YEARBOOK 2009 ANNUAIRE

ATHENS II
Documents of the Conference
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PART I

Organization of the CMI
Comité Maritime International

CONSTITUTION

2001

PART I - GENERAL

Article 1

Name and Object

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

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

Article 2

Existence and Domicile

The juridical personality of the Comité Maritime International is established under the law of Belgium of 25th October 1919, as later amended. The Comité Maritime International is domiciled in the City of Antwerp, and its registered office is at Everdijstraat 43 B-2000 Antwerp. Its

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

STATUTS

2001

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 Comité Maritime International a son siège 43 Everdijstraat à B-2000 Anvers. Le

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
Article 3
Membres et responsabilité

I

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

Si dans un pays il n’existe pas d’Association nationale et qu’une organisation de ce pays pose sa candidature pour devenir Membre du Comité Maritime International, l’Assemblée peut accepter une pareille organisation comme Membre du Comité Maritime International après s’être assurée que l’objectif, ou un des objectifs, poursuivis par cette organisation est l’unification du droit maritime sous tous ses aspects. Toute référence dans les présents statuts à des Associations membres comprendra toute organisation qui aura été admise comme Membre conformément au présent article.

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

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

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

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

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

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

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

II

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

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


II

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

b) (i) Une requête d’exclusion d’un Membre sera faite:
   (A) par toute Association Membre ou par un Membre titulaire;
or (B) by the Executive Council.

(ii) Such motion shall be made in writing and shall set forth the reason(s) for the motion.

(iii) Such motion must be filed with the Secretary-General or Administrator, and shall be copied to the Member in question.

c) A motion to expel made under sub-paragraph II(b)(i)(A) of this Article shall be forwarded to the Executive Council for first consideration.

(i) If such motion is approved by the Executive Council, it shall be forwarded to the Assembly for consideration pursuant to Article 7(b).

(ii) If such motion is not approved by the Executive Council, the motion may nevertheless be laid before the Assembly at its meeting next following the meeting of the Executive Council at which the motion was considered.

d) A motion to expel shall not be debated in or acted upon by the Assembly until at least ninety (90) days have elapsed since the original motion was copied to the Member in question. If less than ninety (90) days have elapsed, consideration of the motion shall be deferred to the next succeeding Assembly.

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

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

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

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

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

III

The liability of Members for obligations of the Comité Maritime International shall be limited to the amounts of their subscriptions paid or currently due and payable to the Comité Maritime International.
(B) par le Conseil exécutif.
(ii) Une requête d’exclusion d’un Membre se fera par écrit et en exposera les motifs.
(iii) La requête d’exclusion doit être déposée chez le Secrétaire général ou chez l’Administrateur et sera transmise en copie au Membre en question.

c) Une requête d’exclusion faite en vertu de l’alinéa II (b) (i) (A) ci-dessus sera transmise pour examen au Conseil exécutif pour la prendre en considération.
(i) Si telle requête est approuvée par le Conseil exécutif, elle sera transmise à l’Assemblée pour délibération telle que prévue à l’article 7 b) des statuts.
(ii) Si la requête n’est pas approuvée par le Conseil exécutif, elle peut néanmoins être soumise à la réunion de l’Assemblée suivant immédiatement la réunion du Conseil exécutif où la requête a été examinée.

d) Une demande d’exclusion ne fera pas l’objet de délibération ou ne il n’en sera pas pris acte par l’Assemblée si au moins quatre-vingt-dix jours ne se sont pas écoulés depuis la communication de la copie de la requête d’exclusion au Membre visé. Si moins de quatre-vingt-dix jours se sont écoulés, la requête sera prise en considération à la prochaine réunion de l’Assemblée.

e) (i) Le Membre en question peut présenter une réplique écrite à la requête d’exclusion, et/ou peut prendre la parole à l’Assemblée pendant la délibération sur la requête.
(ii) Dans le cas d’une requête d’exclusion appuyée sur une carence de paiement, comme le prévoit l’article 3 II a) (i) ci-dessus, le paiement effectif de tous les arriérés dus par le Membre visé, constituera une défense suffisante et, pourvu que le Trésorier confirme le paiement, la requête sera présumée être retirée.

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

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

III.

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

Article 4
Composition

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

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

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

Article 5
Meetings and Quorum

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

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

Article 6
Agenda and Voting

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

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

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

All decisions of the Assembly shall be taken by a simple majority of Member Associations present, entitled to vote, and voting. However, amendments to this Constitution or to any Rules adopted pursuant to Article 7(h) and (i) shall require the affirmative vote of a two-thirds majority of all Member Associations present, entitled to vote, and voting. The Administrator, or another person designated by the President, shall submit to the Belgian Ministry of Justice any amendments of this Constitution and shall secure their publication in the Annexes du Moniteur belge.
2ème PARTIE - ASSEMBLEE

Article 4
Composition

L’Assemblée est composée de tous les membres du Comité Maritime International et des membres du Conseil exécutif.

Toute Association membre et tout Membre consultatif peuvent être représentés à l’Assemblée par trois délégués au maximum.

Le Président peut, avec l’approbation du Conseil exécutif, inviter des observateurs à assister, totalement ou partiellement, aux réunions de l’Assemblée.

Article 5
Réunions et quorum

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

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

Article 6
Ordre du jour et votes

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

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

Toutes les décisions de l’Assemblée sont prises à la majorité simple des Associations membres présentes, jouissant du droit de vote et prenant part au vote. Toutefois, le vote positif d’une majorité des deux tiers de toutes les Associations membres présentes, jouissant du droit de vote et prenant part au vote sera nécessaire pour modifier les présents statuts ou des règles adoptées en application de l’Article 7 (h) et (i). L’Administrateur, ou une personne désignée par le Président, soumettra au Ministère de la Justice belge toute modification des statuts et veillera à sa publication aux Annexes du Moniteur belge.
Article 7
Functions
The functions of the Assembly are:
a) To elect the Officers of the Comité Maritime International;
b) To elect Members of and to suspend or expel Members from the Comité Maritime International;
c) To fix the amounts of subscriptions payable by Members to the Comité Maritime International;
d) To elect auditors;
e) To consider and, if thought fit, approve the accounts and the budget;
f) To consider reports of the Executive Council and to take decisions on the future activity of the Comité Maritime International;
g) To approve the convening and decide the agenda of, and ultimately approve resolutions adopted by, International Conferences;
h) To adopt rules governing the expulsion of Members;
i) To adopt rules of procedure not inconsistent with the provisions of this Constitution; and
j) To amend this Constitution.

PART III - OFFICERS

Article 8
Designation
The Officers of the Comité Maritime International shall be:
a) The President,
b) The Vice-Presidents,
c) The Secretary-General,
d) The Treasurer,
e) The Administrator (if an individual),
f) The Executive Councillors, and
g) The Immediate Past President.

Article 9
President
The President of the Comité Maritime International shall preside over the Assembly, the Executive Council, and the International Conferences convened by the Comité Maritime International. He shall be an ex-officio member of any Committee, International Sub-Committee or Working Group appointed by the Executive Council.

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

The President shall have authority to conclude and execute agreements on behalf of the Comité Maritime International, and to delegate this authority to other officers of the Comité Maritime International.
Article 7
Fonctions
Les fonctions de l’Assemblée consistent à:

a) élire les Membres du Bureau du Comité Maritime International;

b) élire des Membres du Comité Maritime International et en sus­pendre ou exclure;

c) fixer les montants des cotisations dues par les Membres au Comité Maritime International;

d) élire des réviseurs de comptes;

e) examiner et, le cas échéant, approuver les comptes et le budget;

f) étudier les rapports du Conseil exécutif et prendre des décisions concernant les activités futures du Comité Maritime International;

g) approuver la convocation et fixer l’ordre du jour de Conférences Internationales du Comité Maritime International, et approuver en dernière lecture les résolutions adoptées par elles;

h) adopter des règles régissant l’exclusion de Membres;

i) adopter des règles de procédure sous réserve qu’elles soient conformes aux présents statuts;

j) modifier les présents statuts.

3ème PARTIE- MEMBRES DU BUREAU

Article 8
Désignation
Les Membres du Bureau du Comité Maritime International sont:

a) le Président,

b) les Vice-Présidents,

c) le Secrétaire général,

d) le Trésorier,

e) l’Administrateur (s’il est une personne physique),

f) les Conseillers exécutifs, et

g) le Président précédant.

Article 9
Le Président


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’oeuvre du Comité Maritime International.

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

**Article 10**

**Les Vice-Présidents**

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

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

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

**Article 11**

**Le Secrétaire général**


Le Secrétaire Général 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,

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,
Article 15
Présentations de candidatures

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

Le Comité de Présentation de candidatures se compose de:

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

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

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

Le président du Comité de Présentation transmet les propositions ainsi formulées à l’Administrateur suffisamment à l’avance pour qu’elles soient 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.
c) The Secretary-General,
d) The Treasurer,
e) The Administrator (if an individual),
f) The Executive Councillors, and
g) The Immediate Past President.

Article 18
Functions

The functions of the Executive Council are:

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

**Article 18**

**Fonctions**

Les fonctions du Conseil exécutif sont:

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

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

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

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

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

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

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

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

i) d’examiner et d’approuver les propositions de publications du Comité Maritime International;

j) de fixer les dates et lieux de ses propres réunions et, sous réserve de l’article 5, des réunions de l’Assemblée, ainsi que des séminaires et colloques convoqués par le Comité Maritime International;

k) de proposer l’ordre du jour des réunions de l’Assemblée et des Conférences Internationales, et de fixer ses propres ordres du jour ainsi que ceux des Séminaires et Colloques convoqués par le Comité Maritime International;

l) d’exécuter les décisions de l’Assemblée;
m) To report to the Assembly on the work done and on the initiatives adopted.

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

**Article 19**

**Meetings and Quorum**

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

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

**PART V - INTERNATIONAL CONFERENCES**

**Article 20**

**Composition and Voting**

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

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

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

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

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

The resolutions of International Conferences shall be adopted by a simple majority of the Member Associations present, entitled to vote, and voting.
m) de faire rapport à l’Assemblée sur le travail accompli et sur les initiatives adoptées.

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

**Article 19**

**Réunions et quorum**


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

**5ème PARTIE - CONFÉRENCES INTERNATIONALES**

**Article 20**

**Composition et Votes**

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

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

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


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

Les résolutions des Conférences Internationales sont prises à la majorité simple des Associations membres présentes, jouissant du droit de vote et prenant part au vote.
PART VI - FINANCE AND GOVERNING LAW

Article 21
Arrears of Subscriptions

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

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

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

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

Article 22
Financial Matters and Liability

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

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

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

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

Article 23
Governing Law

Any issue not resolved by reference to this Constitution shall be resolved by reference to Belgian law, including the Act of 25th October 1919 (Moniteur belge of 5th November 1919), as subsequently amended, granting
6ème PARTIE - FINANCES

Article 21
Retards dans le paiement de Cotisations

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

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

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

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

Article 22
Questions financières et responsabilités

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


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

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

Article 23
Loi applicable

Toute question non résolue par les présents statuts le sera par application du droit belge, notamment par la loi du 25 octobre 1919 (Moniteur belge 5 novembre 1919) accordant la personnalité civile aux associations.
juridical personality to international organizations dedicated to philanthropic, religious, scientific, artistic or pedagogic objects, and to other laws of Belgium as necessary.

**PART VII - ENTRY INTO FORCE AND DISSOLUTION**

**Article 24**

**Entry into Force (2)**

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

**Article 25**

**Dissolution and Procedure for Liquidation**

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

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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

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

Article 25
Procédure de dissolution et de liquidation

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

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

1996

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

1999¹

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

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

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

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

¹. Adopted in New York, 8th May 1999, pursuant to Article 3 (I)(c) and (d) of the Constitution.
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4 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.

5 Wim Fransen was born on 26th July 1949. He became a Master of law at the University of Louvain in 1972. During his apprenticeship with the Brussels firms, Botson et Associés and Goffin & Tacquet, he obtained a ‘licence en droit maritime et aérien’ at the Université Libre de Bruxelles. He started his own office as a maritime lawyer in Antwerp in 1979 and since then works almost exclusively on behalf of Owners, Carriers and P&I Clubs. He is the senior partner of Fransen Advocaten. He is often appointed as an Arbitrator in maritime and insurance disputes. Wim Fransen speaks Dutch, French, English, German and Spanish and reads Italian. Since 1998 he is the President of the Belgian Maritime Law Association. He became Administrator of the CMI in June 2002.
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6 Candidate in Law, (University of Louvain), 1984; Licentiate in Law, (University of Louvain), 1987; LL.M. in Admiralty, Tulane, 1989; Diploma Maritime and Transport Law, Antwerp, 1990; Member of the Antwerp bar since 1987; Professor of Maritime Law, University of Louvain; Professor of Marine Insurance, University of Hasselt; founding partner of Goemans, De Scheemaecker Advocaten; Member of the board of directors and of the board of editors of the Antwerp Maritime Law Reports (“Jurisprudence du Port d’Anvers”); publications in the field of Maritime Law in Dutch, French and English; Member of the Team of Experts to the preparation of the revision of the Belgian Maritime Code and Royal Commissioner to the revision of the Belgian Maritime Code.

7 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.

8 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 specialty. 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.

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advisor in the Department for International Affairs of the Swedish Ministry of Justice 1970-1981 and Head of that Department 1982-1984; responsible for the preparation of legislation in various fields of civil law, mainly transport law, nuclear law and industrial property; represented Sweden in negotiations in a number of intergovernmental organisations, e.g. the International Maritime Organization (IMO). Director of the International Oil Pollution Compensation Funds 1985-2006. Served as arbitrator in Sweden. Member of the Panel of the Singapore Maritime Arbitration Centre and of the International Maritime Conciliation and Mediation Panel. Published (together with two co-authors) a book on patent law as well as numerous articles in various fields of law. Visiting professor at the World Maritime University in Malmö (Sweden) and at the Maritime Universities in Dalian and Shanghai (People's Republic of China). Lecturer at the IMO International Maritime Law Institute in Malta, the Summer Academy at the International Foundation for the Law of the Sea in Hamburg and universities in the United Kingdom and Sweden. Member of the Steering Committee of the London Shipping Law Centre. Awarded the Honorary Degree of Doctor of Laws by the University of Southampton 2007. Elected Executive Councillor 2007.


12 Born 1944 in Onitsha, Nigeria. Educated at Marlborough College, U.K; read law at Queens’ College, Cambridge, U.K B.A.in 1967, LL.M 1968, M.A 1970. Called to the English Bar (Middle Temple) Nov.1968. Called to the Nigerian Bar in June 1973 and set up law partnership Mbanefo & Mbanefo in 1974. Currently he runs the law firm Louis Mbanefo & Co. in Lagos. Has appeared as counsel in many of the leading Nigerian shipping cases and was appointed a Senior Advocate of Nigeria (SAN) in May 1988. A founder member of the Nigerian Maritime Law Association, he is the current Vice President. He has been Chairman of the Nigerian National Shipping Line and Chairman of a Ministerial Committee to review and update the Nigerian shipping laws. He is the author of the Nigerian Shipping Law series and was responsible for the preparation of the Admiralty Jurisdiction Act 1991 and the Merchant Shipping Act 2007 for the Nigerian Government. He has been involved with IMLI since its inception in 1988.
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PART II

The Work of the CMI

I. ADDITIONAL DOCUMENTS FOR THE ATHENS CONFERENCE

II. CONFERENCE DOCUMENTS
I.

ADDITIONAL DOCUMENTS FOR THE ATHENS CONFERENCE

PROCEDURAL RULES RELATING TO LIMITATION OF LIABILITY IN MARITIME LAW

Letter of Gregory Timagenis dated October 1, 2008 enclosing:

– the actual text of the Draft Guidelines and Page 126
– a Digest of the comments by the National Associations " 134
International Sub-Committee on the Procedural Rules relating to Limitation of Liability in Maritime Law

October 1st, 2008

To

The Presidents of NMLAs
The Members of the I-SC on Procedural Rules relating to Limitation of Liability

Dear Presidents, dear Members of the I-SC,

Re: Guidelines for the Procedural Rules Relating to Limitation of Liability in Maritime Law

In view of the forthcoming 39th CMI Conference in Athens I attach two working documents for the facilitation of the work in Athens.

The first is a document which includes the actual text of the Draft Guidelines without introductory notes and comments- (CMI 39/Conf/PRLL.WP1).

The second is a digest of the comments received from NMLAs up to 30 September 2009 arranged under each Guideline (CMI39/Conf/PRLL.WP2).

Please make sure that you bring with you hard copies of these documents because in accordance with the Practice of CMI in the recent years and conferences, no documents will be distributed in hard copies during the Conference.

All the other documents relating to the Procedural Rules (and available up to April 2008) are published in the CMI Yearbook 2007-2008 which will be distributed at the Conference and it is posted at the CMI web site. Any documents subsequently issued or received are posted on the web site of the Conference (www.cmi2008athens.gr)

Early documents on the subject (i.e. the Questionnaire and the Replies of NMLAs) appear in the CMI Yearbook 2005-2006.

I wish you and your national delegations a nice trip and I look forward to seeing you in Athens.

Yours sincerely,

GR. J. TIMAGENIS
Procedural Rules Relating to Limitation of Liability
Maritime Law

October 1st, 2008

Draft Guidelines

The Comité Maritime International (CMI)
1. bearing in mind its purpose in accordance with its Constitution, which is “to contribute by all appropriate means and activities to the unification of maritime law in all its aspects”.
2. noting that international conventions generally and specifically in connection with limitation of liability have contributed to the unification of maritime law but that there is considerable diversity in the way they are implemented and applied procedurally by various States, while a considerable number of States have not ratified any relevant convention and apply national legislation not based on any convention for the limitation of liability in maritime law.
3. believing that it may contribute to the harmonization of the procedures relating to the limitation of liability in maritime law by preparing draft Guidelines for this purpose, has developed the following Guidelines.

1. Interpretation

(a) For the purposes of these Guidelines
   “Limitation of Liability” means the limitation of liability in maritime law through the establishment of a fund and does not include limitation per package or unit or per passenger nor does it relate to international compensation funds established under international conventions.
   “Fund” means the fund established for the purpose of Limitation of Liability out of which claims subject to limitation may be satisfied.
   “Claims” means the claims subject to the Limitation of Liability and/or, where the context so requires, claims submitted for satisfaction out of the distribution of the Fund and “Claimant” is to be construed accordingly.
   “Limitation Proceedings” means the proceedings or procedures for the Limitation of Liability including without limitation the establishment of the Fund, the registration and proof of the claims and the distribution of the Fund.
   “Guidelines” means the guidelines which are contained in the following sections of this document.

(b) All the Guidelines are subject to and/or without prejudice to any specific provisions in any applicable convention.
2. Jurisdiction

When the courts of a State have jurisdiction in relation to Limitation of Liability—whether pursuant to an international convention or pursuant to its national law—the State should ensure that there is preferably one court having jurisdiction to deal with the Limitation of Liability. The court(s) having such jurisdiction should have the capacity to deal with complex multiparty cases. If more than one court have jurisdiction their respective jurisdiction should be clearly delineated to avoid conflicts, and where Limitation Proceedings start in one of these courts all proceedings relating to limitation should be referred to that court.

3. Limitation of Liability without the Constitution of a Fund

(a) If a person liable may limit its without the establishment of a Fund, the court should (i) adjudicate each Claim for its full proven amount (provided that all the requirements for the adjudication of the Claim have been satisfied) and (ii) at the same time declare the right of limitation of the person liable and, for the purpose of limiting enforcement, the amount of limitation applicable to the respective claim.

(b) If Limitation of Liability is invoked without the establishment of a Fund, assets arrested or other security provided should not be released but the security may be reduced to the amount of Limitation.

4. Time Limit for starting Limitation Proceedings

States should in their national legislation take into account that:

(a) Limitation of Liability may not be invoked against a Claim after its satisfaction through enforcement or otherwise, provided however that this is without prejudice (i) to the right to start Limitation Proceedings in respect of other Claims and (ii) to any rules concerning subrogation.

(b) Limitation may be invoked as an original or amended defence in pending proceedings up to the time allowed by the procedural rules of the court where the proceedings are pending.

(c) Subject to paragraph (a) above, no other time limit seems to be necessary for the commencement of autonomous Limitation Proceedings.

(d) Where the prior approval of a court is required for the establishment of the Fund, it is advisable for a time limit for such establishment to be set in the national law or fixed by the court after such approval has been given.

5. Procedure for the establishment of the Fund and evidence

States should in their national legislation:
(a) Provide an expeditious procedure for the establishment of the Limitation Fund.

(b) Specify when exactly the Fund is deemed to be established.

(c) Specify that the right of Limitation becomes provisionally effective at the time of the establishment of the Fund.

(d) Specify the evidence proving that the Fund is established.

(e) Provide the person liable with appropriate confirmation of the establishment of the Fund, preferably through a court decision, thus facilitating the recognition of such establishment in other States.

6. Challenging the right of Limitation

(a) States should provide in their national legislation for the right of Claimants to challenge the right of the person liable to limit its liability before the Court where the Fund is established or proceedings for the establishment of the Fund are pending [or before any other Court having jurisdiction for this purpose].

(b) The right of the person liable to limit its liability may be also challenged by the Claimants before the Court where vessels are arrested or other assets are attached or other security is given or proceedings are pending in this connection, provided that this challenge is made only for the purpose of maintaining the arrest, attachment or other security or for the purpose of preservation of rights.

(c) The proceedings for challenging the right of limitation should not automatically stay or cause delay to the establishment of the Fund and its effects.

[(d) Exceptionally, if there is no reasonable basis upon which the party liable may claim the benefit of Limitation of Liability, following a request by any Claimant or other party having a legitimate interest, a stay of the limitation procedure may be granted by the court in summary expeditious proceedings without causing undue delay to the effects of the establishment of the Fund as a result of the court’s consideration of the request.]

7. Consequences of Limitation

States should:

(a) Provide in their national legislation reasonable requirements and expeditious procedures for the recognition of the effects of the establishment of the Fund in another State; and

(b) Establish procedures for the expeditious release of attached assets, following the establishment of the Fund.
8. Loss of right to Limitation of Liability

States should provide in their national legislation that if it is determined after the establishment of the Fund [and the effective date of provisional right of Limitation] that the person liable is not entitled to limit its liability:

(a) If the right to limit liability is lost in respect of one or some of the Claims only, then the Limitation Proceedings shall continue in respect of the other Claimants and the Fund remain in place for distribution between these other Claimants.

(b) If the right to limit liability is lost in respect of all the Claimants, then:
   (i) The Fund shall nevertheless remain in place and be distributed between the Claimants pursuant to the Limitation Proceedings.
   (ii) The Claims of the Claimants shall be verified and/or adjudicated in the same manner and in the same procedure, as if the right of limitation had not been lost.
   (iii) The Claimants, however, shall be entitled to immediately seek security on other assets of the person liable and to enforce the balance of their [adjudicated] [verified] claims on other assets of the person liable.

(c) In case the right to limit liability having been lost, the consequences of bringing Claims in the Limitation Proceedings, including protection of the limitation of time (time bar), will remain in full effect.

(d) Claims which are not subject to limitation shall be pursued outside and independently from the Limitation Proceedings.

9. Information and documents to be provided by the person invoking the benefit of limitation

States should specify in their national legislation which documents and information must be provided by the person invoking the benefit of limitation, such as:

(a) A copy of the measurement certificate of the ship or any other document required for the calculation of the limitation amount.

(b) A list with the names and addresses, to the extent known, of the persons that may have claims subject to limitation.

(c) Evidence of the appropriate deposit of the amount of the Fund or a bank guarantee equal to the amount of the Fund.
10. Approval of the right of limitation

States should provide in their national legislation appropriate clear rules relating to:

(a) The sum that must be added to the limit of liability for interest from the time of the incident up to the establishment of the Fund.

(b) The sum that [must] [may] be added to the Fund in respect of the costs of administration of the Fund.

(c) The location and standing of the bank that may provide a guarantee.

(d) The guarantees, other than bank guarantees, that are acceptable.

(e) The duty of the court to verify the calculation of the limit expeditiously.

(f) That the amounts in the Fund distributed to the Claimants may be transferred from the State in question without any restrictions.

11. Time limit for actions by the Claimants in Limitation Proceedings

(a) States should set in their national legislation or give their courts the power to set a time limit for the following actions by Claimants with respect to:

(i) challenging the right of the person liable to invoke the benefit of Limitation,
(ii) requesting a review of the amount of the Limitation Fund,
(iii) filing Claims in the Limitation Proceedings.

(b) In setting these time limits special attention should be paid to the relevant provisions of international conventions, including in particular CLC and HNS Convention.

(c) States should specify in their national legislation the event from which these time limits start. The time limit for the participation of the Claimants in the Limitation Proceedings must not start before they are notified of the establishment of the Fund either individually – if their names and addresses are known – or through publications ensuring reasonably broad publicity.

12. Consequences of late Participation

Subject to any related provisions in the applicable international Conventions, States should adopt provisions on the consequences of late participation of Claimants in the Limitation Proceedings in respect of:

(a) The (exclusion of the) right to challenge the right of the person liable to invoke the benefit of limitation or to seek review of the amount of the Limitation Fund.
(b) The (exclusion of the) right to participate in the initial or the final distribution of the Fund.

13. Verification of Claims

States should enact provisions setting or giving power to their Courts to set the procedure for the verification of the Claimants’ Claims in the Limitation Proceedings including, inter alia, rules for:

(a) the registration or notice of the claimants’ claims and submission of related evidence,

(b) preparation of a first list of Claimants and Claims either by the Fund administrator or by an appointed judge or by the court and notification of this list to the Claimants,

(c) the time limit within which the list (distribution plan) and in effect the Claims enumerated in the list may be challenged (either by Claimants or by the person liable unless bound by res judicata or by the specific provisions of any applicable international Convention),

(d) the procedure for the resolution of disputes concerning the distribution plan, and,

(e) the finalization of the list (distribution plan) and the distribution of the Fund.

14. Challenge of Claimants’ Claims

(a) Subject to the rules of res judicata or to the provisions of any applicable international Convention [including in particular but without limitation the CLC and the HNS Convention] States should, in the context of Limitation Proceedings and the procedure for the verification of claims, give the person liable the possibility to challenge the Claims and the Claimants the possibility to challenge the Claims of other Claimants.

(b) The challenge of the Claim of one Claimant should not delay the distribution of the Fund to other Claimants the Claims of which are not anticipated to be adversely affected (i.e. reduced) by the challenge.

(c) Any amount released by the rejection from the distribution list (Distribution Plan) of a Claim challenged should be distributed to all the claimants on the list (plan) of distribution pro rata in proportion to their respective claims as a supplementary distribution.

15. Relation between Limitation Proceedings and Proceedings on the merits of the Claims

Subject to any specific provisions in the applicable international Conventions,
States should provide in their national legislation expeditious procedures for the recognition of judgments issued on the merits of Claims by other courts having jurisdiction on the merits of these Claims.

16. More than one Person Liable

(a) Where more than one person liable (and entitled to limit liability) exist and unless a relevant Convention provides otherwise and/or unless any such person has lost its right to limit its liability as a result of any provision, including provisions concerning its conduct, the establishment of the Fund and the Limitation of Liability by any of them benefit all such persons vis-à-vis third party claimants.

(b) States should include in their national legislation provisions regulating the right of subrogation and the apportionment of liability among the persons liable and providing an expeditious procedure for this purpose and for giving effect to the subrogation provisions, if any, of the relevant Convention or national legislation.

17. More than one Ship Liable

(a) Unless any applicable Convention provides otherwise, where Claims arise from an incident involving more than one ship, the persons liable in relation to each ship may limit their liability separately and independently from the persons liable in relation to any other ship.

(b) Any Claimants having Claims against persons liable in relation to more than one of the ships may participate in both or all sets of Limitation Proceedings and register their Claims with each of the relevant Funds for the total amount of their respective Claims.

(c) The subrogation provisions of any applicable Convention apply in the relations between the persons liable in relation to the various ships and States that are not parties to the relevant Conventions should enact similar provisions.

18. Subrogation

States should provide in their national legislation rules concerning subrogation of rights to the extent that this is a matter left to national legislation by the applicable Convention.

19. Counterclaims

States should provide in their national legislation that:

(a) Unless any applicable Convention provides otherwise, counterclaims of
the person liable may be raised [and set off against Claims of Claimants] [in accordance with the law applicable to such set off], in which case these Claims participate in the distribution of the Fund for the balance, if any, [provided that the raising of the counterclaim and the set off does not cause undue delay to the distribution process.] and

(b) If the applicable Convention provides for compulsory set off of certain counter claims, the issue of set off may be raised by any Claimant participating to the distribution vis-à-vis any other Claimant(s).

20. Partly Paid Claims

If a claim entitled to participate in the distribution of a particular Fund has been partially paid outside the Fund, then it will participate in the distribution in respect of its unpaid balance.
Additional documents for the Athens Conference
### Procedural Rules relating to Limitation of Liability in Maritime Law

#### Scandianvian MLAs

<table>
<thead>
<tr>
<th>Part II - The Work of the CMI</th>
<th>Procedural Rules relating to Limitation of Liability in Maritime Law</th>
</tr>
</thead>
<tbody>
<tr>
<td>Is the definition of “Guidelines” really necessary? The only place the term is used, except for in the preamble, is Section 1(b) and we see no useful purpose of a further definition. Moreover, taken literally, it seems that the Preamble and Section I were not a part of the “Guidelines” because Section 1(a) notes that “Guidelines” means the Guidelines which are contained in the following sections of this document.</td>
<td></td>
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<tr>
<td>Scandianvian MLAs:</td>
<td></td>
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<tr>
<td>The definition of “Limitation Proceeding” should perhaps clarify that the concept includes decisions on whether or not a claim is subject to limitation.</td>
<td></td>
</tr>
<tr>
<td>“Limitation Proceeding” means the proceeding or procedures for the limitation of liability including without limitation the establishment of the Fund, the registration and proof of the claims, decisions as to whether a claim is subject to limitation, and the distribution of the Fund.”</td>
<td></td>
</tr>
</tbody>
</table>

#### Section 2: Jurisdiction

| Scandianvian MLAs: |
| It should be clarified whether the provision is intended only to deal with “Limitation Proceedings” as defined, or also the substance of the individual claims. |
| If the intention is to deal only with “Limitation Proceedings”, as defined, one should perhaps emphasize in the comments that the rationale is to accumulate experience and gather expertise in one court. |
| If the idea is to provide for the jurisdiction in respect of the substance of claims subject to limitation, one should avoid the defined term “Limitation Proceedings.” On this assumption, one should clarify whether the jurisdiction rules also should apply to actions initiated before a limitation fund has been established. Furthermore, it should be clarified whether the intention is to recommend that each State assigns limitation matters to one particular court, or whether the intention is to recommend that one court that should have the sole jurisdiction in each case could be a different court from case to case. |
### Section 2 - Limitation of Liability Without the Constitution of a Fund

**Korean MLA.**

As introductory note (c) says, if the person liable who wants to limit its liability is more than one person, establishment of the fund is desirable.

There should be a deadline by which the claims subject to limitation should be registered at the court or charge of the distribution of fund, and in the event the claimants fail to comply with the deadline, the claims shall be forfeited. Otherwise, the owners will be exposed to the risk of overpayments above the limit because, but for the deadline, this scheme (i.e., limitation-of-liability without the constitution of a fund) would allow other claimants to appear after the completion of the distribution of the fund.

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**Scandinavian MLA.**

A word is missing:

"(aa) If a person liable may limit its liability without the establishment of a Fund, the court should adjudicate each claim for its full proven amount (provided that all requirements for the adjudication of the claim have been satisfied) and (at the same time declare the right of limitation of the person liable and, for the purpose of limiting enforcement, the amount of limitation applicable to the respective claim.""

---

### Section 4 - Time Limit for Starting Limitation Proceedings

**Korean MLA.**

Under Korean law, a person liable should apply for starting limitation proceedings within one year after he receives claims more than its limitation amount (or 6 months in case of oil pollution by oil tanker).

In order to facilitate the compensation procedure for the claimants, the person liable may as well apply within some...
| Japanese M.L.A. | 
|---|---|
| **“Eligent” (Section 4(8)(i)** |  
| Section 4(8)(i) should be amended as follows. |  
| “(8) Limitation may be invoked as an "original or amended defense" in pending proceedings, up to the time allowed by the procedural rules of the court where the proceedings are pending.” |  
| Under some jurisdictions, including ours, the possible invocation of the limitation is not, exactly speaking, qualified as a "defense" in pending proceedings (procedure on the merit). It is regarded as a kind of objection during the enforcement procedure. In addition, the terms "original defense" and "amended defense" might be unfamiliar in some jurisdictions. These terminologies or qualifications might vary considerably among jurisdictions, and the guidelines should be as neutral as possible for all jurisdictions. As far as section 4(8)(i) is concerned, we believe that the reference to "as an original or amended defense" can safely be deleted without causing any ambiguity. |  
| “Autonomous Limitation Proceedings” (Section 4(8)(i)) |  
| What is the exact meaning of autonomous “Limitation Proceedings”? If no special meaning is intended by the term “autonomous”, it should be deleted. |  
| **Section 5: Procedure for the Establishment of the Fund and Evidence** |  
| Japanese M.L.A. |  
| The reference to “Limitation Fund” in Section 5(a) must be “Fund”. See Section 1 (the definition of “Fund”). |
Section 6 - CHALLENGING THE RIGHT OF LIMITATION

Korean MILAs

It would be desirable to omit Clause (a) and Clause (b), preferably, to delete Clause (b) concerning the place where to challenge the limitation because there is a risk of conflicting decisions between the courts of Clause (a) and Clause (b).

Scandinavian MILAs

Proposed drafting improvement:

"(b) The right of the person liable to limit his liability may also be challenged by the Claimants before the Court where vessels are arrested or other assets are attached or other security is given; or proceedings are pending in this connection, provided that this challenge is made only for the purpose of maintaining the arrest, attachment, or other security or for the purpose of preservation of rights."

We think that sub-paragraph (a) would come into play only in extremely rare situations, and prefer that it should be deleted.

Section 7 - CONSEQUENCES OF LIMITATION

Japanese MILA

Section 7(a)
Section 7(b) should be deleted.

We fully understand that the issue of international parallel proceedings is a serious practical concern. However, it is a totally different question whether the current project is an appropriate opportunity to address the issue.

While international conventions (Article 15 of ILIWC, Article 7N of the CLC, and Article 11 of the BHI Convention) provide for the mutual recognition of the limitation proceedings among Contracting States, Guideline (Section 7(a)) covers all limitation proceedings in foreign states whether based on international convention or on their national legislation. It is quite difficult to predict what harm each limitation proceedings would take or what kind of effect is intended under the proceedings in the state in question. We are not sure if the Guidelines would offer any meaningful
guidance to the national legislation in this circumstance. We are not even sure whether the demand for “expeditious procedure” would be feasible in this context.

From the viewpoint of our national MLA, the issue can only be solved by carefully drafted international conventions or a model law something like UNCITRAL Model Law on Cross-Border Insolvency 1997, and a simple reference in the Guidelines cannot help the situation. We believe that the issue of the recognition of a foreign limitation procedure should be, if and only if CMI wish to take up the issue, examined independently outside the current project, which mainly focuses on the domestic limitation proceedings.

<table>
<thead>
<tr>
<th>Section 8 - LOSS OF RIGHT TO LIMITATION OF LIABILITY</th>
</tr>
</thead>
<tbody>
<tr>
<td>Korean MLA</td>
</tr>
<tr>
<td>According to Section 7, the attached vessel should be released expeditiously following the establishment of the Fund. On the other hand, if the right to limit liability is lost, the Fund shall nevertheless remain in place pursuant to Section 8. The release of the previous attached asset such as vessel should not be released if there is possibility that the right to limit liability is involved. When the total claim is US $ 2M and the limitation amount is US $ 1M and the attached vessel is worth US $ 2M, and the vessel had been released after the establishment of the Fund, the claimants are short of security with limitation amount of US $ 1M in case that the right of limitation is lost. By establishing the fund, in this example, the person liable is abusing the limitation procedure.</td>
</tr>
</tbody>
</table>

| Scandinavian MLAs                                    |
| Despite the title, this Draft Article deals with two very different situations. One concerns a situation in which one or more liable parties has lost the right of limitation due to privity. The other concerns a situation in which one or more claims cannot be recovered from the limitation fund because they are not subject to limitation as they fall outside the scope of the particular limitation rules. These situations should be clearly distinguished, as it is hardly justifiable to deny a claimant access to the fund in privity cases, while a claim that falls outside the scope of the limitation rules never should be allowed to a compete with a claim subject to limitation in the limitation fund. In both situations it may happen that a limitation fund has been established and limitation cannot be invoked for any claims. In those cases the issue arises whether the fund shall revert to the person that constituted it, or whether it should be distributed to the claimants against that person or a sub-set of them. In our view, one may very well use the limitation procedure, but it would hardly be justifiable to deny the general creditors of the person that established the
Additional documents for the Athens Conference
<table>
<thead>
<tr>
<th>Section</th>
<th>INFORMATION AND DOCUMENTS TO BE PROVIDED BY THE PERSON INVOKING THE BENEFIT OF LIMITATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>Korean MILA</td>
<td>ROK MILA wants to add several other information such as (i) reason of the applying, (ii) person invoking the benefit of limitation (iii) vessel's name involved in the accident.</td>
</tr>
<tr>
<td>Japanese MILA</td>
<td>The following few words should be added to Section 9(c) to align with Section 10(a). “(c) Evidence of the appropriate deposit of the amount of the Fund or a bank guarantee or other acceptable guarantee equal to the amount of the Fund.”</td>
</tr>
<tr>
<td>Scandinavian MILAs</td>
<td>Drafting proposal to remind Courts that different limitation systems may refer to different tonnage measurement rules: “(a) A copy of the relevant measurement certificate of the ship or any other document required for the calculation of the limitation amount.”</td>
</tr>
<tr>
<td>Section 10</td>
<td>APPROVAL OF THE RIGHT OF LIMITATION</td>
</tr>
<tr>
<td>Korean MILA</td>
<td>The title is not consistent with the contents in Section 10. Therefore, the title should be adjusted in line with the content.</td>
</tr>
</tbody>
</table>
| Japanese MILA | Section 10(1) Section 10(1) should be deleted. Section 10(3), which prohibits “any restriction” on the transfer of the amount for distribution, might be problematic for many countries. Although we fully understand foreign claimants’ legitimate interest to receive distribution from the
Additional documents for the Athens Conference

<table>
<thead>
<tr>
<th>Section 11- TIME LIMIT FOR ACTIONS BY THE CLAIMANTS IN LIMITATION PROCEEDINGS</th>
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<tr>
<td>Korean MLA</td>
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<tr>
<td>Japanese MLA</td>
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<td>Scandinavian MLAs</td>
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Procedural Rules relating to Limitation of Liability in Maritime Law

| Part II - The Work of the CMI |

Procedural Rules relating to Limitation of Liability in Maritime Law

limitation amount, and that decision must be recognized, e.g., under the Brussels system in EU.

On this background, we support the Draft Articles on this point with the following amendment (which reflects current Scandinavian law):

"(a) States should set in their national legislation or give their courts the power to set a time limit for the following actions by Claimants with respect to:

(i) challenging the right of the person liable to invoke the benefit of limitation,

(ii) requesting a review of the amount of the fund,

(iii) filing claims in the limitation proceedings.

In setting the time limit for filing claims, due consideration should be taken to the possibility of damage occurring a long time after the incident. The fund may be distributed in portions among the Claimants that are known at the time of distribution. In such cases, separate time limit for filing Claims shall be set for each portion of the fund."**

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| Mr. M.Jacobsen | It is suggested that paragraph (b) in the guidelines should read (amended part indicated in italics):

(b) In setting these time limits special attention should be paid to **the right of Claimants to take court action in respect of their Claims up to the expiry of the time bar periods laid down in certain international conventions, including in particular the CLC and the HNS Convention.**

---

| Section 12: CONSEQUENCES OF LATE PARTICIPATION |

**ROK MLA supports the current text. New proposal that the right to participate should not be barred unless it has been time-barred may invite undue delay to the whole limitation procedures and, in addition, may prejudice the right of the claimant who duly files claims within the deadline.**

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| Korean MLA | The reference to “Limitation Fund” in Section 12(a) must be “Fund”. See Section 1 (the definition of “Fund”).

---

| Japanese MLA |

**The words “relevant provisions of” have been deleted.**
Section 12(b) should be amended as follows:

"(b) The (exclusion of the) right to participate in a part or the entire in the initial of the final distribution [procedure] of the Fund."

The current wording, read literally, sounds as if the choice was exclusion from either the first or the final distribution. The real intention, we believe, is expressed more correctly in the above amended text.

<table>
<thead>
<tr>
<th>Scandinavian MLAs</th>
<th>Same comments as Section 11</th>
</tr>
</thead>
</table>
| Mr. M. Jacobsson  | It is proposed that paragraph (a) of the Introductory Note should read (amended part indicated italics):
(a) None of the Conventions deals with the consequences of late participation in the Limitation Proceedings and consequently this is left to the national legislation of States, subject to the obligation of States to respect the rights of claimants to bring legal actions within the time bar periods laid down in certain international Conventions including in particular the CLC and the HNS Conventions.

In order to clarify the obligation of States to respect the rights of claimants to bring legal actions up to the end of the time bar periods laid down in certain Conventions, the introductory paragraph and paragraph (b) of the Guideline should be amended to read (amendments indicated in italics):

2 States should adopt provisions on the consequences of late participation of Claimants in Limitation Proceedings in respect of:

(a) [no change]

(b) The (exclusion of the) right to participate in the initial or the final distribution of the Fund, provided that the right to an equal share of the limitation Fund is preserved for Claimants who take legal actions within the time periods laid down in the applicable Convention, including in particular the CLC and the HNS Conventions.

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2 The words “subject to any related provisions in the applicable international Conventions” deleted.
### Procedural Rules relating to Limitation of Liability in Maritime Law

<table>
<thead>
<tr>
<th>Section</th>
<th>Verification of Claims</th>
<th>Challenge of Claimants' Claims</th>
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<tbody>
<tr>
<td>Korean M.L.A.</td>
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<tr>
<td>Japanese M.L.A.</td>
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<td>Japanese M.L.A.</td>
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<tr>
<td>Scandinavian M.L.A.</td>
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</tbody>
</table>

We support the clarifications proposed by Mr. M. Inoue, Inoue.

The words 'infringement of any applicable international Convention (including in particular, but without limitation, the L.C. and the T'nC Conventions)' are.

[Note: The table and text are not fully legible due to the image quality.]
Additional documents for the Athens Conference

Section 15 - RELATION BETWEEN LIMITATION PROCEEDINGS AND PROCEEDINGS ON THE MERITS OF THE CLAIMS

We would like either to delete Section 15 of the Guidelines or to amend it as follows:

"Subject to any specific provisions in the applicable international Conventions, States should provide in their national legislation expedited procedures for the recognition of judgments issued on the merits of claims by other courts having jurisdiction on the merits of these claims."

Section 15 of the Guidelines requires each state to provide expedited procedures for the recognition of judgments issued on the merits of claims by other courts having jurisdiction on the merits of these claims. Although it is not completely clear what is meant by "expedited procedures" if it implies a special procedure which is considerably simpler and faster than the ordinary procedure for recognition of foreign judgment in each state, such as Articles 10 of the CLC and 40 of the HNS Convention, then the proposal seems too far-reaching.

Although the CLC and the HNS Convention provide for such a procedure, it should be noted that both conventions also govern the substantive rules for the claims themselves. Therefore, any judgment regarding the merits of claims covered by the CLC or the HNS Convention rendered under other contracting states is assumed to be based on the same substantive rules, which are also the applicable rules for the recognizing state, and this is the basis for a State Party’s expedited procedure for recognizing the judgment rendered under these conventions. In contrast, the substantive rules for assessing the merit of claims covered by LLMC may vary considerably among jurisdictions, and thus we strongly believe that an ordinary procedure for recognizing foreign judgments is necessary and appropriate.
### Scandlnavian MILAs

We propose the following clarifications:

"Subject to any specific provisions in the applicable international Conventions, States should provide in their national legislation express provisions for the recognition or non-recognition of judgments issued on the merits of Claims by other courts having jurisdiction recognized by that State on the merits of those Claims."

### Section 16 - MORE THAN ONE PERSON LIABLE

A word is missing:

"(a) Where more than one person liable (and entitled to limit liability) exist and unless a relevant Convention provides otherwise and/or unless any such person has lost its right to limit its liability as a result of any provision, including provisions concerning its conduct, the establishment of the Fund and the Limitation of Liability by any of them shall benefit all such persons vis-à-vis third party claimants."

### Section 17 - MORE THAN ONE SHIP LIABLE

Japanese: MILA

Section 17(b) may be amended as follows:

"(b) Any Claimants having Claims against persons liable in relation to more than one of the ships may participate in both or all aspects of the Limitation Proceedings commenced with regard to any ships involved and register their Claims with each of the relevant Funds for the total amount of their respective Claims."

The above text is, we believe, a more accurate expression of what is meant by the provision.
### Section 18- SUBROGATION

**Scandinavian MLA**

It should perhaps be pointed out in the commentaries that one of the issues that need to be addressed in national law is the distinction between subrogation and claims of the person liable in respect of preventive measures if the liable person cannot claim for his own preventive measures in a particular limitation regime. Example: the owner has engaged a skimmer to clean up bunker oil spill. Can he claim in the fund on the basis of subrogation if he has paid the skimmer even if he could not recover for his own preventive measures?

### Section 19- COUNTERCLAIMS

**Korean MLA**

ROK MLA supports the current text, in that the set-off should be allowed and furthermore, if the person interested does not invoke the set-off, the set-off may be raised by any claimant participating to the distribution.

**Japanese MLA**

Section 19(b) should be amended as follows:

"(b) If the applicable Convention provides for compulsory set-off of certain counter claims, the court shall allow the distribution only for the balance of any relevant claim. The issue of set-off may be raised by any Claimant participating to the distribution vis-à-vis any other Claimant(s)."

### Section 20- PARTIALLY PAID CLAIMS

**Japanese MLA**

"If a claimant entitled to participate in the distribution of a particular fund has been partially paid for its claim outside the Fund, then it will participate in the distribution of its the unpaid balance."

The above text is, we believe, a more accurate expression what is meant by the provision.
### ADDITIONAL COMMENTS

<table>
<thead>
<tr>
<th>Korean MLA. (Effect of Fund)</th>
<th>ROC. MLA would like to suggest to include the effect of the establishment and distribution of the Fund in the guideline. When the claimant who participates in the limitation proceedings are able to receive distributions of the Fund, the person invoking the benefit of limitation will be relieved the liability from outside of the limitation proceedings (Act. 73 in Korean Shipowner's Limitation of Liability Act).</th>
</tr>
</thead>
<tbody>
<tr>
<td>Scandinavian MLA. (Reduction of Limitation with EU Legislation)</td>
<td>When the Guidelines on Procedural Rules Relating to Limitation of Liability in Maritime Law have been adopted, there is an urgent need to consider the relationship between the International Limitation Conventions and the EU regional law on choice of law as well as jurisdiction and enforcement of judgements. If these sets-of rules are not brought into better harmony, the scope of the International Conventions may be curtailed in a major region of the world, or the European integration process may be unnecessarily hampered. Two examples can perhaps illustrate the challenges that warrant further studies by the CMI. First, there is a choice of law provision in the Rome III Regulation article 15:4</td>
</tr>
<tr>
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<td>The law applicable to non-contractual obligations under this Regulation shall govern in particular: (b) the grounds for exemption from liability, any limitation of liability and any division of liability;</td>
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<td>It seems necessary to work out how global limitation can function if different laws should govern the limitations of different (non-contractual) claims pursuant to this provision. That would be similar to a bankruptcy governed by different laws for different claims. There may very well be solutions to these problems, but further studies on the matter are certainly justified. Out second example relates to the relationship between the LLMIC and the Brussels Regulation Article 7(6).5</td>
</tr>
</tbody>
</table>

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5 Out second example relates to the relationship between the LLMIC and the Brussels Regulation Article 7(6).


In the Danish Torm Alexandra case (The Maritime and Commercial Court in Copenhagen 19 March 2008; in Danish only) <http://olk.moi.no/erikto/WWW/EU/2008/1-012_001.pdf>, illustrates this well. In this case, a limitation fund established in Liberia (Civil Law Court for the Sixth Judicial Circuit 14 August 2002) <http://olk.moi.no/erikto/WWW/EU/2002/7-935.pdf> was recognized on the basis of LLMC Act 14 despite that some of the basic rules of LLMC had been ignored in Liberia, and indeed characterized as "laughable." Had the Danish Court not felt a strong obligation to recognize the Liberian decision, it would obviously not have done so.


II.

CONFERENCE DOCUMENTS

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Charterer’s rights to limit liability  "  357

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HNS Convention  "  417
Minister,
Secretary General,
Distinguished Guests,
Ladies and Gentlemen,
Friends.

Welcome to the 39th Conference of the Comité Maritime International here in Athens, the heart of one of the foremost maritime nations.

This is the second time, since the CMI was founded in 1897, that the CMI has held a Conference in Athens. The first time was back in 1962, and I doubt that many of you attended. It was the 25th Conference, under the Presidency of Albert Lilar, and the topics for discussion were, of course, various aspects of maritime law (collisions, limitation of liability, carriage by sea) in light of the need for international uniformity.

Indeed, the aim of the CMI is to unify maritime law in order to facilitate shipping industry practices and international trade. I know, Minister, that your presence with us tonight is a sign of acknowledgment by the merchant marine community of the benefits of our Organization. It is in cooperation with other international organizations, like the IMO, UNCITRAL, UNCTAD, ILO, the IOPC Funds and others, that the CMI devotes its skills towards such unification.

In this regard I must express our deep gratitude to the Secretary General of the International Maritime Organization for having agreed to be present at this Opening Ceremony and to say a few words about the contribution of the CMI to the work of the IMO.

I also wish to express our thanks to the other International Organizations to which we have brought our contribution, for also being represented at this Conference.
Our contribution to the legislative work of the International Organizations is made possible by drawing on the knowledge and expertise provided by our member Associations, that is to say, some 60 National Maritime Law Associations throughout the world consisting of legal practitioners, academics, in-house lawyers and others whose activities lie in the shipping domain, all of whom are keen to achieve a better understanding of their and other countries’ maritime legislation.

Thanks to the nature of our membership, we are probably better equipped than any other organization to spot those areas of maritime law which need to be harmonized at an international level and to carry out surveys of national legislation through the “questionnaires” sent to the Member Associations, whose replies enable us to prepare reports and draft instruments for submission to the appropriate international organizations.

Owing to this procedure, just as in many other aspects of the CMI’s structure and management, our tradition has become our strength and, paradoxically, is the key to our modernity. The CMI is not a political body, nor a seat of power, but a vibrant melting–pot of ideas. This is ambitious enough to prevent us from losing our soul to other goals…

That said, I am now pleased to announce that, thanks to the work produced by our International Working Groups and International Sub-Committees during these last four years and even longer, the major topics for the CMI’s 39th Conference will be:

1. “Places of Refuge for Ships in Distress”, a subject which in April 2005 was acknowledged by the Legal Committee of the IMO as being of great importance and needing to be kept under review, but without feeling it was necessary to draft a Convention at that point in time. We will see what progress can be made to achieve a draft which, hopefully, might be acceptable for a future Convention.

2. The “UNCITRAL Convention for the International Carriage of Goods Partly or Wholly by Sea”, approved on 3rd July 2008 at the 41st Session of the UNCITRAL Commission held in New York, with the participation of a number of CMI members attending either as CMI Observers or as Delegates of their respective national Governments. It should not be forgotten that the CMI originally pioneered these reforms as early as 1987 and closely followed up the meetings which led to this Convention.

3. The Rules of Procedure for limitation of liability under various Conventions (LLMC, CLC, HNS), which is a subject of our own as an attempt to harmonize procedural rules which may differ considerably from one State to another.

Although these three major topics will occupy most of our time this
week, we shall also be dealing with other subjects which deserve your attention:

- Non-Technical Measures to Promote Quality Shipping for Carriage by Sea
- Implementation of Maritime Conventions Relating to Limitation of Liability
- International Recognition of Judicial Sales of Ships
- the International Convention on Liability and Compensation for Damage in Connection with the Carriage of HNS
- the Draft Convention for the Safe and Environmentally Sound Recycling of Ships
- Charterers’ right to limit liability.

As the agenda for this Conference was prepared so many months ago, it does not include, unfortunately, a discussion of the risks to which our Seafarers are exposed, particularly during investigations following marine casualties, and even more so where acts of piracy and maritime violence are involved. The huge increase recently in such attacks entails not only a political or military response but also the need for internationally recognized rules, in particular for extradition, prosecution and jurisdiction. Having already done a substantial amount of work on these aspects, the CMI is ready once again to submit its suggestions to the IMO.

A humorist once said that:

If you had to identify, in a single word, the reason why the human race never achieves its full potential, that word is: “meetings” …

With a rebellious spirit in the face of such cynicism, I would exhort you all to join me in proving this humorist wrong: here in Athens, under the auspices of the Fathers of Philosophy, we will show that, thanks to the CMI’s long tradition of tolerance and open-mindedness, we can indeed achieve our full potential!

And now to conclude this address, I would like to express our very warmest thanks to our hosts and organizers, namely the Hellenic Maritime Law Association, its President, Professor Anthony Antapassis, as well as to the Host Committee animated by John Markianos-Daniolos, Deucalion Rediadis, Vassilis Vernicos and Gregory Timagenis, whom we congratulate on the excellence of all their work since 2004 in preparing for this Conference, in choosing this brilliant Concert Hall for the Opening Ceremony and in locating the rest of the Conference in the magnificent premises of the Astir Palace in
Vouliagmeni, just far away enough from the busy hubbub of downtown Athens and Piraeus to entice you all to spend the whole week in restful and salutary surroundings, for the benefit of the unification of maritime law!

Efkaristoume
tin Elleniki Enosi Naftikou Dikaiou
gia ti filoxenia!

I wish you all a good week!
PLACES OF REFUGE

(1) Introduction by the Chairman,
by Stuart Hetherington

Annex 1: Policies of the United States
Coast Guard and National Response Team,
by LIZABETH L. BURRELL

Annex 2: An Instrument on Places of Refuge
From a Ports’ Perspective, by Frans van Zoelen

Annex 3: Places of Refuge for Ships
in Distress – the P & I Insurer’s Perspective,
by ANDREW BARDOT

Annex 4: Places of Refuge, by Archie Bishop

Annex 5: Places of Refuge, by Fritz Stabinger

Annex 6: Notes on Clauses of Draft Instrument
on Places of Refuge, by Richard Shaw

Annex 7: Submission of Report and Instrument
to IMO, by Richard Shaw

(2) Resolution adopted by the 39th CMI Conference
in connection with the Draft Instrument on Places of Refuge in Athens 17 October 2008
INTRODUCTION

Delegates met at the Astir Palace Hotel, Vouliagmeni, Athens, Greece on Monday and Tuesday, 13 and 14 October 2008 to debate the draft Instrument. The discussion commenced with short presentations made by the Chairman of the International Working Group who explained how the draft Instrument had come into being and introduced the other panel speakers. Liz Burrell (Annex 1), the former President of the United States Maritime Law Association brought delegates up to date with developments in the United States and referred to the United States Coastguard Places of Refuge Policy document dated 17 July 2007 and the United States National Response Team Guidelines for Places of Refuge decision making which are also to be found in Yearbook 2007-2008 Athens 1 at pages 142 to 183. Eric Van Hooydonk, a member of the International Working Group, discussed recent developments in the European Union. Eric Van Hooydonk was succeeded by Frans van Zoelen (Annex 2) the Chair of the Legal Committee of the International Association of Ports and Harbours Andrew Bardot (Annex 3), representing the International Group of P&I Clubs then made a presentation and was succeeded by Archie Bishop (Annex 4) from the International Salvage Union. Fritz Stabinger (Annex 5) then made a presentation representing the International Union of Marine Insurers. Richard Shaw (Annex 6), the rapporteur to the International Working Group, then identified some of the pertinent provisions in the draft Instrument.

The meetings which then took place during the rest of the first and second days of the conference engendered considerable debate. In relation to the preamble, the Belgium delegation raised the issue that the third paragraph might imply a criticism of the IMO and therefore the words “sufficiently clear framework” were replaced by the words “comprehensive framework”. It was suggested that the definition of “ship” should not contain the exception referred to in the draft Instrument. There was general agreement that there was no necessity to limit the definition of “ship” to “sea going vessels” and thus the words “sea going” were deleted. There was also some discussion as to whether the text was intended to cover inland waterways or be restricted to territorial waters at sea. There was some support for extending the instrument to inland waters.

1 Published in CMI Yearbook 2007-2008, page 128.
The definition of “competent authority” was thought to be confusing and it was thought that it should specifically refer to the State, that is the party to the treaty if this document is to become a convention, and then to refer to the other organisations or persons who have the power to permit or refuse entry of a ship to a place of refuge.

There was general agreement that there was no necessity to define “limitation sum”.

There was considerable discussion as to whether or not the definition of “objective assessment” needed to be amended. The MLA of Australia and New Zealand suggested adding the words “and has regard to all the circumstances of the ship, her cargo, and the risks and hazards to which they may be exposed”. Other delegations did not think that clarified the matter. It was however, considered that the word “objective” could better form part of the description of what “assessment” means rather than referring to “an objective assessment”.

Accordingly the definition was changed to read “‘assessment’ means an objective analysis...”. The word “analysis” being used in the context of “analysis factors” which are required to be taken into account in the IMO Guidelines. Archie Bishop queried whether additional words identifying who is required to make the assessment such as “appropriately experienced persons appointed by the competent authority” should be added. Once again it was felt that the IMO Guidelines and the requirement that States should establish a Maritime Assistance Service makes such a provision unnecessary. As the German delegation pointed out, clause 3.10 of the IMO Guidelines describes the requirements of an inspection team designated by the coastal state who board the ship as being “composed of persons with expertise appropriate to the situation”.

It was noted that the definition of “ship owner” was not identical to that in the Wreck Removal Convention and as a result it was amended accordingly.

In relation to Article 3 and the legal obligation to grant access there was considerable debate as to the circumstances in which a competent authority may be entitled to refuse access. The Belgium delegation queried whether a coastal state could not be entitled to claim salvage remuneration for granting access to its territory. Some delegations considered that the absence of an insurance certificate or letter of guarantee should justify refusal to admit a vessel. As a result of that debate it was decided to incorporate various options into the text. Pursuant to the first option it is provided that the mere absence of an insurance certificate, letter of guarantee or other financial security would not entitle a competent authority to deny access to a Place of Refuge. The second option provided that the absence of such security whilst not relieving the competent authority from the obligation to carry out the assessment could, if it is coupled with a determination that the condition of the ship is such that it and/or its cargo is likely to pose a greater risk if
permission to enter a Place of Refuge is granted than if such request is refused, justify such refusal. The third option enables a competent authority to refuse access if the ship owner fails to provide an insurance certificate, letter of guarantee or other financial security.

In relation to Article 5 it was pointed out by the Danish association that the drafting left much to be desired and there seemed to be no justification for having two conditions in sub-paragraph (a) and one in sub-paragraph (b). The UK delegation also queried whether the reference to “shipowner” was intended to include cargo. The drafting committee decided to include the word “cargo owner” in the list of persons who may suffer as a result of a refusal of entry to a place of refuge. As a result of this debate the drafting committee reproduced Article 5 so that it only contained the one paragraph. Archie Bishop representing the ISU queried whether some reference should not be included in order to make it clear that where the salvor’s task had been made more difficult, the salvor should have a remedy.

In relation to Article 6 the Danish delegation suggested that the word “behaviour” should be changed.

In relation to Article 7 there was considerable discussion as to the subject of “guarantees”. The IAPH expressed its fundamental objection to the inclusion of the limit of liability in this Article. The Danish delegation thought it should be made clear as to what types of liability were intended to be taken into account or covered by a letter of guarantee. In redrafting the drafting committee inserted the words “in respect of such reasonably anticipated liabilities that it has identified from its assessment”. Andrew Bardot representing the International Group of P&I Clubs explained the history of the form of guarantee which was an annexure to the draft Instrument as having been negotiated with the Singapore Port Authority. He also pointed out the bank guarantees can be prohibitively expensive and that in itself could effectively prevent a ship from entering a place of refuge if it was a prerequisite of the State. He also suggested that the standard International Group form of guarantee, if offered, should be accepted and it should be limited to the appropriate limitation regime.

The representative of the International Chamber of Shipping queried whether it was appropriate to include an article such as Article 7. Some delegates supported the deletion of Article 7. Others thought the letter of guarantee should cover all forms of potential liability including wreck removal and dock damage. Eric van Hooydonk pointed out that paragraph 3.14 of the IMO Guidelines contains the following provision:

“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...”.

Other delegations, such as Switzerland, supported the retention of a guarantee provision as being something which is necessary to prevent States
from avoiding admissions by ships in distress by making excessive demands. The Swiss delegate pointed out that there is insufficient insurance to provide unlimited security. The Venezuelan delegation pointed out that in some jurisdictions authorities may only accept a guarantee from banks or insurance companies based in that State. It was also pointed out that a new law in Venezuela empowers the States to demand an unlimited guarantee. In light of the varied views of the delegations the drafting committee decided to adopt the same procedure in relation to Article 7 as it had in relation to Article 3, that is to incorporate three options to reflect the wide extent of the views expressed. Under the first option the State is permitted to request an insurance certificate, letter of guarantee or other financial security but not to exceed the applicable sum under the 1976 Limitation Convention (or any amendment thereto), or any other relevant international convention. The second option, in addition to permitting the State to request such certificate or security under option 1 to the extent of any applicable limitation convention, can also seek security in respect of those claims referred to in Article 2 paragraphs 1(d) or (e) of the Limitation Convention, such as wreck removal, which are not subject to limitation in the jurisdiction concerned for such reasonable amount as it requires to compensate it in respect of such liabilities.

By the third option the amount of the security which a State could request is expressed without reference to any limitation regime.

In relation to Article 8 and plans to accommodate ships seeking assistance some delegates queried whether Article 8 needed to be retained, given the contents of the OPRC Convention; other States considered that it was a useful reminder and should be retained. Archie Bishop pointed out that there are many States which have no plans whatsoever and accordingly it would be useful to retain this clause.

There was a similar debate in relation to Article 9 and the “identification of competent authority”. Archie Bishop again pointed out that this is a beneficial provision as in salvage operations it needs to be made clear from the earliest stages who is in charge from a coastal State’s perspective. Denmark queried whether the Article should require publication of the details of the competent authority. The drafting committee adopted this suggestion and incorporated some wording from the Wreck Removal Convention in the concluding words of the amended Article. It was also suggested in debate that the word “identify” could be improved by use of the word “designate”.

There was general agreement that the annexes were inappropriate in the context of an international convention and the drafting committee resolved to omit them.

At the Plenary Session, Denmark suggested that there was no consensus that the burden of proof should be placed on the coastal State and that it was important not to go too far. The Danish delegation believed that the Instrument in its present form would not be acceptable to many States.
The French delegation expressed its support for the Instrument and favoured option 1 in Article 3 and option 3 in Article 7. It did not oppose the other options.

The International Group of P&I Clubs expressed disappointment that the option to have open ended guarantees was retained in the Instrument. Belgium also supported the Instrument and agreed with the comments made by the French delegation. It suggested that the Instrument introduced a qualified obligation on the State to accept a ship in case of dire necessity. Canada also expressed support for the Instrument and thought it would be useful for the IMO to have a work product which reflected the different views. Ireland also supported the draft Instrument.

A resolution was put to the Plenary Session at the conclusion of the discussion. A vote was taken on the following Resolution:

“Resolution

CMI approves the text of the draft Instrument on Places of Refuge for submission to the IMO Legal Committee, noting that it contains options in two Articles for alternative provisions to be adopted in any text which that Committee may consider appropriate at some future occasion.”

When the Instrument was put to the vote 16 delegations supported the Instrument and 10 voted against, with 2 abstentions.

On 26 January 2009 the draft instrument was submitted by Richard Shaw to IMO, in his capacity as CMI Observer Delegate, accompanied by a Report of the Chairman of the CMI International Working Group on Places of Refuge (Annex 7).

January 2009

STUART HETHERINGTON, Chairman
PLACES OF REFUGE POLICIES OF THE UNITED STATES COAST GUARD AND NATIONAL RESPONSE TEAM

LIZABETH L. BURRELL

I. Origins of the Guidelines

1. As interpreted by the U.S. Coast Guard, “The purpose of this [IMO] resolution is to encourage nations to adopt systems to balance the needs of the vessel and the needs of the coastal state and make sound decisions to enhance maritime safety and the protection of the marine environment.”

2. “Being a signatory to this agreement, it is incumbent upon the United States through the National Response System to develop protocols and procedures to address places of refuge for vessels in distress.”

B. Efforts to formalize a system that would diminish exposure to the type of events that had motivated the creation IMO Guidelines (M/T ERIKA, December 1999; M/T CASTOR, December 2000; M/T PRESTIGE, November 2002, leading to an orientation of balanced risk reduction: “These incidents clearly demonstrated that in some cases, the coastal states actually increased their risk to significant contamination by denying a vessel the

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opportunity to make repairs in relative safety, or by delaying a decision until no options remained.\(^3\)

II. Objectives: Minimizing damage by preparing for and rationally managing a crisis
A. Crisis management: Creating a formal and substantive tool to make reasoned decisions and defend them to the public in case of adverse consequences: “This Instruction establishes a process to support risk based planning and decision making. A repeatable, transparent process is also important in building stakeholder and public confidence in the final decision, regardless of outcome.” USCG Policy § 4.c (“Background”) at 2.
1. Formal tool: Defining a step-by-step procedure for the decision-making process
2. Substantive tool: Providing checklists for gathering and sharing information, considerations to be taken into account, and potential stakeholders to consult
B. Crisis preparation and planning: a framework for preincident identification of potential places of refuge for inclusion in appropriate Area Contingency Plans\(^4\)

III. Participants in the Creating the U.S. Guidelines
A. National Response Team\(^5\) (“NRT”): an organization of sixteen federal departments and agencies\(^6\) responsible for coordinating emergency preparedness and response to oil and hazardous substance pollution incidents.

\(^3\) NRT Guidelines, Executive Summary at 5.
\(^4\) NRT Guidelines, Executive Summary, at 5; U.S. Coast Guard Commandant Instruction 16451.9 (COMDIST 16451.9), USCG Policy § 1 (“Purpose”) at 1.
\(^5\) The National Oil and Hazardous Substances Pollution Contingency Plan (NCP) and the Code of Federal Regulations (40 CFR part 300) outline the role of the NRT and Regional Response Teams (RRTs). The response teams are also cited in various federal statutes, including Superfund Amendments and Reauthorization Act (SARA) – Title III and the Hazardous Materials Transportation Act.
\(^6\) These are: Environmental Protection Agency; U.S. Coast Guard; U.S. Department of Agriculture; U.S. Department of Commerce (National Oceanographic and Atmospheric Administration, Office of Response and Restoration, NOAA’s National Ocean Service); U.S. Department of Defense; U.S. Department of Energy (Office of Environmental Health and Safety; National Nuclear Security Administration); U.S. Department of Health and Human Services (Centers for Disease Control and Prevention (CDC), National Institute for Occupational Safety and Health at the CDC); U.S. Department of the Interior (Office of Environmental Policy and Compliance: Training Module, Minerals Management Service); U.S. Department of Justice; U.S. Department of Labor (Occupational Safety and Health
The Environment Protection Agency (EPA) and the U.S. Coast Guard (USCG) serve as Chair and Vice Chair, respectively.

1. The National Oceanic and Atmospheric Administration (NOAA) took the lead, with coastal groups and the Department of the Interior contributing strongly.

2. The NRT approach was to start with the IMO Guidelines, make them more practical and usable in the field, compare them with existing practices in Alaska and the West Coast, and then expand them to other states.

B. U.S. Coast Guard. While the Coast Guard is a member of the NRT, the Coast Guard wished to “take ownership” of the ports of refuge mission by focusing “primarily on the decision process of selecting the lowest risk Place of Refuge option for a stricken vessel.” USCG Policy § 1 (“Purpose”) at 1.

C. The outcome was two sets of guidelines, the NRT Guidelines dated July 26, 2007 and the USCG Policy dated July 17, 2007.

IV. Common Elements in the NRT Guidelines and the USCG Policy

A. Incident-specific decision-making, with regard to minimizing the overall risk and scope of damage, a policy encouraged by the geographic considerations relevant to the United States

B. Advance preparation and contingency planning for an incident by
gathering information to identify and assess the peculiarities and capabilities of possible places of refuge (NRT “PPOR’s”) in various regions (USCG “pre-incident surveys”), BUT in both documents, an express disavowal that such evaluations constitute a decision that any place may or may not be a suitable
C. A unified command controls the decision-making process, with the Captain of the Port (COTP) or, in the case of a very large geographic area being at risk, the Sector Commander usually being in charge of the process
D. “Stakeholders” are nevertheless strongly involved, although with some differences in their roles
E. Similar process of stage-by-stage decision-making, with similar information being gathered and assessed at each stage:
   1. gathering and disseminating information
   2. developing options
   3. potential damage assessment under each option
F. Similarity, but not identity, of weighting of various considerations taken into account in the decision-making process

V. Differences in the NRT Guidelines and the USCG Policy

A. Coast Guard orientation stems from its history and normal scope of activities
   1. traditional mission of preserving life and property and exposure of its personnel to perils of the sea, leads to
      a. primary weight to considerations of protection of life and property
      b. an explicitly pro-entry approach (“A vessel should only be denied entry when the Operational Commander can, having considered all options, identify a practical and lower risk alternative to granting a Place of Refuge. . . . An arbitrary decision to force the vessel to another locale, particularly one which may involve higher risk and/or with less capability to address the situation is unacceptable.” USCG Policy § 5.d (“Risk Informed Decision Making”) at 3.
      c. greater consideration given to the fact that a need for shelter arises from force majeure, USCG Policy § 5.i (“Force Majeure”) at 4.
      d. explicit reference to and integration of Search and Rescue mission and capabilities (Marine Assistance Services (MAS) mentioned in IMO Guidelines) at all points in the process
   2. traditional involvement in international activities and international law
      a. express consideration of authority for taking action in connection

9 For a current list of U.S. Coast Guard missions, see http://www.uscg.mil/top/missions.
with a vessel on the high seas, *USCG Policy* § 5.k (“Intervention on the High Seas”) at 4.

b. express mention of coordination with other countries in events occurring near international borders, *USCG Policy* § 5.m(4) (“Notifications and International Cooperation”) at 6.

c. express mention of communications with flag state and adhering to protocols to honor treaty obligations, *USCG Policy* § 5.m(1) (“Notifications and International Cooperation”) at 5.

3. traditional involvement in and regulation of all phases of a vessel’s transit in U.S. waters
   a. express mention of transit oversight, *USCG Policy* § 5.c (“Transit Oversight”) at 3.
   b. awareness of normal course of events, and the possible need to dispense with certain regulations, *e.g.*, Notice of Arrival regulations. *USCG Policy* § 5.j (“Notice of Arrival”) at 4.

4. tradition of and reliance on Coast Guard’s traditional maritime expertise, including navigation, operations, and regulatory environment
   a. greater information gathering, given knowledge of what types of players are involved, where information can be gleaned, and how communications can be handled
   b. gives rise to additional practical considerations of maritime commerce and shipping in developing a course of action, *e.g.*, consideration of possibility of blocking channel, potentially dangerous cargo
   c. concern about the involvement of those who might not appreciate the maritime practicalities, *e.g.*, “Place of Refuge situations can raise significant concerns among local stakeholders, who may have little understanding of the technical nature of the problem, but clearly see risks to their citizens, natural resources, and economy. Area Committees should therefore make every attempt to incorporate local stakeholders into the planning processes.”
   d. explicit authority given to Coast Guard personnel to assess the situation and take charge: “In some cases, circumstances may be so urgent that the stakeholder consultation and formal risk analysis processes described in this Instruction are not possible, even in an abbreviated form. In such cases, Operational Commanders shall make all notifications that circumstances permit, and shall determine the best course of action based on the available information, prior Place of Refuge planning efforts, and their own professional judgment.” *USCG Policy* § 5.q (“Urgent Situations”) at 7.
   e. respect for and involvement of others with maritime expertise, including vessel personnel, salvors, and other marine agencies such as NOAA and consequently dividing the decision-making process about
how to manage vessel, which goes to marine experts, from weighing the possible impact, which goes to environmental experts and stakeholders, i.e.,

i. Step 1, “Define the Scope and Scale of the Evaluation” is that the “Operational Commander determines the “worst case scenario” the group will use as a planning assumption, and lists the potential Place of Refuge locations that the group will evaluate. Taken together, these two decisions define the scope and scale of the evaluation. The Incident Commander shall make these determinations based on available information and the input of professional mariners, pilots, and salvage and response experts.”

ii. “Step 2, Probability: For the probability component of risk, consider the likelihood (probability) that the scenario defined in step 1.1 above may occur for each Place of Refuge (POR) option being considered. The probability of such an incident may be different for different Place of Refuge options due to environmental factors, such as wind and sea conditions both at the Place of Refuge and during any transit, and by the degree of difficulty and complexity in conducting repair or salvage operations at a given POR.

iii. It is only at Step 3 that the nonmaritime factors get involved:

Step 3 - Consequences: For the consequence component of risk, appropriate stakeholders will determine the level (scale) of consequences that can reasonably be expected if an “incident” – defined as a significant worsening of the vessel’s condition – occurs. Stakeholders will assess the scale of expected consequences for the following three categories:

- Human Health and Safety, including the safety of the crew, professional responders, and the public at large
- Natural Resources, including threatened and endangered species, subsistence species, commercial species, habitat, and cultural resources
- Economic Impacts, including commercial shipping and fishing, marine tourism and recreational fishing, and nonmarine related economic activities

iv. initial decision-making and development of range of options is solely with the Operational Commander who also defines the potential places of refuge

5. as a law enforcement agency, greater consideration of the legalities of its actions, e.g.,

a. pervasive mention of legal authority for its actions, from waiving Coast Guard regulations to requirements for intervention on the high seas
b. awareness of legal doctrines: “In general, force majeure is a doctrine
of international law which confers limited legal immunity upon vessels that are forced to seek refuge or repairs within the jurisdiction of another nation due to uncontrollable external forces or conditions. This limited immunity prohibits coastal state enforcement of its laws which were breached due to the vessel’s entry under force majeure. If a vessel’s master cites force majeure as a reason for entry, Sector Commanders shall consult with the servicing staff judge advocate before allowing the vessel to enter. If time and circumstances permit, Sector Commanders shall use these Place of Refuge guidelines and the Maritime Operational Threat Response (MOTR) process to reach a decision and direct the vessel to a particular location.” USCG Policy § 5.i (“Force Majeure”) at 4.

c. consultation with Coast Guard attorneys on a variety of matters, from *force majeure* to letters of undertaking or other financial responsibility matters

### B. Coast Guard Personnel may use either document.

#### C. Qualitative v. Quantitative: Does it make a difference?

1. The *NRT Guidelines* list the factors to be considered at each stage of the process without assigning a weight to each factor and therefore leaving the balancing of considerations to the person in charge.

2. The *USCG Policy* gives a weighted value to various factors at different stages of the process so as to allow a calculation that will compare the benefits and risks of different alternatives.

3. As a practical matter, because the numbers assigned to the various factors in the *USCG Policy* will affect the ultimate calculation, there is a virtually equivalent scope of discretion to the person in charge under either the *USCG Policy* or the *NRT Guidelines*.

### VI. A unified command structure, separated from political process, will lead to reasoned and efficient decision-making, with Coast Guard personnel, who customarily have a strong marine safety orientation, in charge.

While any NRT member can request NRT mobilization and the NRT can convene itself, the NRT is a national body sitting in Washington and is not intended as an operational and tactical body except in extraordinary circumstances, such as a national disaster of the scale of *Katrina*. The NRT’s job is generally to direct resources to where they are needed rather than to micromanage a given situation more within the expertise of one of its members. In any event, because of the unified command structure, it is unlikely that there will be any confusion or “turf wars.” Most significantly, elected officials are not the decision-makers. Instead, the greatest decision-making power is allocated to the agency most attuned to marine safety and to the need to guard life and property from the perils of the sea.
Excerpts from IMO Guidelines

2. GUIDELINES FOR ACTION REQUIRED OF MASTERS AND/OR SALVORS OF SHIPS IN NEED OF A PLACE OF REFUGE

Appraisal of the situation

2.1 The master should, where necessary with the assistance of the company and/or the salvor, identify the reasons for his/her ship is need of assistance. (Refer to paragraph 1 of Appendix 2.)

Identification of hazards and assessment of associated risks

2.2 Having made the appraisal referred to in paragraph 2.1 above, the master, where necessary with the assistance of the company and/or the salvor, should estimate the consequences of the potential casualty, in the following hypothetical situations, taking into account both the casualty assessment factors in their possession and also the cargo and bunkers on board:
   - if the ship remains in the same position;
   - if the ship continues on its voyage;
   - if the ship reaches a place of refuge; or
   - if the ship is taken out to sea.

Identification of the required actions

2.3 The master and/or the salvor should identify the assistance they require from the coastal State in order to overcome the inherent danger of the situation. (Refer to paragraph 3 of Appendix 2.)

Contacting the authority of the coastal State

2.4 The master and/or the salvor should make contact with the coastal State in order to transmit to it the particulars referred to in paragraphs 2.1 to 2.3 above. They must in any case transmit to the coastal State the particulars required under the international conventions in force. Such contact should be made through the coastal State’s Maritime Assistance Service (MAS), as referred to in resolution A.950(23).

Establishment of responsibilities and communications with all parties involved

2.5 The master and/or the salvor should notify the MAS of the actions that are intended to be taken and within what period of time.
2.6 The MAS should notify the master and/or the salvor of the facilities that it can make available with a view to assistance or admittance of the ship to a place of refuge, if required.
Response actions

2.7 Subject, where necessary, to the coastal State’s prior consent, the shipmaster and the shipping company concerned should take any necessary response actions, such as signing a salvage or towage agreement or the provision of any other service for the purpose of dealing with the ship’s situation.

2.8 The master, the company and, where applicable, the salvor of the ship should comply with the practical requirements resulting from the coastal State’s decision-making process referred to in paragraphs 3.12 to 3.14.

Reporting procedures

2.9 The reporting procedures should be in accordance with the procedures laid down in the safety management system of the ship concerned under the ISM Code or resolution A.852(20) on Guidelines for a structure of an integrated system of contingency planning for shipboard emergencies, as appropriate.

3. GUIDELINES FOR ACTIONS EXPECTED OF COASTAL STATES

3.1 Under international law, a coastal State may require the ship’s master or company to take appropriate action within a prescribed time limit with a view to halting a threat of danger. In cases of failure or urgency, the coastal State can exercise its authority in taking responsive action appropriate to the threat.

3.2 It is therefore important that coastal States establish procedures to address these issues, even if no established damage and/or pollution has occurred.

3.3 Coastal States should, in particular, establish a Maritime Assistance Service (MAS).²

Assessment of places of refuge

Generic assessment and preparatory measures

3.4 It is recommended that coastal States endeavour to establish procedures consistent with these Guidelines by which to receive and act on requests for assistance with a view to authorizing, where appropriate, the use of a suitable place of refuge.

² Unless neighbouring States make the necessary arrangements to establish a joint service.
3.5 The maritime authorities (and, where necessary, the port authorities) should, for each place of refuge, make an objective analysis of the advantages and disadvantages of allowing a ship in need of assistance to proceed to a place of refuge, taking into consideration the analysis factors listed in paragraph 2 of Appendix 2.

3.6 The aforementioned analysis, which should take the form of contingency plans, is to be in preparation for the analysis provided for below when an incident occurs.

3.7 The maritime authorities, port authorities, authorities responsible for shoreside safety and generally all governmental authorities concerned should ensure that an appropriate system for information-sharing exists and should establish communications and alert procedures (identification of contact persons, telephone numbers, etc.), as appropriate.

3.8 The aforementioned authorities should plan the modalities for a joint assessment of the situation.

**Event-specific assessment**

**Analysis factors**

3.9 This analysis should include the following points:
- seaworthiness of the ship concerned, in particular buoyancy, stability, availability of means of propulsion and power generation, docking ability, etc.;
- nature and condition of cargo, stores, bunkers, in particular hazardous goods;
- distance and estimated transit time to a place of refuge;
- whether the master is still on board;
- the number of other crew and/or salvors and other persons on board and an assessment of human factors, including fatigue;
- the legal authority of the country concerned to require action of the ship in need of assistance;
- whether the ship concerned is insured or not insured;
- if the ship is insured, identification of the insurer, and the limits of liability available;
- agreement by the master and company of the ship to the proposals of the coastal State/salvor to proceed or be brought to a place of refuge;
- provisions of the financial security required;
- commercial salvage contracts already concluded by the master or company of the ship;
- information on the intention of the master and/or salvor;
- designation of a representative of the company at the coastal State concerned;
- risk evaluation factors identified in Appendix 2; and
- any measures already taken.
Expert analysis

3.10 An inspection team designated by the coastal State should board the ship, when appropriate and if time allows, for the purpose of gathering evaluation data. The team should be composed of persons with expertise appropriate to the situation.

3.11 The analysis should include a comparison between the risks involved if the ship remains at sea and the risks that it would pose to the place of refuge and its environment. Such comparison should cover each of the following points:

- safeguarding of human life at sea;
- safety of persons at the place of refuge and its industrial and urban environment (risk of fire or explosion, toxic risk, etc.);
- risk of pollution;
- if the place of refuge is a port, risk of disruption to the port’s operation (channels, docks, equipment, other installations);
- evaluation of the consequences if a request for place of refuge is refused, including the possible effect on neighbouring States; and
- due regard should be given, when drawing the analysis, to the preservation of the hull, machinery and cargo of the ship in need of assistance.

After the final analysis has been completed, the maritime authority should ensure that the other authorities concerned are appropriately informed.

Decision-making process for the use of a place of refuge

3.12 When permission to access a place of refuge is requested, there is no obligation for the coastal State to grant it, but the coastal State should weigh all the factors and risks in a balanced manner and give shelter whenever reasonably possible.

3.13 In the light of the outcome of the assessment provided for above, the coastal State should decide to allow or refuse admittance, coupled, where necessary, with practical requirements.

3.14 The action of the coastal State does not prevent the company or its representative from being called upon to take steps with a view to arranging for the ship in need of assistance to proceed to a place of refuge. 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, miscellaneous expenses, etc.
APPENDIX 2 to IMO Guidelines

GUIDELINES FOR THE EVALUATION OF RISKS ASSOCIATED WITH THE PROVISION OF PLACES OF REFUGE

When conducting the analysis described in paragraphs 3.4 to 3.8, in addition to the factors described in paragraph 3.9, the following should be considered.

1 Identification of events, such as:
   - fire
   - explosion
   - damage to the ship, including mechanical and/or structural failure
   - collision
   - pollution
   - impaired vessel stability
   - grounding.

2 Assessment of risks related to the identified event taking into account:
   .1 Environmental and social factors, such as:
      - safety of those on board
      - threat to public safety
        What is the nearest distance to populated areas?
      - pollution caused by the ship
      - designated environmental areas
        Are the place of refuge and its approaches located in sensitive areas such as areas of high ecological value which might be affected by possible pollution?
        Is there, on environmental grounds, a better choice of place of refuge close by?
      - sensitive habitats and species
      - fisheries
        Are there any offshore and fishing or shellfishing activities in the transit area or in the approaches to the place of refuge or vicinity which can be endangered by the incoming ship in need of assistance?
      - economic/industrial facilities
        What is the nearest distance to industrial areas?
      - amenity resources and tourism
      - facilities available
        Are there any specialist vessels and aircraft and other necessary means for carrying out the required operations or for providing necessary assistance?
        Are there transfer facilities, such as pumps, hoses, barges, pontoons?
Are there reception facilities for harmful and dangerous cargoes?
Are there repair facilities, such as dockyards, workshops, cranes?

.2 Natural conditions, such as:
  Prevailing winds in the area.
  Is the place of refuge safely guarded against heavy winds and rough seas?
  Tides and tidal currents.
  – weather and sea conditions
    Local meteorological statistics and number of days of inoperability or inaccessibility of the place of refuge.
  – bathymetry
    Minimum and maximum water depths in the place of refuge and its approaches.
    The maximum draught of the ship to be admitted. Information on the condition of the bottom, i.e., hard, soft, sandy, regarding the possibility to ground a problem vessel in the haven or its approaches.
  – seasonal effects including ice
  – navigational characteristics
    In the case of a non-sheltered place of refuge, can salvage and lightering operations be safely conducted?
    Is there sufficient space to manoeuvre the ship, even without propulsion?
    What are the dimensional restrictions of the ship, such as length, width and draught?
    Risk of stranding the ship, which may obstruct channels, approaches or vessel navigation.
    Description of anchorage and mooring facilities in the place of refuge.
  – operational conditions, particularly in the case of a port
    Is pilotage compulsory and are pilots available?
    Are tugs available? State their number and horsepower.
    Are there any restrictions? If so, whether the ship will be allowed in the place of refuge, e.g., escape of poisonous gases, danger of explosion, etc.
    Is a bank guarantee or other financial security acceptable to the coastal State imposed on the ship before admission is granted into the place of refuge?

.3 Contingency planning, such as:
  – competent MAS
  – roles and responsibilities of authorities and responders
    Fire fighting capability
  – response equipment needs and availability
response techniques
   Is there a possibility of containing any pollution within a compact
   area?
international co-operation
   Is there a disaster relief plan in the area?
evacuation facilities

4 Foreseeable consequences (including in the media) of the different
   scenarios envisaged with regard to safety of persons and pollution,
   fire, toxic and explosion risks.

3 Emergency response and follow-up action, such as:
   – lightering
   – pollution combating
   – towage
   – stowage
   – salvage
   – storage.
GUIDELINES FOR ACTIVATION OF THE NATIONAL RESPONSE TEAM

The National Response Team (NRT) has duties outlined in the National Oil and Hazardous Substance Contingency Plan (NCP), 40 CFR, Part 300, to provide support during a response to an oil or hazardous substance spill or release.

The NCP provides information concerning what conditions should exist for the NRT to be activated and what services would likely be expected during an activation. This document provides guidelines on the procedures for activation. This document provides guidance only and is not intended to inhibit or impede agency-to-agency requests or the decision-making authority of the NRT Chair and Vice Chair to call a NRT meeting.

1. Purpose: This document provides guidelines for the activation of the NRT, in accordance with the NCP.

2. When the NRT Should Be Activated:
   a. When an oil discharge or hazardous materials release: (1) exceeds the response capability of the region in which it occurs, (2) transects regional boundaries, and/or (3) involves a substantial threat to the public health or welfare of the United States or the environment, substantial amounts of property, or substantial threats to natural resources (e.g., Spills of National Significance);
   b. When requested by a NRT member;
   c. When requested by an On-Scene Coordinator (OSC);
   d. When requested by a Regional Response Team (RRT);
   e. When there is competition for resources that requires national interagency adjudication; and/or
   f. When there are questions that require interagency input into answers at the national level (e.g., from the White House, Homeland Security Council, Incident Advisory Council (IAC), Congress, Cabinet-level officials, or national-level private groups).
   g. During an Incident of National Significance.

3. What May Be Expected of the NRT?:
   The NRT is capable of providing the following assistance and support to the Lead Agency (LA):
   a. Recommendations to the OSC/Remedial Project Manager (RPM) made through the RRT;
   b. Interagency liaison to bring additional resources under existing authorities to the response operation;
c. Coordination to bring response assistance to the affected region from other regions or districts;
d. Coordination with agencies not involved in the initial response; and
e. Requested NRT liaison personnel (e.g., Liaison Official (LNO) to national-level Joint Information Center or Command Center or IAC liaison).

If the IAC is activated by DHS, then the NRT Chair or NRT IAC liaison will coordinate headquarters-level issues with the IAC. Participation in activation undertaken by member agencies is carried out under existing programs and authorities.

4. Who Activates the NRT?
The NRT is activated at the call of the NRT Chair (Environmental Protection Agency (EPA) Representative) or, in the Chair’s absence, by the NRT Vice Chair (U.S. Coast Guard Representative). For the remainder of the document, “NRT Chair” will include the NRT Vice Chair, in the absence of the Chair.

5. Who Chairs the Activated NRT?:
During periods of activation, the NRT is chaired by the LA - the member agency providing the OSC/RPM. This would normally be the EPA for inland responses or the U.S. Coast Guard for coastal and marine responses. However, it could be the Departments of Defense or Energy if a hazardous substance is released from a site of either department.

6. Types of NRT Activation:
a. Full activation: All of the NRT member agencies are asked to assist in the NRT’s activities related to the response, either face-to-face in a location designated by the NRT Chair or by conference call.
b. Partial activation: Specific agencies are called upon by the NRT Chair to assist in the NRT’s activities related to the response. Participation will either be face-to-face in a location designated by the NRT Chair or by conference call.

7. Who May Be Activated:
a. The Chair may call a full or partial activation. All NRT Agencies will be notified in either case. If a partial activation is called, the Chair will designate those agencies to participate.
b. Each agency is responsible for maintaining a current contacts list (names and 24-hour contact procedures) for its representative and alternates and providing it to the NRT Executive Secretariat.

8. What Is the Activation Process?:
Step 1. The NRT Chair considers activating the NRT based on factors listed in Section 2, above.
Step 2. The NRT Chair instructs the NRT Executive Director to notify the
appropriate RRT Co-Chair(s) of the potential NRT activation and suggests that the RRT(s) activate, if they have not already done so. If the RRT(s) have activated, the NRT Executive Director obtains a summary of RRT proceedings on the incident of relevance to the NRT activation. If the RRT(s) have not activated, a conference call with the Chair and/or Vice Chair and appropriate RRT Chair(s) may precede an RT activation.

Step 3. The NRT Chair decides to activate the NRT.

Step 4. The NRT Chair instructs the NRT Executive Director to call an activation meeting of the participating members of the NRT. The meeting may be by telephone conference call or in person.

Step 5. During the initial NRT activation meeting, the NRT Chair, as a minimum, will inform the representatives of member agencies of the following:
   (a) Reason for and background of the activation;
   (b) Status of the incident and the Federal response, as known;
   (c) Relevant RRT activities to date;
   (a) Type of activation (full or partial);
   (b) If a partial activation, the member agencies involved and reason(s) for their selection; and
   (c) The agency to chair the activated NRT.

Step 6. The NRT Chair will turn over the lead for the meeting to the chair of the activated NRT (LA).

Step 7. The Chair of the activated NRT (LA) will, as a minimum, then:
   (a) Provide specific information and/or assistance requests to other agencies;
   (b) Provide the participating member agencies with information on planned agency response actions;
   (c) Identify the Operations Center to support the activated NRT (e.g., National Response Center, EPA Emergency Operations Center, Homeland Security Operations Center (HSOC), or Agency Operations Center);
   (d) Prioritize requests and establish deadlines for completion of tasks;
   (e) Provide for a method of furnishing updated information to each of the member agencies and if activated, the IAC;
   (f) Provide the members of the activated NRT and the NRT Executive Director with the means to contact him/her, on a 24-hour continuous basis;
   (g) Establish a time and method (telephone or video teleconference) for the activated NRT to confer with the activated RRT and the appropriate OSC(s);
   (h) Establish a schedule for future conferences or next meeting date...
and method/location; and
(i) Ensure the NRT Executive Director documents decisions made and actions taken by the NRT and the rationale for them.

Further Steps – The Chair of the activated NRT continues NRT coordination and actions, such as:
(a) Hold meetings of the activated NRT as needed;
(b) Communicate with the appropriate RRT(s)/OSC(s); (c) Act on RRT/OSC requests for support
(a) Provide national-level feedback to RRT(s)/OSC(s); and
(b) Coordinate with DHS through the IAC.

9. Terminating NRT Activation:
(a) Termination of NRT involvement may take place at the discretion of the NRT Chair, in consultation with the LA, after any assumed tasks (see Section 3, as outlined) have been completed and NRT involvement is no longer considered necessary.
(b) Following termination of NRT involvement, the Director or the Chair of the Response Committee should request lessons learned from NRT participants in the activation and ensure these are reviewed.

UPDATED 04/2007
AN INSTRUMENT ON PLACES OF REFUGE FROM A PORTS’ PERSPECTIVE

FRANS VAN ZOELEN*

1. Introduction

It is rather brave to depart on a project for drawing up an international instrument about Places of Refuge as CMI’s International Working Group under the Chairmanship of Stuart Hetherington has done.

Brave for a number of reasons. First, this subject has been “de-prioritised” by IMO’s Legal Committee in its agenda for action for several years now. In other words: at Albert Embankment in London, where IMO’s Headquarters are based, this subject seems politically dead and buried. As a result, any draft instrument to be adopted by CMI at this week’s conference in Athens has to be very persuasive indeed, in order for Places of Refuge to reappear at IMO’s legislative agenda.

Secondly, the project is also brave from a legal angle. Academic opinion is at best divided about the existence in international law of a right of a ship in distress to enter the territorial waters of a coastal State to find a Place of Refuge. With both advocates and opponents present relying on the same provisions of the United Nations Convention on the Law of the Sea (UNCLOS) of Montego Bay 1982 for their arguments. UNCLOS constitutes a fairly modern codification and extension of the previous written and unwritten law of the sea. However, not even in UNCLOS, did the international community of national States include any provisions explicitly dealing with the topic of Places of Refuge. It is after all this gap, which the Draft Instrument seeks to fill up.

Thirdly, it seems that over time the nature of the problem of Places of Refuge for ships in distress has changed. Whereas previously humanitarian considerations may have led national States to voluntarily grant access to ships in distress in order to save lives, in the meantime better technical means such as long-range helicopters, have become available for this purpose. Instead environmental and financial concerns have become much more important as a result of the impressive increase in the tonnage of ships and quantum and value of cargoes including the enormous increase in capacity of

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ship and cargo to cause major maritime disasters and financial loss whether in the form of serious pollution of the environment, cargo damage or wreck and cargo removal costs.

In my view it cannot be stressed enough that the subject of Places of Refuge touches the core of a national State’s sovereignty, i.e. the right of a coastal or port State to decide for itself, to defend itself and to protect its vital interests, which is recognised under international law. This aspect defines our challenge this week: will we be able to draw up or even adopt an instrument attractive enough for governments to consider subordinating their national interests in favour of the safety of ships in distress? If not, I fear that all our efforts will be fruitless, simply because States will not be prepared to adopt or even ratify such a proposed instrument.

It is the opinion of the International Association of Ports and Harbors (IAPH) that the proposed draft for the Instrument on Places of Refuge is likely to fail because the new obligations and liabilities proposed for national States are not in any way balanced by any (adequate) incentives from shipowners and their underwriters that will provide the States with better protection than the status quo already offers. In short: the proposed instrument reads as a wish list for the owners and P&I Clubs of potential ships in distress, not as a serious attempt to bridge the divide of conflicting interests which continues to exist in this area of law. Needless to say this topic is of great interest for the International Association of Ports and Harbors as in most of the cases, the Place of Refuge happens to be a port of refuge.

My presentation for you today consists of four parts.

1. For those unfamiliar with the association I am representing, I will briefly introduce IAPH, its objectives and activities.

2. Next I will shortly elaborate the position IAPH consistently has taken in the debate on Places of Refuge, and which I trust you already are familiar with.

3. Then I will comment on the proposed Draft Instrument and make suggestions for improvement which may help to increase support for it.

4. Finally, in my conclusive remarks I will pay attention to IAPH’s options in this context.

2. The International Association of Ports and Harbors (IAPH)

The International Association of Ports and Harbors is often referred to as the “United World Ports”, in which the global port community is represented to promote and advance its common purpose and vital interests. To further this goal, IAPH has adopted the following objectives:

– To promote the development of the international port and maritime industry by fostering co-operation between its members in order to build
a more cohesive partnership between the world’s ports and harbors.

– To represent the interests of and views held by the international community of ports and harbors before international organizations involved in legislating and regulating international trade, shipping and transport and to see to it that its interests and views are taken into consideration whenever these organizations take relevant regulatory initiatives.

– To collect, analyze, exchange and distribute information on developing trends in international trade, transportation, ports and the regulations of these industries.

IAPH now comprises of about 230 regular Members from leading ports in 90 States worldwide, including public port authorities, private port operators and government agencies. Together IAPH-member-ports handle approximately 7 billion tons of goods – thus accounting for 60% of the world’s sea-borne trade – and over 90% of world container traffic. In addition, IAPH has over 100 Associate Members consisting of shipping, stevedoring and warehousing companies, national and regional port associations, port and maritime research institutes, and manufacturers of port-related products. The Collective Knowledge and Experience gathered within IAPH is immense, which explains why some refer to IAPH as a sleeping giant.

IAPH is recognized as the only international organization representing the voice of the world port industry and has been granted Consultative Status as Non-Governmental Organization (NGO) by six United Nations specialised agencies and bodies including the International Maritime Organization (IMO), the International Labour Organization (ILO) and the United Nations Commission on International Trade Law (Uncitral). This status has enabled IAPH to represent the views of ports and protect the interests of the global port industry at large.

IAPH divides the world into the following three regions:

– African/European Region (Africa and Europe, including Madagascar and the Asian countries on the Mediterranean and Aegean Seas)

– American Region (North and South America, including Hawaii)

– Asia/Oceania Region

Each region has its own Regional Board. Currently, Mrs. O.C. Phang of Port Klang Authority, Malaysia holds the Presidency over IAPH for the period 2007-2009. The IAPH’s headquarters are based in Tokyo, where our Secretary General Dr. Satoshi Inoue and his staff reside. The African/European regional office of IAPH at Rotterdam is responsible for maintaining contact with most of the international organizations and with other NGO’s.

IAPH as a membership association addresses various issues of interest and concern to the entire membership through committees. IAPH has eight Technical Committees, who are responsible for the task of addressing and examining issues impacting the global port industry. The Legal Committee of
which I am the chairman has been grouped together with the Port Safety and Security Committee and the Port Environment Committee. The position taken by these Committees represent the view of the World Port Industry as a whole.

3. **IAPH and Places of Refuge**

IAPH’s position with regard to Places of Refuge has been a consistent one over the years to begin with IAPH’s initial submission on this subject to the Legal Committee of IMO on 19 March 2002 (LEG 84/7/1). This position has been based on the following two considerations.

First, there is no rule of international law – whether written or unwritten – by which a ship in distress has an absolute right to unconditionally enter territorial waters of a sovereign State to find a Place of Refuge. As no international instrument confirms the existence of such absolute right of entry of a ship in distress, it is clear that national States have reserved their sovereign right to decide for themselves, and to defend and protect their vital interests.

However, this does not mean that coastal and port States or other competent authorities do not care about ships in distress or are unwilling to give ships in distress access to Places of Refuge. What it does mean, is that the governments of these States wish to decide for themselves on a case to case basis under what conditions ships in distress may enter their territorial waters from the high seas to seek refuge there. Neither does it mean that owners of ships in distress are left at the mercy of governments of coastal and port States or other competent authorities, without any access to justice, but rather that political decision-making and judicial review about giving access to territorial waters to a ship in distress seeking a Place of Refuge, takes place at the level of the relevant national State.

It also follows that in reality there is no legal vacuum with regard to Places of Refuge under international law: the matter has so far been left to national States.

The position of coastal States is recognized by IMO, for instance in the IMO Guidelines on Places of Refuge for Ships in Need of Assistance (Resolution A.949 (23), adopted 5 December 2003). In the recitals of this Guideline the prerogative of coastal States to protect their coastline is recognized. Further in paragraph 1.10 it has been acknowledged that the use of a Place of Refuge involves political decisions.

The second consideration is that a ship in distress poses quite an extreme and abnormal situation, which is not covered by the right of innocent passage under articles 17 and 18 UNCLOS. This implies that coastal and port States have the right to impose pre-conditions on a ship in distress in return for granting it the right to enter their territorial waters to find a Place of Refuge.
Such pre-conditions are not limited to technical and operational aspects, but may include also the waiver of the ship-owner's right to limitation and to provide a letter of undertaking or guarantee for amounts based upon the potential for damage resulting from the ship in distress entering the Place of Refuge. Coastal States cannot be expected to subordinate their interests to such an extent that they voluntarily absorb the risk of a major maritime disaster posed by ships in distress. In any case not if ship-owners and their respective P&I Clubs, as well as other interested parties such as cargo interests and other coastal States are unwilling to offer any (additional) incentive in return whilst accepting the benefit of this selfless act.

It should be noted that IAPH is not at all unsympathetically towards casualty ships. Although there is no (absolute) obligation in international law for a coastal State to grant access to its territorial waters to a ship in distress, it does not follow that it is desirable if coastal and port States were to deny access to a ship in distress to a Place of Refuge under all circumstances. IAPH favours a case-by-case approach on the basis of good public and private management. Ships in distress must be assessed objectively to determine their condition and requirements and the risks attached to them. Next, the potential for (environmental and other) damage if access to the Place of Refuge is denied should be compared with the potential for damage if access is granted. If it appears that the risk of damage if the ship remains on the high seas is higher than the potential for damage to be caused in the Place of Refuge, then this constitutes a prima facie case to allow the ship in distress access to a Place of Refuge in the territorial waters of the coastal State.

In that case it would not be fair to ‘punish’ coastal States and/or ports for their willingness to provide shelter to a ship in distress and to absorb all risks of environmental and financial loss involved, by not allowing them full recovery of their resulting damage. Neither would it be wise from a practical point of view to introduce a pecuniary motive on the part of the ship-owner and his P&I Club, as to where the owner may limit his liability for wreck removal and environmental pollution most cheaply. As it is, there is already considerable diversity as to limitation regimes, which is exemplified by the fact that although Denmark, The Netherlands and England are all party to the LLMC, a general liability limitation fund in Denmark also extends to wreck removal claims, whereas in The Netherlands a separate wreck removal fund would be necessary to limit liability for such claims and in England limitation of liability is not possible for wreck removal claims. If we imagine a ship in distress at the North Sea equally distanced from coastal States Denmark, England and The Netherlands, where do you expect the ship to go to?

This problem is remedied if the ship-owner waives his right to limit in return to access to a Place of Refuge. I trust that this idea of reciprocity will appeal to lawyers in the audience groomed in the common law as it is based on a line of thinking not dissimilar from the consideration doctrine in English
law. In my country we would say “voor wat, hoort wat”, which comes down to the basic notion of “quid pro quo”, or “one good turn deserves another”.

In order to give a proper incentive to coastal States at least two cumulative pre-conditions have to be met:
1) A waiver of any right to global limitation of liability by the ship-owner, and
2) Security for an open ended amount given by a first class bank, insurance company or other financial institution.

IAPH’s position was further elaborated in detail in its letter of 22 June 2007 to Mr. Stuart Hetherington Chairman of CMI’s International Working Group, which letter is attached to this paper. IAPH was astonished to learn that the International Working Group did not take IAPH’s position into consideration or even cared to respond or to enter into discussions about it. On the contrary even, with regard to the key issue of the security to be given on behalf of the ship in distress, article 7 still requires only security for a limited amount by reference to the applicable conventions and national law, which is unacceptable to IAPH and probably to coastal States as well.

In fact the only response received came from Prof. Eric van Hooydonk who suggested to create an incentive for ports in cases where providing shelter to a ship in distress leads to success. Although sympathetic, the proposal is not a real step forward because ports are not seeking to turn ships in distress into a money-making venture, but would be quite content if ports and others who voluntarily absorb a considerable potential for damage for the common good of all, were not left with unrecoverable damage and costs. That would obviously not be a fair deal because coastal and port States who give access to a Place of Refuge already subordinate their own interests, as well as those of their local businesses and inhabitants to an even wider notion of the public goods on international level, which may require a sacrifice of local interests for the general interest of preventing pollution of the environment and of mitigating damage.


General Observations and Alternative by Scaling Down the Draft Instrument

As mentioned earlier, the subject of Places of Refuge has disappeared from IMO’s legislative agenda. Based upon its extensive experience in dealing with Governments and Government Agencies of many States around the world, IAPH has no doubt that the proposed Draft Instrument in its current form will prove to be totally unacceptable to national States, if only because of the way in which it invades the sovereignty of States, without offering any
real benefit in return. It therefore is predictable that the proposed Draft Instrument will not reach the finish line by reviving the issue of Places of Refuge - the file of which will remain dead and buried at Albert Embankment.

This raises the question as to how the Draft Instrument must be changed in order to give it a chance of being successfully adopted by IMO and national States.

IAPH is of the opinion that it is helpful to develop objective standards as to how to assess alternative operational options for dealing with ships in distress.

IAPH’s advice is to take the Draft Instrument back to the drawing-table and redesign it by taking into account the following considerations:

a. It is useful to develop common standards and practices leading to an international objective framework for decision-making concerning ships in distress.

b. This framework should be designed in another way than the current Draft Instrument.

c. The framework should not be compulsive in the way it overrules sovereignty.

d. The framework should harmonize the decision-making process by giving objective criteria in order to improve the quality of the decision-making process without taking away the decision-competences of States.

Such an approach should be based on the following principles:

1. A State and any relevant Competent Authority shall pay proper attention to a ship in need of assistance if requested. How?
2. By establishing the condition of the ship and by investigating if this condition is such that immediate assistance is required for environmental reasons.
3. If immediate assistance is required:
   A. Identifying the conditions for giving access to the ship, or if such is not possible because greater danger for damage exists if permission to enter a Place of Refuge is granted than if such a permission is not given:
   B. By identifying a lower risk alternative to granting access.

Although it is clear that my association disagrees in principal with how the Draft Instrument is constructed now, it is useful to note some specific observations (which comments are not exhaustive).

This approach comes down to clearing the decks by scaling down the instrument to the core matter, i.e. forcing States and other competent authorities to pay objective attention to ships in distress by applying a decision-making process based on an objective framework. The instrument should refrain from taking in controversial issues which might frighten treaty-making parties, such as presuming the existence of a right of entrance and creating liability for States. These controversial issues are not essential ones: what the international community wants to pursue is a proper and quality-based decision-making process.
Observation Article 3. Legal obligation to grant access

This Article 3 is based on the presumption that an absolute obligation exists for coastal States to give access to stricken vessels. As explained above, this right does not exist. Working further on the basis of this misconstrued assumption is not useful.

Observation Article 4. Immunity from liability where access is granted reasonably

Our observation is that because in the decision-making process concerning ships in distress coastal States exercise their sovereign rights, a rule for immunity from liability where access is granted reasonable, is not necessary.

Vice versa it should be noted that the Draft Instrument does not create immunity for States who refuse access to ships on reasonable grounds. Within the understood presumptions of the Draft Instrument such a rule would be logic.

Article 5. Liability to another State, a third party, the ship-owner or salvor where refusal of access is unreasonable

In the Notes on Clauses of the Draft Instrument on Places of Refuge it is stated that this article summarises the existing position in International Law as understood by the International Working Group. As signalled before, such an absolute obligation for States leading to the liability as worked out in this Article 5, does not exist.

Article 7. Guarantees

Any instrument must balance the needs of the ship with those of them providing shelter. There is only one regime of compensation provided in the Draft Instrument which is an insurance certificate, letter of guarantee or other financial security. However, the insurance regime is not compulsory. A Competent Authority cannot use the absence of such a financial security as a reason to refuse access. In addition, there is a limitation in relation to the amount which can be recovered from the ship according to paragraph 7 of the Draft Instrument which refers to the limitation of liability.

In order to give a proper incentive to coastal States at least two cumulative pre-conditions have to be met:
A. A waiver of any right to global limitation of liability by the ship-owner
B. Security for an open ended amount given by a first class bank, insurance company or other financial institution.
5. **Conclusive Remarks**

On basis of stated above it follows that IAPH disagrees in principal with the Draft Instrument: how it has been constructed and how specific clauses are designed. It simply is not a good plan to go this way and we only can advise the National Maritime Law Associations present here, not to agree with the Draft Instrument in its present form.

At the same time IAPH sincerely believes that it is useful to develop common standards and practices leading to an international objective framework for decision-making concerning ships in distress.

Further IAPH is of the opinion that it is possible to construe an Instrument that will meet broad international consensus and will lead to adoption and ratification.

The marching route leads back to the drawing-table by reopening the debate about the material content for such an Instrument. I already outlined the basic principles for such an Instrument:

1. State and any relevant Competent Authority shall pay proper attention to a ship in need of assistance if requested.

2. How? By establishing the condition of the ship and by investigating if this condition is such that immediate assistance is required from environmental reasons.

3. If immediate assistance is required:
   
   A. Identifying the conditions for giving access to the ship, or if such is not possible because greater danger for damage exists if permission to enter a Place of Refuge is granted than if such a permission is not given:

   B. By identifying a lower risk alternative to granting access.

IAPH’s stance is that it refers its position to the standpoint of IMO’s Legal Committee of April 2005 in which it was determined that the subject of Places of Refuge indeed is a very important one, but at that and this point of time urgent priority should be given to implement all existing liability and compensation Conventions (with which is meant the closing of the framework by coming into force of HNS, Bunkers and the Nairobi Wreck Removal Conventions). After a certain period of experience with the compensation and liability framework in place, there will be new momentum for dealing with the question whether a Convention for Places of Refuge should be drafted.

IAPH refers to this approach and therefore is actively promoting the acceleration of respective ratification processes. This is done amongst others with IAPH’s Resolution on Accelerating the Ratification Processes of said conventions including the 1996 Protocols to LLMC 1976, which resolution has been adopted in Dunkirk on 16 April 2008 and which is attached to this paper.

Thank you for your attention.
Comite Maritime International (CMI)
Attn. Stuart Hetherington
Chairman IWG Places of Refuge

Rotterdam, 22 June 2007

Subject: CMI’s draft Instrument on Places of Refuge – position International Association of Ports and Harbors (IAPH)

Dear Mr. Hetherington

Your e-mail of Tuesday 5 June 2007 with which you circulated CMI’s draft Instrument on Places of Refuge was received in good order. The draft text resulted from inter alia the exchange of thoughts during CMI’s ICS meeting on 22 May 2007 in London.

During the discussions various subjects were tabled. From IAPH’s side special attention was asked for paragraph 7 of the draft Instrument. My colleague Wilko Tijsse Claase of Port of Amsterdam explained that ports as potential suppliers of (often well-equipped) places of refuge consider 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, as an important sub-instrument in the context of giving a ship in distress access to a place of refuge. Mr Wilko Tijsse Claase also explained that ports are particularly worried about the wording of paragraph 7 which limits the amount of the financial security to the applicable limit of liability. It was agreed that IAPH would explain its position on this specific point further.

IAPH fully agrees with the approach that the decision to give or deny access to a place of refuge to a ship in distress should be based on a case by case approach. In this approach the potential for damage immanent to refusing access should be compared with the potential for damage immanent to permitting the ship in distress to access the place of refuge. In case the risk of damage if the ship were to remain on the high seas is higher than the potential for damage to be caused in the place of refuge, the ship should in principle be given access to remedy its troubles in a place of refuge.

However, this approach will only work if proper consideration is also given to the interests of those parties who will absorb these lesser risks when giving access to a place of refuge to a ship in distress. In the present wording
of paragraph 7 where the security to be provided is restricted to the limited liability, this reality is not recognised.

It is indeed not uncommon that the damage caused in a place of refuge exceeds the applicable limit of liability, also taking into account that at present important international conventions in this field, such as the HNS Convention, the Bunkers Convention and the Wreck Removal Convention, are not yet in force. From a policy perspective, it is IAPH's view that it is unfair to 'punish' a party who allows a ship in distress access to a place of refuge by imposing limits of liability or limits on the amount of security to be given in return for the permission to enter. After all, by allowing access to a place of refuge that party already subordinates his own other interests as well as the interests of local people and businesses to the serving of an even wider concept of the (often international) public good which includes the general interests of promoting safety at sea, of preventing pollution of the environment and of overall mitigation of damage. Why should that party also accept only a limited recovery of his resulting damage, if thanks to his permission of entry to the ship in distress many other parties escaped from suffering damage altogether or were able to mitigate their damage considerably?

In addition, imposing limitation of liability in the context of places of refuge may also prove counter-productive, because it introduces improper financial considerations for parties involved in a decision making process that should be focused on providing the most effective and cost-efficient assistance to a ship in distress.

As the right to limitation of liability of the ship-owner by its very nature is an optional right, IAPH fails to see why the permission to enter a place of refuge could not be made conditional on open-ended security and a waiver by the ship-owner of this right to limitation.

It should be borne in mind that in any of these cases this potential damage in a place of refuge is nevertheless not exceeding the potential for damage of a scenario where the ship remains on the high seas. It is worth noting in this regard, that the ship-owner by being allowed access to the place of refuge, may not only avoid (exposure to) liabilities towards third parties which may be subject to limitation under the 1976 LLMC Convention (and the1996 Protocol), or under the CLC Convention as the case may be, but that he may also avoid such liabilities as for wreck and cargo removal, for which in some jurisdictions the ship-owner can not limit liability at all and in other jurisdictions he must put up a separate and considerably higher limitation fund. In fact, the financial benefits of the ship-owner and his underwriters are even greater than that, because if the ship in distress is allowed access to the port of refuge the ship-owner may even be able to save the ship and freight. However, the potentially high salved values of the ship and freight are
currently not taken into consideration when determining the appropriate level of security to be granted to the party who allows the ship in distress access to a place of refuge.

From an overall point of view and taking into account all interests concerned including that of the safety of seafarers, the protection of the environment, the ship and the cargo, it is clear that an incentive is needed for those parties who are expected to absorb the (lesser) potential for damage in a place of refuge. This is not an uncommon approach in maritime law. In this respect I would point to the salvage fee where there is an incentive paid to the salvor on the basis of the value of the cargo recovered - and sometimes also taking into account - somewhat artificially – any sums that might have been spent would the ship have remained at the high seas. It is however not the position of the ports to adopt this salvage fee approach when giving access to a ship in distress, i.e. asking for a reward if the operation is successfully finalised. The approach would rather be that the actual costs and damages of any party involved in such operations is borne by the ship and the other interests involved without any limitation.

In view of the above considerations, I would like to stress that paragraph 7 of the draft Instrument is not acceptable to IAPH. When further discussing this draft Instrument, could you please take due note of our standpoint in order to avoid misrepresentations.

We trust that the above information will be of assistance to you in understanding our position. Further we trust that on this basis the combined interests of the ship-owner, the cargo and the environment (i.e. the coastal States) will cooperate in finding an appropriate solution in case of an incident ship seeking shelter in a place of refuge being a port.

Faithfully yours,
International Association of Ports and Harbors

Frans van Zoelen,
Chair, Legal Committee
IMMEDIATE MEDIA RELEASE
April 21, 2008

IAPH adopts a resolution, calling for prompt and early ratification of IMO conventions

The Board of Directors of the International Association of Ports and Harbors (IAPH) convened in Dunkirk, France, for its annual meeting, unanimously adopted a “Resolution on accelerating the ratification process of the HNS, Bunkers and Wreck Removal Conventions and the 1996 Protocols to LLMC 1976” on April 16 2008.

In the resolution, IAPH called for a prompt and early ratification by the states involved of the following three conventions and a protocol that are of immediate concern to the entire maritime world.

• International Convention on Liability and Compensation for Damage in connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996;
• International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001; and
• 1996 Protocols to the International Convention on LLMC of London 1976

The resolution was proposed in the background of relatively slow ratification processes with only a small number of states having ratified them to date.

Mr. Frans van Zoelen, Chairman of Legal Committee, mentioned the significance of the resolution by saying that “These IMO conventions are essential for reinforcing the liability and compensation framework concerning maritime and environmental damages resulting from maritime accidents. These subjects are of importance for coastal states and ports. The said conventions also play a significant role to assist coastal states and ports to cope with ships in distress.”

Secretary General Dr. Satoshi Inoue said, “Earliest entry into force of these conventions would no doubt help coastal states and ports to more effectively cope with physical and/or environmental damages caused by maritime accidents. We will urge all IAPH members to press harder their respective governments to ratify them as early as possible. We also will reiterate to IMO our strong support for these conventions.”

The full text of the resolution reads as follows:

THE BOARD OF DIRECTORS OF THE INTERNATIONAL ASSOCIATION OF PORTS AND HARBORS (IAPH) IN DUNKIRK, FRANCE

BEING AWARE of the slow ratification processes of the Hazardous & Noxious Substances Convention (HNS C) 1996 and the International Convention on Civil Liability for Bunker Oil Pollution Damage 2001 (Bunkers C) and intending to avoid a similar fate for the Nairobi Wreck Removal Convention 2007 (Wreck Removal C),

APPLAUDING the fact that the Bunkers C is now expected to enter into force on 21 November 2008 after ratifications having been completed by twenty States representing 21.52 % of the world’s tonnage,

NOTING that the HNS C needs to be adapted by a Protocol to the HNS C in order to modify the concept of the receiver in this convention, and that it is expected that States which not yet have ratified the HNS C might postpone ratification until the HNS C has been adapted by the protocol which might take another two years,

NOTING FURTHER when implementing the Wreck Removal C States should consider to extend its application to wrecks located in its territorial waters in order to let benefit those who are responsible for such waters from the beneficial effects of this convention,

MINDFUL that said conventions make an essential contribution to the preservation of the environment and the adequate, prompt and effective compensation of persons who suffer damage caused by incidents in connection with maritime trade and shipping,

RECOGNIZING that the prompt coming into force of said conventions also plays a key role in the context of Places of Refuge where the being into force of said conventions would facilitate the prompt and accurate decision making process of coastal States and Port Authorities absorb related risks for the community as a whole,

Limitation of Liability for Maritime Claims (LLMC) 1976;
2. URGES States to facilitate, as a matter of priority, the adaptation of
the HNS C with a protocol with a view to modify the concept of receiver
in this convention;
3. URGES States when implementing the Wreck Removal C to consider
to extend its application to wrecks located in its territorial waters in order
to let benefit those who are responsible for such waters from the
beneficial effects of this convention.

* End *

For inquiry and information, please contact us at
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The International Association of Ports & Harbors (IAPH) is the global
alliance of ports around the world. Established in 1955 as an international
Non-Governmental Organization, IAPH represents today some 220 ports and
130 port-related companies and institutes of about 90 countries. Member
ports all together handle 90% of the world container traffic and over 60% of
the world maritime trade. IAPH tackles through Technical Committees a wide
range of key issues facing the world port industry. Granted a Consultative
NGO Status from UN agencies, IAPH also plays an active role in developing
international frameworks for global issues related to maritime and trade
activity.

* * *

CV Frans van Zoelen

Frans van Zoelen is Head of the Legal Department of Port of Rotterdam
Authority and Legal Counselor of the International Association of Ports and
Harbors (IAPH) (www.iaphworldports.org). He chairs the Legal Committee
of the International Association of Ports and Harbors and the Legal
Committee of the Dutch National Ports Council (www.havenraad.nl/english/), and is member of the Legal Advisory
Committee of the European Seaport Organisation (ESPO) (www.espo.be). He
sits in the Board of the Dutch Association for Maritime and Transport Law
(www.nvzv.nl).

Frans van Zoelen has a civil and public law background with
specializations in real estate law, company law, competition law and maritime
law. His focus is on the interface between public and private sector, a focus
useful for navigating in port environments.

Frans van Zoelen also is a long distance runner and a writer of short
stories for Dutch and UK literary magazines.
PLACES OF REFUGE FOR SHIPS IN DISTRESS
THE P & I INSURER’S PERSPECTIVE

ANDREW BARDOT

International Group of P&I Clubs

The International Group of P & I Clubs comprises 13 mutual shipowners insurance associations, the Clubs, which between them provide liability insurance cover for around 90% of the world’s oceangoing tonnage (734m tonnes and around 50,000 vessels at Feb 2008). Within the Group system, individual clubs retain the first $7 million of claims exposure, above which level claims are shared between all member clubs within the Group pool system up to a maximum limit of currently in the region of US $6.5 billion. Oil pollution claims are subject to a cap of US $1 billion and passenger claims to a cap of US $2 billion with a combined cap for passenger and crew claims of US $3 billion. The pooled liabilities of the Group between US $50 million and US $3.05 billion are protected by an annually purchased commercial reinsurance programme in which the Group captive Hydra participates. Hydra also insures the liabilities of the Group pool in respect of claims between US $30 million and US $50 million.

Club cover

The liabilities covered by the Group clubs are those associated with owning and operating vessels and include pollution, wreck removal, collision, damage to fixed and floating objects including docks, wharves, jetties, terminal and other facilities, personal injury and loss of life, loss of or damage to cargo and, importantly in the context of places of refuge, infringement of rights which would include elements of economic loss. Broadly speaking, all the potential liabilities and exposures which might arise in the context of a place of refuge situation are likely be covered by the shipowners P&I insurance. As such, in common with property insurers, the Group Clubs have an interest in ensuring the availability of places of refuge for vessels in distress, and in measures aimed at improving the efficacy of response to vessels in distress.

Through the Group system the member clubs are able to offer unparalleled limits and the widest range of cover to shipowners which, in turn,
benefits both private and commercial victims of maritime incidents. The Group system provides the largest compensation mechanism available for victims and underpins the funding of compensation under the International Conventions, either exclusively, or in tandem with industry, as is the case in relation to oil pollution through the IOPC Funds system, and as will be the case under the two tier HNS Convention.

**The International Liability and Compensation Conventions**

The great majority of the liabilities covered by clubs are, or will be, covered under the various IMO Conventions which are in force, or which are pending entry into force. CLC covering oil pollution liabilities, the Bunker Convention which is due to enter into force in contracting states on 21 November 2008 covering liabilities arising out of bunker oil spills, the Wreck Convention covering wreck removal and associated obligations and the HNS Convention which will provide compensation for pollution/damage caused by an extremely wide range of non oil cargoes. This framework of Conventions, once fully implemented, will establish a comprehensive compensation system providing, inter alia, for compulsory insurance.

The International Group supports the IMO Conventions, and rationale implicit within them, of consistent international, rather than diverse regional or national legislation. The certainty and widespread applicability of the convention regimes, the level commercial playing field they provide, and the established limitation mechanisms enshrined within the Conventions, are important factors in the sustainability of the insurance cover provided to shipowners by the Group Clubs and by the Group’s reinsurers. The Group which, like CMI, has observer status at IMO, has worked and continues to work with the IMO and its member states in the development of the current and the pending Conventions.

It should not of course be forgotten that the cover provided by the clubs is not dependent on the existence of an applicable International convention. Club cover responds equally to the Shipowners legal liabilities arising under the applicable law or laws.

**Places of refuge – Historical consideration**

The topic of places of refuge, and the desirability, need or otherwise for a draft instrument/convention or other regulation on places of refuge is by no means novel. This has been the focus of regular consideration over quite some years within the IMO Legal Committee, States, the EU and, of course, CMI.

Within CMI, the hare was set running by the IMO Legal Committee
following upon the “Castor” and the “Prestige” incidents. Following consultation with National Maritime Law associations, their responses and a summary was submitted to the IMO Legal Committee. The issue was considered by the Legal Committee at its meeting in 2005 and it is worth recording the contemporary view of the Legal Committee in the relevant section of its report following the meeting;

“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 (its) study on Places of Refuge”

It is also worth noting at this point that the conclusions of the Legal Committee are consistent with the provisions of IMO Resolution A. 500 (XII), and in particular its recommendation, inter alios, that:

“... proposals for new Conventions or amendments to existing Conventions be entertained only on the basis of clear and well-documented compelling need ...

The International Group has followed with considerable interest, and participated in, the discussions which have taken place in the IMO, the EU and elsewhere in relation to places of refuge. The Group noted the concerns expressed by port and other authorities that pending entry into force of all the framework Conventions they could lack appropriate security when granting a place of refuge to a vessel in distress and, in response to these concerns, the Group developed a standard form letter of guarantee to be provided by way of comfort (since the underlying liabilities are in any event covered by clubs) to the relevant authorities, the latest wording of which has been mirrored in Annex II to the latest version of the CMI Draft Instrument. This draft wording met with the approval of the IMO member states.

The issue of places of refuge has also been the subject of recent focus within the EU. The proposed Vessel Traffic Monitoring Directive is one of the seven proposed directives and regulations within the Third Maritime Safety Package. The proposed draft directive includes provisions relating to preparation of plans to accommodate vessels in distress and financial security, but falls short of mandating acceptance of a vessel in a port. It is worth recalling that within the context of the discussions on the VTM,
member states have indicated that they are broadly satisfied with the current International Convention System, albeit clearly frustrated at the very slow pace of ratification and implementation of the Conventions.

Places of Refuge – current consideration

Given that it is the member states of the IMO which will need to be persuaded that there is a “clear and well-documented compelling need” for a new convention governing places of refuge, what has changed since the consideration by the Legal Committee in 2005. The short answer is, in reality, very little, and to the extent that there have been changes, these militate against rather than in favour of developing a new Convention, for the time being at least.

Since 2005 there has been significant progress towards entry into force of the pending Conventions. The International Convention on Civil Liability for Bunker Oil Pollution Damage 2001 will enter into force in contracting states on 21 November 2008. The Nairobi International Convention on the Removal of Wrecks 2007 has been adopted and is pending the required number ratifications for entry into force. Significant progress has also been made in resolving the practical difficulties which have delayed the adoption of the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996.

Within the EU, the provisions of the proposed VTM directive envisage States using the IMO guidelines (Resolution A.949 (23) on Places of Refuge for Ships in Need of Assistance to form the basis of plans prepared by Member States in order to respond effectively to threats posed by ships in need of assistance. Whilst the draft directive requires, inter alia, member states to draw up plans to accommodate vessels in distress, it does not mandate acceptance, and leaves this within the discretion of states.

It should not be overlooked that the IMO guidelines were developed as a means of achieving, and have in effect achieved, a proper and equitable balance between the rights and interests of coastal states on the one hand and the need to render assistance to ships in distress on the other. Seeking to impose legal obligations on states to provide access to places of refuge is a significant progression from developing guidelines or requiring states to draw up response plans in order to respond effectively to the accommodation of vessels in distress and to the threats posed by such vessels. From the perspective of states sovereignty, this is likely to be perceived as a step too far.

There is also the issue of the potential impact on the credibility of the International Convention system if a new convention is developed, but is not sufficiently ratified, or is delayed in ratification. In the dealings which the
International Group and industry have had with the various EU institutions in the context of the Third Maritime Safety Package, the delay in entry into force of the International Conventions has been a recurring criticism, and often deployed as a justification for developing regional regulation which the Group and industry have had to work hard to counter.

Summary

The viability of a new International Convention, and the success of such a Convention if adopted, will depend upon the appetite and support of States. States will need to be persuaded of the compelling need which hitherto they have not recognised. Indeed, States have made it clear that they wish to await the entry into force of the framework Conventions, and an assessment of how these are working in practice, before re-addressing the issue of the desirability of, or the need for, a new Convention governing places of refuge. Seeking to press ahead with a draft instrument without sufficient support for the underlying principle from States, carries with it the risk of enhancing expectations which, if left unfulfilled by the subsequent failure by States to adopt and ratify, may undermine the standing of the International Convention system which insurers and shipowners work hard to support.

The position which the International Group, in common with shipowner associations, has taken, and maintains, on this issue is in line with States approach, namely to first encourage adoption and entry into force of the framework Conventions, to assess how these work in practice and then to review whether a new stand alone Convention is required. Should that turn out to be the case, the considerable work that has gone into the latest version of the Draft Instrument would provide a sound platform to build on.
The refusal by appropriate authorities to grant a place of refuge has long been a problem for the salvor. The Atlantic Empress, Andreas Patria, Christos Bitos Kurdistan, Castor and Prestige are all examples. It had been hoped that the guidelines on places of refuge, prepared by IMO in 2004, would solve, or at least ameliorate, the problem but it would seem that it continues. The guidelines may have improved matters, its difficult to tell, but they have certainly not solved the problem and the risk of another disaster, like the Prestige, remains. Some examples.

A general cargo ship laden with 20,000 tons of Calcutta coal. Lit by spontaneous combustion the cargo took fire and the ship abandoned by her crew in the Andaman Sea. A salvage tug came to her assistance. The fire could be controlled but could not be extinguished until, the ship was alongside in port and the cargo discharged. A not uncommon occurrence with a coal cargo. The salvors sought refuge in Cochin the nearest port with the appropriate facilities. The owner was uncooperative and clearly did not want the ship brought in. He appeared to have political influence in the area, particularly over various port authorities. The harbour master refused to take her, as did other ports in the area. Unable to get the ship into a port with appropriate discharge facilities the salvors could do nothing. The owner and his insurers refused redelivery to another tug and the salvor was stuck with the ship. What was he to do? He decided to mitigate his loss by abandoning the ship in the open sea well away from the traffic lanes after giving 5 days notice to the owner his insurers and the local authorities that he would do so, if a place of refuge could not be found or they had not engaged a tug to take her over. No one reacted, the tow line was cut and the ship abandoned in the Indian Ocean. Appropriate warning were sent to all ships giving notice of the potential danger. She was found some months later aground on one of the remote Maldive islands.

The Stella Riga, a small coaster laden with 3,800 tons of bitumen scheduled for resurfacing roads, experienced an engine failure in very bad weather 25 miles west of Milford Haven. There was a risk of her grounding on rocks. The majority of her crew were airlifted off leaving four onboard. The salving tug took her in tow and tried to take her into Milford Haven but permission was refused. SOSREP did not interfere. Fortunately Swansea agreed to accept the ship.

The Vicky was badly damaged following a collision with the wreck of
the Tricolor which sank in the English channel following a collision with another vessel. The salvors wanted to take her into the river Scheldt but were refused permission. She was subsequently towed to Rotterdam.

The Hanjin Pennsylvania suffered an explosion off the coast of Sri Lanka. The nearest port to accept her was Singapore.

The Malacca was a small ship. In danger off the coast of southern India. She was abandoned, adrift and there was a threat of pollution had she grounded. She was taken in tow by a salvage tug but Cochin would not accept her. The owner seemed uninterested and she was not insured. Eventually the ship was anchored off Cochin and abandoned by the salvors.

These cases illustrate why the ISU supports the CMI’s current initiative. A formal instrument is necessary to compel relevant authorities with little or no knowledge of the sea, to make a proper informed decision in the light of all the circumstances. To make a genuine choice between what may be two evils. Not to simply reject a solution which they perceive will affect them, without considering the consequences to others. Guidelines are simply guidelines which can fairly easily be avoided by a determined politician or administrator with little or no knowledge of ships and the sea or the real dangers posed by them. Teeth are needed to ensure a balanced judgement is made by those who have to make the decisions at times of crises. The draft instrument before us, give those teeth.

That said, the ISU do see some problems with the draft and would like to see them resolved, if it is possible.

1. Firstly, we feel the definition of “objective assessment” needs some further clarification. Who is to make that assessment and who appoints the assessors? Salvors find persons called upon to carry out an inspection all too often have little or no knowledge or experience of the type of problem the ship has, its structural strength, stability or the work of a salvor. It essential such inspections are carried out by competent people. We would therefore suggest that the following additional words be added to the definition:

“Objective assessment means an assessment by appropriately experienced people appointed by the competent authority, in relation to a ship in need of assistance….”

2. The above definition is important when one considers the meaning of 3 (b) but in any event we think further consideration should be given to the current wording of that particular paragraph which currently reads:

“A State or competent authority may, on reasonable grounds, deny access following an objective assessment, which establishes that the condition of the ship is such that it and/or its cargo is likely to cause greater damage if permission to enter the place of refuge is granted than if such a request is refused.”

A number of questions arise from this paragraph. Is the objective assessment itself ‘reasonable grounds”? Can it be later challenged if the
assessment is unreasonable or negligently carried out? Is the word ‘establishes’ too strong? It infers proof one way or another and proof at that stage is often impossible. At the very least it implies certainty. Would the word ‘concludes’ be better? We would have thought an informed opinion made by competent unbiased people should be sufficient to justify denial of entry.

3. Whilst we well understand the problem of giving security and the need to limit that security to insurable sums we imagine that some States may well be put off by limiting the security to the 1976 Convention or its successors. If pollution results the shipowners limit under different conventions such as the CLC 1992 or the HNS convention, should it ever come into force, may well be higher. Should that not be acknowledged? Further what about those countries that do not permit limitation for wreck removal such as the UK. The won’t be encouraged to sign up to an instrument that restricts security to any limit. It would be interesting to know what currently happens in such situations. For instance has security ever been put up for the Napoli whose cost of removal must have well exceeded her 76 limit.

4. Paragraph 8 deals with plans to accommodate ships seeking assistance. The ISU has no problem with the wording of this clause but would like to emphasize the need for it. Experience shows many states are totally unprepared for a shipping disaster when it strikes. The IMO guidelines are a great help for directing their attention to matters which affect a place of refuge but they don’t go far enough in dealing with other problems that arise with any casualty and there is a need to coordinate the efforts of non maritime agencies. As an example salvors have found equipment urgently needed for a particular casualty is often held up for days by customs, to the detriment of the casualty. The ISU is currently preparing “Best Practice Guidelines for Marine Casualty Management” and will in due course share and discuss the resultant draft with the relevant agencies.

5. Finally, it has to be said that the draft instrument is all stick and no carrot. There is no real incentive by way of benefit to the appropriate authority to encourage states to sign up to it. There is quite a lot of stick by way of additional exposure to liability and restriction on the amount of security but no carrot. In Dubrovnik I suggested the development of environmental salvage might provide that carrot. It is too late to develop that issue for this particular instrument but there is no reason why it could not be considered during a revision of the 1989 Salvage Convention. The Convention is now nearly 20 years old and its approaching 30 years since it was first drafted. Much in the world has changed since then. The Convention has been beneficial and resolved many problems but some of the solutions it imposed have not worked and there is a need for review. Perhaps the CMI, as the author of the convention, would undertake that review and draft any amending protocol that might be necessary as a result. The ISU would encourage you to get involved.
Ladies and Gentlemen

Thank you, Archie Bishop and ISU for showing us so many compelling reasons!

My name is Fritz Stabinger and I represent IUMI, the International Union of Marine Insurance which is the worldwide union of 54 national marine insurance associations or insurance associations which deal with marine insurance.

The members of these associations are mainly marine property insurers. This means they insure hull and machinery of ships. They also insure, in more isolated cases, liability, but their main line is property.

My union represents – and talks for – a worldwide premium income of some US$ 22 billion. US$ 6 billion come from insurance of ships, i.e. hull insurance, some US$ 12 billion from insurances of cargo and the rest is divided into offshore energy and a small liability part.

The premiums generated by the International Group of P&I insurers is not included in these figures.

You will appreciate that having the survival of insurers in mind – sometimes I am tempted to say ‘on my conscience’ - writing some US$ 18 billion in premium – that is all marine property or hull and cargo combined – is a heavy task. A disquieting task, a task which makes me nervous. Sometimes. Not always, but lately more often.

Why am I nervous?

First and foremost in my mind is the survival of an essential line of insurance business.

Ladies and Gentlemen:

Admiral Mitropoulos, in his yesterday’s key note address, said it all: without shipping, the world grinds to a halt.

And: without marine insurance there is no shipping.

Without marine insurance there is no import, no export, there is no travelling, there is no economic development.

All of us, therefore, must do our utmost to create an environment where marine insurance is allowed to survive, even to prosper.

The survival of marine insurance depends on basically two things
first
marine insurance – as a matter of fact insurance as a whole – needs a
good public image. We have to get away from the image of ‘claims paying
avoiders’ of ‘making things complicate and difficult’ and we have to be seen
in the public as essential part of the supply chain, as risk carriers who do their
utmost to help, to be fair, constructive and knowledgeable.

Insurance companies have to be seen not as companies hiding in big and
expensive buildings but as people who care.

Please remember: ‘as people who care’.

second
writing marine insurance needs capital.

The marine underwriter gets his capital from his CFO, he gets it from his
CEO or board and ultimately it is the shareholder who provides this capital.

Capital is a scarce commodity.

You watch TV or open any newspaper and you see just how scarce it is.
A scarce commodity is invested or used where it pays off most and that
means that a CFO will be very reluctant to provide capital for a line of
business where the chances of success are – I say it cautiously – slim, or even
(almost) non-existent.

Where during many years hope lost to brutal and cruel reality.
What I mean to say is that marine insurance is in a crisis: we loose
money.

We do not obtain a sufficiently high – if any - return on capital.

And there are two reasons for that:

first, the most important:

competition.

There are too many risk carriers fighting for a slice of a too small cake
of available business. There are too many risk carriers who write market
share, who look at the top line and not at the bottom line.

You can say: yes, we heard him – but is that our problem?
The answer is: this first reason is not your problem. Agreed. It’s in-house
made and we have to sort it out somehow.

Needless to say that I am convinced that we shall succeed.

But there is a second reason.
The reason of fundamentals
What are fundamentals?
Fundamentals are, inter alia,
– quality of the ship
– quality of the crews
– quality of port facilities
– quality of shore-based operators
– support from law-makers, from legislators

Support from law-makers, from legislators
you suddenly understand my drive: there you can do something. That is exactly your line of work that concerns you directly. Here you can help, here you must help.

Because in the defensive brick wall to make shipping safer and the rate of survival of marine insurance a bit higher, the proposed convention on places of refuge is an important, a large brick. A compelling brick.

Let me summarize

in order to survive – and our survival is essential for everybody, we have heard that, the marine insurance industry needs

– the support and understanding of the public
– the support, understanding and far-sightedness of the legislator
– discipline.

The support and understanding of the public.

I have heard and continue hearing comments, even after Erika, Castor, Prestige and others, that a new convention on Ports of Refuge was unnecessary and that first the existing liability conventions should be implemented. That was determined by the legal committee of IMO – and many of you sitting here in this room I shall meet again shortly in London during the next session of the legal committee.

This decision is unfortunate, it is not understandable. It is a decision which the public – remember we need the support of the public – will never understand. Rightly so, I may say, and why:


Argentina: no decision taken to ratify the HNS or the Bunker Convention or the Fund Protocol – that is a delay sine die.

Brazil: ratifies CLC ‘in the near future’, will not ratify HNS or Bunkers

Belgium: no decisions taken – another sine die

Australia: no decision on HNS

Denmark and Finland: will ratify HNS and Bunker ‘in the near future’ – really?

Italy: no decision taken on HNS

Japan: no decision taken concerning neither HNS nor Bunker

The Netherlands: ‘expects’ to ratify HNS ‘in the next couple of years’.

Nigeria: unlikely to ratify

US: unlikely to ratify any of the conventions.

Now that is information dated from 2006, and the actual situation may have improved.

But has it sufficiently improved?

I have no answer to that question – but what I do know is: ladies and gentlemen, we simply cannot not do anything. We simply cannot afford to, once again, look bad in the eyes of the public.

And we have to stop calling hope or hopeful a reality.
We have to go ahead! Yes, let’s go for it.

From IUMI’s point of view I also have a few – very few, I shall not bore you longer – comments on substantive issues concerning the draft, which I shall let flow in to this afternoon’s discussions.

Important is that we do it and that we give it teeth.

You will not be surprised to hear that I would prefer to continue talking about a draft convention and not of an anonymous ‘instrument’ – I do not think that playing with words helps the issue, and what we have in mind I s a convention and not an instrument.

The definition of a ship is too narrow.

A floating semi-submersible is still afloat even if it drills. I think we should continue looking into that.

The term ‘sea going’ may again be too narrow: what happens if a non-sea going vessels finds herself on the high seas? Happens all the time!

**Legal obligation to grant access (article 3, (b))** I am not sure whether it’s a good idea to let the ungraspable term ‘reasonable grounds’ get in here.

and on (d): that should read

(d) If access is denied, the State or competent authority shall identify a practical or lower risk alternative to granting access.

i.e. cross out ‘use its best endeavors’.

**Plans to accommodate ships seeking assistance (article 8)**

It may make sense to amplify the term ‘go to’ in line 5 by ‘go or being towed to’.

That ends my brief intervention here.

Thank you for your attention.
Notes on Clauses of Draft Instrument on Places of Refuge

**General** – The draft has been entitled a draft “instrument” rather than a draft convention, leaving the final choice to IMO if a proposal based on this draft is taken up.

**Preamble** – The paragraphs beginning “Considering” and “Recognising” are intended to state the background object and purpose of the draft instrument – see Vienna Convention on the Law of Treaties 1969 Art. 18 and Art.31 para 1.

The paragraph commencing “Bearing in Mind” has been amended to refer not only to the IMO Guidelines on Places of Refuge adopted by resolution A949(23) but also the Guidelines on the Control of Ships in an Emergency adopted as IMO Circular MSC.1.Circ.1251

**Article 1 Definitions**

“*Ship*” – This is based on the Nairobi Wreck Removal Convention (hereafter “WRC”). The references to platforms are based on Art 3 of the 1989 Salvage Convention.

“*Place of Refuge*” – This is framed to cover a ship requiring action to minimise hazards to navigation, human life, ship, cargo and/or the environment.

“*Objective Assessment*” – This is an attempt to adopt the criteria already accepted by most states in the IMO Guidelines on Places of Refuge (but essentially as “soft law”) as the yardstick for reasonable grounds to accept or reject a request by a ship in need of assistance for admission to a Place of refuge.

“*Shipowner*” and “*Registered Owner*” – These are based on the equivalent definitions of “Registered Owner” and “Operator of the Ship” in the WRC with logical amendments.
Article 2 Object and Purpose
This new article is proposed by the CMI working Group in view of the specific mention of object and purpose in Arts. 18 and 31(1) of the Vienna Convention, and the preference of EU legislators for a clear statement of Object and Purpose.

Article 3 Legal Obligation to Grant Access
This is the principal operative article. The wording of paragraph (c) is based on the latest (20.9.07) draft of The EU Vessel Traffic Monitoring (“VTM”) Regulation Art.20b para 1. (Amendment 39).

The reference in paragraph (d) to the obligation on a state denying access to “identify a practical and lower risk alternative to granting access” is taken from the US Coastguard paper.

Article 4 Immunity from Liability where access is granted reasonably
The object of this article is to provide an incentive to Governments who might otherwise be reluctant to enter into a legal obligation to grant a right of access to a place of refuge in their waters, even when the criteria of objectivity and reasonableness are essential prerequisites. It is the view of the CMI Working Group that the grant of such immunity provides a real encouragement to the competent authority of the state in question, and thus to the ratification of this instrument.

Article 5 Liability to another state third party or shipowner
This article summarises the existing position in International Law as understood by the Working Group.

Article 6 Reasonable Behaviour
This article refers back to the provisions of paragraph (e) of Article 1 (objective assessment) and in turn adopts the standards of behaviour and reasonableness set out in the IMO Guidelines on Places of Refuge and those on the Control of Ships in an Emergency. It is not intended to restrict unreasonably the freedom of action of a coastal state or its officers (such as SOSREP) to take appropriate action.

The word “paragraphs” in the first line of this article should read “Articles”.

Article 7 Guarantees
The Working Group agreed that any proposed instrument would have to find a compromise between the desire of the port interests (articulated by IAPH) to have an unlimited guarantee, with the inability of the shipowers and their P and I Clubs to provide one. Under the current CMI draft the shipowner will
be liable for damage done to the place of refuge subject to their right to limit their liability in accordance with the relevant legal regime. This may be the law of the ship’s flag or the lex fori. It was noted that some states (e.g. UK) have exercised their right of reservation under article 18(1) of LLMC 1976 and 1996 to except wreck removal claims from the rules on limitation of shipowners liability.

However it was agreed that in all cases the guarantee to be provided under the Instrument on Places of Refuge should be limited in amount to the limitation fund of the ship calculated in accordance with LLMC 1976 and 1996. This follows the principle adopted in Article 12(1) of the WRC, reflecting the generally held view that International Conventions should impose liability levels which can be covered by insurance at reasonable cost. It was recognised that this is a matter which may be reserved to the Diplomatic Conference to adopt a Convention on Places of Refuge.

Article 8 Plans to accommodate ships seeking assistance
This Article is intended to reflect the obligations already recognised by the IMO Guidelines on Places of refuge and those on Control of Ships in an Emergency. Similar obligations are imposed by Amendment 39 (Art. 20b Para 1) of the draft EU VTM Regulation.

Article 9 Identification of Competent Authority
The requirement that coastal states should designate a competent authority (a Maritime Assistance Service) comparable to the UK SOSREP, to make decisions on behalf of all organs of government of the state with regard to the threats posed by a marine casualty. This is recognised in the IMO Places of Refuge Guidelines paragraphs 1.20 and 2.4 (see IMO Resolution 950(23) ). The relevant UK Legislation is the Marine Safety Act 2003. The wording of this Article is modelled on Amendments 31 and 32 of the draft EU VTM Regulation.

Articles 3 and 5 refer to a request by the master or other person acting on behalf of the shipowner or salvor for access to a place of refuge. It is clearly essential that Coastal States should publish the identity and communication coordinates of the person or organisation to whom such a request should be addressed, and who should be in a position to respond to such a request on behalf of the coastal state within a reasonable time. The person or organisation in question is likely to be the same as that to which a wreck must be reported under Article 5 of the WRC.

Annex 1 Relevant International Conventions
This list is not intended to be exhaustive, but is intended to provide a useful
point of reference for states facing an emergency situation in which a ship in distress is requesting admission to a place of refuge. A comparable list was annexed to the IMO Assembly Resolution A949(23) by which the Guidelines on Places of Refuge were adopted.

**Annex 2 Standard Letter of Guarantee**
This wording is that adopted by the International Group of P and I Clubs and its member associations. It may need to be revised in the light of experience, possibly by a “tacit amendment procedure” similar, for example, to Article 33 of the 1992 Protocol to the IOPC Fund Convention.

Richard Shaw
Rapporteur
12 September 2008
Annex 7

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Legal Division
International Maritime Organization
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26th January 2009

Attention Geraldine Gibson and Gaetano Librando

Dear Sirs

Documents for LEG95
Comité Maritime International (CMI) Report on Places of Refuge

Further to my email dated 14th January 2009 and subsequent email exchanges, please find enclosed, for good orders sake, hard copies of the following documents:

1. Report submitted CMI on Places of Refuge
2. Annex 1 - Draft International Instrument on Places of Refuge
3. Annex 2 - Summary Report on ratification of Existing Liability Conventions

The enclosed hard copies reflect the modifications effected following our informal consultations, and I trust that these are now in good order for consideration by the Legal Committee under Any Other Business at its forthcoming meeting commencing on 30th March 2009.

Yours truly

Richard Shaw
CMI Observer Delegate
PLACES OF REFUGE
SUBMITTED BY CMI

SUMMARY

Executive Summary:
The CMI has developed a draft instrument on Places of Refuge, which was approved at the Plenary session of the CMI Conference in Athens in October 2008. The approved text is annexed as Annex 1 to this document, which sets out the principal policy issues addressed by the draft. Annex 2 is a copy of a report on a survey conducted by the CMI’s member National Maritime Law Associations on the current status of the ratification of the principal liability conventions

Strategic direction:

High level action:

Planned output:
International Convention or other instrument

Action to be taken:
Delegations are invited to note the contents of the Annex 1 in light of the comments in this paper and the contents of Annex 2

Related documents:
LEG 90/8, LEG 90/15 (paragraphs 384-395), LEG 91/6, LEG 90/8, LEG 89/7, LEG 85/10/3

COMMENTS

At the 90th session of the Legal Committee in May 2005 CMI submitted a report: LEG/90/8. LEG90/15 reported, in paragraphs 384 to 395, on what took place at the 90th session in relation to the topic of “Places of Refuge”. In paragraph 394 it was noted:
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.

The CMI submitted a further report to the 91st session of IMO Legal
Committee in March 2006 (LEG 91/6). The purpose of that report was to inform the IMO Legal Committee that the CMI had decided to complete the work upon which it had embarked and to produce a Draft Instrument dealing with the topic of Places of Refuge.

The Draft Instrument which was attached to LEG 91/6 was the subject of discussion at the CMI Colloquium held in Cape Town in February 2006, at a further Symposium held in Dubrovnik in May 2007 and at the recent CMI Conference held in Athens in October 2008.

At the Plenary Session of the Athens Conference the text of the Draft Instrument was approved by a majority of delegates and the following resolution was passed at the Conference:

“CMI approves the text of the Draft Instrument on Places of Refuge for submission to the IMO Legal Committee, noting that it contains options in two Articles for alternative provisions to be adopted in any text which the IMO Legal Committee may consider appropriate at some future occasion”.

Attached to this report as Annex 1 is the Draft Instrument as approved at the CMI Conference in Athens in 2008.

The objectives which the CMI set out to achieve in producing the Instrument were largely in accordance with those that were identified in LEG 91/6, i.e.:

- to emphasise the position under customary International law of a presumption of a right of access to a place of refuge for a vessel in distress
- to make the presumption rebuttable by the coastal State if it can show that it was reasonable to refuse access (Article 3).
- to give immunity from suit to a State which grants access to a place of refuge to a vessel in distress (Article 4).
- 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 7).
- to require coastal States to designate places of refuge in advance, although not necessarily to publicise them (Article 8).

Concurrently with the preparation of the attached Instrument, the International Working Group sought information from National Maritime Law Associations in late 2006 as to the status of particular conventions and the attitudes, so far as they could be ascertained, of their governments in relation to the likely ratification of those conventions. The conventions concerned were the International Convention on Civil Liability for Oil Pollution Damage (CLC 1992); International Convention on the
Establishment of an International Fund for Compensation for Oil Pollution Damage (Funds 1992; Protocol of 2003 to the 1992 Fund Convention (Supplementary Fund Protocol); the International Convention on Liability and Compensation for Damage in connection with the Carriage of Hazardous and Noxious Substances by Sea (HNS 1996) and the International Convention on Civil Liability for Bunker Oil Pollution Damage 2001. The feedback which the CMI obtained from National Maritime Law Associations has been summarised in a report which the CMI sent to the CMI Executive Council Meeting in November 2006 and a copy of that report together with its annexures is also attached to this Report as Annex 2.

The CMI commends the Instrument to the IMO Legal Committee and remains of the view that there is still a long way to go before existing liability conventions have worldwide acceptance, that even if all the liability conventions (which now include the Wreck Removal Convention 2007) achieve wide international acceptance there is no international convention which expressly requires States, (or those charged with the responsibility of making decisions concerning requests for admission to a place of refuge), to act reasonably in carrying out assessments of the condition of vessels which are in need of assistance and seek that assistance. Whilst the guidelines annexed to IMO Resolution A949(23) make it clear that maritime authorities should, for each place of refuge, make an objective analysis of the advantages and disadvantages of allowing a ship to proceed to a place of refuge in waters under their jurisdiction, there is no compulsion on them to carry out such an assessment. The CMI fears that a repeat of the events which took place in 2001 and 2002, in relation to the vessels “Castor” and “Prestige”, may take place again in the future.

CMI is also conscious of legislation being contemplated within the European Union and believes that the IMO is a more appropriate body to be introducing legislation which requires States to act responsibly in these situations.

Stuart Hetherington
Vice President CMI
Chairman CMI International Working Group on Places of Refuge

15 January 2009
ANNEXURE 1
DRAFT INSTRUMENT ON PLACES OF REFUGE

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Preamble
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6. Reasonable conduct
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PREAMBLE

THE STATES PARTIES TO THE PRESENT INSTRUMENT

CONSIDERING that the availability of places of refuge to ships in need of assistance significantly contributes to the minimization of hazards to navigation, human life, ships, cargoes and the marine environment and to the efficiency of salvage operations,

RECOGNISING that the legal framework for the efficient management of situations involving ships in need of assistance and requiring a place of refuge should take into account the interests of all concerned parties,

CONSCIOUS of the fact that existing international conventions do not establish a comprehensive 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,

NOTING that the principle of customary international law that there is an absolute entitlement of a ship in need of assistance to a place of refuge has in recent times been questioned,

BEARING IN MIND the Guidelines on Places of Refuge for ships in need of assistance, adopted by IMO Resolution A949(23) and the IMO Guidelines on the control of ships in an emergency (adopted as IMO Circular MSC.1/Circ.1251),

MINDFUL OF THE NEED for an Instrument which seeks to establish a framework of legal obligations concerning the granting or refusing of access to a place of refuge to a ship in need of assistance,
INTENDING that this Instrument shall govern the actions of States, competent authorities, shipowners, salvors and others involved, where a ship seeks assistance; encourage adherence to international Conventions relating to the preservation of human life, property and the environment, and balance those interests in a fair and reasonable way; and shall be construed accordingly,

HAVE AGREED as follows:

1. Definitions

For the purposes of this Instrument:

(a) “ship” means a vessel of any type whatsoever and includes hydrofoil boats, air-cushion vehicles, submersibles, floating craft and floating platforms.

(b) “ship in need of assistance” means a ship in circumstances that could give rise to loss of the ship or its cargo or to an environmental or navigational hazard.

(c) “place of refuge” means a place where action can be taken in order to stabilise the condition of a ship in need of assistance, to minimize the hazards to navigation, or to protect human life, ships, cargoes or the environment.

(d) “competent authority” means a State and any organisations or persons which have the power to permit or refuse entry of a ship in need of assistance to a place of refuge.

(e) “assessment” means an objective analysis in relation to a ship in need of assistance requiring a place of refuge carried out in accordance with any applicable IMO guidelines or any other applicable regional agreements or standards.

(f) “ship owner” includes the registered owner or any other organization or person such as the manager or the bareboat charterer who has assumed the responsibility for operation of the ship from the owner of the ship and who, on assuming such responsibility, has agreed to take over all duties and responsibilities established under the International Safety Management Code, as amended.

(g) “registered owner” means the person or persons registered as the owner of the ship or, in the absence of registration, the person or persons owning the ship; however, in the case of a ship owned by a State and operated by a company, which in that State is registered as the operator of the ship, “registered owner” shall mean such company.

2. Object and purpose

The object and purpose of this Instrument is to establish:

(a) a legal framework for the efficient management of situations involving
ships in need of assistance requiring a place of refuge and
(b) the responsibilities and obligations concerning the granting or refusing
of access to a place of refuge.

3. Legal obligation to grant access to a place of refuge
(a) Except as provided in Article 3 (b) any competent authority shall permit
access to a place of refuge by a ship in need of assistance when
requested.

OPTION 1
[(b) The competent authority may deny access to a place of refuge by a ship
in need of assistance when requested, following an assessment which on
reasonable grounds establishes that the condition of the ship is such that
it and/or its cargo is likely to pose a greater risk if permission to enter a
place of refuge is granted than if such a request is refused.
(c) The competent authority shall not deny access to a place of refuge by a
ship in need of assistance when requested on the grounds that the
shipowner fails to provide an insurance certificate, letter of guarantee or
other financial security.]

OPTION 2
[(b) Notwithstanding Article 3 (a) a competent authority may, on reasonable
grounds, deny access to a place of refuge by a ship in need of assistance
when requested, following an assessment and having regard to the
following factors:
(i) the issue of whether the condition of the ship is such that it and/or its
cargo is likely to pose a greater risk if permission to enter a place of
refuge is granted than if such a request is refused, and
(ii) the existence or availability of an insurance certificate, letter of
guarantee or other financial security but the absence of an insurance
certificate, letter of guarantee or other financial security, as referred
to in Article 7, shall not relieve the competent authority from the
obligation to carry out the assessment, and is not itself sufficient
reason for a competent authority to refuse to grant access to a place
of refuge by a ship in distress, and the requesting of such certificate,
or letter of guarantee or other financial security shall not lead to a
delay in accommodating a ship in need of assistance.]

OPTION 3
[(b) Notwithstanding Article 3 (a) the competent authority may deny access
to a place of refuge by a ship in need of assistance when requested:
(i) following an assessment which on reasonable grounds establishes
that the condition of the ship is such that it and/or its cargo is likely
to pose a greater risk if permission to enter a place of refuge is granted than if such a request is refused or
(ii) on the grounds that the shipowner fails to provide an insurance certificate, or a letter of guarantee or other financial security in respect of such reasonably anticipated liabilities that it has identified in its assessment, but limited in accordance with Article 7.]

(d) If access is denied the competent authority shall use its best endeavours to identify a practical or lower risk alternative to granting access.
(e) The obligations imposed by this Article shall not prevent the competent authority from making any claim for salvage to which it may be entitled.

4. Immunity from liability where access is granted reasonably

Subject to the terms of this Instrument, if a competent authority reasonably grants access to a place of refuge to a ship in need of assistance and loss or damage is caused to the ship, its cargo or other third parties or their property, the competent authority shall have no liability arising from its decision to grant access.

5. Liability to another State, a third party, the ship owner or salvor where refusal of access is unreasonable

If a competent authority refuses to grant access to a place of refuge to a ship in need of assistance and another State, the ship owner, the salvor, the cargo owner or any other party prove that it or they suffered loss or damage (including, in so far as the salvor is concerned, but not limited to, the salvors inability to complete the salvage operations) by reason of such refusal such competent authority shall be liable to compensate the other State, ship owner, salvor, cargo owner, or any other party, for the loss or damage occasioned to it or them, unless such competent authority is able to establish that it acted reasonably in refusing access pursuant to Article 3(b).

6. Reasonable conduct

For the purposes of ascertaining under Articles 3, 4 and 5 of this Instrument whether a State or competent authority has acted reasonably courts shall take into account all the circumstances which were known (or ought to have been known) to the competent authority at the relevant time, having regard, inter alia, to the assessment by the competent authority.

7. Guarantees

OPTION 1

[(a) When agreeing to grant access to a place of refuge to a ship in need of assistance, the competent authority may request the ship owner to provide evidence of an insurance certificate, or a letter of guarantee by a
member of the International Group of P&I Clubs, or other financial security from a recognised insurer, bank or financial institution in a reasonable amount in respect of such reasonably anticipated liabilities that it has identified from its assessment. Subject to the following paragraph of this Article, such letter of guarantee or other financial security shall not be required to exceed an amount calculated in accordance with the most recent version of Article 6(1)(b) of the Convention on Limitation of Liability for Maritime Claims, 1976 or the corresponding provision on limitation for claims other than passenger, loss of life or personal injury claims of any other international convention replacing the previously mentioned convention, in force on the date when the insurance certificate, or letter of guarantee or other financial security is first requested, whether or not the State in question is a party to that convention.

(b) Nothing in this Article shall prevent a competent authority from requiring the shipowner to provide a certificate or letter of guarantee under any other applicable International Convention other than this Instrument.

OPTION 2

[(a) When agreeing to grant access to a place of refuge to a ship in need of assistance, the competent authority may request the ship owner to provide evidence of an insurance certificate, or a letter of guarantee by a member of the International Group of P&I Clubs, or other financial security from a recognised insurer, bank or financial institution in a reasonable amount in respect of such reasonably anticipated liabilities that it has identified from its assessment. Subject to paragraph (c) of this Article, such letter of guarantee or other financial security shall not be required to exceed an amount calculated in accordance with the most recent version of Article 6(1)(b) of the Convention on Limitation of Liability for Maritime Claims, 1976 or the corresponding provision on limitation for claims other than passenger, loss of life or personal injury claims of any other international convention replacing the previously mentioned convention, in force on the date when the insurance certificate, or letter of guarantee or other financial security is first requested, whether or not the State in question is a party to that convention.

(b) In cases where claims described in Article 2 paragraphs 1 (d) or (e) of the Convention on Limitation of Liability for Maritime Claims are not subject to limitation the reasonable amount shall be calculated in accordance with Article 7 (a), with the addition of such amount as is likely in total to compensate the competent authority in respect of such liabilities.

(c) Nothing in this Article shall prevent a competent authority from
requiring the shipowner to provide a certificate or letter of guarantee under any other applicable International Convention other than this Instrument.

**OPTION 3**

[(a) When agreeing to grant access to a place of refuge to a ship in need of assistance, the competent authority may request the ship owner to provide evidence of an insurance certificate, or a letter of guarantee by a member of the International Group of P&I Clubs, or other financial security from a recognised insurer, bank or financial institution in a reasonable amount in respect of such reasonably anticipated liabilities that it has identified from its assessment.

(b) Nothing in this Article shall prevent a competent authority from requiring the shipowner to provide a certificate or letter of guarantee under any applicable International Convention other than this Instrument.]

8. Plans to accommodate ships in need of assistance

States shall draw up plans to accommodate ships in need of assistance in appropriate places under their jurisdiction around their coasts and such plans shall contain the necessary arrangements and procedures to take into account operational and environmental constraints to ensure that ships in need of assistance may immediately go to a place of refuge, subject to authorisation by the competent authority, granted in accordance with Article 3. Such plans shall also contain arrangements for the provision of adequate means and facilities for assistance, salvage and pollution response.

9. Identification of competent authority

States shall designate the competent authority to whom a request from a ship in need of assistance for admission to a place of refuge appropriate to the size and condition of the ship in question should be made, and use all practicable means, including the good offices of States and organisations, to inform mariners of the identity and contact details of such competent authority.
ANNEXURE 2

REPORT

EXECUTIVE COUNCIL MEETING NOVEMBER 2006

Places of Refuge

Since the last Assembly and Executive Council Meetings a questionnaire, a copy of which is attached, has been sent to National Associations. At the date of this report responses have been received from the following National Associations:

Australia, New Zealand, Netherlands, Argentina, Italy, Japan, Belgium, Brazil, Nigeria, United States, Finland, Croatia, Germany, Denmark, Slovenia and Canada.

Attached is a summary of the responses to the first question.

In relation to what is anticipated by the above countries, the following responses have been received:

In respect of Argentina no decisions have been made to ratify the HNS or Bunker Conventions or the Fund Protocol 2003.

Brazil is likely to ratify CLC and Fund Protocol 1992 in the near future. It will not be ratifying the Supplementary Fund Protocol 2003 and is not inclined at the present time to ratify FINS or Bunker Conventions.

In respect of Belgium no decisions have been made to ratify the HNS or Bunker Conventions.

In respect of Australia it expects to ratify both the Fund Protocol 2003 and the Bunker Convention in the course of next year. No decision has been made in respect of the HNS Convention.

Canada is considering ratification of each of the HNS, Bunkers and Supplementary Fund Protocol.

Croatia expects to ratify the HNS Convention in 2007.

Denmark and Finland both expect to ratify the HNS and Bunker Conventions in the near future.

Italy expects to ratify the Supplementary Fund and Bunker Convention soon but has not made any decision in relation to the HNS Convention.

Germany expects to ratify the HNS Convention in the near future.

No decisions have been made by the Japanese Government concerning the HNS or Bunker Conventions.

The Netherlands expects to ratify the HNS Convention in the next couple of years.

New Zealand is likely to introduce legislation to give effect to HNS and Bunkers Convention in 2007 or 2008.

Nigeria is unlikely to ratify the Supplementary Fund Protocol of 2003 or the HNS Convention and the United States is unlikely to be ratifying
any of the Conventions.

The only other development in this area has been an initiative by the Bahamas flag and the Maritime Safety Committee of the IMO to produce by next year “generic guidance clarifying the chain of command”. A recent letter to the editor of Lloyd’s List by K Sehimizu, the Director of the MSC confirmed that “at its 81st Session in May 2006 it considered a proposal to develop guidelines covering the responsibilities of all parties in a maritime emergency, which would not create a change of command but implemented by member States as part of their emergency action plans, would clarify what the chain should be”.

He continued in his letter by saying:

“The Committee, having recognised the importance of the issue, decided to include it in the work programs of the NAV and COMSAR sub-committee’s. During the 52nd Session of the sub-committee on safety and navigation in July 2006 there was considerable support for the development of these guidelines and sub-committee was also of the opinion that the ISU should be involved, since the proposed guidelines would include a section on guidelines for salvors. It is expected that this work would be completed during 2007 and any input from the ISU that will assist in achieving the objectives would be welcomed”.

I have been contacted by Mike Lacey the Secretary – General of the I.S.U. (thanks to Patrick Griggs having been in touch with him) who has enquired whether CMI would be interested in becoming involved in this project. I have responded affirmatively.

STUART HETHERINGTON

20 November 2006
Dear President,

Places of Refuge: Third Questionnaire

As you may know the International Working Group on Places of Refuge has prepared a draft instrument on this topic and will be continuing, in the lead up to the conference in Greece in 2008, to refine the document for discussion at that conference. The International Working Group is conscious that there is some opposition, both amongst National Associations and some stakeholders (such as the International Group of P&I Clubs) to such an instrument. One reason which has been expressed for that opposition is understood to be that it is thought that discussions surrounding such an instrument might detract from the implementation of the principal liability Conventions in this area (CLC, Fund, FINS & Bunkers).

To assist the International Working Group I would be grateful if you would respond to the following questionnaire by 30 September 2006. The CMI Year Book does, of course, contain information on accession/ratification in relation to the first 6 Conventions or Protocols listed below (A-F) and your task will be somewhat easier if you consult the Year Book, at least in so far as those instruments are concerned.

1. Please advise whether your country has ratified or acceded to any of the following Conventions or Protocols:
   (A) International Convention on Civil Liability for Oil Pollution Damage (CLC 1969);
   (B) CLC Protocol 1976;
   (C) CLC Protocol 1992;
   (D) International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (Fund 1971);
   (F) Fund Protocol 1976;
   (F) Fund Protocol 1992;
   (G) Protocol of 2003 to the 1992 Fund Convention (Supplementary Fund Protocol);
   (H) International Convention on Liability and Compensation for Damage in connection with the Carriage of Hazardous and Noxious Substances by Sea (HNS 1996);

2. If your country has not ratified or acceded to any of the above Conventions or Protocols, could you please ascertain from an appropriate government official whether any decision to ratify/accede to or not to ratify/accede to any such Convention or Protocol has been made by your government.
3. If your country has made a decision not to ratify/accede to any such Convention or Protocol please ascertain the reason(s) for that decision.

4. If your government has made a decision in favour of ratifying or acceding to any such Convention or Protocol, but has not implemented that decision, could you please ascertain when such ratification or accession is likely to take place.

Yours sincerely,

Stuart Hetherington, Chairman, International Working Group
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RESOLUTION ADOPTED BY THE 39th CMI CONFERENCE
IN CONNECTION WITH THE DRAFT INSTRUMENT
ON PLACES OF REFUGE
IN ATHENS 17 OCTOBER 2008

CMI approves the text of the Draft Instrument on Places of Refuge for submission to the IMO Legal Committee, noting that it contains options in two Articles for alternative provisions to be adopted in any text which that Committee may consider appropriate at some future occasion.
PROCEDURAL RULES RELATING TO LIMITATION OF LIABILITY IN MARITIME LAW

(1) Remarks of the Danish, Norwegian and Swedish MLAS

(2) Memorandum of the Canadian MLA

(3) Resolution of the Conference and the attached text of the Guidelines
I Introduction

These remarks were prepared by an ad hoc sub-committee in May and June 2008. The following persons participated:

From the Norwegian Maritime Law Association:
Mr. Karl-Johan Gombrii
Mrs. Ingeborg Olebakken
Mr. Øystein Ore
Prof. Erik Røsæg (chair, secretary)

From the Danish Maritime Law association:
Mr. Alex Laudrup

The sub-committee has only considered the Guidelines, and not the comments thereto. The sub-committee supports the Guidelines in the present format, but feels that further work has to be undertaken in respect of certain related issues (see infra in III).

II Comments to the Draft Articles

Draft Article 1. Interpretation

The definition of “Limitation Proceedings” should perhaps clarify that the concept includes decisions on whether or not a claim is subject to limitation:

“Limitation Proceedings’ means the proceedings or procedures for the Limitation of Liability including without limitation the establishment of the Fund, the registration and proof of the claims, decisions as to whether a claim is subject to limitation, and the distribution of the Fund.”

Draft Article 2. Jurisdiction

It should be clarified whether the provision is intended only to deal with “Limitation Proceedings” as defined, or also the substance of the individual claims.
If the intention is to deal only with “Limitation Proceedings” as defined, one should perhaps emphasize in the comments that the rationale is to cumulate experience and gather expertise in one court.

If the idea is to provide for the jurisdiction in respect of the substance of claims subject to limitation, one should avoid the defined term “Limitation Proceedings.” On this assumption, one should clarify whether the jurisdiction rule also should apply to actions initiated before a limitation fund has been established. Furthermore, it should be clarified whether the intention is to recommend that each State assigns limitation matters to one particular court, or whether the intention is to recommend that the one court that should have the sole jurisdiction in each case could be a different court from case to case.

Draft Article 3. Limitation of liability without the constitution of a fund

A word is missing:
“(a) If a person liable may limit its liability without the establishment of a Fund, the court should (i) adjudicate each Claim for its full proven amount (provided that all the requirements for the adjudication of the Claim have been satisfied) and (ii) at the same time declare the right of limitation of the person liable and, for the purpose of limiting enforcement, the amount of limitation applicable to the respective claim.”

Draft Article 6. Challenging the right of limitation

Proposed drafting improvement:
“(b) The right of the person liable to limit may also be challenged by the Claimants before the Court where vessels are arrested or other assets are attached or other security is given or proceedings are pending in this connection, provided that this challenge is made only for the purpose of maintaining the arrest, attachment or other security or for the purpose of preservation of rights.”

We find that sub-paragraph (d) would come into play only in extremely rare situations, and prefer that it should be deleted.

Draft Article 8. Loss of right to limitation of liability

Despite the title, this Draft Article deals with two very different situations. One concerns a situation in which one or more liable parties has lost the right of limitation due to privity. The other concerns a situation in which one or more claims cannot be recovered from the limitation fund because they are not subject to limitation as they fall outside the scope of the particular limitation rules. These situations should be clearly distinguished, as it is hardly justifiable to deny a claimant access to the fund in privity cases,
while a claim that falls outside the scope of the limitation rules never should be allowed to compete with a claim subject to limitation in the limitation fund.

In both situations it may happen that a limitation fund has been established and limitation cannot be invoked for any claims. In those cases the issue arises whether the fund shall revert to the person that constituted it, or whether it should be distributed to the claimants against that person or a subset of them. In our view, one may very well use the limitation procedure, but it would hardly be justifiable to deny the general creditors of the person that established the fund access to it. Therefore, the defined term “Claimant” should be used with caution. On this background, we propose the following amendments:

"8. Loss of right. Claims not subject to limitation of liability

States should provide in their national legislation that if it is determined after the establishment of the Fund [and the effective date of provisional right of Limitation] that the person liable is one or more persons, in respect of whom a Fund has been established, are not entitled to limit their liability, then the following shall apply:

(a) If the right to limit liability is lost in respect of one or some or all of the Claims due to the conduct of one or more of the persons liable, the affected Claims can still be partially recovered in the Fund on a pro rata basis in respect of one or some of the Claims only, then the Limitation Proceedings shall continue in respect of the other Claimants and the Fund remain in place for distribution between these other Claimants.

(b) If the right to limit liability is lost in respect of all the persons in respect of whom the Fund has been established, then:

(i) The Fund shall nevertheless remain in place and be distributed between the Claimants creditors of the person who has established it pursuant to the Limitation Proceedings. In these cases, the person liable cannot recover his or her own expenses, e.g. expenses to prevent or mitigate damage, in the Fund.

(ii) The Claims of the Claimants shall be verified and/or adjudicated in the same manner and in the same procedure, as if the right of limitation had not been lost.

(iii) The Claimants, however, shall be entitled to immediately seek security on other assets of the person liable and to enforce the
balance of their [adjudicated] [verified] claims on other assets of the person liable.

(c) In case the right to limit liability having been lost, the consequences of bringing Claims in the Limitation Proceedings, including protection of the limitation of time (time bar), will remain in full effect.

(d) Claims which are not subject to limitation shall be pursued outside and independently from the Limitation Proceedings.

**Draft Article 9. Information and documents to be provided by the person invoking the benefit of limitation**

Drafting proposal to remind Courts that different limitation systems may refer to different tonnage measurement rules:

“(a) A copy of the relevant measurement certificate of the ship or any other document required for the calculation of the limitation amount.”

**Draft Articles 11. Time limit for actions by the claimants in limitation proceedings and 12. Consequences of late participation**

Mr. Måns Jacobsson has raised some very important and pertinent points in respect of Draft Articles 11 and 12. As far as we understand, his idea is that a limitation fund should not be distributed before the end of the time limitation period. Although this view may be well founded in respect of second tier funds, we feel that the solution would be sub-optimal and unnecessary in respect of the kinds of limitation funds we discuss here:

- The limitation periods may be very long, e.g. 20 years in some cases in national law and 10 years in the HNS Convention (see Art 37 [http://folk.uio.no/erikro/WWW/HNS.html]).
- There is substantial State Practice that Limitation Funds are distributed before the limitation periods has expired, e.g. as per the Scandinavian legislation implementing the CLC and LLMC Convention.
- There is no general rule that the limitation amount should be available to a claimant to the end of the time limitation period. Exceptions include laches and situations in which a foreign court has ruled for a lower limitation amount, and that decision must be recognized, e.g., under the Brussels system in EU.

On this background, we support the Draft Articles on this point with the following amendment (which reflects current Scandinavian law):

“(a) States should set in their national legislation or give their courts the power to set a time limit for the following actions by Claimants with respect to:
(i) challenging the right of the person liable to invoke the benefit of Limitation,
(ii) requesting a review of the amount of the Limitation Fund,
(iii) filing Claims in the Limitation Proceedings.

In setting the time limit for filing claims, due consideration should be taken to the possibility of damage occurring a long time after the incident. The Fund may be distributed in portions among the Claimants that are known at the time of distribution. In such cases, separate time limit for filing Claims shall be set for each portion of the Fund.”

**Draft Article 14. Challenge of claimants’ claims**

We support the clarifications proposed by Mr. Måns Jacobsson.

**Draft Article 15. Relation between limitation proceedings and proceedings on the merits of the claims**

We propose the following clarifications:

“Subject to any specific provisions in the applicable international Conventions, States should provide in their national legislation expeditious procedures for the recognition or non-recognition of judgments issued on the merits of Claims by other courts having jurisdiction recognized by that State on the merits of these Claims.”

**Draft Article 16. More than one person liable**

A word is missing:

”(a) Where more than one person liable (and entitled to limit liability) exist and unless a relevant Convention provides otherwise and/or unless any such person has lost its right to limit its liability as a result of any provision, including provisions concerning its conduct, the establishment of the Fund and the Limitation of Liability by any of them shall benefit all such persons vis-à-vis third party claimants.”

**Draft Article 18. Subrogation**

It should perhaps be pointed out in the commentaries that one of the issues that need to be addressed in national law is the distinction between subrogation and claims of the person liable in respect of preventive measures if the liable person cannot claim for his own preventive measures in a particular limitation regime. Example: The owner has engaged a skimmer to clean up bunkers oil spill. Can he claim in the fund on the basis of subrogation if he has paid the skimmer even if he could not recover for his own preventive measures?
III Proposal for further work

When the Guidelines on Procedural Rules Relating to Limitation of Liability in Maritime Law have been adopted, there is an urgent need to consider the relationship between the International Limitation Conventions and the EU regional law on choice of law as well as jurisdiction and enforcement of judgements. If these sets of rules are not brought into better harmony, the scope of the International Conventions may be curtailed in a major region of the world, or the European integration process may be unnecessarily hampered.

Two examples can perhaps illustrate the challenges that warrant further studies by the CMI. First, there is a choice of law provision in the Rome II Regulation article 15:1

The law applicable to non-contractual obligations under this Regulation shall govern in particular:

(b) the grounds for exemption from liability, any limitation of liability and any division of liability;

It seems necessary to work out how global limitation can function if different laws should govern the limitation of different (non-contractual) claims pursuant to this provision. That would be similar to a bankruptcy governed by different laws for different claims. There may very well be solutions to these problems, but further studies on the matter are certainly justified.

Our second example relates to the relationship between the LLMC and the Brussels Regulation Article 71:2

1. This Regulation shall not affect any conventions to which the Member States are parties and which in relation to particular matters, govern jurisdiction or the recognition or enforcement of judgments.

This provision – or rather its forerunners in other instruments – has been construed so that the LLMC does not include relevant provisions on recognition of judgments, so that EU law will govern the matter in its entirety.3 This may be surprising, as the LLMC always has been understood

to include a strong obligation for States Parties to recognize the constitution of a limitation fund in another State Party\textsuperscript{4}. But more important in this context is that the effect of this is that the exceptions to the duties to recognize limitation funds set out, i.e., in Article 15(1)\textsuperscript{5} of the LLMC, will be made inapplicable. Arguably, this provision, which deals with the geographical scope of the LLMC and which has formed part of several generations of limitation conventions, is quite essential, in particular in the transition from one limitation regime to a newer one and, ironically, the European Commission has made it an integral part of one of its proposals.\textsuperscript{6} It is obvious that the new situation thus created warrants further study by the CMI.

It would be great if CMI could assist not only international organizations and national governments, but also the European Union.

\textsuperscript{4} in the Danish Torm Alexandra case (The Maritime and Commercial Court in Copenhagen 19 March 2008; in Danish only) <http://folk.uio.no/erikro/WWW/EU/1012_001.pdf> illustrates this well. In this case, a limitation fund established in Liberia (Civil Law Court for the Sixth Judicial Circuit 14 August 2002) <http://folk.uio.no/erikro/WWW/EU/1017_001.pdf> was recognized on the basis of LLMC Art 14 despite that some of the basic rules of LLMC had been ignored in Liberia, and indeed characterized as "laughable." Had the Danish Court not felt a strong obligation to recognize the Liberian decision, it would obviously not have done so.

\textsuperscript{5} The text of LLMC is readily available at <http://www.admiraltylawguide.com/conven/limitation1976.html>

MEMORANDUM OF THE
CANADIAN MARITIME LAW ASSOCIATION

The Canadian Maritime Law Association (CMLA) provides the following comments on the Draft Guidelines for Procedural Rules Relating to Limitation of Liability in Maritime Law. This memorandum is provided in response to circulation of the draft guidelines of February 2008, prepared after the second meeting of the I-SC in September 2007, the Chairman’s report on additional issues of February 26, 2008 and the memorandum of Mr. Jacobsson of February 6, 2008.

Generally

This memorandum is specifically intended to respond to the questions raised in the Chairman’s report at paragraph A(5) and F(1-5). It is not intended to be exhaustive nor deal with issues of drafting.

As a general point, the CMLA encourages the CMI to try to bring these efforts to conclusion and vote on adoption of the Procedural Rules Relating to Limitation of Liability of Maritime Law at the Athens Convention this October. The CMLA does not support the further broadening of scope or the addition or additional issues at this time as it may be counter productive to achieving the goal of establishing a set of procedural rules in a timely manner.

Questions Posed: (Responses using the numbering from your memo of February 26, 2008)

A5

(a) “Does your national law provide for the possibility of a stay under certain circumstances”?

Canada has adopted the LLMC and the CLC into its national law, the Marine Liability Act, a Federal Statute. With respect to a stay procedure, there is no specific section or clause in the Marine Liability Act regarding a stay of a limitation proceeding. However, Canada’s Admiralty Court (the Federal Court), when dealing with a claim for limitation of liability under the LLMC, has broad powers, which includes the ability to make any rule of procedure it considers appropriate with respect to the proceedings. Canada’s Admiralty Court, which would hear claims for limitation of liability under the LLMC or the CLC, also has a broad power to grant a stay of proceedings which may include a stay of proceedings in favour of proceedings commenced in another
jurisdiction (i.e. forum non conveniens) or for other good reason in the “interests of justice”.

A5

(b) “Would you support a Guideline along the lines of Guideline 6(d)”?

No. The CMLA does not see any particular advantage to proposed Guideline 6(d). It may add more difficulty in implementation than it seeks to resolve. The standard of “no reasonable basis upon which the party liability may claim the benefit of limitation of liability” combined with the standard for conduct barring limitation found in the LLMC and the CLC, would be so high that it is difficult to envision a situation where a Court would conclude, on a preliminary motion, that there is no reasonable basis for a party entitled to seek limitation of liability. This clause, with the standard of “no reasonable basis” would likely require a trial of the issues in and of itself. In any event, Canada’s procedural rules are sufficiently broad to provide for a summary judgment procedure, if warranted. If the objective of proposed Guideline 6(d) is to alleviate a concern that a shipowner may post a fund in order to have assets released from arrest and then in turn be unable to maintain limitation of liability, then that is a matter which can be addressed by the Admiralty Court in a bail hearing.

F.

1. “Should the Guidelines remain within their present scope, i.e. only procedural and general (abstract) without reference (as far as possible) to substantive issues or interpretation of international conventions or should their scope be broadened”?

Yes. The guidelines should remain within their present scope.

2. “If the answer to Question 1 is positive, should we delay the adoption of the Guidelines in their present form (i.e. abstract and only procedural without interpretation of conventions) until the additional broader (substantive and/or interpretation issues) issues (e.g. those relating to CLC and HNS) are resolved or should we proceed with finalizing the Guidelines in their present form and then discuss the additional issues (and if agreeable incorporate them to the Guidelines)”?

Proceed in the present form. The CMLA supports finalizing the Guidelines and then discussing additional issues at a later time if necessary.

3. “If the reply is broaden now, should we broaden the scope only in connection with the two issues of CLC and HNS set under B and C above or to other issues as well”?
Based on the CMLA answer above, this question is moot. However, if the CMI intends to broaden the scope, then the CMLA supports the broadening only in connection with the two issues of CLC and HNS and not to other issues. The CMLA supports maintaining a narrow focus in the development of Guidelines in order to achieve a timely completion.

4. “If the reply is to other issues as well, should such other issues relate only to interpretation of conventions on procedural matters or should be expand to substantive limitation issues as well”?

Based on the CMLA answer above, this question is moot. However, if the CMI intends to expand the scope to other issues, then the CMLA would support only the interpretation on procedural issues and not to substantive issues as well.

5. “Regardless of your reply on the questions of procedure above, what are your views on the two issues relating to CLC and HNS Conventions, i.e.:

a) Should/may/can the time limit for participation to the limitation proceedings and the distribution of the CLC and HNS Convention funds be shorter than the time limit for the extinction of claims set by these conventions?

It is the CMLA’s position that this should be left to the discretion of the Court hearing the claim for limitation of liability. In appropriate cases, a Court should not be forced to wait the entire time limit for the bringing of claims under the CLC and the HNS Conventions before adjudicating on the right of limitation of liability and distribution of the fund. There may be appropriate circumstances where all claimants either come forward, or upon proper notice that all claimants who intend to make a claim can come forward for determination of limitation and the distribution of the fund. It is the CMLA’s position that it could be unfair to force claimants that have suffered damage and that have come forward immediately to wait until the expiry of a time bar to see if a prospective claimant may or may not come forward. Accordingly, the matter should be left to the discretion of the Court to determine the time limit for participation in the limitation proceedings and distribution of the fund. This would include a shorter time limit than for the extinction of claims as set out by the CLC and HNS Conventions.

b) If the reply is positive (i.e. shorter time limit), should/may/can the consequence of late participation result in loss of its claim by the delayed claimant?

Yes. If a claimant comes forward after a shorter time limit set forth by the Court determining limitation proceedings, and the fund has been dissipated, that claimant may and should suffer a loss of its claim. It is the CMLA’s position that limitation of liability proceedings should be used to
resolve claims arising from a significant casualty in a prompt and orderly fashion and should encourage both the shipowner (or other party responsible) to come forward promptly with its limitation fund and at the same time encourage claimants to come forward promptly to determine the entitlement of limitation of liability and the subsequent distribution of the fund.

c) Are the claimants entitled to challenge the claims of other claimants in the context of the CLC and HNS limitation proceedings even if such claims have been adjudicated and proceedings between the other claimants and the person liable before Courts having jurisdiction pursuant to these (CLC and HNS) Conventions, as long as and to the extent that the challenging claimants had not participated nor summoned to the proceedings between the other claimant and the person liable?

It is the position of the CMLA that one claimant should be entitled to challenge the claims of another claimant in the context of limitation proceedings. This may include instances where such claims have already been adjudicated in proceedings between the other claimant and the person liable before a Court having jurisdiction. However, whether an adjudicated claim may be subsequently challenged by another claimant should be left to the discretion of the Court seized with the limitation proceedings. It is the CMLA position that a claimant in limitation proceedings should have the opportunity to challenge the quantum of another claimant’s adjudicated claim, if there are concerns about natural justice, fairness or the fullness of the hearing in connection with the other adjudicated claim. Accordingly, the CMLA supports the position that there should be entitlement to challenge claims, but subject to the discretion of the Court seized with the matter.
RESOLUTION ADOPTED BY THE 39TH CMI CONFERENCE ON LIMITATION OF LIABILITY IN MARITIME LAW IN ATHENS 17 OCTOBER 2008

The Comité Maritime International (CMI):

1. bearing in mind its purpose, in accordance with its Constitution, “to contribute by all appropriate means and activities to the unification of maritime law in all its aspects”,

2. noting that international conventions in connection with limitation of liability have contributed to the unification of maritime law but there is considerable diversity procedurally in the way they are implemented and applied in various States,

3. noting that a considerable number of States have not ratified any relevant convention and that they apply national law, which is not based upon any convention, relating to the limitation of liability in maritime law.

4. believing that it may contribute to the harmonization of the procedures relating to the limitation of liability in maritime law by preparing procedural guidelines, adopted at its 39 th Conference, held in Athens between 12 th and 17 th October 2008, Guidelines in respect of Procedural Rules relating to Limitation of Liability in Maritime Law.

The CMI further considers that a number of other issues, both of procedural and substantive nature relating to limitation of liability in maritime law, including gaps or ambiguities in existing conventions, need further consideration and for this reason decided to extend in time and broaden in scope the mandate of the “International Subcommittee on Limitation of Liability” with a view to preparing a list of issues concerning limitation of liability in Maritime Law, considering these issues and making recommendations to the Executive Council of the CMI for further action. In the context of its work the “International Subcommittee on Limitation of Liability” may propose more detailed elaboration of certain of the Guidelines adopted or amendments arising from its subsequent work or otherwise.

Finally, the 39 th CMI Conference authorises the Executive Council to consider any linguistic or drafting inconsistencies and/or improvements required and make the necessary improvements to the adopted Guidelines, before their publication.
GUIDELINES

In respect of Procedural Rules Relating to Limitation of Liability in Maritime Law

The Comité Maritime International (CMI):

1. bearing in mind its purpose, in accordance with its Constitution, “to contribute by all appropriate means and activities to the unification of maritime law in all its aspects”,

2. noting that international conventions in connection with limitation of liability have contributed to the unification of maritime law but there is considerable diversity procedurally in the way they are implemented and applied in various States,

3. noting that a considerable number of States have not ratified any relevant convention and that they apply national law, which is not based upon any convention, relating to the limitation of liability in maritime law.

4. believing that it may contribute to the harmonization of the procedures relating to the limitation of liability in maritime law by preparing procedural guidelines,

adopted at its 39th Conference, held in Athens in October 2008, the following Guidelines in respect of Procedural Rules relating to Limitation of Liability in Maritime Law.

1. Relationship of guidelines to maritime conventions

These Guidelines are subject to and/or without prejudice to any specific provisions of any international convention.

2. Interpretation

For the purposes of these Guidelines:


“Claim(s)” means the claims subject to the Limitation of Liability and/or, where the context so requires, claims submitted for satisfaction out of the distribution of the Fund and “Claimant” is to be construed accordingly.

“CLC” means the International Convention on Civil Liability for Oil
Pollution Damage 1969 and the International Convention on Civil Liability for Oil Pollution Damage 1992 as applicable.

“Fund” means the fund established, for the purpose of Limitation of Liability, by the provision of cash, bank guarantee or other acceptable guarantee, and out of which claims subject to limitation may be satisfied.


“Limitation of Liability” means the limitation of liability in maritime law, through the possible establishment of a fund, and does not include limitation per package or unit or per passenger nor does it relate to international compensation funds established under international conventions.

“Limitation Proceedings” means the proceedings or procedures for the Limitation of Liability including, but not limited to, the establishment of the Fund, the submission and proof of Claims, decisions as to whether a Claim is subject to limitation and the distribution of the Fund.

“Person liable” means any person seeking to limit his liability.

3. Jurisdiction

When the courts of a State have jurisdiction in relation to Limitation Proceedings, whether pursuant to an international convention or pursuant to national law, it is preferable that one court should have jurisdiction to deal with Limitation Proceedings. The court(s) having such jurisdiction should have the capacity to deal with complex multiparty cases. If more than one court has jurisdiction, their respective jurisdiction should be clearly delineated to avoid conflicts, and where Limitation Proceedings start in one of these courts, all related limitation proceedings should be referred to that court.

4. Limitation of liability without the constitution of a fund

(a) If a person liable may limit his liability without the establishment of a Fund, the court should:

(i) judge each Claim for its full proven amount (provided that all the requirements for the adjudication of the Claim have been satisfied) and,

(ii) declare the right of the person liable to limit his liability and, for the purpose of enforcement, the amount of limitation applicable to the respective Claim.
(b) If Limitation of Liability is invoked without the establishment of a Fund, assets arrested or other security provided should not be released but the security may be reduced to the amount of limitation judged applicable to all respective Claims.

5. Time limit for starting limitation proceedings

States should in their national law take into account that:

(a) Without prejudice (i) to the right to start Limitation Proceedings in respect of other Claims and (ii) to any rules concerning subrogation, Limitation of Liability may not be invoked against a Claim after its satisfaction through enforcement or otherwise.

(b) Limitation may be invoked in pending proceedings up to the time allowed by the procedural rules of the court where the proceedings are pending.

(c) Subject to paragraph (a) above, no other time limit seems to be necessary for the commencement of Limitation Proceedings.

(d) Where the prior approval of a court is required for the establishment of the Fund, it is advisable that States provide in their national law a time limit for such establishment or that such a time limit be fixed by the court after such approval has been given.

6. Procedure for the establishment of the fund and evidence

States should in their national law:

(a) provide an expeditious procedure for the establishment of the Fund.

(b) specify when exactly the Fund is deemed to be established.

(c) specify that the right of Limitation of Liability becomes provisionally effective at the time of the establishment of the Fund.

(d) specify the evidence that proves the Fund is established.

(e) provide the person liable with appropriate confirmation of the establishment of the Fund, preferably through a court decision, thus facilitating the recognition of such establishment in other States.

7. Challenging the right of limitation

(a) States should in their national law make provision for the entitlement of Claimants to challenge the right of the person liable to limit his liability
before the Court where the Fund is established or Limitation Proceedings are pending.

(b) The procedure for challenging the right of limitation referred to in paragraph (a) above should not automatically stay or cause delay to the establishment of the Fund and its effects.

(c) Without prejudice to the final determination of whether or not the right to limit liability exists by the court referred to in paragraph (a) above, and until such determination is made or recognized in another State where security is sought or security has been obtained by arrest of vessels or attachment of other assets or otherwise, States should consider requirements and procedures for the granting and/or the release and/or retention of such security.

8. Consequences of limitation

States should:

(a) Provide in their national law procedures for the recognition or non recognition of the effects of the establishment of the Fund in another State; and

(b) In the event of recognition, provide procedures for the release of attached assets, following the establishment of the Fund.

9. Loss of right to limitation of liability

(a) States should provide in their national law that if it is determined after the establishment of the Fund [and the effective date of provisional right of Limitation of Liability] that some or all the persons liable are not entitled to limit their liability then:

(i) The Fund shall nevertheless remain in place and be distributed among the Claimants pursuant to the Limitation Proceedings.

(ii) The Claims shall be verified and/or adjudicated in the same manner and in the same procedure, as if the right of limitation had not been lost.

(iii) The Claimants, however, shall be entitled to immediately seek security from other assets of the person liable and to enforce the balance of their adjudicated verified claims on other assets of the person liable.

(b) In case the right to limit liability has been lost, the consequences of bringing Claims in the Limitation Proceedings, including protection of the limitation of time (time bar), will remain in full effect.
(c) States should provide in their national law that Claims which are not subject to limitation shall be pursued independently from the Limitation Proceedings.

10. Information and documents to be provided by the person invoking the benefit of limitation

States should specify in their national law what information and documents must be provided by the person invoking the benefit of limitation, such as:

(a) The identity of the person invoking the right of Limitation of Liability.
(b) The name of the vessel involved.
(c) A copy of the relevant measurement certificate of the ship or any other document required for the calculation of the limitation amount.
(d) A list with the names and addresses, to the extent they are known, of the persons that may have Claims subject to the Limitation of Liability.
(e) Evidence of the appropriate deposit of the amount of the Fund or a bank guarantee or other acceptable guarantee equal to the amount of the Fund.

11. Issues relating to the fund

States should provide in their national law appropriate and clear rules relating to:

(a) The sum that must be added to the amount of limitation for interest from the time of the incident up to the establishment of the Fund.
(b) The sum that may be added to the Fund in respect of the costs of administration of the Fund.
(c) The location and standing of the bank that may provide a guarantee.
(d) The guarantees that are acceptable other than bank guarantees.
(e) The duty of the court to verify expeditiously the calculation of the amount of limitation.
(f) The transfer of the amounts distributed by the Fund to the Claimants from the State in question without any restriction.

12. Time limits in limitation proceedings

(a) States should set in their national law a time limit, or give their courts the power to set such time limit, for the following actions by Claimants:
(i) challenging the right of the person liable to invoke the benefit of Limitation of Liability,
(ii) requesting a review of the amount of the Fund,
(iii) submitting Claims in the Limitation Proceedings.

(b) In setting these time limits special attention should be paid to the relevant provisions of international conventions, including in particular the CLC, the HNS Convention and the Bunker Convention or any other applicable convention. In making interim and final distributions, due consideration shall be given to the possibility of damage arising after such distribution.

(c) States should specify in their national law the point of time at which these time limits commence. The time limit for the participation of the Claimants in the Limitation Proceedings must not commence before Claimants are notified of the establishment of the Fund either individually, if their names and addresses are known, or through publications which have reasonably broad exposure.

13. Consequences of late participation

Subject to any related provisions in applicable international conventions, States should adopt provisions in relation to the following consequences of late participation of Claimants in the Limitation Proceedings:

(a) The right (or exclusion thereof) to challenge the right of the person liable to invoke the benefit of limitation or to seek review of the amount of the Fund.

(b) The right (or exclusion thereof) to participate in the interim and final distribution of the Fund.

14. Verification of claims

States should provide in their national law procedures for the verification of Claims in the Limitation Proceedings including procedures for:

(a) the submission of the Claims and related evidence,

(b) preparation of a first list of Claimants and Claims either by the Fund administrator, or by the appointed judge or by the court, and for notification of this list to the Claimants,

(c) the time limit within which the list of Claimants and Claims may be challenged (either by Claimants or by the person liable, unless prevented from doing so by res judicata or by the specific provisions of any applicable international convention),
(d) the procedure for the resolution of disputes concerning the list, and
(e) the finalization of the list and the distribution of the Fund.

15. Challenge of claimants’ claims

(a) Subject to the rules of *res judicata* States should, in the context of Limitation Proceedings and the procedure for the verification of claims, give the person liable the possibility to challenge the Claims and the Claimants the possibility to challenge the Claims of other Claimants provided however that a claim or the amount of a claim accepted following consideration on the merits by a court in another State competent under the CLC, the HNS Convention, the Bunker Conventions or any other applicable convention in a judgment which should be recognised under the applicable convention, in other Contracting States, may not be challenged in the Limitation Proceedings.

(b) The challenge of a Claim should not delay the interim distribution of the Fund to other Claimants. National law may provide for challenges to be tried collectively, provided this does not delay the interim distribution of the Fund

(c) Any amount released by the rejection from the list of a Claim challenged should be distributed to all the Claimants on the list pro rata and in proportion to their respective Claims as a supplementary distribution.

16. Relation between limitation proceedings and proceedings on the merits of the claims

Subject to any specific provisions in the applicable international conventions, States should provide in their national law procedures for the recognition or non-recognition of judgments issued on the merits of Claims by other courts having jurisdiction recognised by that State on the merits of these Claims.

17. More than one person liable

(a) Where more than one person liable exists (and is entitled to limit his liability) and unless a relevant convention provides otherwise and/or unless any such person has lost his right to limit his liability as a result of any provision, including provisions concerning his conduct, the establishment of the Fund and the Limitation of Liability by any of them shall benefit all such persons vis-à-vis third party Claimants.

(b) States should include in their national law provisions; regulating the right of subrogation and the apportionment of liability among the persons liable, an expeditious procedure for such purpose and that give effect to the subrogation provisions, if any, of the relevant convention or national law.
18. More than one ship liable

(a) Unless any applicable convention provides otherwise, where Claims arise from an incident involving more than one ship, the persons liable in relation to each ship may limit their liability separately and independently of the persons liable in relation to any other ship.

(b) Any Claimants having Claims against persons liable in relation to more than one ship may participate in any of the Limitation Proceedings commenced with regard to any ship involved and may submit their Claims to each of the relevant Funds for the total amount of their respective Claims.

(c) The subrogation provisions of any applicable convention apply in the relations between the persons liable in relation to the various ships and States that are not parties to the relevant conventions should enact similar provisions.

19. Subrogation

States should, to the extent that this is a matter left to national law by any applicable convention, provide in their national law procedures concerning subrogation of rights.

20. Setting off of counterclaims

States should provide in their national law that:

(a) Unless any applicable convention provides otherwise, counterclaims of the person liable may be raised and set off against Claims in accordance with the law applicable to such set off, in which case these Claims participate in the distribution of the Fund for the balance, if any, and

(b) If the applicable convention provides for compulsory set off of certain counter claims, the issue of set off may be raised by any Claimant participating to the distribution vis-à-vis any other Claimant(s).

21. Partly paid claims

If a Claimant entitled to participate in the distribution of a particular Fund has been partially paid for his Claim outside of the Limitation Proceedings, then he will participate in the distribution in respect of the unpaid balance of his Claim.
UNCITRAL DRAFT CONVENTION ON
CONTRACTS FOR THE INTERNATIONAL
CARRIAGE OF GOODS
WHOLLY OR PARTLY BY SEA

Chairman: Stuart N. Beare

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DRAFT CONVENTION ON CONTRACTS
FOR THE INTERNATIONAL CARRIAGE
OF GOODS WHOLLY OR PARTLY BY SEA

The work of the CMI on this subject started as long ago as April 22, 1988 when the CMI Assembly gave Professor Francesco Berlingieri authority “to investigate the question whether the uniformity of the law of the carriage of goods by sea should be placed on the agenda of the 1990 Paris Conference of the CMI and the manner in which the problem should be approached.” Professor Berlingieri’s report on his study is published in CMI Yearbook 1991 Paris II at pages 104-176.

On April 13, 1994 the CMI Executive Council established a Working Group, consisting of Professors Berlingieri, William Tetley, Rolf Herber and Jan Ramberg, to consider the problems of the various regimes dealing with the carriage of goods by sea and to report at its next meeting in Sydney (CMI Newsletter number 2 of 1994, page 5). At the Sydney meeting, the Working Group was instructed to consider the possible preparation of a Questionnaire for distribution to the National MLAs (Newsletter number 4 of 1994, page 9). A Questionnaire was duly prepared and approved for circulation, and at a second meeting of the Executive Council in Sydney a new Working Group was established under the chairmanship of Professor Berlingieri and consisting of David Angus, Jean-Serge Rohart, Ron Salter and Frank Wiswall as members. A summary of the responses received was published in Newsletter number 1 of 1995.

An International Sub-Committee (“ISC”) was then established under Professor Berlingieri as chairman and Frank Wiswall as rapporteur. The reports of the five meetings of the ISC on “Uniformity of the Law of Carriage of Goods by Sea” are published in Yearbooks 1995 (pages 107-243), 1996 (pages 342-420) and 1997 (pages 288-356).

At its meeting of June 8, 1997, the Executive Council created three separate groups. The first to continue the work on carriage of goods and to
prepare a basis for a possible revision of that area of the law. The second to study Electronic Data Interchange, and the third to embark on a broader-based investigation of the functionality of the bill of lading. The Executive Council also decided to create a steering committee consisting of Alexander von Ziegler, George Chandler, Frank Wiswall, Karl-Johan Gombrii and Professor Berlingieri under the chairmanship of Patrick Griggs. A report of their work may be found in Newsletter number 4 of 1997 at page 2.

On the United Nations side, UNCITRAL considered, at its 29th Session in 1996, a proposal to include in its work program a review of current practices and laws in the area of the international carriage of goods by sea. When this became known to the CMI, Professor Berlingieri and the President of the CMI at that time, Allan Philip, met in Vienna with the Secretary of UNCITRAL to discuss informally possible future cooperation between UNCITRAL and the CMI in their endeavour. It will be recalled that ever since the Belgian government relinquished its treaty law-making function in favour of the organisations of the United Nations, draft conventions must be sponsored by a UN agency, such as UNCITRAL or the IMO, and the CMI will, if requested, cooperate with them. Subsequently, a Working Group on Issues of Transport Law was appointed by the CMI Assembly in 1998-99 under the chairmanship of Stuart Bare and, subsequently, Professor Michael Sturley as Rapporteur (Newsletter number 1 of 1998 at page 3). That Working Group drew up another Questionnaire which was sent to all National MLAs in May 1999 and a new ISC was then established by the CMI in November 1999 to consider the analysis of the replies conducted by the Working Group. A draft Instrument was thereupon prepared by the ISC and considered at the CMI conference in Singapore in February 2001. Following further amendments, approval by the Executive Council was given and the draft Instrument was submitted to UNCITRAL in December 2001.

At its 34th Session in 2001, UNCITRAL decided to establish a Working Group on Transport Law to consider its own preliminary draft Instrument on the carriage of goods by sea and comments made by UNECE and UNCTAD. That Working Group’s purpose 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 shipping practices. Stuart Beare was appointed as the CMI’s Observer to Working Group III, which was chaired by Professor Rafael Illescas of the University of Madrid. The Working Group’s final draft convention was completed in January 2008 and distributed to all UN member States. The UNCITRAL Commission met in New York June 16-26, 2008 and made some amendments to comply with the wishes of certain States. In giving its approval to the Draft Convention, the Commission expressed its appreciation to the CMI for the advice it provided during its preparation. The consolidated text will be submitted to the 6th (Legal) Committee of the UN
General Assembly on or about October 20, 2008 and, hopefully, formal adoption by the General Assembly Plenary Session at its 63rd session in early December, 2008. A Signing Ceremony will take place in Rotterdam on or about September 16, 2009, and thereafter the Convention will be open for ratification by signatory states.

For a detailed review of CMI’s involvement with this subject from even earlier beginnings and its cooperation with UNCITRAL, see Stuart Beare’s article “Liability Regimes: Where We Are, How We Got There and Where We Are Going” which may be found in Lloyd’s Maritime Commercial Law Quarterly, 2002, pages 306-315. This excellent article traces the substantive studies and cooperative effort that go into the making of an international convention. Your attention is also drawn to the Travaux Préparatoires on the CMI website for an account of the deliberations in UNCITRAL.
SCOPE OF APPLICATION, FREEDOM OF CONTRACT

HANNU HONKA

1. Background

The Hague and the Hague-Visby Rules 1924/1968 were in many sources considered to be too old-fashioned to properly regulate in the 21st century liability issues connected with carriage of goods by sea. The Hamburg Rules 1978, even if in force, had failed in the sense that important shipping nations were not prepared to ratify them. Multimodal issues were not regulated internationally in a satisfactory fashion and the Multimodal Convention 1980 had failed in achieving proper support. In these circumstances it was felt necessary to modernize international rules of carriage of goods by sea and to regulate multimodal issues to the extent reasonably possible, but considering that sea carriage was the starting point. The CMI took an initiative in 1996 to produce a standpoint concerning new rules for the international carriage of goods by sea. The result was the “Draft Instrument for the Carriage of Goods [Wholly or Partly] by Sea” in 2001. This draft was not just an amendment to existing liability regimes, but a completely new regime.

UNCITRAL initiated work on these matters in 2002 based on the fact that the CMI had produced the above-mentioned draft. After several years of preparation a final version on “UN Convention for the International Carriage of Goods Wholly or Partly by Sea” was approved by the UNCITRAL Commission during its 41st session in June-July 2008. This was the situation at the CMI Conference in Athens, but since then the UN Assembly has adopted the Convention in December 2008, meaning that it will be opened for signature and later on for ratification. As the Convention is opened for signatures in Rotterdam in September 2009, it has been considered appropriate to state that the Convention contains the Rotterdam Rules (RR).

In view of the particular topic, it is necessary to mention that these matters are connected with the mandatory nature of the RR and the expansion of freedom of contract to a certain extent.

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1 The reasons are more nuanced than what has been considered necessary to mention in the text above.
2 UNCITRAL Commission Report, 41st session 2008, A/63/17, Annex I. The references to different articles in the text are based on this document.
The RR article 1 includes a long list of definitions. At this point the important ones are article 1.1 to 1.4, all connected with scope of application and volume contracts. The substantive provisions on scope of application are found in article 5 to 7 and the mandatory nature and limits of the Convention are expressed in article 79 - 81. In the following, I shall only deal with general outlines. A more detailed discussion has to take place elsewhere.

2. Scope of application

For the scope of application of the Rotterdam Rules, contract of carriage is defined in article 1.1 according to which it means a contract in which a carrier, against the payment of freight, undertakes to carry goods from one place to another. The contract shall provide for carriage by sea and may provide for carriage by other modes of transport in addition to the sea carriage.

Further specification and separation is found elsewhere, as explained below. There is an important specification in the definition, however, whereby a sea leg can be combined with other modes of transport. The sea carriage is an absolute requirement, but other modes not, even if possible. The RR deal with multimodal issues. The RR reflect a maritime plus approach: always a sea leg, but other modes of transport can be added on. The definition does not clarify whether the sea leg should be based on what has been agreed or what has factually happened. The first alternative is acceptable and, when necessary, the contract has to be interpreted in view of whether a sea leg has been agreed upon or not.

Volume contracts are defined in article 1.2. As can be seen they are also considered to be contracts of carriage. This is important as it means that such contracts are considered to fall under the RR, unless the substantive provisions state otherwise.

Article 1.3 and 1.4 define liner transportation and non-liner transportation, important for understanding the scope issue.

Working Group III at UNCITRAL considered three main approaches to the scope of application question: 1) the documentary approach, 2) the contractual approach and 3) the trade approach. The first one referred to the possibility of basing application of the RR on the use of a particular transport document. The second focussed on what type of contract had been concluded between the parties and the third on what type of trade was intended by the contract of carriage. None of these alternatives was accepted as such. It can rather be said that the end result is a mixture of them all.

The scope issue starts with the RR article 5.1 where it is stated that the Convention applies to contracts of carriage. Clarification on what this reference means is found in the above-mentioned definitions in article 1.1. and 1.2. I shall return to the geographical scope later on, being also a part of article 5.1.
But, the reference in article 5.1 does not suffice without necessary further specifications found in article 6. Without repeating the exact wording of this article, the main message is that contracts of carriage in liner transportation are within the Convention, while contracts of carriage in non-liner transportation are outside the Convention. The above-mentioned definitions again are necessary for the proper understanding of article 6.

One could presume that this setting would suffice, but as said above, a pure trade approach was not the proper way to go. It would have two major problems. First, it would leave unclear specific transport arrangements within liner transportation where it would not be generally considered necessary to include those arrangements under the RR. Second, it was early on considered necessary not to decrease the scope of application of the RR compared with the Hague and the Hague-Visby Rules. As the latter two cover more than just liner transportation due to the requirement of a bill of lading or a similar document of title having been issued, as long as not based on charterparties, it was necessary to have a clarifying provision in the RR whereby the same result would be achieved. In this general setting it was also clear that what was outside the Hague and the Hague-Visby Rules would also be outside the RR. The main category in this respect includes charterparties. The result in the RR is more sophisticated and has more nuances than what was at one point of the work considered to be enough. Previous versions had in general terms excluded charterparties, contracts of affreightment and volume contracts, but such references caused more confusion than clarification.

Legislatively, liner transportation was clarified in article 6.1, considering that liner transportation was automatically included by the general definition of contract of carriage read together with article 5.1. Thus, the specific situations in liner carriage that would not, however, fall under the Convention were in consensus considered to be charterparties used in liner transportation and other contracts for the use of a ship or of any space thereon used in liner transportation. The type of trade yielded to these specific parts. For example, slot charters and space charters on a liner ship in liner trade would fall outside the RR.

Quite naturally and, one could say, fully in accordance with tradition, non-liner trade is as said outside the RR according to the chapeau of article 6.2. To coordinate with the Hague and the Hague-Visby Rules an addition was necessary as specified in the same article. Contracts of carriage in non-liner trade are within the RR provided that there is no charterparty or similar contract between the parties and a transport document or an electronic transport record is issued. This is the rule necessary for the Hague and Hague-Visby coordination. To recall, the Hague and the Hague-Visby Rules are applicable when a bill of lading or a similar document of title is issued. Those rules have no explicit exclusion of non-liner trade. It may well happen that a ship carries goods in non-liner trade where no charterparty is issued. The
carriage could, for example, concern some specific goods where the carrier does not trade in line transportation, such as a return voyage where the incoming leg is liner based, but the outgoing leg not. Cargo interests might need carriage on the outgoing leg. Some times this arrangement is called on-demand carriage. The above-mentioned addition of inclusion in the RR article 6.2 gives in principle the same result as by the Hague and the Hague-Visby Rules.

The relevant difference between the RR and the Hague system is that the RR do not require the use of a particular transport document or corresponding electronic transport record. In this way the RR are the same as the Hamburg Rules. The one exception in view of the RR is that the above-mentioned on-demand carriage does need a particular transport document or electronic transport record as clarified in article 6.2 after the chapeau. Transport document and electronic transport record are defined in article 1.14 and 1.18 respectively. The definition of transport document includes the requirements of the transport document being the receipt of the goods and evidencing or containing the contract of carriage as further specified in the definition. The corresponding requirements are found in article 1.18. In view of on-demand carriage there must not be a charterparty or similar contract underlying the arrangements.

There is no problem in the RR covering third party interests where they exist to the extent that the above-mentioned provisions make the RR applicable. Thus, in an ordinary liner trade situation where the RR apply, for example, the consignee is covered in addition to the contracting shipper.

Once outside the application of the RR in non-liner trade, but not being on-demand carriage, the status of third parties needs clarification. This is a policy matter - in other words should third parties be included at all. The Hague, the Hague-Visby and the Hamburg Rules all protect a third party bill of lading holder, not being the shipper, in non-liner trade where a charterparty has been concluded between the shipper and the carrier. The protective needs have long since been considered relevant. For the RR, there was no need to change this approach. A third party needed to be covered by the RR. While the present regimes require the third party, not being the shipper, to possess a (shipped-on-board) bill of lading, discussion arose in Working Group III on the need to maintain such a requirement. Views were pretty much divided between keeping the traditional approach and a new approach where the protected party would be named in the RR directly. The latter view prevailed, partly based on the fact that the bill of lading is not a guiding line in the RR in general. The name is not used once in this new setting. Also, by naming the third parties the rules were, at least to my mind, clearly simplified compared with the present regimes. With this background in mind, article 7 states that the RR apply as between the carrier and the consignee, controlling party or
holder that is not an original party to the charterparty or other contract of carriage excluded from the application of the RR. However, the RR do not apply as between the original parties to a contract of carriage excluded pursuant to article 6. The basic traditional protective concept has been maintained, but the concrete solution on defining third parties is different compared with the present regimes.

As to the geographical scope of the RR, it is necessary to return to article 5.1. For the RR to apply the contract of carriage must include international carriage. As the RR are maritime plus by nature it has been held appropriate that in multimodal operations involving a sea leg both the overall carriage and the sea carriage must be international. The one and same sea carriage must be international. In other words, two separate national sea carriages in two different states under the same contract of carriage does not suffice. There is of course no hindrance for contracting states to extend the application of the RR to national carriage or to extend the application of the RR otherwise on national legislative basis.

The geographical scope has also to do with the fact that there must be a sensible connecting factor to a Contracting State. The place of receipt, the port of loading, the place of delivery or the port of discharge must be situated in a Contracting State.

In this context it has been felt that there is no possibility to deal with certain other issues that could at least relate to the scope of application issue. Multimodal regulation in view of conflict of conventions is regulated in article 82. This provision becomes understandable when looking at the maritime plus nature of the RR in view of article 1.1 and article 26. As said, these specific matters have to be dealt with elsewhere.

3. **Mandatory rules and freedom of contract**

3.1. **General provisions**

Even since the U.S. Harter Act was introduced in the 1890's the debate has revolved around the need to protect cargo interests by certain mandatory minimum liability rules for the carrier. This is, as is well-known, reflected in the Hague and the Hague-Visby Rules. The Hamburg Rules developed the issue somewhat bringing more clearly in the shipper's status compared with the older regimes. The original basis for mandatory minimum liability for the carrier was not only the above-mentioned protective needs, but also, which fact is nowadays too easily forgotten, to enhance the negotiability value of the bill of lading. An issued Hague bill of lading gave certain protection in view of carrier liability for third party bill of lading holders in addition to the value of the negotiability nature of the document as such. Since the Hamburg Rules ended the requirement of the use of bill of lading for application of those
Rules, this latter aspect is not a very strong argument anymore as basis for requiring mandatory rules. The same is true for the RR. Once only the protection of cargo interests remains relevant, there is on this point the problem that not all carriage of goods by sea today can be combined with the basic fact that the carrier is the strong negotiating party, while the shipper is not. In many trades the situation is the opposite. The world-wide commercial picture as basis of a policy line is thus fragmentary. One would in these circumstances presume that maintaining a mandatory system for the benefit of cargo interests is not of world-wide interest. On the other hand, the present regimes are not necessarily described properly by putting mandatory name tags on them. The fact is that the carrier benefits from ex lege exceptions to liability, such as the nautical error exception in the Hague and the Hague-Visby Rules, and limitation of liability as found in all the above-mentioned regimes. This means that such benefits do not even have to be included in the contract of carriage for them to operate. Whatever the real balancing substance of the present regimes is, the fact remains that in Working Group III it was never seriously discussed to create full freedom of contract for the parties and interests involved. In this way the preparatory approach was traditional indeed, be it that with the concept certain changes were made, such as abolishing the nautical error exception (as was already done in the Hamburg Rules) and increasing the limitation levels. But, the core idea of maintaining the mandatory nature of the new regimes had extensive consensus. However, to certain parts there was a breakthrough. The mandatory system would not cover all situations where the RR are applicable as such. What in the RR are called volume contracts are now in a specific situation as explained below.

But, first the basic mandatory system is explained once it was decided to maintain the traditional policy basis. The setting is found in the RR article 79. This article separates between carrier obligations and liability on the one hand and obligations and liability of cargo interests on the other.

In view of the mandatory system for the carrier, there was discussion on whether a one-way or two-way system would be accepted. The traditional approach is the first where the carrier would be required to maintain minimum obligations and liability. In other words his obligations and liability could always be increased by contract. The two-way system would have based the carrier’s obligations and liability completely on the RR in the same kind of fashion as is true for road carriage under the CMR. Working Group III clearly felt that the traditional approach was appropriate. No relevant basis was found to support another line of policy. Article 79 creates a minimum mandatory system for the carrier where his obligations and liability are separately and explicitly mentioned. The core of the provisions does not change what one is accustomed to on the basis of the present regimes. The provisions in the RR are, however, more specified than before and hopefully
clearer to anybody having to apply the provisions than before.

The reference in article 79 to “indirectly” excluding or limiting obligations and liability is now a clear statement on the fact that the carrier cannot circumvent the mandatory system by certain arrangements in the contract. For example, the carrier might not be able to agree validly on an applicable law clause taking any dispute outside the RR that without such clause would be applied.

Certain subcontractors are included in the RR system and it is necessary to cover them under article 79 as well. The covered subcontractor is in the RR called maritime performing party, as defined in article 1.6 compared with the definition of the carrier in article 1.4. A performing party, not being a maritime performing party, is not under the RR regime, but it has been necessary to define the first-mentioned for other reasons. The definition is found in article 1.6.

The obligations and liability of cargo interests are under the mandatory RR system in accordance with article 79. Cargo interests are enumerated as being the shipper, consignee, controlling party, holder or documentary shipper. These persons are defined in article 1. For cargo interests, the RR function as a two-way system. According to article 79.2 the obligations and liability of cargo interests can neither be decreased or increased. The two-way mandatory approach for cargo interests is familiar from the Hamburg Rules. Otherwise, what has been said above about the carrier side is to applicable parts true for cargo interests.

In spite of the core points of the RR being mandatory in the above-mentioned sense, article 79 allows for non-mandatory rules by the wording “[U]nless otherwise provided in this Convention”. Certain particular provisions are of non-mandatory nature. One example is article 56 making many of the right of control provisions non-mandatory.

Certain additional matters concerning the mandatory nature of the RR and freedom of contract should be taken into account. For example, there are specific provisions on such issues in article 81 not, however, dealt with at this point.

3.2. The particular case of volume contracts

As stated above, it can be questioned to what extent the traditional approach to mandatory rules is still valid. In some sources views have been expressed according to which there is no need in typical commercial relations to provide protective legislative rules without the contracting parties having the possibility to agree between themselves what their mutual risks are. It is no more a dominating fact that the cargo side is the weaker party in relation to the carrier.

Article 80 reflects to a certain degree this background, but it does not expand freedom of contract without certain preconditions.
The debate on the possibility to restrict the application of the provisions in their mandatory capacity in relation to certain kinds of service contracts arose due to the U.S. Working Paper 34 put forward for the 12th session of Working Group III in 2003. In this document the U.S. explained the background for its proposal and how the regulation would look.

The introduction of that proposal reads in paragraph 18 as follows:

“A key issue in the United States (and we believe in other parts of the world as well) is how the Instrument should treat certain specialized and customized agreements used for ocean liner services that are negotiated between shippers and carriers. As part of the overall package, the United States believes that this kind of agreement, which we refer to as an Ocean Liner Service Agreement (“OLSA”), should be covered by the Instrument, unless the OLSA parties expressly agree to derogate from all or part of the Instrument. A decision to derogate from the Instrument, however, would be binding only on the parties to the OLSA. There are differing views, both within the United States and internationally, on the option to derogate down from the Instrument’s liability limits. Nevertheless, the U.S. view is that the parties to an OLSA should be able to depart from any of the Instrument’s terms.”

OLSAs were explained to have derived from the possibility in the U.S. of competitively negotiating liner service contracts, a possibility that opened up towards the end of the 1990’s. OLSAs do not relate to the tramp trade. When studying the proposal more closely, the conclusion is that OLSAs are framework contracts aiming to solve the transport needs and obligations as a package. Any single transport would not be a service contract.

OLSAs were thought by the U.S to have a special status in the respect that these contracts were proposed to fall under the scope of the Convention, but that the parties could specifically agree to derogate from all or part of the Convention’s provisions. The concern for the U.S was also that OLSAs should not fall outside the scope of application of the Convention.

At that stage the scope of application of the proposed Convention was planned to exclude certain contract types. According to Working Paper 32 article 2 (3), the proposed Convention would not apply to charter parties, contracts of affreightment, volume contracts, or similar agreements. Additionally it was proposed in article 2 (5) that if a contract provided for the future carriage of goods in a series of shipments, the provisions of the proposed Convention would apply to each shipment to the extent that other articles more specifically would so state. The latter above-mentioned U.S

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3 Cf. HamburgR article 2 (4).
This basic concept of separating a framework contract from individual voyages has been regulated upon in the Nordic Maritime Codes, see the Finnish Maritime Code Chapter 14 section 47.1.

The concept introduced by the U.S. gave rise to concern among many delegations in that the proposal might cause a serious deterioration of the status of small shippers and in that the term OLSA was difficult for many to place in the concept of contract of carriage. But, clear support was also expressed not accepting the dangers to shippers as maintained by others.

At one stage the text proposal included the idea of a stand-alone provision with a separate regulation of the intended OLSA-system. Gradually through informal consultations the idea emerged that an OLSA as understood and intended by the U.S. really was a volume contract, whereby the contracting parties agreed on more than one consignment. It was a question of a kind of a package deal with a framework contract covering the comprehensive setting. Individual carriages might in that concept be arranged as appropriate, but mainly on two lines. Either they were arranged through liner trade or through a chartering concept. With this concept in mind it became clear that volume contracts should be implemented into the scope of application rules in order to reach the goal where mainly liner trade was under the new Convention. The extent of freedom of contract would be adjusted by a separate provision.

This systematic concept eventually prevailed. It was quite another matter to achieve reasonable consensus for the freedom of contract aspect. Some delegations approached the matter as a non-starter. Efforts in this respect to allow expanded freedom of contract should not in other words be accepted at all. In spite of total opposition in some quarters there was support to develop the freedom of contract concept in view of volume contracts.

During informal and formal consultations there were various views. A common basis was that the shipper should be informed properly on the contract conditions deviating from the provisions of the Convention. The same protective need was of course important also for any third party, such as a consignee. What exact preconditions would apply was the target of, sometimes, deep disagreement. One main line of opinion was that the carrier should be allowed alternative routes for such information. The other main line of opinion was that freedom of contract should not be allowed at all by a contract of adhesion where exemption clauses were implemented in the contract without proper individual negotiations having taken place. The first

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4 This basic concept of separating a framework contract from individual voyages has been regulated upon in the Nordic Maritime Codes, see the Finnish Maritime Code Chapter 14 section 47.1.
line prevailed at the beginning and reached a majority of support. It was felt, however, that in order to gain support in a wider range than achieved so far in a matter of principle, further specification was agreed upon taking the final solution close to or even covering the second line of opinion.

Due to the very difficult situation with opposing views where reasonable compromise was not readily found, the provision setting the above-mentioned preconditions for freedom of contract in view of volume contracts is fairly complex. It also provides protection “with belts and suspenders”. In other words, it would seem that one protecting rule covers another. This was well understood in the Working Group, but, nevertheless, a secure setting was chosen, be it that the result in legal-technical terms is somewhat clumsy.

Even if the emphasis was on protecting the cargo side, it must not be forgotten that article 80 also covers the possibility to affect the shipper’s status and any other relevant person on the cargo side. Under the same conditions that are applicable to the carrier, it is possible to deviate from the two-way mandatory rules covering cargo interests. It is true that it is a carrier perspective that mainly underlies the text. But, the shipper’s position can be affected and the rules in this respect must be applied with that concept in mind.

Outside the above-mentioned protective result, it was generally accepted early on that some provisions in the Convention were of the nature that they could not under any circumstances fall under freedom of contract, as long as the Convention by its own rules was applicable. As article 80 covers both carriers and shippers, so also would these absolute mandatory rules, or “supermandatory” rules take both interests into consideration.

The policy aspect is thus clear. Then comes the matter of how this policy materializes in article 80 itself. Simultaneously it is important to take into consideration that for jurisdiction purposes there are special provisions for volume contracts in article 67. In the following, as already stated, only main outlines are mentioned, but details are left out.

Article 80.1 sets the tone for freedom of contract. It includes important messages. There is of course the necessary reference to volume contracts and also a reference that the Convention must apply to the respective volume contract. In order to understand this setting it is necessary to look at the definition of contract of carriage in article 1.1 and the definition of volume contract in article 1.2. It can be noticed from these definitions that a volume contract is one type of contract of carriage. A contract of carriage must in turn provide for carriage by sea and may provide for carriage by other modes of transport in addition to sea carriage. If no sea leg is involved, the Convention does not apply, nor in that case the specific provision on volume contracts.

In looking at the definition of the volume contract it provides the message that the contracting parties have further operations in mind than
merely one sea carriage. There are three requirements for a contract to fulfil the definition in article 1.2, meaning that the contract provides for

1) a specified quantity of goods
2) in a series of shipments
3) during an agreed period of time.

The specification of the quantity of goods may include a minimum, a maximum or a certain range.

An unspecified amount of goods would not result in a volume contract. The series of shipments might be consecutive or not. The period of time is not limited. It can extend from a few days to several years.

Opponents to the definition have stated that the mandatory rules can too easily be pushed aside by mere contract formulation. Thus, the parties could agree to ship two containers one the first day, the second the next day. This would be a volume contract. To this the sensible reply is that when a judge can draw conclusions that the intention is not to carry on the basis of a real package deal, but to enable a certain degree of freedom of contract by circumvention, any exemption clause could on that basis be set aside. In this case the reference in article 79 to indirect exclusion, limitation or increase is a sound basis for such discretion. There is no clear-cut line and the result is dependent on each individual case. Further, it is hard to believe that any carrier would make the effort to expand its freedom of contract for mere, say, two containers considering the numerous requirements set forth in article 80.

It was proposed during the negotiations that the number of containers would be specified in the definition of volume contracts, but that kind of exercise is futile as individual situations vary.

As a volume contract in the sense of the RR is by definition a contract of carriage the ordinary provisions on scope of application are relevant for volume contracts as well. This means, for example, that a volume contract based on non-liner carriage is not under the RR at all, in accordance with article 6 (2). If a volume contract is based on liner carriage the RR will apply, in accordance with article 5 (1) compared with article 6 (1). The RR do not have any reply to a mixed volume contract, where the individual voyages are performed partly in non-liner trade and partly in liner trade, but the correct approach would in such cases be that the individual voyage will guide the application issue.

Article 80 applies only to volume contracts under the RR. Once applied, the RR gives a certain range for freedom of contract as stated in article 80.1.

The possibility to deviate from the provisions in the RR, to the extent that those provisions otherwise would be mandatory, is regulated in article 80.2. Paragraph 2 covers the carrier and the shipper by reference to paragraph 1. The status of a third party is regulated in paragraph 5.

The exact wording in paragraph 2 was contentious at the preparatory
stage. There are four preconditions and all of them must be fulfilled for the provisions in the RR not to apply in a mandatory fashion.

   Article 80.2.a) requires that the derogation must be set forth in the volume contract in form of a prominent statement. Thus, the statement must be clear. In comparison, the Oxford Concise Dictionary states that the word “prominent” means “particularly noticeable”.

   In subparagraph b) there is the requirement that the volume contract is either individually negotiated or prominently specifies the sections of the volume contract containing the derogations. The formulation was discussed several times during the sessions. The alternative was whether instead of an “or” there should be an “and” the latter resulting in both requirements being fulfilled. The “or” alternative was finally accepted and did not leave much disagreement due to what was introduced in subparagraph c). The first part of subparagraph b) requires that any derogation must be properly negotiated and not just incorporated in standard form. The alternative second part of subparagraph b) requires a prominent or particularly noticeable specification of the sections of the volume contract containing the derogations.

   Subparagraph c) was introduced at a very late stage of the consultations. There were strong demands aiming to guarantee that shippers, particularly small shippers, would not need to go along derogations that were standardised one way or another, or nearly standardised. Subparagraph b) was considered by many to produce sufficient protection, but others thought that more was needed in this respect. In particular, it was considered necessary to base the derogation on some individual show of will. It also became apparent that many delegations thought that a shipper should be left with a real choice in any case by either staying with the provisions of the RR or accepting derogation. These particular demands were met and the end result was considered satisfactory in the way that sufficient consensus existed. The result of the prevailing text in subparagraph c) is in practice that the shipper will be offered two freight rates, one in case of the RR provisions applying, the other in case of derogations. No other conclusion is possible from the text in subparagraph c).

   According to subparagraph c), the shipper must be notified that he has a real choice as mentioned above and he must on the basis of that notification be able to choose. Whether such real choice has been provided or not must be decided upon separately in each individual case.

   The same late result is true for subparagraph d). It was clear early on, however, that an incorporation of a derogation clause from another document should be disallowed. This is included in the first part of subparagraph d). While subparagraph b) requires individual negotiations only as an alternative and while the first part of subparagraph d) only disallows reference, the second part of subparagraph d) requires proper negotiations for derogation
and as an only alternative. The second part of subparagraph d) will take away a lot of the relevance of the first part of subparagraph b), but this is the compromise and the result, whether it is in legal-technical terms appropriate or not. The use of the term “contract of adhesion” might be unknown or unclear in some jurisdictions, but it was included based on a fairly common understanding of the concept. This means that it is not according to article 80.2.d)ii) allowed just to use standard terms or boilerplate terms for derogation that are not freely bargained, but there must be a sufficient individual element involved for including a derogation clause in the volume contract.

In all respects the whole of paragraph 2 must be read in light of article 3 according to which the relevant communication has to take place in writing or by electronic communication as further specified in article 3.

Paragraph 3 seems to overlap many parts in paragraph 2. Again, this is a further clarification on the preconditions for freedom of contract.

It was mentioned in the background to article 80 above that certain provisions were thought to be of such fundamental importance that derogation would not be allowed in a volume contract even if all the requirements in article 80 would have been fulfilled. These supermandatory rules cover two references concerning the carrier and two references concerning the shipper. Perhaps the most important supermandatory provision is that the carrier has a non-delegable duty to provide and maintain a seaworthy ship according to article 14.a) and b). The other relates to limitation of liability in article 61.

There are supermandatory rules also concerning the shipper’s obligations and liability.

Paragraph 5 deals with the derogation possibilities in relation to any person other than the shipper. At the preparatory stage it was considered understandable that the same preconditions that were valid for derogation between the carrier and the shipper could not prevail in relation to third parties who had had no power to exercise direct influence on the contract of carriage in form of a volume contract. It was not relevant what indirect influence could be exercised by the third party via the shipper, for example, through the contract of sale.

There are specific requirements in paragraph 5 aiming to take into consideration the specific status of third parties and to provide protection respectively. The chapeau shows that the requirements mentioned in view of the shipper - carrier relationship must be satisfied. Added to this, there are specific rules in the two subparagraphs.

Article 80.5.a) requires that prominent, i.e. particularly noticeable, information has been received by the third party on the fact that the volume contract derogates from the Convention. When this information has been
received it is also required that the third party has given its express consent to be bound by such derogations. It does not suffice to interpret consent into this legal relationship, for example, by some kind of construction based on implied consent. The express consent is bound to form in accordance with article 3. Such consent must be given in writing or by corresponding electronic means and the consent must due to the requirement of “express” be clear.

Paragraph 5 has no specification on when the express consent shall be provided. This is up to the third party. From the carrier’s point of view it is wise policy to possess this consent at the time of conclusion of the contract of carriage, if possible. Any time subsequent to such conclusion gives the third party full option. He may at that time refuse express consent leading to application of the RR between the carrier and the third party.

Once there already exists a right to claim in damages the mandatory rules hardly need to govern the relationship between the parties. It is, for example, quite possible that the parties agree on compensation which does not reach the RR-based amounts that the third party would be entitled to. Such procedure is of course quite common in practice. A settlement agreement is not dependent on the provisions of the RR. Comparison can be made with article 72.1 in view of jurisdiction agreements after the dispute has arisen.

Paragraph 5 subparagraph b) sets up restrictions on the express consent stating that it does not suffice to set forth such consent in a carrier’s public schedule of prices and services, transport document or electronic transport record.

In all respects the whole of article 80.5 must be read in light of article 3 according to which the relevant communication has to take place in writing or by electronic communication as further specified in article 3.

If there is dispute on the validity of any derogation it is important to clarify who has the risk of providing proper evidence and thus proving a particular point. Article 80.6 clarifies the matter of burden of proof. It is stated in the provision that the party claiming the benefit of derogation bears the burden of proof that the conditions for derogation have been fulfilled. It seems that in most jurisdictions such burden of proof would apply in any case. In order to enhance harmonization, a specific provision was, nevertheless, included in the RR.

The Hague and the Hague-Visby Rules have no similar exits from their mandatory systems to that of the RR. The Hamburg Rules article 4.4 has a reference to carriage of goods in a series of shipments, but that provision is not comparable with the RR article 80.
4. Other issues and final remarks

The explaining of scope of application and freedom of contract is not comprehensive. There are other principles and provisions that are important in order to understand the RR properly. These specific issues cannot be dealt with in detail.

It is, however, necessary to mention that the carrier’s subcontractors called maritime performing parties are liable directly to the cargo interests as regulated in the RR. In addition to the definition of the maritime performing party in article 1.7 making, for example, stevedores and port operators to fall under the definition, the core provision is found in the RR article 19. According to article 19.1 a maritime performing party is subject to the obligations and liabilities imposed on the carrier under the RR and is entitled to the carrier’s defences and limits of liability as provided for in RR. For this provision to apply there are further conditions in article 19.1 connected with the geographical aspect. It was not possible to have the same provision for the carrier in article 5.1 and for the maritime performing party in this respect. The maritime performing party has to be linked to a Contracting State as specified in article 19.1. The basic substantive liability issues for the maritime performing party are also found in article 20.

Scope of application is also in a certain way linked with jurisdiction issues in the RR Chapter 15 and arbitration issues in the RR Chapter 16. The only observation at this point is that when a State ratifies the RR, Chapters 15 and 16 are not included. They are only included if a statement is made by the Contracting state in accordance with article 74, 78 and 91.

As has been seen with scope of application and freedom of contract many controversial issues have been dealt with and a sufficient consensus has been reached. The same is true for other parts of the RR. It can be said that under the circumstances the best compromising result has been achieved at this point of time with the particular delegations that took part in Working Group III negotiations. All routes and alternatives were tested. Perhaps another time and another group might have concluded otherwise. The reality is, nevertheless, that the UNCITRAL Commission approved of a Draft and a Convention was since adopted by the UN General Assembly. This is what the international community now has to live with and adjudge what the next step is. Shall the Convention be signed or not? Shall the Convention be ratified or not? The underlying policy issues are not uncomplicated even at the last stages in deciding the fate of the Convention. The RR aim for global solutions. When sea or air carriage is involved I see the global approach as the only proper alternative. It would be totally undesirable for either of these forms of carriage going regional. Concern must be expressed on what particularly the European Union might do. Its only chance is to accept regional solutions - as said, not desirable for shipping.
The RR must be understood to be a compromise. There are always some other ideas on what the best solution should have been, but to implement one’s own opinions, and one’s own opinions only, on the global arena with real effect and consensus is more easily said than done. The RR are undeniably a complicated piece of legislation, but they are the only modern international approach now and for many years to come. Should the RR internationally fail, one may ask what, if any, would come instead. Regional solutions? National solutions? A new global convention? To hope for the last-mentioned development now and after the RR have been adopted is to my mind completely unrealistic. The first two are not desirable. I hope that the RR are looked at with these serious macro perspectives in mind.

Sources used:


OVERVIEW OF THE CONVENTION
THE UNCITRAL PERSPECTIVE

KATE LANNAN

It is a great pleasure to be with you today on behalf of the UNCITRAL secretariat. For those of you unaccustomed to our UN acronyms, UNCITRAL is the United Nations Commission on International Trade Law, which is based in Vienna, Austria. I was the Secretary of Working Group III on Transport Law for the past several years, and, along with several of you, I have had the pleasure and challenge of working on the text of the Draft Convention for the past 6 years.

Unfortunately, the newly-named Secretary of UNCITRAL, Renaud Sorieul could not be attend this important conference, as he will soon be on his way to New York for the 63rd Session of the UN General Assembly. However, in addition to sending you his regrets, he also sends his greetings, and his warm congratulations and appreciation to the CMI for its advice and assistance in the preparation of the Draft Convention.

As you all know, given your presence here today, this summer, on July 3rd, at the conclusion of its 41st session, UNCITRAL approved the text of the draft convention on contracts for the international carriage of goods wholly or partly by sea. While the title of the draft convention might seem unwieldy to some, both UNCITRAL’s Working Group III on Transport Law and the Commission – note that I use the terms ‘Commission’ and ‘UNCITRAL’ interchangeably – agreed that the title of the text should reflect both its nature as a “maritime plus” convention, covering door-to-door transport, and its focus on the contract of carriage. In any event, you may expect that the text will soon be known by a much shorter, geographically specific name, but I shall, for the moment, simply refer to it as the “Draft Convention”. For those of you who are wondering why it is still referred to as a “draft” convention, when the text has been approved by the Commission, it is still a “draft” convention in UN terms until its adoption by the UN General Assembly. I will explain the next steps for the text at the conclusion of my remarks.

The original impetus for the Draft Convention actually came from UNCITRAL’s Working Group on Electronic Data Interchange, or EDI. That Working Group had suggested to the Commission in 1994 and 1995 that preliminary work should be undertaken on the issue of negotiability and transferability of rights in goods in a computer-based environment. As you know, this was a particularly thorny problem that had plagued discussions on
electronic commerce for some time, and for which solutions had not yet been found. In 1995, the Commission endorsed the Working Group’s recommendation that such work should proceed, with a particular emphasis on maritime transport documents, and taking into account work that was then underway in other international organizations, including the CMI.

In 1996, at its 29th session, the Commission was presented with a proposal to include in the UNCITRAL work programme a review of current practices and laws in the area of the international carriage of goods by sea, with a view to establishing the need for uniform rules in the areas where no such rules existed and with a view to achieving greater uniformity of laws than had so far been achieved. It was suggested that existing national laws and international conventions left significant gaps regarding issues such as the functioning of bills of lading and sea waybills, the relation of those transport documents to the rights and obligations between the seller and the buyer of the goods and to the legal position of banks and financial institutions involved in the transaction. Some States had provisions on those issues, but they were disparate, whilst others had none at all, creating obstacles to the free flow of goods and resulting in increased transaction costs. Further, there was a desire to explore uniform provisions in respect of electronic means of communication regarding the carriage of goods.

The Commission agreed that rather than include the topic on its agenda in 1996, the Secretariat should become a focal point for the gathering of information, ideas and opinions regarding the problems that arose in practice and possible solutions for those problems. Further, the UNCITRAL secretariat was to consult not only Governments in this regard, but also intergovernmental and non-governmental organizations (that is, IGOs and NGOs), including international organizations representing the commercial sectors involved in the carriage of goods by sea, again, specifically indicating the CMI, amongst others. The information gathered by the Secretariat was then to be presented to the Commission at a future session, so that a decision could be made regarding the nature and scope of any future work that could be usefully undertaken by UNCITRAL.

As you know from the perspective of the CMI on the history of the work on the Draft Convention, the CMI and UNCITRAL began their collaboration toward a common solution after that Commission session in 1996, although, of course, the CMI had already been working on the task of investigating issues surrounding the uniformity of the law of the carriage of goods by sea for some time.

Collaboration between the CMI and UNCITRAL continued over the course of the next few years, and interim reports were provided on a regular basis to the Commission at its annual sessions.

In 2000, a Transport Law Colloquium was organized jointly by the
UNCITRAL secretariat and the CMI, ostensibly to gather ideas and expert opinions on problems in international carriage of goods and possible solutions from a broad range of interested organizations and industry bodies. A number of issues were identified during the colloquium as deserving of consideration, including:

- gaps in the existing law in respect of the functioning of various transport documents, the relationship of those documents to the rights and obligations of the buyer and the seller of the goods, and the legal position of financing entities;
- multimodal transport;
- electronic commerce;
- clarification of the roles, responsibilities, duties and rights of all parties;
- clearer definition of delivery;
- rules for non-localized damage to cargo;
- an examination of the liability regime and limits; and
- provisions to prevent the fraudulent use of bills of lading.

At its 34th session in 2001, the Commission heard a report that summarized the considerations and suggestions that had resulted to date from the discussions in the CMI International Subcommittee in order to enable the Commission to assess the thrust and scope of possible solutions and decide how it wished to proceed. A series of issues were described in the report that would have to be dealt with in a future instrument, which very closely resemble the chapter headings of the Draft Convention:

- the scope of application,
- the period of responsibility of the carrier,
- the obligations of the carrier and the shipper,
- the carrier’s liability,
- transport documents,
- freight,
- delivery to the consignee,
- right of control over the cargo,
- transfer of rights in goods,
- right of suit against the carrier, and
- time for suit.

Further, the UNCITRAL secretariat reported that consultations undertaken had indicated that work could usefully commence towards an international instrument that would modernize the law of carriage; take into account the latest technological developments and eliminate legal difficulties that had been identified.

Of course, as you know, the CMI International Sub-Committee had, by 2001, prepared a draft instrument based on its body of work; that draft instrument received the approval of the CMI’s Executive Council in
December of 2001, and was submitted to UNCITRAL for further consideration in Working Group III.

When deliberations began in Working Group III in April of 2002, there was general consensus that the purpose of its work was to end the multiplicity of the regimes of liability applying to carriage of goods by sea and also to adjust maritime transport law to better meet the needs and realities of international maritime transport practices. The Working Group also gratefully acknowledged the work already undertaken by the CMI in preparing the draft instrument and the commentary, which were used as the starting point for the deliberations of the Working Group. Further, it was thought that the draft instrument should take into consideration international conventions currently in force that governed different modes of transport, and that the draft instrument should seek to establish a balance between the interests of shippers and those of carriers.

In light of those goals, and a mere 6 and _ years and 26 weeks of Working Group sessions later, the Draft Convention has been approved by the Commission, and we can ask whether we have achieved what we set out to do. Not surprisingly, the view of the UNCITRAL Secretariat is that we have indeed taken major strides toward the accomplishment of the goals expressed. Of course, the proof of the pudding is in the eating, as they say, and only time will tell whether the Draft Convention will succeed in its goal of achieving harmonization of the legal regime governing the carriage of goods by sea.

As noted in my comments thus far, the numerous concerns raised in respect of the existing legal regime eventually convinced industry and Governments that the time had come for a fresh look at international maritime conventions for carriage of goods. The Draft Convention deals with a broad range of issues, many of which are novel for a uniform transport law instrument. Further, in respect of matters already dealt with in earlier instruments, the Draft Convention aims at enhancing legal certainty by codifying decades of case law and industry practice and by clarifying earlier texts where necessary.

Our view is that the result of the combined CMI-UNCITRAL effort is a comprehensive instrument governing international contracts of carriage from “door-to-door” that will modernize the law, making it much better-suited for the needs of today’s commerce. Importantly, this is accomplished while preserving the existing international regimes in respect of unimodal transportation, such as carriage by road, by rail or by inland waterway. We believe that the Draft Convention will give commercial actors and those involved in the international carriage of goods the opportunity to benefit from predictability and uniformity in an area that has to date been characterized by competing multilateral, regional and domestic regimes. The new Convention will thus improve conditions for international trade, enhance efficiency for commercial transactions, and reduce the overall cost of doing business internationally.
Finally, the last goal that the Working Group set for itself in 2002 was that of creating balance amongst competing stakeholders.

Before answering that question, I would ask you to recall that the UNCITRAL secretariat was encouraged to consult a broad range of IGOs and NGOs in pursuing its work in this area. Indulge me for a moment as I run through the list of the IGOs and NGOs that actively participated in the various Working Group sessions. They are, in no particular order, with the exception of the first:

- CMI
- UNCTAD
- UNECE (UN Economic Commission for Europe)
- ICC (International Chamber of Commerce)
- IUMI (International Union of Marine Insurers)
- FIATA (International Federation of Freight Forwarders Associations)
- ICS (International Chamber of Shipping)
- BIMCO (the Baltic and International Maritime Conference)
- International Group of P&I Clubs
- IAPH (International Association of Ports and Harbours)
- European Commission
- Association of American Railroads
- OTIF (Intergovernmental Organization for International Carriage by Rail)
- European Shippers’ Council
- IRU (International Road Transport Union)
- International Multimodal Transport Association (IMMTA)
- World Maritime University

And remember that every Member State of the UN has the right to actively participate in our Working Groups, and that each of those national delegations consulted their own stakeholders as well.

Having pointed out the diversity of the stakeholders that participated in the preparation of the Draft Convention, I can also tell you that the atmosphere during the years of negotiation of the Draft Convention was generally one of cooperation and constructive effort toward reaching a common goal, rather than one of confrontation and competition. It seemed that the various commercial interests involved in international maritime transport were conscious of the outdated nature of the current legal regime in light of modern industry needs, and of the pressing need for a coherent, unified approach.

The text that you will be discussing over the next few days represents the efforts of many competing interests to build consensus and to arrive at practical and workable common solutions to replace the current unwieldy and outdated regime for the international maritime carriage of goods.
The road forward

As I mentioned earlier, the Commission approved the text of the Draft Convention this summer in New York. Of course, that begs the question “What next?”.

In its decision and recommendation to the General Assembly, the Commission expressed its appreciation to the CMI for the advice it provided during the preparation of the Draft Convention, and submitted the text of the Draft Convention to the General Assembly for its consideration and adoption.

As you may be aware, the 63rd Session of the General Assembly is ongoing, and the 6th Committee, which considers legal matters, will take up the topic of the Draft Convention on or about the 20th of October. The Chair of the 41st Session of the Commission, Rafael Illescas, who was also the Chair of Working Group III, will provide his report to the 6th Committee, which will then consider the text for adoption.

Also before the 6th Committee of the General Assembly is the generous proposal of the Netherlands to host a signing ceremony for the Draft Convention in the Port of Rotterdam in September of 2009. That proposal was greeted very warmly by the Commission, and was accepted by acclamation. The Commission has, in turn, recommended to the General Assembly that it in fact authorize such a signing ceremony in Rotterdam in 2009.

Upon the conclusion of its consideration of the Draft Convention, it is anticipated that the 6th Committee will recommend a resolution to the plenary session of the General Assembly, adopting the Draft Convention and authorizing that it be opened for signature in Rotterdam in September of 2009. The final resolution of the General Assembly may be expected in early December of this year.

One other aspect of the future plans for the Draft Convention in which you may be interested is the signing ceremony in Rotterdam. Prior to the formal ceremony itself, the Dutch Government, in conjunction with UNCITRAL and others, intends to host a seminar on the subject of the Draft Convention on 21 September 2009, with various events planned for 22 September, followed by the formal signing ceremony on 23 September 2009.

Thank you for your kind attention. I look forward to what promises to be an interesting couple of days spent discussing the Draft Convention, and, of course, I would be pleased to answer any questions that you may have at a time that the Chair deems appropriate.
My task is to deal with the reactions to the Convention expected from the industry. Basically, I have had to rely on my relations with the International Chamber of Commerce and FIATA – The Freight Forwarders’ World Organization – which I have had since the 1970s. This, I think, will enable me to reflect some reactions at least on the main components of the Convention.

The main objective

The main objective of the Convention – at least originally – was to bridge the system under the Hague – Hague/Visby Rules and the Hamburg Rules. That objective has been supported by everyone. It only remains to see whether the objective has been successfully reached by the Convention.

Basis of liability (Art. 17)

The core of the Convention is the carrier’s liability. I think it is fair to say that in substance the objective has been reached. But the form of doing so has been subject to some criticism. In essence, different approaches in common and civil law explain the criticism. Generally, lawyers used to the civil law systems do not understand why it is necessary to have a long list of exemptions and a shifting back and forth of the burden of proof when the whole thing boils down to a liability for presumed fault by the carrier for loss or damage proven to have occurred during his period of responsibility. But this is how the bridge has been built, the list of exemptions having been taken from the Hague – Hague/Visby Rules together with the removal of the defenses of error in navigation and management of the vessel and of fire. A continuing duty to exercise due diligence in maintaining the vessel seaworthy and ensuring care of the goods makes the carrier’s liability akin to the liability under the Hamburg Rules. Some object to the difficulty in understanding the beauty of Article 17 of the Convention. In particular, it is suggested that – e.g. in case of loss or damage caused by perils of the sea (Art. 17.3 (b)) – the burden of proving seaworthiness of the vessel is unacceptable to the shipper (Art. 17.5(a)). But Article 17 could nevertheless be defended as it reflects how claims are handled in practice.
Limitation of liability (Art. 59)

As always, there is a lot of discussion relating to the carrier’s limitation of liability. As for the amounts (875 SDR per unit and 3 SDR per kilo), some traditionalists object. But I think it is fair to say that the increase does reflect the world inflation since the limits in the Hamburg Rules were established. What is more difficult to accept is the extension of the carrier’s right of liability to cover not only loss of or damage to the goods but also loss following from other breaches of his obligations under the Convention (Art. 59.1). This creates an imbalance compared with the mandatory and unlimited liability of the shipper. To some extent this could be explained by the fact that the shipper never enjoyed any right to limit his liability. However, with the expansion of the carrier’s right to limit liability to cover breach of any obligation we arrive at a situation where the same type of breach – e.g. failure to give correct information to the other party – results in a limited liability for the carrier but an unlimited liability for the shipper (Art. 79.1(b)). This result is hard to defend.

The electronic record (Chapter 3)

With respect to the provisions relating to the electronic record the reactions are generally positive. Surely, electronic transmission of data will sooner or later be accepted worldwide in the same manner as paper documents. But the provisions of the Convention do good service during the transition period.

The innovations

So far, I think that – with the exception of the expansion of the carrier’s right to limit his liability for any breach – the main objective has been reached with the Convention.

There are, however, a number of innovations which may cause problems in practice. As always with innovations, they are difficult to accept as they may not be properly understood and applied. I will address the more important innovations and point out where they may make States less inclined to ratify the Convention.

The “Maritime Plus” – “wholly or partly by sea”

The question whether the Convention should be extended to cover more than carriage of goods by sea – the so-called “Maritime Plus” – has been intensely debated over the six year period of deliberations. It may be right to give the carrier an option to include carriage preceding and succeeding the maritime carriage. However, in practice, it will not always be easy to ascertain which option the carrier has in fact chosen. Has he used the traditional rôle only to act as an agent with respect to pre- and on-carriage or has he used the
option available for him under the Convention to act as a carrier for the whole transit? The question to decide whether a person has acted as agent or principal is well-known in the freight forwarding industry and there is simply no easy solution to the problem. We will now have the same type of problem under the Convention.

There has also been a considerable discussion with respect to a potential conflict of conventions – a discussion which I think is misplaced. It is not a matter of conflict of conventions but rather a problem of several conventions hypothetically applicable to the same transport (Art. 82). So, even if the preponderant part of the carriage should be non-maritime, it is perfectly possible that the Convention nevertheless applies. This is not merely a matter of the carrier’s liability but also relates to important practical problems with respect to transport documentation. The provisions of Article 26(a) that the provisions of other international conventions supersede the Convention when loss or damage could be localized to the non-maritime segment are helpful, but this does not solve the problem with respect to mandatory national law or so-called non-localized loss or damage.

The maritime performing party (Art. 1.7 and Art. 19)

The Convention introduces a new definition, namely the “maritime performing carrier” which is subjected to the same liability as applies to the carrier of goods by sea. Maritime performing carriers will include cargo terminals operating in the port area. This may be acceptable to such terminals which only are used for handling and storing goods in connection with outgoing or incoming sea transport. But it is different with so-called multipurpose cargo terminals serving as distribution centers in logistics transport operations. They will prefer their own conditions and may see no reason why maritime rules should apply rather than rules applicable to non-maritime transport or generally to distribution services. It should be borne in mind that the 1991 Convention on Operators of Transport Terminals (the so-called “OTT-Convention”) for that very reason has not been successful but that it may nevertheless enter into force. The ratification of one more State suffices.

The documentary shipper (Art.1.9)

At first sight, it may seem practical to include yet another category under the Convention, namely the “documentary shipper” signifying a person who does not conclude a contract of carriage with the carrier but only appears with his name in the transport document. If he accepts to be so included, he would be liable together with the shipper (Art. 33) which represents the person concluding the contract of carriage with the carrier. I think it is safe to assume that Ex Work- and FOB- sellers would oppose being liable together with buyers having concluded the contract of carriage. Such liability would be
particularly strange if the sellers have collected the price of the goods from a bank under documentary credits expecting to be free of any liability thereafter. It would therefore be necessary to inform such sellers of the dangers to which they may become exposed under the Convention.

**Delivery without presentation of negotiable bills of lading (Art. 47.2)**

The most difficult provision of the Convention is contained in Art. 47.2 which grants the carrier the right to issue a negotiable transport document and to deliver the goods without surrender of that document or an equivalent electronic record. Indeed, it is confusing to have two variants of negotiable bills of lading, one which is truly negotiable and another which only is said to be negotiable but which in fact is not.

In order to ensure that I have correctly understood this provision, I will give an example. Let us assume that there is first a sale under which the seller tenders an Article 47.2-document and that the buyer sells the goods further to buyer 2 who in turn sells the goods further to buyer 3. Let us further assume that the first two sales are duly implemented but that problems arise in connection with the third sale. The parties get into a heated debate as to the condition of both document and goods and as a result the seller is forced to give a discount of say 50 % on the price in order to induce buyer 3 to instruct the bank having issued a documentary credit to accept the bill of lading. The vessel arrives but no one appears with the document. The carrier uses his right under Article 47.2 and, when unable to find the person controlling the disposition of the goods, turns for instructions to the shipper which is the seller in the first contract of sale. He is then informed that the goods have been sold to buyer 1 who, when contacted by the carrier, indicates buyer 2. The goods are tendered to him. He is surprised but nevertheless pleased to receive the goods, since in his sale to buyer 3 he had been forced to give a 50 % discount on the price which he thought was most unfair. He is requested to put up adequate security representing the maximum loss which the carrier could incur if somebody turns up with the document or its electronic equivalent. This now happens and the third buyer, when finally receiving the bill of lading from the bank, finds himself in the unfortunate position that he cannot get hold of the goods and not even full compensation for the loss of his right to get the goods.

**Concluding remarks**

It would be a pity if the success to achieve a bridge between the Hague – Hague/Visby Rules and the Hamburg Rules would falter due to one or more of the innovations but I think that the risk is obvious. In particular, Article 47.2 will be troublesome. It must not be forgotten that, in international trade, the very purpose of any Bill of Lading convention, such as the 1924 Convention,
the Hamburg Rules or this Convention, is to ensure that the seller may receive from the carrier a document “controlling the disposition of the goods”, now in the sense of Art. 58.2 of the UN Convention on Contracts for the International Sale of Goods (CISG). Such a document is needed for CFR- and CIF-sellers under INCOTERMS 2000 (Clause A8). By using the option under Art. 47.2, the carrier may avoid the obligation to issue such a document which, I think, is unacceptable to the international trading community.
SHIPOWNERS’ VIEW ON THE UNCITRAL CONVENTION ON CONTRACTS FOR THE INTERNATIONAL CARRIAGE OF GOODS WHOLLY OR PARTLY BY SEA

KNUD PONTOPPIDAN*

Summary

The main argument put forward is that international harmonization of maritime transport law is essential for the smooth handling of international trade, to the benefit of carriers and customers.

The existing port-to-port rules are no longer adequate to meet the complex logistical demands of the 21st century’s door-to-door delivery services, which call for a new international convention on multimodal transports with a maritime leg.

The answer to these calls, we argue, is the UNCITRAL Convention. It covers the right type of transport and provides an attractive and modern set of rules that allow for delivery of goods without presentation of a negotiable transport document, electronic transport documents, and extended freedom of contract. It also takes a balanced approach to the rights and obligations of shippers and carriers. Combined, this makes for an attractive convention that meets the requirements of today’s liner shipping.

However, the early adoption of the new UNCITRAL Convention by the UN General Assembly and the possible later signature of the Convention in Rotterdam is not in itself sufficient to bring us the truly international instrument that we need. 20 states must ratify the Convention for it to enter into force, and in this regard, we all have a role to play.

Speech

I have been looking forward to this day – to come here and share my views with you on the new UNCITRAL Convention – or the Rotterdam Rules as it will no doubt soon be called – because being here today means that, we have the final text.¹

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* Executive Vice President, A.P. Moller – Maersk.
¹ The UN Resolution on United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea of 11 December 2008 (A/RES/63/122 of 2 February 2009) adopting the Convention recommends the Convention to be known as the “Rotterdam Rules”. 
Today, I will explain to you why – from a shipowner’s perspective – a new convention on maritime transport and multimodal transport with a maritime leg is necessary, and why the new UNCITRAL Convention meets our needs, and finally a few words on the ratification process.

I will begin, however, with a few words about liner shipping and what it is about, because the characteristics and requirements of liner shipping are what we measure the new convention against.

The Convention is also applicable in tramp trades in the relation between the carrier and a consignee, not being an original party to the charter agreement. This corresponds basically to what is provided for in present conventions like the Hague/Visby-Rules, although the principle has been given a slightly broader application. I do not believe the Convention will have a significant impact in the tramp trades and shall not comment upon this question any further.

Now, does the Convention fulfil the needs of liner shipping?

I guess that many of you may be familiar with the name A.P. Moller-Maersk, but I would nevertheless like to say a few words about us and our liner activities.

We are a worldwide organisation with about 117,000 employees and offices in around 130 countries. Active in liners, tankers, off shore, supply, oil exploration, supermarkets and industry.

We are one of the leading liner shipping companies in the world, with more than 470 container ships and close to two million containers. Every 13 minutes one of our container ships calls port somewhere in the world.

So, I trust that you will believe me when I say that today, international liner trade is no longer the simple service between a handful of ports in a couple of different countries, as it used to be in the old days, but rather a highly complex logistical and legal challenge.

Not only for A.P. Moller-Maersk, but for all liner carriers.

Our liner ships call and serve practically all costal States in the world, and our door-to-door services extend to almost every single country, including those that are landlocked far away from the sea. About one fourth of our container transport is performed as door-to-door services. And more than a third is multimodal.

Our container ships load and discharge containers in not only one or two or three countries along their route, but in many countries and in even more ports. In some ports only loading takes place, and in others only discharging.

It also belongs to the logistical picture, that our ships pick up or deliver containers to a container hub, from where they are carried on by other ships or by trucks or trains to their final destinations, or to yet another hub or terminal for on-carriage.

Consider the following figures – and it is only for Maersk Line:

Last year we transported around 14 million TEUs – that is more than 11% of global containerized trade.
And every year we issue almost 4 million Bills of Lading. Can you imagine the logistical challenge? Not to mention the legal challenge? Finding the right answers to these legal challenges requires that you take into account the way that liner shipping operates and the multimodality of door-to-door delivery.

Now, I would like to return to my “why” questions:

• Why is a new convention on maritime transport necessary, and
• Why does the new convention meet many of our needs.

I.

There are mainly two reasons why a new convention on maritime transport and multimodality is necessary.

The first reason pertains to the practical, financial and legal disadvantages of different rules in different countries.

Different rules in different countries must be followed by the carrier – and consistently so – even though it raises questions of liability, limitation of liability, the length of notices to be given, delivery procedures, claims settlement and so on and so forth.

The list is long, and I could probably go on for another minute.

The consequence of a multitude of different – and also sometimes conflicting – rules that must be followed is that maritime traffic in general and international liner traffic in particular would suffer considerably, because of the additional time and costs spent.

A dramatic increase in legal costs connected with claims handling would occur, and jurisdictional conflicts, race to courts and forum shopping would be the order of the day.

Carriers would find it more difficult to provide speedy and efficient service, international trade would suffer and the costs of international trade would increase and be imposed on the exporters and importers.

We are already seeing some of this today.

We enter into a contract of carriage from Limassol in Cyprus to Port Said in Egypt. The bill of lading is issued to the shipper in Limassol.

Maersk Line’s bill of lading designates English law.

However, and now it gets complicated:

Cyprus is party to the Hague Rules, UK party to the Hague-Visby Rules, and Egypt party to the Hamburg Rules.

At the claimant’s choice, a cargo damage claim could be initiated in any of the three countries – Cyprus, UK or Egypt – which apply different substantive rules to the claim – different liability limits, different defences, different periods within which suit must be filed and so on and so forth.

And when it comes to multimodal transport, shipowners face an increasing number of conventions as well as national rules, and the existing rules do not provide sufficient legal clarity about which rules apply, and to
what extent the parties can contractually agree the terms of the multimodal contract.

Obviously, legal certainty and predictability in this area, where no general accepted international convention is in force today, are very much warranted.

And that is why there is an urgent need to have one single modern convention covering all maritime transports, including maritime transports with a connected land leg.

The second reason has to do with the tendency to regionalism.

In recent years, a number of draft texts suggesting regional multimodal transport regimes have surfaced.

Regionalism would hinder the smooth handling of international transports and international trade by preventing States parties to a regional system in conflict with the UNCITRAL Convention from joining that international convention.

There are especially two texts that I would like to remind you of.

In 2005 – at the initiative of the European Commission – a group of legal experts proposed “A draft set of uniform liability rules for intermodal transport” for transports to or from a Member State of European Economic Community.\(^2\) This draft is still being considered by the Commission and other stakeholders.

The intention is probably admirable, but if these ideas are translated into legislation, it would jeopardise the development of an international regime.

We hope that all EU countries will support that only one set of rules should apply to international maritime traffic and connected land transports – and that is an international convention. And, furthermore we hope that they will fully respect this convention – and not substitute it by regional rules.


If introduced to and adopted by the US Congress, the US would have had to denounce the Hague Rules and would not be able to ratify the Hague/Visby Rules.

And, this effectively would have introduced US unilateralism in the sphere of port-to-port and multimodal transportation. And the US Congress was eager to act as their COGSA was found out of date.

Fortunately, at the time – based on a joint initiative between WSC and

NIT Leage – the US decided to await the outcome of the discussions within the CMI and UNCITRAL and to judge if the international solution might satisfy their requirements.

Needless to say, for the longevity of the new UNCITRAL Convention and for us who trade on the US, I hope that the Convention will meet the expectations of the US.

It most likely will, as practically all important aspects of the Convention carry the fingerprint of the US delegation, who vigorously participated in the discussions in UNCITRAL.\(^3\)

Now, so many were the words about why a new convention is necessary.

II.

The more intriguing question, now that the new UNCITRAL Convention is finally agreed upon, is, whether the Convention will in fact deliver the answers that we need. – My second “why” question.

The short answer is: YES! – And actually a resounding yes!

There are still elements that concern us such as the provisions on right of control, and provisions on registered owner liability, but hopefully more on the theoretical than the practical level.

I will now elaborate on the many reasons for my resounding YES.

• The scope of the Convention
• The substance of the Convention, and
• The flexibility and freedom of contract that the Convention provides.

**Now, as to the first reason - the scope of the Convention - I would say it is very sensible and suited for shipping.**

For an international liner shipping company that delivers door-to-door movement of goods, we make use of various transport links, where each link corresponds to a transfer, storage or transport operation either in the country of origin, in a transit country, or in the country of final destination. Trucks, trains, and ships may be involved – adding to the complexity of who is responsible for delivering cargo at destination in safe conditions, according to agreed schedules.

The new Convention covers international maritime traffic and international multimodal transport *with* an international maritime leg.\(^4\)

And that is exactly the scope that we shipowners would like it to cover.

The condition that it has to include a maritime leg is a sensible limitation, because it is feasible to regulate transports *with* a maritime leg internationally.

The same cannot necessarily be said about multimodal transports

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\(^3\) In a Statement of Position by the US before the 6th Committee of the U.N. General Assembly the US stated: “With continued industry support, we look forward to U.S. signature of the Convention at the signing ceremony in Rotterdam next year, and to prompt U.S. ratification”.

\(^4\) See Article 1(1) and Article 5.
without a maritime leg such as combined rail and road transport.

Rail and road transports do not have the same global character as maritime transport, and can more easily – and also more appropriately – be regulated within the various regions of the world where they take place.

This limitation of the scope to multimodal transports with a maritime leg has also made it possible and reasonable to apply the port-to-port regime to all damages in the multimodal chain, which cannot be localised to a particular leg. The considerable increase in the limitation of liability of the carrier has made it even more reasonable to apply the maritime rules to all non-localised damages.

This means that we will avoid the complications that would follow, if we were to establish a separate regime for non-localised damages in multimodal transport.

As to the substance of the Convention I believe it is pragmatic and contains a number of sensible quid pro quos.

We knew from the very beginning of the negotiations that carriers would not get a free ticket.

We knew that we would have to give something in return for an international convention that would regulate multimodal transport with a maritime leg.

But then again, we know that there is usually no such thing as a free lunch, and we all did a little or a lot quid pro quo during the negotiations.

I will now tell you about the top five substantive changes, as I see them. They are practically all improvements.

First, there are all the liability issues.

- The Convention contains comprehensive provisions on carrier and shipper obligations and liabilities.\(^5\)

The liability of the shipper for loss or damage sustained by the carrier has been clarified and strengthened compared to the legal situation in many national laws, and the liability of the carrier for loss or damage sustained by the shipper has been increased.\(^6\)

The liability rules are much clearer and presented in a more structured manner than in the existing conventions. They avoid purely abstract liability provisions, such as those contained in the Hamburg Rules.

The defence for error in navigation and management of the vessel has gone, and the level of the limitation amounts has been considerably increased. In fact, the rules on limitation of liability under the UNCITRAL Convention will often, because of the per package limitation system, give a shipper a

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\(^5\) See in particular Chapters 4 and 7.

\(^6\) See in particular Article 17 and Articles 30-32.
much better compensation than the compensation available under the CMR.

Of course, we should probably expect that the higher level and limits of liability will increase carriers’ P&I premiums.\(^7\) It probably comes as no surprise that shipowners are not so happy with this change, but, on the other hand, we expect the Convention to bring with it considerable reductions in administrative costs for carriers, which means that on balance, the Convention will benefit all stakeholders – shipowners, shippers and international trade.

The Convention – wisely enough – only establishes liability for carrier delay, when the goods are not delivered at the place of destination (provided for in the contract of carriage) within the time agreed.\(^8\)

And last but not least, the Convention provides for network liability.\(^9\)

- The second improvement is that the Convention gives carriers a right to limit liability for breaches of obligations under the Convention.\(^10\)

  This is an improvement compared with the current situation, where liability can only be limited to loss of or damage to the goods.

- The third new element is a significant improvement: It will be possible to deliver goods to the consignee in instances, where, for instance, the negotiable transport document has been lost.\(^11\)

There is real potential here:

- The fourth is that the Convention provides for detailed rules on all documentary aspects and ensures uniformity and certainty in an area, which has been dominated by divergent national rules and court decisions.\(^12\)

For example, we may now through the Convention know for certain when a transport document is negotiable or not. To-day, we don’t.

A bill of lading is considered negotiable in some jurisdictions, if it does not specifically specify that it is non-negotiable. In other jurisdictions it is only negotiable if so specified.

- And finally, the Convention takes an important step forward and

\(^7\) See Article 59.
\(^8\) See Articles 17 and 21.
\(^9\) See Article 26.
\(^10\) See Article 59.
\(^11\) See in particular Article 47.
\(^12\) See Chapter 8 and Article 1.
facilitates the booking – and documentation processes by allowing for and introducing rules on electronic documents.\textsuperscript{13}

The third major reason – in addition to the scope and the substance – for concluding that the Convention does indeed deliver what we need is that it contains provisions on flexibility and the freedom of contract for both shippers and carriers.

The trend in the new UNCITRAL Convention away from the mandatory character of the Hague/Visby Rules and the Hamburg Rules towards a more flexible regime gives commercial parties greater freedom to enter into contracts, which serve their needs.

The most important provision here is probably Article 80 on volume contracts in liner traffic.

Article 80 allows the parties to contractually deviate from most of the otherwise mandatory applicable rules, provided a number of protective conditions are fulfilled.

The possibility of “tailor made” contract terms allows the parties a higher degree of stability with regard to service and rates. After all, one size does rarely suit all.

For many large shippers the liner carrier becomes part of their sophisticated logistics chain. In Maersk Line we have today entered into such tailored contracts with many of our large customers, such as Adidas, Wal-Mart, Volkswagen, Hewlett-Packard and IKEA just to mention a few.

I believe that freedom of contract is a potentially significant development for both carriers and shippers, as they are pressed to seek efficiencies and innovative processes in our dynamic global economy.

* * *

Taking it all together, it would not surprise you when I now say that I find the UNCITRAL Convention to be an ambitious attempt for a comprehensive and attractive convention for maritime transport and connected transports.

It does indeed cater to the need of international liner shipping.

And it does take into account many aspects of multimodal transport that are absent from existing conventions, because these aspects were not required at the time of adoption.

The story of liner shipping over the past 20 years has been a constant push to streamline and standardize in an effort to deal with the demands of trade. And the Convention certainly furthers this objection.

The drawback is that the end result is 96 articles – and, some may argue,

\textsuperscript{13} See Chapter 3.
a complicated text. In fact, it contains more articles than the Hague, Hague/Visby and Hamburg conventions combined.

But, be that as it may.

All 96 articles are in my opinion of immense value to the parties to maritime contracts and contracts on multimodal transport with a maritime leg. And especially contemporary provisions such as the one on electronic document, which is needed in the 21st century.

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The question that now remains to be addressed is: When does the UNCITRAL Convention enter into force?

I think that I speak for all shipowners and their associations, ICS and the World Shipping Council included when I say that the UNCITRAL Convention should be ratified quickly and on a broad international basis in order to dissuade national and regional authorities from filling the vacuum with domestic or regional regulations.

I hope for a time frame of two to four years – and not the 10 to 15 years it took for many states to ratify the 1924 Hague Rules.

Naturally, ratification as such is a matter for governments, but that does not imply that we do not also have a role to play.

All of you here today have a responsibility to assist and urge your respective governments to ratify the new convention.

And those of us with in-depth expertise and knowledge of maritime law may wish to provide specific technical-legal assistance to countries, upon request and pro bono, to facilitate their implementation of the Convention.

As to my own efforts, I would like to mention that I – as part of a senior industry group – recently have conveyed to the European Commission the importance of providing assistance to Member States to aid their ratification of the Convention. EMSA could be the instrumental vehicle in that effort.

Also, I spoke last autumn, at the IUMI conference in Copenhagen,14 with an audience from the insurance sector, where I expressed my hopes for constructive input and assistance from IUMI to the UNCITRAL Convention and pointed out the merits of ratification. And for that matter, I also spoke before a CMI Transport Law Colloquium back in 2000 in New York, arguing already then that an adjustment of maritime transport law at the international level was much needed.

You may also find it interesting that the national shipowners’ associations in the Nordic countries have pledged their efforts towards ensuring that Denmark, Sweden and Norway are able to ratify the Convention

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in 2010 or 2011 – making these three countries the front runners on the way towards the 20 ratifications required for the Convention to enter into force.

If the UNCITRAL Convention becomes the accepted norm for international maritime trade and connected land transportation, large amounts of administrative costs would be saved and legal disputes avoided.

If, on the other hand, the Convention only becomes applicable in certain regions of the world, with other regions applying their own – and most likely conflicting rules – another chaotic situation will arise.

So, in closing, I would like to encourage you to support an international approach. In my view, it is the only way to develop maritime law, in due respect to international comity, providing legal certainty and transparency, and furthering the growth of international commerce.

There is only one way forward: And that is the way of the UNCITRAL Convention.
I would like to welcome all the foreign participants to our country and to extend to all of you the best regards of the Union of Greek Shipowners. I also wish to thank the organizers and especially my good friends in the Greek Maritime Law Association for their invitation to join you in the 39th Comité Maritime International (CMI) Conference and for giving me the opportunity to participate in the debate with such a high level audience representing the international maritime legal community.

The CMI returns to Greece after 46 years. Our country is, I hope you will agree, a good choice for this gathering since Greek shipowners with their impressive share of participation in the world fleet are among the best clients of the international law firms. The timing of this Conference coincidentally is crucial due to the fact that during the last two weeks we are all observers of a financial meltdown with an unpredictable impact on both shipping and the wider business markets. Undoubtedly, shipping will be called to face one of its most testing periods whilst the legal framework in which it operates may further exacerbate costs.

I would like to clarify at the outset that I do not have a legal background and I do not intend, therefore, to get involved in legal technicalities about the new Convention. I understand that it will be called “The Rotterdam Rules”.

Having been involved in shipping for almost 40 years as a broker, shipowner and ship manager, I would like to share with you my experience from the application of the existing regime up to now and also some concerns about its emerging successor. One has to admit that the status quo in the liability of carriage of goods by sea works without major problems. The Hague / Visby Rules, with their long history, is now a traditional piece of legislation, enriched by case law. This means that a large number of claims, filed against our companies, can be handled adequately sometimes without the intervention of the legal community. Yet, in some quarters there are justified misgivings about the old fashioned character of these rules and calls for their updating.

I also wish to clarify that my experience comes solely from the tramp cargo sector. However, we all heard Mr. Knud Pontoppidan elaborated on the views of liner operators.
My understanding is that – for the time being, the vast majority of the tramp sector operating under charter parties will not be subject to the new Convention. However, if Bills of Lading are issued (under the charter party) the Convention will be applied. Hence, I take it that this new instrument, once tried and tested, might be applicable to the tramp sector, as well, in the future.

Some years ago when the legal community and United Nations Commission on International Trade Law (UNCITRAL) started negotiations for a new Convention, the prime purpose was to further enhance the harmonization and unification of international trade law. Lack of uniformity due to the emerging proliferation of international Conventions and domestic legislations in various jurisdictions, inevitably detracts from commercial and legal certainty, which is undoubtedly an important factor for all parties engaged in the international carriage of goods. A new Convention, in order to be broadly accepted by the international community, should provide a modern set of rules which will ensure a fair balance of rights and liabilities as well as a fair allocation of risk between the parties to the contract of carriage.

Especially, in this modern era it is wrong to assume that the carrier has more bargaining power vis-à-vis the charterer or the shipper as the transportation of a significant volume of cargoes is nowadays arranged by large multinational corporations which are often in a position to impose their terms and conditions on the carrier.

In this context, I would like to refer briefly to some major changes.

Although the new liability provisions maintain the principle of a fault-based liability regime with retention of the carrier defences of the Hague/Visby Rules, there is a serious modification: that of the abolition of the traditional “navigational error”. There is also another change referring to the obligation of exercising due diligence to make the ship seaworthy, i.e. this has now been extended to the entire voyage. The combined effect of these changes seems to shift the balance of risk from cargo to ship. There are also complex rules regarding the burden of proof on the cargo claimant and on the carrier, which means, in practice, more litigation and higher legal fees.

Furthermore, the limits of the carrier’s liability are significantly increased. It is, in my view, regrettable that the new limits were agreed only for reasons of political expediency. I am aware of the prolonged debates on the monetary limits for the carrier’s liability during the negotiations. No evidence was produced to demonstrate that the Hague / Visby Rules limits are inadequate to meet the vast majority of claims. Indeed, the limits are seldom invoked and this would support the perception that they are satisfactory. Yet, no side, carriers or shippers, seems to be satisfied with the purported consensus and, therefore, these limits might become an impediment for ratification of the Convention by some states including major trading economies.
However, it is noteworthy that the greater liability exposure of carriers might result in higher insurance premiums which would obviously be reflected in the retail prices of the goods and this snowball effect, I am afraid, would ultimately reach the final consumer with obvious implications for the global economy.

And now, allow me to share some thoughts on jurisdiction and arbitration: We can agree that the absence of relevant provisions in the Hague and Hague/Visby Rules has not detracted from their widespread application nor created difficulties of principle or practice. Therefore, there are serious arguments for letting commercial parties freely determine dispute resolution arrangements, most suited to their particular needs. Contracts for the carriage of goods are essentially a matter of private law which in the modern era virtually in all cases are made between parties of a similar bargaining strength. However, the compromise to agree detailed but optional provisions on jurisdiction and arbitration may be an outlet especially for major groups of states like the EU. In any case, I would like to stress that this approach may in practice undermine the desired uniformity and legal certainty in international trade, even among the contracting states of the new Convention.

All in all, although the new Convention cannot be considered to be ideal for carriers’ interests, may be the last chance to have an international uniform legal framework for modern commercial practices of carriage by sea, to replace the existing patchwork of legal regimes.

Shipping, as a global industry, requires international governance rules for all issues, including safety, environmental protection and commercial aspects.

Equally, the liability regime governing the carriage of goods by sea should be international so as to ensure legal certainty and predictability. In this vein, we warmly welcome the active participation to the UNCITRAL negotiations of nations from the four corners of the planet, including the US, which decided to put off their plans for a new Carriage of Goods by Sea Act (COGSA) due to the pending legal exercise in UNCITRAL.

This means that although we are not completely satisfied with the new Instrument, we hope that it might be able to achieve a widespread international acceptance. Otherwise, if its acceptance is only limited, the Convention will fail to produce unification of the law, and will only add a new layer to the current puzzle of laws and regulations.

In this regard, I wish to add that I am surprised that there are still initiatives which could diminish the prospects of its ratification. To be more precise, the European Commission has ambitious plans to introduce legislation concerning the intra-EU multimodal carriage of goods. Such
legislation will impinge upon the international rules contained in the UNCITRAL. Therefore, I would like to call policymakers and legislators around the world to follow a “wait and see” approach. In other words, to respect the legal work carried out in the name of comity of nations. I believe that the new Rules need time to be absorbed and digested by the international legal community and, in particular, it should scrutinize the text to agree to a common interpretation of the remaining grey areas of the Convention. This will facilitate its smooth application in future disputes. All of you, ladies and gentlemen, lawyers and academics will have the difficult task of persuading interested parties, carriers, shippers, and governments to decide their final attitude vis-à-vis the new Rules proving their attractiveness. As far as the shipping community is concerned, I believe that we have proved for decades that we have the flexibility to adapt to commercial changes as well as to customers’ needs and demands.

In conclusion, I would like to congratulate the CMI organisers for devoting significant part of this Conference to the new Convention. All parties involved in the shipping business need such venues in order to realize what these Rules mean in practice. I believe that the debate on the UNCITRAL Convention will give food for thought to all participants and will send a clear message to the international shipping and trading community at large.
THE NEW ELEMENTS
THE FACILITATION OF ELECTRONIC COMMERCE

Summary of the oral presentation

JOHANNE GAUTHIER

The sessions dealing with the UNCITRAL Draft Convention opened with a brief history of the initial stages of its preparation. By necessity, it was brief and did not focus on any particular issue. It is thus worth noting here that one of the earliest issues identified as crucial by UNCITRAL, the OECD and CMI was the need to produce a convention that would apply not only to all traditional contracts of carriage and documents covered by the Hague, Hague-Visby and Hamburg Rules but also to contracts of carriage concluded electronically and to electronic records related thereto.

When this work started, e-commerce was starting to gain a greater foothold within our society, thus, we were mindful of advancing the goal of commercial certainty in the part of cyberspace that related to contracts for the carriage of goods wholly or partly by sea.

Very quickly, the working group of CMI on electronic commerce concluded that to reach this goal, the Draft Convention had to be medium neutral as well as technology neutral. This last expression means that it had to be adapted to all types of systems not only those based on a registry such as Bolero (based in part on the CMI Rules for electronic bills of lading) but also suited to systems operating in a closed environment (such as an intranet) as well as those operating in an open environment (such as the internet). One also had to keep in mind that technology evolves rapidly and that as we reported in Singapore in 2001, “what appears impossible today is probably already on the current agenda of software developers.” Therefore, the Draft Convention could not favour one technology over another.

It is with this in mind that the working group initially drafted the provisions submitted to UNCITRAL.

It is also worth noting that the CMI organized the Bordeaux Colloquium in 2003 in part to answer the need expressed by several MLAs in Singapore for more detailed information on the technological aspects and legal issues related to e-commerce. A full day was devoted to these issues; panellists first explained and demonstrated how various systems then available worked and how international rules dealing with contracts concluded electronically or
“documents” issued electronically would enable those systems to evolve into fully paperless systems. Then, UNCITRAL Model Laws on Electronic Commerce (1996) and Electronic Signatures (2001) and European Commission Directives related to such topics were explained. We also looked at whether, in all, the two above-mentioned UNCITRAL Model Laws were being implemented in Ibero-American countries. In the afternoon, after an in-depth analysis of functional equivalence, very lively discussion ensued with the delegates.

A brief guide to e-commerce features requiring special attention was then prepared by the working group to facilitate the further discussion of national delegations at UNCITRAL sessions.

In 2005, members of the working group also participated in a special meeting organized in London by UNCITRAL to discuss the e-commerce features of the then so-called “Instrument” and all the provisions dealing with the right of control (Chapter 10) and the transfer of rights (Chapter 11) necessary to foster the evolution of paperless systems.

Today, we have a final product before us. Although it is obviously the result of the collective efforts of all delegates who attended the intensive UNCITRAL sessions, I want to take this opportunity to officially thank the members of the CMI working group on electronic commerce (who also worked very hard as part of their respective national delegations), without whom I truly believe this would not have been possible. They are Gertjan VanDerZiel, George Chandler, Robert Howland and Luis Cova Arria. I also want to acknowledge the marvellous support and efforts of many other members of the CMI who worked within their own national delegations to ensure that these topics, which clearly appeared to many as somewhat difficult because they are new, would not simply be deleted from the final draft.

For those less familiar with these issues, the solutions and the language used in the Draft Convention today may appear simple, but let me tell you that the “dematerialisation” of documents of title, such as negotiable bills of lading, is considered by most specialists in e-commerce law not only as one of the most pressing issues to deal with given their importance in international commerce, but also as one of the most difficult legal issues to address.

Obviously, there are limits to what one can do in the context of a convention dealing with transport law.

I will discuss how this particular problem is addressed and how the view, expressed by certain organizations such as CIFFA - that there is no more need for negotiable transport documents or electronic records - was also addressed by clearly defining the right of control under the contract of carriage and specifying that this right is transferable.

I have reproduced in Annex 1 some of the provisions relevant to e-commerce. Obviously, there are many other references to, or mention of, negotiable or nonnegotiable electronic transport records (ETR) throughout
First, it is important to mention that “consent” is paramount and a sine qua non condition for the use of electronic communications (Article 1(17)) for the various purposes referred to in the Draft Convention be it a notice, an agreement, a declaration, etc. (Article 3).

It is also the basis for the use and the effect given to ETRs (Article 8(a), Article 35(b)). Because we are dealing with international carriage and given that the technological capacities and legal regimes that may become pertinent when the goods are resold or pledged (for example) vary greatly, Article 10 provides for the possibility of opting in or out of the initial agreement as to what particular medium would be used (be it a transport document or an ETR).

Freedom of contract and thus, in that sense, consent is also paramount in defining the procedures that will, according to Article 9, define the method of issuance or transfer of an ETR and how a holder is able to identify itself to obtain delivery. What the Draft Convention does however is require the parties to adopt definite rules in respect to all the issues listed in Article 9 and that these procedures be referred to in the contract particulars and be readily ascertainable. As at the moment there is no predominant system in place, this is necessary to ensure that all those interested, such as a bank or a prospective consignee, properly understand what, for example, one needs to do to obtain delivery as the holder of an ETR as well as determine if it is content with these procedures or would prefer opting out pursuant to Article 10.

The general principle of medium neutrality mentioned earlier as one of our goals is found at Article 8. In addition, although the structure and language used throughout the Draft Convention is medium neutral wherever possible (for example reference to the contract of carriage and contract particulars), old concepts are defined wherever intended to apply to new realities as are new concepts. For example, “holder” (Article 110(b)), “consignee” (Article 1(11)), “issuance” and “transfer” (Articles 1(21) and 1(22)), ETR (Article 1(18)), negotiable ETR (Article 1(19)) and non-negotiable ETR (Article 1(20)). See also Article 35, Article 38 (Signature) and Articles 45-47 (Delivery).

The principle of technological neutrality is embodied in Article 9 and Article 38. In the latter, the essential functions of the signature are referred to in accordance with the principles set out in the UNCITRAL Model Law on Electronic Commerce (Article 7) instead of adopting the more technology biased definition of signature found in the Model Law on Electronic Signatures (Article 6).

Turning now to functional equivalence, that is how the Draft Convention deals with the traditional functions of transport documents (the expression “bill of lading” is not used anywhere in the Draft Convention) and there is little doubt that through the definitions and the various provisions discussed
earlier, an ETR will easily function as a receipt for the goods and as evidence of the contract of carriage.

As mentioned, whether it can also function as a “document of title” that enables its holder to transfer its rights in the goods or to pledge them or otherwise transfer the rights embodied in it, is not only an issue of transport law. It is subject to the national law applicable to such transactions.

Nevertheless, what is clear is that the traditional negotiable bill of lading became a document of title because it represented or embodied the right to obtain actual custody or delivery of these goods from the carrier.

Like in many other areas of the law (for example, copyright, protection of privacy, contracts), e-commerce business models force jurists to have a hard look at the origins and basic principles of the legal rules now applied in the “outside world” (as opposed to cyberspace).

Thus, apart from referring throughout to negotiable ETRs wherever negotiable transport documents are dealt with, the Draft Convention offers two additional means for achieving functional equivalence with respect to this ultimate function of the negotiable transport document.

First, the “exclusive control” of the negotiable ETR by the holder thereof is set out as the equivalent of the physical possession of the negotiable transport document by its holder (Article 8(b)).

Second, and most importantly, it also provides a clear codification of the right of control that follows the current commercial practices accepted almost universally (Article 50(3) and (4)) and it spells out how, insofar as transport law is concerned at least, the rights “embodied” in a negotiable transport document or a negotiable ETR can be transferred (Article 57).

The Draft Convention goes even further by codifying who has the right of control over the goods during the period of responsibility of the carrier (the controlling party) – what this right encompasses – and how it can be transferred when no negotiable transport document or negotiable ETR is issued. It thus offers a more secure alternative to the international commercial community and particularly the financing banks. In effect, Article 50(1), which really sets out the general rule, (Article 50(2), (3) and (4) being the exceptions) makes it very clear that the right of control, including the right to instruct the carrier to whom the goods are to be delivered, is not linked to the possession of a particular document or ETR. This means that even if the Draft Convention’s other provisions designed to ensure that negotiable ETRs are given the same effect as negotiable transport documents by national Courts dealing with issues of property and security fail to achieve that goal, there is another mechanism in place to ensure that by becoming the controlling party, a bank, a new buyer or other persons interested in the goods can effectively have the legal control of those goods during the transit. As Gertjan VanDerZiel notes in an article soon to be published, the importance of this effective legal control for persons with rights to the goods, be it property
rights or rights of pledge, cannot be overestimated. I agree.

The Draft Convention certainly paves the way for a new way of doing business in a totally paperless world. It also provides for more solid foundations to Sea Waybills (paper or electronic form), while at the same time providing all the necessary tools for Courts to give effect to the new reality that is negotiable ETRs. I firmly believe that, considering the arduous process leading to its final stage, the Draft Convention offers very appropriate solutions and meets the goals it was set out to achieve.
MULTIMODAL ASPECTS OF THE ROTTERDAM RULES

GERTJAN VAN DER ZIEL


1. Introduction

The multimodal aspects of the Rotterdam Rules have been one of the most contentious subjects during the whole discussion on this new convention. The basic issue was: should the draft apply not only to the maritime part of a carriage by sea, but also to ancillary carriage by other modes prior to or after the carriage by sea?

An affirmative answer to this question was viewed by some delegates as a serious obstacle to achieve their multimodal ideal: a uniform liability regime that applies to all modes of transport. Others saw maritime law intruding an area where it ought not to be: ashore is the legal domain of the CMR, COTIF-CIM and the Budapest Convention! At best, in their view, a network system could be tolerated.

Other delegations were adamant to include the inland parts of a maritime carriage in the scope of the Rotterdam Rules when these parts are covered by the same contract of carriage. In their view, it would not make sense to restrict the scope to port-to-port carriage only: doing so would just add another maritime convention to three existing ones. The modern maritime contract, it was said, is multimodal. And a network system might be possible for carrier’s
liability only, but the application of different conventions to the various parts of a voyage under a single contract of carriage would, in this view, only create chaos.

In the end, within UNCITRAL a remarkable level of consensus could be reached on what now is known as the ‘maritime plus’ concept.

Article 5, dealing with the scope of application starts with:

Subject to article 6, this Convention applies to contracts of carriage in which … (follows the connecting factors)

And article 1 (a) defines ‘contract of carriage’ as:

“Contract of carriage” means a contract in which a carrier, against payment of freight, undertakes to carry goods from one place to another. The contract shall provide for carriage by sea and may provide for carriage by other modes of transport in addition to the sea carriage.

Furthermore, according to article 5, both the whole carriage of the goods as well as the sea carriage must be international. It means that the convention applies to, for example, a carriage from Malta through the port of Genoa to Milan and does not apply to a carriage from Sicily through the port of Genoa to Zurich, Switzerland.

In this connection I like to underline that the basis concept of the whole convention is not so much a modal approach or a documentary approach, but a contractual approach3,4.

Already from this contractual approach it follows more or less automatically that the new convention had to cover inland transport that is ancillary to carriage by sea, because the modern maritime transport contract in the liner trade is, to a substantial level, a multimodal transport contract.

Therefore, not only pragmatic reasons have led to the ‘maritime plus’

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3 Anthony Diamond rightfully points out that the actual carriage by sea may play a role when it comes to the interpretation whether a transport contract is a contract as defined in article 1(1). Some contracts of carriage do not specify a mode of transport or leave the mode optional to the carrier. In such cases the mode of transport that is actually used may be (one of) the factor(s) to determine whether the contract of carriage falls under the definition of article 1(1). See A. Diamond ‘The Next Sea Carriage Convention? [2008] 2 LMCLQ 140/141. I note that the definition of ‘contract of carriage’ does not includes the word ‘states’ or specifies’, but uses the wider term ‘provides’.

4 This approach in not exceptional, to the contrary: also other transport conventions like the Hamburg Rules, CMR, COTIF 1999, Budapest Convention and Montreal Convention apply to a certain type of contract. For the Hamburg Rules, CMR, COTIF and Budapest Convention this is already clear from their scope rules. The scope rules of the Montreal Convention seem to suggest otherwise, but looking at this convention as a whole, one cannot but conclude that it applies to contracts for international air transport.
application of the Rotterdam Rules, also the contractual concept left no other choice but to include ancillary inland transport.

2. *A ‘limited network system’*

The first question that arises is whether, in view of the different nature of maritime transport compared with inland transport, special provisions should apply to inland parts of the carriage that deviate from those applicable to the maritime stage. The answer given by the Rotterdam Rules to this question is affirmative.

The main special provision is article 26 dealing with the carrier’s liability during the inland parts of the maritime carriage. This article 26 reads:

*Article 26. Carriage preceding or subsequent to sea carriage*

> When loss of or damage to goods, or an event or circumstance causing a delay in their delivery, occurs during the carrier’s period of responsibility but solely before their loading onto the ship or solely after their discharge from the ship, the provisions of this Convention do not prevail over those provisions of another international instrument that, at the time of such loss, damage or event or circumstance causing delay:

(a) *Pursuant to the provisions of such international instrument would have applied to all or any of the carrier’s activities if the shipper had made a separate and direct contract with the carrier in respect of the particular stage of carriage where the loss of, or damage to goods, or an event or circumstance causing delay in their delivery occurred;*

(b) *Specifically provide for the carrier’s liability, limitation of liability, or time for suit; and*

(c) *Cannot be departed from by contract either at all or to the detriment of the shipper under that instrument.*

At first sight, this article may look complicated. The summary is, however, that in case there is a relevant inland transport convention, the liability rules thereof may apply when loss or damage occurs during the inland part of the voyage.

Hereunder, I will provide a couple of explanatory notes on this article:

(a) *only convention, no national law*

There has been substantial discussion in UNCITRAL to broaden the scope of article 26 to national law as well. In particular, ‘large surface’ countries like China, India, Canada, Australia and Sweden, were in favour thereof. The counter argument was that inclusion of ‘national law’ would dilute uniformity. Eventually, the aim for uniformity prevailed. Even a compromise proposal permitting States to make a declaration that their own courts would be allowed to apply national law, was rejected.
The result is that article 26 only applies when another transport convention\(^5\) would have applied under the hypothetical contract of carriage relating to the inland part of the multimodal transport. Since the existing transport conventions apply to international carriage, this inland part must, in practice, be international\(^6\).

Consequently, the normal liability provisions of the Rotterdam Rules apply if the loss of or damage to goods or delay occurs during an ancillary inland transport to which, under a hypothetical contract, national law would have applied. This inland carriage may be either national or international.

(b) Only liability provisions

The provisions which prevail must be directly related to liability. Therefore, the provisions on limitation of liability and time for suit are included, but all provisions that indirectly may have an impact on carrier’s liability, such as provisions relating to jurisdiction, documentary requirements, instruction right, successive carriers and so on, are excluded. A fortiori, relating to non-liability matters, the Rotterdam Rules always prevail.

The general view was that if the network principle would be extended to other issues than carrier’s liability for loss or damage to the goods (and delay), chaos under the contract of carriage could be created. Documentary securities needed for trade financing might be put in jeopardy. Two examples may be given.

The first is the requirements of the CMR relating to the consignment note. These may apply between the carrier and an inland subcarrier, but their application to a part of the carriage under the main contract of carriage would be inconsistent with the documentary provisions of the Rotterdam Rules that, by their nature, must cover the whole carriage.

A second example is the provisions of the CMR relating to the right to give the carrier instructions. These again can only be applied to the relation between carrier and subcarrier (in which relation the carrier is the ‘sender’). For the main contract of carriage the provisions on the right of control of the Rotterdam Rules must apply.

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\(^5\) To be more precise: the draft refers to an “international instrument”. This term includes an EU Regulation or Directive, which may not qualify as a convention but certainly is an international instrument.

\(^6\) To my knowledge, there may be one exception. Article 31 of the Budapest Convention on the Contract for the Carriage of Goods by Inland Waterway allows State-Parties to declare that it will apply the convention to its own national carriage as well. Therefore, it is arguable that under the Rotterdam Rules, in cases that the damage occurs during a national inland navigation carriage in a State that made such declaration, the liability rules of the Budapest Convention must be applied.
Further, the provisions which prevail must have a mandatory character. Whether such mandatory character is one-sided or two-sided does not matter.

In order for the inland transport convention possibly to apply, the loss of or damage to goods or delay must have occurred during the period that the goods are ashore. The choice was, in principle, between ‘detected’, ‘caused’, or ‘occurred’.

‘Detected’ has the advantage that the time and location of detection of a loss or damage can clearly be established. The disadvantage is, however, that the liability of the carrier in many cases will be allocated to the final (inland) part of the carriage, because damage to goods often is detected at or after completion of the carriage of the goods.

‘Caused’ has the disadvantage that the liability of the carrier often will be allocated to the first (inland) leg of the voyage, because in the container trade the most common cause of damage is bad stowage of the goods in the container by the shipper and this cause occurs before the voyage begins. An even greater disadvantage of ‘caused’ is that first the matter of causation has to be resolved before it can be determined whether an inland convention is applicable to the carrier’s liability.

Eventually, the choice was made for ‘occurred’ because, it was viewed, the occurrence in most cases is reasonably easy to establish and is expected to produce the fairest results.

The loss of or damage to goods or delay must have occurred solely before or after the maritime part of the voyage. This means that, instead of article 26, the general liability rules of the convention (i.e. those that apply to the maritime part of the transport) continue to apply when:

(i) the loss of or damage or delay to the goods occurs during the carriage by sea and another mode of transport, such as gradually occurring damage, or

(ii) it cannot be determined where the damage has occurred (‘concealed damage’).

In initial drafts of the convention, article 26 was formulated as a conflict of convention provision. The words in the chapeau “do not prevail over” are reminiscent of this. In earlier texts wording was used to the effect that an other (inland) convention would apply if according to its own terms it had to apply to the inland part of the multimodal maritime carriage. The objection against
In particular, such difference exists in respect of the CMR. In England, CMR is held applicable to an international road leg under an international air carriage, refer Quantum Corporation Inc. and others v. Plane Trucking Ltd. and another [2002] EWCA Civ 350; [2002] 2 Lloyd’ s Rep 24 (CA). In Germany, CMR does not apply to a road haulage part of a multimodal carriage, refer the German Supreme Court in BGH 17 July 2008, I ZR 181/05. A similar view is held in the Netherlands by the Court of Appeal of ’s-Hertogenbosch, 2 November 2004, S&S 2006, 117. In these two jurisdictions the CMR only applies to the road haulage subcontract that is made between the multimodal carrier and the road (sub) carrier.

In the final draft, however, the legal technique of the ‘hypothetical contract’ is used. The great advantage of the final wording is that the application of article 26 does not depend on any specific interpretation of the scope rules of other conventions, but that it applies when its own conditions are met.

An example may illustrate this: Let us assume a carriage from Houston to Berlin through the port of Rotterdam. The carriage from Houston to Rotterdam is performed by sea and the oncarriage to Berlin by road haulage. The damage occurs between Rotterdam and Berlin. Now, according to the hypothetical contract formula “if the shipper had made a separate and direct contract with the carrier in respect of the particular stage of carriage where the loss of, or damage to the goods, … occurred” the liability rules of the CMR convention apply to this damage, because (i) Germany or The Netherlands are party to the CMR (in fact both) and (ii) the damage occurred during the period of the hypothetical CMR contract.

In my opinion, the answer is yes: it is the intention of article 26 that the courts of a State Party to the Rotterdam Rules should do so, even if such State is not a Party to the CMR. And for such courts it is for the application of the CMR equally irrelevant whether The Netherlands and/or Germany are a Party to the Rotterdam Rules (but one of them must be a Party to the CMR, which is a requirement of the CMR itself to apply to the hypothetical contract).

In earlier drafts a further paragraph was added to article 26 to the effect that this article would apply “regardless of the national law otherwise applicable to contract of carriage”. This paragraph was meant as a conflict of

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7 In particular, such difference exists in respect of the CMR. In England, CMR is held applicable to an international road leg under an international air carriage, refer Quantum Corporation Inc. and others v. Plane Trucking Ltd. and another [2002] EWCA Civ 350; [2002] 2 Lloyd’s Rep 24 (CA). In Germany, CMR does not apply to a road haulage part of a multimodal carriage, refer the German Supreme Court in BGH 17 July 2008, I ZR 181/05. A similar view is held in the Netherlands by the Court of Appeal of ’s-Hertogenbosch, 2 November 2004, S&S 2006, 117. In these two jurisdictions the CMR only applies to the road haulage subcontract that is made between the multimodal carrier and the road (sub) carrier.

8 Refer A/CN.9/WG.III/WP.56 and earlier drafts.
Another argument in favour of deletion was that the RR should, generally, not deal with applicable law matters. For transport conventions incorporation by reference of provisions of another convention is not unique: the second sentence of article 2 CMR does the same. Eventually, it was decided to delete this paragraph because it was regarded as superfluous, in particular after the choice made by the drafters for the hypothetical contract formula. It is this formula combined with the general scope provisions of the CMR that determines that the CMR liability provisions apply to the damage in question. Or, in other words, the effect of article 26 is that the liability provisions of other inland transport conventions are incorporated by reference in the Rotterdam Rules and, this way, have become an integral part of the Rotterdam Rules provided the conditions of their application set out in article 26 are met.

Also the words in the chapeau “do not prevail over” may in the example not be interpreted as if a court of a non-CMR state has a sort of option to apply CMR. It was discussed in UNCITRAL whether these words (which were a left over of an earlier draft) were to be replaced upon the introduction of the hypothetical contract formula, but the general view was that there was no need for doing so. The draft of article 26, as a whole, was regarded as sufficiently clear.

(h) at the time of

The other convention must have been applicable to the hypothetical contract at the time of the loss, damage or event or circumstance causing delay in delivery. In other words, not only the liability provisions of existing conventions are incorporated by reference in the Rotterdam Rules, but also those of possible future conventions. The date of occurrence of the loss or damage under the RR is the relevant moment for the determination whether the liability rules of the other convention apply.

(i) effectiveness of article 26

Criticism was raised that article 26 would be ineffective because the carrier (who has according to the system of article 17 the onus of proof of the cause of the damage) would not be interested to prove that the damage was caused during the inland part of the carriage.

I do not share this view. First, because in inland transport the vast majority of damages are caused by obvious occurrences: road accidents, theft of cargo, etc. Therefore, in many cases the cause of damages in inland transport is clear from the facts and the onus of proof is no issue at all.

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9 Another argument in favour of deletion was that the RR should, generally, not deal with applicable law matters.

10 For transport conventions incorporation by reference of provisions of another convention is not unique: the second sentence of article 2 CMR does the same.
Second, this criticism is based on the assumption that the inland liability regime is more favourable to the cargo claimant than that of the RR. In many cases, this assumption is wrong. The practical results of the liability regime of the RR and that of the inland conventions do not so much substantially differ anymore. In addition, and this may in practice even be more important, the limitation levels for the relevant damages may be (much) higher under the RR.

The Rotterdam Rules include a package limitation (875 SDR per package) and a weight limitation (3 SDR per kg), while the inland conventions only include a weight limitation (CMR: 8 SDR per kg). Because multimodal transport is primarily relevant to the carriage of containerized packed goods, in most cases the package limitation of the RR will result in a (much) higher limitation level than the weight limitation of the inland convention will do. A comparison between the RR and the CMR will show that with regard to packages below abt. 109 kg the RR will produce a better limitation result for the cargo claimant and for packages over abt. 109 kg the outcome will be more favourable for the carrier. And for any insider in the container transport it is common knowledge that packages in a container that weight over 109 kg are rather exceptional. In other words, this difference in limitation levels will have the result that in many cases a carrier may have an interest to prove that the damage occurred during the inland transport.

(i) Conclusion

It may be concluded that article 26 provides for a network system, but because of the restrictions outlined in (a) to (e) above, the article is correctly labelled as a ‘limited network system’.

The article is intended to incorporate the liability provisions of certain inland conventions in the Rotterdam Rules by reference. These must be applied when the conditions referred to in the chapeau of article 26 are met.

In addition, the practical effectiveness of article 26 is beyond reasonable doubt.

3. The position of the inland carrier

The previous paragraph dealt with the liability of the carrier under the main contract. A further question that may arise is how the Rotterdam Rules affect the position of the inland (sub)carrier.

In the articles 18 and 19 of the Rotterdam Rules the position of, amongst others, subcarriers is dealt with. The main rule is that the contracting carrier is responsible for the performance of all subcarriers that are involved in the carriage. A cargo claimant, however, is also entitled to sue a subcarrier directly, whereupon such subcarrier may defend itself with all the rights and remedies that the new convention provides to the contracting carrier. This
This exclusivity of the operation in the port area is related to the inland carrier’s performance under the relevant contract of carriage. Examples of such inland carriers are the fork lift truck operator shifting a container within a terminal, a road haulage carrier transferring a transhipment container from one terminal to another in the same port, or a rail operator shunting railcars with goods within the port area in order to compose a full train. However, if thereafter the same rail operator in his capacity as subcontractor under the same contract of multimodal carriage pulls this train to a destination outside the port area, it is not a maritime performing party, also not for the shunting part of his performance.

It follows that the Rotterdam Rules do not directly affect inland carriers. They are in article 4 even not listed under the persons that enjoy a himalaya protection under the new convention.

There was considerable support amongst the delegates to leave the position of inland carriers untouched. This support was twofold. It came from delegates that did not want ‘maritime law coming ashore’, because the inland transport liability regime in their countries is more favourable for the claimant. And it came from delegates from countries where the opposite is the case: inland carriers under their national law being subject to a liability regime that is more favourable for them than the regime of the Rotterdam Rules. An inland carrier, it was argued, might be unaware that his operations are part of an overall multimodal contract and, in case of a direct action against him under the RR, he might be faced with much higher limits than he is insured for.

The result is that a party to the contract of carriage can only institute an action against an inland carrier based on tort. It means that such claimant not only has to prove the damage and that it occurred during the transport period, but also must prove the cause of the damage and the causation. Then, the inland carrier may have a himalaya protection under an applicable inland convention or under national law.

Another possibility might be that in such case the inland carrier is able to invoke a himalaya clause in the multimodal contract (under which the inland carrier is a (sub)carrier), referring to defences available for him under the Rotterdam Rules.

This exclusivity of the operation in the port area is related to the inland carrier’s performance under the relevant contract of carriage. Examples of such inland carriers are the fork lift truck operator shifting a container within a terminal, a road haulage carrier transferring a transhipment container from one terminal to another in the same port, or a rail operator shunting railcars with goods within the port area in order to compose a full train. However, if thereafter the same rail operator in his capacity as subcontractor under the same contract of multimodal carriage pulls this train to a destination outside the port area, it is not a maritime performing party, also not for the shunting part of his performance.

Unless, of course, national law would allow the claimant to sue the inland carrier under the subcontract. If the claimant is not only the consignee under the main contract of carriage, but it is mentioned as consignee under the subcontract as well, it may be that under certain national laws this claimant may be deemed (by claiming the goods from the subcarrier or otherwise) to have acceded to the subcontract (or otherwise has become a party to the subcontract) and, accordingly, may have acquired contractual rights against the subcarrier.
The conclusion from this paragraph is that, unless the exceptional case applies that it exclusively operates within a port area, the inland carrier will not be affected by the Rotterdam Rules. Normally, (i) under a recourse action by the main carrier, (ii) in the event of a case referred to in footnote 12, or (iii) through invoking a possible himalaya protection in case of a tort claim, the inland carrier will only be faced with national law or a convention relating to its own business: inland transport.

4. Conflicts with other conventions

The third pillar under the ‘multimodal compromise’ in the Rotterdam Rules is the conflict of conventions issue, which is, with regard to multimodal transport, a notoriously difficult subject. The RR deal with it as follows:

First, article 26 has a conflict avoiding effect. It incorporates the liability provisions of the inland transport conventions by reference, meaning that when the conditions for the application of article 26 are met, the liability provisions of the other conventions apply instead of the corresponding provisions of the Rotterdam Rules.

Second, the Rotterdam Rules include a specific article dealing with the conflicts of convention issue: article 82. The chapeau of this article states that priority shall be given to four categories of conventions – and even future amendments thereof, but no future new conventions – that regulate the liability of the carrier for loss or damage to the goods. These categories are subsequently listed in this article, but in respect of three of them the priority rule is restricted to a specified assumed area of overlap between the Rotterdam Rules and the other convention. Since the assumed area of overlap is specified, outside this assumed area of overlap the Rotterdam Rules prevail over the other possibly conflicting convention. And if, in a given case, the assumption is wrong, there is no overlap and therefore no conflict13.

I like to underline that the specification in article 82 of areas of overlap does not mean that the application of the conflict rule is restricted to a certain part of the carriage. The aim of the conflict rule is to determine which convention applies to the contract of carriage, as defined in article 1 (1): either the RR or the other type of convention that the article 82 subparagraph in question refers to.

The listed categories of conventions are the following:

– under (a) reference is made to “any convention governing the carriage of goods by air”. No specific area of possible overlap is mentioned here. There is only the general statement “to the extent that such convention

13 See nt 15.
according to its provisions applies to any part of the contract of carriage14. For the multimodal practice a conflict provision between air- and sea transport conventions was not regarded as very important because sea-air combinations under a single contract of carriage are rare.

– (b) refers to “any convention governing the carriage of goods by road” and the assumed area of overlap with the RR is “the carriage of goods that remain loaded on a road cargo vehicle carried on board of a ship”. This description does not refer to a certain part or period of the carriage, but it refers to a certain type of carriage, namely roll-on roll-off carriage, such as the carriage to which art 2 CMR applies.

An example may illustrate how this provision is intended to operate. Let us assume a contract of carriage of goods by road in a vehicle between Berlin, Germany and Manchester, UK. In order to arrive in the UK, the road carrier makes use of a ferry connection between Rotterdam, The Netherlands, and Hull, UK. The CMR Convention, including its article 2, applies to this contract of carriage. Since the goods are also carried by sea, the Rotterdam Rules may apply to this contract of carriage as well. According to the priority rule, in this example the Rotterdam Rules yield to the CMR, because it concerns here “the carriage of goods that remain loaded on a road cargo vehicle carried on board of a ship”15. Had the cargo been offloaded from the road haulage vehicle and stowed separately in the seagoing vessel, the Rotterdam Rules would have applied to this contract of carriage, because then the contract of carriage would have satisfied the requirements of article 1 (1) of the RR. In both cases the respective conventions apply to the whole transport under the contract of carriage and the ‘period aspect’ is covered by

14 For a list of possible conflict situations between the Montreal Convention and the Rotterdam Rules see Christopher Hancock ‘Multimodal Transport and the new UN Convention on the carriage of goods’, [2008] 14 JIML p 494. Also the fact that under the Rotterdam Rules the place of occurrence determines the applicability of the other convention while under the air transport convention the place where the damage is caused is relevant for its applicability, may result in a conflict between the air transport conventions and the RR.

15 Another matter is whether there is an overlap here. In other words, do the Rotterdam Rules also apply to the ferry part of the road haulage? If so, the contract of carriage concluded under the CMR must also qualify as a maritime contract under art 1 (1) of the RR and be a contract that “provides for the carriage by sea and may provide for carriage by other modes of transport in addition to sea carriage”. In my view, it is arguable that, unless the operator of road cargo vehicle with whom the contract of carriage is concluded and the ferry operator are the same legal entity, such CMR contract would not qualify as a article 1 (1) RR contract. However, it was thought useful that any doubt about a possible overlap between article 2 CMR and the scope rules of the RR should be taken away and article 82, subparagraph (b), aims to provide this clarity.
the respective conventions themselves. When the CMR applies and the damage occurs during the ferry part of the carriage, art 2 CMR deals with this situation. When the RR apply and the damage occurs during the road haulage part, art 26 RR may be relevant for such damage.

- (c) refers to “any convention governing the carriage of goods by rail” and the possible area of overlap with the RR is “carriage of goods by sea as a supplement to the carriage by rail”. This provision takes into account that article 1(4) of the COTIF/CIM Rules 1999 extends the application of these rules to the sea part of an international railway service listed in accordance with article 24(1) of the COTIF Convention 1999. Actually, this list includes several railway services with a sea part.

- (d) refers to “any convention governing the carriage of goods by inland waterways” and the possible area of overlap with the RR is “carriage of goods without trans-shipment both by inland waterways and sea”. It is a matter of fact that (small) seagoing vessels may carry goods to or from ports located at far inland places. For these cases the Budapest Convention 2001 (CMNI) provides in article 2(2) whether it applies or not. If the contract of carriage also qualifies as a contract under article 1(1) of the RR, this CMNI rule of application may conflict with the scope rules of the RR.

The general opinion of the delegates to UNCITRAL was that through the provisions outlined above, the matter of a possible conflict between the Rotterdam Rules and other transport conventions was adequately solved. This view implies that, in respect of the CMR convention, the view of the English appeal judge in the Quantum case was rejected and, instead, the line of thinking of the German Supreme Court and the Netherlands’ Court of Appeal in ‘s-Hertogenbosch was followed, meaning that the unimodal conventions do not ex proprio vigore apply to the different parts of a multimodal contract of carriage.

5. ‘Maritime plus’ innovative?

In my opinion, this question may be answered rather negatively.

First, the phenomenon ‘unimodal plus’ is well known in other conventions. Since long, the air transport conventions apply to ‘pick-up and delivery services’, in respect of which no geographical limits are set by these conventions. Further, the COTIF/CIM Rules 1999 apply to national road and inland waterways transport that is supplementary to an international rail
carriage\textsuperscript{19}. The same applies to ‘listed’ supplementary sea- and international inland waterways transport\textsuperscript{20}. In my view, as a matter of principle, there is not so much difference between these precedents\textsuperscript{21} and the ‘maritime plus’ concept of the Rotterdam Rules.

Second, as to the carrier’s liability issue the Rotterdam Rules do not create much changes in practice. As outlined above, for the inland (sub) carrier nothing changes at all, while a large majority of maritime container carriers already operates under multimodal contracts of carriage that, since decades, include a network liability regime without reported difficulties. The main practical change will be that the RR network system is not extended to national law, while the bill of lading network systems often are.

6. Conclusions

– The Rotterdam Rules apply also to inland carriage if it is performed prior to or after the maritime part of the carriage and if it is covered under the same contract as the maritime leg.

– Article 26 incorporates the liability rules of the inland conventions. These rules replace the liability provisions of the Rotterdam Rules when the conditions set in article 26 for their application are met.

– A direct action against the inland carrier is not possible under the Rotterdam Rules.

– To the extent that the scope of other transport conventions may include carriage by sea, such other convention prevails over the Rotterdam Rules.

– The ‘maritime plus’ concept certainly is not revolutionary, at best it is evolutionary.

\textsuperscript{19} Article 1 (3) COTIF/CIM.

\textsuperscript{20} Article 1 (4) COTIF/CIM.

\textsuperscript{21} I do not refer to article 2 CMR because I do not consider ‘piggy back’ carriage as genuine multimodal carriage. In such case the vehicle does not make use of its ‘proper’ infrastructure, the road, but by necessity and for a certain part only, of another type infrastructure such as rail or water. In my view, the yardstick for the application of CMR is not the use of a certain type of infrastructure; yardstick is whether a certain type of contract has been concluded. However, for those that do not share my view, article 2 may be a further precedent.
CONCLUSIONS OF THE CHAIRMAN

The UNCITRAL Program consisted of four panel discussions held on Tuesday and Thursday afternoons, October 14 and 16, 2008, during which thirteen different speakers presented, analyzed, and discussed the UNCITRAL Draft Convention.

Kate Lannan, the secretary of UNCITRAL Working Group III (Transport Law), gave an overview of the project. Eight speakers addressed technical aspects of the Draft Convention. And four speakers gave industry perspectives.

The views expressed on the Draft Convention ranged from enthusiastically supportive (by several speakers) to carefully neutral. Industry representatives were concerned about greater burdens placed on their respective interests, but generally concluded that these burdens were more than offset by the benefits of greater predictability and uniformity. One industry representative urged national member associations to encourage their governments to ratify the Convention.

Several speakers noted that if the Draft Convention is not ratified – after all the time and effort that has been expended on it – there is no prospect of achieving a global solution in the decades ahead. This would result in a total breakdown in uniformity as regulation is imposed on a national or regional basis.

In addition to several questions, the Conference heard positive comments about the Draft Convention from the floor.

I conclude that the Conference believes that the Draft Convention generally achieves a fair balance among the various interests in the shipping industry, even though some delegates consider that it contains provisions that they do not find wholly satisfactory. Moreover, it offers a unique opportunity to unify and update maritime law and practice on a global basis.

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Resolution of the Conference on UNCITRAL Draft Convention

The 39th Conference of the Comité Maritime International,

Believing that the UNCITRAL Draft Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea generally achieves a fair balance among the various interests in the shipping industry, even though some delegates consider that it contains provisions that they do not find wholly satisfactory; and
Recognizing that the Draft Convention offers a unique opportunity to unify and update maritime law and practice on a global basis,
Adopts the Report on the UNCITRAL program, and
Endorses the UNCITRAL Draft Convention
NON-TECHNICAL MEASURES TO PROMOTE QUALITY SHIPPING

(1) Quality Shipping – Background, by Karl Gombrii Page 318

(2) Summary of Discussions in the International Oil Pollution Compensation Funds, by Richard Shaw » 323

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QUALITY SHIPPING - BACKGROUND

KARL GOMBRII

The efforts to reduce substandard shipping or – with a more positive spin – to promote quality shipping, has traditionally been focused on technical issues. This is reflected for example by the SOLAS and MARPOL Conventions. Gradually, the importance of the human factor, or the training and shape of the seafarers on board the ships has been recognised as being of equal importance. This is reflected e.g. by the STWC Convention.

Statistically, the quality of the ocean going fleet also improved towards the end of the last century: Despite a great increase in the volume of seaborne trade, there was a significant reduction in e.g. ship source pollution. This is so despite the well known major accidents like Braer, Exxon Valdes and the other unfortunate names.

Nevertheless, the efforts to promote quality shipping continued, and it was recognised that the problem might be less related to structural defects of the vessel, or training or condition of the seafarers, but more to the lack of effective management systems and a failure to meet the required minimum standards and, in some cases, a “culture of minimum compliance” leading to the cutting of corners and expenses. This trend of trying to improve the “culture” is reflected by the ISM Code (International Safety Management Code).

Compliance with existing requirements is being checked by classification societies, flag states, port states and to some extent coastal states. It has been felt though that the implementation of the requirements, particularly by the flag states, is of varying quality. This is so firstly because some of the treaties allow flag states to delegate statutory work to private entities, primarily classification societies, but also because the treaties are not always precise, for example in using expressions such as “to the satisfaction of the administration” and the like, which give a lot of latitude to the implementing flag state. In response, IMO has introduced a Voluntary Member State Audit Scheme and has also adopted a Code for the Implementation of Mandatory IMO Instruments.

The 1992 IOPC Fund has also been directly and indirectly interested in these matters. The Fund decided in 2000 to set up a Working Group to assess the adequacy of the international compensation regime for oil pollution damage, i.e. the Civil Liability and the Fund Conventions from 1992. In 2003
this resulted in the adoption of a Protocol to the 1992 Fund Convention, establishing a supplementary compensation fund, which hugely increases the available amount of compensation for oil pollution damage.

The Working Group also considered whether amendments should be made in relation to the shipowners’ liability. It was emphasised that it was the responsibility of the shipowner to maintain a safe and seaworthy ship. Several proposals were made in this respect:

1. The Civil Liability Convention should be amended so as to impose a financial burden on the individual cargo owner by means of increased contributions to the fund for the use of “a certain category of ships” for example those of a particular age.

2. Another suggestion was to increase the shipowners’ liability limit when the incident arose as a result of an oil tanker’s defect or deficiency coupled with an obligation to pay an extra contribution to the fund.

3. A third proposal was related to accidents with ships with “defects due to decay or lack of maintenance contributing to the accident” in which case the shipowner would be deprived of the right to limit his liability.

In the end it appeared that there was insufficient support for any revision and it was decided not to review the convention.

The 1992 Fund Working Group

As a kind of political quid pro quo, however, it was at the same time decided by the 1992 Fund Assembly to establish a new Working Group with the mandate i.a. to develop proposals in respect of non-technical measures and guidelines for contracting states and the industry in order to promote quality shipping by ensuring that effective checks and procedures are in place to establish that ships insured and certified are suitable for the carriage of oil by sea covered under the international regime created by the 1992 Conventions.

When the Assembly decided to set up the new Working Group, it had available a note submitted to it by the International Group of P & I Clubs, which inter alia provided details of the service and inspections which were carried out by classification societies, port states and insurance and cargo interests.

Among the issues discussed by the Working Group were the following:

1. The feasibility and impact of differentiated insurance rates and premiums that would encourage quality shipping.

2. Possible measures for the denial or withdrawal of insurance cover in order to improve the safer transport of oil.

3. Factors that prevent a sharing of information between marine
Non-technical measures to promote quality shipping

insurers and efforts to develop a common policy or other measures that would facilitate such sharing of information.

With respect to the first issue it was noted that

– the International Group had concluded that there was no evidence to establish a direct relation between substandard ships and a bad claim’s record, and that the great majority of maritime casualties involved good quality vessels; and that

– on the basis of a study by the secretariat, vessels outside the International Group and outside IACS did not appear to be more likely to be involved in pollution incidents than vessels entered with IACS and the International Group.

The Working Group therefore concluded that differentiation of insurance rates and premiums was not likely to lead to significant improvement in the quality of transportation of oil in bulk by sea. From the information before it, the Working Group also concluded that it was not possible to verify that there was a correlation between the type of contract underwritten (e.g. high deductibles) and a higher rate of accidents.

With respect to the second issue, the Working Group noted in relation to hull insurance

– that accurate information regarding how many oil tankers were navigating without hull insurance was difficult to obtain,

– that accurate and directly relevant information was not available as to whether there is a link between the absence of hull insurance and the number of incidents in which an oil tanker is involved,

– that the hull insurance market was very competitive.

The Working Group concluded that any further contribution that the hull underwriters can make to quality shipping is probably limited.

With respect to the third issue, i.e. to identify factors that prevent a sharing of information between marine insurers and seek to develop a common policy or other measures that would facilitate such sharing of information, the Working Group at its first meeting extended an invitation to the CMI to undertake a study with the following aims:

a. To identify factors that allow/require/prevent marine insurers and other business endeavours from sharing information on clients, including national legislation and practises; and

b. To identify whether competition law and practises take into consideration the need for taking measures to encourage quality shipping for the transportation of oil.

The Working Group at its second meeting had been informed that a study had already been carried out by the International Group of P & I Clubs, the
results of which had demonstrated that the problem according to that study had only occurred under Norwegian legislation. This problem had been rectified and the Working Group had been informed of the change in Norwegian legislation. As a result, the Working Group decided that the CMI study should focus on the difficulties, if any, faced by the hull underwriters.

It invited CMI to proceed on that basis and approved a draft questionnaire which had been prepared by the CMI in close cooperation with the International Union of Marine Insurance (IUMI) and the IOPC Fund Secretariat, a copy of which is annexed to Richard Shaw’s paper.

This was distributed to the National Maritime Law Associations’ members of the CMI in October 2007 with an extremely short time limit. Given the complexity of the issues and the questions, only 9 National Maritime Law Associations (NMLAs) were able to meet the deadline.

The CMI delegate to the third meeting of the Working Group in March 2008 invited the meeting to authorise CMI to continue the work and to carry out an analysis of the responses. The recommendation was that an academic with special expertise in this field should be asked to carry out the analysis, but the decision was taken by the IOPC Fund Working Group not to proceed with further work on this topic.

The Working Group was also informed that the International Group had drafted a model rule to incorporate into insurance contracts for use by all clubs in the group stating that the shipowner agreed to the sharing of information related to the condition of his ship. The International Group had taken legal advice as to whether that model rule, if incorporated, would raise competition law problems. The advice was that it would not violate EU or US competition law.

We will hear more about the international group and its activities in this field from Nigel Carden later this morning. I will therefore not dwell on that any further at this stage.

I should perhaps also mention that the Working Group briefly considered a couple of other interesting issues in order to promote quality shipping, e.g.

- the possibility for a flag state to withdraw a CLC certificate if it had indications that the quality was less than satisfactory,
- the introduction of economic incentives such as reduced port tariffs and fewer ship inspections for quality shipping representatives.

However, none of the proposals gathered sufficient support within the Working Group.

So the situation is that the 1992 IOPC Fund seems to have lost interest in the topic, at least for the time being, whilst the CMI is stranded with 9 replies to a questionnaire which raised complicated and detailed questions as to the national law of the countries of the member associations regarding
1. Competition law
2. Data protection law, and
3. The law of defamation

The replies to the questionnaire highlighted very significant differences in the practises of states, which indicated that it might be very difficult to synthesise the answers into one set of principles that could be recommended to all states.

In view of all that, the question before us seems to be: What do we, the CMI, do now? Three alternative replies to that question come immediately to mind:

1. We can leave it at that, recognising that we did what we were asked to do, but that there was no real interest in pursuing the topic, in which case the questionnaire and the replies could be made publicly available, including on the CMI website, for further consideration or research at some later stage.

2. We can pursue the topic independently and try to develop model rules or recommendations as to what states could do in order to promote quality shipping.

3. We can try to produce, or have produced, a summary and brief analysis of the replies to the questionnaire in order to have a more tangible, although condensed, result of the work of the CMI and its National Maritime Law Associations.
SUMMARY OF DISCUSSIONS
IN THE INTERNATIONAL OIL POLLUTION
COMPENSATION FUNDS¹

RICHARD SHAW

The issue of non-technical measures to promote quality shipping is not a new one. The discussion started following the winding up of the work of the Working Group chaired by Alfred Popp QC (Canada) on the working of the International Pollution Compensation System generally. The conclusion of that working group was that, although there were several aspects of the present system which could be improved, there was no compelling need at that time (October 2005) for a new International Convention.

It was suggested, however, that work should be done to investigate the possibility of non-technical measures to be taken by other parties, such as marine insurers, to eliminate the activities of sub-standard ships.

Due note was taken of the report of the Organisation for Economic Cooperation and Development (OECD) on this subject, which they had commissioned from Mr Terence Coghlin, formerly Chief Executive of Thomas Miller P and I, managers of the UK P and I Club.²

The conclusions of that report are set out in the section entitled “Overview” at pages 9 and 10. Item 1.10 reads:

“Many insurers have in recent years become more diligent and discriminating in their selection of assureds. But all insurers would be helped and encouraged in doing so if national and regional laws and regulations were modified as necessary to remove any barriers to the above steps and to a freer flow of information, to and between insurers, about the quality of ships and their operators.”

The IOPC Fund set up a working group under the chairmanship of Birgit Solling Olsen (Denmark) to review the possible measures which might be adopted to promote quality shipping and to discourage poor quality ships and

¹ Regular reports on all the meetings of the IOPC Fund bodies are published in the CMI Newsletter on the CMI website.

² The full text of Mr Coghlin’s report is at www.oecd.org/dateoecd/58/15/32144381.pdf
their owners. One of the areas examined by the working group was the use of insurance as a means of doing so.

The International Group of P and I Clubs reviewed measures which they might introduce with this objective, and the steps taken by group clubs following this study were reported to the IOPC Fund meeting in March 2007.

Sharing of information between marine insurers

The Working Group examined legal barriers to the exchange by insurers of information on ship standards. Details were provided of the new statute adopted by the Norwegian Parliament, the Ship Safety Act 2007, which removed the previous prohibition on the exchange of information on ship standards by marine insurers. This new law also provides that an assured has to be informed about what information has been sent to a new or proposed insurer. This encouraged a number of member states to examine their own laws in this area to see whether such a prohibition exists. Under English law there is no general prohibition, however care has to be taken due to the potential commercial sensitivity of such information, and therefore it is prudent to seek the permission of the assured before passing on such information.

The CMI offered to assist the IOPC Fund Working Group by conducting a survey of the relevant laws from its member maritime law associations, and a parallel survey was conducted by IUMI in the insurance industry as to the exact nature of their concerns regarding the sharing of information.

At the June 2007 meeting of the IOPC Funds it was decided to ask CMI and IUMI to assist with further work. The CMI appointed a working group consisting of Karl-Johan Gombrii (Norway), and Richard Shaw (UK). A questionnaire was prepared by this working group, in close consultation with the International Union of Marine Insurance (IUMI) and the IOPC Fund Secretariat, a copy of which is annexed to this paper. This was distributed to National Maritime Law Associations in October 2007, with a request that responses be submitted to the CMI Office by the 20th December.

In the event, the complexity of the legal issues and the limited time available meant that few NMLAs were able to meet this deadline, and when the IOPC Fund Working Group next met in Monaco in March 2008 responses had only been received from nine NMLAs. The CMI Delegate invited the meeting to authorise CMI to continue this work, and to carry out an analysis of the responses, but this did not commend itself to the delegates at the Monaco meeting.

There is no doubt that the task has proved more complex than originally envisaged, and the very diversity of relevant national laws, particularly those relating to competition, makes it difficult to distil common principles.
CMI recommended that an academic with special experience of this field (Dr. Renato Nazzini of the University of Southampton) should be asked to carry out an analysis of the responses.

This did not, however, commend itself to the delegates, and the decision was taken by the IOPC Fund Working Group not to proceed with further work on this topic. The Chairman of the Working Group has prepared a draft set of Conclusions on all aspects of the Group’s work, which can be found in document number 92FUND/WGR.4/14 on the IOPC Fund website at www.iopcf.org

**Further work by CMI**

In view of the new situation, where the IOPC Fund’s interest in continuing to work on this topic seems to have ceased, the CMI is presently considering how best to utilise the replies to the Questionnaire. A decision will be made regarding any future work in this respect after the Conference in Athens, when the topic will be the subject of a panel discussion on Thursday 16 October, chaired by Mr Karl-Johan Gombrii. The input from that session will of course be very important when a decision is taken as to whether and to what extent the CMI should pursue this topic.

It should be noted that the brief of the IOPC Fund’s studies of this topic was limited to the sharing of such information relating to oil tankers. However the same principles are equally applicable to ships carrying dry cargoes, and if the CMI is to continue work on this subject, it is recommended that the study should be cast broadly to include all types of vessel.

**ANNEX**

**QUESTIONNAIRE DISTRIBUTED TO CMI MEMBER ASSOCIATIONS NON-TECHNICAL MEASURES TO PROMOTE QUALITY SHIPPING**

CMI Questionnaire to National Maritime Law Associations

As part of their overall review of the working of the Oil Pollution Compensation system, the International Oil Pollution Compensation Fund (IOPC Fund) set up a Working Group under the chairmanship of Birgit Solving Olsen of Denmark with a mission, inter alia, to research possible non-technical measures to promote quality shipping for Carriage by Sea.

One of the topics adopted by the Working Group for further study was to identify factors which prevent the sharing of information between marine insurers regarding the condition of the ship and to seek to develop
Non-technical measures to promote quality shipping

A common policy or other measures that would facilitate the sharing of information. The Comité Maritime International was asked and has agreed to assist the IOPC Fund with this study.

Three particular areas of potential difficulty have been identified by the Working Group:

1. Competition Law.
2. Data Protection Law.
3. Law of Defamation.

Your Association is kindly requested to supply answers to the Questions set out below regarding the relevant laws in your country. You may find it helpful to consult colleagues who are academics or lawyers specialising in these fields. Your replies will assist us in ascertaining how far cooperation or exchange of information on sub-standard shipping can go without breaching the law.

It should be noted that the International Group of P&I Clubs has already put in place a number of measures to ensure the maximum free flow of information on entered ships between Clubs which are members of the International Group. Details of these measures are set out in the IOPC Fund document 92FUND/WGR4/4/4 which is available at www.iopcfund-docs.org. This Questionnaire is therefore concerned with property insurance, mainly hull and machinery and cargo insurance, not P&I. Details of the position of the International Union of Marine Insurance (IUMI) in this respect is set out in the IOPC Fund Document 92FUND/WGR.4/7/5, which is also available at www.iopcfund-docs.org.

It would be appreciated if you would ensure that your Association’s response to this Questionnaire is received at the CMI Secretariat in Antwerp not later than December 20, 2007. The short time limit is very much regretted, but is necessary in order to enable the CMI, which will establish its own Working Group on Quality Shipping, to assist the IOPC Fund Working Group as requested.

A. Competition law

1. Are there rules of competition law and practice in your country which prevent or restrict the sharing of information on clients and their ships by insurers, classification societies and/or Port State Control authorities, or other bodies or organisations with an interest in ship safety?

2. If so, does competition law and practice in your country in principle take into account certain considerations of public interest as a possible ground for an exception to those rules?

3. If so, is the need for measures aimed at enhancing the quality and
safety of transport by sea among those considerations of public interest?

4. If not, what other legal rules or principles in your country would permit the need for quality and safety of transport by sea to be taken into consideration when determining what is allowed under competition law and practice in your country?

5. Do you consider, in the context of these questions, that the ability to share such information between insurers would in practice lead to the insurance or other relevant services not being available to substandard ships/shipowners, or being available at a significantly higher price or on significantly different conditions?

In answering questions 1–5, please provide extracts, details or examples together if possible with translations into English.

B. Data protection law

1. Are there rules of data protection law and practice in your country which prevent the sharing of information on clients and their ships by bodies or organisations with an interest in ship safety, such as insurers, classification societies and/or Port State Control authorities?

2. If so, does the law and practice on data protection in your country in principle take into account certain considerations of public interest as a possible ground for an exception to those rules?

3. If so, is the need for measures aimed at enhancing the quality and safety of transport by sea among those considerations of public interest?

4. If not, what other legal rules or principles in your country would permit the need for quality and safety of transport by sea to be taken into consideration when determining what is allowed under law and practice on data protection in your country?

In answering questions 1-4, please supply details, if possible translated into English as necessary.

C. Law of Defamation

1. Would the laws of your country relating to defamation apply to the sharing of information concerning matters of ship safety, or the lack of it, by bodies or organisations with an interest in ship safety, such as insurers, classification societies and/or Port State Control authorities?

2. If so, are there circumstances in which such sharing of information would be considered privileged and thus not grounds for a defamation action?

3. If so, is the need for measures aimed at enhancing the quality and safety of transport by sea among those considerations giving rise to such privilege?
In answering questions 1-3, please supply details, if possible translated into English as necessary.

D. Legal factors not related to the law on competition, data protection or defamation

1. Are there any legal factors, not related to competition law or the law on data protection or defamation, which effectively restrict the sharing of information on clients by bodies or organisations with an interest in ship safety, such as insurers, classification societies and/or Port State Control authorities, in your country?

2. If so, do these in principle take into account certain considerations of public interest as a possible ground for an exception to those restrictions?

3. If so, is the need for quality and safety of transport by sea among those considerations of public interest?

In answering questions 1-3, please supply details, if possible translated into English as necessary.
NON TECHNICAL MEASURES
FOR THE PROMOTION OF QUALITY SHIPPING
FOR CARRIAGE OF GOODS BY SEA

NIGEL CARDEN*

Introduction

1. Readers unfamiliar with the language of IOPC Fund meetings might need some translation to understand the title of this paper. Those who attend these meetings no doubt understand better, but nevertheless some of the ideas, for which the terms ‘non-technical measures’ and ‘quality shipping’ are code, remain difficult to understand clearly and unambiguously.

2. In his excellent account of the background to the establishment in March 2006 of the IOPC Fund’s Intersessional Working Group on “Non-technical measures to promote quality shipping for carriage of oil by sea”, Karl Gombrii observes that the promotion of quality shipping can be seen as the positive side of the effort to reduce sub-standard shipping.

3. It is useful to explore these two different sides of the problem of quality. How is quality shipping understood and where is the dividing line between the sub-standard and the merely mediocre ship? Is it part of the expectation of States that non-technical measures, coupled with the technical, can help us to judge prospectively, and not merely retrospectively, which is which, and take steps to target and eliminate the substandard?

4. Or is it, rather, the expectation that by improving quality generally, the standards of even the worst ships and operators will be raised to a level where they are merely mediocre and not dangerously substandard? Is the choice of words “to promote quality shipping” not merely diplomatic nicety, but an accurate statement of what the nontechnical measures should be directed at? For my part, I believe that is so.

* Chairman – Ships’ Standards Subcommittee, International Group of P&I Clubs.
Deputy Chairman – Thomas Miller P&I Ltd.
Technical measures

5. On the technical side, one can look at the management of the ship and shipping company, the physical condition of the ship and its machinery and equipment, and the experience and competence of the crew who operate it. The standards of Classification society rules, and of SOLAS, MARPOL, and STCW provide a baseline for measurement, a framework in which the shipowner can keep his vessel maintained to acceptable standards, and a means for class, flag states, and port states to check that acceptable standards are observed.

6. The degree of compliance with such rules and standards is certainly one way to measure quality and to identify the sub-standard. The way in which that process falls to various parties involved in shipping was documented in a paper sponsored by the International Group of P&I Clubs (IG) and submitted to the 10th Session of the 1992 Fund Assembly (see document 92 FUND/A.10/32). The paper was prepared by a distinguished former head of shipping policy in the UK, Frank Wall, at the IG’s request, and its purpose was to identify, and remind the IOPC Fund delegates of the key importance of, technical measures, overseen in IMO, in promoting quality shipping.

7. It has often been said that we don’t need more legislation to promote quality shipping, we just need to enforce properly and consistently the technical measures that already exist, so that those who are fully compliant are not bearing a financial compliance burden which others are able to avoid.

8. Well, we may not need more legislation, but it is not true that we have all the technical measures necessary to ensure there is quality shipping – there are important matters of concern to insurers like the Clubs, and to other interested parties, that are not covered by class, flag or port state surveys. So there are the various additional industry technical measures, like the excellent SIRE scheme of OCIMF; and the oil companies, chemical industries and (more recently) bulk charterers’ vetting programs. There are also the P&I Clubs inspections and surveys, concentrating on a ship as a source of liability and looking at issues such as water-tightness of hatchcovers, how crews and mooring ropes interact, engine room tidiness, winch maintenance, or the contents of medical lockers.

9. Meanwhile, the full, proper and consistent enforcement of existing legislation does not happen everywhere - yet. There is variability in the standards with which technical measures are enforced – there is variation in the quality of port state control, in the quality of flag states, in the extent of their interest in how their ships are really run; and in the quality of classification society work.
Non-technical measures

10. And so, in order to make up for what is missing, to make a second line of attack/defence, one turns to so-called ‘non-technical measures’ – looking at the wider context of shipping and seeing whether there are indirect ways to drive up quality and discourage the substandard.

11. It is easy to put too much faith in the non-technical. A prominent shipping politician, after the ERIKA spill was quoted as saying “Put bluntly, there would not be the problem of substandard shipping if nobody was prepared to insure or finance it”. This is about as helpful as saying there wouldn’t be such a problem if no one designed or built such ships, or flagged them, or permitted them to use their ports, or used them.

All true – we can all be useful, by breaking links in a chain of poor quality. However, as a diagnosis of how best to discourage substandard shipping, this misses the point unless, as it suggests, the insurers and financiers have an insight unavailable to the flag state, port state or shipper, of the prospective quality of the ship.

Role of insurers

12. Why would the insurer know more? The obvious answer is to say that the insurer knows what’s gone wrong in the past, not only with that ship, but with others in the fleet – the P&I Club has paid the liabilities, the hull underwriter has seen the breakdowns and repairs, and a comparison of claims records will show up what is sub-standard (and, presumably, what is high quality). This will provide a prospective view.

13. Then, the story goes, the insurer could price punitively to reflect that poor quality – and this would have the effect of encouraging an improvement in quality.

14. We would see the ship owner willing to spend more, for example, on maintenance, in the expectation of saving insurance costs in return. Society benefits and everyone is happy.

15. And if the owner sought to escape from this process, perhaps by moving to another insurer, the industry could ensure that the risk was properly priced by sharing the information.

16. But - it ain’t necessarily so. It ain’t necessarily so. Non-technical measures, might not be such treasures, it ain’t necessarily so…..!

Quality shipping and liability costs

17. Quality in shipping is often associated with a liability cost. Like the way in which it can be expensive to hire a good lawyer, manning a ship with excellent crew can be very expensive, and this has a consequence in the costs
of insuring the employer’s liability to those crew. The old joke goes ‘if you think a good lawyer is expensive, try hiring a bad one” and of course the hiring of poorly trained or inexperienced crew has its own dangers. However, for a good many such crew, a part of the shortcoming in their skills may be compensated by the simple instinct for self-preservation afloat. Whatever the explanation, the fact is that Clubs will undoubtedly come across a proportion of ships which appear to be under-financed with poor maintenance, and poorly treated crews, and yet which seem to incur very few liability claims.

18. Good quality shipping operations attract good quality cargo shippers, who have higher expectations, less tolerance of minor damage and loss, better processes to recover it and a more demanding attitude to compensation. The same can happen with passengers, so that, for example, the shipowner may be sued for not having built the swimming pool a few feet closer to the landing spot of the unfortunate youth who manages to miss it when jumping ‘in’. Great container liner companies use highly sophisticated terminals with a potential, when an accident happens, for much more costly damage than will arise at the port to which the ship trades at the bottom end of the quality spectrum. Great cruise lines take their passengers to the most pristine waters, in places where the legal consequences of a minor spill will be far more serious, at least from a financial point of view, than the same volume of spill from an old ferry past its best days in an industrial port.

19. The point of these examples is to bring out the lack of correlation between degrees of financial risk and quality of shipping operation, and to emphasise the unsoundness of the assumption that insurers must have an especially privileged insight from their claims records into which fleets are substandard. They sometimes have additional insight, but often will have no better knowledge than any other player in the chain of responsibility.

20. Where a Club, or a hull insurer, regards an owner as presenting an unacceptable risk, what can they do about it? Can they apply punitive pricing to force the owner to spend more on improving quality?

21. Mostly they cannot. The hull market cannot because there will usually be a competitor willing to undercut the price, and agreements to fix the price will be in breach of competition law.

22. While the International Group benefits from its limited exemption from competition law, in being able to operate the International Group Agreement, it should be noted that this agreement requires the new Club not to undercut the old Club for one year unless the new Club can show that the rate of the old Club was unreasonably high.

23. The scale of savings that could be made by the poorest quality owners, from operating a regime of minimal compliance and minimal maintenance, as calculated in the report provided to the Transport Committee of the OECD in April 1996, was up to 15% of annual running costs. In order to use
insurance premiums to provide a financial incentive to the owner to forego that saving, the P&I insurance rate would have to be punitive. A punitive insurance rate, loaded to achieve a financial leverage, and not reflecting actual claims in the loss record, would be *unreasonably high* – and therefore *not* a rate that could be sustained in applying the IGA.

24. The Clubs therefore concluded, when presented with this suggestion in the original report and referred to again in the subsequent review by Terence Coghlin, that they could not use insurance rating as a non–technical measure to persuade owners (whose ship presented a perspective risk) to spend more on maintenance.


25. Nevertheless, the Clubs were happy to do what they could and, in response to the OECD report and the discussion of quality shipping in the IOPC Fund, the Clubs produced a raft of improvements to their systems to try to ensure they were actively encouraging quality and were not knowingly underwriting anything sub-standard.

26. In doing this work, the Clubs liaised closely with different sectors of their membership. Since we are meeting in Athens, it seems opportune to acknowledge the role taken by the Union of Greek Shipowners (UGS) in helping the Clubs ensure that their measures of rationalising P&I surveys did not stray into matters that were the proper responsibility of classification societies. Much work on the IG’s measures was done in consultation with ICS and of course with Intertanko, reflecting the fact that the issue was before the IOPC Fund. For the same reason, the Clubs benefited from challenging discussions with their oil major members and with OCIMF.

27. There was a subsequent additional impetus from the IG’s decision to support Intertanko’s Poseidon Challenge – which invites all involved with the tanker industry to contribute to the ambitious targets of zero fatalities, zero pollution, and zero detentions. While the aims might seem impossibly high (and, for the Clubs, like Christmas for turkeys) the idea is to set targets that are consistent with a process and philosophy of continual striving for improvement, rather than a more reachable target whose achievement would end the process. That overarching idea, which is at least simple and clear (if not realistic), provides a goal to which the industry can return, irrespective of how long the system of annual challenge meetings is continued.

28. The choice of Club measures was also informed by extensive discussions with, and advice from, representatives of those States that took a leading role in the debates at the IOPC Fund that led to a strengthening of the compensation system.
29. Last, but not least, the IG’s existing work and its further proposals for a ‘double retention’ system to penalise any Club knowingly insuring a vessel nominated as being of unacceptable quality, were extensively presented and debated in the Intersessional Working Group whose name make up the title of this paper.

Details of the International Group’s measures

30. In their report of January 2001 for the OECD Maritime Transport Committee, entitled “The Cost to Users of Substandard Shipping”, SSY Consultancy & Research Ltd defined a substandard ship as: “A vessel that, through its physical condition, its operation or the activities of its crew fails to meet basic standards of seaworthiness and thereby poses a threat to life and/or the environment”.

In the 2000 edition of ‘Procedures for Port State Control’, IMO defines a substandard ship as: “A ship whose hull, machinery, equipment, or operational safety is substantially below the standards required by the relevant convention or whose crew is not in conformance with the safe Manning document”. [My emphasis.]

31. We have no evidence that it is true that ships of this kind cause more damage as a general rule, albeit it is obvious that in particular cases very serious casualties have been attributable to the substandard condition of a ship. The trouble is that the degree of damage caused is not related to the degree of deficiency in the standards of a ship.

32. A ship can therefore be in a condition that falls within these definitions of the substandard, yet be in possession of ‘valid’ flag state and classification certificates, and have no P&I claims record to speak of, perhaps because it sails predominantly in local trades, calmer waters, carrying cheaper commodities, etc. And it may have no adverse port state control record, if it trades at ports where PSC enforcement is not vigorous.

33. Insofar as such a ship is so identified as a source of additional risk, this will have a bearing in the Club system on whether the ship can be accepted and if so at what premium rating.

34. To the extent that a substandard ship trades without claims, without PSC detentions, there will be nothing to raise suspicions about the risk it presents. Conversely, a poor claims record may sometimes reflect not a substandard ship, but simply a run of bad luck for a first class operator.

The Clubs therefore need a number of other methods to aid identification of potentially substandard ships, and to help the underwriter in judging whether, and if so at what rate, to underwrite the risk.
Identification of substandard ships

35. The right to enter a Club and the right to coverage has always been conditional on ships being properly classed. However, additional Club surveys were introduced, from about 1990, partly because of concerns about the reliability of class surveys, and partly because the quality of operation of insured ships, although central to the interests of P&I underwriters, was not of direct interest to class societies and was not assessed by them.

36. All the International Group Clubs commission condition surveys on some ships prior to acceptance, normally on ships over a certain age. They may also do the same for ships already within the Club where:

(a) a ship changes classification societies, usually from an IACS to a non-IACS society;

(b) information from PSC indicates that the ship is below the acceptable standards of the Club;

(c) the ship has a deteriorating claims record or a if a claim demonstrates a lapse in shipboard maintenance, or

(d) a ship inspection visit indicates that the ship is not maintaining the standards acceptable to the Club.

37. In addition some Clubs also undertake an annual programme of ship visits and inspections, with the aim of raising awareness to practices onboard that could lead to claims or affect safety. Although they have some elements in common, these are not like class surveys or port state control inspections but involve the assessment of safety standards, service and maintenance, cargo-worthiness, operational performance, manning, pollution control and management systems; in short, anything that may give rise to liabilities insured by the Club.

Practical improvements in standards enforced by Clubs

38. A ship with serious problems may be refused entry, while in less serious cases cover may be suspended until whatever repairs are required have been made. Some Clubs will decline to renew the entry of a ship if it is in breach of repair requirements when the new policy year begins. In serious cases, persistent survey problems may result in an entire fleet being declined renewal.

39. The fact that substandard ships are still around does not mean that existing measures to get rid of them are ineffective. An analysis of major liabilities caused by failures in the structure or equipment of ships over the period 1987 to 2002, from the largest of the Clubs, showed a clear and consistent year-on-year decline in numbers (although not values) of such incidents.
Club Surveys – scope

40. While all Clubs make use of condition surveys to assess the quality of certain ships entered or to be entered, there was no uniform practice in relation to the scope of such surveys, or their triggers.

41. A minimum scope of information to be included in any condition survey undertaken by an International Group Club was accordingly drawn up with input from all Clubs. A ‘sample’ condition survey report form was also drawn up, to illustrate the requirements of the scope. This work, and the willingness of each Club to have regard to it, ensures for the first time that the scope of Club condition surveys is at least as extensive as that in the scope document.

42. Another change agreed by the Clubs was that the survey department of each Club should report any vessel which caused concern not merely to the underwriting department but also to the central management of that Club. The reason for introducing this measure was that there is no precise correlation between claims and condition, as noted elsewhere in this paper. The issue of vessel quality should therefore be given its own focus of attention, independently of any consequences manifested in claims, by being reported as a matter of routine to the Club’s central management.

Club Surveys – Triggers

43. Although Clubs have long undertaken condition surveys on a systematic basis, differing standards have been employed. For instance, some Clubs would survey 10 year old ships on entry, whereas others might only survey 15 year old ships, or only tankers. Clubs have implemented a new (minimum) requirement that condition surveys be undertaken upon the application for entry of any sea-going ship aged 12 years or more.

44. With regard to ships already entered, the Clubs agreed as minimum requirements that their condition survey programs would include any vessel that appears on the EC blacklist and would also include any sea going tanker, ten years old or more, which had carried heavy fuel oil as cargo during the preceding year, if it had not already been surveyed by the Club within the past three years. In order to implement the latter proposal, owners are required by their Clubs, at the beginning of each policy year, to declare the names of ships that have carried Heavy Fuel Oil as cargo during the previous year.

Condition Surveys – Exchange of Information

45. The OECD report notes that a great deal of information is collected about the condition of ships but surmises that the main barriers to transparency are legal, whether real or imagined. The report suggested that it would be a significant step if the Clubs were to set up a database where each Club would be obliged to lodge survey and inspection reports.
46. Legal opinions were obtained on whether Clubs are entitled, or obliged, to pass on information about action taken by Clubs, on the basis of condition surveys or inspections, to other members of the Pool. The opinions varied under different legal systems, but it was considered possible without legal obstacle merely to record on a central database the identities of ships on which a condition survey has been carried out, so that underwriters would be aware if a prospective entry has been surveyed by another Club.

47. The Group has established a central database as described, and now requires that underwriters should consult the database before quoting and should ask the prospective member and Club concerned for a copy of any relevant report. This is unobjectionable from a legal point of view, but from a commercial point of view Clubs continue to seek consent from their members to the sharing of such information.

48. Consent is not always given. A common reason for a ship to move from one Club to another is its sale to a new owner. The seller can be nervous about information reaching the prospective buyer’s Club, in case it reaches the buyer and influences the sale, or the price. The procedures therefore recognize that consent to share information may be withheld, and provide for the new Club automatically to conduct a P&I entry condition survey in that circumstance.

Penalties if Sub-Standard Vessels knowingly underwritten

49. Up until 2007, a Club could decline or withdraw cover on the basis of an adverse survey report only to find that the vessel has been accepted by another Club and then face the possibility of having to share in a claim brought to the Pool from that vessel.

50. New provisions were drafted to allow a Club in extreme circumstances, where it feels that a ship is so unfit that the risk it presents should not be shared by the Pool in the normal way, to nominate the ship for designation by a panel of experts as a vessel to which a double Pool retention should apply i.e. a Club in which the vessel was entered would be responsible for the first $14 million instead of the first $7 million of every claim.

51. The proposal was implemented from 20th February 2007, after the Group received satisfactory legal advice that the procedures would not be regarded as an ‘abuse of dominant position’ within the meaning of the competition law provisions of the Treaty of Rome.

52. The procedures include a scoring system developed with a view to permitting an objective judgment to be reached on the basis of the factors outlined in the survey report. The procedures were also designed to ensure that an owner, whose ship is designated as one in respect of which the insuring Club must accept a double retention, can reverse the designation process by the simple expedient of improving the quality of the ship and its operations.
Non-technical measures to promote quality shipping

Loss prevention programmes

53. The Clubs also contribute to improving standards in shipping by extensive loss prevention and education programmes.

54. Addressing the human factor in claims, many new loss prevention initiatives were developed by the Clubs through the 1990s. The Clubs all now produce some loss prevention materials, ranging from the bare minimum to the ‘all singing all dancing’, in the form of circulars, newsletters, posters, books, videos, seminars, conferences, and even distance learning. Not all of it is instructional material - a Club sponsored a service to provide electronic delivery of local news based on crew nationality, hoping that improvements in the quality of life on board might translate into improvements in crew performance and safety.

55. Some Clubs have joint-ventured with other institutions with maritime expertise, to allow more ambitious projects, and this has improved the links between them and bodies such as the International Chamber of Shipping, BIMCO, Intertanko, and the Nautical Institute. The range of subjects addressed is wide, and a growing number of Clubs now distribute information via internet websites. In some cases this allows advice on best practice relating to safety issues not only to be seen by an intended audience of Members, but also to be developed by contributions from others with relevant expertise or experience.

56. There is increased transparency and an increasing ability to provide information which is, for want of a better word, very ‘fresh’. Some of this activity will be used by shipowners to enhance already first rate services, but some of it will help the less well resourced owner to improve, to move a notch or two further towards the quality end of the spectrum and away from the substandard.

Club Rules and shipping standards

57. Although the Clubs compete with each other for business, as noted above they share their larger risks under the terms of the Pooling Agreement. Therefore all Clubs in the International Group have a strong self-interest in ensuring that ships in other Clubs in the Group are of an acceptable standard, and have adopted common measures as part of their rules to achieve this aim. These include the following.

58. All IG Clubs’ Rules deny rights of recovery for claims arising from failure of vessels to comply with statutory requirements of Flag States, or for claims arising on vessels that are not classed by an approved Classification Society.

59. All Group Clubs’ Rules make it a condition of insurance that the insured must:
(a) promptly report to Class any matters in respect of which Class might make recommendations;
(b) comply in timely fashion with Class rules and requirements
(c) authorize Class to disclose information about the ship requested by the Club, and
(d) advise the Club if the Class Society is changed, identifying any recommendations or requirements that are outstanding at the date of the change.

60. IG Clubs also have an agreed policy not to insure, either newly or by way of renewal, any ship that does not hold a valid Safety Management Certificate required under the ISM Code, or the certificates required by the International Ship and Port Facility Security (ISPS) Code.

International Group Clubs are able to apply these common standards by virtue of the homogeneity that the Pooling Agreement provides.

Conclusion

61. Despite the stringent measures that form part of each Club’s policy conditions, accidents continue to occur.

62. Statistics show that human error has been the principal cause of claims in recent years and that such errors cause expensive losses in well-managed fleets as well as in fleets of a lesser quality. While the substandard physical condition of ships has declined as a source of P&I claims, some such ships still remain. Their numbers may grow as a result of building being carried out by new and inexperienced yards, and by yards that have been keen to maximize throughput during the recent building boom at the expense of quality.

Clubs cannot and should not duplicate the work of classification societies, Flag States, or Port State control authorities. However, the IG Clubs contribute to the raising of shipping standards by risk assessment measures (including surveys) that allow them to vet the physical and operational qualities of tonnage newly applying for entry, and to monitor entered tonnage identified as being at particular risk; they address human error by loss prevention and education programmes; and by assistance given to members to identify and manage their risks.

Clubs are motivated to do this not only for marketing reasons, but by the desire to reduce their claims bills, to improve their underwriting results, and to thereby provide a more attractive product. Insofar as there remains some substandard tonnage within the IG system its risks are spread in the same way as are the risks of good quality tonnage. There is, however, no statistical evidence to suggest that the ‘substandard’ ships can be identified as a class of
vessels whose P&I risks are subsidized by premiums of better quality ships, or that use of punitive insurance premiums for poorer quality tonnage would be an effective non-technical measure to reduce serious accidents.
JUDICIAL SALE OF SHIPS

(1) A Brief Discussion on Judicial Sale of Ships, by Henry Hai Li

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A BRIEF DISCUSSION ON
JUDICIAL SALE OF SHIPS

HENRY HAI LI*

Introduction

At a meeting of the Executive Council of the CMI in 2007, it was proposed that a preliminary study on the issues in relation to judicial sale of ships might be worthy to be conducted for the purpose of exploring future possible new topics/projects for the CMI. It was later agreed to include this topic into the program of the Athens Conference as one of the issues on which the Conference will dedicate shorter periods of time.

Unlike arrest of ships, with which the international maritime law circles are very familiar, the issues in relation to judicial sale of ships have not yet been identified as a subject necessarily to be dealt with by a particular international convention, given the fact that provisions on certain issues in relation to forced sale can be found in a few maritime conventions1. It seems suggested by this fact that it would be unnecessary to have or the relevant issues are too simple or too difficult to be covered by a particular international convention. Upon the preliminary study, it is revealed that the subject covering the issues in relation to judicial sale of ships is a rather comprehensive one, especially from an international standpoint or in the international context. As a matter of reality, a number of problems, in particular the recognition of judicial sale of ships by a foreign court, have been encountered by the international shipping industry, thus solutions to these problems should be explored and adopted. For the purpose of this paper,

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1 For example, Article 11 and Article 12 of the International Convention on Maritime Liens and Mortgages 1993 are entitled “notice of forced sale” and “effects of forced sale” respectively. And, similar provisions can also be found in the 1967 Convention.
the discussions will be focused on the following primary issues in relation to judicial sale of ships, namely, the concept, the titles, the effects, the international recognition, etc.

**The concept: “judicial sale” v. “forced sale”**

As known, provisions on “notice of forced sale” and “effects of forced sale” are contained in the International Convention for the Unification of Certain Rules relating to Maritime Liens and Mortgages 1967 (hereinafter referred to as the “1967 Convention”) and the International Convention on Maritime Liens and Mortgages 1993 (hereinafter referred to as the “1993 Convention”). It goes without saying that the aforesaid “forced sale” refers to the sale of ship ordered by a court after the ship is being arrested or seized for the purpose of enforcement of a maritime lien or mortgage or hypothèque or charges of the same nature on ships. However, no definition on the term “forced sale” can be found in these conventions. Perhaps, it is also true for all other maritime conventions. Therefore, it might be interesting to ask, what kind of sales is exactly covered by the term “forced sale” in the aforesaid conventions.

As interpreted by the *Black’s Law Dictionary*, the term “forced sale” means: “1. See execution sale. 2. A hurried sale by a debtor because of financial hardship or a creditor’s action.” It is understood that the foregoing second interpretation represents an opposite term to “voluntary sale”, while the first interpretation, i.e. the term “execution sale” is interpreted by the same dictionary to mean “a forced sale of a debtor’s property by a government official carrying out a writ of execution.” It seems clear that the “execution sale” is one of the 2 kinds of “forced sale”. In addition, it should be noted that the *Black’s Law Dictionary* also explains that the “execution sale” may be “also termed judicial sale, judgment sale, sheriff’s sale”, while the term “judicial sale” is interpreted to mean “[A] sale conducted under the authority of a judgment or court order, such as an execution sale.” In light of the interpretations of the *Black’s Law Dictionary*, it seems that the term “forced sale” and the term “judicial sale” in one context may mean the same thing. Whereas, in another context, the term “forced sale” may have a broader meaning than the term “judicial sale”. The latter carries more emphasis on or restrictions to the authority of a judgment or court order. It is interesting to note, as a matter of reality, in some countries, for example, in China, the term “forced sale” is wide enough to cover an auction entrusted or pursued by a
government agency, such as the Customs. And, this kind of sale or auction is conducted without any involvement or control of a court. For these reasons, it might be more appropriate to use the term “judicial sale” than the term “forced sale” in the context of involuntary sales of ships ordered or pursued by a court exercising its maritime jurisdiction. Or, it is advisable that the international convention should contain a definition on “forced sale” or “judicial sale”, whichever is used in the convention, so as to avoid any possible misunderstanding of the term.

The “titles”

As known, for the purpose of obtaining security for a maritime claim, a ship may be arrested only based upon one of the maritime claims recognized by law. This is the rule laid down by Article 2 of the International Convention Relating to the Arrest of Sea-Going Ships 1952, which has been ratified or accepted by more than 80 countries or regions. Whereas, for the purpose of enforcement of a payment obligation which has been adjudicated or to be adjudicated, many kinds of enforceable instruments may be replied upon to have a ship arrested or seized leading to a judicial sale. The enforceable instruments recognized by law are in some countries referred to as titles for enforcement. And, the scope of the titles for enforcement may vary from country to country. For example, in China, according to the relevant provisions of the Civil Procedure Law, the titles which are enforceable by the People’s Courts shall include judgment, court order, conciliation statement, arbitration award, notarized deed of debt, etc. But, mortgage or hypothec deeds are not included in the titles as being recognized by the Chinese law.

It is my observation that in some cases a judicial sale of ship is effected
for the enforcement of a judgment or an arbitral award prescribing certain payment obligations to be performed by the shipowner; while in some other cases it is effected for the purpose of enforcing a court order, such as an order for the appraisement and sale of a ship under arrest which is applied for by a maritime claimant before a judgment is issued on the merits of the claim(s) giving rise to the arrest.

In light of the above, it seems true that the titles based on which a judicial sale of ship can be initiated, may cover a wide range of varieties, which may be in the form of a judgment or a court order or an arbitral award, etc. Therefore, it follows that the titles for judicial sale of ships may represent debts of different nature and character. For example, for the debts affirmed by a judgment or an arbitral award, they may be of maritime nature or non-maritime nature, and among the debts of maritime nature, they may, but nevertheless may not relate to the ship to be sold by way of judicial sale. For further example, for the debts represented by a court order, such as an order of sale of a ship under arrest which is applied for by a maritime claimant for obtaining security, the debts represented by this kind of court orders are merely unadjudged debts which have not yet been affirmed by a judgment or an arbitral award. Therefore, the debts represented by this kind of court orders are just pending claims which are different from those which have been adjudged through litigation or arbitration proceedings. Since the titles based on which a judicial sale of ship may be initiated may vary from case to case, and the debts sought to be satisfied by the proceeds of a judicial sale of ship may be of different nature and character, it seems correct to say that the judicial sale of ships may be used or pursued for satisfaction of not only maritime debts, but also non-maritime debts which are irrelevant to enforcement of maritime clams or maritime liens or mortgages/hypotheques on a ship or the ship to be sold by way of judicial sale.

Bearing in mind of the above, it seems that two issues in respect of the titles for judicial sale of ships might be worthy for further consideration and discussion. The first one is whether or not it is necessary to provide by law or international convention a special closed list of titles for judicial sale of ships, by which it means that titles not included in the list shall not be allowed to initiate the procedures for judicial sale of ships. The second one is whether or not it is a good idea to include the rules or provisions on judicial sale (or forced sale) into the conventions designated to deal with the issues in relation to recognition and enforcement of maritime liens and mortgages/hypotheques on ships, such as the 1967 Convention or the 1993 Convention. Or, alternatively whether or not it is more appropriate to subtract those rules or provisions from the said conventions, and put them into a convention to be designated to deal with the issues in relation to judicial sale of ships, than to keep those rules or provisions in the said conventions. The questions should of course be open for discussions. And, hopefully the answers thereto may be
helpful in finding a way to solve the problems encountered by the international shipping industry in respect of recognition of foreign judicial sale of ships, which will be discussed further in the paragraphs below.

The effects

As correctly observed by Mr. Justice Sheen in the case, the “Cerro Collorado”, “from time to time almost every shipowner wants to borrow money from his bank and to give as security a mortgage on a ship. The value of the security would be drastically reduced if, when it came to be sold by the Court there was any doubt as to whether the purchaser from the Court would get a title free of encumbrances and debts.” It is also true that “[N]obody in fact would be prepared to pay the market price for a vessel when there is then the risk that pre-existing claims may still be enforceable against the ship, particularly because a recovery against the previous owner would not be successful.”

From the above, it is obvious that in order to find a purchaser for a ship to be sold by way of judicial sale, or for the purpose of accomplishing a judicial sale of ship, assurance must be given to the purchaser that the title to the ship acquired by him from the judicial sale is a clean one and is free of all charges or encumbrances of whatever nature, and is good against the world. For these reasons, a number of legal effects of judicial sale of ships must be affirmed and recognized by law on the ship, the relevant parties, the relevant ship’s register, or more exactly the whole world. The legal effects of a judicial sale of ship which are necessarily to be affirmed and recognized by law should at least include the following:

1. The pre-sale ownership over the ship must be extinguished or be put to an end. In other words, once a judicial sale of ship is accomplished, the former shipowner of the ship shall not be entitled or allowed to pursue any right or title of whatsoever nature against the ship or the purchaser;

2. The mortgages/hypotheques, maritime or other liens, and all kinds of security rights attached to the ship before the judicial sale shall be extinguished and ceased to attach to the ship, except those assumed by the purchaser with the consent of the relevant holders; in other words, apart from those assumed by the purchaser, no charges or encumbrances of any security nature on the ship shall remain attaching to or be allowed to be enforceable against the ship after the ship is soled by way of a judicial sale;

10 UN ESCAP, Guide-lines for Maritime Legislations, p. 262.
(3) The charges or encumbrances created by a charter party or a contract for use or lease of the ship or all kinds of rights to use the ship and benefit therefrom attached to the ship before judicial sale shall be extinguished unless assumed by the purchaser. In other words, upon the completion of a judicial sale, any pre-sale charter party or contract for use or lease of the ship or the alike shall be ceased to have any binding effect on the purchaser; and

(4) The nationality and the ownership of the ship registered in the name of the pre-sale shipowners, and the mortgages/hypotheques or any registrable charges of the same nature and the demise charter if any on the ship, shall be deregistered by the relevant ship’s register at the request of the purchaser, and the certificates of nationality and ownership of the ship in the name of the purchaser shall be issued by the relevant ship’s register at the application of the purchaser.

It can be imagined that it could be difficult or impossible to find a purchaser for a ship to be sold by way of a judicial sale, if either of the above mentioned effects is not affirmed or recognized by law. Fortunately, most of the above mentioned effects have been affirmed and recognized by the national laws of a number of countries. For example, “it had long been recognized in both Canadian and English maritime law that a court ordered sale in an action in rem conveyed the subject ship to the purchaser free and clear of all liens.”

The international recognition

Unlike real estate, ships after being soled by way of judicial sale would in many cases call for international recognition. It is true that “[I]t would be intolerable, inequitable and an affront to the court if any party who invoked the process of the court and received its aid, and, by implication, assented to the sale to an innocent purchaser should thereafter proceed or was able to proceed elsewhere against the ship under her new and innocent ownership.” It is also true that “[I]f it became the practice for the Courts of one country not to recognize a valid title given by a competent Court of another country, there would be chaos. It was bound to redound to the prejudice of those who give credit to ships.” Whereas, the following cases may illustrate some of the problems or situations which have been encountered by the international

11 See the “Galaxias”, LMLN 240, p2.
13 See supra. p. 407.
shipping industry in respect of recognition of judicial sale of ships by a foreign country.


   On 16 December 1960, at a suit of a French company of necessaries, the Italian steamship Acrux owned by an Italian company was arrested in England. Later on, appraisement and sale of the ship was ordered by the Court in order to satisfy the judgment given by the Court in respect of the claim. Whereas, the order for sale was suspended at the application of the shipowner’s liquidator from Italy, but was restored as a result of the intervention of an Italian bank, being the mortgagees of the ship. The ship was sold on 27 April 1961 by the Admiralty Marshal. The proceeds of the sale are less than the sum claimed by the mortgagees. The Court was later informed by the Admiralty Marshal that the purchaser of the Acrux was unable to secure permanent registration of the ship in his desired country, because he was unable to obtain a certificate of deletion from Italian Register of Ships, evidencing that the order for sale of the Admiralty Court was not recognized in Italy and that according to Italian law, the mortgagees could start an executive procedure on the ship not only in Italy but even in other countries. For this reason, an undertaking is required from the mortgagees by the Court not to commence proceedings in rem or any similar proceedings abroad against the Acrux in respect of the claims pursued by the mortgagees in the motion before the Court.

   The undertaking was given by the mortgagees as required by the Court, but no report was made if the purchaser obtained the necessary certificate of deletion from the Italian Register of Ships and secured the permanent registration of the ship in his desired country.


   In September 1986, the Greek registered ship, the Galaxias was arrested in Canada, and several claims were made on the ship, including a “somewhat novel” claim for a maritime lien purportedly legislated by the Greek government in favour of the Greek Seamen’s Union. Later on, a Sheriff of British Columbia was appointed as a Deputy Marshal to carry out the commission of sale of the Galaxias. The ship was sold according to the order of the court “as is, where is” and “free and clear of all encumbrances”. Whereas, the purchaser soon became uneasy with respect to the attitude taken by the Minister of Merchant Marine in Greece regarding the transfer of title of the Galaxias clear of all encumbrances in the Greek Shipping Registry in Piraeus. The Minister objected to the issuance of the necessary Deletion Certificate and made it contingent on the satisfaction of the claims raised against the Galaxias by the Greek Seamen’s Union.
The Sheriff commenced an action against the purchaser seeking a declaration that he had fulfilled his duty with respect to the order of sale or commission of sale, and that the bill of sale did convey title in the *Galaxias* to the purchaser “free and clear of all encumbrances.” On the other hand, the purchaser filed a defence and counterclaimed with respect to the costs and damages which it claimed were brought about by the failure of the Deputy Marshal to convey the ship “free and clear of all encumbrances”, and as it presently stood, unregistrable in the Greek Shipping Registry.

It was held by the court, *inter alia*, that on one hand the plaintiff was entitled to the declaration sought by him, on the other hand, the purchaser would take free and clear of all encumbrances according to the laws of Canada, and although the Canadian courts desired and expected that the courts and governments of other nations would respect their orders and judgments, particularly in the area of maritime law, that was not an area over which the Federal Court exercised control. In addition it is also held by the court that “[i]f there were other jurisdictions which would ignore the effect of the judicial sale in Canada, that was a political problem in respect of which the Federal Court of Canada could be of no assistance.”

It was not reported if the purchaser obtained the necessary Deletion Certificate from the Greek Shipping Registry before or after satisfaction of the claims raised against the *Galaxias* by the Greek Seamen’s Union.

3. The “Great Eagle”, 1994 (1) SA 65 (C)

In July 1991, a Cypriot company (the “Claimant”) instituted an action in *rem* against a Panamanian company (the “Respondent”), which was commenced by the arrest of the motor ship *Greet Eagle* at Saldanha Bay, South Africa. The main claim is for a *declarator* that the Claimant is owner of the ship and entitled to its possession. The alternative claim, on the premise that the Claimant is not the owner and that the owner is liable to the Claimant in *personam*, is for the recovery of damages in the amount of 4.4 million US dollars arising from the concerted fraudulent actions of a number of parties which resulted in the Claimant being dispossessed of the ship at Qingdao, the PR China, and the Respondent’s becoming its current registered owner.

It is accepted by the Respondent that up to 30 May 1991 the Claimant was the owner and under his ownership the ship was named *Mnimsyni*, but it was on that day the ship was auctioned by Qingdao Maritime Court, the PR China, and as the purchaser of the ship under the judicial sale the Respondent became the owner since then. The Respondent filed an application for the release of the ship and argued on three grounds, namely

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14 See the Galaxias, LMLN 240, p.2.
15 The judgment was delivered on 28 October 1991.
(1) as a matter of statutory interpretation, the Act\textsuperscript{16} does not empower an action in \textit{rem} where the action and the arrest are directed at the claimant’s own ship, as is the case in a vindicatory claim; (2) the Claimant has no \textit{prima facie} case justifying the action and the accompanying arrest; and (3) the Court is not the appropriate forum and jurisdiction should be declined in terms of the Act.

It is concluded by the Court that (1) where a claimant seeks to vindicate his ship, the Act empowers him to arrest and take proceedings against it \textit{in rem}. It follows that applicant’s first ground fails; and (2) the claimant has failed to make out a \textit{prima facie} case in respect of the causes of the action, that means the second ground on which the applicant has based his application is good. Being so, it is unnecessary to deal with the third ground, namely the \textit{forum non conveniens} point. It is ordered by the Court \textit{inter alia} that the ship be released from arrest and that the Claimant’s action is dismissed with costs.

It might be interesting to mention that in another action\textsuperscript{17} following the second arrest of the ship for the same matter commenced by the abovementioned Claimant, views in respect of the \textit{forum non conveniens} point were expressed by the Court that if the Claimant is advised that it has a \textit{prima facie} case against the Respondent, the appropriate forum to have such case established is a Chinese Court, and not a South African one.


On 24 June 2005, the ship, \textit{Union}, which is registered in Belize was arrested by Tianjin Maritime Court of the PR China at the application of a French bank based in Paris, for enforcement of a mortgage on the ship \textit{Phoenix}, which is the former name of the ship now registered with the name of \textit{Union}. The mortgage was effected on the ship \textit{Phoenix} for the purpose of securing a loan in the sum of 5 million US dollars, and registered on 4 November 1999 in St. Vincent and the Grenadines, and was further registered in Russia in later November 1999 when the ship was bareboat chartered to a Russian company. In order to recover from the borrower the outstanding balance of the loan which is in the sum of 2 million US dollars, a judgment has been obtained in the mortgagee’s favour from the Commercial Court of Paris in September 2003. However, the judgment is not performed or satisfied by the borrower. In the lawsuit filed with the Chinese Maritime Court by the French bank, it was claimed that the duly registered mortgage on the ship \textit{Phoenix}, of which the current name is \textit{Union}, should be recognized by the Court and enforceable on the ship irrespective of the change of her name and registration. On the other side, the current registered owner of the ship filed a

\textsuperscript{16} The Act refers to the Admiralty Jurisdiction Regulation Act 105 of 1983.

\textsuperscript{17} 1992 (4) SA 313 (C), the judgment was delivered on 9 April 1992.
defence and counterclaimed with respect to the costs and damages which were allegedly brought about by the wrongful arrest of the ship by the French bank. It was maintained by the current shipowner that the ship, *Phoenix*, was arrested in May 2003 and auctioned in November 2004 by the Court of Rason, the Democratic People’s Republic of Korea (hereinafter referred to as the “DPRK Court”) at the applications of a number of claimants for unpaid crew wages and port charges, and for repayment of outstanding loans. The purchaser of the ship is a local company, who after the sale registered the ship on a temporary basis with the local maritime administration under its name with a new ship’s name of *Rason*. In June 2005, the purchaser sold the ship to the current shipowner who in turn registered the ship in Belize on 7 July 2005 under its name with the current ship’s name, i.e. *Union*. Apart from the above, it was investigated by the Maritime Court that after the sale of the ship by the DPRK Court the registration of the ship and the mortgage in St. Vincent and the Grenadines was not deleted.

Due to the fact that neither of the parties has requested to apply or provided any material to prove the contents of the applicable foreign laws (including the laws of St. Vincent and the Grenadines, the DPRK and Belize), the Chinese Maritime Court applied the PRC laws to all the issues disputed in this case.

It was held by the Maritime Court *inter alia* that (1) after the sale of the ship by the DPRK Court, all charges and encumbrances, including the French bank’s mortgage on the ship are all extinguished given the fact that the registration of the ship and the mortgage in St. Vincent and the Grenadines was not deleted; (2) it is only a legal fact to be investigated and considered by this Court if the ship was once sold by the DPRK Court, that does not involve any recognition or enforcement by the PRC court of any judgment or order of the DPRK Court; and (3) it is not within the jurisdiction of this Court to examine and judge whether or not the ship sold by the DPRK Court was in accordance with the DPRK law, including whether or not a proper notice has been sent to the French bank and/or the ship’s register in St. Vincent and the Grenadines. Based on these grounds, the claims of the mortgagee were dismissed by the Maritime Court. In addition, the appeal by the mortgagee was also rejected by the High Court of Tianjin18.

As can be seen from the above cases, the issues involved in each of the cases are not exactly the same, but the problems behind them are all in relation to recognition of judicial sale of ships by a foreign court. And, it seems that the following issues are calling for special attention.

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18 See Judgment [2006] Jin Gao Min Si Zhong Zi No. 95
Judicial Sale of Ships

(1) The deregistration and registration

As illustrated in the above cases, in particular the “Acrux” and the “Galaxias”, if a judicial sale of ship in a foreign country is not recognized in the country where the ship was registered, it could be difficult or even impossible for the purchaser to delete the previous registration or to get a certificate of deregistration of the ship from the ship’s register, as a consequence the purchase would not be able to register the ship in his desired country. On the other hand, as shown in the cases, the “Great Eagle” and the “Union”, if a ship after a judicial sale may be registered in a country before or without deregistration of the ship (including her nationality, ownership, mortgage, etc.) in her previous country of registration, it would cause problems, such as duplicate or multiple registrations of the same ship are concurrently maintained in two or even more countries. In addition, it might amount to a violation of the customary rule of international law, for “[I]t is in fact a customary rule of international law, now embodied in the 1967 Brussels Convention, that in case of change of nationality a vessel may not be registered in the new register unless she is de-registered from her previous register.”

It is to be noted that as a matter of fact rules concerning deregistration and registration of ships following forced sales are contained in both the 1967 Convention and the 1993 Convention. But the questions which may be asked here are (1) whether or not the said rules are good enough to be applicable not only to the forced sale for enforcement of maritime liens and mortgages on ships, but also to all kinds of judicial sale of ships, and (2) if the answer to the first question is in affirmative, what steps can be taken to make those rules widely accepted and followed by the international shipping industry.

(2) The Notice

It was claimed by the French bank in the above case, the “Union”, being the holder of a duly registered mortgage on the ship, no notice was received by them that the mortgaged ship was to be sold by the DPRK Court, and as a consequence they were not able to take any step to protect their lawful rights and interests, including to take part in the procedures of distribution of the proceeds of the ship. If this is true, it is certainly not something that should happen. As a matter of principle, it should be accepted and followed that prior to a judicial sale of ship, a proper notice of the time, venue and all other necessary particulars of the sale should be sent in advance to all related parties, such as the registered owner of the ship, the registered demise charterer, the holders of mortgage or hypothec on the ship, the known holders

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See UN ESCAP, Guide-lines for Maritime Legislations, p. 262.
of maritime and other liens on the ship, the ship’s register, etc., so as to ensure that steps may be taken by each of them to protect their respective rights and interests in connection with the ship to be sold by way of judicial sale.

As mentioned above, Article 11 of the 1993 Convention is entitled “Notice of forced sale” and provisions thereon can be found in this article, and similar provisions are contained in Article 10 of the 1967 Convention. But, it is unfortunate that the 1967 Convention has not yet come into effect, while the 1993 Convention although has come into effect on 5 September 2004 has not yet become a widely accepted international convention. Therefore, a similar question which can be asked here again is that what steps may be taken to make the rules in respect of notice of judicial sale of ships an international obligation to be performed by the countries in which judicial sale of ships is to be pursued.

(3) The Validity

As can be seen from the above cases, in particular, the “Great Eagle” and the “Union”, the plaintiffs were trying to challenge the validity of the judicial sale of the ship effected in a foreign country. In the case, the “Great Eagle”, the sale of the ship by the Chinese Maritime Court was claimed by the previous shipowner to be “concerted fraudulent actions of a number of parties”, while in the case, the “Union”, the sale of the ship by the DPRK Court was claimed by the registered mortgagee to be not in accordance with the DPRK law, and no notice of the sale was given to him and the ship’s register. It seems that the challenges are all in relation to recognition of the validity of a judicial sale of ship by a foreign court.

In light of the statement made by Mr. Justice Hewson in the above case, the “Acrux”, that “[T]he court recognizes proper sales by competent Courts of Admiralty or Prize, abroad—it is a part of the comity of nations as well as contribution to the general well-being of international maritime trade”, 20 it seems that for an English court to recognize a sale by a foreign court, there are at least two conditions, namely, (1) the sales must be “proper sales” and (2) by “competent courts”, the true meaning of these words under English law are matters to be advised by English lawyers. The provisions contained in Article 12 of the 1993 Convention seem suggesting that for a forced sale of ship in one country to be recognized in other countries as having the effect that all registered mortgages, hypothecs or charges shall cease to attach to the ship, the sale must meet with the following two conditions, i.e.

(1) at the time of sale, the ship is in the area of the jurisdiction of the country, and (2) the sale has been effected in accordance with the law of the country and the provisions of Article 11 and Article 12 of the Convention.

20 See the “Acrux” (1962) 1 Lloyd’s Rep. 409.
Based on the above, it seems obvious that for a judicial sale of ship in one country to be recognized by other countries as a valid and effective one, the sale must meet with certain conditions or criteria acceptable to the other countries. Or, otherwise it would be difficult for the other countries to recognize the validity or effectiveness of the sale. Needless to say, it is desirable that the said conditions or criteria may be set forth in an international convention being widely ratified or accepted by the maritime nations.

(4) The Jurisdiction

If the validity or effectiveness of a judicial sale of ship by a foreign court is challengeable, then it would draw forth the question that which court shall have jurisdiction over the disputes concerning the validity or effectiveness of a judicial sale of ship.

The question is answered by the South African Court in the abovementioned case, the “Great Eagle”, that the appropriate forum to have such case is the court of the country where the challenged sale of ship is effected. The answer is made on the basis of the well-known principle, i.e. “forum non conveniens”. In addition, the question is also answered by the Chinese Maritime Court in the abovementioned case, the “Union”. By emphasizing the principle that “sovereignies are equal and neither of them shall have jurisdiction over the other”, it is held by the Chinese Maritime Court that it is not within the jurisdiction of this Court to examine and judge whether or not the ship sold by the DPRK Court was in accordance with the DPRK law, and that such claim should be referred in accordance with the DPRK law to the DPRK Court. The approach of the Chinese Maritime Court seems to be that to first qualify the sale by a foreign court as a legal fact only, then to apply the applicable law to determine the legal effect and/or consequence that may be given rise by such legal fact. By this approach, not only the recognition of a foreign judgment or court order is avoided but also the examination of a decision made by a court of another sovereignty is riddled.

The jurisdiction issue is not covered by the 1967 Convention nor by the 1993 Convention. It might be arguable or worthy debating if the above answers are the only or the best answers to the question.

(5) Other related issues

As known, the purpose of a judicial sale of ship is to satisfy the creditors of the shipowner and sometimes also creditors of someone else who is not the shipowner when their claims are secured by a mortgage or maritime lien or other charges on the ship, out of the proceeds of the sale. Therefore, it is in the common interests of the creditors and the shipowner that the ship may be sold
at the highest possible price. In addition, protections should be duly balanced not only among the purchaser, the shipowner and the creditors, but also among the creditors themselves so as to ensure that all creditors in relation to the ship shall have an equal opportunity to take part in the procedure of distribution of the proceeds.

As a matter of fact, apart from the prior notice to be sent to the related parties, there are a number of other issues necessarily to be dealt with by the rules regulating the procedure of judicial sale of ships, such as the valuation, the basic price, the conditions for bidding, the conduct of the auction, etc. It is certainly desirable to have a set of internationally accepted rules regulating the procedure of judicial sale of ships, or at least to set forth the key principles which should be followed in formulating the rules regulating such procedure.

The conclusion

While ships are being arrested or seized in one country or another, and some of the arrested or seized ships are sold by court for enforcement of maritime or non-maritime claims, problems in relation to judicial sale of ships have been encountered by the international shipping industry and are calling for consideration and solutions.

Based on the belief that “[I]n view of the forced sale being the normal manner whereby mortgages and hypothecs as well as maritime liens are enforced, provisions on forced sale of ships found a proper place in a convention on maritime liens and mortgages,” provisions on “notice of forced sale” and “effects of forced sale” are included in the 1967 Convention and the 1993 Convention. Unfortunately, the 1967 Convention has not yet come into effect, while the 1993 Convention, although has come into effect on 5 September 2004, has not yet become a widely accepted international convention. On the other hand, as pointed out in this paper, judicial sale of ships is not only the normal manner for enforcement of maritime liens and mortgages or hypothecs on ships, but also can be used for enforcement of a wide range of titles which are not necessarily in connection with enforcement of maritime liens and mortgages or hypothecs on ships. Furthermore, the subject covering the issues in relation to judicial sale of ships is a rather comprehensive one, which means that in addition to the issues in respect of the notice and the effects of judicial sales, a number of other issues are also necessary to be dealt with by an international convention. In other words, it is desirable to have a particular international convention to set forth those principles or rules which should be followed by the maritime nations in which judicial sale of ships is effected or to be recognized.

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21 See UN ESCAP, Guide-lines for Maritime Legislations, p. 262.
Last but not the least, it must be admitted that this paper represents only a preliminary study on some of the issues in relation to judicial sale of ships. It is hoped that by discussion or debate on the issues including those identified by this paper, the question that whether or not it is necessary and feasible for the CMI to launch a new project in relation to judicial sale of ships will be considered, discussed and answered by the international maritime law circles at this conference and afterwards.
CHARTERER’S RIGHTS TO LIMIT LIABILITY

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CHARTERERS’ RIGHT TO LIMIT LIABILITY

PATRICK GRIGGS*

Introduction

1976 Limitation Convention

Article 1(1) provides that “Shipowners… may limit their liability in accordance with the rules… set out in Article 2.”

Article 1(2) provides that “The term “Shipowner” shall mean the owner, charterer, manager and operator of a seagoing ship.”

Article 2 lists the claims which are subject to limitation.

The extent of the right of a charterer to limit liability was examined in the High Court in London in the case of the “Aegean Sea” [1998] 2 Lloyd’s Rep.39.

This case concerned a vessel which had loaded a cargo of crude oil for discharge at La Coruna in Spain. Whilst entering the port the vessel grounded, subsequently exploded and became a total loss losing much of her crude oil cargo into the sea.

The owners asserted that the vessel had been sent to an unsafe port and claimed damages from charterers in London arbitration for (1) loss of the ship (2) the loss of the bunkers and (3) unpaid freight. They also sought an indemnity in respect of their liability under the Civil Liability Convention for property damage, clean up expenses and the costs of preventative measures arising out of the oil spill. Further they sought reimbursement of the special compensation paid to the salvors under a Lloyd’s Open Form Salvage Agreement. The total claims against charterers came to US$65 million. The vessel’s limitation fund was approximately US$12 million. The scope of the various claims was wide but there was a common factor namely that the owner would not have been able to limit his liability under the 1976 Convention for any of these claims. The first three claims represented the Owners own losses and were therefore claims over which the owner had no opportunity to raise a limitation defence. The next two claims (the claim in relation to CLC and special salvage compensation) were excepted from
limitation under the 1976 Convention (Article 3) but the owner now sought to recover these items from the charterers by way of damages.

The issue for the Court was whether a charterer could exercise a right to limit under the 1976 Convention in circumstances where an owner could not. The decision of the High Court was that a charterer was not entitled to limit in such circumstances. Mr Justice Thomas felt that it had never been the intention of the Convention that the amount contained in a limitation fund could be reduced by direct claims by owners against charterers if, as a result, the fund would be to diminish for those truly entitled to claim. In his view the reference to “charterer” in the Convention referred to the situation where a charterer was “standing in the shoes of an owner” and facing direct claims as such. In other words, a charterer could only limit his liability in circumstances where the charterer was sued by a third party as if he was the owner.

In the “CMA Djakarta” the facts were as follows:

In July 1999, “CMA Djakarta” was a few hundred miles off the coast of Cyprus when there was an explosion on deck followed by a fire. The vessel was subsequently abandoned and grounded off the coast of Egypt where salvors took over. The vessel was refloated and towed to Malta as a port refuge and subsequently to Croatia for repairs.

In a London arbitration between owners and charterers it was found that the fire and explosion on deck had been caused by a cargo of bleaching powder, which had self-combusted, possibly as a result of impurities in the cargo, either caused during the manufacturing process or as a result of contamination during transport.

It was held in the arbitration that this amounted to a breach of the Charterparty by charterers and the owners were awarded the cost of repairing the “CMA Djakarta”, together with the costs of salvage and an indemnity for cargo claims.

The arbitrators found themselves bound by the decision of Mr Justice Thomas in the “Aegean Sea” with the result that the charterers had no right to limit. The charterers appealed this one aspect of the London Arbitration Award. The appeal was heard in the High Court before Mr Justice Steel. He agreed with the decision of Mr Justice Thomas in the “Aegean Sea”. The person entitled to limit under the Convention was the “Shipowner” and although the “Shipowner” was defined as meaning “the owner, charterer, manager or operator of a sea-going ship”, under the 1976 Limitation Convention, a charterer only had the right to limit as against third parties when acting in the capacity of an owner.

The decision of Mr Justice Steel was then taken to the Court of Appeal. The Court held that, in principle, a time-charterer could limit as against an owner under the Convention. The Court found that the rationale applied by Steel and Thomas J was misfounded in law, and that the charterer’s right to limit does not arise because he stands in the shoes of the Shipowner, but as of right by application of the Convention.
The Court found that the person seeking to limit can limit in respect of all the claims that are mentioned in Article 2. Additionally, it noted that Article 2(2) provides that most of the claims set out in Article 2(1) are subject to limitation even if brought by way of recourse or for an indemnity under a contract or otherwise.

Accordingly, in deciding whether a charterer can limit his liability, it is first necessary to ascertain whether the claims being made against a charterer by an owner fall within Article 2. The main claim that was brought in the “CMA Djakarta” was for the cost of repairs to the ship. The Court held that the words in Article 2(1)(a) did not include loss of or damage to the ship itself. The Court also held that the amount that the owners had to pay by way of salvage did not fall within Article 2 and equally that the owners’ claim to be indemnified against their liability to contribute in general average would not fall within Article 2. It followed that the charterer could not limit in respect of any of these heads of claim.

In practice, therefore, the Court’s decision that a charterer could limit against an owner, has little effect when considering many of the most common claims an owner is likely to make, following a casualty, against a charterer. Although not considered in the case, oil pollution claims also fall under a separate convention and therefore are outside Article 2.

The Court of Appeal, however, highlighted one type of claim which did fall within Article 2, namely an indemnity for any cargo claim that an owner has had to pay. Such a claim falls within “claims in respect of …loss of or damage to property …occurring on board…”. (Of course, if a charterer was sued by cargo interests direct, he would no doubt seek to limit his liability to those cargo interests under the Convention).

Accordingly, it is possible that an owner, whilst able to establish a breach of the charterparty by the charterer, might not be able to recover from the charterer the full amount that he has had to pay to a cargo interest in another jurisdiction.

From an examination of the Travaux Preparatoires to the LLMC ’76, it is evident that the issues raised by the “Aegean Sea” and the “CMA Djakarta” were never considered by those who drafted the Convention.

The issue

The issue is therefore clear: if and to what extent can a charterer limit his liability in respect of indemnity claims presented by the owner of the chartered ship?

The charterers’ right to limit liability

One matter on which all are agreed is that, if limitation survives as a concept, charterers should have the benefit of it.
The term “shipowner” in the LLMC 1976 includes “…the owner, charterer, manager or operator…” The term “charterer” itself is not itself defined. One of the questions posed was whether the term “charterer” should be defined and, if so, whether the definition should reflect modern trade usage by including space charterers and liner operators who now play such an important role.

Most respondents expressed the view that the term “charterer” in the LLMC 1976 is to be given a wide interpretation and should include all who hire space in a vessel even if they have not taken the whole capacity of the vessel. The Maritime Codes of Norway, Sweden and Finland (on the basis of which the LLMC 1976 is to be interpreted in those countries) all give a wide definition of charterer even to the extent that it may include shippers. (It is not suggested, however, that the right of limitation should be extended to a shipper.)

In Canada the legislation giving effect to LLMC 1976 widens the definition of “shipowner” to include “…any person who has an interest in…a ship…” This puts the matter beyond doubt.

In England it has been held (though not in the context of limitation) that “charterer” includes a slot charterer. (The “Tychy” [1999] 2 Lloyds Rep.11.)

However, in its response the German MLA expresses the view that whilst charterers and sub-charterers (who “are related to the vessel as a whole”) should be allowed to limit, “part-charterers” should not. Spain and Mexico also take this line. Argentina is against extension even though they have not ratified the LLMC 1976.

Notwithstanding these reservations there is broad support for the proposition that limitation should be available to charterers of all types. If the current definition is not thought to be adequate to achieve this a new definition will be needed.

A further issue concerns the calculation of the fund where only part of the ship’s capacity has been hired. Should the fund be calculated according to the total tonnage of the vessel or by reference only to the hired capacity? In England and Belgium the better view seems to be that limitation must always be by reference to the total tonnage.

Conclusion

Despite the apparent fact that courts and national laws, in applying the LLMC 1976, are giving the term “Charterer” a wide interpretation it would be helpful to have a definition of charterer which reflects the wide scope which most desire. At the same time it would be helpful to deal with the question of how the fund should be calculated where the charterer has only taken part of the ship’s capacity.
**Limitation and the indemnity claim**

I turn now to the question whether and if so to what extent the charterer may limit when faced with an indemnity claim from the shipowner.

England seems to be the only jurisdiction in which this issue has actually come before the courts though, in Sweden, the court has allowed a charterer (on an ex parte application) to create a limitation fund in an indemnity action by a shipowner without deciding whether he could limit. In Australia the question was left open in Tasman Orient Line CV-v-Alliance Group Ltd. Many respondents recognise that there is, here, the potential for trouble and have tried to assess how their courts would deal with this issue.

The starting point which appears to be accepted by all states which have implemented the LLMC 1976 is that charterers are accorded the right to limit by the Convention in respect of direct claims from third parties.

When it comes to the question of whether a charterer should be allowed to limit when faced with an indemnity claim from the shipowner the position is much less clear.

In a detailed and carefully argued paper (which I urge you to read) the German MLA argues that the charterer should only be able to limit in respect of direct claims from third parties. Indemnity issues should be covered by the express terms of the charterparty or other contract with the shipowner. This simple proposal, however, ignores Article 2 (2) which expressly provides that claims shall be subject to limitation “…even if brought by way of recourse…” It seems to me that there is a lot to be said for restricting the right to limit to situations where the parties have not had the opportunity of dealing with issues of liability and compensation in a contract. However, we cannot simply ignore the terms of Article 2(2) in the search for a tidy solution.

The British MLA knows that it is bound by the “CMA Djakarta” but, in seeking a “better” solution, suggests that because shipowners and charterers are more often than not in a co-operative venture it would make sense for there to be only one limitation fund per ship. Thus where an owner seeks an indemnity in respect of sums paid to cargo claimants in excess of his limit (perhaps because he has paid more in another jurisdiction such as the USA) it would be fair that the charterer should be able to limit to that proportion of the fund (calculated under the LLMC 1976) which the sum paid by the shipowner bears to the claims against the fund as a whole but should not be liable for the excess amount paid. Whilst this may make sound commercial sense it is not what the Convention provides (Article 2(2)).

The British MLA questions whether the “CMA Djakarta” strikes a fair balance between owners and charterers. As English law now stands charterers cannot limit in respect of most types of indemnity claim which an owner is likely to bring against him. The only notable exception is an indemnity for
paid cargo claims. Is this fair? Do we need fairness? Are charterers truly disadvantaged by this or does insurance resolve the apparent imbalance?

In Sweden the official commentary on the rules of the Swedish Maritime Code implementing the LLMC 1976 recognises the right of a charterer to limit against an indemnity claim by a shipowner. The Swedish MLA suggests that as between owners and charterers “…the limitation regime should ensure that the liability is adequately distributed to the party that ultimately bears the risk of the events that give rise to the claim.” I’m not sure I understand quite what the Swedish MLA has in mind but I will pursue that thought further. The MLA of Finland also talks about balancing the different commercial interests of shipowners, charterers and (by implication) their insurers.

Whilst the Belgian Courts have not had to consider this issue I am advised that the judges always apply a strict interpretation of conventions. The implication is that the decision in the “CMA Djakarta” might be persuasive before a Belgian Court.

The Irish MLA has indicated that the decision in the “CMA Djakarta” would be “persuasive” in its courts and the Japanese MLA seems also to think that its courts would follow the reasoning of that decision.

Chile, whilst not being a party to the LLMC 1976, does recognise the right of a charterer to limit liability whether the claim comes from a third party or from a shipowner by way of indemnity.

The MLA of Korea suggests that the principles established in the “CMA Djakarta” might be applied by the Korean Courts.

Italy has not ratified the LLMC 1976 but viewing the issue on basic principles (and bearing in mind that only the operator of the ship can limit under Italian law) the MLA can see no justification for allowing the charterer to limit against an indemnity claim from the owner.

The Australian/New Zealand MLA state that a charterer “…should be able to limit his liability in respect of an owner’s claim…only if (a) the loss or damage is to property and (b) occurring in direct connection with the operation of the ship”. This MLA is also concerned at the present uncertainty which could expose charterers to uninsurable risks.

The USMLA responded even though the US never has and never will ratify the LLMC 1976. In its response the Association makes the interesting point that if the owners have limited liability in the first place the charterer’s indemnity exposure will thereby be limited to what the owner has paid in the first instance.

The MLA of China which has incorporated much of the LLMC into its Maritime Code considers that charterers should be able to limit in respect of indemnity claims from owners.

The MLA of Finland is concerned that many of the issues raised in the
Questionnaire are matters of policy and not, perhaps, within the remit of national associations.

José Maria Alcantara on behalf of the Spanish MLA does not believe that a charterer should be able to limit as against an indemnity claim from the owner. He does not say however whether that is a personal view or a likely interpretation by the Spanish Court of the LLMC 1976.

The Norwegian MLA helpfully supplied me with an article (author not identified) which addresses the issues raised by the Questionnaire. As with other Scandinavian countries many of the doubts exposed by the “CMA Djakarta” have been anticipated and dealt with in the implementation legislation and commentaries. Thus the right of the charterer to limit against an indemnity claim from the owner is not in doubt. It also appears that this right to limit would extend to a claim for damage to the ship itself.

In passing I should mention that several respondents (Norway and Finland amongst them) recorded the fact that the whole principle of limitation is being questioned. If you wish to look at a defence of the right to limitation I refer you to the British MLA paper.

I should also mention that the British MLA raises a number of procedural issues (which are not covered by the Convention) on which some harmonisation would be helpful. I am delighted to say that most of these matters are being addressed in a separate CMI project run by Gregory Timagenis.

Conclusion

I sense that most of my respondents welcome the fact that a charterer can limit when faced by claims from third parties but puzzle to understand why this right should be exercised in respect of indemnity claims from shipowners. After all the claims in respect of which indemnity is sought will themselves have been subject to the shipowners right of limitation. Why limit again? Shouldn’t all indemnity claims be governed by the terms of the agreement between the shipowner and the charterer?

The way ahead

I think that under both heads there is work that could usefully be done to explore whether relatively minor adjustments could be made to the text of the Convention to resolve the issues which this study has identified. It may be some years before the issue of limitation again comes before the IMO Legal Committee but a paper from CMI on these issues might assist those who follow after us.
General comments

UNITED KINGDOM

The British Maritime Law Association established a sub-committee to respond to the questionnaire sent by the President of the CMI to the President of the member Maritime Law Associations on 5 March 2007 relating to the right of Charterers to limit their liability under The Convention on Limitation of Liability for Maritime Claims 1976 ("LLMC 1976").

At the international level, it has become increasingly difficult to defend the right to limit, except where strict liability is created or where the liability insurers can make a case about market capacity. The BMLA is aware that the LLMC 1976 may continue to be controversial in so far as it provides limits not only for property claims but also for injury and death. Any suggestion of amending limitation law raises the very real possibility that the whole concept could be challenged by States. The subcommittee felt that it was beyond its remit to consider the question of the desirability of limitation, which is not in any event the focus of the questionnaire.

However, when answering the questions raised in the questionnaire it was felt that it would be helpful to briefly consider the nature of the justification for limitation before considering the specific questions and arriving at the answers and the sub-committee therefore considered a variety of possible justifications for the right to limit liability. Our conclusion was that there were a number of potential justifications.

First, the sub-committee were agreed that an important justification for the shipowners’ right to limit was that carriers by sea need to be encouraged to take the risk of trading because trade benefits all economies worldwide. In the modern economic climate shipowners have to invest very significant sums in new vessels, the training of crews and associated operations. In order to encourage owners to make this investment owners must be protected from the
consequences of huge losses. Secondly, and in addition to this, as was clearly intended at the time the LLMC 1976 was conceived, the amount of the limitation fund should reflect the amount of insurance reasonably available to shipowners. Thirdly, the existence of the right to limit liability sometimes assists in the early settlement of claims.

In talking of “owners” in the context of limitation, a broad definition is required; one that includes “charterers”. In the last 30 years owners and charterers have come to be more closely associated with the operation of ships. Many owners in practice arrange for their vessels to be “chartered” out to associated companies or companies linked to banks who have lent them money to build and operate the vessels. In effect the owners and charterers will often be found to be operating the ship together as if they were parties to a joint venture.

Ships and other craft often constitute much larger investments than ever before. It is said that the “Emma Maersk” is capable of carrying 13,000 TEU; no carrier, on its own, can fill a ship of this size. The carrier needs to share the space with other carriers who, themselves, have contracts of affreightment covering many tens or hundreds of thousands of units of cargo to be carried each year. These carriers may often be slot charterers.

Similar developments have been seen in other areas of shipping such as chemical carriers, bulk vegetable oil carriers etc. To encourage owners, charterers and commercial lenders to develop shipping in this way, catastrophic losses must be avoided and limitation is seen as having an important role to play in achieving this. Because these ventures often involve investment, not only by owners but also charterers, it is felt that there is a strong argument for allowing charterers a right to limit in addition to owners.

The developments in the shipping market outlined above have largely occurred since the LLMC 1976 was conceived and it is felt that the law must follow and adapt to such commercial developments.

SOUTH AFRICA

We refer to your letters of 5th March and 30th July 2007 to which were attached a questionnaire regarding the charterers’ right to limit liability.

South Africa is not a party to the 1976 Limitation Convention.

The limitation regime is contained in domestic legislation set out in sections 261 through to 263 of the Merchant Shipping Act, No. 57 of 1951.

The question of limitation is currently the subject of revision with a strong possibility that, despite its perceived shortcomings, the provisions of the 1976 Limitation Convention will be adopted and incorporated into domestic legislation.

Much of what is set out below is subject to possible changes.
Responses to the individual questions

1. Have the Court and arbitrators in your jurisdiction considered whether a charterer has a right to limit liability when faced by an indemnity claim? If so, with what result? Have any of these decisions been at Appellate level?

ARGENTINA
This issue has not been considered by our Federal Courts nor are we aware of any decision having been made in arbitrations in our jurisdiction. This is so mainly because most of time-chartered vessels calling Argentinean ports are under charter parties which include arbitration and jurisdiction clauses whereby any dispute is normally referred to either London or New York jurisdiction.

AUSTRALIA AND NEW ZEALAND
Not to our knowledge.

BELGIUM
In a Judgment of 7th September 2004 in re ms “Independent Spirit” the Antwerp Commercial Court has decided that “it is possible that one of the LLMC-debtors (i.e. the Shipowner) can limit his liability and that another LLMC-debtor (i.e. the Time-charterer) cannot, if the loss results from “his personal act or omission, committed with the intent to cause such loss, or recklessly and with knowledge that such loss would probably result.”

By Judgement of 5th March 2007 the Antwerp Appeal Court has judged that as the limitation fund constituted by the Shipowner is considered to be constituted in the name and for account of all persons named in al. 1, A of article 9 of the LLMC-Convention (referring to article 1.2 of the LLMC-Convention) these articles apply to the Time-charterer and that the limitation fund constituted by the Shipowner is considered to be constituted also on behalf of the Charterer.

CANADA
There is no Canadian case law which has considered the charterer’s right to limit liability in the context of an indemnity claim.

CHILE
Assuming the question refers to limitation of liability on the claims mentioned in Article 2 of the LLMC 1976, it is necessary to clarify that Chile has not ratified said Convention, but has incorporated in the Code of Commerce, part of their principles and rules. Based upon the domestic law contained in that Code, Charterers have successfully claimed the right to limit their liabilities, in respect of a casualty consisting in damages to a Wharf, and
the other one in respect of substantial damages to cargo as a result of a fire which took place during the navigation of the vessel. In this last case, the Court’s decision admitting the limitation of the charterers was questioned before the Supreme Court, under the arguments that the limitation breaches rights of private property granted by the Constitution. In the proceeding before the Supreme Court, the Official Prosecutor of this tribunal had expressed his opinion against the plaintiff, whose claim had been included in the list of creditors in the limitation proceeding. However, there was no final judgment from the Supreme Court, because the recourse was desisted from by the claimant.

**China**

We have not known or advised if the charterer could limit their liability in China Jurisdiction.

**Finland**

To our knowledge, there are no court decisions in Finland in this particular matter. It is more difficult to verify the situation as far as arbitration awards are concerned, but, presumably no awards dealing with this particular matter exist.

**Germany**

As far as we are aware, no judgement or awards have been rendered which directly or indirectly deal with the charterers’ right to limit liability vis-à-vis the owner.

**Ireland**

The question as to whether a charterer has the right to limit liability does not appear to have come before the Irish courts either directly or in a reference from arbitration. The Court of Appeal judgment in *CMA Djakarta* [2003] 2 *Lloyd’s Rep.* 50, although not binding, would be of persuasive value in the Irish Courts and is likely to be followed.

**Italy**

Italy is not a party to the LLMC Convention. The Italian limitation system differs significantly from that of both the 1957 and the 1976 Conventions and grants the benefit of limitation only to the operator (*armatore*) of the ship. However it is worth mentioning that whilst Italian Courts would apply Italian law as to issues of procedure, the substantial issues would be governed by the law of the ship’s flag. Italian Courts would therefore apply the LLMC Convention if the ship flies the flag of a State party and the accident subject to limitation has occurred in the Italian jurisdiction. To our knowledge the Italian Courts have applied the 1976 LLMC Convention in one
Synopsis of the responses to the questionnaire

occasion (Tribunal of Sassari 22 April 2004, The “Panam Serena”, Diritto dei Trasporti 2006, 559) where limitation of liability was invoked by the owner of a ship flying the Bahamas flag. In the matter of the “Panam Serena” it was not considered whether a charterer has a right to limit liability as indemnity claims were brought only against the owner of the ship.

JAPAN
There has been no case so far.

KOREA
No precedents yet.

MEXICO
Yes, we are aware of two cases were the Court has permitted the charterer to limit liability. These cases have not been appealed as the parties accepted the Court ruling.

NIGERIA
The question of the charterers right to limit liability when faced with an indemnity claim from the shipowner, has not arisen before Nigerian Courts.

NORWAY
No.

SOUTH AFRICA
No.

SPAIN
Negative up to date.

SWEDEN
Under Swedish law a limitation fund may be constituted if suit has been brought or legal proceedings instituted on account of “a claim subject to limitation”. Accordingly, when the courts consider an application for the constitution of a limitation fund the court will have to determine whether the claim relied on by the applicant for the constitution of a fund is subject to limitation or not. In two cases, one of the Courts of Appeal (the courts below the Swedish Supreme Court) has allowed the constitution of a limitation fund on the basis of an indemnity claim by the owners against the charterers. However, the Svea Appeal Court has remarked that the determination in connection with the constitution of a limitation fund is not final and that the question whether a specific claim is subject to limitation must be determined in limitation proceedings (that is, legal proceedings before the court where the
fund is constituted in which in questions of liability and limitation are decided and the fund is distributed, see Chapter 12, Section 10 of the Swedish Maritime Code). As the court’s determination of the claim in connection with the constitution of a limitation fund (which is made ex partes, that is without hearing the claimants) is summary in nature it is fair to say that it is sufficient for the constitution of a limitation fund that the claim is prima facie limitable. In conclusion, although the question of whether a charterer is entitled to limit his liability with respect to an indemnity claim from owners is not finally resolved in Swedish law such claims have at least been considered to be prima facie limitable.

**UNITED KINGDOM**

**Answer:** The English Courts have considered whether a Charterer has a right to limit when faced with an indemnity claim in the following cases:


- **Blue Nile Shipping Company Limited and Another v. Iguana Shipping & Finance Inc. and Others (the “Darfur”)** [2004] 2 Lloyd’s Law Rep.469 – Admiralty Court before Mr Justice David Steel.

The Court in the “Aegean Sea” found that a charterer could limit his liability, but only when acting “qua shipowner”. This more limited approach was however rejected by the Court of Appeal in the “CMA Djakarta” whose judgment was followed in the “Darfur”. In the “CMA Djakarta” the Court of Appeal held that the correct approach was simply to look at the type of claim that was being made (whether directly or by way of indemnity), to ascertain whether it fits into the categories of claim described in Article 2 of the LLMC 1976; if it did, the charterer was entitled to limit and if it did not, he was not. Thus in the “CMA Djakarta” the charterer could not limit in relation to damage to the chartered vessel itself since this did not fall within Article 2.1(a) of the LLMC 1976. Nor could the charterer claim for loss consequential on damage to the vessel, which would therefore disentitle the charterer from limiting in relation to claims by the owner seeking an indemnity in respect of the ship’s proportion of salvage remuneration or contribution to general average.

However the Court of Appeal held that a charterer could limit where an owner sought an indemnity in respect of cargo claims. It was conceded in the “CMA Djakarta” that charterers could limit their liability in any suit brought against the charterers by cargo owners. Accordingly the Court felt that it would be anomalous if charterers could be exposed to a greater liability for the same claim merely because it was routed through the shipowners.
Comment: This could have important consequences if, as was the case in the “CMA Djakarta”, one or more claims are bought in a country which is not a party to the LLMC 1976 Convention such as the United States of America with the result that no limit, or at the very least a higher limit, applied. To the extent that the shipowners’ liability in respect of that cargo claim was greater than it would have been under the LLMC 1976 that loss would have to be borne by the shipowner as the Charterer could limit in respect of it. The practical result of these judgments is that the most important area in which a charterer can limit in respect of an indemnity claim is where an Owner seeks an indemnity in respect of cargo claims. However, whilst there are some other possible claims in respect of which limitation might be sought by Charterers, most of the claims which are likely to arise as between Owners and Charterers (including indemnity claims) are not limitable.

UNITED STATES

No. The United States is not a party to the LLC and it is highly unlikely ever to become a party. The U.S. Limitation of Liability Act differs in many respects from the LLC. Under U.S. law, only bareboat charterers may limit liability because they are considered to be owners pro hac vice. Therefore our law is in harmony with Justice Thomas’ finding that charterers can only limit to the extent that they are held liable as owners in the first place. It should be noted that just because one has the right to seek limitation under the U.S. Limitation Act, does not mean that an owner or bareboat charterer will be permitted by the Court to limit its liability. The burden is on the party seeking limitation to prove that the cause of the accident was not within his privity or knowledge, which has become a rather steep burden.

2. Have there been any local regulations, amendments, enacting statutes or other forms of direct or delegated legislation which have addressed the issue of a charterers’ right to limit?

ARGENTINA

The charterer’s right to limit is granted by the Navigation Law in so far as the charterer is considered to be a carrier. Pursuant to Section 175 this right is granted to the registered owner (propietario) and the beneficial owner (armador), whilst Section 181 extends this right to the carrier (transportador) or his servants, the servants of the beneficial owner (armador), and the master or the crewmembers. In this regard, it should be noted that under Section 267 the “carrier” is the person who contracts with the shipper for the carriage of goods, whether the registered owner (propietario), the beneficial owner (armador), the charterer (fletador), or whoever has the ship at his disposal.

The right to limit does not depend on the person who claims (the owner
or a third party), nor on the way the claim is brought (recourse action, indemnity action or under a contract), but on the type of claim.

As per Section 177 the following claims are subject to limitation:
(a) loss of life, or personal injury to, any person,
(b) loss of, or damage to, property or rights, and
(c) liability out of wreck removal, refloating of vessels sunk or grounded, or damage to berths or port facilities.
Pursuant to Section 178 the right to limit liability cannot be invoked, though, in connection with
(a) claims out of salvage awards,
(b) contributions in general average, and
(c) claims of the master and crewmembers, or their dependents, arising out of their services on board.

AUSTRALIA AND NEW ZEALAND

Not in Australia. In New Zealand s84(b) of the Maritime Transport Act 1994 expressly includes the “charterer” within the definition of owner and it has been held, in Tasman Orient Line CV v Alliance Group Ltd [2003] 2 Lloyd’s Rep 713; [2004] 1 NZLR 650, that this provision is wide enough to include time-charterers and sub-time-charterers at least in relation to cargo claims brought by cargo owners against the sub-time-charterer as carrier. The issue of whether, and to what extent, a charterer has the right to limit liability in respect of claims brought by the shipowner was left open in Tasman Orient Line CV v Alliance Group Ltd.

BELGIUM

The LLMC-Convention has been ratified in Belgium and incorporated into Belgian law by the law of 11th April 1989.
The issue of Charterers’ rights to limit has not been addressed separately. Under Belgian law Belgian judges are bound to consider – on the basis that an international convention should be applied as such without interference of national law and bearing in mind the purpose of the convention – that in order to find out whether a claim falls within the limitation one needs to check whether:

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1 Section 84 defines “owner” as follows:
“Owner, in relation to a ship:
(a) Means every person who owns the ship or has any interest in the ownership of the ship;
(b) In any case where the ship has been chartered, means the charterer;
(c) In any case where the owner or charterer is not responsible for the navigation and management of the ship, includes every person who is responsible for the navigation and management of the ship”.

(a) the person claiming the protection of limitation is one of those mentioned in the LLMC-Convention and that a Charterer (Bareboat-, Time- and Slot-charterer) certainly is;

(b) that limitation applies to all claims mentioned in the Convention unless the LLMC-Convention has allowed the contracting states to exclude certain types of claim.

In re “Tricolor” v/ “Kariba” the Antwerp Arrest Judge has in a Judgement of 10th January 2003 judged i.r.o. a collision that took place in the French exclusive economic zone that given that the aforementioned law of 11th April 1989 has excluded claims meant by article 2.1 (d) and (e), i.e. removal and rendering harmless of ships’ wrecks and their cargo, are not subject to limitation in our country because Belgium has per article 18.1 of the LLMC-Convention excluded the application of art. 2 §1 (d) and (e).

The Judgement is made on the basis that the wording of the limitation convention in this respect is clear and therefore not subject to interpretation. In fact the Belgian approach corresponds to what the Court of Appeal decided in its Judgement in re ms “CMA Jakarta”: “As I read these provisions, the duty of a Court is to ascertain the ordinary meaning of the words used, not just in their context but also in the light of the evident object and purpose of the convention.”

**CANADA**

The LLMC 1976 allows the shipowner, salvor, insurer, and “any person for whose act, neglect or default the shipowner or salvor is responsible” to limit liability. The Canadian Marine Liability Act, S.C. 2001, c. 6, a Federal statute, expands the category of those eligible to limit liability, providing at section 25(1)(b) that:

25.(1) For the purposes of this Part and Articles 1 to 15 of the Convention, ...

(b) the definition “shipowner” in paragraph 2 of Article 1 of the Convention shall be read … as including any person who has an interest in or possession of a ship from and including its launching;

Thus, in Canada, section 25(1) of the Marine Liability Act explicitly extends the meaning of the term “shipowner” as referred to in the LLMC 1976.

**CHILE**

This question has been in part answered in N° 1 above, but we can add that the basic rule giving right to limit liability to the “Shipowner”, who is defined as the person who whether owning or not the vessel, sails and exploits her, acting on her own name (article 882 of Commercial Code), is complemented by article 902, which expressly extends the right to limitation of liability to: the registered owner of the ship, her operator, the carrier or by
the lessor, when he is a different person than the shipowner, and also for his servants o for the master and members of the crew in the actions against these others.

When the shipowner, as above defined is a person different than the registered owner, either because she is a bareboat charterer or a time charterer of the vessel, in these cases she is a charterer, so the answer to this question is that in Chile, the charterer has the right to limit liability.

**China**

Pursuant to Chinese Maritime Code, the charterer is entitled limit the liability for maritime claim stated in the Maritime Code.

**Finland**

When the Nordic countries of Denmark, Finland, Norway and Sweden implemented the LLMC 76 in their national legislation, there were some clarifying remarks made in the legislative preparatory material, but some uncertainties continue to exist. The remarks were not included in connection with preparing the present Nordic Maritime Codes of 1994, but were made before that. There is no reason to believe that the present text in these Maritime Codes would be intended to be interpreted in another way than what the situation was before introducing those Codes. The transformation from LLMC 76 into the Nordic Maritime Codes is not a word by word method.

However, some differences between the Nordic countries may exist, at least judging by the wording in the respective Codes. The general provision in Chapter 9 section 1 of the Finnish and Swedish Maritime Codes dealing with persons entitled to limit refers not only to a charterer of a ship, but also to a shipper of goods. The latter reference means the person that has concluded a contract of carriage with the carrier (cf the Finnish and Swedish Maritime Codes Chapter 13 section 1 on definitions, even of no explicit reference in Chapter 9 has been made to Chapter 13). This reference was added in 1994 with the new Codes for the sake of clarity as, for example, stated in the Finnish Government Bill 62/1994 under Chapter 9 section 1. Such a specification can hardly mean any other possibility, but understanding the reference to a charterer of a ship to mean any charterer. Otherwise, e.g. slot charterers for liner trade purposes or other purposes would be excluded, but shippers included. Whether this provision corresponds with the intention of the LLMC 76 or not, is another matter. On the other hand, section 171 of the Norwegian Maritime Code refers to a charterer, but does not include a reference to a shipper of goods. Then it is quite another matter that it in view of Norwegian law has been debated whether ”charterer” does include ”shipper”.

When it comes to particular matters under the hypothesis of the charterer being entitled to limit, one of them is the situation where the owner directs a
claim against a charterer (could be in chains of contracts) due to damage caused to the ship. It seems that such a claim would fall under limitation rights as long as the claim otherwise falls into one of the enumerated categories.

**GERMANY**

There are no relations of any kind in German law which directly or indirectly address the charterers’ right to limit liability.

**IRELAND**

No.

**ITALY**

No. In any event this would be a matter for the legislator only

**JAPAN**

Article 3(1)(iii) of the Law of Liability Limitation of Shipowners\(^2\) excludes “any claim arising out or the loss of or damage to the ship” from the scope of liability limitation. This exclusion seems to be based on the interpretation of LLMC as follows. First, like “Aegean Sea”, when charterer damaged the ship, a charterer should not be entitled to the limitation for liability against the shipowner. On the other hand, it does not mean that a charterer is always unable to limit the liability against the ship owner. Rather, like “CMA Djakarta”, the law will allow limitation for the charterer for such claims as “claims arising out of the loss of or damage to the property on board”.

**KOREA**

Not yet.

**MEXICO**

There are no local regulations, amendments, enacting statutes or other legislation that address charterers liability. Mexico strictly applies the text of the London 1976 Convention.

**NIGERIA**

There is no direct local legislation which has addressed the issue of the charterers right to limit liability.

However under S. 9 of the Admiralty Jurisdiction Act 1991, a Charterer who apprehends that a claim for compensation under a law that gives effect to a liability convention, may be made against him by a shipowner, may apply to

\(^2\) The domestic legislation which implements 1996 LLMC in Japan.
the Federal High Court to determine whether the liability of the shipowner in respect of the claim may be limited.

**Norway**

It is clearly presumed in the Preparatory documents to the rules in the Scandinavian Maritime Code including the Convention that the charterer should have this right. Cf. the enclosed article for further details.

**South Africa**

Section 263(2) of the South African Merchant Shipping Act was amended by Section 8 of Act No. 3 of 1981 and states as follows:

“For the purposes of Section 261 the word “owner” in relation to a ship shall include any charterers …”

Section 261 states, where relevant, as follows:

“The owner of a ship, whether registered in the Republic or not, shall not, if any loss of life or personal injury to any person, or any loss of or damage to any property or rights of any kind, whether movable or immovable, is caused without his actual fault or privity …”

There follows thereafter a formulation of the interpretation based on whether these are claims for damages in respect of loss of or damage to property and/or in respect of loss of life or personal injury.

**Spain**

Negative. Spain follows strictly the LLMC Protocol 1996 and have denounced the Convention 1976. The Charterer, under the draft of Navigation Act (not in force yet), will be able to limit where he is a B.B. Charterer or a Time Charterer acting as Carrier of goods by sea under the specific conditions set out for the legal regime applicable (Hague-Visby Rules).

**Sweden**

Pursuant to Chapter 9, Section 1 of the Swedish Maritime Code the right to limit extends to the operator of a vessel and “an owner of the vessel who does not operate the vessel and to a person who manages the vessel and to a person who manages the vessel in the owner’s place, and also to a charterer, shipper and to any one performing services directly connecting with salvage”. Accordingly, it is expressly provided that a charterer is entitled to limit.

There is no express provision in the Swedish Maritime Code or elsewhere in Swedish law dealing with the charterer’s right to limit by a claim from owners nor is there any express exception for such claims. It may be noted that the leading Swedish commentary on the rules of the Swedish Maritime Code implementing the 1976 LLMC takes the view that a charterer is entitled to limit its liability with respect to a claim by the owner (even for claims relating to damage to the vessel itself). The commentary has been
prepared by the Swedish judge who chaired the 1976 London Diplomatic Conference leading up to the 1976 LLMC.

**UNITED KINGDOM**

Historically demise charterers were granted the right to limit their liability under the Merchant Shipping Act 1894 as amended by the Merchant Shipping Act 1906 – section 71. The justification for this was that it was thought they deserved the same protection as shipowners when sued by third party claimants. The 1957 Limitation Convention went further: In Article 6(ii), the right to limit was extended to the “Charterer, Manager and Operator” of the ship, “as they apply to the owner himself”. In other words, if the shipowner would be entitled to limit his liability, e.g. to the cargo owners, then a time charterer should also be entitled to limit in circumstances where, for example, the Charterer was the contracting carrier. The 1957 Limitation Convention was enacted into UK law by the Merchant Shipping (Liability of Shipowners and Others) Act 1958 and in doing this the Convention wording was altered so as to omit the reference to “as they apply to an owner himself”. The LLMC 1976 is enacted into English law by the Merchant Shipping Act 1995 and applies to incidents occurring after 1 December 1986. The Protocol of 1996 to amend the Convention on Limitation of Liability for Maritime Claims of 19 November 1976 (“the 1996 Protocol”) applies to incidents occurring after 13 May 2004. As noted above, the LLMC 1976 has been held to give a charterer the right to limit. It is anticipated that the position of a slot charterer (widely believed to be able to limit liability) will be addressed later this year (see 6 below).

These are the only local regulations, amendments or enacting statutes or other forms of direct or delegated legislation which have addressed the issue of a charterers’ right to limit.

**UNITED STATES**

Yes, the U.S. Limitation Act permits limitation by owners and owners *pro hac vice*, which by definition are demise or bareboat charterers. Time and voyage charterers have no right to limitation.

3. **Is it desirable that a charterer should be permitted to limit when faced with an indemnity claim and if so, should his right be restricted to certain types of claim only? In particular, should a charterer have the right to limit liability in relation to claims brought by the owner?**

**ARGENTINA**

In our opinion, it is desirable that a charterer should be permitted to limit when faced with an indemnity claim in respect of the same list of claims
which are subject to limitation. However, it should be also desirable that the owner and the charterer are put on an equal footing with regard to any indemnity claim brought by one of them against the other.

**Australia and New Zealand**

A charterer should be able to limit his liability in respect of an owner's claim to be indemnified against his liability only if (a) the loss or damage is to property and (b) occurring in direct connection with the operation of the ship.

**Belgium**

It is believed that a Charterer should be permitted to limit when faced with an indemnity claim if that claims falls within those listed in the LLMC-Convention and which are not excluded by national law pursuant to an exception admitted by the Convention. In this respect it should be born in mind that Charterers (whether they are Bareboat-, Time- or Slot-charterers) can only invoke the tonnage limitation calculated by reference to the whole tonnage of the vessel and not just the tonnage available to the Charterer on board of the vessel.

I mean by this that even if the Charterer is not “acting qua Owner or as if he were Owner” he can be exposed to such huge responsibilities that tonnage limitation brings relief.

The fact that the claim is brought against him by the Owner does not seem to be relevant in that respect.

**Canada**

It is the considered view of the CMLA Board of Directors and the CMLA Committee on Limitation of Liability that expanding the rights of charterers in the Convention to claim limitation should not be supported at this time. No persistent or great inequity has been identified to justify the effort that would be required to amend the Convention in this regard.

**Chile**

We answer only to the last question of this Point, because the other questions have been answered above.

In our opinion, the charterer should be allowed to limit against the same claims the other persons are entitled to limit, whether the claimant is an owner or a third party. In fact, the Chilean Code of Commerce makes no discrimination as to the category of the claimant. The right to limit should be conditioned only upon the nature of the claim and not on the role of the claimant.

However, if the matter only refers to the relationship between the Owners and the Charterers, we think that if there are claims for other damages than those which give rise to limitation under law, they should be considered in the
relevant contract (Charter Party), as is the case under Chilean Law.

Actually, Article 888 of the Commercial Code states that the Shipowner (under the meaning of the definition of Article 882), may contractually limit his liability, except when the law forbids him to do so. For instance, there are not express provisions in the law forbidding do so for vessel’s repairs or loss of hire against the charterers or damages to the ship stranded as a result of the use of an unsafe berth. There is no jurisprudences on these specific points, but, as the drafters of the new Book III of the Chilean Commercial Code, in this particular topic, had a broader mind in favour of shipping business, their idea was to open the system of limitation fund, so we consider that those cases also give rise to limitation in favor of the charterer.

**CHINA**

We think charterer should be permitted to limit their liability when faced with maritime claim, even if the claim is filed by owner.

**FINLAND**

There is no clear-cut answer to such de lege ferenda questions. Some academic research and some commercial opinions have placed the whole system of the global limitation rights under question saying that no serious policy reasons exist to maintain such a system. On the other hand, many commercial sources find it absolutely necessary to continue with the system, particularly insurance sources. It must also be remembered that present regulation provides more flexibility than before, not only within the LLMC 76 itself, especially in view of death and personal injury situations, but also by the introduction of particular limitation systems, for example, due to oil pollution. In addition, another tier of coverage exists in cases of oil pollution (Fund).

In the bigger picture the debate runs on somewhat other lines than on the particular question concerning the charterer’s right to limit his liability.

We believe that debating policy matters, which are in the end for the legislator to decide upon, does not run by drawing lines between different national views. Rather, it is a question of different views represented by different interest groups. There are other aspects here as well, but there is no possibility to dwell upon them in further detail in this connection. The conclusion is that for a National Association it is not necessarily appropriate to express one single opinion, as it is probable that views on this delicate matter vary within the membership.

The comments under 2. above indicate problems of interpretation de lege lata. Providing that global limitation provisions are upheld, which many sources think they must, there seems to be indications in a Finnish perspective that as a matter de lege ferenda the charterer of a whole ship should have the right to limit, even if a view also has been expressed that the Aegean Sea
approach should suffice. The latter is, judging by the comments received, the minimum common denominator. As there is no unanimous explicit consensus on this point concerning de lege ferenda, it becomes clear that limitation rights beyond this and beyond the charterer cannot be verified on a consensus basis by our Association as a policy matter.

**Germany**

This questions really is divided into two sub-questions. As is indicated by sub-question 2, sub-question 1 concerns (indemnity) claims brought against the charterer by third parties. In so far, the position already has been clarified in the LLMC ‘76. Firstly, Article 1.2 expressly grants the right to limit to, inter alia, the charterer. Secondly, according to Article 2.2, the charterer is also protected if claims which fall under Article 2.1 are brought as recourse or indemnity claims, be it under contract or otherwise. A charterer may limit liability only in relation to claims as per Article 2.1. In so far, the charterers’ right to limit today is already restricted to certain types of claims. There does not seem to be a particular reason to either restrict or extend the claims listed in Article 2.1 in any way in respect of the charterer. In our view, charterers and owners, for the purpose of the right to limit liability, should be treated equally.

Sub-question 2 covers what we feel is the main issue in relation to the charterers’ right to limit liability, i.e. whether he should be entitled to limit vis-à-vis claims brought by the owner. In our view, this question cannot be separated from the perhaps more theoretical issue of whether the owner would be entitled to limit liability vis-à-vis contractual claims brought by the charterer or, more generally, whether the parties listed in Article 1.2 and thus entitled to limit liability, may do so in relation to claims amongst themselves. It is our considered opinion that the right to limit liability should generally only be afforded in relation to third party claims and not to claims brought by any other party entitled to limit. The parties listed in Article 1.2 are bound by a number of different contracts and thus able to enter into agreements concerning their mutual liability, also in respect of claims enumerated in Article 2.1. It is correct that Article 2.2 clarifies that the right to limit is also extended to contractual claims. To us, it is a matter of principle that the parties named in Article 1.2 are considered a privileged group vis-à-vis other parties, but not in respect of their mutual liability. This accords with the original idea and justification of the limitation of liability, i.e. the protection of the ship owner accepting the more-than-ordinary business risk of operating an ocean going ship.

**Ireland**

The public policy justification for the right to limit liability is that it affects the price of goods in their ultimate marketplace. It is desirable that
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everyone involved in carrying the goods to market should have the same right to limit liability in relation to claims brought by third parties or in relation to a claim brought for an indemnity for claims brought by third parties. The question as to whether the shipowner or the charterer ought to bear a loss, which one or the other of them most bear in any case, is the fundamental question of this questionnaire. Clearly, it is a question which will be answered differently by shipowners on the one hand and charterers on the other; it follows that there can be no definitive answer to this question as there is no public policy reason as to why the law should devour shipowners or charterers or vice versa.

ITALY

If our understanding is correct, this question and the subsequent ones are not related to the LLMC Convention but are de iure condendo. By “indemnity claim” (or recourse action) we assume is meant a claim of e.g. the owner against the charterer in respect of the settlement by the owner of claims brought against him by third parties, such as the first three claims brought by the owners of the “Aegean Sea” against the charterers. This is actually the more specific question that has been asked in the second sentence. The answer to this question presupposes an affirmative answer to Question 4. Since we believe that this should be the case, we shall attempt to answer this question 3, which indeed has raised differing views in our Association. The prevailing view is that limitation in respect of an indemnity claim is not justified because, a) if the claim against the owner was subject to limitation, then the indemnity claim would be brought in respect of the limitation fund; and, b) if the claim against the owner was not subject to limitation, there is no reason why the charterer should enjoy a benefit the owner did not have.

JAPAN

As is indicated in the response to question 2, charterer’s liability against the owner regarding the damage to the ship should not be subject to the liability limitation.

KOREA

Only indemnity claim from the owner against the charterer should be subject to the limitation of liability. Restriction to LLMC Art 2(1) claims is right approach like in the case of CMA Djakarta.

MEXICO

No, in our opinion, the charterer’s right to limit liability should be equal to that of the owner and we do not consider that should be conditioned, in particular to claims brought by owners.
NIGERIA

A Charterer should be permitted to limit liability when faced with an indemnity claim. However his right should be restricted to claims for oil pollution damage where the shipowner cannot get relief under the CLC.

NORWAY

The Scandinavian legislator has clearly wanted this result. The charterer is presumed to have a right of limitation also in relation to a claim from the owner for damage to the ship. The result may be discussed, but then it will be in a de lege ferenda perspective, cf. again the enclosed article.

SOUTH AFRICA

It is probable that the charterer will be permitted to limit when faced with a claim for an indemnity arising out of the claims referred to in Section 261, i.e. where there has been loss or damage to property and loss of life or personal injury. With regard to the charterer having the right to limit liability in relation to claims brought by the owner, this particular issue has not yet been canvassed.

SPAIN

Negative. I do not think that it would be desirable unless such Charterer had acted as Owner (i.e., as Disponent Owner or Carrier). The right to limitation is grounded upon the entrepreunerial risks and running costs afforded by the Owner or the operator of the ship toward third party claims and toward Authorities.

SWEDEN

We believe that the same policy reasons that apply with respect to the owners’ right to limit also apply to the charterers’ right of limitation and that the charterers accordingly should be given the right to limit. As to claims between owners and charterers the limitation regime should ensure that the liability is adequately distributed to the party that ultimately bears the risk of the event that give rise to the claim.

UNITED KINGDOM

Answer: A charterer should be permitted to limit when faced with an indemnity claim if the claim in respect of which indemnity is sought falls within Article 2(i) of the 1976. The effect of this is that the charterer will only be able to limit in relation to indemnities for cargo claims but not in relation to the types of claim which fall outside Article 2(i) such as salvage, general average and oil pollution under the CLC. To this extent only, a charterer should have the right to limit in relation to claims brought by the owner.

Comment: The time or voyage charterer who does not man the vessel will
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frequently be liable for things which happen which are not his fault but either stem from a provision in the charterparty or the fault of some third party. This might apply for example to:

- Stevedore damage to the ship (unless the stevedores are employed as opposed to sub-contracted by the charterers);
- Cranes collapsing on ships;
- Pollution damage;
- Misplaced lights, buoys and other navigational aids causing damage to the ship;
- Pilot error;
- Explosions caused by undeclared, unsafe cargo;
- Off-spec/contaminated bunkers provided by a time charterer’s sub-contractor or supplier.

It could be argued that it would be reasonable to allow the charterer to limit his liability in respect of the above types of claim as a way of allocating the loss in accordance with fault. On the other hand it could equally be argued that as the loss in some of the above cases has nothing to do with the shipowners’ fault either but is due to the fault of some third party independent of the charterer or the shipowner it would be unfair to permit any party to limit its liability. In any event whoever is liable as between the charterer and the shipowner can usually seek a recovery from the party who is actually at fault. Moreover if fault is to be used as the criterion for deciding whether or not a party is allowed to limit then the whole basis of the law governing a shipowners’ right to limit would be undermined.

In these circumstances the BMLA’s charterers’ right to limit sub-committee’s view was that a pragmatic approach should be adopted. Owners and charterers are more often than not in a cooperative venture and while charterers should be entitled to limit as against cargo claimants there should only be one limitation fund against which all claims are brought and one limit. Thus where an owner seeks an indemnity from charterers in respect of amounts paid out to cargo claimants in excess of his limit (perhaps because he had to pay more in another jurisdiction such as the United States) it would be fair that the charterer should be able to limit to that proportion of the fund which the sum paid by the shipowner bears to the claims against the fund as a whole but he should not be liable for the excess amount paid.

As we have noted, however, most often the largest item covered by an indemnity claim made by the owner against a charterer is in respect of damage to the hull of the chartered vessel. This is however not an indemnity claim. We believe therefore that it falls outside the ambit of this question. If it is relevant, then we have already noted that the Courts in this jurisdiction have held that such a claim clearly falls outside Clause 2(i) of the LLMC 1976. The Courts have thus held that the Owner should be able to pass this loss on in full to the charterer if that is what the charterparty allows him to do. Of course, it is
theoretically possible for a charterer to negotiate the terms of his charter so that losses of this kind may not be passed on in certain circumstances.

**United States**

The answer depends on the point of view of the responder. Plaintiffs’ personal injury lawyers tend to believe that limitation should no longer be available to owners, and would certainly not be in favor of extending the right to seek limitation to charterers. At least one P&I Club attorney feels that charterers should have the same right to limit as the owner, but notes that if the owners have limited liability in the first place, the charterer’s indemnity exposure will in any event be limited to what the owner’s have paid first. Vessel owners would likely be in favor of leaving the U.S statutory scheme untouched, thereby allowing only owners and bareboat charterers to limit their liability. Time and voyage charterers would obviously like to be able to limit their liability for cargo damage. One final note is that under U.S. law, owners cannot limit claims arising under a personal contract.

4. *In your view, bearing in mind the historical background which gave rise to an owners’ right to limit, should such a right now be extended to charterers in order to reflect modern trade usage and the increasingly important role played by charterers and liner operators?*

**Argentina**

Yes, in our view the right to limit should be extended to time-charterers and liner operators.

**Australia and New Zealand**

Yes.

**Belgium**

In the light of the answer given hereabove to question 3 Charterers and Liner-operators do have and should have the right to limit because they fall within the definitions of the LLMC-Convention which indeed – even if it was not meant by those drafting the LLMC-Convention – corresponds to modern trade usage.

**Canada**

It is the considered view of the CMLA Board of Directors and the CMLA Committee on Limitation of Liability that expanding the rights of charterers in the Convention to claim limitation should not be supported at this time. No persistent or great inequity has been identified to justify the effort that would be required to amend the Convention in this regard.
CHILE
Our new law extended the right of limitation explicitly to many other persons who in most of the cases, may be the charterer of the vessel. The same argument of this question was in the mind of the drafters of the New Book III of Commerce Code, to extend the system as it is expressed in article 902 above mentioned.

CHINA
Now, more and more line operator charter the vessel for the operation. So we think the extension of the limit of liability reflect the modern trade, especially for the container business.

FINLAND
See the de lege ferenda comments under 3. above. We do see that the shipping world today is something quite different to the historical starting points and background, with many more active players than before. The picture concerning “operators” is fragmented.

GERMANY
In our view, it would seem that the question whether the right to limit liability should also be extended to charterers already has been dealt with in LLMC ’76. Article 1.2 expressly refers to the charterer and thus affords the right to limit as specified in the convention to him.

IRELAND
On the view expressed above, following the decision of the Court of Appeal in CMA Djakarta, charterers have the right to limit liability though this right issubject to the same exceptions as shipowners.

ITALY
Since the 1924 Limitation Convention the charterer has enjoyed the benefit of limitation. In the 1924 Convention reference was made to “armateur non proprietaire” and to the “affreleur principal” (article 10); in the 1957 Limitation Convention (article 6(2)) and in the 1976 LLMC Convention (article 1(2) reference is made to the “charterer, manager and operator”. In view of this, we assume that this question aims at seeking an opinion on whether the charterer should enjoy the benefit of limitation in respect of claims brought by the owner, as in the case of the “Aegean Sea” in respect of the first three claims and in that of the “CMA Djakarta”. As said in the reply to question 1), Italian law grants the benefit of limitation only to the operator of the ship. Pursuant to art. 275 code of navigation the operator of a ship is entitled to limit his liability in respect of obligations assumed in the occasion and for the needs of a voyage and of the obligations arisen out of facts
occurred or acts performed during the voyage, provided the operator did not act with gross negligence or wilful misconduct. Italian law further provides that in order to limit liability the operator of a ship must establish a limitation fund by way of actual payment of a sum into Court. The amount of the limitation fund is equal to two-fifths of the sound value of the ship together with the ship’s earnings at the end of the voyage. If the value of the ship at the time when the limitation is applied for is lower than one-fifth of the sound value, then the limitation fund is equal to one-fifth. The sound value is, pursuant to art. 622 code of navigation, the insured value. If the actual value of the ship at the end of the voyage is above two-fifths of the insured value the limit is two-fifths of such insured value. Bearing in mind the historical background which gave rise to the owner’s right to limit, and also having in mind that the Italian limitation system existing so far is still strictly linked to the ships’ value and therefore to the ancient system of the “abandonment”, we believe that the Italian approach should be rather conservative for the time being, although times are changing and the role of charterers and liner operators cannot be denied or undervalued. We therefore are of the view that justice and fairness should require an affirmative answer to the question, but within the limits of similar claims: for example, while the owner can enjoy limitation in respect of claims for loss or damage caused by unseaworthiness, the charterer should enjoy limitation in respect of claims for loss or damage caused by dangerous goods. The charterer instead should not be able to enjoy limitation in respect of claims for freight and demurrage.

JAPAN
Yes. The Law of Liability Limitation of Shipowners provides for that effect.

KOREA
Yes, the right to limit liability is desirable to be extended to the charterers.

MEXICO
We do agree for such right to be extended to charterers.

NIGERIA
Yes, it is important for charterers to be able to limit their liability the way shipowners have been able to do so.

NORWAY
My personal opinion is that the limitation is outdated and against economic efficiency considerations, but as mentioned the legislators view in Scandinavia is different.
South Africa
This issue has not yet been debated.

Spain
Always in my view, the Owners’ right of limitation should be extended to all Charterers who undertake owners-like or shipmanagement/operating functions only, but not to voyage and slot Charterers.

Sweden
See paragraph 3 above.

United Kingdom
Yes – in England this has been the case for many years already (see 2 above).

United States
The Committee is aware of no impetus to change the U.S. Limitation of Liability Act to permit time or voyage charterers to limit liability. We expect it would be difficult to develop a consensus in favor of such a proposal.

5. In your view does what appears to be the current uncertainty in the law create an uneven playing field as between an owner and a charterer and further does the current position expose a charterer to the potential of bearing an uninsurable risk or at least one that can only be covered at an extremely high and prejudicial cost?

Argentina
In view of the uncertainty in the law created by the two decisions quoted in the questionnaire, it would be convenient to try and solve it by way of an appropriate amendment to the LLMC’ 76 even though we fail to grasp that there may arise the risk of the playing field being uneven as described above.

Australia and New Zealand
Yes.

Belgium
I believe that there is no uncertainty in the law if one correctly applies the LLMC-Convention as it was ratified in our country and that indeed Owners, Charterers and operators should be in a position to limit their liability and that they should not be exposed to an uninsurable risk.

Canada
It is the considered view of the CMLA Board of Directors and the
CMLA Committee on Limitation of Liability that expanding the rights of charterers in the Convention to claim limitation should not be supported at this time. No persistent or great inequity has been identified to justify the effort that would be required to amend the Convention in this regard.

**Chile**

We see that article one of the Convention and our law includes the charterer between the persons who have rights to limit liabilities. So the uncertainty may be in those cases occurred in Countries which have not ratified the Convention 1976 or in cases where the Chilean law is not be applicable.

**China**

We think the current uncertainty in the law is unfair for charterer. And it is difficult for charterer to evaluate the liability to expose. Although some commercial insurer and P&I suffer some cover for charter, it is more expensive than owner’s cover. We believe that the uncertainty of the risk is one of the causes.

**Finland**

As the basic starting point is the LLMC 76, it is quite natural to expect that national legislation based on this Convention would be interpreted in a unified or harmonized way. This is the aim of any convention. As seen above, a particular matter might be that the Convention is, by some Governments and states, considered to be silent on some particular points, leaving room for national supplements, without the state in question having breached its international obligations deriving from the LLMC 76.

To what extent there is an uneven playing field between the owner and some type of charterer is also a matter of policy and something that different interest groups might answer in different ways. One idea would be to delete global limitation rights altogether and thus achieve an even playing field. Another would be to maintain a global limitation system, but to explicitly extend this right to other operators as well, not only to owners proper, see previous answer. Where the exact line should be drawn is a matter for further discussions.

We have no absolute figures on the calculation of costs of insurance nor of general insurability of the charterer’s liability if and when no limitation right for the charterer exists.

**Germany**

The legal situation as created by the *CMA Jakarta* decision indeed does not seem to be well balanced. In particular, the claims in respect of which Article 2.1 allow a limitation of liability more often than not will originally be
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owners’ claims. However, it would not seem that the position as outlined in the *CMA Jakarta* decision added risks to the charterers’ scope of liability. As far as we are aware, it has not been assumed within the insurance industry that the charterer was at all entitled to limit vis-à-vis claims brought by the owner. The fact that he now, in accordance with the *CMA Jakarta* decision, may do so in particular circumstances really does not increase existing risks or add new risks, but merely reduces the charterers’ potential liability in relation to particular claims.

**IRELAND**

If the law is perceived to be uncertain then it should be made certain so as not to expose a charterer to greater liabilities than a shipowner. However, following the decision of the Court of Appeal in *CMA Djakarta*, the law, though complex, does not appear to be uncertain.

**ITALY**

The Italian Market provides very few Charterers Liability coverage (that are actually transferred “in fronting” to the London Market) and, to our knowledge, coverage never gave rise to unsolvable problems. That said, we believe that the solution, whatever it may be, should be in principle the same with respect to any kind of charter.

**JAPAN**

Nothing in particular.

**KOREA**

Yes.

**MEXICO**

We consider that there owners and charterers should have exactly the same right to limit their liability.

**NIGERIA**

The present uncertainty in the law certainly creates an uneven playing field for the charterer who might be faced with an insurable risk.

**NORWAY**

The present uncertainty in the law certainly creates an uneven playing field for the charterer who might be faced with an insurable risk.

**SOUTH AFRICA**

This issue has not yet been debated.
SPAIN

Negative, in my view. The Charterer should be exposed to no lesser extent of liability than the Owner is and to similar extent where he acts as an Owner. His risks are perfectly insurable. If ever the door is opened to enable the shipper to limit his liability under the contract of carriage, then new basis for resuming the discussion would be at hand.

SWEDEN

We have no practical experience of any particular problems in this field.

UNITED KINGDOM

Answer: Clearly there is an uneven playing field as between owners and charterers as things currently stand. For example charterers cannot limit in respect of nearly every single type of claim an owner can bring against the charterer (the only notable exception being the case of an indemnity in respect of cargo claims) but owners can limit in respect of almost every sort of a claim a charterer can bring against him. However, the BMLA is not aware that charterers are finding that this is an uninsurable risk or one that can only be covered at an extremely high and prejudicial cost.

Comment: The main issue that needs considering is whether the charterer should be entitled to limit in respect of claims by the owner for damage to the hull of the chartered vessel. Such a right would almost certainly result in the diminution of the limitation fund available to other claimants. On behalf of those interested in ships it has been argued that the benefits of the current system even out in the long term but this is hard to demonstrate. It is however fair to point out that if such a right were allowed, hull and machinery underwriters would be adversely affected.

UNITED STATES

There is no uncertainty on this point in U.S. law.

6. Do your answers to the questions above relate solely to time charterers or should additional protection also be available for slot charterers and other types of sub-charterer?

ARGENTINA

In principle, the benefit of the limitation should be extended to time charterers only.

AUSTRALIA AND NEW ZEALAND

It is likely that the present regime in fact includes other types of charterer in any event and so the comments are apposite to them as well.
Belgium

Again under Belgian law the word “Charterer” includes all Charterers it being understood – as explained hereabove – that the protection of the LLMC-Convention is available for Slot-charterers and other types of Sub-charterers only if the total amount of their liabilities exceeds the limitation amount calculated on basis of the whole tonnage of the vessel as per the LLMC-Convention.

Canada

It is the considered view of the CMLA Board of Directors and the CMLA Committee on Limitation of Liability that expanding the rights of charterers in the Convention to claim limitation should not be supported at this time. No persistent or great inequity has been identified to justify the effort that would be required to amend the Convention in this regard.

Chile

They mainly refers to bareboat and time charterers, and under Chilean law the right to limit also include the “carriers”, as explained above, but those concepts do not necessarily include the voyage/slot/space charterer. But, as shipping business develops extremely fast, it would not be wise to restrict the concept to a specific type of charterer, to leave it open so as to include the new charterer types that might appear.

China

Apply to Time charter, slot charterers and other sub-charter.

Finland

The replies above show that the status of all groups of charterers (shippers) should be discussed, but whether the solution for each group is the same is another matter.

Germany

Article 1.2 extends the right to limit liability to “… the … charterer …”. Taken expresses verbis, this should include all types of charterers such as time and voyage charterers, part charterers, slot charterers and all types of sub-charterers. As a matter of German law, a charterer is distinguished from a shipper who enters into a contract of carriage with a carrier. The LLMC ’76 protection would not be afforded to that party, even if the amount of cargo would reach or be close to the vessel’s full capacity. In our view, considering that the other parties listed in Article 1.2, i.e. the owner, manager and the operator are related to the vessel as a whole, this should apply also to the charterer. It would follow that the protection afforded by the LLMC ’76 should not be extended to part charterers including slot charterers. As you will
know, there is some dispute among writers whether these type of charterers are included. We believe that charterers including sub-charterers but not part charterers of any kind should be treated equal to the other parties listed in Article 1.2.

IRELAND

The answers above relate to time charterers, voyage charterers and slot charterers (by which is understood voyage charterers of part of a ship). As LLMC’76 refers only to “charterers”, and not time charterers alone, it seems likely that the Irish courts would, in line with the English Court of Appeal, apply the Convention to all charterers.

ITALY

We believe that a difference should be drawn between global limitation and limitation in respect of carriage of goods and passengers. The dividing line between charter parties and contracts of carriage is very thin, since actually many types of charter parties (e.g. the voyage charters) are actually contracts of carriage. But this does not entail that the principle of justice and fairness should not apply also in respect of contracts of carriage. Reference may be made in this respect to the present UNCITRAL Draft Convention, in which it has been accepted that if liability for delay is governed by the Convention and liability of the carrier is limited, liability of the shipper should equally be limited.

JAPAN

Our answer also applies slot charters etc. It is established that the term “charterer” in Law of Liability Limitation of Shipowners includes slot charters etc.

KOREA

Revision of the LLMC 76 rather than new convention is desirable.

MEXICO

Above answers should only apply to bareboat charterers and time charterers, and not to other type of charterers.

NIGERIA

Time Charterers are more exposed as demised charterers are sometimes classified as owners. Therefore additional protection should be made available for slot charterers and other types of sub-charterers.

NORWAY

The Norwegian/Scandinavian position is that all charterers, including
slot charterers and even shippers (stykk godsbefrakter) are provided with the right of limitation.

**SOUTH AFRICA**

The general view is that reference to charterers is a reference to all types of charter and is not restricted to time charterers.

**SPAIN**

The above answers do not relate to voyage, slot and sub-charterers, who in my view do not need additional protection as yet.

**SWEDEN**

We believe that the right to limit should extend also to slot charterers and other types of sub-charterers (which is indeed the position under Swedish law). For instance, if we assume that charterers would be entitled to limit their liability for an indemnity claim from owners for damage to third parties caused by the charterers’ cargo, the same policy reasons for allowing the charterers to limit their liability in such situation also apply to a slot charterer or a shipper.

**UNITED KINGDOM**

**Answer:** Yes, additional protection should be given to slot charterers and other types of charterer.

**Comment:** The right to limit under the LLMC 1976 probably extends in English law to slot charterers already – see the “TYCHY I” [1999] LL Rep 11 and the “CMA Djakarta” [Supra]. In the latter case, Longmore LJ said:

“I would therefore not give any gloss to the word “Charterer” in Art. 1(ii) and give what seems to me its ordinary meaning. There was some discussion whether the word included a part charterer or a slot charterer; it was said for the shipowners that the framers of the Convention could not have intended that a slot charterer could limit his liability to the Owner particularly since it would be absurd that his limit would have to be calculated by reference to the whole tonnage of the vessel when he had never contracted to have that tonnage available to him. I am content to leave to another day the question whether “Charterer” means the charterer of the ship as a whole or charterer of part of the ship, merely observing that this Court has already held in the (not entirely dissimilar) context of the Arrest of Seagoing Ships Convention 1952 that the word “Charterer” does indeed include a slot charterer, the “TYCHY” [1999] 2 LL Rep 11”

However, this point has not been finally decided in the English Courts yet, although it is due to be decided in the near future.

It is worth trying to define what we mean by a slot charterer; it very
probably should cover a charter of part of a ship but should it cover consortium agreements for the use of a ship where perhaps slots get traded as “swap slots”? The current wording of the LLMC 1976 leaves the definition of charterer unexplored and there is little or no authority on how the English Courts would view a party to a consortium agreement in this context. It would be helpful if the Convention was clarified in this respect.

Indeed, we take the view that it would be helpful if some clarification could be given in general terms as to which types of charterer are entitled to the benefits of limitation.

There is an argument to the effect that a voyage charterer who has no right of control over the vessel and is not a “joint venturer” with the owner should have no right to limit (even though at the moment under the LLMC 1976 he does). To afford a voyage charterer such a right runs contrary to the philosophy behind allowing a charterer to limit his liability described in the introduction to this paper. The purpose of affording a charterer the right to limit is to encourage the carriage of goods by sea, whereas in many cases voyage charterers are not carriers of goods but owners of goods.

However, on balance we feel that the complexity of depriving voyage charterers of the right to limit makes this proposal impracticable. First of all because of the difficulties of definition and secondly because the practical effect of depriving them of the right to limit is almost negligible.

United States

The response applies to other charterers as well.

7. **Depending on your answers to the questions above, should the LLMC ’76 be amended to reflect that position or should there potentially be a new convention giving the right to a charterer to limit liability?**

Argentina

We are of the opinion that if the LLMC’76 could be properly amended there should be no need for a new convention.

Australia and New Zealand

The LLMC ’76 could be amended to clarify the position. A new convention is not required.

Belgium

As obviously the LLMC-Convention gives rise to conflicting case law and to different interpretations it should certainly be clarified i.r.o. the Charterer’s right to limit liability for those who cannot simply agree with the principle that:
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- an international convention should be applied as such without interference of national law;
- it should be applied to all “Charterers” and to all claims listed in the convention (if no exceptions by national law are admitted by the LLMC-Convention and made by the national law of a contracting state).

CANADA

It is the considered view of the CMLA Board of Directors and the CMLA Committee on Limitation of Liability that expanding the rights of charterers in the Convention to claim limitation should not be supported at this time. No persistent or great inequity has been identified to justify the effort that would be required to amend the Convention in this regard.

CHILE

The text of the Convention is ample and comprehensive enough, it states “charterer” without any further qualification, so we consider it would be unnecessary to start with amendments.

CHINA

LLMC’ 76 should definite the charterer’s position when they encounter a claim against them. It should stipulate what circumstance the charterer will be entitled to limit liability and what situation their limitation may be disrupted.

FINLAND

We believe that this might rather be a practical-technical problem. It depends on, for example, whether it is generally considered that the LLMC 76 is in need of substantial reforms or not. If not, it might be preferable to modify the present Convention and clarify the position of different groups of charterers (and also to discuss the position of shippers, as mentioned above). We also believe that it is not desirable to let English Court practice alone decide the interpretation of the Convention. Already now, as said, it seems that Nordic law de lege lata does not follow those, in themselves somewhat unclear, outlines. There are also some problems concerning terminology.

Further, even if a charterer might be covered, there is still the question of how to approach the area of global limitation rights. For example, damage to the ship seems to be a contentious issue when the owner makes a claim against the charterer. It seems that this type pf problem (and other problems) is part of the question of the charterer’s legal status.

To the extent changes are going to be discussed, we see that there are at least three major questions concerning the topic that need clarification: 1) What is meant by the term charterer (shipper)?
2) Does and should damage to the owner’s ship caused by a charterer fall under global limitation rights or not, even if all groups of charterers or the respective group of charterers would fall under the LLMC 76, considering that this particular matter is also contractual and thus steerable by contract? Another matter is to what extent these aspects would be thought of in a contracting situation.

3) Does and should other damage than that mentioned under 2) to the shipowner caused by the charterer fall under global limitation rights or not? We maintain that these difficult matters are not easily covered by answering certain preset questions.

**GERMANY**

As explained above, in our opinion there should be no right to limit liability in relation to claims brought by other parties entitled to limit under Article 1.2. In particular, this would apply to claims among charterers and owners. This position could be clarified in an amendment to the existing LLMC ‘76 convention, which apparently would require another protocol. Unfortunately, it would not seem possible to proceed as per Article 21, as it only relates to an amendment of the liability amounts. In our view, there should not be a separate convention dealing only with the charterers’ right to limit.

**IRELAND**

No. We do not feel that there is any need for a new convention or for any amendment to LLMC’76.

**ITALY**

Charterers have already the right to limit liability. The question, therefore, is to make sure that they have a right to limit liability in respect of claims brought against them by the owner. We believe that first a careful analysis should be made of the LLMC Convention, in order to establish whether or not such right already exists. With all due respect, we believe that the facts that there have been conflicting views in the English Courts does not justify a decision to amend an existing Convention or to prepare a new convention.

**JAPAN**

We do not believe that a new convention or an amendment to the existing conventions is necessary.

**KOREA**

Revision of the LLMC 76 rather than new convention is desirable.
Synopsis of the responses to the questionnaire

**MEXICO**
We consider that the LLMC ’76 should be amended to reflect our position and we do not consider convenient a new convention for charterers.

**NIGERIA**
LLMC 76 should remain as it is. A new convention giving the charterer the right to limit his liability should be enacted.

**NORWAY**
No amendments are necessary in relation to the Norwegian/Scandinavian legal position, but an amendment may be necessary to obtain international harmonization.

**SOUTH AFRICA**
Although this issue has not been debated the general view would be to amend existing conventions appropriately rather than to create new conventions dealing with specific issues.

The queries raised above will form the subject of discussions, debates and workshops relevant to the development of an amended limitation regime. In the interim should the relevant CMI committees or any members of the CMI have any queries we look forward to receiving them.

**SPAIN**
In my view the LLMC 76 should be amended to qualify the term “Charterer” in the definition of “owner” under Article 1.2. There should be NO Convention giving the voyage, slot and types of sub-charterers a right of limitation.

**SWEDEN**
If the study should find that there is a need to regulate the charterers’ right to limit we would favour a revision of the LLMC 1976 instead of drafting a new convention.

**UNITED KINGDOM**
*Answer:* We think that the answer to this issue will depend on which form of instrument would attract the greatest support so as to ensure, as far as possible, the greatest degree of uniformity.

In addition, we take the view that other issues also deserve to be addressed which could be dealt with by way of protocol or convention or indeed by the promulgation by the CMI of a set of Uniform or Model Rules.

**Other practical issues**
There are a number of practical issues in the operation of the LLMC 1976 insofar as it relates to the right of charterers to limit their liability which can cause problems. We set out some of these issues below:
(i) It is unclear from the wording of the LLMC 1976 whether there should be more than one fund where both owners and charterers are limiting in respect of the same incident; as a matter of English law we know that only one fund can be constituted because that was what was decided in the “Aegean Sea” [supra] and this supports the wording in Article 11(iii) of the LLMC 1976 but nowhere in the Convention’s text is it completely clear.

(ii) Assuming there should be only one fund it is unclear what rights the owners/charterers and others entitled to limit have between themselves where the fund constituted by one party meets claims against another party entitled to limit. Thomas J., in the “Aegean Sea” (supra at page 50) took the view that recourse claims between owners and charterers should not be dealt with so as to diminish the fund despite Article 12(ii) but the wording of LLMC 1976 is silent on the point.

(iii) It is at present unclear procedurally how parties entitled to limit should claim the right to limit once a fund has been established by another limiting party; in England the procedure probably is that an application has to be made in the existing limitation proceedings that the subsequent limiting party or parties should be entitled to avail themselves of the right to limit by virtue of the fund already established but this is currently being tested in the Admiralty Court in the “MSC Napoli” and there is therefore no decision on point that we are aware of.

(iv) Orders for administering the fund:

(a) Claims are often ordered to be filed against the limitation fund before the bill of lading and other applicable time limits expire; this has the effect of simultaneously disentitling such claimants from being able to claim against the owner or carrier after the time for filing claims against the fund has expired or obtaining any other security for their claims. The effect of such orders is to greatly diminish the rights of claimants by reducing the time limit. This can be particularly harsh in circumstances where claimants receive no actual (as opposed to constructive) notice of the constitution of the fund.

(b) Claims for contribution or indemnity are time barred as a matter of English law two years from the date on which the right accrued (Section 10 Limitation Act 1980). This will normally be the date of a judgment or award or the date for payment under a settlement agreement. This means that in most cases no claim can be filed against the fund in respect of indemnity claims as usually no cause of action accrues until a date after which the claims are required to be filed. Any claim which is filed before a judgment, award or settlement, can be struck out because the cause of action has not yet accrued. Further, potential indemnity claimants cannot even raise the issue with the Admiralty Registrar because they have
no locus standi. Article 12(4) of the LLMC 1976 allows the Court to provisionally set aside an appropriate sum to allow such a person to enforce his claim against the fund at a later date. But this can only be invoked on an application by an indemnity claimant with locus standi and is therefore ineffective to deal with this problem.

(v) Bar to other actions - there is considerable doubt whether, and in what circumstances, persons entitled to limit can claim to take the benefit of the Bar to other actions provisions in Article 13 when a Fund has been established by a third party but in a State which has ratified or acceded to the 1996 Protocol where his assets are in a LLMC 1976 (non-1996 Protocol) State.

The BMLA feel that some sort of attempt should be made in any new instrument to deal with these procedural issues which go beyond the charterers’ right to limit and in many cases relate to all limitation actions. Perhaps a model rule of procedure might be appended to a new instrument which would assist parties ratifying the new convention in dealing with the procedural issues which it poses.

**UNITED STATES**

As the United States has not ratified and is not likely to ratify the 1976 Convention, we have not responded to this question. Nevertheless, we can foresee instances in which some of our clients would benefit from the amendment.
WRECK REMOVAL CONVENTION 2007

(1) The Nairobi Wreck removal Convention, by Richard Shaw  
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THE NAIROBI WRECK REMOVAL CONVENTION

RICHARD SHAW*

The new Wreck Removal Convention 2007 was adopted by a Diplomatic Conference at Nairobi on 14-18 May 2007. It will enter into force when 10 states have ratified it. The adoption of this text was the culmination of over 12 years of preparatory work in the Legal Committee of the International Maritime Organization (IMO), but the origins of this convention are much older.

Wreck removal expenses are among the risks covered by the usual Protecting and Indemnity ("P and I") Club rules, and the majority of wreck removal operations are directly managed and financed by the Club in which the wrecked ship is entered. No convention on removal of wrecks had previously been adopted internationally, but changing patterns of shipping, and notably the emergence of the one-ship company, have brought about the need for such an instrument.

The benefits, particularly to developing countries, of a coherent international regime with significant financial advantages are considerable. A wreck is, by definition, a thing of no commercial value. Were it to have such a value, the salvage industry would no doubt undertake its removal and sale in return for a suitable salvage reward. However a valueless wreck will not yield proceeds of sale equal to the costs involved in its removal, and since most ships these days are owned by a one-ship company, the prospects of a coastal state recovering by legal action expenses which it has incurred in removing a wreck are very poor in the absence of insurance provisions such as those in the Nairobi Convention.1

The evolution of the Nairobi Wreck Removal Convention really started with the wreck of the tanker "TORREY CANYON" in March 1967 on the Seven Stones, a submerged reef between Land’s End and the Scilly Isles in the UK. At that time she was one of the largest ships in the world, and carried a cargo of about 115,000 tons of crude oil. Salvage efforts by Wijsmuller of Holland proved unsuccessful, particularly after an explosion on board the ship resulted in the death of Capt. Stal, the salvage officer in charge of the

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1 In many cases the Owner or P and I Club concerned will arrange the removal of the wreck or settle the claims for the expenses involved, but this is not so in all cases.
operation, a solemn reminder of the risks to which salvors and their personnel are exposed.

The wreck lay outside what was at that time the limit of the UK territorial sea, which was then 3 miles, and serious questions arose as to the right of a coastal state to take action to protect its coastline from the tide of drifting oil leaking from the wreck. The UK Government finally announced that it proposed to send aircraft to drop high explosive bombs on the wreck to open up her cargo tanks and then napalm bombs to set fire to the oil which remained in the hull. This was duly done.

The actual efficacy of this operation has always remained a matter of doubt, but it has not been suggested that it was not a reasonable response by a coastal state to a very grave and imminent threat of serious pollution of the nearby coastline.

The best known result of the “TORREY CANYON” casualty in the field of International Law is undoubtedly the 1969 Convention on Civil Liability for Oil Pollution (“the CLC Convention), followed by the 1971 Fund Convention. However another important consequence was the adoption of the 1969 International Convention relating to Intervention on the High Seas in cases of Oil Pollution Casualties.2

This convention was designed to meet the need for intervening action by a coastal state arising from a casualty outside the territorial sea of the state but which threatened damage to the coastline of that state. Such a measure was not without controversy. At that time the overriding policy of states such as the UK was to preserve the freedom of navigation on the High Seas by their substantial fleet of merchant ships. Attempts to extend the limits of the territorial sea were resisted.

The rights conferred on states parties to the Intervention Convention are therefore very limited. Article I gave the right to take such intervention measures only where the danger of pollution of their coastline was “grave and imminent”, followed upon a “marine casualty” and was “expected to result in major harmful consequences”. Article V required the measures taken to be “proportionate to the damage actual or threatened” and not to “go beyond what is reasonably necessary to achieve the end mentioned in Article I.”

In 1982 the UN Convention of the Law of the Sea (“UNCLOS”) was adopted. This Convention contains in Article 221 provisions identical in substance with those of the 1969 Intervention Convention. It also created a new sea area called the Exclusive Economic Zone (“EEZ”) extending 200 miles from the base lines from which the territorial sea, now extending 12 miles, is calculated. Within the EEZ, the coastal state was granted certain limited rights as provided in Article 56.

1. In the exclusive economic zone, the coastal State has:

(a) sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or
non-living, of the waters superjacent to the seabed and of the seabed and its subsoil, and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents and winds;

(b) jurisdiction as provided for in the relevant provisions of this Convention with regard to:

(i) the establishment and use of artificial islands, installations and structures;

(ii) marine scientific research;

(iii) the protection and preservation of the marine environment;

(c) other rights and duties provided for in this Convention. (Emphasis added)

While therefore UNCLOS conferred rights on the coastal state to take measures in its EEZ for the protection of the marine environment, it was not immediately clear that such measures taken for the safety of navigation, such as the removal of a wreck obstructing an important seaway, would fall within this Article.

It must be emphasised that within its territorial sea and inland waters a state has unfettered jurisdiction to take such measures. In the UK these rights are conferred by sections 252, 253 and 254 of the Merchant Shipping Act 1995, which derive from equivalent provisions in the Merchant Shipping Act 1894. Similar provisions exist in the maritime codes of many states.

The wreck of the “MONT LOUIS”

The need for an international instrument was demonstrated by the problems surrounding the wreck of the French vessel “MONT LOUIS” which sank off the Belgian port of Zeebrugge following a collision with the passenger ferry “OLAU BRITANNIA” in August 1984. The wreck lay on a sandbank near the Wandelaar pilot station and was clearly a hazard to navigation. However she was outside the limit of Belgian territorial waters as they existed at that time, and although a Wreck Removal Order was issued by the Belgian Authorities to the owners of the “MONT LOUIS”, it was not clear that they had jurisdiction to do so. The matter was resolved amicably, but this casualty revealed the absence of a legal right of a coastal state to institute

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2 Adopted on 29 November 1967; entered into force 6 May 1975
3 Sections 530 to 534
4 Her cargo of drums of uranium hexafluoride was removed safely in an impressive salvage operation.
outside its territorial limits legal measures to protect access to a major port.

The History of the Wreck Removal Convention.\(^5\)

This topic was first raised in the IMO Legal Committee\(^6\) in 1974/5 when a review was conducted of national law in a number of member states with a view to the development of an international instrument, but this did not go further at that time.

A draft convention on Wreck Removal was first raised in its current form at the IMO Legal Committee’s 69th 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 this topic. This 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 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 2007 Nairobi Convention has been developed from that draft.

The key components of this draft text were:

1. the grant of rights to the coastal state to remove a wreck from its EEZ if it was a danger to safe navigation or to the marine environment;
2. strict liability on the shipowner for the costs of reporting, marking and removing a wreck if required to do so by the coastal state;
3. compulsory insurance and direct action against insurers, up to the LLMC\(^7\) Limit, modelled on the equivalent provisions of article VII of the 1969 CLC Convention.

The Comite Maritime International (“CMI”) became actively involved in 1996, three years after the topic entered the Legal Committee work programme. A small International Working Group was set up under the chairmanship of Bent Nielsen (Denmark) to study the proposed Wreck Removal Convention. A questionnaire was prepared and circulated to CMI member national maritime law associations. Based on responses to the

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\(^5\) This section is based in part on a valuable paper by Patrick Griggs CBE presented to the CMI Colloquium in Dubrovnik in May 2007 before the Nairobi Conference. The full text of this paper is at [www.comitemaritime.org/year/2005_6/pdffiles/YBK05_06.pdf](http://www.comitemaritime.org/year/2005_6/pdffiles/YBK05_06.pdf)

\(^6\) Then known as the Intergovernmental Maritime Consultative Organisation (IMCO).

\(^7\) 1976 International Convention on Limitation of Liability for Marine Claims; the revision of this convention which led to the Protocol of 1996, was already well advanced.
questionnaire the CMI International Working Group submitted a report to the 74th Session of the Legal Committee in October 1996. This report commented on the draft convention in the light of its survey of national wreck removal laws in the 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 Wreck Removal Convention”. This was the first suggestion of extending the draft convention’s provisions to internal and territorial waters, since the IMO draft only related to international waters. The CMI report commented:

“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.”

These prescient remarks led to a major debate during the development of the Wreck Removal Convention by the IMO Legal Committee.

The evolution of the Wreck Removal Convention

The Netherlands was appointed “lead country” by the governments working on the draft of this convention. That nation’s predominant position in the world of salvage, with which wreck removal is inevitably linked, made this a logical choice. However at the meetings of the IMO Legal Committee the Netherlands delegates maintained a steadfast reluctance to extend the provisions of the draft to inland or territorial waters.

There was a rational basis for their position. The limits on the rights of coastal states to take measures in the EEZ outside their usual jurisdiction resulted in the appearance in the draft text of carefully worded clauses limiting the freedom of action of the intervening state. These can be seen in Articles 2 and 9 of the final text, and reflect the limitations imposed by the 1969 Intervention Convention. Such limitations were not necessarily appropriate to action taken by a state in its internal waters and the territorial sea, and certain delegations fiercely defended their governments’ right to take any action which they considered appropriate in such waters.

However the indisputable fact that most troublesome wrecks lie in shallow waters, and that most such wrecks are in internal waters and the territorial sea, led the Diplomatic Conference to adopt finally a text which gave states parties the option to extend the convention’s provisions to such waters. This was, however, only achieved in the final stages of the discussions.

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8 Emphasis added.
At the meeting of the Legal Committee in April 2005 a provision to this effect was actually removed from the draft text.

Before that however, the draft convention had run into the doldrums. Following the events of 11th September 2001 the United Nations had ordered an urgent review of all international instruments relating to terrorism, including the 1988 Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (the SUA Convention) and its Protocol concerning such acts against the Safety of Fixed Platforms on the Continental Shelf. Likewise there was considerable international pressure for the revision of the 1974 Athens Convention on Liability to Passengers. It was not until the Athens Protocol of 2002 and the revised SUA Protocols of 2005 had been adopted that work could really begin in earnest to produce the final draft of the Wreck Removal Convention for a diplomatic conference timetabled for 2007.

During the summer of 2006 a small CMI Working Group reviewed the text generally and proposed a number of drafting amendments. In addition it reminded the IMO of the importance of resolving the debate over the “opt in” provisions. An extensive debate took place at the Legal Committee meeting in Paris in October 2006, but the opt-in issue remained unresolved. Impetus was given by the International Group of P and I Clubs, whose members had agreed to give the letters of financial security for wreck removal expenses as required by the draft convention. The International Group representatives emphasised that their member associations would not give a guarantee for expenses incurred by a coastal state which fell outside the carefully crafted wordings of articles 2 and 9, whereas the delegates of some states had asserted that they could not accept such limitations on their freedom of action within their own territory.

As the October meeting concluded, it appeared that the prospects for a successful diplomatic conference in the following May were looking distinctly doubtful. A small focus group chaired by Germany was tasked with finding a solution to this issue, and an important meeting took place in London in March 2007 at which the focus group reported, and significant progress was made. This led directly to the successful resolution of this issue at Nairobi. The careful balancing of the rights of the flag state with those of the affected coastal state was the continuing theme of the debates leading to the adoption of the text of this convention. The speed and number of ratifications will be the ultimate test of whether that balance was successfully achieved.

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10 See articles 3 and 4 of the final text.
An Overview of the Nairobi Wreck Removal Convention

The broad scope of this convention follows the three principles in the 1994 Working Paper produced by Germany the Netherlands and the UK referred to above, namely:

1. the grant of rights to the coastal state to remove a wreck from its EEZ if it represents a hazard to safe navigation or to the marine environment;
2. strict liability on the shipowner for the costs of reporting, marking and removing a wreck if required to do so by the coastal state;
3. compulsory insurance and direct action against insurers, up to the 1996 LLMC Limit, modelled on the equivalent provisions of the 1969 CLC Convention.

In addition Article 3 enables a State Party to extend the application of the Convention to wrecks within its territory including the territorial sea and to notify the IMO that it has done so. This is the so-called “opt in” provision.

Article 1 Definitions

This article contains the usual structure of key phrases which are precisely defined, but in this Convention several of them are of significance in defining the limits of the convention’s application.

Paragraph 1 “Convention Area” refers to the EEZ or equivalent area following the wording of previous conventions such as the 2001 Bunker Pollution Convention. The words “established in accordance with international law” are an oblique reference to articles 55 to 75 of UNCLOS in which the Exclusive Economic Zone is defined. Article 3(3) extends the meaning of “convention area” to the territory, including the territorial sea, in the case of a state party which has exercised the option to extend the application of the convention to such waters.

Paragraph 2 gives an exceptionally wide definition of “ship” including floating platforms subject to the exception, first adopted in the 1989 Salvage Convention, of such platforms which are “on location” (a term widely understood in the offshore industry) and engaged in the exploration, exploitation or production of sea-bed mineral resources.

Paragraph 3 The definition of “maritime casualty” is identical with that
in the 1969 Intervention Convention. Note that “wreck” is defined in paragraph 4 as “following a marine casualty”, although it is hard to envisage a ship becoming a wreck in circumstances which are not ipso facto a marine casualty.

Paragraph 4 The definition of “wreck” is widely drawn to include both ships and their cargo, and also a ship in distress. The word “effective” was added at the instance of the CMI and the International Salvage Union to ensure that a coastal state does not have the right to intervene when a casualty is in the hands of a competent salvor. In such circumstances the legal rules applicable to a salvor in possession will apply, and a state which intervenes may expose itself to legal liability to the salvor.

Paragraph 5 The definition of “hazard” makes it explicit that this word applies not only to marine perils, but also to the threat of harmful consequences to the marine environment.

Paragraph 6 The phrase “related interests” is taken from Article II(4) of the 1969 Intervention Convention, and the definition follows the wording of that article, with the addition of “offshore and underwater infrastructure” reflecting the increase in offshore activity since 1969, and the contemplation of such activity in the EEZ in Article 56 of UNCLOS.

The overriding obligation created by the Wreck Removal Convention is to be found in Article 2(1) which requires that there should be “a wreck which poses a hazard in the Convention Area”. The cross references in the first six definitions in Article 1 requires all six of them to apply to the facts of the case if the Convention is to be invoked.

Paragraph 9 defines “operator of the ship” very widely and includes the bareboat charterer, reflecting the increasing use of such arrangements. The reference to the ISM Code is unusual, since it is not customary to refer in one international instrument to another, to which the states party to the original instrument may not be signatories. However since the ISM Code is part of the SOLAS Convention, which is of almost universal application, this is unlikely to cause difficulties.

The other significant definition is in paragraph 10, which defines “Affected State” in purely geographical terms as the state in whose Convention Area the wreck is located. It is not difficult to envisage circumstances in which a drifting ship amounts to a hazard to more than one nearby coastal state, but the Convention confers the rights of intervention on only one state, namely the one in whose EEZ the ship is at the material time.

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17 Para 4(d)
18 Chapter 9
19 Although the threshold of the ISM Code is 500 tons, whereas that of the Wreck Removal Convention is 300 tons – see article 12(1).
The identity of the Affected State may of course change if the ship drifts from the EEZ of one state into that of another.20

**Article 2 – Objectives and General Principles**

This article contains the heart of the Convention, and also sets out the limitations on the rights of the Affected State to intervene. The origins of these rights in the Intervention Convention, discussed above, can be seen here, notably in the use of the term “proportionate” in paragraph 2 and in the prohibition of more than what is reasonably necessary and of unnecessary interference with the rights of other states, including those of the ship’s flag state.21

**Article 3 – Scope of Application**

This article, much of which was drafted during the Diplomatic Conference in Nairobi, contains the provisions to give effect to the “opt in” powers to coastal states. The somewhat cumbersome wording shows the problems encountered in achieving a broadly acceptable compromise. In particular the last sentence of paragraph 2 was added at the instigation of the International Group of P and I Clubs to safeguard their letters of guarantee, and to ensure that claims for expenses beyond those incurred in accordance with articles 7 (locating) 8 (marking) and 9 (removal) would not be covered by such a guarantee.

The wording also covers the entry into force of any “opt in” notification, and of its withdrawal.

This article does not address the legal relationship between a state which has given such a notification and one which has not. One may envisage a case where a ship is wrecked in the territorial sea of a state which has indeed so extended the Convention, but where the ship is registered in a flag state which has not done so. The powers of wreck removal granted by the Convention to the Affected State are unlikely to be wider than those of any domestic legislation applicable within its territorial sea, but in order to benefit from the financial advantage of the security provided by the Convention, the Affected State would be wise to notify the State of the ship’s registry in accordance with Article 9(1), even though the exclusion of this article by article 4(4)(ii) does not require them to do so.

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20 Article 2(5) and the International Convention on Oil Pollution Preparedness, Response and Cooperation 1990 (the OPRC Convention) will almost certainly apply to such circumstances.

21 See Article 5 (1) and (2) of the Intervention Convention. The explanation of what is “proportionate” in paragraph 3 has not been included, but may, it is submitted, be referred to for guidance.
Article 9 was drafted some months before article 3, but it is reasonable to infer that the consent of the flag state under article 9(10) to action taken by the Affected State (provided that it is in accordance with the constraints imposed by article 2 and paragraphs 4 to 8 of article 9) would extend to action taken inside the territorial sea if the Affected State has given a notification under article 3. Again Article 4(4)(ii) appears to say that paragraphs 7 and 8 of article 9 (inter alia) would not apply to wrecks in internal and territorial waters, but it appears from article 3(2) that compliance with those paragraphs would remain a pre-condition to the Clubs’ liability under any letter of guarantee.

**Article 4 – Exclusions**

This is a curious collection of paragraphs, somewhat unrelated to one another. Paragraph 1 provides that this convention shall not apply to measures taken under the Intervention Convention, notwithstanding the similarity of wording discussed above. The Intervention Convention applies to action taken on the high seas. It was drafted at a time when the limit of the territorial sea of most states was still 3 miles and the EEZ did not exist.

Article 86 of UNCLOS provides that the articles relating to the High Seas will apply “to all parts of the sea that are not included in the [EEZ], the territorial sea or in the internal waters of a state…” When the Wreck Removal Convention enters into force the interface between it and the Intervention Convention will clearly be at the outer limit of the relevant EEZ. In the meantime, however, the position is less clear. A state threatened by a distressed ship inside its EEZ could probably invoke the Intervention Convention and customary international law to justify appropriate action.

As discussed above, the exclusions listed in paragraph 4(4) were part of the compromise package which enabled the “opt in” provisions in article 3 to be adopted. It is however curious that this paragraph was not included in article 3, which is where it logically belongs. Likewise the application and non-application of certain provisions to any given set of circumstances involving a wreck inside territorial or internal waters is regrettably uncertain.

**Article 5 - Reporting wrecks**

**Article 6 – Determination of hazard**

**Article 7 – Locating wrecks**

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22 Although many major maritime states were beginning to recognise that they would have to accept the inevitability of a 12 mile limit to the territorial sea. The Torrey Canyon’s grounded position was outside UK territorial waters in 1967.
Article 8 – Marking of wrecks

These four articles are essentially administrative in nature and are designed to ensure that reasonable precautions are taken to identify a wreck, assess the degree of hazard according to a set of objective criteria, and to locate the wreck, buoy it, and publish its location by appropriate notices to mariners. The contents are however also relevant to the application of those articles dealing with financial matters, since any claim by an affected state under this Convention for refund of the expenses involved will have to be accompanied by proof that the procedures and criteria set out in these articles have been satisfied.

The obligation under article 8 on the Affected State to mark the wreck, even though it is lying outside its territorial waters, is a clear extension of the rights and duties of the coastal state beyond those specified in the provisions of article 56 of UNCLOS concerning the rights of a coastal state in its EEZ.

Article 9 – Measures to facilitate removal of wrecks

This is one of the most important articles in the Nairobi Convention, but contains an assortment of apparently unrelated paragraphs. As Patrick Griggs has observed\(^\text{23}\), the title “wreck removal” would have been good enough.

The bare statement in paragraph 2 “The registered owner shall remove a wreck determined to constitute a hazard” is at the core of the obligations created by this convention, while the requirement in paragraphs 1 and 3 to inform and consult the flag state and to provide evidence of insurance is largely administrative.

Paragraph 4 is the most interesting and innovative of this article largely due to one word - “any”. Many states have laws reserving salvage operations in their waters to their own salvage contractors. Such laws cannot of course apply in the EEZ, and paragraph 4 preserves the independence of the shipowner (and his P and I Club) to choose the most suitable contractor for the job. The second sentence and paragraph 5 limit the power of the affected state to interfere if the wreck removal operation is proceeding safely and effectively. This also reflects the position if a competent salvor is in possession of the wreck.

Paragraphs 6 and 7 allow the Affected to State to intervene if the wreck removal operations are not commenced or proceeded with after a reasonable time. The terms of these paragraphs are not controversial, but there are potential problems in store here. A major wreck removal operation will usually require elaborate preparation and planning, the marshalling of a substantial quantity of heavy equipment on site, often brought in from

\(^{23}\) Footnote 4 supra
overseas, and the careful use of tidal and weather windows. Government officials, who rarely have detailed knowledge of such operations, may well grow impatient if they can see nothing happening. The wise contractor requires good diplomatic skills, and will set up procedures to keep the Affected State advised, and it is to be hoped that the wording of paragraphs 6, 7, and 8 will encourage and assist this.

Paragraph 8 of this article allows the Affected State to step in and take over the operation if “immediate action is required.” In practice most governments are reluctant to take on a major wreck removal operation, for which in most cases they do not have the expertise or equipment. The officials of an Affected State would be well advised to pause and reflect seriously before invoking the powers granted by this paragraph. In doing so they should also bear in mind the general limitations on the action of the Affected State set out in paragraphs 2 and 3 of Article 224.

The states most concerned with preserving their freedom of action within their territory including the territorial sea were vociferous in the debates leading up to the Nairobi Conference in arguing that article 9 should not apply to salvage operations inside their territory. The result was a compromise by which article 4(4)(ii) excludes paragraphs 1, 5, 7, 8, 9 and 10 from applying to such operations. However, an Affected State would be wise to remember that if it wishes to obtain refund of wreck removal expenses under the guarantee provisions of article 12, it must show that it has complied with articles 7, 8 and 9 in toto.25

Article 10 - Liability of the owner

This article contains in paragraph 1 the statement that the registered owner shall be liable for expenses incurred under articles 7, 8 and 9, subject to the usual exclusions from strict liability to be found in the CLC, HNS, and Bunker Pollution Conventions. It is noteworthy that the word “terrorism” has not been included. Since this is a risk which is excluded from the usual Club Cover, it remains to be seen whether the P and I Clubs will be able to issue the certificates required by article 12. Considerable difficulties have been encountered with the equivalent provisions in the 2002 Protocol to the Athens Convention relating to the Carriage of Passengers in this respect.26

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24 The measures taken shall be “proportionate to the hazard”, shall not “go beyond what is reasonably necessary”, and “shall not unnecessarily interfere with rights and interests of other states…and of any person concerned.”

25 See the last sentence of Article 3(2)

Paragraph 2 preserves the right of the ship owner to seek limitation of liability under the applicable regime, but it should be remembered that many states, including the UK, have exercised the reservation contained in the 1976 LLMC Convention\(^{27}\) to exclude wreck removal claims from the scope of limited liability.

**Article 10 – Exceptions from liability**

This article excludes from the liability under the Wreck Removal Convention costs covered by other well-established liability regimes. In the case of CLC, HNS and Nuclear liabilities, this poses no problem, since these regimes have their own “stand alone” funds. However in the case of liabilities under the 2001 Bunkers Convention, the liability is restricted to the ship’s LLMC limitation fund, and the same applies to those under the Wreck Removal Convention. In the case of a casualty involving claims for bunker pollution and wreck removal, if the shipowner invokes his right to limitation of liability, these claims will have to compete with each other for the limited funds available if the applicable law allows limitation of liability for wreck removal claims\(^{28}\).

**Article 12 – Compulsory insurance or other financial security**

This long article is very similar to the comparable provision in the CLC, HNS, and Bunkers Conventions. It does not require detailed discussion here. Of particular note is the relatively low threshold of 300 tons for the required certificate in Paragraph 1. This will certainly increase the administrative burden on shipowners and their flag administrations, which will be required to provide the appropriate certification to small ships such as coasters and trawlers. As previously mentioned, the threshold for the application of the ISM Code is 500 tons, and problems may be encountered in applying the provisions of Article 1(9) which refers to the ISM code in the definition of the operator of the ship, when the ship may be below the 500 ton threshold and the ISM Code does not therefore apply to it.

Note that the amount of the security required shall be the limit of liability of the ship calculated in accordance with article 6(1)(b) of the Convention on Limitation of Liability for Maritime Claims 1976 (the “LLMC Convention”) as amended by the 1996 Protocol. The word “calculated” was added at the suggestion of CMI in an attempt to ensure that the security, and the liability of the insurer, would not exceed that limit even if the ship is wrecked in a state

\(^{27}\) International Convention on Limitation of Liability for Maritime Claims 1976 – article 18(1).

\(^{28}\) See note 25 above
which has not ratified the LLMC Convention, or which, like the UK, has excluded wreck removal claims from the scope of limitation of liability.

Paragraph 13 is new wording, not found in other liability conventions, and allows flag states to maintain the relevant financial security in electronic format, and to communicate this to the IMO and to other states. However this paragraph will not apply unless the coastal or port state has notified the IMO that it will recognise security in this format. This is surely the way ahead, and it is to be hoped that this option will be taken up by governments, and applied eventually to the financial security required by the CLC, HNS and Bunkers Conventions.

Article 13 – Time limits

The time limits of three years from the determination of the hazard and six years from the maritime casualty that resulted in the wreck follow the pattern of previous liability conventions. The IOPC Fund takes the view that since the equivalent provision in the 1992 Fund Convention extinshes the right to compensation, it is not possible to extend this time limit by agreement. This means that in major cases parties are obliged to commence legal proceedings against the Fund to protect the time limit while constructive settlement discussions are still under way, and this can sometimes harden attitudes. It would appear that the same will apply to claims under the Wreck Removal Convention.

Article 15 – Settlement of Disputes

This article was added at a late stage in the discussions at the October 2006 meeting of the IMO Legal Committee following a proposal by the governments of Italy and Germany supported by an intervention by a representative of the International Tribunal for the Law of the Sea. This tribunal is principally concerned with disputes between states, but has recently been encouraging private parties to submit disputes to it. Claims by governments and individuals made against P and I Clubs under their guarantees provided in accordance with Article 12 may be submitted to this Tribunal, but in most cases the Rules of the Club concerned will be governed by English law or the law of the country where the Club is established, and will be submitted to arbitration as provided in the Rules.

Article 16 – Relationship to other conventions and international agreements

This article contains a general reservation of the rights and obligations

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29 Article 6
30 Document LEG92/4/1
31 Established under Part V of UNCLOS
32 Japan, USA or Scandinavia
of a state under UNCLOS or the customary international law of the sea. The United States delegation expressed some concern at earlier drafts of this article, particularly since it is not a party to UNCLOS. Pronouncements by President Bush since the Nairobi Diplomatic Conference suggest that this position may be about to change. That would be a welcome development indeed for those seeking the harmonisation of international maritime law.

Final Clauses

These follow the pattern of recent IMO Conventions. Of particular note is the requirement in article 18 for entry into force of the Nairobi Convention of ratification by ten states. This is a relatively small number and suggests that the final text has achieved a broad acceptance internationally.

Afterthoughts – What is not in the Nairobi Convention

The long period of gestation of this convention has allowed for a very full review of all issues. It is noteworthy however that the final text does not contain any provision allowing the shipowner or government undertaking removal of a wreck to dispose of the wreckage (e.g. for sale for scrap) to recoup expenses incurred, nor does it allow the shipowner or his club to take credit against such a claim for the net proceeds of such a sale. A provision to this effect forms part of the maritime law of many countries\textsuperscript{33}, but it appears that such a provision did not commend itself to the delegates to the IMO Legal Committee.

Moreover on a broader front, the existence of a certificate of financial responsibility provided for in the Nairobi Convention may well have an impact on the topical question of Places of Refuge. State and port authorities will be justifiably concerned at the risk of a ship in distress sinking and obstructing navigation of their waterways. If their government has exercised the option in Article 3(2) to extend the application of the Wreck Removal Convention to its internal and territorial waters, this should allay their concerns that they may be left with a valueless wreck and no prospects of recovery from her owners. The topic of Places of Refuge is still under discussion in the CMI\textsuperscript{34} in the European Union\textsuperscript{35}, and at the IMO. Delegates would be wise to recognise the linkage with the Nairobi Wreck Removal Convention.

\textsuperscript{33} e.g. section 252(2)(d) Merchant Shipping Act 1995
\textsuperscript{34} This is on the agenda of the October 2008 Athens Conference of the CMI.
\textsuperscript{35} In discussion of the Traffic Monitoring Directive.
HNS CONVENTION

(1) The HNS Convention: Prospects for its entry into force, by Måns Jacobsson
THE HNS CONVENTION – PROSPECTS FOR ITS ENTRY INTO FORCE

MÅNS JACOBSSON*

1 Introduction

In 1996 a Diplomatic Conference held under the auspices of the International Maritime Organization (IMO) adopted the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea (HNS Convention). The Convention aims to ensure adequate, prompt and effective compensation for damage to persons and property, costs of clean-up and reinstatement measures and economic losses caused by the maritime transport of such substances.

The HNS Convention was modelled on the regime governing liability and compensation for pollution damage caused by spills of persistent oil from tankers, i.e. the regime established by the 1992 Civil Liability and Fund Conventions. It establishes a two-tier system of compensation, with the first tier being paid for by the individual shipowner or his insurer and the second by the International Hazardous and Noxious Substances Fund (HNS Fund).

2 Main content of the HNS Convention

2.1 HNS Substances

The definition of the hazardous and noxious substances to which the...
The HNS Convention applies is largely based on lists of individual substances that have been previously identified in a number of IMO Conventions and Codes designed to ensure maritime safety and prevention of pollution. These substances are very varied and include solids, liquids and liquefied gases carried in bulk as well as packaged goods.

The HNS Convention defines “hazardous and noxious substances” (hereinafter “HNS”) as any substances, materials and articles carried on board a ship as cargo referred to in the instruments listed below (subject to certain qualifications)³:

- the International Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk, 1983 (IBC Code);
- the International Maritime Dangerous Goods Code (IMDG Code);
- the International Code for the Construction and Equipment of Ships Carrying Liquefied Gases in Bulk, 1983 (IGC Code);
- the Code of Safe Practice for Solid Bulk Cargoes (BC Code).

The definition covers also residues from the previous carriage in bulk of substances referred to in the instruments listed above and liquid substances carried in bulk with a flashpoint not exceeding 60° (measured by a closed-cup test).

HNS include bulk solids, liquids including oils (both persistent and non-persistent), liquefied gases such as liquefied natural gases (LNG) and liquefied petroleum gases (LPG). A number of bulk solids such as coal, grain and iron ore are excluded because of the low hazards they present. Packaged goods are included if they are covered by the IMDG Code.

The number of substances covered by the definition of HNS is very large. The IMDG Code, for example, lists hundreds of materials which can be dangerous when shipped in packaged form. In practice, however, the number of HNS that is shipped in significant quantities is relatively small.

2.2 The concept of damage

The definition of “damage” in the HNS Convention is much wider than that in the 1992 Civil Liability and Fund Conventions which only apply to

³ The definition of HNS in the Convention (Article 1.5) is very detailed and it has not been possible to give an exhaustive description thereof in this article.
pollution damage. The following types of damage will be covered by the HNS Convention:

- loss of life or personal injury on board or outside the ship carrying the HNS
- loss of or damage to property outside the ship
- economic losses resulting from contamination of the environment, e.g. in the fishing, mariculture and tourism sectors
- costs of preventive measures, e.g. clean-up operations at sea and onshore
- costs of reasonable measures of reinstatement of the environment.

However, claims arising from pollution damage caused by persistent oil are excluded from the HNS Convention, since such damage is already covered by the Civil Liability and Fund Conventions. Loss or damage caused by certain categories of radioactive materials is also excluded.

### 2.3 The shipowner’s liability

Under the HNS Convention, the shipowner has strict liability for any damage caused by HNS. The shipowner is obliged to maintain insurance to cover his liabilities under the Convention. It is expected that this insurance will normally be provided by his protection and indemnity insurer (P&I Club).

The shipowner is exempt from liability if the damage resulted from an act of war, hostilities, civil war, insurrection or a natural phenomenon of an exceptional, inevitable and irresistible character. He is also exempt if the damage was wholly caused by an act or omission done with intent to cause damage by a third party, or wholly caused by the negligence of a public authority in the maintenance of lights and other navigational aids. The shipowner is further exempt if the failure of the shipper or any other person to furnish information concerning the hazardous and noxious nature of the substances shipped either caused the damage, wholly or partly, or lead the owner not to obtain insurance. The last defence is not available to the shipowner if he or his servants knew or ought reasonably to have known of the hazardous and noxious nature of the substances shipped.

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4 It should be noted that the HNS Convention does not apply to pollution damage as defined in the 1992 Civil Liability Convention, i.e. pollution damage caused by persistent oil, whether or not compensation is payable in respect of such damage under that Convention (Article 4.3 (a)).

5 The defences in the first three categories in the HNS Convention are identical to those in the 1992 Civil Liability Convention, whereas the latter Convention does not contain any defence corresponding to that in the fourth category in the HNS Convention.
The shipowner is normally entitled to limit his liability to the following amounts: 10 million Special Drawing Rights (SDR)⁶ (US$15.4 million) for ships up to 2 000 units of gross tonnage (GT), rising to 100 million SDR (US$154 million) for ships of 100 000 GT or over.

The shipowner is not entitled to limit his liability if the damage resulted from his personal act or omission, committed with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result.

2.4 The HNS Fund

The HNS Fund will provide additional compensation up to a maximum of 250 million SDR (US$386 million), including the amount paid by the shipowner and his insurer.

The HNS Fund will operate in a similar way to the IOPC Funds.⁷ It will be governed by an Assembly composed of representatives of the Governments of all its Member States and will also have a Committee on Claims for Compensation, which will be similar to the 1992 Fund’s Executive Committee. The HNS Fund will be administered by a Secretariat, headed by a Director.

Given the similarities between the HNS Fund and the IOPC Funds, it has been suggested that the HNS Fund should have a joint Secretariat with the IOPC Funds. A joint Secretariat would enable the HNS Fund to benefit from the experience gained over the years by the IOPC Funds and would reduce the administrative costs for both the HNS Fund and the IOPC Funds.

There will however be some important differences in the way the HNS Fund will operate compared to the IOPC Funds. The IOPC Funds only deal with claims for pollution damage, whereas the HNS Fund will have to deal with a wider range of potential claims, e.g. for death and personal injury. The system for contributions to the HNS Fund is much more complicated than that for contributions to the IOPC Funds.

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⁶ The unit of account in the HNS Convention is the Special Drawing Right (SDR) as defined by the International Monetary Fund. In this article the amounts in SDR have been converted into US Dollars on the basis of the rate of exchange on 10 June 2009, 1 SDR=US$1.544540.

⁷ There are three separate intergovernmental organisations within the regime of liability and compensation for pollution damage caused by oil spills from tankers, the International Oil Pollution Compensation Fund 1971 (1971 Fund) set up under the 1971 Fund Convention, the International Oil Pollution Compensation Fund 1992 (1992 Fund) set up under the 1992 Fund Convention and the Supplementary Fund set up under the Supplementary Fund Protocol 2003. These three organisations, which have a joint Secretariat, are normally referred to collectively as the IOPC Funds. The 1971 Fund Convention ceased to be in force on 24 May 2002 and does not apply to incidents taking place after that date.
2.5 Financing of the HNS Fund

The basic concept for financing the HNS Fund is the same as the financing of the IOPC Funds. The HNS Fund will thus in principle be financed by contributions payable by the physical receiver of the contributing cargo discharged in the ports and terminals of a State Party to the Convention after sea transport. The contribution system under the HNS Convention is, however, much more complicated than that under the Fund Conventions.

As already mentioned, contributions to the HNS Fund are to be paid by the person who physically receives contributing cargo discharged in the ports and terminals of a State Party (the receiver). However, if at the time of receipt the person who physically receives the cargo acts as an agent for another person who is subject to the jurisdiction of any State Party, then the principal shall be deemed to be the receiver, provided the agent discloses the principal to the HNS Fund.

In addition, a State may apply its own definition of the term “receiver”, namely “the person in the State Party who in accordance with the national law of that State Party is deemed to be the receiver of contributing cargo discharged in the ports and terminals of a State Party”. A State using this option must, however, ensure that the total contributing cargo received according to such national law is substantially the same as that which would have been received if the definition of “receiver” laid down in the Convention had been applied. It is evident that if this option were to be used by Contracting Parties, this could cause considerable complications in the application of the Convention. For this reason, the Correspondence Group set up by the Legal Committee of IMO mentioned below strongly recommended that States should not do so.

As regards liquefied natural gases (LNG), contributions to the HNS Fund shall be made in respect of each State Party by any person who, immediately prior to its discharge, held title to an LNG cargo discharged in a port or terminal of that State. The identity of the person holding title to an LNG cargo immediately prior to discharge will depend on the type of contract of carriage used. The fact that the person liable for contributions may not be subject to the jurisdiction of the State in which the LNG cargo is discharged, nor to the jurisdiction of any other State Party to the Convention may cause complications.

With respect to oils that fall within the concept of contributing oil as defined in the 1992 Fund Convention (i.e. crude and heavy fuel oil, hereinafter “persistent oil”), the provisions on contributions in the HNS Convention are the same as those in the 1992 Convention.

The HNS Fund will have up to four accounts: separate accounts for oil, LNG and LPG and a general account for bulk solids and other HNS. Each

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8 In order to ensure the financial viability of the three special accounts (those for
account will only meet claims resulting from incidents involving the respective cargoes, i.e. there will be no cross-subsidization. The contributions to each account are determined annually by the HNS Fund Assembly.

Contributions by individual receivers to the accounts will be in proportion to the quantities of HNS received, or in the case of LNG discharged, provided the quantities received are above the following thresholds:

<table>
<thead>
<tr>
<th>Substance</th>
<th>Threshold</th>
</tr>
</thead>
<tbody>
<tr>
<td>Oil persistent oil</td>
<td>150,000 tonnes</td>
</tr>
<tr>
<td>Oil non-persistent oil</td>
<td>20,000 tonnes</td>
</tr>
<tr>
<td>LNG</td>
<td>No minimum quantity</td>
</tr>
<tr>
<td>LPG</td>
<td>20,000 tonnes</td>
</tr>
<tr>
<td>Other substances</td>
<td>20,000 tonnes</td>
</tr>
</tbody>
</table>

### 3 Entry into force conditions of the HNS Convention

The HNS Convention will enter into force 18 months after ratification by at least 12 States, subject to the following conditions:

- in the previous calendar year a total of at least 40 million tonnes of cargo consisting of bulk solids and other HNS contributing to the general account (i.e. HNS other than oil, LNG and LPG) was received in States that have ratified the Convention, and
- four of the States each have ships with a total tonnage of at least 2 million GT.

As at 1 June 2009, 13 States had ratified the HNS Convention: Angola, Cyprus, Hungary, Liberia, Lithuania, Morocco, the Russian Federation, Saint Kitts and Nevis, Samoa, Sierra Leone, Slovenia, Syrian Arab Republic and Tonga. Two of these States (Cyprus and the Russian Federation) each had ships with a total tonnage of 2 million GT.

A State should, when ratifying the HNS Convention and annually thereafter until the Convention enters into force for that State, submit to the Secretary-General of IMO data on the relevant quantities of contributing cargo received or, in the case of LNG, discharged in that State during the preceding calendar year. Of the States that have ratified the Conventions, only

oil, LNG and LPG), the initial operation of the relevant separate account will be postponed if the total quantities of the substances subject to contributions to the respective account for the preceding calendar year has not reached a certain threshold. It has been suggested that initially the thresholds for the setting up of the LNG and LPG accounts might not be reached. In such a case, of the separate accounts initially only the oil account would be established, whereas the operation of the LNG and LPG accounts would be postponed so that the LNG and LPG accounts would initially form sectors of the general account.
two, Cyprus and Slovenia, have submitted this data. The entry into force conditions are therefore far from being fulfilled.

Since a number of important States have indicated that there are serious obstacles to their ratification of the HNS Convention, it is unlikely that the Convention will enter into force in its present version.

4 Preparations for the entry into force

The 1996 Diplomatic Conference which adopted the HNS Convention invited the Assembly of the 1992 Fund to assign to its Director the administrative tasks necessary for setting up the HNS Fund. In 1998 the 1992 Fund Assembly instructed the Director to carry out the tasks requested by the Conference.

The Legal Committee of the IMO set up a Correspondence Group to monitor the implementation of the HNS Convention. The Group held a meeting in Ottawa in 2003. When the conclusions of that meeting were considered by the Legal Committee, the Committee agreed that the core work of the Group had been completed. It was then suggested that the 1992 Fund should assume a more active role and work with IMO as regards the responsibility for co-ordinating the implementation of the HNS Convention.

The IOPC Funds’ Secretariat has established a website dedicated to the implementation of the HNS Convention (www.hnsconvention.org).

In 2005 the IOPC Funds organised a Workshop in London to assist States with the implementation of the HNS Convention. It has prepared a Guide to the implementation of the Convention which is available on the above-mentioned website.9 A second workshop was held in London in 2006, focussing on the more practical aspects of the implementation of the Convention.

Correct reporting of contributing cargo is essential to the operation of the HNS FUND. The IOPC Funds’ Secretariat has therefore created a system to monitor contributing cargo under the HNS Convention that includes a database of all substances qualifying as HNS substances. The Secretariat has developed software to assist States and potential contributors to fulfil their reporting requirements. This software, the HNS Convention Contributing Cargo Calculator (HNS CCCC), is available on CD-ROM or via a website, www.hnscccc.org.

5 Draft Protocol to the HNS Convention

5.1 Establishment of a “Focus Group”

In view of the Resolution adopted by the 1996 Diplomatic Conference, the HNS Convention has for some time been discussed by 1992 Fund Assembly. These discussions have led to the recognition, especially after a session held by the Assembly in June 2007, that there were a number of obstacles to the entry into force of the Convention. When in October 2007 the Assembly considered the problems that had arisen, all States that intervened expressed their strong support in principle for the HNS Convention, based on a system of shared liability, and indicated their wish that work towards resolving the problems should continue. Many States expressed their support for the development of a protocol the Convention which would provide legally binding solutions to the key issues.

The 1992 Fund Assembly established a Working Group (“Focus Group”) with the mandate to examine the underlying causes to the issues which had been identified as inhibiting the entry into of the HNS Convention and develop legally binding solutions to these issues in the form of a draft protocol to the Convention, namely:

– contributions in respect of LNG substances
– the concept of “receiver”; and
– non-submission of contributing cargo reports.10

The Focus Group elaborated a draft protocol to the HNS Convention which contained amendments to the Convention in respect of these three issues.11

5.2 Liquefied natural gases

As regards contributions in respect of LNG cargoes, as mentioned above the Convention provides that contributions shall be made in respect of each State Party by any person who, immediately prior to its discharge, held title to an LNG cargo discharged in a port or terminal of that State. It was submitted that this solution could cause major difficulties in its application, in particular due to the fact the titleholder might not be subject to the jurisdiction of any State Party. Under the draft protocol prepared by the Focus Group the physical

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10 The mandate of the Focus Group is set out in the IOPC Funds’ Annual Report 2007, p. 46-47.

11 The Focus Group also made proposals, in co-operation with the IMO Secretariat, concerning an up-dating of the definition of HNS substances to take into account changes in the structure of Conventions and Codes on which this definition is based.
receiver would be liable for the contributions. On this issue a significant minority of delegations (mostly of countries that are major importers of LNG) was, however, in favour of retaining the titleholder as primarily liable for contributions.

5.3 Packaged goods

One of the main difficulties in implementing the HNS Convention had been how to organise the system for reporting contributing cargo. Whilst bulk cargos had not been considered a problem, it had not been possible to find a practical way to collect data and make reports on packaged goods. The reporting of packaged HNS presented many complex problems for both industry and States and that as a result there was a potential for large-scale and long-term under-reporting.

For these reasons the Focus Group decided to propose that packaged goods should be excluded from the contribution system to HNS Fund. Under this proposal, incidents involving packaged goods would still be covered by the HNS Fund as regards compensation to ensure that victims would be protected in case of a major incident. However, in order to maintain the concept of shared liability between the shipping industry and the cargo interests, the shipowners’s limitation amount would be increased for ships carrying packaged HNS in comparison with the original Convention. The Focus Group did not make any proposal as regards the level of this increased limit, since it was considered that this matter was for the Diplomatic Conference to decide.

It should be mentioned that the International Group of P&I Clubs had provided the Focus Group with an analysis of data on compensation claims relating to incidents involving the carriage of HNS between 2002 and 2006. This data shows that the vast majority of claims paid for damage arising from such incidents would have been met in full by the shipowner under the HNS Convention if it had been in force at the time of the incident.

5.4 Non-submission of contributing cargo reports

The attention of the Focus Group was drawn to the fact that a number of States had not fulfilled their obligations under the 1992 Fund Convention to submit to the 1992 Fund reports on the contributing oil received in the ports and terminals of the State in question. It was submitted that it was essential that the reporting problem which had become endemic in the IOPC Funds was not repeated in the HNS Fund. For this reason, and based on the model in the

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12 IOPC Funds document 92FUND/WGR.5/5.
13 As regards the non-submission of oil reports to the IOPC Funds reference is made to their Annual Report 2008, p. 38.
2003 Supplementary Fund Protocol to the 1992 Fund Convention, it was decided to insert in the draft protocol to the HNS Convention provisions introducing sanctions against States that did not submit reports on receipts of HNS in their ports and terminals.

Pursuant to the proposed provisions, the HNS Fund would not pay any compensation for damage in a State until that State had fulfilled its obligation to submit reports on contributing cargos for all years prior to the incident in question. This sanction would, however, not apply to claims for compensation in respect of personal injury or death.

Already before the HNS Convention comes into force States should, when ratifying the Convention and annually thereafter until the Convention enters into force for a State, submit to the Secretary-General of IMO data on the relevant quantities of contributing cargo received or, in the case of LNG, discharged in that State during the preceding calendar year. As mentioned above, of the 13 States that have ratified the Convention only two States have fulfilled their obligation in this regard.

The Focus Group has proposed, therefore, to provide in the draft protocol for sanctions against States that have ratified the Convention but not fulfilled their obligation to submit reports on contributing cargos for all relevant years. Under that proposal, such State would, before the entry into force of the protocol for that State, be temporarily suspended from being a Contracting State until it has complied with its obligation.

6 Consideration by the 1992 Fund Administrative Council

In June 2008, the 1992 Fund Administrative Council, a body set up by the Assembly to act on its behalf, approved a draft Protocol to the HNS Convention prepared by the Focus Group.

The 1992 Fund Administrative Council noted, however, that as regards contributions in respect of LNG cargos there were differences of opinion between two groups of States which were of a political, economic and policy nature and not just a matter of drafting. It was also noted that it was essential for efforts to be made to bridge the gap between the two sides in order to reach a consensus quickly. An informal correspondence group was set up with the aim of developing a compromise on this issue that would make the Convention attractive to as many States as possible.

The Council decided that the draft protocol should be submitted to the Secretary-General of IMO, with a request that he should refer it to the IMO Legal Committee for consideration with a view to convening a Diplomatic Conference to consider the draft protocol at the earliest opportunity.14

14 The draft protocol is reproduced in the Annex to IMO document LEG 94/4.
The Secretary-General’s attention was drawn to two other issues where amendments to the HNS Convention could be beneficial:

- **Entry into force conditions**: As mentioned above, one of the conditions for entry into force of the HNS Convention is that a total quantity of 40 million tonnes of HNS other than oil, LNG and LPG has been received in the States that have ratified the Convention. It has been suggested that this figure should be increased to for instance 60 or 70 million tonnes to ensure that the general account is financially viable from the outset. It has also been suggested to reduce from 18 to 12 months the period from the fulfillment of the entry into force conditions at the end of which the Conventions enters into force.

- **Procedure for amendment of limits of liability**: Modeled on the 1992 Civil Liability and Fund Conventions, the HNS Convention provides for a simplified procedure for amendments of the limits of liability laid down in the Convention (known as “the tacit acceptance procedure”). Under this procedure amendments to these limits may be decided by the IMO Legal Committee by a two-thirds majority, and such an amendment is deemed to have been accepted unless within a period of 18 months at least one fourth of the States Parties communicate their objection to IMO. An amendment deemed to have been accepted enters into force 18 months after its acceptance. It has been suggested that the periods of 18 months should be shortened to 12 months, following the model of the Supplementary Fund Protocol.

### 7 Consideration by the IMO Legal Committee

**7.1 October 2008 session**

The Legal Committee examined the draft protocol prepared within the 1992 Fund at its October 2008 session.

The Committee accepted the proposal to exclude *packaged goods* from the contributions to the HNS Fund. Most delegations stated that they were prepared to accept an increase in the shipowner’s limitation amount for ships that carried HNS as packaged goods, provided it was moderate and the principle of shared liability of shipping industry and cargo interests was maintained. Other delegations expressed doubts about the need for any such increase, bearing in mind that according to the statistical data provided, incidents involving packaged HNS had not exceeded the limitation amounts set out in the original text of the Convention, but they were nonetheless prepared to accept a moderate increase as a compromise. The Committee decided to adopt the Focus Group’s proposals in respect of packaged goods set out in the draft protocol.

The Correspondence Group set up with the aim of developing a
compromise on the issue of who should be liable to pay contributions in respect of LNG cargos had submitted a compromise solution to the Legal Committee on this issue. The Group agreed on the need for a change of the Convention on this point, but considered that the simple substitution of the receiver for the titleholder proposed by the Focus Group would not provide the necessary flexibility. It proposed therefore that the person liable for contributions would normally be the receiver, except that by agreement between the titleholder and the receiver, the titleholder would be liable. However, if the titleholder defaulted on the contribution payments, the receiver would be liable. The Legal Committee adopted this compromise proposal.\textsuperscript{15}

The Legal Committee also adopted the proposed provisions introducing sanctions in respect of States which had not fulfilled the obligations to submit reports on contributing HNS cargos.

As regards the two other questions raised by the Fund Administrative Council set out above, the Legal Committee took the view that it was for the Diplomatic Conference to resolve these issues.

The Legal Committee decided to inform the IMO Council of the unanimous wish of delegations to see the HNS Convention enter into force at the earliest possible time. There was in principle general agreement in the Committee that the best way to achieve this was to adopt a protocol to the Convention as soon as possible. While many delegations were satisfied with the text of the draft protocol as amended at the session, may other delegations considered that the Committee needed more time for further consideration of the text at its next session. The Committee recommended to the IMO Council that a Diplomatic Conference should be convened as soon as possible in 2010 to consider and adopt the prospective protocol.

The Legal Committee decided to continue its consideration of the draft protocol at its March 2009 session.

\textit{7.2 March 2009 session}

At its March 2009 session the Legal Committee examined the draft protocol article by article and adopted some further amendments to the draft of a mainly editorial or technical nature.\textsuperscript{16}

\textsuperscript{15} In order to provide legal certainty and enhance uniform application of the provisions on this point, the Legal Committee approved a proposal by the Director of the IOPC Funds to include the following provision in the draft protocol: “The Assembly shall determine in the internal regulations the circumstances under which the titleholder shall be considered as not having made the contributions and the arrangements in accordance with which the receiver shall make the remaining contributions.”

\textsuperscript{16} As mentioned in section 2.1 above, the definition of hazardous and noxious substances in the HNS Convention is based on lists of individual substances in certain IMO Conventions and Codes, \textit{inter alia} the International Maritime Dangerous Goods Code
The Committee approved the text so amended and recommended to the IMO Council that it should be submitted to a Diplomatic Conference.\footnote{IMO document LEG 95/10, paragraph 22.}

The Diplomatic Conference is expected to be held in April 2010.

8 Concluding remarks

After an attempt made under the auspices of IMO in the early 1980ies to adopt a convention on liability and compensation for damage caused by hazardous and noxious substances had failed, a Diplomatic Conference held in 1996 managed to adopt a Convention governing these issues, the 1996 HNS Convention. However, more than twelve years have passed since that Conference, and the Convention has not entered into force. In view of the obstacles to ratification that have been identified by a number of States, it appears unlikely that the Convention will enter its force in its present version.

The draft protocol to the HNS Convention elaborated within the framework of the IOPC Funds appears to provide appropriate solutions to the problems identified by States as obstacles to ratification, and it appears that these solutions have the support of the great majority of the States which have participated in the work within the IOPC Funds and in the IMO Legal Committee. There should therefore be a good possibility that this protocol, once adopted by a Diplomatic Conference, will be ratified by a reasonable number of States and will enter into force within a relatively short period of time.

It is submitted that the adoption and early entry into force of a protocol modifying the HNS Convention along the lines proposed would be the last possibility to bring about a global regime governing these matters. A failure in this endeavour may well encourage regional initiatives. In view of the international character of maritime transport, such a development would, in the author’s opinion, be regrettable. A regionalisation in this field of law on liability and compensation would in the author’s view be detrimental to international shipping and in particular to victims of damage caused by hazardous and noxious substances carried by sea.

\footnote{IMDG Code}, referring to that Code as amended. The Legal Committee decided, after a long discussion, to amend that reference to read “the International Maritime Dangerous Goods Code, 1996,”. As a result, the HNS Convention as amended by the proposed protocol would be restricted to substances included in the 1996 version of that Code; IMO document LEG 95/10, paragraph 3.9.
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 Étrangères, 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 résumé du texte de ces réserves est publié après la liste des ratifications de chaque Convention.

(3) - Les dates mentionnées pour la dénonciation sont les dates à lesquelles la dénonciation prend effet.
Editor's notes:

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

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

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

International convention
for the unification of certain rules of law relating to
Collision between vessels
and protocol of signature
Brussels, 23rd September, 1910
Entered into force: 1 March 1913

(Translation)

Angola (a) 20.VII.1914
Antigua and Barbuda (a) 1.II.1913
Argentina (a) 28.II.1922
Australia (a) 9.IX.1930
Norfolk Island (a) 1.II.1913
Austria (r) 1.II.1913
Bahamas (a) 3.II.1913
Belize (a) 3.II.1913
Barbados (a) 1.II.1913
Belgium (r) 1.II.1913
Brazil (r) 31.XII.1913
Canada (a) 25.IX.1914
Cape Verde (a) 20.VII.1914
China
   Hong Kong(1) (a) 1.II.1913
   Macao(2) (r) 25.XII.1913
Cyprus (a) 1.II.1913
Croatia (a) 8.X.1991
Denmark (r) 18.VI.1913
Dominican Republic (a) 1.II.1913
Egypt (a) 29.XI.1943
Estonia (a) 15.V.1929
Fiji (a) 1.II.1913
Finland (a) 17.VII.1923

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

(2) With letter dated 15 October 1999 the Embassy of the People’s Republic of China in the Kingdom of Belgium informed the Minister of Foreign Affairs of Belgium that the Collision Convention will continue to apply to the Macao Special Administrative Region with effect from 20 December 1999. In its letter the Embassy of the People’s Republic of China stated that the responsibility for the international rights and obligations arising from the application of the above Convention will be assumed by the Government of the People’s Republic of China.
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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.
Saint Lucia (a) 3.III.1913
Saint Vincent and the Grenadines (a) 1.II.1913
Solomon Islands (a) 1.II.1913
Sao Tome and Principe (a) 20.VII.1914
Seychelles (a) 1.II.1913
Sierra Leone (a) 1.II.1913
Singapore (a) 1.II.1913
Slovenia (a) 16.XI.1993
Somalia (a) 1.II.1913
Spain (a) 17.XI.1923
Sri-Lanka (a) 1.II.1913
Sweden (r) 12.XI.1913

(denunciation 19 December 1995)
Switzerland (a) 28.V.1954
Timor (a) 20.VII.1914
Tonga (a) 13.VI.1978
Trinidad and Tobago (a) 1.II.1913
Turkey (a) 4.VII.1913
Tuvalu (a) 1.II.1913
United Kingdom (r) 1.II.1913
Jersey, Guernsey, Isle of Man, Anguilla,
Bermuda, Gibraltar, Falkland Islands and
Dependencies, Cayman Islands, British Virgin
Islands, Montserrat, Caicos & Turks Islands.
Saint Helena, Wei-Hai-Wei (a) 1.II.1913
Uruguay (a) 21.VII.1915
Zaire (a) 17.VII.1967

Constitution internationale pour l’unification de certaines règles en matière d’Assistance et de sauvetage maritimes et protocole de signature
Bruxelles, le 23 septembre 1910
Entrée en vigueur: 1 mars 1913

(Translation)
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Angola (a) 20.VII.1914
Antigua and Barbuda (a) 1.II.1913
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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 Tomé and Principe (a) 20.VII.1914
Seychelles (a) 1.II.1913
Sierra Leone (a) 1.II.1913
Singapore (a) 1.II.1913
Slovenia (a) 13.X.1993
Somalia (a) 1.II.1913
Spain (a) 17.X.1923

(denunciation 19.I.2006)

Sri Lanka (a) 1.II.1913
Sweden (r) 12.XI.1913
Switzerland (a) 28.V.1954
Syrian Arab Republic (a) 1.VIII.1974
Timor (a) 20.VII.1914  
Tonga (a) 13.VI.1978  
Trinidad and Tobago (a) 1.II.1913  
Turkey (a) 4.VII.1955  
Tuvalu (a) 1.II.1913  
United Kingdom (3) (r) 1.II.1913  
Anguilla, Bermuda, Gibraltar,  
Falkland Islands and Dependencies, 
British Virgin Islands,  
Montserrat, Turks & Caicos  
Islands, Saint Helena (a) 1.II.1913  
(denunciation 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  

Austria (r) 4.IV.1974  
Belgium (r) 11.IV.1973  
Brazil (r) 8.XI.1982  
Croatia (r) 8.X.1991  
(denunciation 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 concernant la Limitation de la responsabilité des propriétaires de navires de mer et protocole de signature
Bruxelles, 25 août 1924
Entrée en vigueur: 2 juin 1931

International convention for the unification of certain rules relating to the Limitation of the liability of owners of sea-going vessels and protocol of signature
Brussels, 25th August 1924
Entered into force: 2 June 1931
### Règles de La Haye

**Convention internationale pour l’unification de certaines règles en matière de Connaisssement et protocole de signature**

*“Règles de La Haye 1924”*

Bruxelles, le 25 août 1924

Entrée en vigueur: 2 juin 1931

(Translation)

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

(2) With letter dated 15 October 1999 the Embassy of the People’s Republic of China in the Kingdom of Belgium informed the Minister of Foreign Affairs of Belgium that the 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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St. Kitts and Nevis (a) 2.XII.1930
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of Man)* (r) 2.VI.1930
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Bermuda, Falkland Islands and dependencies,
Turks & Caicos Islands, Cayman Islands,
British Virgin Islands, Montserrat,
British Antarctic Territories.
  (denunciation 20.X.1983)
Anguilla (a) 2.XII.1930
Ascension, Saint Helène and Dependencies (a) 3.XI.1931
United States of America* (r) 29.VI.1937
Zaire (a) 17.VII.1967


**Reservations**

**Australia**

a) The Commonwealth of Australia reserves the right to exclude from the operation of legislation passed to give effect to the Convention the carriage of goods by sea which is not carriage in the course of trade or commerce with other countries or among the States of Australia.

b) The Commonwealth of Australia reserves the right to apply Article 6 of the Convention in so far as the national coasting trade is concerned to all classes of goods without taking account of the restriction set out in the last paragraph of that Article.

**Cuba**

Le Gouvernement de Cuba se réserve le droit de ne pas appliquer les termes de la Convention au transport de marchandises en navigation de cabotage national.

**Denmark**

...Cette adhésion est donnée sous la réserve que les autres États contractants ne soulèvent aucune objection à ce que l’application des dispositions de la Convention soit limitée de la manière suivante en ce qui concerne le Danemark:

1) La Loi sur la navigation danoise en date du 7 mai 1937 continuera à permettre que dans le cabotage national les connaissances et documents similaires soient émis conformément aux prescriptions de cette loi, sans que les dispositions de la Convention leur soient appliquées aux rapports du transporteur et du porteur du document déterminés par ces titres.

2) Sera considéré comme équivalent au cabotage national sous les rapports mentionnés au paragraphe 1) - au cas où une disposition serait édictée en ce sens en vertu de l’article 122, dernier alinéa, de la loi danoise sur la navigation - le transport maritime entre le Danemark et les autres États nordiques, dont les lois sur la navigation contiennent des dispositions analogues.

3) Les dispositions des Conventions internationales concernant le transport des voyageurs et des bagages et concernant le transport des marchandises par chemins de fer, signées à Rome, le 23 novembre 1933, ne seront pas affectées par cette Convention.”

**Egypt**

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

**France**

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

**Ireland**

...Subject to the following declarations and reservations: 1. In relation to the carriage of goods by sea in ships carrying goods from any port in Ireland to any other port in Ireland or to a port in the United Kingdom, Ireland will apply Article 6 of the Convention as though the Article referred to goods of any class instead of to particular goods, and as though the proviso in the third paragraph of the said Article were omitted; 2. Ireland does not accept the provisions of the first paragraph of Article 9 of the Convention.
Ivory Coast
Le Gouvernement de la République de Côte d’Ivoire, en adhérant à ladite Convention précise que:
1) Pour l’application de l’article 9 de la Convention relatif à la valeur des unités monétaires employées, la limite de responsabilité est égale à la contre-valeur en francs CFA sur la base d’une livre or égale à deux livres sterling papier, au cours du change de l’arrivée du navire au port de déchargement.
2) Il se réserve le droit de réglementer par des dispositions particulières de la loi nationale le système de la limitation de responsabilité applicable aux transports maritimes entre deux ports de la république de Côte d’Ivoire.

Japan
Statement at the time of signature, 25.8.1925.
Au moment de procéder à la signature de la Convention Internationale pour l’unification de certaines règles en matière de connaissement, le soussigné, Plénipotentiaire du Japon, fait les réserves suivantes:
a) A l’article 4.
Le Japon se réserve jusqu’à nouvel ordre l’acceptation des dispositions du a) à l’alinéa 2 de l’article 4.
b) Le Japon est d’avis que la Convention dans sa totalité ne s’applique pas au cabotage national; par conséquent, il n’y aurait pas lieu d’en faire l’objet de dispositions au Protocole. Toutefois, s’il n’en pas ainsi, le Japon se réserve le droit de régler librement le cabotage national par sa propre législation.

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

Kuwait
Le montant maximum en cas de responsabilité pour perte ou dommage causé aux marchandises ou les concernant, dont question à l’article 4, paragraphe 5, est augmenté jusque £ 250 au lieu de £ 100.
The above reservation has been rejected by France and Norway. The rejection of Norway has been withdrawn on 12 April 1974. By note of 30.3.1971, received by the Belgian Government on 30.4.1971 the Government of Kuwait stated that the amount of £ 250 must be replaced by Kuwait Dinars 250.

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

Netherlands
...Désirant user de la faculté d’adhésion réservée aux Etats non-signataires par l’article 12 de la Convention internationale pour l’unification de certaines règles en matière de connaissement, avec Protocole de signature, conclue à Bruxelles, le 25 août 1924, nous avons résolu d’adhérer par les présentes, pour le Royaume en Europe, à ladite Convention, Protocole de signature, d’une manière définitive et promettons de
Règles de La Haye

Hague Rules

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 soulevent aucune objection à ce que l’application des dispositions de la
Convention soit limitée de la manière suivante en ce qui concerne la Norvège:
1) La loi sur la navigation norvégienne continuera à permettre que dans le cabotage
national les connaissements et documents similaires soient émis conformément aux
prescriptions de cette loi, sans que les dispositions de la Convention leur soient
appliquées ou soient appliquées aux rapports du transporteur et du porteur du
document déterminés par ces titres.
2) Sera considéré comme équivalent au cabotage national sous les rapports
mentionnés au paragraphe 1) - au cas où une disposition serait édictée en ce sens en
vertu de l’article 122, denier alinéa, de la loi norvégienne sur la navigation - le
transport maritime entre la Norvège et autres 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
described Convention, I declare that the acceptance of the Convention given by His
Britannic Majesty in the instrument of ratification deposited this day extends only to
the United Kingdom of Great Britain and Northern Ireland and does not apply to any
of His Majesty’s Colonies or Protectorates, or territories under suzerainty or mandate.
United States of America

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

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

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

### Protocole portant modification de la Convention Internationale pour l'unification de certaines règles en matière de connaissement, signée a Bruxelles le 25 août 1924

*Règles de Visby*  
Bruxelles, 23 février 1968  
Entrée en vigueur: 23 juin 1977

### Protocol to amend the International Convention for the unification of certain rules of law relating to bills of lading, signed at Brussells on 25 August 1924

*Visby Rules*  
Brussels, 23rd February 1968  
Entered into force: 23 June, 1977

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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 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.
**Visby Rules**

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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 dudit Protocole (cette déclaration est faite en vertu de l’article 9 du Protocole).

**Netherlands**
Ratification effectuée pour le Royaume en Europe. Le Gouvernement du Royaume des Pays-Bas se réserve le droit, par prescription légale, de préciser que dans les cas prévus par l’article 4, alinéa 2 de c) à p) de la Convention, le porteur du connaissement peut établir la faute personnelle du transporteur ou les fautes de ses préposés non couverts par le paragraphe a).

**Poland**
Confirmation des réserves faites lors de la signature, à savoir: “La République Populaire de Pologne ne se considère pas liée par l’article 8 du présent Protocole”.
### Protocole DTS

**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.**

*Bruxelles, le 21 décembre 1979*

**Entrée en vigueur:** 14 février 1984

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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 connaissance, telle qu’amendée par le Protocole de modification du 23 février 1968, remplacé par l’article II du Protocole du 21 décembre 1979, que la Suisse calcule de la manière suivante la valeur, en droit de tirage spécial (DTS), de sa monnaie nationale:  
La Banque nationale suisse (BNS) communique chaque jour au Fonds monétaire international (FMI) le cours moyen du dollar des États Unis d’Amérique sur le marché des changes de Zürich. La contrevaleur en francs suisses d’un DTS est déterminée d’après ce cours du dollar et le cours en dollars DTS, calculé par le FMI. Se fondant sur ces valeurs, la BNS calcule un cours moyen du DTS qu’elle publiera dans son Bulletin mensuel.

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*(Translation)*
CONVENTION INTERNATIONALE POUR L’UNIFICATION DE CERTAINES RÈGLES CONCERNANT LES IMMUNITÉS DES NAVIRES D’ÉTAT

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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.

ARGENTINA (a) 19.IV.1961
BELGIUM (r) 8.I.1936
Immunité 1926

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</table>

Reservations

United Kingdom

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

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

(a) as regards the delay or arrest of a ship or cargo belonging to such a State, and (b) to prohibit seizure of or execution against such a ship or cargo.
### Convention internationale pour l’unification de certaines règles relatives à la Compétence civile en matière d’abordage

Bruxelles, 10 mai 1952
Entrée en vigueur:
14 septembre 1955

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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.

Khmere Republic
Le Gouvernement de la République Khmère, en adhérant à ladite convention, fait cette réserve que l’action civile du chef d’un abordage survenu entre navires de mer ou entre navires de mer et bateaux de navigation intérieure, pourra être intentée uniquement devant le tribunal de la résidence habituelle du défendeur ou de l’Etat dont le navire bat pavillon. En conséquence, le Gouvernement de la République Khmère ne reconnaît pas le caractère obligatoire des alinéas b) et c) du paragraphe 1° de l’article 1°.

En acceptant ladite convention, le Gouvernement de la République Khmère fait cette réserve expresse que, en aucun cas, elle ne renoncera à sa compétence ou juridiction pour appliquer la loi khmère en matière d’abordage survenu en haute mer ou dans ses eaux territoriales au préjudice d’un navire khmère.

Convention internationale pour l’unification de certaines règles relatives à la Compétence pénale en matière d’abordage et autres événements de navigation
Bruxelles, 10 mai 1952
Entrée en vigueur: 20 novembre 1955
Anguilla*
Antigua and Barbuda*
Argentina*
Bahamas*
Belgium*
(a)
(a)
(a)
(a)
(r)
12.V.1965
12.V.1965
19.IV.1961
12.V.1965
10.IV.1961
Belize*  (a)  21.IX.1965  
Benin  (a)  23.IV.1958  
Burkina Faso  (a)  23.IV.1958  
Burman Union*  (a)  8.VII.1953  
Cayman Islands*  (a)  12.VI.1965  
Cameroon  (a)  23.IV.1958  
Central African Republic  (a)  23.IV.1958  
China  
    Hong Kong(1)  (a)  29.III.1963  
    Macao(2)  (a)  23.III.1999  
Comoros  (a)  23.IV.1958  
Congo  (a)  23.IV.1958  
Costa Rica*  (a)  13.VII.1955  
Croatia*  (r)  8.X.1991  
Cyprus  (a)  17.III.1994  
Djibouti  (a)  23.IV.1958  
Dominica, Republic of*  (a)  12.V.1965  
Egypt*  (r)  24.VIII.1955  
Fiji*  (a)  29.III.1963  
France*  (r)  20.V.1955  
Overseas Territories  (a)  23.IV.1958  
Gabon  (a)  23.IV.1958  
Germany*  (r)  6.X.1972  
Greece  (r)  15.III.1965  
Grenada*  (a)  12.V.1965  
Guyana*  (a)  19.III.1963  
Guinea  (a)  23.IV.1958

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

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

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

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

(2) The extension of the Convention to the territory of Macao has been notified by Portugal with declaration deposited on 23 March 1999. With letter dated 15 October 1999 the Embassy of the People’s Republic of China in the Kingdom of Belgium informed the Minister of Foreign Affairs of Belgium that the Convention will continue to apply to the Macao Special Administrative Region with effect from 20 December 1999. In its letter the Embassy of the People’s Republic of China stated that the responsibility for the international rights and obligations arising from the application of the above Convention will be assumed by the Government of the People’s Republic of China.
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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 1° and 2° de la présente Convention.

Croatia

Reservation made by Yugoslavia and now applicable to Croatia: “Sous réserve de ratifications ultérieures et acceptant la réserve prévue à l’article 4 de cette Convention. Conformément à l’article 4 de ladite Convention, le Gouvernement yougoslave se réserve le droit de poursuivre les infractions commises dans ses 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, consented to the institution of criminal and disciplinary proceedings before judicial or administrative authorities of Dominica;
(b) the right under Article 4 of the said Convention to take proceedings in respect of offences committed within the territorial waters of Dominica.

Egypt

Au moment de la signature le Plénipotentiaire égyptien a déclaré formuler la réserve prévue à l’article 4, alinéa 2. Confirmation expresse de la réserve faite au moment de la signature.

Fiji

The Government of Fiji reserves the right not to observe the provisions of article 1 of the said Convention in the case of any ship if the State whose flag the ship was flying has as respect that ship or any class of ship to which that ship belongs consented to the institution of criminal or disciplinary proceedings before judicial or administrative authorities in Fiji. The Government of Fiji reserves the right under article 4 of this Convention to take proceedings in respect of offences committed within the territorial water of Fiji.

France

Au nom du Gouvernement de la République Française je déclare formuler la réserve prévue à l’article 4, paragraphe 2, de la convention internationale pour l’unification de certaines règles relatives à la compétence pénale en matière d’abordage.

Germany, Federal Republic of

(Traduction) Sous réserve du prescrit de l’article 4, alinéa 2.

Grenada

Same reservations as the Republic of Dominica
Guyana
*Same reservations as the Republic of Dominica*

Italy
Le Gouvernement de la République d’Italie se réfère à l’article 4, paragraphe 2, et se réserve le droit de poursuivre les infractions commises dans ses propres eaux territoriales.

Khmere Republic
Le Gouvernement de la République Khmère, d’accord avec l’article 4 de ladite convention, se réservera le droit de poursuivre les infractions commises dans ses eaux territoriales.

Kiribati
*Same reservations as the Republic of Dominica*

Mauritius
*Same reservations as the Republic of Dominica*

Montserrat
*See Antigua.*

Netherlands
Conformément à l’article 4 de cette Convention, le Gouvernement du Royaume des Pays-Bas, se réserve le droit de poursuivre les infractions commises dans ses propres eaux territoriales.

Nigeria
The Government of the Federal Republic of Nigeria reserve the right not to implement the provisions of Article 1 of the Convention in any case where that Government has an agreement with any other State that is applicable to a particular collision or other incident of navigation and if such agreement is inconsistent with the provisions of the said Article 1. The Government of the Federal Republic of Nigeria reserves the right, in accordance with Article 4 of the Convention, to take proceedings in respect of offences committed within the territorial waters of the Federal Republic of Nigeria.

North Borneo
*Same reservations as the Republic of Dominica*

Portugal
Au nom du Gouvernement portugais, je déclare formuler la réserve prévue à l’article 4, paragraphe 2, de cette Convention.

Sarawak
*Same reservations as the Republic of Dominica*

St. Helena
*See Antigua.*

St. Kitts-Nevis
*See Antigua.*

St. Lucia
*Same reservations as the Republic of Dominica*
St. Vincent
See Antigua.

Seychelles
Same reservations as the Republic of Dominica

Solomon Isles
Same reservations as the Republic of Dominica

Spain
La Délégation espagnole désire, d’accord avec l’article 4 de la Convention sur la compétence pénale en matière d’abordage, se réserver le droit au nom de son Gouvernement, de poursuivre les infractions commises dans ses eaux territoriales. Confirmation expresse de la réserve faite au moment de la signature.

Tonga
Same reservations as the Republic of Dominica

Tuvalu
Same reservations as the Republic of Dominica

United Kingdom
1. - Her Majesty’s Government in the United Kingdom reserves the right not to apply the provisions of Article 1 of this Convention in any case where there exists between Her Majesty’s Government and the Government of any other State an agreement which is applicable to a particular collision or other incident of navigation and is inconsistent with that Article.
2. - Her Majesty’s Government in the United Kingdom reserves the right under Article 4 of this Convention to take proceedings in respect of offences committed within the territorial waters of the United Kingdom.
...subject to the following reservations:
(1) The Government of the United Kingdom of Great Britain and Northern Ireland reserve the right not to observe the provisions of Article 1 of the said Convention in the case of any ship if the State whose flag the ship was flying has as respects that ship or any class of ship to which that ship belongs consented to the institution of criminal and disciplinary proceedings before the judicial or administrative authorities of the United Kingdom.
(2) In accordance with the provisions of Article 4 of the said Convention, the Government of the United Kingdom of Great Britain and Northern Ireland reserve the right to take proceedings in respect of offences committed within the territorial waters of the United Kingdom.
(3) The Government of the United Kingdom of Great Britain and Northern Ireland reserve the right in extending the said Convention to any of the territories for whose international relations they are responsible to make such extension subject to the reservation provided for in Article 4 of the said Convention...

Vietnam
Comme il est prévu à l’article 4 de la même convention, le Gouvernement vietnamien se réserve le droit de poursuivre les infractions commises dans la limite de ses eaux territoriales.
Convention internationale pour l’unification de certaines règles sur la Saisie conservatoire des navires de mer

Bruxelles, 10 mai 1952
Entrée en vigueur: 24 février 1956

International convention for the unification of certain rules relating to Arrest of sea-going ships

Brussels, 10th May 1952
Entered into force: 24 February 1956

Algeria
Antigua and Barbuda*
Bahamas*
Belgium
Belize*
Benin
Burkina Faso
Cameroon
Central African Republic
China
   Hong Kong(1)
   Macao(2)
Comoros
Congo
Costa Rica*
Côte d’Ivoire
Croatia*
Cuba*
Denmark
Djibouti
Dominica, Republic of*
Egypt*
Fiji
Finland
France
Overseas Territories
Gabon

(a) 18.VIII.1964
(a) 12.V.1965
(a) 12.V.1965
(r) 10.IV.1961
(a) 21.IX.1965
(a) 23.IV.1958
(a) 23.IV.1958
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(a) 18.III.1963
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(r) 23.IV.1958
(a) 23.IV.1958
(r) 23.IV.1958
(a) 23.IV.1958
(r) 23.IV.1958
(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.
### Arrest of ships 1952

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Guernsey (a) 8.XII.1966  
Falkland Islands and dependencies (a) 17.X.1969  
Zaire (a) 17.VII.1967  

Reservations  

Antigua  
...Reserves the right not to apply the provisions of this Convention to warships or to vessels owned by or in the service of a State.  

Bahamas  
...With reservation of the right not to apply the provisions of this Convention to warships or to vessels owned by or in service of a State.  

Belize  
Same reservation as the Bahamas.  

Costa Rica  
(Traduction) Premièrement: le 1er paragraphe de l’article 3 ne pourra pas être invoqué pour saisir un navire auquel la créance ne se rapporte pas et qui n’appartient plus à la personne qui était propriétaire du navire auquel cette créance se rapporte, conformément au registre maritime du pays dont il bat pavillon et bien qu’il lui ait appartenu. 
Deuxièmement: que Costa Rica ne reconnaît pas le caractère obligatoire des alinéas a), b), c), d), e) et f) du paragraphe 1er de l’article 7, étant donné que conformément aux lois de la République les seuls tribunaux compétents quant au fond pour connaître des actions relatives aux créances maritimes, sont ceux du domicile du demandeur, sauf s’il s’agit des cas visés sub o), p) et q) à l’alinéa 1er de l’article 1, ou ceux de l’Etat dont le navire bat pavillon. 
Le Gouvernement de Costa Rica, en ratifiant ladite Convention, se réserve le droit d’appliquer la législation en matière de commerce et de travail relative à la saisie des navires étrangers qui arrivent dans ses ports.  

Côte d’Ivoire  
Confirmation d’adhésion de la Côte d’Ivoire. Au nom du Gouvernement de la République de Côte d’Ivoire, nous, Ministre des Affaires Etrangères, confirmons que par Succession d’Etat, la République de Côte d’Ivoire est devenue, à la date de son accession à la souveraineté internationale, le 7 août 1960, partie à la Convention internationale pour l’unification de certaines règles sur la saisie conservatoire des navires de mer, signée à Bruxelles le 10 mai 1952, qu’elle l’a été de façon continue depuis lors et que cette Convention est aujourd’hui, toujours en vigueur à l’égard de la Côte d’Ivoire.  

Croatia  
Reservation made by Yugoslavia and now applicable to Croatia: “...en réservant conformément à l’article 10 de ladite Convention, le droit de ne pas appliquer ces dispositions à la saisie d’un navire pratiquée en raison d’une créance maritime visée au point o) de l’article premier et d’appliquer à cette saisie la loi nationale”.  

Cuba  
(Traduction) L’instrument d’adhésion contient les réserves prévues à l’article 10 de la Convention celles de ne pas appliquer les dispositions de la Convention aux navires de guerre et aux navires d’État ou au service d’un État, ainsi qu’une déclaration relative à l’article 18 de la Convention.  

Dominica, Republic of  
Same reservation as Antigua
Egypt
Au moment de la signature le Pléniopotentiaire égyptien a déclaré formuler les réserves prévues à l’article 10.
Confirmer 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

International convention relating to the Limitation of the liability of owners of sea-going ships and protocol of signature

Brussels, 10th October 1957
Entered into force: 31 May 1968

Algeria (a)
Australia (r)
(denunciation – 30.V.1990)

Bahamas* (a)
Barbados* (a)
Belgium (r)
(denunciation – 1.IX.1989)

Belize (r)

China
Macao (1)

Denmark* (r)
(denunciation – 1.IV.1984)

Dominica, Republic of* (a)

Egypt (Arab Republic of)
(denunciation – 8.V.1985)

Fiji* (a)

Finland (r)
(denunciation – 1.IV.1984)

France (r)
(denunciation – 15.VII.1987)

Germany (r)
(denunciation – 1.IX.1986)

Ghana* (a)

Grenada* (a)

Guyana* (a)

Iceland* (a)

India* (r)

Iran* (r)

Israel* (r)

(1) The extension of the Convention to the territory of Macao as from 23 September 1999 has been notified by Portugal with declaration deposited on 23 March 1999. With letter dated 15 October 1999 the Embassy of the People’s Republic of China in the Kingdom of Belgium informed the Minister of Foreign Affairs of Belgium that the Collision Convention will continue to apply to the Macao Special Administrative Region with effect from 20 December 1999. In its letter the Embassy of the People’s Republic of China stated that the responsibility for the international rights and obligations arising from the application of the above Convention will be assumed by the Government of the People’s Republic of China.
Japan (denunciation – 19.V.1983)

Kiribati* (a) 21.VIII.1964
Lebanon (a) 23.XII.1994
Madagascar (a) 13.VII.1965
Mauritius* (a) 21.VIII.1964
Monaco* (a) 24.I.1977
Netherlands (denunciation – 1.IX.1989)
Aruba* (r) 1.I.1986
Norway (denunciation – 1.IV.1984)
Papa New Guinea* (a) 14.III.1980
Poland (r) 1.XII.1972
Portugal* (r) 8.IV.1968
St. Lucia* (a) 4.VIII.1965
St. Vincent and the Grenadines (a) 4.VIII.1965
Seychelles* (a) 21.VIII.1964
Singapore* (a) 17.IV.1963
Solomon Islands* (a) 21.VIII.1964
Spain* (r) 16.VII.1959

Sweden (denunciation – 04.I.2006)

Switzerland (denunciation – 1.IV.1984)

Bermuda, British Antarctic Territories, Falkland and Dependencies, Gibraltar,
British Virgin Islands (a) 21.VIII.1964
Guernsey and Jersey (a) 21.X.1964
Caicos and Turks Isles* (a) 4.VIII.1965
Vanuatu (a) 8.XII.1966
Zaire (a) 17.VII.1967

Reservations

Bahamas
Subject to the same reservations as those made by the United Kingdom on ratification namely the reservations set out in sub-paragraphs (a) and (b) of paragraph (2) of the Protocol of Signature.

Barbados
Same reservation as Bahamas

China
The Government of the People’s Republic of China reserves, for the Macao Special Administrative Region, the right not to be bound by paragraph 1.(c) of Article 1 of the
Convention. The Government of the People’s Republic of China reserves, for the Macao Special Administrative Region, the right to regulate by specific provisions of laws of the Macao Special Administrative Region the system of limitation of liability to be applied to ships of less than 300 tons. With reference to the implementation of the Convention in the Macao Special Administrative Region, the Government of the People’s Republic of China reserves, for the Macao Special Administrative Region, the right to implement the Convention either by giving it the force of law in the Macao Special Administrative Region, or by including the provisions of the Convention, in appropriate form, in legislation of the Macao Special Administrative Region. Within the above ambit, the Government of the People’s Republic of China will assume the responsibility for the international rights and obligations that place on a Party to the Convention.

Denmark
Le Gouvernement du Danemark se réserve le droit:
1) de régler par la loi nationale le système de limitation de responsabilité applicable aux navires de moins de 300 tonneaux de jauge;
2) de donner effet à la présente Convention, soit en lui donnant force de loi, soit en incluant dans la législation nationale les dispositions de la présente Convention sous une forme appropriée à cette législation.

Dominica, Republic of
Same reservation as Bahamas

Egypt Arab Republic
Reserves the right:
1) to exclude the application of Article 1, paragraph (1)(c);
2) to regulate by specific provisions of national law the system of limitation to be applied to ships of less than 300 tons;
3) on 8 May, 1984 the Egyptian Arab Republic has verbally notified the denunciation in respect of this Convention. This denunciation will become operative on 8 May, 1985.

Fiji
Le 22 août 1972 a été reçue au Ministère des Affaires étrangères, du Commerce extérieur et de la Coopération au Développement une lettre de Monsieur K.K.T. Mara, Premier Ministre et Ministre des Affaires étrangères de Fidji, notifiant qu’en ce qui concerne cette Convention, le Gouvernement de Fidji reprend, à partir de la date de l’indépendance de Fidji, c’est-à-dire le 10 octobre 1970, les droits et obligations souscrits antérieurement par le Royaume-Uni, avec les réserves figurant ci-dessous.
1) In accordance with the provisions of subparagraph (a) of paragraph (2) of the said Protocol of signature, the Government of the United Kingdom of Great Britain and Northern Ireland exclude paragraph (1)(c) of Article 1 from their application of the said Convention.
2) In accordance with the provisions of subparagraph (b) of paragraph (2) of the said Protocol of signature, the Government of the United Kingdom of Great Britain and Northern Ireland will regulate by specific provisions of national law the system of limitation of liability to be applied to ships of less than 300 tons. Furthermore in accordance with the provisions of subparagraph (c) of paragraph (2) of the said Protocol of signature, the Government of Fiji declare that the said Convention as such has not been made part in Fiji law, but that the appropriate provisions to give effect thereto have been introduced in Fiji law.

Ghana
The Government of Ghana in acceding to the Convention reserves the right:
1) to exclude the application of Article 1, paragraph (1)(c);
2) to regulate by specific provisions of national law the system of limitation of liability to be applied to ships of less than 300 tons;
3) to give effect to this Convention either by giving it the force of law or by including in national legislation, in a form appropriate to that legislation, the provisions of this Convention.
Grenada  
_Same reservation as Bahamas_

Guyana  
_Same reservation as Bahamas_

Iceland  
The Government of Iceland reserves the right:  
1) to regulate by specific provisions of national law the system of limitation of liability to be applied to ships of less than 300 tons;  
2) to give effect to this Convention either by giving it the force of law or by including in national legislation, in a form appropriate to that legislation, the provisions of this Convention.

India  
Reserve the right:  
1) To exclude the application of Article 1, paragraph (1)(c);  
2) To regulate by specific provisions of national law the system of limitation of liability to be applied to ships of less than 300 tons;  
3) to give effect to this Convention either by giving it the force of law or by including in national legislation, in a form appropriate to that legislation, the provisions of this Convention.

Iran  
Le Gouvernement de l’Iran se réserve le droit:  
1) d’exclure l’application de l’article 1, paragraphe (1)(c);  
2) de régler par la loi nationale le système de limitation de responsabilité applicable aux navires de moins de 300 tonneaux de jauge;  
3) de donner effet à la présente Convention, soit en lui donnant force de loi, soit en incluant dans la législation nationale les dispositions de la présente Convention sous une forme appropriée à cette législation.

Israel  
The Government of Israel reserves to themselves the right to:  
1) exclude from the scope of the Convention the obligations and liabilities stipulated in Article 1(1)(c);  
2) regulate by provisions of domestic legislation the limitation of liability in respect of ships of less than 300 tons of tonnage;  
The Government of Israel reserves to themselves the right to give effect to this Convention either by giving it the force of law or by including in its national legislation, in a form appropriate to that legislation, the provisions of this Convention.

Kiribati  
_Same reservation as Bahamas_

Mauritius  
_Same reservation as Bahamas_

Monaco  
En déposant son instrument d’adhésion, Monaco fait les réserves prévues au paragraphe 2° du Protocole de signature.

Netherlands-Aruba  
La Convention qui était, en ce qui concerne le Royaume de Pays-Bas, uniquement applicable au Royaume en Europe, a été étendue à Aruba à partir du 16.XII.1986 avec effet rétroactif à compter du 1er janvier 1986.  
La dénonciation de la Convention par les Pays-Bas au 1er septembre 1989, n’est pas valable pour Aruba.
Note: Le Gouvernement des Pays-Bas avait fait les réservations suivantes:

Le Gouvernement des Pays-Bas se réserve le droit:
1) d’exclure l’application de l’article 1, paragraphe (1)(c);
2) de régler par la loi nationale le système de limitation de responsabilité applicable aux navires de moins de 300 tonneaux de jauge;
3) de donner effet à la présente Convention, soit en lui donnant force de loi, soit en incluant dans la législation nationale les dispositions de la présente Convention sous une forme appropriée à cette législation.

Papua New Guinea
(a) The Government of Papua New Guinea excludes paragraph (1)(c) of Article 1.
(b) The Government of Papua New Guinea will regulate by specific provisions of national law the system of limitation of liability to be applied to ships of less than 300 tons.
(c) The Government of Papua New Guinea shall give effect to the said Convention by including the provisions of the said Convention in the National Legislation of Papua New Guinea.

Portugal
(Traduction) ...avec les réserves prévues aux alinéas a), b) et c) du paragraphe deux du Protocole de signature...

St. Lucia
Same reservation as Bahamas

Seychelles
Same reservation as Bahamas

Singapore
Le 13 septembre 1977 à été reçue une note verbale datée du 6 septembre 1977, émanant du Ministère des Affaires étrangères de Singapour, par laquelle le Gouvernement de Singapour confirme qu’il se considère lié par la Convention depuis le 31 mai 1968, avec les réserves suivantes:
...Subject to the following reservations:
a) the right to exclude the application of Article 1, paragraph (1)(c); and
b) to regulate by specific provisions of national law the system of limitation of liability to be applied to ships of less than 300 tons. The Government of the Republic of Singapore declares under sub-paragraph (c) of paragraph (2) of the Protocol of signature that provisions of law have been introduced in the Republic of Singapore to give effect to the Convention, although the Convention as such has not been made part of Singapore law.

Solomon Islands
Same reservation as Bahamas

Spain
Le Gouvernement espagnol se réserve le droit:
1) d’exclure du champ d’application de la Convention les obligations et les responsabilités prévues par l’article 1, paragraphe (1)(c);
2) de régler par les dispositions particulières de sa loi nationale le système de limitation de responsabilité applicable aux propriétaires de navires de moins de 300 tonneaux de jauge;
3) de donner effet à la présente Convention, soit en lui donnant force de loi, soit en incluant dans la législation nationale les dispositions de la présente Convention sous une forme appropriée à cette législation.
Tonga
Reservations:
1) In accordance with the provisions of subparagraph (a) of paragraph (2) of the
Protocol of signature, the Government of the Kingdom of Tonga exclude paragraph
(1)(c) of Article 1 from their application of the said Convention.
2) In accordance with the provisions of subparagraph (b) of paragraph (2) of the Protocol
of signature, the Government of the Kingdom of Tonga will regulate by specific provisions
of national law the system of liability to be applied to ships of less than 300 tons.

Tuvalu
Same reservation as Bahamas

United Kingdom of Great Britain and Northern Ireland
Subject to the following observations:
1) In accordance with the provisions of subparagraph (a) of paragraph (2) of the said
Protocol of Signature, the Government of the United Kingdom of Great Britain and
Northern Ireland exclude paragraph (1)(c) of Article 1 from their application of the said
Convention.
2) In accordance with the provisions of subparagraph (b) of paragraph (2) of the said
Protocol of Signature, the Government of the United Kingdom of Great Britain and
Northern Ireland will regulate by specific provisions of national law the system of
limitation of liability to be applied to ships of less than 300 tons.
3) The Government of the United Kingdom of Great Britain and Northern Ireland also
reserve the right, in extending the said Convention to any of the territories for whose
international relations they are responsible, to make such extension subject to any or all
of the reservations set out in paragraph (2) of the said Protocol of Signature. Furthermore,
in accordance with the provisions of subparagraph (c) of paragraph (2) of the said
Protocol of Signature, the Government of the United Kingdom of Great Britain and
Northern Ireland declare that the said Convention as such has not been made part of
the United Kingdom law, but that the appropriate provisions to give effect thereto have
been introduced in United Kingdom law.

United Kingdom Overseas Territories
Anguilla, Bermuda, British Antarctic Territories, British Virgin Islands,
Cayman 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.

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
### Status of Ratifications to Brussels Conventions

#### Carriage of Passengers by Sea (1961)

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<td>18.II.1991</td>
<td>(a)</td>
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<td>6.VII.1984</td>
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<td>2.III.1965</td>
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#### Stowaways (1957)

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Madagascar 13.VII.1965
Morocco* 15.VII.1965
Peru 29.X.1964
Switzerland 21.I.1966
Tunisia 18.VII.1974
United Arab Republic* 15.V.1964
Zaire 17.VII.1967

Reservations

Cuba
(Traduction) ...Avec les réserves suivantes:
1) De ne pas appliquer la Convention aux transports qui, d’après sa loi nationale, ne sont pas 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 Jounada 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 Jounada II 1337 (31 mars 1919) formant code de commerce maritime, tel qu’il a été modifié par la dahir du 16 Jounada II 1367 (26 avril 1948).

United Arab Republic
Sous les réserves prévues aux paragraphes (1), (2) et (3) du Protocole.

Convention internationale relative à la responsabilité des exploitants de Navires nucléaires et protocole additionnel
Bruxelles, 25 mai 1962
Pas encore en vigueur

International convention relating to the liability of operators of Nuclear ships and additional protocol
Brussels, 25th May 1962
Not yet in force

Lebanon 3.VI.1975
Madagascar 13.VII.1965
Netherlands* 20.III.1974
Portugal 31.VII.1968
Suriname 20.III.1974
Syrian Arab Republic 1.VIII.1974
Zaire 17.VII.1967
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 1967
Bruxelles, 27 mai 1967
Pas encore en vigueur

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 relative à l’inscription des droits relatifs aux Navires en construction 1967
Bruxelles, 27 mai 1967
Pas encore en vigueur
### Privilèges et hypothèques 1967

**Convention internationale pour l’unification de certaines règles relatives aux Privilèges et hypothèques maritimes**

Bruxelles, 27 mai 1967

<table>
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<td><strong>Denmark</strong></td>
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<td><strong>Syrian Arab Republic</strong></td>
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**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
1. Cet état est basé sur des informations recues de l’Organisation Maritime Interna-
2. Les dates mentionnées sont les dates du dépôt des instruments.
3. L’asterisque qui suit le nom d’un Etat indique que cet Etat a fait une déclaration, une
reserve ou une communication dont le texte est publié à la fin de chaque état de rati-
fications et adhesions.
4. Les dates mentionnées pour la dénonciation sont les dates à lesquelles la dénonci-
ation 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

<table>
<thead>
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<th>Country</th>
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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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Number of Contracting States: 45

The Convention applies provisionally in respect of the following States:
Kiribati
Solomon Islands

1 With a declaration, reservation or statement.
4 In accordance with the intention expressed by the Government of the Federal Republic of Germany and based on its interpretation of article XV of the Convention.
5 As from 26.XII.1991 the membership of the USSR in the Convention is continued by the Russian Federation.
Declarations, Reservations and Statements

Australia
The instrument of ratification of the Commonwealth of Australia was accompanied by the following declarations:
“Australia has taken note of the reservation made by the Union of Soviet Socialist Republics on its accession on 24 June 1975 to the Convention, concerning article XI(2) of the Convention. Australia wishes to advise that is unable to accept the reservation. Australia considers that international law does not grant a State the right to immunity from the jurisdiction of the courts of another State in proceedings concerning civil liability in respect of a State-owned ship used for commercial purposes. It is also Australia’s understanding that the above-mentioned reservation is not intended to have the effect that the Union of Soviet Socialist Republics may claim judicial immunity of a foreign State with respect to ships owned by it, used for commercial purposes and operated by a company which in the Union of Soviet Socialist Republic is registered as the ship’s operator, when actions for compensation are brought against the company in accordance with the provisions of the Convention. Australia also declares that, while being unable to accept the Soviet reservation, it does not regard that fact as precluding the entry into force of the Convention as between the Union of Soviet Socialist Republics and Australia.”
“Australia has taken note of the declaration made by the German Democratic Republic on its accession on 13 March 1978 to the Convention, concerning article XI(2) of the Convention. Australia wishes to declare that it cannot accept the German Democratic Republic’s position on sovereign immunity. Australia considers that international law does not grant a State the right to immunity from the jurisdiction of the courts of another State in proceedings concerning civil liability in respect of a State-owned ship used for commercial purposes. Australia also declares that, while being unable to accept the declaration by the German Democratic Republic, it does not regard that fact as precluding the entry into force of the Convention as between the German Democratic Republic and Australia.”

Belgium
The instrument of ratification of the Kingdom of Belgium was accompanied by a Note Verbale (in the French language) the text of which reads as follows:
[Translation]
“...The Government of the Kingdom of Belgium regrets that it is unable to accept the reservation of the Union of Soviet Socialist Republics, dated 24 June 1975, in respect of article XI, paragraph 2 of the Convention.
The Belgian Government considers that international law does not authorize States to claim judicial immunity in respect of vessels belonging to them and used by them for commercial purposes.
Belgian legislation concerning the immunity of State-owned vessels is in accordance with the provisions of the International Convention for the Unification of Certain Rules concerning the Immunity of State-owned Ships, done at Brussels on 10 April 1926, to which Belgium is a Party.
The Belgian Government assumes that the reservation of the USSR does not in any way affect the provisions of article 16 of the Maritime Agreement between the Belgian-Luxembourg Economic Union and the Union of Soviet Socialist Republics,
of the Protocol and the Exchange of Letters, signed at Brussels on 17 November 1972. The Belgian Government also assumes that this reservation in no way affects the competence of a Belgian court which, in accordance with article IX of the aforementioned International Convention, is seized of an action for compensation for damage brought against a company registered in the USSR in its capacity of operator of a vessel owned by that State, because the said company, by virtue of article I, paragraph 3 of the same Convention, is considered to be the ‘owner of the ship’ in the terms of this Convention.

The Belgian Government considers, however, that the Soviet reservation does not impede the entry into force of the Convention as between the Union of Soviet Socialist Republics and the Kingdom of Belgium.”

### China

At the time of depositing its instrument of accession the Representative of the People’s Republic of China declared “that the signature to the Convention by Taiwan authorities is illegal and null and void”.

### German Democratic Republic

The instrument of accession of the German Democratic Republic was accompanied by the following statement and declarations (in the German language):

[Translation]

“In connection with the declaration made by the Government of the Federal Republic of Germany on 20 May 1975 concerning the application of the International Convention on Civil Liability for Oil Pollution Damage of 29 November 1969 to Berlin (West), it is the understanding of the German Democratic Republic that the provisions of the Convention may be applied to Berlin (West) only inasmuch as this is consistent with the Quadripartite Agreement of 3 September 1971, under which Berlin (West) is no constituent part of the Federal Republic of Germany and must not be governed by it.”

“The Government of the German Democratic Republic considers that the provisions of article XI, paragraph 2, of the Convention are inconsistent with the principle of immunity of States.”

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.”

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(1) The following Governments do not accept the reservation contained in the instrument of accession of the Government of the German Democratic Republic, and the texts of their Notes to this effect were circulated by the depositary: Denmark, France, the Federal Republic of Germany, Japan, Norway, Sweden and the United Kingdom.
Federal Republic of Germany

The instrument of ratification of the Federal Republic of Germany was accompanied by a declaration (in the English language) that “with effect from the day on which the Convention enters into force for the Federal Republic of Germany it shall also apply to Berlin (West)”.

Guatemala

The instrument of acceptance of the Republic of Guatemala contained the following declaration (in the Spanish language):

*[Translation]*

“It is declared that relations that may arise with Belize by virtue of this accession can in no sense be interpreted as recognition by the State of Guatemala of the independence and sovereignty unilaterally decreed by Belize.”

Italy

The instrument of ratification of the Italian Republic was accompanied by the following statement (in the Italian language):

*[Translation]*

“The Italian Government wishes to state that it has taken note of the reservation put forward by the Government of the Soviet Union (on the occasion of the deposit of the instrument of accession on 24 June 1975) to article XI(2) of the International Convention on civil liability for oil pollution damage, adopted in Brussels on 29 November 1969.

The Italian Government declares that it cannot accept the aforementioned reservation and, with regard to the matter, observes that, under international law, the States have no right to jurisdictional immunity in cases where vessels of theirs are utilized for commercial purposes.

The Italian Government therefore considers its judicial bodies competent - as foreseen by articles IX and XI(2) of the Convention - in actions for the recovery of losses incurred in cases involving vessels belonging to States employing them for commercial purposes, as indeed in cases where, on the basis of article I(3), it is a company, running vessels on behalf of a State, that is considered the owner of the vessel.

The reservation and its non-acceptance by the Italian Government do not, however, preclude the coming into force of the Convention between the Soviet Union and Italy, and its full implementation, including that of article XI(2).”

Peru (2)

The instrument of accession of the Republic of Peru contained the following reservation (in the Spanish language):

*[Translation]*

“With respect to article II, because it considers that the said Convention will be understood as applicable to pollution damage caused in the sea area under the

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(2) The depositary received the following communication dated 14 July 1987 from the Embassy of the Federal Republic of Germany in London (in the English language):

“...the Government of the Federal Republic of Germany has the honour to reiterate its well-known position as to the sea area up to the limit of 200 nautical miles, measured from the base lines of the Peruvian coast, claimed by Peru to be under the sovereignty and
sovereignty and jurisdiction of the Peruvian State, up to the limit of 200 nautical miles, measured from the base lines of the Peruvian coast”.

**Russian Federation**

*See USSR.*

**Saint Kitts and Nevis**

The instrument of accession of Saint Kitts and Nevis contained the following declaration:

“The Government of Saint Kitts and Nevis considers that international law does not authorize States to claim judicial immunity in respect of vessels belonging to them and used by them for commercial purposes”.

**Saudi Arabia**

The instrument of accession of the Kingdom of Saudi Arabia contained the following reservation (in the Arabic language):

[Translation]

“However, this accession does not in any way mean or entail the recognition of Israel, and does not lead to entering into any dealings with Israel; which may be arranged by the above-mentioned Convention and the said Protocol”.

**Syrian Arab Republic**

The instrument of accession of the Syrian Arab Republic contains the following sentence (in the Arabic language):

[Translation]

“...this accession [to the Convention] in no way implies recognition of Israel and does not involve the establishment of any relations with Israel arising from the provisions of this Convention”.

**USSR**

The instrument of accession of the Union of Soviet Republics contains the following reservation (in the Russian language):

[Translation]

“The Union of Soviet Socialist Republic does not consider itself bound by the provisions of article XI, paragraph 2 of the Convention, as they contradict the principle jurisdiction of the Peruvian State. In this respect the Federal Government points again to the fact that according to international law no coastal State can claim unrestricted sovereignty and jurisdiction beyond its territorial sea, and that the maximum breadth of the territorial sea according to international law is 12 nautical miles.”

The depositary received the following communication dated 4 November 1987 from the Permanent Mission of the Union of Soviet Socialist Republics to the International Maritime Organization (in the Russian language):

[Translation]

“...the Soviet Side has the honour to confirm its position in accordance with which a coastal State has no right to claim an extension of its sovereignty to sea areas beyond the outer limit of its territorial waters the maximum breadth of which in accordance with international law cannot exceed 12 nautical miles.”
of the judicial immunity of a foreign State.” (3) Furthermore, the instrument of accession contains the following statement (in the Russian language):

[Translation]

“On its accession to the International Convention on Civil Liability for Oil Pollution Damage, 1969, the Union of Soviet Socialist Republics considers it necessary to state that:

“(a) the provisions of article XIII, paragraph 2 of the Convention which deny participation in the Convention to a number of States, are of a discriminatory nature and contradict the generally recognized principle of the sovereign equality of States, and

(b) the provisions of article XVII of the Convention envisaging the possibility of its extension by the Contracting States to the territories for the international relations of which they are responsible are outdated and contradict the United Nations Declaration on Granting Independence to Colonial Countries and Peoples (resolution 1514(XV) of 14 December 1960)”.

The depositary received on 17 July 1979 from the Embassy of the Union of Soviet Socialist Republics in London a communication stating that:

“...the Soviet side confirms the reservation to paragraph 2 of article XI of the International Convention of 1969 on the Civil Liability for Oil Pollution Damage, made by the Union of Soviet Socialist Republics at adhering to the Convention. This reservation reflects the unchanged and well-known position of the USSR regarding the impermissibility of submitting a State without its express consent to the courts jurisdiction of another State. This principle of the judicial immunity of a foreign State is consistently upheld by the USSR at concluding and applying multilateral international agreements on various matters, including those of merchant shipping and the Law of the sea.

In accordance with article III and other provisions of the 1969 Convention, the liability for the oil pollution damage, established by the Convention is attached to “the owner” of “the ship”, which caused such damage, while paragraph 3 of article I of the Convention stipulates that “in the case of a ship owned by a state and operated by a company which in that state is registered as the ship’s operator, “owner” shall mean such company”. Since in the USSR state ships used for commercial purposes are under the operational management of state organizations who have an independent liability on their obligations, it is only against these organizations and not against the Soviet state that actions for compensation of the oil pollution damage in accordance with the 1969 Convention could be brought. Thus the said reservation does not prevent the consideration in foreign courts in accordance with the jurisdiction established by the Convention, of such suits for the compensation of the damage by the merchant ships owned by the Soviet state”.

(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

Contracting States
as at 30.VI.2006

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Number of Contracting States: 54

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1. With a notification under article V(9)(c) of the Convention, as amended by the Protocol.
2. With a declaration.
3. As from 26.XII.1991 the membership of the USSR in the Protocol is continued by the Russian Federation.
4. Applies to the Hong Kong Special Administrative Region with effect from 1.VII.1997.
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

(CLIC PROT 1992)

Done at London,
27 November 1992
Entry into force: 30 May 1996

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Yemen (accession)  20.IX.2006  20.IX.2007

Number of Contracting States: 121

1 China declared that the Protocol will also be applicable to the Hong Kong Special Administrative Region.
Germany
The instrument of ratification of Germany was accompanied by the following declaration:

New Zealand
The instrument of accession of New Zealand contained the following declaration:
“And declares that this accession shall not extend to Tokelau unless and until a declaration to this effect is lodged by the Government of New Zealand with the Depositary.”
**International Convention relating to**

**Intervention on the high seas in cases of oil pollution casualties, 1969**

*( Intervention 1969)*

Done at Brussels,
29 November 1969
Entry into force: 6 May 1975

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**Convention Internationale sur**

**L'intervention en haute mer en cas d'accident entraînant ou pouvant entraîner une pollution par les hydrocarbures, 1969**

*( Intervention 1969)*

Signé à Bruxelles
le 29 Novembre 1969
Entrée en vigueur: 6 Mai 1975
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<td>Syrian Arab Republic (accession)¹</td>
<td>6.II.1975</td>
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<td>Trinidad and Tobago (accession)</td>
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1. Intervention 1969
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<td>Yemen (accession)</td>
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</table>

Number of Contracting States: 86

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.
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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<th>Country / Accession Type</th>
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<td>Germany (ratification)1,2</td>
<td>21.XII.1985</td>
<td>19.XI.1985</td>
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<td>Iran (Islamic Republic of) (accession)</td>
<td>25.VII.1997</td>
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Intervention Prot. 1973

Protocole de 1973 sur
L'intervention
en haute mer
en cas de pollution par des
substances autres
que les hydrocarbures

(Intervention Prot. 1973)

Signé a London
le 2 Novembre 1973
Entrée en vigueur: 30 Mars 1983
<table>
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<td>St. Lucia (accession)</td>
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<td>Yemen (accession)</td>
<td>6.III.1979</td>
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</tbody>
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Number of Contracting States: 53

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**

(FUND 1971)

Done at Brussels, 18 December 1971

Entered into force: 16 October 1978

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**Cessation: 2.XII.2002**

**Contracting States at time of cessation of Convention**

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</table>

² Succession.
³ Succession.
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.”
PART III - STATUS OF RATIFICATIONS TO IMO CONVENTIONS

Fund Protocol 1976

Protocol to the International Convention on the Establishment of an International Fund for compensation for oil pollution damage

(FUND PROT 1976)

Done at London, 19 November 1976
Entered into force: 22 November 1994

<table>
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<th>Country (accession) / (acceptance)</th>
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Fund Protocol 1976

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Number of Contracting States: 31

1 With a declaration or statement.
2 As from 26.XII.1991 the membership of the USSR in the Protocol is continued by the Russian Federation.
3 Applies only to the Hong Kong Special Administrative Region.

States which have denounced the Protocol

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<td><strong>Colombia</strong></td>
<td>25.I.2005</td>
<td>25.I.2006</td>
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<td><strong>Ireland</strong></td>
<td>15.V.1997</td>
<td>15.V.1998</td>
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</table>

Declarations, Reservations and Statements

**Federal Republic of Germany**
The instrument of ratification of the Federal Republic of Germany contains the following declaration in the English language:
“... with effect from the date on which the Protocol enters into force for the Federal Republic of Germany, it shall also apply to Berlin (West).”

**Poland**
(for text of the notification, see page 458)

Done at London, 27 November 1992
Entry into force: 30 May 1996

<table>
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<tr>
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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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## Fund Protocol 1992

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Number of Contracting States 103

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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

* Notes:

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  - South Georgia and the South Sandwich Islands
  - Anguilla
  - Bailiwick of Guernsey
  - Bermuda
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 Protocol 2003


(FUND PROT 2003)

Done at London,
16 May 2003
Entry into force: 3 March 2005

Protocole de 2003 à la Convention internationale de 1992 portant création d'un fonds international d'indemnisation pour les dommages dus à la pollution par les hydrocarbures

(FONDS PROT 2003)

Signée à Londres
le 16 mai 2003
Entrée en vigueur: 3 Mars 2005

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Number of Contracting States: 23

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1. Extended to Greenland (3 March 2005) and Faroe Islands (19 June 2006).
2. With a declaration, reservation or statement.
Convention relating to Civil Liability in the Field of Maritime Carriage of nuclear material (NUCLEAR 1971)

Done at Brussels, 17 December 1971
Entered into force: 15 July 1975

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”.

**Athens Convention relating to the Carriage of passengers and their luggage by sea (PAL 1974)**

Done at Athens: 13 December 1974
Entered into force: 28 April 1987

**Convention d’Athènes relative au Transport par mer de passagers et de leurs bagages (PAL 1974)**

Signée à Athènes, le 13 décembre 1974
Entrée en vigueur: 28 avril 1987

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Number of Contracting States: 324

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.

* A dispute exists between the Governments of Argentina and the United Kingdom of Great Britain and Northern Ireland concerning sovereignty over the Falkland Islands (Malvinas).
** Ceased to apply to Hong Kong with effect from 1.VII.1997.
Declarations, Reservations and Statements

Argentina (1)
The instrument of accession of the Argentine Republic contained a declaration of non-application of the Convention under article 22, paragraph 1, as follows (in the Spanish language):

[Translation]
“The Argentine Republic will not apply the Convention when both the passengers and the carrier are Argentine nationals”.

The instrument also contained the following reservations:

[Translation]
“The Argentine Republic rejects the extension of the application of the Athens Convention relating to Carriage of Passengers and Their Luggage by Sea, 1974, adopted in Athens, Greece, on 13 December 1974, and of the Protocol to the Athens Convention relating to the Carriage of Passengers and Their Luggage by Sea, 1974, approved in London on 19 December 1976, to the Malvinas Islands as notified by the United Kingdom of Great Britain and Northern Ireland to the Secretary-General of the International Maritime Organization (IMO) in ratifying the said instrument on 31 January 1980 under the incorrect designation of “Falkland Islands”, and reaffirms its sovereign rights over the said Islands which form an integral part of its national territory”.

German Democratic Republic
The instrument of accession of the German Democratic Republic was accompanied by the following reservation (in the German language):

[Translation]
“The German Democratic Republic declares that the provisions of this Convention shall have no effect when the passenger is a national of the German Democratic Republic and when the performing carrier is a permanent resident of the German Democratic Republic or has its seat there”.

USSR
The instrument of accession of the Union of Soviet Socialist Republic contained a declaration of non-application of the Convention under article 22, paragraph 1.

(1) A communication dated 19 October 1983 from the Government of the United Kingdom, the full text of which was circulated by the depositary, includes the following:

“The Government of the United Kingdom of Great Britain and Northern Ireland reject each and every of these statements and assertions. The United Kingdom has no doubt as to its sovereignty over the Falkland Islands and thus its right to include them within the scope of application of international agreements of which it is a party. The United Kingdom cannot accept that the Government of the Argentine Republic has any rights in this regard. Nor can the United Kingdom accept that the Falkland Islands are incorrectly designated”.
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).
Declarations, Reservations and Statements

Argentina (1)
The instrument of accession of the Argentine Republic contained the following reservation (in the Spanish language):

[Translation]
“The Argentine Republic rejects the extension of the application of the Athens Convention relating to Carriage of Passengers and their Luggage by Sea, 1974, adopted in Athens, Greece, on 13 December 1974, and of the Protocol to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974, approved in London on 19 December 1976, to the Malvinas Islands as notified by the United Kingdom of Great Britain and Northern Ireland to the Secretary-General of the International Maritime Organization (IMO) in ratifying the said instrument on 31 January 1980 under the incorrect designation of “Falkland Islands”, and reaffirms its sovereign rights over the said Islands which form an integral part of its national territory”.

(1) The depositary received the following communication dated 4 August 1987 from the United Kingdom Foreign and Commonwealth Office:

“The Government of the United Kingdom of Great Britain and Northern Ireland cannot accept the reservation made by the Argentine Republic as regards the Falkland Islands.

The Government of the United Kingdom of Great Britain and Northern Ireland have no doubt as to the United Kingdom sovereignty over the Falkland Islands and, accordingly, their right to extend the application of the Convention to the Falkland Islands”.

4 The United Kingdom declared ratification to be effective also in respect of:
Bailiwick of Jersey
Bailiwick of Guernsey
Isle of Man
Bermuda
British Virgin Islands
Cayman Islands
Falkland Islands*
Gibraltar
Hong Kong**
Montserrat
Pitcairn
Saint Helena and Dependencies

5 Applies to the Hong Kong Special Administrative Region with effect from 1.VII.1997.

6 Applies to Macau Special Administrative Region with effect from 24 June 2005.

* With a reservation made by the Argentine Republic and a communication received from the United Kingdom.

** Ceased to apply to Hong Kong with effect from 1.VII.1997.
### PAL Protocol 1990

**Protocol of 1990 to amend the 1974 Athens Convention relating to the Carriage of passengers and their luggage by sea (PAL PROT 1990)**

Done at London, 29 March 1990  
Not yet in force

**Protocole de 1990 modifiant la Convention d’Athènes de 1974 relative au Transport par mer de passagers et de leurs bagages (PAL PROT 1990)**

Fait à Londres, le 29 mars 1990  
Pas encore en vigueur

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Number of Contracting States: 6

### Protocol of 2002

**Protocol of 2002 to the Athens Convention relating to the carriage of passengers and their luggage by sea, 1974 (PAL PROT 2002)**

Done at London, 1 November 2002  
Not yet in force

**Protocole de 2002 à la Convention d’Athènes relative au Transport par mer de passagers et de leurs bagages, 1974 (PAL PROT 2002)**

Fait à Londres, le 1 Novembre 2002  
Pas encore en vigueur

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<td><strong>Syrian Arab Republic</strong> (accession)</td>
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Number of Contracting States: 4
Convention on
Limitation of Liability
for maritime claims
(LLMC 1976)

Done at London, 19 November 1976
Entered into force: 1 December 1986

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Mexico (accession) 13.V.1994 1.IX.1994
Netherlands (accession)\(^1\), \(^2\) 15.V.1990 1.IX.1990
New Zealand (accession)\(^5\) 14.II.1994 1.VI.1994
Nigeria (accession) 24.II.2004 1.VI.2004
Poland (accession)\(^6\) 28.IV.1984 1.XII.1986
Romania (accession) 12.III.2007 1.VII.2007
Samoa (accession) 18.V.2004 1.IX.2004
Sierra Leone (accession) 26.VII.2001 1.XI.2001
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Tuvalu (accession) 12.I.2009 1.IV.2009
United Arab Emirates (accession) 19.XI.1997 1.III.1998
United Kingdom (ratification)\(^1\), \(^7\), \(^8\) (denunciation – 17.VII.1998) 31.I.1980 1.XII.1986
Vanuatu (accession) 14.IX.1992 1.I.1993
Yemen (accession) 6.III.1979 1.XII.1986

Number of Contracting States: 52
The Convention applies provisionally in respect of: Belize

\(^1\) With a declaration, reservation or statement.
\(^2\) With a notification under article 15(2).
\(^3\) On 3.X.1990 the German Democratic Republic acceded to the Federal Republic of Germany. The German Democratic Republic had acceded\(^1\), \(^6\) to the Convention on 17.II.1989.
\(^4\) With a notification under article 15(4).
\(^5\) The instrument of accession contained the following statement: “AND WHEREAS it is not intended that the accession by the Government of New Zealand to the Convention should extend to Tokelau.”.
\(^6\) With a notification under article 8(4).
\(^7\) The United Kingdom declared its ratification to be effective also in respect of: Bailiwick of Jersey
Bailiwick of Guernsey
Isle of Man
Belize
Bermuda
Belgium
The instrument of accession of the Kingdom of Belgium was accompanied by the following reservation (in the French language):
[Translation]
“In accordance with the provisions of article 18, paragraph 1, Belgium expresses a reservation on article 2, paragraph 1(d) and (e)”.

China
By notification dated 5 June 1997 from the People’s Republic of China:
[Translation]
“1. with respect to the Hong Kong Special Administrative Region, it reserves the right in accordance with Article 18 (1), to exclude the application of the Article 2 (1)(d)”.

France
The instrument of approval of the French Republic contained the following reservation (in the French language):
[Translation]
“In accordance with article 18, paragraph 1, the Government of the French Republic reserves the right to exclude the application of article 2, paragraphs 1(d) and (e)”.

German Democratic Republic
The instrument of accession of the German Democratic Republic was accompanied by the following reservation (in the German language):
[Translation]
Article 2, paragraph 1(d) and (e)
“The German Democratic Republic notes that for the purpose of this Convention there is no limitation of liability within its territorial sea and internal waters in respect of the removal of a wrecked ship, the raising, removal or destruction of a ship which is sunk, stranded or abandoned (including anything that is or has been on board such ship).
Claims, including liability, derive from the laws and regulations of the German Democratic Republic.”  
**Article 8, paragraph 1**  
“The German Democratic Republic accepts the use of the Special Drawing Rights merely as a technical unit of account. This does not imply any change in its position toward the International Monetary Fund”.

**Federal Republic of Germany**  
The instrument of ratification of the Federal Republic of Germany was accompanied by the following declaration (in the German language):  
[Translation]  
“...that the said Convention shall also apply to Berlin (West) with effect from the date on which it enters into force for the Federal Republic of Germany”.  
“In accordance with art. 18, par. 1 of the Convention, the Federal Republic of Germany reserves the right to exclude the application of art. 2, par. 1(d) and (e) of the Convention”

**Japan**  
The instrument of accession of Japan was accompanied by the following statement (in the English language):  
“...the Government of Japan, in accordance with the provision of paragraph 1 of article 18 of the Convention, reserves the right to exclude the application of paragraph 1(d) and (e) of article 2 of the Convention”.

**Netherlands**  
The instrument of accession of the Kingdom of the Netherlands contained the following reservation:  
“In accordance with article 18, paragraph 1 of the Convention on limitation of liability for maritime claims, 1976, done at London on 19 November 1976, the Kingdom of the Netherlands reserves the right to exclude the application of article 2, paragraph 1(d) and (e) of the Convention”.

**United Kingdom**  
The instrument of accession of the United Kingdom of Great Britain and Northern Ireland contained reservation which states that the United Kingdom was “Reserving the right, in accordance with article 18, paragraph 1, of the Convention, on its own behalf and on behalf of the above mentioned territories, to exclude the application of article 2, paragraph 1(d); and to exclude the application of article 2, paragraph 1(e) with regard to Gibraltar only”.

**Notifications**

**Article 8(4)**

**German Democratic Republic**  
[Translation]  
“The amounts expressed in Special Drawing Rights will be converted into marks of the German Democratic Republic at the exchange rate fixed by the Staatsbank of the German Democratic Republic on the basis of the current rate of the US dollar or of any other freely convertible currency”.

**China**  
[Translation]  
“The manner of calculation employed with respect to article 8(1) of the Convention concerning the unit of account shall be the method of valuation applied by the International Monetary Fund;”

**Poland**  
“Poland will now calculate financial liabilities mentioned in the Convention in the
terms of the Special Drawing Right, according to the following method. The Polish National Bank will fix a rate of exchange of the SDR to the United States dollar according to the current rates of exchange quoted by Reuter. Next, the US dollar will be converted into Polish zloties at the rate of exchange quoted by the Polish National Bank from their current table of rates of foreign currencies”.

**Switzerland**

“The Federal Council declares, with reference to article 8, paragraphs 1 and 4 of the Convention that Switzerland calculates the value of its national currency in special drawing rights (SDR) in the following way:

The Swiss National Bank (SNB) notifies the International Monetary Fund (IMF) daily of the mean rate of the dollar of the United States of America on the Zurich currency market. The exchange value of one SDR in Swiss francs is determined from that dollar rate and the rate of the SDR in dollars calculated by IMF. On the basis of these values, SNB calculates a mean SDR rate which it will publish in its Monthly Gazette”.

**United Kingdom**

“...The manner of calculation employed by the United Kingdom pursuant to article 8(1) of the Convention shall be the method of valuation applied by the International Monetary Fund”.

**Article 15(2)**

**Belgium**

*[Translation]*

“In accordance with the provisions of article 15, paragraph 2, Belgium will apply the provisions of the Convention to inland navigation”.

**France**

*[Translation]*

“...- that no limit of liability is provided for vessels navigating on French internal waterways;
- that, as far as ships with a tonnage of less than 300 tons are concerned, the general limits of liability are equal to half those established in article 6 of the Convention...for ships with a tonnage not exceeding 500 tons”.

**Federal Republic of Germany**

*[Translation]*

“In accordance with art. 15, par. 2, first sentence, sub-par. (a) of the Convention, the system of limitation of liability to be applied to vessels which are, according to the law of the Federal Republic of Germany, ships intended for navigation on inland waterways, is regulated by the provisions relating to the private law aspects of inland navigation.

In accordance with art. 15, par. 2, first sentence, sub-par. (b) of the Convention, the system of limitation of liability to be applied to ships up to a tonnage of 250 tons is regulated by specific provisions of the law of the Federal Republic of Germany to the effect that, with respect to such a ship, the limit of liability to be calculated in accordance with art. 6, par. 1 (b) of the Convention is half of the limitation amount to be applied with respect to a ship with a tonnage of 500 tons”.

**Netherlands**

*Paragraph 2(a)*

“The Act of June 14th 1989 (Staatsblad 239) relating to the limitation of liability of owners of inland navigation vessels provides that the limits of liability shall be calculated in accordance with an Order in Council.

The Order in Council of February 19th 1990 (Staatsblad 96) adopts the following limits of liability in respect of ships intended for navigation on inland waterways.
I. Limits of liability for claims in respect of loss of life or personal injury other than those in respect of passengers of a ship, arising on any distinct occasion:

1. for a ship non intended for the carriage of cargo, in particular a passenger ship, 200 Units of Account per cubic metre of displacement at maximum permitted draught, plus, for ships equipped with mechanical means of propulsion, 700 Units of Account for each kW of the motorpower of the means of propulsion;

2. for a ship intended for the carriage of cargo, 200 Units of Account per ton of the ship’s maximum deadweight, plus, for ships equipped with mechanical means of propulsion, 700 Units of Account for each kW of the motorpower of the means of propulsion;

3. for a tug or a pusher, 700 Units of Account for each kW of the motorpower of the means of propulsion;

4. for a pusher which at the time the damage was caused was coupled to barges in a pushed convoy, the amount calculated in accordance with 3 shall be increased by 100 Units of Account per ton of the maximum deadweight of the pushed barges; such increase shall not apply if it is proved that the pusher has rendered salvage services to one or more of such barges;

5. for a ship equipped with mechanical means of propulsion which at the time the damage was caused was moving other ships coupled to this ship, the amount calculated in accordance with 1, 2 or 3 shall be increased by 100 Units of Account per ton of the maximum deadweight or per cubic metre of displacement of the other ships; such increase shall not apply if it is proved that this ship has rendered salvage services to one or more of the coupled ships;

6. for hydrofoils, dredgers, floating cranes, elevators and all other floating appliances, pontoons or plant of a similar nature, treated as inland navigation ships in accordance with Article 951a, paragraph 4 of the Commercial Code, their value at the time of the incident;

7. where in cases mentioned under 4 and 5 the limitation fund of the pusher or the mechanically propelled ships is increased by 100 Units of Account per ton of maximum deadweight of the pushed barges or per cubic metre of displacement of the other coupled ships, the limitation fund of each barge or of each of the other coupled ships shall be reduced by 100 Units of Account per ton of the maximum deadweight of the barge or by 100 Units of Account per ton of the maximum deadweight or per cubic metre of displacement of the other vessel with respect to claims arising out of the same incident; however, in no case shall the limitation amount be less than 200,000 Units of Account.

II. The limits of liability for claims in respect of any damage caused by water pollution, other than claims for loss of life or personal injury, are equal to the limits mentioned under I.

III. The limits of liability for all other claims are equal to half the amount of the limits mentioned under I.

IV. In respect of claims arising on any distinct occasion for loss of life or personal injury to passengers of an inland navigation ship, the limit of liability of the owner thereof shall be an amount equal to 60,000 Units of Account multiplied by the number of passengers the ship is authorized to carry according to its legally established capacity or, in the event that the maximum number of passengers the ship is authorized to carry has not been established by law, an amount equal to 60,000 Units of Account multiplied by the number of passengers actually carried on board at the time of the incident. However, the limitation of liability shall in no case be less than 720,000 Units of Account and shall not exceed the following amounts:

(i) 3 million Units of Account for a vessel with an authorized maximum capacity of 100 passengers;

(ii) 6 million Units of Account for a vessel with an authorized maximum capacity of 180 passengers;

(iii) 12 million Units of Account for a vessel with an authorized maximum capacity of more than 180 passengers.
Claims for loss of life or personal injury to passengers have been defined in the same way as in Article 7, paragraph 2 of the Convention on Limitation of Liability for Maritime Claims, 1976. The Unit of Account mentioned under I-IV is the Special Drawing Right as defined in Article 8 of the Convention on Limitation of Liability for Maritime Claims, 1976.”

Paragraph 2(b)
The Act of June 14th 1989 (Staatsblad 241) relating to the limitation of liability for maritime claims provides that with respect to ships which are according to their construction intended exclusively or mainly for the carriage of persons and have a tonnage of less than 300, the limit of liability for claims other than for loss of life or personal injury may be established by Order in Council at a lower level than under the Convention. The Order in Council of February 19th 1990 (Staatsblad 97) provides that the limit shall be 100,000 Units of Account. The Unit of Account is the Special Drawing Right as defined in Article 8 of the Convention on Limitation of Liability for Maritime Claims, 1976.”

Switzerland

[Translation]
“In accordance with article 15, paragraph 2, of the Convention on Limitation of Liability for Maritime Claims, 1976, we have the honour to inform you that Switzerland has availed itself of the option provided in paragraph 2(a) of the above mentioned article.

Since the entry into force of article 44a of the Maritime Navigation Order of 20 November 1956, the limitation of the liability of the owner of an inland waterways ship has been determined in Switzerland in accordance with the provisions of that article, a copy of which is [reproduced below]:

II. Limitation of liability of the owner of an inland waterways vessel

Article 44a
1. In compliance with article 5, subparagraph 3c, of the law on maritime navigation, the liability of the owner of an inland waterways vessel, provided in article 126, subparagraph 2c, of the law, shall be limited as follows:
a. in respect of claims for loss of life or personal injury, to an amount of 200 units of account per deadweight tonne of a vessel used for the carriage of goods and per cubic metre of water displaced for any other vessel, increased by 700 units of account per kilowatt of power in the case of mechanical means of propulsion, and to an amount of 700 units of account per kilowatt of power for uncoupled tugs and pusher craft; for all such vessels, however, the limit of liability is fixed at a minimum of 200,000 units of account;
b. in respect of claims for passengers, to the amounts provided by the Convention on Limitation of Liability for Maritime Claims, 1976, to which article 49, subparagraph 1, of the federal law on maritime navigation refers;
c. in respect of any other claims, half of the amounts provided under subparagraph a.
2. The unit of account shall be the special drawing right defined by the International Monetary Fund.
3. Where, at the time when damage was caused, a pusher craft was securely coupled to a pushed barge train, or where a vessel with mechanical means of propulsion was providing propulsion for other vessels coupled to it, the maximum amount of the liability, for the entire coupled train, shall be determined on the basis of the amount of the liability of the pusher craft or of the vessel with mechanical means of propulsion and also on the basis of the amount calculated for the deadweight tonnage or the water displacement of the vessels to which such pusher craft or vessel is coupled, in so far as it is not proved that such pusher craft or such vessel has rendered salvage services to the coupled vessels.”

United Kingdom

“...With regard to article 15, paragraph 2(b), the limits of liability which the United Kingdom intend to apply to ships of under 300 tons are 166,677 units of account in respect of claims for loss of life or personal injury, and 83,333 units of account in respect of any other claims.”
Article 15(4)

Norway
“Because a higher liability is established for Norwegian drilling vessels according to the Act of 27 May 1983 (No. 30) on changes in the Maritime Act of 20 July 1893, paragraph 324, such drilling vessels are exempted from the regulations of this Convention as specified in article 15 No. 4.”

Sweden
“...In accordance with paragraph 4 of article 15 of the Convention, Sweden has established under its national legislation a higher limit of liability for ships constructed for or adapted to and engaged in drilling than that otherwise provided for in article 6 of the Convention.

### Protocol of 1996 to amend the convention on Limitation of Liability for maritime claims, 1976

**(LLMC PROT 1996)**

Done at London, 2 May 1996

Entered into force: 13 May 2004

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Tonga (accession)
Tuvalu (accession)
United Kingdom (ratification)\(^1\)

Number of Contracting States: 34

\(^1\) With a reservation or statement

**International Convention on Salvage, 1989**
(SALVAGE 1989)

Done at London: 28 April 1989
Entered into force: 14 July 1996

**Convention Internationale de 1989 sur l’Assistance**
(ASSISTANCE 1989)

Signée a Londres le 28 avril 1989
Entrée en vigueur: 14 juillet 1996
### Salvage 1989

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Number of Contracting States: 54

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1. With a reservation or statement
2. With a notification
3. The United Kingdom declared its ratification to be effective in respect of:
   - The Bailiwick of Jersey
   - The Isle of Man
   - Falkland Islands*
   - Montserrat
   - South Georgia and the South Sandwich Islands
   - Hong Kong** as from 30.V.1997
   - Anguilla
   - British Antarctic Territory
   - British Indian Ocean Territory
   - Cayman Islands
   - Pitcairn, Henderson, Ducie and Oeno Islands with effect from 22.7.98
   - St Helena and its Dependencies
   - Turks and Caicos Islands
   - Virgin Islands
4. Applies to the Hong Kong Special Administrative Region with effect from 1.VII.1997.
5. Applies to Macau Special Administrative Region with effect from 24 June 2005.

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* A dispute exists between the Governments of Argentina and the United Kingdom of Great Britain and Northern Ireland concerning sovereignty over the Falkland Islands (Malvinas).
** Ceased to apply to Hong Kong with effect from 1.VII.1997.
Declerations, 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

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Oil pollution preparedness 1990

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Number of Contracting States: 97

(1) The instrument of ratification of the Argentine Republic contained the following reservation:

[Translation]

“The Argentine Republic hereby expressly reserves its rights of sovereignty and of territorial and maritime jurisdiction over the Malvinas Islands, South Georgia and South Sandwich Islands, and the maritime areas corresponding thereto, as recognized and defined in Law No. 23.968 of the Argentine Nation of 14 August 1991, and repudiates any extension of the scope of the International Convention on Oil Pollution Preparedness, Response and Co-operation, 1990, which may be made by any other State, community or entity to those Argentine island territories and/or maritime areas”.

(2) Applies to the Hong Kong and Macao Special Administrative Regions with effect from 1 May 2001.

(3) 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.

(4) Applies to Aruba with effect from 13 October 2006. Applies to the Netherlands Antilles with effect from 18 October 2007.

(5) 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.”

Accession by the United Kingdom was declared to be effective in respect of the Isle of Man with effect from 16 May 2003.
### Protocol on preparedness, response and co-operation to pollution incidents by hazardous and noxious substances, 2000
*(OPRC-HNS 2000)*

Done at London, 15 March 2000
Entered into force: 14 June 2007

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Number of Contracting States: 23
International Convention on Liability and Compensation for damage in connection with the carriage of hazardous and noxious substances by sea, 1996
(HNS 1996)

Done at London, 3 May 1996
Not yet in force.

Convention Internationale de 1996 sur la responsabilité et l’indemnisation pour les dommages liés au transport par mer de substances nocives et potentiellement dangereuses
(HNS 1996)

Signée à Londres le 3 mai 1996
Pas encore en vigueur.

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Number of Contracting States: 13.

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

Will enter into force on 21 November 2008.

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PART III - STATUS OF RATIFICATIONS TO IMO CONVENTIONS

535

SUA 1988

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representing approximately 75.50% of the world’s merchant shipping

1 With a reservation or declaration.

Convention for the suppression of unlawful acts against the safety of maritime navigation, 1988
(SUA 1988)

Done at Rome, 10 March 1988

Convention pour la répression d’actes illicites contre la sécurité de la navigation maritime, 1988
(SUA 1988)

Signée à Rome le 10 Mars 1988

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Number of Contracting States: 152 representing approximately 92.84% of the gross tonnage of the world’s merchant shipping.

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1 With a reservation, declaration or statement.
2 With a notification under article 6.
3 On 3 October 1990 the German Democratic Republic acceded to the Federal Republic of Germany. The German Democratic Republic had acceded* to the Convention on 14 April 1989.
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.
PART III - STATUS OF RATIFICATIONS TO IMO CONVENTIONS

SUAProtocol 1988

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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Number of Contracting States: 140, representing approximately 87.86% of the gross tonnage of the world’s merchant shipping.

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1 With a notification under article 3.
2 With a reservation, declaration or statement.
3 On 3 October 1990 the German Democratic Republic acceded to the Federal Republic of Germany. The German Democratic Republic had acceded* to the Convention on 14 April 1989.
* With a reservation.
4 The United Kingdom declared its ratification to be effective also in respect of the Isle of Man. (notification received 8 February 1999).
5 Applies to Aruba with effect from 17 January 2006.
6 China declared that the Protocol would be effective in respect of the Hong Kong Special Administrative Region (HKSAR) with effect from 20 February 2006.
## Status of Ratifications to UN Conventions

**Status of the Ratifications of and Accessions to United Nations and United Nations/IMO Conventions in the Field of Public and Private Maritime Law**

**Etat des ratifications et adhesions aux conventions des Nations Unies et aux conventions des Nations Unies/OMI en matiere de droit maritime public et de droit maritime privé**

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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
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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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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.

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**Montego Bay 10 December 1982**  
Entered into force:  
16 November 1994

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United Nations Convention on Conditions for Registration of ships
Convention des Nations Unies sur les Conditions d’Immatriculation des navires
Geneva, 7 February 1986
Genève, 7 février 1986
Not yet in force.
Pas encore entrée en vigueur.

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<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gabon</td>
<td>15.XII.2004</td>
</tr>
<tr>
<td>Georgia</td>
<td>21.III.1996</td>
</tr>
<tr>
<td>Egypt</td>
<td>6.IV.1999</td>
</tr>
<tr>
<td>Paraguay</td>
<td>19.VII.2005</td>
</tr>
</tbody>
</table>

**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.

**International Convention on Maritime liens and mortgages, 1993**

Done at Geneva, 6 May 1993
Entered into force: 5 September 2004

**International Convention on Arrest of Ships, 1999**

Done at Geneva, 12 March 1999
Not yet in force.
## STATUS OF THE RATIFICATIONS OF UNESCO CONVENTIONS

### UNESCO Convention on the Protection of the Underwater Cultural Heritage

Done at Paris 2 November 2001*

<table>
<thead>
<tr>
<th>Country</th>
<th>Date of deposit of instrument</th>
</tr>
</thead>
<tbody>
<tr>
<td>Barbados (acceptance)</td>
<td>2.X.2008</td>
</tr>
<tr>
<td>Bulgaria (ratification)</td>
<td>06.X.2003</td>
</tr>
<tr>
<td>Cambodia (ratification)</td>
<td>24.XI.2007</td>
</tr>
<tr>
<td>Croatia (ratification)</td>
<td>01.XII.2004</td>
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<tr>
<td>Cuba (ratification)</td>
<td>26.V.2008</td>
</tr>
<tr>
<td>Ecuador (ratification)</td>
<td>01.XII.2006</td>
</tr>
<tr>
<td>Grenada (ratification)</td>
<td>15.I.2009</td>
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<tr>
<td>Lebanon (acceptance)</td>
<td>08.I.2007</td>
</tr>
<tr>
<td>Libyan Arab Jamahiriya (ratification)</td>
<td>23.VI.2005</td>
</tr>
<tr>
<td>Lithuania (ratification)</td>
<td>12.VI.2006</td>
</tr>
<tr>
<td>Mexico (ratification)</td>
<td>05.VIII.2006</td>
</tr>
<tr>
<td>Montenegro (ratification)</td>
<td>18.VII.2008</td>
</tr>
<tr>
<td>Nigeria (ratification)</td>
<td>21.X.2005</td>
</tr>
<tr>
<td>Panama (ratification)</td>
<td>20.V.2003</td>
</tr>
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<td>Paraguay (ratification)</td>
<td>07.IX.2006</td>
</tr>
<tr>
<td>Portugal (ratification)</td>
<td>21.IX.2006</td>
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<td>Romania (acceptance)</td>
<td>31.VII.2007</td>
</tr>
<tr>
<td>Saint Lucia (ratification)</td>
<td>01.II.2007</td>
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<tr>
<td>Slovenia (ratification)</td>
<td>18.IX.2007</td>
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<tr>
<td>Spain (ratification)</td>
<td>06.VI.2005</td>
</tr>
<tr>
<td>Tunisia (ratification)</td>
<td>15.I.2009</td>
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<tr>
<td>Ukraine (ratification)</td>
<td>27.XII.2006</td>
</tr>
</tbody>
</table>

* In accordance with its Article 27, this Convention shall enter into force on 2 January 2009 for those States that have deposited their respective instruments of ratification, acceptance, approval or accession on or before 2 October 2008. It shall enter into force for any other State three months after the deposit by that State of its instrument of ratification, acceptance, approval or accession.
STATUS OF THE RATIFICATIONS OF 
AND ACCESSIONS TO UNIDROIT CONVENTIONS 
IN THE FIELD OF PRIVATE MARITIME LAW

ETAT DES RATIFICATIONS ET ADHÉSIONS 
AUX CONVENTIONS D’UNIDROIT EN MATIÈRE 
DE DROIT MARITIME PRIVE

Unidroit Convention on
International financial 
leasing 1988

Done at Ottawa 28 May 1988
Entered into force.
1 May 1995

Convention de Unidroit sur
le Creditbail international
1988

Signée à Ottawa 28 mai 1988
Entré en vigueur:
1 Mai 1995

Belarus (a) 18.VIII.1998
France (r) 23.IX.1991
Hungary (a) 7.V.1996
Italy (r) 29.XI.1993
Latvia (a) 6.VIII.1997
Nigeria (r) 25.X.1994
Panama (r) 26.III.1997
Russian Federation (a) 3.VI.1998
Uzbekistan, Republic of (a) 6.VII.2000
CONFERENCES
OF THE COMITE MARITIME INTERNATIONAL

I. BRUSSELS - 1897
President: Mr. Auguste BEERNAERT.
Subjects:
Organization of the International Maritime Committee - Collision - Shipowners’ Liability.

II. ANTWERP - 1898
President: Mr. Auguste BEERNAERT.
Subjects:
Liability of Owners of sea-going vessels.

III. LONDON - 1899
President: Sir Walter PHILLIMORE.
Subjects:
Collisions in which both ships are to blame - Shipowners’ liability.

IV. PARIS - 1900
President: Mr. LYON-CAEN.
Subjects:
Assistance, salvage and duty to tender assistance - Jurisdiction in collision matters.

V. HAMBURG - 1902
President: Dr. Friedrich SIEVEKING.
Subjects:
International Code on Collision and Salvage at Sea - Jurisdiction in collision matters - Conflict of laws as to owner-ship of vessels.

VI. AMSTERDAM - 1904
President: Mr. E.N. RAHUSEN.
Subjects:
Conflicts of law in the matter of Mortgages and Liens on ships - Jurisdiction in collision matters - Limitation of Shipowners’ Liability.

VII. LIVERPOOL - 1905
President: Sir William R. KENNEDY.
Subjects:
Limitation of Shipowners’ Liability - Conflict of Laws as to Maritime Mortgages and Liens - Brussels Diplomatic Conference.

VIII. VENICE - 1907
President: Mr. Alberto MARGHIERI.
Subjects:
Limitation of Shipowners’ Liability - Maritime Mortgages and Liens - Conflict of law as to Freight.

IX. BREMEN - 1909
President: Dr. Friedrich SIEVEKING.
Subjects:
Conflict of laws as to Freight - Compensation in respect of personal injuries - Publication of Maritime Mortgages and Liens.

X. PARIS - 1911
President: Mr. Paul GOVARE.
Subjects:
Limitation of Shipowners’ Liability in the event of loss of life or personal injury - Freight.

XI. COPENHAGEN - 1913
President: Dr. J.H. KOCH.
Subjects:

XII. ANTWERP - 1921
President: Mr. Louis FRANCK.
Subjects:

XIII LONDON - 1922
President: Sir Henry DUKE.
Subjects:

XIV. GOTHENBURG - 1923
President: Mr. EfieL LÖFGREN.
Subjects:

XV. GENOA - 1925
President: Dr. Francesco BERLINGIERI.
Conferences of the Comité Maritime International

XVI. AMSTERDAM - 1927
President: Mr. B.C.J. LODER.
Subjects:
Compulsory insurance of passengers - 
Letters of indemnity - Ratification of the Brussels Conventions.

XVII. ANTWERP - 1930
President: Mr. Louis FRANCK.
Subjects:
Ratification of the Brussels Conventions - 
Compulsory insurance of passengers - 
Jurisdiction and penal sanctions in matters of collision at sea.

XVIII. OSLO - 1933
President: Mr. Edvin ALTEN.
Subjects:
Ratification of the Brussels Conventions - 
Civil and penal jurisdiction in matters of collision on the high seas - Provisional arrest of ships - Limitation of Shipowners’ Liability.

XIX. PARIS - 1937
President: Mr. Georges RIPERT.
Subjects:
Ratification of the Brussels Conventions - 
Civil and penal jurisdiction in the event of collision at sea - Arrest of ships - 
Commentary on the Brussels Conventions - 
Assistance and Salvage of and by Aircraft at sea.

XX. ANTWERP - 1947
President: Mr. Albert LILAR.
Subjects:
Ratification of the Brussels Conventions, 

XXI. AMSTERDAM - 1948
President: Prof. J. OFFERHAUS
Subjects:

XXII. NAPLES - 1951
President: Mr. Amedeo GIANNINI.
Subjects:
Brussels International Conventions - Draft convention relating to Provisional Arrest of Ships - Limitation of the liability of the Owners of Sea-going Vessels and Bills of Lading (Revision of the Gold clauses) - 
Revision of the Conventions of Maritime Hypothèques and Mortgages - Liability of Carriers by Sea towards Passengers - Penal Jurisdiction in matters of collision at Sea.

XXIII. MADRID - 1955
President: Mr. Albert LILAR.
Subjects:
Limitation of Shipowners’ Liability - 
Liability of Sea Carriers towards passengers - Stowaways - Marginal clauses and letters of indemnity.

XXIV. RIJEKA - 1959
President: Mr. Albert LILAR
Subjects:
Liability of operators of nuclear ships - 
Revision of Article XIV of the International Convention for the Unification of certain rules of Law relating to assistance and salvage at sea - International Statute of Ships in Foreign ports - Registry of operations of ships.

XXV. ATHENS - 1962
President: Mr. Albert LILAR
Subjects:
Damages in Matters of Collision - Letters of Indemnity - International Statute of Ships in Foreign Ports - Registry of Ships - 
Coordination of the Convention of Limitation and on Mortgages - Demurrage and Despatch Money - Liability of Carriers of Luggage.

XXVI. STOCKHOLM - 1963
President: Mr. Albert LILAR
Subjects:
Bills of Lading - Passenger Luggage - Ships under construction.

XXVII. NEW YORK - 1965
President: Mr. Albert LILAR
Subjects:
Revision of the Convention on Maritime Liens and Mortgages.
Conferences of the Comité Maritime International

XXVIII. TOKYO - 1969
President: Mr. Albert ILAR
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 ILAR
Subjects:
Revision of the Constitution of the International Maritime Committee.

XXX. HAMBURG - 1974
President: Mr. Albert ILAR
Subjects:

XXXI. RIO DE JANEIRO - 1977
President: Prof. Francesco BERLINGIERI
Subjects:

XXXII MONTREAL - 1981
President: Prof. Francesco BERLINGIERI
Subjects:
Convention for the unification of certain rules of law relating to assistance and salvage at sea - Carriage of hazardous and noxious substances by sea.

XXXIII. LISBON- 1985
President: Prof. Francesco BERLINGIERI
Subjects:

XXXIV. PARIS - 1990
President: Prof. Francesco BERLINGIERI
Subjects:

XXXV. SYDNEY - 1994
President: Prof. Allan PHILIP
Subjects:

XXXVI. ANTWERP – 1997
CENTENARY CONFERENCE
President: Prof. Allan PHILIP
Subjects:

XXXVII. SINGAPORE – 2001
President: Patrick GRIGGS
Subjects:

XXXVIII. VANCOUVER – 2004
President: Patrick GRIGGS
Subjects:

XXXIX – ATHENS 2008
President: Jean-Serge Rohart
Subjects: