

YEARBOOK 2019 ANNUAIRE



Nigel Harvey Hugh Frawley

Nigel Harvey Hugh Frawley
7 June 1936 - 22 January 2020¹



Nigel Frawley, who passed away earlier this year, was the quintessential CMI person. He epitomised for many the reason why those who have attended CMI meetings and been involved in the CMI for many years keep on giving their time, working for and enjoying the CMI. He will be remembered by the CMI family for his great good humour, dedication and diligence to the CMI but also for his legal acumen, integrity, common sense and affability. He was unflappable and a joy to work with and spend time with.

Nigel was a Titulary member of the CMI, a former President of the Canadian MLA (1996 to 1998) and Secretary-General of the CMI (2004 to 2013). He served four Presidents of the CMI and, as I said when he retired, he made us all look better than we were, and we all owed him an enormous debt of gratitude. John Hare, who had previously served on the Executive Council of the CMI and succeeded Nigel as Secretary-General has rightly said of him that he was the “master of the equitable resolution of disputes and arguments, who guided, encouraged and taught me how to perform the role from a distance”. I like to think that Nigel joined us in

¹ [This memorial for Nigel Frawley was originally prepared and published in a shortened form for the CMI News Letter Issue No 1 2020. It has been extended for the purposes of the Yearbook by including extracts from “On a life well spent”, a memoir that Nigel himself wrote for his wife Lynn and sons Douglas and Jamie. CMI is grateful to them for allowing us to make use of it for these purposes]

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Istanbul in 2015 despite his health to check on his protégé and make sure the CMI was in good hands.

Former Presidents of the CMI who had worked with Nigel all mourned his passing. Karl Gombrii on hearing of Nigel's passing said: "Nigel was a great companion and fabulous co-worker. I miss a very dear friend". Patrick Griggs echoed those sentiments and has recounted how he shared the news of Nigel's passing with an ex partner at Ince and Co who had served in submarines with Nigel whilst he served with the Royal Navy (see further below) before also coming ashore and qualifying as a lawyer. As Patrick said: "We always used to say that in order to be a submariner it was necessary to turn off the brain thus keeping it fresh for use in subsequent life ashore-they took this kindly (and rather agreed)!" Jean-Serge Rohart has said : "I owed him the greatest help in the preparation of all our meetings. He was also a nice companion during excursions and I keep a picture of him after the Colloquium in Cape Town: he was standing in front of the wooden plate indicating "Cape of Good Hope" and with his legendary sense of humour he told me: "Who knows?"

Vice President Giorgio Berlingieri also captured what Nigel meant to so many of the CMI family when he said: "Nigel was extraordinary and impressed me for his greatness in so many aspects: his competence, his distinction, his polite ways, his elegance, his sense of humour, and the quiet ways in which he faced and solved CMI activities"

As Secretary-General Nigel played the important role in ensuring that all aspects of the annual meetings functioned successfully, from the booking of hotels, to arranging the programme for the business sessions, the social aspects and the minute taking of Assembly and Executive Council meetings. All of these responsibilities Nigel took on and performed with aplomb. He worked incredibly hard to achieve the successes that were achieved at all the meetings he was responsible for. The pinnacle of his achievements was the Beijing Conference in 2012, where on occasions there were at least three and some times four contemporaneous sessions taking place in different venues in the Conference hotel. It was a tour de force.

The other important (possibly pre-eminent) role of the Secretary-General is encouraging the International Working Groups and Committees to perform their work. One such Group, which was started at his recommendation, was that on Arctic Activities. Realising that the warming client was changing maritime activity in the northern polar region he deemed it essential that CMI assist in making the international maritime legal framework fit for purpose in this newly opening up region. He was passionate about the work that this new Group could contribute and as its first Chair he charted the course that he was so pleased to see another Canadian, Aldo Chircop, continue.

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During the Presidency of Jean Serge Rohart a new ad hoc Committee, the Steering Committee, was formed which comprised the two Vice Presidents and Secretary-General. It was charged with looking towards the future with a view to reforming the management, membership and operation of the CMI. One of the major topics which the Committee considered needed review was the membership fees paid by MLAs and Titulary members. The gap between the highest and lowest subscribing MLAs needed to be lessened, but with a diminished income pool expenses needed to be reduced as well. The suggestions made by this Committee introduced a simplified subscription regime and made recommendations that have influenced how CMI meetings and activities have been performed in subsequent years, as a result of the suggestions made by MLAs in response to Questionnaires sent out by the Committee. In all the deliberations of the Committee Nigel's opinions were sensible and always in the best interests of the CMI.

In his memoir Nigel wrote:

“As I look back on my life I like to think that it was meaningful as well as fun. I certainly had my share of fun, exciting and dangerous at times in the navy during the Suez crisis and “Cold War”. I practised law with enthusiasm and enjoyed the cut and thrust of litigation. I like to think I played a small part in the development of Canadian and international maritime law”.

To my observation he was entitled to think he had led a meaningful life and had contributed greatly to the development of maritime law.

Nigel was born in London, UK in 1936. He recalled in his memoir the conditions in London during the blitz of the Second World War and his trip to Canada as a small boy:

My memory of leaving England with my mother in 1942 is quite good even though I was only 6 years old. I remember by father coming to say goodbye on the railway platform when we took the train for Greenock, Scotland. We boarded a ship there called the *S.S. Argentina* on a west bound convoy in ballast to New York. During the voyage I ran free on the upper deck and my mother said that I was the only child on board and a favourite of the ship's officers. I remember gunnery target practice and putting on one of the officer's hats which promptly blew overboard! The Captain was concerned about a U-Boat attack, but none was seen as we had no cargo in that convoy. I recall getting up very early one morning and going out on the deck and seeing a soldier quietly staring at the horizonless dawn. My last recollection is

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being carried down the gangplank by an obliging male passenger into the immigration and customs sheds in New York.”

Having made his first sea voyage to New York he and his mother then travelled by train to New Brunswick in Canada to await his step father (from whom he took his surname) who was serving in the Canadian military. Over the next few years he grew up in Quebec City, Montreal and Hudson (30 miles west of Montreal) and attended Hudson High School and then spent his final two years at Ridley College, St Catherine’s, Ontario. Nigel described his activities in the summer vacations from high school:

“In the summers of 1951 and 1952 I worked on Canadian Pacific ships on the west coast. I served in the *S.S. Marguerite*, *S.S. Patricia*, and *S.S. Lake Louise* on voyages from Vancouver to Nanaimo, Victoria and Seattle, and from Vancouver to Prince Rupert and Wrangell, BC, and Ketchikan and Skagway, Alaska. I was the brass boy and spent my days polishing brass and scrubbing decks. I also helped load and discharge cars and cargo. It was then that I developed my love of the sea and often sneaked up to the wheelhouse to talk to the officer of the watch and try my hand at steering the ship.”

On leaving school in 1954, he joined the Royal Military College and a year later had to choose which arm of the services to join. Not surprisingly, he joined the Royal Canadian navy. Nigel described some of his first experiences:

“In the summer of 1955 I was sent off to the naval base at Esquimalt, British Columbia with about 100 other cadets to join the Royal Canadian Navy. We were appointed to frigates (I served in *HMCS STE. Therese*) and spent the first month learning rudimentary navigation at sea and then, on a voyage to Pearl Harbour, Hawaii we were taught celestial navigation. It was long before the advent of GPS, and radio aids navigation like Loran were just coming in vogue. While operating around the Hawaiian Islands, we worked with USN submarines and one day one of their submarines surfaced nearby and invited some of the cadets on board for a day. I volunteered and have never forgotten that first dive and all the excitement it generated. The captain looked about 23 years old and was dressed in a white t-shirt and grey flannels! I vowed to return to submarines one day. I loved the informality, but at the same time, the seriousness of it all.”

Nigel recalled the summer of 1956 when he returned to the west coast to join the destroyer *HMCS Athabaskan*. He said of it:

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“It was a great summer where our navigating and gunnery skills were honed from BC to Mexico. I remember many runs ashore in Victoria, San Francisco, Tijuana and San Diego-all with massive hangovers on sailing”.

He was then posted to *HMCS Magnificent*, an aircraft carrier, where he experienced flying as an observer in the carrier’s aircraft and feeling “a bit unnerving” being catapulted off the deck.

Later that year he found himself in Egypt during the Suez crisis as part of the first UN peace keeping force, the Canadian Prime Minister having offered to supply 1000 Canadian troops and *HMCS Magnificent* was to take them to the middle east. He described the experience there as follows:

“We arrived and anchored off Port at the western end of the Suez Canal in late 1956. There were many ships that been sunk during the fighting all around us and we sent salvage teams to assist in raising them for disposal. We midshipmen had the duty of ferrying the troops back and forth to sentry positions along the western end of the Suez canal. It was all very exciting as we were armed and some of the work had to be done at night. I remember hearing machine- gunning going on to the north of us. The Israelis were still engaging the Egyptians even though a cease fire had been declared. By this time the British and French land forces had withdrawn to Cyprus. One night I remember taking a boatload of armed soldiers to their sentry position, only to discover that the soldiers they were relieving were not there. Either we were in the wrong position or they were. There was a curfew and all street and houselights were out. It was pitch black and I had to make a decision. I led the soldiers down an alleyway with my pistol drawn to where I thought the other soldiers might be. I heard a window opening behind me and the hair on the back of my neck rose as I could well imagine an angry Egyptian sniping at us because the fighting had only stopped a week or two beforehand. Fortunately there were no shots and we discovered out lost soldiers and all was well again”.

He also describes a memorable flight at low altitude along the Suez Canal and landing in the desert and the unforgettable experience of the generals that he was accompanying:

“sitting at a card table with white linen and polished silverware having lunch all alone while they discussed forthcoming events and the rest of us went to a nearby oasis where we had sandwiches and a can of beer in the shade of a date tree.”

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A few weeks later they sailed from the Middle East and their next port of call was Naples. He continued the narrative:

“The reason we were there, believe it or not, was because Pope Pius XII wanted to greet the “brave Canadians” who had formed the world’s first United Nations peace keeping force. Each day 200 of us went by train to Rome for this purpose. Because we had a crew of just under 1,000 officers and men, I guess we were there for five days and much fun was had by all in Naples. When my group went to Rome, we were taken by bus to the Vatican and ushered into the inner sanctum. We walked down endless corridors with Swiss guards on either side of us and then emerged into a large reception room. His Holiness emerged, stood on a small dais and spoke to us in English and French flawlessly. He then mingled, chatting to one and all, and gave everybody a small silver medallion with his profile engraved on both sides. After a few prayers we were ushered out, had several glasses of vino at a nearby bar and took the train back to Naples”.

Having finished exams and been promoted to Acting Sub-Lieutenant Nigel sailed with 20 others as a first class passenger on *SS Ibernia* from Canada for Southampton in September 1958 and describes that part of his career in the following way:

“We proceeded to the Royal Naval College at Greenwich which was designed by Sir Christopher Wren after the London fire of 1666. We had a year of studies there, including the Junior Officers War Course, with many young officers from the Royal Navy, Royal Marines, Royal Australian Navy, and Royal New Zealand Navy. It was a magnificent place, our “Mess” was the famous “Painted Hall”, the studies were interesting and we had a lot of fun in the London of the 50s. ... When we took a navigation course at HMS Dryad two of the books we studied were those written by my great grandfather, Commander Stratford Thornton Stirling Lecky, Royal Navy, entitled “Wrinkles in Practical Navigation” and “Danger Angles and Offshore Distance Tables”. There was a photograph of my grandfather’s class of 1906 at the Gunnery School on Whale Island where I studied at HMS Excellent. He wrote “The King’s Ships”. I felt at this point that I was part of a great naval tradition, particularly as my mother’s youngest brother, Ian Lecky, had served in the Royal Navy in a battleship (*HMS Rodney*), a cruiser and a destroyer during World War II”.

Nigel then returned to Canada but not long after responded to a Navy call out for volunteers to serve in submarines, which as yet the Canadian navy did not possess. That required further training in the UK, and on

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completion he elected to serve on *HMS Tapir* and travelled in the spring of 1960 to Malta where he joined the ship in the first submarine squadron at Sliema Creek. He described the experience in the following way:

“My first C.O. was Lieutenant Commander “Lucy” Lupton R.N. I was on the Mediterranean station for one year and although formally on loan service to the Royal Navy, I was treated and became, to all intents and purposes a typical British officer. This included playing polo and cricket at the Marsa Club, which we were all expected to do, and “banyans” (ie picnics with girlfriends and lots of Maltese wine) on the islands of Gozo and Comino. Those were the days of a very large British Naval presence in the Mediterranean including a cruiser squadron, several destroyer squadrons and up to a dozen submarines. The fleet exercises were exhilarating and a real “eye-opener” to me as the only Canadian officer serving on that station. We were also involved with 42 Commando, Royal Marines, in clandestine training exercises on the Libyan coast. Another highlight was taking part in the fleet review in Naples Bay, a guard ship for the yachting events for the Rome Olympics in 1960. A few of us were able to go ashore and take the train to Rome to see some of the Track and Field events.”

One of the reasons (I am pleased to say) that Nigel gave for choosing *HMS Tapir* was that it was due to be transferred to Australia. They duly sailed from Malta via Aden, Colombo, Singapore and the Great Barrier Reef to Sydney with Nigel serving as navigating officer. They were en route around Sumatra and Borneo at a time when tensions were high between Indonesia and Britain and as Nigel describes it they were:

“at action stations throughout. When on the surface, machine guns were mounted against air attack and part of our duties included the protection of Malayan and Singaporean fishing vessels from attack by the Indonesians or by pirates”.

He describes navigating the Great Barrier Reef as follows:

“Negotiating the Great Barrier Reef was a test of anyone’s navigational skills! In those days, there were some areas off the safe route which were marked on the charts as “last charted by Captain Cook” or “last confirmed positions by Captain Flinders”! The trip was extremely hot and some enterprising “matelots” rigged a canvas swimming pool around the gun turret on the forward casing. Passing merchant men expressed their amazement at such a display of undisciplined behaviour with a variety of unique Aldis signals to us. We arrived at the Sydney Heads in April 1961 and joined two other RN submarines at the Royal Australian Naval base in Mosman in Sydney Harbour.”

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Nigel also refers to his experiences during the Cuban missile crisis in 1962.

“We outfitted for war in record time and proceeded to our station in the Iceland - Faroes Gap where we tracked and identified a number of Soviet submarines heading south for the Eastern Seaboard of the United States and the Caribbean. It was a very tense time and taken extremely seriously by the Admiralty.

In 1966 he was appointed First Lieutenant of *HMS Opportune* and in 1968 he was promoted Lieutenant Commander and posted in command of *HMCS Okanagan* then under construction at Chatham, England. Shortly after commissioning in 1968 he describes an experience on a voyage from the west coasts of Scotland and Ireland to Halifax:

“I chose to do the entire Atlantic crossing submerged. When south of Iceland, our sonar picked up a Soviet nuclear submarine travelling southward and towards us at a high speed and below 200 feet. I remained at periscope depth (65 feet) and allowed it to pass underneath us. All the while, we tracked it and tape recorded its sound signature for identification purposes. She never knew we were there!”

He also describes an experience in 1969 after taking part in exercises off Halifax and in the north Atlantic going to Montreal in August 1969 to “show the flag” for recruiting purposes. He says:

“We were the first submarine to visit that port since the war. My last day in command consisted of taking the Prime Minister, the Right Honourable Pierre Trudeau, and Senator Allan MacEachern for a day’s submerged activities off Halifax. They were in Halifax attending the opening ceremonies of the Atlantic summer games. When we came aboard, I ushered the Prime Minister up to the Bridge. When I was manoeuvring the boat away from the jetty I heard him say “Gee, when I grow up I want to be a submarine commander”. It seemed only natural for me to say: “Gee, when I grow up I want to be Prime Minister”!

After serving for 15 years Nigel left the navy to become a lawyer. He enrolled at the Law School at the University of Toronto in September 1969. During the summer vacations he worked for the Reserve Navy at the submarine squadron in Halifax his first summer and the next summer he worked as an administrator with a stevedoring company in the docks of Toronto. As he said:

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“It was a good way for me to learn about the merchant shipping side of Toronto life.”

He graduated from the University of Toronto Law School in 1972. He joined McMillan Binch initially. He describes his experiences as follows:

“I was involved in several interesting cases. The best was the *SS Miriana* which sank mysteriously while at anchor in Montego Bay, Jamaica. I was sent to Jamaica to interview witnesses and take commission evidence. My investigations revealed the ship had been purposely sunk and the owners were trying to fraudulently recover insurance money. Lloyds denied the claim on our recommendation. We then defended Lloyds Hull and Machinery insurers in the suit brought by the owners. However, they soon realised that we had sufficient evidence of their barratry and discontinued their suit. I handled many collisions and cargo claims. I well remember my first collision case because I was able to put my knowledge and navigation and seamanship to good use.”

In 1979 he joined a specialist maritime and aviation practice at Paterson MacDougall and recalled these experiences there:

“The trial I remember most during those years was that of the sinking of Captain John’s Floating Restaurant (*SS Normac*) at the foot of Yonge Street in Toronto Harbour. A passenger ferry boat owned and operated by the Municipality of Metropolitan Toronto, *SS Trillium*, had run into the floating restaurant while docking and caused considerable damage to the *Normac*. Fortunately there were only two or three passengers that suffered personal injuries as there was a fire and minor leaking ensued. The vessel sank two weeks later. My opponent David Beard QC had very few defences for the collision, but argued that the Municipality of Metropolitan Toronto could limit its liability to about a tenth of the damage we were claiming by one of the provisions in the Canada Shipping Act. He also argued that the bulk of the damage was that of the sinking damage which was not the responsibility of Metropolitan Toronto because it occurred two weeks later and in the intervening period the owner could have done more to save his ship. At trial I was successful in getting judgment for the collision and defeating the claim for limitation of liability and obtained collision damages for Captain John’s. However, the sinking damages were denied my client. We thereupon appealed and it was successful!”

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In 1986 he moved to McMaster Meighen which then became Meighen Demers. He argued maritime (and aviation) cases before all levels of the Canadian maritime Courts, including the Supreme Court in the case of *Ordon v Grail* where his client prevailed. He describes it as follows:

My last major case at Meighen Demers was *Ordon v Grail*. We acted for Mrs Ordon whose husband drowned when a pleasure craft owned and operated by Mr Grail grounded in rough weather in Lake Erie and sank. Liability and the extent of damages were contested. The case proceeded through the lower courts in Ontario and wound up in the Supreme Court of Canada in 1998. Leave to Appeal had been granted because of conflicting legislation in jurisprudence, and concepts of common and civil law as to the breadth and extent of “Canadian Maritime Law”. The law had to be clarified and our case and three others were chosen for argument in the Supreme Court of Canada. After a full day of argument, our case prevailed and the law was clarified. It was the crowning achievement of my legal career, just like commanding the submarine *Okanagan* was in the navy.”

Another case he recalled from those days, which he enjoyed, was when he was acting for a gas pipeline company in Alberta, known as Pembina Resources. He describes it as follows:

“They owned a gas field in the eastern end of Lake Erie known as Long Point Bay. During a storm, several ships which had anchored in the vicinity dragged their anchors and one of them hooked one of my client’s pipelines and fractured it. They lost a tremendous amount of gas because ice formed over the particular area shortly afterwards and divers had trouble locating and shutting off the gas. The damages suffered by Pembina were very large indeed. My problem was identifying the guilty ship so I sued all of them and by a process of elimination during Examinations for Discovery managed to narrow it down to one ship which belonged to Upper Lakes Shipping Ltd. Their counsel, John Morin QC, argued strenuously that I did not have sufficient proof that it was his client’s ship but, once again, my knowledge of seamanship and navigation came to the fore and I prevailed. Having succeeded in liability, I then had to set about proving our considerable damages, which I was able to do with the assistance of an accountant from Calgary who was very knowledgeable in gas field leaks.”

Nigel then joined Borden and Elliott in 1999, (which became Borden, Ladner, Gervais) for 3 years before retiring for the first time. He then set up a consultancy in 2002 during which he was appointed by the Minister of Transport to enquire into the regulation of pilotage off the East Coast

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of Canada. He then returned to private practice in 2008 when he joined William Sharpe's office.

Justice Sean Harrington has recalled a case in which Nigel had cross examined a witness who had been a Master mariner who had commented afterwards: "with all due respect to Sean and all other maritime lawyers I have met Nigel was the only one who actually knew what he was talking about."

What a great epitaph! A life well spent, indeed. The footnote to Nigel's memoir which explains its title refers to: "Cicero 43 BC: "The life given us by nature is short, but the memory of a well spent life is eternal".

Nigel Frawley has left an indelible mark on the CMI which will be long remembered. The CMI has conveyed its condolences to his wife Lynn, Douglas and Jamie and his extended family. They were fortunate indeed to have had such an outstanding person as their husband, father and family member respectively. The CMI was equally fortunate to have had his good counsel, organisational skills, efficiency, sense of humour, dedication as Secretary- General and friendship to so many for so long.

Stuart Hetherington, August 2020.

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PART I

**Organization of
the CMI**

Constitution

CONSTITUTION

2017

PART I - GENERAL**Article 1
Name and Object**

The name of this organisation is “Comité Maritime International”, which may be abbreviated to “CMI”. The name of the organisation may be used in full or in its abbreviated form. It is a non-governmental not-for-profit international organisation 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 organisations.

**Article 2
Existence and Statutory Seat**

The Comité Maritime International is incorporated in Belgium as an Association internationale sans but lucratif (AISBL) / Internationale Vereniging zonder Winstoogmerk (IVZW) under the Belgian Act of 27 June 1921 as later amended. It has been granted juridical personality by Royal Decree of 9 November 2003. Its statutory seat is at Ernest Van Dijckkaai 8, 2000 Antwerpen. Its statutory seat may be changed within Belgium by decision of the Executive Council.

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PART II –MEMBERSHIP AND LIABILITY OF MEMBERS

Article 3 **Voting Members**

- (a) Subject to Article 28, 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 CMI 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.
- (b) Where in a State there is no national Association of Maritime Law in existence, and an organisation in that State applies for membership of the CMI, the Assembly may accept such organisation as a Member of the CMI if it is satisfied that the object of such organisation, 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 organisation admitted as a Member pursuant to this Article.
- (c) Only one organisation 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.
- (d) 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 CMI.
- (e) National (or multinational) Member Associations of the CMI are identified in a list published on the CMI Website or as may otherwise be determined by the Executive Council.

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**Article 4
Titulary Members**

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 CMI and/or to their services rendered in legal or maritime affairs in furtherance of international uniformity of maritime law or related commercial practice. Titulary Members presently or formerly belonging to an Association which is no longer a member of the CMI may remain individual Titulary Members at large pending the formation of a new Member Association in their State.

Titulary Members of the CMI are identified in a list published on the CMI Website or as may otherwise be determined by the Executive Council.

**Article 5
Provisional Members**

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 by the Assembly. A primary objective of Provisional Membership is to facilitate the organisation 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. Provisional Members of the CMI are identified in a list published on the CMI Website or as may otherwise be determined by the Executive Council.

**Article 6
Members Honoris Causa**

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. Members honoris causa may be

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designated as honorary officers of the CMI 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 CMI as a whole.

Members *honoris causa* of the CMI are identified in a list published on the CMI Website or as may otherwise be determined by the Executive Council.

Article 7 Consultative Members

International organisations which are interested in the object of the Comité Maritime International may be elected by the Assembly as Consultative Members.

Consultative Members of the CMI are identified in a list published on the CMI Website or as may otherwise be determined by the Executive Council.

Article 8 Expulsion of Members

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

Constitution

- (c) A motion to expel made under Article 8(b)(i)(a) 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 11(b).
 - ii. If such motion is not approved by the Executive Council, the motion may nevertheless be laid before the Assembly by the Member Association or Titulary Member 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 Article 8(a)(i), 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 Article 8(a)(i), 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 Article 8(a)(ii) and (iii), expulsion shall require the affirmative vote of a two-thirds majority of the Member Associations present, entitled to vote, and voting.

Constitution

Article 9
Limitation of Liability of Members

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 CMI.

PART III –ASSEMBLY

Article 10
Composition of the Assembly

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

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

Article 11
Functions of the Assembly

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 CMI;
- (c) To fix the amounts of subscriptions payable by Members to the CMI;
- (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 activities of the CMI, including the location for the holding of meetings, and in particular, meetings of the Assembly;
- (g) To approve the convening of, and ultimately approve resolutions adopted by, International Conferences;
- (h) To adopt Rules of Procedure not inconsistent with the provisions of this Constitution and make such additional Rules of Procedure

Constitution

as may be necessary when so doing to take account of any transitional issues that arise; and

- (i) To amend this Constitution pursuant to Article 14.

Article 12 **Meetings and Quorum of the Assembly**

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 13 **Agenda and Voting of the Assembly**

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 authorised by that Member Association.

Unless otherwise provided in this Constitution and subject to Article 8(f) (ii) and Article 14, all decisions of the Assembly shall be taken by a simple majority of Member Associations present, entitled to vote, and voting. However, amendments to any Rules of Procedure adopted pursuant to Article 11(h) shall require the affirmative vote of a two-thirds majority of all Member Associations present, entitled to vote, and voting.

Constitution

Article 14
Amendments to the Constitution

Amendments to the Constitution shall be made in writing and shall be transmitted to all National Associations at least six weeks prior to the annual meeting of the Assembly at which the proposed amendments will be considered.

Amendments to the Constitution shall require the affirmative vote of a two-thirds majority of all Member Associations present, entitled to vote, and voting. Their effectiveness and entry into force shall be subject to Belgian law.

PART IV - OFFICERS**Article 15**
Designation

The Officers of the Comité Maritime International shall be the governing body of the CMI within the meaning of the Belgian Act of 27 June 1921 as later amended and shall consist of the following members who are the directors of the CMI within the meaning of the Act:

- (a) The President,
- (b) Two Vice-Presidents,
- (c) The Secretary-General,
- (d) The Treasurer (and Head Office Director)
- (f) (hereafter “The Treasurer”),
- (e) The Administrator (if an individual), and
- (f) Up to eight Executive Councillors.

Article 16
President

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

Constitution

With the assistance of the Secretary-General and the Administrator he or she 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 CMI externally.

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

The President shall have authority to institute legal action in the name and on behalf of the CMI, and to delegate such authority to other officers of the CMI. 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 CMI.

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

Article 17 **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 CMI, shall substitute for the President when the President is absent or is unable to act.

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

Article 18 **Secretary-General**

The Secretary-General shall undertake and be responsible for the tasks and duties assigned to him or her from time to time by the President or the Executive Council.

Constitution

The Secretary-General shall have particular responsibility for organisation of the intellectual and social content, and all non-administrative preparations for International Conferences, Colloquia, Symposia and Seminars convened by the Comité Maritime International.

The Secretary-General shall liaise with appropriate international bodies, especially Consultative Members of the CMI and may represent the CMI at any forum when so requested by the President or the Executive Council.

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

Article 19
Treasurer

The Treasurer shall undertake and be responsible for the tasks and duties assigned to him/her from time to time by the President or the Executive Council.

In particular, the Treasurer shall:

- (a) 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, in accordance with protocols prescribed from time to time by the Executive Council;
- (b) maintain adequate accounting records for the CMI;
- (c) 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;
- (d) submit financial statements and the proposed budgets for review by the auditors and the Audit Committee appointed by the Executive Council, and following any revisions, 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.
- (e) at the request of the Executive Council, open such bank accounts and other financial facilities, such as credit cards, as are necessary to facilitate the financial operations of the CMI, and take all steps necessary to manage the finances of the CMI including arranging the deposit of funds and payment of accounts.

Constitution

In his/her capacity as Head Office Director, the Treasurer shall be:

- (a) the line manager of the Administrative Assistant in Antwerp in relation to his/her office duties and in general to oversee the day by day business of the Secretariat of the CMI.
- (b) authorised to give, and be responsible for, all formal and informal notifications of amendments to the Constitution of the CMI; official notifications of the appointment and termination of officers of the Executive Council; and all other notifications required by the laws of Belgium from time to time. And in this regard, the Treasurer shall appoint and liaise with a practising Belgian lawyer to ensure compliance with all formal and legislative prerequisites in relation to the Executive Council, the Assembly, and the CMI in general.

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

Article 20 **Administrator**

The Administrator shall undertake and be responsible for the tasks and duties assigned to him or her from time to time by the President or the Executive Council.

The Administrator shall have particular responsibility for the formal administrative preparations for meetings of the Comité Maritime International, and to that end, shall:

- (a) give official notice of all meetings of the Assembly and the Executive Council, of International Conferences, Symposia, Colloquia and Seminars, and of all meetings of Committees, International Sub-Committees and Working Groups;
- (b) circulate the agendas, minutes and reports of such meetings;
- (c) make all necessary administrative arrangements for such meetings (such as the liaison with the host Maritime Law Association for the booking of venues and associated social activities);
- (d) 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) 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; and

Constitution

- (f) keep current and ensure publication of the lists of Members pursuant to Articles 3, 4, 5, 6 and 7.

The Administrator may represent the CMI at any forum when so requested by the President or the Executive Council.

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 CMI.

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

PART V - EXECUTIVE COUNCIL

Article 21

Composition, criteria for election and terms of office of the Executive Council

The Executive Council shall comprise the Officers of the Comité Maritime International as described in Article 15.

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

Each elected Executive Councillor shall be elected to his or her specific office in the Executive Council for a term of three years and shall be eligible for re-election for one additional term to each such office, except that (as provided in Articles 18, 19 and 20) there shall be no such limit on the number of re-elections of the Secretary-General, Administrator or Treasurer.

Constitution

Article 22
Functions of the Executive Council

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 organisations;
- (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 organisations, informing them of the views of the CMI on relevant subjects;
- (c) To initiate new work within the object of the CMI, to establish Standing Committees, International Sub-Committees and Working Groups to undertake such work, to appoint Chairs, Deputy Chairs and Rapporteurs for such bodies, and to supervise their work; reports of such Committees, Sub-Committees and Working Groups shall be submitted to the Executive Council and/or the Assembly as requested by the President;
- (d) To initiate and to appoint persons to carry out by other methods any particular work appropriate to further the object of the CMI; reports of such persons shall be submitted to the Executive Council and/or the Assembly as requested by the President;
- (e) To encourage and facilitate the recruitment of new members of the CMI;
- (f) To oversee the finances of the CMI 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 CMI, and to make interim appointments of such auditors if necessary;
- (i) To review and approve proposals for publications of the CMI;

Constitution

- (j) To set the dates and places of its own meetings and, subject to Article 11, of the meetings of the Assembly, and of Seminars, Symposia and Colloquia convened by the CMI;
- (k) To propose the agenda of meetings of the Assembly and of International Conferences, and to decide its own agenda and those of Seminars, Symposia and Colloquia convened by the CMI;
- (l) To carry into effect the decisions of the Assembly;
- (m) To report to the Assembly on the work done and on the initiatives adopted.
- (n) To pay an honorarium to the Secretary-General, Administrator and Treasurer if it considers it appropriate to do so.

Article 23**Meetings and Quorum of the Executive Council**

The Executive Council shall meet at least 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. 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 lawful 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.

Article 24**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 or her discretion shall advise the President and the Executive Council. His or her expenses in so attending shall be met in the same way as those of Executive Councillors.

Constitution

PART VI - NOMINATING PROCEDURES**Article 25
Nominating Committee**

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 Chair, who shall have a casting vote where the votes are otherwise equally divided, and who shall be appointed by the Executive Council;
- (b) The President and Immediate Past President of the CMI (provided that a Past President may resign from the Nominating Committee at any time upon giving written notice to the President);
- (c) Two members proposed by Member Associations through the procedures of the Nominating Committee, *mutatis mutandis*, and thereafter nominated by the Nominating Committee for election by the Assembly;
- (d) One further member appointed by the Executive Council.

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 or she is a candidate.

All members of the Nominating Committee other than the President and Immediate Past President (who respectively shall hold office *ex officio*) shall hold office for a term of three years and shall be eligible for re-appointment or re-election for one additional term.

**Article 26
Nomination Procedures**

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

- (a) whether any officers eligible for re-election are available to serve for an additional term in which event he or she shall obtain a statement from such officers as to the contributions they have made to the Executive Council or the Nominating Committee during their term(s);

Constitution

- (b) whether Member Associations wish to propose candidates for possible nomination by the Nominating Committee as an Executive Councillor, or other Officer or, where applicable, to serve on the Nominating Committee.

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

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

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

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

PART VII - INTERNATIONAL CONFERENCES

Article 27 **Composition and Voting**

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

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

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

Constitution

Each Member Association present and entitled to vote shall have one vote in an International Conference; no other Member and no Officer of the CMI 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.

Clerical mistakes, or errors arising from an accidental mistake, omission or oversight, or an amendment to provide for any matter which should have been but was not dealt with at an International Conference can be corrected by a resolution at a subsequent Assembly meeting.

PART VIII – FINANCE

Article 28

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.

Constitution

Article 29
Fees and Expenses

The Secretary-General, Administrator and Treasurer shall receive such honoraria as may be determined by the Executive Council and the auditors shall receive such fee as may be approved by the Executive Council.

Members of the Executive Council, the Immediate Past President, and Chairs of Standing Committees, Chairs 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 President or the Executive Council.

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

PART IX – FINAL PROVISIONS**Article 30**
Liability

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

Article 31
Dissolution and Procedure for Liquidation

The Assembly may, upon written motion received by the Administrator not less than six months 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 laws of Belgium. Following the discharge of all outstanding liabilities and the payment of all reasonable expenses of liquidation, the net assets of the CMI, if any, shall devolve to the CMI Charitable Trust, a registered charity established under the laws of the United Kingdom.

Constitution

Article 32
Governing Law

Any issue not resolved by reference to this Constitution shall be resolved by reference to Belgian law.

Article 33
Entry into Force

This Constitution shall enter into force on the tenth day following its publication in the Annexes du Moniteur belge.

Rules of Procedure

RULES OF PROCEDURE

1996, as amended 2017

Rule 1**Right of Presence**

In the Assembly, only Members of the Comité Maritime International as defined in Article 3(a) of the Constitution, members of the Executive Council as provided in Article 10, the Immediate Past President and Observers invited pursuant to Article 10 may be present as of right.

At International Conferences, only Members of the CMI as defined in Article 3 of the Constitution (including non-delegate members of national Member Associations), Officers of the CMI as defined in Article 15, the Immediate Past President and Observers invited pursuant to Article 27 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 Comité Maritime International as defined in Article 3 of the Constitution, members of the Executive Council and the Immediate Past President 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 Comité Maritime International 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.

Rules of Procedure

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

Rule 4 **Voting**

For the purpose of application of Article 13 of the Constitution, the phrase “Member Association present, entitled to vote, and voting” shall mean Member Associations whose right to vote has not been suspended pursuant to Articles 14 or 28, 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 nomination(s) of the Nominating Committee pursuant to Article 26, then the candidate(s) nominated by the Nominating Committee may be declared by the President to be elected to that office by acclamation. If the Nominating Committee nominates more candidates than there are vacancies for any office, then the Assembly shall conduct an election in accordance with the procedures of this Rule.

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.

Rules of Procedure

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 Comité Maritime International appointed by the President, shall act as secretary and shall take note of the proceedings and prepare minutes of Assembly meetings. Minutes of the Assembly shall be published on the CMI website (where practical) in the two official languages of the CMI, English and French, and in the CMI News Letter and/or otherwise distributed in writing to 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 at least six weeks 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 Comité Maritime International.

In the event of an apparent conflict between any of these Rules and any provision of the Constitution, the Constitutional provision shall prevail. 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.

Rules of Procedure

Rule 9**Carry-over of terms when electoral process is changed**

Where the Assembly amends the Constitution by changing the manner in which the members of a Committee or body of the Comité Maritime International are to be elected, the Assembly may by resolution agree to permit the terms of office of members of such Committee or body, who were elected under the previous process specified under this Constitution, to be extended until the next Assembly meeting, and for such persons to carry out their functions on that Committee or body until their terms expire at the subsequent Assembly meeting.

GUIDELINES FOR PROPOSING THE ELECTION OF TITULARY AND PROVISIONAL MEMBERS

1999²

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.

² Adopted in New York, 8th May 1999, pursuant to Article 3 (I)(c) and (d) of the Constitution.

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PART II

The Work of the CMI

MEXICO COLLOQUIUM

29 Sept – 2 Oct 2019

Speaker's Presentations

Camino Real Hotel, Oaxaca I, Sept 30th 2019

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MEXICO COLLOQUIUM

SPEAKERS' PRESENTATIONS

WELCOME SPEECH

Héctor Lopez Gutierrez

Good morning to all of you.

Distinguished members of the Presidium,
Mr. Christopher Davis, President of CMI.
Mr.- General Under Secretary of the International Maritime
Organization
Congressman Monica Almeida Lopez, President of the Marine
Commission of the Chamber of Deputies of the LXIV Legislature
Mr. Ignacio Melo, President of the Mexican Association of Maritime
Law

The maritime industry is the means of transportation with less cost and higher effectiveness, through which the great majority of international trade has its main activities in the maritime transportation and therefore it must be sustainable and feasible.

The treaties over Maritime trade where the International Maritime Committee has been a great promoter, has made possible more harmonic dealings at a worldwide level, where the legal certainty has developed a fundamental role for the security of transportation and clear negotiation rules whereby the regional leaders and at a global level in this aspect have been basically civil agencies focused on trade in a pacific manner.

The topics that will be discussed today are those regarding autonomous Vessels, Cyber-security, Environmental Protection and regulations of the world offshore, among others, are the legacy that will serve as a basis to build a legal framework more uniform and fair for all the economies and regions of the world.

The CMI contributes in an important manner to constitute the maritime legal framework at an international level that covers different aspects, both trade wise as well as of security and protection to the environment.

In this sense, it is a great honor for Mexico that this colloquium be held for the time in the history thereof in our country.

From the scope of competence of the Ministry of Communications and Transportation, we are engaged to a fair legislation focused in obtaining all the foregoing, but with emphasis in the measures necessary to prevent, reduce and control the pollution of the marine environment, coming from

Welcome Speech, by Héctor Lopez Gutierrez

any source, using to that effect the more feasible means that are available and to the extent of our possibilities we will make an effort to harmonize our policies in that regard.

Mexico adopted in year xxx the United Nations Convention over Maritime Law whereby jurisdictional rules come from and which specify the rights and obligations of the States in regard to vessels in several marine areas and, more specifically, the rules and principles related to the flag, the port and the coast, state Jurisdictions which in the majority are covered by such Convention of the United Nations. This is a framework widely ratified with 168 State Parties until now, which defines the rights and responsibilities of the nations in regard to the use of oceans around the world, the protection to the marine environment and the handling of resources of the marine nature.

The OMI is probably the sole international organization capable to develop the necessary regulations of security and an international legal regime to compensate and indemnify the damages suffered by the environment, that arose from an accident such as the one occurred in Macondo.

The SCT has a certification or recognition program of green ports.

The Green Ports are focused in social, economic and sustainable environmental development. The port authorities together with the companies, service providers and users in general, participate in the strategic implementation of policies and activities focused in the port growth, respecting and improving the maritime environment.

In our ports we have the Terms and Goals that are indicative:

-2020 reduce in a 30% GEI emissions.

-2024 at least 35% of the electricity generation must come from clean energy resources.

-2050 reduce in a 50% GEI emissions in connection with those issued in year 2000.

And Rate ZERO of carbon loss.

The fourth transformation of the political life of our Country sets forth the beginning of an era focused in treasuring and conserving our resources, including the protection of the environment. The sea is an asset that provides life and therefore we must prevent from polluting it with wastes and spills and mainly in a pacific manner, with a completely civil sense.

Goodbye...

Session I – Opening Colloquium

In order to carry out the foregoing, the joint participation is required by the Government of all the Countries, the Mexican Government and each one of its federal entities and coast zones, the academy members and the population in general.

What it is important is to demonstrate the compromise and, even more, to participate in something that concerns us all, businessmen, citizens, public sector, cooperation agencies... If the environment is everything around us, then it is up to us all... we shall make Social Responsibility, and protect our environment and protect our Seas.

Tribute to te Late Francesco Berlingieri (1922 - 2018), by Luis Cova Arria

TRIBUTE TO THE LATE FRANCESCO BERLINGIERI (1922 – 2018)

La sua devozione al diritto marittimo internazionale

Luis Cova Arria

Before I begin these words, I should express my gratitude to the Executive Council of this Comité Maritime International (CMI), in the person of its President, Dr. Christopher Davis and the other members of the same, for the honor they have given me by inviting me to pronounce in this Colloquium these words in posthumous tribute to who was my great friend, Doctor and Professor Francesco Berlingieri, one of the great presidents who contributed with his tireless work to the fundamental purpose for which the CMI was founded, the international unification of maritime law.

Also and, for the same reasons, I thank the entire board of the Mexican Maritime Law Association, co-organizer of this Colloquium, in the person of its president, Dr. and Professor Ignacio Luis Melo Ruiz, whose book in his tribute, we presented last Saturday 28th of the current month in this city.

I also take the opportunity of these words, to congratulate the Italian Maritime Law Association (IMLA), for the celebration of the 120th anniversary of its foundation, to which Francesco Berlingieri lent his invaluable material and intellectual contributions, not only as its president, but as one more member, as his son Giorgio has brilliantly outlined in his article on the history of the IMLA, which you will find on the CMI website. I thank Giorgio for providing me with the informative sources to write these short words. To him, as much as he wanted it, was impossible to attend this Colloquium. However, his son Andrea is with us, who not only represents the entire Berlingieri family, but his grandfather, to whom we pay tribute today.

I would never have imagined, in May 1977, when presiding over the Venezuelan Maritime Law Association, recently founded, attending the XXXI CMI Conference in Rio de Janeiro, which was chaired by Francesco Berlingieri, that 42 years later I would have to say a words in his posthumous tribute, today here at the CMI, and, in March 2018, at the Academy of Political and Social Sciences of Venezuela.

Session I – Opening Colloquium

Those of us who had the good fortune to meet Francesco Berlingieri personally, and, also those who did not, still felt his presence through his books and his works, in the international meetings where he advocated, not only the international legislative unification of maritime law, but the correct uniform interpretation of its norms, contained, not only in international conventions, but in national laws adapted to them, and to the rules, customs and customs, born of the already more than centennial unifying work of the CMI.

Therefore, it is likely to remember here the edition of Saturday, March 10, 2018, of the *Il Secolo XIX* newspaper of Genoa, Italy, which entitled on its first page, the following: “Addio a Berlingieri, vita eroica tra guerra e diritto marittimo” and then on page 23, they did not hesitate to describe him as “Il padre del diritto marittimo”. This is how this important Genoese newspaper outlined the sensitive death of Francesco Berlingieri, which occurred on March 6 of last year 2018 at the age of 96, in his beloved city, Genoa, where he was born, on February 20, 1922.

It was also reviewed by such edition of the Genoese newspaper, the immense number of people, in addition to their relatives, who attended their funerals, which took place in the Church of Nostra Signora del Carmine and Sant’Agnese, in Genoa, where there was side of his coffin an honor guard of the Italian Navy, covered with the flag of that country. There, emotional words were pronounced, remembering, among other things, the deep love between him and his wife Anna Teresa Berlingieri-Origone, with whom he had married in 1947, who died in 2015, at the age of 91 years. From that Berlingieri-Origone union, their four children were born: Giorgio, Andrea, Paolo and Matteo. They had blessed them with eight grandchildren, Chiara, Francesca, Andrea, Giuseppe, Francesco, Anna, Pietro and Giorgio and, these grandchildren, in turn, with eight great grandchildren, Matilde, Giulia, Giorgia, Alice, Vittoria, Alberto, Oliviero and Joseph.

Francesco Berlingieri, not only was one of the most prominent jurists specializing in Maritime Law in recent years but was also an Officer of the Italian Navy. Both professions were exercised with unparalleled devotion.

In fact, he was at the Naval Academy, from 1943 to 1945, having had to participate, during the Second World War, in several military actions, for whose performance, qualified as “example of decision, courage and dedication beyond duty to the Fatherland”, the Silver Medal for Military Value was conferred.

Tribute to te Late Francesco Berlingieri (1922 - 2018), by Luis Cova Arria

This was only the beginning of an extraordinary life, because after receiving that deserved medal and, only at 34 years old, as a lawyer of the “Società Italia di Navegazione”, he defended it in the trial arising as a result of the collision occurred in waters near Nantucket, between the “Andrea Doria” and the “Stockholm”.

Francesco Berlingieri is part of the history of modern maritime law. He attended his first CMI conference in Naples in 1951.

After the “Torrey Canyon” incident in 1967, when the IMO commissioned the CMI to study the liability for oil pollution damage resulting from spills from tankers, Francesco Berlingieri, contributed to the CMI International Sub Committee, which was chaired by Lord Devlin. That work was decisive for the 1969 CLC Convention and the 1971 Fund, whose drafts were drawn up at the 1969 Tokyo Conference.

Later, Francesco Berlingieri reached the Presidency of the CMI, a position he held from 1976 to 1991. On this last date, he was appointed President Ad Honorem, a position he held until his death. He was also honorary president of the Italian Maritime Law Association, and Doctor Honoris Causa of the Universities of Bologna, Antwerp and Athens. He had, in addition, very outstanding work, since 1954, in the teaching of maritime law as Professor of the University of Genoa.

His work as a lawyer led him to act before the English Commercial Court Committee, from 1977 to 1999, for whose work and, in recognition of his important role in the unification of maritime law, Queen Elizabeth II granted him the title of Honorary Officer of the Order of the British Empire.

The delivery, dedication and devotion of Francesco Berlingieri to the CMI, and therefore to the unification of Maritime Law, is difficult to review in a few words. More than a personal dedication, it is a family bulwark. Making use of the historical investigation of the presence of the Berlingieris in the CMI, from 1900 to the present day, made by who was our President, Karl-Johan Gombrii, to which he made the same reference in the tribute he was paid In Genoa, in 2017, there was a young maritime lawyer from Genoa, named Francesco Berlingieri, attending the CMI Conference in Paris in 1900, who when he was to preside the Italian delegation, at the Copenhagen Conference in 1913, with him, in that Italian delegation, was a young lawyer by name, Giorgio Berlingieri. Then, in 1959 at the Rijeka Conference, in addition to this Giorgio Berlingieri, another young Genoese lawyer, named Francesco Berlingieri, attended and, in 1977 at the Rio de Janeiro Conference, the latter being Francesco, president of the CMI, another young Genoese lawyer, named Giorgio

Session I – Opening Colloquium

Berlingieri, attended. That is, they were already or had been involved with the CMI, two Francesco and two Giorgio. One of them, Francesco, is to whom we pay this posthumous tribute and the other one, Giorgio, is our former Vice-President who could not attend this symposium. The other two, Francesco and Giorgio, are the grandfather, great-grandfather and great-great grandfather of the young lawyer Andrea Beringieri, who today is with us and. Finally, our esteemed Giorgio Berlingieri, is currently president of the Italian Maritime Law Association (AIDM), and Vice-President for Italy of the Ibero-American Institute of Maritime Law, having been until October of last year, First Vice-President of the CMI. Therefore, we can say that the Berlingieri caste, which has dedicated its life to working with the CMI in the international unification of maritime law, has remained alive, not only with Giorgio, but also with Andrea.

Returning, to the tireless work that Francesco Berlingieri did for the Italian Maritime Law Association, he assumed its presidency in 1982, when he moved his headquarters from Rome to Genoa. Immediately and, in that same year, he organized the CMI Venice Colloquium of 1982. Then, he organized an Assembly of the same in Genoa, on June 27 1992, preceded by a conference on contemporary issues related to maritime transport, jointly coordinated with Ricardo Monaco, then president of UNIDROIT.

Another event that, with these roles organized, also in Genoa, was a Seminar that took place from September 21 to 25, 1992, on the liability for marine oil pollution damages. The Seminar was followed by two meetings of the CMI Executive Council, with the adoption of a new Constitution of the same.

Francesco, during his long life, did not cease his extraordinary activity in the search for the uniformity of maritime law. From there, it is important to mention his contribution in the drafting work of the United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea, later approved as “Rotterdam Rules”, being delegate of the Italian Government to UNCITRAL and attending the sessions of the same in New York and Vienna. From his performance, in the UNCITRAL Project on the Rotterdam Rules, nothing better than bringing here the words of Kate Lannan, a UNCITRAL official, contained in his article “Francesco Berlingieri: The Gentleman Diplomat”, inserted in the book published in his tribute in 2010, which brought together the essays of 90 academics from all over the world, on the occasion of his eighty-eight birthday (*Scritti in Onore di Francesco Berlingieri*). Kate points out that, “*Professor Berlingieri has left his mark not only on the Convention itself but on so many of us associated with the Rotterdam Rules and with their negotiation in the international area. His professionalism,*

Tribute to te Late Francesco Berlingieri (1922 - 2018), by Luis Cova Arria

his unflagging enthusiasm, his tireless efforts, his diplomacy and his willingness to compromise to achieve the greater good are recognized by us all “.

For all of this at the Seminar in his honor, held in September 2017 in Genoa, the CMI recognized his high merit, in the plaque that they delivered there, which reads as follows:

“Francesco Berlingieri, member of the Executive Council from 1972, President from 1976 to 1991, President Ad-Honorem since 1991, in recognition and gratitude for his service and devotion to the CMI”.

He was Editor-in-Chief of the renowned maritime publication *“Il Diritto Marittimo”*, and, until a few years ago, the person in charge of the CMI publications: Newsletter and Yearbook.

On January 10, 2001, the International Maritime Law Institute (IMLI), of the International Maritime Organization (IMO), conferred on him the title of Honorary Professor in International Maritime Law in recognition of his contribution to the international maritime legal community.

He was one of the members of the group of experts appointed by the already deceased, Director General of the International Maritime Organization (IMO), Chandrika Prasad Srivastava, to write in 1988 the draft of the First “SYLLABUS” of the International Maritime Law Institute (IMLI).

He published many articles and books, being his textbook *“Berlingieri on Arrest of Ships”*, a mandatory reference by numerous generations of lawyers, insurers, professors and students of maritime law.

Before finishing, with everyone here gathered in this beautiful and modern mega-metropolis of Mexico City, externalizing our tribute to whoever was one of our prominent presidents, I want to remember that we are only a few days from October 8 of this year, date in which five hundred years of the entrance to it will be fulfilled, when it was called “Mexico-Tenochtitlan” and was the capital of the Aztec empire, of the conquering and adventurous hosts of Hernán Cortes, who were dazzled before the sight of the same, which was a city, for the time, larger than Naples and Constantinople (the ancient Byzantium, today Istanbul), considered the largest in the European world of that year of 1519.

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For this reason and, since we are in Ibero-america, makes sense that we make a brief relationship of the contacts that Francesco Berlingieri had with our Ibero-american world, for the support of our associations of maritime law and our countries, because he was a true friend and collaborator in the work of unification of International Maritime Law.

I will begin with his visit to Madrid in 1955, representing for the first time the Italian association at the XXIII CMI conference where the so-called “*Madrid Draft Convention of Limitation of Shipowner Liability*” was approved, which in 1957 was signed in Brussels as Limitation of Owners of Sea-going Ships a substitute for the 1924 Brussels Convention, given the problems posed by the limitation of liability, both in terms of setting the limits of liability, and in the inclusion of all those that could eventually be considered beneficiaries.

In May 1977, as I said at the beginning of these words, Berlingieri went to Rio de Janeiro to preside over the XXXI CMI Conference, an opportunity in which we met and began our friendship. In that conference, the first one and only one CMI conference held in a Latin-American country, two draft conventions were approved, on matters to which he showed a great devotion, one on Jurisdiction, Choice of law and Recognition and Enforcement of Judgements in Collisions Matters, and, the other, on Off-Shore Mobile Craft. It appears that the next CMI Conference to be held in a Latin-American country will be in 2024 in Rio de Janeiro also.

After his visit to Rio de Janeiro, Francesco Berlingieri, the same 1977, was in Caracas, to give some lectures at the Faculty of Law and Political Sciences of the Central University of Venezuela, together with other great jurists, members and executives of the CMI, already deceased, José Domingo Ray, Nicholas J. Healy and Kaj Pineus.

In Caracas, he honored us with two magnificent presentations. One about the foundation and the works that had been imposed by the CMI, and the other on what, by that date was only a Draft Rules to regulate the liability of the carrier of goods by sea, in order to replace the “The Hague-Visby Rules”, the today “*Hamburg Rules*”.

In his conference about the CMI, Francesco Berlingieri, told us that “the requirement of an international uniformity of Maritime Law has always been present over the centuries, and this is evidenced by medieval and Nordic medieval codifications, and in the special jurisdiction recognized in England to the Admiralty Court, which did not apply the Common Law but the Merchant Law, whose formation clearly showed

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the uniformity requirements of Maritime Law and whose origin was based on Roman Law. ”

These Journeys constituted the engine by which they began to develop studies of modern maritime law in Ibero America.

In 1980, he visited us again to participate in the first event, supported and sponsored in an Latin-American country by the CMI, similar to the one that is inaugurated today, here in Mexico City, held in Margarita Island, Venezuela. In that international event, he spoke about the differences between Mortgages of Latin origin, and the common law Mortgage.

On the occasion of the CMI XXXIII Conference, held in Lisbon in May 1985, a group of Ibero-American lawyers attending it, which Francesco Berlingieri presided, with his approval was subscribed what we call the “*Lisbon Declaration*”, of which I was one of its drafters, sponsoring the Creation of a Private Association of Ibero-American Associations with the purpose of promoting the unification of maritime law in our region. That statement was the seed that gave birth to the Ibero-American Institute of Maritime Law (IIDM), whose Constituent Assembly, convened by the then President of the Spanish Association of Maritime Law and who was a prominent member of the CMI, José Luis Goñi Etchevers, was held in the city of Seville, in October 1987. Francesco Berlingieri as president of the CMI attended that Constituent Assembly, as a guest of honor, offering us words of greeting and good wishes to the nascent Institute.

At the beginning of 2001, Francesco Berlingieri, was admitted as a Corresponding Member by Italy of the Academy of Political and Social Sciences of Venezuela, presented for this purpose, an Essay on “*The International Maritime Law Conventions and their role in domestic law*” in which states its philosophy of the necessary unification of maritime law with these words, “... *My firm and deep conviction is that it is necessary to continue the efforts... in favor of a uniform maritime law. It is no more useful that the rules that regulate the institutes of maritime law are similar; that the same rules are applicable in the different ordinances. Only through international conventions of uniform material law can this result be achieved... the ratification of a convention is certainly not enough - and sometimes even necessary - to ensure uniformity*”.

As you can see from that journey of Francesco through our Latin American countries, his contribution through his leadership, in the search for the uniformity of international maritime law, was undoubtedly invaluable. But he was not only present in our countries in this titanic

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work, but he did so in almost all other CMI member countries. Just to remember one of his last efforts is the database on Maritime Jurisprudence which the University of Singapore had already implemented.

To finish this posthumous tribute to Francesco Berlingieri, it is necessary to point out that he was a great human being, a gentleman, a true English Lord. His treatment was always kind, receptive, and, along with his beloved wife Anna, they were great hosts at the CMI events and conferences, so we must bring up the communication, which on March 6, 2018, our former president, The Australian lawyer, Stuart Hetherington, sent to all the titular members, announcing his death, where he highlighted his great work, developed during his long and fruitful life, in the interest of the unification of international maritime law, remembering some of his virtues, the of being, as had highlighted in 2010, Kate Lannan, on the occasion of the celebration of her 88 years, a “*Consummate Gentleman Diplomat*”.

The time that has been granted to me to present this posthumous tribute to Francesco Berlingieri, is not enough to review the great legacy he left us in his stubborn work in the unification of maritime law, but I do not want to miss to remember his visionaries and still present words, pronounced in Caracas in 1977, when referring to the future of the CMI said that it depended on its constant sensitivity to economic legal problems that arise or may arise, and above all to competition and devotion to the cause of the unification of Maritime Law that all its members have always demonstrated, that they have dedicated and continue to dedicate the best of themselves to the cause of the international unification of Maritime Law.

Finally, and to conclude, using the headline of the Genoa newspaper “*Il Secolo XIX*”, of March 10, 2018, “*quando muore una <<leggenda vivente>>, rimane la leggenda*”.

Damage from Offshore Oil and Gas Activities, by the Hon. Justice Steven Rares

CHARTING A NEW COURSE – PROMOTING THE DEVELOPMENT OF AN INTERNATIONAL CONVENTION ON LIABILITY AND COMPENSATION RELATING TO TRANSBOUNDARY DAMAGE FROM OFFSHORE OIL AND GAS ACTIVITIES

The Honourable Justice Steven Rares

I have spoken previously about the need for an international convention to regulate liability and compensation in respect of transboundary loss and damage as a consequence of offshore oil and gas activities.³ Most maritime lawyers understand the practical attraction of such a public law instrument.

However, the hydrocarbon industry and numerous States have chosen to adopt the apocryphal ostrich-like response to danger of putting their heads in the sand. Perhaps, this is an attempt to search in new places. But the reasons for the opposition to, or lack of interest in, any international convention on this issue are not transparent or obvious: it may be that it is in their “too hard basket” for political or economic reasons.

The opposition to a convention may be a symptom of what Professor Nicholas Gaskell has called the “disaster reaction syndrome”⁴ namely, there needs to be (another) major catastrophe caused by an (insolvent) offshore facility, that will have an impact equivalent to the oil spills from the grounding of *Torrey Canyon* in 1967 or the offshore platform blowout from *Deepwater Horizon* in 2010, to spur the complacent into action.

An international instrument creating generally accepted public international law norms and rights and obligations enforceable in private law actions is a necessity. The adoption of a convention will help to ensure that all persons, including littoral States, who are adversely affected by pollution damage from blowouts or oil spills from fixed platforms, can claim and be paid fair and adequate compensation in a timely fashion.

3 For further discussion on the model convention, see: Steven Rares, “An International Convention on Offshore Hydrocarbon Leaks” [2011] *Lloyd’s Maritime and Commercial Law Quarterly* 361.

4 Nicholas Gaskell, “Compensation for Offshore Pollution: Ships and Platforms” in Malcolm Clarke (ed), *Maritime Law Evolving* (London: Hart Publishing, 2013) 63, 63.

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What an international convention should look like

As I have explained in the past, in my view, an international convention will need to develop rules and criteria on the following issues:

- (1) Identifying the persons liable and the basis for liability. This involves whether liability should be imposed on one or more of an operator, owner, licensee or others with a commercial interest in the operation of the offshore facility.
- (2) Whether liability should be strict, rather than fault-based?
- (3) To what sum should liability be limited?
- (4) What level of insurance or financial security should each person with liability obligations be required to maintain?
- (5) What categories of loss or damage should be compensable: environmental damage, property damage, personal injury, including pure psychiatric harm, and or pure economic loss?
- (6) Who or what class of person or persons and Governmental interests or States can claim compensation?
- (7) Should there be a further fund set up (like the *International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage*⁵ (**Fund Convention**) and the *Protocol of 2003 to the Fund Convention*⁶ (**2003 Protocol**)) to provide compensation in circumstances where, for example, the relevant insurance or financial security required is inadequate to pay the whole of the compensation due?
- (8) Rules for conferring jurisdiction on the courts or tribunals of each State party and for the recognition and enforcement of judgments or awards given under the convention.

The International Maritime Organization

It is as surprising, as it is lamentable, that the International Maritime Organization (**IMO**) appears, presently, to be closed to the possibility of developing an international convention dealing with the consequences of blowouts and oil spills from offshore oil and gas facilities.⁷ Over the

5 Done at London on 27 November 1992. The Fund Convention amended the *International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage* (done at Brussels on 18 December 1971). There are 116 States party to the Fund Convention.

6 Done at London on 16 May 2003. There are 32 States party to the 2003 Protocol.

7 IMO, "Report of the Legal Committee on the Work of its Ninety-Ninth Session", LEG 99/14 (24 April 2012), [13.17]. The IMO has continuously maintained this position. See, for

last several years, in a breathtaking failure of leadership, the IMO has vacated the field that it proudly led in developing the 1969 (CLC 1969) and 1992 *International Conventions on Civil Liability for Oil Pollution Damage*⁸ (CLC 1992). Instead, the IMO recently opted to promote the use of non-legal instruments, such as its guidance, to “assist” States to formulate their own national legislation, bilateral or regional instruments on this issue.⁹

The American movie mogul, Sam Goldwyn, once allegedly said that “a verbal contract is not worth the paper it’s written on”. Nor is the IMO’s guidance. It consists of mere aspirational talking points, is not binding and is inadequate to the task. The guidance merely provides for a “non-normative checklist of possible elements”,¹⁰ which are very broad and lack any specific criteria or rules on liability and compensation. It is a collection of platitudes.¹¹ The so-called “guidance” is a far cry from what is needed to achieve uniformity and certainty of enforceable rights and obligations that can be created by an international convention.

The CLC 1969, CLC 1992, the Fund Convention and 2003 Protocol have governed the liability of the international shipping industry and, in particular ship owners, for half a century. Those conventions have provided certainty that they can, and must insure, their limited but strict liability that applies when their ships leak oil.

The IMO’s guidance is not a solution, but an evasion of its responsibility and leadership role. It is only a matter of time before the world will witness another significant hydrocarbon blowout, spill or leakage, such as occurred in the 2009 *Montara* and the 2010 *Deepwater Horizon* events. The Australian Maritime Safety Authority estimated that the oil or sheen

example, IMO, “Report of the Legal Committee on the Work of its One Hundred and Third Session”, LEG 103/14 (15 June 2016), [13.13].

8 Done at London on 27 November 1992. The CLC 1992 amended the International Convention on Civil Liability for Oil Pollution Damage (done at Brussels on 29 November 1969). There are 139 States party to the CLC 1992.

9 IMO, “Liability and Compensation Issues Connected with Transboundary Pollution Damage from Offshore Exploration and Exploitation Activities: Guidance for Bilateral/Regional Arrangements or Agreements on Liability and Compensation Issues Connected with Transboundary Oil Pollution Damage Resulting from Offshore Exploration and Exploitation Activities”, LEG 104/14/2 (21 February 2017); IMO, “Report of the Legal Committee on the Work of its 104th Session”, LEG 104/15 (10 May 2017), [14.2]-[14.7].

10 Günther Handl, “Allocating Transboundary Loss from Offshore Oil and Gas Accidents” in Günther Handl and Kristoffer Svendsen (eds), *Managing the Risk of Offshore Oil and Gas Accidents: the International Legal Dimension* (Cheltenham: Edward Edgar Publishing, 2019) 253, 267.

11 For example, the guidance inspires States to consider “elements” such as geographical coverage, the damages to be covered, limitation on liability, and compulsory insurance or other financial security.

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from the *Montara* blowout covered a total surface area of around 90,000 square kilometres.¹²

Recently, for example, in late 2016, around 670,000 gallons (or 2.5 million litres) of oil spilled in the Gulf of Mexico from a fractured underwater pipeline in the *Delta House* floating production facility.¹³ In addition, late last year, 250,000 litres of oil spilled into the ocean off Newfoundland on Canada's East Coast from a subsea flowline connecting Husky Energy's White Rose Field and its storage vessel, *SeaRose*.¹⁴ Whilst neither incident was of similar scale to that of the *Montara* and *Deepwater Horizon* blowouts, or appear to have involved transboundary damage, they demonstrate the ever-present risk that pollution from an offshore accident can affect more than one littoral State and its citizens, businesses and environment.

In our current age of ever more unusual natural phenomena, it is not far to seek possible situations in which transboundary pollution can occur and, possibly, also be worsened by the forces of nature. Early in September 2019, Hurricane Dorian, a category five storm and one of the largest hurricanes on record, hit the Bahamas and then proceeded to wreak havoc as it moved north-west across the Gulf of Mexico and then north-east following the coast along the south-eastern United States and up to Canada. Although Hurricane Dorian did not live up to the weather forecasting abilities of the President of the United States, it may not be long before he shows King Canute a thing or two when seeking to put South Carolina back onto the track of a disaster that was going to miss it. Suppose that the path of Hurricane Dorian went over a blowout similar in scale to *Deepwater Horizon's*, what might have happened to the leaked oil or hydrocarbon pollution as the hurricane moved in its northerly path?

Offshore facilities can be both fixed and floating but pollution released from any blowout or spill is not obedient to sovereigns, like King Canute, or even Presidents, and dissipates with the four winds and the currents.

The bottom line is that so long as there is offshore oil and gas activity, there will be an ever-present risk of a blowout or spill. That risk may be accentuated if market demand drives offshore activity. Recently,

12 Montara Commission of Inquiry, "Report of the Montara Commission of Inquiry" (June 2010), 26.

13 Christina Caron, "How a 672,000-Gallon Oil Spill was Nearly Invisible" (29 October 2017), *The New York Times*, accessed on 3 September 2019 <<https://www.nytimes.com/2017/10/29/science/gulf-oil-spill-louisiana.html>>.

14 Husky Energy Inc, "White Rose Incident Updates – FAQs" (2019), accessed on 8 September 2019 <<https://huskyenergy.com/whiterose/whiterose-faqs.asp?>>>.

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McKinsey & Co predicted that floating-rig demand will grow 6% p.a. between 2019 and 2027.¹⁵ In addition, there is growing interest and activity in hydrocarbon exploration and exploitation in more remote locations and hostile environments, such as the Arctic. A blowout or spill in the Arctic could have very serious effects on the region's wildlife, environment and indigenous peoples. And, as always with such events, the clean-up effort and cost may also be significant.

Gone are the days when in response to *Torrey Canyon* stubbornly continuing to leak oil off the English Coast, Whitehall adopted a novel, but unrepeatable, solution.¹⁶ *Torrey Canyon* ran aground on 18 March 1967 and began spilling her cargo of 120,000 tonnes of crude oil. On 28 March 1967, after other methods had failed, the Royal Navy and Royal Air Force launched a full scale attack on the ship dropping 62,000lbs, or 28 tonnes, of bombs, about a quarter of which missed, and 5,200 gallons or about 23,500 litres of petrol on her.¹⁷ The armed services also fired 11 rockets at the wreck and dropped large quantities of napalm on her. The BBC reported that:

[d]espite direct hits, and a towering inferno of flames and smoke as the oil slick began to burn, the tanker refused to sink.

To add insult to the British forces' injury, the mission that day was called off when particularly high spring tides put out the flames. The Home Office issued a disappointed statement acknowledging this set back, which ended by observing that: "We cannot say at this stage what the next step will be". However, the BBC reported on 29 March 1967:¹⁸

It was decided at first light this morning to carry on bombing. Holiday makers gathered on the cliffs to watch the towering column of flames and smoke which could be seen up to 100 miles away.

Sadly, the British Government's provision of this spectacle was to little avail. In the end, the spilled unburnt oil created a 270 square mile (or about 700 square kilometres) slick that contaminated 120 miles of the

15 McKinsey & Company, "Offshore-drilling Outlook to 2035" (May 2019), accessed on 11 September 2019 <<https://www.mckinsey.com/industries/oil-and-gas/our-insights/offshore-drilling-outlook-to-2035?cid=eml-web>>.

16 Steven Rares, "Ships that Changed the Law: the *Torrey Canyon* Disaster" [2018] *Lloyd's Maritime and Commercial Law Quarterly* 336.

17 "Bombs Rain Down on the *Torrey Canyon*" (29 March 1967), *BBC*, <http://news.bbc.co.uk/onthisday/hi/dates/stories/march/29/newsid_2819000/2819369.stm>.

18 *Ibid*.

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Cornish coast and 50 miles of the coast of Normandy.¹⁹ At the time, this was the biggest oil spill in history. The clean-up efforts took months and reportedly cost the British and French Governments over USD16 million.²⁰

It may be a sign of changing times, but the Australian Government did not seem to think of using the military in the same way to deal with the oil spills from the *Montara* platform or the *Shen Neng 1* running aground in 2010 on the Great Barrier Reef.

It would be naïve to think that any international convention would have no practical benefit simply because a region or facility may be thought to be “immune” from any offshore accident causing transboundary damage.

The problem with adopting a piecemeal approach is that it leads to piecemeal results. The use of bilateral or regional conventions, or of non-binding, unilateral legislation based on suggestions such as the IMO’s guidance, will result in a lack of international uniformity in setting compensation regimes and limits and in ensuring that awards of damages are predictable and enforceable immediately.

A sequel of the Montara blowout

The experience from the CLC 1969, CLC 1992 and the Fund Convention has been of a relatively smooth, clear process. There now exists a well-trodden path that enables persons who allege that they have suffered loss or damage from oil pollution from a ship, to establish their claims for compensation within a predictable and efficient assessment process.

An international convention is likely to lessen or overcome the difficulties and delays in seeking compensation, such as those allegedly experienced by Governments and persons who claim that their land, waters, property and or businesses suffer transboundary or other damage as a consequence of a blowout or oil spill from an offshore hydrocarbon facility.

For example, in 2009, the *Montara* blowout caused an oil spill in Australia’s Exclusive Economic Zone (EEZ). The offshore well was owned by a Thai company, PTT Exploration and Production PCL (PTTEP), and operated by its Australian subsidiary, PTTEP Australasia (Ashmore Cartier) Pty

19 Patrick Griggs CBE, “‘Torrey Canyon’, 45 Years On: Have We Solved All the Problems?” in Baris Soyer and Andrew Tettenborn (eds), *Pollution At Sea: Law and Liability* (London: Informa, 2012) 3, 3.

20 Ann Blackwood Crain, “Comments: Troublesome Aspects of the SEDCO 135 Disaster: Has the Plight of the Transnational Pollution Victim Really Improved in the Wake of Torrey Canyon?” (1980) 2 *Houston Journal of International Law* 387, 387.

Ltd (PTTEP AU). The spill allegedly caused transboundary damage in Indonesian and East Timorese waters.

Since 2009, the Indonesian Government has, unsuccessfully, sought compensation from the Thai government and PTTEP AU itself. In 2014, Indonesia formally requested Australia's cooperation in obtaining appropriate compensation from the responsible parties given the difficulties it had experienced in seeking recovery.²¹ In 2017, the Indonesian Government commenced proceedings in an Indonesian court against PTTEP and PTTEP AU seeking USD2.1 billion in compensation but it withdrew the proceeding in 2018.²² And right now, my colleague in the Federal Court of Australia, Justice Yates, is in the midst of a 10-week hearing of a private class action filed against PTTEP AU for negligence on behalf of what the media estimates suggest are about 15,000 Indonesian seaweed farmers who are claiming a substantial total amount of compensation for loss of income. The lawyers for the seaweed farmers estimate that, if successful, compensation of more than AUD200 million will be assessed.²³ The seaweed farmers have to prove, *first*, that the oil that they claim affected their crops came from the *Montara* facility and, *secondly*, the operator's negligence caused the blowout. The hearing resumes in October and December 2019. Such litigation is costly, time- and resource-consuming, and its outcome is ever uncertain until settled or judgment is given.

Patchwork of national laws and regional agreements

The offshore industry and persons with claims against parties operating in it for loss or damage caused by pollution from a blowout currently face the prospect of dealing with individual cases within a patchwork of national laws and regional agreements. These laws may not be comprehensive

21 George Roberts, "Montara Oil Spill: Indonesia Requests Australia's Cooperation on Resolving Dispute over Impact on Coastal Communities" (29 September 2014), *ABC News*, accessed on 8 September 2019 <<https://www.abc.net.au/news/2014-09-29/indonesia-pleads-for-australias-cooperation-on-montara-oil-spill/5777840>>.

22 PTTEP, "Indonesia's Lawsuit Against PTTEP Relating to the Montara Incident" (18 July 2017), accessed on 7 September 2019 <<https://www.pttep.com/en/Investorrelations/Regulatorfilings/Setnotification/Indonesia%E2%80%99sLawsuitagainstptteprelatingtothemontaraincident.aspx>>; PTTEP, "The Revocation of Indonesian Lawsuit Relating to the Montara Incident" (7 March 2018), accessed on 7 September 2019 <<http://www.pttep.com/en/Investorrelations/Regulatorfilings/Setnotification/Therevocationofindonesianlawsuitrelatingtothemontaraincident.aspx>>.

23 Maurice Blackburn Lawyers, "Oil Spill now a \$200m+ Class Action for Seaweed Farmers" (3 August 2016), accessed on 13 September 2019 <<https://www.mauriceblackburn.com.au/about/media-centre/media-statements/2016/oil-spill-now-a-200m-class-action-for-seaweed-farmers/>>; Maurice Blackburn Lawyers, "Australian Oil Spill Class Action Trial Begins in Federal Court (17 June 2019), accessed on 13 September 2019 <<https://www.mauriceblackburn.com.au/about/media-centre/media-statements/2019/australian-oil-spill-class-action-trial-begins-in-federal-court/>>.

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and may require a claimant to prove the liability of the operator or owner. Moreover, even if the claimant is successful in proving his, her or its case, there may not be any compensation available if the defendant is not solvent or adequately insured. And, the mere fact that the court in which the proceeding is heard, gives a verdict for one side or the other, does not guarantee that the successful party's result can be enforced in any other jurisdiction.

The absence of a coherent, common legislative framework to regulate the making of claims for compensation for loss or damage arising from hydrocarbon spills that are or have the potential to cause environmental, property or economic damage in more than one State, and the ability to enforce internationally any domestic award or judgment of a tribunal or court, is likely to lead to injustice and inconvenience. Unless a claimant is well-resourced or can bring litigation as a class action under the domestic law of one State, it will be very difficult, not to say expensive, to take and get useful results from domestic proceedings without an international convention regulating such claims. As experience under the CLCs has shown, littoral businesses, such as fishermen, seaweed farmers, tourist facilities including restaurants and hotels, and ports, often suffer significant damage from oil spills. Moreover, the potential for a blowout from an offshore facility to release a very large amount of hydrocarbon into the sea could result in the interruption of established sea routes for cargo or passenger trade that could also give rise to claims for compensation.

In addition, where one State incurs clean-up costs for a spill from an offshore hydrocarbon facility located outside its jurisdiction, that State may not be able to recover those costs, if the facility's operator or owner does not have any presence within its jurisdiction or is not amenable to its sovereign legal process.

The offshore oil and gas industry has an entrenched international character and is a major participant in international trade and commerce. In the last 50 years, multinational businesses, both private and State-owned, have become a feature of commerce throughout the world. The regulation of corporate juggernauts is an ongoing concern of sovereign States. One only has to think of the issues that have arisen about the collection of taxation from the operations of large technology companies with so-called commercial or head offices in low tax nations in which those companies have no actual operations that produce the physical good or service. Transfer pricing by multinationals often can facilitate tax avoidance, at best, or tax evasion, at worst, in States in which the businesses' substantive

profits are earned.²⁴ Likewise, there is a limited ability of any one Government to regulate aspects of the internet, including the dark web, and the more innocent activities of enterprises, such as Google and other search engines that offer not just access to information but to products and services of all kinds. Any attempt at such international regulation, other than by a nation State in its own jurisdiction, is fraught with difficulty, not least because of western democratic values of freedom of speech, religion and opinion, underpinned by the First Amendment in the Bill of Rights in the Constitution of the United States of America.

However, the regulation of offshore hydrocarbon facilities under an international convention that includes provisions governing liability for pollution damage and the payment of compensation, is likely to be much more straightforward than in other areas of multinational activity. After all, there are conventions governing much of the international shipping industry, including setting standards for the construction of particular types of vessels, the prevention of pollution, the treatment and payment of seafarers, the carriage of goods by sea, and the enforcement of maritime claims. There is also UNCLOS which regulates activity in the Area under Pt XII and, in particular, Art 235, that is the portions of the world's oceans that are not within any nation's territorial waters or jurisdiction.

The current void in regulation of compensation for loss or damage caused by, or also created with, the operation of an offshore hydrocarbon facility has created an unacceptable risk that persons injured as a result of a blowout or spill, including one or more governments, will have no, or no effective, recourse against the person responsible. The magnitude of that risk can be seen from the 2018 annual report of BP. There, BP stated that it had incurred costs to that time (including fines) in consequence of the *Deepwater Horizon* incident totalling about USD67 billion.²⁵ That is a staggering sum. It included about USD14.34 billion for spill response costs, USD8.525 billion for environmental costs, USD4 billion for penalties, and USD42.4 billion for litigation and claim costs.

There are not many corporations with the financial strength of BP. And, as we know, exploration activity is both risky and expensive. Many exploration ventures fail financially because they do not find what they are looking for before running out of funds, and such ventures may not properly cap well heads when leaving the field of operation; others fail

24 See, for example, Organisation for Economic Co-operation and Development, "OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations" (OECD, July 2017).

25 BP p.l.c., "Annual Report and Form 20-F 2018" (2019), 151.

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because they cannot support the infrastructure necessary to exploit a discovery or resource. An international convention to regulate pollution from these situations offers the prospect of a guaranteed source of payment of compensation and a workable means for claimants to obtain it.

Nation States have a real exposure to meet expenses in the order of magnitude that BP faced (of over USD22.5 billion) in clean-up and environmental costs because they may have to deal with the direct, physical consequences of a blowout. The above experience of BP demonstrates the magnitude of the potential risk to a littoral State from a transboundary incident (there, nearly USD23 billion) in the absence of an international convention that assures the availability of at least a minimum insurance fund and the possibility of a top up fund like the Fund Convention. Thus, if an owner or operator is unable to meet its liability, it will fall on each littoral State whose land and waters are polluted to bear the burden of the clean-up and environmental costs. In addition, a State may have to take action, even in the UNCLOS area, to ensure the safe passage of ships and safety in offshore oil and gas activities to avert the risks of fire or damage to property and life.

Had there not been substantial owners and operators of the *Montara* and *Deepwater Horizon* platforms, the Governments affected would have had to meet the cost of cleaning up both the spills themselves and the environmental damage. Yet, the potential of having to pay such costs has not been enough to stimulate the IMO into preparing a convention.²⁶ It could be inferred that the States that oppose developing a convention fear that it might have the potential to dampen offshore oil and gas activity. Yet, as UNCLOS requires in Art 235(1), States are responsible for fulfilling their international obligations concerning the protection and preservation of the marine environment. If a State that cannot meet the cost of cleaning up a major oil spill can permit an offshore facility to operate and its operator, too, cannot meet those costs, self-regulation (as is the IMO's position) will leave the marine environment in peril.²⁷

The European Union

Interestingly, over the last several years, the European Union has been giving thought to issues of regulation of liability and compensation in the

26 Brazil has continuously opposed the IMO taking steps towards any international regime. See: IMO, "Analysis of Liability and Compensation Issues Connected with Transboundary Pollution Damage from Offshore Exploration and Exploitation Activities, Including a Re-examination of the Proposed Revision of Strategic Direction 7.2: Submitted by Brazil", LEG 99/13/1 (10 February 2012).

27 Steven Rares, above n 1, [15].

offshore oil and gas industry. Unlike the IMO, it has not closed the door to an international instrument although it has not progressed one either.

In 2013, the European Parliament made the *Directive on Safety of Offshore Oil and Gas Operations*²⁸ (**the 2013 Directive**) that is largely precatory about what its individual member States should or might do about imposing liability and safety standards. The Directive is silent on compensation.

The European Commission commissioned two reports, the first in 2013²⁹ and the second in 2014 (**the Deloitte report**).³⁰ Both reports highlighted the inconsistent regulation of liability and compensation across different national legal systems and regional agreements, as well as the lack of availability of different financial and insurance market instruments (including pooling mechanisms) to cover liability.

For example, the Deloitte report found that some States in the European Economic Area excluded compensation for pure economic loss, some had laws that may not extend to their continental shelf and EEZ where most offshore oil and gas operations took place, and no State (other than Norway) had legislation dealing with compensation claims relating to offshore oil and gas accidents.

In 2015, the European Commission published a report to the European Parliament and Council on civil liability, compensation and financial security.³¹ It adopted a “wait and see” approach – that is, it would wait to see if and how member States transposed the list of wishes in the 2013 Directive into their national laws before the EC would analyse the effectiveness of those liability provisions and the availability of means to secure payment of compensation.

In December 2016, the European Parliament passed a resolution in which, among other matters, stated that it:³²

28 Directive 2013/30/EC on *Safety of Offshore Oil and Gas Operations and Amending Directive 2004/35/EC* (28 June 2013, L 178/66).

29 De Smedt Kristel et al., “Civil Liability and Financial Security for Offshore Oil and Gas Activities: Final Report” (22 October 2013), Maastricht European Institute for Transnational Legal Research.

30 Katherine Salès, Shailendra Mudgal and Valerie Fogleman, “Civil Liability, Financial Security and Compensation for Offshore Oil and Gas Activities in the European Economic Area: Final Report” (14 August 2014), Bio by Deloitte and Stevens & Bolton LLP.

31 European Commission, “Report from the Commission to the European Parliament and the Council on Liability, Compensation and Financial Security for Offshore Oil and Gas Operations Pursuant to Article 39 of Directive 2013/30/EU”, (14 September 2015, COM(2015) 422 final).

32 European Parliament, “Liability, Compensation and Financial Security for Offshore

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[a]lso regrets the fact that the way civil liability is handled varies considerably from one Member State to another; stresses that there is no liability in many of the Member States with offshore and gas activities for most third-party claims for compensation for traditional damage caused by an accident, no regime in the vast majority of Member States for compensation payments, and no assurance in many Member States that operators or liable persons would have adequate financial assets to meet claims; stresses, moreover, that there is often uncertainty as to how Member States' legal systems would deal with the diversity of civil claims that could result from offshore oil and gas incidents; believes, therefore, that an European framework is needed, which should be based on the legislation of the most advanced Member States, should cover not only bodily injury and property damage but also pure economic loss, and should ensure effective compensation mechanisms for victims and for sectors that may be severely affected (e.g. fisheries and coastal tourism); calls in this respect on the Commission to assess whether a horizontal European framework of collective redress would be a possible solution, and to pay particular attention to this when drawing up the OSD implementation report.

The European Parliament's resolution concluded by inviting the European Commission and member states "to continue examining the possibility of an international solution" in order to ensure "a global level playing field". This was because it recognised that oil and gas companies operating in the European Union were active across the world and that there should be one global regulatory and compensatory solution.³³

Whether each of the European Union's member States is open to the European Parliament's suggestions and decides to follow them by legislative action remains to be seen.

Oil and Gas Operations: European Parliament Resolution of 1 December 2016 on Liability, Compensation and Financial Security for Offshore Oil and Gas Operations" (2015/2352(INI)), (1 December 2016, P8_TA(2016)0478).

³³ Ibid, item 24.

Charting a new course

The present, unfortunate reality is that while the IMO is uniquely well placed to promote and formulate an international convention to address the consequences of offshore facility blowouts and spills,³⁴ it presently considers that “no further work” is required in this area³⁵ and its strategic plan for 2018 to 2023 omits any reference to it.³⁶

Accordingly, in my view, the CMI must now consider what other international body may be an appropriate forum to prepare and promote the adoption of a convention.

UNCITRAL

One option is UNCITRAL. It has, as its object, the “promotion of the progressive harmonization and unification of the law of international trade”. A means of achieving this object is preparing or promoting the adoption of new international conventions and promoting the codification and wider acceptance of international trade terms in collaboration, where appropriate, with organisations operating in the field.³⁷

As the European Parliament suggested, the lack of an international regime on liability and compensation for damage arising from offshore facilities may be thought to have an impact on international trade. There is international trade in the exploration for, as well as the development and exploitation of, offshore hydrocarbon reserves throughout the world’s marine environments. There seems to be a case that this issue falls within the purview of UNCITRAL.

CMI and UNCITRAL have collaborated productively in the past and are doing so at the present time. *First*, the successful development of the *Rotterdam Rules*,³⁸ which the CMI initially drafted, demonstrates the capacity for a strong working relationship between the two bodies.

34 Steven Rares, above n 1. This is because of its experience in propounding international conventions that deal with the consequences and containment of oil pollution from ships and offshore installations; for example, the *Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf* (done at Rome on 10 March 1988) and the *International Convention on Oil Pollution Preparedness, Response and Co-operation* (done at London on 30 November 1990).

35 IMO, “Report of the Legal Committee on the Work of its 104th Session”, LEG 104/15 (10 May 2017), [14.6].

36 IMO, “Other Decisions of the Thirtieth Regular Session of the Assembly and Resolutions Adopted”, A 30/D (23 January 2018), which adopted Resolution A.1111(30), “Application of the Strategic Plan of the Organization”, A30/Res.1111 (8 December 2017).

37 United Nations, *Resolution 2205 (XXI) Establishment of the United Nations Commission on International Trade Law* (adopted on 17 December 1996 at the 1497th Plenary Meeting), Arts I and II(8)(c).

38 *United Nations Convention on Contracts for International Carriage of Goods Wholly or*

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Secondly, the CMI has been collaborating, since 2018, with UNCITRAL (through its Working Group VI) on cross-border issues relating to the judicial sale of ships,³⁹ specifically reviewing the “Beijing Draft” of the convention on that issue that the CMI adopted.⁴⁰ Initially, the CMI had approached the IMO Legal Committee, unsuccessfully, to include the judicial sale of vessels on its agenda, before approaching UNCITRAL.⁴¹ After that rebuff, in seeking to encourage UNCITRAL to take leadership on this issue in 2017, the CMI stressed the significance of UNCITRAL’s “universal” coverage in terms of States that participate in its negotiations and the fact that UNCITRAL is a specialist organisation for private international trade and commercial law.⁴²

In May 2019 in New York, Working Group VI reported with its comments on the draft judicial sale convention.⁴³ Currently, a revised draft is being worked on, which will be the subject of further discussion at the next working group meeting in Vienna in November this year.

This recent and current experience suggests that it would be appropriate for the CMI to approach UNCITRAL to explore whether it would be interested in developing an international convention on compensation for transboundary loss or damages caused by offshore hydrocarbon facilities, with the CMI’s assistance. And, as I have explained, there is a plethora of international views about “guidance” that can be provided to UNCITRAL if it takes up the challenge.

United Nations Environment Programme

Another option is for the CMI to approach the United Nations Environment Programme (**UNEP**). Its main functions include promoting international cooperation in the field of the environment and recommending policies to that end, as well as reviewing the “world environmental situation

Partly by Sea (done at New York on 11 December 2008).

39 United Nations Commission on International Trade Law (Working Group VI), “Proposals of the Comité Maritime International (CMI) and of Switzerland for Possible Future Work on Cross-Border Issues Related to the Judicial Sale of Ships” (14 February 2019, A/CN.0/WG.VI/WP.81), Annexes I and II.

40 United Nations Commission on International Trade Law (Working Group VI), “Judicial Sale of Ships: Proposed Draft Instrument Prepared by the Comité Maritime International: Note by the Secretariat” (1 April 2019, A/CN.9/WG.VI/WP.82).

41 Ibid, [8].

42 Comité Maritime International, “Proposal of the Comité Maritime International (CMI) for Possible Future Work on Cross-Border Issues Related to Judicial Sale of Ships” (April 2017, submitted to United Nations Commission on International Trade Law).

43 United Nations Commission on International Trade Law, “Report of Working Group VI (Judicial Sale of Ships) on the Work of its Thirty-Fifth Session” (24 May 2019, A/CN.9/973).

to ensure that emerging environmental problems of wide international significance” receive appropriate consideration by governments.⁴⁴

Any offshore oil and gas accident is likely to have significant impacts on at least local, if not more widely-spread, ecosystems and environments. The potential to address the lack of an international regime on liability and compensation (particularly for environmental damage) relating to such accidents could be of interest to UNEP, which may wish to fill the gap, so as to ensure environmental integrity.

Indeed, UNEP is familiar with offshore oil and gas activities. For example, the *Barcelona Convention*⁴⁵ was developed under the auspices of UNEP.⁴⁶ That obliges States to take all appropriate measures to prevent, abate and combat pollution of the Mediterranean Sea Area resulting from exploration and exploitation of the continental shelf, the seabed and its subsoil.⁴⁷ Article 16 provides that:

The Contracting Parties undertake to cooperate in the formulation and adoption of appropriate rules and procedures for the determination of liability and compensation for damage resulting from pollution of the marine environment in the Mediterranean Sea Area.

Pursuant to the States party’s obligation under Art 16 of the *Barcelona Convention*, the UNEP-Mediterranean Action Plan (**UNEP-MAP**) developed, between 1978 and 2008, regional guidelines for a civil liability and compensation regime with respect to the Mediterranean Sea Area.⁴⁸ UNEP adopted these guidelines in 2008, but they remain unenforceable, just like the 2013 Directive and the IMO’s guidance.

44 United Nations, *Resolution 2997 (XXVIII) Institutional and Financial Arrangements for International Environment Cooperation* (adopted on 15 December 1972 at the 2112th Plenary Meeting), Art I(2).

45 *Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean* (done at Barcelona on 16 February 1976), as amended by the *Amendments to the Convention for the Protection of the Mediterranean Sea Against Pollution* (done at Barcelona on 10 June 1995). The *Barcelona Convention* concerns the Mediterranean Sea Area and has 22 States party including France, Greece, Italy, Malta, Spain and Turkey.

46 United Nations Environment Programme, “Celebrating 40 Years of Cooperation for a Healthy Mediterranean” (2 February 2016), accessed on 9 September 2019 <<https://www.unenvironment.org/news-and-stories/press-release/celebrating-40-years-cooperation-healthy-mediterranean>>.

47 Art 7 of *Barcelona Convention*.

48 United Nations Environment Programme, “Decision IG 17/4: Guidelines for the Determination of Liability and Compensation for Damage Resulting from Pollution of the Marine Environment in the Mediterranean Sea Area” (UNEP(DEPI)/MED IG.17/10, 2008).

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All this would suggest that UNEP may be wise to assist in promoting a convention with the CMI.

Conclusion

Obviously, what I am suggesting requires political will and diplomatic finesse to coalesce if it is to be achieved. We live in an age where modern communications and transport has linked the human race as never before. Likewise, industrial and technological advances in this age have presented mankind with new challenges, such as those we face from climate change.

The risks and perils of exploration and exploitation of offshore hydrocarbon resources are pellucid; so is the present dependence of most of the world on resources of that kind to supply it with energy and lubrication. We know blowouts and spills happen. Indeed, human experience is that accidents happen, many caused by a failure to apply previous experience.

International politics is showing increasing signs of isolationism. That portends badly for the future, where international comity and cooperation in addressing the issues of our age should hold centre stage. Inaction on the development of an international convention on offshore hydrocarbon blowouts and spills serves no one's long-term interest. The presence of new insurers to support cover under such a convention would bring new eyes to the management of the risks of a disaster and may help to avert, or lessen, the impact of what might otherwise develop as a massive blow to the environment in the next *Deepwater Horizon* type of offshore catastrophe. As Brutus said in Shakespeare's *Julius Caesar*:⁴⁹

There is a tide in the affairs of men.
Which, taken at the flood, leads on to fortune;
Omitted, all the voyage of their life
Is bound in shallows and in miseries.
On such a full sea are we now afloat,
And we must take the current when it serves,
Or lose our ventures.

This is the time to take the tide to fortune, which at least the European Union's more representative institutions think worthwhile, in the shape of a new convention, hopefully, with UNCITRAL's support.

49 Act IV, scene 3.

Brazilian Offshore Sector, by Camila Mendes Vianna Cardoso

BRAZILIAN OFFSHORE SECTOR

Camila Mendes Vianna Cardoso

Summary: (I) Brazil: General Overview; (II); LNG in Brazil; (III) Petrobras Disputes; (IV) Oil and Gas Exploration in Brazil; (V) Decommissioning in Brazil; (VI) 10 Main Reasons to Invest in Brazil.

(I) BRAZIL: GENERAL OVERVIEW

In order to contextualize the presentation, I will briefly expose the main data from Brazil as a country and in relation to the market. Brazil is the largest country and economy in Latin America. Brazil's size is 8,515,767 km, with the coastline of 7,491 km and population is around 210 million people.

The Brazilian GDP from 2018 was R\$ 6,8 trillion, being the Worlds 9th largest economy by nominal GPS and 7th largest foreign investment attractor.

In relation to O&G market, Brazil is the largest oil producer in Latin America, with 15 billion BOE ("barrels oil equal") of O&G proven reserves, being also the 7th largest oil consumer and 9th world's largest oil producer.

As you can see, Brazil is a big player and attractor of investments in the O&G Market and, as a consequence, in the Offshore Market in a whole.

That been said, I will expose in the sequence the main specificities of the Brazilian oil and gas market.

(II) PETROBRAS DISPUTES

In Brazil, the navigation market is strongly protective, with legislation and regulation aimed at fostering the internal navigation market, especially due to strategic issues and national sovereignty. That is why the proportion of Brazilian vessels is significantly larger that foreign vessels in Brazilian fleet.

As you know, this is similar to what occurs in the USA in view of the Jones Act, which is also considered a protectionist legislation focused on issues related to maritime commerce.

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The decrease on the total number of Offshore Vessels on the last years is due to the international oil crisis, aggravated by Brazilian governmental and institutional crisis.

This crisis on the Offshore market resulted in several Petrobras' Contracts termination. Since Petrobras had numerous contracts with different sectors and players, those terminations arise several disputes with Petrobras to discuss the implications of those terminations.

Also, in view of those terminations and the internal crisis they were facing, Petrobras is always innovating and seeking for new reasons to apply fines and deductions from its contractors.

In the context of the lawsuits arise from those disputes, **Injunction Relief** is often granted to prevent deductions if the party demonstrates:

- 1) Strong evidence of the right; and
- 2) Risk of irreparable harm.

Furthermore, the **Main argument** used by the parties in those lawsuits is that Petrobras cannot unilaterally carry out deduction arising from disputed debts. An important strategy to be used **is to always** challenge the charges received to demonstrate disagreement.

An overview of the main topics that are object of disputes with Petrobras are:

- a) **Reimbursable Expenses:** Obligation of Petrobras to reimburse (i) port expenses; (ii) piloting; (iii) stowage; and (iv) cleaning of silos.
- b) **Collection Lawsuits:** Enforcement order.
- c) **Excessive Oil Consumption:**
 - (i) Petrobras is obliged to bear the fuel costs for the operation.
 - (ii) Petrobras may claim excessive consumption and threaten to discount.
- d) **CAA (“Charter Authorization Certificate”) Related Lawsuits:** Petrobras is required to provide and renew the Chartering Authorization Certificate.
- e) **Excess of Downtime:** Application of fine for alleged excess of downtime.

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- f) **Normative Resolution No. 06/2017:** Alleged non-compliance with the proportionality of Brazilians and foreigners in the crew.
- g) **Local Content:** Alleged non-compliance with the Local Content regulation. **Ps: ANP Penalty:** Redress of ANP's penalties due the non-conformities of vessel.
- h) **Late Delivery:** Fine for alleged late delivery of the vessel.

(III) OIL AND GAS EXPLORATION IN BRAZIL

Overcoming Petrobras issues and the O&G crisis, the current scenario is one of very positive expectations. According to Petrobras' Business and Management Plan 2019-2023, the investments to happen **between 2019 and 2023 are:**

- a) **Investments in Oil Exploration and Production:** Total of US\$ 68.8 billion, divided in 16% for Exploration; 70% Production Development and 14% for Infrastructure and Research and Development ("R&D").

The investments will also be of US\$ 48.4 billion for Production Development, divided in 56% for Pre-Salt and 44% for Post-Salt.

- b) **Refining and Natural Gas Investments:** Total of US\$ 13.9 billion, divided in 36% for Natural Gas and Power; 61% for Refining, Transportation, MARKETING AND Petrochemicals.

Since our head office is in Rio de Janeiro and Rio is also one of the Brazilian largest powers in the oil and gas market in Brazil, I have separated the following data about this market in Rio in the next 10 years in relation to Brazil as a whole:

- a) **96%** increase on the total oil production.
- b) **70%** increase on the total liquid gas production.

For sake of information, as you may know, the offshore oil exploration is divided in pre and post salt areas. The **PRE-SALT** is the area of oil reserves that lies beneath a deep salt layer, forming one of the various rock layers of the seafloor. The geological layer formed **before (and below) an extensive salt layer**, which may exceed 2,000 meters in thickness. In Brazil, this layer comprises a strip that extends over 800 km.

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The **POST-SALT** is the geologically formed layer **after (and above) the salt** is called the Post-salt Layer. This means that sand, organic material and other dejects accumulated later than the original salt layer.

That said, we will now analyze the **DIFFERENT FORMS OF O&G EXPLORATION IN BRAZIL**. In Brazil we have, since 2010, a Mixed Regulatory Regime for the Exploration and production of oil and natural, consisting of:

- (I) **CONCESSION REGIME** – **about 98%** of the total area of the Brazilian sedimentary basins; and
- (II) **PRODUCTION SHARING REGIME** – **(about the rest 2%)** for the pre-salt polygon areas and other areas that are considered strategic.

There is another bidding model of offering areas named **OPEN ACREAGE PROCESS**. The process consists in the **continuous offer of relinquished marginal oil fields** (or in process of devolution) **and exploration blocks offered in past bid rounds that were not awarded or which had been devolved to the Agency**.

This new Permanent Offer bidding model opens space for small and medium-sized companies to operate in terrestrial fields. The Public Session of the First Round of Open Acreage (“Permanent Offer”) was held on September 10th, 2019 and

For exploratory blocks, the total bonus collected was R\$ 15.32 million and there is a forecast of R\$ 309.8 million in investments. For areas with marginal accumulations, the total bonus was R\$ 6.98 million, with a forecast of R\$ 10.5 million in investments.

It shall also be mentioned that the **CESSION OF CONTRACTS** is allowed under the applicable legislation and it means the transfer (assignment), in whole or in part, of oil and natural gas exploration and production contracts, preserving the original object and contractual conditions, as long as the assignee meets the technical, economic and legal conditions.

Authorization for assignment of agreement, as well as for performance of merger, spin-off and incorporation, change of operator, and replacement or exemption of performance guarantee shall be preceded by administrative procedure for assignment.

The assignment process will be started and conducted by ANP, under the terms of the applicable ANP regulation and will follow the procedure described in the Assignment Procedure Manual (“MPC”).

Regarding the CONCESSION REGIME, in this exploration regime, the winner bidder, as the concessionary company or consortium, assumes the risk of investing and finding – or not – oil or natural gas.

Also, the concessionary will total property of the oil discovered in the conceded area.

The company pays first the signature bonus, offered in the bidding proposal, and, after, governmental fees/taxes, such as royalties.

In these bidding rounds, the interested companies **offer**, individually or in a consortium:

- (i) An amount for the Signature Bonus and
- (ii) Propose a Minimum Exploratory Program (PEM), that describes the activities which the company/consortium commits itself to carry out in that area.

Based on its CHOSING CRITERIA the winning company or consortium is the one that presents the bigger signature bonus and the best Minimum Exploratory Program is considered the winner of the bidding.

As mentioned before, this regime is the most relevant, since it corresponds to 98% of the oil exploration contracts.

As to the PRODUCTION SHARING REGIME, it was included in the Brazilian legal frame since the discovery of the Pre-Salt Area.

It is worth mentioning that this regime is largely used in countries or areas that have a large reserve or a large volume of production. That is the Pre-Salt case.

For the areas located in the Pre-Salt Polygon and other considered strategic according to governmental strategic plan.

The National Council for Energy Policy (“CNPE”) decides if bidding rounds will be held or if Petrobras will be directly hired, in order to preserve the national interest and achieve other energy policy objectives.

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Even though Petrobras is directly contracted, it will be signed under the regime of production sharing. The fact that Petrobras is a stated-owned company, it doesn't mean that the regime won't apply.

If decides to conduct the bidding round, CNPE has the obligation to first offer Petrobras to be the operator of the blocks to be contracted.

When Petrobras expresses the interest of acting as the operator, it must inform in which areas it wants to exercise this right, indicating its percentage of participation in the consortium, **which cannot be less than 30%.**

Based on its CHOSING CRITERIA the winning company/consortium is the one that offers the largest percentage of the exceeding oil for the Brazilian State.

The exceeding oil is the amount that is verified after discounting the investments made by the winner for exploration and production.

Explained the differences between the ways of exploration of O&G in Brazil, see the map provided by the ANP, which reflects the areas under concession in relation to each Bidding Round.

Addressing opportunities in this market, ANP has Current, Upcoming and Planned ANP Bidding Rounds.

- 1) The first one is the **“First Cicle of Permanent Offer”**, based on the Open Acreage explained before, which Public Session happened on September 10th, 2019, with the following results:

Exploratory Blocks that were offered in past bid rounds that were not awarded or which had been devolved to ANP:

33 blocks purchased (total area of 16,730.43 km²)

Total bonus offered: R\$ 15,325,190.66.

Areas with Marginal Accumulations:

12 areas on onshore basins (total area of 148.01 km²)

The total bonus offered: R\$ 6,981,645.86.

- 2) In the **16th Concession of Exploratory Blocks Bidding Round** thirty-six blocks will be offered (all offshore) in the sedimentary basins of Pernambuco-Paraíba, Jacuípe, Camamu-Almada, Campos and Santos, totaling 29.3 thousand km² of area.

17 Companies bidded: Of the 17 companies registered, only Petrobras and Enauta are Brazilian. As others, 15 are all strange and, among them, only Petronas do not have exploration and production contract in Brazil.

See below for a list of bidding companies:

BP Energy do Brasil Ltda.; Chevron Brasil Óleo e Gás Ltda.; CNOOC Petroleum Brasil Ltda.; Ecopetrol Óleo e Gás do Brasil Ltda.; Equinor Brasil Energia Ltda.; Exxonmobil Exploração Brasil Ltda.; Karoon Petróleo & Gás Ltda.; Petrobras; QPI Brasil Petróleo Ltda.; Repsol Exploração Brasil Ltda.; Shell Brasil Petróleo Ltda.; Total E&P do Brasil Ltda.; Enauta Energia S.A.; Murphy Exploration & Production Company; Petrogal Brasil S.A.; Petronas Petróleo Brasil Ltda.; and Wintershall Dea Do Brasil E&P Ltda.

The Public Session for Offers Presentation will happen on **Oct. 10th, 2019.**

- 3) In the **6th Production Sharing Bidding Round** the 5 blocks will be offered: Aram, Bumerangue, Cruzeiro do Sul, Sudoeste de Sagitário and Norte de Brava.

On Sept. 16th, 2019 the tender protocol and the form of production sharing agreement were published.

On Oct. 1st, 2019 will be the final deadline for submitting the documents to express interest, qualification and payment of the participation fee.

The Public Session for Offers Presentation will happen on **Nov. 7th, 2019.**

Until March 31st, 2020 there will be the execution of the production sharing agreement.

- 4) In the **Transfer of Rights Surplus Production Sharing Bidding Round** the Atapu, Buzios, Itapu and Sepia development areas will be offered in the Santos Basin. The exploration will be based on production sharing agreement.

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On Sept. 6th, 2019 the tender protocol and the form of production sharing agreement were published.

On Sept. 23rd, 2019 was the final deadline for submitting the documents to express interest, qualification and payment of the participation fee.

The Public Session for Offers Presentation will happen on Nov. 6th, 2019.

According to Guidelines for Multiyear Planning of Oil and Natural Gas Exploration and Production Blocks for the 2020 - 2021 Biennium, the following Bidding Rounds are planned:

- a) **17th Concession of Exploratory Blocks Bidding Rounds (2020)**, which shall be select blocks from the Pará-Maranhão Offshore Basins, Pelotas and Potiguar; from ultra- deep waters outside the Pre-salt from the Campos Basin and Santos Basin.
- b) **18th Concession of Exploratory Blocks Bidding Rounds (2021)**, which shall be selected blocks from the Ceará Basin and Pelotas and ultra-deep waters outside the Pre-salt polygon of the Espírito Santo Basin.
- c) **7th Production Sharing Bidding Round (2020)**, for which the technical and economic parameters of Esmeralda and Ágata areas, located in the Santos Basin and Água Marinha, located in the Campos Basin, shall be evaluated.
- d) **8th Production Sharing Bidding Round (2021)**, for which the technical and economic parameters of the Tupinambá, Jade and Ametista areas, located in the Santos Basin, and Turmalina area, located in the Campos Basin, shall be evaluated.

Regarding Rio de Janeiro's data in relation to the Energy Market, Rio's Government published that its participation in the Brazilian Market is 73% of the Oil (1.8 Mbbl/d), 54% of the Gas (58 Mm3/d) and 10% of the Power Generation (57.9 GWh (energy generation)).

In this sense, in the same study it was informed that Brazil is the 9th World's Largest Oil Producer and Rio de Janeiro is the 13th.

Also, the results of the upcoming rounds in relation to the increase in demand of vessels in Rio de Janeiro is that 70% of the National demand for Vessels will be in Rio de Janeiro State. The resumption of oil

and gas auctions will benefit the state of Rio de Janeiro with the growth of demand for support vessels.

It is expected to be required in the exploration 27 Drilling Rigs and 49 Support Vessels and in the Production 35 FPSOs and 140 Support Vessels.

(IV) LNG IN BRAZIL

Another very promising market in Brazil is LNG Market. The main reasons for understanding this market as attractive in Brazil are:

- a) **It is the fastest growing type of energy:** it should supply more than 40% of the additional energy demand by 2015;
- b) **It is considered a Clean energy**, as 78% improvement in China's air quality due to the migration from coal to Gas;
- c) The Sulphur Cap established by IMO 2020, which will limit the marketing of certain fuels, opening for other as LNG that comply with the established criteria;
- d) In view of the Nuclear downtime and reliability; and
- e) Due to the **Seasonality / Intermittence of renewables**, which is very relevant since Brazil has 40% renewable energy.

A very attractive issue in the LNG market are the LNG Terminals. The highlights of using LNG Terminals are as follows:

- a) The use of LNG Terminal allows the creation of gas distribution hubs;
- b) They create an integration between different modals (road, sea and pipeline); and
- c) They allow the diversification of origins (national and imported from different countries) and destinations in the same infrastructure of the gas in the chain.

An unfolding and development in relation to the use of LNG Terminals is their connection with a Thermal Power Plant ("UTE"), being the

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Power-to-Gas Projects. This Project is very relevant and promising since

- a) Considering the extent, population and activities present in Brazil, it is evident the demand for more power generation;
- b) Note that Brazil has deficiency in the pipelines (as shown on the map).
- c) As you can verify in the map, there is a large concentration of generation units and long distances to the actual consumption areas.

In this sense, the demand for these projects is evident, since the pipeline system in Brazil is mainly focused on the coast, and, on the other hand, there is a vast transmission network that can be used to transform LNG into energy at Thermal Power Plant.

The LNG Terminal Projects in Brazil were recently mapped by the Brazilian Ministry of Mines and Energy, (“MME”) together with Energy Research Company (“EPE”), totaling 20 Projects, being:

- a) 3 Existing Facilities, all of them from Petrobras;
- b) 2 Expected Facilities (one of them almost ready for operation – CELSE); and
- c) 15 Announced Projects.

That been said, I will talk briefly about the 3 existing projects and the 2 expected projects.

EXISTING PROJECTS:

1) Pecém Terminal:

This Existing Facility is the first Flexible LNG Regasification Terminal in Brazil, located in Ceará, with the capacity to transfer up to 7 million m³/day of natural gas to the Guamaré-Pecém (Gasfor) pipeline. It mainly serves the Ceará and Fortaleza thermoelectric plants.

It is operated by Petrobras and is located in a Berth in a Private Use Terminal (“TUP”).

2) Baía De Guanabara Terminal:

Brazilian Offshore Sector, by Camila Mendes Vianna Cardoso

This Existing Facility is a Flexible LNG Regasification Terminal in Rio de Janeiro, which has the capacity to transfer up to 14 million m³/day of natural gas to the Southeast Region pipeline network. It mainly serves the thermoelectric plants of the region.

It is also operated by Petrobras and is located in an Offshore Private Use Terminal (“TUP”).

3) Bahia Terminal (“TRBA”)

This Existing Facility, also called TRBA, is a Flexible LNG Regasification Terminal in Bahia that has a maximum flow rate of 14 million m³ / d and supports a maximum pressure of 102 kgf/cm²g, being linked to a pipeline network.

It is also operated by Petrobras and located in an Offshore Private Use Terminal (“TUP”).

EXPECTED PROJECTS:

1) SERGIPE I PORT (CELSE’S PROJECT)

This is the first LNG facility to be fully dedicated to a Thermal Power Plant in the Country (gas-to-power), and also the first that has authorized under this regulatory framework (Normative Resolution n. 13/16). The extensive work demanded to obtain the license under the current regulation shows that the applicable regulation needs to be improved to adapt to this new model.

The Power Plant linked to the stationary FSRU “Golar Nannook” Vessel will supply northwest of the Country with 1,5 GW, being the largest power plant in South America, with only private investments of over R\$4,5Bi.

2) AÇU PORT (GNA PROJECT)

This Terminal shall have the capacity to regasify up to 21 million m³/day of LNG to be used in the Açu Thermal Power Plant. The Project is located in a Private Use Terminal (“TUP”). The FSRU “BW Magna” Vessel will be linked and dedicated to two Thermal Power Plants (gas-to-power). This Project was also based 100% in Private Investment

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Having explored the main LNG Terminal Projects, it is evident that the Gas-to-Power Projects are very promising, not only due to the Brazilian demand for the energy supply already indicated, but also because it involves, in the same project: (i) Thermal Power Plant (“UTE”) installation and operation; (ii) Navigation to bring the LNG; (iii) the Regasification Unit (as it is the Stationary FSRU); (iv) use of Ports Facilities; and (v) Gas transport and the marketing chain.

(V) DECOMMISSIONING IN BRAZIL

Another promising area in the Offshore market is the Decommissioning, which is considered rather new in Brazil.

Decommissioning is considered an Inductor for the Revitalization of the Naval Industry.

The main reasons for considering decommissioning as a promising market niche in Brazil are:

- a) The **Petrobras Divestment Plan**, that reaches 254 Fields;
- b) 21% Recovery Factor⁵⁰ in Brazil versus the 35% worldwide;
- c) The Contracts signed on Round Zero are effective until the year 2025;
- d) The Government (ANP) adopts the position to continue production;
- e) **The contracting of Decommissioning Financial Guarantee** is considered as a condition for assignment of mature fields (open acreage system), using Letter of Credit, Bond or Deposit.

It also causes a Market Ripple Effect, further driving the economy generated by the Offshore Market, given that triggers the demand of services such as:

- ✓ Engineering projects;
- ✓ Cargo handling;

50 Recovery Factor is the ratio between the recoverable volume and the original volume of a fluid in a hydrocarbon reservoir, ie. the fraction or percentage of the original volume expected to be produced from a reservoir.

Brazilian Offshore Sector, by Camila Mendes Vianna Cardoso

- ✓ Cargo management;
- ✓ Underwater inspection;
- ✓ Manufacture and assembly;
- ✓ Cutting and welding services; and
- ✓ Subsea services (ROV, Rivers etc.).

In relation to the Decommissioning Forecast in Brazil, the projections are very attractive to the market, confirming the information provided before:

- a) 66 Units in Brazil over 25 years (41% of existing structures);
- b) 24 Units in Brazil over 15 years (15% of existing structures);
- c) 6 Projects Under Analysis;
- d) 5 Projects Already Approved (4 only production units);
- e) 60 Units in Brazil between 2025-2030;
- f) Over 100 Units until 2040.
- g) Investment of US\$10,3 bi between 2020-2040.

The Regulatory Regime in Brazil is Based on (i) Federal Constitution; (ii) Environmental Law; (iii) Concession Contracts; (iv) ANP Res. 27/06 and 46/06; (v) IBAMA Res. 001/86; (vi) Navy.

The situations to decommission in Brazil are:

- (i) 180 days prior to Termination of Production – PDI presentation;
- (ii) Possible Suspension of production;
- (iii) No warm or cold stack;
- (iv) Cost of removal – REPETRO.

The main challenges that the decommissioning faces in Brazil are:

- a) Dissemination of Sun-Coral & NORM (Naturally Occurring Radioactive Material);
- b) High Costs since there are located in deepwater and distant from coast;
- c) Enormous difficulty in finding documentation and information;
- d) High risk of environmental damage, which should be noted, given that Brazilian environmental agencies are very strict.

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One new thing we have is the New Joint Regulation, from IBAMA, Navy and ANP, which is expected to be published in October 2019. It shall cover the following:

- ✓ All facilities to be removed;
- ✓ Dumping not allowed;
- ✓ Partial removal: comparative assessment;
- ✓ Infra reuse/repurpose;
- ✓ Shallow waters (100m) – cut depth of 3 m below seabed;
- ✓ Post Decomm: inspection of non removed infra, debris and wastes, Bio monitoring, water and sediments monitoring;
- ✓ Decomm plan to be presented 3 years before Production cessation.

The Contract form shall be:

- ✓ OIC hires separately each of the subcontractors
- ✓ EPRD + sale of unit

(VI) 10 MAIN REASONS TO INVEST IN BRAZIL

To finish my presentation, I selected 10 main reasons to invest in Brazil, which I understand are:

To finish my presentation, I selected 10 main reasons to invest in Brazil, which I understand are:

- 1) LEADING REGIONAL ECONOMY** - Top 10 economies in the world and the largest in Latin America.
- 2) GLOBAL DESTINATION FOR INVESTMENT** - Top 10 recipients of FDI in the world and the only Latin American country on that list.

Open to foreign direct investment.

- 3) RESILIENT DOMESTIC MARKET** - One of the largest consumer markets in the world.
- 4) DIVERSIFIED ECONOMY** - Wide range of economic sectors. Competitive industrial sector.

- 5) **ENERGY POWERHOUSE** – The Pre-salt discover.
One of the top producers and exporters of ethanol biofuel in the world.

Renewable sources are now responsible for a big amount of Brazil's energy matrix.
- 6) **LARGE POOL OF WORKERS** - Brazil's domestic market offers good opportunities for companies seeking to hire.

Young, dynamic workforce supported by government professional training programs.
- 7) **EXTENSIVE RAW MATERIALS** - Abundant natural resources (major supplier of raw materials).
- 8) **CAPACITY TO ENDURE** - Brazil is resilient and steadfast, capable of withstanding an adverse international economic scenario.

Net external creditor (since 2010).
- 9) **GLOBAL PLAYER, THE B IN BRICS** - Constant global player, always active and engaged in international Politics.
- 10) **GATEWAY TO LATIN AMERICA** - Consolidating position as global investment destinations.

Consolidating their position as global investment destinations with most countries of Latin America. free trade agreements with the largest markets in Latin America and is a member of the South American Common Market (Mercosul). Consolidating their position as global investment destinations with most countries of Latin America. free trade agreements with the largest markets in Latin America and is a member of the South American Common Market (Mercosul).

MARITIME LIENS IN BANKRUPTCY PROCEEDINGS: A LEGAL ANALYSIS OF THE NEED TO HARMONIZE AND AMEND THE MONTENEGRIN LEGISLATION

Maja Radunović

The paper is divided into 5 chapters, namely: Chapter I – Introduction, Chapter II – Maritime liens in a nutshell, Chapter III – Overview of bankruptcy law, Chapter IV - Position of maritime liens under bankruptcy proceedings and Chapter V – Conclusions and recommendations. Considering time limits, the presentation will follow chapters but give only the brief overview of each. Special emphasis will be given to Chapter IV where the core of the paper is exposed.

CHAPTER I - Introduction

Depending on the bases of their creation, security rights on ships can be distinguished into: contractual security rights (mortgages, hypothecs etc.), security rights created by the operation of the law (maritime liens or privileges) and the ones created through enforcement of maritime claims. Those created by the mere operation of maritime law are maritime liens. Maritime liens are long standing concept of securing creditors of maritime claims. The jurisprudence even considers maritime liens as “one of the first principles of the law of the sea”. Nowadays they play an important part in most maritime jurisdictions, by being provided in national laws, or simply by their recognition in case law.

However, when the shipowner faces financial difficulties and insolvency, the bankruptcy of the shipowner will subject all its assets to the bankruptcy estate and therefore subject to judicial sale and distribution to the bankruptcy creditors. At that moment, both Admiralty and Bankruptcy law come into play, but, it may be the case that only one regime will be applicable for the satisfaction of creditors having maritime liens on the ship which belongs to a bankruptcy debtor. That is because the enforcement of maritime liens and bankruptcy procedures have the same aim: selling the ship in order for creditors’ claims to be settled. However, they are often applied in different courts and attract different procedures, and the rules for determining secured creditors and their priorities do not usually correspond. In such a situation two categories of secured creditors are distinguished – maritime and bankruptcy creditors, who often compete with each other.

The purpose of this research is to give answers to the above questions, by analysing parallel legal regimes and their coexistence, as well as to come up with desirable solutions to the conflict of applicable laws in Montenegrin legal practice.

CHAPTER II - Maritime liens in a nutshell

Chapter II gives overview of maritime liens through their Historical origins (Subchapter 2.1), Definition, characteristics and legal nature (Subchapter 2.2), International framework (Subchapter 2.3), Enforceability - the major feature of maritime liens (Subchapter 2.4) and with special emphasis to Maritime privileges under Montenegrin legislation (Subchapter 2.5).

Historical origins of maritime liens can be traced back to ancient Greek law, after which was codified in Digest of Justinian, transferred to Byzantine law a.k.a. the Basilica (9th century A.D.), and it was also well-known in medieval Italian City maritime codes. One of the very first judicial references to the liens was given by English Admiralty court in *Hartfort v. Jones* case (1698), where the security right was recognized in favour of the salvor.

The best way to define maritime lien is through its own characteristics. Maritime lien is....

1) ...a privileged claim or charge...

In most maritime policies, maritime liens have the highest ranking - over mortgages, possessory liens and statutory rights of action in rem.

2) ...upon maritime property ...

Traditionally, maritime property is considered to be: ship, her appurtenances, cargo and freight, or other property once associated with a ship and the maritime adventure on which she was employed. Nowadays, the concept has been extended by the statute so as to include aircraft, when waterborne, and hovercraft, and property associated therewith.

3) ...for service rendered to it or damage done by it...

The main ratio for the supremacy given to the maritime liens lies in the fact that they secure claims for service rendered to or damage done by the ship. However, the list of maritime liens is limited, not all such services or damages are secured by the maritime lien. English law traditionally recognizes as so-called maritime liens proper: Damage done by a ship; Salvage; Seafarer's wages (including Master's wages), Master's disbursements and Bottomry and Respondentia.

4) ...accruing from the moment of the events out of which the cause of action arises...

Unlike other types of security rights which depend on the contract or judicial procedure, maritime liens arise from the moment "the circumstances gave birth to it".

5) ...travelling with the property secretly and unconditionally

...

Described as invisible, secret, indelible or inalienable incumbrance, maritime liens are rights on the ship which will not be affected with a change of its ownership (except when such ship is sold in a judicial sale).

6) ...enforced by *actio in rem*...

The possibility to enforce the claim by the *actio in rem* is of great practical significance, because it gives rise to arrest of the encumbered property and its subsequent judicial sale out of which the claim will be satisfied.

The relevant international conventions which govern the matter are as

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follows: The 1926 and 1967 International Convention for the Unification of Certain Rules Relating to Maritime Liens and Mortgages (both Conventions done by CMI) and The 1993 International Convention on Maritime Liens and Mortgages (jointly done by CMI, IMO and UNCTAD). Another creation of CMI which inevitably goes together with maritime liens are the Arrest Conventions (1952 and 1999), designed to unify various rules on the detention of a ship by judicial process for securing a maritime claims. In that way, *in rem* enforcement of maritime liens, as their mere essence, is provided.

As a country with civil law tradition, Montenegro recognizes the concept of maritime privileges over sea-going ships (terminological issue). Still strongly resting on former Yugoslav laws, the current regulation on maritime privileges is found in The Law on Maritime and Inland Navigation of Montenegro of 2008 as amended in 2011 and 2013 (referred to as: LMIN), which basically reproduced provisions of the 1978 Maritime and Inland Navigation Act of Yugoslavia. It is interesting that the law provisions almost fully implement the provisions of 1926 MLM, even though neither Yugoslavia, nor Montenegro now, became party to that Convention.

CHAPTER - III Overview of bankruptcy law

Divided into 3 subchapters, Chapter III expands separately the nature and purpose of bankruptcy procedure, its international background and bankruptcy procedure under Montenegrin legislation.

Bankruptcy procedures in Montenegro are regulated by the Law on Bankruptcy of 2011 as amended in 2016 (LOB). The purpose of the procedure is clearly stated in Article 2 of the Law: “The bankruptcy procedure is conducted for the purpose of collective settlement of the creditors of the bankruptcy debtor, in case when he has the assets, by the sale of this property and the distribution of funds collected to the creditors.” The bankruptcy estate is managed solely by bankruptcy administrator; all litigations and administrative procedures against the debtor stay upon the commencement of the bankruptcy proceedings and no more security rights can be attached or enforced against the property of the debtor. Montenegrin Law recognizes two types of bankruptcy creditors, namely secured or non-secured, depending on the nature of the claim they have against the debtor at the moment of declaration of bankruptcy.

CHAPTER IV - Position of maritime liens under bankruptcy proceedings

Introducing the problem with General issues and conflicting points (Subchapter 4.1) and with Comparative solution analysis (Subchapter 4.2), Chapter IV gives a special emphasis to Particular problems recognized in Montenegrin laws and practice (Subchapter 4.3).

With the commencement of bankruptcy procedure over the shipowner, the Pandora’s box is opened, and the possible overlap of different regimes of security rights requires significant level of regulation. Unfortunately, Montenegrin legislation and practice fail to answer the question

which legal regime will prevail in case of bankruptcy of a shipowner. The current situation can be seen from two different perspectives:

- First scenario : prevalence of bankruptcy law

If bankruptcy law prevails over maritime law, maritime claims secured by a lien should find their place under the provisions of the existing Law on Bankruptcy.

However, that causes possible problems in practice:

1. Identification of maritime claimants - secured or non-secured creditors?

According to Article 53(5) of the LOB, maritime liens acquired 60 (or less) days before bankruptcy procedure is opened extinguish with the opening of the bankruptcy procedure, and such claimants are not considered as a secured bankruptcy creditors. That means that in reality, there would actually be more creditors whose claims arose (and therefore maritime liens attach) in the time when the insolvency of a debtor was already manifested and due to which their claims could not be satisfied. However, if the lienholders do not manage to enforce their claims in total prior to 60 days before the bankruptcy procedure starts, such right will be completely neglected in the bankruptcy procedure! Ironically enough, general rules on maritime liens ranking give priority to the creditors who acquired their liens later (opposite to the *prior tempore, potior iure* principle), but in the case of bankruptcy, such liens even “cease to exist”.

2. Competing with other secured rights

Even though the supremacy of maritime liens over other secured claims is guaranteed under Article 983 of LMIN, applicability of such provision from the perspective of bankruptcy procedure is disputable. If the provision is considered of a procedural nature only, it is applicable outside bankruptcy procedure, but without importance when the shipowner goes bankrupt. It remains also unclear if the maritime liens do not have the highest priority in the ranking, where would be their place in the distribution of ship's assets - would it depend on the moment of their creation, like mortgages? Or maybe the fact that maritime liens do not require registration will place them after mortgages, hypothecs and other registered security rights.

3. Maritime property as object of secured rights

According to Article 53 of LOB, secured creditors in the bankruptcy procedure are only the claimants having security rights over property of a debtor subject to registration. That means that the bankruptcy court would recognize secured rights on ships only, but not other maritime property. As a consequence, if the value of the ship is not sufficient for their satisfaction, maritime lienholders are automatically deprived of the privileged position to satisfy their claims from other maritime property of a debtor.

4. Procedural sale of ship

Bankruptcy administrator will decide if the ship is going to be sold in a separate procedure or together with other property of a debtor. In any case, all secured creditors can object to the sale proposed by the bankruptcy

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administrator (Article 138), direct sale shall be previously approved by the creditors' committee (Article 134(12)), and there is a wide leeway in decreasing the purchase price (Article 134(10) and (11)).¹⁰⁰ Such sale procedures usually take time and unless the bankruptcy administrator is proficient in sale and purchase of ships, it is likely that it will lead to a significant decline of value of the ship (it should be recalled that the ship will be sold for the most favourable price, which does not always mean the best price).

5. Business activities of a shipowner in ongoing bankruptcy procedure

If the ship of bankrupted shipowner continues to carry on the commercial activities, it is unregulated if such incomes, if any, will form bankruptcy assets in general and therefore be subjected to deductions in the name of satisfaction of bankruptcy costs overall.

Legal status of the claims which arise from the ship's operation during the bankruptcy will therefore appear as important, having in mind that they cannot be given a privilege of maritime lien (pursuant to Article 95 of the LOB, no more security rights can be attached or enforced against the property of the debtor upon the bankruptcy procedure is opened). The only category where such claims could be placed are the expenses of the procedure. The same would happen with the costs of the maintenance and repair of such ship. Therefore, are such expenses to be covered only from the value of the ship? If yes, is it justifiable, having in mind that the costs are at the risk of maritime creditors (as a creditors of a ship), but incurred in the interest of the bankruptcy asset overall, therefore for all bankruptcy creditors?

6. Ships non subject to registration

The LOB recognize as secured only creditors with secured rights over the property subject to registration. Therefore, maritime liens which attach to ships whose registration is not required (especially smaller ships), will not be recognized as a security rights within the bankruptcy procedure.

7. When maritime lienholder is not a creditor of the bankruptcy debtor

The LOB does not contemplate the situation where the maritime lien is attached to the property for securing the claim against third person, not against the debtor - shipowner. That would typically be the case when the debtor, before going bankrupt, acquired the ownership over the ship which had already been encumbered by maritime liens. In such case, the creditors with maritime lien over the ship possessed but not owned by a bankruptcy debtor, would be obliged to provide appropriate evidence for their claim, within the specified deadline, and in case they fail to do so, their security rights extinguish. The further position of such creditors (priority, procedural rights, remedies etc.) remains unregulated by the Law.

9. No extraction

Right of extraction from the bankruptcy estate is given only to persons who have a legal title over the particular property, not to secured creditors.

- *Second scenario: prevalence of maritime law*

It is difficult to contemplate such scenario under the current regime. Simply because, one of the main consequences of the bankruptcy is a stay of all proceedings against the bankruptcy debtor and his assets. That means that no provision of the LMIN can prevent ships and other maritime property to become a part of bankruptcy assets and therefore be completely subjected to the jurisdiction of the bankruptcy court and rules applicable thereto.

CHAPTER V - Conclusions and Recommendations

Even though both established for the purpose of securing creditors, two different legal regimes in their interaction can actually result in the deprivation of maritime creditors' rights, rather than their protection.

Summa summarum, maritime liens are substantive, vested rights, and as such shall be neither subject to the recognition of bankruptcy administration, nor exposed to the variability of ranking rules.⁵¹

Few recommendations are given in Chapter V:

1. Starting point for harmonization of Montenegrin Laws shall be to amend the Law on Maritime and Inland Navigation by adding so-called overriding provision. Basically, Article 37(C) of the Merchant Shipping Act of Malta should serve as a good model for drafting such provision:

„(1) All registered mortgages, any special privileges and all actions and claims to which a ship may be subject shall not be affected by the bankruptcy of the mortgagor or shipowner happening after the date on which the mortgage was created or the special privilege, action or claim arose, notwithstanding that the owner at the commencement of the bankruptcy had the ship in his possession, order or disposition, or was the reputed owner thereof, and such mortgage, privilege, action or claim shall have preference, on the said ship, over all other debts, claims or interests of any other creditor of the bankrupt or of any curator, trustee or receiver, acting on behalf of any other creditors. (2) Any judicial sale proceedings instituted by any registered mortgagee or privileged creditor shall not be interrupted or in any way hindered by any curator in bankruptcy, whether voluntary or compulsory, or any liquidator or receiver of the shipowner for any cause other than a cause that could be set up by the owner.”

51 Position of a seafarer in both scenarios *exempli causa*.

By transforming ships into ring-fenced assets, they would remain „untouched“ by the bankruptcy regime and subject only to the rules of maritime law and separate enforcement procedure.

In one hand, such provision should reflect substantial aspect of maritime liens: by use of express statement that rights of maritime lienees shall not be affected by the bankruptcy of a shipowner happening after the date on which the security right was created and that maritime liens will take priority over any other creditors of a shipowner. Also, the provision should prohibit any kind of implications that opening of a bankruptcy procedure, actions of bankruptcy administrator etc. could have on the judicial sale initiated by the maritime lienees. The complete extraction of ships from the bankruptcy estate shall serve to preserve the existing security rights thereto - not only maritime liens, but also other security rights on ships (acquired by the operation of law, contract or judicial procedure). Furthermore, not only ships shall be extracted from the bankruptcy estate, but also other maritime property in the virtue of Article 253 of the LMIN.

2. Having considered the application of the LOB of Montenegro as *lex specialis*, it appears that ring-fencing of maritime property shall be re-confirmed by providing an additional provision therein.

3. One more legislative action: to follow the European approach to the implementation of UNCITRAL Model Law: Montenegro would secure by its Laws that the opening of insolvency proceedings over a debtor located in another State shall not affect the rights in rem of creditors or third parties in respect of ships belonging to the debtor. That means that the stay of enforcement procedures over property of such debtor located in Montenegro, resulting from the recognition of foreign bankruptcy procedure in accordance with national Law, will not affect the enforcement of maritime claims. The previous solution shall also be carried out through the amendments of the LOB.

4. Any surplus on the sale of maritime property upon satisfaction of maritime claimants will be transferred to the bankruptcy administrator to take part into bankruptcy assets. This provision should be added to the amendments of the LMIN suggested above.

5. In case where only maritime property is found within the ownership of a bankrupt debtor, it should be left to the discretion of the bankruptcy judge whether the procedure shall temporary stay (until the ship is sold in separate procedure and secured creditor's claims satisfied), or it shall be concluded in shortened procedure, on the grounds that there are no bankruptcy assets found for the satisfaction of the bankruptcy creditors. Basically, it will be decided on a case by case basis, so if estimated values of the ship and secured claims give rise to the reasonable expectation of any surplus, the bankruptcy procedure will probably wait for the outcome of such sale.

6. Encouraging mutual cooperation between bankruptcy and admiralty judges and other participants of described procedures.

The suggested inputs to the change of the domestic Laws are considered as simple legal solutions which do not require any additional effort, time or

Maritime Liens in Bankruptcy Proceedings, by Maja Radunović

costs for the State's Administration. However, their practical implication is tremendous, because it would finally remove any ambiguity and uncertainty of the position of secured maritime creditors. By providing clear provisions in national Laws, there will be no space left for further interpretation by the courts and wrongful and unjustifiable deprivation of maritime liens of their secured rights.

THE IMPACT OF ROSS AND ITS BROTHERS ON THE PROFESSION OF SHIPPING LAWYERS

Massimiliano Musi

The speech is aimed at analyzing the different ways in which Artificial Intelligence (*inde* “AI”) is currently applied in the legal profession, focusing, in particular on the potential implications of new software such as Ross Intelligence, Kira Systems, LawGeex, Casetext and Ravel Law, for the lawyers operating in the shipping market.

Firstly, it should be considered that depending on the functions performed, the AI’s current legal applications can be divided into the following categories:

1. Prediction Technology
2. Legal Analytics
3. Due Diligence
4. Document Automation
5. Intellectual Property
6. Electronic Billing.

However, for our purposes, the analysis is focused especially on the AI’s applications relating to legal research and contract review and the main purpose is to evaluate which are or could be the true benefits that a proper use of the AI could bring to the legal activities carried out by the lawyers operating in the shipping market.

In this context, if we consider the features of the contracts and, more in general, of the most commonly used maritime transport documents, it seems possible to conclude that an appreciable level of standardization takes place both in their content and in their structure and layout.

Indeed, being based mainly on formats, contracts, such as time and voyage charter parties, and transport documents are generally adapted by operators, stakeholders and lawyers in order to meet the needs of each single transaction and commercial agreement.

From one side, this circumstance clearly facilitates the AI’s applications in lawyer’s activity, especially in the preliminary phase of the document creation, when the support of an IT tool

can allow to use software templates to create filled out documents based on data input.

Moreover, remaining in the field of out-of-court activity, existing software, such as Kira Systems and LawGeex, are able to validate contracts providing suggestions for editing in case they fail to meet the standards.

Specifically, Kira System, thanks to its-built-in provisions models for general commercial terms, compliance and more, which are taken as a basis for making a comparison with contractual clauses specified by the lawyer, can underline all the contractual elements in contrast with standard contractual models and the law in force.

LawGeex, instead, is able to review contracts understanding the legal language and the economic impacts, in the relationship between the parties, of the words used. This is made possible by the combined use of the so called Legal Language Processing (LLP) and Legal Language Understanding (LLU) algorithms. In particular, the first one trains the neural network with as many contracts as possible, consequently the AI software learns to understand legal terms and to identify terminology-relevant clauses in the contract. The second one translates legal expressions into legal concepts, which help the AI to understand unfamiliar clauses.

Thus, it seems that for the lawyer involved in out-of-court activity, the benefits linked to the use of AI's applications are mainly those related to the contract drafting phase and to the assessment of regulatory aspects.

That said, we should focus for a while on the role of the lawyer involved in the shipping market, which requires a preliminary specification based on the current tendency to widen the sub-practice areas related to the Maritime Law macro area.

Indeed, over the last twenty years, international trade has undergone a number of swift changes and innovations which have determined for the professionals the development of an ever-increasing number of added functions and technical expertise concerning an extended range of shipping sector related subjects.

In particular, nowadays, within the macro area of shipping, it is possible to distinguish a set of subjects that have not traditionally been associated with the pure Maritime Law, such as for example the M&A operations involving corporate entities active in the maritime transport sector. Thus, even in the out-of-court activity, the AI's applications change, being involved also

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in the drafting and processing of agreements far from the set of traditional contracts that are normally characterized by more common clauses and conditions.

If it is not easy for a software to discover, for example in the text of a ship's sale and purchase agreement, the “deal breakers” that require a more sophisticated negotiation and that can be assessed only through a careful interpretation of clauses, it can be only imagined which could be the consequences of the lack of comprehensive interpretation's functions of an AI in the preliminary phase of an M&A operation.

Indeed, focusing on the due diligence activity, even admitting the advantages of those AI's applications that are able to cluster documents and to accurately extract some relevant elements from the unstructured text (e.g. names, dates, addresses, interest rates, terms), it seems difficult to understand how the software can guarantee the same accuracy of a human being in identifying significant risks that could impact the terms of the deal or put it in jeopardy.

Having that in mind, moving now to the area of judicial activity and starting from the initial stage of the litigation phase (which is the preliminary “desk side” of judicial proceedings) we can argue that lawyers can surely obtain advantages from the use of AI tools, aimed at facilitating the process of legal research by collecting relevant passages from a huge amount of legal sources or case law.

Indeed, in this phase, one of the key functions of the lawyer is to perform a meticulous reviewing of the facts along with a proper legal research, finding out all the norms and Courts' decisions which could have an impact on the case, in order to assess his legal arguments.

Ross Intelligence is one example of how AI can play a prominent role when it comes to legal research. This innovative technology not only provides cases you are searching for, highlighting the most relevant information, but also finds out other cases related to the query and shows how they are linked to each other.

One of the most efficient profiles that characterize Ross Intelligence relates to the natural language search capability of the software that allows lawyers to phrase questions as they would ask them if they were talking to a colleague. The queries, indeed, can be typed into a search engine or spoken aloud with voice search, thus making interactions feel exactly like interaction with humans.

Finally, in the field of judicial activity, benefits for the legal profession can be obtained on the basis of prediction technologies that are able to foresee, with a good percentage of success in Common Law legal systems, the outcome of a litigation. This type of technology analyzes past legal reference data to provide insights into future outcomes. Such solutions are clearly favorable to evaluate a litigant's probability of winning by being shown "the win rate" in a certain court, taking into account similar cases.

For instance, software as Ravel Law can identify the outcome of litigation on the basis of former relevant precedents memorized in data bases, and software as Casetext can help lawyers foresee the opposing counsel's arguments by collecting the published papers that provide legal analyses about similar cases.

In light of the above considerations, it shall be noted that difficulties may arise, in the use of AI tools, during both the out-of-court and the litigation phase, with regard, in particular, to the preliminary stage of the dispute.

The interpretation of the contract can be problematic for AI's software, due to the fact that the variation of even a single word can make a big difference and the software's vocabulary can be not sufficiently extended as to recognize all the terms used in the different types of contracts. If we think, for example, to the shape and complexity of the charter parties, in their different forms, we can easily imagine how difficult it could be for a lawyer to teach the AI software all the legal terms and clauses that those agreements can contain.

Complications can also arise if we consider one of the main characteristic of Maritime Law, represented by the role of uses (soft law), which on the one hand have always a certain importance in the interpretation of norms and contracts' clauses and, on the other hand, being not written can not be easily transmitted and taught to the AI.

Moreover, if we focus, for example, on disputes relating to cargo claims or ship arrests, a number of critical issues may arise, in the use of an AI tool, with regard to the identification of the different Parties' obligations and liabilities, of the jurisdiction and applicable law and especially of the legal implications deriving from the detection of the time and place where the damages occurred (e.g. in case of a multimodal transport or of the presence of an insurance for the benefit of those it may concern). That said, considering the number of difficulties that may arise in this kind of disputes, it seems not easy to see the risk that AI can fully replace the role of human lawyers.

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In conclusion, facing with the constant development of technology, further researches will have to be performed and further discussions will have to be held in the near future, in order to answer the million-dollar question: are lawyers dinosaurs on the way to extinction or to a new challenging evolution?

ARTIFICIAL INTELLIGENCE TOOLS FOR MARITIME CASUALTIES INVESTIGATIONS

Bernardo Melo Graf

In first terms, reference should be made to the United Nations Convention on the Law of the Sea (UNCLOS), in article 94 with referee to the Duties of the flag State in his parrara 7 says:

“Each State shall cause an inquiry to be held by or before a suitably qualified person or persons into every marine casualty or incident of navigation on the high seas involving a ship flying its flag and causing loss of life or serious injury to nationals of another State or serious damage to ships or installations of another State or to the marine environment. The flag State and the other State shall cooperate in the conduct of any inquiry held by that other State into any such marine casualty or incident of navigation.”

Hence, the IMO took the task of carrying out a procedure for notification of maritime safety and casualties investigations that is carried out in accordance with the following legal instruments:

1. Code of International Standards and Recommended Practices for a Safety Investigation into a Marine Casualty or Marine Incident (Casualty Investigation Code), 2008 edition (resolution MSC.255(84)), paragraph 14.1, chapter 14 of the mandatory Part II;
 2. Guidelines to assist investigators in the implementation of the Casualty Investigation Code (resolution MSC.255(84) (resolution A.1075(28)));
 3. Safety of fishermen at sea, resolution A.646(16), paragraph 3;
 4. Reports on casualty statistics concerning fishing vessels and fishermen at sea, MSC/Circ.539/Add.2, paragraph 2;
 5. Report on fishing vessels and fishermen statistics, MSC/Circ.753, paragraph 3;
 6. Provision of preliminary information on serious and very serious casualties by rescue co-ordination centres, MSC/Circ.802, paragraph 3;
 7. Guidance on near-miss reporting, MSC-MEPC.7/Circ.7, paragraph 4; and
 8. Casualty-related matters, Reports on marine casualties and incidents, MSC MEPC.3/Circ.4/Rev.1, paragraphs 6 and 8.
- The IMO Secretariat worked with the European Maritime Safety Agency (EMSA) for harmonizing reporting procedures with the European Marine

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Casualty Information Platform (EMCIP) and avoiding duplication of reporting.

Within the guidelines to assist investigators in the implementation of the Casualty Investigation Code we must obtain a sufficient amount of documents that for reasons of time we will not analyze in their entirety, but which we will refer to some of them in their practical approach and in such a way that we can better understand the approach that a smart machine might have with these to provide us in a fast and efficient way information relevant to maritime claims investigation and this way to help both the State Authorities and the lawyers in charge of defending the interests of each of the parties involved in these claims.

The following is a list of the documents to be produced:

Ship's register
Current statutory certificates
ISM Code certification
Classification society or survey authority certificates
Official log book
Crew list
Crew qualifications (see also 1.4 of these Guidelines)
Deck log book
Port log, log abstract and cargo log book
Engine movement book
Engine-room log book
Data logger print-out
Course recorder chart
Echo sounder chart
Oil record book
Soundings book
Night order book
Master's/Chief Engineer's Standing Orders
Company Standing Orders/
Operations Manual
Company Safety Manual
Compass error book or records
Radar log book
Planned maintenance schedules
Repair requisition records
Articles of Agreement
Bar records - daily purchases - voyage receipts, etc.
Records of drug and alcohol tests
Passenger list
Radio log
Ship Reporting records
Voyage Plan
Charts and record of chart corrections
Equipment/machinery manufacturer's operational/maintenance manuals
Any other documentation relevant to the inquiry

For reasons of time we will not analyze each and everyone in this paper but will give some concepts and example to understand how machines will carry out this for us.

However, we need to know the tools that modern technology has for us for the practice of law and in particular maritime claims investigations, so we must first talk about artificial intelligence and for that purpose we need to know the different branches and subbranches of this discipline of science and for that we need a conceptual map, so that we can be clear exactly what we mean when we talk about artificial intelligence, machine learning, neural networks, big data or deep learning.

The concepts that we will study are usually understood or interpreted differently and therefore end up being used with great confusion.

Trying to give an exact definition of what artificial intelligence is, is a very difficult task since it is a concept that depends on the conceptualization of intelligence itself, which to this day, still has multiple and varied interpretations of this, so when we try to define what artificial intelligence is, we also encounter many authors who define it in their own way, Andreas Kaplan and Michael Haenlein define artificial intelligence as “the ability of a system to interpret external data, to learn from that data and use that knowledge to achieve concrete tasks and goals through flexible adaptation.”⁵²

As we can see, artificial intelligence is its branch of computing that seeks the creation of machines that can imitate intelligent behaviors, in other words assimilate data, study it and thus learn from it, resulting in actions that are not previously programmed but the result of assimilated knowledge.

These behaviors can be very diverse from driving vehicles to analyzing patterns, recognizing voices or analyzing documents, etc. there are many ways in which a machine can simulate intelligent behavior and we increasingly have examples of how in certain areas achieve higher human performance.

That doesn't necessarily make them better or more capable than us, nor does it mean that lawyers are going to be displaced by artificial intelligences, but it does mean that our work will be different in the future.

52 «Andreas Kaplan; Michael Haenlein (2019) Siri, Siri in my Hand, who's the Fairest in the Land? On the Interpretations, Illustrations and Implications of Artificial Intelligence, Business Horizons, 62(1), 15-25».

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To better understand, let's look at a first classification of artificial intelligences that currently exist and are divided into two groups, weak and strong.

We mean that artificial intelligence is weak when we talk about those systems that can only perform a very limited set of tasks, for example no matter how much you have taught a computer to seek court resolutions, it will not be able to do something different like drafting a contract, which would not be the expected result, but on the contrary, strong type artificial intelligences refer to those that are able to apply to a wide variety of different problems and domains.

We have that within the field of artificial intelligence we can find different subcategories that respond to different intelligent behaviors for example if you look at the ability to move and adapt to the environment we mean the field of robotics or if we mean the ability to understand language we have the field of natural language processing (NLP) or the ability to perform speech-to-text conversion or text-to-speech conversion called Speech Recognition, all these capabilities make up branches of artificial intelligence, but yet if there is one of them that really defines us as intelligent agents is the ability to learn i.e. machine learning.

Machine learning is the subfield of computer science and a branch of artificial intelligence, which aims to develop techniques that allow computers learn. It is said that an agent learns when their performance improves with experience; that is, when the skill was not present in its genotype or birth traits.⁵³

This is the branch of artificial intelligence that studies how to equip machines with learning capacity, understood as the generalization of knowledge from a set of experiences, this learning can be divided into three different groups learning 1) supervised; 2) Unsupervised and 3) reinforced, therefore we are already clear that machine learning is a discipline within the field of artificial intelligence but it is not any discipline, its a nuclear component that actually relates to the rest of categories.

It is common to confuse artificial intelligences with machine learning, but it is not the same to program a machine to perform a task, that programming it to learn how to do tasks, in other words it is different to read a Law, than to learn to interpret the same.

53 Russell, Stuart; Norvig, Peter (2009). *Inteligencia Artificial: Un Enfoque Moderno* (3rd edición). p. 229.

Within machine learning we find a new world where there are different techniques that serve to cover different types of applications for example we have techniques such as decision trees, regression models, classification models, clustering techniques and many others however one of the most popular over the last decade these are neural networks, the interesting thing about neural networks is that they are able to learn in a hierarchical way, let's say that information is learned by levels where the first layers learn specific concepts such as pencil, paper, pen and in the back layers, information learned previously is used to learn more abstract concepts such as a book, a dictionary, a document, this means that as we add more layers the information we learn is increasingly abstract and interesting and how many layers we can put because there is no limit and the trend is that these algorithms add more and more layers becoming algorithms becoming more and so this increase in the number of layers and complexity is what makes these algorithms known as deep learning algorithms.

We can understand deep learning as the subbranch of artificial intelligence that learns from large volumes of information.

The complexity of these algorithms might seem unnecessary, but we are currently living in an era where the volume of information circulating on computer networks is abysmal and the trend is not to get rid of information but to accumulate it, because of the cheaper storage media is now a days and these large pieces of information are called "Big Data", but it is also often referred to in the same way to the technique by which these large pieces of information are analyzed.

Having already spoken of each of the subdivisions of artificial intelligence, we are quick to give a few examples of concrete application to them, applying it to some of the documents that we have listed of a maritime accident.

Certificates of competence.

In this case, we can apply the so-called Deep Learning, which is able to identify, by facial recognition of the photograph, whether the person is the same as to which the certificate of competence was granted and also know if within its capabilities is to carry out the tasks of the crew that is required by the ship for navigation.

Crew statements.

In this document you can apply what we know as Natural Language Processing NLP, to find similarities or differences between the different statements of the crew.

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Nautical charts

Nautical charts can be subjected to Deep Learning analysis to obtain the ship's navigation data before, during and after an event and thus with the help of augmented reality generate accurate simulations that may even be filed in court as evidence in many jurisdictions.

To all the documents of all maritime accidents we can apply Big Data technique in order to analyze, predict and prevent maritime accidents in the future.

SMART CONTRACTS

Javier Cardoso

Technology has been used as an important and complementary tool throughout time, and it has become more and more necessary in daily activities, including the exercising of different jobs and professions.

Nowadays, artificial intelligence is our number one aid, we have become dependent to its use and it is present from the starting of our day, with a simple programmed alarm, to the dimming of lights in our apartments by the use of “Alexa” for instance.

Technology, great as it is, is able to follow commands that have been created by a human who codifies the devices’ behavior. This set of rules and codes, allows a machine to automatically solve a simple inquiry.

The programmer or codifier is the main director of this orchestra. This party is the one that implements all the information and procedures that the machine must follow, just by the mention of certain words or by a combination of sentences that had been previously analyzed and predicted by its creator.⁵⁴

Law is not an isolated field for technology’s implementation. Nowadays, we are exposed to different kinds of electronic contracts which seek to create an obligation in the least quantity of steps as possible. That’s where the term “Smart Contracts” comes to be defined. Smart contracts are considered as “self-executing agreements that exist as a set of instructions to a computer.”

Smart contracts have been defined by Nick Szabo as:

*“A computerized transaction protocol that executes the terms of a contract. The general objectives of smart contract design are to satisfy common contractual conditions (**such as payment terms, liens, confidentiality, and even enforcement**), minimize exceptions both malicious and accidental, and minimize the need for trusted intermediaries. Related economic goals included lowering fraud loss, arbitration and enforcement cost and other transaction cost”*

Smart contracts are a common current practice in which electronic commerce and contract law unify and get the chance to contact strangers located in different parts of the world in order to finalize a transaction.

54 Rhode, D. L. (2014). *Colloquium: The legal profession’s monopoly on the practice of law*. New York, NY: Fordham University School of Law.

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These types of contracts need two elements to subsist which are: the use of cryptocurrency and essential programming language.

To be able to execute the conditions of a smart contract it is mandatory that the elements of the contractual relationship are codifiable and that they are connected to a computer system. Property like: cars, telephones, houses or intangible assets must be object of blockchain control. This means that these goods can be negotiated in a contract because they are interconnected to a codified system that belongs to the smart contract. In the case of breach of any of the codified agreements, the smart contract will automatically execute the penalties that are directly tied to the “smart property”. By using this types of contracts with smart properties. Trust increases and fraud and intermediary fees are reduced.

Smart contracts are a digital version in programming language of a traditionally written agreement. In it, the rules and consequences are defined, but the difference is highlighted in the fact that once the rules of the contract’s execution have been fixed, the execution does not respond to the will of the parties, but to the fixed rules of the program.

When a smart contract is enforced by the computer system, it doesn’t require a third party to penalize the individual that has breached the agreement. The system does it itself and for that to happen, all of its operation must be carefully programmed. It is noted that in this figure, there is no room for lack of prediction or coding which will take out the effectiveness for the application of this contract. Since at the minor absence of commands, the contract won’t be able to be enforced.

This brings us to another legal issue that could arise from the application of this agreement, interpretation of smart contracts.

Interpretation

Traditional contracts reflect human will and multiple scenarios that could result from this agreement between parties, but what happens when the faith of a contract is placed on the language that a computer system can solely interpret?

Smart contracts are elaborated with computer coding and not with human language. Computer coding could just be done by a professional with a level of expertise. This person is the one who is in charge of creating commands that are assimilated to the orders or rules by which the contract must be outlined. The rules given to this third party will not always be interpreted in the language of its proponent which could cause a mistranslation.

As a consequence, courts will have the duty to face the difference between written language and coding and also they’ll have the quest of looking for the intended purpose or meaning of the contract, which could

have been deformed by the translation from the computer programmer, who is not a legal consultant.

When mistranslation matters come along, judges will have to rely on basic interpretation principles (common or civil law) which will help them determine the final agreement by which the coding was elaborated. Judges could also count on the intervention of an expert computer programmer that could conclude if the smart contract matches the instructions issued by the contracting parties.

Rectification

What does rectification mean?

Rectification according to Guillermo Cabanellas is defined as the clarification of a truth that has been altered or modified by mistake or malice. It is also thought as the healing of a document.

As we all know traditional contracts are subject to mistakes, those mistakes could be done regarding the semantics of the contract or the will of the parties which has not been evidenced as it was intended to. This situation is not far from smart contracts.

Rectification in smart contracts is normally focused on the modification of the language used by the coder to have symmetry with the intention of the contracting parties. The information displayed in the contract must be the exact materialization of their previous agreement.

As in traditional contractual law the rectification could be done when there are inconsistencies between substantive agreements and its external expression. In the case of smart contracts, the English Contractual Law have developed two different views to analyze the nature of the intention of the contracting parties and they are the subjective and the objective view. The objective view focuses its importance in what a third party has understood from the agreement while the subjective view focuses on which was the real intended purpose of the parties initially, which will be the only hint to determine whether a mistakes has been done or not. In Civil Law instead, the courts will focus only in substantive rules.

Therefore, the process of rectification applied in smart contracts shall be complex and it shall depend on whether it was initially written in programming code or if there was an agreement between parties that could serve as the grounds to the contract. This agreement could be used as a background in court to establish what the parties wanted to pursue.

To conclude, we are in a world that keeps evolving. Technology is the result of such evolution, and it is found everywhere currently. This means that different fields should move at the same rate and Law is not the exception. Even though, there are many legal loopholes today. Legislators and Courts should constantly work on creating and

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modifying the legal framework that includes this phenomenon and that could be applicable to the different issues that arise from the use of new technologies, which in the near future will substitute traditional negotiations and contracts.

THE IMPACT OF AUTONOMOUS SHIPS ON THE PROFESSION OF SHIPPING LAWYERS

Morgane Roussel

I. INTRODUCTION

Maritime law is a conservative area of law, where traditions are not easily discarded: some of its principles as the status of the master, liability in collisions or carriage of goods, limitation of liability were enunciated in the Ancient World. For two centuries, shipping industry is continuously evolving and integrating new technology (motorization, containerization) yet so far underlying concepts and practices have not been substantially affected, except maybe to adjust to the increasing environmental concerns.

However, these past two years the technological evolution has been so considerable, with the fast development of blockchain and unmanned ships, that it has more the appearance of a revolution.

And while technology has long been considered as a tool for seamen, it is now witnessed that it is completely replacing them, with the design of ships free of any human interaction whatsoever and completely operated by highly sophisticated software technology, control algorithms and sonar radar.

But what impact would it then have on the profession of shipping lawyers?

The first reaction would be that it will inevitably lead to a decrease of the number of accidents and marine casualties and thus of claims, and *ipso facto* the business of shipping lawyers, insofar as technology would be more reliable than human being, insofar as its behaviour is purely automated so that it would react equally in a same manner to any predefined event, while human behaviour differs, even in an identical situation, depending on the identity of the person in charge, its experience, psychology, mood, physical condition or other subjective parameters.

This would obviously bring shipping lawyers to consider diverting their activity within or outside the legal profession.

But when reflecting further, looking also back to past industrial revolutions in other fields which also carried similar predictions, that did not come true, autonomous ships may well, on the contrary, bring shipping lawyers to reconsider their understanding of civil law **(1)** to seek solutions so to adapt the maritime international conventions and national laws to the automated ships **(2)** and to enlarge their scope of knowledge and practice to cover other ancillary fields **(3)**.

1. Reconsidering the understanding of civil liability

The civil liability system, which is mainly based on the notion of risk and correlatively on human intervention will surely be disrupted, whether with respect of the nature and extent of the risks, the conditions of liability or the liable persons and associated liabilities.

The human behaviour plays a central role in the civil liability rules: most liabilities, in contract or in tort, are triggered by a human wrongful act or a negligence, a human breach of rules, or a human lack of due diligence and are aggravated if there is a human intent to cause a damage or recklessness, or reduced in case of mental or emotional disorders.

All these elements will disappear in the operational aspect of the maritime voyage.

As autonomous ships which navigate independently of human real-time decision making and on the basis of programs, it is difficult to find room for an assessment of fault (on part of the shipowner or his servants or agents) - unless the shipowner has failed to exercise due diligence in its operation and use of the autonomous ships or in relation to maintenance or software updates.

In fact, liability will have to be sought backstage with the actors behind the curtains.

Indeed, automated ships will surely imply an increased chain of contracts, between the owner, shipmanager, shipyard, software developer, electronic systems manufacturer, system operator, etc , with new duties and obligations on their shoulders related to maritime safety, navigational rules, sea environmental regulations, etc.

Shipping lawyers would then intervene upstream, for the drafting, negotiation and conclusion of the contracts, and, in case of incident, in the various litigations that would oppose the parties in contract, as well as in tort vis-à-vis the third party victim.

Besides, with the autonomous ships, if there is no crew on board, new staff will appear on shore, as the shore-based remote controller and/or alternatively the technology supplier actually involved in the supervision of the voyage and who may have influence on the navigation of the ship.

In any event, automated ships would anyway remain exposed to the inherent risks of a maritime voyage, I.e. natural (storm, fog, ice) and unpredictable events (fire, explosion), whereas artificial intelligence and deep learning would probably not be able to have the same intuitive feel

for the situation and probably not be able to diagnose defects in order to limit the damage and whereas new risks such as cybercriminality, technology malfunctioning and communication risks will contribute further to the unpredictable character of the events that may be faced by the ship during a sea voyage.

2. To adapt the maritime international conventions and national laws

It is difficult to examine in depth all the concepts of the international conventions and national laws that would have to be reconsidered in the light of the substitution of the human element by the automated factor.

In this respect, the CMI is doing an important work of review of the most relevant conventions regarding the navigation of ships to ascertain whether and where amendments might be required to adapt them to autonomous ships (8 of the IMO conventions such as SOLAS, COLREGS, UNCLOS, MARPOL, STCW...)

We will outline rapidly 5 concepts:

- Collision
- Seaworthiness
- Limitation of liability
- Carriage of Goods

3. To enlarge the scope of knowledge and practice to cover other ancillary fields

In the light of the above, it is obvious that the development of automated ships any accident will also have an impact on the actual practice of shipping lawyers.

Surveys regarding incidents implicating automated ships, will now occur not only at the place of occurrence of the damage occurred or of location of the vessel, but also in the different sites where the technological systems are installed and/or operated.

They will also implicate aspects more technological than related to human behaviour, which will also widen the knowledge of shipping practitioners and bring them to develop the network of their surveyors.

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With respect of the liability issues, shipping lawyers will have to widen their knowledge to cover IT liability, product liability, cybercriminality liability and the corresponding insurance policies, while intervening, outside pure litigation, to drafting IT contracts, support and contract managements, which they will have to adjust to the shipping regulations. The future is still here for shipping lawyers, until the advent of automated lawyers.

UNIFORMITY OF MARITIME LAW FROM THE LATIN AMERICAN PERSPECTIVE

Ignacio Melo Graf

INTRODUCTION

The sole mention of this theme implies touching one of the most complex points of the maritime legislations in the world.

It is well known that the approach to this problematic by the different type of countries, people and customs by creating different legal systems and further on sub-groups of those systems, implies reordering ideas in modern times, considering several historic factors, the relationship with other fields of the legal system ruling in the same country, the evolution of those systems, the development of new legislations and International Treaties during the XX century and the perspective to achieve in the future, partial or totally said unification, that without forgetting the main characteristic of Maritime Law, that is, its particularism that has been well examined by great jurists, specially French, such as Valin, Emerigon, Bonnet, Ripert, Rodière, among others.

Neither can be bypassed that the unification of maritime provisions does not stop with the unification of texts on the different topics, but after such uniformity it must be complemented over the base of harmonic interpretations between them as otherwise, the unification of legal texts on this subject would lose sense, as they may have different meanings depending on who and where they are applied.

Having this in mind, it is necessary to recur to the analysis from the mentioned angles, regarding the different legislative systems and the situation that prevails now regarding the more important themes of this area of the law. It must be pointed out that the factors to which I have referred before do not coincide in the same way and in the same proportion in all the cases, for which is necessary to value the degree that they affect these circumstances in each particular case.

The comments hereby produced correspond to a country in Latin-America which legislation is within the latin legislation system and that have as a base or origin the European countries such as Spain, France, Portugal, Italia and others. In that order of ideas, it must be reminded that throughout time, the legislation in those countries has been forming legislative bodies that have marked historic milestones that can not be

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forgotten, among which we can mention within the last millennium the “*Consulado del Mar*” (Consulate of the Sea), the “*Roles de Oleron*” (Rolls of Oleron), the “*Guía del Mar*” (Guide of the Sea) and most specially the “*Ordenanzas de Colbert*” (Ordinances of Colbert) of 1681 that has a significant influence in the Ordinances of Bilbao of 1727 that were also in force in some countries of Latin-America, as these countries became independent the Spanish legislation in force at the time remained in place, which in turn was inherited through the Napoleonic Code.

As complemente of the above historic data, the Codes of Commerce in the XIX century of the different Latin-American countries had a full book titled of the Maritime Commerce, presenting a uniformity not seen before and in some cases, they contained identical articles.

The uniformity in those legislations was not due to the labour of jurists of the time to uniform maritime provisions, but in function of political reasons and due to the fact that these regulations originated from the metropoli-colonies situation that Spain and Portugal had over the Latin American countries, reasons which explain the historical momentum of such uniformity and its origin, but in nothing assist in actual times the new uniformity labour within circumstances and times totally different.

From the second part of the XX century an inverse current occurred, that broke the uniformity of the Latin American nations, that, in an attempt to modernize their legislations, enact new laws related to the maritime law and law of the sea that little by little leave the uniformity that prevailed in those legislations behind, such as the Argentinian Navigation Law, the Reforms of the Commerce Codes in the part of the Maritime Commerce in Chile, the promulgation of new acts, such as in Mexico 1963-1994-2006, Venezuela 2000, etc. Simultaneously those same Latin American countries adopted some International Treaties specially in themes in which the circumstances demanded, but not following a uniformity nor a consensus with the countries of similar legal systems, such as Latin America, and even less with other legal groups with whom the similarities were less.

The great increment of the world trade, as well as the tendency towards globalization, have forced to bring back to the international forums the theme of the uniformity of Maritime Law, not only on the level of legal groups but in general to all legal systems, which is the challenge we now face.

It is imperative to trace a clear strategy in which it is contemplated all the angles of the problem and in the stages in which realistically can be carried on.

Regarding this, we think that we are now before endless maritime regulations of remarkable asymmetry most of them, very advanced regarding the practice on the countries with a lot of maritime commerce and others that, due to circumstances beyond the countries, have been left behind, which takes us to a first problem, the need to armonice endless legal regulations, some that originate in countries in which the customs and habits have developed them in an accelerated way and others in which such customs and habits have been slower.

Neither we can ignore that the special circumstances in each country put forward diverse problems to reach this final goal and that is another of the obstacles to sort out, more than other because, as previously mentioned, the regulations of the Maritime Law must be in strict harmony with the Laws in force in the same space.

On the other hand, the different working groups in the Committee Maritime International have pointed out what is considered an important theme in Maritime Law and that is described in the International Working Group in the 2016 CMI Yearbook Volume II at page 261, we will refer to those topics in which most uniformity has been achieved and those in which there is still a long road ahead.

It is also important to mention that although the subject in discussion refers to the uniformity of the Maritime Law, all sources of the law must be included, such as the contracts and rules to which the parties subject themselves, not by law order but by their free will in certain commercial acts executed in the sea o through the sea and that certain international organism have drawn with name and code namer and that are updated by the same parties that carry commercial acts using this regulated contracts carrying on periodic revisions that grant the parties a legal frame updated and fair.

Regarding the rules of commercial nature for certain aspect of the conduct of men at sea, and that has been kept updated and uniform through the continuos work of certain international organisms such as the CMI and the ICC, to which we will refer later on, we must point out that some of this subjects can be revised by this international organisms without being an International Treaty or Convention therefore are easier to uniform in the legal context of certain maritime matters than the International Conventions that require much more formal and

complex forms both at international level and the internal level within the countries that ratify such Conventions,

CONTRACT FORMS

These contracts are designated under a name code, are periodically revised and updated according to the customs and habits and practices of the maritime commerce, therefore the uniformity of its clauses is given day by day by the agreement of the parties. This phenomenon is observed specially in the different charter parties forms.

In the matter of agreements in which only the free will of the parties is involved and not the public order regulations of the different countries, several private organisms such as BIMCO, observing the commercial practice and taking into consideration the rights and obligations of the parties have elaborated endless contracts that cover most of the maritime practice, such as BARECON 1989, 2001 and 2017; SUPPLYTIME 1989, 2005 and 2017; SALEFORM 1987, 1993 and 2012; NYPE 1993, 2015, etc.

In salvage matters there is the Lloyds Open Form, with 12 revisions, the latests in 1980, 1990, 1995 and 2011 that allow a fast response in dangerous situations in salvage.

RULES

We must also mention that the rules that exist referred to certain aspect of Maritime Law, such as York-Antwerp in general average, the International Commerce Terms (INCOTERMS) and others, are periodically revised in such a way to preserve the uniformity of certain commercial practices to which they refer to and, in all cases try to maintain a universal uniformity in this matters, although they have not the force of an International Treaty they do have a universal application by the pact of the partes that it is included in all the documents in which they are referred to, such as contracts of carriage which always refer the liquidation of any potential or possible general average according to Antwerp-York rules; or in cases of international sale-purchase operations normally refer to the obligations international commerce terms (INCOTERMS) and, as a consequence, in first place, the parties are clear as to the rights and liabilities of each of them and, second, the periodical revision of these rules maintain them up to date and looking for the best uniformity possible in its application.

In the case of York-Antwerp the texts have been revised and the last revisions have been in 1864, 1877, 1890, 1924, 1950, 1974, 1994, 2004

and 2016; in the case of the Incoterms the revisions to the texts have been on 1923, 1928, 1936, 1953, 1967, 1976, 1980, 1990, 2000 and 2010.

LEGISLATIONS

Regarding the uniformity of legislations we must point out the achievements of the United Nations Conference on the Law of the Sea (UNCLOS) signed at Montego Bay, Jamaica on December 10th, 1982, to the degree that, despite having multiple changes on traditional concepts, it is now one of the International Treaties with the most ample space application in the world.

The same can be said about the Safety of Live at Sea (SOLAS) treaty, which has been a great success in its ratification and application.

However, and despite above success obtained in those areas, it must be pointed out that there is not the same uniformity in several themes and where enormous efforts have been made by this Committee as well as other international bodies such as UN, UNCTAD, UNCITRAL, etc.; and perhaps the best example of this is the carriage of goods under bill of lading in which for many decades its legal frame was centered in the International Convention for the Unification of Certain Rules for Carriage Under a Bill of Lading (Hague Rules 1924) and its amendments by the Visby protocol, and the protocol Special Drawing Rights (SDR) of 1979, ordinances that have been incorporated by 9 Spanish speaking countries.

However, when it was necessary the revision of this International Treaties, uniformity was lost and the regulations in this matter run in parallel by the Hamburg Rules that correspond to the United Nation Convention on the Carriage of Goods by Sea, to which only 3 Latin American countries have incorporated, being these rules incompatible with the Hague-Visby Rules.

In an effort of unification of this rules, several International Organisms worked jointly to produce a new instrument to be executed as an International Treaty, which was named as the Convention on Contract for the International Transport of Goods in Whole or in Part by Sea, known in abbreviated form as the Rules of Rotterdam.

This document was signed on September 23rd, 2009 by 25 countries, none of them from Latin America, just Spain as Spanish speaking and until now it has not enter into force as its article 94 requires of the deposit

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of 20 ratification, acceptance, approval or accession instruments, and only three from Africa and one from Europe has been received.

Much has been written about the regulations on this matter, specially since the dislocation produced during the revision of the Visby Protocol and the signing of the Hamburg Rules and the matter has been extensively discussed in all international forums, however we think that the actual state of this matter is far from having a happy ending or an harmonization or unification desired.

There are other themes that without the difficulty of that discussed before require also special attention for its unification, will refer only to some of them as it would be impossible a deep study of all.

In some cases the incident factors to achieve the uniformity refer to very special circumstances in the commerce or exploitation of the seas or the sea bottom, being these factors which at the end determine the adhesion of certain countries to the Conventions that affect such special circumstances, for example those countries with an extensive oil commerce, exploitation and traffic are directly affected by the CLC and FUND Conventions, etc.

Another of the subjects that are worth of a profound reflection is the Limitation of Liability. For a long time the differendum in this subject was centered in the legal systems that handled the limitation of liability under the basis of the *Fortune de Mer* while the Common Law systems limited the responsibility based on the tonnage of the vessels, situation that is now in the past, prevailing nowadays the limitation of liability based on the gross tonnage, as established in the LLMC convention of 1976 and its amendment protocol of 1996. In the world this liability system has prevailed while the *Fortune de Mer* is now almost not used anymore.

However, the LLMC has not had the ratification of Latin-American countries except for Mexico that has adopted the 1976 text, but not the amendment protocol and, on the other hand, Spain denounced the ratification of the 1976 text and adhered to the 1996 one, which implies a manifest rejection by Latin-America to this Convention. It is our opinion that from all the systems of limitation of liability, the mentioned text is the most adequate in this matter, being the reason of Mexico's adoption.

In the matter of lien and mortgages in which for many decades the 1926 convention was in force and that now the 1993 was signed, the 1967 never went into force. The 1993 text entered into force on September

5th, 2004 and have entered as parties Ecuador, Peru and Spain, from the Spanish speaking countries. Mexico, despite that until now has not ratified the convention, since 1994 incorporated in its national legislation almost identically, the basics of said Convention, in the 1994 Navigation Act and the 2006 Maritime Navigation and Commerce Act, therefore we think that it should not present any mayor problems to the rest of the Spanish speaking countries as it will not affect the rest of their legislation and will indeed harmonize with it.

It is of special interest the International Convention an Arrest of Ships of 1999 as it reviews and revisits some of the topics of the 1952 Convention and that in fact we are of the opinion that it has any unsurmountable problems with the different legislative systems, for which, even when it has to date only 2 ratifications from the Spanish speaking countries, its text does not prevent the states the ratification, which is the case of Mexico that is seriously considering its adoption.

We could continue making general comments in other subjects of possible uniformity, however we believe that the most adequate avenue is to study case by case in depth, instead of just making general comments and to pursue a generalized system that contemplates the main factors that affect the harmonization of the systems that have legal structures with much difference between them.

CONCLUSIONS

In the harmonization, uniformity and unification efforts of the subjects of maritime law and law of the sea we estimate that we should take into consideration first, the legislative group to which each country belongs to, as the harmony of different branches of the law can not be lost against the unification of just one branch of the law with the rest of the countries and, in this case, regarding maritime law and law of the sea, the two main legal systems are the english system (Common Law) and the group of latin legislations, and to achieve the most common ground, it will allow to advance notably in the unification.

Other of the extraordinarily important points are the political considerations that prevail in each country and that affect the maritime legislations and the possibility of any agreement for harmonization effects with other countries with a different political situation, without loosing sight that, any modification, as occurred with the Hague Visby Rules, may give birth to contradictory international conventions that may potentially create greater divisions.

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It is also of special importance to consider the particular circumstances of some countries, that force them to adopt or reject specific legal provisions of Maritime Law or Law of the Sea, as for example, in the countries with major oil movements regarding the CLC and the FUND.

Regardless of above, as before mentioned, there is not only an effort to unify the texts of laws and International Treaties, but also the efforts for unification must not stop in this but to try for those text to be interpreted in a uniform manner within the decisions of each countries Courts. We have observed that despite having clear texts, the interpretation criteria have not been uniform a hundred percent and although the cases of discrepancies are not much, the tendency must be to search also for this uniformity in interpretation, being our opinion that, in some form, either in the introduction or in the signature of the treaty or any other related document or in the texts, to look for clear interpretations that leave no place for doubts.

A Latin American Perspective, by José Vicente Guzmán Escobar

A LATIN AMERICAN PERSPECIVE⁵⁵

José Vicente Guzmán Escobar⁵⁶

Abstract

Usages and customs of maritime navigation and trade were the primary source of maritime law, as well as the first tool to procure its uniformity. Below international conventions and national legislations, usages and customs remain a secondary source of maritime law. However, this depends on the wording of national provisions concerning the sources of this field of the law. This article analyses the role of usages and customs as a source of maritime law in several Latin-American countries and presents a possible solution to recover their importance, in the context of the work conducted by the Comité Maritime International on this subject.

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Introduction

The purpose of the International Working Group of the *Comité Maritime International* – CMI – on the *Lex Maritima* is to advance a systematic and orderly compilation of the general and internationally accepted principles of maritime law, in order to have a tool for consultation, interpretation and application of maritime law and practice in all jurisdictions.

The *Lex Maritima* is a set of principles, usages and customs of maritime law. Many of them have existed for centuries and have even been considered as legal rules in many jurisdictions. Accordingly, they have been incorporated in international treaties, national laws, judicial decisions, doctrine, non-binding guidelines, model laws and generally accepted practices among the international maritime community.

Nevertheless, these principles, usages and customs of maritime navigation and trade have not yet been identified and compiled in a systematic and organized set of rules. It is for this reason that the CMI has pursued this endeavor.

It is a well-known fact by those who have either studied or practiced maritime law that this field of the law was born and developed precisely from the usages and customs of maritime navigation and trade. Very early in time, indeed, they were been incorporated into written sets of rules, such as the “*Rooles de Oleron*” or the “*Consulado del Mar*” of Barcelona. Following the appearance of the first national States, and the enactment of their constitutions and national maritime codifications, usages and custom have lost the place they used to have as the original sources of maritime law.

Despite this circumstance, it does not mean that usages and custom have lost their importance or that they are not anymore a source of maritime law. On the contrary, they are still present and contribute permanently to rules of behavior and the regulation of maritime activities, as it is recognized by doctrine and case law. However, their current importance within the sources of maritime law depends more and more on the way they are provided as such in national legislations.

This makes it necessary to briefly examine the maritime legislation of some Latin American States.⁵⁷ Therefore, in order to attempt an identification of the *Lex Maritima* in Latin America (II), this article will first refer to national laws regarding the sources of maritime law in several Latin-American States with a particular focus on whether usages and custom are provided for as sources of maritime law therein and their place among them (I).

I. Usages and Custom in the Maritime Laws of Some Latin-American States

Most maritime legislations, including those of Latin-American States, refer to usages and custom of maritime navigation and trade in several provisions regarding different aspects of these activities. Thus, it is reasonable to start this examination by stating as a preliminary fact that usages and custom can currently be considered as sources of maritime law.

This article will not refer to these punctual provisions. It will not examine how commentators and judicial authorities have interpreted and applied (respectively) usages and custom as sources of maritime law either.

Instead, the scope of this article has been limited to three issues: first, whether the maritime codes (or, in their absence, their maritime laws) of some Latin-American States set forth the sources of maritime law; second, whether usages and custom are included among the sources of maritime law; and, third, whether there is a hierarchy of these sources in which usages and custom occupy a certain place.

Not all Latin-American legislations include usages and custom as a source of their maritime law. The maritime laws examined in this article have been limited to those of certain countries precisely because a study and analysis of the maritime laws in every Latin-American State falls out of the scope of this article. Accordingly, the Latin-American maritime laws examined in this section are those of Argentina (A), Chile (B), Venezuela (C), Mexico (D) and Colombia (E). Even though Spain is not a Latin-American State, its maritime laws were considered herein as well due to its cultural and historical importance among Latin-American States (F).

57 According to the definition found in the Spanish dictionary of the Royal Academy of the Spanish Language (*Real Academia de la Lengua Española*), the word "Latin-American" is the name given to the "group of countries in America which were colonized by Latin nations, namely Spain, Portugal or France". Nevertheless, countries whose official language is either Spanish or Portuguese or where either of these languages is the most frequently spoken. Consequently, the following countries are considered Latin-American in this article: Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Cuba, Ecuador, El Salvador, Guatemala, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Paraguay, Panama, Peru, Puerto Rico, Dominican Republic, Uruguay and Venezuela.

A. Argentina

Article 1 of the Argentinian Navigation Act (Law 20.094 of 1973) sets forth a rule regarding the sources of maritime law, as follows:

Article 1. Applicable law. – Every legal matter originated in the navigation on water is governed by the rules set forth in this act, those provided for in other laws and regulations and by usages and custom. In the absence of applicable maritime law rules, and as long as analogy does not allow to arrive to a solution to the matter, common law will be applicable.

In other words, usages and custom are sources of Argentinian maritime law, but are found below laws and regulations in the hierarchy of these sources. This article also means that Argentinian law displays a tendency towards the autonomy of maritime law, as is within this field of law that solution to any matter arising out of maritime activities must primarily be sought. Usages and custom are only ancillary sources under Argentinian maritime law, as well as the analogy of the rules of the Argentinian Navigation act. Only when a solution cannot be found in accordance to these rules common law will be applicable.

B. Chile

Article 1 of the 1978 Chilean Navigation Act sets forth two paramount features of Chilean maritime law: its specialty and its autonomy. According to this article, every maritime activity is governed by the special rules set forth therein, which prevail over every other maritime rule:

Article 1. – All the activities which are part of (or are related with) navigation will be governed by this act and the rules herein will prevail over any other maritime law rule in force.

Thus, the Chilean Navigation Act does not mention usages nor custom among the sources of Chilean maritime law. This does not mean that custom is not a source of Chilean law. Article 5 of the Chilean Commercial Code, indeed, states that “commercial practices fill the silence of the law when they are uniform, public, generally executed either nationwide or in a specific place and reiterated during a long period of time, which will be determined by commercial tribunals.”⁵⁸

58 Chilean Commercial Code. Art. 4th. Commercial customs fill the silence of the law, when

However, this is a reference to custom in general, instead of maritime custom in particular.

Book Third of the Chilean Commercial Code (Maritime Navigation and Trade) sets forth a rule concerning the proof of maritime custom, which allows an easier application to the matters governed by this book. This rule is contained in Article 825, according to which:

Article 825. In the matters within the scope of this Book, custom can be proven, other than the forms mentioned in Article 5 of this Code, by reports of experts, which will be duly analyzed by the judge in accordance with the rules of reasoned judgement

This provision does not refer to maritime custom as a source of maritime law. It only simplifies the issue of its proof so such custom will be able to fill the silence of the laws, as provides for in Article 5th of the Code of Commerce.

Therefore, usages and custom might be applied as sources of maritime law in Chile law, by virtue of the general provisions of commercial law. But neither the Chilean Navigation Act nor the Book III of the Chilean Commercial Code provide for custom as a source of maritime law. The latter only sets forth a rule regarding its proof.

C. Venezuela

The maritime law sources regime in Venezuela is set forth by Article 3 of the Maritime Commerce Act of 2001 (Official Gazette N° 5.551 of November 9, 2001).⁵⁹ This provision states the following hierarchy of maritime law sources:

1. First of all, the Maritime Commerce Act will be applied.

facts are uniform, public, generally executed either nationwide or in a specific place, and reiterated during a long period of time, which be determined by commercial tribunals. Art.5th. Authenticity of the custom can be proven to commercial tribunals, by any of the following means:

- 1.- By reliable testimony of two sentences that custom existence, have been pronounced in accordance with the rules;
 - 2.- By three public deeds prior to the events that arise the trial where evidence must be proved.
- Art. 6th. Commercial customs will be rule to determine the meaning of the words or technical phrases of the trade and to interpret the commercial acts or conventions.

59 Article 3. – The matters within the material scope of this governmental decree which are related with foreign legal systems will be governed by the relevant public international law rules, in particular those set provided for in international treaties in force in Venezuela. In their absence, Venezuelan private international law rules will be applied.

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2. Then, regarding issues related with foreign legal systems, the following rules shall be applied:
 - a. Standards of public international law on the subject, particularly those established by international treaties in force in Venezuela;
 - b. In their absence, Venezuelan international private law rules;
 - c. In their absence, analogy;
 - d. Finally, generally accepted principles of International Private Law.

Similarly, Article 4th of the 2001 Maritime Commerce Act provides that *“in matters governed by this decree-law, the facts or elements that constitute custom may be proven before the competent authority by the opinion of experts”*.

In addition, Article 2 of the 1998 Navigation Act (Extraordinary Gazette N° 5.263 of 17 September, 1998) expressly provides for the prevalence of international conventions ratified by Venezuela over its own provisions.⁶⁰

In short, Venezuela's maritime legislation also does not provide for maritime custom and usages as sources of maritime law. Article 4th of the Maritime Commerce Act only provides a special system for its proof by the opinion of experts.

In this sense, just like the case Chile, it is necessary to refer to general commercial law in order to apply maritime custom and usages as sources of Venezuelan maritime law. Article 9th of the Venezuelan Commercial Code, indeed, provides that custom is a subsidiary source of the law in the absence of a solution given by the principal sources of the law in a given matter.⁶¹

60 Article 2. –The provisions or stipulations contained in international treaties or conventions that oblige Venezuela will prevail, in the relevant matters, over the provisions of this act.

61 Article 9. – The customs of commerce fill the silence of the law when the facts are uniform, public, usually carried out in the country or in a specific community and repeated for a long period of time that will be determined under the discretion of the Commercial Courts.

D. Mexico

The Mexican maritime law sources regime is provided for by Article 6 of the 2006 Maritime Navigation and Commerce Act. This article sets forth a clear hierarchy among these sources:

1. Mexico's Maritime Navigation and Commerce Act of 2006, its regulations and international treaties, predominantly. In the absence of a special rule applicable among them, the following shall be applicable.
2. The National Property General Act;
3. The Federal Sea Act;
4. The Ports Act;
5. The Commercial Code and the General Law of Securities and Credit Transactions;
6. The Federal Economic Competition Act;
7. The Federal Administrative Procedure Act;
8. The Federal Civil Code and the Federal Code of Civil Procedure;
9. The law applicable to the Insurance Contract and the General Insurance of Mutual Institutions and Corporations Act;
10. The Federal Labor Act; and
11. International maritime custom and usages.

Article 264 of the 2006 Maritime Navigation and Commerce Act provides some remarkable rules for the interpretation of maritime laws and maritime contracts. The second paragraph of this article provides that judicial and administrative authorities shall consider the uniformity of maritime law in their decisions and administrative acts when interpreting international treaties and according to this paragraph. In addition, it provides that they shall also consider the uniformity of maritime law when interpreting internationally accepted contracts or standard clauses, while checking in their decisions and administrative acts that the contract or clause content corresponds to their obligational content as it is accepted in the international community.

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Thus, the Mexican Maritime Navigation and Commerce Act of 2006 expressly includes international maritime custom and usages as a source of the Mexican Maritime Law, without any need to recurring to the commercial law provisions. I would like to emphasize, on one side, that Mexican law refers to international maritime custom and, on the other side, that they are deemed as a direct source of their maritime law, with the hierarchy mentioned in Article 6 of the rules set forth in this Act.

E. Colombia

Colombia has no Maritime Navigation and Commerce Act. The current maritime legislation is disarticulated, incomplete and outdated.

Colombian Maritime Law is mostly found in the Code of Commerce of 1971; but its content and structure were already outdated in front of the international legal developments by the time of its enactment. Another important part of the Colombian Maritime Law can be found in the Decree Law N° 2324 of 1984; even though his decree has been of great importance for the strengthening of the Maritime Authority, it shows evident needs of actualization in aspects such as the applicable procedure for the investigation of incidents, accidents and maritime casualties, the regime of fines and sanctions, the administrative regime of the ship and naval artifacts, the shipbuilding activities and marine and coastal explorations, among other subjects. There are other Acts regulating some aspects of the maritime industry, such as Act 730 of 2001 regarding ship's registration and the Act 658 of 2001 on pilotage service. Both Acts have been criticized and they also need to be reviewed and updated.

As mentioned before, Colombian Maritime Legislation is incomplete, disarticulated and outdated.

Incomplete, because there is no an integral and comprehensive regulation of the subject, since Colombia does not have laws on very important aspects of the maritime navigation, such as the towage contract, wreck removal, off-shore activities, as well as tourist sporting and recreational navigation among others. It is disarticulated, since it does not have a system of principles and sources to allow the interaction of Colombian Maritime Law with other fields of law.

Colombian Maritime Law is outdated for three reasons: Colombia has yet to ratify several international conventions that other countries have long ratified. Colombian Maritime Legislation does not provide for subjects and figures of maritime navigation of widespread acceptance not only in the international community, but also in national maritime trade (such as the protective agent of the ship, the effective carrier, the port handling contract, etc.). Finally, almost all of its legislation predates the political constitution of 1991 and the economic liberalization undertaken by

Colombia since 1990. This implies that this legislation is not harmonized with the current constitutional order, which has been in force for 25 years, nor with the tendencies favorable to economic integration and globalization, which have marked Colombian economic policy since the same period.⁶²

The foregoing considerations mean that Colombia does not have its own system of Maritime Law sources. In addition, there are also no normative provisions providing for usages and custom as sources of its Maritime Law.

Usages and custom are only provided as sources of commercial law, according to articles 3rd, 5th and 7th of the Colombian Commerce Code⁶³. Then, by way of the general commercial law, usages and custom of maritime navigation and commerce may become a source of maritime law.

In Colombia the custom has the same authority than the law, as soon as it is neither manifestly nor tacitly contrary to the law and that the constitutive facts of the same are public, uniform and reiterated where the obligations are to be fulfilled or where the relationships governed by such custom originate (art. 3rd of the Code of Commerce). In addition, custom also has an interpretative function, since it is used to determine the meaning of technical words or phrases of commerce and to construe commercial behaviors and conventions (art. 5th of the Code of Commerce). Finally, international trade custom which meet the requisites of publicity, uniformity and iteration may apply in subsidiarity to national law and local custom.

62 Colombian Maritime Law has not always been dispersed and disarticulated. Before 1971, on the contrary, Colombia had a Maritime Commerce Code, which entered into force in 1870, was reformed in 1873 and adopted as the Law of the Republic by Law 57 of 1887. This Code fully regulated the matter and provided for the existence of commercial courts, whose mission was to apply the Code; this was a normative collection that, at the time (but still today) constituted a true Colombian Maritime regime, whose study and analysis are beyond the scope of this article.

63 Article 3. Validity of Commercial Custom. The Trade Custom will have the same authority as the commercial law provided, as long as it does not contradict it manifestly or tacitly and that the constituent facts of the same one are uniform and reiterated public in the place where the benefits are to be fulfilled or arose the relationships that they must regulate. In the absence of local custom, the general of the country will be applied, provided that it fulfills the requirements set forth in the previous paragraph.

Article 5. Application of Commercial Custom. The trade customs will be, in addition, set forth in determining the meaning of the words or technical phrases of the trade and interpreting of the trade acts and agreements.

Article 7. Application of International Treaties, Conventions and Customs. The International Trade Treaties or Conventions not ratified by Colombia, International Trade Customs that meets the conditions of Article 3, as well as the general principles of commercial law, may be applied to commercial matters that cannot be solved according to the preceding rules.

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However, Colombian legislation does not have a special rule that provides for the application of usages and custom as a source of maritime law, nor special mechanisms for its proof, accreditation and compilation.

Currently, the Colombian Maritime Authority (DIMAR, for its acronym in Spanish), is promoting a comprehensive reform of Colombian Maritime Legislation. It has proposed a preliminary draft of the maritime code for consideration by the maritime industry, in order to receive comments, suggestions and contributions, with the good purpose of seeking a consensus regarding the best and most effective way to modernize Colombian Maritime Law. Regarding the subject of this writing, article 4 of the third version of this draft (published on September 26, 2019 on the DIMAR website: www.dimar.mil.co) provided for usages and custom as a source of maritime law, after the political constitution, the “international instruments” (instead of international conventions), the law (in the broad sense, not in special maritime law) and the valid stipulations of the parties.⁶⁴

In my opinion, the wording of this article relating usages and custom as sources of Colombian Maritime Law in this preliminary draft can be improved because even if it provides for a hierarchy in accordance with the Colombian legal order, it is essential to replace “international instruments” as a source of maritime law to international conventions as source of this field of the law. In addition, it is necessary to clarify the reference to the special maritime law as a source of Colombian maritime law, and not to the law in general, in order to aim for the autonomy of maritime law. Fortunately, this is only a preliminary draft which, and DIMAR is receiving and analyzing the comments on this text, therefore, I hope that the necessary adjustments can be still changed regarding this initiative on this and other respects.

F. Spain

As it has been said before, although Spain is not a Latin-American country, a brief analysis of its legislation has been included for two reasons: first, for its obvious historical and cultural influence in the region; and secondly, because Spain has adopted the most recent maritime navigation law among Spanish speaking countries, by Law 14 of 2014.

64 Preliminary draft maritime code. Version 3 (September 26 of 2019). www.dimar.mil.co.
Article 4. Sources: The Colombian Maritime Law sources are:
The Political Constitution of Colombia.
The international instruments approved by Colombia.
The Law.
The valid provisions of the arties.
The international and national maritime custom.
The mercantile custom.

Spanish law provides for a system of sources and interpretation of maritime law, the first of which establishes the following hierarchy of sources:

1. The rules of international treaties ratified by Spain and those of the European Union which govern the same matter.
2. The Maritime Navigation Act (Law 14 of 2014).
3. In supplementary form, the complementary laws and regulations.
4. In a supplementary form to the previous sources, the usages and custom relating to maritime navigation.
5. In the absence of all other sources, the analogy and Common Law.⁶⁵

I would like to emphasize on the equally important rule of interpretation provided for in the second paragraph of this article, as follows:

“2. In any case, for the interpretation of the rules of this law, the regulations contained in the international treaties in force in Spain and the convenience of promoting uniformity in the regulation of the matters which are their object will be attended”.

It means that the Spanish Maritime Navigation Act of 2014 clearly states that its interpretation must always be in accordance with the content of the international conventions in force, and must be construed and applied having regard to the convenience of promoting the uniformity of maritime law.

Thus, the Spanish Maritime Navigation Act of 2014 expressly provides for the usages and custom of maritime navigation as being a source of Spanish maritime law, in a supplementary form to the Act itself. It also sets forth a very important rule of interpretation the aim of which is to promote the internationality and uniformity of maritime law.

II. The *Lex Maritima* in Latin-America

Two trends can be observed with regard to usages and custom as the main or secondary source of maritime law in Latin-America. The first

⁶⁵ Article 2. -Sources and interpretation.

1. This law will be applied insofar as it does not conflict with the provisions of international treaties in force in Spain and with the standards of the European Union which regulate the same matter. In addition, supplementary laws and regulations and customs and additional practices relating to maritime navigation will be applied. In the absence of all this, and to the extent that recourse to analogy cannot be made, common law will be applied.

2. In any case, for the interpretation of the rules of this law, the regulations contained in the international treaties in force in Spain and the convenience of promoting uniformity in the regulation of the matters which are their object will be retained.

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consists in expressly providing for their application in special Navigation or Maritime Commerce Acts. This is the case for Mexico and Spain. The second one, consists in referring to the provisions of general commercial law relating to the custom of trade and, by this means, to include the usages and custom of navigation and maritime trade. This is the case of Chile, Venezuela and Colombia.

The first tendency may be more suited to the specialization and autonomy of maritime law than the second one. In fact, it is far more convenient for this purpose to provide expressly in the national maritime legislation that usages and custom of the maritime and trade commerce are primary or secondary sources of maritime law. It is also recommendable to provide for specific rules on proof, accreditation and collection of maritime usages and custom.

Finally, as it is the case of Spanish and Mexican legislation, it seems advisable to provide expressly that the application and interpretation of maritime navigation laws and international maritime conventions must consider the international nature of the maritime law and the convenience of promote its uniformity, for which national and international doctrine and jurisprudence should also be considered.

A. Towards a system of maritime law sources which includes usages and custom

For this purpose, I would like to suggest, as a first alternative, to create and enact special rules expressly including the usages and custom of maritime and commerce navigation as a primary or secondary source of maritime law. It can be done by amending the current navigation and maritime commerce acts for the countries that have such a special maritime law legislation. For the countries that do not have it, then it would be necessary to enact special laws on the subject with a particular system of sources with the same provision.

Based on the navigation laws of Mexico and Spain, very succinctly, a possible system of maritime law sources could provide for the following hierarchy:

1. The Political Constitution.
2. International Conventions ratified by the country.
3. The Maritime Navigation Law.
4. The decrees and regulatory resolutions of the Maritime Navigation Law.

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5. The stipulations of the parties which are not contrary to a mandatory rule.
6. The usages and custom of navigation and maritime commerce, including the usual stipulations of standard contracts.
7. The analogy applied between the laws and other special sources of maritime law.
8. Jurisprudential (case law) precedents, for countries with case law precedents system.
9. Common law, defined as the rules of other fields of the law, such as commercial law, labor law, administrative law, civil law and criminal law, with their own rules concerning the application of analogy, jurisprudence and usages and custom.

B. Functions of Maritime Usages and Custom

Depending on the legal system of each country, maritime usages and custom may have at least the following functions:

- a. Creative function of maritime law: In the event that there are gaps in navigation laws or, more generally, in maritime rules, usages and custom will have the same authority as the law, as soon as they fulfill the required conditions of publicity, uniformity and reiteration, and that their accreditation and proof can be completed in accordance with the legislation of each country.
- b. Interpretive function of maritime law: Usages and custom serve as a means of interpreting technical words and phrases in maritime matters, as well as the terms of a maritime contract and specific acts of navigation.

C. Proof, Compilation and Accreditation of Maritime Usages and Custom

Each country has specific rules concerning the proof, collection and accreditation of maritime usages and custom. These rules are usually provided for by their commercial code or their procedural codes. However, the maritime legislation of each country should also have these characteristics:

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- a. Evidence of maritime usages and custom through testimonies from traders, sailors and seafarers, among others.
- b. Accreditation of usages and custom by chambers of commerce, maritime chambers, trades exchanges or other similar institutions.

D. Suggestion of a Possible Working Plan

In order to achieve an organized, reliable and referable system of international maritime usages and custom, which could be projected as a source of international maritime law, a possible work plan could include the following actions:

3. Creation or modification of specific provisions concerning the sources of maritime law to expressly include maritime usages and custom.
4. Compilation of maritime usages and custom by National Maritime Law Associations, in collaboration with the *Comité Maritime International* and, above all, with the CMI *Lex Maritima* Working Group.
5. Accreditation of maritime usages and custom, for their easy reference, consultation and application to specific cases, through the relevant rules of each country, preferably with the participation of chambers of commerce, maritime chambers, trade exchanges or other similar institutions.

IMO CIVIL LIABILITY AND COMPENSATION CONVENTIONS: WHY MORE LATIN AMERICAN COUNTRIES JOIN AND IMPLEMENT

Jan de Boer

Objective

The objective of my presentation is to provide for a comprehensive overview of the IMO civil liability and compensation conventions, in particular the 1992 Civil Liability Convention, the 1992 Fund Convention and the 2010 HNS Convention. Thereby I will also highlight the relevant legislation that is needed for complying with these international maritime instruments.

IMO's global regulatory regime is essential for the safe and secure operation of shipping and the preservation of the oceans and atmospheric environment. Therefore, it is also essential that IMO Member States ratify and fully enforce all relevant IMO liability instruments which provide for prompt and adequate compensation in the region.

This concerns the following conventions:

- 1992 International Convention on Civil Liability for Oil Pollution Damage (CLC 1992)
- 1992 International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (FUND 1992)
- 2003 Supplementary Fund Protocol (FUND PROT 2003)
- International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea (HNS), 1996 (and its 2010 Protocol)
- International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001
- Convention on Limitation of Liability for Maritime Claims (LLMC), 1976, and its 1996 Protocol (LLMC Protocol 1996)
- Nairobi International Convention on the Removal of Wrecks, 2007
- 1989 Salvage Convention
- Athens Convention relating to the Carriage of Passengers and their Luggage by Sea (PAL), 1974, and its 2002 Protocol

IMO Civil liability regime – general information and historical background

IMO is primarily concerned with the safety of shipping and the prevention of marine pollution, but the Organization has also introduced regulations covering liability and compensation for damage, such as pollution, caused by ships. The **Torrey Canyon** disaster of 1967, which led to an intensification of IMO's technical work in preventing pollution, was also the catalyst for work on liability and compensation. Many different liability and compensation conventions were concluded from the 1969 Civil liability convention on oil pollution by ships (CLC) and the supplementary 1971 FUND Convention up to the Nairobi International Convention on the removal of wrecks, 2007. All these liability regimes contain some similar fundamental principles of liability:

- **Strict liability of the shipowner:** the registered owner of the ship in question is strictly liable to pay compensation following an incident involving HNS. This means that he is liable even in the absence of fault on his part. The fact that damage has occurred is sufficient to establish the shipowner's liability provided there is a causal link between the damage and the HNS carried on board the ship.
- **Limitation of liability:** the shipowner is normally entitled to limit his liability under an amount calculated on the basis of the units of gross tonnage (GT) of the ship.
- **Channelling of liability:** the provisions of many Conventions preclude claims for compensation being brought against individuals other than the shipowner. By requiring claims to be pursued against the shipowner, who must also take out insurance to cover such claims, it is clear who the person responsible for pollution damage is.
- **Prompt and adequate compensation:** the purpose of which is to provide adequate, prompt and effective compensation for loss or damage to the environment, and under some conventions also for damage to persons, property etc.
- **Funds for compensation:** the shipowner is liable for the loss or damage up to a certain amount, which is covered by insurance (1st tier). A compensation fund (IOPC Fund or HNS Fund) will provide additional compensation when the victims do not obtain full compensation from the shipowner or the insurer (2nd tier). The HNS Fund will be funded by those companies and other entities which receive HNS after sea transport in a Member State in excess of the thresholds laid down in the Convention.

The 1992 Civil Liability & Fund Conventions and the 2003 Supplementary Fund Protocol

As mentioned above, the background of the creation of the regime was the incident of the ship **Torrey Canyon** which caused an unprecedented scale of pollution damage, impacting coastlines, fishing waters and the livelihoods of many victims.

This incident exposed a number of serious shortcomings, in particular the absence of an international agreement on liability and compensation in the event of such a spill. It led the international community to establish, under the auspices of the IMO, a regime for pollution damage caused by spills from oil tankers. The purpose of this regime is to provide compensation to victims of pollution damage (including preventive measures) caused by 'persistent oil' from ships (tankers) through uniform international rules.

The framework for the regime was originally the 1969 International Convention on Civil Liability for Oil Pollution Damage (1969 Civil Liability Convention) and the 1971 International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (1971 Fund Convention). This regime was amended in 1992 by two Protocols, and the amended Conventions are known as the 1992 Civil Liability Convention and the 1992 Fund Convention. The 1992 Conventions entered into force on 30 May 1996 and now form the current regime.

The 1971 Fund Convention ceased to be in force on 24 May 2002 and the International Oil Pollution Compensation Fund 1971 (1971 Fund) ceased to exist with effect from 31 December 2014. A large number of States have also denounced the 1969 Civil Liability Convention.

The 1992 Civil Liability Convention

The 1992 Civil Liability Convention represents the first tier of compensation and governs the liability of shipowners for oil pollution damage resulting from spills of persistent oil from tankers. The Convention lays down the principle of strict liability for shipowners and creates a system of compulsory liability insurance. The shipowner is normally entitled to limit its liability to an amount which is linked to the tonnage of its ship.

Scope of application

The 1992 Civil Liability Convention covers pollution damage suffered in the territory, territorial sea or exclusive economic zone (EEZ) or equivalent area of a State Party to the Convention. The flag State of the tanker and the nationality of the shipowner are irrelevant for determining the scope of application.

'Pollution damage' is defined as loss or damage caused by contamination. In the case of environmental damage (other than loss of profit from impairment of the environment) compensation is restricted to costs

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actually incurred or to be incurred for reasonable measures to reinstate the contaminated environment.

The notion of pollution damage includes measures, wherever taken, to prevent or minimise pollution damage in the territory, territorial sea or EEZ or equivalent area of a State Party to the Convention ('preventive measures'). Expenses incurred for preventive measures are recoverable even when no spill of oil occurs, provided that there was a grave and imminent threat of pollution damage.

Strict liability (Article III of the 1992 CLC)

The owner of a tanker has strict liability (i.e. the owner is liable also in the absence of fault) for pollution damage caused by oil spilled from its tanker as a result of an incident. The owner is exempt from liability under the 1992 Civil Liability Convention only if it proves that:

1. the damage resulted from an act of war or a grave natural disaster, or
2. the damage was wholly caused by sabotage by a third party, or
3. the damage was wholly caused by the negligence of public authorities in maintaining lights or other navigational aids.

Limitation of liability (Article V of the 1992 CLC)

The shipowner shall be entitled to limit its liability under the 1992 Civil Liability Convention. The limits were increased on 1 November 2003.

The owner of a ship shall be entitled to limit his liability under the CLC in respect of any one incident to an aggregate amount calculated as follows:

- (a) 4,510,000 SDR for a ship not exceeding 5,000 units of gross tonnage;
- (b) for a ship with a tonnage between 5 000 and 140 000 units of tonnage, 4 510 000 SDR (US\$6.07 million) plus 631 SDR (US\$850) for each additional unit of tonnage; and
- (c) (c) for a ship of 140 000 units of tonnage or over, 89 770 000 SDR (US\$120.9 million).

The unit of account in the 1992 Conventions is the Special Drawing Right (SDR) as defined by the International Monetary Fund.

If it is proved that the pollution damage resulted from the shipowner's personal act or omission, committed with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result, the shipowner is deprived of the right to limit its liability.

Compulsory insurance (Article VII of the 1992 CLC)

The owner of a ship registered in a Contracting State and carrying more than 2,000 tons of oil in bulk as cargo shall be required to maintain insurance or other financial security to cover its liability under the 1992 Civil Liability Convention. Tankers must carry a certificate on board attesting the insurance coverage. When entering or leaving a port or terminal installation of a State Party to the 1992 Civil Liability Convention, such a certificate is required also for ships flying the flag of a State which is not Party to the 1992 Civil Liability Convention.

Claims for pollution damage under the 1992 Civil Liability Convention may be brought directly against the insurer or other person providing financial security for the owner's liability for pollution damage.

Competence of courts

Actions for compensation under the 1992 Civil Liability Convention against the shipowner or its insurer may only be brought before the Courts of the State Party to that Convention in whose territory, territorial sea or EEZ or equivalent area the damage occurred.

The 1992 Fund Convention

The 1992 Fund pays compensation to those suffering oil pollution damage in a State Party to the 1992 Fund Convention who do not obtain full compensation under the 1992 Civil Liability Convention for one of the following reasons:

1. The shipowner is exempt from liability under the 1992 Civil Liability Convention because it can invoke one of the exemptions under that Convention; or
2. the shipowner is financially incapable of meeting its obligations under the 1992 Civil Liability Convention in full and its insurance is insufficient to satisfy the claims for compensation for pollution damage; or
3. the damage exceeds the shipowner's liability under the 1992 Civil Liability Convention.

The 1992 Fund Convention, which is supplementary to the 1992 Civil Liability Convention, establishes a regime for compensating victims when the compensation under the applicable Civil Liability Convention is inadequate. This represents the second tier of compensation.

The 1992 Fund is a worldwide intergovernmental organisation established for the purpose of administering the regime of compensation created by the 1992 Fund Convention. By becoming Party to the 1992 Fund Convention, a State becomes a Member of the 1992 Fund. The Organisation has its headquarters in London.

In order to become Parties to the 1992 Fund Convention, States must also become Parties to the 1992 Civil Liability Convention.

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The 1992 Fund does not pay compensation if:

1. the damage occurred in a State which was not a Member of the 1992 Fund; or
2. the pollution damage resulted from an act of war or was caused by a spill from a warship; or
3. the claimant cannot prove that the damage resulted from an incident involving one or more ships as defined (i.e. a sea-going vessel or seaborne craft of any type whatsoever constructed or adapted for the carriage of oil in bulk as cargo).

Limit of compensation

The maximum amount payable by the 1992 Fund in respect of an incident occurring before 1 November 2003 was 135 million SDR (US\$181.8 million), including the sum actually paid by the shipowner (or its insurer) under the 1992 Civil Liability Convention. The limit was increased on 1 November 2003. The increased limit applies only to incidents occurring on or after this date.

Competence of courts

Actions for compensation under the 1992 Fund Convention against the 1992 Fund may only be brought before the Courts of the State Party to that Convention in whose territory, territorial sea or EEZ or equivalent area the damage occurred.

Experience in past incidents has shown that most claims are settled out of court.

The 2003 Fund Protocol

A third instrument, the the Protocol to the 1992 Fund Convention (Supplementary Fund Protocol), was adopted in 2003, to provide additional compensation over and above that available under the 1992 Fund Convention for pollution damage in the States that become Parties to the Protocol

This Fund represents the third tier of compensation. So far 31 States have ratified or acceded to the Protocol.

The Supplementary Fund only pays compensation for pollution damage for incidents which occur after the Protocol has entered into force for the State concerned.

Membership of the Supplementary Fund is optional and any State which is a Member of the 1992 Fund may join the Supplementary Fund.

Time bar

Rights to compensation under the 1992 CLC, the 1992 Fund Convention and the Supplementary Fund Protocol shall be extinguished unless action is brought within 3 years from the date of damage

However, in no case shall an action be brought after 6 years from the date of the incident

Claims and their settlement

The majority of claims are settled out of court within 3 years

Under the Fund Conventions, the Funds are obliged to ensure that all claimants are given equal treatment so if the total amount of the established claims exceeds the total amount of compensation available under the Civil Liability and Fund Conventions, each claimant will receive the same proportion of the loss. When there is a risk that this situation will arise, the Funds may have to restrict compensation payments to a percentage of the losses to ensure that all claimants are given equal treatment.

To be entitled to compensation, the pollution damage must result in an actual and quantifiable economic loss. The claimant must be able to show the amount of his loss or damage by producing accounting records or other appropriate evidence.

An oil pollution incident can generally give rise to claims for the following types of pollution damage:

- Cost of clean-up operations and preventive measures
- Property damage
- Economic losses in fishery, mariculture and tourism sectors:
- Environmental damage (costs of reasonable reinstatement measures actually undertaken or to be undertaken)

Legal implementation of the 2003 Fund Protocol

The 2003 Fund Protocol provisions have to be implemented on the same footing as those of the 1992 Fund Protocol.

International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea (HNS)

The HNS Convention was adopted by an international conference in 1996 and is based on the model of the Civil Liability and Fund Conventions. Similarly, the HNS Convention will establish a two-tier system for compensation to be paid in the event of accidents at sea, in this case, involving hazardous and noxious substances such as chemicals. However, it goes further in that it covers not only pollution damage but also the risks of fire and explosion, including loss of life or personal injury as well as loss of or damage to property.

Tier one will be covered by compulsory insurance taken out by shipowners, who would be able to limit their liability. In those cases where the insurance does not cover an incident, or is insufficient to satisfy the claim, a second tier of compensation will be paid from a fund, made up of

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contributions from the receivers of HNS (the HNS Fund). Contributions will be calculated according to the amount of HNS received in each Party in the preceding calendar year. The purpose of this Convention is to provide compensation for loss or damage to persons, property and the environment arising from the carriage of HNS by sea. HNS is Hazardous and Noxious Substances.

By 2009, the 1996 HNS convention had still not entered into force, due to an insufficient number of ratifications. A second international conference, held in April 2010, adopted a Protocol to the HNS convention (2010 HNS Protocol) that was designed to address practical problems that had prevented many States from ratifying the original Convention.

The 2010 Protocol will enter into force eighteen months after the date on which the following conditions are fulfilled:

- (a) at least twelve States, including four States each with not less than 2 million units of gross tonnage, have expressed their consent to be bound by it; and
- (b) the Secretary-General has received information in accordance with article 20, paragraphs 4 and 6, that those persons in such States who would be liable to contribute pursuant to article 18, paragraphs 1(a) and (c), of the Convention, as amended by this Protocol, have received during the preceding calendar year a total quantity of at least 40 million tonnes of cargo contributing to the general account.

This Convention applies to:

- any damage caused by HNS in the territory or territorial sea of Member States
- pollution damage in the exclusive economic zone (or equivalent) of Member States
- damage other than pollution damage outside the territory or territorial sea of any State
- costs of preventive measures wherever taken

This Convention does not apply to:

- pollution damage as defined in the 1992 CLC
- damage caused by a radioactive material (in the IMDG Code or IMSBC Code)
- optional – ships up to 200GT doing cabotage and carrying HNS in packaged form only

What is HNS?

The Concept of HNS is defined largely by reference to a list of individual substances that have been previously identified in a number of international Conventions and Codes designed to ensure maritime safety and prevention of pollution

- Oils, carried in bulk (Annex I to the MARPOL 73/78)
- Noxious liquid substances, carried in bulk, and mixtures (Annex II to the MARPOL 73/78)
- Dangerous liquid substances carried in bulk and dangerous products (IBC Code)
- Dangerous, hazardous and harmful substances, materials and articles in packaged form (IMDG Code)
- Liquefied gases and products (IGC Code)
- Liquid substances carried in bulk with a flashpoint not exceeding 60°C
- Solid bulk materials possessing chemical hazards (IMSBC Code and IMDG Code in effect in 1996 when carried in packaged form)

The 1996 HNS Convention and the 2010 Protocol together constitute the 2010 HNS Convention. The 2010 Protocol to the 1996 HNS Convention was designed to address the practical problems that had been perceived to prevent many States from ratifying the Convention.

Again, the principle of strict liability applies. There are a few exceptions to the shipowners' liability.

The main features of the HNS Fund are:

- Payment of compensation when:
 - damage exceeds shipowner's liability limit
 - shipowner financially incapable of meeting their obligations
 - no shipowner's liability
- Maximum compensation 250 million SDR, including shipowner's liability
- Contributions from receivers of contributing cargo in State Parties to the Convention

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- Very limited exceptions
 - damage resulted from an act of war, damage caused by a State ship
 - claimant cannot prove that damage resulted from incident involving ship(s)

Who is the receiver?

The receiver is the person who has physically received contributing cargoes after sea transport in a Member State, in a calendar year, in quantities above the threshold specified in the Convention. The Convention allows a person who physically receives HNS on behalf of a third party to designate that third party as the receiver. For LNG, the annual contribution shall be made by the receiver or by the titleholder*

Member States are also allowed to establish their own definition of ‘receiver’*

What is contributing cargo?

HNS Fund will be financed by contributions levied on persons who have received contributing cargoes after sea transport in a Member State, in a calendar year in quantities above the thresholds in the Convention.

The HNS Convention establishes four accounts:

- General;
- Oil;
- Liquefied Petroleum Gas (LPG); and
- Liquefied Natural Gas (LNG).

Article 1 of the HNS Convention

10. ‘Contributing cargo’ means any bulk HNS which is carried by sea as cargo to a port or terminal in the territory of a State Party and discharged in that State. Cargo in transit which is transferred directly, or through a port or terminal, from one ship to another, either wholly or in part, in the course of carriage from the port or terminal of original loading to the port or terminal of final destination shall be considered as contributing cargo only in respect of receipt at the final destination.

Member States are required to inform the HNS Fund of the name and address of receivers, together with the quantities of cargo received by each of them.

No compensation is payable by the HNS Fund until these reporting obligations have been fulfilled (except for death and personal injury).

Ratification and implementation issues prior to the entry into force of the 2010 HNS Convention

Each State Party to the HNS Convention is required to establish the jurisdiction of its Courts to entertain actions for compensation under this

Convention. Each Member State is also required to ensure the right of the HNS Fund to intervene in legal proceedings.

Furthermore, each Member State is required to ensure that parties to the proceedings against a shipowner or his insurer are entitled to notify the Fund of the proceedings.

IMO has taken measures to facilitate the entry into force and to provide for a harmonized interpretation of the HNS Protocol 2010. A HNS Correspondence Group has been set up to focus on **three** specific items:

- The publication of a Brochure: HNS Why it is Needed
- HNS scenarios
- The development of an IMO resolution on implementation and entry into force of the 2010 HNS Convention: the main goal is encouraging states to implement the HNS Convention and bring it into force

Conclusions

Latin-American countries that have not yet done so should accede to the 1992 CLC only and to the 1992 Fund Convention.

The IMO Legal Committee has considered that the HNS Convention is the last piece in the puzzle to ensure that those who have suffered damage caused by HNS cargoes carried on board ships have access to a comprehensive and international liability and compensation regime. The IMO Secretary-General Mr. Kitack Lim is urging all States to consider acceding to the HNS 2010 Convention as soon as possible in order to bring it into force.

WHY THE SHIPPING INDUSTRY BELIEVES MORE LATIN AMERICAN COUNTRIES SHOULD JOIN THE LIABILITY AND COMPENSATION REGIME

Kiran Khosla

1. As an international industry, shipping needs rules agreed at international level. The IMO and the 174 or so member states that comprise it has the mandate to regulate shipping and ensure its safe operation at an international level. Through wide ratification and implementation by the member states, it can ensure that these rules and standards have global application and effect. We fully support the regulation of the industry by the IMO and the rules developed there which cover all aspects of shipping.
2. These rules include the international compensation and liability regime contained in the IMO conventions we were discussing today.
3. The system provides benefits to all parties, to claimants, governments and the Industry.
4. We wholly endorse and support this regime and strongly urge everyone – legal practitioners, academics and advisers to national governments to urge their governments to ratify and implement these conventions.

Detail:

The Conventions (CLC, HNSC) agreed in the aftermath of the Torrey Canyon, place a heavy burden on the shoulders of the shipowner through their provisions on:

1. Channelling of all claims from an incident to the shipowner;
2. The strict liability of the shipowner, regardless of whether he is not actually at fault;
3. The high amount of liability which has increased significantly over the years;
4. The compulsory insurance provisions to cover this strict liability which must be certified by a State Party; and

5. The waiver of the “Pay to be Paid” rule in shipowners’ insurance policy and the imposition of the right of direct action against shipowner’s insurer.

The provisions when they were first devised in 1969 (CLC) and 1971 (FC) were novel and radical, designed to provide prompt and effective compensation.

They had a huge impact on the traditional P&I insurance system carried by shipowners. Shipowners accepted these provisions - recognising that radical solutions were needed to ensure swift compensation - as part of an overall package which included a limit of liability which was intended to be unbreakable. This limit of liability was intended to provide certainty to shipowners and their insurers, allowing shipowners to obtain insurance for the liabilities at reasonable commercial costs and ensured that insurance would continue to be available to meet these liabilities.

The second tier of compensation provided by the FC and the HNSC is paid for by the cargo industry interests. This reflects the principle that all parties interested in the maritime venture should share the risk and contribute to the compensation system.

Over the past 50 years since the CLC was adopted in 1969, the system has been proven successful and it has achieved its aims. The risks to countries that have not ratified these conventions is clear. It is not possible for countries to replicate the valuable provisions such as compulsory insurance at national or regional level: Shipowners and their insurers, the IG of P&I Clubs, will only accept the onerous obligations in the IMO regime if they are adopted at an international level such as at the IMO. Moreover, the second tier of liability paid for by cargo interests can only apply and be available if the first tier in the CLC and the HNSC is adopted and ratified. Thus, countries that have not ratified the 1992 CLC cannot participate in the 1992 FC and are excluded then from the higher limits of liability – and by extension, also excluded from the further compensation tier provided in the Supp Fund Convention.

The higher tier of compensation provided by shipowners under the FC are overseen by the states parties to that convention and through this oversight and the various guidance for claims handling and other procedures agreed and issued by the IOPCF, ensures that claims are treated equally and equitably. This ensures the integrity of the compensation system.

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In view of all the benefits to governments and to the Industry, CMI member MLAs are urged to commend the conventions to their respective governments.

LIABILITY FOR MARINE OIL POLLUTION IN CHILE

José Manuel Zapico Mackay

I. Introduction.

This paper contains a brief outline of the current state of the international conventions concerning liability for oil pollution in Chile, their relationship with domestic law and the relevant principles applied by the Chilean Supreme Court in decisions made in recent years regarding marine pollution.

II. CLC 1969⁶⁶ and 1992 Protocol⁶⁷

Chile is party to the International Convention on Civil Liability for Oil Pollution Damage 1969 (CLC 1969) since 1977.

The CLC 1992 Protocol was ratified by the State of Chile in April 2003.

On March 2015, Chile incorporated the amendments of the 1992 Protocol⁶⁸, adopted in October 2000, increasing the limitation amounts.

III. Fund Convention 1992⁶⁹

Chile ratified the Fund Convention 1992 and the same was approved by the Chilean Parliament on August 2001. However, until today the Chilean Government has not deposited the instrument of accession and the convention has not become law.

Therefore, even though the convention was approved by Congress some 18 years ago the same has not come into effect yet.

The Fund Convention 1992 requires to adjust Chilean domestic law to the convention.

As a consequence, the bill has suffered a slow and long process through various ministries. Since 2001, the convention has been studied by the

66 International Convention on Civil Liability for Oil Pollution Damage 1969

67 Protocol of 1992 to amend the International Convention on Civil Liability for Oil Pollution Damage 1969

68 Amendments of the Limitation Amounts in the Protocol of 1992 to Amend the International Convention on Civil Liability for Oil Pollution Damage, 1969

69 International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage 1992

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Ministry of Justice, Foreign Affairs and Environment and it was decided that additional legislation was required before the convention could come into effect.

In 2018 a Government Working Group was set up and a political commitment made to pass the required legislation to implement the convention.

IV. 2001 Bunker Oil Convention.

Chile is not party to the 2001 Bunker Oil Convention.

The Navigation Law applies in cases of bunker oil spills.

V. 2010 HNS Convention.

Chile is not party to the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 2010 (2010 HNS Convention) but the Government Working Group is also considering its adoption in 2020.

The Navigation Law applies in cases of pollution of hazardous and noxious substances.

VI. Chilean Navigation Law (Law Decree N°2.222 of 1978)

The main domestic statute governing marine oil pollution damage is the Chilean Navigation Law (Law Decree N°2.222 of 1978).

This Law Decree enacted in 1978 incorporates the rules of the CLC 1969 in cases where the convention does not apply like bunker oil spills.

VII. Interpretation of the CLC 1969 Convention and 1992 Protocol by Chilean Courts

The Chilean Supreme Court has applied the CLC both by virtue of its incorporation in the Navigation Law and directly from the Convention.

In the first case ever decided by the Supreme Court of Chile on marine oil pollution, articles 144 et. seq. of the Law Decree N°2.222 of 1978 (Chilean Navigation Law) were applied.

The Navigation law makes applicable the International Convention on Civil Liability for Oil Pollution Damage 1969 (CLC 1969) to cases not provided by the Convention such as bunker oil spills.

In this decision, the Supreme Court⁷⁰ dismissed claims for damages arising from oil pollution, applying article 1.6 of the CLC 1969⁷¹ (as provided by the Navigation Law) which states that pollution damage includes the costs of preventive measures and further loss or damage caused by such measures, and declared that:

- **Claimants need to prove to have taken any such measures and that the intended measures were reasonable and related to the oil spill**
- **Uncertain, hypothetical and contingent damages are not payable**
- **Strict proof of the damages claimed is required**
- **The burden of proof of the damages and causation is on the claimants**
- **Environmental damages may only be claimed by the State of Chile**

In another case⁷², the Supreme Court applied the CLC 1969 and made an express reference to the 1992 Protocol⁷³ declaring that:

- **Oil pollution damages are confined to reasonable measures taken after the spill aimed to restore the marine environment and do not include the loss of the site natural attraction**

70 Supreme Court - Empresa Portuaria de Antofagasta vs. Pretty Bright Shipping S.A. and Parakou Shipping Limited, 11 January 2013. Case N°4598-2010 (M/V “Eider”).

71 Article 1.6 of the CLC 1969 provides: “Pollution damage” means loss or damage caused outside the ship carrying oil by contamination resulting from the escape or discharge of oil from the ship, wherever such escape or discharge may occur, and includes the costs of preventive measures and further loss or damage caused by preventive measures.

72 Supreme Court – State of Chile vs. Minimal Enterprises Company and Elmira Shipping and Trading, 2 June 2014. Case N°14.209-2013 (M/V “Liquid Challenge”).

73 Article 1.6 of the CLC 1969, as amended by the 1992 Protocol, provides: “Pollution damage” means:

(a) loss or damage caused outside the ship by contamination resulting from the escape or discharge of oil from the ship, wherever such escape or discharge may occur, provided that compensation for impairment of the environment other than loss of profit from such impairment shall be limited to costs of reasonable measures of reinstatement actually undertaken or to be undertaken;

(b) the costs of preventive measures and further loss or damage caused by preventive measures.

VIII. Conclusion.

The International Convention on Civil Liability for Oil Pollution Damage 1969 and its 1992 Protocol are currently the main international regulations on liability for marine pollution in Chile.

Even though the 1992 Protocol has the force of law for those cases provided by the convention, the CLC 1969 still applies as provided by the Navigation law, to spills of bunkers and lubricants and other pollutants from vessels other than spills of persistent hydrocarbon mineral oil from tankers.

The Fund Convention 1992 already approved by the Chilean Parliament may become law in year 2020 after required amendments of internal law are made.

If the State of Chile decided to ratify the 2001 Bunker Oil Convention and the 2010 HNS Convention, a major reform of the Navigation law would be required.

IS IT TIME FOR LATIN AMERICAN GOVERNMENTS TO RATIFY INTERNATIONAL CONVENTIONS (CLC/ FUND/HNS)? THE COLOMBIAN CASE

Javier Franco

Colombia originally ratified the CLC and FUND conventions through Law 55 of 1989. To date those versions have already been formally denounced but replaced by their 1992 counterparts by means of Law 523 of 1999. On the other hand, the country has not yet ratified neither the Supplementary Fund Protocol nor the HNS Convention.

From a broader perspective it could be said that, although the country has ratified certain key international instruments within the ambit of Maritime Law, Colombia has a disperse - and not always coherent - legislation on the subject. Thus recently the National Maritime Authority (DIMAR) has developed a program called “Legal Strengthening of the Maritime Authority”, which aims to provide the country with a unified regime in the subject (ie. the Draft Maritime Code). As it could be expected, the Draft Maritime Code makes reference to several aspects of Maritime Law, but specifically regarding maritime pollution, the code has included the following features:

1. One general principle, ie. “the one who pollutes, pays”.
2. A general obligation to notify the existence of a maritime incident involving pollution of waters.
3. Measures to prevent the pollution of the marine environment due to the performance of offshore activities.
4. A maritime “incident” of pollution, which will in practice imply the initiation of a legal proceedings to investigate the situation.

Regarding the concept of “pollution” it is worth mentioning that Art. 186 of the current draft Code defines the concept in a very ample manner as:

“(...) all introduction, discharge, shedding, or any equivalent act, of hydrocarbons, ballast and sewage water, sediments, garbage and in general of any contaminating substance that causes or may cause damage to life, ecosystem and marine resources, to human health or the legitimate use of colombian maritime waters.

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It is understood as contaminant any substance that by its nature and/or concentration is likely to cause degradation of the maritime environment”⁷⁴.

As per the Draft Code, the general rule is that liability for pollution is considered to be “strict” (i.e. *responsabilidad objetiva*) since it would be triggered due to the sole fact of the production of the polluting event.

Of importance, it should be highlighted that the Draft Code establishes that the certain key issues such as determination of damages, excepted events, and liability limits in cases of pollution incidents are to be determined in accordance with what is defined in international **conventions** ratified on the subject by Colombia (i.e. CLC/FUND Conventions).

To sum up it could be said that:

- A. The current Draft Maritime Code provides an opportunity to:
- i) incorporate parameters of certain maritime conventions on the subject and/or,
 - ii) to harmonise local provisions with those provided by international conventions ratified by the country.

The political tide in Colombia seems to be convenient to continue efforts to enhance further ratification of international conventions within the ambit of Maritime Law

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IS IT TIME FOR LATIN AMERICAN GOVERNMENTS TO RATIFY INTERNATIONAL CONVENTIONS (CLC/ FUND/HNS)? - ECUADOR

José Modesto Apolo

In this panel we have been asked to discuss whether it is time for Latin-American governments to ratify the International Convention on Civil Liability for Oil Pollution Damage (“1969 CLC”) and its Protocol of 1992 (“1992 CLC Protocol”) (consolidated as the “1992 CLC Convention”); the International Convention on Liability and Compensation for Damages in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996 (“1996 HNS Convention”) and its Protocol of 2010 (“2010 HNS Protocol”) (consolidated as the “2010 HNS Convention”); the International Convention on the Establishment of an International Fund or Compensation for Oil Pollution Damage (“IOPC Fund”), its Protocol of 1992 (“1992 IOPC Fund Protocol”) (consolidated as the “1992 Fund Convention”) and/or the 2003 IOPC Fund Protocol (“The Supplementary Fund Protocol”).

In my capacity as President of Ecuador’s Maritime Law Association, I will be addressing my speech from an Ecuadorian standpoint.

The history of the 1969 CLC Convention starts in Ecuador in 1976 by initiative of the “Supreme Government Board”, a military triumvirate that took power in 1976 and continued governing Ecuador without a National Congress (since it had been dissolved under the prior dictatorship of Velasco Ibarra and Rodríguez Lara). Following the return to democracy in the year of 1979, the National Congress was restored with its original name until Ecuador’s Constitution of 2008 changed it to “National Assembly”.

On July 2nd, 2013, the Ministry of Foreign Affairs, Integration and Trade published in Ecuador’s National Gazette the entire text of the 1992 CLC Protocol and the 1992 IOPC Fund Protocol but as per the report it is not entirely clear how were they ratified. Neither the 1996 HNS Convention nor its 2010 HNS Protocol has been ratified but there is some governmental initiative underway that I will come to explain later. Ecuador has not ratified the International Oil Pollution Supplementary Fund, 2003 (“The Supplementary Fund”).

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After October 20th, 2008, when Ecuador's latest (and current) Constitution came into effect, the route for the Ecuadorian State to become bound to an international treaty is paved with different layers of domestic approvals, falling the ratification powers over the President as head of the executive branch (articles 147(10) and 418, Ecuador's Constitution), who is only required to notify the National Assembly about the signature of the treaty as a condition prior to proceed with its deposit.

Sometimes the National Assembly is required to do more than simply receiving notice of the treaty's signature. Where, for the example - and not exhaustively - the International Treaty is concerned with "rights and protections enshrined in the Constitution", or conveys the "compromise to enact, amend or repeal a statute", or "compromises natural resources, specially the water, biodiversity and genetical patrimony" (articles 419(3), 419(4) and 419(8), Ecuador's Constitution), the President is required to first obtain the prior approval of the National Assembly before ratifying and depositing the treaty.

Special attention should be drawn to the phrase "rights and protections enshrined in the Constitution" provided in article 419(4) of Ecuador's Constitution. Ecuador's Constitution develops an extensive and open-sourced catalogue of rights and protections of same hierarchy, and further to the Supremacy Clause, any norm, domestic or international, found inconsistent with the Constitution, is deemed pre-empted by the latter (article 424, Ecuador's Constitution); only International Treaties on Human Rights conferring more favourable rights than those enshrined in our Constitution can prevail.

Virtually, any human activity can entail the exercise of a constitutional right, and therefore, it becomes a question of constitutional law determining what type of rights crossed upon by an international treaty require the acknowledgment and approval from the National Assembly.

Ecuador's Constitutional Court has exclusive authority to answer questions of constitutionality (article 436(6), Ecuador's Constitution) and also binding authority to determine whether the ratification of an International Treaty must first secure the prior approval of the National Assembly and whether that treaty is consistent with Ecuador's Constitution provisions (article 438(1), Ecuador's Constitution). The exercise of these powers is called "constitutionality control" and in so doing the Constitutional Court has statutory authority to use "balancing powers".

As a matter of procedure, if the President is seeking to ratify an International Treaty that he believes crosses upon constitutional rights protected by Ecuador's Constitution, he or she must first address to the Constitutional Court to exercise "constitutionality control" over the international treaty sought for ratification, as a step prior to address to the National Assembly.

On November 13th, 2012, President Rafael Correa's legal advisor appeared before the Constitutional Court asking to exercise "constitutionality control" over the 2010 HNS Convention.

On July 9th, 2014, the Constitutional Court, its binding opinion No. 006-14-DTI-CC (hereinafter, the "binding opinion"), answered that the 2010 HNS Convention did require the approval from the National Assembly, and also determined, without analysis, that all of its provisions were consistent with the Constitution, and particularly,

"consistent with the development model enshrined in the Constitution, for which reason it [the development model] must be protected. If the end of the State is to assist in achieving a good life (*sumak kawsay*), particularly the right to health and the right to a clean and equilibrated environment of the Ecuadorian population, it is indispensable that these rights secure protection from local and international norms, in virtue of which it is considered that both the Convention and the Protocol are oriented and constitute valid mechanisms for the defence and protection of the human rights secured by the contracting parties" (see at page 94).

The Constitutional Court ultimately considered that:

"The Convention and the Protocol are international instruments devoted to secure human welfare, especially the rights of health and an equilibrated and clean environment in accordance with our Constitution. The development and effectiveness of the rights to a good life, health, and clean and equilibrated environment entail the protection of human rights of the Ecuadorian society, for which reason the legislative approval is required within the legitimacy process of these international instruments" (see at page 95).

It is very well known that any International Maritime Treaty regulating shipowners' civil liabilities is the result of a trade of compromises, where the shipowners accept to attain to certain risks and liabilities in exchange of some bedrock concessions like: (i) exemptions of liability

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clauses; (ii) short statutes of limitations; and (iii) limitation of liability provisions. The 2010 HNS Convention are clearly not an exemption, and neither is the 1992 CLC Convention nor the 1992 Fund Convention.

Under article 396 of Ecuador's Constitution, the following principles do have constitutional pedigree prevailing over any contradictory norm, domestic or international: (i) liability for environmental damages is strict, and the tortfeasor may exempt itself from liability solely by proving the inexistence of the actual or potential damage; (ii) the duty to mitigate, restore and repair environmental damages is subject to the *restitutio in integrum* principle; (iii) all persons participating in the use of goods and services may face direct environmental liability; and (iv) legal actions for bringing claims and imposing sanctions for environmental damages are subject to no statutes of limitations, in other words, they never become barred. All of these principles have been replicated and developed in the newly enacted Environmental Code, statute that just entered into force last year on April 12th, 2018.

Let's go one by one.

Firstly, as a matter of Ecuador's constitutional law, environmental damages are subject to a strict liability regime. Both the 2010 HNS Convention and the 1992 CLC Convention are also premised on strict liability terms, whereas article 7(2) of the 2010 HNS Convention provides for four (4) exemptions of liability causes; articles 3(2) and 3(3) of the 1992 CLC Convention provides for a similar number; articles 4(2) and 4(3) of the 1992 Fund Convention provides for three (3) exemption of liability clauses, whereas articles 14(3) and 14(4) of the 2010 HNS Convention provides for a similar number.

Under section 397 of Ecuador's Constitution, the shipowner can escape from liability only if it can prove the inexistence of an actual or potential damage; in other words, as long as there is a damage, the shipowner is liable and must compensate. The Environmental Code ratifies the "polluter pays" principle under section 9(4), and the strict liability regime principle under section 11. Under sections 307 and 308 of the Environmental Code, a force majeure and a fortuitous event and the third party's exclusive fault, may exempt the polluter of being subject to administrative sanctions but does not exempt it from facing civil liability since, so long as there is some damage, it will be deemed as civilly bound to implement all mitigation, restorations, repair and remediation measures.

As it can be seen, the strict liability regime of both the 2010 HNS Convention, the 1992 CLC Convention and the 1992 Fund Convention

- all of which allow for exemptions of liability – critically differ from the more stringent “the polluter pays” principle enshrined in Ecuador’s Constitution and the Environmental Code which do not allow for exemptions of liability, and it is hard to see how could they be reconciled.

Secondly, the duty to mitigate, restore and repair environmental damages is premised under the *restitutio in integrum* principle, which is inconsistent with the notion of limiting one person’s liability. The principle of full and integral compensation is continually replicated by the Environmental Code under sections 9(1), 9(4) and 9(9), whereas said Code contains no provision allowing for any sort of liability limitation. However, article 9 of the 2010 HNS Convention and article 5 of the 1992 CLC Convention contain provisions allowing the shipowners to limit their liability, and furthermore, providing them for the benefit to shield other assets pace the constitution of a compensation fund. It is difficult to see how such assets could effectively become shielded under Ecuador’s Constitution if pursuant to section 290 of the Environmental Code even the shipowners’ controlling or parent corporations could be held civilly liable for the environmental damages caused by their subsidiaries. From the Fund standpoint, article 4(4) of the 1992 Fund Protocol and article 14(5) of the 2010 HNS Convention permit the Funds to limit their liability, existing thereby another cause of irreconciliation with the cited *restitutio in integrum* constitutional principle.

Thirdly, under Ecuador’s Constitution every and each person participating in the use of goods and services is subject to face direct environmental liability, and this is replicated under section 290 of the Environmental Code which additionally makes that direct liability “joint and several”, in such stringent terms that even a parent or controlling corporation, an incumbent legal representative, or even the shareholders of a cancelled polluter corporation could be held directly liable, all of which can be hardly reconciled with article 7(5) of the 2010 HNS Convention, or with article 3(4) of the 1992 CLC Convention, which in certain circumstances provides for the exclusion of certain people from being targets of potential legal actions.

Finally, under Ecuador’s Constitution, actions for environmental damages never become barred, and this is replicated under section 305 of the Environmental Code; conversely, actions for damages are subject to short statutes of limitations under article 37 of the 2010 HNS Convention, under article 8 of the 1992 CLC Convention and under article 6 of the 1992 Fund Convention. This is probably the most blatant and irreconcilable contradiction.

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The unintended result is that two systems of compensation of environmental damages appear to exist today in Ecuador: population affected by *non*-CLC polluters may have the benefit and access to full and integral mitigation, repair and restoration actions, with no statutes of limitations, whereas population affected by CLC polluters do not. I am afraid that there is nothing in Ecuador's Constitution allowing for such distinction, let alone that section 11(2) provides that all persons are equal with same rights, duties and opportunities, prohibiting all form of discrimination.

How could the Constitutional Court have missed in its binding opinion No. 006-14-DTI-CC all of these critical issues whose determination required no more than a simple fair and textual reading of articles 396 and 397 of the Constitution?

As of today, it is unclear whether the cited provisions of the 1992 CLC Convention and of the 1992 Fund Convention could survive a constitutional rigorous scrutiny by a local judge assuming an action for environmental damages is filed in Ecuador against a shipowner under the 1992 CLC Convention and the 1992 Fund Convention.

On the one hand, there is room for the argument that if the Constitutional Court could not find any constitutional issue with the 2010 HNS Convention, there is no reason to believe that equivalent provisions (at least in character) contained in the 1992 CLC Convention or in the 1992 Fund Convention should be bound to a different fate. On the other hand, pursuant to section 11(3) of Ecuador's Constitution, every State officer is bound to apply the Constitution directly, and this includes judges, congressmen and administrative officials.

Since the binding opinion totally fails to distinguish normative inconsistencies between the Constitution and the 2010 HNS Convention, it is my view that any local court uncomfortable with the narrated inconsistencies not distinguished at all by the Constitutional Court could apply section 428 of Ecuador's Constitution, suspend the pertaining judicial procedure and address to the Constitutional Court requiring to revisit its binding opinion.

Is the National Assembly obliged to abide by the Constitutional Court's binding opinion during the legislative process of approval of the 2010 HNS Convention despite being in apparent contradiction with clear Constitutional provisions?

It is clear that the National Assembly should not interfere with the Constitutional Court's exercise of constitutional interpretive authority

displayed in the binding opinion since that would entail crossing a line beyond the division of powers concept; it is my view, however, that pursuant to section 11(3) of Ecuador's Constitution the National Assembly has enough authority to take the initiative to require the Constitutional Court to revisit its prior binding opinion and provide, at the very least, a detailed and analytical account of why the 2010 HNS Convention is consistent with Ecuador's Constitution despite clear provisions to the contrary.

AN OVERVIEW OF THE INCORPORATION OF THE IMO CIVIL LIABILITY AND POLLUTION COMPENSATION REGIMES INTO PANAMA'S LEGAL SYSTEM

Francisco J. Linares F.

I. Panama's international treaty implementation system

Since 1989, Panama is a representative democracy, with a unicameral legislature, composed of 71 regional MPs. Each and every treaty or international convention must be approved by Parliament, and legislation must be enacted in order for this to become effective, pursuant to articles 1589 (1) and 164 (a) of the Constitution.

Panama has adopted a number of international maritime conventions through the ordinary constitutional avenue. Frequently, however, the contents of important conventions have been enacted as part of Panama's own domestic legislation.

II. IMO marine pollution conventions in Panama

Panama is a maritime country. It has the world's largest merchant marine, since the mid '90s. Panama is a category A member of the IMO Council. Thus, it comes as no surprise that Panama has ratified most of the key international conventions dealing with marine pollution liability, such as CLC 1992, the CLC Fund Convention 1992, and Bunker CLC 2001. In a similar vein, Panama has adopted UNCLOS 1982 and the Nairobi wreck removal convention 2015.

III. Panama's domestic legislation

On the domestic front, for instance, Panama has *de facto* adopted the contents of the London Limitation of Liability 1976 Convention, through Title VIII, Chapters I-III of Code of Maritime Procedure (CMP). Panama is not a party to the HNS Convention. However, that subject matter is covered by Title VIII, Chapter IV of the CMP. This is a domestic liability regime for marine pollution in general. It provides for strict liability on the polluter, and allows limitation of liability essentially based on article V of CLC 1969. Administrative liability for marine pollution exists pursuant to Law No. 19 of 1997 on the Panama Canal, and the Panama Canal regulations. Finally, Panama has a default regime for environmental pollution – Law No. 41 of 1998 – which establishes three levels of liability (administrative, civil and criminal) and enshrines the principle of “polluter pays”.

IV. **Proposals**

Effective regional collaboration towards the CMI's goal of uniformity requires periodic meetings of all Latin American MLAs' presidents in suitable venues, for discussing, brainstorming and strategizing. Events such as the upcoming Panama Maritime XV World Conference & Exhibition in 2021 may be such a suitable venue.

CIVIL LIABILITY, IOPC FUND AND HNS CONVENTIONS – IS IT TIME FOR LATIN AMERICAN GOVERNMENTS TO RATIFY THESE CONVENTIONS? – MEXICO PERSPECTIVE

José Luis Hernández Abdalah

First of all, I would like to briefly thank the members of the International Maritime Committee (IMC), the Executive Committee of the IMC, and mainly Chris Davis for having trusted Mexico for the Mexican Association of Maritime Law to have been a part of this Colloquium that is being held in Mexico ... thank you.

I will try to make my presentation as quickly as possible, it will only refer to some reflections of what is happening in the world in terms of hydrocarbon production and what is taking place in Mexico, what we lack of and where we are in regard the conventions “Civil Liability” (CLC), “IOPC Fund” and “HNS”.

Mexico is currently part of the CLC Convention and is also part of the 1992 Fund Convention, however, we haven’t ratified the Complimentary 2003 Fund Convention, nor the Convention over Hazardous and Noxious Substances (HNS).

Going a bit back over what is happening at an international level, I would like to tell you briefly that the world is currently consuming approximately 100 million barrels a day (“BP Statistical Review of World Energy 2019”), of these 100 millions barrels that the world produces and consumes, the US itself is consuming 20% of these 100 million; however, the US is neither part of the 1992 Fund nor is part of the Complimentary 2003 Convention. It is important to mention that a great part of the consumption of the US comes from other latitudes, this is, the risk of hydrocarbon spills also exists in other latitudes and a clear example is Mexico. Our country sends to the United States 80% of its crude oil exports, and it’s also important to say that 80% of our hydrocarbon production is extracted from the sea. Another important data is that according to the UNCTAD (UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT), in 2018, 1874 million tons of crude oil were transported by sea, which represents 36% of the world consumption.

This high world consumption has made that the hydrocarbon reserves be increased along several decades, for example in 1998 the reserves worldwide were 1141 thousand millions of barrels whilst in 2008 it increased up to 1493 thousand millions barrels and in year 2018 we were in 1729 thousand million barrels (BP Statistical Review of World Energy 2019), in other words, far from having our reserves being reduced, these

having been increasing, and I don't see our reserves reaching their end. However, what might be endangered is the resistance of our planet being purified against spills and against pollution of fossil products.

Due to the foregoing, in my opinion, is that many of the regulations that the OMI has implemented has been due to all these spills that have taken place at an international level. I think the creation of the "Fund" is a good idea, even if not all the countries are a part thereof, nor that all the countries have 100% ratified this "Fund".

And in the case of Mexico, the current production of hydrocarbons in our country is 1.7 million barrels a day, 80% of the production is extracted in waters of the Gulf of Mexico and in order to increase the production of hydrocarbons, several blocks have been allocated after the Energy Reform in 2013, as was previously made in the United States; this is, several blocks were allocated: 32 in shallow waters and 28 blocks in deep waters (the latter, according to the National Hydrocarbon Commission) in order to try to revert the reduction of production Mexico has had in the past years. With these blocks that Mexico has been promoting and that has already contracted with several international companies (there are more than 40 international companies that were allocated with blocks in different parts of Mexico), it is forecasted that in 2024 the decrease be reverted and the 2 million barrels per day is overcome.

On the other hand, one thing that must be quickly analyzed is that, even if Mexico is a great hydrocarbon producing country, the main part of its operations are to export them and not to receive them, and as we all know, in order for the parts of the Fund may be able to contribute they have to receive them and not export them.

I would also like to discuss what is happening in Mexico in respect to the 2003 Complimentary Fund and the Convention over Hazardous and Noxious Substances (HNS). In order for Mexico to be able to ratify a Convention, 4 main steps are necessary to be followed; first, a work group of experts must be constituted to study the pros and cons of adopting a convention or not and, after such work group has carried out the task, it passes it on to several ministries such as the Ministry of Energy, the Ministry of the Environment, the SEMAR or armed force in Mexico and the Ministry of Communications and Transportation. These Ministries analyze the pros and cons the work group gave them and once their criteria has been unified (and that is where we are with both conventions) they send it to the Mexican Congress, in this case the Mexican Congress is the Senate; it is submitted to voting by all the members of the Senate and if the latter approves it, the Convention is practically thereafter approved, further sent to the President for him to publish it in the Official Daily of the Federation and from there must it be implemented and remains approved.

In Mexico, the international conventions are to the Mexican Constitution, in other words, they are more important than secondary laws. I think

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that in Mexico as in the majority of Latin American countries, there is a similar political system, and their legal regulations are also similar.

On the other hand, it is important to mention the risks of pollution that any spillage from the platforms could cause, as the latter are not covered by the Fund; it has been mentioned in several forums that in order to solve this problem what is needed to be done is a bi-lateral treaty among two or three countries (tri-lateral) that are involved or that they are adjacent or are near to the same geographic area. However, they forget that the sea is not static, the sea is constantly moving and a proof thereof is the current of the Gulf of Mexico that reaches the coasts of Europe and in some way it may have some implications such as the weather in countries like England, Spain and Portugal, and due to that reason we believe that what is made in the platforms is very important.

To finish, I would like to say that it is very important that we begin to think in the renewable energies that are proximate, since the transit to the energy of fossil resources is in transit to renewable energies, and due to that reason I believe that the Fund (FIDAC) may be in a position to act hereinafter and may be asked for a contribution to the countries so that the development of these renewable energies be partially subsidized. Thank you very much....

CIVIL LIABILITY, IOPC FUND AND HNS CONVENTIONS – IS IT TIME FOR LATIN AMERICAN GOVERNMENTS TO RATIFY THESE CONVENTIONS? - ARGENTINA

Diego Chami

1. New trends in Navigation Law; 2. Argentina's ratification CLC 69/PROT 92 and the FUND 71/PROT 92; 3. Spill prior to conventions entering in force; 4. Advantages of the system CLC 69/Prot92 – Fund 71/Prot 92; 5. Spill after the Conventions being in force: ghost ship; 6. HNS/Prot 2010 Convention; 7. Conclusion

1. New trends in Navigation Law

In the last decades of the 20th Century, the development of the navigation required a legal response to the number of new situations that were not regulated, giving rise to, as José Domingo Rey highlighted in many articles⁷⁵, what was called New Trends in Navigation Law. The oil spill in water is one of those facts that became a new trend. The accident of the tanker 'Torrey Canyon' drew the attention of the maritime community to the oil spills and gave rise to an innovative system of three levels of responsibility.

2. Argentina's ratification CLC 69/PROT 92 and the FUND 71/PROT 92

Argentina ratified the 1992 Protocol that amends the international International Convention on Civil Liability for Oil Pollution Damage (CLC) and the 1992 Protocol that amends the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (FUND)

Notwithstanding, Argentina does not form part of the supplementary fund of 2003.

75 Cfr. RAY, José D., "Nuevas tendencias en el derecho de la navegación internacional. La Conferencia de Montreal. Asistencia y salvamento", LL 1982-C-841; "Nuevas tendencias en el derecho de la navegación (reflexiones sobre la asistencia y salvamento)", LL 1988-D-985 y "Nuevas tendencias en el derecho de la navegación. La 34ª Conferencia del Comité Marítimo Internacional (París 24/30 de junio de 1990)", LL 1991-C-819.

3. Spill prior to conventions entering in force

The spill that occurred in the coast of the city of Magdalena, at the Buenos Aires Province, as a consequence of the collision between the tanker Estrella Pampeana and the container ship Sea Parana, made Argentina subscribe to the international system. The Sea Parana had sailed from Dock Sud, at the Buenos Aires Port, and it was sailing in the Canal Intermedio of the Rio de la Plata heading for the port of Santos, in Brazil, while the Estrella Pampeana had sailed from Caleta Olivia, Comodoro Rivadavia, coming from Tierra del Fuego, with a cargo of crude oil, heading for the flammable dock in Dock Sud. At a head on situation the Sea Paraná suffered a black out and made a sudden maneuver to port side and collided the Estrella Pampeana. The collision caused an oil spill in the Rio de la Plata, which impacted in the city of Magdalena.

I point out two circumstances of this event.

The first one is that the tanker Estrella Pampeana alleged as its defense against claims by third parties affected by the pollution that the fault in the collision and oil spill came from a third party that they could not be responsible for (MV Sea Parana), as per article 1113 of the Civil Code, in full effect at that moment. What I want to highlight is that that defense would not have been possible and the responsible would have been easily found if the system of CLC 69/Prot 92 had been in full force because it did not exclude from responsibility the fault of a third party (except the negligence or other wrongful act of any Government or other authority responsible for the maintenance of lights or other navigational aids in the exercise of that function), but the act or omission done with intent to cause damage by a third party. In that sense, article 3.2.b) of the international Convention on the liability resulting from damages for oil pollution, 1969 (CLC 69/PROT 92) states that there shall not be any liability whatsoever on the owner if it is proved that the damages for pollution were caused by action or intended omission of a third party to provoke damages.

The second circumstance that I want to point out is that, although the conventions in analyses were not in force when the collision occurred, the shipowners of the two vessels involved in the collision and their corresponding P & I Clubs assessed the claims of the third parties affected by the pollution on the basis of the criteria established by the Fund.

4. Advantages of the system CLC 69/Prot92 – Fund 71/Prot 92

The advantages of the system CLC 69/PROT 92 over a system of civil law to regulate the liability in the event of an oil spill, are evident. First, it establishes a system of liability centered in the owner of the vessel; therefore, there is no need for investigation on who was responsible. Besides, it is a system of strict liability with limited exonerations and with limits that allow reasonable compensations. On the other hand, the civil liability insurance is compulsory, so it grants security to persons affected. Cova Arria stated that the system of liability created by the CLC 92 has exclusive and excluding way⁷⁶. Exclusive, because no claim for compensation for pollution damage shall be made against the owner otherwise than in accordance with the Convention (article III, section 4th, first paragraph), and excluding, because no claim for pollution damage under the Convention or otherwise may be made against the servants or agents of the owner (article III, section 4th, second paragraph). Goñi claimed that the system is based on three essential aspects: a strict liability in the first place, in setting an only individual to whom file the claim in the second place, and finally, in a specific jurisdiction where to deal with all the claims by the affected parties by the spill⁷⁷. But, furthermore, when the system CLC is not enough to compensate for damages, the Fund shall compensate them. In addition, it is a balanced system between the interests of the vessel that bears the risk until the CLC 69/Prot 92 limit, on the one hand, and those of the cargo that contribute to the IOPC Fund that bear the risk until the FUND 71/ Prot 92 limit of liability, on the other hand. Because of these advantages, the decision of Argentina to ratify the conventions was very reasonable.

5. Spill after the Conventions being in force: the “ghost” ship

It is important to highlight that Argentina has vast inland waterways not only in Rio de la Plata but also in the Paraná-Paraguay waterway. If a spill occurred in said waters, the conventions CLC 69/Prot 92 and FUND 71/Prot 92 shall be applied equally as long as the spill came from sea-going vessel.

After the conventions entered in full force and effect, only one incident occurred that involved the Fund. It took place on December 26th, 2007 in Caleta Cordova, in Chubut Province. The spill affected almost 1.5

76 Cfr. COVA ARRIA, Luis, “Experiencia latinoamericana en la aplicación de los Convenios de Responsabilidad Civil y el Fondo”, Revista de Estudios Marítimos N° 55, p. 38, año XXX, Buenos Aires, noviembre de 2005.

⁷⁷ Cfr. GOÑI, José L., “Un nuevo concepto de la responsabilidad aplicado en la contaminación marítima por hidrocarburos”, ponencia presentada en la Conferencia del Centenario, Asociación Argentina de Derecho de la Navegación, junio de 2005, Buenos Aires.

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km of the coast. During the clean-up operations and remediation, sand and about 160 m³ of water emulsion and oil and 900 m³ of waste were removed. Although a center of recovery was created, about 400 birds died. The fishing activity was interrupted, and the tourism was affected as well. By September 2010, about 170 claims for the cost of the clean-up activities, for the loss of the fishing activity and the tourism had been filed. Now, who had caused the spill?

In that opportunity the tanker *Presidente Illia* had been loading oil in the oil bouy of Caleta Córdova. However, the owner of the vessel and the P & I Club alleged that the oil did not come from *Presidente Illia* but from other non identified vessel, a ‘ghost vessel’. In said case the Fund had to compensate for damages. However, in the investigation carried out, it was determined that there was a leak in the pipe of ballast water. That pipe went through the central cargo tank of the vessel and therefore, when the ballast water was thrown away, the oil mixed with the ballast water was thrown into the ocean. It was also proven that the oil spilled was similar to the oil on board the *Presidente Illia* and in the same way that at the port of destination a shortage of oil was found. Finally, without recognizing its liability, the P & I Club of *Presidente Illia* reached settlement agreements with the third-party claimants for pollution damages.

6. HNS/Prot 2010 Convention

Argentina is not part of the convention of the subtitle that requires the ratification of 12 States, 4 of them with a minimum of two million units of gross each and that each of them has received the year before 40 million of tons of cargo subjected to contributions to the general account. Up to now, it has been ratified by Canada, Denmark, Norway, Turkey and South Africa. In the Argentine Maritime Law Association there is tendency to ratify the Convention HNS/ Prot 2010 and this was stated in the X Jornadas Rioplatenses de Derecho Marítimo, organized by the Argentina MLA that took place in Buenos Aires on 5th and 6th of September 2019 where the Convention HNS/ Prot 2010 was analyzed.

7. Conclusion

To conclude this paper, I want to mention that in 1931 a French author, Daniel Danjon⁷⁸, highlighted several characteristics of the Maritime Law, among them the audacity of his legal solutions. The system that made up the CLC 69/ Prot 92 and the Fund 71/ Prot 92 reveal the audacity of the Maritime Law that Danjon had pointed out.

78 DANJON, Daniel, *Tratado de derecho marítimo*, Reus, Madrid, 1931.

PART III

STATUS OF CONVENTIONS

(Guidance as to where information can be obtained)

STATUS OF SIGNATURES, RATIFICATIONS, ACCEPTANCES, APPROVALS, ACCESSIONS, RESERVATIONS AND NOTIFICATIONS OF SUCCESSION WITH REGARD TO MARITIME LAW CONVENTIONS

Since 1951 CMI has published information about the status of maritime law conventions in its CMI Bulletins, and later in its CMI Yearbooks. The information was initially limited to the Brussels' conventions which were the result of the work of CMI itself. But over time information about maritime law conventions produced by IMO and other organizations was also published by CMI. For its information CMI relied on the kind co-operation with the Ministry of Foreign Affairs of Belgium (the depositary of the Brussels' conventions), and the secretariats of the relevant international organizations.

Over the years the Belgian Ministry and the international organizations have proceeded to publish information on the status of conventions on the internet. These internet publications are updated as soon as new information becomes available. Therefore, spending a lot of time on the gathering of the same information for an annual publication in a paper yearbook would now seem to serve a very limited purpose. It was therefore decided to stop publishing the status of conventions in the CMI Yearbook and switch to publication on the CMI website. In order to prevent the unnecessary duplication of information already publicly available (and kept up to date) on the websites of the Belgian Ministry of Foreign Affairs and the international organizations, CMI will now simply provide a list of the relevant maritime law conventions with links to the websites of convention depositaries and international organizations. References to national treaty databases which provide trustworthy information on the status of multilateral conventions are also included.

The conventions are listed under six headings:

- Status of Brussels (CMI) Maritime Law Conventions
- Status of IMO Maritime Law Conventions
- Status of UN and UN/IMO Maritime Law Conventions
- Status of UNESCO Maritime Law Conventions
- Status of UNIDROIT Maritime Law Conventions
- Status of Antarctic Maritime Law Conventions

Status of Signatures, Ratifications, Acceptance, Approvals, Accessions, Reservations and Notifications of Succession with regard to Maritime Law Conventions

As was done in the CMI Yearbook the conventions are listed within these categories in chronological order, but keeping protocols to conventions grouped together with the original convention.

It should be noted that the information provided on the websites referred to may vary in detail and accuracy. Just as in the past, CMI cannot guarantee that all the information is complete and correct. In the end it is advisable to contact the official depositary of each convention. Experience has shown that even then the information provided may be subject to debate.

T. van der Valk
CMI Publications Editor
14 January 2020

Status of Brussels (CMI) Maritime Law Conventions

International Convention for the Unification of Certain Rules of Law with respect to Collision between Vessels, Brussels, 23 September 1910

Entry into force: 1 March 1913

- the depositary, the Belgian Government: <http://diplomatie.belgium.be/sites/default/files/downloads/i1.pdf>
- Netherlands Treaty Database (in English) (*Verdragenbank*): <https://verdragenbank.overheid.nl/en/Verdrag/Details/003382>

Convention for the Unification of Certain Rules of Law relating to Assistance and Salvage at Sea, Brussels, 23 September 1910

Entry into force: 1 March 1913

- the depositary, the Belgian Government: <http://diplomatie.belgium.be/sites/default/files/downloads/i2a.pdf>

Protocol to amend the Convention for the Unification of Certain Rules of law relating to Assistance and Salvage at Sea Signed at Brussels on 23rd September 1910, Brussels, 27 May 1967

Entry into force: 15 August 1977

- the depositary, the Belgian Government: <http://diplomatie.belgium.be/sites/default/files/downloads/i2b.pdf>

International Convention for the Unification of Certain Rules relating to the Limitation of the Liability of Owners of Sea-going Vessels, Brussels, 25 August 1924

Entry into force: 2 June 1931

- the depositary, the Belgian Government: <http://diplomatie.belgium.be/sites/default/files/downloads/i3.pdf>
- the United Nations Treaty Collection: <https://treaties.un.org/pages/showDetails.aspx?objid=0800000280167705>

International Convention for the Unification of Certain Rules of Law relating to Bills of Lading, Brussels, 25 August 1924

Entry into force: 2 June 1931

- the depositary, the Belgian Government: <http://diplomatie.belgium.be/sites/default/files/downloads/I-4a.pdf>
- the United Nations Treaty Collection: <https://treaties.un.org/Pages/showDetails.aspx?objid=08000002801d0f51>
- Netherlands Treaty Database (in English) (*Verdragenbank*): <https://verdragenbank.overheid.nl/en/Verdrag/Details/004127>

Status of Signatures, Ratifications, Acceptance, Approvals, Accessions, Reservations and Notifications of Succession with regard to Maritime Law Conventions

Protocol to amend the International Convention for the Unification of Certain Rules of Law relating to Bills of Lading, signed at Brussels on 25th August 1924, Brussels, 23 February 1968

Entry into force: 23 June 1977

- the depositary, the Belgian Government: <http://diplomatie.belgium.be/sites/default/files/downloads/I-4b.pdf>
- the United Nations Treaty Collection: <https://treaties.un.org/Pages/showDetails.aspx?objid=08000002800ea4ab>
- Netherlands Treaty Database (in English) (*Verdragenbank*): <https://verdragenbank.overheid.nl/en/Verdrag/Details/003112>

Protocol amending the International Convention for the Unification of Certain Rules of Law relating to Bills of Lading, 25 August 1924 as amended by the Protocol of 23 February 1968, Brussels, 21 December 1979

Entry into force: 14 February 1984

- the depositary, the Belgian Government: <http://diplomatie.belgium.be/sites/default/files/downloads/I-4c.pdf>
- the United Nations Treaty Collection: <https://treaties.un.org/Pages/showDetails.aspx?objid=08000002800d54ea>
- Netherlands Treaty Database (in English) (*Verdragenbank*): <https://verdragenbank.overheid.nl/en/Verdrag/Details/000840>

International Convention for the Unification of Certain Rules relating to Maritime Liens and Mortgages, Brussels, 10 April 1926

Entry into force: 2 June 1931

- the depositary, the Belgian Government: <http://diplomatie.belgium.be/sites/default/files/downloads/I-5.pdf>
- the United Nations Treaty Collection: <https://treaties.un.org/pages/showDetails.aspx?objid=080000028016775a>

International Convention for the Unification of Certain Rules concerning the Immunity of State-owned Ships, Brussels, 10 April 1926

Entry into force: 8 January 1937

- the depositary, the Belgian Government: <http://diplomatie.belgium.be/sites/default/files/downloads/i6.pdf>
- the United Nations Treaty Collection: <https://treaties.un.org/pages/showDetails.aspx?objid=0800000280166914>
- Netherlands Treaty Database (in English) (*Verdragenbank*): <https://verdragenbank.overheid.nl/en/Verdrag/Details/003839>

Status of Signatures, Ratifications, Acceptance, Approvals, Accessions, Reservations and Notifications of Succession with regard to Maritime Law Conventions

Additional Protocol to the International Convention for the Unification of Certain Rules concerning the Immunity of State-owned Ships, Brussels, 24 May 1934

Entry into force: 8 January 1937

- the depositary, the Belgian Government: <http://diplomatie.belgium.be/sites/default/files/downloads/i6.pdf>
- the United Nations Treaty Collection: <https://treaties.un.org/pages/showDetails.aspx?objid=0800000280166914>
- Netherlands Treaty Database (in English) (*Verdragenbank*): <https://verdragenbank.overheid.nl/en/Verdrag/Details/005942>

International Convention on Certain Rules concerning Civil Jurisdiction in Matters of Collision, Brussels, 10 May 1952

Entry into force: 14 September 1955

- the depositary, the Belgian Government: <http://diplomatie.belgium.be/sites/default/files/downloads/i7.pdf>
- the United Nations Treaty Collection: <https://treaties.un.org/Pages/showDetails.aspx?objid=08000002801338d5>

International Convention for the Unification of Certain Rules Relating to Penal jurisdiction in matters of collision and other incidents of navigation, Brussels, 10 May 1952

Entry into force: 20 November 1955

- the depositary, the Belgian Government: <https://diplomatie.belgium.be/sites/default/files/downloads/i8.pdf>
- the United Nations Treaty Collection: https://treaties.un.org/Pages/showDetails.aspx?objid=08000002801338c3&clang=_en

International Convention for the Unification of Certain Rules Relating to the Arrest of Sea-Going Ships, Brussels, 10 May 1952

Entry into force: 24 February 1956

- the depositary, the Belgian Government: http://diplomatie.belgium.be/sites/default/files/downloads/Zeerecht_9.pdf
- the United Nations Treaty Collection: <https://treaties.un.org/pages/showDetails.aspx?objid=08000002801338ba>
- Netherlands Treaty Database (in English) (*Verdragenbank*): <https://verdragenbank.overheid.nl/en/Verdrag/Details/007235>

Status of Signatures, Ratifications, Acceptance, Approvals, Accessions, Reservations and Notifications of Succession with regard to Maritime Law Conventions

International Convention relating to the Limitation of the Liability of Owners of Sea-going Ships, Brussels, 10 October 1957

Entry into force: 31 May 1968

- the depositary, the Belgian Government: <http://diplomatie.belgium.be/sites/default/files/downloads/i10a.pdf>
- the United Nations Treaty Collection: <https://treaties.un.org/Pages/showDetails.aspx?objid=08000002800ea54a>
- Netherlands Treaty Database (in English) (*Verdragenbank*): <https://verdragenbank.overheid.nl/en/Verdrag/Details/006826>

Protocol amending the International Convention relating to the Limitation of the Liability of Owners of Sea-going Ships dated 10 October 1957, Brussels, 21 December 1979

Entry into force: 6 October 1984

- the depositary, the Belgian Government: <http://diplomatie.belgium.be/sites/default/files/downloads/i10b.pdf>
- the United Nations Treaty Collection: <https://treaties.un.org/Pages/showDetails.aspx?objid=08000002800d549d>

International Convention relating to Stowaways, Brussels, 10 October 1957

Entry into force: not yet in force

- the depositary, the Belgian Government: <http://diplomatie.belgium.be/sites/default/files/downloads/i11.pdf>

International Convention for the Unification of Certain Rules relating to the Carriage of Passengers by Sea, Brussels, 29 April 1961

Entry into force: 4 June 1965

- the depositary, the Belgian Government: <http://diplomatie.belgium.be/sites/default/files/downloads/i12.pdf>
- the United Nations Treaty Collection: <https://treaties.un.org/Pages/showDetails.aspx?objid=08000002800ea435>
- Netherlands Treaty Database (in English) (*Verdragenbank*): <https://verdragenbank.overheid.nl/en/Verdrag/Details/009010>

International Convention on the Liability of Operators of Nuclear Ships, (Brussels, 25 May 1962)

Entry into force: not yet in force

- the depositary, the Belgian Government: <https://diplomatie.belgium.be/sites/default/files/downloads/i13.pdf>
- Netherlands Treaty Database (in English) (*Verdragenbank*): <https://verdragenbank.overheid.nl/en/Verdrag/Details/009108>

Status of Signatures, Ratifications, Acceptance, Approvals, Accessions, Reservations and Notifications of Succession with regard to Maritime Law Conventions

International Convention for the Unification of Certain Rules relating to Carriage of Passenger Luggage by Sea, Brussels, 27 May 1967

Entry into force: not yet in force

- the depositary, the Belgian Government: <https://diplomatie.belgium.be/sites/default/files/downloads/i14.pdf>

Convention relating to Registration of Rights in respect of Vessels under Construction, Brussels, 27 May 1967

Entry into force: not yet in force

- the depositary, the Belgian Government: http://diplomatie.belgium.be/sites/default/files/downloads/I_15.pdf

International Convention for the Unification of Certain Rules relating to Maritime Liens and Mortgages, Brussels, 27 May 1967

Entry into force: not yet in force

- the depositary, the Belgian Government: <http://diplomatie.belgium.be/sites/default/files/downloads/i16.pdf>

Status of IMO Maritime Law Conventions

International Convention on Civil Liability for Oil Pollution Damage, Brussels, 29 November 1969

Entry into force: 19 June 1975

- the depositary, the (Secretary-General of the) International Maritime Organization: <http://www.imo.org/en/About/Conventions/StatusOfConventions/Pages/Default.aspx>
- the United Nations Treaty Collection: https://treaties.un.org/Pages/showDetails.aspx?objid=08000002801083db&clang=_en
- Netherlands Treaty Database (in English) (*Verdragenbank*): <https://verdragenbank.overheid.nl/en/Verdrag/Details/003096>

Protocol to the International Convention on Civil Liability for Oil Pollution Damage, 1969, London, 19 November 1976

Entry into force: 8 April 1981

- the depositary, the (Secretary-General of the) International Maritime Organization: <http://www.imo.org/en/About/Conventions/StatusOfConventions/Pages/Default.aspx>
- the United Nations Treaty Collection: https://treaties.un.org/Pages/showDetails.aspx?objid=08000002800e815e&clang=_en
- Netherlands Treaty Database (in English) (*Verdragenbank*): <https://verdragenbank.overheid.nl/en/Treaty/Details/001655>

Protocol of 1984 to amend the International Convention on Civil Liability for Oil Pollution Damage, 1969, London, 25 May 1984

Entry into force: not yet in force

- the depositary, the (Secretary-General of the) International Maritime Organization: <http://www.imo.org/en/About/Conventions/StatusOfConventions/Pages/Default.aspx>
- Netherlands Treaty Database (in English) (*Verdragenbank*): <https://verdragenbank.overheid.nl/en/Verdrag/Details/000115>

Protocol of 1992 to amend the International Convention on Civil Liability for Oil Pollution Damage, 1969, London, 27 November 1992

Entry into force: 30 May 1996

- the depositary, the (Secretary General of the) International Maritime Organization: <http://www.imo.org/en/About/Conventions/StatusOfConventions/Pages/Default.aspx>

Status of Signatures, Ratifications, Acceptance, Approvals, Accessions, Reservations and Notifications of Succession with regard to Maritime Law Conventions

- the United Nations Treaty Collection: https://treaties.un.org/Pages/showDetails.aspx?objid=08000002800a5777&clang=_en
- Netherlands Treaty Database (in English) (*Verdragenbank*): <https://verdragenbank.overheid.nl/en/Verdrag/Details/012371.html>

International Convention relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, 1969, Brussels, 29 November 1969

Entry into force: 6 May 1975

- the depositary, the (Secretary General of the) International Maritime Organization: <http://www.imo.org/en/About/Conventions/StatusOfConventions/Pages/Default.aspx>
- the United Nations Treaty Collection: https://treaties.un.org/Pages/showDetails.aspx?objid=08000002801089a9&clang=_en
- Netherlands Treaty Database (in English) (*Verdragenbank*): <https://verdragenbank.overheid.nl/en/Verdrag/Details/003095>

Protocol relating to Intervention on the High Seas in Cases of Pollution by Substances other than Oil, 1973, London, 2 November 1973

Entry into force: 30 March 1983

- the depositary, the (Secretary General of the) International Maritime Organization: <http://www.imo.org/en/About/Conventions/StatusOfConventions/Pages/Default.aspx>
- the United Nations Treaty Collection: https://treaties.un.org/Pages/showDetails.aspx?objid=08000002800ddf24&clang=_en
- Netherlands Treaty Database (in English) (*Verdragenbank*): <https://verdragenbank.overheid.nl/en/Verdrag/Details/002394>

International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, Brussels, 18 December 1971

Entry into force: 16 October 1978

- the depositary, the (Secretary-General of the) International Maritime Organization: <http://www.imo.org/en/About/Conventions/StatusOfConventions/Pages/Default.aspx>
- the United Nations Treaty Collection: https://treaties.un.org/Pages/showDetails.aspx?objid=08000002800f5af6&clang=_en

Status of Signatures, Ratifications, Acceptance, Approvals, Accessions, Reservations and Notifications of Succession with regard to Maritime Law Conventions

- Netherlands Treaty Database (in English) (*Verdragenbank*): <https://verdragenbank.overheid.nl/en/Verdrag/Details/002837>

Protocol to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971, London, 19 November 1976

Entry into force: 22 November 1994

- the depositary, the (Secretary-General of the) International Maritime Organization: <http://www.imo.org/en/About/Conventions/StatusOfConventions/Pages/Default.aspx>
- the United Nations Treaty Collection: https://treaties.un.org/Pages/showDetails.aspx?objid=08000002800ad4bc&clang=_en
- Netherlands Treaty Database (in English) (*Verdragenbank*): <https://verdragenbank.overheid.nl/en/Verdrag/Details/001657>

Protocol of 1984 to amend the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971, London, 25 May 1984

Entry into force: not yet in force

- the depositary, the (Secretary-General of the) International Maritime Organization: <http://www.imo.org/en/About/Conventions/StatusOfConventions/Pages/Default.aspx>
- Netherlands Treaty Database (in English) (*Verdragenbank*): <https://verdragenbank.overheid.nl/en/Verdrag/Details/000116>

Protocol of 1992 to amend the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971, London, 27 November 1992

Entry into force: 30 May 1995

- the depositary, the (Secretary-General of the) International Maritime Organization: <http://www.imo.org/en/About/Conventions/StatusOfConventions/Pages/Default.aspx>
- the depositary, the United Nations Treaty Collection: https://treaties.un.org/Pages/showDetails.aspx?objid=08000002800a599a&clang=_en
- Netherlands Treaty Database (in English) (*Verdragenbank*): <https://verdragenbank.overheid.nl/en/Verdrag/Details/012374>

Status of Signatures, Ratifications, Acceptance, Approvals, Accessions, Reservations and Notifications of Succession with regard to Maritime Law Conventions

Protocol of 2003 to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992, London, 16 May 2003

Entry into force: 3 March 2005

- the depositary, the (Secretary-General of the) International Maritime Organization: <http://www.imo.org/en/About/Conventions/StatusOfConventions/Pages/Default.aspx>
- Netherlands Treaty Database (in English) (*Verdragenbank*): <https://verdragenbank.overheid.nl/en/Verdrag/Details/010844>

Convention relating to Civil Liability in the Field of Maritime Carriage of Nuclear Material, Brussels, 17 December 1971

Entry into force: 15 July 1975

- the depositary, the International Maritime Organization: <http://www.imo.org/en/About/Conventions/StatusOfConventions/Pages/Default.aspx>
- the United Nations Treaty Collection: <https://treaties.un.org/pages/showDetails.aspx?objid=0800000280107d4b>
- Netherlands Treaty Database (in English) (*Verdragenbank*): <https://verdragenbank.overheid.nl/en/Verdrag/Details/002836>

Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974, Athens, 13 December 1974

Entry into force: 28 April 1987

- the depositary, the (Secretary-General of the) International Maritime Organization: <http://www.imo.org/en/About/Conventions/StatusOfConventions/Pages/Default.aspx>
- the United Nations Treaty Collection: <https://treaties.un.org/Pages/showDetails.aspx?objid=08000002800cddb3>

Protocol to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974, London, 19 November 1976

Entry into force: 30 April 1989

- the depositary, the (Secretary-General of the) International Maritime Organization: <http://www.imo.org/en/About/Conventions/StatusOfConventions/Pages/Default.aspx>
- the United Nations Treaty Collection: <https://treaties.un.org/Pages/showDetails.aspx?objid=08000002800c3599&clang=en>

Status of Signatures, Ratifications, Acceptance, Approvals, Accessions, Reservations and Notifications of Succession with regard to Maritime Law Conventions

Protocol of 1990 to amend the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974, London, 29 March 1990

Entry into force: not yet in force

- the depositary, the (Secretary-General of the) International Maritime Organization: <http://www.imo.org/en/About/Conventions/StatusOfConventions/Pages/Default.aspx>

Protocol of 2002 to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974, London, 1 November 2002

Entry into force: 23 April 2014

- the depositary, the (Secretary-General of the) International Maritime Organization: <http://www.imo.org/en/About/Conventions/StatusOfConventions/Pages/Default.aspx>
- Netherlands Treaty Database (in English) (*Verdragenbank*): <https://verdragenbank.overheid.nl/en/Verdrag/Details/011547>

Convention on Limitation of Liability for Maritime Claims, London, 19 November 1976

Entry into force: 1 December 1986

- the depositary, the (Secretary-General of the) International Maritime Organization: <http://www.imo.org/en/About/Conventions/StatusOfConventions/Pages/Default.aspx>
- the United Nations Treaty Collection: <https://treaties.un.org/pages/showDetails.aspx?objid=08000002800f9404>
- Netherlands Treaty Database (in English) (*Verdragenbank*): <https://verdragenbank.overheid.nl/en/Verdrag/Details/001656>

Protocol of 1996 to amend the Convention on Limitation of Liability for Maritime Claims, 1976, London, 2 May 1996

Entry into force: 13 May 2004

- the depositary, the (Secretary-General of the) International Maritime Organization: <http://www.imo.org/en/About/Conventions/StatusOfConventions/Pages/Default.aspx>
- Netherlands Treaty Database (in English) (*Verdragenbank*): <https://verdragenbank.overheid.nl/en/Verdrag/Details/007428>

Status of Signatures, Ratifications, Acceptance, Approvals, Accessions, Reservations and Notifications of Succession with regard to Maritime Law Conventions

Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 1988, Rome, 10 March 1988

Entry into force: 1 March 1992

- the depositary, the (Secretary-General of the) International Maritime Organization: <http://www.imo.org/en/About/Conventions/StatusOfConventions/Pages/Default.aspx>
- the United Nations Treaty Collection: https://treaties.un.org/Pages/showDetails.aspx?objid=08000002800b9bd7&clang=_en
- Netherlands Treaty Database (in English) (*Verdragenbank*): <https://verdragenbank.overheid.nl/en/Verdrag/Details/002231>

Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, 1988, Rome, 10 March 1988

Entry into force: 1 March 1992

- the depositary, the (Secretary-General of the) International Maritime Organization: <http://www.imo.org/en/About/Conventions/StatusOfConventions/Pages/Default.aspx>
- the United Nations Treaty Collection: https://treaties.un.org/Pages/showDetails.aspx?objid=08000002800b9af3&clang=_en
- Netherlands Treaty Database (in English) (*Verdragenbank*): <https://verdragenbank.overheid.nl/en/Verdrag/Details/002232>

Protocol of 2005 to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, London, 14 October 2005

Entry into force: 28 July 2010

- the depositary, the (Secretary-General of the) International Maritime Organization: <http://www.imo.org/en/About/Conventions/StatusOfConventions/Pages/Default.aspx>
- Netherlands Treaty Database (in English) (*Verdragenbank*): <https://verdragenbank.overheid.nl/en/Verdrag/Details/011471>

Protocol of 2005 to the Protocol for the Suppression on Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf, London 14 October 2005

Entry into force: 28 July 2010

- the depositary, the (Secretary-General of the) International Maritime Organization: <http://www.imo.org/en/About/Conventions/StatusOfConventions/Pages/Default.aspx>

Status of Signatures, Ratifications, Acceptance, Approvals, Accessions, Reservations and Notifications of Succession with regard to Maritime Law Conventions

- Netherlands Treaty Database (in English) (*Verdragenbank*): <https://verdragenbank.overheid.nl/en/Verdrag/Details/011470>

International Convention on Salvage, 1989, London, 28 April 1989

Entry into force: 14 July 1996

- the depositary, the (Secretary-General of the) International Maritime Organization: <http://www.imo.org/en/About/Conventions/StatusOfConventions/Pages/Default.aspx>
- the United Nations Treaty Collection: <https://treaties.un.org/Pages/showDetails.aspx?objid=08000002800a58b3>
- Netherlands Treaty Database (in English) (*Verdragenbank*): <https://verdragenbank.overheid.nl/en/Verdrag/Details/003805>

International Convention on Oil Pollution Preparedness, Response and Co-operation 1990, London, 30 November 1990

Entry into force: 13 May 1995

- the depositary, the (Secretary-General of the) International Maritime Organization: <http://www.imo.org/en/About/Conventions/StatusOfConventions/Pages/Default.aspx>
- the United Nations Treaty Collection: https://treaties.un.org/Pages/showDetails.aspx?objid=08000002800aada6&clang=_en
- Netherlands Treaty Database (in English) (*Verdragenbank*): <https://verdragenbank.overheid.nl/en/Verdrag/Details/004459>

Protocol on Preparedness, Response and Co-operation to Pollution Incidents by Hazardous and Noxious Substances, 2000, London, 15 March 2000

Entry into force: 14 June 2007

- the depositary, the (Secretary-General of the) International Maritime Organization: <http://www.imo.org/en/About/Conventions/StatusOfConventions/Pages/Default.aspx>
- Netherlands Treaty Database (in English) (*Verdragenbank*): <https://verdragenbank.overheid.nl/en/Verdrag/Details/009370>

Status of Signatures, Ratifications, Acceptance, Approvals, Accessions, Reservations and Notifications of Succession with regard to Maritime Law Conventions

International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996, London, 3 May 1996

Entry into force: not yet in force

- the depositary, the (Secretary-General of the) International Maritime Organization: <http://www.imo.org/en/About/Conventions/StatusOfConventions/Pages/Default.aspx>
- Netherlands Treaty Database (in English) (*Verdragenbank*): <https://verdragenbank.overheid.nl/en/Verdrag/Details/007429>

Protocol of 2010 to the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996, London 30 April 2010

Entry into force: not yet in force

- the depositary, the (Secretary-General of the) International Maritime Organization: <http://www.imo.org/en/About/Conventions/StatusOfConventions/Pages/Default.aspx>
- Netherlands Treaty Database (in English) (*Verdragenbank*): <https://verdragenbank.overheid.nl/en/Verdrag/Details/012292>

International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001, London, 23 March 2001

Entry into force: 21 November 2011

- the depositary, the (Secretary-General of the) International Maritime Organization: <http://www.imo.org/en/About/Conventions/StatusOfConventions/Pages/Default.aspx>
- Netherlands Treaty Database (in English) (*Verdragenbank*): <https://verdragenbank.overheid.nl/en/Verdrag/Details/011005>

Nairobi International Convention on the Removal of Wrecks, Nairobi, 18 May 2007

Entry into force: 14 April 2015

- the depositary, the International Maritime Organization: <http://www.imo.org/en/About/Conventions/StatusOfConventions/Pages/Default.aspx>
- Netherlands Treaty Database (in English) (*Verdragenbank*): <https://verdragenbank.overheid.nl/en/Verdrag/Details/009962>

Status of Signatures, Ratifications, Acceptance, Approvals, Accessions, Reservations and Notifications of Succession with regard to Maritime Law Conventions

Status of UN and UN/IMO Maritime Law Conventions

United Nations Convention on a Code of Conduct for Liner Conference, Geneva, 6 April 1974

Entry into force: 6 October 1983

- the depositary, the (Secretary-General of the) United Nations: https://treaties.un.org/Pages/showDetails.aspx?objid=080000028003a445&clang=_en
- Netherlands Treaty Database (in English) (*Verdragenbank*): <https://verdragenbank.overheid.nl/en/Verdrag/Details/002264>

United Nations Convention on the Carriage of Goods by Sea, Hamburg, 31 March 1978

Entry into force: 1 November 1992

- the depositary, the (Secretary-General of the) United Nations: <https://treaties.un.org/Pages/showDetails.aspx?objid=0800000280042179>

United Nations Convention on International Multimodal Transport of Goods, Geneva, 24 May 1980

Entry into force: not yet in force

- the depositary, the (Secretary-General of the) United Nations: https://treaties.un.org/Pages/showDetails.aspx?objid=0800000280025033&clang=_en

United Nations Convention on the Law of the Sea, Montego-Bay, 10 December 1982

Entry into force: 16 November 1994

- the depositary, the (Secretary-General of the) United Nations: https://treaties.un.org/Pages/showDetails.aspx?objid=0800000280043ad5&clang=_en
- Netherlands Treaty Database (in English) (*Verdragenbank*): <https://verdragenbank.overheid.nl/en/Verdrag/Details/000493>

United Nations Convention on Conditions for Registration of Ships, Geneva, 7 February 1986

Entry into force: not yet in force

- the depositary, the (Secretary-General of the) United Nations: <https://treaties.un.org/Pages/showDetails.aspx?objid=080000028004c485>

Status of Signatures, Ratifications, Acceptance, Approvals, Accessions, Reservations and Notifications of Succession with regard to Maritime Law Conventions

United Nations Convention on the Liability of Operators of Transport Terminals in International Trade, Vienna, 19 April 1991

Entry into force: not yet in force

- the depositary, the (Secretary-General of the) United Nations: https://treaties.un.org/Pages/showDetails.aspx?objid=080000028004b4e0&clang=_en

International Convention on Maritime Liens and Mortgages, 1993, Geneva, 6 May 1993

Entry into force: 5 September 2004

- the depositary, the (Secretary-General of the) United Nations: <https://treaties.un.org/Pages/showDetails.aspx?objid=080000028004a70a>

International Convention on Arrest of Ships, 1999, Geneva, 12 March 1999

Entry into force: 14 September 2011

- the depositary, the (Secretary-General of the) United Nations: <https://treaties.un.org/Pages/showDetails.aspx?objid=080000028004ce27>
- the International Maritime Organization: <http://www.imo.org/en/About/Conventions/StatusOfConventions/Pages/Default.aspx>

United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly By Sea, New York, 11 December 2008

Entry into force: not yet in force

- the depositary, the (Secretary-General of the) United Nations: <https://treaties.un.org/Pages/showDetails.aspx?objid=080000028021e615>
- Netherlands Treaty Database (in English) (*Verdragenbank*): <https://verdragenbank.overheid.nl/en/Verdrag/Details/010533>

Status of Signatures, Ratifications, Acceptance, Approvals, Accessions, Reservations and Notifications of Succession with regard to Maritime Law Conventions

Status of UNESCO Maritime Law Conventions

UNESCO Convention on the Protection of Underwater Cultural Heritage, Paris, 2 November 2001

Entry into force: 2 January 2009

- the depositary, the (Director-General of the) United Nations Educational, Scientific, Cultural Organization (UNESCO): <http://www.unesco.org/eri/la/convention.asp?KO=13520&language=E&order=alpha>
- Netherlands Treaty Database (in English) (*Verdragenbank*): <https://verdragenbank.overheid.nl/en/Verdrag/Details/010501>

Status of UNIDROIT Maritime Law Conventions

UNIDROIT Convention on International Financial Leasing, Ottawa, 28 May 1988

Entry into force: 1 May 1995

- the depositary, the Government of Canada: -
- the originating organization, the International Institute for the Unification of Private Law (UNIDROIT): <https://www.unidroit.org/status-leasing-conv-1988>

Status of Antarctic Maritime Law Conventions

Annex VI to the Protocol on Environmental Protection to the Antarctic Treaty: Liability Arising From Environmental Emergencies, Stockholm, 14 June 2005

Entry into force: not yet in force

- the depositary, the Government of the United States: -
- Netherlands Treaty Database (in English) (*Verdragenbank*): <https://verdragenbank.overheid.nl/en/Verdrag/Details/010766>

CONFERENCES OF THE COMITE MARITIME INTERNATIONAL

I. BRUSSELS – 1897

President: Mr. Auguste

BEERNAERT.

Subjects: Organization of
the International Maritime
Committee - Collision
-Shipowners' Liability.

Subjects: Conflicts of law in
the matter of Mortgages and
Liens on ships -Jurisdiction in
collision matters -Limitation of
Shipowners' Liability.

II. ANTWERP – 1898

President: Mr. Auguste

BEERNAERT.

Subjects: Liability of Owners of
sea-going vessels.

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.

III. LONDON – 1899

President: Sir Walter

PHILLIMORE.

Subjects: Collisions in which
both ships are to blame -
Shipowners' liability.

VIII. VENICE – 1907

President: Mr. Alberto

MARGHIERI.

Subjects: Limitation of
Shipowners' Liability -Maritime
Mortgages and Liens - Conflict
of law as to Freight.

IV. PARIS – 1900

President: Mr. LYON-CAEN.

Subjects: Assistance, salvage
and duty to tender assistance -
Jurisdiction in collision matters.

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.

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.

X. PARIS – 1911

President: Mr. Paul GOVARE.

Subjects: Limitation of
Shipowners' Liability in the
event of loss of life or personal
injury -Freight.

VI. AMSTERDAM - 1904

President: Mr. E.N. RAHUSEN.

Conferences of the Comité Maritime International

XI. COPENHAGEN – 1913

President: Dr. J.H. KOCH.

Subjects:

London declaration 1909

- Safety of Navigation -

International Code of

Affreightment - Insurance of

enemy property.

XII. ANTWERP – 1921

President:

Mr. Louis FRANCK.

Subjects:

International Conventions

relating to Collision and

Salvage at sea. -Limitation of

Shipowners' Liability -Maritime

Mortgages and Liens -Code of

Affreightment - Exonerating

clauses.

XIII LONDON – 1922

President:

Sir Henry DUKE.

Subjects:

Immunity of State-owned ships

-Maritime Mortgage and Liens.

-Exonerating clauses in Bills of lading.

XIV. GOTHENBURG – 1923

President: Mr. Efiel LÖFGREN.

Subjects:

Compulsory insurance of

passengers -Immunity of State

owned ships -International Code

of Affreightment - International

Convention on Bills of Lading.

XV. GENOA – 1925

President: Dr. Francesco

BERLINGIERI.

Subjects: Compulsory

Insurance of passengers -

Immunity of State owned ships - International Code of Affreightment - Maritime Mortgages and Liens.

XVI. AMSTERDAM – 1927

President: Mr. B.C.J. LODER.

Subjects:

Compulsory insurance of

passengers -Letters of indemnity

- Ratification of the Brussels

Conventions.

XVII. ANTWERP – 1930

President: Mr. Louis FRANCK.

Subjects:

Ratification of the Brussels

Conventions -Compulsory

insurance of passengers

-Jurisdiction and penal sanctions

in matters of collision at sea.

XVIII. OSLO – 1933

President: Mr. Edvin ALTEN.

Subjects:

Ratification of the Brussels

Conventions -Civil and penal

jurisdiction in matters of

collision on the high seas -

Provisional arrest of ships

- Limitation of Shipowners'

Liability.

XIX. PARIS – 1937

President: Mr. Georges RIPERT.

Subjects:

Ratification of the Brussels

Conventions -Civil and penal

jurisdiction in the event of

collision at sea - Arrest of ships

- Commentary on the Brussels

Conventions - Assistance and

Salvage of and by Aircraft at

sea.

Conferences of the Comité Maritime International

XX. ANTWERP – 1947

President: Mr. Albert LILAR.

Subjects:

Ratification of the Brussels Conventions, more especially of the Convention on immunity of State-owned ships -Revision of the Convention on Limitation of the Liability of Owners of sea-going vessels and of the Convention on Bills of Lading - Examination of the three draft conventions adopted at the Paris Conference 1937 - Assistance and Salvage of and by Aircraft at sea -York and Antwerp Rules; rate of interest.

XXI. AMSTERDAM – 1948

President: Prof. J.

OFFERHAUS

Subjects: Ratification of the Brussels International Convention - Revision of the York-Antwerp Rules 1924 - Limitation of Shipowners' Liability (Gold Clauses) -Combined Through Bills of Lading -Revision of the draft Convention on arrest of ships - Draft of creation of an International Court for Navigation by Sea and by Air.

XXII. NAPLES – 1951

President: Mr. Amedeo

GIANNINI.

Subjects: Brussels International Conventions -Draft convention relating to Provisional Arrest of Ships - Limitation of the liability of the Owners of Sea-going Vessels and Bills of Lading (Revision of the

Gold clauses) - Revision of the Conventions of Maritime Hypothèques and Mortgages - Liability of Carriers by Sea towards Passengers - Penal Jurisdiction in matters of collision at Sea.

XXIII. MADRID – 1955

President: Mr. Albert LILAR.

Subjects:Limitation of Shipowners' Liability -Liability of Sea Carriers towards passengers - Stowaways - Marginal clauses and letters of indemnity.

XXIV. RIJEKA – 1959

President: Mr. Albert LILAR

Subjects:

Liability of operators of nuclear ships -Revision of Article X of the International Convention for the Unification of certain Rules of law relating to Bills of Lading - Letters of Indemnity and Marginal clauses. Revision of Article XIV of the International Convention for the Unification of certain rules of Law relating to assistance and salvage at sea -International Statute of Ships in Foreign ports - Registry of operations of ships.

XXV. ATHENS – 1962

President: Mr. Albert LILAR

Subjects:

Damages in Matters of Collision -Letters of Indemnity - International Statute of Ships in Foreign Ports -Registry of Ships - Coordination of the Convention of Limitation and

Conferences of the Comité Maritime International

on Mortgages -Demurrage and Despatch Money -Liability of Carriers of Luggage.

XXVI. STOCKHOLM - 1963

President: Mr. Albert LILAR

Subjects: Bills of Lading - Passenger Luggage -Ships under construction.

XXVII. NEW YORK – 1965

President: Mr. Albert LILAR

Subjects:

Revision of the Convention on Maritime Liens and Mortgages.

XXVIII. TOKYO – 1969

President: Mr. Albert LILAR

Subjects:

“Torrey Canyon” - Combined Transports -Coordination of International Convention relating to Carriage by Sea of Passengers and their Luggage.

XXIX. ANTWERP – 1972

President: Mr. Albert LILAR

Subjects:

Revision of the Constitution of the International Maritime Committee.

XXX. HAMBURG – 1974

President: Mr. Albert LILAR

Subjects:

Revisions of the York/Antwerp Rules 1950 - Limitation of the Liability of the Owners of Seagoing vessels - The Hague Rules.

XXXI. RIO DE JANEIRO - 1977

President: Prof. Francesco

BERLINGIERI

Subjects:

Draft Convention on Jurisdiction, Choice of law and Recognition and enforcement of Judgements in Collision matters. Draft Convention on Off-Shore Mobile Craft.

XXXII. MONTREAL – 1981

President: Prof. Francesco

BERLINGIERI

Subjects:

Convention for the unification of certain rules of law relating to assistance and salvage at sea - Carriage of hazardous and noxious substances by sea.

XXXIII. LISBON- 1985

President: Prof. Francesco

BERLINGIERI

Subjects: Convention on Maritime Liens and Mortgages - Convention on Arrest of Ships.

XXXIV. PARIS – 1990

President: Prof. Francesco

BERLINGIERI

Subjects:

Uniformity of the Law of Carriage of Goods by Sea in the 1990's - CMI Uniform Rules for Sea Waybills - CMI Rules for Electronic Bills of Lading -Revision of Rule VI of the York-Antwerp Rules 1974.

XXXV. SYDNEY – 1994

President: Prof. Allan PHILIP

Subjects:

Review of the Law of General Average and York-Antwerp

Conferences of the Comité Maritime International

Rules 1974 (as amended 1990) - Draft Convention on Off-Shore Mobile Craft - Assessment of Claims for Pollution Damage - Special Sessions: Third Party Liability -Classification Societies - Marine Insurance: Is the doctrine of Utmost Good Faith out of date?

XXXVI. ANTWERP – 1997
CENTENARY CONFERENCE

President: Prof. Allan PHILIP

Subjects:

Off-Shore Mobile Craft - Towards a Maritime Liability Convention - EDI -Collision and Salvage - Wreck Removal Convention - Maritime Liens and Mortgages, Arrest of Ships -Classification Societies - Carriage of Goods by Sea - The Future of CMI.

XXXVII. SINGAPORE – 2001

President: Patrick GRIGGS

Subjects:

Issues of Transport Law - Issues of Marine Insurance - General Average -Implementation of Conventions - Piracy -Passengers Carried by Sea.

XXXVIII. VANCOUVER – 2004

President: Patrick GRIGGS

Subjects:

Transport Law - General Average - Places of Refuge for Ships in Distress - Pollution of the Marine Environment - Maritime Security - Marine Insurance – Bareboat Chartered

Vessels - Implementation of the Salvage Convention.

XXXIX. ATHENS 2008

President: Jean-Serge Rohart

Subjects:

Places of Refuge – Procedural Rules Relating to Limitation of Liability in Maritime Law – UNCITRAL Draft Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea – Non-technical Measures to Promote Quality Shipping –Implementation and Interpretation of International Conventions – Judicial Sale of Ships – Charterer’s Right to Limit Liability – Charterer’s Right to Limit Liability – Wreck Removal Convention 2007 – Draft Convention on Recycling of Ships

XL. BEIJING 2012

President: Karl-Johan Gombrii

Subjects:

Judicial Sales of Ships – Salvage Convention 1989 – Rotterdam Rules –York Antwerp Rules 2004 – Offshore Activity – Fair Treatment of Seafarers –Piracy – Maritime Issues for Judges –Marine Insurance – The Western and Eastern Cultural Influences on Maritime Arbitration and its Recent Developments in Asia – Arctic/ Antarctic Issues – Cross Border Insolvencies – The Shipbuilding Industry in Asia: Problems and Challenges – Future of the CMI in the Decades to come. –

Conferences of the Comité Maritime International

Young Members Session: Arrest of Ships and Judicial Sales of Vessels – Offshore Activities, New Regulations and Contracts – Enforcement on Shipping Companies by Creditors.

XLI. HAMBURG 2014

President: Stuart Hetherington

Subjects:

Judicial Sales of Ships – York Antwerp Rules 2004 – Ships in hot water: Ship Financing and Restructuring; Cross Border Insolvencies; Liability of classification societies; Wrongful arrest of ships; Piracy – Ships in cold water: Arctic Issues – Maritime Miscellany: Ships Emissions; Wreck Removal Convention; Young CMI Panel; MLC 2006 Issues and Implementation.

XLII. NEW YORK 2016

President: Stuart Hetherington

Subjects:

General Average – Costa Concordia – Cybercrime in Shipping – Offshore Activities – Pandemic Response – Polar Shipping – Unmanned Ships – Lex Maritima – Ship financing and Security Practices – Refugee Migration at sea – Cross-border insolvencies – Maritime Arbitration – Marine Insurance – Liability for Wrongful Arrest

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