YEARBOOK 2007 - 2008 ANNUAIRE

ATHENS I

Documents for the Conference

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PART I

Organization of the CMI

Comité Maritime International

CONSTITUTION

2001[1]

PART I - GENERAL

Article 1
Name and Object

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

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

Article 2
Existence and Domicile

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

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

Comité Maritime International

STATUTS

2001[1]

Ière PARTIE - DISPOSITIONS GENERALES

Article 1er
Nom et objet

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

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

Article 2
Existence et siège

Le Comité Maritime International a la personnalité morale selon la loi belge du 25 octobre 1919 telle que modifiée ultérieurement. Le Comité Maritime International a son siège 43 Everdijstraat à B-2000 Anvers. Le

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

address may be changed by decision of the Executive Council, and such change shall be published in the *Annexes du Moniteur belge*.

Article 3
Membership and Liability
I

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

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

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

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

Article 3
Membres et responsabilité
I

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

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

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

maritime law or related commercial practice. The Titulary Members of the Comité Maritime International are identified in a list to be published annually.
Titulary Members presently or formerly belonging to an association which is no longer a member of the Comité Maritime International may remain individual Titulary Members at large, pending the formation of a new Member Association in their State.

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

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

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

II

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

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

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

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

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

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

II

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

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

or

(B) by the Executive Council.

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

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

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

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

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

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

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

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

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

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

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

III

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

(B) par le Conseil exécutif.

(ii) Une requête d'exclusion d'un Membre se fera par écrit et en exposera les motifs.

(iii) La requête d'exclusion doit être déposée chez le Secrétaire général ou chez l'Administrateur et sera transmise en copie au Membre en question.

c) Une requête d'exclusion faite en vertu de l'alinéa II (b) (i) (A) ci-dessus sera transmise pour examen au Conseil exécutif pour la prendre en considération.

(i) Si telle requête est approuvée par le Conseil exécutif, elle sera transmise à l'Assemblée pour délibération telle que prévue à l'article 7 b) des statuts.

(ii) Si la requête n'est pas approuvée par le Conseil exécutif, elle peut néanmoins être soumise à la réunion de l'Assemblée suivant immédiatement la réunion du Conseil exécutif où la requête a été examinée.

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

e) (i) Le Membre en question peut présenter une réplique écrite à la requête d'exclusion, et/ou peut prendre la parole à l'Assemblée pendant la délibération sur la requête.

(ii) Dans le cas d'une requête d'exclusion appuyée sur une carence de paiement, comme le prévoit l'article 3 II a) (i) ci-dessus, le paiement effectif de tous les arriérés dus par le Membre visé, constituera une défense suffisante et, pourvu que le Trésorier confirme le paiement, la requête sera présumée être retirée.

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

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

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

III.

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

PART II – ASSEMBLY

Article 4
Composition

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

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

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

Article 5
Meetings and Quorum

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

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

Article 6
Agenda and Voting

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

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

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

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

2ème PARTIE - ASSEMBLEE

Article 4
Composition

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

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

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

Article 5
Réunions et quorum

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

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

Article 6
Ordre du jour et votes

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

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

Toutes les décisions de l'Assemblée sont prises à la majorité simple des Associations membres présentes, jouissant du droit de vote et prenant part au vote. Toutefois, le vote positif d'une majorité des deux tiers de toutes les Associations membres présentes, jouissant du droit de vote et prenant part au vote sera nécessaire pour modifier les présents statuts ou des règles adoptées en application de l'Article 7 (h) et (i). L'Administrateur, ou une personne désignée par le Président, soumettra au Ministère de la Justice belge toute modification des statuts et veillera à sa publication aux *Annexes du Moniteur belge*.

Article 7
Functions

The functions of the Assembly are:

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

PART III – OFFICERS

Article 8
Designation

The Officers of the Comité Maritime International shall be:

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

Article 9
President

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

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

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

Article 7
Fonctions

Les fonctions de l'Assemblée consistent à:

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

3ème PARTIE- MEMBRES DU BUREAU

Article 8
Désignation

Les Membres du Bureau du Comité Maritime International sont:

a) le Président,
b) les Vice-Présidents,
c) le Secrétaire général,
d) le Trésorier,
e) l'Administrateur (s'il est une personne physique),
f) les Conseillers exécutifs, et
g) le Président précédant.

Article 9
Le Président

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

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

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

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

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

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

Article 10

Vice-Presidents

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

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

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

Article 11

Secretary-General

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

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

Article 12

Treasurer

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

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

The Treasurer shall submit the financial statements and the proposed

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

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

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

Article 10
Les Vice-Présidents

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

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

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

Article 11
Le Secrétaire général

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

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

Article 12
Le Trésorier

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

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

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

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

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

Article 13

Administrator

The functions of the Administrator are:

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

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

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

Article 14

Executive Councillors

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

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

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

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

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

Article 13
L'Administrateur

Les fonctions de l'Administrateur consistent à:

a) envoyer les convocations à toutes réunions de l'Assemblée et du Conseil exécutif, des conférences internationales, séminaires et colloques, ainsi qu'à toutes réunions de comités, de commissions internationales et de groupes de travail,
b distribuer les ordres du jour, procès-verbaux et rapports de ces réunions,
c) prendre toutes les dispositions administratives utiles en vue de ces réunions,
d) entreprendre toute action, de sa propre initiative ou par délégation, nécessaire pour donner plein effet aux décisions de nature administrative prises par l'Assemblée, le Conseil exécutif, et le Président,
e) assurer la distribution de rapports et documents demandées par le Président, le Secrétaire Général ou le Trésorier, ou approuvées par le Conseil exécutif,
f) maintenir à jour et assurer la publication annuelle des listes de Membres en application de l'article 3;
g) d'une manière générale accomplir la charge quotidienne du secrétariat du Comité Maritime International.

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

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

Article 14
Les Conseillers exécutifs

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

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

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

Article 15
Nominations

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

The Nominating Committee shall consist of:

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

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

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

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

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

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

Article 16
Immediate Past President

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

PART IV – EXECUTIVE COUNCIL

Article 17
Composition

The Executive Council shall consist of:

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

Article 15
Présentations de candidatures

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

Le Comité de Présentation de candidatures se compose de:

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

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

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

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

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

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

Article 16
Le Président sortant

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

4ème PARTIE - CONSEIL EXÉCUTIF

Article 17
Composition

Le Conseil exécutif est composé:

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

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

Article 18
Functions

The functions of the Executive Council are:

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

c) du Secrétaire général,
d) du Trésorier,
e) de l'Administrateur, s'il est une personne physique,
f) des Conseillers exécutifs,
g) du Président sortant.

Article 18
Fonctions

Les fonctions du Conseil exécutif sont:
a) de recevoir et d'examiner des rapports concernant les relations avec:
   (i) les Associations membres,
   (ii) le Fonds de Charité du Comité Maritime International ("CMI Charitable Trust"), et
   (iii) les organisations internationales;
b) d'examiner les documents et études destinés:
   (i) à l'Assemblée,
   (ii) aux Associations membres, concernant l'oeuvre du Comité Maritime International, et en les avisant de tout développement utile,
   (iii) aux organisations internationales, pour les informer des points de vue du Comité Maritime International sur des sujets adéquats;
c) d'aborder l'étude de nouveaux travaux entrant dans le domaine du Comité Maritime International, de créer à cette fin des comités permanents, des commissions internationales et des groupes de travail, de désigner les Présidents, les Présidents Adjoints et les Rapporteurs de ces comités, commissions et groupes de travail, et de contrôler leur activité;
d) d'aborder toute autre étude que ce soit pourvu qu'elle s'inscrive dans la poursuite de l'objet du Comité Maritime International, et de nommer toutes personnes à cette fin;
e) d'encourager et de favoriser le recrutement de nouveaux Membres du Comité Maritime International;
f) de contrôler les finances du Comité Maritime International et de nommer un Comité de révision;
g) en cas de besoin, de pourvoir à titre provisoire à une vacance de la fonction de Secrétaire général, de Trésorier ou d'Administrateur;
h) de présenter pour élection par l'Assemblée des réviseurs indépendants chargés de réviser les comptes financiers annuels préparés par le Trésorier et/ou les comptes du Comité Maritime International, et, au besoin, de pourvoir à titre provisoire à une vacance de la fonction de réviseur;
i) d'examiner et d'approuver les propositions de publications du Comité Maritime International;
j) de fixer les dates et lieux de ses propres réunions et, sous réserve de l'article 5, des réunions de l'Assemblée, ainsi que des séminaires et colloques convoqués par le Comité Maritime International;
k) de proposer l'ordre du jour des réunions de l'Assemblée et des Conférences Internationales, et de fixer ses propres ordres du jour ainsi que ceux des Séminaires et Colloques convoqués par le Comité Maritime International;
l) d'exécuter les décisions de l'Assemblée;

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

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

Article 19

Meetings and Quorum

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

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

PART V – INTERNATIONAL CONFERENCES

Article 20

Composition and Voting

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

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

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

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

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

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

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

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

Article 19
Réunions et quorum

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

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

5ème PARTIE - CONFÉRENCES INTERNATIONALES

Article 20
Composition et Votes

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

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

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

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

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

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

PART VI – FINANCE AND GOVERNING LAW

Article 21
Arrears of Subscriptions

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

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

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

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

Article 22
Financial Matters and Liability

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

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

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

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

Article 23
Governing Law

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

6ème PARTIE - FINANCES

Article 21
Retards dans le paiement de Cotisations

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

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

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

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

Article 22
Questions financières et responsabilités

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

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

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

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

Article 23
Loi applicable

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

juridical personality to international organizations dedicated to philanthropic, religious, scientific, artistic or pedagogic objects, and to other laws of Belgium as necessary.

PART VII – ENTRY INTO FORCE AND DISSOLUTION

Article 24
Entry into Force [(2)]

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

Article 25
Dissolution and Procedure for Liquidation

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

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

internationales poursuivant un but philanthropique, religieux, scientifique, artistique ou pédagogique telle que modifiée ou complétée ultérieurement et, au besoin, par d'autres dispositions de droit belge.

7ème PARTIE - ENTREE EN VIGUEUR ET DISSOLUTION

Article 24
Entrée en vigueur [(2)]

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

Article 25
Procédure de dissolution et de liquidation

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

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

RULES OF PROCEDURE*

1996[1]

Rule 1
Right of Presence

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

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

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

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

Rule 2
Right of Voice

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

Rule 3
Points of Order

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

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1. Adopted in Brussels, 13th April 1996.

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

Rule 4
Voting

For the purpose of application of Article 6 of the Constitution, the phrase "Member Associations present, entitled to vote, and voting" shall mean Member Associations whose right to vote has not been suspended pursuant to Articles 7 or 21, whose voting delegate is present at the time the vote is taken, and whose delegate casts an affirmative or negative vote. Member Associations abstaining from voting or casting an invalid vote shall be considered as not voting.

Voting shall normally be by show of hands. However, the President may order or any Member Association present and entitled to vote may request a roll-call vote, which shall be taken in the alphabetical order of the names of the Member Associations as listed in the current CMI *Yearbook*.

If a vote is equally divided the proposal or motion shall be deemed rejected.

Notwithstanding the foregoing, all contested elections of Officers shall be decided by a secret written ballot in each category. Four ballots shall be taken if necessary. If the vote is equally divided on the fourth ballot, the election shall be decided by drawing lots.

If no nominations for an office are made in addition to the proposal of the Nominating Committee pursuant to Article 15, then the candidate(s) so proposed may be declared by the President to be elected to that office by acclamation.

Rule 5
Amendments to Proposals

An amendment shall be voted upon before the proposal to which it relates is put to the vote, and if the amendment is carried the proposal shall then be voted upon in its amended form.

If two or more amendments are moved to a proposal, the first vote shall be taken on the amendment furthest removed in substance from the original proposal and then on the amendment next furthest removed therefrom and so on until all amendments have been put to the vote.

Rule 6
Secretary and Minutes

The Secretary-General or, in his absence, an Officer of the CMI appointed by the President, shall act as secretary and shall take note of the proceedings and prepare the minutes of the meeting. Minutes of the

Assembly shall be published in the two official languages of the CMI, English and French, either in the *CMI Newsletter* or otherwise distributed in writing to the Member Associations.

Rule 7
Amendment of these Rules

Amendments to these Rules of Procedure may be adopted by the Assembly. Proposed amendments must be in writing and circulated to all Member Associations not less than 60 days before the annual meeting of the Assembly at which the proposed amendments will be considered.

Rule 8
Application and Prevailing Authority

These Rules shall apply not only to meetings of the Assembly and International Conferences, but shall also constitute, *mutatis mutandis,* the Rules of Procedure for meetings of the Executive Council, International Sub-Committees, or any other group convened by the CMI.

In the event of an apparent conflict between any of these Rules and any provision of the Constitution, the Constitutional provision shall prevail in accordance with Article 7(h). Any amendment to the Constitution having an effect upon the matters covered by these Rules shall be deemed as necessary to have amended these Rules *mutatis mutandis,* pending formal amendment of the Rules of Procedure in accordance with Rule 7.

GUIDELINES FOR PROPOSING THE ELECTION OF TITULARY AND PROVISIONAL MEMBERS

1999[1]

Titulary Members

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

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

Provisional Members

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

Periodic Review

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

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

HEADQUARTERS OF THE CMI
SIÈGE DU CMI

Everdijstraat 43
2000 ANTWERP
BELGIUM

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

MEMBERS OF THE EXECUTIVE COUNCIL
MEMBRES DU CONSEIL EXÉCUTIF

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

Past President:
Président honoraire: **Patrick J.S. GRIGGS (1997**[2]
International House,
1 St. Katharine's Way,
London E1W 1AY, England.
Tel.: +44 20 7481.0010 – Fax: +44 20 7481.4968
E-mail: pm.griggs@yahoo.co.uk

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

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

Officers

Vice-Presidents:
Vice-Présidents:

Karl-Johan GOMBRII (1994)[3]
Nordisk Defence Club, Kristinelundveien 22
P.O.Box 3033, Elisenberg N-0207 Oslo, Norway.
Tel.: +47 22 13.56.00 – Fax: +47 22 43.00.35
E-mail: kjgombrii@nordisk.no

Stuart HETHERINGTON (1997)[4]
Colin Biggers & Paisley
Level 42, 2 Park Street, Sydney, Australia.
Tel.: +61 2 8281.4555 - Fax: +61 2 8281.4567
E-mail: swh@cbp.com.au

Secretary General:
Secrétaire Général:

Nigel FRAWLEY[5]
107A Cottingham St.,
Toronto, Ontario M4V 1B9, Canada
Tel.: home +1 416 923.0333 – cottage +1 518 962.4587
Fax: +1 416 944.9020
E-mail: nhfrawley@earthlink.net

Administrator:
Administrateur:

Wim FRANSEN (2002)[6]
Everdijstraat 43
2000 Antwerpen, Belgium
Tel.: +32 3 203.4500 - Fax: +32 3 203.4501
E-mail: wimfransen@fransenadvocaten.com

---

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

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

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

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

Officers

Treasurer:
Trésorier:

Benoit GOEMANS[7]
Goemans, De Scheemaecker Advocaten
Ellermanstraat 46
Antwerp B-2060 Belgium
Tel.: +32 3 231.1331 – Direct: +32 3 231.5436 - Fax: +32 3 231.1333
E-mail: benoit.goemans@GDSadvocaten.be

Members:
Membres:

José M. ALCANTARA[8]
C/o Amya
C/Princesa, 61, 5°
28008 Madrid, Spain
Tel.: +34 91 548.8328 – Fax: +34 91 548.8256
E-mail: jmalcantara@amya.es

Christopher O. DAVIS[9]
Shareholder
Baker, Donelson, Bearman, Caldwell & Berkowitz, PC
201 St. Charles Avenue, Suite 3600,
New Orleans, LA 70170, U.S.A.
Tel.: +1 504 566.5200 – Fax: +1 504 636.4000
E-mail: codavis@bakerdonelson.com

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

---

[7] Candidate in Law, (University of Louvain), 1984; Licentiate in Law, (University of Louvain), 1987; LL.M. in Admiralty, Tulane, 1989; Diploma Maritime and Transport Law, Antwerp, 1990; Member of the Antwerp bar since 1987; Professor of Maritime Law, University of Louvain; Professor of Marine Insurance, University of Hasselt; founding partner of Goemans, De Scheemaecker Advocaten; Member of the board of directors and of the board of editors of the Antwerp Maritime Law Reports ("Jurisprudence du Port d'Anvers"); publications in the field of Maritime Law in Dutch, French and English; Member of the Team of Experts to the preparation of the revision of the Belgian Maritime Code and Royal Commissioner to the revision of the Belgian Maritime Code.

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

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

José Tomás GUZMAN SALCEDO[10]
Hendaya 60. Of. 503,
Las Condes: 7550188 Santiago, Chile
Tel. +56 2 3315860/3315861
Fax: +56 2 3315135
E-mail: jtomasguzman@jtguzmanycia.cl

Måns JACOBSSON [11]
2 Mansfield Street
London W1G 9NG, United Kingdom
Tel. +44 20 7636.8141 (UK) - +46 40 471.863 (Sweden)
E-mail: mansjacobsson@hotmail.co.uk

Sergej LEBEDEV (2000)[12]
Maritime Arbitration Commission,
Russian Chamber of Commerce & Industry
Ilinka 6, 103684 Moscow, Russia
Tel.: +7 095 434.9491 (Office) - +7 095 687.5153 (home)
Fax: +7 095 929.0178
E-mail: privintlaw@mgimo.ru

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[10] Independent practice specialized in Maritime & Insurance Law, Average and Loss Adjustment. Until year 2000, a partner of Ansieta, Cornejo & Guzmán, Law Firm established in 1900 in the same speciality. Has lectured on Maritime and Insurance Law at the Catholic University of Chile and at the University of Chile, Valparaíso. Titulary Member of the Comité Maritime International. Vice President of the Chilean Maritime Law Association. Vice President for Chile of the Iberic American Institute of Maritime Law. Past President of the Association of Loss Adjusters of Chile. Arbitrator at the Mediation and Arbitration Centers of the Chambers of Commerce of Santiago and Valparaiso. Arbitrator at the Chilean Branch of AIDA (Association Internationale de Droit d'assurance). Co-author of the Maritime and Marine Insurance Legislation at present in force as part of the Commercial Code. Member of the Commission for the modification of Insurance Law. Participated in drafting the law applicable to loss adjusting.

[11] Born 1939 in Malmö, Sweden. Studies at Princeton University (USA) 1957-58. Bachelor of Law Lund University, Sweden 1964. Served as a judge at district court and appellate court level in Sweden 1964-1970. Appointed President of Division of the Stockholm Court of Appeal 1985. Legal advisor in the Department for International Affairs of the Swedish Ministry of Justice 1970-1981 and Head of that Department 1982-1984; responsible for the preparation of legislation in various fields of civil law, mainly transport law, nuclear law and industrial property; represented Sweden in negotiations in a number of intergovernmental organisations, e.g. the International Maritime Organization (IMO). Director of the International Oil Pollution Compensation Funds 1985-2006. Served as arbitrator in Sweden. Member of the Panel of the Singapore Maritime Arbitration Centre and of the International Maritime Conciliation and Mediation Panel. Published (together with two co-authors) a book on patent law as well as numerous articles in various fields of law. Visiting professor at the World Maritime University in Malmö (Sweden) and at the Maritime Universities in Dalian and Shanghai (People's Republic of China). Lecturer at the IMO International Maritime Law Institute in Malta, the Summer Academy at the International Foundation for the Law of the Sea in Hamburg and universities in the United Kingdom and Sweden. Member of the Steering Committee of the London Shipping Law Centre. Awarded the Honorary Degree of Doctor of Laws by the University of Southampton 2007. Elected Executive Councillor 2007..

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

Henry H. LI[13]
Law School of Dalian Maritime University
1 Linghai Road, Dalian, China
Tel.: +86 411.8472.9316 - Fax: +86 411.8472.7749
E-mail: szshenry@public.szptt.net.cn

Gregory J. TIMAGENIS (2000)[14]
57, Notara Street
18535 Piraeus, Greece
Tel.: +30 210 422.0001 - Fax: +30 210 422.1388
E-mail: git@timagenislaw.com

Publications Editor:

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

Auditors:

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

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

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

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

HONORARY OFFICERS

PRESIDENT AD HONOREM

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

HONORARY VICE-PRESIDENTS

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

Nicholas J. HEALY
Radharc Alainn, Glengarriff
County Cork, Ireland
Tel.: +353 27 63049

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

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

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

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

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

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

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

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Addresses

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

W. David ANGUS
C/o Stikeman Elliot
1155 René-Lévesque Blvd., Suite 4000
Montreal, Quebec, H3B 3V2 Canada
Tel: +1 514 397.3127
Fax: +1 514 397.3208
E-mail: dangus@stikeman.com

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

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

Tom BIRCH REYNARDSON
DLA
3 Noble Street
London EC2V 7EE, United Kingdom
Tel: +44 20 7796.6762
Fax: +44 20 7796.6780
E-mail: Tom.Birch.Reynardson@dla.com

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

Wim FRANSEN
Everdijstraat 43
2000 Antwerpen, Belgium
Tel.: +32 3 203.4500
Fax: +32 3 203.4501
E-mail: wimfransen@fransenadvocaten.com

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

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

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

Charles GOLDIE
2 Myddylton Place
Saffron Walden
Essex CB10 1BB,
United Kingdom
Tel: +44 1799 521.417
Fax: +44 1799 520.387
E-mail: charlesgoldie@nascr.net

Karl-Johan GOMBRII
Nordisk Defence Club
Kristinelundveien 22
P.O.Box 3033 Elisenberg
N-0207 Oslo, Norway
Tel.: +47 22 135.600
Fax: +47 22 430.035
E-mail: kjgombrii@nordisk.no

Patrick GRIGGS
C/o Ince & Co.
International House, 1 St. Katharine's Way
London E1W 1AY, United Kingdom
Tel: +44 20 7481.0010
Fax: +44 20 7481.4968
E-mail: pm.griggs@yahoo.co.uk

José Tomás GUZMAN SALCEDO
Hendaya 60. Oficina 503,
Zip Code: 7550188 Santiago, Chile
Tel. +56 2 3315860/61
Fax: +56 2 3315135
E-mail:jtomasguzman@jtguzmanycia.cl

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

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

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

John KIMBALL
c/o Blank Rome LLP
The Chrysler Building
405 Lexington Avenue
New York, NY 10174-0208, U.S.A.
Tel.: +1 212 885.5259
Fax: +1 917 332.3730
E-mail: JKimball@BlankRome.com

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

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

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

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

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

Richard SHAW
24 Priors Lodge
56 Richmond Hill
Richmond TW10 6BB
United Kingdom
Fax: +44 20 76907241
E-mail: rshaw@soton.ac.uk

Michael STOCKWOOD
C/o Ince & Co.
International House, 1 St. Katharine's Way
London E1W 1AY, United Kingdom
Tel: +44 20 7481.0010
Fax: +44 20 7481.4968
E-mail: michael.stockwood.inces.com

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

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

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

Alexander VON ZIEGLER
Postfach 1876
Löwenstrasse 19
CH 8021 Zürich, Switzerland
Tel: +41 44 215.5252
Fax: +41 44 215.5200
E-mail: alexander.vonziegler@swlegal.ch

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

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

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

MEMBER ASSOCIATIONS
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ARGENTINA

ASOCIACION ARGENTINA DE DERECHO MARITIMO

(Argentine Maritime Law Association)
Leandro N. Alem 928 - 7º piso, Ciudad Autónoma de Buenos Aires, República Argentina,
C.P. C1001AAR. - Tel.: +54 11 4310.0100 int. 2519 - Fax +54 11 4310.0200
E-mail: ACC@marval.com.ar – Website www.aadm.org.ar

Established: 1905

Officers:

President: Alberto C. CAPPAGLI, Marval, O´Farrell & Mairal, Av. Leandro N. Alem 928, 7º piso, 1001 Buenos Aires. Tel.: +54 11 4310.0100 – Fax +54 11 4310.0200 - E-mail: ACC@marval.com.ar

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

First Vice-President: Domingo M. LOPEZ SAAVEDRA, Esnaola & Vidal Raffo, San Martin 664 4° piso, 1004 Buenos Aires. Tel.: +54 11 4515.0040/1224/1235 - Fax: +54 11 4515.0060/0022 - E-mail: domingo@lsa-abogados.com.ar

Second Vice-President: Carlos R. LESMI, Lesmi & Moreno, Lavalle 421 – piso 1°, 1047 Buenos Aires. Tel.: +54 11 4393.5292/5393/5991 – Fax: +54 11 4393.5889 – Firm E-mail: lesmiymoreno@fibertel.com.ar – Private E-mail: clesmi@fibertel.com.ar

Secretary General: Jorge M. RADOVICH, Ruggiero, Radovich y Fernández Llorente Abogados, Corrientes 545, piso 6°, 1043 Buenos Aires. Tel.: +54 11 4328.2299 - Fax: +54 11 4394.8773/4328-1797 – Firm E-mail: sealaw@infovia.com.ar – Private E-mail: jradovich@sealaw.com.ar

Assistant Secretary: Fernando ROMERO CARRANZA, Llerena & Asociados Abogados, Av. L.N.Alem 356, piso 13, Tel.: +54 11 4314.2670 – Fax: +54 11 4314.6080 – E-mail: frcarranza@llerena.com.ar

Treasurer: Pedro G. BROWNE, Browne & Cia., Lavalle 381, piso 5°, 1047 Buenos Aires. Tel.: +54 11 4314.7138/2126/8037 – 4314-4242 – Fax: +54 11 4314.0685 – E-mail: peterbrowne@browne.com.ar

Assistant Treasurer: Diego Esteban CHAMI, Chami, Di Menna & Asociados, Libertad 567, piso 4º, 1012 Buenos Aires. Tel.: +54 11 4382.4060/2828 – Fax: +54 11 4382.4243 – E-mail: diego@chami-dimenna.com.ar

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Assistant Auditor: Hernán LÓPEZ SAAVEDRA, Tel.: +54 11 4515.0040 (int. 27 o 48) – E-mail: hernan@lsa-abogados.com.ar

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AUSTRALIA AND NEW ZEALAND

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

Established: 1974

Officers:

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

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

New Zealand Vice President: Paul DAVID, PO Box 4472, Auckland, North Island 1140, New Zealand. Tel: +64 9 379.5589 Fax: +64 9 379.5590 – E-mail vpnz@mlaanz.org

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c/o Henry Voet-Genicot, Mr. Henri Voet Jr.,
Kipdorp, 53, 2000 Antwerpen
Tel.: +32 3 218.7464 - Fax:+32 3 218.6721
E-mail: henri.voet@voet-genicot.be

Established: 1896

Officers:

President: Guy VAN DOOSSELAERE, Lange Gasthuisstraat 27, 2000 Antwerpen, Belgium. Tel.: +32 3 203.4000 – Fax: +32 3 225.2881 – E-mail: guy@vandoosselaere.be

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Jef GORREBEECK, c/o Vanbreda Risk & Benefits, Plantin en Moretuslei 297, 2140 Antwerpen, Belgium. Tel.: +32 3 217.5792 – Fax: +32 3 235.3120 – E-mail: jef.gorrebeeck@vanbreda.be

Frans PONET, Van Putlei 9, 2018 Antwerpen, Belgium. Tel.: +32 3 248.4840 – Fax: +32 3 216.3671 – E-mail: ponet@ponet-law.be

Guy HUYGHE, Lange Nieuwstraat 47, 2000 Antwerpen, Belgium. Tel.: +32 3 206.7878 – Fax: +32 3 226.1771 – E-mail: guy.huyghe@hbsv-law.be

Secretary: Henri VOET Jr., Kipdorp 53, 2000 Antwerpen, Belgium. Tel.: +32 3 218.7464 – Fax: +32 3 218.6721 – E-mail: henri.voet@voet-genicot.be

Treasurer: Adry POELMANS, Lange Gasthuisstraat 27, 2000 Antwerpen, Belgium. Tel.: +32 3 203.4000 – Fax: +32 3 225.2881 – E-mail: adrypoelmans@vandoosselaere.be

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BRAZIL

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

Established: 1924

Officers:

President: Dr. Artur Raimundo CARBONE, Escritório Jurídico Carbone - Av. Rio Branco, 109, 14th Fl., Rio de Janeiro, CEP 20040-004 RJ-Brasil. Tel.: +55 21 2253.3464 - Fax: +55 21 2253.0622 - E.mail: ejc@carbone.com.br

Vice-Presidents:

Dr. Theòphilo DE AZEREDO SANTOS, Av. Atlantica, 2016/5° andar, Rio de Janiero, RJ, CEP 22.021-001. Tel.: +55 21 2203.2188/2255.2134.

Dr. Celso D. ALBUQUERQUE MELLO, Rua Rodolfo Dantas, 40/1002, Rio de Janeiro, RJ, CEP 22.020.040. Tel.: +55 21 2542.2854.

Dr. Luiz Carlos DE ARAUJO SALVIANO, Judge of Brazilian Maritime Court, Rua Conde de Bonfim, 496/502, Rio de Janeiro, RJ, CEP 20.520-054. Tel.: +55 21 2253.6324/2208.6226.

Dr. Délio MAURY, Rua Teófilo Otoni, 4/2º andar, Rio de Janeiro, RJ, CEP 20090-070. Tel.: +55 21 3870-5411/3870-5679

Secretary General: Mr. José SPANGENBERG CHAVES

Titulary Members:

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

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BULGARIA

BULGARIAN MARITIME LAW ASSOCIATION

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

Officers:

President: Prof. Ivan VLADIMIROV
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Members: Ana DJUMALIEVA, Anton GROZDANOV, Valentina MARINOVA, Vesela TOMOVA, Neli HALACHEVA, Ruben NICOLOV and Svetoslav LAZAROV

CANADA

CANADIAN MARITIME LAW ASSOCIATION
L'ASSOCIATION CANADIENNE DE DROIT MARITIME

c/o Bull, Housser & Tupper LLP, 3000 Royal Centre,
1055 West Georgia Street, Vancouver BC V6E 3R3
Tel.: +1 604 641.4970 - Fax: +1 604 646.2641 - E-mail: mjbird@bht.com

Established: 1951

Officers:

President: Michael J. BIRD, Bull, Housser & Tupper LLP, 3000 Royal Centre, 1055 West Georgia Street, Vancouver BC V6E 3R3. Tel.: +1 604 641.4970 – Fax: +1 604 646.2641 E-mail: mjbird@bht.com

Immediate Past President: A. William MOREIRA, Q.C., Stewart McKelvey Stirling Scales, PO Box 997, 900-1959 Upper Water Street, Halifax, NS B3J 2X2. Tel: +1 902 420.3346 - Fax: +1 902 420.1417 - E-mail: wmoreira@smss.com

National Vice-President: P. Jeremy BOLGER, Borden Ladner Gervais LLP, 1000 de la Gauchetière St. West, Suite 900, Montréal, QC H3B 5H4. Tel.: +1 514 954.3119 - Fax: +1 514 954.1905 - E-mail: jbolger@blgcanada.com

Secretary and Treasurer: Jean-Francois BILODEAU, Robinson Sheppard Shapiro, Stock Exchange Tower, 800 Place Victoria, Suite 4600, Montréal, QC H4Z 1H6. Tel.: +1 514 878.2631 – Fax: +1 514 878.1865 – E-mail: jfbilodeau@rsslex.com

Vice President West: Chistopher J. GIASCHI, Giaschi & Margolis, 404-815 Hornby Street, Vancouver, BC V6Z 2E6. Tel.: +1 604 681.2866 - Fax: +1 604 681.4260 - E-mail: giaschi@admiraltylaw.com

Vice President Central: William M. SHARPE, 40 Wynford Drive, Suite 307, Toronto, ON M3C 1J5. Tel.: +1 416 482.5321 – Fax: +1 416 322.2083 – E-mail: wmsharpe@eol.ca

Vice President Quebec: John G. O'CONNOR, Langlois Kronström Desjardins s.e.n.c. , 300 - 801 Grande Allée West, Québec, QC G1S 1Cl. Tel.: +1 418 682.1212 - Fax: +1 418 682.2272 - E-mail: john.oconnor@lkd.ca

Vice President East: M. Robert JETTÉ, Q.C., Clark Drummie, 40 Wellington Row, Saint John, NB E2L 4S3. Tel.: +1 506 633.3824 - Fax: +1 506 633.3811 - E-mail: mrj@clarkdrummie.ca

Directors:

Brad M. CALDWELL, Caldwell & Co., 401-815 Hornby Street, Vancouver, BC V6Z 2E6. Tel: +1 604 689.8894 - Fax: +1 604 689.5739 - E-mail: bcaldwell@admiraltylaw.com

Shelley CHAPELSKI, Bromley Chapelski, 1150 - 777 Hornby Street, Vancouver, BC V6Z 1S4. Tel.: +1 604 602.1877 - Fax: +1 604 602.1878 - E-mail: chapelski@bromleychapelski.com

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

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

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

Marc D. ISAACS, Isaacs & Co., 24 Duncan Street, 3rd Floor, Toronto, ON M5V 2B8. Tel.: +1 416 601.1340 – Fax: +1 416 601.1190 – E-mail: marc@isaacsco.ca

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

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

Matthew G. WILLIAMS, Matthew G. Williams, Huestis Ritch, 1200-1809 Barrington Street, Halifax, NS B3J 3K8. Tel.: +1 902 429-3400 - Fax: +1 902 427.4713 - E-mail: mgw@hrlaw.net

Representatives of Constituent Members:

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

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

Canadian International Freight Forwarders Association, c/o Gavin MAGRATH, Magrath O'Connor LLP, 302-326 Richmond St. West, Toronto, ON M5V 1X2. Tel.: +1 416 931.0463 – Fax: +1 866 389.0743 – E-mail: gavin@magrathoconnor.com

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

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

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

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

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CHILE

ASOCIACION CHILENA DE DERECHO MARITIMO

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

Established: 1965

Officers:

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

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

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

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

Member: José Tomás GUZMAN SALCEDO, Hendaya 60. Of. 503, Las Condes 7550188 Santiago, Chile. - Tel. +56 2 3315860/3315861 - Fax: +56 2 3315135 - E-mail: jtomasguzman@jtguzmanycia.cl

Titulary Members:

don Eugenio CORNEJO FULLER, don José Tomás GUZMAN SALCEDO, don Eugenio CORNEJO LACROIX, don Ricardo SAN MARTIN PADOVANI y don Maximiliano GENSKOWSKY MOGGIA.

CHINA

CHINA MARITIME LAW ASSOCIATION

6/F Golden Land Building,
No. 32, Liang Ma Qiao Road,
Chaoyang District, BEIJING 100016, CHINA
Tel.: +86 10 6462.4004, 6460.4040 - Fax: +86 10 6464.3500
E-mail: info@cmla.org.cn - Website: www.cmla.org.cn

Established: 1988

Officers:

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

Vice-Presidents:

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

Yanjun WANG, Deputy Chief of the Fourth Civil Affairs Court, Supreme People's Court of P.R.C., No. 27 Dong Jiao Min Xiang, Beijing, 100745, China. Tel.: +86 10 65299624 - Fax: +86 10 65120831

Futian WANG, Vice-President of China Ocean Shipping (Group) Company, COSCO Building, No. 158 Fuxingmennei Street, Beijing, 100031, China. Tel.: +86 10 66492573 - Fax: +86 10 66083792

Zongze GAO, Chairman of All-China Lawyers' Association, Qinglan Mansion, No. 24 Dong Si Shi Tiao, Beijing, 100007, China. Tel.: +86 10 84020232 - Fax: +86 10 84020232

Linchun KE, Deputy Director of Department of System Reform & Legislation, Ministry of Communications of P.R.C., No. 11 Jiunguomennei Street, Beijing, 100736, China. Tel.: +86 10 65292601 - Fax: +86 10 65261596

Jianwei ZIIANG, Vice-President of China National Foreign Trade Transportation Corporation, Jinyun Tower A, No.43a Xizhimenbei Street, Beijing, 100044, China Tel.: +86 10 62295999 - Fax: +86 10 62295998

Shicheng YU, Professor of Shanghai Maritime University, No. 1550 Pu Dong Dadao, Shanghai, 200135, China. Tel.: +86 21 58207399 - Fax: +86 21 58204719

Yuzhuo SI, Professor of Dalian Maritime University, Post Box 501, Building 113, Dalian Maritime University, Dalian, 116026, China. Tel.: +86 411 4671338 - Fax: +86 411 4671338

Yuquan LI, Vice-President of the People's Insurance Company of China, No. 69 Dongheyan Street, Xuanwu District, Beijing, 100052, China. Tel.: +86 10 63035017 - Fax: +86 10 63033734

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

Deputy Secretaries General:

Ilong JIANG (Ms.), China Maritime Arbitration Commission, 6/F Golden Land Building, No. 32 Liangmaqiao Rd., Chaoyang District, Beijing, 100016, China. Tel.: +86 10 64646688 - Fax: +86 10 64643500

Jinxian ZHANG, Judge of the Fourth Civil Affairs Court, Supreme People's Court of P.R.C., No. 27 Dong Jiao Min Xiang, Beijing, 100745, China. Tel.: +86 10 65299638 - Fax: +86 10 65120831

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

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

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

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

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

COLOMBIA

ASOCIACION COLOMBIANA DE DERECHO Y ESTUDIOS MARITIMOS "ACOLDEMAR"

Carrera 7 No. 24-89 Oficina 1803
P.O. Box 14590
Bogotà, D.C. Colombia, South America
Tel. +57 1 241.0473/241.0475 - Fax: +57 1 241.0474

Established: 1980

Officers:

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COSTA RICA

ASOCIACION INSTITUTO DE DERECHO MARITIMO DE COSTA RICA

(Maritime Law Association of Costa Rica)
Oficentro Torres del Campo, Edificio I, Segundo Nivel, San José, Costa Rica
Tel.: +506 257.2929 - Fax: +506 248.2021

Established: 1981

Officers:

President: Lic.Tomas Federico NASSAR PEREZ, Abogado y Notario Publico, Apartado Postal 784, 1000 San José.
Vice-President: Licda. Roxana SALAS CAMBRONERO, Abogado y Notario Publico, Apartado Postal 1019, 1000 San José.
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Fiscal: Lic. Carlos GOMEZ RODAS

CROATIA

HRVATSKO DRUŠTVO ZA POMORSKO PRAVO

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

Established: 1991

Officers:

President: : Dr. sc. Petar KRAGIĆ, Legal Counsel of Tankerska plovidba d.d., B. Petranovića 4, 23000 Zadar. Tel. +385 23 202-261 - Fax: +385 23 250.501 - E-mail: petar.kragic@tankerska.hr
Vice-Presidents:
Prof. dr. sc. Dragan BOLANČA, Professor of Maritime Law at the University of Split Faculty of Law, Domovinskog rata 8, 21000 Split. Tel.: +385 21 393.518 - Fax: +385 21 393.597 - E-mail: dbolanca@pravst.hr
Prof. dr. sc. Aleksandar BRAVAR, Associate Professor of Maritime and Transport Law at the University of Zagreb Faculty of Law, Trg Maršala Tita 14, 10000 Zagreb. Tel.: +385 1 480-2417 - Fax: +385 1 480-2421 - E-mail: abravar@pravo.hr
Dr. sc. Vesna TOMLJENOVIĆ, Assistant Professor of Private International Law at the University of Rijeka Faculty of Law, Hahlić 6, 51000 Rijeka. Tel.: +385 51 359.684 - Fax: +385 51 359.593 - E-mail: vesnat@pravri.hr
Secretary General: Mr. Igor VIO, LL.M., Lecturer at the University of Rijeka Faculty of Maritime Studies, Studentska 2, 51000 Rijeka. Tel. +385 51 338.411 - Fax: +385 51 336.755 - E-mail: vio@pfri.hr

Administrators:
Dr. sc.. Dora ĆORIĆ, Assistant Professor of Maritime and Transport Law at the University of Rijeka Faculty of Law, Hahlić 6, 51000 Rijeka. Tel.: +385 51 359-534 - Fax: +385 51 359-593 - E-mail: dcoric@pravri.hr
Mrs. Sandra DEBELJAK-RUKAVINA, LL.M, Research Assistant at the University of Rijeka Faculty of Law, Hahlić 6, 51000 Rijeka. Tel.: +385 51 359.533 - Fax: +385 51 359.593 - E-mail: rukavina@pravri.hr
Treasurer: Mrs. Marija POSPIŠIL-MILER, LL.M., Legal Counsel of Lošinjska plovidba-Brodarstvo d.d., Splitska 2, 51000 Rijeka. Tel.: +385 51 319.015 - Fax: +385 51 319.003 - E-mail: legal@losinjska-plovidba.hr

Titulary Members:

Ivo GRABOVAC, Vinko HLAČA, Hrvoje KAĆIĆ, Petar KRAGIĆ, Mrs. Ljerka MINTAS-HODAK, Drago PAVIĆ.

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Institutions: 62
Individual Members: 232

DENMARK

DANSK SORETSFORENING

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

Established: 1899

Officers:

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

Members of the Board:

Anders ULRIK, Assuranceforeningen Skuld, Frederiksborggade 15, 1360 Copenhagen K, Denmark. Tel.: +45 33 43.34.00 - Fax: +45 33 11.33.41 - E-mail: anders.ulrik@skuld.com
Henrik THAL JANTZEN, Kromann Reumert, Sundkrogsgade 5, 2100 Copenhagen Ø, Denmark. Tel.: +45 70 12.12.11 - Fax: +45 70 12.13.11 - E-mail: htj@kromannreumert.com
Dorte ROLFF, A.P. Møller - Mærsk A/S, Esplanaden 50, 1098 Copenhagen K, Denmark. Tel.: +45 33 63.33.63 - Fax: +45 33 63.41.08 - E-mail: cphcomp@maersk.com
Jes ANKER MIKKELSEN, Bech-Bruun Dragsted, Langelinie Allé 35, 2100 Copenhagen Ø, Denmark. Tel.: +45 72 27.00.00 - Fax: +45 72 27.00.27 – E-mail: jes.anker.mikkelsen@bechbruundragsted.com
Michael VILLADSEN, Advokaterne, Aaboulevarden 11-13, P.O. Box 5081, 8100 Aarhus C, Denmark. Tel.: +45 86 12.19.99 - Fax: +45 86 12.19.25
E-mail: mv@aaboulevarden.dk

Uffe LIND RASMUSSEN, Danish Shipowners' Association, Amaliegade 33, 1256 Copenhagen K, Denmark. Tel.: +45 33 11.40.88 - Fax: +45 33 11.62.10
E-mail: ulr@danmarksrederiforening.dk
Ole SPIERMANN, Jonas Bruun, Bredgade 38, 1260 Copenhagen K, Denmark. Tel.: +45 33 47.88.00 - Fax: +45 33 47.88.88 - E-mail: osp@jblaw.dk
Peter ARNT NIELSEN, Copenhagen Business School, Legal Department, Howitzvej 13, 2000 Frederiksberg C, Denmark. Tel.: +45 38 15.26.44 - Fax: +45 38 15.26.10 - E-mail: pan.jur@cbs.dk
Jens HENNILD, the Confederation of Danish Industries (DI), H.C. Andersens Boulevard 18, 1787 Copenhagen V, Denmark. Tel.: +45 33 77.33.77 - Fax: +45 33 77.33.00 - E-mail: jeh@di.dk

Titulary Members:

Jan ERLUND, Flemming IPSEN, Alex LAUDRUP, Hans LEVY, Jes Anker MIKKELSEN, Bent NIELSEN, Uffe Lind RASMUSSEN, Henrik THAL JANTZEN, Anders ULRIK, Michael VILLADSEN.

Membership:

Approximately: 145

DOMINICAN REPUBLIC

ASOCIACION DOMINICANA DE DERECHO MARITIMO (AADM)

557 Arzobispo Portes Street, Torre Montty, 3rd Floor,
Ciudad Nueva, Santo Domingo, Dominican Republic
Tel.: +851 685.8988/682.2967 - Fax: +851 688.1687

Established: 1997

Officers:

President: Lic. George Montt BUTLER VIDAL
Secretary: Lic. Marie Linnette GARCIA CAMPOS
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ECUADOR

ASOCIACION ECUATORIANA DE ESTUDIOS Y DERECHO MARITIMO "ASEDMAR"

(Ecuadorian Association of Maritime Studies and Law)
Junin 105 and Malecón 6nd Floor, Intercambio Bldg.,
P.O.Box 3548, Guayaquil, Ecuador
Tel.: +593 4 2560.100 - Fax: +593 4 2560.700

Established: 1993

Officers:

President: Dr. José Modesto APOLO TERÁN, Junín 105 y Malecón, Edif. Intercambio 6to Piso, Guayaquil, Ecuador. Tel.: 2560100 - E-mail: jmapolo@lawyers.ec

Vice President: Ab. Jaime MOLINARI LLONA, Av. 25 de Julio Km 2,5, Junto a las Bodegas de Almagro. Tel.: 2489402 - E-mail ecuapandi@telconet.net

Principal Vocals:

Ab. Fernando ALARCÓN SÁENZ, Corp. Noboa El Oro 105 y la Ria. Tel.: 2442055 ext. 4167 - E-mail: falarcon@bonita.com

Ab. Publio FARFÁN VÉLEZ, Av. 9 de Octubre 416 y Chile Edific. City Bank, Consejo de la Marina Mercante 5to Piso. Tel.: 2560688/2561366 - E-mail: sectec@telconet.net

Ab. Pablo BURGOS CUENCA, DIGPER: Base Sur, Via Puerto Maritimo. Tel.: 2502259 - E-mail: pabloburgoscuenca@hotmail.com

Substitute Vocals:

Dr. Modesto Gerardo APOLO TERÁN, Córdova 810 y Victor Manuel Rendón Edific. Torres de la Merced 1er Piso Ofic. 2. Tel.: 2569479 - E-mail: mgapolo@interactive.net.ec

Ab. Victor Hugo VÉLEZ, Digmer: Elizalde y Malecón Esquina, Tel.: 2320400 ext 312 - E-mail: asesoria_juridica@digmer.org

Dr. Manuel RODRÍGUEZ DALGO, Av. Amazonas N24 196 y Cordero Edif. Flopec Piso 11. Tel.: (02) 2552100 - E-mail: legal@flopec.com.ec

Titulary Member

José MODESTO APOLO

FINLAND

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

Established: 1939

Officers:

President: Hannu HONKA, Åbo Akademi, Department of Law, Gezeliusgatan 2, FI-20500 Åbo. Tel.: +358 2 215 4129 - Fax: +358 2 215 4699. E-mail: hannu.honka@abo.fi
Vice-President: Nils-Gustaf PALMGREN, Brandkårsgränden 3 G, FI-02700 Grankulla. Tel.: +358 9 505 1490 - E-mail: n-g.palmgren@kolumbus.fi
Secretary: Peter SANDHOLM, Åbo Hovrätt, Tavastgatan 11, FI-20500 Åbo. Tel.: +358 10 364 1100 - Fax: +358 10 364 1101 - E-mail: peter.sandholm@om.fi

Members of the Board:

Jan AMINOFF, Advokatbyrå Aminoff & Weissenberg Oy Ab, Högbergsgatan 34, 00130 Helsingfors. Tel.: +358 9 684 0477 - Fax: +358 9 6840 4740 - E-mail: jan.aminoff@jaflaw.fi
Lolan ERIKSSON, Kommunikationsministeriet, POB 31, FI-00023 Statsrådet. Tel. +358 9 160 02
Henrik GAHMBERG, Advokatbyrå Gahmberg & Co Oy Ab, POB 79, FI-00131 Helsingfors. Tel.: +358 9 6869 8830 - Fax: +358 9 6869 8850 - E-mail: henrik.gahmberg@getco.fi
Jan HANSES, Viking Line, POB 166, AX-22101 Mariehamn. Tel.: +358 18 27 000 - Fax: +358 18 169 44 - E-mail: jan.hanses@vikingline.fi
Saila HIIRSALMI, Gard (Baltic) Oy Ab, Bulevardi 46, 00120 Helsinki. Tel.: +358 9 618 8380 - Fax: +358 9 612 1000 - E-mail: saila.hiirsalmi@gard.no
Ilkka KUUSNIEMI, Neptun Juridica Oy Ab, Keilaranta 9, FI-02150 Espoo. Tel.: +358 9 6962 6313 - Fax: +358 9 628 797 - E-mail: ilkka.kuusniemi@neptunjuridica.com
Olli KYTÖ, Alandia-Bolagen, POB 121, AX-22101 Mariehamn. Tel.: +358 18 29 000 - Fax: +358 18 13 290 - E-mail: olli.kyto@alandia.com
Niklas LANGENSKIÖLD, Advokatbyrå Castrén & Snellman, POB 233, FI-00131 Helsingfors. Tel.: +358 20 776 5476 - Fax: +358 20 776 1476 - E-mail: niklas.langenskiold@castren.fi
Antero PALAJA, Turun Hovioikeus, Hämeenkatu 11, FI-20500 Turku. Tel. +358 10 364 1100 - Fax: +358 10 364 1101. E-mail: antero.palaja@om.fi
Mervi PYÖKÄRI, Kemira GrowHow Oyj, POB 900, 00181 Helsinki. Tel.: +358 10 215 2842 - Fax: +358 10 215 2126 - E-mail: mervi.pyokari@kemira-growhow.com
Matti TEMMES, Multicann Finland Oy, Satamakatu 9 A 13, FI-48100 Kotka. Tel.: +358 5 225 0918 - Fax: +358 5 225 0917 - E-mail: mtemmes.multicann@kolumbus.fi
Peter WETTERSTEIN, Åbo Akademi, Deparment of Law, Gezeliusgatan 2, FI-20500 Åbo. Tel.: +358 2 215 4321 - Fax: +358 2 215 4699. E-mail: peter.wetterstein@abo.fi

Titulary Member:

Nils-Gustaf PALMGREN

Membership:

Private persons: 104 - Firms: 24

FRANCE

ASSOCIATION FRANCAISE DU DROIT MARITIME

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

Established: 1897

Officers:

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

Présidents Honoraires:

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

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

Me. Jean-Serge ROHART, Avocat à la Cour de Paris, SCP Villeneau Rohart Simon & Associés, 15 Place du Général Catroux, 75017 Paris. Tel.: +33 1 46.22.51.73 – Fax: +33 1 47.66.06.37 – E-mail: js.rohart@villeneau.com

Vice-présidents:

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

M. Philipe DELEBECQUE, Professeur à l'Université de Paris I, Panthéon-Sorbonne 4, rue de la Paix, 75002 Paris. Tel.: +33 1 42.60.35.60 – Fax: +33 1 42.60.35.76 – E-mail: ph-delebecque@wanadoo.fr

Secrétaire Général: M.me Valérie CLEMENT-LAUNOY, Directrice Juridique, Seafrance, 1, avenue de Flandre, 75019 Paris. Tel. + 33 1 53.35.11.62 - Fax: +33 1 53.35.11.64 – E-mail: vclement@seafrance.fr

Secrétaires Généraux Adjoints:

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

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

Membres du Comité de Direction

M.me Cécile BELLORD, Responsable juridique Armateurs de France, 75008 Paris. Tel. +33 1 53.89.5254/44 – Fax: +33 1 53.89.52.53.

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

M. Jean-Paul CHRISTOPHE, Expert maritime, Paris, 12, rue Ernest Tissot, 92210 Saint-Cloud. Tel.: +33 1 47.71.14.31 – Fax: +33 1 47.71.11.89 – E-mail: jp.christophe@wanadoo.fr

M.me Isabelle CORBIER, Avocat à la Cour, 134, Bld Saint-Germain, 75006 Paris. Tel.: +33 1 43.26.15.25 – fax: +33 1 43.25.95.58 – E-mail: ic@isabellecorbier.com

M.me Nathalie FRANCK, Avocat à la Cour, Gide Loyrette Nouelm, 26, cours Albert 1er, 75008 Paris. Tel.: +33 1 40.75.60.95 – Fax: +33 1 42.56.84.47

M. Philippe GODIN, Avocat à la Cour, Bouloy Grellet & Godin, 69, rue de Richelieu, 75002 Paris. Tel. +33 1 1 44.55.38.83 – Fax: +33 1 42.60.30.10

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

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

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

M. Olivier JAMBU-MERLIN, Avocat à la Cour, 6 rue Deurbroucq, 44000 Nantes. Tel. +33 2 40.71.87.26 – Fax: +33 2 40.69.38.88

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

M. Didier LE PRADO, Avocat aux Conseils, 8, Villa Bosquet, 75007 Paris. Tel.: +33 1 44.18.37.95 – Fax: +33 1 44.18.38.95 – E-mail: dlpavoc@wanadoo.fr

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

M.me Pascale MESNIL, Juge, Président de Chambre Tribunal ce Commerce de Paris, 77, rue des Beaux Lieux, 95550 Bessancourt. Tel/Fax: +33 1 39.60.10.94 – E-mail: pmesniltcp@tiscali.fr

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

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

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

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

M. Antoine VIALARD, Professeur émérite de l'Université Montesquieu - Bordeaux IV, 20, Hameau de Russac, 33400 Talence. Tel.: +33 5 24.60.67.72

Titulary Members:

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

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GERMANY

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

Established: 1898

Officers:

President: Dr. Inga SCHMIDT-SYASSEN, Pikartenkamp 44, 22587 Hamburg. Tel.: +49 (40) 863113 - Fax: +49 (40) 86608313 - E-Mail: inga.schmidt-syassen@gmx.de
Vice-President: Dr. Bernd KRÖGER, Möörkenweg 39a, 21029 Hamburg. Tel. +49 40 7242.916 - Fax: +49 40 30330.933 - E-mail: gerke@reederverband.de
Secretary: Dr. Jan-Thiess HEITMANN, Verband Deutscher Reeder, Esplanade 6, 20354 Hamburg. Tel. +49 40 35097.219 - Fax: +49 40 35097.211 - E-mail: heitmann@reederverband.de

Members:

Dr. Sven GERHARD, Global Office Marine, Allianz Global Corporate & Specialty, Burchardstr. 8, 20095 Hamburg. Tel.: +49 (40) 36172905 - Fax: +49 (40) 36173048 - E-mail: sven.gerhard@ma.allianz.com
Wolfgang JÜRSS, Aktiengesellschaft Allianz Global Corporate & Specialty, Großer Burstah 3, 20457 Hamburg. Tel.: +49 40 36173679 - E-mail: wolfgang.juerss@ma.allianz.com
Prof. Dr. Rainer LAGONI LL.M., Institut für Seerecht und Seehandelsrecht der Universität Hamburg, Schlüterstr. 28, 20146 Hamburg. Tel.: +49 40 42838.2240 - Fax: +49 40 42838.6271 - E-mail:lagoni@uni-hamburg.de
Dr. Volker LOOKS, CMS Hasche, Sigle Rechtsanwälte, Stadhausbrücke 1-3, 20355 Hamburg. Tel.: +49 40 3763.0303 - Fax: +49 40 3763.0300 - E-mail: volker.looks@cms-hs.com
Dr. Hans-Heinrich NÖLL, Verband Deutscher Reeder, Esplanade 6, 20354 Hamburg. Tel.: +49 40 35097.227 - Fax: +49 40 35097.211 - E-mail: noell@reederverband.de
Dr. Klaus RAMMING, Soz. Lebuhn & Puchta, Vorsetzen 35, 20459 Hamburg. Tel.: +49 40 3747780 - Fax: +49 40 364650 - E-Mail: klaus.ramming@lebuhn.de

Titulary Members:

Hartmut von BREVERN, Prof. Dr. Rolf HERBER, Dr. Bernd KRÖGER, Dr. Dieter RABE, Dr. Klaus RAMMING, Dr. Thomas M. REME'.

Membership:

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GREECE

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

Established : 1911

Officers:

President: Dr. Antoine ANTAPASSIS, Professor at the University of Athens, Advocate, 10 Akti Poseidonos, 185 31 Piraeus. Tel.: +30 210 422.5181 - Fax: +30 210 422.3449 - E-mail: antalblaw@ath.forthnet.gr

Vice-Presidents:

Aliki KIANTOU-PAMPOUKI, Emeritus Professor at the University of Thessaloniki, 3 Agias Theodoras, 546 23 Thessaloniki. Tel.: (2310) 221.503 - Fax (2310) 237.449

Nikolaos SKORINIS, Advocate, 67 Hiroon Polytechniou, 185 36 Piraeus. Tel. +30 210 452.5848-9/452.5855 - Fax: +30 210 418.1822

Secretary-General: Constantinos ANDREOPOULOS, Advocate, 8, Kiou Str., 166 73 Ano Voula, Greece

Deputy Secretary-General: Thanos THEOLOGIDIS, Advocate, 4 Skouze, 185 35 Piraeus. Tel.: +30 210 429.4010 - Fax: +30 210 429.4025

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Ioannis MARKIANOS-DANIOLOS, Advocate, 29 I. Drosopoulou, 112 57 Athens. Fax: +30 210 821.7869

Treasurer: Petros CAMBANIS, Advocate, 50 Omirou, 106 72 Athens. Tel.: +30 210 363.7305/363.5618 - Fax: +30 210 360.3113

Members:

Lia ATHANASSIOY, Advocate, Lecturer at the University of Athens, Kallipoleos 36, 16777, Elliniko. Tel.: +30 210 3390118/3390119- Fax: +30 210 3387337

Ioannis HAMILOTHORIS, Judge, 17 Notou, 153 42 Ag. Paraskevi. Fax: +30 210 639.3741

Ioannis KOROTZIS, Judge, P.O.Box 228, 19003, Markopoulo Attikis, Tel.: +30 22990 72771

Panayotis MAVROYIANNIS, Advocate, 96 Hiroon Polytechniou, 185 36 Piraeus. Tel.: +30 210 451.0249/451.0562/413.3862 - Fax: +30 210 453.5921

Panayotis SOTIROPOULOS, Advocate, 4 Lykavittou, 106 71 Athens. Tel.: +30 210 363.0017/360.4676 - Fax: +30 210 364.6674 - E-mail: law-sotiropoulos@ath.forthnet.gr

Stelios STYLIANOY, Advocate, Platonos 12, 185 35 Piraeus. Tel.: +30 210 411.7421/413.0547 - Fax: +30 210 417.1922

Dr. Grigorios TIMAGENIS, Advocate, 57 Notara Sreet, 18535 Piraeus. Tel.: +30 210 422.0001 - Fax +30 210 422.1388 - E-mail: gjt@timagenislaw.com

Titulary Members:

Christos ACHIS, Constantinos ANDREOPOULOS, Anthony ANTAPASSIS, Paul AVRAMEAS, Aliki KIANTOU-PAMPOUKI, Panayiotis MAVROYIANNIS, Ioannis ROKAS, Nicolaos SKORINIS, Panayotis SOTIROPOULOS

GUATEMALA

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

Officers:

President: Mr. José Eduardo MARTI BAEZ

HONG KONG, CHINA

HONG KONG MARITIME LAW ASSOCIATION
c/o Clyde & Co.
18th Floor, CITIC Tower, 1, Tim Mei Avenue, Central, Hong Kong.
Tel: +852 2878.8600 - Fax: +852 2522.5907
E-mail: secretary@hkmla.org - Website: www.hkmla.org

Established: 1978 (re-established: 1998)

Executive Committee Members:
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INDONESIA

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

Established: 1981

Board of Management:

President: Mrs. Chandra Motik Yusuf DJEMAT, S.H., Attorney at law, Chandra Motik Yusuf Djemat & Ass., c/o Jl. Yusuf Adiwinata 33, Jakarta 10350, Indonesia. Tel.: +62 21 390.9737 – Fax: +62 21 390.5772. – Home: Jl. Lumajang no. 2, Jakarta 10350. Tel. +62 21 331.735

General Secretary: Mrs. Rinie AMALUDDIN, S.H., Attorney at law, c/o Chandra Motik Yusuf Djemat & Ass., Jl. Yusuf Adiwinata 33, Jakarta 10350, Indonesia. Tel.: +62 21 390.9737 – Fax: +62 21 390.5772

General Treasurer: Mrs. Masnah SARI, S.H., Notary, c/o Notaris Masnah Sari, Jl. Jend. Sudirman 27.B, Bogor Jawa Barat, Indonesia. Tel.: +62 251 311.204

Chief Dept. for Maritime Law: Mrs. Mariam WIDODO, S.H., Notary, c/o Notaris Mariam Widodo JL., Terminal no. 22, Cikampek, Jawa Barat, Indonesia. Tel. +62 264 513.004 ext. 246. – Home: Jl. Potlot II no. 6 Duren Tiga, Kalibata Jakarta Selatan. Tel.: +62 21 799.0291

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

Chief Dept. for Law of the Sea: Mrs. Erika SIANIPAR, S.H., Secretariat of PT. Pelni, c/o PT. Pelni, Jl. Gajah Mada no.14, 2nd Floor, Jakarta, Indonesia. Tel.: +62 21 385.0723

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

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

Chief of Dept. Information Law Service: Mrs. Aziar AZIS, S.H., Legal Bureau Bulog, c/o Bulog, Jl. Gatot Subroto, Jakarta, Indonesia. Tel.: +62 21 525..2209. – Home: Kpm. Cipinang Indah Blok L no. 34, Jakarta Timur. Tel.: +62 21 819.0538

Vice: Amir HILABI, S.H., Attorney at law, c/o Amir Hilabi & Ass., Jl. Biru Laut Raya no. 30, Cawang Kapling, Jakarta, Indonesia. Tel.: +62 21 819.0538

Chief of Dept. Legal Aid: Mrs. Titiek ZAMZAM, S.H., Attorney at law, c/o Titiek Zamzam & Ass., Jl. Ex. Kompek AURI no. 12, Jakarta 12950, Indonesia. Tel.: +62 21 525.6302

Public Relation Service: Mrs. Neneng SALMIAH, S.H., Notary, c/o Notaris Neneng Salmiah Jl. Suryo no. 6 Kebayoran Baru, Jakarta, Indonesia. Tel.: +62 21 739.6811/722.1042. – Home: Jl. MPR III Dalam no. 5 Cilandak, Jakarta 12430, Indonesia

General Assistance: Z. FARNAIN, S.H., Attorney at law, c/o Chandra Motik Yusuf Djemat & Ass., Jl. Yusuf Adiwinata no. 33, Jakarta 10350, Indonesia. Tel.: +62 21 390.9737 – Fax: +62 21 390.5772

IRELAND

IRISH MARITIME LAW ASSOCIATION

All correspondence to be addressed to the Hon. Secretary:
Helen NOBLE, Mason Hayes - Curran Solicitors, South Bank House,
Barrow Street, Dublin 4. Tel.: +353 1 614.5000 - Fax: +353 1 614.5001
E-mail: hnoble@mhc.ie

Established: 1963

Officers:

President: Colm O'HOISIN, S.C., P.O.Box 4460, Law Library Buildings, 158/159 Church Street, Dublin 7. Tel.: +353 1 817.5088 - E-mail: cohoisin@indigo.ie

Vice-President: Paul GILL, Dillon Eustace, Solicitors, 33 Sir John Rogerson's Quay, Dublin 2. Tel.: +353 1 667.0022 - Fax: +353 1 667.0042 - E-mail: paul.gill@dilloneustace.ie

Hon. Secretary: Helen NOBLE, Mason Hayes - Curran Solicitors, South Bank House, Barrow Street, Dublin 4. Tel.: +353 1 614.5000 - Fax: +353 1 614.5001 - E-mail: hnoble@mhc.ie

Hon. Treasurer: Niamh LOUGHRAN, Dillon Eustace, Solicitors, 33 Sir John Rogerson's Quay, Dublin 2. Tel.: +353 1 667.0022 - E-mail: Niamh.loughran@dilloneustace.ie

Committee Members:

John Wilde CROSBIE, BL, Law Library, Four Courts, Dublin 7. Tel: +353 1 872.0777 - Fax: +353 1 872.0749 - E-mail: crossbee@eircom.net

Hugh KENNEDY, Lavelle Coleman, 51-52 Fitzwilliam Square, Dublin 2. Tel: +353 1 6445800 - Fax: +353 1 6614581 - E-mail: hkennedy@lavellecoleman.ie

Bill HOLOHAN, Holohan Solicitors, Waterview House, 16 Sundays Well Road, Cork. Tel: +353 21 4300734 - Fax: +353 21 4300911 - E-mail: bill@billholohanb.ie

Eamonn MAGEE, BL, Allianz Insurance, Burlington Road, Dublin 4. Tel: +353 1 613.3223 - Fax: +353 1 660.5246 - E-mail: eamonn.magee@allianz.ie

Cian O CATHAIN, Vincent & Beatty, Solicitors, 67/68 Fitzwilliam Square, Dublin 2. Tel: +353 1 676.3721 - Fax: +353 1 678.5317 - E-mail: vinbea@securemail.ie

Vincent POWER, A & L Goodbody Ltd., Solicitors, IFSC, North Wall Quay, Dublin 1. Tel.: +353 1 649.2000- Fax: +353 1 649.2649- E-mail: vpower@algoodbody.ie

Sheila TYRRELL, Arklow Shipping Ltd., North Quay, Arklow, Co. Wicklow. Tel.: +353 402 39901 - Fax: +353 402 39902 - E-mail: smt@asl.ie

The Hon. Mr. Justice Brian McGOVERN, J., Four Courts, Dublin 7. E-mail: bmcgov@gmail.com

Her Hon. Judge Petria McDONNELL, Phoenix House, 15/24 Phoenix Street North, Smithfield, Dublin. E-mail: Petria.McDonnell@courts.ie

Sean KELLEHER, Irish Dairy Board, Grattan House, Lower Mount Street, Dublin 2. Tel: +353 1 661 9599 - E-mail: skelleher@idb.ie

Sean O'REILLY, P&I Shipping Services Ltd., 4 St. Columba's Rise, Swords, Co. Dublin. Tel: +353 1 8132605 - E-mail: pandi@sealaw.ie

David HURLEY, McCann Fitzgerald Solicitors, Riverside One, Sir John Rogerson's Quay, Dublin 2. Tel: +353 1 829000 - Fax: +353 1 8290010 - E-mail: David.Hurley@mccannfitzgerald.ie

Titulary Members:

Paul GILL, Bill HOLOHAN, Sean KELLEHER, Eamonn MAGEE, Her Hon. Judge Petria McDONNELL, The Hon. Mr. Justice Brian McGOVERN, J. Niall McGOVERN, Colm O'HOISIN, Mary SPOLLEN.

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ITALY

ASSOCIAZIONE ITALIANA DI DIRITTO MARITTIMO

(Italian Maritime Law Association)
Via Roma 10 - 16121 Genova
Tel.: +39 010 586441 - Fax: +39 010 594805
E-mail: presidenza@aidim.org

Established: 1899

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

Officers:

President: Giorgio BERLINGIERI, Via Roma 10, 16121 Genova. Tel.: +39 010 586441 - Fax: +39 010 594805 - E-mail: presidenza@aidim.org

Vice-Presidents:

Elda TURCO BULGHERINI, Viale G. Rossini 9, 00198 Roma. Tel.: +39 06 8088244 - Fax: +39 06 8088980 - E-mail: studioturco@tiscalinet.it

Sergio M. CARBONE, Via Assarotti 20, 16122 Genova. Tel.: +39 010 885242 - Fax: +39 010 8314830 - E-mail: smcarbon@tin.it

Secretary General: Giuseppe DUCA, S. Croce, 266, 30135 Venezia. Tel.: +39 041 711017 - Fax: +39 041 795473 - E-mail: segretario@aidim.org

Treasurer: Marcello MARESCA, Via Bacigalupo 4/13, 16122 Genova. Tel.: +39 010 877130 - Fax: +39 010 881529 - E-mail: tesoriere@aidim.org

Councillors:

Alberto BATINI, Via di Franco 9, 57100 Livorno. Tel. +39 0586 883232 - Fax: +39 0586 884233 - E-mail: alberto.batini@studiolegalebatini.com

Mauro CASANOVA, Via XX Settembre 14, 16121 Genova. Tel.: +39 010 587888 - Fax: +39 010 580445 - E-mail: slcasanova@libero.it

Sergio LA CHINA, Via Roma 5, 16121 Genova. Tel.: +39 010 541588 - Fax: +39 010 592851 - E-mail: sergiolachina@tin.it

Emilio PIOMBINO, Via Ceccardi 4/26, 16121 Genoa, Italy. Tel.: +39 010 562623 - Fax: +39 010 587259 - E-mail: epiombino@studiogcavallo.it

Francesco SICCARDI, Via XX Settembre 37, 16121 Genova, Italy. Tel.: +39 010 543951 - Fax: +39 010 564614 - E-mail: f.siccardi@siccardibregante.it

Sergio TURCI, Via Ceccardi 4/30, 16121 Genova. Tel.: +39 010 5535250 - Fax: +39 010 5705414 - E-mail: turcilex@turcilex.it

Enzio VOLLI, Via San Nicolò 30, 34100 Trieste. Tel.: +39 040 638384 - Fax: +39 040 360263 - E-mail: info@studiovolli.it

Stefano ZUNARELLI, Via del Monte 10, 40126 Bologna. Tel.: +39 051 7457221 - Fax: +39 051 7457222 - E-mail: stefano.zunarelli@studiozunarelli.com

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Membership:

177

JAPAN

THE JAPANESE MARITIME LAW ASSOCIATION

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

Established: 1901

Officers:

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

Vice-Presidents:

Sumio SHIOTA, Chairman of a Airport Environment Improvement Foundation, 2-1-1 Uchisaiwai-cho Chiyoda-ku, Tokyo 100-0011.

Takao KUSAKARI, President of Nippon Yusen Kaisha, c/o N.Y.K., 2-3-2 Marunouchi, Chiyoda-ku, Tokyo 100-0005.

Hachiro TOMOKUNI, Counselor of Mitsui O.S.K. Lines Ltd., c/o M.O.L., 2-1-1 Toranomon, Minato-ku, Tokyo 105-8685.

Hisashi TANIKAWA, Professor Emeritus at Seikei University, 4-15-33-308, Shimorenjaku 4-chome, Mitaka-City, Tokyo 181-0013.

Seiichi OCHIAI, Professor of Law at the University of Tokyo, 6-5-2-302 Nishi-shinjyuku, Shinijyuku-ku, Tokyo 160-0023.

Kenjiro EGASHIRA, Professor of Law at the University of Tokyo, 3-25-17, Sengencho 3-chome, Higashi-Kurume, Tokyo 203-0012

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

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Mitsuo ABE, Kenjiro EGASHIRA, Taichi HARAMO, Hiroshi HATAGUCHI, Takeo HORI, Yoshiya KAWAMATA, Noboru KOBAYASHI, Takashi KOJIMA, Hidetaka MORIYA, Masakazu NAKANISHI, Seiichi OCHIAI, Tsuneo OHTORI, Yuichi SAKATA, Akira TAKAKUWA, Hisashi TANIKAWA, Shuzo TODA, Akihiko YAMAMICHI, Tomonobu YAMASHITA.

KOREA

KOREA MARITIME LAW ASSOCIATION

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

Established: 1978

Officers:

President: Prof. LEE-SIK CHAI, Professor of Law, Korea University, Seoul
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Prof. KYUN-SUNG LEE, Professor of Law, Hankook University of Foreign Studies, Seoul
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ROK-SANG YU, Attoney at Law, kim, Shin and Yu, Seoul
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Individual members: 150

D.P.R. OF KOREA

CHOSON MARITIME LAW ASSOCIATION

Maritime Building 2nd Floor, Donghundong, Central District, Pyongyang, DPRK
Tel.: +850 2 18111/999 ext: 8477 - Fax: +850 2 3814567
E-mail: radiodept@silibank.com

Established: 1989

Officers:

President: Mr. RA DONG HI, Vice Minister of the Ministry of Land & Maritime Transportation
Vice-President: Mr. KIM JU UN, Director of Legal & Investigation Department of the Ministry of Land & Maritime Transportation
Secretary-General: Mr. KIM YONG HAK, Secretary-General of Choson Maritime Arbitration Commission

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Individual Members: 142

MALTA

MALTA MARITIME LAW ASSOCIATION

144/1 Palazzo Marina, Marina Street, Pietà PTA 9043, Malta
Tel.: +356 21 250320, +356 27 250320 – Fax: +356 21 250320
E-mail: mlac1@onvol.net – Website: www.mmla.org.mt

Established: 1994

Officers:

President: Dr. Tonio FENECH, Fenech & Fenech Advocates, 198 Old Bakery Street, Valletta VLT 1455, Malta. Tel.: +356 21 241232 - Fax: +356 25 990641 - E-mail: tonio.fenech@fenlex.com

Vice-President: Dr. Ivan VELLA, Level 12, Portomaso Business Tower, St. Julians PTM 01, Malta. Tel.: +356 21 388344 - Fax: +356 21 388347 - E-mail: iv@advocate-vella.com

Secretary: Dr. Daniel AQUILINA, Ganado & Associates, 171 Old Bakery Street, Valletta VLT 1455, Malta. Tel.: +356 21 235406 – Fax: +356 21 225908 – E-mail: daquilina@jmganado.com

Treasurer: Ms. Miriam CAMILLERI, MC Consult, 29, Church Street, Msida, MSD 1382, Malta. Tel.: +356 21 371411 - Fax: +356 23 331115 - E-mail: miriam@waldonet.net.mt

Executive Committee Members:
Dr. Ann FENECH, Fenech & Fenech Advocates, 198 Old Bakery Street, Valletta VLT 1455, Malta. Tel.: +356 21 241232 - Fax: +356 25 990644 - E-mail: ann.fenech@fenlex.com
Dr. Suzanne SHAW, Dingli & Dingli Law Firm, 18/2, South Street, Valletta VLT 1102, Malta. Tel.: +356 21 236206 - Fax: +356 21 240321 - E-mail: suzanne@dingli.com.mt
Dr. David TONNA, Mamo TCV Advocates, 90, Palazzo Pietro Stiges, Strait Street, Valletta VLT 1436, Malta. Tel.: +356 21 231345 - Fax +356 21 244291 - E-mail: david.tonna@mamotcv.com
Dr. Stefano FILLETTI, Filletti & Filletti Advocates, 7, St. Christopher Street, Valletta, VLT 1468, Malta. Tel.: +356 21 251196 - Fax: +356 21 251196 - E-mail: stefano.filletti@gmail.com
Mr. Norman XERXEN, J.B. Sorotto Ltd, Exchange Buildings, Republic Street, Valletta VLT 05, Malta. Tel.: +356 21 232649 - Fax: +356 21 250326 - E-mail: admin@jbsorotto.com.mt

MEXICO

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

Established: 1961

Officers:

President: Dr. Ignacio L. MELO Jr.
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Treasurer: Dr. David ENRIQUEZ
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Dr. Ignacio L. MELO Jr.

MOROCCO

ASSOCIATION MAROCAINE DE DROIT MARITIME
(Moroccan Association of Maritime Law)
Espace Paquet n° 501 - Place Nicolas Paquet, Boulevard Mohamed V
Casablanca, Morocco
Tel.: +212 2245.2525 - Fax: +212 2245.0501

Established: 1955

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NETHERLANDS

NEDERLANDSE VERENIGING VOOR ZEE- EN VERVOERSRECHT

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

Established: 1905

Officers:

President: Prof. Mr G.J. VAN DER ZIEL, Doornstraat 23, 3151 VA Hoek van Holland. Tel.: +31 174 384.997 - Fax: +31 174 387.146 - E-mail: vanderziel@xs4all.nl

Secretary: Mr J.M.C. WILDSCHUT, P.O. Box 10711, 1001 ES Amsterdam. Tel.: +31 20 626.0761 - Fax: +31 20 620.5143 - E-mail: JMC.Wildschut@planet.nl

Treasurer: De heer J. POST, Post & Co. (P&I) B.V, P.O. Box 443, 3000 AK Rotterdam. Tel.: +31 10 453.5888 - Fax: +31 10 452.9575 - E-mail: jack@pstvanophem.nl

Mr T. ROOS, Van Dam & Kruidenier Advocaten, P.O. Box 4043, 3006 AA Rotterdam. Tel.: +31 10 288.8800 - Fax: +31 10 288.8828 - E-mail: roos@damkru.nl

Mr T. VAN DER VALK, AKD Prinsen Van Wijmen, P.O. Box 4302, 3006 AH Rotterdam. Tel.: +31 88 253.5404 - Fax: +31 88 253.5430 - E-mail: tvandervalk@akd.nl

Members:

Prof. Mr M.H. CLARINGBOULD, Van Traa Advocaten, P.O. Box 21390, 3001 AJ Rotterdam. Tel.: +31 10 413.7000 - Fax: +31 10 414.5719 - E-mail: claringbould@van traa.nl

Mr J.J. CROON, Transavia Airlines C.V., P.O. Box 7777, 1118 ZM, Schiphol. Tel.: +31 20 604.6397 - Fax: +31 20 648.4533 - E-mail: croon@transavia.nl

Mr J.M. VAN DER KLOOSTER, Gerechtshof 's-Gravenhage, P 2 - K 155, P.O. Box 20302, 2500 EH 's-Gravenhage. Tel. + 31 70 381.1362 - Fax: +31 70 381.3256 - E-mail: h.van.der.klooster@rechtspraak.nl

Mr A.O.E. KNEEFEL, Verbond van Verzekeraars, P.O. Box 93450, 2509 AL 's-Gravenhage. Tel.: +31 55 579.5220 - Fax: +31 55 579.2162 - E-mail: arno.kneefel@achmea.nl

Mr J.G. TER MEER, Boekel de Nerée, P.O. Box 75510, 1070 AM Amsterdam. Tel.: +31 20 431.3236 - Fax: +31 20 795.3953 - E-mail: jg.termeer@bdn.nl

Mr A.J. NOORDERMEER, RaboBank Shipping, P.O. Box 10017, 3004 AA, Rotterdam. Tel. +31 10 400.3961 - Fax: +31 10 400.3730 - E-mail: a.j.noordermeer@rotterdam.rabobank.nl

Mrs Mr H.A. REUMKENS, Ministerie van Verkeer en Waterstaat, P.O. Box 20906, 2500 EX's-Gravenhage. Tel.: +31 70 351.1800 - Fax: +31 70 351.8550 - E-mail: henny.reumkens@minvenw.nl

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

Mr P.L. SOETEMAN, Marsh B.V., P.O. Box 232, 3000 AE Rotterdam. Tel: +31 10 406.0489 - Fax: +31 10 4216.806 - E-mail: paul.soeteman@marsh.com

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

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

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

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

Titulary Members:

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

NETHERLANDS ANTILLES

COMITE FOR MARITIME LAW, NETHERLANDS ANTILLES

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

Officers:

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

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

Secretary: Lex C.A. GONZALEZ, P.O. Box 6058, Curaçao. Netherlands Antilles. Tel./Fax: +599 9 888.0872. - Mobile: +599 9 563.8290 - Email: geminibls@cura.net

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

Members:

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

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

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

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

Teun NEDERLOF, Seatrade Reefer Chartering (Curacao) N.V., Kaya Flamboyan 11, P.O. Box 4918, Curacao, Netherlands Antilles. Tel: +599 9 737.0386 - Fax: +599 9 737.1842.

Hensey BEAUJON, Kroonvlag (Curacao) N.V., Maduro Plaza z/n, P.O. Box 3224, Curacao, Netherlands Antilles. Tel: +599 9 733.1500 - Fax: +599 9 733.1538.

NIGERIA

NIGERIAN MARITIME LAW ASSOCIATION

National Branch of the Comité Maritime International
31, Cameron Road Ikoyi, Lagos, Nigeria

Established: 1980

Officers:

President: Hon. Justice M.B. BELGORE (Rtd), 31 Cameron Road, Ikoyi, Lagos. Tel.: +234 1 2693997/2691679.

First Vice President: Fola SASEGBON Esq., 61 Ijora Causeway, Ijora, Lagos. Tel.: +234 1 5836061/5832186

Second Vice President: Louis N. MBANEFO S.A.N., 230 Awolowo Road, Lagos. Tel.: +234 1 2694085 - E-mail: mbanlaw@infoweb.abs.net

First Assistant Secretary: Mrs Funke AGBOR, 38/40 Strachan Street (5th Floor), Lagos. Tel.: +234 1 2631960/2633528/2637178 - E-mail: aca@linkserve.com.ng

Second Assistant Secretary: Akin AKINBOTE, Esq., 7, Sunmbo Jibowu Street (Off Ribadu Road), Ikoyi, Lagos. Tel.: +234 1 2672279/2672289

Hon. Treasurer: Chief M. A. AJOMALE, Bola Ajomale & Co., 4, Campbell Street, Lagos. Tel.: +234 1 2630525/7755912 - E-mail: BAjomale@aol.com

Financial Secretary: Mr. Alaba OKUPE, 18, Moor Road, Ebute-Metta, Lagos. Tel.: +234 1 7744099

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NORWAY

DEN NORSKE SJORETTSFORENING
Avdeling av Comité Maritime International
(Norwegian Maritime Law Association)
c/o Nordisk Institutt for Sjørett, UiO, Karl Johans gt. 47
P.O. Box 6706 St. Olavs Plass, 0130 Oslo
Tel.: +47 22 85 97 48 - Fax: +47 22 85 97 50
E-mail: t.l.wilhelmsen@jus.uio.no

Established: 1899

Officers:

President: Trine-Lise WILHELMSEN, Nordisk Institutt for Sjørett, UiO, Karl Johans gt. 47, P.O.Box 6706 St. Olavs Plass, 0130 Oslo. Tel.: +47 22 85 97 48 - Fax: +47 22 85 97 50 - E-mail: t.l.wilhelmsen@jus.uio.no

Members of the Board:

Torbjørn BEKKEN, DNV Norge, Veritasveien 1, 1322 Høvik. Tel.: +47 67 57 99 00 Fax: +47 67 57 98 07 - E-mail: torbjorn.bekken@dnv.com

Viggo BONDI, Norges Rederiforbund, Postboks 1452 Vika, 0116 Oslo. Tel.: +47 22 40 15 00 - Fax: +47 22 40 15 15 - E-mail: viggo.bondi@rederi.no

Eric JACOBS, Assuranceforeningen Skuld. E-mail: eric.jacobs@skuld.no

Karl-Johan GOMBRII, Nordisk Skibsrederforening, Postboks 3033, Elisenberg, 0207 Oslo. Tel.: +47 22 13 13 56 00 - Fax: +47 22 43 00 35 - E-mail: kjgombrii@nordisk.no

Stephen KNUDTZON, Thommessen Krefting Greve Lund, Postboks 1484 Vika, 0116 Oslo. Tel.: +47 23 11 11 11 - Fax: +47 23 11 10 10 - E-mail: skn@thommessen.no

Morten LUND, Vogt & Wiig Advokatfirmaet AS, Postboks 1503 Vika, 0117 Oslo. Tel.: +47 22 41 01 90 - Fax: +47 22 42 54 85 - E-mail: morten.lund@vogtwiig.no

Erik RØSÆG, Nordisk Institutt for Sjørett, Universitetet i Oslo, Postboks 6706 St. Olavs plass, 0130 Oslo. Tel.: +47 22 85 97 52 - Fax: +47 22 85 97 50 - E-mail: erik.rosag@jus.uio.no

Arne FALKANGER THORSEN, Bergesen Worldwide Gas ASA, Postboks 2800 Solli, 0204 Oslo. Tel.: +47 22 12 05 05 - Fax: +47 22 12 05 00 - E-mail: arne.thorsen@bwgas.com

Gaute GJELSTEN, Wikborg Rein & Co, Postboks 1513 Vika, 0117 Oslo. Tel.: +47 22 82 75 00 - Fax: +47 22 82 75 01 - E-mail: ggj@wr.no

Deputy:

Ingeborg OLEBAKKEN, Thommessen Krefting Greve Lund, Postboks 1484 Vika, 0116 Oslo. Tel.: +47 23 11 11 11 – Fax: +47 23 11 10 10

Titulary Members:

Sjur BRAEKHUS, Karl-Johan GOMBRII, Frode RINGDAL.

PAKISTAN

PAKISTAN MARITIME LAW ASSOCIATION

c/o Khursheed Khan & Associates
305 Amber Estate, Shahrah-e-Faisal
Karachi 75350 - Pakistan
Tel. : +92 21 453.3665/453.3669 - Fax : +92 21 454-9272/453.6109
E-mail: maritime@pakistanlkaw.com – Website: www.pakistanlaw.com

Established: 1998

Officers:

President: Zulfiqar Ahmad KHAN, c/o Khursheed Khan & Associates, 305 Amber Estate, Shahrah-e-Faisal, Karachi 75350, Pakistan. Tel.: (9221) 453.3665/453.3669 - Fax: (9221) 454-9272/453.6109 - E-mail: aritime@pakistanlkaw.com

Secretary: Iftikhar AHMED

Treasurer: Zainab HUSAIN

PANAMA

ASOCIACION PANAMENA DE DERECHO MARITIMO

(Panamanian Maritime Law Association)
P.O. Box 0831-1423 - Panama, Republic of Panama
Tel.: +507 302-0106 - Fax: +507 302-0107 - E-mail: info@apdm.org
Website: www.apdm.org

Established: 1979

Officers:

President: Tomás M. AVILA MANZANARES, E-mail tavila@apdm.org
Vice President: Juan David MORGAN JR.
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PERU

ASOCIACIÓN PERUANA DE DERECHO MARITIMO
(Peruvian Maritime Law Association)
Calle Barcelona 425 – San Isidro - Lima 27 - PERU
Tel..: +51 1 422.3030 – Fax: +51 1 422.8693 – E-mail: general@vyalaw.com.pe

Established: 1977

Officers:

Executive Committee:
President: Dr. Katerina VUSKOVIC, Calle Barcelona 425, San Isidro, Lima 27, Peru. E-mail: vuskovic@vyalaw.com.pe
Past Presidents:
Dr. Ricardo VIGIL, c/o Tribunal de Justicia de la Comunidad Andina, Av. Roca 450, Quito, Ecuador. E-mail: vigiltoledo@msn.com
Dr. Frederick D. KORSWAGEN, Jr. Federico Recavarren 131 Of. 404, Miraflores,Lima 18, Peru. E-mail: andespacific@pandiperu.com
Dr. Manuel QUIROGA CARMONA, Calle Manuel Miota 513, San Antonio, Miraflores, Lima 18, Peru. E-mail: manuelquiroga@quirogayquirogaabog.com
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Dr. Juan Jose SALMON, Calle Amador Merino Reyna 295, oficina 1001 San Isidro, Lima 27, Peru. E-mail: jsalmon@greenandes.com.pe
Dr. Eduardo URDAY, Calle Chacarilla 485, San Isidro, Lima 27, Peru. E-mail: murdayab@amauta.rcp.net.pe
Secretary General:
Dr. Mariela URRESTI, Calle Amador Merino Reyna 195, San Isidro, Lima 27, Peru. Tels.: +51 1 442.9090 - Fax: +51 1 442.2673 - E-mail: muj@osa.com.pe
Treasurer:
Dr. Daniel ESCALANTE, Calle Barcelona 425, San Isidro, Lima 27, Peru. Tel.: +511 422.3030 – Fax: +51 1 422.8693 – E-mail: escalante@vyalaw.com.pe
Directors:
Dr. Carla PAOLI, Calle Virtud y Unión (ex Calle 12) Nº 160, Urb. Corpac, San Isidro, Lima 27, Peru. E-mail: cpaoli@interlog.com.pe
Dr. Manuel QUIROGA SUITO, Malecón 28 de Julio 159 Dpto. 501, Miraflores, Lima 18, Peru. E-mail: mquiroga@apn.gob.pe
Dr. Pablo ARAMBURU, Calle Barcelona 425, San Isidro, Lima 27, Peru. E-mail: aramburu@vyalaw.com.pe
Dr. Jorge ARBOLEDA, Salvador Gutiérrez 329, Miraflores, Lima 18, Peru. E-mail: jjarbo@terra.com.pe

Titulary Members:

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MARITIME LAW ASSOCIATION OF THE PHILIPPINES (MARLAW)

c/o Del Rosario & Del Rosario
15F, Pacific Star Bldg., Makati Ave. corner Gil Puyat Ave.,
1200 Makaty City, Philippines
Tel.: +63 2 810.1791 - Fax: +63 2 817.1740
E-mail: ruben.delrosario@pandiphil.com

Established: 1981

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Executive Vice-President: Diosdado Z. RELOJ, Jr. Reloj Law Office, 9th Fl., Ermita Center Bldg., Roxas Boulevard, Manila, Philippines. Tel.: +63 2 505.196/521.6922 - Fax: +63 2 521.0606

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(Committee of International Maritime Law)
Praça do Comercio, 1188 Lisboa Codex
Fax: +351 1 342.4137

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RUSSIAN FEDERATION

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

Established: 1968

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SINGAPORE

THE MARITIME LAW ASSOCIATION OF SINGAPORE

24 Raffles Places, # 18-00, Clifford Centre, SINGAPORE 048621
Tel.: +65 6230.1160 – Fax: +65 6533.7029
E-mail: mail@hhp.com.sg

Established: 1992

Officers:

President:Ajaib HARIDASS, 17 Jalan Insaf, Singapore 579013 – E-mail: haridas@hhp.com.sg
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Committee Members: Govindarajalu ASOKAN, Frederick J. FRANCIS, Lawrence THE KEE WEE, James P. DAVID

SLOVENIJA

DRUŠTVO ZA POMORSKO PRAVO SLOVENIJE

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

Established: 1993

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Vice President: Andrej PIRS M.Sc., Liminjanska 2, 6320 Lucija, Slovenija. Tel.: +386 5 677.1688 - Fax: +386 5 676.7130
Secretary General: M.Sc. Mitja GRBEC, LL.M., Sv. Peter 142, 6333 Sečovlje, Slovenija. Tel.: +386 41 846.378 - Fax: +386 1 436.3431 - E-mail: mgrbec74@yahoo.com - mitja.grbec@fersped.si
Treasurer: Sinisa LAVRINCEVIC, M.Sc., Hrasce 117, 6230 Postojna, Slovenia. Tel.: +386 5 753.5011 - Mobile: +386 31 603.578 - E-mail: sinisa.lovrincevic@sava-re.si
Member:
Capt. Tomaz Martin JAMNIK, Logodi utca 34a/III, H - 1012 Budapest, Tel.: + 36 1 2120.000 - Fax: +36 1 2120.001 - Mobile: +386 51 320.803 - E-mail: lukakp@axelero.hu

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Individual members: 90

SOUTH AFRICA

THE MARITIME LAW ASSOCIATION OF THE REPUBLIC OF SOUTH AFRICA

All correspondence to be addressed to the Secretariat:
Anisa GOVENDER, Shepstone & Wylie, International Transport & Trade Dept.,
35 Aliwal Street, Durban, 4001 – P.O.Box 205 Durban 4000
Tel. +27 (31) 302.0403 – Fax: +27 (31) 302.0835
E-mail: govendera@wylie.co.za

Established: 1974

Officers:

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

Vice-President: Andrew PIKE, A-Cubed Consulting (Pty) Ltd, 1st Floor, The House, Bellevue Campus 5, Bellevue Road, Kloof, KZN, P O Box 261, Westville, KZN, 3630. Tel.: (31) 764.0972 Fax: (31) 764 1385 - Mobile: 27-83-295.3925 - E-mail: andrewp@acubed.co.za

Secretary: Anisa GOVENDER, Shepstone & Wylie, International Transport & Trade Dept., 35 Aliwal Street, Durban, 4001 – P.O.Box 205 Durban 4000. Tel. +27 (31) 302.0403 – Fax: +27 (31) 302.0835 – E-mail: govendera@wylie.co.za

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

Executive Committee:

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

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

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

Clare NEL, Safmarine, 18th Floor, Safmarine House, 22 Riebeek Street, Cape Town, 8001, PO Box 27, Cape Town, 8000. Tel.: (21) 408.6502 – Fax: (21) 408.6320 – Mobile: 27-83-798.6502 – E-mail: cnel@za.safmarine.com

Mike WRAGGE, Huguenot Chambers, 40 Queen Victoria Street, Cape Town, 8000, Tel.: (21) 423.4389 – Fax: (21) 424.1821 –E-mail: michaelw@netactive.co.za

SPAIN

ASOCIACIÓN ESPAÑOLA DE DERECHO MARÍTIMO

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

Established: January, 1949

Officers

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

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

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The Swedish Maritime Law Association
c/o The Average Adjuster's Office - Vitmossegatan 24, SE-431 69 MÖLNDAL
Tel.: +46 31 701 58 70 - Fax +46 31 701 58 69
E-mail: info@dispaschor.se

Officers

President: Svante O. JOHANSSON, Professor and Average Adjuster, The Average Adjuster's Office, Vitmossegatan 24, SE-431 69 Mölndal. Tel.: +46 31 701 58 70 - Fax +46 31 701 58 69 - E-mail: info@dispaschor.se

Treasurer: Jonas ROSENGREN, AdvokatfirmanVinge, P O Box 11025, SE-404 21 Gothenburg. Tel.: +46 31 722 35 00 - Fax +46 31 722 37 - – E-mail: jonas.rosengren@vinge.se

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

Established: 1952

Officers:

President: Dr. Alexander von ZIEGLER, Postfach 1876, Löwenstrasse 19, CH-8021 Zürich. Tel.: +41 44 215.5252 – Fax: +41 44 215.5200 – E-mail: alexander.vonziegler@swlegal.ch

Secretary: Cécile HESS-MEISTER, avocate secrétaire, St. Alban Graben 1-3, CH 4002 Basel. Tel.: +41 61 266.7712 – Fax: +41 61 266.7939 - E-mail: cecile.hess-meister@credit-suisse.com

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ASSOCIATION TUNISIENNE DE DROIT MARITIME

(Tunisian Association of Maritime Law)
2 Rue Labide 1er etage - appt n° 15 Belvedere 1002 TUNIS
Tel.: 00216 71 835 468 – Fax 00216 71 835 945

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(Maritime Law Association of Turkey)

Istiklâl Caddesi Korsan Çikmazi Saadet Apt. - Kat. 2 D. 3-4, Beyoglu, Istanbul
Tel.: +90 212 249.8162 – Fax: +90 212 293.3514

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Av. Sadik ERIS, Chief Legal Advisor of General Manager of Turkish Coastal Safety and Salvage Organization. Tel. +90 212 292.5272 – Fax: +90 212 292.5277
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Av. Dr. Özhan GÜRKAN, Yesilkir Sok. Yogurtçubasi Apt. No. 15/14, Selamiçesme / Kadiköy/Istanbul. Tel.: +90 216 350.1957

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

BRITISH MARITIME LAW ASSOCIATION

c/o Andrew D. TAYLOR,
c/o Richards Butler, Beaufort House, 15 St. Botolph Street, London EC3A 7EE
Tel.: +44 20 7617.4453
E-mail: adt@richardsbutler.com

Established: 1908

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Treasurer and Secretary: Andrew D. TAYLOR, c/o Richards Butler, Beaufort House, 15 St. Botolph Street, London EC3A 7EE. Tel.: +44 20 7617.4453 – E-mail: adt@richardsbutler.com

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UNITED STATES OF AMERICA

THE MARITIME LAW ASSOCIATION OF THE UNITED STATES

c/o Warren J. MARWEDEL, Presidnet, Marwedel Minichello & Reeb PC,
10 South Riverside Plaza, Suite 720, Chicago, IL 60606.
Tel.: +1 212 902.1600, Ext 5054 - Fax: +1 212 902.9900
E-mail: wmarwedel@mmr-law.com

Established: 1899

Officers:

President: Warren J. MARWEDEL, Marwedel Minichello & Reeb PC, 10 South Riverside Plaza, Suite 720, Chicago, IL 60606. Tel.: +1 212 902.1600, Ext 5054 - Fax: +1 212 902.9900 E-mail: wmarwedel@mmr-law.com

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

First Vice-President: Patrick J. BONNER, Freehill, Hogan & Mahar, 80 Pine Street, New York, NY 10005-1759. Tel.: +1 212 425.1900 - Fax: +1 212 425.1901 - E-mail: bonner@freehill.com

Second Vice-President: Robert B. PARRISH, Moseley Prichard Parrish Knight & Jones, 501 West Bay Street, Jacksonville, FL 32202. Tel.: +1 904 421.8436 - Fax: +1 904 354.0194 - E-mail: bparrish@mppkj.com

Treasurer: Robert G. CLYNE, 45 Broadway, Suite 1500, New York, New York 10006-3739. Tel.: +1 212 669.0600 - Fax: +1 212 669.0698 - E-mail: rclyne@hillrivkins.com

Secretary: Harold K. WATSON, Locke Lord Bissell & Liddell LLP, 3400 JP Chase Tower, 600 Travis Street, Houston, TX 77002-3095. Tel.: +1 713 226.1200 - Fax: +1 713 223.3717 E-mail: hwatson@lockelord.com

Membership Secretary: David J. FARRELL, Jr., Admiralty Law Office of David J. Farrell, Jr., 2355 Main Street, P.O. Box 186, S. Chatham, MA 02659. Tel.: +1 508 432.2121 - Fax: +1 508 432.2334 – E-mail: farrell@sealaw.org

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URUGUAY

ASOCIACION URUGUAYA DE DERECHO MARITIMO

(Uruguayan Maritime Law Association)
Rio Negro 1394 Esc. 504, – Montevideo, Uruguay
Tel.: +598 2 901.2552 – 901.7221 – Fax: +598 2 902.3157
E-mail: iidmuruguay@adinet.com.uy

Established: 1985

Officers:

President: Dr. Julio VIDAL AMODEO
Secretary: Dra. Victoria ZORRILLA FERRES
Treasurer: Cra. Andrea LANFRANCO

VENEZUELA

ASOCIACION VENEZOLANA DE DERECHO MARITIMO

(Comité Maritimo Venezolano)
Av. Libertador, Multicentro Empresarial del Este
Torre Libertador, Núcleo B, Piso 15, Oficina B-151
Chacao - Caracas, 1060, Venezuela
Tel.: 58212-2659555/2674587 - Fax: 58212-2640305
E-mail: avdmar@cantv.net

Established: 1977

Officers:

President: Francisco Antonio VILLARROEL RODRÍGUEZ, Tel.: (58-212) 952.62.28/ (58-212) 286.35.48 – Mobile/cellular (58-414) 3233029 – Faxes: (58-212) 285.57.06 / (58-212) 952.33.06 – E-mail: venezuelanlaw@cantv.net

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Luis COVA-ARRIA, Tel.: (58-212) 265.9555 – Fax: (58-212) 264.0305 – Mobile/Cellular (58-416) 6210247 – E-mail: Luis.Cova@LuisCovaA.com, luiscovaa@hotmail.com
Armando TORRES-PARTIDAS, Mobile/Cellular (58-414) 3272487
Wagner ULLOA-FERRER, Tel.: (58-212) 864.7686/864.9302/264.8116 – Fax: (58-212) 864.8119 E-mail: matheusandulloa@cantv.net
Tulio ALVAREZ-LEDO, Tel.: (58-212) 992.4662 – Fax: (58-212) 285.92.05 – E-mail: alvarezledo@cantv.net
Freddy BELISARIO CAPELLA, Tel./fax (58-212) 943.5064 – E-mail: Belisario02@cantv.net
Omar FRANCO-OTTAVI, Tel.: (58-281) 2677267 – E-mail: legalmar@cantv.net
Alberto LOVERA VIANA, Tel: (58-212) 951.21.06 – E-mail: alberto_Lovera@yahoo.com
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Institutional Relations: Ivan SABATINO, Tel: (58-242) 364.1801 Email: mail@sabatinop.com
Maritime Matters: Rodolfo TOVAR, Tel: (58-212) 709.0103 – Email: rjtm@conferry.com
Publicity and Events: Maritza AVILÁN, Tel: (58-212) 991.3774 – Email: Maritza@seafreightvenezuela.com
Oil Matters: Henry MORIAN, Tel: (58-212) 265.9555 – Email: henry.morian@luiscovaa.com
Port Matters: José SABATINO, Tel: (58-242) 364.1801 Email: mail@sabatinop.com
Insurance Matters: Bernardo BENTATA, Tel: (58-212) 953.2031 – Email: Bentata@bentatalegal.com
Directors:
Pedro PEREZ SEGNINI, Gustavo OMAÑA, Omar LEÓN, Tomas MALAVÉ, Ana Mary RAMÍREZ.
Alternative Directors: Carlos LUENGO ROMERO, María del Cielo SANCHEZ, Juan Antonio MALPICA, Jesús ROJAS GUERINI, Miguel LÓPEZ
Secretary General: Patricia MARTINEZ de FORTOUL, Tel.: (58-212) 265.9555 – Fax: (58-212) 264.0305 – Mobile/Cellular (58-414) 327.8950– E-mail: patricia.martinez@luiscovaa.com
Alternative Secretary General: Maria Claudia GUARNIERI
Treasurer: Eugenio MORENO, Tel.: (58-212) 976.7026 – Email: emorenovzla@cantv.net
Alternative Treasurer: Gilberto VILLALBA
Disciplinary Court Magistrates: Antonio RAMIREZ Tiuna BENITO, Alberto BAUMEISTER
Alternatives Disciplinary Court Magistrates: Leoncio LANDAEZ, Ana Karina LEIVA, Lubin CHACÓN GARCIA
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Accountant Inspector Assistant: Elsy RODRIGUEZ

Titulary Members

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TEMPORARY MEMBERS
MEMBRES PROVISOIRES

HONDURAS

Mr. Norman Martinez
IMLI
P.O.Box 31, Msida, MSD 01 Malta

KENYA

Mr. Eric Okumu Ogola
Ogola & Ochwa Associates
P.O. Box 16858 MOMBASA, Kenya
E-mail: attorneys@iconnect.co.ke

ZAIRE

Mr. Isaki MBAMVU
c/o OZAC/Commissariat d'Avaries
B.P. 8806 KINSHASA

LATVIA

c/o Mr. Maris Lejnieks
Lecturer of the Department of International and Maritime Law Sciences
University of Latvia, Faculty of Law
Raina bulv. 19, RIGA, LV 1586, Latvia

MEMBERS HONORIS CAUSA
MEMBRES HONORIS CAUSA

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

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

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

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

Alfred H.E. POPP Q.C.
Senior General Counsel Admiralty & Maritime Law Department of Justice, Maritime Law Secretariat, 594 Highland Avenue, Ottawa, ON H2A 2K1. Tel.: +1 613 729.4233 - Fax +1 613 729.5082 - E-mail: poppa@justice.gc.ca

TITULARY MEMBERS
MEMBRES TITULAIRES

Mitsuo ABE
Attorney at Law, Member of the Japanese Maritime Arbitration, c/o Mitsuo Abe Law Firm, 2-4-13-302 Hirakawa-Cho, Chiyoda-ku, 102-0093, Tokyo, Japan. Tel.: (81-3) 5275.3397 - Fax: (81-3) 5275.3398 - E-mail: abemituo@law.ne.jp

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

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

José M. ALCANTARA GONZALEZ
Maritime lawyer in Madrid, Director of the Law firm AMYA, Arbitrator, Average Adjuster, Past President of the Spanish Maritime Law Association, Executive Vice-President of the Spanish Association of Maritime Arbitration, Past President of the Iberoamerican Institute of Maritime Law. Office: Princesa, 61, 28008 Madrid, Spain. Tel.: +34 91 548.8328 - Fax: +34 91 548.8256 - E-mail: jmalcantara@amya.es

Mme Pascale ALLAIRE BOURGIN
24 rue Saint Augustin, 75002 Paris, France.

Tulio ALVAREZ LEDO
Doctor of Law, Lawyer and Professor, partner of Law Firm Alvarez & Lovera, Past President of the Asociacion Venezolana de Derecho Maritimo, Centro Comercial Los Chaguaramos, Unica Torre, Piso 9, Ofic. 9-11, Los Chaguaramos, Caracas, Venezuela. Tel: (58-212) 285.9208 - E-mail: alvarezledo@cantv.net

Charles B. ANDERSON
Skuld North America Inc., 317 Madison Avenue, Suite 708, New York, NY 10017, U.S.A. Tel.: +1 212 758.9936 - Fax: +1 212 758.9935 - E-mail: NY@skuld.com - Web: www.skuld.com

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

Juan A. ANDUIZA
Haight, Gardner, Holland & Knight, 195 Broadway, New York 10007, N.Y., USA. Tel.: (+1 212) 513.3311 - Fax: (+1 212) 385.9010 - E-mail: juan.anduiza@hklaw.com

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

Armando ANJOS HENRIQUES
Armando Henriques, Ana Cristina Pimentel & Associados, Sociedade de Advogados, RL, Av. Miguel Bombarda, 50-2º, 1050-166 Lisboa, Portugal. Tel.: +351 21 781.9990 - Fax +351 21 793.0615 - E-mail ah.acp@netcabo.pt

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

José M. APOLO
Maritime Attorney, Bachellor in International Sciences in Ecuador, Executive President of the firm Estudio Juridico Apolo & Asociados S.A., Maritime & Port Group, President of the Ecuadorean Association of Maritime Studies and Law "ASEDMAR", Vice-President for Ecuador of the Iberoamerican Institute of Maritime Law, Vélez 513, 6th and 7th Floor, "Acropolis" Building, Guayaquil, Ecuador. P.O. Box. 3548. Tel.: 593 (4) 320.713/4 - Fax: 593 (4) 322.751

Francisco ARCA PATIÑO
Lawyer, Member of the Executive Committee of the Peruvian Maritime Law Association, Calle Virtud y Unión (ex Calle 12) Nº 160, Urb. Corpac, Lima 27, Peru. E-mail: interlog@interlog.com.pe

Ignacio ARROYO

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

David ATTARD

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

Paul C. AVRAMEAS

Advocate, 133 Filonos Street, Piraeus 185 36, Greece. Tel.: (1) 429.4580 - Tlx: 212966 JURA GR - Fax: (1) 429.4511.

Eduardo BAGES AGUSTI

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

Nicola BALESTRA

Avocate, Piazza Corvetto 2-5, 16122 Genova, Italy. Tel.: (010) 889.252 - Fax: (010) 885.259 - E-mail: bbp.ge@bbpartners.it

Mario Ferreira BASTOS RAPOSO

Lawyer, Dean of "Ordem dos Advogados" (1975/1977), Vice-Chairman of "Uniao Internacional dos Advogado" (1976/1978), Member of "Conselho Superior do Ministério Pùblico" (1977/1978), Minister of Justice in former Governments, Member of the Parliament (1979/1981/1983), Member of "Secçao de Direito Maritimo e Aéreo da Associaçao Juridica" (1964), Member of "Associaçao Portuguesa de Direito Maritimo" (1983), Chairman of "Comissao Internacional de Juristas Secçao Portuguesa", R. Rodrigo da Fonseca, 149-1° Dt°, 1070-242 Lisboa, Portugal. Tel.: (351) 21 382.6200/08 - Fax: (351) 21 382.6209.

Stuart N. BEARE

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

Freddy BELISARIO-CAPELLA

Venezuelan lawyer, Master in Admiralty Law Tulane University, U.S.A., Professor in Maritime Law in the Central University of Venezuela, VMLA's Director, Calle San Juan, Quinta Coquito, Sorocaima, La Trinidad, Caracas, Venezuela. Tel./Fax: (58-212) 943.5064 - E-mail: Belisario02@cantv.net

Jorge BENGOLEA ZAPATA

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

Francesco BERLINGIERI

O.B.E., Advocate, President ad Honorem of CMI, former Professor at the University of Genoa, doctor of law honoris causa at the Universities of Antwerp, Athens and Bologna, President ad honorem of the Italian Maritime Law Association, 10 Via Roma, 16121 Genoa, Italy. Tel.: +39 010 586.441 - Fax: +39 010 594.805 - E-mail: slb@dirmar.it - www.studiolegaleberlingieri.it

Giorgio BERLINGIERI
Advocate, President of the Italian Maritime Law Association, 10 Via Roma, 16121 Genoa, Italy. Tel.: +39 010 586.441 - Fax: +39 010 594.805 - E-mail: presidenza@aidim.org - www.aidim.org - www.studiolegaleberlingieri.it

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

Angelo BOGLIONE
Advocate, Via G. D'Annunzio 2/50, 16121 Genoa, Italy. Tel. +39 010 570.4951 - Fax: +39 010 570.4955 - E-mail: info@boglione.eu

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

Philippe BOISSON
Docteur en droit, Secrétaire Général de l'Association Française du Droit Maritime, Conseiller Juridique Bureau Veritas, 17 bis Place des Reflets, Cedex 44, F-92077 Paris - La-Défense, France. Tel.: (1) 429.152.71 - Fax: (1) 429.152.98 - E-mail: philippe.boisson@bureauveritas.com

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

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

Franco BONELLI
Advocate, Professor at the University of Genoa, Via delle Casaccie 1, 16121 Genoa, Italy. Tel.: +39 010 84621 - Fax: +39 010 813.849 - E-mail: franco.bonelli@beplex.com

Lawrence J. BOWLES
Partner, Nourse & Bowles, LLP, One Exchange Plaza, 55 Broadway, New York, New York 10006, U.S.A. Tel.: (212) 952.6213 - Fax: (212) 952.0345 - E-mail: lbowles@nb-ny.com

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

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

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

Tom BROADMORE

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

Claude BUISSERET

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

Thomas BURCKHARDT

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

Lizabeth L. BURRELL

Past President of the Maritime Law Association of the United States, Curtis, Mallet-Prevost, Colt & Mosle LLP, 101 Park Avenue, New York, NY 10178-0061 - Tel.: (212) 696.6995 – Fax: (212) 368.8995 – E-mail: lburrell@curtis.com

Pedro CALMON FILHO

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

Alberto C. CAPPAGLI

Lawyer, President of the Argentine Maritime Law Association, Partner of Marval, O'Farrell & Mairal, Av. Leandro N. Alem 928, 7º piso, 1001 Buenos Aires, Argentina. Tel.: (11) 4310.0100 - Fax: (11) 4310.0200 - E-mail: acc@marval.com.ar

Artur Raimundo CARBONE

President of the Brazilian Maritime Law Association, Law Office Carbone, Av. Rio Branco, 109/14° floor, Rio de Janeiro, CEP 20040-004 RJ-Brasil. Tel.: (5521) 2253.3464 - Fax: (5521) 2253.0622 - E.mail: ejc@carbone.com.br

Sergio M. CARBONE

Avocat, Professeur à l'Université de Gênes, Vice-President of the Italian Maritime Law Association, Via Assarotti 20, 16122 Genoa, Italy. Tel.: +39 010 810.818 —Fax: +39 010 870.290 - E-mail: carbone@stcarbone.it

Francisco CARREIRA-PITTI

55th Street no. 225 CARPIT Bldg., El Cangrejo, Panama, Republic of Panama, Tel.: +507 269.2444 - Fax: +507 263.8290 - E-mail: paco@carreirapitti.com - carreirapitti@gmail.com

Nelson CARREYO COLLAZOS

P.O. Box 8213, Panama 7, Republic of Panama, Tel.: +507 264.8966 - Fax: +507 264.9032 - E-mail: astral@cableonda.net

Kenneth J. CARRUTHERS

The Hon. Mr Justice Kenneth Carruthers, Judge in Admirality, Supreme Court of New South Wales, Former President of the Maritime Law Association of Australia and New Zealand, Judges Chambers, Supreme Court, Queen's Square, Sydney 2000, Australia. Tel.: (2) 230.8782 - Fax: (2) 230.8628.

Gian CASTILLERO GUIRAUD

Arias, Fabrega & Fabrega PH Plaza 2000 Building, 50th Street, PO Box 0816-01098, Panama, Republic of Panama. Tel.: (507) 205.7000/205.7016 - Fax: (507) 205.7001/205.7002 - E-mail: gian@arifa.com

Giorgio CAVALLO

Average Adjuster, Via Ceccardi 4/26, 16121 Genoa, Italy. Tel.: +39 010 562623 - Fax: +39 010 587259 - E-mail: gcavallo@studiogcavallo.it

Diego Esteban CHAMI

PhD in Law from the University of Buenos Aires. Maritime Law Professor at the University of Buenos Aires Law School (www.comission311.com.ar). Pro-Treasurer of the Argentine Maritime Law Association, Senior Partner of Estudio Chami-Di Menna y Asociados, Libertad Nº 567, 4th floor, 1012 Buenos Aires, Argentina. Tel: +54 11 4382.4060 - Fax +54 11 4382.4243 - Email: diego@chami-dimenna.com.ar; www.chami-dimenna.com.ar

George F. CHANDLER, III

Advocate, Partner in Hill Rivkins & Hayden LLP, 712 Main Street, Suite 1515, Houston, Texas 77002-3209, U.S.A. Tel.: (713) 457.2289 - Fax: (713) 223.8106 - E-Mail: gchandler@hillrivkins.com

Michael Marks COHEN

Nicoletti Hornig Campise & Sweeney, Wall Street Plaza, 88 Pine Street, New York, NY 10005-1801, U.S.A., Tel.: (212) 220.0390- Fax: (212) 220.3784 - E-mail: mcohen@nicolettihornig.com

Guilherme George CONCEICAO SILVA

Docteur en droit, Capitaine de Frégate, Avocat, Représentant de l'Etat, Major de la Marine, Ancien Professeur de Droit Maritime International, Rua Victor Cordon, 1, 4°-Esq. A, 1200 Lisboa, Portugal.

Eugenio CORNEJO FULLER

Honorary Vice-President of the C.M.I., Prat 827, Piso 12, Casilla 75, Valparaiso, Chile. Fax: (32) 25.26.22.

Eugenio CORNEJO LACROIX

Lawyer, Average Adjuster and Professor of Maritime Law and Insurance, President, Asociacion Chilena de Derecho Maritimo c/o Cornejo, San Martin & Figari, Hendaya 60, Of. 503, Santiago, Chile. Tel.: +56 2 3315860 / 3315861 / 3315862 / 3315863 - Fax +56 2 3315811 - E-mail: eugeniocornejol@cornejoycia.cl

Luis CORREA-PÉREZ

Av. Abraham Lincoln c/calle El Colegio, Edif. Provincial, p./2, Ofic. 2-F, Sabana Grande, Caracas, Venezuela. Tel.: (58-212) 762.4949 - E-mail: scort@movistar.net.ve

Luis COVA ARRIA

Lawyer, Luis Cova Arria & Associados, Former President of the Comité Maritimo Venezolano, Av. Libertador, Multicentro Empresarial del Este, Torre Libertador, Nucleo B, Piso 15, Ofic. B-151, Chacao, Caracas 1060, Venezuela. Tel.: (58-212) 265.9555 - Fax: (58-212) 264.0305 - Mobile/Cellular phone: (58-416) 621.0247 E-mail: Luis.Cova@LuisCovaA.com, luiscovaa@hotmail.com

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

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

Christopher O. DAVIS
Shareholder, Baker, Donelson, Bearman, Caldwell & Berkowitz, PC, 201 St. Charles Avenue, Suite 3600, New Orleans, LA 70170, U.S.A. Tel.: +1 504 566.5251 - Fax: +1 504 636.3951 - E-mail: codavis@bakerdonelson.com - Website: www.bakerdonelson.com

Enrique DE ALBA ARANGO
Morgan & Morgan, MMG Tower, 16th Floor, 53rd E Street, Marbella, P.O. Box 0832-00232 World Trade Center, Panama, Republic of Panama. Tel.: (507) 265.7777 - Fax: (507) 265.7700 - E-mail: dealba@morimor.com

Vincent de BRAUW
Lawyer, AKD Prinsen Van Wijmen, Westplein 12-14, P.O. Box 23070, 3001 AH Rotterdam. Tel.: (10) 277.2710 - Fax: (10) 272.5400 - E-mail: vdebrauw@akd.nl

Colin de la RUE
Solicitor, Partner of Ince & Co., International House, 1 St. Katharine's Way London E1W AY, England. Tel.: (20) 7481.0010- Fax: (20) 7481.4968 - E-mail: colin.delarue@incelaw.com

Maria DE LOURDES MARENGO
Patton, Moreno & Asvat, Capital Plaza, Floor 8, Paseo Roberto Motta, Costa del Este, Panama, Zip Code 0819-05911, Panama City, Republic of Panama, Tel.: +507 264.8044 - Fax: +507 263.7038 - E-mail: mmarengo@pmlawyers.com

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

Leo DELWAIDE
Professor of Maritime Law Universities Antwerp and Brussels, Markgravestraat 17, 2000 Antwerpen, Belgium. Tel.: (32-3) 205.2307 - Fax: (32-3) 205.2031 - E-mail: Leo.Delwaide@Antwerp.be

Vincent M. DE ORCHIS
De Orchis Wiener & Partners LLP, 61 Broadway, Floor 26, New York 10006-2802, U.S.A. Tel.: (1-212) 344.4700 - Fax: (1-212) 422.5299 - E-mail: vdeorchis@marinelex.com

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

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

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

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

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

William R. DORSEY, III
Former, Advocate, President of the Maritime Law Association of the United States, of Counsel, Semmes, Bowen & Semmes, 250 West Pratt Street, Floor 16, Baltimore, Maryland 21201, U.S.A. Tel.: (410) 576.4738 - Fax (410) 539.5223 - E-mail: wdorsey@semmes.com

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

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

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

Aboubacar FALL
Principal Legal Counsel, Legal Services Department (GECL), African Development Bank Group, P.O. Box 323, Tunis, 1002 Belvedere, Tunisia. Email: a.fall@afdb.org – Fall_aboubacar@yahoo.fr

Aurelio FERNANDEZ-CONCHESO
Clyde & Co., Av. Francisco de Miranda, Centro Comercial El Parque, Piso 8, Los Palos Grandes, Caracas, Venezuela. Tel.: (58-212) 285.6294 - E-mail: clyde.co@cantv.net

Luis FIGAREDO PÉREZ
Maritime Lawyer, Average Adjuster, Arbitrator, Founder of the Maritime Institute of Arbitration and Conciliation (IMARCO) Uria Menendez Abogados, C/ Príncipe de Vergara, 187, 28002 Madrid, España. Tel.: + 34 915 860 768 - Fax: + 34 915 860 403 - E-mail: lfp@uria.com

Emmanuel FONTAINE
Avocat à la Cour, c/o Gide, Loyrette, Nouel, 26 Cours Albert 1er, F-75008 Paris, France. Tel.: (1) 40.75.60.00.

Omar FRANCO OTTAVI
Doctor of law, Lawyer, Master in Maritime Law LLM, Professor on Maritime Law Universidad Catolica Andrés Bello Caracas, Executive Vice-President of the Venezuelan

Maritime Law Association, Avenida Francisco Solano, Detras del Gran Café, Edificio San German, Piso 3, Oficina 3-D, Sabana Grande, Caracas, Venezuela. Tel.: (58-281) 2677267 - E-mail: legalmar@cantv.net

Wim FRANSEN

Avocat, Administrateur du CMI, Everdijstraat 43, 2000 Antwerpen, Belgique. Tel.: (3) 203.4500 - Fax: (3) 203.4501 - E-mail: wimfransen@fransenadvocaten.com

Nigel H. FRAWLEY

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

Javier GALIANO SALGADO

Lawyer, Albors, Galiano & Co., c/ Velásquez, 53-3° Dcha, 28001 Madrid, Spain. Tel.: (91) 435.6617 - Fax: (91) 576.7423 - E-mail: madrid@alborsgaliano.com.

Nicholas GASKELL

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

Johanne GAUTHIER

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

Mark GAUTHIER

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

J.J.H. GERRITZEN

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

Chistopher J. GIASCHI

Giaschi & Margolis, 404-815 Hornby Street, Vancouver, BC V6Z 2E6. Tel.: +1 604 681.2866 - Fax: +1 604 681.4260 - E-mail: giaschi@admiraltylaw.com

Paul A. GILL

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

Guillermo GIMENEZ DE LA CUADRA

Abogado, C/ San Fernando, 27 - 3º, 41004 - Sevilla, España. Tel.: + 34 954 228 026 - Fax: + 34 954 228 026 - E-mail: gimenezdelacuadra@mercantilmaritimo.com

Philippe GODIN

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

Paul GOEMANS

Avocat,Goemans-Mirdikian, directeur et rédacteur de la revue "Jurisprudence du Port d'Anvers", Sleutelstraat 27, B-2550 Kontich, Belgium. Tel.: (+32 3) 232.1851 - Fax: (+32 3) 233.5963- E-mail: goemans.mirdikian@skynet.be

Edgar GOLD,

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

Charles W.H. GOLDIE

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

Karl-Johan GOMBRII

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

Rucemah Leonardo GOMES PEREIRA

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

José Luis GONI

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

Rodolfo Angel GONZALEZ LEBRERO

Lawyer, Doctor of Laws, Lebrero & Co. Abogados, C/ Alfonso XII, 24 - 4º, 28014 Madrid, España. Tel.: + 34 915 313 605 - Fax: + 34 915 314 194
E-mail: rodlebrero@lebreroandco.com

Manuel Angel GONZALEZ RODRIGUEZ

Garrigues & Andersen Norte, S.L., Rodriguez Arias, 15-4°, 48008 Bilbao, Spain. Tel.: (94) 4700699 - Fax: (94) 4447998

Luis GONZALO MORALES

Calle 86, No. 11-50, 1202, Bogota, Colombia, Tel.: +571 257.5354 - Fax +571 218.6207 - Tel. office: +571 530.3072 - E-mail: lgmor@apm.net.co

Gideon GORDON

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

James E. GOULD

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

Ivo GRABOVAC

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

Me Luc GRELLET

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

Patrick J.S. GRIGGS

Solicitor of the Supreme Court of Judicature, Past President of CMI, Senior Partner of Ince & Co (Solicitors), International House, 1 St. Katharine's Way London E1W 1AY, England. Tel.: (20) 7481.0010 - Fax: (20) 7481.4968 - E-mail: pm.griggs@yahoo.co.uk

Etienne GUTT

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

José Tomas GUZMAN SALCEDO

Lawyer, Average Adjuster, Professor of Maritime & Insurance Law, Director of Chilean Maritime Law Association, Hendaya 60, Of. 503. Las Condes 7550188 Santiago, Chile - Tel. (56-2) 3315860/3315861 - Fax: (56-2) 3315135 - E-mail: jtomasguzman@jtguzmanycia.cl

Taichi HARAMO

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

Sean Joseph HARRINGTON

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

Hiroshi HATAGUCHI

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

Raymond P. HAYDEN

Former First Vice President of the Maritime Law Association of the United States, Partner. Hill Rivkins & Hayden LLP, 45 Broadway, Suite 1500, New York, NY 10006-3739, U.S.A. Tel.: (212) 669.0600 - Fax: (212) 669.0698 - E-mail: rhayden@hillrivkins.com

George W. HEALY III

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

Nicholas J. HEALY

Former President of The Maritime Law Association of the United States, Advocate, Honorary Vice-President of the Comité Maritime International, Adjunct Professor of Law, New York University, Radharc Alainn, Glengarriff, County Cork, Ireland. Tel.: +353 27 63049

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

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

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

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

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

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

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

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

Chester D. HOOPER
Former President of The Maritime Law Association of the United States, Holland & Knight LLP, 195 Broadway, Floor 24, New York N.Y. 10007-3189, U.S.A. Tel.: (212) 513.3444 - Fax: (212) 385.9010 - E-mail: chooper@hklaw.com

Takeo HORI
Former Vice-Minister at the Ministry of Transport, 6-15-36 Ikuta, Tamaku, Kawasaki-Shi, Kanagawaken, Japan.

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

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

Jean HULLIGER
Director of the Swiss Maritime Navigation Office, Head of the Division for Communica-

tions, Federal Department of Foreign Affairs, Département fédéral des affaires étrangères, Friedhagweg 14, 3047 Bremgarten b. Bern, Suisse. Tel.: +41 (0)31 302.2732 - Fax: +41 (0)31 3014400 - E-mail: jean-hulliger@bluewin.ch

Marc A. HUYBRECHTS

Advocate, Member of the Antwerp Bar, Professor of Maritime and Transport Law at the University of Leuven and the University of Antwerp, Amerikalei 73, B-2000 Antwerpen, Belgique. Tel.: +32 3 244.1560 - Fax: +32 3 238.4140 - E-mail: m.huybrechts@elegis.be.

Juan Luis IGLESIAS PRADA

Uria Menedez Abogados, C/ Príncipe de Vergara, 187, 28002, Madrid, España. Tel.: + 34 915 860 406 - Fax: + 34 915 860 403 - E-mail: jli@uria.com

Marko ILESIC

University of Ljubljana, Faculty of Law, Poljanski nasip 2, 1000 Ljubljana, Slovenia.

Rafael ILLESCAS ORTIZ

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

Flemming IPSEN

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

Dorde IVKOVIĆ

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

R.E. JAPIKSE

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

John L. JOY

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

Hrvoje KACIC

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

Anton KARIZ

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

Yoshiya KAWAMATA

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

Marshall P. KEATING

Advocate, Deorchis Wiener & Partners LLP, 61 Broadway - Floor 26, New York, NY 10006-2802, U.S.A. Office Tel.: (212) 344.4700 - Fax: (212) 422.5299 - E-mail: keating@marinelex.com

Tony KEGELS
Avocat, Mechelsesteenweg 196, 2018 Antwerpen, Belgique.

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

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

John KIMBALL
c/o Blank Rome LLP, The Chrysler Building, 405 Lexington Avenue, New York, NY 10174-0208, U.S.A. Tel.: +1 212 885.5259 - Fax: +1 917 332.3730 - E-mail: JKimball@BlankRome.com

Noboru KOBAYASHI
Professor of Law at Seikei University, 58-306 Yamashita-Cho, Naka-ku, Yokohama-Shi, 231-0023, Japan. Tel. / Fax: (45) 781.0727 - E-mail: kobayashi@law.seikei.ac.jp.

Takashi KOJIMA
Professor Emeritus of Kobe University, 2-18 Hiratacho, Ashiya City, Hyogoken, 659-0074, Japan.

Petar KRAGIĆ
Doctor of Law, President of the Croatian Maritime Law Association, Legal Counsel of Tankerska plovidba d.d., B. Petranovića 4, 23000 Zadar, Croatia.

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

Sergio LA CHINA
Avocat, Professeur à l'Université de Gênes, Président du Comité Gènois de l'Association Italienne de Droit Maritime, Via Roma 5/7, 16121 Genoa, Italy. Tel.: +39 010 541.588 - Fax: +39 010 592.851 - E-mail: sergiolachina@tin.it

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

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

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

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

Antonio LEFEBVRE d'OVIDIO

Avocat, Ancien Professeur à l'Université de Rome, Via del Nuoto, 11 (Due Pini), 00194 Rome, Italy.

Carlos R. LESMI

Lawyer, Second Vice-President of the Argentine Maritime Law Association, Partner of Lesmi & Moreno, 421 Lavalle, piso 1°, 1047 Buenos Aires, Argentina, Tel +54 11 4393 5292/5393/5991, Fax +54 11 4393 5889, Firm E-mail: lesmiymoreno@fibertel.com.ar - Private E-mail: clesmi@fibertel.com.ar

Hans LEVY

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

Jacques LIBOUTON

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

Domingo Martin LOPEZ SAAVEDRA

Lawyer, former Professor, First Vice-President of the Argentine Maritime Law Association, Esnaola & Vidal Raffo, San Martin 664 4° piso, 1004, Buenos Aires, Argentina. Tel.: +54 11 4515.0040/1224/1235 - Fax: +54 11 4515.0060/0022 - E-mail: domingo@lsa-abogados.com.ar

Alberto LOVERA-VIANA

Doctor of law, Lawyer and Professor, partner of Law Firm Alvarez & Lovera, Former Senator and President of the Merchant Marine Sub-Committee of the Venezuelan Senate, VMLA's Vice-President of Institutional Relationships, Av. Libertador, Multicentro Empresarial del Este, Torre Libertador, Nucleo B, Piso 15, Ofic. B-151, Chacao, Caracas 1060, Venezuela. Tel.: (58-212) 951.2106 - E-mail: alberto_Lovera@yahoo.com

Ian M. MACKAY

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

Eamonn A. MAGEE, LL.B.,B.L.

Barrister at Law, Marine Manager, Allianz, Insurance, Burlington Road, Dublin 4, Ireland. Tel.: (353-1) 667.0022 - Fax: (353-1) 660.8081.

Ian MAITLAND

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

Mohammed MARGAOUI

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

David W. MARTOWSKI

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

Warren J. MARWEDEL
President of Maritime Law Association of the United States, Shareholder and President of Marwedel, Minichello & Reeb, PC, 10 South Riverside Plaza, Suite 720, Chicago, Illinois 60606, United States. Tel.: +1 212 902-1600 Ext 5054 - Fax: +1 212 902-9900 - E-mail: wmarwedel@mmr-law.com

Carlos MATHEUS-GONZALEZ
Lawyer, Matheus & Ulloa, Asocs., Vice-President VMLA, Esq. Mijares, Torre Banco Lara, p/11, Ofic. A-B, Carmelitas, Caracas Venezuela. Tel.: (58-212) 861.1142- E-mail: matheusandulloa@cantv.net

Panos MAVROYANNIS
Avocat au Barreau d'Athenes, Cour de Cassation, Secrétaire de l'Association Hellénique de Droit Maritime - Heroon Polytechniou Ave. 96, Piraeus, Greece. Tel.: (1) 451.0562 - Tlx. 212410 - Fax. (1) 453.5921.

Howard M. McCORMACK
Former President of the Maritime Law Association of the United States, Burke & Parsons, 100 Park Avenue 30FL, New York, NY 10017-5533, U.S.A. - Tel.: +1 212 354.3820 - Fax: +1 212 221.1432 - E-mail: mccormack@burkeparsons.com

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

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

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

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

Joel R. MEDINA
Member of the Panama Bar Association, Panamanian Association of Maritime Law, Senior Partner and Director of the Shipping & Admiralty Department of the law firm of Icaza, Gonzales-Ruiz & Aleman, Aquilino de la Guardia Street No. 8, IGRA Building, P.O. Box 0823-02435 Panama, Republic of Panama - Tel.: (507) 205-6000 - Fax: (507) 269-4891 - E-mail: igranet@icazalaw.com

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

Ignacio L. MELO Jr.
Doctor of Law, Senior Partner of Melo & Melo Attorneys, President of the Mexican Maritime Law Association, Former President of the Iberoamerican Maritime Law Institute,

General Director of the Ship Owners Agents National Association, Rio Marne No. 23, Col. Cuauhtemoc, C.P. Mexico 06500, Mexico D.F. Tel.: (5) 705.4311/705.4561 - Fax: (5) 520.7165 - E-mail: imelo@melo-melo.com.mx.

Aurelio MENENDEZ MENENDEZ

Abogado, Presidente de la Comision de Codificacion, Rama Derecho Mercantil, Catedratico de Derecho Mercantil, Uria Menendez Abogados, C/ Príncipe de Vergara, 187, 28002 Madrid, España. Tel.: + 34 915 860 407 - Fax: + 34 915 860 403 - E-mail: amm@uria.com

Thomas A. MENSAH

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

Jes Anker MIKKELSEN

Lawyer, Dragsted Schlüter Aros, 4 Raadhuspladsen, DK-1550 København V, Denmark. Tel.: (45) 77.33.77.33 - Fax: (45) 77.33.77.44
E-mail: jes.anker.mikkelsen@bechbruundragsted.com

Ljerka MINTAS-HODAK,

Doctor of Law, Htzova 2, 10000 Zagreb, Croatia.

Sumati MORARJEE (Mrs.)

Chairman Emeritus of Scindia Steam Navigation Co., Bombay, c/o Scindia House, Narottan Morarjee Marg. Ballard Estate Bombay 400 038, India.

William. A. MOREIRA, Q.C.,

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

Hidetaka MORIYA

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

James F. MOSELEY

Former President of the Maritime Law Association of the United States, Partner Moseley, Warren, Prichard & Parrish, 501 West Bay Street, Jacksonville, Florida 32202, U.S.A. Tel.: (904) 356.1306 - Fax: (904) 354.0194 - E-mail: jfmoseley@mwpplaw.com

Françoise MOUSSU-ODIER (Mme)

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

The Rt. Hon. The Lord MUSTILL

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

Masakazu NAKANISHI

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

Peter Gad NASCHITZ

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

Bent NIELSEN

Lawyer, Nordre Strandvéj 72A, DK-3000 Helsinger, Denmark. Tel.: +45 3962.8394 - Fax: +45 4057.3950 - E-mail: bn@helsinghus.dk

José Angel NORIEGA PEREZ

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

Seiichi OCHIAI

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

John G. O'CONNOR,

Langlois Kronström Desjardins s.e.n.c. , 300 - 801 Grande Allée West, Québec, QC G1S 1Cl, Canada. Tel.: +1 418 682.1212 - Fax: +1 418 682.2272 - E-mail: john.oconnor@lkd.ca

Chris O. OGUNBANJO

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

Colm O'hOISIN

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

Tsuneo OHTORI

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

Barry A. OLAND

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

Maria Cristina de OLIVEIRA PADILHA (Mrs.)

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

Manuel OLIVENCIA RUIZ

Catedratico de Derecho Mercantil de la Univversidad de Sevilla, Delegado de Espana en Uncitral, Presidente de Comité Regional de Sevilla Asociacion Espagnola de Derecho Maritimo, Paseo de la Palmera 15, 41013 Sevilla, Espana.

David R. OWEN

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

Richard W. PALMER

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

Nils-Gustaf PALMGREN

Managing Director, Neptun Juridica Co. Ltd., Past President of the Finnish Maritime Law Association, Brandkårsgränden 3 G, FI-02700 Grankulla, Finland. Tel.: +358 9 505.1490 - E-mail: n-g.palmgren@kolumbus.fi

Roger PARENTHOU

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

Gordon W. PAULSEN

Lawyer, Former President of The Maritime Law Association of The United States, Member of the Firm Healy & Baillie, 29 Broadway, New York, N.Y. 10006, U.S.A. Tel.: (212) 943.3980 - Fax (212) 425.0131.

Drago PAVIC

Doctor of Law, Professor of Maritime Law, College of Maritime Studies, Zrinskofrankopanska 38, 21000 Split, Croatia

Marko PAVLIHA

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

André PIERRON

Expert Répartiteur d'Avaries Communes, Le Reuilly, 162, avenue du Président Robert Schuman, 33110 Le Bouscat, France.

Emilio PIOMBINO

Advocate and Average Adjuster, Via Ceccardi 4/26, 16121 Genoa, Italy. Tel.: +39 010 562623 - Fax: +39 010 587259 - E-mail: epiombino@studiogcavallo.it

Mag. Andrej PIRŠ

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

Vesna POLIC FOGLAR

Doctor of Law, Allianz Suisse Insurances Ltd, Transport Claims, Hohlstrasse 552, CH - 8048 Zürich, Switzerland. Tel. +41 58358.7734 - Fax +41 58358.4054 - E-mail vesna.polic@allianz-suisse.ch

Alfred H.E. POPP Q.C.

Senior General Counsel Admiralty & Maritime Law Department of Justice, Maritime Law Secretariat, 594 Highland Avenue, Ottawa, ON H2A 2K1, Canada. Tel.: +1 613 729.4233 - Fax: +1 613 729.5082 - E-mail: poppa@justice.gc.ca

Vincent Mark PRAGER

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

Manuel QUIROGA CARMONA

Lawyer LL.M. (Southampton), member of the Executive Committee of the Peruvian Maritime Law Association, Calle Manuel Miota nº 513, San Antonio, Lima 18, Peru. Email: manuelquiroga@quirogayquirogaabog.com

Dieter RABE

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

Jorge M. RADOVICH

Lawyer and Full Professor of Maritime and Insurance Law, Member of the Executive Council and of the Arbitration Committee of the Argentine Association of Maritime Law, Member of the Editing Council of the Revista de Estudios Marítimos (Magazine of Maritime Studies), Partner of the Law Firm Ruggiero, Radovich & Fernández Llorente, Avda. Corrientes 545 6º Piso, C1043AAF, Buenos Aires, Argentina. Telephone: +54 11 4328.2299 - Fax: +54 11 4394.8773 - E-mail: jradovich@sealaw.com.ar

L.M.S. RAJWAR

Managing Director India Steamship Co.Ltd., 21 Hemanta Basu Sarani, Calcutta 700 001, India.

Jan RAMBERG

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

Klaus RAMMING

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

Sigifredo RAMIREZ CARMONA

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

Uffe Lind RASMUSSEN

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

José Domingo RAY

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

Patrice REMBAUVILLE-NICOLLE

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

Thomas M. REME'

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

Martine REMOND-GOUILLOUD (Mme)

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

Rafael REYERO-ALVAREZ

Lawyer, postgraduate course on Shipping Law at the London University (U.C.L.), Professor of Maritime Law at the Central University of Venezuela and the Merchant Marine University of Venezuela, Vice-President of Oil Affairs of the Comite Maritimo Venezolano, Garcia, Deffendini & Asoc., Paseo Enrique Eraso, Edif. La Noria, P.B., Oficinas 4 y 5, Las Mercedes, Caracas, Venezuela. Tel.: (58-212) 761.0230 - Email: reyerolaw@cantv.net

Francis REYNOLDS, Q.C. (Hon.), D.C.L., F.B.A.

Professor of Law Emeritus in the University of Oxford, Emeritus Fellow of Worcester College, Oxford, Honorary Professor of the International Maritime Law Institute, Malta, 61 Charlbury Rd, Oxford OX2 6UX, England. Tel.: (1865) 559323 - Fax: (1865) 511894 - E-mail: francis.reynolds@law.ox.ac.uk.

Winston Edward RICE

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

Frode RINGDAL

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

David ROBLES

Lawyer in Admiralty and Maritime Law, Member of the Maritime Law Associations of Panama and The United States, Senior partner, Law Firm of De Castro & Robles, 9th Floor Scotia Plaza, 51st St. & Federico Boyd Ave., P.O. Box 0834-02262, Panama City, Panama. Tel.: (507) 263.6622 - Fax: (507) 263.6594 - E-mail robles@decastro-robles.com

José Luis RODRIGUEZ CARRION

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

Jean-Serge ROHART

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

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

Roger ROLAND
Avocat, Chargé de cours de droit maritime et des transports, ainsi que d'assurances maritimes à la Faculté de Droit de l'Université d'Anvers, Directeur et rédacteur de la revue de la Jurisprudence du Port d'Anvers, Antoon van Dyckstraat 2, 2018 Antwerpen, Belgique. Tel.: +32 3 232.2017

Fernando ROMERO CARRANZA
Doctor of law, Lawyer, Professor of Navigation Law at the Faculty of Law at the National Buenos Aires University, Member of the Executive Council of the Argentine Maritime Law Association, Llerena & Asociados Abogados, Av. L.N.Alem 356, piso 13, Tel.: +54 11 4314.2670 – Fax: +54 11 4314.6080 – E-mail: frcarranza@llerena.com.ar.

Thomas S. RUE
Johnstone, Adams, Bailey, Gordon & Harris LLC, Royal St. Francis Bldg, 104 Saint Francis St. 8th Floor, Mobile, AL 36602. Tel.: +1 251 432.7682 - Fax: +1 251 432.2800 E-mail: tsr@johnstoneadams.com

Mag. Josip RUGELJ
Dantejeva 17, 6330 Piran, Republic of Slovenia.

Fernando RUIZ-GALVEZ VILLAVERDE
Solicitor, Partner of the firm Ruiz-Gálvez Abogados, C/Velázquez, 20, 3° y 4° Dcha., 28001 Madrid, Spain. Tel.: (91) 781.2191 - Fax: (91) 781.2192 - E-mail: fdoruizgalvez@retemail.es

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

Michael J. RYAN
Advocate, Of Counsel to Hill, Betts & Nash, LLP, One World Financial Ctr 200, Liberty Street, FL 26, New York, New York 10281-2400, U.S.A. - Tel.: (212) 589-7516 - Fax: (212) 466.0514 - E-mail: mryan@hillbetts.com

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

José Alfredo SABATINO-PIZZOLANTE
Av. Salom, Urb. Cumboto Saur, Level 2, Ofc. 2-08/2-09, Centro Comercial Inversiones Pareca. P.O. Box 154. Puerto Cabello 2050, Edo. Carabobo, Venezuela. Tel: (58-242) 364.1801 - E-mail: mail@sabatinop.com

Yuichi SAKATA
Attorney at Law, Legal Adviser to the Japanese Shipowners' Association and Nippon Yusen Kabushiki Kaisha, 1-17-802 Shirokane, Minato-ku, Tokyo, Japan 108-0072. Tel. & Fax: (3) 5768.8767.

Ronald John SALTER

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

Fernando SANCHEZ CALERO

Abogado, Catedratico de Derecho Mercantil en la Universidad de Madrid, Anct. Président de l'Association Espagnole de Droit Maritime, Quintana, 2-2°, 28008, Madrid, Spain.

Julio SANCHEZ-VEGAS

Doctor of law, Venezuelan lawyer, Master in Maritime Insurance and Aviation, University of London, England, Professor in Maritime Law in "Rafael Urdaneta" University, "Andrés Bello" Catholic University and in the Maritime University of the Caribbean, VMLA's Vice-President Executive, AJMSV - Attorneys Office, Calle La Estancia, CCCT, Torre A, P/ 8, Of A-803, Chuao, Caracas, Venezuela, Tel. (58-212) 959.2236, E-mail: asvajm@cantv.net

Jan SANDSTRÖM

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

Ricardo SAN MARTIN PADOVANI

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

Ricardo SARMIENTO PINEROS

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

Guillermo SARMIENTO RODRIGUEZ

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

Nicholas G. SCORINIS

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

William M. SHARPE

Barrister & Solicitor, 40 Wynford Drive, Suite 307, Toronto, ON M3C 1J5. Tel.: +1 416 482.5321 - Fax: (416) 322-2083 - E-mail: wmsharpe@eol.ca

Richard A. A. SHAW

Solicitor, former Senior Partner and now Consultant to Shaw and Croft, London EC3A 7BU; now Senior Research Fellow at the University of Southampton Institute of Maritime Law, Southampton SO17 1BJ - E-mail: rshaw@soton.ac.uk. Correspondence address: 24 Priors Lodge, 56 Richmond Hill, Richmond TW10 6BB, United Kingdom. Fax: +44 20 76907241 - E-mail: rshaw@soton.ac.uk

Francesco SICCARDI
Lawyer, Studio Legale Siccardi, Via XX Settembre 37/6, 16121 Genoa, Italy. Tel.: +39 010 543.951 - Fax: +39 010 564.614 - E-mail: f.siccardi@siccardibregante.it

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

Gabriel R. SOSA III
De Castro & Robles, Scotia Plaza, 51st & Federico Boyd Streets, P.O.Box 0834-02262, Panama, Republic of Panama. Tel.: (+507) 263.6622 - Fax (+507) 263.6594 - E-mail: sosa@decastro-robles.com www.decastro-robles.com

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

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

Graydon S. STARING
Former President of the Maritime Law Association of the United States, Nixon Peabody LLP, One Embarcadero Center, Floor 18, San Francisco, Ca. 94111, U.S.A. Tel.: (415) 984.8310 - Fax: (415) 984.8300 - E-mail: gstaring@nixonpeabody.com

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

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

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

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

Haydee S. TALAVERA (Mrs.)
Doctor of law, Lawyer, Professor of Navigation Law, Faculty of Law at the National Buenos-Aires University and La Plata University, Carbajal 3636, C 1430 CBD, Buenos Aires, Argentina. Tel.: +54 11 4555.5172/5287 - Fax: +54 11 4555.5287/4373.5103 E-mail: giovannablangiardi@speedy.com.ar.

Hisashi TANIKAWA, Ph. D.
Emeritus Professor of Seikei University, Vice President of the Japanese Maritime Law

Association, Honorary Vice President of the CMI, c/o Japan Energy Law Institute, Tanakayama Bldg., 7F, 4-1-20, Toranomon Minato-ku, Tokyo 105-0001, Japan. Tel.: (3) 3434.7701 - Fax: (3) 3434.7703 - E-mail: y-okuma@jeli.gr.jp

Gérard TANTIN

Avocat, 55, Rue Claude Bernard, 75005 Paris, France.

Yves TASSEL

Professeur à l'Université de Nantes, Directeur du Centre de droit maritime, Conseiller juridique du Droit Maritime Français, 16 bis rue Alexandre Dumas, 44000 NANTES, France

David W. TAYLOR

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

William TETLEY Q.C.

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

Henrik THAL JANTZEN

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

Jan THEUNIS

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

Alain TINAYRE

Avocat, Ancien Membre du Conseil de l'Ordre, 43 rue de Courcelles, 75008 Paris, France. Tel.: (1) 53.75.00.43 - Fax: (1) 53.75.00.42.

Shûzo TODA

Emeritus Professor of the University of Chûo, 9-15, 2 chome. Sakurazutsumi, Musashino-Shi, Tokyo, Japan.

Lionel TRICOT

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

Sergio TURCI

Lawyer, Studio Legale Turci, Via R. Ceccardi 4/30, 16121 Genoa, Italy. Tel.: +39 010 553.5250 - Fax: +39 010 595.414 - E-mail: turcilex@turcilex.it

Wagner ULLOA-FERRER

Lawyer, Past-President Asociacion Venezolana de Derecho Maritimo, Torre Banco Lara, piso 11. Ofic.A-B, Esquina de Mijares, Carmelitas, Caracas, Venezuela. Tel.: (58-212) 861.1142 - E-mail: matheusandulloa@cantv.net

Anders ULRIK

Barrister, Deputy Director, Assuranceforeningen Skuld and Danish Shipowners' Defense

Association, Frederiksborggade 15, 1360 Kobenhavn K., Denmark. Tel.: (33) 116.861 - Fax: (33) 113.341 - E-mail anders.ulrik@skuld.com

Percy URDAY BERENGUEL

Doctor of law, Lawyer LL.M. (London), Calle Chacarilla no. 485, San Isidro, Lima 27, Perù. Tel.: (51) 14224.101 - Fax: (51) 14401.246 - E-mail: purday@murdayab.com

Rodrigo URIA GONZALEZ

Avocat, Catedratico de Derecho Mercantil, C/Jorge Juan 6, 28001 Madrid, Spain.

Jozef VAN DEN HEUVEL

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

Taco VAN DER VALK

Advocaat, AKD Prinsen Van Wijmen, P.O.Box 4302, 3006 AH Rotterdam, The Netherlands. Tel.: +31 88 253.5404 - Fax: +31 88 253.5430 - E-mail: tvandervalk@akd.nl

Gertjan VAN DER ZIEL

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

Eric VAN HOOYDONK

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

Antoine VIALARD

Professeur de Droit Maritime à la Faculté de Droit, des Sciences Sociales et Politiques de l'Université de Bordeaux, Avenue Léon-Duguit, 33600 Pessac, France. Tel.: +33 524 60.67.72 - Fax: +33 5 56.84.29.55 - E-mail: aevialard@numericable.fr

Ricardo VIGIL TOLEDO

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

Michael VILLADSEN

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

Francisco VILLARROEL-RODRÍGUEZ

Villarroel, Rodríguez & Asociados - Abogados. Av. Universidad, Centro Empresarial, Piso 10, Oficina 10-C, Caracas 1010, Venezuela. Tel.: (58-212) 952.6228 - E-mail: venezuelanlaw@cantv.net

Henri VOET Jr.

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

Kenneth H. VOLK

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

Enzio VOLLI

Professeur de droit maritime, Président du Comité de Trieste de l'Association Italienne de Droit Maritime, Via S. Nicolò 30, 34131 Trieste, Italie. Tel.: +39 040 638.384 - Fax: +39 040 360.263 - E-mail: segreteria@studiovolli.it

Alexander von ZIEGLER

Associate Professor (Privatdozent) at the University of Zurich, Doctor of Law, LL.M. in Admiralty (Tulane), Attorney at Law, President of the Swiss Maritime Law Association, Partner of Schellenberg Wittmer, Löwenstrasse 19, Postfach 1876, CH-8021 Zürich, Suisse. Tel.: +41 44 215.5252 - Fax: +41 44 215.5200 - E-mail: alexander.vonziegler@swlegal.ch

D. J. Lloyd WATKINS

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

Francisco WEIL

Average Adjuster and Honorary Treasurer of the Executive Council of the Argentine Maritime Law Association, c/o Ascoli & Weil, Juan D. Peron 328, 4th Fl., 1038 Buenos-Aires, Argentina. Tel.: (1) 342.0081/3 - Fax: (1) 361.7150 - E-mail: ascoliweil@weil.com.ar.

Peter WILLIS LL. B.

Former President of The Maritime Law Association of Australia & New Zealand, Solicitor, 35 Thornton Street, KEW. 3101, Australia. Tel.: 861.9828.

Frank L. WISWALL, Jr.

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

Akihiko YAMAMICHI

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

Tomonobu YAMASHITA

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

CONSULTATIVE MEMBERS

Intergovernmental Organizations

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

Att: Rosalie P. Balkin
Director

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

Att: Willem Oosterveen,
Director

Other International Organizations

BIMCO
Bagsvaerdvej 161
DK-2880 Bagsvaerd
DENMARK

Att: Mr. Torben C. Skaanild
Secretary-General

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

Att: Dr. Ian C. White
Managing Director

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

Att: Bruce Farthing
Consultant Director

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

INTERNATIONAL CHAMBER OF COMMERCE - ICC
Maritime and Surface Transport Division
38 Cours Albert 1er
F-75008 Paris
FRANCE

Att: Maria Livanos Cattani
Secretary-General

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

Att: Tomas F. Nassar
President

INTERNATIONAL ASSOCIATION OF INDEPENDENT TANKER OWNERS – INTERTANCO
Postboks 7518
Skillebekk
N-0205 Oslo
NORWAY

Att: Svein Ringbakken
Legal Counsel

INTERNATIONAL BAR ASSOCIATION - IBA
271 Regent Street
London W1R 7PA
UNITED KINGDOM

Att: Jonathan Lux
Chairman

INTERNATIONAL CHAMBER OF SHIPPING - ICS
Carthusian Court
12 Carthusian Street
London EC1M 6EB
UNITED KINGDOM

Att: J.C.S. Horrocks
Secretary-General

INTERNATIONAL FEDERATION OF FREIGHT FORWARDERS' ASSOCIATION – FIATA
Schaffhauserstrasse 104
CH-8152 Glattbrugg
SWITZERLAND

Att: William M. Gottlieb
President

INTERNATIONAL MARITIME INDUSTRIES FORUM – MIF
15A Hanover Street
London W1R 9HG
UNITED KINGDOM

Att: J.G. Davies, C.B.E.
Chairman

INTERNATIONAL GROUP OF P&I CLUBS – IGP&I
78 Fenchurch Street
London EC3M 4BT
UNITED KINGDOM

Att: D.J. Lloyd Watkins
Secretary and Executive Officer

INTERNATIONAL UNION OF MARINE INSURANCE – IUMI
Löwenstrasse 19
P.O. Box 1876
CH-8021 Zurich
SWITZERLAND

Att.: Stefan Peller
General Secretary

THE NATIONAL INDUSTRIAL TRANSPORTATION LEAGUE
1700 North Moore St.
Suite 1900
Arlington, Virginia 22209

Att.: Edward M. Emmett
President

WORLD SHIPPING COUNCIL
1015 15th St. N.W.
Suite 450
Washington, D.C. 20005

Att.: Christopher Koch
President

PART II

The Work of the CMI

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Document 1

INTRODUCTION

This topic was first discussed at a CMI Conference at Vancouver in 2004. It has also been the subject of discussion at Colloquiums held at Bordeaux in 2003 and in Cape Town in 2006 and has been the subject of International Sub-Committee (**ISC**) meetings in 2003 and 2007, and the only face to face meeting of the International Working Group (**IWG**) in London in 2007, at which the draft Instrument, which is Document 2, was discussed and shortly thereafter, finalised.

CMI's work on this topic was initiated by the IMO Legal Committee following upon the incidents involving the "*Castor*" and the "*Prestige*". In accordance with its usual practice, CMI sent out questionnaires to National Maritime Law Associations. Their responses, and summaries of them, were forwarded to the IMO Legal Committee. Copies of the Report of the ISC meeting in 2003, the Report sent to the IMO with responses to the second questionnaire, the Discussion Paper which had been prepared for the ISC Meeting in 2003, as well as the papers given at the Bordeaux Colloquium and Vancouver Conference, can be found in Yearbook 2003 Part II. The result of the discussions at Vancouver can be found in a report published in Yearbook 2004 Vancouver II.

In preparation for the Colloquium held in South Africa in early 2006, the IWG prepared a draft Instrument. An explanatory letter addressed to the Presidents of National Maritime Law Associations and the draft Instrument, as well as the report on the presentations made at that Colloquium, and the report which was submitted to the IMO Legal Committee after the Cape Town Colloquium can be found in Yearbook 2005-2006.

Although the Legal Committee of the IMO determined in April 2005 that the subject of Places of Refuge was a very important one and needed to be kept under review, it also agreed that at that point in time there was no need to draft a Convention dedicated to Places of Refuge. It identified a more urgent priority as being to implement all the existing liability and compensation Conventions. The CMI Executive Council took the view that there remains a probability that ultimately there will be a need for such a Convention and that it would be a worthwhile exercise to complete the work which CMI had commenced and it noted that further work was being done by the EU in this area, which could create a lack of uniformity in International law.

In addition to continuing its work on the draft Instrument, the IWG also sent a further questionnaire to National Maritime Law Associations, seeking to identify which of the liability Conventions (CLC, Fund, HNS and Bunker)

their country had adopted and what was the current intention in relation to any of those Conventions which they had not given effect to. A copy of the report sent to the CMI Executive Council on the third questionnaire is Document 3.

The IWG also sought to ascertain whether the law and practice of salvage could provide greater incentives to States to assist vessels in distress. This is a topic which the ISU (and in particular Archie Bishop) has considered. He and Christopher Davis both addressed the topic of salvage in the context of Places of Refuge at the Joint Symposium which CMI held with the Croatian Maritime Law Association in Dubrovnik in 2007.

Whilst the process which has been outlined above has been proceeding within CMI, there have been other developments on the world stage. The IMO has developed "Guidelines on places of refuge for ships in need of assistance", Resolution A.949 (23) which can be seen in Yearbook 2003 Part II, and more recently, "Guidelines on the control of ships in an emergency" adopted as IMO circular MSC.1/Circ 1251. In addition, the European Union has done work in this area in relation to its Vessel Traffic Monitoring Directive and the United States Coast Guard and the National Response Team have issued Policy Documents and Guidelines. Eric van Hooydonk and Liz Burrell will be participating in the panel discussions at the Athens Conference and describing these developments to the delegates.

As a result of the further deliberations of the IWG and the ISC Meeting in London in 2007, the draft Instrument which had been prepared for the Cape Town Colloquium is now in the form which is Document 2. It is proposed that at the Athens Conference the panel of speakers will include (in addition to those referred to above), representatives from the IWG, the International Association of Ports & Harbours (IAPH), the International Salvage Union (ISU) and the International Group of P&I Clubs who will explain the positions adopted by their constituency on the draft Instrument and, thereafter, delegates, in the traditional manner of CMI, will debate the text of the draft Instrument.

It is the hope of the Executive Council that the text will be finalised and approved at the Plenary Session of the Conference, and thereafter forwarded to the IMO Legal Committee, for its consideration.

STUART HETHERINGTON, *Chairman*

Document 2

DRAFT INSTRUMENT ON PLACES OF REFUGE

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4. Immunity from liability where access granted reasonably
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7. Guarantees
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9. Identification of competent authority

Annex 1 Applicable International Conventions
Annex 2 Standard Letter of Guarantee

Preamble

THE STATES PARTIES TO THE PRESENT INSTRUMENT

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

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

CONSCIOUS of the fact that existing international conventions do not establish a sufficiently clear framework for legal liability arising out of circumstances in which a ship in need of assistance seeks a place of refuge and is refused, or is accepted, and damage ensues,

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

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

MINDFUL OF THE NEED for an Instrument which seeks to establish a framework of legal obligations concerning the granting or refusing of access to a place of refuge to a ship in need of assistance,

INTENDING that this Instrument shall govern the actions of States, competent authorities, shipowners, salvors and others involved, where a ship seeks assistance; encourage adherence to international conventions relating to the preservation of human life, property and the environment, as well as balancing those interests in a fair and reasonable way; and that it shall be construed accordingly,

HAVE AGREED as follows:

1. Definitions

For the purposes of this Instrument:

(a) “ship” means a sea going vessel of any type whatsoever and includes hydrofoil boats, air-cushion vehicles, submersibles, floating craft and floating platforms, except when such platforms are on location engaged in the exploration, exploitation or production of sea-bed mineral resources.

(b) “ship in need of assistance” means a ship in circumstances that could

give rise to loss of the ship or its cargo or to an environmental or navigational hazard.

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

(d) "competent authority" means any person who or any organisation which has the power to permit or refuse entry of a ship in need of assistance to a place of refuge.

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

(f) "limitation sum" means the amount to which a shipowner is entitled to limit liability under one of the International Conventions listed in Annex 1.

(g) "ship owner" includes the registered owner, the bareboat charterer and anyone who has assumed the responsibility for operation of the ship from the owner of the ship and who, on assuming such responsibility, has agreed to take over all duties and responsibilities established under the International Safety Management Code, as amended.

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

2. Object and purpose

The object and purpose of this Instrument is to establish:

(a) a legal framework for the efficient management of situations involving ships in need of assistance requiring a place of refuge and

(b) the responsibilities and obligations concerning the granting or refusing of access to a place of refuge.

3. Legal obligation to grant access

(a) A State and any competent authority shall permit access to a place of refuge by a ship in need of assistance when requested.

(b) A State or the competent authority may, on reasonable grounds, deny access following an objective assessment, which establishes that the condition of the ship is such that it and/or its cargo is likely to cause greater damage if

permission to enter a place of refuge is granted than if such a request is refused.

(c) The absence of an insurance certificate, letter of guarantee or other financial security, as referred to in Article 7, shall not relieve the State or competent authority from the obligation to carry out the objective assessment and is not itself sufficient reason for a State or competent authority to refuse to grant access to a place of refuge by a ship in distress.

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

4. Immunity from liability where access granted reasonably

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

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

If a State or competent authority refuses to grant access to a place of refuge to a ship in need of assistance and:

(a) another State or a third party proves that it has suffered loss or damage to its property by reason of such refusal, and it would have been unlikely that such loss or damage would have occurred if access to a place of refuge had been granted when requested by the master or other person acting on behalf of the ship owner or salvor, or

(b) the ship owner proves that the ship sustained loss or damage by reason of such refusal or the salvor proves that it was unable to complete the salvage operations by reason of such refusal such State or competent authority which refused access shall be liable to compensate the other State or third party, the ship owner or salvor, as the case may be, for the loss or damaged occasioned thereby, unless such State or competent authority is able to establish that it acted reasonably in refusing access.

6. Reasonable behaviour

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

7. Guarantees

When agreeing to grant access to a place of refuge to a ship in need of assistance, the State or competent authority may request the ship owner to present an insurance certificate, letter of guarantee or other financial security by a member of the International Group of P&I Clubs or other recognised insurer, bank or financial institution in the form of Annex 2 to this Instrument not exceeding an amount equal to the limits of liability under the applicable national or international limitation regime, but in all cases not exceeding an amount calculated in accordance with the most recent version of Article 6(1)(b) of the Convention on Limitation of Liability for Maritime Claims, 1976 or the corresponding provision on limitation for claims other than passenger, loss of life or personal injury claims of any other international convention replacing the previously mentioned convention, in force on the date when the insurance certificate, letter of guarantee or other financial security is first requested, whether or not the State in question is a party to that convention.

The requesting of this certificate, letter of guarantee or other financial security certificate shall not lead to a delay in accommodating a ship in need of assistance.

8. Plans to accommodate ships seeking assistance

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

9. Identification of competent authority

States shall identify the competent authority, which has the required expertise and power at the time to take the appropriate decision, on receipt from a ship in need of assistance, of a request for admission to a place of refuge appropriate to the size and condition of the ship in question.

Annex 1

RELEVANT INTERNATIONAL CONVENTIONS

The following Conventions and Protocols are considered relevant.

- United Nations Convention on the Law of the Sea (UNCLOS), in particular articles 195, 211 and 221 thereof;
- International Convention relating to Intervention on the High Seas in Cases of Oil Pollution Casualties (the Intervention Convention), 1969, as amended;
- Protocol relating to Intervention on the High Seas in Cases of Pollution by substances other than Oil, 1973;
- International Convention for the Safety of Life at Sea, 1974 (SOLAS 1974), as amended, in particular chapter V thereof;
- International Convention on Salvage, 1989 (the Salvage Convention);
- International Convention on Oil Pollution Preparedness, Response and Co-operation, 1990 (the OPRC Convention);
- International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 (MARPOL 73/78);
- International Convention on Maritime Search and Rescue, 1979 (SAR 1979), as amended.
- Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972.
- Convention Relating to Civil Liability in the Field of Maritime Carriage of Nuclear Material, 1971.
- Convention on Limitation of Liability for Maritime Claims (LLMC), 1976, and Protocol of 1996 thereto.

- International Convention on Civil Liability for Oil Pollution Damage (CLC), 1969.
- International Convention on Civil Liability for Oil Pollution Damage (CLC), 1992.
- International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (FUND), 1992.
- Hazardous and Noxious Substances Convention 1996.
- Bunker Convention 2001.
- International Convention on the Removal of Wrecks 2007
- Facilitation of International Maritime Traffic 1965.
- International Regime of Maritime Ports 1923.
- Convention and Statute on Freedom of Transit 1921.
- Convention on Regime of Navigable Waters of International Concern 1921.

Annex 2

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

Dear Sirs

Heading – Details of Ship, Casualty and Place of Refuge

In consideration of:

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

and upon condition that:

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

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

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

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

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

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

2. without prejudice to or waiver of:

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

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

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

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

Document 3

REPORT TO THE EXECUTIVE COUNCIL MEETING

NOVEMBER 2006

Places of Refuge

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

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

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

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

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

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

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

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

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

Croatia expects to ratify the HNS Convention in 2007.

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

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

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

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

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

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

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

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

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

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

STUART HETHERINGTON

20 November 2006

Dear President,

Places of Refuge: Third Questionnaire

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

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

1. Please advise whether your country has ratified or acceded to any of the following Conventions or Protocols:

(A) International Convention on Civil Liability for Oil Pollution Damage (CLC 1969);
(B) CLC Protocol 1976;
(C) CLC Protocol 1992;
(D) International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (Fund 1971);
(E) Fund Protocol 1976;
(F) Fund Protocol 1992;
(G) Protocol of 2003 to the 1992 Fund Convention (Supplementary Fund Protocol).
(H) International Convention on Liability and Compensation for Damage in connection with the Carriage of Hazardous and Noxious Substances by Sea (HNS 1996).
(I) International Convention on Civil Liability for Bunker Oil Pollution Damage 2001.

2. If your country has not ratified or acceded to any of the above Conventions or Protocols, could you please ascertain from an appropriate government official whether any decision to ratify/accede to or not to

ratify/accede to any such Convention or Protocol has been made by your government.

3. If your country has made a decision not to ratify/accede to any such Convention or Protocol please ascertain the reason(s) for that decision.

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

Yours sincerely,

STUART HETHERINGTON,
Chairman, International Working Group

COUNTRY	CLC 1969	CLC PROTOCOL 1976	CLC PROTOCOL 1992	FUND 1971	FUND PROTOCOL 1976	FUND PROTOCOL 1992	FUND PROTOCOL 2003	HNS 1996	BUNKER 2001
ARGENTINA	✓	✓	✓	✓	✓	✓	*X*	*X*	*X*
AUSTRALIA	✓	✓	✓	✓	✓	✓	*X*	*X*	*X*
BELGIUM	✓	✓	✓	✓	✓	✓	✓	*X*	*X*
BRAZIL	✓	*X*	*X*	*X*	*X*	*X*	*X*	*X*	*X*
CANADA	✓	✓	✓	✓	✓	✓	*X*	*X*	*X*
CROATIA	✓	✓	✓	*X*		✓	✓	*X*	✓
DENMARK	✓	✓	✓	✓	✓	✓	✓	*X*	*X*
FINLAND	✓	✓	✓	✓	✓	✓	✓	*X*	*X*
GERMANY	✓	✓	✓	✓	✓	✓	✓	*X*	✓
ITALY	✓	✓	✓	✓	✓	✓	*X*	*X*	*X*
JAPAN	✓	✓	✓	✓	✓	✓	✓	*X*	*X*
NETHERLANDS	✓	✓	✓	✓	✓	✓	✓	*X*	*X*
NEW ZEALAND	✓	*X*	✓	✓	*X*	✓	*X*	*X*	*X*
NIGERIA	✓	✓	✓	✓	✓	✓	*X*	*X*	✓
SLOVENIA	✓	✓	✓	✓	✓	✓	✓	✓	✓
USA	*X*	*X*	*X*	*X*	*X*	*X*	*X*	*X*	*X*

Document 4

UNITED STATES COAST GUARD PLACES OF REFUGE POLICY

COMDTINST 16451.9
July 17 2007

COMMANDANT INSTRUCTION 16451.9
Subj: U.S. COAST GUARD PLACES OF REFUGE POLICY

Ref: (a) International Maritime Organization Resolution A.949(23), Guidelines on Places of Refuge for Ships in Need of Assistance
(b) Marine Safety Manual, COMDTINST M16000 (series)
(c) U.S. Coast Guard Addendum to the United States National Search and Rescue Supplement to the International Aeronautical and Maritime Search and Rescue Manual (IMSAR Manual), COMDTINST M16130.2 (series)
(d) U.S. Coast Guard Maritime Law Enforcement Manual, COMDTINST M16247.1 (series)

1. PURPOSE. This Instruction provides policy guidance, a sample checklist, and a risk assessment job aid to field commanders, Area Committees, and Regional Response Teams (RRTs) to aid in preparing for and responding to a vessel requesting a place of refuge as described in reference (a), or similar events in which a vessel, not in need of immediate Search and Rescue (SAR) assistance, may pose a variety of risks to a port or coastal area. This Commandant Instruction focuses primarily on the decision process of selecting the lowest risk Place of Refuge option for a stricken vessel. In any such situation, Operational Commanders will also be conducting other, simultaneous operations, including, but not limited to, developing transit plans, staging pollution, fire, and/or hazmat response equipment, and addressing any security concerns.

2. ACTION. Area, district, and sector commanders of Maintenance and Logistics Commands, commanding officer of integrated support commands, commanding officers of Headquarters units, assistant commandants for directorates, Judge Advocate General, and special staff elements at Headquarters shall ensure compliance with the provisions of this Instruction. Internet release is authorized.

3. DIRECTIVES AFFECTED. None.

DISTRIBUTION – SDL No. 146

NON-STANDARD DISTRIBUTION:

4. BACKGROUND.

a. On December 5, 2003, the International Maritime Organization (IMO) adopted resolution A.949 (23), *Guidelines on Places of Refuge for Ships in Need of Assistance*, which were drawn up in response to three significant events – the motor tanker (M/T) ERIKA (Dec 1999), the M/T CASTOR (Dec 2000), and the M/T PRESTIGE (Nov 2002) – involving tank ship structural failures at sea. In the case of the ERIKA and PRESTIGE, both tank ships broke apart and sank, resulting in catastrophic environmental damage to coastal states due to spilled oil. The purpose of this resolution is to encourage nations to adopt systems to balance the needs of the vessel and the needs of the coastal state and make sound decisions to enhance maritime safety and the protection of the marine environment.

b A second IMO resolution, A.950 (23), *Maritime Assistance Services* (MAS), recommends that all coastal states establish a maritime assistance service (MAS). In the United States, Rescue Coordination Centers (RCCs) meet the intent of this resolution.

c. These incidents demonstrated that in some circumstances, coastal states could actually increase their risk if they deny a vessel the opportunity to enter a place of refuge and make repairs, or delay a decision until no options remain. This Instruction establishes a process to support risk based planning and decision making. A repeatable, transparent process is also important in building stakeholder and public confidence in the final decision, regardless of outcome.

5. DISCUSSION.

a. Contingency Planning/Pre-Incident Surveys. Operational Commanders, including Area, District, and Sector Commanders and the Commanding Officers of Marine Safety Units and Chairs of Area Committees, and RRTs shall use this Instruction as part of their normal contingency planning process. Any evaluations of possible Places of Refuge

conducted before an actual incident shall be considered «pre-incident surveys» rather than a final decision. If an actual event occurs, the Operational Commander, working within a Unified Command structure as appropriate, shall review, verify, and modify as necessary these pre-surveys. Note that the term «Place of Refuge» refers simply to a location where a ship can go so that its crew or others can stabilize the situation or make repairs. It may, but need not, include actual ports or terminals.

b. National Response Team Place of Refuge Guidelines. The National Response Team (NRT), which includes the Coast Guard, developed and approved *Guidelines for Places of Refuge Decision-Making* (NRT Guidelines) that provides: (1) an incident-specific decision-making process to assist Coast Guard Captains of the Port in deciding whether a vessel needs to be moved to a place of refuge, and if so, which place of refuge to use; and (2) a framework for preincident identification of potential places of refuge for inclusion in appropriate Area Contingency Plans. The NRT Guidelines, (located at http://www.nrt.org), emphasizes consultation with the Area Committees, RRTs, natural resource trustees, other stakeholders, and technical experts in the identification of potential places of refuge during pre-incident planning and during the decision-making process of an event. In general, operational commanders may use this and other planning tools that are consistent with the intent of this instruction.

security information. The parallel relationship between SAR, safety, environmental, and security concerns is depicted in enclosure (3).

g. National Defense Concerns. Operational Commanders shall evaluate the risks a vessel seeking a Place of Refuge may pose to national defense, including limiting freedom of action (such as by blocking a channel), or compromising Operational Security (OPSEC) by exposing Department of Defense (DOD) or Coast Guard personnel, installations, or equipment to unacceptable surveillance. Operational Commanders shall include appropriate DOD personnel in Place of Refuge planning activities, and incorporate DOD stakeholder concerns into any final Place of Refuge decision. As in the case regarding security concerns, Operational Commanders are reminded of their responsibility to protect classified information.

h. Safety Concerns. Operational Commanders shall exercise extreme caution before placing boarding officers or other Coast Guard personnel aboard a stricken vessel. Personnel safety concerns remain paramount and boarding operations shall be conducted in accordance with reference (d) and with due regard for unusual safety hazards. Survey and response operations onboard a stricken vessel shall only be conducted in accordance with an approved site safety plan. This applies equally to

Coast Guard and non-Coast Guard personnel.

i. Force Majeure. *Force majeure* is defined as an overwhelming force or condition of such severity that it threatens loss of the vessel, cargo or crew unless immediate corrective action is taken. A request for a Place of Refuge may be preceded by, or issued in conjunction with, a force majeure declaration. Volume VI, Chapter 1 of reference (b) discusses Coast Guard policy with respect to force majeure. In general, force majeure is a doctrine of international law which confers limited legal immunity upon vessels that are forced to seek refuge or repairs within the jurisdiction of another nation due to uncontrollable external forces or conditions. This limited immunity prohibits coastal state enforcement of its laws which were breached due to the vessel's entry under force majeure. If a vessel's master cites *force majeure* as a reason for entry, Sector Commanders shall consult with the servicing staff judge advocate before allowing the vessel to enter. If time and circumstances permit, Sector Commanders shall use these Place of Refuge guidelines and the Maritime Operational Threat Response (MOTR) process to reach a decision and direct the vessel to a particular location. In all cases, Sector Commanders can and shall impose appropriate requirements needed to ensure safety, security, and the protection of natural resources.

j. Notice of Arrival.

(1) Notice of Arrival (NOA) regulations are found in 33 Code of Federal Regulations (CFR) Part 160. Per 33 CFR 160.214, COTPs are granted the authority to waive any requirements of the NOA regulation for any vessel if the NOA requirements are «unnecessary or impractical for purposes of safety, environmental protection, or national security.» An operational commander's decision to grant a waiver, such as for the 96 hour NOA time requirement, should be based on an examination of the facts and circumstances of each particular Place of Refuge request. Factors to take into account when considering a waiver include but are not limited to MARSEC level, available intelligence, and homeland security threat level. Any decision concerning civil penalty or similar enforcement action should likewise be made on a case by case basis.

(2) Vessels arriving under *force majeure* may be considered exempt from NOA requirements under 33 CFR 160.203(b) (3) if they are not carrying certain dangerous cargo or controlling another vessel carrying certain dangerous cargo. Any vessel requesting a Place of Refuge will almost certainly meet the standard of a hazardous condition as defined in 33 CFR 160.204, and therefore must meet the reporting requirements of 33 CFR 160.215.

k. Intervention on the High Seas. Volume IX, Chapter 1 of reference (b)

discusses Coast Guard policy with respect to the Intervention on the High Seas Act (33 USC 1471) and the *International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties*, 1969. In general, the convention affirms the right of a coastal State to take such measures on the high seas as may be necessary to prevent, mitigate or eliminate danger to its coastline or related interests from pollution by oil or the threat thereof, following a maritime casualty. «Interests» is defined to include (but not limited to) fisheries, tourism activities, and the health and well being of coastal populations. The measures taken must be proportionate to the threat. Note that consultation with the affected flag state is required and that the authority to take such action remains with the Commandant and has not been delegated. Sector Commanders who believe Intervention on the High Seas actions may be necessary shall notify their Operational Commander as soon as possible.

l. Financial Responsibility Concerns. In general, most financial responsibility concerns confronting the FOSC/COTP will be satisfied provided the vessel holds a valid Certificate of Financial Responsibility (COFR). If a vessel requesting a Place of Refuge does not hold a valid COFR, Operational Commanders shall contact the National Pollution Funds Center (NPFC) to discuss other options before allowing the vessel to enter United States waters, and may put the vessel's representative in direct communication with the NPFC. Sector Commanders seeking a Letter of Undertaking or other surety shall consult the servicing staff judge advocate for guidance.

m. Notifications and International Coordination.

(1) The complex and sensitive nature of Place of Refuge incidents makes rapid communication with stakeholders, partner agencies, and the Coast Guard chain of command particularly important. Most Place of Refuge requests will involve foreign flag vessels. In such cases, in order to meet treaty obligations, follow established protocol, and ensure our response is consistent with foreign policy objectives, it is imperative that Sector Commanders inform Coast Guard Headquarters, via their operational chain of command, and the servicing District legal office of the facts of the situation and any proposed course of action. Within the Coast Guard, Operational Commanders shall ensure that the following offices are notified at the onset of the event, and kept informed through message traffic and other routine channels: the Coast Guard Headquarters Offices of Incident Management and Preparedness, (CG-3RPP), Law Enforcement (CG-3RPL), Operations Law Group (OLG) (CG-09412), and the Director of Inspections and Compliance (CG-3PC). The OLG duty team, in-country liaison officers and other in-

country personnel may be reached 24 hours a day, 365 days a year, through the Coast Guard National Command Center.

(2) When directed by competent authority, Place of Refuge incidents may by communicated via Maritime Operational Threat Response (MOTR) protocols; a national-level interagency communications process designed to achieve consistent coordinated action and desired outcomes that directly support National Security Presidential Directive-41/Homeland Security Presidential Directive-13: *Maritime Security Policy,* December 21, 2004. Strategic in nature, MOTR protocols achieve a coordinated U.S. Government response to threats against the United States and its interests' globally in the maritime domain. MOTR addresses the full range of maritime threats including terrorism, piracy, drug smuggling, migrant smuggling, weapons of mass destruction (WMD) proliferation, maritime hijacking, and fisheries incursions.

(3) When MOTR is triggered, established protocols are put into action for initiating real-time interagency communication, coordination, and decision-making through the integrated network of command centers. MOTR events are coordinated with the National Joint Terrorism Task Force (NJTTF) or Joint Terrorism Task Force (JTTF) and agencies that typically participate in MOTR calls, depending on the threat, include but are not limited to: the Department of Homeland Security (DHS), DOD, Department of Justice (DOJ), Department of Energy (DOE), Department of State (DOS), Department of Transportation (DOT), USCG, U.S. Customs and Border Protection (CBP), Immigration and Customs Enforcement (ICE), White House Situation Room (WHSR) and the National Counterterrorism Center (NCTC). DHS, DOD and DOJ are designated lead agencies. The National Security Council and Homeland Security Council announced via memo that the President of the United States approved MOTR on October 27, 2005.

(4) As with other pollution preparedness activities concerning events near international borders, Place of Refuge planning activities should be made in cooperation with the appropriate officials in foreign governments, and under the aegis of the governing Joint Contingency Plan (JCP). Accordingly, Regional Response Teams shall use this Instruction as part of their normal JCP planning process. U. S. Coast Guard representatives shall encourage their foreign counterparts to adopt a risk based, transparent approach to Place of Refuge planning and decisions.

(5) In the event of a Place of Refuge situation occurring near an international border, or where a transit to a Place of Refuge will

cross an international border, the U. S. Coast Guard, in accordance with the governing JCP, shall notify and cooperate with the appropriate foreign authorities, share all available information, and, in cooperation with foreign government representatives, strive to present a united and consistent set of requirements for the vessel seeking refuge.

(6) Note that the United States is party to the *International Convention on Oil Pollution Preparedness, Response and Co-operation*, 1990. This treaty requires, among other provisions, that ships notify coastal states of pollution incidents, and that potentially impacted states share information and cooperate during the response.

5. DISCLAIMER. Each COTP/FOSC has discretionary authority which should be used to best reduce risk within their area of responsibility (AOR). Nothing in this Instruction is intended to circumscribe the discretionary authority of a COTP/FOSC to address the unique safety and security situation within their AOR. This Instruction is intended only for internal guidance of Coast Guard personnel responsible for responding to a Place of Refuge request. Any requirements or obligations created by this Instruction flow only from such personnel to the Coast Guard, and the Coast Guard retains the discretion to deviate or authorize deviation from any requirements in this Instruction. This Instruction creates no duties or obligations to the public to comply with procedures described herein, and no member of the public should rely upon these procedures as a representation by the Coast Guard as to the manner in which it will respond to a Place of Refuge request.

6. REQUESTS FOR CHANGES. Direct to: Places of Refuge Project Officer, Office of Incident Management and Preparedness (CG-3RPP-A), 2100 Second Street, S.W., Washington, DC 205930001.

7. ENVIRONMENTAL ASPECT AND IMPACT CONSIDERATIONS. Environmental considerations were examined in the development of this Instruction and have been determined to be not applicable.

8. FORMS/REPORTS. None.

DAVID P. PEKOSKE /s/
Rear Admiral, U. S. Coast Guard
Assistant Commandant for Operations

Encl: (1) Sample Place of Refuge Checklist
(2) Place of Refuge Risk Assessment Job Aid
(3) Authorities, Responsibilities, and Roles during a Place of Refuge Incident

Sample Place of Refuge Checklist

<table>
<tr><th colspan="8">Vessel Information</th></tr>
<tr><td colspan="4">Name</td><td colspan="2">Flag</td><td colspan="2">Official Number</td></tr>
<tr><td colspan="4">Number of Persons on Board</td><td colspan="4">Location</td></tr>
<tr><td colspan="2">Crew</td><td colspan="2">Passengers</td><td colspan="3">Longitude</td><td>Latitude</td></tr>
<tr><td colspan="4" rowspan="2">Number Of Crew/Passengers Already Evacuated:</td><td colspan="4">Description: e.g., 20 miles west of Cape Disappointment</td></tr>
<tr><td colspan="4" rowspan="2">Type/Service: e.g., container ship, product tanker, etc.</td></tr>
<tr><td>Gross Tons</td><td>Length</td><td colspan="2">Draft</td></tr>
<tr><td colspan="4">Current O/S WX & Sea State</td><td colspan="4">Projected O/S WX</td></tr>
<tr><td colspan="2">Owner/Operator/RP[1]</td><td colspan="2">P&I Club</td><td colspan="2">Class Society</td><td colspan="2">Agent</td></tr>
<tr><td colspan="2">POC</td><td colspan="2"></td><td colspan="2"></td><td colspan="2"></td></tr>
<tr><td colspan="2">Phone</td><td colspan="2"></td><td colspan="2"></td><td colspan="2"></td></tr>
<tr><td colspan="8">Notified by vessel master?</td></tr>
<tr><td colspan="2">__ Yes __No</td><td colspan="2">__ Yes __No</td><td colspan="2">__ Yes __No</td><td colspan="2">__ Yes __No</td></tr>
</table>

[1] Determine which party will be acting as the responsible party and has authority to do so. Under OPA 90 the responsible party is any person owning, operating, or demise chartering the vessel.

Vessel Information (continued)

Complete Port State Control Safety & ISPS/MTSA targeting matrix

Complete HIV targeting matrix *(Classified upon completion)*

Ensure vessel has a valid COFR[2]

Cargo		Bunkers	
Type	Amount	Type	Amount

Other HAZMAT: e.g., Ship's stores, etc. (Attach vessel's dangerous cargo manifest if available)

General description of ship's condition, including any structural damage

[2] If vessel does not hold a COFR, coordinate with NPFC and servicing legal office to arrange COFR or other coverage to the extent deemed necessary for entry

Vessel Information (continued)	
Are there any deaths, injuries, or persons in need of medical assistance? If so, treat as SAR incident and prosecute accordingly!	
What is the nature of the problem leading to a need for a Place of Refuge?	
What is the vessel master/rep specifically requesting?	
When did the problems begin?	How long has the crew been up? (fatigue concerns)
Status of the Following Systems:	
Lifesaving (lifeboats, rafts, EPIRB, etc)	
Fire Fighting for Cargo and Accommodation/Machinery Spaces	
Bilge Pumps	
Propulsion	
Steering	
Ship's Service Generator	
Emergency Generator	
Measures Already Taken by the Crew – The attached "Rapid Salvage Survey" may assist in collecting information.	
Repairs	
Ballasting	
Cargo Shifts	

Require the Vessel to take the following actions, as appropriate. Use an Administrative Order for vessels outside of the territorial seas and a COTP Order for vessels inside the territorial seas. The Oil Spill Liability Trust Fund (OSLTF) is available to remove an actual discharge of oil or to prevent or mitigate a substantial threat of an oil discharge.

Action	Notes
Arrange for tugs of sufficient horsepower to render necessary assistance.	
Submit a salvage plan to the Captain of the Port.	
Hire/activate an appropriate Oil Spill Response Organization.	The responsible party must notify the Qualified Individual per the Vessel Response Plan (VRP).
Hire a salvage company capable of addressing the situation.	See the International Salvage Union http://www.marine-salvage.com or the American Salvage Association http://www.americansalvage.org for information about professional salvage standards, including compensation issues.
Hire a marine fire fighting company capable of addressing the situation.	See the National Fire Protection Association for information on professional standards for marine fire fighting. http://www.nfpa.org
Other	
The vessel's representative/responsible party must describe exactly what it is requesting with respect to a Place of Refuge, and what it intends to do there (i.e. repairs). This will require, at a minimum, a salvage plan and a transit plan, both of which will require COTP approval.	

Notifications by the COTP/FOSC In addition to notifications required by local policy, the COTP/FOSC shall make the following notifications:

Notification	Number	Notes/Completed
District Command Center		Notify District Command Center, ensure District prevention, response, and legal offices are notified.
Area Command Center		Will normally be notified by the District Command Center
Marine Safety Center (Salvage Engineering Response Team)	(202) 475-3400 or (202) 327-3985	Search for "Salvage Engineering" at http://homeport.uscg.mil
National Pollution Funds Center	(202) 493-6700	http://www.uscg.mil/hq/npfc/index.htm
Appropriate Strike Team	AST (609) 724 0008 PST (415) 883 3311 GST (251) 441 6601	
Area Committee Members		
Natural Resource Trustees		
Other		

Actions by the COTP/FOSC and Unified Command (Items most relevant to making a decision regarding a Place of Refuge request)

Action	Notes/Completed
Facilitate the placement of an inspection team on the vessel if safe to do so.	Entry should be made only in accordance with a site safety plan.
Plot the trajectory of the vessel if it is drifting or at risk of losing power or steerage.	
Plot the trajectory of the expected spill from the current location.	
Plot the trajectory of the expected spill from each Place of Refuge under consideration.	
Identify and evaluate resources at risk for each Place of Refuge under consideration.	
Review and approve a salvage plan.	
Review and approve a transit plan.	

Place of Refuge Risk Assessment Job Aid

Operational Commanders should use this evaluation as part of the normal planning process through table top exercises and other scenario based planning activities. While Area Committees should take the lead in this planning, any actual event may cross Area Committee boundaries. Therefore, RRTs should review these evaluations to ensure consistent risk evaluation.

In the event of an actual Place of Refuge request, the Operational Commander should review and verify the previous work or modify it to suit the particular situation. The risk evaluation may be done by a future plans unit within the Planning Section made of subject matter experts from the Operations and Planning Sections, the Command Staff, and appropriate stakeholders. Before beginning the evaluation, use the checklist (Enclosure 1) to gather all relevant information.

The risk evaluation job aid is designed to independently evaluate the probability and consequences associated with each Place of Refuge option under consideration. The scores for each option are then combined to produce overall risk scores.

Numerical scores for each option are generated using a formulated Excel spreadsheet, which is located on both CG Central and CG Homeport. To access the spreadsheet via CG Central, log onto http://cgcentral.uscg.mil and follow the path: Our CG > Organizational Information > HQ Directorates > Assistant Commandant for Operations (CG-3) > Assistant Commandant for Response (CG-3R) > Office of Incident Management and Preparedness (CG-3RPP) > Places of Refuge > under «Supporting Documents» select the file labeled «Places of Refuge COMDTINST 16451.9_Enclosure 2_Risk Assessme15n04.xob Aid.xls.4 se ET BT /TT0 1 Tf 0.00 0 Tw 12 0 0 12 72 329245919.

Briefly, the sequence of events is as follows: The Operational Commander shall define the worst case scenario assumption, identify any overriding national security or national defense considerations, and list the specific Place of Refuge options (locations) that the future plans unit will evaluate. The planning unit will then evaluate the risk associated with each option identified by the Operational Commander. Finally, the Operational Commander will verify the work of the planning unit, and set conditions and requirements on how and when the stricken vessel will enter the designated Place of Refuge.

Note on weighting factors: The weighting factors for the consequences tables have been calculated with a hierarchy which favors human health and safety over natural resources and natural resources over economic losses. This hierarchy will not pre-determine the final decision however, because scores for all categories will be calculated and considered during the process.

Step 1 - Define the Scope and Scale of the Evaluation

The process begins when the Operational Commander determines the «worst case scenario» the group will use as a planning assumption, and lists the potential Place of Refuge locations that the group will evaluate. Taken together, these two decisions define the scope and scale of the evaluation. The Incident Commander shall make these determinations based on available information and the input of professional mariners, pilots, and salvage and response experts.

Step 1.1 - Identify the «worst case scenario» that one may reasonably expect. This might otherwise be defined as a significant worsening of the vessel's condition and the associated results. Make conservative but realistic assumptions about the vessel's current status, how the situation may worsen, and the likely results. For example, determine if the loss of the entire vessel is possible, how much cargo/hazmat is onboard, and if fire or explosion is possible. Use these assumptions to define the «worst case scenario» for the incident. Evaluators should apply this definition consistently throughout the risk evaluation process. Define the scenario below:

Step 1.2 - The Incident Commander shall designate a limited number of potential Places of Refuge that the group will evaluate. Prior Place of Refuge and other planning activities, taken in combination with the current situation and the vessel's location should provide an adequate number of options. Unless clearly ruled out by the circumstances, «continue voyage» and «repair in place» should be included so that the risks with these options can be evaluated. «Grounding» and «scuttle» need only be considered if those options, however undesirable, may be preferable to taking no action. If needed, either of these options may be lined out on the tables and replaced with an additional POR to evaluate.

Indicate below which of the following Place of Refuge options will be evaluated.

Vessel Continues its voyage (deny entry)[1]
Vessel Remains in its current location (repairs made in place)
Vessel is taken out to sea and scuttled at a given location
Vessel is intentionally grounded at a given location
Vessel is taken to a place of refuge at:
Vessel is taken to a place of refuge at:
Vessel is taken to a place of refuge at:

[1] Note: A continue voyage/deny entry decision should be accompanied with a plan to render assistance and impose restrictions until the situation is ultimately resolved.

Step 2 - Probability

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

Step 2.1 - Consider how each of the following factors may affect the probability of the proposed scenario occurring, using the following scale:

1	Ideally suited to addressing situation, equipment readily staged and deployed
2	Acceptable under prevailing and expected conditions
3	Poorly suited, additional measures or procedures will be needed
4	Poorly suited to addressing situation even w/additional measures; equipment staged/deployed only with great difficulty
5	Completely unsuitable or unavailable to address situation

Evaluators should assign a higher score only where the factor would actually increase the likelihood of an incident, independent of cost or convenience.

Table 2-A. Add any additional factors relevant to the current situation at the bottom of the table.

Physical Attributes and Port Services	POR A	POR B	Continue Voyage	Repair in Place	Scuttle[2]	Ground
Transit Difficulty						
Holding Ground						
Expected Winds						
Expected Sea State						
Tides and Currents						
Cargo Offload						
Cargo Storage						
Docking Facilities						
Salvage Equipment						
Spill Equipment						
Security Concerns						
Total						

Total the scores for each Place of Refuge option under consideration. Lower scores indicate options less likely to result in a significant worsening of the vessel's condition.

[2] Per step 1.2, «scuttle» and «ground» may be lined out on this and all subsequent tables if they are not viable options and space is needed to evaluate other specific POR options.

Step 2.2 - The numbers recorded in table 2-A above does not translate directly into a probability score, they are only intended to help the stakeholders consider the various factors that may influence the probability that the ship's condition will significantly worsen for each of the COAs under consideration.

Having considered the various factors that may affect the likelihood of a further worsening of the vessel's situation; assign a probability score for each COA using the criteria below.

Highly Probable	Almost certain an incident will occur	0.9
Probable	More than 50% likelihood that an incident will occur	0.75
Equal probability	Approximately 50% likely that an incident will occur	0.5
Unlikely	Less than 50% likelihood than an incident will occur	0.25
Improbable	Incident not expected to occur under prevailing and expected conditions	0.05

Table 2-B

Course of Action	Probability Score
Vessel Continues its Voyage	
Repairs Made in Current Location	
Vessel is Taken to Place of Refuge A	
Vessel is Taken to Place of Refuge B	
Vessel is scuttled at a given location[3]	
Vessel is grounded at a given location	

[3] For this COA, the probability will be 100% unless the situation is such that scuttling might result in a more controlled release of pollutants than would be the case if no action were taken.

Step 3 - Consequences:

For the consequence component of risk, appropriate stakeholders will determine the level (scale) of consequences that can reasonably be expected if an «incident»

– defined as a significant worsening of the vessel's condition – occurs. Stakeholders will assess the scale of expected consequences for the following three categories:

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

Step 3.1 - Begin by evaluating the potential consequences to human health and safety using Table 2-C below (or attached Excel table). While few credible Place of Refuge scenarios will include significant health and safety consequences to the general public, the National Contingency Plans properly lists the safety of human life as the top priority during every response action (40 CFR 300.317). Score using the following criteria:

2	No credible threat to human health and safety
4	Minor injuries to a few individuals, exposure to hazmat below PEL/STEL
8	Serious but non-life threatening injuries, hazmat exposure beyond PEL/STEL
16	Some deaths and/or significant injuries/ hazmat exposure beyond IDLH to small groups or lesser exposure to large groups
32	Many deaths, serious injuries, or life threatening health concerns

Table 2-C

Raw score	POR A	POR B	Continue Voyage	Repair to Place	Seattle	Ground	Weight
General population							16
Response personnel							4
Vessel crew							4

Weighted Score	POR A	POR B	Continue Voyage	Repair to Place	Seattle	Ground
General Population						
Response Personnel						
Vessel Crew						
Total						

Step 3.2 - Evaluate the likely consequences to each category of natural resources and for each COA being considered using the table below, or the attached Excel spreadsheet. Score each item as follows:

2	No expected exposure of the natural resource in question
4	Minimal exposure, impact expected to be local and short term
8	Moderate exposure, measurable impact over a larger area or longer time
16	Significant exposure, regional impact and/or multi-year recovery period
32	High exposure, impact could cause the long term collapse over a large area

Table 2-D

Raw Score	POR A	POR B	Continue Voyage	Repair in Place	Seattle	Ground	Weight
Threatened and endangered species							8
Critical habitat for TAES							10
Sensitive (non protected) species							6
Critical habitat for sensitive, (non protected) species							5
Historic or cultural resources							10
Subsistence use species							8
Subsistence use critical habitat							10
Commercial species							6
Essential fish habitat							3
Recreational use/activities							3
Other natural resources							3

Step 3.2 (continued) – Record the weighted scores in the following table, or by using the attached Excel spreadsheet.'

Weighted Score	POR A	POR B	Continue Voyage	Repair in Place	Seattle	Ground
Protected Species						
Critical habitat for protected species						
Sensitive (non protected) species						
Critical habitat for sensitive, (non protected) species						
Historic or cultural resources						
Subsistence use species						
Subsistence use critical habitat						
Commercial species						
Critical habitat for commercial species						
Other natural resources						
Total						

Step 3.3 – Evaluate the potential economic consequences to each category of economic activities for each COA being considered using the table below. Consider direct impacts to critical infrastructure, but avoid undue speculation concerning cascading economic disruption. Score each item as follows:

2	No expected impact on the economic activity in question
4	Minor – local area, few businesses, and/or short term
8	Moderate – regional area, many business, and/or longer term
16	Major – significant impacts on region/economic sector for several weeks
32	Severe – will affect regional activity for several months or longer

Table 2-E

Raw Score	POR A	POR B	Continue Voyage	Repair in Place	Scuttle	Ground	Weight
Maritime commerce and shipping							4
Commercial fishing and aquaculture							4
Recreational fishing, marine tourism							4
Non-maritime activities and commerce							4
Other							1

Weighted score	POR A	POR B	Continue Voyage	Repair in Place	Scuttle	Ground
Maritime commerce and shipping						
Commercial fishing and aquaculture						
Recreational fishing, marine tourism						
Non-maritime activities and commerce						
Other						
Total						

Step 4 - Combined Risk Score

Step 4.1 - Record the probability for each Place of Refuge option, and the associated consequence score for each type of consequence from previous tables.

	Probability Score	Health and Safety	Natural Resources	Economic Activity
Place of Refuge A				
Place of Refuge B				
Continue Voyage				
Repair in Place				
Seattle				
Ground				

Step 4.2 - Calculate the risk for each type of consequence, and the total risk for each Place of Refuge in the table below. Risk = Probability * Consequences.

		Risk by Consequence Type			
	Probability Score	Human Health and Safety	Natural Resources	Economic Activity	**Total** Risk
Place of Refuge A					
Place of Refuge B					
Continue Voyage					
Repair in Place					
Seattle					
Ground					

Step 4.3 - Combine Probability and Consequence scores and determine the lowest risk Place of Refuge option. Decision makers are advised to consider each category individually, not just the lowest total risk score. For example, a Place of Refuge option with the lowest total risk might still have an unacceptably high Human Health and Safety risk relative to other options. Also, as previously discussed in this instruction, the Operational Commander shall consider security and national defense risks in making a final decision. Attach this form to the signed Incident Action Plan to document approval of the final decision.

Authorities, Responsibilities, and Roles during a Place of Refuge Incident

Shaded areas indicate «lead» at the given stage of the operation

	SMC/SAR	COTP/Force Majeure	FOSC/Places of Refuge	FMSC/Security Concerns
Stage 1: SAR		Monitor and assist	Monitor and assist. Notify trustees, stakeholders, and RRT of potential for POR concern	Monitor and assist. Identify any security issues
State 2: Force Majeure	Monitor and assist		Monitor and assist. Notify trustees, stakeholders, and RRT of potential for POR concern	Monitor and assist. Impose any necessary security restrictions
Stage 3: Place of Refuge Request Assessment	Monitor and assist			Monitor and assist. Impose any security restrictions required to allow transit to proceed as planned.
Stage 4: Vessel Transit	Monitor and assist			Monitor and assist. Conduct positive control boarding or other ops necessary for secure transit.
Stage 5: Response	Monitor and assist			Monitor and assist
Stage 6: Follow-Up	Monitor and assist		Focus on Natural Resource Damage Assessment (NRDA), claims, restoration, and other long term concerns	Monitor and assist
State 7: Conclusion	Monitor and assist			Monitor and assist
Stage 8: Lessons Learned				

All agencies, Commands, authorities, and personnel are expected to act with a *Unity of Effort* to resolve the situation with due regard to safety, security, and stewardship.

Document 5

Guidelines for Places of Refuge Decision-Making

Acknowledgement

The National Response Team (NRT) acknowledges the NRT member agencies, and state and Federal agencies participating on the Regional Response Teams (RRTs), for their contributions in preparing this document. We invite comments or concerns on the usefulness of this document in all-hazard planning for responses. Please send comments to:

U.S. National Response Team
NRT Response Committee
U.S. Environmental Protection Agency
(Mail Code 5104A)
1200 Pennsylvania Avenue,
N.W. Washington, DC 20460

U.S. National Response Team Member Agencies:

Chair: U.S. Environmental Protection Agency
Vice Chair: U.S. Coast Guard

U.S. Department of Agriculture
U.S. Department of Commerce
U.S. Department of Defense
U.S. Department of Energy
U.S. Department of Health and Human Services
U.S. Department of the Interior
U.S. Department of Justice
U.S. Department of Labor
U.S. Department of State
U.S. Department of Homeland Security
U.S. Federal Emergency Management Agency
U.S. General Services Administration
U.S. Nuclear Regulatory Commission
U.S. Department of Transportation

For more information on the NRT, please visit *www.nrt.org*.

Executive Summary

Over the past decade, finding places of refuge for stricken vessels has become a significant issue deserving the attention of Area Committees, Regional Response Teams (RRTs), and the National Response Team (NRT). In December 2003, the International Maritime Organization (IMO) adopted Resolution A.949(23), *Guidelines on Places of Refuge for Ships in Need of Assistance*. Being a signatory to this agreement, it is incumbent upon the United States through the National Response System to develop protocols and procedures to address places of refuge for vessels in distress.

The IMO resolution was developed in response to three major overseas oil spills; namely, the M/T ERIKA (December 1999), the M/T CASTOR (December 2000), and the M/T PRESTIGE (November 2002). Each of these incidents involved tank ship structural failures at sea. In the case of the ERIKA and PRESTIGE, both tank ships eventually broke apart and sank, releasing millions of gallons of crude oil, which resulted in significant contamination to coastal states. These incidents clearly demonstrated that in some cases, the coastal states actually increased their risk to significant contamination by denying a vessel the opportunity to make repairs in relative safety, or by delaying a decision until no options remained. The port states' refusal to allow vessels in distress to find «safe refuge» ultimately became decisions that resulted in significant adverse environmental and economic consequences. The decision of whether to allow a distressed vessel into a place of refuge, including cases of force majeure[1], should be reached after consideration of the full range of potential impacts, rather than being based on a policy of wholesale denial of entry.

The purpose of these guidelines is to provide: (1) an incident-specific decision-making process to assist U.S. Coast Guard Captains of the Port (COTPs) in deciding whether a vessel needs to be moved to a place of refuge and, if so, which place of refuge to use; and (2) a framework for preincident identification of potential places of refuge for inclusion in appropriate Area Contingency Plans.

This document emphasizes the inclusion of USCG COTPs, Unified Commands, RRTs, Area Committees, natural resource trustees, and other stakeholders and technical experts in the identification of potential places of refuge during pre-incident planning. It also emphasizes consultation with appropriate stakeholders and other technical experts from multiple disciplines to assist the COTP in the decision-making process during an incident, including when an evaluation of potential places of refuge may be only one of several response activities taking place.

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[1] Force majeure is defined as an overwhelming force or condition of such severity that it threatens the loss of the vessel, cargo, or crew unless immediate corrective action is taken.

Introduction

1. Purpose and Scope

The purpose of the *Guidelines for Places of Refuge Decision-Making (Guidelines*2*)* is to provide:

(1) An incident-specific decision-making process (Appendix 1) to assist U.S. Coast Guard (USCG) Captains of the Port (COTPs) in deciding whether a vessel needs to be moved to a place of refuge and, if so, which place of refuge to use; and

(2) A framework for developing pre-incident identification of potential places of refuge for inclusion in appropriate Area Contingency Plans (ACPs)

These *Guidelines* address places of refuge decision-making in waters subject to U.S. jurisdiction. They are consistent with the December 2003 International Maritime Organization «Guidelines on Places of Refuge for Ships in Need of Assistance» and USCG Commandant Instruction 16451.9, «U.S. Coast Guard Places of Refuge Policy.»

These *Guidelines* provide COTPs with a process that will help (1) expedite place of refuge decision-making, and (2) ensure stakeholders and other technical experts are consulted as appropriate. This in turn, helps ensure that COTPs have appropriate input, and the best available information, prior to making a place of refuge decision.

2. Overview

A «place of refuge» is defined as a location where a vessel needing assistance can be temporarily moved to, and where actions can then be taken to stabilize the vessel to: (1) protect human life, sensitive natural and cultural resources, historic properties, national defense, security, economic interests, and critical infrastructure; and (2) reduce or eliminate a hazard to navigation. A place of refuge may include constructed harbors, ports, natural embayments, or offshore waters with the necessary maritime support infrastructure.

Imperiled, structurally damaged, or leaking vessels (including vessels that have sunk and been refloated) may need to be brought into a harbor or anchored or moored in protected waters to make repairs to prevent or stop the loss of oil or other hazardous substances. Likewise, vessels that have lost power or steerage may need to be brought into a place of refuge for repairs to

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[2] «Guidelines» mean the decision-making guidelines and matters set forth in this document. Notwithstanding any such words as «may,» «should,» «will,» or «would,» these guidelines are intended solely as factors that may be considered with respect to the exercise of judgment in deciding whether, where, and when to direct or permit a vessel to seek a place of refuge, as well as considered during the execution and implementation of any such decisions.

prevent a shipwreck that could result in the loss of fuel, hazardous substances, or other cargo. Taking these actions would help prevent or minimize potential adverse effects to the public, the environment, resource users, and national defense, security, economic interests, and critical infrastructure. These incidents may (or may not) involve force majeure; i.e., an overwhelming force or condition of such severity that it threatens the loss of the vessel, cargo, or crew unless immediate corrective action is taken.

There are no places of refuge that are suitable for all vessels and all situations; therefore the National Response Team (NRT) does not support the pre-approval of places of refuge in waters subject to U.S. jurisdiction. Decisions relating to places of refuge need to be made on an incident-specific basis because they encompass a wide range of issues that vary according to each situation, such as:

- Each incident is unique (e.g., vessel size, fuel carried, and reason assistance is needed).
- Information relevant to a specific location may be incomplete or out-of-date.
- Weather and sea conditions are variable.
- Fish and wildlife resources are mobile and may or may not be in an area as anticipated.
- The locations of other activities (e.g., commercial fishing and recreational boating) vary over time.
- Resources (e.g., salvage vessels) available to respond to the incident vary over time.

The NRT does support pre-incident identification of potential places of refuge (PPORs) (see Appendix 3), which would then receive incident-specific evaluations if the location(s) is being considered as a PPOR for an actual incident. It is important to note that identifying PPORs during pre-incident planning does not require that those locations be used as a place of refuge. Likewise, it does not eliminate the need to review and refine (as appropriate) during the incident, information specific to the PPORs.

The best location for a place of refuge at any given point in time is dependent on incidentspecific characteristics and real-time input by appropriate stakeholders (see Appendix 2) and other technical experts. When considering places of refuge decisions, COTPs typically need to consider multiple interests, which will include one or more of the following: (1) protecting human life, sensitive natural and cultural resources, historic properties, national defense, security, economic interests, and critical infrastructure; and (2) reducing or eliminating a hazard to navigation.

If time allows and if appropriate, the COTP will activate a Unified Command under the Incident Command System for the decision-making process. When an incident has the potential to involve more than one COTP zone, the cognizant USCG District Commander may assist in the decision-

making process. The decisions to direct or permit a vessel to seek a place of refuge, as well as the decisions and actions implementing those decisions, will be based on best available information and sound professional judgment.

When a vessel is in need of assistance, each of the following vessel options should be considered, as appropriate:

– The vessel remaining in the same position.
– The vessel continuing on its voyage.
– The vessel moving farther from shore.
– The vessel being intentionally scuttled in deep water.
– The vessel being intentionally grounded.
– The vessel moving to a place of refuge.

The incident-specific place of refuge decision-making process, outlined in Appendix 1, recognizes that while the timeframe for COTPs to make decisions regarding places of refuge varies, it may be divided into the following three categories:

(1) The vessel's situation requires immediate action, leaving no time for «pre-decision» notification of, or consultation with, appropriate stakeholders and/or other technical experts.
(2) The vessel's situation requires rapid action, leaving time for notification of, and consultation with, some, but not all, appropriate stakeholders and/or other technical experts.
(3) The vessel's situation allows time for notification of, and consultation with, all appropriate stakeholders and/or other technical experts.

COTP response activities will occur within an Incident Command System. For incidents that include response activities (e.g., responding to an oil discharge from the vessel) in addition to places of refuge decision-making, the COTP should consider forming a «places of refuge» unit within the Planning Section, headed by the Deputy Planning Chief, to conduct the place of refuge evaluation. This unit would include appropriate stakeholders and other technical experts from the Operations and Planning Sections and the Command Staff. In addition, the unit would consult with other appropriate stakeholders and technical experts who are not represented in the Operations Section, Planning Section, and/or the Unified Command.

3. Selected Authorities and Responsibilities

The following is a description of selected authorities and responsibilities for Federal agencies, U.S. States, and U.S. possessions, territories, and commonwealths that may be involved in places of refuge decision-making as described in these *Guidelines*:

– The U. S. Coast Guard COTP (who is also the designated Federal On-Scene Coordinator) has authority to order vessels into and out of ports, harbors and embayments in order to protect the public, the

environment, and maritime commerce.[3] While the COTP retains ultimate authority for places of refuge decision-making, the COTP is responsible, as outlined in the *Guidelines*, for consulting with appropriate natural resource trustees, Federally-recognized tribes, State On-Scene Coordinators, and other stakeholders and technical experts, and activating (as appropriate) a Unified Command.

The U.S. Department of the Interior, the U.S. Department of Commerce, and U.S. Department of Agriculture each have authority to represent and protect their respective interests for incidents that may threaten or affect lands (including submerged lands), shorelines, waters, or other resources within their respective jurisdiction; e.g., units of the national park system, national wildlife refuges, national forests, national marine sanctuaries, migratory birds, marine mammals, threatened and endangered species and their critical habitats, essential fish habitat, cultural resources, and historic properties. Representatives of these agencies are responsible, as outlined in the *Guidelines*, for providing timely input to the COTP/Unified Command on interests under their respective authorities and jurisdiction.

U.S. States and U.S. possessions, territories, and commonwealths have authority to represent and protect their respective interests for incidents that may threaten or impact their respective land, waters, and other resources within their jurisdiction; e.g., Stateowned submerged lands and State-owned shorelines. U.S. States and U.S. possessions, territories, and commonwealths each provide a designated State On-Scene Coordinator to represent their respective interests, who in turn, is responsible, as outlined in the *Guidelines*, for providing timely input to the COTP/Unified Command on interests under their respective authorities and jurisdiction.

It should be noted that there are other agencies (e.g., the U.S. Department of Homeland Security,

U.S. Immigration and Customs Enforcement, and U.S Customs and Border Protection; U.S. Department of Health and Human Services, Centers for Disease Control and Protection; and U.S. Department of Justice, Federal Bureau of Investigation) that may also provide input to, or otherwise be involved in, places of refuge decision-making, based on their respective authorities and jurisdiction.

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[3] It should be noted that there may be some maritime homeland security situations where the COTP has Sensitive Security Information and/or classified information that may affect places of refuge decision-making. In those situations, the COTP will use appropriate protocols (e.g., the Maritime Operational Threat Response protocols) to relay information (as appropriate) to appropriate stakeholders and/or other technical experts .

Appendix 1

Incident-Specific Places of Refuge Decision-Making Process

Step 1. Place of Refuge Requested.

The U.S. Coast Guard Captain of the Port (COTP)[4] receives a request from a vessel master or his/her representative[5] to move a vessel to a place of refuge. The COTP will request the following information from that individual:

- List of crew members, including:
  names
  date of birth
  nationality
  vessel particulars (e.g., length and gross tonnage)
- The location(s) of the place of refuge (if a specific location is requested).
- The reasons the vessel needs assistance and the specific assistance required.
- Alternatives (if any) in addition to moving the vessel to a place of refuge.
- A summary of medical and/or life safety issues associated with the incident, including the need to evacuate individuals from the vessel.
- Time when the problems began.
- Status of the vessel and its systems, including:
  steering
  propulsion
  bilge pumps
  lifesaving (e.g., lifeboats)
  firefighting capability
  service generator and emergency generator
  watertight integrity
  number of people onboard
- Status of the vessel's pumping system (if the vessel is flooding).
- Types, quantities, hazards, and condition of petroleum products, hazardous substances, and/or other cargo onboard (including animal, plant, or food cargo).
- Length of time the crew has been awake.

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[4] When an incident has the potential to involve more than one COTP zone, the cognizant USCG District Commander may assist in the decision-making process.

[5] In the event there are no individuals on board the vessel authorized to make the request, or the vessel has been abandoned, the COTP will be responsible (to the extent possible) for obtaining appropriate information identified in Step 1.

- Presence (or suspected presence) of rats or other invasive species and/or animal, plant, or human diseases onboard the vessel.
- On-scene weather and water conditions and marine forecast.
- Status of notifications completed by master (e.g., owners, operators, agents, Qualified Individual, and class society).
- Measures already taken by the crew, including:
  repairs
  ballasting
  cargo shifts
- Status of actions taken.
- Nation of Origin.
- Vessel's last port of call.
- Current position.
- Vessel owner's name, address, and contact information.
- Financial Responsibility Certificate.
- Oil Spill Response Organization (person in charge name and contact information).

Step 2. Immediate Action Required by COTP[6].

If the vessel's situation requires immediate action, leaving no time for consultation with appropriate stakeholders or other technical experts, the COTP will:

- Evaluate the options of the vessel remaining in the same position, continuing on its voyage, moving farther from shore, being intentionally scuttled in deep water, being intentionally grounded, or moving to a place of refuge.
- Determine, if moving to a place of refuge is an option, whether potential places of refuge have been identified in the area where the vessel may be moved to, and if so, whether any potential places of refuge locations are appropriate for this incident.
- Permit or direct the vessel to stay in place, continue on its voyage, move farther from shore, intentionally ground, move to a place of refuge, or prepare for scuttling in deep water.
- Inform appropriate stakeholders and other technical experts (see Appendix 2) of the decision.
- Activate, if necessary, a Unified Command to address any remaining issues.

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[6] It is important to note that Step 2 should only be used when an incident truly requires immediate action, since selection of a place of refuge without incident-specific consultation with appropriate natural resource trustees, Federally-recognized tribes, State On-Scene Coordinators, and other stakeholders and technical experts may result in a decision based on incorrect and/or incomplete information.

Step 3. COTP/Unified Command[7] requests input from stakeholders and other technical experts on vessel options.

If the vessel's situation does not require immediate action, the COTP will:

- Activate a Unified Command, if appropriate.
- Require, if appropriate, the vessel master or owner/operator to contract with a salvor and/or pollution response contractor.
- Consider dispatching, if safety considerations and time allow, an appropriate inspection team to board the vessel to evaluate the vessel's condition.
- Determine whether potential places of refuge have been identified in the area where the vessel may be taken, and if so, whether any are appropriate to consider for this incident.
- Contact the National Oceanic and Atmospheric Administration (NOAA) Scientific Support Coordinator (SSC) to request that the NOAA SSC identify the following information, as appropriate, for the options of the vessel remaining in the same position, continuing on its voyage, moving farther from shore, being intentionally scuttled in deep water, being intentionally grounded, or moving to a place of refuge:
  - Weather and sea states, including prevailing winds.
  - Tides and currents.
  - Largest scale navigational charts of the area.
  - Seasonal considerations, such as ice.
  - Potential temporary grounding locations (if intentional temporary grounding is an option).
  - Trajectories for products already released or potentially discharged from the vessel.
  - Oil or chemical fate analysis.
- Contact (depending on the incident) appropriate Federal, State, and/or local safety and public health entity representatives to request that they:
  - Identify any public health and/or safety issues, or potential issues, related to individuals still onboard, individuals responding to the incident, and to the general public for the options of the vessel remaining in the same position, continuing on its voyage, moving farther from shore, being intentionally scuttled in deep water, being intentionally grounded, or moving to a place of refuge.
- Contact natural resource trustee representatives to request that they:
  - Identify any impacts, or potential impacts, to natural and cultural resources and historic properties at risk for the options of the vessel

[7] While information in Steps 3 through Step 10 refers to the COTP/Unified Command, if the COTP determines that activation of a Unified Command is not appropriate or necessary, the reference to «Unified Command» in Step 3 through Step 10 will not be applicable.

remaining in the same position, continuing on its voyage, moving farther from shore, being intentionally scuttled in deep water, being intentionally grounded, or moving to a place of refuge.

- Contact (depending on the incident) representatives of Federally-recognized tribes to request that they:
  - Identify any impacts, or potential impacts, to interests of Federally-recognized tribes related to the vessel remaining in the same position, continuing on its voyage, moving farther from shore, being intentionally scuttled in deep water, being intentionally grounded, or moving to a place of refuge.
- Contact (depending on the incident) Federal, State, and/or local critical infrastructure and/or security entities to request that they:
  - Identify any security issues, or potential issues, related to individuals still onboard, individuals responding to the incident, and to the general public, and/or any critical infrastructure considerations for the options of the vessel remaining in the same position, continuing on its voyage, moving farther from shore, being intentionally scuttled in deep water, being intentionally grounded, or moving to a place of refuge.
- Contact (depending on the incident) Federal, State, and/or local agricultural and animal entity representatives to request that they:
  - Identify any issues, or potential issues, related to animal or plant disease and/or invasive species and disposal or salvage of animal, plant, and/or food cargo for the options of the vessel remaining in the same position, continuing on its voyage, moving farther from shore, being intentionally scuttled in deep water, being intentionally grounded, or moving to a place of refuge.
- Contact (depending on the incident) Federal, State, and/or local economic entity representatives to request that they:
  - Identify any Federal, State, and/or local economic impacts, or potential impacts, for the options of the vessel remaining in the same position, continuing on its voyage, moving farther from shore, being intentionally scuttled in deep water, being intentionally grounded, or moving to a place of refuge.
- Contact other appropriate stakeholders (see Appendix 2), as time allows, to request that they:
  - Identify other stakeholder impacts/concerns, or potential impacts/concerns, for the options of the vessel remaining in the same position, continuing on its voyage, moving farther from shore, being intentionally scuttled in deep water, being intentionally grounded, or moving to a place of refuge.
  - Contact the vessel master, vessel owner, and salvage experts to request that they provide, as appropriate, information on:
  - Vessel status/seaworthiness, in particular buoyancy, stability,

availability of propulsion and power generation, docking ability, and any progressive deterioration.
  - Any impending threat to the vessel or its product.
  - Availability of rescue tugs/tow vessels of sufficient size and power to aid the vessel in distress.
- Contact appropriate oil spill response organizations to request that they provide information on:
  - Ability and/or feasibility to respond to discharges/releases from the vessel.

Step 4. COTP/Unified Command selects vessel option based on input from stakeholders and other technical experts.

Based on the input received in Step 3, the COTP/Unified Command will evaluate the considerations listed below and will then determine whether the vessel should remain in the same position, continue on its voyage, move farther from shore, be intentionally scuttled in deep water, be intentionally grounded, or move (or be taken to) a place of refuge:

Vessel Status and Risk Considerations

- The kind and size of the vessel.
- The status/seaworthiness of the vessel, in particular buoyancy, stability, watertight integrity, availability of propulsion and power generation, docking ability, and any progressive deterioration.
- Types, quantities, hazards, and condition of petroleum products, hazardous substances, and/or other cargo onboard.
- The presence (or suspected presence) of rats or other invasive species onboard the vessel.
- Any impending threat to the vessel or its product.
- Weather conditions and forecasts.
- Master's ability to navigate the vessel or need for a pilot.
- Vessel traffic in the area.
- Ability of vessel to move from its current location, and estimated distance it could transit without further incident.
- Other vessel status or risk considerations, if any.

Response and Salvage Resources Considerations

- Availability of rescue tugs/tow vessels of sufficient size and power to aid the vessel in distress, including towing.
- Salvage and spill response resources on-scene with the vessel and available during transit.
- Vessel traffic in the area.
- Access to pier or dock with repair and/or cargo handling facilities.
- Access to vessel by emergency service equipment (e.g., ambulances, fire fighting equipment, and radiological gear).

– Other response or salvage resources considerations, if any.

Public Health and Safety Considerations

– Safety, or potential safety issues for individuals (if any) still onboard.
– Safety, or potential safety issues for individuals performing salvage/response activities.
– Impacts, or potential impacts, on public health and safety (e.g., from human diseases and/or cargo onboard).
– Closure, or potential closure, of water intakes (e.g., for drinking water supplies and/or power plants).
– Other considerations, if any, identified by Federal, State, and/or local safety and public health entity representatives.

Natural and Cultural Resources and Historic Properties Considerations

– Impacts, or potential impacts, on sensitive resources (e.g., migratory birds, marine mammals, fish, shellfish, threatened or endangered species, cultural resources, and/or historic properties).
– Impacts, or potential impacts, on sensitive areas (e.g., designated essential or critical habitats, sea grass beds, mangrove swamps, marshes, marine sanctuaries, parks, refuges, and/or forests).
– Other considerations, if any, identified by natural resource trustee representatives.

National Defense, Security, and Economic and Critical Infrastructure Considerations

– Impacts, or potential impacts, to national security interests and defense readiness.
  – Economic, or potential economic, impacts resulting from:
  – Port closures (e.g., loss of perishable goods and/or delays in transportation of goods and people)
  – Disruption of recreational activities (e.g., beach closures), commercial fisheries, mariculture, and other activities
  – Other considerations, if any, identified by Federal, State, and/or local economic entity representatives

Other Considerations

– Liability, insurance, and compensation issues and limits.
– Requirements of port or harbor authorities for financial responsibility and bonding.
– Media and public interest.
– Contamination of private property.
– Other considerations (not already identified).

If the COTP/Unified Command selects the option of moving the vessel to a place of refuge, the remaining steps in this appendix should be completed. If the COTP/Unified Command selects another vessel option (i.e., remaining in the same position, continuing on its voyage, moving farther from shore, being intentionally scuttled in deep water, or being intentionally grounded), no additional steps in this appendix need to be taken.

Step 5. COTP/Unified Command requests input from technical experts on operational considerations for potential places of refuge locations.

To help identify one or more potential places of refuge locations based on operational considerations, the COTP/Unified Command will:

- Request from the NOAA SSC, the following information, as appropriate for all potential places of refuge locations being considered:
  - Weather and sea state including prevailing winds.
  - Tides and currents.
  - Seasonal considerations, such as ice.
  - Trajectories for products already released and/or potentially discharged from the vessel.
  - Oil or chemical fate analysis.
- Request from appropriate Pilots Association or other mariners, the following applicable port or anchorage criteria:
  - The type and size of the vessel and required «swing room» relative to the size of the place of refuge site.
  - Adequate water depth at mean lower low water (MLLW) to accommodate the vessel.
  - Navigational approach, including vessel traffic and associated risks.
  - Pilotage requirements.
  - Anchoring depth and ground, or suitable docking facilities.
  - Availability of repair facilities.
  - Availability of cargo reception and storage facilities.
  - Land and/or air access.
  - Availability of required emergency response capabilities (e.g., firefighting, pollution. prevention, law enforcement, and/or State or Federal food inspectors).
  - Other pertinent port or anchorage information, if any.
- Request from appropriate salvage experts (e.g., USCG and vessel salvage representatives), the following information, as appropriate, for all potential places of refuge locations being considered:
  - Any new information on the status/seaworthiness of the vessel, in particular buoyancy, stability, watertight integrity, availability of propulsion and power generation, docking ability, and progressive deterioration.

  - Any new information on the impending threat to the vessel or its product.
  - Availability of rescue tugs/tow vessels of sufficient size and power to aid the vessel in distress, including towing.
  - Available salvage and spill response resources.

Availability of appropriate and compatible lightering equipment and receiving vessels.

  - Availability of product storage (e.g., tanker barge, other vessels).
  - Availability of skilled labor and trained personnel.
  - Access to repair equipment and facilities.
  - Availability of cargo reception and storage facilities.
  - Salvage and response vessel access.
  - Other pertinent salvage-related information, if any.

- Request (if applicable) from appropriate oil spill response organizations, the following information for all potential places of refuge locations being considered:
  - Ability and/or feasibility to respond to discharges/releases from the vessel.
  - Other pertinent oil spill response information, if any.
- Request (if applicable) from appropriate port or harbor authorities and/or land owners and land managers, the following information for all potential places of refuge locations being considered:
- Permits or other requirements, or other pertinent information, if any.

Step 6. COTP/Unified Command selects potential place(s) of refuge location(s) based on operational considerations.

Based on input received from technical experts in Step 5, the COTP/Unified Command will select one or more potential places of refuge locations based on the following operational considerations:

Port or Anchorage Area Criteria

- The type and size of the vessel compared to the size of the place of refuge site.
- Adequate water depth at MLLW to accommodate the vessel.
- Navigational approach, including vessel traffic and associated risks.
- Pilotage requirements.
- Tides and currents.
- Seasonal conditions, such as ice.
- Anchoring depth and bottom characteristics, or suitable docking facilities.
- Availability of repair facilities.
- Availability of cargo reception and storage facilities.
- Land and/or air access.
- Weather and sea state including prevailing winds.

– Requirements from port authorities and/or area landowners/managers.
– Ability to adequately secure the area from subsequent threats and/or contain shipboard threats.
– Availability of necessary emergency response capabilities (e.g., fire fighting, pollution response, law enforcement, rat prevention, and/or State or Federal food inspections).
– Other pertinent port or anchorage information, if any.

Response, Salvage, and Repair Resources

– Available salvage and spill response resources.
– Salvage and response vessel access.
– Availability of appropriate and compatible lightering equipment and receiving vessels.
– Availability of product storage (e.g., tanker barge or other vessels).
– Availability of skilled labor and trained personnel.
– Access to repair equipment and facilities.
– Availability of cargo reception and storage facilities.
– Other pertinent response, salvage, or repair resource information, if any.

Other Command Management Factors

– Liability, insurance, and compensation issues and limits.
– Requirements of port or harbor authorities for financial responsibility and bonding.
– Required notifications such as marine pilots, if applicable.
– Public expectations and media outreach.
– Other pertinent command management factors, if any.

Step 7. COTP/Unified Command provides stakeholders with potential place(s) of refuge location(s) based on operational considerations.

The COTP/Unified Command will provide the following information to natural resource trustee and other appropriate stakeholder representatives:

– The list of potential place(s) of refuge.
– Principal reasons for selecting each location (e.g., the vessel cannot travel far without sinking; or location of repair facilities).
– How the vessel will transit to the area (e.g., on its own power or assisted by a tug) and transit route.
– Amount, location, and type of petroleum products and/or other hazardous substances remaining on the vessel; the likelihood of discharge/release; and the anticipated trajectory for any products released at any point along the vessel's intended transit route.
– The presence (or suspected presence) of animals, plants, food products, invasive species, and/or animal or plant diseases onboard.

– What incident-related activities will occur in the place of refuge (e.g., lightering and underwater welding).
– What support vessels/aircraft will be required (e.g., salvage vessel).
– The estimated duration the vessel will be in that location.
– Transit route of the vessel upon leaving the location.
– Anticipated weather and sea states (including prevailing winds), tides and currents, and seasonal considerations relevant to places of refuge locations.
– Other pertinent information, if any.

Step 8. Stakeholders provide ranking of potential place(s) of refuge location(s) to COTP/Unified Command.

Based on information provided to them in Step 7, natural resource trustees and other appropriate stakeholder representatives will:

– Review the information provided to them in Step 7.
– Rank the potential places of refuge locations, providing a consensus ranking where possible.
– Identify any special considerations or constraints and/or any permits or other authorizations required for any potential places of refuge locations.
– Provide the COTP/Unified Command with the ranking of potential places of refuge locations and any identified special considerations or constraints and/or any permits or other authorizations required.
– Provide, as appropriate, the COTP/Unified Command with documentation of considerations taken into account when arriving at a consensus position.

Note: In the event the COTP/Unified Command provides stakeholders in Step 7 with only one potential place of refuge location based on operational considerations, stakeholders will provide consensus input to the COTP/Unified Command regarding the location; any identified special considerations or constraints and/or any permits or other authorizations required; and documentation of considerations taken into account when arriving at the consensus position.

Step 9. COTP/Unified Command selects place of refuge based on input from stakeholders and other technical experts.

Based on input received from stakeholders and other technical experts, the COTP/Unified Command will:

– Direct or allow the vessel to move to a place of refuge, in accordance with any identified special considerations or constraints and any permits or other authorizations.
– Inform stakeholders and other technical experts of the decision and of any additional response-related assistance required.

Continue overseeing or directing, as appropriate, response activities until the case is closed.

Note: In the event that potential place(s) of refuge location(s) identified in Step 7 and evaluated by stakeholders in Step 8 are not workable and/or circumstances have changed and moving the vessel to a particular place of refuge location is no longer an option, the COTP/Unified Command will re-analyze vessel options using the appropriate steps in these guidelines.

Step 10. The COTP/Unified Command prepares documentation of the places of refuge decision-making process.

Appendix 2

Potential Stakeholders

Federal and State natural resource trustees, when the vessel is within, or may enter, U.S. waters.

Federally-recognized tribes, if the interests of Federally-recognized tribes have been, or may be affected.

U.S. possessions, territories, and commonwealths, if the vessel will, or could be, directed to waters of a U.S. possession, territory, and commonwealth.

Foreign governments (e.g., Canadian Federal and Provincial, Mexican Federal and State, and Russian Federal), if the vessel is, or could be, in a trans-boundary area.

State On-Scene Coordinators, when the vessel is within, or may enter, State waters.

Federal, State, and local safety and public health entities, if there is, or may be, a risk to public safety and/or health.

Federal, State, and local critical infrastructure entities, if there is, or may be, a risk to critical infrastructure.

Federal, State, and local security entities, if there is, or may be, a security risk.

Federal, State, and/or local economic entities, if there are, or may be, economic impacts.

Federal, State, and local agricultural entities, if there are, or may be, invasive species, animal or plant disease onboard and/or if there is animal, plant, or food cargo onboard.

Local governments, if there is, or may be, a risk to their jurisdiction.

Port authorities, if the vessel will, or may be, taken to their port.

Private landowners and business owners, if their property will, or may be, affected.

Appendix 3

Process for Pre-Incident Identification of Potential Places of Refuge

Purpose

At stated above in Section 2, there are no places of refuges that are suitable for all vessels and all situations; therefore the National Response Team (NRT) does not support the pre-approval of places of refuge in waters subject to U.S. jurisdiction. At the same time, the NRT supports the identification of potential places of refuge (PPOR), which would receive incident-specific evaluations if the location(s) is being considered as a PPOR for an actual incident. It is important to note that identifying PPORs during pre-incident planning does not require that those locations be used as a place of refuge. Likewise, it does not eliminate the need to review and refine (as appropriate) during the incident, information specific to the PPORs.

This appendix provides the framework for identifying PPORs, which would then be included in the appropriate Area Contingency Plan. Following this framework will ensure that both the process for identifying PPORs and the resulting PPOR documents are consistent with the NRT *Guidelines for Places of Refuge Decision-Making (Guidelines).*

PPOR Document Development

Steps recommended for identifying PPORs include the following:

- Establish an Area/Sub-area Contingency Plan PPOR Work Group of interested and knowledgeable stakeholders and other technical experts for the geographic area to be addressed.
- Identify the casualty risks, including the types of vessel (e.g., oil tankers, LNG tankers, tank barges, and/or cruise ships) and the anticipated transit routes of those vessels.
- Identify physical and operational characteristics of the vessels and PPOR locations to be included.
- Identify candidate PPOR locations.
- Identify, for PPOR locations, public health and safety, natural and cultural resources and historic properties, response and salvage resources, and other stakeholder considerations.
- Identify land owners and land managers for PPOR locations.
- Prepare PPOR chart/table sheets for each PPOR location (see next section below).
- Include the resulting documents in the Area/Sub-Area Contingency Plan following public review and any revisions based on that review.

PPOR Document Contents:

Recommended contents of PPOR documents include:

- Purpose and Scope – A narrative introducing PPORs and describing how the regional PPOR document is used in conjunction with, and tiers off, the NRT Guidelines.
- How Document Was Developed – A narrative outlining the process used to identify PPOR locations and who participated in the process.
- How to Use the PPOR – A narrative briefly describing how regional PPOR information is used in conjunction with, and tiers off, the NRT Guidelines.
- Site Assessment Matrix – A summary of PPOR locations in one matrix, which includes information such as: location name, type of berthing, latitude/longitude, available swing room, dock face, water depth, bottom type, wind exposure, conflicting uses, ability to boom, geographic response strategies/plans, sensitive resources, distance to population centers, and distance to alternative PPORs.
- Index of PPOR Map – A map showing all PPOR locations.
- PPOR Chart/Table Sheets – One-page (two-sided) sheeting containing, for each PPOR location:
  - Side one: One or more color navigation charts of the PPOR location showing information, such as: approaches, anchorages, moorings, docks/piers, existing geographic response strategies/plans, and other relevant infrastructure; a color aerial photograph of the location; and a chart legend.
  - Side two: Tables containing information for each PPOR location describing physical and operational characteristics (e.g., maximum vessel size, navigational approach, minimum and maximum water depths, maximum vessel draft, types of berthing, swing room/dock face, bottom type, moorings, anchorages [including those for firefighting], docks, piers, prevailing winds, currents, tides, sea conditions, shelter from severe storms, fog, and ice); and other locational considerations (e.g., public health and safety [such as distances to communities], natural and cultural resources and historic properties considerations [such as threatened or endangered species and sensitive habitat areas and whether (or not) rats or other invasive species are present at the port], response and salvage considerations [such as ability to boom vessel and closest alternative PPOR]); other stakeholder considerations (such as fisheries, tourism/recreation, and waterfront public facilities); and land owners/land managers for the location.

PROCEDURAL RULES RELATING TO LIMITATION OF LIABILITY IN MARITIME LAW

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Document 1

DRAFT GUIDELINES

(Draft February 2008)
Prepared after the 2nd Meeting of the I-SC
on Procedural Rules Relating to
Limitation of Liability in Paris 13-14 September 2007

INTRODUCTION

1. In accordance with its Constitution, the purpose of Comité Maritime International is "*to contribute by all appropriate means and activities to the unification of maritime law in all its aspects*".

To this end the CMI shall (a) "*promote the establishment of national associations of maritime law*" and (b) "*co-operate with other international organizations*".

The CMI has promoted the unification of maritime law very successfully in the past by preparing a number of important conventions.

Now, that treaty making has passed to intergovernmental organizations, especially within the system of the United Nations, the CMI continues its activities in accordance with its Constitution by co-operating with international organizations and in particular with the IMO. More specifically, it carries out surveys of national legislation through the "*questionnaires*" which the CMI sends to the National Maritime Law Associations and prepares reports and draft instruments that are submitted to the appropriate international organizations.

In addition, the CMI continues its autonomous activity for the unification for maritime law in the area of implementation of international conventions for the purpose of contributing to a more harmonized application of the conventions. In this connection, the CMI carries out surveys (through the questionnaires) of national legislations to establish how the international conventions on maritime law have been implemented and applied by various countries and also collects decisions of national courts concerning the interpretation and application of these conventions. These court decisions in summary are exhibited on the web site of the CMI and they may also contribute to a more harmonized understanding and a hopefully more harmonized interpretation and application of the maritime conventions.

In the context of this activity the CMI has noted that although limitation of liability in maritime law is regulated by International Conventions, the

procedural0020rules of various states relating to limitation have similarities but also differences which justify an effort of harmonization.

2. For this reason the Executive Council of the CMI decided in 2004 to prepare and distribute to National Associations a Questionnaire with the view to finding out which rules of procedure had been enacted in States parties to the Convention on Limitation of Maritime Claims (LLMC) and to the Conventions on Civil Liability for Oil Pollution Damage 1969 and 1992 (CLC 1969-1992) in order to implement them. The Questionnaire was prepared by Prof. F. Berlingieri (Italy) with contribution from Dr. Gr. Timagenis (Greece).

3. After responses had been received from a number of National Associations, a synopsis (Digest) was prepared by Prof. F. Berlingieri as well as an analysis of such responses. These documents were posted on the CMI website.

4. A report on the work that had been done was presented by Gr. Timagenis, also on behalf of Fr. Berlingieri, at the Colloquium held in Cape Town in February 2006.

5. All the above documents are now being published in the CMI Yearbook 2005-2006.

6. At its meeting (in November 2006), held by means of electronic communications, the Executive Council of the CMI decided to establish an International Sub-Committee to cover the three Conventions relating to limitation of liability, namely LLMC, CLC and the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996 (HNS Convention), and to work towards draft guidelines rather than an International Convention.

7. The first meeting of the International Sub-Committee was held in Dubrovnik during the Symposium jointly organised by the CMI and the Croatian Maritime Law Association. The meeting took place on Saturday 12th May 2007 under the chairmanship of Prof. Fr. Berlingieri with Dr. Gr. Timagenis as Co-chairman and Rapporteur.

8. The second meeting of the International Sub-Committee was held in Paris (13-14 September 2007) under the chairmanship of Dr. Gr. Timagenis. The results of the work of that meeting are reflected in this document.

9. In addition to national legislation reviewed through successive

questionnaires, the main Conventions relating to limitation of liability which provided the background for the preparation of the Guidelines, are:

(a) The "*International Convention on Limitation of Liability for Maritime Claims London 1976*" (LLMC);

(b) the "*International Convention on Civil Liability for Oil Pollution Damage*" 1969 and that Convention as amended by the 1992 Protocol thereto (CLC 1969 and 1992); and

(c) the "*International Convention on Liability and Compensation for Damage in connection with the Carriage of Hazardous and Noxious substance by Sea*" 1996 (HNS Convention).

10. The following clarifications are important for the purpose and the role of the draft Guidelines:

(a) The specific conventions referred to in paragraph 9 above and in the Introductory Note of each draft Guideline are mentioned for reference purposes only and as a background for a better understanding of the relevant draft Guideline.

(b) The draft Guidelines are general (abstract) so as to be applicable to procedures under any of the above conventions or any other past or future convention concerning the limitation of liability, or under any national legislation, also in respect of states which have not ratified any convention relating to limitation of liability.

(c) Consequently the draft Guidelines may not apply to all the conventions in the same way or even they may not be applicable at all. For this reason, each draft guideline should be read as including at its beginning a sentence to the effect that it is "subject to and/or without prejudice to any specific provisions in any applicable international conventions". In addition, in the Introductory Note and the Commentary relating to each draft Guideline (and in few cases in the Guidelines themselves) reference is made to the relation of such draft Guideline to certain conventions.

(d) The draft Guidelines do not concern limitation of liability per package or unit or per passenger, but only to global limitation of liability especially through establishment of a limitation fund as understood in the conventions referred to in paragraph 9 above.

(e) The draft Guidelines do not refer to international funds like the ones established under the *International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage 1992 (1992 Fund Convention)* or under the HNS Convention.

(f) The draft Guidelines do not intend to impose the solutions suggested, although these solutions are the preferred ones. Other solutions to

each issue are possible and the draft Guidelines mainly intend to raise the issues and invite States to provide solutions in their national legislation rather than overlook the issue.

(g) Certain of the draft Guidelines seem to state the obvious. However, the discussions in the course of the preparation of the Guidelines have shown that the recommendations included even in these Guidelines are not necessarily obvious. Further what seems to be obvious for States which have ratified maritime conventions relating to limitation of liability, is not necessarily obvious for States which have not ratified these conventions but have dealt with the issues in their national legislation or for states which may ratify the conventions subsequently. Consequently these draft Guidelines remind such States of the issues which should be regulated by their national legislation. Finally, none of these draft Guidelines states only the obvious, but always include additional recommendations like the need for expeditious procedures, while in certain cases they serve as introductory statements to support recommendations which follow.

PREAMBLE

The Comité Maritime International (CMI)

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

2. noting that international conventions generally and specifically in connection with limitation of liability have contributed to the unification of maritime law but that there is considerable diversity in the way they are implemented and applied procedurally by various States, while a considerable number of States have not ratified any relevant convention and apply national legislation not based on any convention for the limitation of liability in maritime law.

3. believing that it may contribute to the harmonization of the procedures relating to the limitation of liability in maritime law by preparing draft Guidelines for this purpose,

has developed the following Guidelines.

1. INTERPRETATION

(a) For the purposes of these Guidelines

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

"Fund" means the fund established for the purpose of Limitation of Liability out of which claims subject to limitation may be satisfied.

"Claims" means the claims subject to the Limitation of Liability and/or, where the context so requires, claims submitted for satisfaction out of the distribution of the Fund and "Claimant" is to be construed accordingly.

"Limitation Proceedings" means the proceedings or procedures for the Limitation of Liability including without limitation the establishment of the Fund, the registration and proof of the claims and the distribution of the Fund.

"Guidelines" means the guidelines which are contained in the following sections of this document.

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

2. JURISDICTION

1. Introductory Note

(a) All Conventions relating to limitation of liability contain provisions on the jurisdiction of the court where the limitation may be sought and the limitation Fund may be established and administered (LLMC Art.11(1) possibly in combination with Art.13(2); CLC Article V(3) in combination with Article IX; HNS Art.9(3) in combination with Art.38(1), (2) and (3)). In fact, the CLC and the HNS Convention require expressly Contracting States to ensure that their courts possess the necessary jurisdiction to entertain actions for compensation.

(b) However, these provisions only govern the distribution of jurisdiction between States [1] but do not regulate the jurisdiction of the courts within a State. For this reason in some cases situations have arisen where there are

[1] Only the LLMC in 13(2) (a)(b) and (c) but not (d) refers to "port" rather than state. However, this should be also understood as "the state where the port…"

uncertainties or even conflicts as regards the jurisdiction of the national courts of a State on limitation issues and in this way difficulties and delays in the satisfaction of Claimants may arise.

(c) For this reason it is advisable for any State –whether or not a party to any convention relating to limitation of liability – to regulate the internal jurisdiction of its courts regarding limitation of liability and a Guideline to this effect has been proposed.

2. Draft Guideline

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

3. Commentary

(a) This Guideline relates to the internal jurisdiction of the courts of one State. It has been observed e.g. in pollution cases that frequently more than one local court have jurisdiction for dealing with the limitation of liability and the establishment of the Fund and delays are caused in the limitation proceedings as a result of jurisdictional conflicts among the courts of this particular State.

(b) For this reason the Guideline encourages States to specify preferably one court to deal with limitation of liability and, if more than one court have jurisdiction, to delineate clearly the jurisdiction of these courts to avoid conflicts and to concentrate all the Limitation Proceedings in one court (principle of concentration).

(c) The Guideline does not deal with the distribution of jurisdiction between States, because this is regulated by the conventions themselves, although it was recognized that the concentration principle would be desirable at the international level as well.

(d) The Guideline finally does not deal with the more complex issue whether the claims pending in various courts (in the same or different countries) should be concentrated to one court. Although such concentration was thought to be desirable it was recognized that practically it is often very difficult to transfer pending proceedings from one court to another.

3. LIMITATION OF LIABILITY WITHOUT THE CONSTITUTION OF A FUND

1. Introductory Note

(a) Under certain Conventions relating to limitation of liability the establishment of the Fund is a condition for the limitation of liability (Art.V(3) of CLC and Art.9(3) of the HNS). The LLMC provides for the possibility of limitation without establishing a Fund, provided that States may provide otherwise in their national legislation (Art.10 LLMC). From the replies to the CMI questionnaire it appears that some countries have made the establishment of a Fund a condition for limitation under the LLMC while others have not.

(b) Practically, limitation without establishment of the Fund is meaningful mainly in cases where there is only one Claimant or where more than one Claimant bring their claims against the person liable before the same court in the same set of proceedings, in which case the right of limitation may be invoked as a defence. In this case, the court will issue a judgment for the full amount of the claim, which however will be enforceable only up to the amount of limitation but may be enforced on any assets of the defendant (person liable). For this reason the judgment should specify the amount of limitation applicable to each Claim. If the person liable establishes the Fund after the judgment, the Claimants will participate in the distribution of the Fund for their respective shares. If other -additional- claimants appear at that stage, each of the Claimants will participate for the full amount of his respective claim which will be reduced proportionately).

(c) The possibility of the Fund being established after the judgment is the reason why a judgment for the full amount is proposed. If the judgment is not for the full amount but for the limited amount and a Fund is established after the judgment, the question will arise for what amount the claim will participate in the distribution of the Fund.

(d) In the case where limitation is effected without establishment of the Fund, Art.12(1) of the LLMC (and the reference to it in Article 10(2)) applies where more than one Claimant participate in the same set of proceedings against the person liable.

(e) If the person liable wants to limit its liability vis-à-vis more than one claimant in more than one court, then the establishment of the Fund seems to be inevitable.

(f) For these reasons a Guideline is proposed covering the above issues (i.e. limitation without establishing a Fund and the consequences of such limitation).

2. Draft Guideline

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

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

3. Commentary

This Guideline does not apply of course to procedures under conventions (like the CLC and the HNS Convention) or to national legislation which provide that the establishment of the Fund is a condition for the limitation of liability.

4. TIME LIMIT FOR STARTING LIMITATION PROCEEDINGS

1. Introductory Note

(a) A question which arises in connection with Limitation of Liability is whether there is any time limit within which the right of limitation should be invoked and the Fund, where required, established in order to have the effects of limitation, at least provisionally.

(b) None of the Conventions relating to limitation of liability includes any provision on this point. From the replies to the CMI questionnaire it seems that none of the countries whose National Associations replied, has set a time limit in its national legislation for the commencement of Limitation Proceedings. Certain countries provide for a time limit for the establishment of the Fund or the submission of the bank guarantee, before or after the court decision allowing Limitation (e.g. Italy requires the guarantee to be deposited together with the request for limitation). In some other countries the Fund should be established or the guarantee deposited within a time limit -fixed by the law or by the court- after the decision for Limitation is issued).

(c) However, Limitation of Liability by its nature is subject to certain time limits. Thus:

(i) Where it may be raised as a defence in pending proceedings (without establishment of a Fund), the latest point in time when limitation may be invoked is the latest time when defences may be submitted (or amendments presented) to the court where the proceedings are pending in accordance with its rules of procedure.

(ii) Where limitation is sought to be achieved by establishment of the Fund through separate independent proceedings, then it is also inevitable that the right of limitation cannot be invoked against a claim after its satisfaction through enforcement on certain assets of the defendant.

(iii) Practically otherwise the need for limitation to be invoked may arise when the person liable wishes to prevent arrest of its assets or obtain release of arrested assets..

(d) Consequently, a question which arises is whether States should establish in their national legislation any time limit (starting from the incident or the damage) within which the (independent) Limitation Proceedings should be initiated.

(e) Taking into account that:

(i) the Limitation of Liability is a right and not an obligation; and

(ii) the Limitation of Liability does not amount to admission of the claims,

it is suggested that no time limit for invoking the right of Limitation should be set.

(f) For these reasons a Guideline relating to certain time limits in respect of limitation seems to be appropriate.

2. Draft Guideline

States should in their national legislation take into account that:

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

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

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

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

3. Commentary

(a) Although paragraph (a) of this Guideline seems to state the obvious, it was thought useful to be retained to ensure that in case of

limitation of liability no refund may be claimed on the basis of undue enrichment or restitution. This Guideline, however, does not prevent the party liable to limit its liability in respect of other claims nor the party which paid to participate in the (subsequent) distribution of the limitation Fund on the basis of the rules concerning subrogation.

(b) In connection with paragraph (c) one participant in the I-SC September 2007 meeting in Paris was of the view that some time limit should be set to avoid unfair surprise of the Claimant at the enforcement stage. The majority, however, was of the view that this is not allowed by the Conventions and that it was not necessary or advisable.

(c) In the context of the discussion of paragraph (d) at the Paris meeting) a distinction was drawn between the establishment of the Fund and the determination of the right to limit liability. In some States the Fund may be established in one court and the right of limitation be determined by another and as a result this distinction has practical consequences.

5. PROCEDURE FOR THE ESTABLISHMENT OF THE FUND AND EVIDENCE

1. Introductory Note

(a) The procedure for the Limitation of Liability and the establishment of the Fund is left by all the Conventions relating to limitation of liability to the national legislation.

(b) As it appears from the replies to the CMI questionnaire certain countries allow the person liable to establish the Fund (and limit its liability) immediately (subject only to a preliminary judicial review about quantum of the Fund with or without the issue of an order or other decision of the court). Claimants do not participate in this procedure but they may challenge the right of the person liable to limit its liability either by starting proceedings before the court where the Fund is established or by challenging the right to limit at the time when the person liable tries to obtain the release from arrest of other assets.

(c) In certain other countries the approval of the court is required prior to the establishment of the Fund. From the replies it is not clear whether Claimants may participate in these proceedings (at least at this early stage), whether they may object to limitation (at this stage) and whether the limitation is delayed until such challenge is resolved by the court.

(d) The procedure to be followed for the establishment of the Fund and for deciding whether the liable person is entitled to limitation is a matter which may be very closely related to the overall judicial system and procedure

of each State, and it may be difficult to make any recommendation. However, it is clear that the procedure for the establishment of the Fund should be a quick procedure. This derives from the fact that the purpose of limitation is not only to limit the liability of the party liable but also to allow other assets (e.g. vessels) to be released from arrest.

(e) For the same reason (i.e. release of other assets) it is important for national legislations to specify clearly the exact moment when the Fund is deemed to be established and/or the provisional consequences of limitation (i.e. release of other assets) become effective.

(f) Finally, it is important to specify in the national legislation how (i.e. through what procedure and on the basis of what documents) the State where the limitation Fund is established can certify the effectiveness of the establishment of the Fund, so as to enable other States to recognize such establishment, e.g. a State where vessels should be released from arrest (Article X of CLC and Article 40 of the HNS Convention refer to another issue, i.e. recognition of a judgment against a person liable in another State). In this connection it should be noted that in some countries the Fund is established without any court decision, while in others the court order or other decision allowing the establishment of the Fund is issued *ex parte*, i.e. without the participation of the Claimants. In addition, in this latter group of countries the order or other decision is issued prior to the establishment of the Fund and does not prove the establishment of the Fund as such. Consequently, the recognition of the establishment of the Fund and of its consequences (i.e. the provisional effects of limitation such as the right to the release of vessels etc.) is not self-explanatory, since most national legislations, bilateral treaties or multilateral conventions for the recognition of foreign judgments refer to court decisions issued with the participation of all parties (or at least requiring them to have been properly summoned). For this reason special rules should be established for the recognition of the establishment of the Fund and its effects.

This procedure has two aspects, one from the point of view of the State where the Fund was established (i.e. sufficient proof of its establishment) and another from the point of view of other States which may be called upon to recognize the establishment of the Fund and its effects.

For this reason a Guideline is proposed on the issues referred to above (i.e. expeditious procedure, time of effects of the establishment of the Fund, evidence). This Guideline is addressed to the State where the Fund was established, whereas Guideline 6 addresses the issue from the point of view of other States.

2. Draft Guideline

States should in their national legislation :

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

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

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

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

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

3. Commentary

(a) In the course of the discussions at the meeting of the I-SC in Paris it was clarified that the establishment of the Limitation Fund has provisional but not final effects on the right of Limitation. It may result in release of vessels or other security; however, the Limitation of Liability becomes (finally) effective when objections to Limitation have been finally dismissed by the Court or the time limit for raising such objection has lapsed. For this reason this Guideline refers to the establishment of the Fund and its effects or provisional effects of limitation, but it has been drafted in such a way so as to avoid confusion with the (final) effectiveness of limitation.

(b) In this connection certain participants referred to stages of the Limitation Procedure which include:

(i) the establishment of the Fund;
(ii) the challenge of the right of limitation by Claimants;
(iii) the registration and proof of the claims entitled to participate in the distribution of the Fund; and
(iv) the distribution of the Fund.

(c) At that meeting of the I-SC the issue was raised if the effective establishment of the Fund should depend on whether notice has been given to the Claimants (at least to those who are known). Following discussions the consensus seemed to be that no such notice should be required for such effectiveness . However, in practice, if the person liable wishes to invoke the right of Limitation vis-à-vis a particular Claimant, either as a defence or for the purpose of obtaining the release of other attached assets (such as arrested vessels) or other security (such as a bank guarantee), the request of the person liable to be entitled to limit its liability will inevitably have to be notified to the respective Claimant.

6. CHALLENGING THE RIGHT OF LIMITATION

1. Introductory Note

(a) Under all the Conventions relating to limitation of liability the person liable may not limit its liability in respect of some or all the claims, either because certain claims do not fall within or are exempted from the scope of application of the relevant Convention relating to limitation of liability (e.g. Arts 2 and 3 of LLMC, Arts I (definition of Ship/ Oil) and II of CLC and Arts 1 (definitions) 3 and 4 of HNS Convention) or because the party liable is not among the persons entitled to limit their liability or because that party may not be entitled to limit its liability at all as a result of its conduct (Art.4, LLMC Art. V(2) CLC and Art.9(2)HNS Convention).

(b) The circumstances barring limitation is a substantive issue governed by the respective substantive provisions of the Conventions relating to limitation of liability or of the national laws. However, there are certain related procedural issues concerning the forum, procedure and time to challenge the right of Limitation.

(c) Thus a Claimant may wish to challenge the right of Limitation in two situations:

(i) the first is before the court where a vessel is arrested and its release is sought on the basis of Limitation of Liability following the establishment of the Fund (in this case the challenge of limitation is made only for the purpose of maintaining the arrest); and

(ii) the second is before the court where the Fund was established and/or the procedure of verification of claims for distribution is conducted. This is the forum where the Limitation will be challenged by those Claimants who had not arrested a vessel but also by those who had arrested the vessel (whether the vessel was released or not).

In either situation (and especially in the second one) a procedural opportunity should be given to those Claimants to challenge the right of Limitation and a Guideline is proposed to this effect.

(d) A related question is whether or not the procedure (or the proceedings) for challenging the right of Limitation should delay the effects of the establishment of the Fund. A reasonable reply seems to be "no" (because otherwise one of the major purposes of limitation, i.e. release of other assets from arrest, is defeated), unless there is no reasonable basis for the limitation of liability. For this reason a Guideline is proposed in order to strike a balance between the interests of all parties concerned (i.e. the interest of Claimants to challenge right of Limitation and the interest of the person liable to have other assets released).

(e) Finally, if the limitation is originally allowed and all other assets released but subsequently (after some months or years) it is finally adjudicated that the person liable was not entitled to limit its liability, the first question is what happens to the Fund, taking into account that the Claimants have lost their security (and possibly even the assets of the person liable for enforcement), i.e. whether a procedure should exist for the orderly liquidation of the Fund or Claimants may have to resort to litigation (and if so under what rules). For this issue a separate Guideline is proposed subsequently in that regard (under 7). The present Guideline tries to address this issue pre-emptively.

2. Draft Guideline

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

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

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

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

3. Commentary

(a) The last sentence of paragraph (a) of this Guideline (in square brackets) was added because it was pointed out by one participant at the Paris meeting that the right to limit liability may be challenged in his country in a Court other than the Court where the Fund was established. Although this is contrary to the principle of concentration advocated in Guideline No.2, since it is a reality it was reflected in that sentence.

(b) One participant in the above-mentioned meeting drew the attention of the I-SC to the fact that while under Article 13.1 of the LLMC the (provisional) effects of Limitation arise "where a limitation fund has been constituted", under Article VI of CLC and Article 10 of the HNS Conventions there is additional words stating that the effects arise where the party liable has constituted the fund "and is entitled to limit his liability". As a result, in the view of this participant it is doubtful whether paragraph (c) of the Guideline is applicable to the CLC and the HNS Convention. Another participant was of the view that the same sentence was implied in the LLMC and that in any event the procedural issue, i.e. what happens to the effects of the establishment of the Fund and the vessels arrested or other security provided while objections are pending, was an issue which had to be faced. The I-SC did not discuss the issue extensively and there was no need to take a position on this interpretation issue, bearing in mind that the Guidelines are abstract and without prejudice to the provisions of specific international conventions and their interpretation.

(c) Paragraph (d), although compatible with some national legislations, it was thought that it should remain under consideration and a question should be sent to NMLAs asking them what is the position of their national laws and whether a Guideline for a possible stay (under strictly specified conditions) of the effects of the establishment of the Fund is advisable to be included. The drafting of paragraph (d) follows the language proposed by one NMLA in its written comments.

7. CONSEQUENCES OF LIMITATION

1. Introductory Note

(a) The consequences of the Limitation of Liability is a substantive issue regulated by the Conventions relating to limitation of liability (Art.13 LLMC, Art.VI CLC and Art.10 HNS Convention).

(b) However, there are certain procedural aspects of the consequences of Limitation which should be regulated by national legislation. Such issues are:

(i) The recognition of the establishment of a Limitation Fund in another State; and

(ii) The procedure for the speedy release of assets (e.g. vessel) arrested.

For this reason a Guideline is proposed dealing with these issues.

2. Draft Guideline
States should:

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

(b) Establish procedures for the expeditious release of attached assets, following the establishment of the Fund.

3. Commentary

(a) One participant in the Paris meeting pointed out that in his country the establishment of the Fund is compulsory for the Limitation of Liability and as a result it is also a requirement for the recognition of the limitation effected in another State.

(b) As mentioned above, the establishment of the Fund is inevitable in the context of the CLC and the HNS Convention, which make the establishment of the Fund a condition for the Limitation of Liability.

8. LOSS OF RIGHT TO LIMITATION OF LIABILITY

1. Introductory Note

(a) As already noted above (under 6(1)(e)) the right of limitation of liability of the person liable may be denied by the court at a time much later than the establishment of the Fund and the release of the securities.

(b) The consequences of loss of the right to limitation relate to the questions (i)what will happen with the Fund and (ii)what will happen with the proceedings pending (either before the Fund court or before any other court having jurisdiction) for the verification of the claims.

(c) Most legislations do not include provisions as to what happens in this case and each Claimant seems to be entitled to pursue its claim in the usual manner independently from the others on any assets of the person liable, including the money of the Fund. As a result, litigation may take place with the person liable and between the Claimants themselves.

(d) It is suggested that for the orderly liquidation of the Fund and the avoidance of conflicts between the Claimants, the Fund should remain in place (despite the loss of the right of limitation) and be distributed to the Claimants, as if the right of limitation had not been lost. Simply the Claimants may enforce the balance of their Claims on other assets of the person liable. Similarly, they should be able to seek security on other assets immediately. This matter has procedural aspects (i.e. how the Fund is liquidated), but it also has substantive

consequences (i.e. different distribution of the money in the Fund). However, a relevant recommendation has been included in the Guidelines because it is in effect a post limitation issue (i.e. the liquidation of the Fund) which is not regulated by any convention or by most of the national legislations.

(e) Further, for the avoidance of delays it is suggested that the procedure or proceedings for the verification or adjudication of the claims should continue until a final judgment on the existence and the quantum of the respective claim. Otherwise, certain of the claimants (i.e. those who brought their claims to the Fund Court directly) may be required to start proceedings from the beginning for the adjudication of their claims.

(f) Finally, the consequences of submitting the claim in the limitation procedure (e.g. protection of time bar) should remain effective because otherwise the Claims (some of them being subject to brief time limits) may have become time barred.

(g) For this reason a Guideline is proposed on these issues.

2. Draft Guideline

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

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

(b) If the right to limit liability is lost in respect of all the Claimants, then:

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

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

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

3. Commentary

(a) On the basis of written comments submitted and discussions at the Paris meeting , this Guideline was expanded to cover the situations (i)where the right to limit liability is lost only in respect of one (or some) of the Claimants and (ii)where this right is lost in respect of all the Claimants.

(b) Following these discussions a Guideline was included regarding claims which are not subject to limitation, to the effect that these claims shall be pursued in the usual manner outside and independently of the Limitation Proceedings.

9. INFORMATION AND DOCUMENTS TO BE PROVIDED BY THE PERSON INVOKING THE BENEFIT OF LIMITATION

1. Introductory Note

(a) In order to enable the court to verify that the Fund is constituted in accordance with the provisions of the relevant legislation (i.e. pursuant to the applicable international Convention or to the relevant provisions of the national legislation) and to administer the Fund properly, it is necessary that the person liable supplies the court with information about the Claimants to the extent that they are known, including their addresses, in order to enable the court or the Fund administrator to inform them about the institution of the limitation proceedings. Other Claimants are notified through some public announcement (e.g. through the press) in order to enable them to participate in the Limitation Proceedings and the distribution of the Fund.

(b) Furthermore, since the limit of liability for loss of or damage to property is, in all conventions, based on the ship's gross tonnage, calculated in accordance with the tonnage measurement rules contained in Annex I of the International Convention on Tonnage Measurement of Ships, 1969[2], a copy of the measurement certificate must be produced as well as, in case of passenger claims under the LLMC , appropriate evidence of the number of passengers which the ship is authorised to carry[3].

(c) For these reasons a relevant Guideline is advisable.

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[2] Article 6(5) of the LLMC n, article V(10) of the CLC and article 9(10) of the HNS Convention.

[3] Article 7(2) of the LLMC .

2. Draft Guideline

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

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

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

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

3. Commentary

(a) The documents required under paragraph (a) of the Guideline are necessary in all cases of limitation, i.e. whether the limitation is invoked as a defence in pending proceedings without establishment of a Fund and/or in case that the limitation is sought through the establishment of the Fund. The documents referred to in paragraphs (b) and (c) of the Guideline are required in case that the limitation is sought through the establishment of the Fund.

(b) The second possibility in paragraph (a), i.e. "or any other document required for the calculation of the limitation amount", was included in order to cover situations where the amount of limitation is calculated not on the basis of the tonnage but on the basis of other criteria, either on the basis of international conventions (e.g. LLMC in Article 7(2) for passenger vessels) or on the basis of national legislation of States which are not parties to the relevant international conventions.

10. APPROVAL OF THE RIGHT OF LIMITATION

1. Introductory Note

(a) The first issue to be addressed in connection with limitation is that relating to the manner in which the Fund should be constituted. All Conventions relating to limitation of liability provide[4] that the Fund may be constituted either by depositing the sum corresponding to the limitation amount, or by producing a guarantee which is acceptable under the legislation of the State where the Fund is constituted and is considered to be adequate by

[4] Article 11(2) of the LLMC , article V(3) of the CLC and article 9(3) of the HNS Convention.

the court. Therefore the question relating to the character of the guarantee seems to be left to the law of the relevant States.

(b) The second issue relates to the calculation of the amount, which is left to the court to decide.

(c) The first question relates also to the specific requirements of the bank guarantee, e.g. whether it must be issued by a bank authorised to operate in the State where the Fund is to be constituted, whether that bank must be a first class bank and what the wording of the guarantee should be. It also relates to the type of guarantee, other than a bank guarantee, such as a guarantee of an insurance company or of a P & I Club, that may be considered to be acceptable and in this connection it may be considered whether some recommendation could be made to the effect of allowing guarantees of first class insurance companies and P&I Clubs.

(d) The second question relates to the amount of the Fund, and thus to the correct calculation of the limit or limits, the conversion of the unit of account used in the relevant Convention into national currency and the calculation of interest thereon. Reference to interest is found only in the LLMC (article 11(1)) while both the CLC and the HNS Convention, respectively in article V(3) and in article 9(3), provide that the Fund must be constituted for the total sum representing the limit of liability and interest is not mentioned. The question arises, therefore, whether States may, in the implementing legislation, require that interest be added and it is suggested that the reply should be positive because otherwise the person liable would benefit from any delay in the constitution of the Fund.

(e) The question of whether an amount should be added for costs is separate from the question of interest. The reply to this question may be negative or positive. If no amount for costs is added to the Fund, it is obvious that the costs for the administration of the Fund will be deducted from the amount of the Fund. Since practically it will be difficult to oblige the person liable to pay these costs after the limitation of its liability has been approved but also legally most conventions and legislations do not allow such further claims (for costs) against the person liable. If an amount is going to be added to the Fund for costs (so that the Claims of Claimants are not curtailed any further), this amount for costs will be based on an estimate and certain rules should exist for such calculation.

(f) Any amount which must be added to the amount of limitation for costs and interest in order to establish the Fund should be clearly specified in the national legislation thus allowing the party seeking limitation to establish the Fund quickly and without delays and uncertainties.

2. Draft Guideline

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

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

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

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

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

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

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

3. Commentary

(a) During the discussions at the Paris meeting of the I-SC it was suggested to deal with costs in a separate paragraph (i.e. not together with interest) because the CMI may wish to take different decisions for costs and interest.

(b) This Guideline deals with the interest up to the establishment of the Fund, not the interest for the time thereafter. For subsequent interest a separate question will be submitted to the NMLAs.

(c) In connection with subsequent interest, various suggestions were made (mainly in written comments). In case of the deposit of cash, the relevant amount may be interest bearing. (One participant in his written comments raised the question whether in the contemporary financial environment deposit in cash is old fashioned). The situation may be more difficult if a bank guarantee is given. Of course, a bank guarantee may provide for interest but the banks almost always need a maximum limit (which may not cover the whole period of the Limitation Proceedings since this period may not be foreseeable in advance). On the other hand it was suggested that it may not be fair for the person limiting liability to incur interest, if the delay in the Limitation Proceedings is not due to its actions in the limitation proceedings but to the disagreement of Claimants regarding the distribution of the Fund.

(d) The last paragraph (f) of this Guideline was added after the meeting of the I-SC in Paris as a result of a comment that the difficulty of the transfer

of funds from certain countries is an obstacle to the effective participation of claimants from countries other than that where the limitation Fund is established in the distribution of the Fund and a harmonization Guideline would be useful.

11. TIME LIMIT FOR ACTIONS BY THE CLAIMANTS IN LIMITATION PROCEEDINGS

1. Introductory Note

(a) The right of claimants to participate in the limitation proceedings is inherent in the concept of limitation and, although it is not expressly regulated by any of the Conventions relating to limitation of liability, it is clearly implied by many of their provisions. Since the Fund should at some stage be distributed, whereupon the limitation proceedings would terminate, it is inconceivable that the right of participation be exercisable at any time during the proceedings, because that would disrupt the proper conduct of the proceedings.

(b) None of the Conventions relating to limitation of liability provides for a time limit for the participation of the Claimants in the Limitation Proceedings and the matter is left to national legislation, provided however that provisions in the Conventions on other issues are respected..

(c) Most national legislations regulate this aspect of the proceedings either by setting statutory time limits or by providing that such time limits be set by the court under the supervision of which the Limitation Proceedings are conducted. The time limits may relate, inter alia, to (a to the filing of the claims, (b) the production of the relevant supporting documentation or, (c) the challenge of the right of limitation of liability. Even if no limit for such participation is expressly set, it is obvious that the ultimate point in time when a claimant may participate in the proceedings is the time of the distribution of the Fund. The date from which the various time limits commence to run should be also specified in the national legislation..

(d) Finally a separate time limit is that within which the action must be brought against the person liable to prevent the substantive right from becoming extinguished. In respect of this time limit (limitation of action/ time bar/ prescription) there are provisions in the CLC and in the 1992 Fund Convention, as well as in the HNS Convention, while the time limit for the claims falling under the LLMC is determined by the law governing the respective claim. It is thought that it would be difficult to regulate time bar and prescription in respect of claims covered by the LLMC , in view of the varying nature of such claims and it is suggested that the only aspect that might be considered is that relating to the participation in the Limitation Proceedings.

(e) At this point it should be clarified that the time limit for participating in the various stages of the Limitation Proceedings and the time limit (time bar) for a particular claim are two different types of time limits. When the person liable limits its liability and a Limitation Fund is established, the former set of time limits is put in operation. This set of time limits relates to the participation in the distribution of the Fund. The relation between the time limit for participation in the Limitation Proceedings and the time limit (time bar) for exercising a claim is a subject worthy of consideration.

(f) For the above reasons a Guideline is proposed to the effect that the national legislation of States should set time limits for the various procedural steps in the Limitation Proceedings. However, not specific limits are proposed at this stage.

2. Draft Guideline

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

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

(ii) requesting a review of the amount of the Limitation Fund,

(iii) filing Claims in the Limitation Proceedings.

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

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

3. Commentary

(a) The main issue which was raised in connection with this Guideline both in written comments and at the meeting of the I-SC in Paris concerned the relationship between the time limit for participation of the Claimants in the Limitation Proceedings and the time bar of the claims, especially in cases where the international Conventions themselves set limits in time for taking legal actions (time bar), as is the case for example in the CLC and the HNS Conventions.

(b) Following discussion the I-SC reached the conclusion that:

(i) It is advisable that States set in their national legislation (or give

the authority or discretion to the Courts to set) certain time limits for the presentation of claims in the limitation proceedings, but there is no need to specify such time limits at this stage.

(ii) States in fixing any such time limits should give careful consideration to international Conventions setting related time limits and especially to the CLC and the HNS Convention which set time limits for the extinction of the relevant claim.

(iii) The I-SC did not reach conclusions on the interpretation of any specific Conventions.

(c) In addition, as a result of the discussions at the meeting of the I-SC in Paris the order of the sub-paragraphs of paragraph (a) was altered, and the commencement point for time limits was mentioned separately.

(d) Finally, on the basis of written comment submitted to I-SC the possibility of fixing the time limits by the courts was also provided for in paragraph (a) of the Guideline.

12. CONSEQUENCES OF LATE PARTICIPATION

1. Introductory Note

(a) None of the Conventions deals with the consequences of late participation in the Limitation Proceedings and consequently this is left to the national legislation of States.

(b) From the responses to the questionnaire circulated by the CMI it appears that the consequences vary in various jurisdictions and consist of:

(i) the loss of the right to participate in the distribution of the Fund (in some countries only after the judgment on distribution) ,but in some countries an extension may be granted by the court while in others distribution may be made if the court has set aside an amount for such claim (on the basis of the list of Claimants given by the petitioner),

(ii) the loss of the right to participate in the initial distribution, without prejudice to the right to participate in subsequent distributions,

(iii) the loss of the right to challenge the amount of the Fund or the benefit of limitation.

(c) For this reason a Guideline is proposed dealing with these issues.

2. Draft Guideline

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

(a) The (exclusion of the) right to challenge the right of the person liable to invoke the benefit of limitation or to seek review of the amount of the Limitation Fund.

(b) The (exclusion of the) right to participate in the initial or the final distribution of the Fund.

3. Commentary

(a) In view of the discussions relating to the previous Guideline (under No.11), the view was expressed that the consequence of late participation in the limitation proceedings cannot be the loss of the right to participate in the distribution if the time limit for participation is shorter than the time limit set by certain conventions (e.g. CLC and HNS) for the extinction of claims. The problem exists only for the CLC and the HNS Convention (not for the LLMC). Because this is a matter of interpretation of the conventions the I-SC did not take position on this issue.

13. VERIFICATION OF CLAIMS

1. Introductory Note

(a) No provision exists in any Convention relating to limitation of liability concerning the procedure and the evidence for establishing (verifying) the claims which will participate in the distribution and, therefore, this is a matter to be regulated by the national legislation of States. From the responses to the CMI questionnaire it appears that the verification and establishment of the Claims (at least at a first stage) may be made either by the court itself or by a judge appointed by the court or by an administrator or liquidator of the Fund.

(b) From the responses it also appears that the procedure of verification is conducted through various stages, which may include all or some of the following: (a)registration or notice of the Claims, (b)preparation of a first list of Claimants (by the administrator of the Fund or by the appointed judge or by the court), (c)possibility of challenging Claims in this first list (either in a meeting of Claimants and/or in separate proceedings), (d)resolution of the disputes either in subsequent hearings within the context of the Limitation Proceedings or in separate proceedings.

(c) A Guideline outlining this procedure seems to be useful.

2. Draft Guideline

States should enact provisions setting or giving power to their Courts to set the procedure for the verification of the Claimants' Claims

in the Limitation Proceedings including, inter alia, rules for:

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

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

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

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

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

3. Commentary

(a) On the basis of written comments submitted to the I-SC pursuant to which in certain countries the procedure is determined by the Court, this possibility was provided for in the Guideline.

(b) As a result of the discussions at the Paris meeting of the I-SC in sub-paragraph (c) reference was made not only to res judicata but also to any specific provisions of applicable conventions.

14. CHALLENGE OF CLAIMANTS' CLAIMS

1. Introductory Note

(a) Because the existence and the amount of the claim of each claimant affect the amount which could be allocated to other claimants, it is obvious that each claimant has a legitimate interest to challenge the claim of any other claimant in respect of its existence, quantum or the right to participate in the distribution of the Fund.

(b) The matter becomes more complicated when the Claim of a particular Claimant is based on a judgment issued in proceedings between the Claimant and the person liable which other Claimants who were not parties to these proceedings want to challenge in the context of the Limitation Proceedings.

(c) On the other hand the person liable has an interest to challenge the claims of the claimants (unless and to the extent that it is barred from doing

so as a result of *res judicata*) because if the aggregate amount of all claims of the claimants is less than the amount of the Fund, the balance will be returned to the person liable.

(d) A related issue is the question whether the challenge of the distribution plan, i.e. the list of claims or any of them, should suspend the distribution of the Fund until this matter is finally resolved by the Fund Court. It is suggested that the distribution should be suspended only in respect of claims which are directly or indirectly adversely affected by the challenge (i.e. which may be reduced if the challenge is successful). However, in certain countries all the objections are tried collectively and only one judgment is issued. As long as challenge of certain claims do not delay the payment of others this may well be an alternative.

(e) A further related issue is what happens if one Claimant challenges the claim of another and this other Claim is expelled from the list, e.g. who should benefit from the additional amount released, i.e. only the Claimant who made the challenge (since the others had tacitly accepted the distribution plan) or the other Claimants (who did not challenge) as well (i.e. objective and not only subjective effect of the challenge).

(f) It is suggested a Guideline be adopted referring these matters.

2. Draft Guideline

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

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

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

3. Commentary

(a) The issue which was more extensively discussed during the meeting of the I-SC in Paris was the issue raised in the introductory note above under 14.1(b) especially in connection with the CLC and the HNS Convention.

(b) Because the problem seemed to appear in particular in connection with the CLC and HNS Convention while the Guideline was general, the Guideline was considered in its abstract form acceptable with a clear reservation at the beginning not only in respect of res judicata and a proviso at the end in respect of special provisions in the applicable international conventions with special emphasis on the CLC and HNS Convention.

(c) However, it was decided -in addition- to send a question on this specific point to NMLAs (as no relevant question existed in the earlier Questionnaires) and revisit the issue when the replies are received.

15. RELATION BETWEEN LIMITATION PROCEEDINGS AND PROCEEDINGS ON THE MERITS OF THE CLAIMS

1. Introductory Note

(a) In cases of Limitation of Liability the phenomenon is frequent that at the time that the right of Limitation is invoked and the Fund is established, proceedings on the merits are (well) under way in respect of various Claims against the person liable in various courts of the same or different states. For this reason the relation between various pending proceedings and the Limitation Proceedings should be considered.

(b) The situation has been partly considered (but not resolved) in paragraph 14 above, in connection with the possibility to challenge (in the context of the Limitation Proceedings) Claims adjudicated by other courts. However, on a broader basis the following comments could be made:

(i) If Claims are pending in various courts (especially of different countries) and a Fund is established in one country, on *prima facie* consideration it appears to be ideal for all the pending proceedings to be referred to the court where the Fund is established and have the whole case adjudicated in a consistent manner. This might also avoid duplication of proceedings in cases where a case adjudicated against the person liable in one court having jurisdiction, then it is possibly challenged again in the context of the Limitation proceedings by other Claimants (see above under 14).

(ii) However, this may not be acceptable to the countries where the merits of the claims are tried (especially in publicly sensitive pollution cases) and under some circumstances it may even not be advisable (especially in cases where the proceedings on merits are at an advanced stage, e.g. close to a judgment and the referral to the Limitation court might oblige the Claimant to start in effect the proceedings from the beginning even against the person liable).

(iii) It is suggested that provisions may be enacted in the national

legislation of the State where the Fund court is located to recognize, to the extent possible, procedural steps taken in the court which originally tried the merits.

(c) Finally, if a judgment is issued in one country by a court having jurisdiction on the merits adjudicating a Claim, the *res judicata,* i.e. the binding effect of this judgment, should be recognized in the State where the Fund Court is located. The problem with this recognition is that the requirements of recognition vary from country to country (unless they are parties to multilateral treaties for the recognition of judgments like EU Regulation 44/2001, and/or the Brussels or Lugano Conventions) and perhaps more importantly the concept (and the scope) of *res judicata* differ from country to country . For this reason Articles X of the CLC and 40 of the HNS Convention which deal with recognition of judgments are important.

(d) In view of the above, the I-SC decided not to recommend a Guideline for the transfer of proceedings but only for the recognition of judgments (at least for the cases where such recognition is not provided in and imposed by international Conventions).

2. Draft Guideline

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

16. MORE THAN ONE PERSON LIABLE

1. Introductory Note

(a) In all conventions relating to limitation of liability it is envisaged the possibility of more than one person being liable (and entitled to limit liability) for the same claim, either directly or as guarantor (e.g. insurer).

(b) Thus, in the LLMC persons potentially liable (and entitled to limit liability) are the shipowner (including owner, charterer, manager and operator of the ship), the salvor and the liability insurer (Art.1(1)(2)(3) and (6) of LLMC).

(c) In the CLC and the HNS Convention (which establish channelling of the strict liability, see Arts III(4) of CLC and 7(5) of HNS Convention) persons liable (and entitled to limit liability) are the registered owner or the State operator (see Arts I(3) of CLC and 1(3) of HNS Convention) as well as the financial guarantor/ insurer (Arts V(11) of CLC and 9(11) of HNS

Convention).

(d) All the Conventions relating to limitation of liability provide that any of the persons liable may limit its liability by establishing the Fund. The only difference between the CLC and the HNS Convention on the one hand and the LLMC on the other, is that the CLC and the HNS Convention provide that the insurer may limit its liability even if the owner has lost this right as a result of his conduct (Arts V(11) of CLC and 9(11) of HNS), while the LLMC provides that the insurer may limit its liability "*to the same extent as the assured*" which may imply that if the assured has lost the right to limit, this adversely affects the insurer as well.

(e) In view of the above, and unless any person liable has lost its right of limitation, the establishment of the Fund by one of the persons liable seems to give the others the right to limit their liability as well (the amount of the Fund in respect of all persons liable is the same as this amount is calculated on the basis of the tonnage of the vessel). This seems to supported by Articles 9 and 13(1) of the LLMC ("*assets of a person by or on behalf of whom the Fund has been constituted*"). Similar foundation seems to exist in Arts V(11) and VI of the CLC and 9(11) and 10 of the HNS Convention ("*having the same effect as if it were constituted by the owner*").

(f) Further, it is obvious that the subrogation provisions of the Conventions relating to limitation of liability play a role in this connection, i.e. if the charterer establishes the Fund to limit its liability vis-à-vis cargo interests and pays the relevant claims through the Fund, the charterer may then claim (either directly under the charterparty or by subrogation) against the owner and then the owner may limit his liability vis-à-vis the charterer by establishing a further Fund or even without the establishment of a Fund. If, of course, the Fund was originally established by the owner, the charterer may participate in the distribution of the Fund (in addition to in respect of any claims of his own) by subrogation in respect of claims he paid to other Claimants entitled to participate in the distribution of the Fund.

(g) In view of the above and although several of the issues relating to multiple persons liable are regulated by the Conventions relating to limitation of liability and although any proposed Guideline may assume some interpretation of the Conventions, it is suggested that a Guideline be adopted to cover certain gaps in the Conventions.

2. Draft Guideline

(a) Where more than one person liable (and entitled to limit liability) exist and unless a relevant Convention provides otherwise and/or unless any such person has lost its right to limit its liability as a result of any provision, including provisions concerning its conduct, the

establishment of the Fund and the Limitation of Liability by any of them benefit all such persons vis-à-vis third party claimants.

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

17. MORE THAN ONE SHIP LIABLE

1. Introductory Note

(a) An issue different from the situation of more than one person being liable for damage caused by one ship is the situation where a damage (pollution or other) is caused by more than one ship(e.g. in a collision case).

(b) The situation is not expressly envisaged in the LLMC; it is envisaged in article IV of the CLC and more completely in article 8 of the HNS Convention. The latter Conventions provide expressly for joint and several liability in respect of the pollution caused, while this may not be the case under the LLMC. The HNS Convention expressly provides that the owner of each ship may limit its liability separately (i.e. there may be more than one Fund for the same incident) and that nothing in that Convention shall prejudice the right of one owner to claim against the other. The subrogation provisions of the Convention may apply.

(c) The solution adopted in the HNS Convention seems reasonable and compatible with the other Conventions relating to limitation of liability and a Guideline to the same effect may be adopted to cover existing gaps.

2. Draft Guideline

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

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

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

18. SUBROGATION

1. Introductory Note

(a) All existing Conventions relating to limitation of liability include almost identical rules of subrogation (Art.12(2),(3) and (4) of LLMC, Art.V(5),(6) and (7) of CLC and Art.9(5),(6) and (7) of HNS Convention).

(b) For the persons liable (and some other persons) the right of subrogation is established in the Convention itself (Arts 12(2) LLMC, V(5) CLC and 9(5)HNS Convention) while for other persons who have paid Claims subject to limitation (and are entitled to participate in the distribution of the Fund) the matter is left to the applicable national law (Art.12(3) LLMC, V(6) CLC and 9(6) HNS Convention).

(c) The issues arising for the cases left to the national law are:

(i) which is the national law governing the subrogation. (There may be the law of more than one State cumulatively applicable, e.g. *lex cause* of the Claim which may or may not permit transfer of the Claim to the person who paid and the national law which determines the distribution of the limitation Fund (see Art.14 LLMC, IX(3) CLC and 38(5) HNS Convention); and

(ii) whether for harmonization purposes a Guideline should be proposed encouraging States to specify in their national legislation which law governs the right of subrogation or enact a direct rule specifying in which cases subrogation is permitted.

(d) For this reason a very general Guideline is proposed on these subjects.

2. Draft Guideline

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

19. COUNTERCLAIMS

1. Introductory Note

(a) Only the LLMC provides expressly for counterclaims (Art 5) and only for those counterclaims which arise out of the same occurrence. Counterclaims are envisaged in Art.III (5) of the CLC and Art.7(6) of the HNS Convention (and of course under the general provisions for

counterclaims of *lex fori*).

(b) However, the relevant provisions raise a number of procedural issues which may need clarification and harmonization in the national legislation of States.

Thus:

(i) In the CLC and the HNS Convention, which do not have specific provisions for counterclaims, the question arises whether counterclaims may be raised in the context of the Limitation Proceedings and whether the Claimant will participate in the distribution for the balance. The alternative solution might be not to allow counter-claims in the Limitation Proceedings in which case the Claimant could participate in he distribution of the Fund for the whole of its claim and then the person liable claim the totality of its counterclaim against this particular Claimant separately. This second solution is less favourable to the Claimant and the other Claimants than the previous one. For this reason the former solution should be adopted.

(ii) In the LLMC the language of Article 5 leads to the conclusion that in respect of a counterclaim arising out of the same occurrence set off is compulsory ("shall") and the relevant Claimant participates in the distribution only for the balance, if any. This may be justified by the fact that this set off is beneficial to all the other Claimants as well (because one Claimant participates in the distribution after set off with a smaller claim). If this is the case (i.e. if set off is compulsory for this reason), however, the question arises as to whether, if the person liable does not raise the counterclaim and the set off, this counterclaim and set off may be raised by other Claimants (who have a legitimate interest to do so).

(c) The conclusion from the above analysis is that:

(i) In the LLMC (Article 5) the set off of counterclaims out of the same occurrence is compulsory and the question is whether other Claimants may raise this issue in the context of the limitation proceedings (e.g. challenging the distribution list and the quantum of the specific Claimant's claim).

(ii) All other counterclaims under the LLMC and all counterclaims under the CLC and the HNS Convention may be raised and be set off (optionally). There is no reason to prevent the person liable from so doing and it is to the benefit of all Claimants, provided it does not cause undue delay to the whole distribution process.

(d) An issue requiring further consideration is whether the person liable, who "paid" a claim through set off, is entitled to participate in the distribution of the Fund by subrogation. The correct reply seems to be in the

affirmative, in which case the value of counter-claim and set off vis-à-vis other Claimants may be questioned. It may only regulate the relations of Claimant and counter-claimant in a more fair way.

(e) For this reason a Guideline is proposed dealing with these issues.

2. Draft Guideline

States should provide in their national legislation that:

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

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

3. Commentary

The second bracketed sentence was added on the basis of a written comment submitted by one NMLA.

20. PARTLY PAID CLAIMS

1. Introductory Note

(a) If a Claimant has partially recovered his claim prior to the Limitation of Liability (or independently from the limitation, e.g. voluntarily by the person liable or by any third party or by any other Fund established in respect of another ship liable for the same damage), should this claimant participate in the distribution of the Fund in respect of the balance of its claim or in respect of the whole of its claim and the amount of (earlier) recovery should then be deducted from his share of the limitation amount? The two methods of calculation lead to different results, as shown by the following example. A claimant has a claim of $100,000 and he has recovered $10,000. The Fund satisfies say 50% of the claims. If the claimant participates with the balance of his claim he recovers $45,000 (i.e. $90,000 X 50%). If he participates with the whole of his claim and then the recovery is deducted he receives $40,000 (i.e. $100,000 X 50% = $50,000 less recovery $10,000 balance payable from the Fund $40,000).

(b) This issue may be related to the issue of subrogation because the

party who paid may (possibly) participate in the distribution of the Fund by subrogation. For this reason it seems to be reasonable that the party who paid claims should participate in the distribution of the Fund in respect of their unpaid balance. In respect of the (paid) balance somebody else (the party who paid) may participate. If the original Claimant participates for the full amount of its claim and the subrogated Claimant participates for the (full) amount he paid, then an amount bigger than the original claim will participate in the distribution of the Fund (i.e. 100.000 the claim of the original Claimant and 10.000 of the subrogation i.e. 110.000 for a claim which was 100.000 only).

(c) For this reason a Guideline to this effect is proposed.

2. Draft Guideline

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

Document 2

REPORT ON THE FIRST MEETING

Dubrovnik, Croatia 12 May 2007

Chairman: Prof. Francesco Berlingieri
Co-Chairman/Rapporteur: Dr Gregory J. Timagenis

The meeting was attended by the participants listed in Annex I. The President of CMI Jean-Serge Rohart attended part of the meeting.

Co-Chairman Dr. Timagenis said that it is important for subsequent meetings to clarify which participants participate as representatives of NMLAs and which ones in a personal capacity (i.e. as observers). Because the introduction to the substance of the subject had been made in writing (letter to NMLAs of 7th February 2007 and e-mail reminder of 27 April 2007) and verbally during the Dubrovnik Symposium the I-SC started its substantive work immediately. Working document for the I-SC meeting was the Paper prepared by Prof. Berlingieri and Dr. Timagenis "Aspects of Limitation Proceedings for Consideration by International Sub-Committee".

The Chairman (Prof. Berlingieri) raised the question whether the establishment of the fund should be a compulsory condition for limitation of liability or not. (It is already compulsory in CLC while LLMC allows the state parties the option to follow the one or other solution Mr Simon (France) suggested that the establishment of fund should not be compulsory. Mr Smeele (The Netherlands) said that there is a broader issue i.e. to see whether and how it should become compulsory all claims subject to limitation to be brought before the same Court once limitation is invoked. Mr Boglione (Italy) suggested that it is important to have one tribunal exclusively competent for all limitation issues. Dr Timagenis (Co-Chairman/Rapporteur) commented that there are two separate issues: one is whether the establishment of the fund (under the LLMC) should be recommended to become (through national legislation) a condition to limitation or not and the other issue is that of the competent Court (Court having jurisdiction) for the limitation (and/or all related issues). Although the two issues are interrelated, in order to have an orderly discussion we should try to discuss them separately and Prof. Berlingieri had raised only the first issue. Mr Martinez (Honduras) suggested that a Protocol to the LLMC might be necessary to resolve such issues. Mr

Rohart (President of CMI) suggested that the I-SC might limit its work to the procedure after the establishment of the fund, which is a matter not regulated by the Conventions. Prof. Berlingieri (Chairman of the I-SC) said that procedural rules exist even before the establishment of the fund, including the rules on the Court having jurisdiction (e.g. art. 11 LLMC or art. 9 CLC). Mr Moreira (Canada) said that the need of procedure starts in effect immediately after the casualty and in reply to the question of the Chairman he suggested the establishment of the fund should not be a condition for invoking the limitation. Mr Schwampe (Germany) said that the issue whether the fund should be compulsory for the limitation is an issue which should be dealt with and not avoided. Mr Smeele (The Netherlands) said that there are certain procedural rules in the conventions themselves and it would be artificial to separate post-fund procedural rules from pre-fund procedural rules which are more important. Mr Goni (Spain) warned that the interpretation of the Conventions belongs to the Courts and the I-SC should be careful. Mr Martinez (Honduras) said that several countries adopt the conventions by incorporating their text into their national legislation verbatim without enacting additional rules for their application and when the need for application arises they find out that they do not have the structure to apply the Conventions. What CMI could usefully do would be to recommend guidelines for the creation of such a structure. Mr Henri Li (China) said that the method of adoption of international conventions is determined by the constitution of each country and that it might be possible to separate various procedural rules. Mr Tatham (UK) said that the whole procedure of limitation would be facilitated if the fund could be established by a letter of undertaking of the P+I Club of the vessel.

The Chairman (Prof. Berlingieri) raised a second question i.e. whether - in order to start limitation proceedings and/or establish the fund - it is necessary to wait for an action to be brought by a claimant against the shipowner (or other party entitled to limitation) or not. Mr Simon (France) suggested that it should be possible to start the procedure for the establishment of the fund even before a claim is brought. Mr Ore (Norway) said that it should be possible to establish the fund as a preventive measure before proceedings start against the shipowner. Mr Markianos (Greece) said that perhaps ideas could be taken from CLC and apply them to LLMC. Mr Steves (Belgium) said that the intention of LLMC was to establish the fund only after a claim is brought against the owner. Mr Timagenis (Co-Chairman/Rapporteur) asked whether this is said as a desirable commercial solution or as an interpretation of the LLMC as this point of LLMC has been interpreted differently in various countries. Mr Stevens (Belgium) clarified that we took this position as a matter of interpretation of the LLMC. Mr Laudrup (Denmark) gave an example from a court case in Denmark where the

issue was raised of the enforcement of a Dutch judgement in Denmark or other European countries under EU Regulation 44/2001 despite the limitation of Liability in Denmark.

After the coffee break (and due to insufficient time for a detailed discussion of other issues) the discussion was much more general as to the importance of various issues in parts II and III of the working document. It was also agreed the working document to be enriched with additional issues to be proposed by the chair and/or participants.

During the discussion two additional issues were raised (by Mr Smeele) i.e. (a) to consider the situation where a shipowner limits his liability by establishing a fund (say through a guarantee) payable to those entitled to distribution from the fund) and some time (months or year) later it is decided that he is not entitled to limit his liability (under art. 4 LLMC). The result is that he enjoyed immunity from arrest (under art. 13 LLMC) for a considerable period of time and the creditors may have lost the opportunity to secure their claims by arresting the ship and (b) to consider the procedural complications where more than one parties (e.g. shipowner and charterer) seek to limit their liability (same fund or different?/one set limitation proceedings or more?).

The Group agreed to meet again in Paris in the first half of September 2007. Any additional material to be circulated as early as possible.

Document 3

REPORT ON THE SECOND MEETING

Paris 13-14 September 2007

The second meeting of the I-SC on the Procedural Rules relating to Limitation of Liability in Maritime Law took place in Paris 13-14 September 2007.

The meeting was attended by representatives of the NMLAs of Belgium, France, Greece, Ireland, Italy, Japan, the Netherlands, Sweden and UK. (A list of Participants is attached).

The President of the CMI Jean-Serge Rohart welcomed the Participants in Paris and wished them success in their work.

Dr. Gregory Timagenis (Greece) chaired the meeting.

The I-SC considered the Working Document prepared after the first meeting of the I-SC in Dubrovnik 12 May 2007, which included Introductory Notes and proposed Guidelines concerning the Procedural Rules Relating to Limitation of Liability in certain Maritime Conventions. The I-SC also considered and took into account written comments made by certain NMLAs and certain Participants.

The I-SC discussed extensively the issues involved and proposed changes to the draft guidelines. It also decided to broaden the subject to "Procedural Rules Relating to Liability in Maritime Law". The purpose of the change was to cover also procedural rules in Countries which have not ratified any conventions.

At the end of the meeting it was decided that the Chairman prepare and circulate a revised text of the Introductory Notes and Guidelines and to add Commentary where necessary to reflect the discussions of the I-SC in Paris.

The Chairman of the I-SC on the Procedural Rules
relating to Limitation of Liability in Maritime Law

GR. J. TIMAGENIS

Document 4

February 26th, 2008

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

Dear Presidents,
Dear Members of the I-SC,

1. The purpose of this Letter is to send you the revised version of the Draft Guidelines on "Procedural Rules Relating to Limitation of Liability in Maritime Law".

The Draft Guidelines are accompanied by a brief report on the Paris meeting which reflects the procedure followed, while the substantive changes are reflected in the general introduction of the Guidelines, the Introductory note of each Guideline and the commentary following each Guideline.

As you know this is one of the major topics to be discussed at the 39th CMI Conference to be held in Athens between 12th and 17th October 2008 with a view to adopting these guidelines as a contribution of CMI to the harmonization of maritime law.

This revision was prepared following the second meeting of the I-SC in Paris, which was attended by Angelo Boglione, Tomataka Fujita, Luc Grellet, Mans Jacobsson, Helen Noble, Guido Pastori, Patrick Simon, Frank Smeele, Frank Stevens, Andrew Taylor and Gregory Timagenis.

On this opportunity I would like to thank all the Participants of the Paris meeting for their valuable contribution to the work of the I-SC and the improvement of the draft but especially Mr. Mans Jacobsson for his many and excellent drafting comments which improved the whole draft considerably.

2. The purpose of the circulation of this draft is to give the chance to all NMLAs and to all members of the I-SC (i.e. even those who did not attend the Paris meeting) to review this draft and to make comments, if they so want prior to the Conference.

Because there were many changes from the previous draft the changes

are not marked. However, in any subsequent revision the changes will be clearly marked to facilitate your review of any further changes.

3. For your guidance for your review of the attached draft and for making comments, I should draw your attention to the following points:

(a) The scope of the Guidelines is broader than in the first working document in that they do not refer only to certain maritime conventions but to any rules of limitation of liability in maritime law (i.e. even under a national law of a state which has not ratified any of the "Limitation Conventions"). This was done for two reasons. First to make the Guidelines useful and of interests to states which have not ratified relevant conventions and second to avoid expressions which might be deemed to be interpretation of or prejudicial to interpretation of international conventions, which in accordance with the decisions of the Executive Council is outside the mandate of the I-SC at least until further directions. (However see the penultimate paragraph and the attached memo).

(b) The Guidelines refer only to procedural matters and not to substantive issues of Limitation of Liability in Maritime Law.

(c) As you may appreciate both above tasks are very delicate and difficult to achieve.

(d) Finally, I would like to draw your attention to the clarifications contained in paragraph 10 of the General Introduction to the Guidelines.

4. The procedure to be followed from now on is the following:

(a) All NMLAs and I-SC members may make comments to the draft and any other suggestions.

(b) In order to keep an orderly procedure all such comments or proposals should not be made on the draft but sent as separate documents and should be sent only to CMI and to me as Chairman of the I-SC as it happened with the previous round of comments.

(c) If you want your comments to be easily understood, digested and commented by others and ultimately be successful, please try to keep them brief. If you want to give longer explanations, at least summarize your conclusions briefly.

(d) All these comments and proposals (after the expiration of the relevant time limit) will be circulated to all NMLAs and all I-SC members for their comments on such proposals.

(e) Depending on the nature and broader acceptability of such comments/ proposals, they will be incorporated to a revised draft. Even those comments/ proposals which will not be incorporated will remain open and outstanding for decision at the conference.

(f) Any material ready up to mid April 2008 i.e. the present draft and the comments or the revised draft and the remaining comments (unless they are very long) will be published at the Yearbook (Athens I) as material for the Conference.

(g) Even after this time limit progress in our discussions and negotiations may continue up to the beginning of September 2008 when the material will be posted at the Conference web site as Conference documentation.

(h) The bigger progress we have made prior to the Conference the easier and more successful our work will be at the Conference.

5. During the Paris meeting it was decided that certain additional questions should be circulated to the NMLAs. Further although most Guidelines seemed to concentrate broad approval, different opinions were expressed in the context of Guidelines 11, 12, 14 and 15 in connection with the question whether more specific reference should be made to the CLC and HNS Convention.

The additional questions and the issue of CLC and HNS Convention (and the differing views expressed) are referred to more specifically in two separate attachments of this letter i.e. Chairman's Report on additional issues and a Memorandum on the Report of the International Sub-Committee which Mr. Mans Jacobsson was kind to prepare setting his view on the issues of CLC and HNS Convention.

In view of the above, I would be grateful if you could send your comments at least on the Draft Guidelines up to March 31, 2008, thus allowing their circulation and subsequent publication at the Yearbook. In order to avoid delays any comments received up to March 15th 2008 will circulate first.

As you already know you must address all your communications to admini@cmi-imc.org with copy to Gr.J. Timagenis (gjt@timagenislaw.com).

Thanking you for your co-operation.

Yours Sincerely,
Gr.J. Timagenis

P.S.:
Attachments:
1/ The Report of the Paris Meeting of the I-SC (one page).
2/ The list of I-SC members (in two versions by name and by Country).
3/ The Draft Guidelines (35 pages).
4/ Chairman's Report on additional issues (6 pages).
5/ Memorandum of Mr. Mans Jacobsson (5 pages).
GJT

Document 5

February 26th, 2008

To
1. The President of NMLAs
2. The Members of the I-SC on Procedural Rules relating to Limitation of Liability

CHAIRMAN'S REPORT ON ADDITIONAL ISSUES

Introduction

During the Paris meeting of the I-SC it was decided to address to NMLAs certain additional questions [see Draft Guidelines (Draft February 2008), Section 6, commentary paragraph (c) and Section 14, commentary para (c)].

In addition a difference of opinion arose in connection with Sections 11, 12, 14 and 15 not in their entirety but only in relation to CLC and HNS Convention. The Revised Draft prepared by the Chairman (following consultation with the Paris meeting participants) attempted to use language neutral and not prejudicial to the interpretation of CLC and HNS especially in view of the mandate of the I-SC to deal only with procedural (and not substantive issues) and to avoid as far as possible interpretation of international conventions.

However this was not considered satisfactory by some participants as leaving ambiguities to the Guidelines and the problem should be faced (rather than avoided) and in clear language. For this reason although it was decided to circulate the Revised Draft Guidelines (Draft February 2008) it was also agreed to circulate additional material setting the issues not resolved in Paris. This material inevitably re-opens the issue of the mandate of the I-SC as well.

A. Stay of Limitation Procedure

[Draft Guideline Section 6, Guideline paras (c) and (g) and commentary para (c)]

The issues arising in connection with this matter are set in Section 6 of the Draft Guidelines and briefly it may be noted that:

1. The purpose of limitation of liability is not only to limit the liability of the person liable but also to allow expeditious release of arrested assets (e.g. vessel).

2. Claimants may challenge the right of the person liable to limit its liability and they may be ultimately successful.
3. In the meantime, however, the arrested assets have been released and the claimants may not find other assets to enforce their claims (while the question what happens to the fund is a separate issue dealt with in Section 7).
4. The question then raised is: Whether a stay is advisable to be granted to the limitation procedure (and to the release of assets) pending the challenge, if "there is no reasonable basis" for allowing limitation.
5. The question to NMLAs is:
   (a) Does your national law provide for the possibility of stay under certain circumstances?
   (b) Would you support a Guideline along the lines of Guideline 6 para(d)?

Note: The second question in Section 14 commentary para (c) relates to the issues dealt under C.

B. Time Limit for Claimants to Participate to Limitation Proceedings and consequences of late participation (Sections 11 and 12)

(Relation with CLC and HNS Convention)

1. The issue arising in connection with Sections 11 and 12 is whether States should set in their national legislation a time limit for Claimants to participate to the limitation proceedings (and the distribution of the fund) and if yes what are the consequences of late participation.
2. It seems that there was a general consensus that a time limit for participation should exist.
3. The issue which was not resolved was whether this time limit may be shorter than the time bar for the relevant claim.
4. This question is particularly relevant to CLC and HNS which set time limits (time bar) for the extinction of claims (a two tier time bar of three and six years under Article VIII of CLC and three and ten years under Article 37(1) and (3) of HNS Convention).
5. An analysis relating to this issue appears in Sections 11 and 12 of the draft Guidelines and below under D.

C. Claimants' right to challenge (in the context of Limitation Proceedings) claims of other Claimants' adjudicated in proceedings to which the Challenging Claimants did not participate (Sections 14 and 15)

(Relation with CLC and HNS Convention)

The relevant issues are set in Sections 14 and 15 of the Draft Guidelines. The outstanding questions relate to the CLC and the HNS Convention which

have separate provisions on the jurisdiction of the Courts trying the merits of claims and for the recognition of judgments (CLC Article X and HNS Convention Article 38.2).

D. Discussion on Sections 11, 12, 14 and 15 in relation to CLC and HNS Convention

1. Sections 11 and 12 time bar under CLC and HNS and time limit to participate to limitation proceedings and consequences.

(a) The one view in this connection was that the time limit for participation to the Limitation Proceedings (and the distribution of the limitation fund) should/ can not be shorter than the time limit for the extinction of claims (time bar) provided for in CLC and HNS Convention (and/or in any event the loss of such time limit for participation to the limitation proceedings should not result in the loss of the right of the delayed claimant to participate to the distribution of the fund).

(b) Mr. Mans Jacobsson was kind to present this view in more detail in his attached memorandum.

(c) The opposite view expressed argued that if all known Claimants have presented their Claims and the Fund is ready for distribution, it is not reasonable to wait for six or ten years or even three years just in case some other Claimant may appear. On the basis of this view, the time limits (time bar) set in the Convention or in national legislation for the extinction of claims apply when no limitation has become effective. When a Fund is established an additional time limit comes into operation (i.e. the time limit for participation of the Claimants in the Limitation Proceedings) and although it is different from the time bar it may end up in effect (practically) to the limitation of actions i.e. to their extinction prior to their normal time bar. The situation is similar to bankruptcy in the context of which claims are extinguished prior to their usual time bar, if the Claimants do not participate to the bankruptcy proceedings timely.

2. Challenge of Claimants' claims (in particular by other claimants who had not participated to the proceedings of the merits between a particular Claimant and the person liable).

(a) On the basis of one view once the CLC and the HNS Convention have specific provisions for the jurisdiction of the Courts and special provisions on the recognition of judgments, it is not correct/ allowed to reopen (in the context of limitation proceedings) issues on the merits of claims determined by Courts having jurisdiction.

(b) Mr. Mans Jacobsson was kind to present this view in more detail in the Memorandum attached.

(c) The opposite view was supporting that the other Claimants, who did not have the chance to participate to the proceedings between the

Claimant and the person liable cannot be deprived of their right to have a judicial recourse against the Claim of another Claimant, which affects their own rights, i.e. the quantum of their Claims. This view was relying on the relative nature of *res judicata* (as between the parties) and interpreted Article IX of CLC and Article 38(2) of HNS as referring to recognition within the limits of *res judicata*. This view drew additional arguments from Article X of CLC and 40 of HNS which provide that a judgment is not recognized in other state parties, if obtained by fraud or without reasonable notice. The argument was that once even these conventions provide for certain -limited- grounds for the non recognition of the judgment, it is necessary to provide in the context of limitation proceedings a procedure for raising the objections on these grounds.

E. The scope of the Guidelines

1. The above issues relate to interpretation of the CLC and the HNS Convention and raised an additional issue as to the scope of the Guidelines.
2. There is no doubt that the scope of these Guidelines is to deal with the Procedural Rules Relating to Limitation of Liability and not to substantive issues of limitation of liability.
3. There are also decisions of the Executive Council of CMI directing the I-SC not to deal with Interpretation of International Conventions.
4. For this reason the position of the Chairman of the I-SC was that although barriers between procedural rules and substantive issues as well as between abstract Guidelines and interpretation of Conventions are not always clear and unambiguous, the I-SC had to avoid as far as possible substantive issues and interpretation of conventions issues and these Guidelines are subject and without prejudice to the provisions of any conventions, as clearly spelled out in the (general) Introduction of the Guidelines (especially in para 10 a, b and c).
5. However, special attention was drawn to conventions and especially CLC and HNS in Guidelines 11(b), 12, 14(a) and 15 without entering actual interpretation of conventions or the issue of time bar which in some countries is deemed to be a substantive issue.
6. Notwithstanding, the issue of the scope of the Guidelines may be revisited both by the Executive Council, NMLAs or the Conference.
7. However, the view of the Chairman is that the opening of these issues should not result in delay in the preparation of the Guidelines which have been envisaged as a project to be carried and finalized by CMI as the result of CMI work without the involvement of other international bodies (which may be affected by the interpretation of Conventions) which in the past did not give the chance to CMI to present a final product.
8. Further this project of Guidelines has been envisaged as an on going project which may be supplemented and expanded subsequently with

additional guidelines even dealing with interpretation of Conventions.

9. Finally, the target is to finalize these Guidelines and vote (at least those which are ready) at the CMI Conference in Athens 2008.

F. Questions to the NMLAs

In view of the above the following questions should be answered by the NMLAs: (An effort is made to present the questions in a form permitting brief replies):

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

(Reply: Yes or No).

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

(Reply: proceed in the present form or broaden the scope now).

3. If the reply is broaden now, should the scope be broaden only in connection with the two issues of CLC and HNS set under B and C above or to other issues as well?

(Reply: to the two issues only or to other issues as well).

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

(Reply: interpretation on procedural issues only or substantive issues as well).

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

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

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

(c) Are the Claimants entitled to challenge the claims of other Claimants in the context of the CLC and HNS limitation proceedings even if such claims have been adjudicated in proceedings between the other Claimants and the person liable before courts having jurisdiction pursuant to these (CLC and HNS) Conventions, as long as and to the

extent that the challenging Claimants had not participated nor summoned to the proceedings between the other Claimant and the person liable?

G. The view of the Chairman of the I-SC

The views of the Chairman on the above questions are:

(a) Proceed with the Guidelines within their present scope (i.e. only procedural and general without entering interpretation of Conventions).

(b) Not expand the scope of our work now but discuss the two outstanding issues of CLC and HNS in parallel up to the Athens Conference.

(c) Discuss the same issues during the Athens Conference, but (due to time constrains) after completing the work on the Guidelines within their present scope, in order to avoid delay.

(d) Any decision on the two CLC and HNS issues to be incorporated in the Guidelines clarifying that this is the situation under CLC and HNS.

(e) Immediately after the Athens Conference expand the scope of the work and consider other/ additional procedural issues, including procedural issues arising from the interpretation of International Conventions.

(f) Not enter substantive issues of limitation of liability in the near future because this may upset and/or require amendments of International Conventions.

Needless to say that although I expressed my opinion on the above procedural matter (exactly because I deal with these issues for a considerable period of time and I have the main responsibility for bringing results), I am entirely open to the view which will prevail in the course of the pre-conference consultations and during the Conference.

Finally, from the above analysis it may be appreciated why these issues have been dealt separately from the main report. Members of the I-SC may also express their views but it should be appreciated that in this context those views will be taken into account which reflect the views of their respective NMLAs.

Looking forward to hearing from you.

GR. J. TIMAGENIS

Document 6

MEMORANDUM ON THE REPORT OF THE INTERNATIONAL SUB-COMMITTEE

Introduction

The mandate of the International Sub-Committee is to prepare draft Guidelines relating to procedural rules in maritime law, not to prepare Guidelines on matters of substance. However, procedural rules often have an impact on substantive issues. It is important, therefore, that the Guidelines on procedural issues are drafted in such a manner that they are not ambiguous or misleading in matters that relate to provisions in relevant international treaties, whether of a procedural or substantive nature.

Although arguably the Guidelines should not take position on issues relating to interpretation of Conventions, as the discussions in the Sub-Committee have shown it is not always possible to avoid that the procedural rules proposed in the Guidelines are based on a particular interpretation of the relevant Conventions. It is also submitted that in order to be helpful to national legislators the Guidelines and the notes and commentary relating thereto should be as clear as possible as to the meaning of the relevant provisions in the Conventions. The Guidelines and the notes and commentaries thereto should also be in line with internationally accepted interpretations of the relevant Conventions, thereby contributing to a uniform implementation and application of the Conventions.

It is recognised that in the Section headed "Interpretation", paragraph b, it is stated that "all the Guidelines are subject to and/or without prejudice to any specific provisions in any applicable convention" and that the Guidelines in Sections 11, 12, 13 and 14 contain similar caveats of a general nature (including in the Guidelines 11(b) and 14(a) a reference to the CLC and the HNS Convention of a general nature). However, it is submitted that nevertheless certain provisions in the Guidelines set out in Sections 11, 12, 14 and 15 are ambiguous or misleading, because they do not make a proper distinction between the CLC and the HNS Convention, on the one hand, and the LLMC and other conventions, on the other, which makes them less useful to national legislators. In addition, the commentary in the Report on some of these provisions does not properly address the problems involved.

It should also be pointed out that as regards the CLC, experience shows that special procedural problems arise when one incident causes pollution damage in more than one Contracting State, and it is likely that similar problems will arise under the HNS Convention. It is important, therefore, that

in order to be of assistance to national legislators the Guidelines and the commentary address these problems.

Section 11 Time limit for actions by the claimants in the limitation proceedings

It is suggested that paragraph (b) in the Guideline should read (amended part indicated in Italics):

(b) In setting these time limits special attention should be paid to[1] the *right of Claimants to take court action in respect of their Claims up to the expiry of the time bar periods laid down in certain* international conventions, including in particular the CLC and the HNS Convention.

Commentary

The LLMC does not contain any provisions relating to time bar. However, in the CLC and the HNS Convention a time limit has been fixed for the bringing of court actions in order to prevent the extinction of the relevant right of compensation – three years from the date of the damage but no more than six years from the date of the incident (Article VIII of the CLC) and three years from the date when the injured person knew or should have reasonably known of the damage and the identity of the owner but no later than 10 years from the date of the incident (Article 37(1) and (3) of the HNS Convention). Claimants who bring legal actions within these periods are entitled to their share of the limitation fund. Depriving the claimants of their right under these two Conventions to bring legal actions in respect of their claims up to the end of the applicable time bar periods laid down therein would be a violation of the Conventions. A State providing in its national law (or authorising its courts to lay down) time periods for the presentation of claims in the limitation proceedings shorter than the time bar periods laid down in these Conventions would have to include provisions in its national law protecting the rights of claimants who take legal action in respect of their claims after the expiry of this shorter time period but within the time bar periods laid down in the applicable Convention, so as to enable such claimants to participate in the distribution of the limitation fund on the same conditions as other claimants, i.e. on a *pro rata* basis, in accordance with Article V.4.

The consequences of a State providing for such shorter time periods for the presentation of claims in the limitation proceeding without protecting the rights of "late" claimants can be illustrated by the following example. An incident causes oil pollution in State A, which has provided for such shorter

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[1] The words "relevant provisions of" have been deleted.

periods in its national law, and in State B which has not done so. The persons having suffered pollution damage would normally prefer to bring their claims before the courts of their respective State, as they are entitled to do under Article IX of the CLC. Claimants bringing their claims in the courts in State A after the expiry of the shorter period laid down in the national law of that State (but before the expiry of the time periods laid down in the CLC) would be prevented from participating in the distribution of the limitation fund. On the other hand, claimants bringing their claims in the courts in State B at the same time would be allowed to pursue their claims and would be entitled to their *pro rata* share of the limitation fund on the basis of the final judgements rendered by these courts, in accordance with Articles V.4 and X. Such an unfair result would clearly be unacceptable.

It is considered that the proposed text of paragraph (b), i.e. that "special attention should be paid to the relevant provisions of certain international Conventions, in particular the CLC and the HNS Convention", is not sufficiently clear on this point. In view of the importance of this issue, it is submitted that paragraph (b) of the Guideline should be amended to read as set out above in order to avoid any doubt as to the obligation of Contracting States to respect the rights of claimants to bring their claims to court within the time bar periods laid down in the CLC and the HNS Convention.

12 Consequences of late participation

For the reasons set out in Section 11 above, it is proposed that paragraph (a) of the Introductory Note should read (amended part indicated in italics):

(a) None of the Conventions deals with the consequences of late participation in the Limitation Proceedings and consequently this is left to the national legislation of States, *subject to the obligation of States to respect the rights of claimants to bring legal actions within the time bar periods laid down in certain international Conventions including in particular the CLC and the HNS Conventions.*

In view of what is stated in Section 11 above and in order to clarify the obligation of States to respect the rights of claimants to bring legal actions up to the end of the time bar periods laid down in certain Conventions, the introductory paragraph and paragraph (b) of the Guideline should be amended to read (amendments indicated in Italics):

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

(a) [no change]

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[2] The words "Subject to any related provisions in the applicable international Conventions" deleted.

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

14 Challenge of claimants' claims

It is proposed that paragraph (a) of the Guideline should read (amended part indicated in Italics):

(a) Subject to the rules of *res judicata*[3] States should, in the context of Limitation Proceedings and the procedure for the verification of claims, give the person liable the possibility to challenge the Claims and the Claimants the possibility to challenge the Claims of other Claimants, *provided however that a claim or the amount of a claim accepted by a court in another State competent under the CLC or the HNS Convention or any other applicable Convention in a judgement which under the applicable Convention should be recognised and is enforceable in other Contracting States may not be challenged in the Limitation Proceedings.*

Commentary

Contrary to what is the case in respect of the LLMC, the CLC and the HNS Convention contain provisions on the recognition and enforcement of judgements (Article X and Article 38.2, respectively). Any judgement rendered by a court competent under the respective Convention which is enforceable in the State of origin where it is no longer subject to ordinary forms of review shall be recognized in any Contracting State, except where the judgement was obtained by fraud or where the defendant was not given reasonable notice and a fair opportunity to present his case. A judgement recognised under these provisions shall be enforceable in each Contracting State as soon as the formalities required by that State has been complied with. It is expressly stated that the formalities may not permit the merits of the case to be re-opened. It should be noted that, although under Article IX.3 and Article 38.5 respectively of these Conventions the courts of the State where the limitation fund is constituted has the exclusive competence to determine all matters relating to the apportionment and distribution of the limitation fund, these courts do not have the competence to reconsider the merits of claims which have been adjudicated by a court in another State party.

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[3] The words "or to the provisions of any applicable international Conventions [including in particular but without limitation the CLC and the HNS Conventions]" deleted.

If a Claimant whose claim falls within the CLC or the HNS Convention has obtained a judgment fulfilling the conditions referred to above rendered by a competent court in a Contracting State other than that where the limitation proceedings take place against the person liable, this claim cannot be challenged by other claimants in the context of limitation proceedings, since the courts in the State where these proceedings take place may not re-open the merits of the case. This provision applies even if this other claimant had not participated in the proceedings in which the judgment was issued, since the only exceptions from the obligation of States to recognize and enforce such judgement are if the judgement was obtained by fraud or if the defendant was not given reasonable notice and a fair opportunity to present his case. This also the interpretation which is generally held internationally.

If, as has been suggested, a final judgement by a competent national court in one State (even a judgement by a Court of Appeal or the Supreme Court) could be re-examined as to the merits by a national court in another State, e.g. the courts in the State where the limitation proceedings take place, many States would have found it difficult from a constitutional and a political point of view to become parties to these Conventions.

It is submitted that the present text of the proposed Guideline, which contains a general caveat of "subject to the provisions of any applicable international Convention [including in particular but without limitation the CLC and HNS Conventions]" does not address this point in a proper manner and is not therefore helpful for national legislators. It is suggested that, in view of the importance of this issue, the Guideline should clarify that a claim that has been accepted by a judgement rendered under the CLC or the HNS Convention by a competent court in another Contracting State fulfilling the conditions set out above may not be challenged in the limitation proceedings.

In this context it could be questioned whether a recommendation should be made in the Guidelines to the effect that other claimants should have the right to challenge in the limitation proceedings a final and enforceable judgement rendered by a court in the **same** State, although this would be permitted also under the CLC and the HNS Convention. If such a challenge were to be allowed, this could cause considerable delay in the compensation payments, as a result of the legal uncertainty that would exist concerning the final decision on the admissibility of the claim and its admissible quantum. It should be noted that as regards the CLC and the HNS Convention there is a second layer of compensation paid by an International Fund. Claims under the CLC and the Fund Convention are normally brought against the shipowner/insurer and against the Fund in the same legal proceedings, and once a judgement against them is no longer subject to appeal the claim is paid by the shipowner/insurer or the Fund in the amount set out in the judgement. This procedure could hardly be maintained, if there is a risk that a claim that had been accepted for a certain amount in a judgement which is no longer

subject to appeal could nevertheless be re-examined as to the merits, and rejected or reduced as to the admissible amount, by the court administering the limitation proceedings.

15 Relation between limitation proceedings and the merits of the claims

For the reasons set out in Section 14 above, a clear reference should be made in the commentary in Section 15 to the fact that under the CLC and the HNS Convention the courts in one Contracting State may not re-open the merits of a case that has been decided by a final judgement fulfilling the conditions referred to above rendered by a competent court in another Contracting State.

MÅNS JACOBSSON
6 February 2008

Document 7

COMMENTS by NMLAS

(i) Japan
(ii) Republic of Korea

(i) JAPAN

Comments on the "Procedural Rules Relating to Limitation of Liability in Maritime Law (Draft Guidelines)" by Japanese Maritime Law Associations

I. Replies to the questions in "Chairman's Report on Additional Issues"
1. Stay of Limitation Procedure
2. Time Limit for Claimant's Participation and Claimant's Right to Challenge Claims
II. Other Comments to Draft Guidelines
1. Possible Technical Improvement of the Wording
(1) Section 1
(2) Section 4
(3) Section 5(a), 11(a)(ii) and 12(a)
(4) Section 9(c)
(5) Section 12
(6) Section 13
(7) Section 14
(8) Section 17
(9) Section 20
2. More Substantive Issues in the Current Draft
(1) Section 7(a)
(2) Section 10(f)
(3) Section 14(b)(c)
(4) Section 15
(5) Section 19(b)

I. Replies to the questions in "Chairman's Report on Additional Issues"

1. Stay of Limitation Procedure

Questions to the NMLAs:

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

No. Japanese law does not provide for the possibility of *a stay for the whole*

limitation procedure based on the challenge by a claimant regarding the debtor's right to limit its liability.

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

JMLA does not support the Guideline along the lines of Guideline 6 paragraph (d). If it is to be maintained, careful wording would be desired to make sure that it is *not* mandatory for each state to enact legislation that allows such an "exception"; rather, it should be up to the individual state whether to provide for it. A modification along the lines of the following might be worth consideration for this purpose.

> "(d) *Notwithstanding (c), States may provide in their national legislation that* if there is no reasonable basis upon which the party liable may claim the benefit of Limitation of Liability, following a request by any Claimant or other party having a legitimate interest, a stay of the limitation procedure is to be granted by the court in summary expeditious proceedings without causing undue delay to the effects of the establishment of the Fund as a result of the court's consideration of the request."

2. Time Limit for Claimant's Participation and Claimant's Right to Challenge Claims

Questions to the NMLAs:

1. Should the Guidelines remain within their present scope, i.e. only procedural and general (abstract) without reference (as far as possible) to substantive issues or interpretation of international conventions, or should their scope be broadened? (Reply: Yes or No)

Yes. We think it is appropriate to maintain the present scope.

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

It is preferable to proceed in the present form.

3. If the reply is broaden now, should be broaden the scope only in connection with the two issues of THE CLC and THE HNS set under B and C above or to other issues as well? (Reply: to the two issues only or to other issues as well).

Not applicable.

4. If the reply is to other issues as well, should such other issues relate only to interpretation of Conventions on procedural matters or we should expand to substantive limitation issues as well?
(Reply: interpretation on procedural issues only or substantive issues as well).

Not applicable.

5. Regardless of your reply on the questions of procedure above what are your views on the two issues relating to THE CLC and THE HNS Convention, i.e.:
(a) Should/ may/ can the time limit for participation to the limitation proceedings and the distribution of the CLC and HNS Convention funds be shorter than the time limit for the extinction of claims set by these conventions?

Yes, but it should be subject to the qualification below.

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

Yes, but subject to the following qualification.
We fully share the concern raised by Mr. Jacobsson in his memorandum that the claimant's right to take court action within the time-bar period under the CLC or the HNS Convention should be respected and should not unduly be restricted by procedural requirements under domestic legislation. At the same time, we believe that these conventions leave a certain degree of discretion for national law as to how the claimant's right should be protected under limitation proceedings in each state.
It should be noted that the time limit to participate in the limitation period, at least conceptually, is of a different nature than the time-bar for the claim. As is suggested in "Chairman's Report on Additional Issues", within bankruptcy procedure, any claimant would lose its right for distribution unless it files its claim pursuant to the regulation, even if the time-bar period is not yet passed for the claim. The same would apply to the limitation procedure. Of course, a contracting state should provide a time limit for filing of the claim consistent with the purpose of the CLC or the HNS Convention. For example, it would be quite inappropriate for a court to set a short time limit immediately after the incident to which CLC applies, while loss or damage by oil pollution is still expanding and the scope of the claimants is not yet completely fixed.
However, it might be too formalistic to say, for example, that if the national law precludes late participants from the distribution of the fund, the time limitation for filing a claim in the limitation procedure *always* should be longer than the time-bar period under these Conventions. It would be also too formalistic to argue that claimants who filed their claims in the limitation procedure, whether late participants or not, *always* should enjoy an equal

share of limitation funds as other claimants. The point is rightfully expressed in "Chairman's Report on Additional Issues", which reads as follows: "if all known Claimants have presented their Claims and the Fund is ready for distribution, it is not reasonable to wait for six or ten years or even three years just in case some other Claimant may appear." We believe that a contracting state may treat a late participant, even if it files its claim within the time-bar period, in a disadvantageous manner if a fair opportunity is guaranteed for filing its claim in the limitation procedure. The limitation proceedings could also protect claimants' interest by imposing a duty on the person liable, beneficiaries and the administrator to send notice when they become aware of their existence and their claims as well as to issue public notice.

Therefore, although we, to a large extent, feel sympathy with Mr. Jacobsson's concern, we hesitate to support the proposed text and would like to maintain the current text. As for Section 11, however, we can accept the proposed text if it is further amended in the following manner.

> *"(b)* In setting these time limits, *special attention should be paid so that the right of Claimants to take court action in respect of their Claims up to the expiry of the time bar periods laid down in certain international conventions, including in particular the CLC and the HNS Convention is not unreasonably restricted."*

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

The short answer to the question is yes under Japanese law. A claimant who is not involved in a domestic decision on merit still has a chance to challenge the existence or the amount of the claim within the limitation procedure (Article 61 of the Law concerning Limitation of Liability for Shipowners (Law No. 94 of 1975)). The same is true for a foreign judgment.

Article X of the CLC and Article 40 of the HNS Convention provide that, subject to very limited exceptions, any judgment by a court with jurisdiction under these conventions shall be recognized in any other contracting states. It should be noted that *these provisions require that a contracting state of these conventions should treat a judgment rendered in other contracting states as if it is rendered under its own court but nothing more*. Nothing in these conventions requires that a contracting state of these conventions should treat a foreign judgment more preferably than its domestic decision. Therefore, the answer to question of whether foreign judgment in other contracting states can be challenged in the limitation procedure depends on

how a domestic decision (which is no longer subject to ordinary forms of review) is treated in the limitation procedure under a court of the state in question. The following example illustrates the point.

Let us suppose that a limitation procedure under CLC begins in State X, which is a contracting state of CLC. Assume Claimant x won a judgment in State X and claimant y in State Y, which is also a contracting state of CLC. Claimant x and y filed their claim in the limitation procedure in State X and claimant z challenged the amount of these claims. If the procedural rule in State X does not allow z's challenge on claimant x's claim, it should not allow the challenge on claimant y's claim because CLC requires an automatic recognition. However, if the procedural rule of State X allows claimant z to challenge the amount of claimant x's claim because of the relative nature of *res judicata*, then it is possible that the court in State X also allow its challenge regarding the existence or the amount of claimant y's claim.

There might be different opinions whether State X's procedural rule, which allows a challenge to the decision, whether domestic or foreign, by a claimant who is not involved in the procedure, is a good policy or not. Indeed, it was one of the issues during the Japanese legislation process of the Law concerning Limitation of Liability for Shipowners. The point is correctly referred to in Mr. Jacobsson's memorandum (*see*, the last paragraph of 14 Challenge of claimant' claims). However, this policy decision is a separate question from the question of automatic recognition required under Article X of the CLC and Article 40.

For the above reasons, we have a reservation regarding Mr. Jacobsson's analysis on the CLC and the HNS Convention and therefore cannot support his proposed text. Although the current wording of Guideline 14(a) is not clear enough, it is at least better than the proposed text.

II. Other Comments to Draft Guidelines

1. Possible Technical Improvements

(1) Section 1

Definitions of "Limitation of Liability" and "Limitation Proceedings"

Definitions of "Limitation of Liability" and "Limitation Proceedings" appear inconsistent. "Limitation Proceedings" is defined as "the proceedings or procedures for the "Limitation of Liability *including limitation without the establishment of the fund*" while the term "Limitation of Liability" means the limitation of liability in maritime law *through the establishment of the fund*. The exact intention of the definition might be that "Limitation of Liability" means the limitation of liability in maritime law *potentially* through the establishment of a fund.

Definition of "Guidelines"

Is the definition of "Guidelines" really necessary? The only place the term is used, except for in the preamble, is Section 1(b) and we see no useful purpose of the definition. Moreover, taken literally, it seems that the Preamble and Section 1 were not a part of the "Guidelines" because Section 1(a) notes that "Guidelines" means the Guidelines which are contained *in the following sections* of this document.

(2) Section 4

"Defense" (Section 4(b))

Section 4(b) should be amended as follows.

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

Under some jurisdictions, including ours, the possible invocation of the limitation is not, ~~exactly~~ strictly speaking, qualified as a "defense" in pending proceedings (procedure on the merit). It is regarded as a kind of objection during the enforcement procedure. In addition, the terms "original defense" and "amended defense" might be unfamiliar in some jurisdictions. These terminologies or qualifications might vary considerably among jurisdictions and the guideline should be as neutral as possible for all jurisdictions. As far as section 4(b) is concerned, we believe that the reference to "as an original or amended defense" can safely be deleted without causing any ambiguity.

"Autonomous Limitation Proceedings" (Section 4(c))

What is the exact meaning of *autonomous* "Limitation Proceedings"? If no special meaning is intended by the term "autonomous", it should be deleted.

(3) Section 5(a), 11(a)(ii) and 12(a)

The reference to "Limitation Fund" in Section 5 (a), 11(a)(ii) and 12(a) must be "Fund". See Section 1 (the definition of "Fund").

(4) Section 9(c)

The following few words should be added to Section 9(c) to align with Section 10(d).

> "(c) Evidence of the appropriate deposit of the amount of the Fund or a bank guarantee or <u>other acceptable guarantee</u> equal to the amount of the Fund."

(5) Section 12

Section 12(b) should be amended as follows:

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

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

(6) Section 13

Section 13 begins with "States should *enact*", while other sections uses the expression "State should provide in their national legislation." Is there any intended difference? If not, it would be better to use the same wording.

(7) Section 14

Section 14(b) may be amended as follows:

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

The number of the claimant does not matter.

(8) Section 17

Section 17(b) may be amended as follows:

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

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

(9) Section 20

Section 20 may be amended as follows:

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

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

2. More Substantive Issues in the Current Draft

(1) Section 7(a)

Section 7(a) should be deleted.

We fully understand that the issue of international parallel proceedings is a

serious practical concern. However, it is a totally different question whether the current project is an appropriate opportunity to address the issue.
While international conventions (Article 13 of LLMC, Article VI of the CLC and Article 10 of the HNS Convention) provide for the mutual recognition of the limitation proceedings among Contracting States, Guideline Section 7(a) covers all limitation proceedings in foreign states whether based on international convention or on their national legislation. It is quite difficult to predict what form such limitation proceedings would take or what kind of effect is intended under the proceedings in the state in question. We are not sure if the Guidelines could offer any meaningful guidance to the national legislation in this circumstance. We are not even sure whether the demand for "expeditious procedure" would be feasible in this context.
From the viewpoint of our national MLA, the issue can only be solved by carefully drafted international conventions or a model law something like UNCITRAL Model Law on Cross-Border Insolvency 1997, and a simple reference in the Guidelines cannot help the situation. We believe that the issue of the recognition of a foreign limitation procedure should be, *if and only if CMI wish to take up the issue*, examined independently outside the current project, which mainly focuses on the domestic limitation proceedings.

(2) Section 10(f)

Section 10(f) should be deleted.
Section 10(f), which prohibits "any restriction" on the transfer of the amount for distribution, might be problematic for many countries. Although we fully understand foreign claimants' legitimate interest to receive distribution from the Fund, it seems quite doubtful that such interests automatically and completely override the State's foreign exchange regulations.
Article 34(7) of the 1992 Fund Convention or Article 35(6) of the HNS Convention requires Contracting States to authorize the transfer and payment of any contribution to the Fund and of any compensation paid by the fund without any restriction. However, it should be noted that these provisions are based on a specific policy consideration (e.g., each contracting state should make sure that its domestic contributors cannot use the currency regulation as an excuse to refuse to pay its contribution). Without such special policy, which supersedes each state's currency regulation, we believe that the efficient distribution of the fund of limitation proceedings alone cannot automatically justify the unlimited freedom of the currency transfer.

(3) Section 14(b) (c)

Introductory note (d) to Section 14, based on a careful comparative research, notes the following: "However, in certain countries all the objections are tried collectively and only one judgment is issued. As long as the challenge of

certain claims do not delay the payment of others this may well be an alternative." We appreciate for the reference and hope it would be desirable that the idea in this reference is reflected in the Guidelines in some way.

(4) Section 15

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

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

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

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

(5) Section 19(b)

Section 19(b) should be amended as follows:

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

When the applicable Convention provides for compulsory set-off, the relevant claim should be deducted by the counterclaim automatically. While any claimant participating in the distribution may raise the issue of set-off, as

stated in the current Guidelines, the court should set off, regardless of whether or not a claimant raised the issue. The current wording of the draft Guidelines may be a little misleading regarding this aspect of compulsory set-off.

March 31, 2008

Japanese Maritime Law Association
Special Committee on the Procedural Rules Relating to Limitation of Liability

Chairman Noboru Kobayashi
Reporter Tomotaka Fujita

(ii) Republic of Korea

Comments from Republic of Korean Maritime Law Association on the Guidelines of the Procedural Rules relating to Limitation of Liability in Maritime Law

A. Comments on the Draft Guidelines

Section 1. Interpretation

On the definition of "Fund", there is ambiguity on what is included in the Fund. Either cash or bond may be provided as a Fund.
Therefore, we suggest to insert ", which could be provided by way of a bond or by a cash" after "—— be satisfied" as followings;
"Fund" means the fund established for the purpose of limitation of liability out of which claims subject to limitation may be satisfied, which could be provided by way of a bond or by a cash.

Section 3. Limitation of liability without the constitution of a fund

As Introductory Note (e) says, if the person liable who wants to limit its liability is more than one person, establishment of the fund is desirable.
There should be a deadline by which the claims subject to limitation should be registered at the court in charge of the distribution of fund, and in the event the claimants fail to comply with the deadline, the claims shall be forfeited. Otherwise, the owners will be exposed to the risk of overpayments above the limit because, but for the deadline, this scheme (i.e., limitation of liability without the constitution of a fund) would allow other claimants to appear after the completion of the distribution of the fund.

Section 4. Time Limit for Starting Limitation Proceedings

Under Korean law, a person liable should apply for starting limitation proceedings within one year after he receives claims more than its limitation amount. (or 6 months in case of oil pollution case by oil tanker).
In order to facilitate the compensation procedure for the claimants, the person liable may as well apply within some time limit for starting limitation proceedings. Republic of Korea MLA opposes to section 4 in which no time limit is set out for invoking the right of limitation.

Section 6. Challenge the right of limitation

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

Section 8. Loss of Right to Limitation of Liability

According to section 7, the attached vessel should be released expeditiously, following the establishment of the Fund. On the other hand, if the right to limit liability is lost, the Fund shall nevertheless remain in place pursuant to Section 8.
The release of the previous attached asset such as vessel should not be released if there is possibility that the right to limit liability is involved. When the total claim is US $ 2M and the limitation amount is US $ 1M and the attached vessel is worth US $ 2M, and the vessel had been released after the establishment of the fund, the claimants are short of security with limitation amount of US$ 1M in case that the right of limitation is lost. By establishing the fund, in this example, the person liable is abusing the limitation procedure.
Therefore, republic of Korea MLA would like to stress on the necessity that the provision on releasing mechanism on the attached asset in the Guideline should be revisited and elaborated more carefully in order to safeguard the innocent claimants.

Section 9. Information and Documents to be provided by the Person invoking the benefit of limitation

Republic of Korea MLA wants to add several other information such as (i) reason of the applying, (ii) person invoking the benefit of limitation (iii) vessel's name involved in the accident.

Section 10. Approval of the Right of Limitation

The title is not consistent with the contents in section 10. Therefore, the title should be adjusted in line with the content.

Section 11 & 13

The term "filing" used in Draft Guideline (a) (iii) of the section 11 and registration used in Draft Guideline (a) of the Section 13 should be identical in order to avoid any misunderstanding and confusion.

Section 12. Consequences of Late Participation

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

Section 19 Counter Claims

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

Additional Comment

Republic of Korea MLA would like to suggest to include the effect of the establishment and distribution of the fund in the guideline.
When the claimant who participates in the limitation proceedings are able to receive distributions of the Fund, the person invoking the benefit of limitation will be relieved the liability from outside of the limitation proceedings (Art. 73 in Korean Shipowner's Limitation of Liability Act).

B. Comments on Chairman's Report on Additional Issues

As to Section F (Questions to the NMLAs)

1. Yes.
2. Proceed with the present text.
3. Two issues only, otherwise it is too broad.
4. Interpretation on procedural issues.

5.(a) Yes, the time limit for participation to the limitation proceedings and the distribution of the CLC and HNS Convention may be shorter than the time limit for the extinction of claims set by these conventions.

(b) Yes, the consequence of late participation should result in the loss of its claim by the delayed claimant.

(c) Yes, the claimants should be entitled to challenge the claims of other claimants in the situation mentioned here.

Rok Sang, You
President of Republic of Korea Maritime Law Association

UNCITRAL DRAFT CONVENTION ON CONTRACTS FOR THE INTERNATIONAL CARRIAGE OF GOODS WHOLLY OR PARTLY BY SEA

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THE UNCITRAL CARRIAGE OF GOODS CONVENTION: CHANGES TO EXISTING LAW

Michael F. Sturley*

1. Introduction – 2. Multimodal Coverage: Scope of Application and Period of Responsibility. – 3. Freedom of Contract – 4. Jurisdiction and Arbitration – 5. Limitation Amounts – 6. The Loss of the Right to Limit Liability – 7. Himalaya Clauses – 8. The Time-for-Suit Period – 9. Expanded Shippers' Obligations – 10. Electronic commerce – 11. Controlling Parties and the right of control – 12. Qualifying Clauses

1. Introduction

As this paper goes to press (in May 2008), the United Nations Commission on International Trade Law (UNCITRAL) is about to consider the Draft Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea ("Draft Convention") that was prepared by UNCITRAL's Working Group III (Transport Law).[1] By the time the CMI convenes in Athens (in October 2008), the Commission will presumably have approved the Draft Convention in some form. No doubt the Commission will change the draft to some extent, even if substantial changes are unlikely. In Athens, we will be able to discuss the Draft Convention in its final form. In the meantime, the analysis in all of the conference papers must be based on the text proposed by Working Group III, which appears as an annex to the report of the Working Group's final session (in January 2008).[2] This paper will focus on the Draft

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(*) Stanley D. and Sandra J. Rosenberg Centennial Professor of Law, University of Texas (Austin). Prof. Sturley served as the Rapporteur for the CMI's International Sub-Committee on Issues of Transport Law (which did much of the preparatory work for the project discussed here) and as the Senior Adviser on the United States Delegation to Working Group III (Transport Law) of the United Nations Commission on International Trade Law (UNCITRAL). But he writes here solely in his academic capacity and the views he expresses are his own. They do not necessarily represent the views of, and they have not been endorsed or approved by, any of the entities (or any of the individual members) with which (and with whom) he served.

[1] For a discussion of the background to this project, including the CMI's preliminary work, *see* Michael F. Sturley, *The United Nations Commission on International Trade Law's Transport Law Project: An Interim View of a Work in Progress*, 39 Texas Int'l L.J. 65, 68-75 (2003).

[2] U.N. doc. A/CN.9/645, annex (2008), available at http://daccessdds.un.org/doc/UNDOC/GEN/V08/507/44/PDF/V0850744.pdf?OpenElement. The UNCITRAL web site (www.uncitral.org) contains — in the six official U.N. languages — each draft of the proposed

Convention's proposed changes to existing law, often summarily (to permit broader coverage in the limited space available).

The publication schedule requires an odd comparison on one side of the balance, since we are not yet sure exactly what the final convention will include. The comparison is also odd on the other side of the balance because "existing law" is even more uncertain than the final text of the convention. Most of world trade now operates under the Hague-Visby Rules, but that regime is only one part of existing law. Well over a quarter of world trade is still subject to the older Hague Rules and over thirty countries (albeit countries with only a small proportion of world trade) are parties to the Hamburg Rules. To further complicate matters, not every country adheres precisely to one of these three regimes. China—one of the world's largest trading nations—has a national maritime code that incorporates elements of both the Hague-Visby and Hamburg Rules (along with domestic elements that are unique to Chinese law). Even the Nordic countries, which have long been major partners in the international effort to achieve uniformity in this field, have incorporated significant elements of the Hamburg Rules into their domestic versions of the Hague-Visby Rules.

Every element of this uneven patchwork is part of the "existing law" that would need to be considered in a full comparison. Particular aspects of the Draft Convention will result in more significant changes in some countries than in others. To the extent that one can generalize, the Draft Convention draws largely from the Hague-Visby and Hamburg Rules, incorporating significant elements from each. Those countries that have already adopted a national law incorporating significant Hague-Visby and Hamburg elements are therefore less likely to see significant changes under the new regime in their legal systems (although every country can expect, from the very nature of a compromise, that some significant changes will need to be made). On the other hand, those countries that still adhere to the Hague Rules are likely to see the greatest changes.

All of these comparisons are necessarily relative. If we focus on the big picture, the Draft Convention's proposed changes to existing law are not earth-shattering. The new convention is deliberately evolutionary, not revolutionary. The focus throughout has been on updating and modernizing the existing legal regimes that govern the carriage of goods, filling in some of the gaps that have been identified in practice over the years, and harmonizing the governing law when possible. Indeed, several proposals to deal with more revolutionary subjects (or at least subjects in which harmonization would have been difficult) were abandoned precisely so that the Working Group could in fact complete the project and address the core issues.

Updating and modernizing are particularly necessary when a law drafted over 80 years ago still regulates an industry that has changed remarkably in the

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convention, the reports of each Working Group meeting, the formal proposals made by each delegation, and all of the other documents that have been filed with UNCITRAL.

meantime. The Visby Amendments are over 40 years old, and they made only a few changes to the original Hague Rules. Even the Hamburg Rules are over 30 years old. The draftsmen of the early 1920s could not anticipate the container revolution, but the Visby and Hamburg draftsmen did not anticipate the impact that the container revolution would eventually have on modern commercial practices—including the incredible growth of multimodal shipments, the increasing prominence of transportation intermediaries, and the potential for new technologies (such as electronic commerce).

Even if existing law adequately addressed the requirements of modern industry, different regimes address those requirements in different ways, thus creating a need for greater harmonization. The benefits of international uniformity in this field are well-known and widely accepted, but some of the world's largest trading nations have nevertheless permitted their laws to diverge from the international norms. The Draft Convention offers an opportunity for the world community to regain the uniformity that it enjoyed immediately before the Second World War.

Despite the heavy focus on modernization and harmonization, some of the Draft Convention's evolutionary changes include modest reforms in legal doctrine. Perhaps the most visible of these changes is the elimination of the heavily criticized "navigational fault" exception,[3] but even that high-profile decision is not a "change to existing law" for those countries that have adopted the Hamburg Rules. Indeed, in practical terms it is not a change to existing law in those countries whose courts will rarely if ever uphold the defense.[4] But a number of other provisions in the Draft Convention, some of which are of key importance, will also change the law to make it better suited to meet the needs of the industry as it enters the 21st century.

2. Multimodal Coverage: Scope of Application and Period of Responsibility

Perhaps the most significant innovation of the Draft Convention is its door-to-door application. The Hague and Hague-Visby Rules apply only on a tackle-to-tackle basis. The Hamburg Rules extend coverage slightly, applying port-to-port. Such limited coverage may have made sense in the days when each segment of a journey was generally governed by its own contract of carriage. In today's world, however, when contracts of carriage are typically concluded

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[3] Article 4(2)(a) of the Hague and Hague-Visby Rules excuses the carrier from liability for any "[a]ct, neglect, or default of the master, mariner, pilot, or the servants of the carrier in the navigation or in the management of the ship."

[4] In some countries that recognize the navigational fault defense in theory, the courts will often find a negligent member of the crew to be evidence of a carrier's failure to exercise due diligence to provide a seaworthy vessel.

on a door-to-door basis, it makes much more sense for the governing law to follow the commercial practice. Thus the Draft Convention makes the carrier responsible for the entire contractual period of carriage, which in a multimodal shipment will often be from the carrier's receipt of the goods at an inland location in the country of origin all the way to the carrier's delivery of the goods at an inland location in the country of destination.

This fundamental change in the law was initially controversial, but it is the only way to accomplish the most basic goals of a uniform international legal regime in this field: To obtain certainty, predictability, and uniformity, one legal regime must govern the entire performance of the contract. In practice today, the parties often agree in their contract to extend the maritime regime inland, but such a contractual extension takes effect only with the force of a contract. The Draft Convention will apply a uniform legal regime with the force of law.

It is important to recognize, however, that the Draft Convention is not a full multimodal instrument. Before it can apply, there must be not only a sea leg but an international sea leg. Thus the Draft Convention can best be characterized as "maritime plus."

The Draft Convention also recognizes that in some parts of the world (particularly Europe) there are existing regional conventions governing inland transport. Because the countries involved feel strongly about preserving the application of these regional regimes, the Draft Convention adopts a limited network principle so that the extent of the contracting carrier's liability for inland damage (when it can be localized) will be governed by the regional convention that would have applied if a separate contract for the inland leg had been concluded. Although this approach undermines international uniformity and predictability, the Working Group concluded that it was a practical necessity.

The Hague and Hague-Visby Rules, as a general rule, apply to outbound shipments *from* a contracting State. The Hamburg Rules, in contrast, apply to both inbound and outbound shipments to or from a contracting State). The Draft Convention follows the Hamburg Rules, thus changing existing law for many countries.

3. Freedom of Contract

One of the most important reforms is the Draft Convention's revised treatment of the parties' freedom of contract. Although this change has also been among the more controversial, it is still evolutionary rather than revolutionary. The Hague, Hague-Visby, and Hamburg Rules already permit freedom of contract between the immediate parties to a transaction in certain situations—particularly contracts of carriage under charterparties.

The Draft Convention extends this freedom of contract to volume contracts, but achieves greater uniformity by bringing these contracts into the new regime at least on a default basis. In other words, shipments under volume contracts

will be subject to the Draft Convention unless the parties take the affirmative step of contracting out of coverage. Under existing law, shipments under charterparties are routinely subject to the Hague or Hague-Visby Rules, but only because the parties take the affirmative step of contracting into coverage.

The biggest concern among some members of Working Group III was that small shippers might be coerced into concluding volume contracts, or might inadvertently surrender rights that the Draft Convention would otherwise guarantee. At the Working Group's final session, therefore, additional safeguards were added to the freedom of contract provision to ensure that every shipper would always have the right to conclude a contract of carriage on convention terms, and that every derogation from the convention must be clearly expressed.

4. Jurisdiction and Arbitration

The Draft Convention's jurisdiction and arbitration chapters are based directly on the corresponding chapters of the Hamburg Rules, but they do provide some additional protection for carriers (particularly in the context of volume contracts). As a result, these chapters will include some changes to existing law even in countries that have adopted the Hamburg Rules.

Because the Hague and Hague-Visby Rules do not address jurisdiction and arbitration at all, the existing law in most countries must be found in domestic legislation or national jurisprudence. For countries such as Canada, which have legislation similar to the Hamburg Rules, the Draft Convention would represent a fairly modest change. For countries such as the United Kingdom, whose national jurisprudence strongly favors the enforcement of jurisdiction and arbitration clauses, the Draft Convention would represent a more significant change.

Because some members of Working Group III felt strongly about the need to address jurisdiction and arbitration while other members felt strongly about preserving inconsistent domestic law, these subjects were among the most controversial in the negotiations. Matters were further complicated by the need to involve the European Commission, which has the exclusive competence to negotiate on this issue for the nations of the European Union. In the end, it was possible to reach a compromise solution only by making the jurisdiction and arbitration chapters optional. A nation may ratify the Draft Convention without accepting these two chapters, which will bind only those countries that explicitly declare their intention to be bound by them.

5. Limitation Amounts

When the Hague Rules were negotiated in the early 1920s, the "high"[5]

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[5] The Hague Rules' limitation amount was £100 sterling, then worth approximately US$500. Different countries translated this figure into their national currencies, thus leading to wildly different limitation amounts as exchange rates varied.

package limitation was considered a major improvement for cargo interests. Not only was this limitation figure five times as high as limitation amounts that were commonly included in bills of lading at the time, it was also thought to be high enough to cover all but the most valuable cargo.

In the intervening years, inflation changed the calculus. In 1924, for example, a U.S. dollar was worth well over an order of magnitude more than a dollar is worth today.[6] As it happens, the effects of inflation were offset to some extent by two consequences of the container revolution, even in countries that still follow the Hague Rules. Containerization has permitted carriers to transport cargo in containers in much smaller packages than would have been possible in 1924, with the result that the package limitation is less likely to apply.[7] Moreover, the efficiencies of containerization make it economically feasible to ship less valuable cargo than would otherwise have been possible. As a result, the average value of maritime cargoes has not increased at the same pace as inflation generally.

The bigger problem was with non-containerized cargo. Many courts have applied the package limitation amount even to large pieces of valuable machinery. When the Hague-Visby Rules increased the package limitation, therefore, an independent limitation based on the weight of the goods was also added. For "packages" weighing over 333 kilograms, cargo damage is instead subject to the weight-based limitation. The Hamburg Rules maintained the same mixed package/weight approach, simply increasing the limitation figures by 25%.

The bottom line is that most of the world's trade is now subject to the Hague-Visby limitation amounts of 666.67 SDRs per package and 2 SDRs per kilogram. A large portion of the world's trade is still subject to the Hague Rules, which has only a package limitation. The amounts vary widely. In the United States, for example, the limitation amount is $500 per package. A small portion of world trade is subject to the Hamburg limitation amounts of 835 SDRs per package and 2.5 SDRs per kilogram.

Although only a very small proportion of the world's maritime trade is governed by the Hamburg Rules, a disproportionately large number of the

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6 These comparisons are based on the consumer price index. That index may not be the most relevant measure for these purposes, but it illustrates the general point.

7 Consider, for example, a shipment of television sets (a fairly common high-value cargo). If television sets had existed in 1924, or if the industry had still used 1924 methods to ship television sets in this century, shipment would have required the consolidation of a number of sets in a large packing crate. In case of damage, the package limitation would have applied to everything in that packing crate. Thus £100 or $500 would have been the total compensation for perhaps a dozen television sets. Containerization, however, permits each set (packaged in the cardboard box that the ultimate consumer sees) to be loaded into the container. The law then treats these individual boxes as "packages" for limitation purposes. Thus £100 or $500 would be the maximum compensation for each television set.

countries participating in Working Group III have adopted that regime. Moreover, many of these countries felt very strongly that the new convention should represent significant "progress" over the Hamburg Rules (with "progress" being defined as increasing the limitation amounts). It was therefore necessary for the major maritime nations (which generally favored keeping the limits at Hague-Visby levels but were willing to go up to Hamburg limits) to compromise with countries seeking much higher limits. In the end, the Working Group agreed that the Draft Convention would increase the package limitation to 875 SDRs (almost a 5% increase above the Hamburg limit) and would increase the weight-based limitation to 3 SDRs per kilogramme (a 20% increase above the Hamburg limit).

These increases would have no effect on the majority of cases in which the existing limits are already high enough to provide full recovery, but the higher limits will provide significantly higher recoveries in those extreme cases that expose the Hague Rules to the strongest criticism. Heavy machinery would no longer be subject to *de minimis* recoveries. For the Hague-Visby and Hamburg countries, the increases will affect far fewer cases, and the impact will be more modest in those cases.

Having a higher limitation amount should also eliminate much of the wasteful litigation designed solely to "break" the limitation.

6. The Loss of the Right to Limit Liability

The Hague-Visby and Hamburg Rules both make it extremely difficult for a cargo claimant to "break" the package limitation. As a general rule, the carrier is liable to pay claims above the limitation amounts only when it has acted deliberately or recklessly.

The rule is not so clear under the Hague Rules, with the result that domestic law in some countries following the Hague Rules has made it easier to avoid the limitation provisions. The common-law deviation doctrine is perhaps the best-known example, but other similar doctrines also exist.[8]

The Draft Convention follows the intent of the Hague-Visby and Hamburg Rules, using stronger language to make the rule clear even in countries that currently recognize doctrines that make it easier to break the limitation amount.

7. Himalaya Clauses

The extent to which negligent third parties can rely on a carrier's defenses and limitations of liability has been a contentious issue for over half a century.

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[8] In the United States, for example, the courts have created a judicial doctrine know as the "fair opportunity" requirement. If the carrier does not give the shipper what the court ultimately determines was a "fair opportunity" to declare the true value of the cargo, and thus avoid the package limitation, then the carrier may not rely on the package limitation.

At first, the primary question was whether stevedores could benefit from the carrier's package limitation or time-for-suit provision. In recent years, with the growth of multimodal shipments, a much broader range of the carrier's sub-contractors have claimed the benefit of a broader range of the carrier's defenses and limitations of liability (including inland carriers that had nothing to do with the maritime aspects of the contract).

The Hague Rules did not explicitly address the issue. The Hague-Visby Rules recognized the problem, but the resolution was ambiguous for independent contractors (who are the ones most likely to raise the issue). The Hamburg Rules protect the carrier's servants and agents, without explicit mention of independent contractors.

Courts in many countries have addressed the issue with varying results. Some have held that any person performing any of the carrier's duties under the contract of carriage was automatically entitled to whatever contractual defenses the carrier would have had. At the opposite extreme, some courts held that negligent third parties were fully liable for their own negligence unless the contracts extended the carrier's defenses in terms that complied with restrictive national doctrines. Eventually, most courts concluded that third parties would be protected if the bill of lading included an adequate "Himalaya clause," and most carriers have learned to incorporate adequate Himalaya clauses into their bills of lading. The modern doctrine has become more of a trap for the unwary (who failed to comply with the requirements established by the courts) than a means to protect identifiable commercial interests.

The Draft Convention provides automatic protection to all of the carrier's employees, agents, and independent contractors to the extent that they are subject to suit under the convention. Thus "maritime performing parties," who assume the carrier's obligations during their own periods of responsibility, are automatically protected (to the same extent as the carrier), whether or not the transport document includes a Himalaya clause. Non-maritime performing parties are not subject to suit under the convention.

In theory, this represents a significant change in the law under the Hague Rules; a significant clarification of the law under the Hague-Visby Rules; and a modest clarification of the law under the Hamburg Rules. In practice, the Draft Convention will make very little difference at all. Commercial parties have been achieving the same result by contract for years. If anything, the new convention may cut down on some wasteful litigation.

8. The Time-for-Suit Period

Under the Hague and Hague-Visby Rules, a cargo claimant has one year in which to file a suit against the carrier before the action is time-barred. The Hamburg Rules extended this time-for-suit period to two years. The Draft Convention follows the Hamburg Rules.

In theory, this will be a significant change for most of the world. In practice, many experienced practitioners have suggested that the effect will simply be to postpone everything by twelve months. In some parts of the world, however, the extra time may enable claimants to gather the evidence they need to make their claims.

9. Expanded Shippers' Obligations

The existing maritime regimes focus almost entirely on the carrier's obligations to the shipper. In the Hague and Hague-Visby Rules, only two paragraphs of article 4 address the issue of shippers' obligations. Article 4(3) does not even impose liability, but rather preserves preexisting negligence liability from implied repeal. Article 4(6) imposes strict liability, but only in narrow circumstances. The Hamburg Rules do not expand on that liability.

The Draft Convention, recognizing both the bilateral nature of the shipping transaction and the serious risks that the shipper is better situated than the carrier to avoid, imposes more requirements on shippers (particularly the obligation to share information) and explicitly imposes liability on a shipper that breaches the requirements.

10. Electronic commerce

It is hardly surprising that the Hague, Hague-Visby, and Hamburg Rules make no provision for electronic commerce. The concept had not even been considered when the Hague Rules were negotiated, and there was no commercial need to address the topic when the Hague-Visby and Hamburg Rules were negotiated. Even today, electronic commerce is more of a promise on the horizon than a wide-spread commercial reality.

One reason that electronic commerce may not be growing faster is the lack of a legal framework against which a system of electronic commerce can be established. Commercial parties are unlikely to risk millions on a venture with little idea how the law will treat them if things go wrong. Accidents and losses may be inevitable, but people investing their money need to know how the law will deal with those problems when they arise.

The goal of the Draft Convention is to establish a legal framework that will give the industry the legal background rules that will enable electronic commerce to become a practical reality. It is far too early to know exactly how electronic commerce will develop, so the convention needs to be "media neutral," able to handle whatever system might ultimately emerge.

11. Controlling Parties and the Right of Control

Prior maritime conventions have not dealt with controlling parties or the concept of the right of control. Existing law is thus found in domestic law, and

may therefore be somewhat different in every country (although the broad principles are in fact fairly uniform). In practice, the Draft Convention will not tend to change existing law on this subject in any significant way, but will instead provide a solid and uniform legal basis for issues that have in many legal systems been left to unpredictable practice (particularly when there is no negotiable bill of lading in the transaction).

The Draft Convention's provisions on the right of control clearly fill a gap in the law in many jurisdictions, and help harmonize the law. They also play an important role in modernizing the law. Because these provisions are most important when the carrier does not issue a physical piece of paper qualifying as a negotiable bill of lading, which is exactly the situation in an electronic commerce transaction, this chapter constitutes an important part of the Draft Convention's indirect facilitation of electronic commerce.

12. Qualifying Clauses

Under the Hague and Hague-Visby Rules, the carrier is required to issue a bill of lading if the shipper requests one, and that document is required to give certain information about the goods. The carrier may escape this liability under certain circumstances, but as a practical matter the remedy — declining to issue the document — is commercially unacceptable for the carrier. The Draft Convention allows the carrier to qualify the transport document (under certain circumstances) and to rely on these qualifying clauses. For some countries, this will be a significant change from current law; for others, it will simply be a confirmation of existing practice.

THE NEW CONVENTION ON INTERNATIONAL CONTRACT OF CARRIAGE OF GOODS WHOLLY OR PARTLY BY SEA : A CIVIL LAW PERSPECTIVE

Philippe Delebecque*

1. *UNCITRAL Convention balances'*. The UNCITRAL draft convention on international contract of carriage of goods wholly or partly by sea is now adopted. The text is the fruit of long and wide debates. It contains various compromises, which is not surprising if we recall that the working group in charge of the draft was composed of nearly thirty national delegations members of UNCITRAL, besides the fact that there were professional organization representatives. Despite those difficulties, the drafters had not hesitated, as soon as the first session, to point out some guidelines in order especially to ensure fundamental balances:

– between tradition and modernity: hence, the concern to ensure safety of navigation and environment protection, but in the same time the willing to not totally change positive law;
– between the owner's and the shipper's interests, hence the determination of their respective duties;
– between the different legal systems and more precisely between common law and civil law[1], hence the team of experts coming from both legal systems ; yet, the common law system was best represented due mostly to the use of English language prevailing in maritime matters.

2. *Common law or civil law influences*. The previous UNCITRAL Convention, the first fundamental convention on international trade law, the Vienna sale of goods convention (VSC), has, in the opinion of most of the doctrine, realized quite a good balance between the different legal systems[2]. Its spirit of moderation and compromise has been underlined and, as a matter of fact, the use of common law mechanisms (*e.g.*: last shot theory; anticipatory breach; mitigation of damages) has its counterpart by references to German law (cf. nachfirst theory, art. 47) or French law (*exceptio non adimpleti contractus*, art. 58).

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* Law Professor, University Paris-I (Pantheon-Sorbonne)

1 We understand by civil law the continental law belonging to the roman German family.

2 V. J.M. Jacquet, Le droit de la vente internationale de marchandises: le mélange des sources, Mélanges Kahn, 2000, 75.

Likewise, the road and rail carriage conventions (CMR; CIM) and inland waters convention (CMNI) are not inspired by a unique system. There has been several borrows to various legal systems and the result is quite satisfactory.

In the context of EU where an attempt to define common principles of law of contract is presently an issue, the mutual influences between common law and civil law is today very critical.

3. *Hague Visby Rules interpretation: divergences and convergences*. With no doubt the question of the spirit of maritime texts is timeless. It was already an issue at the time of the adoption of the first maritime convention on carriage of goods, Brussels Convention 1924. Yet at that time, French language and French legal concepts were still influent and, besides, it was the French version of the Hague Rules which had officially authority. Likewise in air law, for the French version of the Warsaw Convention. The situation changed with the adoption of Hague Visby Rules (HVR) for which several linguistic versions are recognized and their coming into force.

If these Rules are specifically international as a convention of uniform law, some effect is left to national law. First of all, when one has to fill in gaps, the applicable law has to be determined. This situation leads unavoidably to different solutions. The best example is case law concerning the opposability of jurisdiction clauses. The French position is strict, while the Dutch position is liberal[3]. Besides, even though in EU, Rome Convention has harmonized conflicts of law in contractual issues, the text remains so complicated that it leads to different solutions. For instance how to understand art. 4.4 Rome Convention? But with no doubt, the adoption of Rome 1 Regulation will make improvement[4].

Secondly, the Hague Visby Rules often need interpretation and, as F. Berlingieri has underlined, differences are obvious. For example, as for the meaning of art. 1.b HVR, the English have a literal interpretation considering, to make a long story short, that in the absence of B/L the convention does not apply[5] ; as for the French, the contractual approach has been set forward[6].

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[3] See e.g. Cass. com. 29 nov. 1994, DMF 2005, 209, obs. P. Bonassies; CJCE 9 nov. 2000, Coreck Marine, DMF 2001, 187 and the obs.

[4] Rome 1 deals separately with goods and passengers. With regard of goods, the parties retain freedom of choice; absent of choice, the governing will be the law of the place of delivery or the law of the carrier's habitual residence. With regard of passengers, there is more limited freedom of choice because passengers are treated as akin to consumers.

[5] Given the straight B.L is considered as a true B/L (cf. Rafaela S, Ch. Lords 2005, LLR 2005.I.345). French Cour de cassation has the same analysis (Cass. com. 19 June 2007, DMF 2007, 790, obs. Tassel).

[6] V. MM. Bonassies et Scapel, Traité de droit maritime, LGDJ 2006, n° 905.

Likewise, there is true opposition between House of Lords and the French "Cour de cassation" concerning the validity of FIO or FIOS(T) clauses[7]. This does not mean that there are no convergences between the national interpretations: indeed they do exist especially in the understanding of excepted cases[8] or also in the understanding of damages compensated on the basis of the convention (cf. damages in relation or in connection with the cargo).

4. *UNCITRAL Convention philosophy: "pragmatism first"*. The first ambit of Uncitral Convention is to unify again the law of international carriage and especially of international carriage by sea. The convention has the purpose to consider all contractual issues with no bias. The drafters have not been willing to retain such or such conception. Therefore the convention has no real theoretical basis, but only ambits to give a practical answer to the issues, while leaving to the applicable law the task to fill in possible gaps. Several times, especially on the question of the legal situation of the consignee, party or third party to carriage contract, it has been said that the priority was not to settle theoretical problems, precisely because of the differences between legal systems. Therefore it is difficult to point out the influences of such and such legal family and to venture that the Uncitral Convention would be inspired more by common law or civil law. Among all, the convention is pragmatic: that is its own philosophy!

5. *UNCITRAL Convention: what about a civil law perspective*. This pragmatic approach is no doubt far from a civil law perspective which traditionally prefers to set forward theoretical basis of rules. The Uncitral convention is far from the Cartesian tradition. Besides, if important concessions of the contractual approach have been made, putting aside the documentary approach (art. 5 s.), all the conclusions are not drawn accurately. The charter-parties are not governed by this convention, but charter-parties are not, for the civil lawyers, contracts but documents: the expression "affrètement" preferably should have been used[9]. Besides, if the convention is, from now on, an international convention on carriage contract and no more only, as by the past, a convention on transport liability, it is not certain that the drafters have understood all of the consequences of the change. In a civil law

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7 Comp. "The Jordan II" (Ch. Lords, LLR 2005.I.57) and Cass. com. 19 march 1985, DMF 1986, 20

8 Cf. about the interpretation of "nautical fault" concept, the restrictive solutions are comparable, see. MM. Bonassies et Scapel, op. cit., n° 1094; J F Wilson, Carriage of goods by sea, Longman, 4th ed., p. 262.

9 The French concept of "affrètement" does not exactly meet the English concept of "affreighment".

perspective, the enlargement of the international law is decisive. The civil lawyers due to the preference for abstraction will certainly give to this enlargement more importance than common lawyers. Yet, we will not go too far in this perspective, and one must read the convention with a positive view.

In other words, reading the Uncitral convention in a civil law perspective leads to three questions: what might be offending for a civil lawyer? What a civil lawyer is happy with? What can be satisfying for a civil lawyer?

I. What might be offending for a civil lawyer ?

6. *Structure.* Two points may offend a civil lawyer: the method and substantial issues.

A. Method

7. *Methodology and terminology*. A civil lawyer has some difficulty to be satisfied with art. 1 that gives plenty of definitions and contains fantastic tautologies. Let us recall the definition of the transportation contract as a contract by which a carrier has to carry! See in the same way art. 1.4: non liner transportation means any transportation that is not liner transportation! Or art. 1-29: a competent court means a court that may exercise jurisdiction over the dispute!

One is also struck by the structure which does not follow the contractual logic and therefore complicate it. It would have been much simple to follow three points: conclusion, content and execution of contract. One has also some difficulty to understand the title of chapter 6: additional provisions relating to particular stages of carriage, when it would have been more clear to link it with the former chapter or even the chapter on carrier's obligations.

The willing to say things all together from a positive and negative point of view is also peculiar: this is true for definitions; this is also true for certain provisions. Let's look article 6: art 6.2 precises that the convention does not apply to contracts of carriage in non liner transportation, except when … With no doubt, this could have been said more clearly and more directly. This method is all the more critical that, when we are waiting for the solution, the text is silent: about the delay, art. 18 and art. 22 say the carrier is liable if the delay is agreed, but nobody knows what happens if no delay has been agreed. In our opinion, the solution may be found in applicable law. The same problem exists about the shipper's liability for delay.

A last word about terminology: what is a reasonable man or what is reasonably? Both expressions are used very often by the text. I must say that our references to "bonus pater familias" are hardly better. Moreover, can we still talk of "common adventure" (art. 17)? You will certainly agree that this word is old fashioned or obsolete.

8. *Impressionism*. Other drawbacks are not, strictly speaking, matter of method. They are only due to the common law tradition and the way the statutes must be drafted. In France, we teach that statute is general and abstract. What will my students think of the list of catalogue exceptions (art. 18)? Would it not have been more relevant to distinguish between those excepted cases and to consider in one hand the excepted cases under the control of the carrier and in the other hand the excepted cases out of this control?

Which is more irritating are the length and the heaviness of the wording. Chapter 8 on transport documents and further more Chapter 9 on delivery are too long. From my opinion, a few articles would have been sufficient and it was not necessary to systematically repeat that what is worth for the paper document is also worth for the electronic document. Chapter 3, in this respect, should have been totally sufficient. There again the need for details has prevailed.

As for chapter 11 on Transfer of Rights, I wonder if it is really useful. It says too much or not enough. Too much: what it indicates is that is obvious. Not enough: if the straight B/L is mentioned, it is only provided that it transfers rights without endorsement. The requirements of art 1690 of civil code will have to be respected if French law is applicable; in this respect, the question of the applicable law of the assignment and more precisely the applicable law of the effect of the assignment toward third parties should have been directly solved.

B. Substantial issues

9. *Jurisdiction and arbitration. Opting-in*. Some solutions are difficult to accept from a civil law perspective. Those relating to jurisdiction (chap. 14) and arbitration (Chap. 15) are quite confusing. It is difficult to admit that a person that is not party to a volume contract is bound by an exclusive choice of court agreement (art. 69.2), even if this is possible under the applicable law. On this point, French law, rightly, requires the consent of the party.

Likewise in arbitration, how can the text say that the parties are not bound by the place of the arbitration proceedings as designated in the arbitration agreement (art. 77.2 b)?

Fortunately, these two chapters are not compulsory: they will be only binding if the Contracting States will make a declaration in this sense (opting in system, art. 76 and 80).

10. *Coherency*: *the provisions lack of coherency*. Let's take the examples of provisions on multimodal carriage. Article 13 allows the carrier to be, by contract, exonerated of his liability as a carrier and to be liable only as an agent for the carriage inland leg. This provision is most subject to critics because it is in contradiction with the multimodal aspect of the Convention.

If the transport liability can be different from one way of transport to another, one cannot provide that for certain aspects in relation with the carriage, the carrier cannot be liable. Besides, art. 13 seems to say that the carrier is liable as an agent: to be honest, this means that all will depend of the applicable law to the detriment of predictability.

11. *Technical points*. Most of the technical points are linked with the structure of the provisions that are difficult to understand for a civil lawyer. This is the case for art. 44 which provides that if the contract particulars contains the statement "freight prepaid", the carrier cannot assert against the consignee the fact that the freight has not been paid. Is it a substantial rule? Is it a rule of evidence? In a civil law perspective, the second option would be considered, but this is not in accordance with the working group analysis.

Furthermore, some concepts show the common law influence. And this can be quite disturbing: this is the case for the effect of "deviation" (art. 25).

At last, if art. 64 provides a period of time for suit, this period of time must be considered as a foreclosure period of time and not as a statute of limitation (prescription). In other words, the suit is extinguished but not the right. As our British friends would say, only adjective law is concerned. But, why does art. 65 say that this period of time cannot be interrupted? This is not correct. Any period of time whatever can be interrupted. On the other hand, it is logical to say, as it is a period of time of foreclosure, that the debtor can still and always put forward its rights in a context of a defence or set off (art. 64.3)

On second thoughts, this link with adjective law seems to us the best. On this point, the civil law family is, from my point of view, incorrect.

II. What a civil lawyer is happy with ?

12. *A modern conception of the contract*. UNCITRAL Convention enhances major law contract themes as consensualism (mutual agreement), freedom of contract, binding force, and privity of contract. The text underlines the principal characters of contract carriage of goods, as a commercial contract, and in the same time as an adhesion contract and now as a successive execution contract. The questions of qualification are important, because carriage is distinguished from affreightment, from forwarding, from stevedoring, but, from my point of view, not sufficiently from renting (containers)[10]. At last, the convention determines the obligations of the parties: the contract content is fixed. It is a real juridical progress, which is a good point.

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[10] V. Cass. com. 5 mars 2002, DMF 2002, 569, applying carriage regime, even though the damages were relying to the defects of refrigerated containers, containers having been rented by the carrier.

This modern approach does not concern only the law of contract. One could say the same thing about securities: the right to retain the goods may be exercised pursuant the contract, as art. 51 says, without really understanding the consequence of this possibility[11].

Let's go through the major contract themes and let's see how Uncitral Convention harmonizes them an appropriate manner. About mutual agreement, we'll do not say a lot, because if the text retains a contractual approach[12] and develops the documents issues', it is limited to providing that the absence of one or more of the contract particulars does not affect the legal character or validity of the transport document (art. 41.1). As for the evidentiary function of the documents, we will see it later (infra, n° 16). Let's go on and consider the other themes.

A. Freedom of contract vs. Mandatory law

13. *Exemption clauses: nullity or validity?* Can we congratulate ourselves on freedom of contract coming back in contract of carriage? Let's immediately precise that contract of carriage widely remains a mandatory contract. Besides, exemption clauses are forbidden (art. 81) and this solution is worth for the liability clauses (art. 81.1 a) as for the different clauses relating to responsibility or obligations (81.1 b). This is not a secondary point and leads to wonder if liberties clauses are yet valid. One must distinguish between the type of clause. Anyway, other articles expressly recognize the possibility for the parties to derogate to such or such provision: see art. 14-2 which considers as valid clauses FIO / FIOST practice. It is, in our point of view, an excellent provision, at least in non liner transportation.

In other respects, in volume contracts, the parties have the possibility to derogate to most of the convention provisions (art. 82). It is needless to say how fundamental is this article. We have, ourselves, denied this possibility, but we ought to recognize that derogations are now well organized and that many limits circle freedom of contract game:

It is clearly said that the derogations cannot be stipulated in an adhesion contract, *i.e*. in a contract the terms of which have not been discussed. In other words, a derogation cannot be stipulated in a B/L. To speak about an adhesion contract cannot make anything but to attract a civil lawyer. I am not going to develop this issue: it is the matter of my colleague Honka. I am going to insist on another aspect relating with the trilogy of content of contract, that is

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[11] French law is in the same line since 2006 reform, see. C. civ. art. 2286.

[12] Many contracts leave the means of transport open: so, if the contract does not say goods are to be carried by sea, but this is permissible and the goods are carried by sea, the Convention applies.

recalling the famous Pothier's[13] distinction between "essentialia", "naturalia" and "accidentalia" of the contract.

14. *Essentialia: core obligations*. "Essentialia" of the contract find their expression through the fundamental obligations of the parties, the core obligations which by definition are not left to the sole freedom of contract. Even if the convention does not say that expressly, we find this idea considering the carrier obligations like shipper obligations.

In those conditions, the carrier has to exercise due diligence, at the beginning of, and during the voyage by sea, to make and keep the ship seaworthy and properly crew, equip and supply the ship and keep the ship so crewed, equipped and shipped throughout the voyage. His obligation about seaworthy is from now on continuous: it is a progress and this provision is going to increase the safey of navigation. This obligation is expressly considered as a fundamental one under art. 82.4 in relation with volume contract. The solution has to be generalized.

The obligation to carry and the obligation to deliver, even if the text gives no explanation and no other definition (cf. art. 11), belongs to the "essentialia" of the contract. With the delivery the contract is discharged. The contract is fulfilled and therefore the fundamental element of the transportation. One will stress that the delivery cannot, in theory, occur before unloading, which consequently limits the effects of tackle to tackle clause. Furthermore, "misdelivery" leads to the responsibility of the carrier, yet but rightly, entitled to the benefit of the limitation of liability.

Nevertheless, the parties can always precise the conditions of delivery. For instance, when the shipper asks the carrier to deliver the goods without surrender of B/L, but with a letter of understanding as counterpart. The shipper entrusts the carrier with a specific task: in our civil law conception, this is an "adjustment of the usual duties following from the carriage contract"[14].

On the other side, the shipper as well is bound by fundamental duties: to provide to the carrier information, instructions and documents necessary for the voyage (art. 30). There again, article 82.4 specifies it expressly for volume contracts, but this rule has to be generalized. As for the duties concerning dangerous goods, public policy requires that they apply systematically.

15. *Naturalia et accidentalia*. By "naturalia" of the contract, we mean the duties that are normally part of the contract but that can be adjusted or

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[13] Pothier is one of the main 17th century authors who has inspired the drafters of the French civil code.

[14] Cass. com. 22 June 2007, DMF 2007, 607: so, the carriage time-bar is applicable.

precised by the parties themselves. In this respect, the most important provision is art.14.2 which provides that the parties may agree that the loading, handling, stowing or unloading of the goods can be performed by the shipper, the documentary shipper or the consignee (v. egal. supra, n° 13). Such an agreement shall have to be mentioned in the contracts particulars as it relieves the carrier from its duties.

One can add that if the deck cargo was under HVR considered as an exceptional operation, it is today considered as perfectly normal for most of the transportation and especially for containers transportation which represents the great part of the traffic. The solution is certainly welcome[15].

The convention provides also that the shipper is bound by several duties : some are fundamental as we have seen ; other are usual : for instance, the obligation to deliver the goods ready for carriage and this duty can be agreed otherwise in the contract of carriage (art. 28).

As for the "accidentalia", they concern terms that can be agreed by the parties to face specific situations: for instance, jurisdiction or arbitration clauses (chap. 14 and 15) or declaration of value (art. 61), which is always possible in order to increase the amount of limitation of liability.

B. Binding force vs. Flexibility

16. *Unilateralism vs. bilateralism.* The carriage contract has this specificity of being a three parties contract (infra, n° 19) and a contract subject to a certain form of unilateralism in the sense that it can be adjusted without any *mutuus consensus*. The Uncitral Convention has perfectly understood this specificity. Three examples will be considered.

First of all, the exercise of right of control. New instructions can be given concerning the goods but also considerable variations to the contract of carriage. These variations can be stated unilaterally as an *a contrario* interpretation of art. 56 allows it. Moreover, this text does make a distinction between unilateral variations of the contract and variations agreed by both parties (*mutuus dissensus*).

Secondly, the carrier can make reserves concerning the information relating to the goods[16]. This can be done under specific conditions (art. 42), but always unilaterally. This position is important, although the carrier has not the obligation to qualify the information. The text does not take any action against the carrier who would not want to qualify the information, although

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[15] Comp. Cass. com. 18 mars 2008, "Ville de Tanya", n° 07-11777, observing that the carrier who has loaded upon the deck a container without any consent of the shipper cannot invoke perils of the sea exception to withdraw himself to own liability.

[16] The word "reserves" is not used by HVR. Art. 3.3 considers it only under a negative point of view. The French text is more explicit (Décr. 1966, art. 36), like HR (art. 16.1).

he is aware of the defects of the goods[17].

At last, the period of time for suit may be extended by a declaration (art. 65). Can be there better example of the effect of unilateralism in contract?

17. *Bona fide*. The contract of carriage is a contract that, as any other contract, must be performed in good faith. French case law and doctrine insist on this idea[18]. Yet, the *bona fide* rule allows the judge to punish an abuse of a contractual right but does not allow him to modify the content and the substance of the rights and the duties agreed by the parties[19]. This is the exact meaning of the contractual good faith rule. On this point Uncitral Convention is quite silent, except in art. 2 which insists on the observance of good faith in international trade. A civil lawyer will take into account the rule previously fixed by French case law.

Art. 39 expressly takes in account good faith to identify the carrier. The issue is famous because of the practice of BL without heading. In this respect, French case law has clear solutions. If the carrier is not clearly identified, one assumes that the ship owner is considered as the carrier[20]. The same rule is provided by Uncitral Convention with slight differences. In any case, this provision reveals the very modern idea of the need of great transparency in contractual relations[21].

C. Privity of the contract vs. group of contracts

18. *Legal liability*. Privity of contract is nowadays understood in a more flexible way and takes into account economic impact. This is a very good point and Uncitral Convention in this respect is a very modern one. Art. 4 does not make any distinction between contractual and tort liability. A third party concerned[22] will have to sue the carrier in the conditions and within the limits fixed by the Convention. This position is not new (see, art. 4 bis HVR ; L. 1966, art. 32), but it has been extended by the convention as it has been bi-lateralized (art. 4.2). A logical analysis will lead to apply the same solutions in jurisdiction[23].

19. *Contractual block theory*. Uncitral Convention takes in account contractual block theory as H.R. has done it. Nevertheless, the convention

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17 Comp. L. 1966, art. 20.

18 MM. Bonassies et Scapel, op. cit., n° 1007.

19 Cass. com. 10 July 2007, Gaz. Maritime Arbitration Chamber of Paris, n° 14, Editorial.

20 Cf. Cass. com. 21 July. 1987 "Vomar", DMF 1987, 573.

21 BIMCO has exactly considered that in her new models of B/L.

22 The situation of "penitus extranei" is likely quite different.

23 Contra: CJCE 27 Oct. 1998 "Ablasgracht", DMF 1999, 9.

goes further because it does not concern only the situation of substituted carrier but it considers all performing parties as, in a certain sense, equivalent of the contractual carrier. This is a very clever and modern approach.

Yet, the contractual carrier is liable for the breach of its obligations by any performing party (art. 19) and the maritime performing party are subject to the same obligations and liabilities than the contractual carrier (art. 20). Likewise, the joint and several liability of the carrier and maritime performing party (art. 21) is perfectly justified. As for the employees nothing in this convention imposes any liability on them (art. 20.4) which is in accordance with the last French case law[24].

20. *Shipper and consignee.* On the part of cargo interest, the convention takes in account the situation of every person concerned: the shipper but also the documentary shipper subject to the same responsibilities and liabilities than the contractual shipper (art. 34).

The consignee is considered neither like a party nor a third party: he is simply designated as the person having the right to the delivery of the goods. Both the contractual consignee and the actual consignee (in fact, the notify) have the capacity to sue the carrier. Beyond these technical points, we can note that the conception of the carriage contract prevailing in the convention is perfectly in accordance with a civil law perspective.

III. What can be satisfying for a civil lawyer?

A. The rest

21. *Deduction*. What is satisfying is all what is neither offending nor pleasing, *i.e.* a lot, and notably the fact that the convention does not apply to all contracts. Its material scope is satisfying by the exclusions contained (art. 6) concerning especially the charter-parties and by the inclusions retained (art. 7) about transportation under charter-parties. The geographic scope of application is easier to understand (art. 5) and one may approve the fact that the convention applies even if the road legs are more important than the sea legs. Precisely, the "maritime plus" system which prevails in Uncitral is, with no doubt, the system with which the professionals are happy.

22. *Provisions*. Two provisions are particularly welcome. The first comes within the framework of what we may call the common law of carriage and concerns the situation of goods which are not delivered: what is provided by art. 50 of the convention is in accordance with the CMR provisions[25].

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[24] Cass. ass. plén. 25 February 2000, D. 2000, 573

[25] In French law, the solutions are the same: cf. "contrats types" in road carriage.

More original, but equally acceptable, are the different provisions on non negotiable transport documents. Those provisions have the merit to organize the sea way bills regime. In civil law, those titles have a contractual function and an evidentiary function. But they have no commercial function because they do not represent the goods. This situation is not always convenient. This is the case when such a document is not in the hands of the consignee. The consignee has no protection and has to suffer the rule of "opposability of exceptions". The convention solves nowadays the problem in art. 43.b and particularly in art. 43 c: this later text which provides that the consignee may rely on the particulars furnished by the carrier finds its explanation in the common law theory of reliance. The civil law theory of "apparence" is not exactly the equivalent and has not the same scope.

B. Problems not resolved

23. *Matter of interpretation*. If the convention is, on many issues, perfectly acceptable, this does not mean that it does not meet any difficulty, in a civil law perspective. Many issues would have been easier solved if the convention had retained some civil law concepts, and especially, the distinction evoked during the debates between "obligation de moyens, obligation de résultat et obligation de garantie". This distinction, a very pedagogic one, would have permit to circle better the hypothesis of shipper liability: art. 28 et 30, obligation de moyens; art. 32.1 et 33, obligation de résultat; art. 32.2, obligation de garantie.

As for the carrier liability (art. 18), if it is true that the basis of this liability is not exactly the same that the HVR one, it is impossible to say, in our opinion, that it is a "fault based liability regime". Furthermore, it is false to say, while the language of HVR is retained, that the risk has shifted from ship to cargo. The carrier liability is still, in our opinion, a strict liability, given that the carrier could not withdraw his liability if the cause of damage is unknown. But, probably, the divergences of interpretation about such and such excepted case will remain (*e.g.* on the perils of the sea; on the "fait du prince") or still on the "in concreto" or "in abstracto" appreciation of the personal and qualified fault within article 63.2.

24. *Following*. These issues of interpretation are interesting but always delicate, because they express differences of conception and reading of law. The expression "loss and damage" does not cover the French expression of "pertes et avaries" and the notion of "damage", that is a material notion for a French lawyer, does not meet the expression of "prejudice", a legal notion for us.

When the text speaks about apportioned liability, the convention does think in terms of causation (cf. art. 18.5 et 31.3). This may be understood, but in a civil law perspective, the causation must not be divided; therefore it

would have been better to solve the problem in taking into account the gravity of the faults.

At last, there are unavoidable difficulties in relation with the vocabulary and the terminology chosen: when the convention uses the verb "occur" (art. 27), this refers either to the place where the damage has been caused or to the place where the damage has been suffered. Probably, it would have been better to use civil law terminology and to speak about "fait générateur".

Conclusion

25. *All the best?* One could not think that everything goes for the best in the best of the worlds. With no doubt, the Uncitral convention is globally acceptable. It is what we have said at many times and it is what we repeat today. Uncitral Convention has the great merit to contribute to re-unify the law of carriage of goods by sea and to modernize this topic. We have not to hesitate between having one or regional solutions. As K. Christoffersen (AP Moller Maersk counsel) has wrote, "the clearer and more harmonized the rules are, the cheaper our services become: this would be a benefit for the shippers". We have to underline that, at the moment where the States are invited to ratify the convention. Uncitral Convention is neither in favour of the owners nor in favour of the shippers: the convention does not seek to protect any socio-professional category. It aims to realise a balance between both interests. The convention is neither a common law convention nor a civil law convention: it is, first of all, a uniform law convention where many sources are flowing.

Imperfections in the convention should not get in the way. Of course, many difficulties still remain. But they are without no doubt inescapable. In this respect, I would like to associate myself to my colleague M. Sturley observations, always relevant: was it possible to do best? I am not sure of that. Besides, as Portalis, one of our famous drafters of the French civil code in 1804, said: "one must leave what is good alone if one is in doubt about what is better"[26].

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[26] Portalis, Preliminary discourse, translated by Shael Herman, 43 Tul. L. Rev. 762, 1969.

INTRODUCTION

Tomotaka Fujita

"Balance of risk" was the most frequently used and sometimes abused phrase during the UNCITRAL Working Group III's deliberations of the new Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea. Although all Working Group delegations unanimously favored a "fair balance of risk" between carrier and cargo interests, they never reached consensus about what constitutes optimal "balance" under a specific article or in a specific situation. As a result, although the basic formula for the basis of liability and the list of exonerations were decided relatively early on, other elements of the liability regime such as the treatment of delay or limitation levels were left open until the very last stage.

How does the new Convention finally strike the balance of risk? Does it shift the balance more favorably towards the carrier or the other way around? Does the change dramatically affect risk allocation or is it merely a fine tuning? As is often the case, the question is easier to ask than answer. The panelists of this session try to answer this difficult question in terms of carriers' obligations and liabilities, the limitation level and shippers' obligations.

Although detailed examination of the new Convention should be left to each panelist, I would like to remind you that it is more difficult than it first looks to assess how the new Convention changed the risk balance.

One can easily see that carriers' obligations and liabilities are enhanced in several ways compared with the Hague-Visby Rules. Some of the exonerations for carriers have been eliminated. The obligation to make ships seaworthy becomes continuous under the new Convention. However, the new Convention has a more complicated impact on other areas. Let us take the treatment of delay as an example. The new Convention imposes a liability on carriers for delay in delivery, while the Hague-Visby Rules do not. This might be seen as another example of enhanced liability, but the situation is more complicated. The new Convention recognizes delay only when the time for delivery has been agreed upon (see Article 22). If the time for delivery was not agreed upon, then there seems to be no liability under the Convention, and contracting states cannot impose any additional liability under national law. Therefore, those states having their own liability laws which impose delay liability on the carrier would perceive that the Convention decreases carriers'

liability. For states which were contracting parties to the Hamburg Rules, the treatment of delay is a clear case where the rule is changed in favor or the carrier. In other area, it might be difficult to determine whether and to what extent the level of carriers' liability increased under the new Convention because the basic formula for the basis of carriers' liability differs substantially from the Hamburg Rules.

The limitation level of carriers' liability seems easier to asses because it is simply a figure. In fact, it is not so easy. A 20% increase of the limitation figure does not necessarily mean the carrier is 20% more liable. If most of the cargo claim is, as is often emphasized in the Working Group, below the existing limitation, the increase of the limitation only affects a limited number of cases. Therefore, while it is clear the limitation level has increased, its exact impact is not self-evident. In addition, the scope of liability subject to limitation has changed. The new convention limits "the carrier's liability for breaches of its obligations under this Convention." (see Articles 61 (1)) Therefore, liability for misdelivery of goods, for example, is subject to the limitation. Misdelivered goods are thought to be "lost" and liability for misdelivery is limited in some jurisdictions, even under Hague-Visby. However, other jurisdictions have imposed unlimited liability for misdelivery. Carriers' liability for issuing a transport document without qualifying information they know is incorrect (see Article 42(1)) would be another example of the expanded scope of the limitation, although carriers may lose their right to limit pursuant to Article 63. Suffice it to say that even the impact of the liability limitation is not easy to determine.

The new Convention devotes one chapter to the detailed regulation regarding shippers' obligations and liabilities. Although many obligations under the new Convention seem to simply endorse current practice, there are several elements which could impact the risk balance under existing law. The burden of proof for shippers' liability under Article 31 was, as a result of compromise, intentionally vaguely drafted. Shippers' liability is subject to a two-year time-bar since the delivery of goods (or since the last day on which the goods should have been delivered). The time-bar is applicable even when litigation against carriers is based on torts or otherwise (see Article 4(2)). Shippers' obligations and liabilities are mandatorily regulated, unlike under previous conventions for the carriage of goods by sea. It is uneasy to determine whether these elements substantially change existing risk allocation.

I have explained why it is difficult to assess how the new Convention affects the risk allocation. The panelists of this session tackle the difficult task by conducting in-depth analysis of the provisions regarding carriers' obligations and liabilities, the limitation level and shippers' obligations.

CARRIER'S OBLIGATIONS AND LIABILITIES

Francesco Berlingieri

The structure of the liability regime is globally close to that of the Hague-Visby Rules even though it differs from that of the Hague-Visby Rules in some significant aspects. Its fundamental elements are 1) the period of responsibility of the carrier, 2) the obligations of the carrier, 3) the basis of liability, 4) the (abolition of) the exonerations from liability, 5) the allocation of the burden of proof, 6) the liability regime for deck cargo, 7) the liability regime for carriage preceding or subsequent to carriage by sea, 8) the liability of the carrier for other persons and, 9) the right of action of the shipper and consignee against the persons for whom the carrier is liable.

1. The period of responsibility

The period of responsibility differs from that of the Hague-Visby Rules as well as from that of the Hamburg Rules. While in fact in the Hague-Visby Rules it commences from the time the goods are being loaded on board and ends at the time of completion of discharge from the ship (tackle-to-tackle) and in the Hamburg Rules it coincides with the period during which the carrier is in charge of the goods, except that if the carrier receives the goods before their arrival at the port of loading and delivers them in land, beyond the port of discharge, the period of responsibility is limited to the period between their arrival at the port of loading and their departure from the port of discharge (port –to-port) , under the Uncitral Draft it coincides with the whole period during which the carrier is in charge of the goods, wherever he receives the goods from the shipper, in land or at a port, and wherever he delivers them to the consignee, at a port or in land (door-to-door).

2. The obligations of the carrier

(a) The basic obligation

The basic obligation of a carrier under any contract of carriage of goods is obviously to carry the goods from the place of receipt to the place of destination and to deliver them to the consignee at the appropriate time in the same conditions as they were at the time of receipt. Such obligation is, albeit only in part, set out in art. 3(2) of the Hague-Visby Rules, pursuant to which the carrier must "properly and carefully load, handle, stow, carry, keep, care for and discharge the goods carried": what is missing in that provision is the reference to the obligation to deliver the goods at destination. Nothing is said

instead in the Hamburg Rules: the only provision therein relates to the liability of the carrier in case of loss, damage or delay (art. 5). The obligation of the carrier is on the contrary set out fully in art. 11 of the UNCITRAL Draft, except that

(i) no reference is made therein to the time by which delivery must take place; and
(ii) to the conditions of the goods on delivery.

(i) The first aspect, however, is covered by art. 22 which provides that delay in delivery occurs when the goods are not delivered at destination within the time agreed: it has in fact been deemed convenient for the sake of clarity to exclude liability for delay if nothing is said in the contract of carriage in respect of the time of delivery, because that could only be done by qualifying delay as failure to deliver within a reasonable time, a description extremely vague that would give rise to much litigation.

(ii) The second aspect is fully covered by art. 18(1), pursuant to which the carrier is liable for loss of or damage to the goods and for delay in delivery in the situations set out in the subsequent paragraphs.

(b) The specific obligations in respect of the vessel and the goods

Since the Harter Act it has been deemed appropriate to set out the fundamental obligations of the carrier relating to the seaworthiness of the carrying ship and the custody of the cargo. Then they have been set out in the Australian Sea Carriage of Goods Act 1904, in the Canadian Water Carriage of Goods Act 1910 and finally in the Hague Rules of 1921 from which they have been incorporated in the 1924 Brussels Convention. They have instead been omitted in the Hamburg Rules, on the ground that it suffices for the purpose of establishing the liability of the carrier, to adopt the principle of presumed fault and to place on the carrier the burden of proving that he has acted with due diligence.

The UNCITRAL Working Group has however deemed of the greatest importance to preserve the traditional obligations, even though, in view of the door-to-door scope of application of the Draft, it was necessary to regulate separately the obligations relating to the care of the cargo and those relating to the seaworthiness of the ship. The former, set out in art. 14(1), apply throughout the period of responsibility of the carrier. The latter, set out in art. 15, apply only to the voyage by sea. But while the obligations relating to the care of the cargo are the same as those in the Hague-Visby Rules, those relating to the seaworthiness of the ship, though not differing quality-wise (they are still obligations to exercise due diligence), significantly differ time-wise since they are now continuous obligations and not only obligations to be fulfilled at the beginning of the voyage. The impossibility by the carrier to

take during the voyage proper action to keep his ship seaworthy has in fact been deemed a remnant of the time when communications with a ship at sea were difficult, if not impossible, and the restriction to the time before sailing of the obligation to make the ship seaworthy to be at present in patent conflict with the provisions of the ISM Code. Of course the assessment of the due diligence of the carrier to keep his ship seaworthy during the voyage and, in particular, when the ship is at sea, is based on criteria that differ from those applicable when the ship is in a port.

3. The basis of liability

As in the Hague-Visby Rules and in the Hamburg Rules, the basis of liability is fault. But while in the Hague-Visby Rules it is necessary, in order to find that out, to look through the list of the excepted perils until one gets to paragraph 2 (q) of art. 4 and in the Hamburg Rules the lack of clarity of art. 5(1) has made it necessary to annex to the Convention to that effect a Common Understanding, in the UNCITRAL Draft, this is stated clearly in art. 18(2).

4. The abolition of the exonerations from liability

Under the Hague-Visby Rules some of the excepted perils, and precisely those mentioned in paragraph 2 (a) and (b), are actual exonerations from liability: those under (a) being fault by the master or crew in the navigation and management of the ship and that under (b) being fire caused by fault of the servants or agents of the carrier. The others instead are commonly considered events that occur for causes beyond the control of the carrier. In the UNCITRAL Draft the exoneration of the carrier for loss or damage caused by fault in the navigation or management of the sip has been abolished, the former being considered an unjustified exception to the principle *respondeat superior* and the latter as a consequence of the continuous character of the obligation of seaworthiness. The fire exception has been treated as the other excepted perils of the catalogue, to which reference is made below under (5).

5. The allocation of the burden of proof

This has been the most difficult and complicated aspect of the liability regime of the carrier dealt with during the *travaux préparatoires*, in particular because of the different views, perhaps more formal than substantial, on the legal nature of the excepted perils other than those listed under (a) and (b) of art. 4(2) of the Hague-Visby Rules, and on the relationship between the breach of the obligations of the carrier and his liability in respect of loss or damage to the goods.

Furthermore, neither the Hague-Visby Rules nor the Hamburg Rules regulate in full the allocation of the burden of proof, because they do not state

which, if any, is the burden of proof resting of the claimant. This was logically the first aspect that needed to be considered. The allocation of the burden of proof has been regulated as follows.

Phase 1.

The initial burden of proof is on the claimant who must prove a) that the goods have been lost or damaged and, b) that the loss or damage occurred during the period of responsibility of the carrier. A provision in this respect is contained in article 18(1).

Phase 2.

The burden of proof then shifts on the carrier, who may alternatively prove a) that the cause of the loss, damage or delay was not due to his fault or to the fault of the persons for whom he is responsible, or b) that one of the excepted perils enumerated in art. 18(3) – that, with some minor changes, are the same as those enumerated in article 4(2) of the Hague-Visby Rules from (c) to (p) – caused or contributed to the loss, damage or delay.

In the first case the claim is rejected or reduced according to whether the absence of fault related to the only cause or one of the causes of the loss, damage or delay.

Phase 3.

In the second case, since the excepted perils are not exonerations, but only cases of presumed absence of fault, the claimant, on whom the burden of proof then shifts again, has three alternatives:

(i) pursuant to art. 18(4) (a) he may defeat the presumption by proving that the fault of the carrier caused or contributed to the excepted peril on which the carrier relies;

(ii) pursuant to art. 18(4)(b) he may defeat the presumption by proving that another event, which is not an excepted peril, caused or contributed to cause the loss, damage or delay, or

(iii) pursuant to art. 18(5)(a) he may defeat the presumption by proving that the loss, damage or delay was **probably** caused or contributed to by the unseaworthiness or uncargoworthiness of the ship.

If the claimant chooses alternative (i) and is successful, the carrier has no further defence. If instead he chooses alternative (ii) or (iii) and is successful, the burden of proof shifts once more on the carrier.

Phase 4

In case the claimant has chosen alternative (ii) the carrier may, pursuant to art. 18(4))(b), prove that the other event that caused or contributed to cause the loss, damage or delay is not attributable to his fault or to the fault of the persons for whom he is responsible.

In case the claimant has chosen alternative (iii) the carrier may, pursuant

to art. 18(5)(b), either prove that the loss, damage or delay was not caused by the unseaworthiness or uncargoworthiness of the ship or prove that he had exercised due diligence to make and keep the ship seaworthy and cargoworthy.

6. The liability regime for deck cargo

Pursuant to art. 26 the UNCITRAL Draft applies to deck cargo and the liability regime varies according to whether (a) the deck carriage is permitted and why, (b) it is not expressly allowed, or (c) it is effected against an express agreement to carry the goods under deck.

a) Deck carriage is permitted if (i) it is required by law (e.g. for safety reasons), (ii) the goods are carried in containers or rail or railroad cargo vehicles that are fit for deck carriage and the decks are specially fitted for such carriage and, (iii) it is in accordance with the contract or customs, usages and practices of the trade. The liability regime previously considered applies in full in the situations envisaged under (ii) while in those envisaged under (i) and (iii) the carrier is not liable for loss, damage or delay caused by the special risks involved in the deck carriage.

As regards third parties who have acquired a negotiable transport document or a negotiable electronic record in good faith, deck carriage needs not to be mentioned therein in the situations mentioned under (i) and (iii) because it is considered that third parties should be aware that the goods must have been carried on deck in the situation under (i) or may have been so carried in the situation under (iii). It must instead be mentioned in the situation under (ii), failing which pursuant to art. 26(4) the carrier is not entitled "to invoke" the rule allowing deck carriage The effect of that is that deck carriage is treated as not being allowed and the consequence is that vis-à-vis a third party the regime applicable is that considered below.

b) If deck carriage takes place in cases other than those previously mentioned the liability of the carrier is significantly more severe: he in fact is not entitled to the defences provided for in article 18 and, in addition, is liable for loss of or damage to the goods and delay in delivery caused by their carriage on deck and, therefore, in this latter case his liability is strict. This instead is not the case if the loss, damage or delay is not caused by the deck carriage, but would have occurred anyhow, even if the goods had been carried under deck: the "defences" reference to which is made in art. 26(3) are the provisions on the reversal of the burden of proof set out in article 18(3) and do not include the basis of liability. The provision of article 18(1) and (2) therefore still apply.

c) If deck carriage takes place in breach of the agreement to carry the goods under deck pursuant to art. 26(5) the carrier, in addition to being strictly liable

for loss, damage or delay caused by deck carriage, is not entitled to the benefit of the limitation of liability. No reference is made in this provision to the carrier not being entitled to the defences provided for in art. 18, but since the breach by the carrier is in this case more serious than that covered by art. 26(3), it is thought that the provisions set out in that paragraph should apply in full also in the case now under consideration.

7. The liability regime for carriage preceding or subsequent to carriage by sea

The ideal solution would have been the application of the UNCITRAL Draft for the whole period of responsibility of the carrier, wherever the loss, damage or delay occurs, be it at sea, on land or in the air. However that would have given rise to a conflict between the Instrument and the other transport Conventions, amongst which the CMR for carriage by road, the COTIF-CIM for the carriage by rail and the Montreal Convention for the carriage by air. In order to avoid, or at least to reduce to the very minimum, the possibility of any such conflict the UNCITRAL Draft provides that when loss, damage or delay occurs during the carrier's period of responsibility, but solely before loading on or discharge from the ship, its provisions do not prevail over those of another international instrument that would have applied if the shipper had made a separate contract with the carrier in respect of the particular stage of carriage during which the loss, damage or delay has occurred. The provisions of the UNCITRAL Draft yield to those of another international instrument only if:

a) the loss, damage or delay has occurred solely before or after the maritime leg, the burden of proof being on the person who invokes the application of such other instrument;
b) such other instrument would have applied if the shipper had made a separate and direct contract in respect of that particular stage of carriage;
c) the relevant provisions of such instrument are mandatory;
d) they provide for the carrier's liability, limitation of liability and time for suit.

It has been felt in fact that in respect of other matters, such as obligations of the shipper, transport documents, delivery of the goods, right of control, transfer of rights, jurisdiction and arbitration, it would have been impossible that different rules could apply to the same contract.

It had also been suggested to extend the same principle also to national laws, but this has been quite rightly rejected because States could otherwise, after having become parties to the Instrument, exclude its application by enacting a national law regulating the carriage by modes other than sea otherwise as in accordance with the UNCITRAL Draft and that would have

adversely affected uniformity. If States have already in their national law rules that apply to matters that would come under the scope of application of the Instrument, they would, by ratifying the Instrument or acceding to it, accept that the Instrument would prevail over their national law. This is a fundamental principle that cannot be departed from.

8. The liability of the carrier for other persons

The carrier is liable for two categories of persons: its servants or agents and its subcontractors.

a) The servants or agents

A distinction is made in art. 19 between the master and crew of the ship and the employees of the carrier, the reason being that the master and crew may not be employees of the carrier when the carrier is not the operator of the ship.

b) The subcontractors

The situation where the carriage is performed in whole or in part by a person other than the contracting carrier is not regulated in the Hague-Visby Rules. It is instead regulated in the Hamburg Rules where (art. 10) a distinction is made between the (contracting) carrier and the actual carrier. During the sessions of the UNCITRAL Working Group it has been deemed convenient to extend the rules governing the liability of the carrier for its subcontractors to other categories of persons in addition to sub-carriers, such as terminal operators, stevedores, warehouse keepers and, therefore, a new term has been created that covers all such subcontractors: *performing party*. In view of the fact that the Instrument applies door-to-door and thus also during the inland carriage, it was considered appropriate to restrict the application of the provisions of the instrument to the performing parties that operate in strict connection with the carriage by sea, either because they perform in whole or in part such carriage or because they operate in the port area. Such performing parties have been called *maritime performing parties*. They are subject to the rules of the Instrument and are liable jointly with the carrier in respect of loss, damage or delay that has occurred in the period during which the goods are in their custody , but they are not bound by the terms of the contract of carriage if the carrier has agreed to assume obligations other than those imposed by the Instrument or to limits of liability higher than those set out in the UNCITRAL Draft.

9. The right of action of the shipper and consignee against the persons for whom the carrier is liable

The possibility for the claimant to sue in tort the master and the crew or the employees of the carrier has created problems in the past because the

claimant could thereby avoid the operation of the defences and limits of liability the carrier enjoys under the Hague-Visby Rules. Such problem have been overcome by adding in the 1968 Protocol a provision (art. 4bis) whereby the servants or agents of the carrier are entitled to avail themselves of the carrier's defences and limits of liability. While the same rule is provided in the Hamburg Rules, in the UNCITRAL Draft a more radical solution is adopted: pursuant to art. 20(4) the master and the crew of the ship and the employees of the carrier and of the maritime performing parties are not liable in respect of loss, damage or delay under the Instrument.

The position of the performing parties differs according to whether they are maritime performing parties or not. If they are, pursuant to art. 20 all provisions of the Instrument apply to them and the shipper and consignee have a direct action against them in addition to the action against the contracting carrier, their liability and that of the carrier being joint and several (art. 21). If they are not, their liability is not governed by the Instrument and that means that neither the shipper nor the consignee may have an action in contract against them except as otherwise provided under the applicable law.

THE CONVENTION ON CONTRACTS FOR THE INTERNATIONAL CARRIAGE OF GOODS WHOLLY OR PARTLY BY SEA: THE LIABILITY AND LIMITATION OF LIABILITY REGIME

KOFI MBIAH *

Introduction

It is important at the outset to state that the Committee Maritime International (CMI) and Working Group III of UNCITRAL deserve commendation for having brought the project on the New Transport Law this far. The New Transport Law, which is now christened *"DRAFT CONVENTION ON CONTRACTS FOR THE INTERNATIONAL CARRIAGE OF GOODS WHOLLY OR PARTLY BY SEA*" hereinafter referred to as the (DRAFT CONVENTION)[1] went through its final reading at the 21st Session of the UNCIRTAL Working Group III held in Vienna in January 2008.

Undoubtedly, the "CMI Draft" which was submitted to UNCITRAL has undergone numerous changes and refinements during the period of the deliberations from 2001 to 2008.

The discussion of the Liability and Limitation of Liability Regime would thus be based on the Law as contained in the final draft. Reference would however be made to some of the earlier discussions and debates that have informed the current state of the law in the Draft Convention.

It is important to mention that the issue of liability and the spread of risks is arguably the most important reason underpinning the revision of the international legal regime for the carriage of Goods by Sea.

The history of the development of the law regarding freedom of contract, the arbitrary and excessive inclusion of exemption clauses in sea carriage contracts, the development of compromises which manifested itself in the

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* The writer is the Chief Executive Officer of the Ghana Shippers' Council and Leader of Ghana's delegation to Working Group III (Transport Law) of the United Nations Commission on International Trade Law (UNCITRAL) . The views expressed here are entirely that of the writer and do not necessarily represent the position of Ghana or any other group with which the writer may be associated.

1 See A/CN. 9/645 P.58 paragraph 289 .

Harter Act and consequently in the Hague Rules[2], Hague- Visby Rules[3] as well as the Hamburg Rules[4] is so well documented and would thus not need recounting here.

It is trite learning however, to mention that, at the base of all of this, is the issue of risk, liability and the balance of interests between cargo and carrier. The attempts to find a common platform that adequately accommodates the interests of the cargo owner as well as the carrier has thus found expression in the development of international rules that have guided the conduct of international maritime transport for well neigh a century.

Rationale For New Rules

In a brief paper such as this, time and space would not allow for an extensive discussion of the various international regimes, their shortcomings and the need for a new convention.

Suffice it however to mention that today, there are countries which are party to the Hague Rules, some countries which are party to the Hague - Visby Rules, some which are party to the Hamburg Rules and yet a few others which have hybrids of the various rules, developed to meet their national commercial aspirations.

There is no doubt that steps have been taken by some countries[5] to develop new rules on the carriage of goods by sea in furtherance of the above objective. The likelihood of a proliferation of rules very much dependent on individual national aspirations is thus real.

It is also worthy of note that as at the time of writing this paper, April 2008, over 32 countries had ratified the Hamburg Rules and are thus contracting parties to the said rules. The situation makes for a lack of uniformity in the rules regarding the international carriage of goods by Sea.

The CMI's efforts to remedy this situation cannot be underscored. It is worth mentioning that the efforts of the CMI culminated in the development of the "*CMI Draft*"[6] which formed the basis for discussions of the Draft Convention. Thus the key objectives of the new draft was to attain uniformity in the international regime for carriage of goods by sea, bring the rules up to

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2 Brussels Convention for the Unification of Certain Rules of Law Relating to Bills of Lading, August 25 1924,120 L.N.T.S. 155 ("Hague Rules").

3 Hague Rules, *supra* note 2, as amended by protocol to amend the Hague Rules, February 23, 1968, (Visby Protocol).

4 United Nations Convention on the Carriage of Goods by Sea, March 31, 1978, 1695 U.N.T.S. 3.

5 Notably, The United States of America, Australia, Malaysia and some Scandinavian countries. See F. Wilson Carriage of Goods by Sea p. 227.

6 See CMI Yearbook 2001.

speed on new developments and practices in international maritime transport and finally albeit in no small measure, attempt a balance of the cargo and carrier interests.

The development of the new rules as contained in the Draft Convention could be traced to the 9th Session of UNCITRAL in the year 2001[7]. At that session, the Commission re-established Working Group III (Transport Law) and gave it the mandate to prepare in close collaboration with interested international organisations, a legislative instrument on the international carriage of goods by sea.

The new draft convention has thus seen over eight years of discussions and deliberations taking into account viewpoints expressed by various interested parties[8] as well as compromises sometimes intricate and delicate, that were needed to arrive at common ground.

This is the backdrop upon which the liability and limitation of Liability Regime of the new Draft Convention would be discussed.

The basis of Liability

The provisions in the draft convention regarding the basis of liability are to be found in article 18[9] while the provisions regarding limitation of liability are captured in article 61 under the caption Limits of Liability[10].

It would be an understatement to indicate that the present provisions on the Basis of Liability as reflected in Article 18 are the result of very protracted debates, formal and informal consultations,[11] that have produced provisions on liability that are as delicate as they are intricate.

In the light of the above, no litmus test can be set out to ascertain whether indeed the provisions provide the requisite balance desired by either carrier or cargo interests. It is however worth recalling that an Agenda Paper[12] prepared for the 2004 CMI Conference set out some key parameters for establishing the basis of liability. These are indeed relevant as they impacted greatly on the elaboration of the provisions of Article 18 of the Draft Convention.

It established that there was overwhelming support across the various

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7 See A/CN.9/645 p. 6.

8 Apart from members of the Commission and observers various interest groups such as International Federation of Freight Forwarders Associations (FIATA) European Shippers' Council (ESC) Comité Maritime International (CMI) International Group of Protection and Indemnity (P&I) clubs, BIMCO etc for a full list see A/CN. 9/645 p. 6.

9 See A/CN. 9/645 p. 67.

10 See A/CN. 9/645 p. 85.

11 See CMI Yearbook 2004 p. 132.

12 See CMI Yearbook 2004 p. 132.

interests, that the liability of the carrier should be fault based[13]. The direction provided by the Agenda Paper, was to the effect that the Committee[14] should amongst others focus its discussion on matters relating to:

i. The Burden of Proof as between carrier and claimant
ii. The carrier's reliance on the Exculpatory Clauses
iii. The overriding nature of the carrier's obligation
iv. The nexus between the circumstances and the loss, damage or delay to the goods.
v. The fire exception
vi. The Fault or neglect of the carriers agents or servants

A close reading of Article 18 as presently drafted would indicate that these issues have been addressed within the context of the basis of liability. Indeed there is no doubt that a great deal of effort has been put in by the Working Group to strike a balance between carrier and cargo interests in Article 18. It is however worthy of note that, this is still unsatisfactory as expressed by some delegations during the 21st Session of the Working Group[15] and during the previous sessions. In addition, concerns were raised that the deletion of subparagraphs 3(e) and (g) would lead to a substantial increase in the carrier's liability, in certain cases even to an absolute liability. It was also noted that caution should taken when revising a text which had been fully considered and agreed to by the Working Group, especially because **draft article 18 was a central element in the whole package of rights and obligations (my emphasis)**

On the basis of the above, the Working Group refrained from amending the substance of the text of Article 18.

Having provided this background, it now becomes necessary to examine the present article vis-à-vis the Hague-Visby and Hamburg Regimes, to ascertain the extent to which it really balances carrier and cargo interest.

As pointed out earlier, the liability is fault based, very much in tune with[16] *The Hague Visby and the Hamburg Rules.* Article 18 is thus an alloy of the Hague-Visby and Hamburg Regimes on the basis of liability. In fact paragraphs 1& 2 are a new rendition of Article 5(1) of the Hamburg Rules while Article 3 revisits Article IV r 2 of The Hague Visby Rules with some requisite modifications.

Generally speaking therefore, a bold attempt is made to accommodate Hamburg as well as Hague-Visby interests with respect to the basis of liability. A closer look at Article 18 shows it to be more complex and intricate

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13 See the report of Committee A published in CMI Yearbook 2001 Singapore II at pp 182-187.
14 Committee A.
15 See A/CN. 9/645 pp 16 & 17.
16 See also Articles 11 and 12

than it first appears to be. It is also to be noted that any analysis of article 18 cannot be carried out in isolation. It must be read together, and in particular, with articles 14, 15 as well as articles 19-27.

The compromise reached in respect of article 18 shows a departure from the Hamburg Rules to the extent that under the new draft, rather than indicating "he, his servants or agents took all measures that could reasonably be required to avoid the occurrence and its consequences", the carrier is now specifically required to prove the absence of fault on his part, once the claimant has established that the loss, damage or the delay, or the event or the circumstance that caused or contributed to it took place during the period of the carrier's responsibility[17].

Burden of proof

The new approach leads to a subtle but tactical shifting of the burden of proof and in the event leads to a *ping-pong* burden of proof situation. This is a variation from the Hamburg Rules i.e. requiring specific proof from the carrier that there is an absence of fault on his part. It is to be noted that another innovation is introduced into the new draft. Under paragraph 3 of Article 18, the carrier is deemed to discharge the burden of proving the absence of fault on his part, if he proves that the loss damage or delay was occasioned by a list of events which act as presumptions of the absence of fault on his part. This then introduces the exceptions contained in Article IV r 2 of the Hague Visby Rules in a modified form.

The balance of interests between carrier and cargo now lies in the fact that, apart from the shifting of the burden of proof albeit subtly on the carrier, the Article IV v 2 exceptions of The Hague Visby rules are now merely rebuttable presumptions of the absence of fault and would not automatically exonerate the carrier from liability.[18]

It may be argued that this is a clear departure from the position taken by the Hague Visby Rules in which the definite language of the chapeaux of Article IV r 2. - *"Neither the carrier nor the ship shall be responsible for loss or damage arising or resulting from"* set the tone for the exoneration of the carrier from liability with respect to the litany of the exculpatory clauses.

Thus, the presumption approach seems to afford some kind of balance between the carrier and cargo interest. The *ping-pong* approach to the burden of proof is also meant to further establish some level of balance between

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17 The carrier's responsibility now extends to the time when the goods are received by the performing party or carrier until they delivered.

18 See Background Paper on Basis of the Carriers Liability by Francesco Berlingieri – CMI Yearbook 2004.

carrier and cargo interests to make up for the introduction of the exception clause in article 18(3). In this regard, where the carrier proves that one or more of the events or circumstances in Article 18)(3) caused or contributed to the loss or damage or delay the burden of proof then shifts to the claimant to prove that the damage loss or delay, was probably caused by or contributed to by the unseaworthiness of the ship or a failure to meet the specific obligations provided for in Article 15 dealing with the obligations of the carrier under the sea leg of the carriage[19]. The carrier is also liable, where he is unable to prove that neither the unseaworthiness nor the improper crewing etc[20] caused the loss, damage or delay.

The carrier is also liable where he is unable to prove that it complied with its obligation to exercise due diligence pursuant to Article 15. In effect the Hague-Visby obligations to exercise due diligence is again introduced into the Basis of Liability provisions in the draft convention. It would seem that this introduction is also made in view of the abundance of case law on the subject of due diligence.

It also needs be mentioned, that in the quest to balance the carrier and cargo interest, even though the exceptions of Article IV r 2 of the Hague-Visby Rules, which has been the subject of extensive criticism from the viewpoint of cargo interest is reintroduced, some modifications are made which are worth noting.

Reference has already been made to the chapeaux of Article IV r 2 of the Hague-Visby Rules which has been done away with. Also, the new exception clauses (not exoneration clauses)[21] do away with the infamous if not notorious nautical fault exemption of the Hague-Visby Rules[22].

It is the viewpoint of carriers that this is a significant trade-off for not accepting Article 5(1) of the Hamburg Rules as the sole basis of determining the rights and obligations of the carrier and cargo interest. The removal of the nautical fault exemption is indeed a welcome relief for cargo interest.

The new exception under Article 18(3)(f) now make provision for fire on the ship, which was included after rather protracted debates. The words "unless caused by the actual fault or privity of the carrier" have now been done away with within the overall framework of the liability provisions and the burden of proof.

It is also worth noting that the 17 exculpatory clauses apart from being modified in line with current developments have now been shortened to 15

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19 Article 18 5(a).

20 Article 18 5(a) ibid.

21 See (history) Berlingieri – Background Paper on Basis of Carriers Liability p. 143 of CMI Yearbook 2004.

22 Article IV r 2 (a) Act, neglect, or default of the master, carrier, pilot or the servants of the carrier in the navigation or in the management of the ship.

and the "catch all" clause in Article IV r 2(q) of the Hague-Visby Rules is now contained in a slightly different form in Article 18(2). The effect of this clause was that it left open all possibilities to the carrier for exculpating himself from liability[23]. We are yet to see how the new language would impact on the overall liability of the carrier.

It is hoped that the elimination of the catch-all clause founded on the ejusdem generic rule would prove a positive factor in the balance of cargo and carrier interests.

Furthermore, while the core of the exceptions have been maintained, there is a general modification of the language to take care of current trends and developments such as terrorism, reasonable measures to save property at sea as well as reasonable measures to avoid damage to the environment.
The above therefore sets outs the basis upon which the new list of exceptions found its way into the new draft convention. As a delicate compromise this is welcome. It is yet to be seen how the courts would interpret the new provisions having regard to the travaux preparatoires.

Specific Obligations

As pointed out earlier, in an attempt to balance the interests between cargo owners and carriers, the specific obligations of the carrier regarding the sea carriage were reinforced under Article 18 5(a) of the new draft and in respect of Article 15. Where the carrier seeks to rely on any of the exception clauses in Article 18 (3) and proves that it was the cause of the loss, damage or delay, the claimant is then called upon to prove that the event or circumstance relied upon was as a result of the unseaworthiness of the vessel. Article 15 now makes the carrier bound, before, at the beginning **and during the voyage** by sea to exercise due diligence to:

a) "Make and keep the ship seaworthy
b) Properly crew, equip and supply the ship and keep the ship so crewed, equipped and supplied throughout the voyage; and
c) Make and keep the hold and all other parts of the ship in which the goods are carried, including any containers supplied by the carrier in or upon which the goods are carried, fit and safe for their reception, carriage and preservation".

Thus, going beyond the purview of the Hague-Visby Rules, Article 15 makes due diligence a continuing obligation and thus in respect of seaworthiness, the obligation is no longer one restricted to "before and at the beginning of the voyage" – it is now a continuing obligation.

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[23] See the case of *Godwin, Ferrira and Co* v *Lamport and Holt* (2929) 34 Ll LR 192. Also *Leesh River Tea Co* v *British India SN Co* [1966]2 Lloyd's Rep 198

The argument has been made that the rules as currently contained in the new draft places a higher burden of proof on cargo claimants who have little means of proving the unseaworthiness of the ship. It seems however that despite the high level of the burden on the claimant, there is a good balance in making due diligence and seaworthiness as well as the general care of the cargo a continuing obligation. This is borne out of the fact that under the Hague-Visby regime there were a number of difficulties regarding the point in time at which the obligation of due diligence to make the ship-seaworthy is to be invoked. It seems that this could now well be regarded as settled [24].

In my considered opinion, it would be unfortunate to have article 14(2) remain as it is currently drafted. By the current drafting, the words "Notwithstanding" have the effect of taking away what is given in article 14(1) and strengthened by article 15. Article 14(2) should have been made subject to article 14(1) so that the well settled obligations of the carrier in sea carriage contract cannot be easily overridden by agreement between the parties especially as this may be detrimental to the consignee.

There is also abundant case law in this respect and should prove a positive development in the carrier-owner liability relationship especially if 14(2) is made subject to 14(1).

Nexus

The issue of nexus or causal connection is not a new provision[25] when viewed against the backdrop of a number of decided cases[26]. As provided in Article 18 (6) the carrier's liability relates only to that part of the loss damage or delay that is attributable to his fault.

As pointed out earlier, the provisions on liability even though rooted in Article 18, cannot be viewed in isolation. This is because there are a number of other provisions which have a significant impact on the issue of liability with respect to the balance of interest between carrier and cargo.

Mixed liability approach

It is noteworthy that, improving upon the Hamburg Rules, the new draft convention now widens the scope of application of the convention from the

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24 See the case of *Maxine Footwear Company Limited and Another* v *Canadian Government Merchant Marine Limited* where the stages or continuing obligation of Seaworthiness was an issue.

25 See Article 18 (6).

26 *Hamilton* v *Pandorf* (1887) 12 Appcas 518. Also Lord Brandon in *The Popi M* (1985) 2 Lloyds Rep I.

tackle to tackle[27] of the Hague-Visby Rules through the *port to port* concept of the Hamburg Rules and now under the new draft to the *door-to-door* concept. This undoubtedly affects the liability regime of the convention. The drafters of the draft convention have thus invoked a mixed liability approach that takes cognizance of the multimodal nature of the convention.

In effect the liability regime is a mix of the *Network* and *Uniform Liability* approaches[28]. In this respect, Article 27 of the draft convention is unique. It provides that, where loss damage or delay occurs during the carrier's period of responsibility but can be localized to the period before loading or after discharge from the ship, the provisions of the draft convention become subsumed under other international instruments which apply to that leg of the carriage [29] as if the shipper had entered into a separate contract with the carrier regarding that leg.[30] This provision creates flexibility by allowing states to apply their mandatory national law or other international instruments that guide the conduct of unimodal carriage.[31]

As pointed out earlier, the liability provisions of the convention extend to any performing party or any other person performing the carriers obligation under the contract of carriage where the performance is under the carrier's supervision or control[32].

Delay

Article 20 of the draft convention provides for the maritime performing party to enjoy the defences and limits of liability opened to the carrier very much in accord with the Hague–Visby and Hamburg Rules. It is also worthy of note that like the Hamburg Rules, the carrier is made liable for acts or omissions on his part that cause delay in the delivery of the goods. Even though there was protracted debate on the inclusion of provisions on delay in the draft convention; the Working Group finally reached a consensus for its inclusion[33]. For some delegations, this must be seen as part of the carefully crafted balance that the draft convention seeks to achieve.

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27 See *Pyrene Co* v *Scindia Navigation Co* [1954] I Lloyds Rep 321. Also *Fakonbridge Nickel Mines Ltd* v *Chimo Shipping Ltd* [1969] 2 Lloyds Rep 227.

28 See Mahin Faghfouri, International Regulation of Liability for Multimodal Transport – In Search of Uniformity. WMU Journal of Maritime Affairs 2006 , Vol. 5, No. 1 p 95. See also Article 11 of the Hamburg Rules.

29 Article 27.

30 The so called "hypothetical contract approach". A/CN.9/645 p. 23.

31 Such as the Convention on the Contract for the International Carriage of Goods by Road 1956 ("CMR") or the Uniform Rules concerning the Contract for International Carriage of Goods by Rail, Appendix to the Convention concerning International Carriage by Rail as amended by the Protocol of Modification of 1999 ("CIM – COTIF").

32 Compare this to Article 12 of the Hamburg Rules.

33 See A/CN.9/645 p. 19

Deck cargo

As part of the process of balancing the interest, especially as between cargo and carrier, and also to bring the legislation in tune with modern developments, the issue of deck cargo has been comprehensively addressed by the draft convention with the inclusion of road or railroad cargo[34]. It is however worth noting that while in the Hamburg Rules the carrier is expected to "insert in the bill of lading or other document evidencing the contract of carriage by sea", the agreement by the carrier and shipper to carry on deck; there is no such direct requirement under the draft convention even though Article 26(4) may have a similar import. Thus while it may serve the interests of a third party that has acquired a negotiable transport document or negotiable electronic transport record in good faith, the non categorical statement as provided for in the Hamburg rules may not serve the best interests of the shipper.

The key requirement under Article 26 is that the goods should be in containers or road or railroad cargo vehicles suited for deck carriage and so must be the deck itself. It is important to note the balance here. Where goods are carried on deck in contravention of the rules and such carriage results in loss, damage or delay the carrier cannot invoke the defences under article 18(3).

There are other provisions that seek to balance the interests of carrier and cargo and these may be found with respect to the rules regarding deviation, notice periods, time for suit, jurisdiction etc. This paper deals essentially with the basis of liability and does not therefore delve into all of these matters. Suffice it however to mention that there is a great deal of improvement with respect to provisions covering all those areas under the draft convention, akin to the position taken by the Hamburg Rules. These should therefore serve to strike the requisite balance between cargo and carrier interests.

Limitation of liability

During the debates which ushered in the Hamburg Rules, there were strong arguments to the effect that the retention of the principle of limitation of liability was no longer justifiable. Such arguments were revisited[35] in the debates leading to the adoption of the draft convention. Indeed, some recalled the words of Lord Denning in his so called "*final word"* in The *Bramley Moore*[36] where he said "I agree that there is not much justice in this rule but limitation of liability is not a matter of justice. It is a rule of public policy which has its origins in history and its justification in convenience".

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34 See Article 26. Also Article 9 of the Hamburg Rules.

35 The detailed viewpoints expressed can be found in A/CN.9/645 p.39-43.

36 [1964] 1 All ER 105.

When the dust settled, there was consensus that the inclusion of rules regarding limitation of liability stood to benefit both cargo and carrier interest as it enabled the carrier to calculate his risks in advance and hence enable him to offer cheaper freight rates. Having agreed on the inclusion of relevant provisions on limitation of liability, issues as to the exact limits became a subject of protracted debate during the Working Group sessions.

Arguments were put forward on both sides as to why the limits should be higher or lower. Finally the Working Group agreed on 875 units of account per package or other shipping unit or 3 units of account per kilogram of the gross weight of the goods, whichever is higher, with the relevant exceptions[37]. It is however important to note that unlike the language in the Hamburg Rules[38], the current wording under Article 61 includes "all breaches of its obligations under this convention". The limitation of liability is thus not restricted to loss or damage delay but to all other breaches that can be envisaged under the convention. Under this new formula, misdelivered goods which are regarded in some Jurisdictions as "lost" are subject to limitation of liability[39] as provided for under the Hague-Visby Rules[40]. In some jurisdictions however, since the goods are regarded as "lost" they are subject to unlimited liability.

Also under this formula, where a carrier issues a transport document without qualifying the information which he knows is incorrect[41] he still can limit his liability.

He can however lose the right to limit pursuant to article 63.

It is also worthy of note that the dual system of limitation is retained in the interests of owners of high value, light weight cargo.

Even though the draft convention retains the Hamburg Rules formula of packages or shipping units, it is doubtful whether it puts to rest the controversy regarding the use of the phrase **"as packed in or on such article of transport or vehicle".** This was the subject of extensive discussion in the Australian case of *El Greco (Australia) Pty V Mediterranean Shipping Company*[42].

In the above case Allsop J expressed a very strong opinion (obiter) on the meaning of the words "*or unit"* as contained in Article IV r 5(c) of The Hague Visby Rules. He was of the view that the words "or units" was intended to cover articles such as cars or boilers which were capable of being carried without packaging thus rejecting the other school of thought which holds that the word "or units" was inserted to cover bulk cargo by reference to freight

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37 See Article 61

38 See Article 6

39 Eg. Japan

40 The Hamburg Rules also by inference envisage limitation in such situations. See Article 6(c)

41 Article 42(1)

42 [2004] Lloyds Rep 537

unit as in the US COGSA[43]. Whether the addition of the wording "*shipping unit"* does clarify the issue is yet to be firmly pronounced upon.

The draft convention thus settles on the dual system as aforementioned and provides for 875 units of account[44] or 3 units of account per kilogram of the gross weight of the goods[45]. In Article 62, the new draft provides for limits of liability with respect to delay in the amount equivalent to two and a one-half times the freight[46] payable on the goods delayed and in respect of total loss of the goods concerned. This is not to exceed the limit that would be established pursuant to Article 61 paragraph 1. This second limb contrasts with the provision in the Hamburg Rules which provides that in no case should the liability for delay exceed the total fright payable under the contract of carriage of goods by sea[47]. In the new draft convention the total freight payable is omitted in favour of the limit as set under Article 61. 1 i.e. in respect of the total loss of the goods. This may seem more favourable to cargo interest and thus strike the requisite balance for the inclusion of provisions on limitation of liability. The draft convention thus provides more clarity on the subject.

On the issue of other parties engaged by the carrier in the performance of the contract of carriage being entitled to the defences and limits of liability, the draft convention follows the principles laid down in Article IV bis r 2 as well as Article 7 of the Hamburg Rules but does so in different language, while taking care of the multimodal character of the draft convention.

Article 20 provides that a **Maritime Performing Party** is entitled to the carrier's defences and limits of liability provided for under the convention with the necessary qualifications.[48] Very detailed provisions are included in the new draft regarding the circumstances under which the obligations of the Maritime Performing Party would be assumed by the carrier.

Breaking Limitation

Again the principles expressed by The Hague-Visby[49] as well as the Hamburg Rules[50] are quite similar to that adopted by the draft convention. The difference is mainly in the language of the draft convention. Eventhough the language of the draft convention is modeled along that of The Hague–Visby

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43 See also the case of the River Gurara [1998] 1 Lloyds Rep 225

44 Higher than the 835 units of account provided by the Hamburg Rules Article 6 (1)(a)

45 Higher than the 2.5 units of account per kilogram contained in the Hamburg Rules

46 Equivalent to the Hamburg Rules Article 6(1)(b)

47 Article 6 (1)(b)

48 See the development of case law on the subject with respect to the Himalaya Clause; *Alder* v *Dickson (The Himalaya)* [1954] 2 Lloyds Rep 267. See also *Scruttons* v *Midland Silicones* [1962] AC 446 and *New Zealand Shipping Lin*e v *Satterthwaite (The Eurymedon)* [1975] AC 154

49 Article IV rule 5 (e)

50 Article 8

Rules in this respect, it now takes cognizance of the fact that the obligations of the carrier are not restricted to "damage" and thus uses the words "loss resulting from the breach of the carrier's obligation". The burden of proof is on the claimant and it is a heavy burden indeed. The claimant is expected to prove that the loss was due to a personal act or omission done with the intent to cause such loss or recklessly and with knowledge that such loss would probably result.[51] It is thus clear; that the limitation of liability and the mode for breaking limitation are very similar to the provisions contained in The Hague-Visby and Hamburg Rules and should suffice for the balancing of cargo and carrier interests.

Conclusions

As pointed out at the very beginning, the provisions on liability and risks and obligations with respect to shipper and carrier run through the entire convention. Thus, it is only a very detailed analysis of the entire convention that can bring out all the nuances that seek to balance carrier and cargo interest. This brief discussion only seeks to highlight the salient features of the liability and limitation of liability regime under the draft convention. It is by no means exhaustive. It has however demonstrated that a lot of effort has gone into trying to balance the interests of cargo and carrier, to create uniformity of law and to reform the law on carriage of goods by sea while bringing it in tune with current commercial practice and developments.

No attempt to balance the interest of carriers and cargo can come out with provisions or a regime that is entirely satisfactory. Like all compromises, no one leaves completely satisfied but all leave in the hope that they have taken something away.

The deletion of the nautical fault rule, the continuing obligation of due diligence and seaworthiness, the inclusion of provisions on delay, the higher limits of liability and the clarity of language amongst others should be seen by cargo interests as positive additions for balancing the scale.

For carriers, the inclusion of the numerous exculpatory clauses, which still includes strikes and lockouts, as well as the fire exception the inclusion of rules on limitation of liability as well as the heavy burden of proof on the claimant should be heart-warming and be seen as a positive step towards balancing the interests.

It is expected that the harmonization and modernization of the international legal regime, coupled with the bold attempt to balance the carrier and cargo interests should lead to an overall reduction in transaction costs, increased predictability and greater commercial confidence for international business transactions.

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[51] For a discussion on the formidable nature of this burden on the claimant see *Nugent Killick* v *Michael Goss Aviation Ltd.* [2000] 2 Lloyds Rep 222. (Eventhough this deals with Article 25 of the Warsaw Convention it is very instructive).

BACKGROUND PAPER ON SHIPPER'S OBLIGATIONS AND LIABILITIES

Ingeborg Holtskog Olebakken*

1. Introduction

Traditionally, the shipper's obligation has been to deliver the goods ready for carriage, and to pay the freight. As the situation is today, many shippers are just as professional and sophisticated as the carriers. Of course there are still many small and unsophisticated shippers, but the group is still more diversified than it used to be. In the report of the Secretary-General of the UNCITRAL regarding possible future work on transport law of 2 May 2002, the need for the working group to deal with obligations of the shipper is described as follows (A/CN.9/497 paragraph 33 page 8):

> *Under current international regimes, very little responsibility is imposed on the shipper, and the shipper's obligations—to the extent that they exist— are not well defined. During the work of the International Subcommittee, it was suggested that it would be beneficial to list the shipper's obligations more precisely.*

The final draft convention from the working group (A/CN.9/645 Annex) recognizes the carrier's need for proper information relating to the goods. In this respect, the following provision on cooperation between the parties illustrates this new approach:

> *Article 29. Cooperation of the shipper and the carrier in providing information and instructions*
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> *The carrier and the shipper shall respond to requests from each other to provide information and instructions required for the proper handling and carriage of the goods if the information is in the requested party's possession or the instructions are within the requested party's reasonable ability to provide and they are not otherwise reasonably available to the requesting party.*

However, this focus on cooperation between the parties, and the carriers need for information in order to perform the carriage, has not in any way

* Associate, Thommessen Krefting Greve Lund AS Law Firm, Oslo

altered the basic elements of the contract of carriage – transportation against payment. In a previous draft of the convention (A/CN.9/WG.III/WP.32), provisions on freight appeared in chapter 9. Partly due to time constraint and the need to make priorities in the working group in order to prepare a compromised draft convention within the time limits set by the Commission, the majority of provisions on freight were deleted.[1] The only provision on freight is to be found in article 44 which basically just defines the expression "freight prepaid":

> *Article 44. "Freight prepaid"*
>
> *If the contract particulars contain the statement "freight prepaid" or a statement of a similar nature, the carrier cannot assert against the holder or the consignee the fact that the freight has not been paid. This article does not apply if the holder or the consignee is also the shipper.*

The provisions of the convention may not be departed from in contracts of carriage to the detriment of the shipper except unless otherwise provided for in the convention, cf. article 81. However, the convention applies on a non-mandatory basis to volume contracts falling within the scope of the convention, cf. article 82. Nevertheless, the shipper is still protected through certain minimum requirements when entering into volume contracts.

2. The Draft Convention

2.1 Shippers obligation to provide information

Even the very first draft convention had provisions on shipper's obligations and liability, dealing with the obligation to provide information relating to the goods and liability for loss sustained by the carrier caused by the breach of the shipper's obligations under this convention. The shipper's main obligation under this convention is to facilitate for the carrier's proper handling and carriage of goods. However, this is dependant upon the delivery of the goods ready for carriage to the carrier. It may seem needless to regulate, as it ought to go without saying as a consequence of the contract between the parties. Nevertheless the obligation to deliver the goods ready for carriage is to be found in article 28:

> *Article 28. Delivery for carriage*
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> *1. Unless otherwise agreed in the contract of carriage, the shipper shall deliver the goods ready for carriage. In any event, the shipper shall deliver the goods in such condition that they will withstand the intended carriage, including their loading, handling, stowing,*

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[1] See Report of Working Group III thirteenth session (New York, May 2004) (A/CN.9/552 paragraphs 162-64 page 36-37).

lashing and securing, and unloading, and that they will not cause harm to persons or property.

2. The shipper shall properly and carefully perform any obligation assumed under an agreement made pursuant to article 14, paragraph 2.

3. When a container is packed or a road or railroad cargo vehicle is loaded by the shipper, the shipper shall properly and carefully stow, lash and secure the contents in or on the container, or road or railroad cargo vehicle, and in such a way that they will not cause harm to persons or property.

Before and under the transportation, the carrier may need information in order to provide the proper handling of the goods. The obligation of the shipper to provide this information is to be found in articles 29 (see above) and 30:

Article 30. Shipper's obligation to provide information, instructions and documents

1. The shipper shall provide to the carrier in a timely manner such information, instructions and documents relating to the goods that are not otherwise reasonably available to the carrier, and that are reasonably necessary:

(a) For the proper handling and carriage of the goods, including precautions to be taken by the carrier or a performing party; and

(b) For the carrier to comply with law, regulations or other requirements of public authorities in connection with the intended carriage, provided that the carrier notifies the shipper in a timely manner of the information, instructions and documents it requires.

2. Nothing in this article affects any specific obligation to provide certain information, instructions and documents related to the goods pursuant to law, regulations or other requirements of public authorities in connection with the intended carriage.

Article 30 cannot be derogated from in a volume contract, cf. article 82 paragraph 4. Also, there is a specific obligation of the controlling party, which may be concurrent with the shipper, to provide additional information to the carrier during its period of responsibility:

Article 57. Providing additional information, instructions or documents to carrier

1. The controlling party, on request of the carrier or a performing party, shall provide in a timely manner information, instructions or documents relating to the goods not yet provided by the shipper and

not otherwise reasonably available to the carrier, that the carrier may reasonably need to perform its obligations under the contract of carriage.
2. If the carrier, after reasonable effort, is unable to locate the controlling party or the controlling party is unable to provide adequate information, instructions, or documents to the carrier, the shipper shall provide them. If the carrier, after reasonable effort, is unable to locate the shipper, the documentary shipper shall provide them.

2.2 Other obligations of the shipper

By agreement, the shipper may undertake the obligation to load, stow etc. (FIO - or FIOS - clause (free in and out)), cf. article 14 paragraph 2. This is nevertheless considered to be an act performed on behalf of the carrier, and consequently included in the basis of liability for the carrier, cf. article 18. However, the carrier may be relieved of liability if it proves that loading etc. according to a FIO - or FIOS -clause in accordance with article 14 paragraph 2, contributed to the loss, damage or delay, cf. article 18 paragraph 3 letter i. In practice, liability for loss due to events which took place during the loading etc. under a FIO - or FIOS -clause, depends upon what the carrier is able to prove.

The shipper may also be obliged to assist the carrier in performing the obligation of the carrier to deliver the goods to the consignee or the holder, cf. articles 47, 48 and 49. As a principal rule, the carrier shall deliver the goods to the consignee or the holder – depending upon whether the transport document is negotiable or not. However, if the carrier is prevented from delivery, for instance because the consignee or the holder does not properly identify itself, then the carrier may turn to the shipper for instructions. The shipper's failure to give correct information to the carrier may result in a misdelivery. The liability for misdelivery is not specifically dealt with in the convention, and is consequently presumed to be covered by the principal rule on carrier's liability in article 18.

2.3 Shippers liability

The basic liability of the shipper is to be found in article 31:

Article 31. Basis of shipper's liability to the carrier
1. The shipper is liable for loss or damage sustained by the carrier if the carrier proves that such loss or damage was caused by a breach of the shipper's obligations under this Convention.
2. Except in respect of loss or damage caused by a breach by the shipper of its obligations pursuant to articles 32, paragraph 2, and 33, the shipper is relieved of all or part of its liability if the cause or one of the causes of the loss or damage is not attributable to its fault

or to the fault of any person referred to in article 35.
3. When the shipper is relieved of part of its liability pursuant to this article, the shipper is liable only for that part of the loss or damage that is attributable to its fault or to the fault of any person referred to in article 35.

Elegantly enough, this provision does not deal with the burden of proof, which is definitely an important element in the corresponding principal provision on the liability of the carrier, cf. article 18. This omission is intended. Article 31 on the shipper's liability demonstrates to which extent it was possible to establish a consensus among the members of the working group with respect to this issue. The question of burden of proof with respect to the condition of fault in paragraph 2 is left to national law.

A much debated question in the working group was whether the shipper ought to be liable for economic loss due to delay. However, as part of the compromise which led to the quite ambiguous provision on delay for carrier, cf. article 22, the request for a corresponding liability for economic loss due to delay for the shipper was omitted.

The shipper has a strict liability pursuant to breach of its obligations pursuant to articles 32 and 33:

Article 32. Information for compilation of contract particulars
1. The shipper shall provide to the carrier, in a timely manner, accurate information required for the compilation of the contract particulars and the issuance of the transport documents or electronic transport records, including the particulars referred to in article 38, paragraph 1; the name of the party to be identified as the shipper in the contract particulars; the name of the consignee, if any; and the name of the person to whose order the transport document or electronic transport record is to be issued, if any.
2. The shipper is deemed to have guaranteed the accuracy at the time of receipt by the carrier of the information that is provided according to paragraph 1 of this article. The shipper shall indemnify the carrier against loss or damage resulting from the inaccuracy of such information.

Article 33. Special rules on dangerous goods
When goods by their nature or character are, or reasonably appear likely to become, a danger to persons, property or the environment:
(a) The shipper shall inform the carrier of the dangerous nature or character of the goods in a timely manner before they are delivered to the carrier or a performing party. If the shipper fails to do so and the carrier or performing party does not otherwise have knowledge of their dangerous nature or character, the shipper is liable to the

carrier for loss or damage resulting from such failure to inform; and
(b) The shipper shall mark or label dangerous goods in accordance with any law, regulations or other requirements of public authorities that apply during any stage of the intended carriage of the goods. If the shipper fails to do so, it is liable to the carrier for loss or damage resulting from such failure.

Article 33 cannot be derogated from in a volume contract, cf. article 82 paragraph 4.

The liability imposed on the shipper according to these provisions applies also for the documentary shipper, cf. article 34:

Article 34. Assumption of shipper's rights and obligations by the documentary shipper
1. A documentary shipper is subject to the obligations and liabilities imposed on the shipper pursuant to this chapter and pursuant to article 57, and is entitled to the shipper's rights and defences provided by this chapter and by chapter 13.
2. Paragraph 1 of this article does not affect the obligations, liabilities, rights or defences of the shipper.

However, as the shipper may become liable for breach of all of its obligations under this convention, the obligations of the documentary shipper is limited to the obligations under this chapter, which concerns the obligation to provide information. And if the holder of a negotiable transport document is not the shipper and does not exercise any rights under this Convention, for instance a bank, it "does not assume any liability under the contract of carriage solely by reason of being a holder", cf. article 60. The fulfilment of the obligation as controlling party to provide additional information, instructions or documents to the carrier under article 57 does not impose any liability on the holder.

In a maritime context, specific provisions introducing obligations and liabilities on the shippers', are rather new. However, that does not imply that the shipper cannot be held liable today, only that liability today is to be decided according to national law. Consequently, these provisions introduce harmonized rules in this field, and promote predictability for both carriers and shippers.

The shipper is liable for his own acts, but also for other persons, cf. article 35:

Article 35. Liability of the shipper for other persons
The shipper is liable for the breach of its obligations under this Convention caused by the acts or omissions of any person,

including employees, agents and subcontractors, to which it has entrusted the performance of any of its obligations, but the shipper is not liable for acts or omissions of the carrier or a performing party acting on behalf of the carrier, to which the shipper has entrusted the performance of its obligations.

The shipper's liability may not cease to exist upon a certain event or after a certain time is void, cf. article 36.

Shipper's liability is not subject to limitation. In the working group, the question was raised in connection with the debate on carrier's liability for delay.[2] If the shipper were to have a corresponding liability for economic loss caused by delay, this could expose the shipper of a potentially very high liability. However, the need for such a limitation cap ceased to exist as a provision on shipper's liability for delay was not included in the convention (part of the compromise that lead to article 22 on carrier's responsibility for delay).

Regardless of the deletion of shipper's liability for delay, it does not preclude such liability according to national law. Also there may be a need for limitation of liability for loss or damage to the ship, other cargo or personal injury, cf. article 31. Shipper's liability is not limited today, and that does not seem to have caused any problems in practice. However, the pure fact that shipper's liability is regulated in an international convention may give raise to more claims against the shipper. This may in turn make current the need for limitation of liability for the shipper – preferably on an international level.

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2 See proposal by the Swedish delegation on shipper's obligations (A/CN.9/WG.III/WP.85 paragraphs 5-7 page 3-4).

IMPLEMENTATION AND INTERPRETATION OF INTERNATIONAL CONVENTIONS

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IMPLEMENTATION AND INTERPRETATION OF INTERNATIONAL CONVENTIONS

INTRODUCTION

I. IMPLEMENTATION

The methods of national implementation of international conventions differ from country to country and, sometimes, various methods are used on different occasions in the same country. In some countries, treaties, if self-executing, have the force of law as a consequence of their ratification, and they are therefore automatically incorporated in the national legal system. In most countries, however, some sort of implementing legislation is required. This is so in the United Kingdom and in the countries of the Commonwealth. This is also the case in many other countries, such as, for example, most of the civil law countries. The implementing legislation may vary from the promulgation or publication to the enactment of a Convention, to the translation of substantive provisions of the Convention into terms of national law, and to the application of a Convention within the framework of a more general law.

The method of implementation may have positive or negative consequences in the actual implementation of the provisions of a convention by contracting States and in their uniform interpretation.

A. The method of promulgation or publication adopted in several civil law countries has the advantage of ensuring that the provisions of a convention are incorporated in the national legal system without any change in the text which, at least in some countries, becomes part of the national legal system in its original languages, thereby avoiding the danger of changing the meaning of its provisions as a consequence of a bad translation. Conversely, it has the disadvantage, unless the necessary adjustments are made to the existing national legal system, of a) overlaps or, b) difficulties in the enforcement of the uniform rules.

a) Even though in most jurisdictions substantive uniform rules prevail over domestic rules and, therefore, to the extent they regulate the same matter they entail the tacit abrogation of the domestic rules or in any event must be applied in lieu of the domestic rules, doubts may occur whether and to which extent they actually overlap certain domestic rules. Reference may be made,

as an example of this problem, to the enactment in Italy of the Salvage Convention 1989 by the so-called "order of execution": a one article law that simply says that full execution is given to the Convention and thereby when the Convention became binding for Italy, automatically caused its provisions to become part of the Italian legal system. Of course there existed in Italy domestic rules on salvage. More precisely, there existed three separate sets of rules governing (a) assistance and salvage, (b) salvage of sunken ships and other property, and (c) finding of derelicts: clearly the provisions of the Convention prevail over those of Italian domestic law in respect of assistance and salvage (of course to the extent that they are in conflict with them); but the question whether they prevail over those mentioned under (b) and (c) may give rise to doubts. The problem would have been overcome if the implementing legislation had indicated whether and to which extent the uniform rules governed the operations mentioned under (b) and (c).

b) The provisions of a Convention when becoming part of a national legal system may suffer something similar to what in transplantation is called a rejection: quite often the uniform rules, being the end result of a difficult compromise between delegations belonging to different legal systems, do not easily fit into anyone of such systems and require some changes in the existing laws or they may require collateral implementing legislation.

B. The technique of the translation of the rules of a convention into terms of a national law, which is frequently used in Scandinavian countries, may avoid, wholly or partly, the difficulties mentioned above. It could, however, entail a different problem. When in fact the provisions of a convention are translated into terms of national law the danger arises that they are interpreted on the basis of other (general or special) national rules rather than on the basis of the convention from which they originate, no account being taken anymore of the need for their uniform interpretation. This seems to be a real danger in some countries, where this type of implementation cuts away the link between the uniform rules and the convention from which they originate. The danger appears to be minor in common law countries, in which the principle seems to prevail whereby provisions of an international origin must be interpreted, when their formulation permits, so as to enable the State to fulfil its international obligations.[1]

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[1] In England see *Attorney-General for Canada* v. *Attorney-General for Ontario*, [1937] A.C. 326; *The "Banco"* (C.A.) [1971] 1 Lloyd's Rep. 49 at p. 52; *The "Sandrina"* (H.L.) [1985] 1 Lloyd's Rep. 181, at p. 185. In Australia see *Minister for Immigration and Ethnic Affairs* v. *Teoh* (1995) 183 CLR 273 at p. 287 cited by MASON, *Harmonization of Maritime Laws and the Impact of International Law or Australian Maritime Law*, F.S. Dethridge Memorial Address, Conference

For the CMI, that for 110 years has been striving for uniformity of maritime law, it may therefore be important to find out what happens of international conventions after their adoption and entry into force. This has been already done, at least in part, for the Salvage Convention 1989 and, more recently, for the limitation conventions (CLC 1992, LLMC and HNS) in respect of which a CMI International Sub-Committee, under the chairmanship of Gregory Timagenis, is presently considering the possible adoption of guidelines in respect of the procedural aspects of limitation. On a personal more limited basis one of the undersigned has tried to carry out a similar investigation in respect of the Arrest Convention 1952.

It is thought, however, that this investigation should be expanded and it is suggested that it should cover three different areas:

1. The techniques of implementation of conventions and their actual impact on ensuring actual uniformity

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of the Maritime Law Association of Australia and New Zealand, Cairns, 30 September 1998. With specific reference to the Arrest Convention Brandon, J. (as he then was) so stated in *The "Eschersheim"*, [1974] 2 Lloyd's Rep. 188, at p. 192:

> The second consideration is that the 1956 Act was passed for the purpose, among others, of giving effect to the adherence of the United Kingdom to the International Convention Relating to the Arrest of Seagoing Ships made at Brussels, Oct. 10, 1952. In such a case there is a presumption that the legislature, in giving effect to the Convention, intended to fulfil the international obligations of this country rather than to depart from them, and it follows that, where any provisions of the 1956 Act apparently intended to give effect to the Convention are capable of more than one meaning, the Court may look at the terms of the Convention in order to gain assistance, if possible, in deciding which meaning is to be preferred: *The Banco*, [1971] P. 137; [1971] 1 Lloyd's Rep. 49, applying *Salomon* v. *Commissioners of Customs and Excise*, [1967] 2 Q.B. 116; [1966] 2 Lloyd's Rep. 460 and *Post Office* v. *Estuary Radio*, [1968] 1 Q.B. 470; [1967] 2 Lloyd's Rep. 299.

A partially different approach has however been adopted in Scotland by the Outer House of the Court of Session in *Landcatch Ltd.* v. *International Oil Pollution Compensation Fund and Braer Corporation* [1998] 2 Lloyd's Rep. 552. Lord Gill in fact so stated (at p. 566 and 567):

> The Court should start from the assumption that Parliament has accurately implemented the treaty obligations set out in the relevant Conventions. The sections should therefore be construed in the first instance without reference to the Conventions or other related sources such as travaux préparatoires. If the sections disclose a clear-cut meaning, then that is the meaning that they should be given, whether or not that meaning is at odds with the assumed purpose of the Convention. It is only if the statutory provisions are obscure or ambiguous that there is any need to resort to the Conventions themselves, or to any other secondary sources, as an aid to construction (*Salomon* v. *CEC*, [1967] 2 Q.B. 116, Lord Justice Diplock at pp. 143-144). At that point, it becomes a matter for the Courts as to the weight to be given to the various secondary sources of assistance in the interpretation of the statutory provisions (cf. *Fothergill* v. *Monarch Airlines*, [1981] A.C. 251, Lord Scarman at p. 295C).

The decision of the House of Lords in *Fothergill* v. *Monarch Airlines* [1980] 2 Lloyd's Rep. 295 is not directly relevant, because the Warsaw Convention as amended by the Hague Protocol has been given the force of law in England.

2. The relationship between the uniform rules, when they are given the force of law in a State Party, and the pre-existing national rules that regulate the same matter.
3. The extent to which the provisions of a convention require implementing legislation in order to ensure their satisfactory (and uniform) application.

The areas under (1) and (2) could be investigated, at least in a first stage, by means of a questionnaire an outline of which is enclosed (Annex I).

The area under (3) needs to be investigated in respect of each individual convention and, in order to enable the Conference to assess the feasibility and usefulness of this exercise, an overview has been made in Annex II of the provisions of the draft UNCITRAL Convention on the Contract for the International Carriage of Goods Wholly or Partly by Sea [2] that expressly or impliedly refer to provisions of national law or to customs usages and practices of the trade.

The above two documents have been prepared by one of the co-authors of this paper, Prof. Berlingieri.

II. APPLICATION AND INTERPRETATION

When considered from a comparative point of view, the issue of the application of the international maritime conventions, is of great interest because it presents various aspects. It is interrelated: **a)** with the application of those conventions both in the international field and in national legal systems (administrative measures for the execution of the international conventions, legislative and jurisdictional application); **b)** with their legal effects in national legal systems. This is especially so in the case of conventions with legislative content, such as the maritime conventions under examination; **c)** with their application, which may be direct, or may require a special administrative act of domestic public law or a legislative incorporating act or the consent of Parliament given by a ratifying law; **d)** with terms varying to their application, such as the official publication, the observance of publicity. At this point, let me note that the principle of mutuality is of interest with regard to the application of the maritime conventions, because some of them (see article 8 of the 1952 convention on the arrest of seagoing ships or other similar international conventions, see article 1 of the n. 19 international labour convention of 1925 which also applies to seamen) and mostly because the Constitutions of some states (see the French Constitution,

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[2] This is the title chosen by the Working Group at its last session held in Vienna in January 2008.

Article 55, the Greek Constitution, Article 28 par. 1 and the Portuguese Constitution, Article 15 par. 3 on a limited scale) impose the term of mutuality for the application of an international convention to the respective national legal system. The breach or the infringement of the term of mutuality, results in the non application or the suspension of the convention or its termination? The Convention of Vienna of 1969 on the law of treaties (article 60) allows under conditions the termination of the respective international convention; **e)** with limitations to the application of an international convention either by allowing a contracting party when ratifying or acceding to the convention or even later, to provide, that it will not apply or that it will limit the application of the convention as a whole or of some of its provisions to certain relations (see article 15 par. 2 of the International Convention of London of 1976 on the limitation of the liability on maritime claims) or when ratifying or acceding to the convention, to make a reservation, that is to declare that some of the convention' s provisions do not apply vis-á-vis that state or even to give to these provisions a certain meaning, as long as these reservations are positively allowed or they are not generally or specifically prohibited by the convention or they are not contrary to the object and the purpose of the convention; **f)** The issue of interpretation of the international maritime conventions, which are conventions of legislative content and therefore they have direct legal effects in the national legal systems of the contracting parties, is presented during their application, is a matter of high importance. Primarily, what is of interest is how the courts of each contracting party interpret the rights and obligations which arise from such a convention. Such an interpretation is a recognized competence which is not however binding for the other contracting parties. In many national legal systems courts have the exclusive jurisdiction to interpret international conventions. The interpretation that the Administration may give to a convention is not binding for courts. The issue of interpretation of international conventions, especially of those which have legislative content, by english courts is of interest because of the particular system of the incorporation of an international convention to the English legal system.

The courts of Great Britain do not apply *in casu* the original text of an international convention but the text contained in the national law by which it was incorporated into English legal system. They do not take into consideration the original content of the convention, even though it may be an appendix to the incorporating national law. Therefore this text is considered as a *factum*. The examination within a comparative framework of the practice of the states regarding the interpretation of international maritime conventions, will help to clarify the complementary role which such a practice has in their jurisdictional application and it will show the interdependence between their interpretation and their application; **g)** the

application of international conventions is closely connected to the supremacy of the international convention law. Its examination should take place not from the point of view of the international law but of national law. According to national law, the issue is dealt either with constitutional provisions which recognize directly or indirectly the supremacy of international convention law, or with special provisions of international conventions or of the national legislation which reserve the supremacy of the relevant international convention or of a specific category of international conventions or provisions of national law which regulate specific categories of legal relations. The recognition of the supremacy of the international convention law with the enactment of direct and clear constitutional provisions (see the French Constitution of 1955, Article 55, the Dutch Constitution of 1956 as amended in 1983, Articles 66 and 95, the Greek Constitution, Article 28 par. 1) or with the appropriate interpretation of constitutional provisions (this category includes the Constitutions of Spain, Portugal, Germany, Italy, Luxembourg, Denmark and Ireland) or other legislative provisions. The consequence of the recognition of the supremacy of the international convention law, especially if it arises from a constitutional provision, is that, in case of conflict between a national rule and an international convention provision, the national rule will not be applied and also the *ex officio* examination of the opposition of the national rule to the international convention by courts. According to the most persuasive view, the international convention provisions do not prevail over the constitutional provisions, unless there is a specific provision made in them.

Annex III, prepared by Prof. Antapassis, aims to the examination of some provisions of the International Convention of 1993 on Maritime Liens and Mortgages, which either deal with the scope of application, or refer to the national law (*lex navis*, *lex fori*), or do not regulate some issues, allowing thus, the national legislations to regulate them. That means that the application of the Convention is to a very important degree affected by the applicable national law.

ANTHONY ANTAPASSIS FRANCESCO BERLINGIERI

ANNEX I

QUESTIONNAIRE ON THE IMPLEMENTATION OF INTERNATIONAL CONVENTIONS

1. Which is under your Constitution the technique that must be used in order to implement an international convention on uniform substantive law into the national legal system.

2. What is the status of the uniform rules after they have become part of your national legal system as respects other national laws.

2.1 Do the uniform rules repeal or in any event prevail over the national rules or are they on the same level?

2.2 If they repeal the existing domestic rules which are in conflict with them does this occur because the uniform rules possess a higher status (e.g. that of constitutional or semi-constitutional rules) or merely on the basis of the principle that a more recent law prevails over an older one (*lex posterior derogat priori*) or of the principle that a special law prevails over a more general law (*lex specialis derogat generali*)?

2.3 If neither 2.1 or 2.2 is applicable, what is the relationship between pre-existing domestic rules and uniform rules?

ANNEX II

ANALYSIS OF THE PROVISIONS OF THE DRAFT INTERNATIONAL CONVENTION ON CONTRACTS FOR THE CARRIAGE OF GOODS WHOLLY OR PARTLY BY SEA THAT REFER TO DOMESTIC RULES

1. Provisions in which reference is made to national law

Article 12. Period of responsibility of the carrier

> 1. .....
> 2.(a) If the law or regulations of the place of receipt require the goods to be handed over to an authority or other third party from which the carrier may collect them, the period of responsibility of the carrier begins when the carrier collects the goods from the authority or other third party.
> (b) If the law or regulations of the place of delivery require the carrier to hand over the goods to an authority or other third party from which the consignee may collect them, the period of responsibility of the carrier ends when the carrier hands the goods over to the authority or other third party.

States that intend to ratify the Convention may wish to consider whether there exist in their countries any rules of law or regulations requiring the goods to be handed over at the port of loading to an authority from which the carrier must collect them and/or requiring the carrier to hand over the goods at the port of discharge to an authority from which the consignee may collect them and, if there are none, whether there is any good reason to issue them. In addition, any information in this respect would enable all interested parties to know in advance whether the above provisions apply in respect of the agreed ports of loading and discharge and thus integrate the uniform rules.

Article 30. Shipper's obligation to provide information, instructions and documents

> 1. The shipper shall provide to the carrier in a timely manner such information, instructions and documents relating to the goods that are not otherwise reasonably available to the carrier, and that are reasonably necessary:
> (a) ……
> (b) For the carrier to comply with law, regulations or other requirements of public authorities in connection with the intended carriage, provided that the carrier notifies the shipper in a timely manner of the information, instructions and documents it requires.
> 2. Nothing in this article affects any specific obligation to provide certain

> information, instructions and documents related to the goods pursuant to law, regulations or other requirements of public authorities in connection with the intended carriage.

The need for such laws and regulations may exist for safety and security reasons and States ought to take this provision into account when considering ratification of the Convention. In addition, although the carrier and the shipper should be aware of the existing laws and regulations and other requirements reference to which is made in the above article, some investigation in that respect in a number of maritime countries may probably be helpful in order to clarify the effect of this provision.

Article 50. Goods remaining undelivered

> 1. .....
> 2. Without prejudice to any other rights that the carrier may have against the shipper, controlling party or consignee, if the goods have remained undelivered, the carrier may, at the risk and expense of the person entitled to the goods, take such action in respect of the goods as circumstances may reasonably require, including:
>
> (a) ... ...
>
> (b) ... ...
>
> (c) To cause the goods to be sold in accordance with the practices or pursuant to the law or regulations of the place where the goods are located at the time.

The lack of any provision in this respect may adversely affect the smooth operations in a port and, therefore, if they do not exist, their enactment may be useful and would avoid problems in the application of this article.

Article 66. Action for indemnity

> An action for indemnity by a person held liable may be instituted after the expiration of the period provided in article 64 if the indemnity action is instituted within the later of:
>
> (a) The time allowed by the applicable law in the jurisdiction where proceedings are instituted; or
>
> (b) Ninety days commencing from the day when the person instituting the action for indemnity has either settled the claim or been served with process in the action against itself, whichever is earlier.

States Parties may consider whether to provide in their national law a period longer than that indicated in the above article.

Article 67. Actions against the person identified as the carrier

> An action against the bareboat charterer or the person identified as the carrier pursuant to article 39, paragraph 2, may be instituted after the expiration of the period provided in article 64 if the action is instituted within the later of:

(a) The time allowed by the applicable law in the jurisdiction where proceedings are instituted; or

(b) Ninety days commencing from the day when the carrier has been identified, or the registered owner or bareboat charterer has rebutted the presumption that it is the carrier, pursuant to article 39, paragraph 2.

Same comment as that in respect of article 66. Attention should be drawn to the fact that in this case there could be a greater need for a longer period, in view of the possible difficulties a claimant might have in order to commence an action against the actual carrier.

Article 69. Choice of court agreement

1. .....

2. A person that is not a party to the volume contract is only bound by an exclusive choice of court agreement concluded in accordance with paragraph 1 of this article if:

(a) ... ...

(b) ... ...

(c) ... ...

(d) The law of the court seized recognizes that that person may be bound by the exclusive choice of court agreement.

The need to consider this provision arises of course only if a State Party decides to opt-in the chapter on Jurisdiction. In such a case that State may wish to consider whether it would be advisable to clarify by legislation whether a jurisdiction clause in a transport document is binding on a third party or not. At present this is an issue decided by jurisprudence and in some countries (e.g. France and Italy) the decisions go in opposite directions.

Article 75. Recognition and enforcement

1. A decision made by a court having jurisdiction under this Convention shall be recognized and enforced in another Contracting State in accordance with the law of that Contracting State when both States have made a declaration in accordance with article 76.

2. A court may refuse recognition and enforcement:

(a) Based on the grounds for the refusal of recognition and enforcement available pursuant to its law; or

(b) If the action in which the decision was rendered would have been subject to withdrawal pursuant to article 73, paragraph 2, had the court that rendered the decision applied the rules on exclusive choice of court agreements of the State in which recognition and enforcement is sought.

3. ... ...

Always in case a State Party decides to opt-in the chapter on Jurisdiction this chapter may require a review of the existing legislation.

Article 85. Global limitation of liability

> Nothing in this Convention affects the application of any international convention or national law regulating the global limitation of liability of vessel owners.

Even though no action is required at a national level in connection of this article, States Parties may wish to take this opportunity to consider whether the law on global limitation is in line with that adopted in the more recent international conventions.

Article 88. Damage caused by nuclear incident

> No liability arises under this Convention for damage caused by a nuclear incident if the operator of a nuclear installation is liable for such damage:
>
> (a) Under the Paris Convention on Third Party Liability in the Field of Nuclear Energy of 29 July 1960 as amended by the additional Protocol of 28 January 1964, the Vienna Convention on Civil Liability for Nuclear Damage of 21 May 1963 as amended by the Joint Protocol Relating to the Application of the Vienna Convention and the Paris Convention of 21 September 1988, and as amended by the Protocol to Amend the 1963 Vienna Convention on Civil Liability for Nuclear Damage of 12 September 1997, or the Convention on Supplementary Compensation for Nuclear Damage of 12 September 1997, including any amendment to these conventions and any future convention in respect of the liability of the operator of a nuclear installation for damage caused by a nuclear incident; or
>
> (b) Under national law applicable to the liability for such damage, provided that such law is in all respects as favourable to persons that may suffer damage as either the Paris or Vienna Conventions or the Convention on Supplementary Compensation for Nuclear Damage.

States Parties ought to review their national laws, if any, on liability for damage caused by a nuclear incident in order to find out whether they are more favourable to persons that may suffer damage or not.

B) Provisions in which reference is made to customs, usages and practices of the trade

Article 26. Deck cargo on ships

> 1. Goods may be carried on the deck of a ship only if:
>
> (a) Such carriage is required by law;

(b) They are carried in or on containers or road or railroad cargo vehicles that are fit for deck carriage and the decks are specially fitted to carry such containers or road or railroad cargo vehicles; or

(c) The carriage on deck is in accordance with the contract of carriage, or the customs, usages, and practices of the trade in question.

It is suggested that it is of great importance for States Parties to check whether or not there are in existence in their ports customs, usages and practices in respect of carriage on deck of containers, road or railroad cargo vehicles, to establish whether they are consistent with present transportation techniques and whether they are the same in all national ports or not. States ought also to clarify which is the difference at a national level between customs, usages and practices of the trade.

Article 45. Obligation to accept delivery

When the goods have arrived at their destination, the consignee that exercises its rights under the contract of carriage shall accept delivery of the goods at the time or within the time period and at the location agreed in the contract of carriage or, failing such agreement, at the time and location at which, having regard to the terms of the contract, the customs, practices and usages of the trade and the circumstances of the carriage, delivery could reasonably be expected.

Time and location of delivery is important and, therefore States ought to review the existing national (or local) customs, usages, and practices of the trade in respect of the time and place of delivery of goods carried by sea, rail or road.

Article 50. Goods remaining undelivered

1. .....

2. Without prejudice to any other rights that the carrier may have against the shipper, controlling party or consignee, if the goods have remained undelivered, the carrier may, at the risk and expense of the person entitled to the goods, take such action in respect of the goods as circumstances may reasonably require, including:

(a) ... ...

(b) ... ...

(c) To cause the goods to be sold in accordance with the practices or pursuant to the law or regulations of the place where the goods are located at the time.

In this article reference is made, for the sale of goods that remain undelivered, to the practices, laws and regulations of the place where the goods are located. In order to ensure the smooth application of this article, a review of the existing practices, if any, ought to be made by States Parties.

ANNEX III

A SHORT ANALYSIS OF CERTAIN RULES ON THE INTERNATIONAL CONVENTION ON MARITIME LIENS AND MORTGAGES 1993

1. Introduction

Since the end of the 19th century, the financing of shipowners by banks or other financial institutions gained ever increasing importance in the international economic relations. The need to recognize internationally the principal factor of a shipowner's creditworthiness for the building or purchase of ships, namely the maritime mortgage, became apparent to those interested in the merchant marine. Also, the need became apparent to limit the number of maritime liens which took precedence over maritime mortgages only to those creditors whose claims were formed during the exploitation of the ship and were indeed in need of protection. The latter dictated the international unification of maritime liens' regime. That was the only way to overcome any uncertainty as to the, then more significant,[1] differences of the national legislations regarding the maritime liens regime.[2] The fact that maritime liens may be different from one jurisdiction to another as well as the fact that they are created during the voyage of a ship, may be the cause for the creation of maritime liens recognized as such in one jurisdiction but not recognized or having different weight in another. That phenomenon not only does it weaken the creditworthiness of a shipowner during the building, the buying of a ship and its exploitation but also it may lead to unjust results.

The issue above was dealt with by Comité Maritime International at its first Conferences. During the 1904 Amsterdam Conference the CMI decided that the best way forward for the achievement of the international unification of substantive law would be the drafting of an international code of maritime liens. That was so because the creation of a rule of private international law based on the law of the ship's flag could not be applied without exceptions.

That position was initially stated in the international convention on the unification of certain rules relating to maritime liens and mortgages of 10 April 1926. For reasons beyond the scope of the present paper, that

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1 See *Hennebick*, Note de droit comparé sur les principes en matière de privilèges et hypothèques, Bulletin CMI (Conférence d'Hambourg), at p. 12 et seq.

2 See Bulletin CMI n. 11 at p. ?, ?? and 218.

Convention had a limited success.[3] The International Convention of 27 May 1967 on the same topic followed. The latter Convention's stated goal (Art. 25) was to replace the 1926 Convention in order to serve better the extended long-term financial needs of the shipowner and thus achieve wider acceptance. However, despite the effort made, that Convention was not widely accepted, it did not come into force, so it did not replace the convention of 1926.[4]

So, in 1985 the IMO and UNCTAD, assisted by the CMI, began working

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[3] The following states have ratified the international convention of 1926: Belgium, Brazil, Estonia, France, Hungary, Italy, Poland, Romania and Spain. The following states have acceded to it: Algeria, Argentina, Cuba, Haiti, Iran, Lebanon, Madagascar, Monaco, Portugal, Switzerland, Syria, Turkey, Uruguay and Zaire. It is in force among the member states from 2-6-1931. Denmark, Finland, Norway and Sweden had ratified the 1926 Convention but denounced it in 1 March 1965. The 1926 Convention had influenced legislation in Yugoslavia (see. *A. Suc*, La nouvelle loi yougoslave à l'utilisation des navires de mer, D.M.F. 1959, 696), Israel (see. *S. Friedman*, Le droit maritime d'Israel, D.M.F. 1962, 52) and in other countries which were influenced by the French legal thought (see *?*. *Bokobza*, Aperçu sur le code de commerce maritime tunisien, D.M.F. 1962, 760)? *G.- H. Lafage*/*J. Villeneau*, Étude sur l'application des conventions internationales de Bruxelles dans les états independents dont la souveraineté était autrefois exercée par la France, D.M.F. 1966, p. 586, 649).

Greece did not ratify the 1926 Convention. The Greek Code of Private Maritime Law however (Arts. 205-209) has been influenced up to a point by that convention. Further, the administrative acts by which ships are capitals as foreign registered (those ships form the bulk of the Greek merchant fleet) stated that the maritime liens, included in Art. 2 of the 1926 Convention, on ships falling in that category took priority over a preferred maritime mortgage. Since 1983 those acts state that only those maritime liens included in Art. 2 of the 1926 Convention which are recognized by Art. 205 para. 1 of the Code of Private Maritime Law take priority over a preferred maritime mortgage.

The Supreme Court of Greece (Areios Pagos) in its decisions (913/1975, 229/1983 (plenary) and 1055/1983) held that Art. 2 of the 1926 Convention cited by the acts above was to be dealt with as a fact. Thus, the party to the proceedings asserting such a maritime lien had also to prove the existence and the content of the maritime liens which took priority over a preferred mortgage. That was so because the 1926 Convention was not ratified by Greece by a law and the content of Art. 2 was never published together with the acts above in the Official Gazette. This is a matter of general interest, i.e. whether an international convention which has been signed by a state but not ratified by law, is in force in that state and therefore should be applied by courts automatically. The answer is to the negative. This is especially so in case the convention itself requires that the signatories ratify it according to the procedure described in their constitution.

Further, as it is known, due to the system of incorporation of an international convention into the English legal system, English courts do not apply the original text of the convention but the text as included in the incorporating law. As a result, the international convention is seen as a factum (*I.M.Sinclair*, The Principles of Treaty Interpretation and Their Application by the English Courts, ICLQ 1963, at p. 508 et seq.).

[4] 22 states signed the 1967 Convention while 23 states abstained (see Procès-Verbaux etc. de la Conférence Diplomatique de Bruxelles de 1967, at p. 384 et seq.). Up until now the following states have ratified that convention: Denmark, Finland, Norway, and Sweden. Morocco and Syria have acceded to it. It is not yet in force. However, it has been quite influential in the drafting of maritime legislation of Argentina (see Arts. 471-473 of L 20094 on the Law of Navigation), of Germany (see Art. 754 of the HGB as amended in 1980) as well as the northern European states of Denmark, Norway, Sweden and Finland.

on a new international convention on the same subject. The outcome of those efforts was the International Convention on Maritime Liens and Mortgages, which was signed in Geneva, 6th of May in 1993. That Convention was signed by 57 countries and until now 11 countries have ratified or acceded to it. It came into force in 5 September 2004. The scope and the application of its content will be the subject of the present paper.

2. Subjective Scope

As is known, the provisions of any international convention are applicable to the states which are members to such convention. Thus, the provisions of the Convention are applicable to the states parties to that Convention. The provisions of the Convention apply when the rights deriving from a registered mortgage or a maritime lien are exercised within the jurisdiction of a member state on a ship whether that ship flies the flag of a state party or not, as long as it is subject to the jurisdiction of a member state.

States could express their consent to be bound by that Convention by signing it from 1 September 1993 to 31 August 1994 at the Headquarters of the United Nations, New York (a) without reservation as to ratification, acceptance or approval according to national law (Art. 18 para. 2a); or (b) by signing it subject to ratification, acceptance or approval, followed by ratification, acceptance or approval according to national law (Art. 18 para. 2b); or by accession according to national law (Art. 18 para. 2c). Ratification, acceptance, approval or accession are to be effected by the deposit of an instrument to that effect with the Secretary-General of the United Nations (Arts. 17 and 18 para. 3). Up until now the following 11 states have become parties to that Convention: Ecuador, Estonia, Monaco, Nigeria, the Russian Federation, Saint Vincent and Grenadines, Spain, the Syrian Arab Republic, Tunisia, Ukraine and Vanuatu.

3. Objective Scope

A. The wording of the provisions of Arts. 1, 13 para. 1 and 16 of the Convention makes clear that the objective scope of the application of the Convention depends on the definition of the terms "ship" and "seagoing vessel".

(a) The Convention does not define the term "ship". However, the fact that the purpose of the Convention is the unification of the substantive law regarding mortgages and maritime liens leads to the conclusion that the term "ship" is used in a broader meaning i.e. in its technical or scientific meaning. If the Convention was applicable only on vessels which are considered as "ships" by the respective legislation of the forum, which allows them to fly its flag, the international unification of law would not be served. Thus, the

Convention is applicable to every vessel which navigates for the carriage of persons, goods, fishing, towage, salvage, recreation, scientific research or other reasons. The Convention does not apply to permanent or temporary installations as well as floating structures, such as floating drills, refineries, tanks and storage facilities for the storing of fuel or gas, which remain stable when they are in use.

(b) The Convention excluded from the meaning of the term "ship", those ships which navigate in inland waters (lakes and rivers). That becomes obvious when the English and French versions of the text of Arts. 1, 13 and 16 of the Convention are examined, where the terms "seagoing ships" and "navire de mer" are used. The exclusion of ships of inland navigation from the scope of the Convention raises the issue: by which criterion is that distinction between such ships and seagoing ships to be made?[5] Internationally, there is no uniform view on that issue. According to the view advocated especially in France, the criterion of distinction should be the nature of the waters where a ship navigates. Thus, if a ship is destined[6] or usually navigates at sea then it is considered as a seagoing ship.[7] If, on the other hand, the ship is destined or usually navigates inland waters, it is an inland waters ship. The application of that criterion, however, presupposes that the geographic limits of both the sea and inland waters are well defined. Further, the existence and operation of ships navigating at both kinds of waters creates uncertainty as to the application of the criterion above. That is the reason why others use as criterion the particular building features of each ship. However, that criterion does not lead to safe results either. This is so because, from a technical point of view, a number of ships navigating at great lakes or rivers have no difference from the ships navigating at sea. The same applies to the criterion regarding the risks a ship faces. Thus, the risks which a seagoing ship faces do not differ substantially from the risks faced by a ship navigating at inland waters. If anything, collisions and groundings occur more often at inland water (river) navigation than at sea. In order to promote certainty, *G. Berlingieri*[8] supports the criterion of ship registration. Thus, he argues that seagoing ships are those which are registered as such, whereas ships of inland water navigation are those which are registered in the relevant

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5 With regard to the various criteria of distinction see *L.M.Martin*, L'abandon du navire et du fret en droit français (1957).

6 See *G. Ripert*, ?, at p. 132? *P. Chauveau*, p. 108? *Autran*, Code international de l'assistance et du sauvetage (1902), at p. 235.

7 See *Smeesters/Winkelmolen* I, at p. 9. *Schaps/Abraham*, Das Seerecht in der Bundesrepublik Deutschland I (1959), at p. 231, take into consideration the ordinary navigation. As *G. Berlingieri* notes (Salvataggio e assistenza marittima in acque interne ed aerea, Dir. Mar. 1967, at p. 32 fn. 88), the wording does not coincide with the previous ones.

8 Ibid.

books regarding inland water navigation. However, the application of such a criterion does not reflect reality. This is so because there are ships which are registered as inland water navigation ships but operate equally, if not more, at sea. Thus, the Convention would not apply to such ships.

B. Furthermore, the Convention applies both on ships which are registered in a state party to the Convention and on ships registered in a non-party state provided that they are subject to the jurisdiction of a party state.

(a) The Convention relates its applicability to the registration of the ship (Arts. 1, 13 para. 1 and 16). Each state has the right to define the conditions under which it grants its nationality to ships and allows them to register in its register and fly its flag.[9] If registration cannot be immediately effected, the competent administrative authority of the state in question grants its nationality to the ship by issuing a temporary nationality certificate. Each ship which has been registered or issued a temporary certificate of nationality lawfully flies the respective state's flag. The Convention applies also to those ships which have not been registered but for which a temporary certificate of nationality has been issued.

(b) However, it may be that a ship is registered in one state and be allowed to fly the flag of another state. In modern times, the phenomenon of dual registration is frequent.[10]

In order for the ship to fly the flag of the state which the bareboat charterer or the charterer by demise has chosen, the state, where the ship has been initially registered, temporarily limits its jurisdiction mainly to issues which have to do with the rights on the ship. The state, which the charterer chooses, assumes jurisdiction over issues regarding the commercial management and operation of the ship, the security and its crew. That explains why, as far as maritime liens and mortgages are concerned, the Convention (Art. 11) gives the lead to the state where the ship is registered

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[9] See IAC 8 January 1960 *Recueil* 1960 p. 356? *L. Luchini/M. Voelclkel*, Droit de la mer (1966), at p. 38.

[10] The beginnings of this phenomenon are found in the 1951 German law on the nationality of ships. That law was drafted in a time when there was difficulty in the financing of the building of ships in Germany. German shipowners frequently registered their ships at the register of the state of the bareboat charterer who had the right to buy the ship after the lapse of a certain time period. (See *Kroger* in the 1987 ICC Symposium on «Bareboat Charter Registration – Legal issues and Commercial benefits», the minutes and papers of which were published in 1988). To the same effect is the French provision of Art. 3 Law 300 of 29 April 1975 [See. *E. du Pontavice*, Le statut des navires (1976), at n. 19]. Italy has also allowed the registration in its register of ships in the name of the charterer (see *F. Berlingieri*, The New Italian Law on Temporary Registration of Bareboat Chartered Vessels, JMLC 1990, at p. 199 et seq.? *Polic Curcic*, Registration of ships under bareboat charter with particular reference to dual registration, Dir. Mar. 1989, 415).

before it changes flag.

For the application of the Convention it is not necessary that the ship flies the flag of another state party. The fact that the ship is registered or flies the flag of the state where the maritime lien or mortgage are to be exercised does not present a problem. That interpretation of the Convention serves the purpose of the unification of the law regarding maritime liens and mortgages. Thus, the Convention applies also in the case where the mortgage or maritime lien which is exercised derive from wholly domestic relations namely relations without *élements d'extraneité.*[11]

(c) Further, the Convention applies in the case where the ship to which the mortgage and the maritime liens refer to, is not registered in a state party to the Convention. The Convention applies also to ships not registered in states parties as long as the courts of a state party have jurisdiction on the exercise of mortgages and maritime liens on such ships. That is an issue dealt with by the international civil procedure law of the forum.

C. Furthermore, no provision of the Convention creates any rights in, or enables any rights to be enforced against, any vessel owned or operated by a state and used only on government non-commercial service (Art. 13 para. 2). Unlike the 1967 Convention on maritime liens and mortgages (Art. 12 para. 2), the 1993 Convention does not specifically exempt from the scope of its application the ships which are chartered by the state for use on government non-commercial service. Thus, an argument could be made that the Convention applies to such ships. Such an interpretation, however, would not be in harmony with the 1926 Convention on the immunity of state ships. This is so because according to Art. 3 para. 1 of that Convention, as clarified by para. 1 of the Protocol of 24 May 1934, Art. 1 of the 1926 Convention which equals state ships to private ships does not apply on war ships, state yachts, supervision ships, hospital-ships, supply ships and other ships which either belong to the state or have been time chartered or voyage chartered or operated by a third party, provided that at the time when the claim is born or the arrest or charges are sought are used exclusively for the provision of services of governmental and not commercial nature. The same provision states that the above ships may not be subject to actions *in rem*, arrests or any other charges. However, claimants whose claims were born out of collisions or other accidents at sea, salvage or general average as well as repairs supplies or other contracts related to the ship can pursue their claims before the

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[11] See *José Maria Alcantara*, A short Primer on the International Convention on Maritime Liens and Mortgages -1993 Journal of Maritime Law and Commerce, vol. 27 at p. 219 et seq; *Gérard Auchter*, La Convention internationale de 1993 sur les privileges et hypothèques maritimes, D.M.F. 1993 p. ets., 675 ets.

competent courts of the state which owns or operates or charters the ship used in government service. In such a case the state may not claim immunity.

(a) War ships and other state ships used for the provision of administrative services fall in the category of state ships used for government and not commercial service.

War ships form the most important category of ships in public service. Although their definition does not present difficulties, it has to be done according to public international law.

The Hague Convention (VII) of 1907 relating to the conversion of merchant ships into war-ships (Arts. 1-4) defines as a war-ships all ships belonging to the navy of a state, bearing the external marks which distinguish the war-ships of their nationality, their commanders are in the service of the State, duly commissioned by the competent authorities and their names figure on the list of the officers of the fighting fleet and their crew are subject to military discipline. Similar definitions exist in the following international conventions: (i) the Geneva Convention of 29 April 1958 on the open sea (Art. 8 para. 2), (ii) the Brussels Convention of 25 May 1962 on the responsibility of operators of nuclear ships (Art. 1 para. 11), (iii) the Washington Convention of 7 September 1977 on the permanent neutrality of the Panama canal (Annex A) and (iv) the UN Convention on the Law of the Sea of 10 December 1982 (Art. 29). If no provision is made to the contrary, as for example it is made in Arts. 9 and 13 of the International Convention of Montreux of 20 July 1936 on the regime regarding straits, the definition of war-ship also includes auxiliary ships of the navy.

Thus, in the category of war-ships fall the ships belonging to the armed forces of a state whether they are battle-ships or auxiliary ships.

(b) The category of state ships which are used in public service other than war-ships, includes ships of other administrative services whether independent or not, which are destined to cover important needs of the state and do not operate according to market criteria. They are operated by means of public authority and their running cost is covered in a greater or smaller degree by the state budget. Such are the ships of the agency against economic crime, the ships of the coast guard (patrol ships), the ships belonging to the lighthouse agency, the ships belonging to public schools of training of cadets for the merchant marine, hospital- ships, ships conducting oceanographic research or preparing charts, the ships of the fire department and the auxiliary ships of the navy, in case one would consider as war-ships only the battle-ships.

The category of state ships used in commerce or industry includes those ships belonging to or operated either by public authorities which the state has made independent without, however, attributing to them juristic personality,

or by public juristic persons (of public law or private law) which the state establishes in order to organize more efficiently the economic activity in those sectors of economic activity when private enterprise is not able to. Those public services and public juristic persons act by market standards and methods and they seek the optimum economic result of their actions. That is the reason why those activities do not lose their commercial nature and remain within the sphere of private law from a conceptual, methodological and regulatory point of view. This is especially so in the case of public juristic persons of private law. The choice of such a juristic form implies the state's intention to include their relations and the services they provide to private law.

Thus, ships used by the public authorities or the juristic persons above for the provision of services of commercial or industrial nature, do not differ from the ships operated by private enterprises. Those ships fall into the scope of the Convention. That way the advantages sought for in their operation by the public authorities and juristic persons above become evident. From what has been said so far, it becomes clear that the court's decision is influenced by the underlying policies of the national substantive law of the forum.

Furthermore, unlike the 1926 Convention, the 1993 Convention makes no reference to maritime liens on freight nor on the accessories of the ship and freight (see Art. 4 *a contrario*; similar is the provision of the 1967 Convention). However, national law may provide for maritime liens on freight.[12]

Further, the Convention is mute on the issue whether maritime liens on the insurance indemnity may be exercised, thus leaving the matter to national legislation. However, given the fact that conflicting views have been expressed regarding that issue, this may give rise to conflicts of national laws.

4. Regulatory framework

The regulatory framework of the Convention does not provide for wholly original provisions, since it reproduces in a considerable degree the provisions of the 1967 Convention. Its provisions are complicated and include rules of private international law. That is an obstacle to the international unification of the substantive law regarding the rights falling within the scope of the Convention.

A. Art. 1 of the Convention is a basic rule of private (maritime) international law. The relation it regulates is certain rights *in rem*

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[12] See *W. Muller*, Remarques critiques sur la convention internationale du 27 mai pour l'unification des certaines règles relatives sur les privileges et hypothèques maritimes, DMF 1969, at p. 306 et seq.

(hypothèque, mortgage, and other registrable charges). The connecting element of those rights is the fact that they have to be registered in the appropriate book of the state where the ship is registered. The applicable law is the substantive law of that state. The registration and the deletion from the register of the ship and those rights as well as the results they bring are regulated by the substantive law of that state. In case no other provision is made in the Convention, such law regulates the creation, transfer, extinction, any amendments to their content and the exercise of the rights above. In the category of rights *in rem* - other than hypothèque and the Anglo-Saxon institution of mortgage – which have to be registered in a special book, falls the pledge which is especially established on small ships without transfer of possession to the creditor or a third party. Previously, in certain states, Greece being among them, the Anglo-Saxon institution of mortgage was held to be against national public order because of the extensive rights given to the creditor. In modern times, however, such thoughts lost ground and the institution presents no obstacle for the ratification of the Convention. The Convention provides that: "the register and any instruments required to be deposited with the registrar …are open to public inspection and that extracts … are obtainable from the registrar". In this respect the Convention does not follow the 1986 international convention on ships' registration, which allows the inspection of the registry only by those persons having a legitimate interest to such an inspection. In certain jurisdictions, the information above is considered as personal data of the shipowner. Thus, a legitimate interest is required for their inspection.

B. The Convention (Art. 4 para. 1) provides for certain maritime liens applicable in all states parties to the Convention (international maritime liens). Those maritime liens are rights *in rem* because they can be executed against the ship itself, for the satisfaction of certain claims against not only the shipowner but also the charterer by demise, the manager or the operator of the ship (the list is exhaustive).

(a) For many, the inclusion of the manager is arguable.[13] This is so because the manager acts in the name and for the account of the shipowner. Therefore, whatever liabilities the manager creates during the execution of his duties are liabilities of the shipowner. However, it is possible for the manager to have acted beyond the scope of his powers. In such a case he can be considered as solely liable.

(b) As far as claims secured by a maritime lien are concerned, the Convention provides for maritime liens for the following claims: "social

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[13] See *José Maria Alcantara*, A short Primer on the International Convention on Maritime Liens and Mortgages -1993 Journal of Maritime Law and Commerce, vol. 27 p. 219 et seq.

insurance contributions payable on behalf of the master, officers and other members of the vessel's complement". In certain jurisdictions social insurance contributions include monthly contributions by the shipowner and the vessel's complement and they are calculated as a percentage on the wages. The shipowner pays to the relevant social security fund not only his own contributions but also the contributions of the vessel's complement which he extracts from their wages. The wording of the specific provision of the Convention may lead to the conclusion that the maritime lien secures only the vessel's complement contributions which the shipowner extracted and kept without paying them to the relevant social security fund. However, it is clear that such a position does not facilitate the ratification of or accession to the Convention. Further, some of the states which have ratified or acceded to the Convention apply its provisions only to the contributions of the vessel's complement and others to the contributions of both the shipowner and the vessel's complement.

(c) Although the Convention (Art. 4 para. 1) states the claims secured by maritime liens, it does not state whether the maritime lien covers only the claim itself or its accessories as well, i.e. whether it covers the principal as well as contractual or default interest, the expenses of the court proceedings for the satisfaction of the claim or other expenses and the extra charges payable by the shipowner because of the late payment of the social insurance contributions to the respective social security fund. The clarification of that issue with a view wholly to secure the claim and its accessories is of great interest for the application of the Convention by the states parties to the Convention.

(d) Maritime liens are not personal liens but objective (*privilegia causae*). That is why, according to the Convention (Art. 10 para. 1) the assignment of a claim secured by a maritime lien leads to the assignment of the maritime lien itself. However, in certain jurisdictions wages (and thus the vessel's complement's wages as well) cannot be attached nor assigned. Therefore, if under the applicable law to the claim from wages such claim may not be assigned then the maritime lien securing such claim may also not be assigned. That, however, does not allow the member of the vessel's crew to discount his claim to a third party such as a mortgagee bank.

D. The need the Convention to gain the widest possible acceptance led to its provision (Art. 6) that states parties to it may establish further maritime liens on a national level (national maritime liens), than the ones already provided for by the Convention (international maritime liens, Art. 4 para. 1). Those national maritime liens secure claims against the shipowner the charterer by demise, manager or operator of the ship as long those national maritime liens

: (i) are subject to the same provisions as those contained in Arts. 8, 10 and 12 of the Convention, (ii) are extinguished after the lapse of a short period of time (the lapse of 6 months from the creation of the claim or 60 days from the registration to the Registry of the sale of the ship to a bona fide purchaser) and (iii) the international maritime liens, hypotheques, mortgages or other registrable charges take priority over the national maritime liens. The national maritime liens' ranking inter se is defined by the rules of private international law of the forum (usually those rules provide that the *lex fori* is the applicable law). In any case, the Convention does not seem to exclude from its scope the exercise on a ship of privileges (both general and special) which derive from general provisions, such as the general privilege regarding the wages and other sums due to employees (the employees of the shipowner's offices included). Those privileges, however, rank after the international maritime liens, mortgages and the national maritime liens but before the non-secured claims. The status of that kind of privileges needs to be clarified because it affects, even if marginally, the acceptance of the Convention.

E. The Convention (Art. 2) states that the ranking of hypotheques, mortgages, and other registrable charges inter se is regulated by the law of the state of the ship's Register. That provision creates no issues of enforcement since national legislations, influenced by roman law, follow the rule "*prior in tempore potior in iure*".

F. The same Article of the Convention provided that "all matters relating to the procedure of enforcement shall be regulated by the law of the State where enforcement takes place". It is noted that the law of such a state must not only regulate the procedure (*modus procedendi*) but also terms and issues which are closely connected to procedure and its implementation although they may not be procedural per se. Such a position is in harmony with the rule of private maritime law whereby *lex fori* regulates issues which are not procedural but which are closely connected to the procedure of execution. In certain jurisdictions, one of those issues is the following: in order to rank in priority, the claimant who has secured his claim through a maritime lien or hypothèque must request the competent public servant in charge of the judicial (forced) sale to do so. The public servant cannot act ex officio and rank the claimant who has not submitted such a request.

G. The Convention does not fully regulate the extinction of maritime liens contained in Art. 4 para. 1.

(a) Art. 9 of the Convention states that those maritime liens shall be extinguished after a period of one year from the discharge of the crew member from the ship or from the fact which gave rise to the claims, secured by the

maritime lien. That time period is not subject to suspension or interruption. An exception to the rule above is when, prior to the expiry of such a period, the vessel has been arrested or seized (such an arrest or seizure leading to a forced sale) or when, during the period, the arrest or seizure of the vessel is not permitted by law. In certain jurisdictions (Germany, Greece), if the court deciding on the merits of a case holds in his favour, the claimant, whether secured by a maritime lien or not, who has arrested the ship ("a saisi conservatoirement le navire"), has the right to execute that decision without attaching the ship. That way, which usually is time consuming, the arrest of ships leads to their forced sale.

(b) The Convention does not make clear whether in order for the one-year time period above to be suspended or interrupted, the arrest of ship has to be effected by any claimant or a secured claimant, interested in preserving the maritime lien. If one accepted that the on-year time period could be suspended or interrupted when any claimant arrested the ship, then the position of the mortgagee claimant would be adversely affected. This is so because on the one hand the mortgagee claimant arresting the ship would thus help preserve the maritime liens which rank before his claim and on the other hand if the mortgagee did not pursue the arrest of the ship, he would allow it to escape from its sphere of influence. If one accepted that the one-year time period could be suspended or interrupted when only the secured by a maritime lien claimant arrested the ship then such a claimant would have an incentive to arrest the ship at any cost and in those jurisdictions where the arrest of an arrested ship is not allowed, that would prolong the duration of the maritime lien. We believe that the second view is the correct one.

(c) Further, all registered mortgages, hypothèques, registrable charges, maritime liens and encumbrances of a similar nature shall cease to attach to the vessel after its forced sale provided that during the sale of the ship the latter was within the jurisdiction of a state party to the Convention and the forced sale took place according to the provisions of the law of that state as well as the provisions of Art. 11 of the Convention (Art. 12 para. 1). Thus, it becomes clear that in this matter too, the application of the Convention is heavily influenced by the *lex fori*. Unlike the 1967 convention (Art. 11 para. 1 in fine), in case of a forced sale of a ship, the Convention does not deal with the issue of the existing at the time of the sale charterparties and generally contracts regarding the economic exploitation of the ship. Thus, it is the law of the state where the forced sale takes place that answers the issue whether existing at the time of the forced sale charterparties and generally contracts regarding the economic exploitation of the ship continue to be in force after the forced sale or they cease to be in force. Therefore, charterers and other parties to contracts as well as those wishing to participate in the forced sale

are interested in learning the law of the state where the forced sale is to take place.

(d) The fact that the Convention does not mention other reasons of extinction of maritime liens does not mean that the reasons provided for in the applicable national legislation do not apply. Different national legislations provide for reasons of extinction of maritime liens regarding either the secured by the maritime liens claim (such as extinction of the claim because of payment, waiver, confusion etc., time limitations) or the object (such as the purchase of the ship by the claimant, adverse possession, confiscation) or the lien itself (such as resignation from maritime lien). With regard to that issue, the 1976 LLMC Convention Art. 12 para. 1 states that "the fund shall be distributed among the claimants in proportion to their established claims against the fund". That provision which has its origins in Art. 3 para. 2 of the 1957 International Convention on the limitation of shipowners' liability, imposes the distribution of the fund among all claimants subject to the limitation proceedings pro portione, regardless of whether they are claimants of secured by maritime liens or not.

5. From the above it emerges that a wider analysis of this Convention as well as other international maritime conventions within CMI, would make their uniform interpretation and application in each national law system easier. For this reason, such an effort, as difficult as it may seems, is worth the effort.

WRECK REMOVAL CONVENTION 2007

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Document 1

THE NAIROBI PERSPECTIVE: NAIROBI INTERNATIONAL CONVENTION ON THE REMOVAL OF WRECKS, 2007

Jan E. de Boer*

The Nairobi International Convention on the Removal of Wrecks, 2007 has been adopted by a five-day Diplomatic Conference held in the United Nations Office at Nairobi (UNON) in May 2007 under the auspices of the International Maritime Organization (IMO), the United Nations specialized agency with responsibility for safety and security at sea and prevention of marine pollution from ships. The Diplomatic Conference was addressed by President Mwai Kibaki of Kenya.

The Convention will fill a gap in the existing international legal framework, by providing the first set of uniform international rules aimed at ensuring the prompt and effective removal of wrecks located beyond the territorial sea. The new convention will provide the legal basis for States to remove, or have removed, shipwrecks or ships within their exclusive economic zone (EEZ) that may have the potential to affect adversely the safety of lives, goods and property at sea, as well as the marine environment. The EEZ is the area between the territorial sea and extending not more than 200 nautical miles from the baselines from which the breadth of the territorial sea is measured.

During the week before the Diplomatic Conference in Nairobi was about to begin the IMO Secretary-General Mr. E.E. Mitropoulos approached the Government of the Netherlands that due to very regrettable personal circumstances Dr. Thomas Mensah from Ghana and President of the International Tribunal for the Law of the Sea in Hamburg could not be present. Therefore the Secretary-General requested the Head of the Netherlands delegation to be nominated as Chairman of the 'Committee of the Whole'[1] of the Conference. This challenge was only accepted after it was confirmed that the IMO Secretariat had conveyed full trust and confidence in such a nomination for this responsible and crucial task at the Diplomatic Conference. This exceptional role at the Conference was no doubt thanks to

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* Head of Netherlands delegation and Chairman Committee of the Whole of the Nairobi International Conference on the Removal of Wrecks, 2007

1 The substantial part of the Diplomatic Conference in which delegations from 64 States participated.

the initiatives of the Netherlands delegation during the last 15 years of deliberations of the IMO Legal Committee when developing what has now become the Nairobi Convention on Wreck Removal.

1. Introduction

The consideration of a Convention on the subject of Wreck Removal was for more than 36 years one of the top-priority items on the work programme of the Legal Committee of the International Maritime Organization (IMO). The subject has already a long history within the IMO, and the Legal Committee started considering the issue already at its 12th session. This was directly caused by the incident in 1967 with the oil tanker 'Torrey Canyon' before the coasts of France and the United Kingdom. In these early discussions in the beginning of the 1970's, it was felt that until there was a more general Convention on the Law of the Sea, it would be premature to even attempt drafting a new convention. Since the United Nations Convention on the Law of the Sea was successfully concluded in 1982, the IMO Legal Committee decided further on that the subject should be dealt with when work on the HNS Convention and the LLMC Protocol had been concluded. Both the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea (HNS Convention) and a new Protocol to the Convention on Limitation of Liability for Maritime Claims (LLMC) were successfully established in 1996 and furthermore complemented by the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (Bunkers Convention). In the meantime interested Governments were encouraged to continue consultations on the subject of wreck removal. As a result a draft Wreck Removal Convention (WRC) was prepared by Germany, the United Kingdom and the Netherlands in close consultation with other interested states. Following consideration of the draft WRC at its 74th session in 1996 the Legal Committee agreed to establish a formal IMO Correspondence Group on Wreck Removal. The Correspondence Group was co-ordinated by the Netherlands with the aim to identify and, where appropriate, develop options for dealing with several issues identified by the correspondence group for the consideration of the Legal Committee. The consideration in the Legal Committee has finally resulted in the conclusion of a text for a Convention on the Removal of Wrecks to be adopted at the Diplomatic Conference in Nairobi.

2. Primary aim of the Nairobi Convention on Wreck Removal

The Primary aim of the Nairobi Convention on Wreck Removal is to clarify rights, duties and responsibilities relating to the elimination of hazards

posed by wrecks located beyond the territorial sea. By this it will also enhance the uniformity and clarity of international law. Furthermore the Convention will complement existing international law relating to maritime casualties. First I will try to explain how the Convention will work in practice. Thereafter I will focus on some particular aspects of the new Convention:

- scope of application of the WRC:
  - (a) as regards to which geographical areas;
  - (b) safety/environmental concerns; and
  - (c) to what wrecks/ships;
- the legal basis for government intervention
- limitation of liability/ compulsory insurance

2.1 The Nairobi Convention on Wreck Removal in practice

The Nairobi Convention on Wreck Removal will place primary responsibility for the removal or elimination of a hazardous wreck on the shipowner[2]. However, the State in whose Convention area the wreck is located shall set a deadline for removal and, if the wreck were not removed within the deadline, that State may remove the wreck at the shipowner's expense. The State in whose Convention area the wreck is located will be responsible for determining whether a hazard exists [3] and is also responsible for the marking of the wreck [4]. Shipowners will be required to make a full report on casualties involving their ships in accordance with IMO guidelines[5]. Shipowners will also be strictly liable for the costs of location, marking and removal of hazardous wrecks [6]. The Convention will not affect a shipowner's right to limit liability under the applicable international conventions such as the LLMC, the Civil Liability Convention and the HNS Convention [7].

2.2 Scope of application

2.2.1 Geographical areas

As stated before the primary aim of the Nairobi Convention on Wreck Removal is to clarify rights, duties and liabilities relating to the elimination of hazards posed by wrecks located beyond the territorial sea. A convention which does not apply to wrecks located beyond the territorial sea would therefore be unlikely to secure much support because application within the

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2 *Cf.* art. 9, Nairobi International Convention on the Removal of Wrecks, 2007.
3 *Cf.* art. 6, Nairobi International Convention on the Removal of Wrecks, 2007.
4 *Cf.* art. 8, Nairobi International Convention on the Removal of Wrecks, 2007.
5 *Cf.* art. 5, Nairobi International Convention on the Removal of Wrecks, 2007.
6 *Cf.* art. 10, Nairobi International Convention on the Removal of Wrecks, 2007.
7 *Cf.* art. 10, par. 2, Nairobi International Convention on the Removal of Wrecks, 2007.

territorial sea is in many instances regulated by national law. Studies have shown that the applicable laws in the territorial seas of various states do not differ that much. In that sense the Wreck Removal Convention might function as well as a guide of model of application in territorial waters of states (the area not exceeding 12 nautical miles from the coastline). Experience shows that many vessels and their cargo sink just outside territorial waters. This area can for example in the case of the Netherlands be a relatively big area. Therefore there certainly exists a need for a regime for the waters beyond the territorial sea. The Legal Committee has considered extensively whether the Convention should also apply to wrecks located within the territorial sea and, if so, whether such application should be mandatory or optional. In the preparatory work of the Correspondence Group the following four options were identified as regards the geographical scope of application:

1. application only to waters beyond the territorial sea;
2. optional application to the territorial sea and mandatory application to waters beyond the territorial sea;
3. mandatory application both within and beyond the territorial sea;
4. application only to waters within the territorial sea.

During the 92nd session of the Legal Committee in Paris in October 2006 (held at the location of UNESCO because of the major refurbishment of the premises of IMO in Londen) a general agreement was reached on the text of the draft Convention but no final solution was found for the possible application of the Convention within the territory including the territorial sea of a State Party.

Although Germany, the President of the Council of the European Union in the beginning of 2007, was requested to work out a compromise-proposal under high time-pressure before the Diplomatic Conference in Nairobi and despite a further meeting in London in the spring of 2007, no final agreement was reached as regards the possible application to the territory up till the start of the Conference in Kenya. Therefore it was anxiously awaited for how the Chairman of the 'Committee of the Whole' would deal with this important point at the Conference.

By responding to the co-operative efforts of Germany and many other countries and by using a counter-proposal at the Conference of Turkey and the United States for territorial application by national law only based on a Conference Resolution as a big stick, it was possible to narrow the differences and to arrive at a broad-based consensus and agreement based on the opt-in proposals by Germany and other proponents.

As a result the Conference decided that besides mandatory application beyond the territorial sea the new Convention includes an optional clause enabling States Parties to apply certain provisions to their territory, including

their territorial sea[8]. This will provide for certainty and clarity since like in the EEZ shipowners will be financially liable and be required to take out insurance or provide other financial security to cover the costs of wreck removal in the territorial sea. It will also provide States with a right of direct action against insurers in such cases.

2.2.2 Navigational and environmental concerns, coastal State interests

The Convention covers risks to the safety of navigation and the risks of damage to the marine environment, or to the coastline or related interests[9]. Already before a clear majority in the Legal Committee has expressed their view in favour of covering all safety, environmental and coastline risks. On the other hand the view was also expressed to cover safety risks only, on the grounds that pollution damage is already adequately covered in existing conventions (1992 CLC, the 1969 Intervention Convention and 1973 Protocol thereto and the HNS Convention). Possible overlapping and conflicts with the existing conventions such as the 1969 CLC, the 1969 Intervention Convention and the HNS Convention will, however, be avoided by means of exclusion clauses[10]. There also exists strong support for fishing activities to be addressed by the convention.

2.2.3 Inclusion of drifting ships and offshore installations

In general the Convention will apply to all types of danger to navigation located beyond the territorial sea of States Parties. Especially drifting ships and other ships which may reasonably be expected to result in wrecks, will be covered. Earlier on there already was an over-whelming support to include objects which have been on board ships and which may pose the same risks as a wreck, such as containers[11]. Furthermore also offshore installations are included, particularly when they become wrecks as a result of an incident.

Wrecked aircraft can also constitute maritime hazards. However, given the relation between IMO and ICAO it has been decided not to cover also such wrecks.

2.3 Legal basis for government intervention

As regards the legal basis for government intervention coastal States have first of all the right to remove wrecks in the territorial sea as they have sovereignty over their internal waters and their territory. As regards wreck removal beyond the territorial sea, both the Intervention Convention and the

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8 *Cf.* art. 3, par. 2 , Nairobi International Convention on the Removal of Wrecks, 2007.

9 *Cf.* art. 1, par. 5 , Nairobi International Convention on the Removal of Wrecks, 2007.

10 *Cf.* art. 4, par. 1, juncto art. 11, Nairobi International Convention on the Removal of Wrecks, 2007.

11 *Cf.* art. 1, par. 4 , Nairobi International Convention on the Removal of Wrecks, 2007.

United Nations Convention on the Law of the Sea 1982 (UNCLOS) establish the rights of coastal states to take measures. These measures have to be undertaken to avoid damage to their coastline or related interests from pollution following a maritime casualty.

The Intervention Convention provides that coastal states may take such measures as are necessary to prevent, mitigate or eliminate grave and imminent danger from pollution of the sea, which may reasonably be expected to result in major harmful consequences. Article 221 of the UNCLOS acknowledges the right of States, pursuant to international law, to take and enforce measures beyond the territorial sea, but does not explicitly require there to be a grave and imminent danger of pollution before a coastal state can intervene beyond the territorial sea, thus providing for a lower threshold. Since this kind of pollution is not covered under the Intervention Convention, it may now be well addressed by the Nairobi Convention on Wreck Removal.

There were up to now no explicit rules in international law that confer clearly on coastal States the right to undertake a wreck removal for purposes of ensuring only the safety of navigation. However states have rights in international law to protect their security and vital interests. Therefore there existed no bar to the conclusion of a convention on wreck removal in areas beyond the territorial sea.

2.4 Limitation of liability/compulsory insurance

As regards the issue of limitation of liability, in the Nairobi Convention on Wreck Removal the status quo is maintained as regards limitation of liability of the shipowner. Therefore shipowners should be enabled to continue to exercise existing rights to limit liability. It is the aim of the Convention not to change the present standards of liability-limits of the shipowner. That means that possible limitation issues have to be dealt with under the present limitation regimes dealing with wreck removal. That can be either regimes based on international conventions, such as the LLMC, or regimes based on national law (article 18 of the 1996 LLMC leaves scope for such national limits).

However, it should be noted that costs for wreck removal which fall within the definition of "preventive measures" of the CLC, Bunkers Convention or the HNS Convention continue to be applicable under those regimes if in force[12].

Under the Convention shipowners will be required to maintain insurance to cover their liability in the same way as presently prescribed in the CLC, Bunkers Convention and HNS Convention[13].

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12 *Cf.* art. 11, Nairobi International Convention on the Removal of Wrecks, 2007.

13 *Cf.* art. 12, Nairobi International Convention on the Removal of Wrecks, 2007.

3. Conclusion/ Practical experience

Maritime authorities in many countries have been faced with difficult legal problems concerning the removal of hazardous wrecks located beyond their territorial waters. The need for a the new Nairobi Convention on Wreck Removal may further be evidenced by the fact that e.g. the practical experience on the North Sea, shows that many vessels/platforms and/or their cargo sink outside territorial waters.

In such cases, in which vessels and/or cargoes form an obstacle or threat to commonly used shipping routes, removal operations are undertaken for which there is no general basis under national legislation. However, costs incurred by the State during such operations have to be recovered from the parties concerned by the usual legal means. As a result, the State is repeatedly engaged in lengthy legal proceedings to recover costs.

The State may also face claims for damages from the parties concerned or find itself in a state of uncertainty whether the parties concerned will take such action.

Since the rights, duties and liabilities relating to the elimination of hazards posed by wrecks beyond and in the territorial sea are now clarified in the Nairobi International Convention on the Removal of Wrecks, it will become more attractive for both authorities and industry to engage in salvage and wreck removal operations.

The new Convention is open for signature from 19 November 2007 until 18 November 2008 and, thereafter, will be open for ratification, accession or acceptance. It will enter into force twelve months following the date on which ten States have either signed it without reservation as to ratification, acceptance or approval or have deposited instruments of ratification, acceptance, approval or accession with the Secretary General[14].

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[14] *Cf.* art. 18, Nairobi International Convention on the Removal of Wrecks, 2007.

Document 2

NAIROBI INTERNATIONAL CONVENTION ON THE REMOVAL OF WRECKS, 2007

Linda Howlett*

Introduction

When proposals for an international Wreck Removal Convention resurfaced at the IMO Legal Committee in 1994, it has to be said that the International Chamber of Shipping and the International Group of P&I Clubs were less than enthusiastic. There was a concern that a freestanding international convention providing for strict liability, compulsory insurance and direct action in relation to wrecks located beyond territorial waters would be a disproportionate response to what appeared to be a small problem. Industry was not aware of any wrecks outside territorial waters which had caused insurmountable difficulties for States. Moreover, there had been no case where a Club member of the International Group had failed to respond in respect of liability for wreck removal where that liability had been established under domestic law. There had been cases where other liability insurers had failed to respond but these appeared to be isolated instances, which did not justify international regulation.

ICS and the International Group were also concerned that the proposals marked a significant departure from the previous work of the IMO Legal Committee. The previous international conventions developed by the Legal Committee were intended primarily to ensure that private citizens as well as governments received prompt and adequate compensation following shipping incidents. The proposed Wreck Removal Convention was said to be necessary in order to extend the jurisdiction of coastal States in relation to wrecks located beyond their territorial waters. Inclusion of private law provisions in an instrument directed primarily at public law issues was unusual, and public authorities would be the sole claimants under the provisions proposed in the draft Wreck Removal Convention.

In its early submissions to the Legal Committee on the subject, the International Group maintained that there was no need for a Wreck Removal Convention because the costs of wreck removal operations required by domestic law are one of the risks covered by the standard P&I Club rules

* General Manager (Legal), International Chamber of Shipping.

(essentially the contract of insurance between the Club and its member). Moreover, the IG maintained there was no need for unification of national laws on wreck removal because the lack of uniformity had not resulted in any problems in practice of which the Clubs were aware. However, in recognition that the geography of a few States was such that hazardous wrecks could occur in the waters beyond those States' territorial seas, the IG suggested that it might be both appropriate and expedient for States to agree a Protocol to the Intervention Convention to address the public law issues associated with those concerns. In addition, ICS suggested that an international wreck removal regime, if a compelling need for one was established, would be more useful if it also applied to hazardous wrecks located within territorial waters, and if it established a right and a duty for shipowners to remove hazardous wrecks by their own means or by the assistance of any salvor irrespective of flag. The nature of the cargo on board was one of the factors which States had proposed should be taken into account when determining whether a wreck was hazardous and should therefore be removed. This had led ICS to propose that cargo should contribute to the costs of wreck removal in such circumstances.

In subsequent submissions, when it became apparent that States were intent on introducing a freestanding regime with strict liability, compulsory insurance and direct action, ICS and the IG suggested an alternative system of compulsory insurance based on P&I Club certificates of entry. The alternative system would have reduced the administrative burden on States and Clubs associated with administering a CLC-type system of certification and would have avoided the "terrorism issue" which is common to all the IMO liability and compensation conventions, and has hampered implementation of the Athens Convention. ICS and the IG also voiced concern about the very wide definitions of some of the proposed Convention terms, and the limitation of liability provision proposed by States, which was modelled on a similar provision in the Bunkers Convention.

As can be seen from the final text of the Convention adopted in Nairobi, the industry's suggestions were not taken on board. When in force, the Convention will extend the jurisdiction of coastal States parties to wrecks located in their EEZ or equivalent areas and afford "Affected States" broad decision making powers, with the shipowner and his insurer liable to pay the costs.

Implications for the shipping industry

It remains to be seen what the practical and economic implications for the shipping industry will be once the Convention has entered into force. Much will depend on the manner in which Affected States choose to exercise their decision making powers under the Convention. The broad definitions of

"Wreck", "Hazard" and "Related Interests" together with the wide ranging criteria which should be taken into account when determining whether a wreck poses a hazard and must therefore be removed, will significantly enhance coastal States' powers to intervene following maritime casualties. It is hoped that coastal States will be prepared to discuss such issues with shipowners and their insurers.

The broad definitions in the Convention may mean that practice will vary from State to State. State A might determine that a wreck located in its EEZ constitutes a hazard when a similar incident in State B's EEZ might be left to the shipowner and his insurer to resolve without State intervention. Lack of uniform implementation of the Convention would no doubt be a cause for concern on the part of the industry. The "opt-in" clause also contributes to a potential lack of uniform implementation of the Convention by coastal States. Like CMI, ICS and the IG support uniformity of law and this can only be achieved by way of international regulation. ICS and the IG are therefore committed to international regulation of the shipping industry, specifically by IMO. It is crucial to the efficiency of world trade that the same regulations governing matters such as safety, environmental protection and liability apply to all ships in international trade and that the same laws apply in all jurisdictions which a ship may enter.

An important reason for concluding international treaties is to promote uniformity and certainty of law and therefore internationally agreed provisions should be applicable to the greatest extent possible. However, during the Legal Committee discussions, some States indicated that they would not be prepared to change their national laws, and a compromise was agreed whereby when ratifying the Convention, States can choose to apply certain provisions in their territorial waters. It is assumed that the attractions of the compulsory insurance and direct action provisions will provide a sufficient incentive for States to make use of this option, but the position is not ideal from the perspective of encouraging a uniform global liability regime for the removal of wrecks.

It should also be kept in mind that only certain provisions of the Convention will apply in a State's territory when it elects to "opt-in". One of the provisions which will not apply is Article 9(5), which provides that the Affected State may intervene after removal operations have commenced only to the extent necessary to ensure that the removal proceeds effectively in a manner that is consistent with considerations of safety and protection of the marine environment. The absence of this constraint on an Affected State's right to intervene after wreck removal operations have commenced in its territorial waters could create uncertainty for parties to the wreck removal contract. The reasons for exclusion of this provision are not clear, other than that certain coastal States regarded it as a constraint on their sovereign rights.

Another source of concern for the industry is that the Convention

contains no certainty of limitation of liability. Article 10(2) provides that nothing in the Convention shall affect the right of the registered owner to limit liability under any applicable national or international regime. But the Convention itself does not establish a right to limit. The problem for shipowners of course is that some States might not be parties to the international limitation conventions or they may have made a reservation under such conventions in relation to wreck removal claims. Some States may have unlimited liability for wreck removal claims in their national law. ICS finds it quite inequitable that shipowners should be subject to strict liability for wreck removal without a corresponding right to limit that liability which is certain in law.

The right to limit has been a common feature of all the other IMO liability and compensation conventions and is regarded by some as the quid pro quo for strict liability. It might be said in response that the costs of wreck removal have historically not been great (although this may not necessarily be so in the future) but from the ICS perspective it is not a question of cost or insurance capacity. The Wreck Removal Convention has set an unfortunate precedent in this regard, particularly when the principle of limitation of liability is being challenged in some quarters.

A further concern for shipowners, insurers and States is the "terrorism issue". When the Convention enters into force it will be necessary for shipowners to obtain State-approved certificates of insurance or other financial security in order to trade to and from Convention States. However, the International Group is not able to confirm whether it will provide "blue cards" because the Clubs do not provide cover to the full extent required to be certificated under the Convention due to the market war risk exclusions.

The large number of ships which will need to obtain certificates when the Convention enters into force must also be a concern for shipowners, insurers and States. The Convention provides in Article 12 that ships of 300gt and over will be required to obtain certificates, which is a very low tonnage threshold for the requirement when compared with the other IMO liability and compensation conventions and it will be necessary for the Clubs and States to have appropriate systems in place. In this respect the Conference adopted a Resolution proposing that work be started in the IMO Legal Committee on the development of a single consolidated State certificate that could be issued under the various IMO liability and compensation regimes, rather than separate State certificates under each regime, and this work has commenced.

The framework of IMO liability and compensation conventions

One very positive result of the adoption of the Wreck Removal Convention is that it completes the framework of IMO liability and

compensation conventions. ICS and the IG applaud that achievement.

The challenge now of course is for each of the conventions to enter into force and to be implemented uniformly by States. The widespread ratification of the conventions is of crucial importance to all stakeholders, including States and potential claimants. But it is also very important in the context of upholding the unique role of IMO as regulator of the international shipping industry. ICS and the IG are constantly engaged in debates in other forums on regional and national proposals to regulate the international industry, particularly in Europe and in the United States. In response to the various regional and national proposals, we often point to the IMO instruments on essentially the same subjects only to be told that they are not in force. Our case for global regulation would be so much stronger if the IMO Conventions were in force widely throughout the world.

ICS ratification campaign

At the beginning of 2007, ICS launched a concerted global campaign to stress the need for governments to ratify and implement conventions adopted by IMO. Our members, the national shipowners' associations, have emphasised to their governments that the smooth operation of a global maritime regulatory regime is impeded by failure or delay on the part of governments to ratify and implement the very instruments which they have agreed at IMO diplomatic conferences.

But there is only so much that industry can do. And it was particularly pleasing that one of the important Resolutions adopted by the Diplomatic Conference in Nairobi urged States to ensure as a matter of priority the entry into force of the HNS, Bunkers and Athens Conventions. The Bunkers Convention will enter into force on 21 November 2008.

With the successful conclusion of the Wreck Removal Convention it is hoped the IMO Legal Committee may be able to spend some time on identifying barriers to the entry into force of the various liability and compensation conventions and ways to overcome them. The process has started with work on a Protocol to the HNS Convention which it is hoped will pave the way for widespread ratification and entry into force of that important regime.

While active promotion of the Wreck Removal Convention is not a priority for ICS at this time, members have been encouraged to urge administrations that are considering ratification (a) to make use of the opt-in clause and (b) to confer with shipowners, their insurers and other States when exercising powers under the Convention, in the interests of global uniform implementation.

Document 3

NAIROBI INTERNATIONAL CONVENTION ON THE REMOVAL OF WRECKS, 2007

Preamble

THE STATES PARTIES TO THE PRESENT CONVENTION,

CONSCIOUS of the fact that wrecks, if not removed, may pose a hazard to navigation or the marine environment,

CONVINCED of the need to adopt uniform international rules and procedures to ensure the prompt and effective removal of wrecks and payment of compensation for the costs therein involved,

NOTING that many wrecks may be located in States' territory, including the territorial sea,

RECOGNIZING the benefits to be gained through uniformity in legal regimes governing responsibility and liability for removal of hazardous wrecks,

BEARING IN MIND the importance of the United Nations Convention on the Law of the Sea, done at Montego Bay on 10 December 1982, and of the customary international law of the sea, and the consequent need to implement the present Convention in accordance with such provisions,

HAVE AGREED as follows:

Article 1
Definitions

For the purposes of this Convention:

1 "Convention area" means the exclusive economic zone of a State Party, established in accordance with international law or, if a State Party has not established such a zone, an area beyond and adjacent to the territorial sea of that State determined by that State in accordance with international law and extending not more than 200 nautical miles from the baselines from which the breadth of its territorial sea is measured.

2 "Ship" means a seagoing vessel of any type whatsoever and includes hydrofoil boats, air-cushion vehicles, submersibles, floating craft and floating platforms, except when such platforms are on location engaged in the exploration, exploitation or production of seabed mineral resources.

3 "Maritime casualty" means a collision of ships, stranding or other incident of navigation, or other occurrence on board a ship or external to it, resulting in material damage or imminent threat of material damage to a ship or its cargo.

4 "Wreck", following upon a maritime casualty, means:

(a) a sunken or stranded ship; or

(b) any part of a sunken or stranded ship, including any object that is or has been on board such a ship; or

(c) any object that is lost at sea from a ship and that is stranded, sunken or adrift at sea; or

(d) a ship that is about, or may reasonably be expected, to sink or to strand, where effective measures to assist the ship or any property in danger are not already being taken.

5 "Hazard" means any condition or threat that:

(a) poses a danger or impediment to navigation; or

(b) may reasonably be expected to result in major harmful consequences to the marine environment, or damage to the coastline or related interests of one or more States.

6 "Related interests" means the interests of a coastal State directly affected or threatened by a wreck, such as:

(a) maritime coastal, port and estuarine activities, including fisheries activities, constituting an essential means of livelihood of the persons concerned;

(b) tourist attractions and other economic interests of the area concerned;

(c) the health of the coastal population and the wellbeing of the area concerned, including conservation of marine living resources and of wildlife; and

(d) offshore and underwater infrastructure.

7 "Removal" means any form of prevention, mitigation or elimination of the hazard created by a wreck. "Remove", "removed" and "removing" shall be construed accordingly.

8 "Registered owner" means the person or persons registered as the owner of the ship or, in the absence of registration, the person or persons owning the ship at the time of the maritime casualty. However, in the case of a ship owned by a State and operated by a company which in that State is registered as the operator of the ship, "registered owner" shall mean such company.

9 "Operator of the ship" means the owner of the ship or any other organization or person such as the manager, or the bareboat charterer, who has assumed the responsibility for operation of the ship from the owner of the ship and who, on assuming such responsibility, has agreed to take over all duties and responsibilities established under the International Safety Management Code, as amended*.

10 "Affected State" means the State in whose Convention area the wreck is located.

11 "State of the ship's registry" means, in relation to a registered ship, the State of registration of the ship and, in relation to an unregistered ship, the State whose flag the ship is entitled to fly.

12 "Organization" means the International Maritime Organization.

13 "Secretary-General" means the Secretary-General of the Organization.

Article 2

Objectives and general principles

1 A State Party may take measures in accordance with this Convention in relation to the removal of a wreck which poses a hazard in the Convention area.

2 Measures taken by the Affected State in accordance with paragraph 1 shall be proportionate to the hazard.

3 Such measures shall not go beyond what is reasonably necessary to remove a wreck which poses a hazard and shall cease as soon as the wreck has been removed; they shall not unnecessarily interfere with the rights and interests of other States including the State of the ship's registry, and of any person, physical or corporate, concerned.

4 The application of this Convention within the Convention area shall not entitle a State Party to claim or exercise sovereignty or sovereign rights over any part of the high seas.

5 States Parties shall endeavour to co-operate when the effects of a maritime casualty resulting in a wreck involve a State other than the Affected State.

Article 3

Scope of application

1 Except as otherwise provided in this Convention, this Convention shall apply to wrecks in the Convention area.

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* Refer to the International Management Code for the Safe Operation of Ships and for Pollution Prevention, adopted by the Assembly of the International Maritime Organization by resolution A.741(18), as amended.

2 A State Party may extend the application of this Convention to wrecks located within its territory, including the territorial sea, subject to article 4, paragraph 4. In that case, it shall notify the Secretary-General accordingly, at the time of expressing its consent to be bound by this Convention or at any time thereafter. When a State Party has made a notification to apply this Convention to wrecks located within its territory, including the territorial sea, this is without prejudice to the rights and obligations of that State to take measures in relation to wrecks located in its territory, including the territorial sea, other than locating, marking and removing them in accordance with this Convention. The provisions of articles 10, 11 and 12 of this Convention shall not apply to any measures so taken other than those referred to in articles 7, 8 and 9 of this Convention.

3 When a State Party has made a notification under paragraph 2, the "Convention area" of the Affected State shall include the territory, including the territorial sea, of that State Party.

4 A notification made under paragraph 2 above shall take effect for that State Party, if made before entry into force of this Convention for that State Party, upon entry into force. If notification is made after entry into force of this Convention for that State Party, it shall take effect six months after its receipt by the Secretary-General.

5 A State Party that has made a notification under paragraph 2 may withdraw it at any time by means of a notification of withdrawal to the Secretary-General. Such notification of withdrawal shall take effect six months after its receipt by the Secretary-General, unless the notification specifies a later date.

Article 4

Exclusions

1 This Convention shall not apply to measures taken under the International Convention relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, 1969, as amended, or the Protocol relating to Intervention on the High Seas in Cases of Pollution by Substances other than Oil, 1973, as amended.

2 This Convention shall not apply to any warship or other ship owned or operated by a State and used, for the time being, only on Government non-commercial service, unless that State decides otherwise.

3 Where a State Party decides to apply this Convention to its warships or other ships as described in paragraph 2, it shall notify the Secretary-General, thereof, specifying the terms and conditions of such application.

4 (a) When a State Party has made a notification under article 3, paragraph 2, the following provisions of this Convention shall not apply in its

territory, including the territorial sea:

(i) Article 2, paragraph 4;

(ii) Article 9, paragraphs 1, 5, 7, 8, 9 and 10; and

(iii) Article 15.

(b) Article 9, paragraph 4, insofar as it applies to the territory, including the territorial sea of a State Party, shall read:

Subject to the national law of the Affected State, the registered owner may contract with any salvor or other person to remove the wreck determined to constitute a hazard on behalf of the owner. Before such removal commences, the Affected State may lay down conditions for such removal only to the extent necessary to ensure that the removal proceeds in a manner that is consistent with considerations of safety and protection of the marine environment.

Article 5

Reporting wrecks

1 A State Party shall require the master and the operator of a ship flying its flag to report to the Affected State without delay when that ship has been involved in a maritime casualty resulting in a wreck. To the extent that the reporting obligation under this article has been fulfilled either by the master or the operator of the ship, the other shall not be obliged to report.

2 Such reports shall provide the name and the principal place of business of the registered owner and all the relevant information necessary for the Affected State to determine whether the wreck poses a hazard in accordance with article 6, including:

(a) the precise location of the wreck;

(b) the type, size and construction of the wreck;

(c) the nature of the damage to, and the condition of, the wreck;

(d) the nature and quantity of the cargo, in particular any hazardous and noxious substances; and

(e) the amount and types of oil, including bunker oil and lubricating oil, on board.

Article 6

Determination of hazard

When determining whether a wreck poses a hazard, the following criteria should be taken into account by the Affected State:

(a) the type, size and construction of the wreck;

(b) depth of the water in the area;

(c) tidal range and currents in the area;

(d) particularly sensitive sea areas identified and, as appropriate, designated in accordance with guidelines adopted by the Organization*, or a clearly defined area of the exclusive economic zone where special mandatory measures have been adopted pursuant to article 211, paragraph 6, of the United Nations Convention on the Law of the Sea, 1982;

(e) proximity of shipping routes or established traffic lanes;

(f) traffic density and frequency;

(g) type of traffic;

(h) nature and quantity of the wreck's cargo, the amount and types of oil (such as bunker oil and lubricating oil) on board the wreck and, in particular, the damage likely to result should the cargo or oil be released into the marine environment;

(i) vulnerability of port facilities;

(j) prevailing meteorological and hydrographical conditions;

(k) submarine topography of the area;

(l) height of the wreck above or below the surface of the water at lowest astronomical tide;

(m) acoustic and magnetic profiles of the wreck;

(n) proximity of offshore installations, pipelines, telecommunications cables and similar structures; and

(o) any other circumstances that might necessitate the removal of the wreck.

Article 7

Locating wrecks

1 Upon becoming aware of a wreck, the Affected State shall use all practicable means, including the good offices of States and organizations, to warn mariners and the States concerned of the nature and location of the wreck as a matter of urgency.

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* Refer to the revised Guidelines for the Identification and Designation of Particularly Sensitive Sea Areas, adopted by the Assembly of the International Maritime Organization by resolution A.982(24), as amended.

2 If the Affected State has reason to believe that a wreck poses a hazard, it shall ensure that all practicable steps are taken to establish the precise location of the wreck.

Article 8

Marking of wrecks

1 If the Affected State determines that a wreck constitutes a hazard, that State shall ensure that all reasonable steps are taken to mark the wreck.

2 In marking the wreck, all practicable steps shall be taken to ensure that the markings conform to the internationally accepted system of buoyage in use in the area where the wreck is located.

3 The Affected State shall promulgate the particulars of the marking of the wreck by use of all appropriate means, including the appropriate nautical publications.

Article 9

Measures to facilitate the removal of wrecks

1 If the Affected State determines that a wreck constitutes a hazard, that State shall immediately:

(a) inform the State of the ship's registry and the registered owner; and

(b) proceed to consult the State of the ship's registry and other States affected by the wreck regarding measures to be taken in relation to the wreck.

2 The registered owner shall remove a wreck determined to constitute a hazard.

3 When a wreck has been determined to constitute a hazard, the registered owner, or other interested party, shall provide the competent authority of the Affected State with evidence of insurance or other financial security as required by article 12.

4 The registered owner may contract with any salvor or other person to remove the wreck determined to constitute a hazard on behalf of the owner. Before such removal commences, the Affected State may lay down conditions for such removal only to the extent necessary to ensure that the removal proceeds in a manner that is consistent with considerations of safety and protection of the marine environment.

5 When the removal referred to in paragraphs 2 and 4 has commenced, the Affected State may intervene in the removal only to the extent necessary to ensure that the removal proceeds effectively in a manner that is consistent with considerations of safety and protection of the marine environment.

6 The Affected State shall:

(a) set a reasonable deadline within which the registered owner must remove the wreck, taking into account the nature of the hazard determined in accordance with article 6;

(b) inform the registered owner in writing of the deadline it has set and specify that, if the registered owner does not remove the wreck within that deadline, it may remove the wreck at the registered owner's expense; and

(c) inform the registered owner in writing that it intends to intervene immediately in circumstances where the hazard becomes particularly severe.

7 If the registered owner does not remove the wreck within the deadline set in accordance with paragraph 6(a), or the registered owner cannot be contacted, the Affected State may remove the wreck by the most practical and expeditious means available, consistent with considerations of safety and protection of the marine environment.

8 In circumstances where immediate action is required and the Affected State has informed the State of the ship's registry and the registered owner accordingly, it may remove the wreck by the most practical and expeditious means available, consistent with considerations of safety and protection of the marine environment.

9 States Parties shall take appropriate measures under their national law to ensure that their registered owners comply with paragraphs 2 and 3.

10 States Parties give their consent to the Affected State to act under paragraphs 4 to 8, where required.

11 The information referred to in this article shall be provided by the Affected State to the registered owner identified in the reports referred to in article 5, paragraph 2.

Article 10

Liability of the owner

1 Subject to article 11, the registered owner shall be liable for the costs of locating, marking and removing the wreck under articles 7, 8 and 9, respectively, unless the registered owner proves that the maritime casualty that caused the wreck:

(a) resulted from an act of war, hostilities, civil war, insurrection, or a natural phenomenon of an exceptional, inevitable and irresistible character;

(b) was wholly caused by an act or omission done with intent to cause damage by a third party; or

(c) was wholly caused by 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.

2 Nothing in this Convention shall affect the right of the registered owner to limit liability under any applicable national or international regime, such as the Convention on Limitation of Liability for Maritime Claims, 1976, as amended.

3 No claim for the costs referred to in paragraph 1 may be made against the registered owner otherwise than in accordance with the provisions of this Convention. This is without prejudice to the rights and obligations of a State Party that has made a notification under article 3, paragraph 2, in relation to wrecks located in its territory, including the territorial sea, other than locating, marking and removing in accordance with this Convention.

4 Nothing in this article shall prejudice any right of recourse against third parties.

Article 11

Exceptions to liability

1 The registered owner shall not be liable under this Convention for the costs mentioned in article 10, paragraph 1 if, and to the extent that, liability for such costs would be in conflict with:

(a) the International Convention on Civil Liability for Oil Pollution Damage, 1969, as amended;

(b) the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996, as amended;

(c) the Convention on Third Party Liability in the Field of Nuclear Energy, 1960, as amended, or the Vienna Convention on Civil Liability for Nuclear Damage, 1963, as amended; or national law governing or prohibiting limitation of liability for nuclear damage; or

(d) the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001, as amended;

provided that the relevant convention is applicable and in force.

2 To the extent that measures under this Convention are considered to be salvage under applicable national law or an international convention, such law or convention shall apply to questions of the remuneration or compensation payable to salvors to the exclusion of the rules of this Convention.

Article 12

Compulsory insurance or other financial security

1 The registered owner of a ship of 300 gross tonnage and above and flying the flag of a State Party shall be required to maintain insurance or other financial security, such as a guarantee of a bank or similar institution, to cover liability under this Convention in an amount equal to the limits of liability under the applicable national or international limitation regime, but in all cases not exceeding an amount calculated in accordance with article 6(1)(b) of the Convention on Limitation of Liability for Maritime Claims, 1976, as amended.

2 A certificate attesting that insurance or other financial security is in force in accordance with the provisions of this Convention shall be issued to each ship of 300 gross tonnage and above by the appropriate authority of the State of the ship's registry after determining that the requirements of paragraph 1 have been complied with. With respect to a ship registered in a State Party, such certificate shall be issued or certified by the appropriate authority of the State of the ship's registry; with respect to a ship not registered in a State Party it may be issued or certified by the appropriate authority of any State Party. This compulsory insurance certificate shall be in the form of the model set out in the annex to this Convention, and shall contain the following particulars:

(a) name of the ship, distinctive number or letters and port of registry;

(b) gross tonnage of the ship;

(c) name and principal place of business of the registered owner;

(d) IMO ship identification number;

(e) type and duration of security;

(f) name and principal place of business of insurer or other person giving security and, where appropriate, place of business where the insurance or security is established; and

(g) period of validity of the certificate, which shall not be longer than the period of validity of the insurance or other security.

3 (a) A State Party may authorize either an institution or an organization recognized by it to issue the certificate referred to in paragraph 2. Such institution or organization shall inform that State of the issue of each certificate. In all cases, the State Party shall fully guarantee the completeness and accuracy of the certificate so issued and shall undertake to ensure the necessary arrangements to satisfy this obligation.

(b) A State Party shall notify the Secretary-General of:

(i) the specific responsibilities and conditions of the authority delegated to an institution or organization recognized by it;

(ii) the withdrawal of such authority; and

(iii) the date from which such authority or withdrawal of such authority takes effect.

An authority delegated shall not take effect prior to three months from the date on which notification to that effect was given to the Secretary-General.

(c) The institution or organization authorized to issue certificates in accordance with this paragraph shall, as a minimum, be authorized to withdraw these certificates if the conditions under which they have been issued are not maintained. In all cases the institution or organization shall report such withdrawal to the State on whose behalf the certificate was issued.

4 The certificate shall be in the official language or languages of the issuing State. If the language used is not English, French or Spanish, the text shall include a translation into one of these languages and, where the State so decides, the official language(s) of the State may be omitted.

5 The certificate shall be carried on board the ship and a copy shall be deposited with the authorities who keep the record of the ship's registry or, if the ship is not registered in a State Party, with the authorities issuing or certifying the certificate.

6 An insurance or other financial security shall not satisfy the requirements of this article if it can cease for reasons other than the expiry of the period of validity of the insurance or security specified in the certificate under paragraph 2 before three months have elapsed from the date on which notice of its termination is given to the authorities referred to in paragraph 5 unless the certificate has been surrendered to these authorities or a new certificate has been issued within the said period. The foregoing provisions shall similarly apply to any modification, which results in the insurance or security no longer satisfying the requirements of this article.

7 The State of the ship's registry shall, subject to the provisions of this article and having regard to any guidelines adopted by the Organization on the financial responsibility of the registered owners, determine the conditions of issue and validity of the certificate.

8 Nothing in this Convention shall be construed as preventing a State Party from relying on information obtained from other States or the Organization or other international organizations relating to the financial standing of

providers of insurance or financial security for the purposes of this Convention. In such cases, the State Party relying on such information is not relieved of its responsibility as a State issuing the certificate required by paragraph 2.

9 Certificates issued and certified under the authority of a State Party shall be accepted by other States Parties for the purposes of this Convention and shall be regarded by other States Parties as having the same force as certificates issued or certified by them, even if issued or certified in respect of a ship not registered in a State Party. A State Party may at any time request consultation with the issuing or certifying State should it believe that the insurer or guarantor named in the certificate is not financially capable of meeting the obligations imposed by this Convention.

10 Any claim for costs arising under this Convention may be brought directly against the insurer or other person providing financial security for the registered owner's liability. In such a case the defendant may invoke the defences (other than the bankruptcy or winding up of the registered owner) that the registered owner would have been entitled to invoke, including limitation of liability under any applicable national or international regime. Furthermore, even if the registered owner is not entitled to limit liability, the defendant may limit liability to an amount equal to the amount of the insurance or other financial security required to be maintained in accordance with paragraph 1. Moreover, the defendant may invoke the defence that the maritime casualty was caused by the wilful misconduct of the registered owner, but the defendant shall not invoke any other defence which the defendant might have been entitled to invoke in proceedings brought by the registered owner against the defendant. The defendant shall in any event have the right to require the registered owner to be joined in the proceedings.

11 A State Party shall not permit any ship entitled to fly its flag to which this article applies to operate at any time unless a certificate has been issued under paragraphs 2 or 14.

12 Subject to the provisions of this article, each State Party shall ensure, under its national law, that insurance or other security to the extent required by paragraph 1 is in force in respect of any ship of 300 gross tonnage and above, wherever registered, entering or leaving a port in its territory, or arriving at or leaving from an offshore facility in its territorial sea.

13 Notwithstanding the provisions of paragraph 5, a State Party may notify the Secretary-General that, for the purposes of paragraph 12, ships are not required to carry on board or to produce the certificate required by paragraph 2, when entering or leaving a port in its territory, or arriving at or leaving from an offshore facility in its territorial sea, provided that the State Party which issues the certificate required by paragraph 2 has notified the Secretary-

General that it maintains records in an electronic format, accessible to all States Parties, attesting the existence of the certificate and enabling States Parties to discharge their obligations under paragraph 12.

14 If insurance or other financial security is not maintained in respect of a ship owned by a State Party, the provisions of this article relating thereto shall not be applicable to such ship, but the ship shall carry a certificate issued by the appropriate authority of the State of registry, stating that it is owned by that State and that the ship's liability is covered within the limits prescribed in paragraph 1. Such a certificate shall follow as closely as possible the model prescribed by paragraph 2.

Article 13

Time limits

Rights to recover costs under this Convention shall be extinguished unless an action is brought hereunder within three years from the date when the hazard has been determined in accordance with this Convention. However, in no case shall an action be brought after six years from the date of the maritime casualty that resulted in the wreck. Where the maritime casualty consists of a series of occurrences, the six-year period shall run from the date of the first occurrence.

Article 14

Amendment provisions

1 At the request of not less than one-third of States Parties, a conference shall be convened by the Organization for the purpose of revising or amending this Convention.

2 Any consent to be bound by this Convention, expressed after the date of entry into force of an amendment to this Convention, shall be deemed to apply to this Convention, as amended.

Article 15

Settlement of disputes

1 Where a dispute arises between two or more States Parties regarding the interpretation or application of this Convention, they shall seek to resolve their dispute, in the first instance, through negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements or other peaceful means of their choice.

2 If no settlement is possible within a reasonable period of time not exceeding twelve months after one State Party has notified another that a dispute exists between them, the provisions relating to the settlement of disputes set out in Part XV of the United Nations Convention on the Law of the Sea, 1982, shall apply *mutatis mutandis*, whether or not the States party to the dispute are also States

Parties to the United Nations Convention on the Law of the Sea, 1982.

3 Any procedure chosen by a State Party to this Convention and to the United Nations Convention on the Law of the Sea, 1982, pursuant to Article 287 of the latter, shall apply to the settlement of disputes under this article, unless that State Party, when ratifying, accepting, approving or acceding to this Convention, or at any time thereafter, chooses another procedure pursuant to Article 287 for the purpose of the settlement of disputes arising out of this Convention.

4 A State Party to this Convention which is not a Party to the United Nations Convention on the Law of the Sea, 1982, when ratifying, accepting, approving or acceding to this Convention or at any time thereafter shall be free to choose, by means of a written declaration, one or more of the means set out in Article 287, paragraph 1, of the United Nations Convention on the Law of the Sea, 1982, for the purpose of settlement of disputes under this Article. Article 287 shall apply to such a declaration, as well as to any dispute to which such State is party, which is not covered by a declaration in force. For the purpose of conciliation and arbitration, in accordance with Annexes V and VII of the United Nations Convention on the Law of the Sea, 1982, such State shall be entitled to nominate conciliators and arbitrators to be included in the lists referred to in Annex V, Article 2, and Annex VII, Article 2, for the settlement of disputes arising out of this Convention.

5 A declaration made under paragraphs 3 and 4 shall be deposited with the Secretary-General, who shall transmit copies thereof to the States Parties.

Article 16

Relationship to other conventions and international agreements

Nothing in this Convention shall prejudice the rights and obligations of any State under the United Nations Convention on the Law of the Sea, 1982, and under the customary international law of the sea.

Article 17

Signature, ratification, acceptance, approval and accession

1 This Convention shall be open for signature at the Headquarters of the Organization from 19 November 2007 until 18 November 2008 and shall thereafter remain open for accession.

(a) States may express their consent to be bound by this Convention by:

(i) signature without reservation as to ratification, acceptance or approval; or

(ii) signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval; or

(iii) accession.

(b) Ratification, acceptance, approval or accession shall be effected by the deposit of an instrument to that effect with the Secretary-General.

Article 18

Entry into force

1 This Convention shall enter into force twelve months following the date on which ten States have either signed it without reservation as to ratification, acceptance or approval or have deposited instruments of ratification, acceptance, approval or accession with the Secretary-General.

2 For any State which ratifies, accepts, approves or accedes to this Convention after the conditions in paragraph 1 for entry into force have been met, this Convention shall enter into force three months following the date of deposit by such State of the appropriate instrument, but not before this Convention has entered into force in accordance with paragraph 1.

Article 19

Denunciation

1 This Convention may be denounced by a State Party at any time after the expiry of one year following the date on which this Convention comes into force for that State.

2 Denunciation shall be effected by the deposit of an instrument to that effect with the Secretary-General.

3 A denunciation shall take effect one year, or such longer period as may be specified in the instrument of denunciation, following its receipt by the Secretary-General.

Article 20

Depositary

1 This Convention shall be deposited with the Secretary General.

2 he Secretary-General shall:

(a) inform all States which have signed or acceded to this Convention of:

(i) each new signature or deposit of an instrument of ratification, acceptance, approval or accession, together with the date thereof;

(ii) the date of entry into force of this Convention;

(iii) the deposit of any instrument of denunciation of this Convention, together with the date of the deposit and the date on which the denunciation takes effect; and

(iv) other declarations and notifications received pursuant to this Convention;

(b) transmit certified true copies of this Convention to all States that have signed or acceded to this Convention.

3 As soon as this Convention enters into force, a certified true copy of the text shall be transmitted by the Secretary-General to the Secretary-General of the United Nations, for registration and publication in accordance with Article 102 of the Charter of the United Nations.

Article 21

Languages

This Convention is established in a single original in the Arabic, Chinese, English, French, Russian and Spanish languages, each text being equally authentic.

DONE IN NAIROBI this eighteenth day of May two thousand and seven.

IN WITNESS WHEREOF the undersigned, being duly authorized by their respective Governments for that purpose, have signed this Convention.

***

ANNEX

CERTIFICATE OF INSURANCE OR OTHER FINANCIAL SECURITY IN RESPECT OF LIABILITY FOR THE REMOVAL OF WRECKS

Issued in accordance with the provisions of article 12 of the Nairobi International Convention on the Removal of Wrecks, 2007

Name of Ship	Gross tonnage	Distinctive Number or letters	IMO Ship identification Number	Port of Registry	Name and full address of the principal place of business of the registered owner

This is to certify that there is in force, in respect of the above-named ship, a policy of insurance or other financial security satisfying the requirements of article 12 of the Nairobi International Convention on the Removal of Wrecks, 2007.

Type of Security .....

Duration of Security .....

Name and address of the insurer(s) and/or guarantor(s)

Name .....

Address .....

.....

This certificate is valid until .....

Issued or certified by the Government of .....

.....

(Full designation of the State)

OR

The following text should be used when a State Party avails itself of article 12, paragraph 3:

The present certificate is issued under the authority of the Government of .....

(full designation of the State) by ..... (name of institution or organization)

At …… On ……

(Place) (Date)

……..

(Signature and Title of issuing or certifying official)

Explanatory Notes:

1 If desired, the designation of the State may include a reference to the competent public authority of the country where the Certificate is issued.

2 If the total amount of security has been furnished by more than one source, the amount of each of them should be indicated.

3 If security is furnished in several forms, these should be enumerated.

4 he entry “Duration of Security” must stipulate the date on which such security takes effect.

5 The entry “Address” of the insurer(s) and/or guarantor(s) must indicate the principal place of business of the insurer(s) and/or guarantor(s). If appropriate, the place of business where the insurance or other security is established shall be indicated.

Document 4

RESOLUTION ON COMPULSORY INSURANCE CERTIFICATES UNDER EXISTING MARITIME LIABILITY CONVENTIONS, INCLUDING THE NAIROBI INTERNATIONAL CONVENTION ON THE REMOVAL OF WRECKS, 2007

THE CONFERENCE,

HAVING ADOPTED the Nairobi International Convention on the Removal of Wrecks, 2007 (hereinafter referred to as "Convention"),

NOTING that the Convention requires that a compulsory insurance certificate attesting that insurance or other financial security is in force on the same basis as previously established IMO liability and compensation conventions,

MINDFUL that all existing liability and compensation conventions require that a compulsory insurance certificate attesting that insurance or other financial security in force, shall be issued in the form of the model set out in the specific annexes to these conventions,

RECOGNIZING the reduction of administrative costs and further facilitation as regards the issuing of all relevant compulsory insurance certificates by appropriate authorities in States Parties, if in future each and every ship could be provided with a single compulsory insurance certificate,

NOTING FURTHER the urgent priority to implement all the existing liability and compensation conventions,

1. URGES States to ensure, as a matter of priority, the entry into force of the International Convention on Liability and Compensation for Damage in connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996, the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001, and the Protocol to the Athens Convention Relating to the Carriage of Passengers and their Luggage by Sea, 2002;

2. INVITES the International Maritime Organization (IMO) and in particular the Legal Committee to develop a model for a single insurance certificate which may be issued by States Parties in respect of each and every ship under the relevant IMO liability and compensation conventions, including the Convention;

3. INVITES FURTHER IMO to follow the same procedure as that adopted

in relation to the reciprocal recognition of certificates by States Parties to the 1969 and 1992 International Conventions on Civil Liability for Oil Pollution Damage.

* * *

RESOLUTION ON PROMOTION OF TECHNICAL CO-OPERATION AND ASSISTANCE

THE CONFERENCE,

HAVING ADOPTED the Nairobi International Convention on the Removal of Wrecks, 2007 (hereinafter referred to as .the Convention.), concerning uniform international rules and procedures to ensure the prompt and effective removal of wrecks and payment of compensation for the costs therein involved,

RECOGNIZING the need for the development of appropriate legislation and the putting in place of appropriate infrastructure for the removal of wrecks which may pose a danger or impediment to navigation, or may reasonably be expected to result in major harmful consequences to the marine environment, or damage to the coastline or related interests of one or more States,

RECOGNIZING FURTHER that there may be limited infrastructure, facilities and training programmes for obtaining the experience required in assessing the hazard which a wreck may pose, particularly in developing countries,

BELIEVING that the promotion of technical co-operation at the international level will assist those States not yet having adequate expertise or facilities for providing training and experience to assess, put in place or enhance appropriate infrastructure and, in general, implement the measures required by the Convention,

EMPHASIZING, in this regard, the grave threat a wreck can pose to the safety of navigation and to the marine environment, or both, if not removed promptly and effectively,

1. URGES States Parties to the Convention, Member States of the International Maritime Organization (IMO), other appropriate organizations and the maritime industry to provide assistance, either directly or through IMO, to those States which require support in the consideration of adoption and in the implementation of the Convention;

2. INVITES the Secretary-General of IMO to make adequate provision in its Integrated Technical Co-operation Programme (ITCP) for advisory services related to the adoption and effective implementation of the

Convention and, in particular, to address requests for assistance in assessing the safety and environmental hazards of wrecks and in developing appropriate national legislation;

3. INVITES States Parties to the Convention, Member States of IMO, other appropriate organizations and the maritime industry to provide financial and in-kind support to IMO for technical assistance activities related to the adoption and effective implementation of the Convention.

DRAFT CONVENTION ON RECYCLING OF SHIPS

(1) Summary of the Chairman, Nigel H. Frawley Page 368

(2) Summary of presentation, by Charlotte Breide ” 369

(3) Summary of presentation, by Michael Stockwood Page 370

Document 1

DRAFT INTERNATIONAL CONVENTION FOR THE SAFE AND ENVIRONMENTALLY SOUND RECYCLING OF SHIPS

NIGEL H. FRAWLEY*

This Draft Convention is currently being prepared by the Marine Environment Protection Committee of the IMO. It arises from the IMO Guidelines on Ship Recycling and amendments thereto, the Basel Convention which adopted the Technical Guidelines for the Environmentally Sound Management of the Full and Partial Dismantling of Ships, and ILO considerations of safety and health in Shipbreaking.

The CMI has been involved in Working Group sessions as an Observer and our representatives are your speakers on this Panel.

This Convention will impact on all stages of construction, ownership and recycling of ships. It will add significantly to the obligations of owners and others with respect to management of hazardous materials. It is a useful step forward to an effective legal regime and provides some protection of recycling operations from political interference. Importantly, it offers owners a degree of certainty about contractual arrangements. The Convention is expected to be adopted in Hong Kong in October, 2009.

* Secretary General of the CMI.

Document 2

SUMMARY OF PRESENTATION

Charlotte Breide*

The draft International Convention for the Safe and Environmentally Sound Recycling of Ships will, when in force, provide for the "cradle to grave" regulation of ship recycling, including standards for monitoring, reporting and certification. The draft Convention is currently scheduled for adoption in October 2009, and is at its last stages of negotiation and will be finalised at MEPC 58 6-10 October 2008. Serious questions remain about the enforceability of the Convention, should major recycling states such as India, Bangladesh and Pakistan do not ratify.

A number of important issues remain to be negotiated, including two which could prevent the wider ratification of the eventual Convention. First, there is division over how compliance with the Convention will be ensured. Second, the recycling of ships by Flag State parties in non-party recycling States raises questions as to how the recycling yard standards can be certified by the Flag State.

Additional questions which will be addressed in this presentation include the following. What are the implications of free trade rules, and could arrangements between Parties and non-Parties can be prohibited? What will be the relationship between the proposed Convention and existing rules under the Basel Convention and the IMO Guidelines, in the interim period before the Convention comes into force? What is the impact of the Indian Supreme Court decision on recycling rules, and how will it interact with the Convention (should India ratify)? How will other approaches to the recycling issue, such as the proposed EU strategy on ship dismantling, be accommodated within the proposed Convention regime?

* Solicitor, Ince & Co. International Law Firm London.

Document 3

SUMMARY OF PRESENTATION

Michael Stockwood *

The focus of the draft International Convention for the Safe and Environmentally Sound Recycling of Ships is the monitoring and disposal at the end of a vessel's life of hazardous material incorporated into and used by ships. As such, it seeks to provide regulation to identify and monitor such material incorporated into the fabric of ships "from berth to grave" and then to regulate the disposal of such material together with hazardous materials that have been used or generated by the vessel during its lifetime when the ship comes to be recycled.

Such a regime inevitably impacts upon shipbuilding contracts, second hand sale contracts and "contracts for scraping". It raises issues of responsibility and accountability for both shipyards and shipowners/operators. It also raises issues of accountability between owners/operators and recycling facilities and, prospectively, between owners/operators and authorities in recycling locations.

These issues will be summarised and, to the extent possible, addressed in this presentation together with an evaluation of the interaction of the Convention scheme with other approaches to the recycling issue.

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* Partner in the shipping firm Sinclair, Roche & Temperley from 1988 until 2002; Partner in Ince & Co. since then.

PART III

Status of ratifications to Maritime Conventions

Etat des ratifications aux conventions de Droit Maritime

ETAT DES RATIFICATIONS ET ADHESIONS AUX CONVENTIONS INTERNATIONALES DE DROIT MARITIME DE BRUXELLES

(Information communiquée par le Ministère des Affaires Etrangères, du Commerce Extérieur et de la Coopération au Développement de Belgique, dépositaire des Conventions).

Notes de l'éditeur

(1) - Les dates mentionnées sont les dates du dépôt des instruments. L'indication (r) signifie ratification, (a) adhésion.

(2) - Les Etats dont le nom est suivi par un astérisque ont fait des réserves. Un résumé du texte de ces réserves est publié après la liste des ratifications de chaque Convention.

(3) - Les dates mentionnées pour la dénonciation sont les dates à lesquelles la dénonciation prend effet.

STATUS OF THE RATIFICATIONS OF AND ACCESSIONS TO THE BRUSSELS INTERNATIONAL MARITIME LAW CONVENTIONS

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

Editor's notes:

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

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

(3) - The dates mentioned in respect of the denunciation are the dates when the denunciation takes effect.

Convention internationale pour l'unification de certaines règles en matière d'Abordage et protocole de signature

Bruxelles, le 23 septembre 1910
Entrée en vigueur: 1er mars 1913

International convention for the unification of certain rules of law relating to Collision between vessels and protocol of signature

Brussels, 23rd September, 1910
Entered into force: 1 March 1913

(Translation)

Angola	**(a)**	20.VII.1914
Antigua and Barbuda	**(a)**	1.II.1913
Argentina	**(a)**	28.II.1922
Australia	**(a)**	9.IX.1930
Norfolk Island	**(a)**	1.II.1913
Austria	**(r)**	1.II.1913
Bahamas	**(a)**	3.II.1913
Belize	**(a)**	3.II.1913
Barbados	**(a)**	1.II.1913
Belgium	**(r)**	1.II.1913
Brazil	**(r)**	31.XII.1913
Canada	**(a)**	25.IX.1914
Cape Verde	**(a)**	20.VII.1914
China		
Hong Kong[1]	**(a)**	1.II.1913
Macao[2]	**(r)**	25.XII.1913
Cyprus	**(a)**	1.II.1913
Croatia	**(a)**	8.X.1991
Denmark	**(r)**	18.VI.1913
Dominican Republic	**(a)**	1.II.1913
Egypt	**(a)**	29.XI.1943
Estonia	**(a)**	15.V.1929
Fiji	**(a)**	1.II.1913
Finland	**(a)**	17.VII.1923

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

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

Abordage 1910		*Collision 1910*
France	**(r)**	1.II.1913
Gambia	**(a)**	1.II.1913
Germany	**(r)**	1.II.1913
Ghana	**(a)**	1.II.1913
Goa	**(a)**	20.VII.1914
Greece	**(r)**	29.IX.1913
Grenada	**(a)**	1.II.1913
Guinea-Bissau	**(a)**	20.VII.1914
Guyana	**(a)**	1.II.1913
Haiti	**(a)**	18.VIII.1951
Hungary	**(r)**	1.II.1913
India	**(a)**	1.II.1913
Iran	**(a)**	26.IV.1966
Ireland	**(r)**	1.II.1913
Italy	**(r)**	2.VI.1913
Jamaica	**(a)**	1.II.1913
Japan	**(r)**	12.I.1914
Kenya	**(a)**	1.II.1913
Kiribati	**(a)**	1.II.1913
Latvia	**(a)**	2.VIII.1932
Luxembourg	**(a)**	22.IV.1991
Libyan Arab Jamahiriya	**(a)**	9.XI.1934
Macao	**(a)**	20.VII.1914
Madagascar	**(r)**	1.II.1913
Malaysia	**(a)**	1.II.1913
Malta	**(a)**	1.II.1913
Mauritius	**(a)**	1.II.1913
Mexico	**(r)**	1.II.1913
Mozambique	**(a)**	20.VII.1914
Netherlands	**(r)**	1.II.1913
Newfoundland	**(a)**	11.III.1914
New Zealand	**(a)**	l9.V.1913
Nicaragua	**(r)**	18.VII.1913
Nigeria	**(a)**	1.II.1913
Norway	**(r)**	12.XI.1913
Papua New Guinea	**(a)**	1.II.1913
Paraguay	**(a)**	22.XI.1967
Poland	**(a)**	2.VI.1922
Portugal	**(r)**	25.XII.1913
Romania	**(r)**	1.II.1913
Russian Federation[3]	**(r)**	10.VII.1936
Saint Kitts and Nevis	**(a)**	1.II.1913

[3] Pursuant to a notification of the Ministry of foreign affairs of the Russian Federation dated 13th January 1992, the Russian Federation is now a party to all treaties to which the U.S.S.R. was a party. Russia had ratified the convention on the 1st February 1913.

Saint Lucia	**(a)**	3.III.1913
Saint Vincent and the Grenadines	**(a)**	1.II.1913
Solomon Islands	**(a)**	1.II.1913
Sao Tome and Principe	**(a)**	20.VII.1914
Seychelles	**(a)**	1.II.1913
Sierra Leone	**(a)**	1.II.1913
Singapore	**(a)**	1.II.1913
Slovenia	**(a)**	16.XI.1993
Somalia	**(a)**	1.II.1913
Spain	**(a)**	17.XI.1923
Sri-Lanka	**(a)**	1.II.1913
Sweden	**(r)**	12.XI.1913
(denunciation 19 December 1995)		
Switzerland	**(a)**	28.V.1954
Timor	**(a)**	20.VII.1914
Tonga	**(a)**	13.VI .1978
Trinidad and Tobago	**(a)**	1.II.1913
Turkey	**(a)**	4.VII.1913
Tuvalu	**(a)**	1.II.1913
United Kingdom	**(r)**	1.II.1913
Jersey, Guernsey, Isle of Man, Anguilla, Bermuda, Gibraltar, Falkland Islands and Dependencies, Cayman Islands, British Virgin Islands, Montserrat, Caicos & Turks Islands.		
Saint Helena, Wei-Hai-Wei	**(a)**	1.II.1913
Uruguay	**(a)**	21.VII.1915
Zaire	**(a)**	17.VII.1967

Convention internationale pour l'unification de certaines règles en matière

d'Assistance et de sauvetage maritimes

et protocole de signature

Bruxelles, le 23 septembre 1910
Entrée en vigueur: 1 mars 1913

International convention for the unification of certain rules of law relating to

Assistance and salvage at sea

and protocol of signature

Brussels, 23rd September, 1910
Entered into force: l March 1913

(Translation)

Algeria	**(a)**	13.IV.1964
Angola	**(a)**	20.VII.1914
Antigua and Barbuda	**(a)**	1.II.1913

Assistance et sauvetage 1910 *Assistance and salvage 1910*

Argentina	**(a)**	28.II.1922
Australia	**(a)**	9.IX.1930
Norfolk Island	**(a)**	1.II.1913
Austria	**(r)**	1.II.1913
Bahamas	**(a)**	1.II.1913
Barbados	**(a)**	1.II.1913
Belgium	**(r)**	1.II.1913
Belize	**(a)**	1.II.1913
Brazil	**(r)**	31.XII.1913
Canada	**(a)**	25.IX.1914
(denunciation 22.XI.1994)		
Cape Verde	**(a)**	20.VII.1914
China		
Hong Kong[1]	**(a)**	1.II.1913
Macao[2]	**(r)**	25.VII.1913
Cyprus	**(a)**	1.II.1913
Croatia	**(a)**	8.X.1991
(denunciation 16.III.2000)		
Denmark	**(r)**	18.VI.1913
Dominican Republic	**(a)**	23.VII.1958
Egypt	**(a)**	19.XI.1943
Fiji	**(a)**	1.II.1913
Finland	**(a)**	17.VII.1923
France	**(r)**	1.II.1913
Gambia	**(a)**	1.II.1913
Germany	**(r)**	1.II.1913
Ghana	**(a)**	1.II.1913
Goa	**(a)**	20.VII.1914
Greece	**(r)**	15.X.1913
Grenada	**(a)**	1.II 1913
Guinea-Bissau	**(a)**	20.VII.1914
Guyana	**(a)**	1.II.1913

(1)

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

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

Haiti	**(a)**	18.VIII.1951
Hungary	**(r)**	1.II.1913
India	**(a)**	1.II.1913
Iran	**(a)**	26.IV.1966
(denunciation 11.VII.2000)		
Ireland	**(r)**	1.II.1913
Italy	**(r)**	2.VI.1913
Jamaica	**(a)**	1.II.1913
Japan	**(r)**	12.I.1914
Kenya	**(a)**	1.II.1913
Kiribati	**(a)**	1.II.1913
Latvia	**(a)**	2.VIII.1932
Luxembourg	**(a)**	22.IV.1991
Malaysia	**(a)**	1.II.1913
Madagascar	**(r)**	1.II.1913
Mauritius	**(a)**	1.II.1913
Mexico	**(r)**	1.II.1913
Mozambique	**(a)**	20.VII.1914
Netherlands	**(r)**	1.II.1913
Newfoundland	**(a)**	12.XI.1913
New Zealand	**(a)**	19.V.1913
Nigeria	**(a)**	1.II.1913
Norway	**(r)**	12.XI.1913
(denunciation 9.XII.1996)		
Oman	**(a)**	21.VIII.1975
Papua - New Guinea	**(a)**	1.II.1913
Paraguay	**(a)**	22.XI.1967
Poland	**(a)**	15.X.1921
Portugal	**(r)**	25.VII.1913
Romania	**(r)**	1.II.1913
Russian Federation	**(a)**	10.VII.1936
Saint Kitts and Nevis	**(a)**	1.II.1913
Saint Lucia	**(a)**	3.III.1913
Saint Vincent and the Grenadines	**(a)**	1.II.1913
Solomon Islands	**(a)**	1.II.1913
Sao Tomé and Principe	**(a)**	20.VII.1914
Seychelles	**(a)**	1.II.1913
Sierra Leone	**(a)**	1.II.1913
Singapore	**(a)**	1.II.1913
Slovenia	**(a)**	13.X.1993
Somalia	**(a)**	1.II.1913
Spain	**(a)**	17.XI.1923
(denunciation 19.I.2006)		
Sri Lanka	**(a)**	1.II.1913
Sweden	**(r)**	12.XI.1913
Switzerland	**(a)**	28.V.1954
Syrian Arab Republic	**(a)**	1.VIII.1974

Timor	**(a)**	20.VII.1914
Tonga	**(a)**	13.VI.1978
Trinidad and Tobago	**(a)**	1.II.1913
Turkey	**(a)**	4.VII.1955
Tuvalu	**(a)**	1.II.1913
United Kingdom [3]	**(r)**	1.II.1913
Anguilla, Bermuda, Gibraltar, Falkland Islands and Dependencies, British Virgin Islands, Montserrat, Turks & Caicos Islands, Saint Helena	**(a)**	1.II.1913
(denunciation 12.XII.1994 effective also for Falkland Islands, Montserrat, South Georgia and South Sandwich Islands)		
United States of America	**(r)**	1.II.1913
Uruguay	**(a)**	21.VII.1915
Zaire	**(a)**	17.VII.1967

Protocole portant modification de la convention internationale pour l'unification de certaines règles en matière

d'Assistance et de sauvetage maritimes

Signée a Bruxelles, le 23 septembre 1910

Bruxelles, 27 mai 1967
Entré en vigueur: 15 août 1977

Protocol to amend the international convention for the unification of certain rules of law relating to

Assistance and salvage at sea

Signed at Brussels on 23rd September, 1910

Brussels, 27th May 1967
Entered into force: 15 August 1977

Austria	**(r)**	4.IV.1974
Belgium	**(r)**	11.IV.1973
Brazil	**(r)**	8.XI.1982
Croatia	**(r)**	8.X.1991
(denunciation 16.III.2000)		
Egypt	**(r)**	15.VII.1977
Jersey, Guernsey & Isle of Man	**(a)**	22.VI.1977
Papua New Guinea	**(a)**	14.X.1980
Slovenia	**(a)**	13.X.1993
Syrian Arab Republic	**(a)**	1.VIII.1974
United Kingdom	**(r)**	9.IX.1974

~~Convention~~ will be assumed by the Government of the People'sRepublic of China.

[3] Including Jersey, Guernsey and Isle of Man.

Convention internationale pour l'unification de certaines règles concernant la

Limitation de la responsabilité des propriètaires de navires de mer

et protocole de signature

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

International convention for the unification of certain rules relating to the

Limitation of the liability of owners of sea-going vessels

and protocol of signature

Brussels, 25th August 1924
Entered into force: 2 June 1931

Belgium	**(r)**	2.VI.1930
Brazil	**(r)**	28.IV.1931
Denmark	**(r)**	2.VI.1930
(denunciation - 30. VI. 1983)		
Dominican Republic	**(a)**	23.VII.1958
Finland	**(a)**	12.VII.1934
(denunciation - 30.VI.1983)		
France	**(r)**	23.VIII.1935
(denunciation - 26.X.1976)		
Hungary	**(r)**	2.VI.1930
Madagascar	**(r)**	12.VIII.1935
Monaco	**(r)**	15.V.1931
(denunciation - 24.I.1977)		
Norway	**(r)**	10.X.1933
(denunciation - 30.VI.1963)		
Poland	**(r)**	26.X.1936
Portugal	**(r)**	2.VI.1930
Spain	**(r)**	2.VI.1930
(denunciation - 4.I.2006)		
Sweden	**(r)**	1.VII.1938
(denunciation - 30.VI.1963)		
Turkey	**(a)**	4.VII.1955

Convention internationale pour l'unification de certaines règles en matière de

Connaissement

et protocole de signature

"Règles de La Haye 1924"

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

International convention for the unification of certain rules of law relating to

Bills of lading

and protocol of signature

"Hague Rules 1924"

Brussels, 25th August 1924
Entered into force: 2 June 1931

(Translation)

Algeria	**(a)**	13.IV.1964
Angola	**(a)**	2.II.1952
Antigua and Barbuda	**(a)**	2.XII.1930
Argentina	**(a)**	19.IV.1961
Australia*	**(a)**	4.VII.1955
(denunciation - 16.VII.1993)		
Norfolk	**(a)**	4. VII.1955
Bahamas	**(a)**	2.XII.1930
Barbados	**(a)**	2.XII.1930
Belgium	**(r)**	2.VI.1930
Belize	**(a)**	2.XI.1930
Bolivia	**(a)**	28.V.1982
Cameroon	**(a)**	2.XII.1930
Cape Verde	**(a)**	2.II.1952
China		
Hong Kong(1)	**(a)**	2.XII.1930
Macao(2)	**(r)**	2.II.1952
Cyprus	**(a)**	2.XII.1930
Croatia	**(r)**	8.X.1991
Cuba*	**(a)**	25.VII.1977

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

Denmark*	**(a)**	I.VII.1938
(denunciation – 1.III.1984)		
Dominican Republic	**(a)**	2.XII.1930
Ecuador	**(a)**	23.III.1977
Egypt	**(a)**	29.XI.1943
(denunciation - 1.XI.1997)		
Fiji	**(a)**	2.XII.1930
Finland	**(a)**	1.VII.1939
(denunciation – 1.III.1984)		
France*	**(r)**	4.I.1937
Gambia	**(a)**	2.XII.1930
Germany	**(r)**	1.VII.1939
Ghana	**(a)**	2.XII.1930
Goa	**(a)**	2.II.1952
Greece	**(a)**	23.III.1993
Grenada	**(a)**	2.XII.1930
Guyana	**(a)**	2.XII.1930
Guinea-Bissau	**(a)**	2.II.1952
Hungary	**(r)**	2.VI.1930
Iran	**(a)**	26.IV.1966
Ireland*	**(a)**	30.I.1962
Israel	**(a)**	5.IX.1959
Italy	**(r)**	7.X.1938
(denunciation – 22.XI.1984)		
Ivory Coast*	**(a)**	15.XII.1961
Jamaica	**(a)**	2.XII.1930
Japan*	**(r)**	1.VII.1957
(denunciation – 1. VI.1992)		
Kenya	**(a)**	2.XII.1930
Kiribati	**(a)**	2.XII.1930
Kuwait*	**(a)**	25.VII.1969
Lebanon	**(a)**	19.VII.1975
(denunciation - 1.XI.1997)		
Malaysia	**(a)**	2.XII.1930
Madagascar	**(a)**	13.VII.1965
Mauritius	**(a)**	24.VIII.1970
Monaco	**(a)**	15.V.1931
Mozambique	**(a)**	2.II.1952
Nauru*	**(a)**	4.VII.1955
Netherlands*	**(a)**	18.VIII.1956
(denunciation – 26.IV.1982)		
Nigeria	**(a)**	2.XII.1930
Norway	**(a)**	1.VII.1938
(denunciation – 1.III.1984)		
Papua New Guinea*	**(a)**	4.VII.1955
Paraguay	**(a)**	22.XI.1967
Peru	**(a)**	29.X.1964

Poland	**(r)**	4.VIII.1937
Portugal	**(a)**	24.XII.1931
Romania	**(r)**	4.VIII.1937
(denunciation – 18.III.2002)		
Sao Tomé and Principe	**(a)**	2.II.1952
Sarawak	**(a)**	3.XI.1931
Senegal	**(a)**	14.II.1978
Seychelles	**(a)**	2.XII.1930
Sierra-Leone	**(a)**	2.XII.1930
Singapore	**(a)**	2.XII.1930
Slovenia	**(a)**	25.VI.1991
Solomon Islands	**(a)**	2.XII.1930
Somalia	**(a)**	2.XII.1930
Spain	**(r)**	2.VI.1930
Sri-Lanka	**(a)**	2.XII.1930
St. Kitts and Nevis	**(a)**	2.XII.1930
St. Lucia	**(a)**	2.XII.1930
St. Vincent and the Grenadines	**(a)**	2.XII.1930
Sweden	**(a)**	1.VII.1938
(denunciation – 1.III.1984)		
Switzerland*	**(a)**	28.V.1954
Syrian Arab Republic	**(a)**	1.VIII.1974
Tanzania (United Republic of)	**(a)**	3.XII.1962
Timor	**(a)**	2.II.1952
Tonga	**(a)**	2.XII.1930
Trinidad and Tobago	**(a)**	2.XII.1930
Turkey	**(a)**	4.VII.1955
Tuvalu	**(a)**	2.XII.1930
United Kingdom of Great Britain and Northern Ireland (including Jersey and Isle of Man)*	**(r)**	2.VI.1930
(denunciation – 13.VI.1977)		
Gibraltar	**(a)**	2.XII.1930
(denunciation – 22.IX.1977)		
Bermuda, Falkland Islands and dependencies, Turks & Caicos Islands, Cayman Islands, British Virgin Islands, Montserrat, British Antarctic Territories.		
(denunciation 20.X.1983)		
Anguilla	**(a)**	2.XII.1930
Ascension, Saint Helène and Dependencies	**(a)**	3.XI.1931
United States of America*	**(r)**	29.VI.1937
Zaire	**(a)**	17.VII.1967

Reservations

Australia
a) The Commonwealth of Australia reserves the right to exclude from the operation of legislation passed to give effect to the Convention the carriage of goods by sea which is not carriage in the course of trade or commerce with other countries or among the States of Australia.
b) The Commonwealth of Australia reserves the right to apply Article 6 of the Convention in so far as the national coasting trade is concerned to all classes of goods without taking account of the restriction set out in the last paragraph of that Article.

Cuba
Le Gouvernement de Cuba se réserve le droit de ne pas appliquer les termes de la Convention au transport de marchandises en navigation de cabotage national.

Denmark
...Cette adhésion est donnée sous la réserve que les autres Etats contractants ne soulèvent aucune objection à ce que l'application des dispositions de la Convention soit limitée de la manière suivante en ce qui concerne le Danemark:
1) La Loi sur la navigation danoise en date du 7 mai 1937 continuera à permettre que dans le cabotage national les connaissements et documents similaires soient émis conformément aux prescriptions de cette loi, sans que les dispositions de la Convention leur soient appliquées aux rapports du transporteur et du porteur du document déterminés par ces titres.
2) Sera considéré comme équivalent au cabotage national sous les rapports mentionnés au paragraphe 1) - au cas où une disposition serait édictée en ce sens en vertu de l'article 122, dernier alinéa, de la loi danoise sur la navigation - le transport maritime entre le Danemark et les autres Etats nordiques, dont les lois sur la navigation contiennent des dispositions analogues.
3) Les dispositions des Conventions internationales concernant le transport des voyageurs et des bagages et concernant le transport des marchandises par chemins de fer, signées à Rome, le 23 novembre 1933, ne seront pas affectées par cette Convention."

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

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

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

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

Japan
Statement at the time of signature, 25.8.1925.
Au moment de procéder à la signature de la Convention Internationale pour l'unification de certaines règles en matière de connaissement, le soussigné, Plénipotentiaire du Japon, fait les réserves suivantes:
a) A l'article 4.
Le Japon se réserve jusqu'à nouvel ordre l'acceptation des dispositions du a) à l'alinéa 2 de l'article 4.
b) Le Japon est d'avis que la Convention dans sa totalité ne s'applique pas au cabotage national; par conséquent, il n'y aurait pas lieu d'en faire l'objet de dispositions au Protocole. Toutefois, s'il n'en pas ainsi, le Japon se réserve le droit de régler librement le cabotage national par sa propre législation.
Statement at the time of ratification
...Le Gouvernement du Japon déclare
1) qu'il se réserve l'application du premier paragraphe de l'article 9 de la Convention; 2) qu'il maintient la réserve b) formulée dans la Note annexée à la lettre de l'Ambassadeur du Japon à Monsieur le Ministre des Affaires étrangères de Belgique, du 25 août 1925, concernant le droit de régler librement le cabotage national par sa propre législation; et 3) qu'il retire la réserve a) de ladite Note, concernant les dispositions du a) à l'alinéa 2 de l'article 4 de la Convention.

Kuwait
Le montant maximum en cas de responsabilité pour perte ou dommage causé aux marchandises ou les concernant, dont question à l'article 4, paragraphe 5, est augmenté jusque £ 250 au lieu de £ 100.
The above reservation has been rejected by France and Norway. The rejection of Norway has been withdrawn on 12 April 1974. By note of 30.3.1971, received by the Belgian Government on 30.4.1971 the Government of Kuwait stated that the amount of £ 250 must be replaced by Kuwait Dinars 250.

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

Netherlands
...Désirant user de la faculté d'adhésion réservée aux Etats non-signataires par l'article 12 de la Convention internationale pour l'unification de certaines règles en matière de connaissement, avec Protocole de signature, conclue à Bruxelles, le 25 août 1924, nous avons résolu d'adhérer par les présentes, pour le Royaume en Europe, à ladite Convention, Protocole de signature, d'une manière définitive et promettons de

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

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

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

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

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

United States of America
...And whereas, the Senate of the United States of America by their resolution of April 1 (legislative day March 13), 1935 (two-thirds of the Senators present concurring therein), did advise and consent to the ratification of the said convention and protocol of signature thereto, 'with the understanding, to be made a part of such ratification, that, not withstanding the provisions of Article 4, Section 5, and the first paragraph of Article 9 of the convention, neither the carrier nor the ship shall in any event be or become liable within the jurisdiction of the United States of America for any loss or damage to or in connection with goods in an amount exceeding 500.00 dollars, lawful money of the United States of America, per package or unit unless the nature and value of such goods have been declared by the shipper before shipment and inserted in the bill of lading.
And whereas, the Senate of the United States of America by their resolution of May 6, 1937 (two-thirds of the Senators present concurring therein), did add to and make a part of their aforesaid resolution of April 1, 1935, the following understanding: That should any conflict arise between the provisions of the Convention and the provisions of the Act of April 16, 1936, known as the 'Carriage of Goods by Sea Act', the provisions of said Act shall prevail:
Now therefore, be it known that I, Franklin D. Roosevelt, President of the United States of America, having seen and considered the said convention and protocol of signature, do hereby, in pursuance of the aforesaid advice and consent of the Senate, ratify and confirm the same and every article and clause thereof, subject to the two understandings hereinabove recited and made part of this ratification.

Protocole portant modification de la Convention Internationale pour l'unification de certaines règles en matière de connaissement, signée a Bruxelles le 25 août 1924

Règles de Visby

Bruxelles, 23 février 1968
Entrée en vigueur: 23 juin 1977

Protocol to amend the International Convention for the unification of certain rules of law relating to bills of lading, signed at Brussels on 25 August 1924

Visby Rules

Brussels, 23rd February 1968
Entered into force: 23 June, 1977

Belgium	**(r)**	6.IX.1978
China		
Hong Kong(1)	**(r)**	1.XI.1980
Croatia	**(a)**	28.X.1998
Denmark	**(r)**	20.XI.1975

(1) With letter dated 4 June 1997 the Embassy of the People's Republic of China in the Kingdom of Belgium informed the Minister of Foreign Affairs of Belgium that the Visby Protocol will continue to apply to the Hong Kong Special Administrative Region with effect from 1 July 1997. In its letter the Embassy of the People's Republic of China stated that the responsibility for the international rights and obligations arising from the application of the above Convention will be assumed by the Government of the People's Republic of China. Reservations have been made by the Government of the People's Republic of China with respect to art. 3 of the Protocol.

Ecuador	**(a)**	23.III.1977
Egypt*	**(r)**	31.I.1983
Finland	**(r)**	1.XII.1984
France	**(r)**	10.VII.1977
Georgia	**(a)**	20.II.1996
Germany	**(a)**	14.II.1979
Greece	**(a)**	23.III.1993
Italy	**(r)**	22.VIII.1985
Latvia	**(a)**	4.IV.2002
Lebanon	**(a)**	19.VII.1975
Lithuania	**(a)**	2.XII.2003
Netherlands*	**(r)**	26.IV.1982
Norway	**(r)**	19.III.1974
Poland*	**(r)**	12.II.1980
Russian Federation	**(a)**	29.IV.1999
Singapore	**(a)**	25.IV.1972
Sri-Lanka	**(a)**	21.X.1981
Sweden	**(r)**	9.XII.1974
Switzerland	**(r)**	11.XII.1975
Syrian Arab Republic	**(a)**	1.VIII.1974
Tonga	**(a)**	13.VI.1978
United Kingdom of Great Britain	**(r)**	1.X.1976
Bermuda	**(a)**	1.XI.1980
Gibraltar	**(a)**	22.IX.1977
Isle of Man	**(a)**	1.X.1976
British Antarctic Territories, Caimans, Caicos & Turks Islands, Falklands Islands & Dependencies, Montserrat, Virgin Islands (extension)	**(a)**	20.X.1983

Reservations

Egypt Arab Republic
La République Arabe d'Egypte déclare dans son instrument de ratification qu'elle ne se considère pas liée par l'article 8 dudit Protocole (cette déclaration est faite en vertu de l'article 9 du Protocole).

Netherlands
Ratification effectuée pour le Royaume en Europe. Le Gouvernement du Royaume des Pays-Bas se réserve le droit, par prescription légale, de préciser que dans les cas prévus par l'article 4, alinéa 2 de c) à p) de la Convention, le porteur du connaissement peut établir la faute personnelle du transporteur ou les fautes de ses préposés non couverts par le paragraphe a).

Poland
Confirmation des réserves faites lors de la signature, à savoir: "La République Populaire de Pologne ne se considère pas liée par l'article 8 du présent Protocole".

Protocole portant modification de la Convention Internationale pour l'unification de certaines règles en matière de connaissement telle qu'amendée par le Protocole de modification du 23 février 1968.

Protocole DTS

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

Protocol to amend the International Convention for the unification of certain rules relating to bills of lading as modified by the Amending Protocol of 23rd February 1968.

SDR Protocol

Brussels, 21st December 1979
Entered into force: 14 February 1984

Australia	**(a)**	16.VII.1993
Belgium	**(r)**	7.IX.1983
China		
Hong Kong[(1)]	**(a)**	20.X.1983
Croatia	**(a)**	28.X.1998
Denmark	**(a)**	3.XI.1983
Finland	**(r)**	1.XII.1984
France	**(r)**	18.XI.1986
Georgia	**(a)**	20.II.1996
Greece	**(a)**	23.III.1993
Italy	**(r)**	22.VIII.1985
Japan	**(r)**	1.III.1993
Latvia	**(a)**	4.IV.2002
Lithuania	**(a)**	2.XII.2003
Luxembourg	**(a)**	18.II.1991
Mexico	**(a)**	20.V.1994
Netherlands	**(r)**	18.II.1986
New Zealand	**(a)**	20.XII.1994
Norway	**(r)**	1.XII.1983
Poland*	**(r)**	6.VII.1984
Russian Federation	**(a)**	29.IV.1999
Spain	**(r)**	6.I.1982
Sweden	**(r)**	14.XI.1983
Switzerland*	**(r)**	20.I.1988
United Kingdom of Great-Britain and Northern Ireland	**(r)**	2.III.1982
Bermuda, British Antartic Territories, Virgin Islands, Caimans, Falkland Islands & Dependencies, Gibraltar, Isle of Man, Montserrat, Caicos & Turks Island (extension)	**(a)**	20.X.1983

[(1)] With letter dated 4 June 1997 the Embassy of the People's Republic of China in the Kingdom of Belgium informed the Minister of Foreign Affairs of Belgium that the SDR Protocol will continue to apply to the Hong Kong Special Administrative Region with effect from 1 July 1997. In its letter the Embassy of the People's Republic of China stated that the responsibility for the international rights and obligations arising from the application of the above Convention will be assumed by the Government of the People's Republic of China. Reservations have been made by the Government of the People's Republic of China with respect to art. 8 of the Protocol.

Reservations

Poland
Poland does not consider itself bound by art. III.

Switzerland
Le Conseil fédéral suisse déclare, en se référant à l'article 4, paragraphe 5, alinéa d) de la Convention internationale du 25 août 1924 pour l'unification de certaines règles en matière de connaissement, telle qu'amendée par le Protocole de modification du 23 février 1968, remplacé par l'article II du Protocole du 21 décembre 1979, que la Suisse calcule de la manière suivante la valeur, en droit de tirage spécial (DTS), de sa monnaie nationale:
La Banque nationale suisse (BNS) communique chaque jour au Fonds monétaire international (FMI) le cours moyen du dollar des Etats Unis d'Amérique sur le marché des changes de Zürich. La contrevaleur en francs suisses d'un DTS est déterminée d'après ce cours du dollar et le cours en dollars DTS, calculé par le FMI. Se fondant sur ces valeurs, la BNS calcule un cours moyen du DTS qu'elle publiera dans son Bulletin mensuel.

Convention internationale pour l'unification de certaines règles relatives aux

Privilèges et hypothèques maritimes

et protocole de signature

Bruxelles, 10 avril 1926
entrée en vigueur: 2 juin 1931

International convention for the unification of certain rules relating to

Maritime liens and mortgages

and protocol of signature

Brussels, 10th April 1926
entered into force: 2 June 1931

(Translation)

Algeria	**(a)**	13.IV.1964
Argentina	**(a)**	19.IV.1961
Belgium	**(r)**	2.VI.1930
Brazil	**(r)**	28.IV.1931
Cuba*	**(a)**	21.XI.1983
Denmark	**(r)**	
(denunciation – 1.III.1965)		
Estonia	**(r)**	2.VI.1930
Finland	**(a)**	12.VII.1934
(denunciation – 1.III.1965)		
France	**(r)**	23.VIII.1935
Haiti	**(a)**	19.III.1965
Hungary	**(r)**	2.VI.1930
Iran	**(a)**	8.IX.1966
Italy*	**(r)**	7.XII.1949
Lebanon	**(a)**	18.III.1969
Luxembourg	**(a)**	18.II.1991

Madagascar	**(r)**	23.VIII.1935
Monaco	**(a)**	15.V.1931
Norway	**(r)**	10.X.1933
(denunciation – 1.III.1965)		
Poland	**(r)**	26.X.1936
Portugal	**(a)**	24.XII.1931
Romania	**(r)**	4.VIII.1937
Spain	**(r)**	2.VI.1930
Switzerland	**(a)**	28.V.1954
Sweden	**(r)**	1.VII.1938
(denunciation – 1.III.1965)		
Syrian Arab Republic	**(a)**	14.II.1951
Turkey	**(a)**	4.VII.1955
Uruguay	**(a)**	15.IX.1970
Zaire	**(a)**	17.VII.1967

Reservations

Cuba

(Traduction) L'instrument d'adhésion contient une déclaration relative à l'article 19 de la Convention.

Italy

(Traduction) L'Etat italien se réserve la faculté de ne pas conformer son droit interne à la susdite Convention sur les points où ce droit établit actuellement:

– l'extension des privilèges dont question à l'art. 2 de la Convention, également aux dépendances du navire, au lieu qu'aux seuls accessoires tels qu'ils sont indiqués à l'art. 4;

– la prise de rang, après la seconde catégorie de privilèges prévus par l'art. 2 de la Convention, des privilèges qui couvrent les créances pour les sommes avancées par l'Administration de la Marine Marchande ou de la Navigation intérieure, ou bien par l'Autorité consulaire, pour l'entretien et le rapatriement des membres de l'équipage.

Convention internationale pour l'unification de certaines règles concernant les

Immunités des navires d'Etat

Bruxelles, 10 avril 1926
et protocole additionnel

Bruxelles, 24 mai 1934
Entrée en vigueur: 8 janvier 1937

International convention for the unification of certain rules concerning the

Immunity of State-owned ships

Brussels, 10th April 1926
and additional protocol

Brussels, May 24th 1934
Entered into force: 8 January 1937

(Translation)

Argentina	**(a)**	19.IV.1961
Belgium	**(r)**	8.I.1936

Brazil	**(r)**	8.I.1936
Chile	**(r)**	8.I.1936
Cyprus	**(a)**	19.VII.1988
Denmark	**(r)**	16.XI.1950
Estonia	**(r)**	8.I.1936
France	**(r)**	27.VII.1955
Germany	**(r)**	27.VI.1936
Greece	**(a)**	19.V.1951
Hungary	**(r)**	8.I.1936
Italy	**(r)**	27.I.1937
Luxembourg	**(a)**	18.II.1991
Libyan Arab Jamahiriya	**(r)**	27.I.1937
Madagascar	**(r)**	27.I.1955
Netherlands	**(r)**	8.VII.1936
Curaçao, Dutch Indies		
Norway	**(r)**	25.IV.1939
Poland	**(r)**	16.VII.1976
Portugal	**(r)**	27.VI.1938
Romania	**(r)**	4.VIII.1937
(denunciation – 21.IX.1959)		
Somalia	**(r)**	27.I.1937
Sweden	**(r)**	1.VII.1938
Switzerland	**(a)**	28.V.1954
Suriname	**(r)**	8.VII.1936
Syrian Arab Republic	**(a)**	17.II.1960
Turkey	**(a)**	4.VII.1955
United Arab Republic	**(a)**	17.II.1960
United Kingdom*	**(r)**	3.VII.1979
United Kingdom for Jersey, Guernsey and Island of Man	**(a)**	19.V.1988
Uruguay	**(a)**	15.IX.1970
Zaire	**(a)**	17.VII.1967

Reservations

United Kingdom

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

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

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

Convention internationale pour l'unification de certaines règles relatives à la

Compétence civile en matière d'abordage

Bruxelles, 10 mai 1952
Entrée en vigueur:
14 septembre 1955

International convention for the unification of certain rules relating to

Civil jurisdiction in matters of collision

Brussels, 10th May 1952
Entered into force:
14 September 1955

Algeria	**(a)**	18.VIII.1964
Antigua and Barbuda	**(a)**	12.V.1965
Argentina	**(a)**	19.IV.1961
Bahamas	**(a)**	12.V.1965
Belgium	**(r)**	10.IV.1961
Belize	**(a)**	21.IX.1965
Benin	**(a)**	23.IV.1958
Burkina Fasa	**(a)**	23.IV.1958
Cameroon	**(a)**	23.IV.1958
Central African Republic	**(a)**	23.IV.1958
China		
Hong Kong[(1)]	**(a)**	29.III.1963
Macao[(2)]	**(a)**	23.III.1999
Comoros	**(a)**	23.IV.1958
Congo	**(a)**	23.IV.1958
Costa Rica*	**(a)**	13.VII.1955
Cote d'Ivoire	**(a)**	23.IV.1958
Croatia*	**(r)**	8.X.1991
Cyprus	**(a)**	17.III.1994
Djibouti	**(a)**	23.IV.1958
Dominican Republic	**(a)**	12.V.1965
Egypt	**(r)**	24.VIII.1955
Fiji	**(a)**	10.X.1974
France	**(r)**	25.V.1957

(1)

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

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

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

Overseas Territories	**(a)**	23.IV.1958
Gabon	**(a)**	23.IV.1958
Germany	**(r)**	6.X.1972
Greece	**(r)**	15.III.1965
Grenada	**(a)**	12.V.1965
Guinea	**(a)**	23.IV.1958
Guyana	**(a)**	29.III.1963
Haute Volta	**(a)**	23.IV.1958
Holy Seat	**(r)**	10.VIII.1956
Ireland	**(a)**	17.X.1989
Italy	**(r)**	9.XI.1979
Khmere Republic*	**(a)**	12.XI.1959
Kiribati	**(a)**	21.IX.1965
Luxembourg	**(a)**	18.II.1991
Madagascar	**(a)**	23.IV.1958
Mauritania	**(a)**	23.IV.1958
Mauritius	**(a)**	29.III.1963
Morocco	**(a)**	11.VII.1990
Niger	**(a)**	23.IV.1958
Nigeria	**(a)**	7.XI.1963
North Borneo	**(a)**	29.III.1963
Paraguay	**(a)**	22.XI.1967
Poland	**(a)**	14.III.1986
Portugal	**(r)**	4.V.1957
Romania	**(a)**	28.XI.1995
Sarawak	**(a)**	29.VIII.1962
Senegal	**(a)**	23.IV.1958
Seychelles	**(a)**	29.III.1963
Slovenia	**(a)**	13.X.1993
Solomon Islands	**(a)**	21.IX.1965
Spain	**(r)**	8.XII.1953
St. Kitts and Nevis	**(a)**	12.V.1965
St. Lucia	**(a)**	12.V.1965
St. Vincent and the Grenadines	**(a)**	12.V.1965
Sudan	**(a)**	23.IV.1958
Switzerland	**(a)**	28.V.1954
Syrian Arab Republic	**(a)**	1.VIII.1974
Tchad	**(a)**	23.IV.1958
Togo	**(a)**	23.IV.1958
Tonga	**(a)**	13.VI.1978
Tuvalu	**(a)**	21.IX.1965
United Kingdom of Great Britain and Northern Ireland	**(r)**	18.III.1959
Gibraltar	**(a)**	29.III.1963
British Virgin Islands	**(a)**	29.V.1963
Bermuda	**(a)**	30.V.1963
Caiman Islands, Montserrat	**(a)**	12.V.1965
Anguilla, St. Helena	**(a)**	12.V.1965
Turks Isles and Caicos	**(a)**	21.IX.1965
Guernsey	**(a)**	8.XII.1966
Falkland Islands and Dependencies	**(a)**	17.X.1969
Zaire	**(a)**	17.VII.1967

Reservations

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

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

Khmere Republic
Le Gouvernement de la République Khmère, en adhérant à ladite convention, fait cette réserve que l'action civile du chef d'un abordage survenu entre navires de mer ou entre navires de mer et bateaux de navigation intérieure, pourra être intentée uniquement devant le tribunal de la résidence habituelle du défendeur ou de l'Etat dont le navire bat pavillon.
En conséquence, le Gouvernement de la République Khmère ne reconnaît pas le caractère obligatoire des alinéas b) et c) du paragraphe 1° de l'article 1°.
En acceptant ladite convention, le Gouvernement de la République Khmère fait cette réserve expresse que, en aucun cas, elle ne renoncera à sa compétence ou juridiction pour appliquer la loi khmère en matière d'abordage survenu en haute mer ou dans ses eaux territoriales au préjudice d'un navire khmère.

Convention internationale pour l'unification de certaines règles relatives à la

Compétence pénale en matière d'abordage et autres événements de navigation

Bruxelles, 10 mai 1952
Entrée en vigueur:
20 novembre 1955

Internationd convention for the unification of certain rules relating to

Penal jurisdiction in matters of collision and other incidents of navigation

Brussels, 10th May 1952
Entered into force:
20 November 1955

Anguilla*	**(a)**	12.V.1965
Antigua and Barbuda*	**(a)**	12.V.1965
Argentina*	**(a)**	19.IV.1961
Bahamas*	**(a)**	12.V.1965
Belgium*	**(r)**	10.IV.1961

Belize*	**(a)**	21.IX.1965
Benin	**(a)**	23.IV.1958
Burkina Faso	**(a)**	23.IV.1958
Burman Union*	**(a)**	8.VII.1953
Cayman Islands*	**(a)**	12.VI.1965
Cameroon	**(a)**	23.IV.1958
Central African Republic	**(a)**	23.IV.1958
China		
Hong Kong[1]	**(a)**	29.III.1963
Macao[2]	**(a)**	23.III.1999
Comoros	**(a)**	23.IV.1958
Congo	**(a)**	23.IV.1958
Costa Rica*	**(a)**	13.VII.1955
Croatia*	**(r)**	8.X.1991
Cyprus	**(a)**	17.III.1994
Djibouti	**(a)**	23.IV.1958
Dominica, Republic of*	**(a)**	12.V.1965
Egypt*	**(r)**	24.VIII.1955
Fiji*	**(a)**	29.III.1963
France*	**(r)**	20.V.1955
Overseas Territories	**(a)**	23.IV.1958
Gabon	**(a)**	23.IV.1958
Germany*	**(r)**	6.X.1972
Greece	**(r)**	15.III.1965
Grenada*	**(a)**	12.V.1965
Guyana*	**(a)**	19.III.1963
Guinea	**(a)**	23.IV.1958

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

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

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

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

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

Compétence pénale 1952 *Penal jurisdiction 1952*

Haiti	**(a)**	17.IX.1954
Haute-Volta	**(a)**	23.IV.1958
Holy Seat	**(r)**	10.VIII.1956
Italy*	**(r)**	9.XI.1979
Ivory Coast	**(a)**	23.IV.1958
Khmere Republic*	**(a)**	12.XI.1956
Kiribati*	**(a)**	21.IX.1965
Lebanon	**(r)**	19.VII.1975
Luxembourg	**(a)**	18.II.1991
Madagascar	**(a)**	23.IV.1958
Mauritania	**(a)**	23.IV.1958
Mauritius*	**(a)**	29.III.1963
Montserrat*	**(a)**	12.VI.1965
Morocco	**(a)**	11.VII.1990
Netherlands*	**(r)**	
Kingdom in Europe, West Indies and Aruba	**(r)**	25.VI.1971
Niger	**(a)**	23.IV.1958
Nigeria*	**(a)**	7 XI.1963
North Borneo*	**(a)**	29.III.1963
Paraguay	**(a)**	22.XI.1967
Portugal*	**(r)**	4.V.1957
Romania	**(a)**	28.XI.1995
Sarawak*	**(a)**	28.VIII.1962
Senegal	**(a)**	23.IV.1958
Seychelles*	**(a)**	29.III.1963
Slovenia	**(a)**	13.X.1993
Solomon Islands*	**(a)**	21.IX.1965
Spain*	**(r)**	8.XII.1953
St. Kitts and Nevis*	**(a)**	12.V.1965
St. Lucia*	**(a)**	12.V.1965
St. Helena*	**(a)**	12.V.1965
St. Vincent and the Grenadines*	**(a)**	12.V.1965
Sudan	**(a)**	23.IV.1958
Suriname	**(r)**	25.VI.1971
Switzerland	**(a)**	28.V.1954
Syrian Arab Republic	**(a)**	10.VII.1972
Tchad	**(a)**	23.IV.1958
Togo	**(a)**	23.IV.1958
Tonga*	**(a)**	13.VI.1978
Tuvalu*	**(a)**	21.IX.1965
United Kingdom of Great Britain and Northern Ireland*	**(r)**	18.III.1959
Gibraltar	**(a)**	29.III.1963
British Virgin Islands	**(a)**	29.V.1963
Bermuda	**(a)**	30.V.1963
Anguilla	**(a)**	12.V.1965
Turks Islands and Caicos	**(a)**	21.IX.1965
Guernsey	**(a)**	8.XII.1966
Falkland Islands and dependencies	**(a)**	17.X.1969
Viet Nam*	**(a)**	26.XI.1955
Zaire	**(a)**	17.VII.1967

Reservations

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

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

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

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

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

Cayman Islands
See Antigua.

China
Macao
The Government of the People's Republic of China reserves, for the Macao Special Administrative Region, the right not to observe the provisions of Article 1 of the

Convention in the case of any ship if the State whose flag the ship was flying has as respects that ship or any class of ships to which that ship belongs consented to the institution of criminal or disciplinary proceedings before the judicial or administrative authorities of the Macao Special Administrative Region.

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

Within the above ambit, the Government of the People's Republic of China will assume the responsability for the international rights and obligations that place on a Party to the Convention

Costa-Rica
(Traduction) Le Gouvernement de Costa-Rica ne reconnaît pas le caractère obligatoire des articles 1° and 2° de la présente Convention.

Croatia
Reservation made by Yugoslavia and now applicable to Croatia: "Sous réserve de ratifications ultérieure et acceptant la réserve prévue à l'article 4 de cette Convention. Conformément à l'article 4 de ladite Convention, le Gouvernement yougoslave se réserve le droit de poursuivre les infractions commises dans se propres eaux territoriales".

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

Egypt
Au moment de la signature le Plénipotentiaire égyptien a déclaré formuler la réserve prévue à l'article 4, alinéa 2. Confirmation expresse de la réserve faite au moment de la signature.

Fiji
The Government of Fiji reserves the right not to observe the provisions of article 1 of the said Convention in the case of any ship if the State whose flag the ship was flying has as respect that ship or any class of ship to which that ship belongs consented to the institution of criminal or disciplinary proceedings before judicial or administrative authorities in Fiji.
The Government of Fiji reserves the right under article 4 of this Convention to take proceedings in respect of offences committed within the territorial water of Fiji.

France
Au nom du Gouvernement de la République Française je déclare formuler la réserve prévue à l'article 4, paragraphe 2, de la convention internationale pour l'unification de certaines règles relatives à la compétence pénale en matière d'abordage.

Germany, Federal Republic of
(Traduction) Sous réserve du prescrit de l'article 4, alinéa 2.

Grenada
Same reservations as the Republic of Dominica

Guyana
Same reservations as the Republic of Dominica

Italy
Le Gouvernement de la République d'Italie se réfère à l'article 4, paragraphe 2, et se réserve le droit de poursuivre les infractions commises dans ses propres eaux territoriales.

Khmere Republic
Le Gouvernement de la République Khmère, d'accord avec l'article 4 de ladite convention, se réservera le droit de poursuivre les infractions commises dans ses eaux territoriales.

Kiribati
Same reservations as the Republic of Dominica

Mauritius
Same reservations as the Republic of Dominica

Montserrat
See Antigua.

Netherlands
Conformément à l'article 4 de cette Convention, le Gouvernement du Royaume des Pays-Bas, se réserve le droit de poursuivre les infractions commises dans ses propres eaux territoriales.

Nigeria
The Government of the Federal Republic of Nigeria reserve the right not to implement the provisions of Article 1 of the Convention in any case where that Government has an agreement with any other State that is applicable to a particular collision or other incident of navigation and if such agreement is inconsistent with the provisions of the said Article 1. The Government of the Federal Republic of Nigeria reserves the right, in accordance with Article 4 of the Convention, to take proceedings in respect of offences committed within the territorial waters of the Federal Republic of Nigeria.

North Borneo
Same reservations as the Republic of Dominica

Portugal
Au nom du Gouvernement portugais, je déclare formuler la réserve prévue à l'article 4, paragraphe 2, de cette Convention.

Sarawak
Same reservations as the Republic of Dominica

St. Helena
See Antigua.

St. Kitts-Nevis
See Antigua.

St. Lucia
Same reservations as the Republic of Dominica

St. Vincent
See Antigua.

Seychelles
Same reservations as the Republic of Dominica

Solomon Isles
Same reservations as the Republic of Dominica

Spain
La Délégation espagnole désire, d'accord avec l'article 4 de la Convention sur la compétence pénale en matière d'abordage, se réserver le droit au nom de son Gouvernement, de poursuivre les infractions commises dans ses eaux territoriales. Confirmation expresse de la réserve faite au moment de la signature.

Tonga
Same reservations as the Republic of Dominica

Tuvalu
Same reservations as the Republic of Dominica

United Kingdom
1. - Her Majesty's Government in the United Kingdom reserves the right not to apply the provisions of Article 1 of this Convention in any case where there exists between Her Majesty's Government and the Government of any other State an agreement which is applicable to a particular collision or other incident of navigation and is inconsistent with that Article.

2. - Her Majesty's Government in the United Kingdom reserves the right under Article 4 of this Convention to take proceedings in respect of offences committed within the territorial waters of the United Kingdom.

...subject to the following reservations:

(1) The Government of the United Kingdom of Great Britain and Northern Ireland reserve the right not to observe the provisions of Article 1 of the said Convention in the case of any ship if the State whose flag the ship was flying has as respects that ship or any class of ship to which that ship belongs consented to the institution of criminal and disciplinary proceedings before the judicial or administrative authorities of the United Kingdom.

(2) In accordance with the provisions of Article 4 of the said Convention, the Government of the United Kingdom of Great Britain and Northern Ireland reserve the right to take proceedings in respect of offences committed within the territorial waters of the United Kingdom.

(3) The Government of the United Kingdom of Great Britain and Northern Ireland reserve the right in extending the said Convention to any of the territories for whose international relations they are responsible to make such extension subject to the reservation provided for in Article 4 of the said Convention...

Vietnam
Comme il est prévu à l'article 4 de la même convention, le Gouvernement vietnamien se réserve le droit de poursuivre les infractions commises dans la limite de ses eaux territoriales.

Convention internationale pour l'unification de certaines règles sur la
Saisie conservatoire des navires de mer

Bruxelles, 10 mai 1952
Entrée en vigueur: 24 février 1956

International convention for the unification of certain rules relating to
Arrest of sea-going ships

Brussels, 10th May 1952
Entered into force: 24 February 1956

Algeria	**(a)**	18.VIII.1964
Antigua and Barbuda*	**(a)**	12.V.1965
Bahamas*	**(a)**	12.V.1965
Belgium	**(r)**	10.IV.1961
Belize*	**(a)**	21.IX.1965
Benin	**(a)**	23.IV.1958
Burkina Faso	**(a)**	23.IV.1958
Cameroon	**(a)**	23.IV.1958
Central African Republic	**(a)**	23.IV.1958
China		
Hong Kong[1]	**(a)**	29.III.1963
Macao[2]	**(a)**	23.IX.1999
Comoros	**(a)**	23.IV.1958
Congo	**(a)**	23.IV.1958
Costa Rica*	**(a)**	13.VII.1955
Côte d'Ivoire	**(a)**	23.IV.1958
Croatia*	**(r)**	8.X.1991
Cuba*	**(a)**	21.XI.1983
Denmark	**(r)**	2.V.1989
Djibouti	**(a)**	23.IV.1958
Dominica, Republic of*	**(a)**	12.V.1965
Egypt*	**(r)**	24.VIII.1955
Fiji	**(a)**	29.III.1963
Finland	**(r)**	21.XII.1995
France	**(r)**	25.V.1957
Overseas Territories	**(a)**	23.IV.1958
Gabon	**(a)**	23.IV.1958

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

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

Germany*	**(r)**	6.X.1972
Greece	**(r)**	27.II.1967
Grenada*	**(a)**	12.V.1965
Guyana*	**(a)**	29.III.1963
Guinea	**(a)**	12.XII.1994
Haiti	**(a)**	4.XI.1954
Haute-Volta	**(a)**	23.IV.1958
Holy Seat	**(r)**	10.VIII.1956
Ireland*	**(a)**	17.X.1989
Italy*	**(r)**	9.XI.1979
Khmere Republic*	**(a)**	12.XI.1956
Kiribati*	**(a)**	21.IX.1965
Latvia	**(a)**	17.V.1993
Luxembourg	**(a)**	18.II.1991
Madagascar		23.IV.1958
Marocco	**(a)**	11.VII.1990
Mauritania	**(a)**	23.IV.1958
Mauritius*	**(a)**	29.III.1963
Namibia	**(a)**	14.III.2000
Netherlands*	**(r)**	20.I.1983
Niger	**(a)**	23.IV.1958
Nigeria*	**(a)**	7.XI.1963
North Borneo*	**(a)**	29.III.1963
Norway	**(r)**	1.XI.1994
Paraguay	**(a)**	22.XI.1967
Poland	**(a)**	16.VII.1976
Portugal	**(r)**	4.V.1957
Romania	**(a)**	28.XI.1995
Russian Federation*	**(a)**	29.IV.1999
St. Kitts and Nevis*	**(a)**	12.V.1965
St. Lucia*	**(a)**	12.V.1965
St. Vincent and the Grenadines*	**(a)**	12.V.1965
Sarawak*	**(a)**	28.VIII.1962
Senegal	**(a)**	23.IV.1958
Seychelles*	**(a)**	29.III.1963
Slovenia	**(a)**	13.X.1993
Solomon Islands*	**(a)**	21.IX.1965
Spain	**(r)**	8.XII.1953
Sudan	**(a)**	23.IV.1958
Sweden	**(a)**	30.IV.1993
Switzerland	**(a)**	28.V.1954
Syrian Arabic Republic	**(a)**	3.II.1972
Tchad	**(a)**	23.IV.1958
Togo	**(a)**	23.IV.1958
Tonga*	**(a)**	13.VI.1978
Turks Isles and Caicos*	**(a)**	21.IX.1965
Tuvalu*	**(a)**	21.IX.1965
United Kingdom of Great Britain* and Northern Ireland	**(r)**	18.III.1959
United Kingdom (Overseas Territories)*		
Gibraltar	**(a)**	29.III.1963
British Virgin Islands	**(a)**	29.V.1963

Bermuda	**(a)**	30.V.1963
Anguilla, Caiman Islands, Montserrat, St. Helena	**(a)**	12.V.1965
Guernsey	**(a)**	8.XII.1966
Falkland Islands and dependencies	**(a)**	17.X.1969
Zaire	**(a)**	17.VII.1967

Reservations

Antigua
...Reserves the right not to apply the provisions of this Convention to warships or to vessels owned by or in the service of a State.

Bahamas
...With reservation of the right not to apply the provisions of this Convention to warships or to vessels owned by or in service of a State.

Belize
Same reservation as the Bahamas.

Costa Rica
(Traduction) Premièrement: le 1er paragraphe de l'article 3 ne pourra pas être invoqué pour saisir un navire auquel la créance ne se rapporte pas et qui n'appartient plus à la personne qui était propriétaire du navire auquel cette créance se rapporte, conformément au registre maritime du pays dont il bat pavillon et bien qu'il lui ait appartenu.
Deuxièmement: que Costa Rica ne reconnaît pas le caractère obligatoire des alinéas a), b), c), d), e) et f) du paragraphe 1er de l'article 7, étant donné que conformément aux lois de la République les seuls tribunaux compétents quant au fond pour connaître des actions relatives aux créances maritimes, sont ceux du domicile du demandeur, sauf s'il s'agit des cas visés sub o), p) et q) à l'alinéa 1er de l'article 1, ou ceux de l'Etat dont le navire bat pavillon.
Le Gouvernement de Costa Rica, en ratifiant ladite Convention, se réserve le droit d'appliquer la législation en matière de commerce et de travail relative à la saisie des navires étrangers qui arrivent dans ses ports.

Côte d'Ivoire
Confirmation d'adhésion de la Côte d'Ivoire. Au nom du Gouvernement de la République de Côte d'Ivoire, nous, Ministre des Affaires Etrangères, confirmons que par Succession d'Etat, la République de Côte d'Ivoire est devenue, à la date de son accession à la souveraineté internationale, le 7 août 1960, partie à la Convention internationale pour l'unification de certaines règles sur la saisie conservatoire des navires de mer, signée à Bruxelles le 10 mai 1952, qu'elle l'a été de façon continue depuis lors et que cette Convention est aujourd'hui, toujours en vigueur à l'égard de la Côte d'Ivoire.

Croatia
Reservation made by Yugoslavia and now applicable to Croatia: "...en réservant conformément à l'article 10 de ladite Convention, le droit de ne pas appliquer ces dispositions à la saisie d'un navire pratiquée en raison d'une créance maritime visée au point o) de l'article premier et d'appliquer à cette saisie la loi nationale".

Cuba
(Traduction) L'instrument d'adhésion contient les réserves prévues à l'article 10 de la Convention celles de ne pas appliquer les dispositions de la Convention aux navires de guerre et aux navires d'Etat ou au service d'un Etat, ainsi qu'une déclaration relative à l'article 18 de la Convention.

Dominica, Republic of
Same reservation as Antigua

Egypt
Au moment de la signature le Plénipotentiaire égyptien à déclaré formuler les réserves prévues à l'article 10.
Confirmation expresse des réserves faites au moment de la signature.

Germany, Federal Republic of
(Traduction) ...sous réserve du prescrit de l'article 10, alinéas a et b.

Grenada
Same reservation as Antigua.

Guyana
Same reservation as the Bahamas.

Ireland
Ireland reserves the right not to apply the provisions of the Convention to warships or to ships owned by or in service of a State.

Italy
Le Gouvernement de la République d'Italie se réfère à l'article 10, par. (a) et (b), et se réserve:
(a) le droit de ne pas appliquer les dispositions de la présente Convention à la saisie d'un navire pratiquée en raison d'une des créances maritimes visées aux o) et p) de l'article premier et d'appliquer à cette saisie sa loi nationale;
(b) le droit de ne pas appliquer les dispositions du premier paragraphe de l'article 3 à la saisie pratiquée sur son territoire en raison des créances prévues à l'alinéa q) de l'article 1.

Khmere Republic
Le Gouvernement de la République Khmère en adhérant à cette convention formule les réserves prévues à l'article 10.

Kiribati
Same reservation as the Bahamas.

Mauritius
Same reservation as Antigua.

Netherlands
Réserves formulées conformément à l'article 10, paragraphes (a) et (b):
- les dispositions de la Convention précitée ne sont pas appliquées à la saisie d'un navire pratiquée en raison d'une des créances maritimes visées aux alinéas o) et p) de l'article 1, saisie à laquelle s'applique le loi néerlandaise; et
- les dispositions du premier paragraphe de l'article 3 ne sont pas appliquées à la saisie pratiquée sur le territoire du Royaume des Pays-Bas en raison des créances prévues à l'alinéa q) de l'article 1.

Cette ratification est valable depuis le 1er janvier 1986 pour le Royaume des Pays-Bas, les Antilles néerlandaises et Aruba.

Nigeria
Same reservation as Antigua.

North Borneo
Same reservation as Antigua.

Russian Federation
The Russian Federation reserves the right not to apply the rules of the International Convention for the unification of certain rules relating to the arrest of sea-going ships of 10 May 1952 to warships, military logistic ships and to other vessels owned or operated by the State and which are exclusively used for non-commercial purposes.
Pursuant to Article 10, paragraphs (a) and (b), of the International Convention for the

unification of certain rules relating to the arrest of sea-going ships, the Russian Federation reserves the right not to apply:
– the rules of the said Convention to the arrest of any ship for any of the claims enumerated in Article 1, paragraph 1, subparagraphs (o) and (p), of the Convention, but to apply the legislation of the Russian Federation to such arrest;
– the first paragraph of Article 3 of the said Convention to the arrest of a ship, within the jurisdiction of the Russian Federation, for claims set out in Article 1, paragrap 1, subparagraph (q), of the Convention.

St. Kitts and Nevis
Same reservation as Antigua.

St. Lucia
Same reservation as Antigua.

St. Vincent and the Grenadines
Same reservation as Antigua.

Sarawak
Same reservation as Antigua.

Seychelles
Same reservation as the Bahamas.

Solomon Islands
Same reservation as the Bahamas.

Tonga
Same reservation as Antigua.

Turk Isles and Caicos
Same reservation as the Bahamas.

Tuvalu
Same reservation as the Bahamas.

United Kingdom of Great Britain and Northern Ireland
... Subject to the following reservations:
1. The Government of the United Kingdom of Great Britain and Northern Ireland reserve the right not to apply the provisions of the said Convention to warships or to vessels owned by or in the service of a State.
2. The Government of the United Kingdom of Great Britain and Northern Ireland reserve the right in extending the said Convention to any of the territories for whose international relations they are responsible to make such extension subject to the reservations provided for in Article 10 of the said Convention.

United Kingdom (Overseas Territories)
Anguilla, Bermuda, British Virgin Islands, Caiman Islands, Falkland Islands and Dependencies, Gibraltar, Guernsey, Hong Kong, Montserrat, St. Helena, Turks Isles and Caicos
... Subject to the following reservations:
1. The Government of the United Kingdom of Great Britain and Northern Ireland reserve the right not to apply the provisions of the said Convention to warships or to vessels owned by or in the service of a State.
2. The Government of the United Kingdom of Great Britain and Northern Ireland reserve the right in extending the said Convention to any of the territories for whose international relations they are responsible to make such extension subject to the reservations provided for in Article 10 of the said Convention.

Convention internationale sur la

Limitation de la responsabilité des propriétaires de navires de mer

et protocole de signature

Bruxelles, le 10 octobre 1957
Entrée en vigueur: 31 mai 1968

International convention relating to the

Limitation of the liability of owners of sea-going ships

and protocol of signature

Brussels, 10th October 1957
Entered into force: 31 May 1968

Algeria	**(a)**	18.VIII.1964
Australia	**(r)**	30.VII.1975
(denunciation – 30.V. 1990)		
Bahamas*	**(a)**	21.VIII.1964
Barbados*	**(a)**	4.VIII.1965
Belgium	**(r)**	31.VII.1975
(denunciation – 1.IX.1989)		
Belize	**(r)**	31.VII.1975
China		
Macao[1]	**(a)**	20.XII.1999
Denmark*	**(r)**	1.III.1965
(denunciation – 1.IV.1984)		
Dominica, Republic of*	**(a)**	4.VIII.1965
Egypt (Arab Republic of)		
(denunciation – 8.V.1985)		
Fiji*	**(a)**	21.VIII.1964
Finland	**(r)**	19.VIII.1964
(denunciation – 1.IV.1984)		
France	**(r)**	7.VII.1959
(denunciation – 15.VII.1987)		
Germany	**(r)**	6.X.1972
(denunciation – 1.IX.1986)		
Ghana*	**(a)**	26.VII.1961
Grenada*	**(a)**	4.VIII.1965
Guyana*	**(a)**	25.III.1966
Iceland*	**(a)**	16.X.1968
India*	**(r)**	1.VI.1971
Iran*	**(r)**	26.IV.1966
Israel*	**(r)**	30.XI.1967

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

Japan	**(r)**	1.III.1976
(denunciation – 19.V.1983)		
Kiribati*	**(a)**	21.VIII.1964
Lebanon	**(a)**	23.XII.1994
Madagascar	**(a)**	13.VII.1965
Mauritius*	**(a)**	21.VIII.1964
Monaco*	**(a)**	24.I.1977
Netherlands	**(r)**	10.XII.1965
(denunciation – 1.IX.1989)		
Aruba*	**(r)**	1.I.1986
Norway	**(r)**	1.III.1965
(denunciation – 1.IV.1984)		
Papua New Guinea*	**(a)**	14.III.1980
Poland	**(r)**	1.XII.1972
Portugal*	**(r)**	8.IV.1968
St. Lucia*	**(a)**	4.VIII.1965
St. Vincent and the Grenadines	**(a)**	4.VIII.1965
Seychelles*	**(a)**	21.VIII.1964
Singapore*	**(a)**	17.IV.1963
Solomon Islands*	**(a)**	21.VIII.1964
Spain*	**(r)**	16.VII.1959
(denunciation - 04.I. 2006)		
Sweden	**(r)**	4.VI.1964
(denunciation – 1.IV.1984)		
Switzerland	**(r)**	21.I.1966
Syrian Arab Republic	**(a)**	10.VII.1972
Tonga*	**(a)**	13.VI.1978
Tuvalu*	**(a)**	21.VIII.1964
United Arab Republic*	**(a)**	7.IX.1965
United Kingdom*	**(r)**	18.II.1959
Isle of Man	**(a)**	18.XI.1960
Bermuda, British Antarctic Territories, Falkland and Dependencies, Gibraltar, British Virgin Islands	**(a)**	21.VIII.1964
Guernsey and Jersey	**(a)**	21.X.1964
Caiman Islands, Montserrat, Caicos and Turks Isles*	**(a)**	4.VIII.1965
Vanuatu	**(a)**	8.XII.1966
Zaire	**(a)**	17.VII.1967

Reservations

Bahamas
...Subject to the same reservations as those made by the United Kingdom on ratification namely the reservations set out in sub-paragraphs (a) and (b) of paragraph (2) of the Protocol of Signature.

Barbados
Same reservation as Bahamas

China
The Government of the People's Republic of China reserves, for the Macao Special Administrative Region, the right not to be bound by paragraph 1.(c) of Article 1 of the

Convention. The Government of the People's Republic of China reserves, for the Macao Special Administrative Region, the right to regulate by specific provisions of laws of the Macao Special Administrative Region the system of limitation of liability to be applied to ships of less than 300 tons. With reference to the implementation of the Convention in the Macao Special Administrative Region, the Government of the People's Repubic of China reserves, for the Macao Special Administrative Region, the right to implement the Convention either by giving it the force of law in the Macao Special Administrative Region, or by including the provisions of the Convention, in appropriate form, in legislation of the Macao Special Administrative Region. Within the above ambit, the Government of the People's Republic of China will assume the responsability for the international rights and obligations that place on a Party to the Convention.

Denmark
Le Gouvernement du Danemark se réserve le droit:
1) de régler par la loi nationale le système de limitation de responsabilité applicable aux navires de moins de 300 tonneaux de jauge;
2) de donner effet à la présente Convention, soit en lui donnant force de loi, soit en incluant dans la législation nationale les dispositions de la présente Convention sous une forme appropriée à cette législation.

Dominica, Republic of
Same reservation as Bahamas

Egypt Arab Republic
Reserves the right:
1) to exclude the application of Article 1, paragraph (1)(c);
2) to regulate by specific provisions of national law the system of limitation to be applied to ships of less than 300 tons;
3) on 8 May, 1984 the Egyptian Arab Republic has verbally notified the denunciation in respect of this Convention. This denunciation will become operative on 8 May, 1985.

Fiji
Le 22 août 1972 a été reçue au Ministère des Affaires étrangères, du Commerce extérieur et de la Coopération au Développement une lettre de Monsieur K.K.T. Mara, Premier Ministre et Ministre des Affaires étrangères de Fidji, notifiant qu'en ce qui concerne cette Convention, le Gouvernement de Fidji reprend, à partir de la date de l'indépendance de Fidji, c'est-à-dire le 10 octobre 1970, les droits et obligations souscrits antérieurement par le Royaume-Uni, avec les réserves figurant ci-dessous.
1) In accordance with the provisions of subparagraph (a) of paragraph (2) of the said Protocol of signature, the Government of the United Kingdom of Great Britain and Northern Ireland exclude paragraph (1)(c) of Article 1 from their application of the said Convention.
2) In accordance with the provisions of subparagraph (b) of paragraph (2) of the said Protocol of signature, the Government of the United Kingdom of Great Britain and Northern Ireland will regulate by specific provisions of national law the system of limitation of liability to be applied to ships of less than 300 tons.
Furthermore in accordance with the provisions of subparagraph (c) of paragraph (2) of the said Protocol of signature, the Government of Fiji declare that the said Convention as such has not been made part in Fiji law, but that the appropriate provisions to give effect thereto have been introduced in Fiji law.

Ghana
The Government of Ghana in acceding to the Convention reserves the right:
1) To exclude the application of Article 1, paragraph (1)(c);
2) To regulate by specific provisions of national law the system of limitation of liability to be applied to ships of less than 300 tons;
3) to give effect to this Convention either by giving it the force of law or by including in national legislation, in a form appropriate to that legislation, the provisions of this Convention.

Grenada
Same reservation as Bahamas

Guyana
Same reservation as Bahamas

Iceland
The Government of Iceland reserves the right:
1) to regulate by specific provisions of national law the system of limitation of liability to be applied to ships of less than 300 tons;
2) to give effect to this Convention either by giving it the force of law or by including in national legislation, in a form appropriate to that legislation, the provisions of this Convention.

India
Reserve the right:
1) To exclude the application of Article 1, paragraph (1)(c);
2) To regulate by specific provisions of national law the system of limitation of liability to be applied to ships of less than 300 tons;
3) to give effect to this Convention either by giving it the force of law or by including in national legislation, in a form appropriate to that legislation, the provisions of this Convention.

Iran
Le Gouvernement de l'Iran se réserve le droit:
1) d'exclure l'application de l'article 1, paragraphe (1)(c);
2) de régler par la loi nationale le système de limitation de responsabilité applicable aux navires de moins de 300 tonneaux de jauge;
3) de donner effet à la présente Convention, soit en lui donnant force de loi, soit en incluant dans la législation nationale les dispositions de la présente Convention sous une forme appropriée à cette législation.

Israel
The Government of Israel reserves to themselves the right to:
1) exclude from the scope of the Convention the obligations and liabilities stipulated in Article 1(1)(c);
2) regulate by provisions of domestic legislation the limitation of liability in respect of ships of less than 300 tons of tonnage;
The Government of Israel reserves to themselves the right to give effect to this Convention either by giving it the force of law or by including in its national legislation, in a form appropriate to that legislation, the provisions of this Convention.

Kiribati
Same reservation as Bahamas

Mauritius
Same reservation as Bahamas

Monaco
En déposant son instrument d'adhésion, Monaco fait les réserves prévues au paragraphe 2° du Protocole de signature.

Netherlands-Aruba
La Convention qui était, en ce qui concerne le Royaume de Pays-Bas, uniquement applicable au Royaume en Europe, a été étendue à Aruba à partir du 16.XII.1986 avec effet rétroactif à compter du 1er janvier 1986.
La dénonciation de la Convention par les Pays-Bas au 1er septembre 1989, n'est pas valable pour Aruba.

Note: Le Gouvernement des Pays-Bas avait fait les réservations suivantes:
Le Gouvernement des Pays-Bas se réserve le droit:
1) d'exclure l'application de l'article 1, paragraphe (1)(c);
2) de régler par la loi nationale le système de limitation de responsabilité applicable aux navires de moins de 300 tonneaux de jauge;
3) de donner effet à la présente Convention, soit en lui donnant force de loi, soit en incluant dans la législation nationale les dispositions de la présente Convention sous une forme appropriée à cette législation.
... Conformément au paragraphe (2)(c) du Protocole de signature Nous nous réservons de donner effet à la présente Convention en incluant dans la législation nationale les dispositions de la présente Convention sous une forme appropriée à cette législation.

Papua New Guinea
(a) The Government of Papua New Guinea excludes paragraph (1)(c) of Article 1.
(b) The Government of Papua New Guinea will regulate by specific provisions of national law the system of limitation of liability to be applied to ships of less than 300 tons.
(c) The Government of Paupua New Guinea shall give effect to the said Convention by including the provisions of the said Convention in the National Legislation of Papua New Guinea.

Portugal
(Traduction) ...avec les réserves prévues aux alinéas a), b) et c) du paragraphe deux du Protocole de signature...

St. Lucia
Same reservation as Bahamas

Seychelles
Same reservation as Bahamas

Singapore
Le 13 septembre 1977 à été reçue une note verbale datée du 6 septembre 1977, émanant du Ministère des Affaires étrangères de Singapour, par laquelle le Gouvernement de Singapour confirme qu'il se considère lié par la Convention depuis le 31 mai 1968, avec les réserves suivantes:
...Subject to the following reservations:
a) the right to exclude the application of Article 1, paragraph (1)(c); and
b) to regulate by specific provisions of national law the system of limitation of liability to be applied to ships of less than 300 tons. The Government of the Republic of Singapore declares under sub-paragraph (c) of paragraph (2) of the Protocol of signature that provisions of law have been introduced in the Republic of Singapore to give effect to the Convention, although the Convention as such has not been made part of Singapore law.

Solomon Islands
Same reservation as Bahamas

Spain
Le Gouvernement espagnol se réserve le droit:
1) d'exclure du champ d'application de la Convention les obligations et les responsabilités prévues par l'article 1, paragraphe (1)(c);
2) de régler par les dispositions particulières de sa loi nationale le système de limitation de responsabilité applicable aux propriétaires de navires de moins de 300 tonneaux de jauge;
3) de donner effet à la présente Convention, soit en lui donnant force de loi, soit en incluant dans la législation nationale les dispositions de la présente Convention sous une forme appropriée à cette législation.

Tonga
Reservations:
1) In accordance with the provisions of subparagraph (a) of paragraph (2) of the Protocol of signature, the Government of the Kingdom of Tonga exclude paragraph (1)(c) of Article 1 from their application of the said Convention.
2) In accordance with the provisions of subparagraph (b) of paragraph (2) of the Protocol of signature, the Government of the Kingdom of Tonga will regulate by specific provisions of national law the system of liability to be applied to ships of less than 300 tons.

Tuvalu
Same reservation as Bahamas

United Kingdom of Great Britain and Northern Ireland
Subject to the following observations:
1) In accordance with the provisions of subparagraph (a) of paragraph (2) of the said Protocol of Signature, the Government of the United Kingdom of Great Britain and Northern Ireland exclude paragraph (1)(c) of Article 1 from their application of the said Convention.
2) In accordance with the provisions of subparagraph (b) of paragraph (2) of the said Protocol of Signature, the Government of the United Kingdom of Great Britain and Northern Ireland will regulate by specific provisions of national law the system of limitation of liability to be applied to ships of less than 300 tons.
3) The Government of the United Kingdom of Great Britain and Northern Ireland also reserve the right, in extending the said Convention to any of the territories for whose international relations they are responsible, to make such extension subject to any or all of the reservations set out in paragraph (2) of the said Protocol of Signature. Furthermore, in accordance with the provisions of subparagraph (c) of paragraph (2) of the said Protocol of Signature, the Government of the United Kingdom of Great Britain and Northern Ireland declare that the said Convention as such has not been made part of the United Kingdom law, but that the appropriate provisions to give effect thereto have been introduced in United Kingdom law.

United Kingdom Overseas Territories

Anguilla, Bermuda, British Antarctic Territories, British Virgin Islands, Caiman Islands, Caicos and Turks Isles, Falkland and Dependencies, Gibraltar, Guernsey and Jersey, Hong Kong, Isle of Man, Montserrat

... Subject to the same reservations as those made by the United Kingdom on ratification namely the reservations set out in sub-paragraphs (a) and (b) of paragraph (2) of the Protocol of Signature.

Protocole portant modification de la convention internationale sur la

Limitation de la responsabilité des propriétaires de navires de mer

du 10 octobre 1957

Bruxelles le 21 décembre 1979
Entré en vigueur: 6 octobre 1984

Protocol to amend the international convention relating to the

Limitation of the liability of owners of sea-going ships

of 10 October 1957

Brussels, 21st December 1979
Entered into force: 6 October 1984

Australia	**(r)**	30.XI.1983
Belgium	**(r)**	7.IX.1983

Luxembourg	**(a)**	18.II.1991
Poland	**(r)**	6.VII.1984
Portugal	**(r)**	30.IV.1982
Spain	**(r)**	14.V.1982
(denunciation - 04.I. 2006)		
Switzerland	**(r)**	20.I.1988
United Kingdom of Great Britain and Northern Ireland	**(r)**	2.III.1982
(denunciation – 1.XII.1985)		
Isle of Man, Bermuda, Falkland and Dependencies, Gibraltar, Hong-Kong, British Virgin Islands, Guernsey and Jersey, Cayman Islands, Montserrat, Caicos and Turks Isles (denunciation – 1.XII.1985)		

Convention internationale sur les
Passagers Clandestins

Bruxelles, 10 octobre 1957
Pas encore en vigueur

International convention relating to
Stowaways

Brussels, 10th October 1957
Not yet in force

Belgium	**(r)**	31.VII.1975
Denmark	**(r)**	16.XII.1963
Finland	**(r)**	2.II.1966
Italy	**(r)**	24.V.1963
Luxembourg	**(a)**	18.II.1991
Madagascar	**(a)**	13.VII.1965
Morocco	**(a)**	22.I.1959
Norway	**(r)**	24.V.1962
Peru	**(r)**	23.XI.1961
Sweden	**(r)**	27.VI.1962

Convention internationale pour l'unification de certaines règles en matière de
Transport de passagers par mer
et protocole

Bruxelles, 29 avril 1961
Entrée en vigueur: 4 juin 1965

International convention for the unification of certain rules relating to
Carriage of passengers by sea
and protocol

Brussels, 29th April 1961
Entered into force: 4 June 1965

Algeria	**(a)**	2.VII.1973
Cuba*	**(a)**	7.I.1963
France	**(r)**	4.III.1965
(denunciation – 3.XII.1975)		
Haïti	**(a)**	19.IV.1989
Iran	**(a)**	26.IV.1966

Madagascar	**(a)**	13.VII.1965
Morocco*	**(r)**	15.VII.1965
Peru	**(a)**	29.X.1964
Switzerland	**(r)**	21.I.1966
Tunisia	**(a)**	18.VII.1974
United Arab Republic*	**(r)**	15.V.1964
Zaire	**(a)**	17.VII.1967

Reservations

Cuba
(Traduction) ...Avec les réserves suivantes:
1) De ne pas appliquer la Convention aux transports qui, d'après sa loi nationale, ne sont pas considérés comme transports internationaux.
2) De ne pas appliquer la Convention, lorsque le passager et le transporteur sont tous deux ressortissants de cette Partie Contractante.
3) De donner effet à cette Convention, soit en lui donnant force de loi, soit en incluant dans sa législation nationale les dispositions de cette Convention sous une forme appropriée à cette législation.

Morocco
...Sont et demeurent exclus du champ d'application de cette convention:
1) les transports de passagers effectués sur les navires armés au cabotage ou au bornage, au sens donné à ces expressions par l'article 52 de l'annexe I du dahir du 28 Joumada II 1337 (31 mars 1919) formant code de commerce maritime, tel qu'il a été modifié par le dahir du 29 Chaabane 1380 (15 février 1961).
2) les transports internationaux de passagers lorsque le passager et le transporteur sont tous deux de nationalité marocaine.
Les transports de passagers visés...ci-dessus demeurent régis en ce qui concerne la limitation de responsabilité, par les disposition de l'article 126 de l'annexe I du dahir du 28 Joumada II 1337 (31 mars 1919) formant code de commerce maritime, tel qu'il a été modifié par la dahir du 16 Joumada II 1367 (26 avril 1948).

United Arab Republic
Sous les réserves prévues aux paragraphes (1), (2) et (3) du Protocole.

Convention internationale relative à la responsabilité des exploitants de Navires nucléaires et protocole additionnel

Bruxelles, 25 mai 1962
Pas encore en vigueur

International convention relating to the liability of operators of Nuclear ships and additional protocol

Brussels, 25th May 1962
Not yet in force

Lebanon	**(r)**	3.VI.1975
Madagascar	**(a)**	13.VII.1965
Netherlands*	**(r)**	20.III.1974
Portugal	**(r)**	31.VII.1968
Suriname	**(r)**	20.III.1974
Syrian Arab Republic	**(a)**	1.VIII.1974
Zaire	**(a)**	17.VII.1967

Reservations

Netherlands
Par note verbale datée du 29 mars 1976, reçue le 5 avril 1976, par le Gouvernement belge, l'Ambassade des Pays-Bas à Bruxelles a fait savoir:
Le Gouvernement du Royaume des Pays-Bas tient à déclarer, en ce qui concerne les dispositions du Protocole additionnel faisant partie de la Convention, qu'au moment de son entrée en vigueur pour le Royaume des Pays-Bas, ladite Convention y devient impérative, en ce sens que les prescriptions légales en vigueur dans le Royaume n'y seront pas appliquées si cette application est inconciliable avec les dispositions de la Convention.

Convention internationale pour l'unification de certaines règles en matière de

Transport de bagages de passagers par mer

Bruxelles, 27 mai 1967
Pas en vigueur

International Convention for the unification of certain rules relating to

Carriage of passengers' luggage by sea

Brussels, 27th May 1967
Not in force

Algeria	**(a)**	2.VII.1973
Cuba*	**(a)**	15.II.1972

Reservations

Cuba
(Traduction) Le Gouvernement révolutionnaire de la République de Cuba, Partie Contractante, formule les réserves formelles suivantes:
1) de ne pas appliquer cette Convention lorsque le passager et le transporteur sont tous deux ressortissants de cette Partie Contractante.
3) en donnant effet à cette Convention, la Partie Contractante pourra, en ce qui concerne les contrats de transport établis à l'intérieur de ses frontières territoriales pour un voyage dont le port d'embarquement se trouve dans lesdites limites territoriales, prévoir dans sa législation nationale la forme et les dimensions des avis contenant les dispositions de cette Convention et devant figurer dans le contrat de transport. De même, le Gouvernement révolutionnaire de la République de Cuba déclare, selon le prescrit de l'article 18 de cette Convention, que la République de Cuba ne se considère pas liée par l'article 17 de ladite Convention.

Convention internationale relative à l'inscription des droits relatifs aux

Navires en construction

Bruxelles, 27 mai 1967
Pas encore en vigueur

International Convention relating to the registration of rights in respect of

Vessels under construction

Brussels, 27th May 1967
Not yet in force

Croatia	**(r)**	3.V.1971
Greece	**(r)**	12.VII.1974
Norway	**(r)**	13.V.1975
Sweden	**(r)**	13.XI.1975
Syrian Arab Republic	**(a)**	1.XIII.1974

Convention internationale pour l'unification de certaines règles relatives aux
Privilèges et hypothèques maritimes

Bruxelles, 27 mai 1967
Pas encore en vigueur

International Convention for the unification of certain rules relating to
Maritime liens and mortgages

Brussels, 27th May 1967
Not yet in force

Denmark*	**(r)**	23.VIII.1977
Morocco*	**(a)**	12.II.1987
Norway*	**(r)**	13.V.1975
Sweden*	**(r)**	13.XI.1975
Syrian Arab Republic	**(a)**	1.VIII.1974

Reservations

Denmark
L'instrument de ratification du Danemark est accompagné d'une déclaration dans laquelle il est précisé qu'en ce qui concerne les Iles Féroe les mesures d'application n'ont pas encore été fixées.

Morocco
L'instrument d'adhésion est accompagné de la réserve suivante: Le Royaume du Maroc adhère à la Convention Internationale pour l'unification de certaines règles relatives aux privilèges et hypothèques maritimes faite à Bruxelles le 27 mai 1967, sous réserve de la non-application de l'article 15 de la dite Convention.

Norway
Conformément à l'article 14 le Gouvernement du Royaume de Norvège fait les réserves suivantes:
1) mettre la présente Convention en vigueur en incluant les dispositions de la présente Convention dans la législation nationale suivant une forme appropriée à cette législation;
2) faire application de la Convention internationale sur la limitation de la responsabilité des propriétaires de navires de mer, signée à Bruxelles le 10 octobre 1957.

Sweden
Conformément à l'article 14 la Suède fait les réserves suivantes:
1) de mettre la présente Convention en vigueur en incluant les dispositions de la Convention dans la législation nationale suivant une forme appropriée à cette législation;
2) de faire application de la Convention internationale sur la limitation de la responsabilité des propriétaires de navires de mer, signée à Bruxelles le 10 octobre 1957.

STATUS OF THE RATIFICATIONS OF AND ACCESSIONS TO THE IMO CONVENTIONS IN THE FIELD OF PRIVATE MARITIME LAW

Editor's notes

1. This Status is based on advices from the International Maritime Organisation and reflects the situation as at 30 June, 2006.
2. The dates mentioned are the dates of the deposit of instruments.
3. The asterisk after the name of a State Party indicates that that State has made declarations, reservations or statements the text of which is published after the relevant status of ratifications and accessions.

4 The dates mentioned in respect of the denunciation are the dates when the denunciation takes effect.

ETAT DES RATIFICATIONS ET ADHESIONS AUX CONVENTIONS DE L'OMI EN MATIERE DE DROIT MARITIME PRIVE

Notes de l'éditeur

1. Cet état est basé sur des informations recues de l'Organisation Maritime Internationale et reflète la situation au 30 June, 2006.
2. Les dates mentionnées sont les dates du depôt des instruments.
3. L'asterisque qui suit le nom d'un Etat indique que cet Etat a fait une déclaration, une reserve ou une communication dont le texte est publié à la fin de chaque état de ratifications et adhesions.
4. Les dates mentionnées pour la dénonciation sont les dates à lesquelles la dénonciation prend effet.

International Convention on Civil liability for oil pollution damage

(CLC 1969)

Done at Brussels, 29 November 1969
Entered into force: 19 June 1975

Convention Internationale sur la Responsabilité civile pour les dommages dus à la pollution par les hydrocarbures (CLC 1969)

Signée a Bruxelles, le 29 novembre 1969
Entrée en vigueur: 19 juin 1975

	Date of deposit of instrument	Date of entry into force or succession	Effective date of denunciation
Albania (accession)	6.IV.1994	5.VII.1994	30.VI.2006
Algeria (accession)	14.VI.1974	19.VI.1975	3.VIII.1999
Antigua and Barbuda (accession)	23.VI.1997	21.IX.1997	14.VI.2001
Australia (ratification)[1]	7.XI.1983	5.II.1984	15.V.1998
Azerbaijan (accession)	16.VII.2004	14.X.2004	
Bahamas (accession)	22.VII.1976	20.X.1976	15.V.1998
Bahrain (accession)	3.V.1996	1.VIII.1996	15.V.1998
Barbados (accession)	6.V.1994	4.VIII.1994	7.VII.1999
Belgium (ratification)[1]	12.I.1977	12.IV.1977	6.X.1999
Belize (accession)	2.IV.1991	1.VII.1991	27.XI.1999
Benin (accession)	1.XI.1985	30.I.1986	
Brazil (ratification)	17.XII.1976	17.III.1977	
Brunei Darussalam (accession)	29.IX.1992	28.XII.1992	31.I.2003
Cambodia (accession)	28.XI.1994	26.II.1995	
Cameroon (ratification)	14.V.1984	12.VIII.1984	15.X.2002
Canada (accession)	24.I.1989	24.IV.1989	29.V.1999
Chile (accession)	2.VIII.1977	31.X.1977	
China[2] **(accession)**[1]	30.I.1980	29.IV.1980	5.I.2000
Colombia (accession)	26.III.1990	24.VI.1990	25.I.2006
Costa Rica (accession)	8.XII.1997	8.III.1998	
Côte d'Ivoire (ratification)	21.VI.1973	19.VI.1975	
Croatia (succession)	–	8.X.1991	30.VII.1999
Cyprus (accession)	19.VI.1989	17.IX.1989	15.V.1998
Denmark (accession)	2.IV.1975	19.VI.1975	15.V.1998
Djibouti (accession)	1.III.1990	30.V.1990	17.V.2002
Dominican Republic (ratification)	2.IV.1975	19.VI.1975	
Ecuador (accession)	23.XII.1976	23.III.1977	
Egypt (accession)	3.II.1989	4.V.1989	
El Salvador (accession)	2.I.2002	2.IV.2002	
Equatorial Guinea (accession)	24.IV.1996	23.VII.1996	
Estonia (accession)	1.XII.1992	1.III.1993	6.VIII.2006
Fiji (accession)	15.VIII.1972	19.VI.1975	30.XI.2000
Finland (ratification)	10.X.1980	8.I.1981	15.V.1998

CLC 1969

	Date of deposit of instrument	Date of entry into force or succession	Effective date of denunciation
France (ratification)	17.III.1975	19.VI.1975	15.V.1998
Gabon (accession)	21.I.1982	21.IV.1982	31.V.2003
Gambia (accession)	1.XI.1991	30.I.1992	
Georgia (accession)	19.IV.1994	18.VII.1994	
Germany[3] (ratification)[1]	20.V.1975	18.VIII.1975[4]	15.V.1998
Ghana (ratification)	20.IV.1978	19.VII.1978	
Greece (accession)	29.VI.1976	27.IX.1976	15.V.1998
Guatemala (acceptance)[1]	20.X.1982	18.I.1983	
Guyana (accession)	10.XII.1997	10.III.1998	
Honduras (accession)	2.XII.1998	2.III.1999	
Iceland (ratification)	17.VII.1980	15.X.1980	10.II.2001
India (accession)	1.V.1987	30.VII.1987	21.VI.2001
Indonesia (ratification)	1.IX.1978	30.XI.1978	
Ireland (ratification)	19.XI.1992	17.II.1993	15.V.1998
Italy (ratification)[1]	27.II.1979	28.V.1979	8.X.2000
Japan (accession)	3.VI.1976	1.IX.1976	15.V.1998
Jordan (accession)	14.X.2003	12.I.2004	
Kazakhstan (accession)	7.III.1994	5.VI.1994	
Kenya (accession)	15.XII.1992	15.III.1993	7.VII.2001
Kuwait (accession)	2.IV.1981	1.VII.1981	
Latvia (accession)	10.VII.1992	8.X.1992	
Lebanon (accession)	9.IV.1974	19.VI.1975	
Liberia (accession)	25.IX.1972	19.VI.1975	15.V.1998
Libyan Arab Jamahiriya (accession)	28.IV.2005	26.VII.2005	
Luxembourg (accession)	14.II.1991	15.V.1991	21.XI.2006
Malaysia (accession)	6.I.1995	6.IV.1995	9.VI.2005
Maldives (accession)	16.III.1981	14.VI.1981	
Malta (accession)	27.IX.1991	26.XII.1991	6.I.2001
Marshall Islands (accession)	24.I.1994	24.IV.1994	15.V.1998
Mauritania (accession)	17.XI.1995	15.II.1996	
Mauritius (accession)	6.IV.1995	5.VII.1995	6.XII.2000
Mexico (accession)	13.V.1994	11.VIII.1994	15.V.1998
Monaco (ratification)	21.VIII.1975	19.XI.1975	15.V.1998
Mongolia (accession)	3.III.2003	1.VI.2003	
Morocco (accession)	11.IV.1974	19.VI.1975	25.X.2001
Mozambique (accession)	23.XII.1996	23.III.1997	26.IV.2003
Netherlands (ratification)	9.IX.1975	8.XII.1975	15.V.1998
New Zealand (accession)	27.IV.1976	26.VII.1976	25.VI.1999
Nicaragua (accession)	4.VI.1996	2.IX.1996	
Nigeria (accession)	7.V.1981	5.VIII.1981	24.V.2003
Norway (accession)	21.III.1975	19.VI.1975	15.V.1998
Oman (accession)	24.I.1985	24.IV.1985	15.V.1998
Panama (ratification)	7.I.1976	6.IV.1976	11.V.2000
Papua New Guinea (accession)	12.III.1980	10.VI.1980	23.I.2002
Peru (accession)[1]	24.II.1987	25.V.1987	
Poland (ratification)	18.III.1976	16.VI.1976	21.XII.2000
Portugal (ratification)	26.XI.1976	24.II.1977	1.XII.2005

	Date of deposit of instrument	Date of entry into force or succession	Effective date of denunciation
Qatar (accession)	2.VI.1988	31.VIII.1988	20.XI.2002
Republic of Korea (accession)	18.XII.1978	18.III.1979	15.V.1998
Russian Federation[5] (accession)[1]	24.VI.1975	22.IX.1975	20.III.2001
Saint Kitts and Nevis (accession)[1]	14.IX.1994	13.XII.1994	
Saint Vincent and the Grenadines (accession)	19.IV.1989	18.VII.1989	9.X.2002
Sao Tome and Principe (accession)	29.X.1998	27.I.1999	
Saudi Arabia (accession)[1]	15.IV.1993	14.VII.1993	
Senegal (accession)	27.III.1972	19.VI.1975	
Serbia and Montenegro (succession)	–	27.IV.1992	
Seychelles (accession)	12.IV.1988	11.VII.1988	23.VII.2000
Sierra Leone (accession)	13.VIII.1993	11.XI.1993	4.VI.2002
Singapore (accession)	16.IX.1981	15.XII.1981	31.XII.1998
Slovenia (succession)	–	25.VI.1991	19.VII.2001
South Africa (accession)	17.III.1976	15.VI.1976	1.X.2005
Spain (ratification)	8.XII.1975	7.III.1976	15.V.1998
Sri Lanka (accession)	12.IV.1983	11.VII.1983	22.I.2000
Sweden (ratification)	17.III.1975	19.VI.1975	15.V.1998
Switzerland (ratification)	15.XII.1987	14.III.1988	15.V.1998
Syrian Arab Republic (accession)[1]	6.II.1975	19.VI.1975	
Tonga (accession)	1.II.1996	1.V.1996	10.XII.2000
Tunisia (accession)	4.V.1976	2.VIII.1976	15.V.1998
Tuvalu (succession)	–	1.X.1978	30.VI.2005
United Arab Emirates (accession)	15.XII.1983	14.III.1984	
United Kingdom (ratification)	17.III.1975	19.VI.1975	15.V.1998
Vanuatu (accession)	2.II.1983	3.V.1983	18.II.2000
Venezuela (accession)	21.I.1992	20.IV.1992	22.VII.1999
Yemen (accession)	6.III.1979	4.VI.1979	

Number of Contracting States: 45

The Convention applies provisionally in respect of the following States:
Kiribati
Solomon Islands

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[1] With a declaration, reservation or statement.

[2] Applied to the Hong Kong Special Administrative Region with effect from 1.VII.1997. Effective date of denunciation: 5.I.2000.

[3] On 3.X.1990 the German Democratic Republic acceded to the Federal Republic of Germany. The German Democratic Republic had acceded to the Convention on 13.III.1978.

[4] In accordance with the intention expressed by the Government of the Federal Republic of Germany and based on its interpretation of article XV of the Convention.

[5] As from 26.XII.1991 the membership of the USSR in the Convention is continued by the Russian Federation.

Declarations, Reservations and Statements

Australia

The instrument of ratification of the Commonwealth of Australia was accompanied by the following declarations:

"Australia has taken note of the reservation made by the Union of Soviet Socialist Republics on its accession on 24 June 1975 to the Convention, concerning article XI(2) of the Convention. Australia wishes to advise that is unable to accept the reservation. Australia considers that international law does not grant a State the right to immunity from the jurisdiction of the courts of another State in proceedings concerning civil liability in respect of a State-owned ship used for commercial purposes. It is also Australia's understanding that the above-mentioned reservation is not intended to have the effect that the Union of Soviet Socialist Republics may claim judicial immunity of a foreign State with respect to ships owned by it, used for commercial purposes and operated by a company which in the Union of Soviet Socialist Republic is registered as the ship's operator, when actions for compensation are brought against the company in accordance with the provisions of the Convention. Australia also declares that, while being unable to accept the Soviet reservation, it does not regard that fact as precluding the entry into force of the Convention as between the Union of Soviet Socialist Republics and Australia."

"Australia has taken note of the declaration made by the German Democratic Republic on its accession on 13 March 1978 to the Convention, concerning article XI(2) of the Convention. Australia wishes to declare that it cannot accept the German Democratic Republic's position on sovereign immunity. Australia considers that international law does not grant a State the right to immunity from the jurisdiction of the courts of another State in proceedings concerning civil liability in respect of a State-owned ship used for commercial purposes. Australia also declares that, while being unable to accept the declaration by the German Democratic Republic, it does not regard that fact as precluding the entry into force of the Convention as between the German Democratic Republic and Australia."

Belgium

The instrument of ratification of the Kingdom of Belgium was accompanied by a Note Verbale (in the French language) the text of which reads as follows:

[Translation]

"...The Government of the Kingdom of Belgium regrets that it is unable to accept the reservation of the Union of Soviet Socialist Republics, dated 24 June 1975, in respect of article XI, paragraph 2 of the Convention.

The Belgian Government considers that international law does not authorize States to claim judicial immunity in respect of vessels belonging to them and used by them for commercial purposes.

Belgian legislation concerning the immunity of State-owned vessels is in accordance with the provisions of the International Convention for the Unification of Certain Rules concerning the Immunity of State-owned Ships, done at Brussels on 10 April 1926, to which Belgium is a Party.

The Belgian Government assumes that the reservation of the USSR does not in any way affect the provisions of article 16 of the Maritime Agreement between the Belgian-Luxembourg Economic Union and the Union of Soviet Socialist Republics,

of the Protocol and the Exchange of Letters, signed at Brussels on 17 November 1972. The Belgian Government also assumes that this reservation in no way affects the competence of a Belgian court which, in accordance with article IX of the aforementioned International Convention, is seized of an action for compensation for damage brought against a company registered in the USSR in its capacity of operator of a vessel owned by that State, because the said company, by virtue of article I, paragraph 3 of the same Convention, is considered to be the 'owner of the ship' in the terms of this Convention.
The Belgian Government considers, however, that the Soviet reservation does not impede the entry into force of the Convention as between the Union of Soviet Socialist Republics and the Kingdom of Belgium."

China

At the time of depositing its instrument of accession the Representative of the People's Republic of China declared "that the signature to the Convention by Taiwan authorities is illegal and null and void".

German Democratic Republic

The instrument of accession of the German Democratic Republic was accompanied by the following statement and declarations (in the German language):
[Translation]
"In connection with the declaration made by the Government of the Federal Republic of Germany on 20 May 1975 concerning the application of the International Convention on Civil Liability for Oil Pollution Damage of 29 November 1969 to Berlin (West), it is the understanding of the German Democratic Republic that the provisions of the Convention may be applied to Berlin (West) only inasmuch as this is consistent with the Quadripartite Agreement of 3 September 1971, under which Berlin (West) is no constituent part of the Federal Republic of Germany and must not be governed by it."
"The Government of the German Democratic Republic considers that the provisions of article XI, paragraph 2, of the Convention are inconsistent with the principle of immunity of States." [(1)]
The Government of the German Democratic Republic considers that the provisions of article XIII, paragraph 2, of the Convention are inconsistent with the principle that all States pursuing their policies in accordance with the purposes and principles of the Charter of the United Nations shall have the right to become parties to conventions affecting the interests of all States.
The position of the Government of the German Democratic Republic on article XVII of the Convention, as far as the application of the Convention to colonial and other dependent territories is concerned, is governed by the provisions of the United Nations Declaration on the Granting of Independence to Colonial Countries and Peoples (resolution 1514(XV) of 14 December 1960) proclaiming the necessity of bringing a speedy and unconditional end to colonialism in all its forms and manifestations."

[(1)] The following Governments do not accept the reservation contained in the instrument of accession of the Government of the German Democratic Republic, and the texts of their Notes to this effect were circulated by the depositary: Denmark, France, the Federal Republic of Germany, Japan, Norway, Sweden and the United Kingdom.

Federal Republic of Germany

The instrument of ratification of the Federal Republic of Germany was accompanied by a declaration (in the English language) that "with effect from the day on which the Convention enters into force for the Federal Republic of Germany it shall also apply to Berlin (West)".

Guatemala

The instrument of acceptance of the Republic of Guatemala contained the following declaration (in the Spanish language):

[Translation]

"It is declared that relations that may arise with Belize by virtue of this accession can in no sense be interpreted as recognition by the State of Guatemala of the independence and sovereignty unilaterally decreed by Belize."

Italy

The instrument of ratification of the Italian Republic was accompanied by the following statement (in the Italian language):

[Translation]

"The Italian Government wishes to state that it has taken note of the reservation put forward by the Government of the Soviet Union (on the occasion of the deposit of the instrument of accession on 24 June 1975) to article XI(2) of the International Convention on civil liability for oil pollution damage, adopted in Brussels on 29 November 1969.

The Italian Government declares that it cannot accept the aforementioned reservation and, with regard to the matter, observes that, under international law, the States have no right to jurisdictional immunity in cases where vessels of theirs are utilized for commercial purposes.

The Italian Government therefore considers its judicial bodies competent - as foreseen by articles IX and XI(2) of the Convention - in actions for the recovery of losses incurred in cases involving vessels belonging to States employing them for commercial purposes, as indeed in cases where, on the basis of article I(3), it is a company, running vessels on behalf of a State, that is considered the owner of the vessel.

The reservation and its non-acceptance by the Italian Government do not, however, preclude the coming into force of the Convention between the Soviet Union and Italy, and its full implementation, including that of article XI(2)."

Peru [(2)]

The instrument of accession of the Republic of Peru contained the following reservation (in the Spanish language):

[Translation]

"With respect to article II, because it considers that the said Convention will be understood as applicable to pollution damage caused in the sea area under the

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[(2)] The depositary received the following communication dated 14 July 1987 from the Embassy of the Federal Republic of Germany in London (in the English language):

"...the Government of the Federal Republic of Germany has the honour to reiterate its well-known position as to the sea area up to the limit of 200 nautical miles, measured from the base lines of the Peruvian coast, claimed by Peru to be under the sovereignty and

sovereignty and jurisdiction of the Peruvian State, up to the limit of 200 nautical miles, measured from the base lines of the Peruvian coast".

Russian Federation

See USSR.

Saint Kitts and Nevis

The instrument of accession of Saint Kitts and Nevis contained the following declaration:
"The Government of Saint Kitts and Nevis considers that international law does not authorize States to claim judicial immunity in respect of vessels belonging to them and used by them for commercial purposes".

Saudi Arabia

The instrument of accession of the Kingdom of Saudi Arabia contained the following reservation (in the Arabic language):
[Translation]
"However, this accession does not in any way mean or entail the recognition of Israel, and does not lead to entering into any dealings with Israel; which may be arranged by the above-mentioned Convention and the said Protocol".

Syrian Arab Republic

The instrument of accession of the Syrian Arab Republic contains the following sentence (in the Arabic language):
[Translation]
"...this accession [to the Convention] in no way implies recognition of Israel and does not involve the establishment of any relations with Israel arising from the provisions of this Convention".

USSR

The instrument of accession of the Union of Soviet Republics contains the following reservation (in the Russian language):
[Translation]
"The Union of Soviet Socialist Republic does not consider itself bound by the provisions of article XI, paragraph 2 of the Convention, as they contradict the principle

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jurisdiction of the Peruvian State. In this respect the Federal Government points again to the fact that according to international law no coastal State can claim unrestricted sovereignty and jurisdiction beyond its territorial sea, and that the maximum breadth of the territorial sea according to international law is 12 nautical miles."

The depositary received the following communication dated 4 November 1987 from the Permanent Mission of the Union of Soviet Socialist Republics to the International Maritime Organization (in the Russian language):

[Translation]

"...the Soviet Side has the honour to confirm its position in accordance with which a coastal State has no right to claim an extension of its sovereignty to sea areas beyond the outer limit of its territorial waters the maximum breadth of which in accordance with international law cannot exceed 12 nautical miles."

of the judicial immunity of a foreign State."[3]

Furthermore, the instrument of accession contains the following statement (in the Russian language):

[Translation]

"On its accession to the International Convention on Civil Liability for Oil Pollution Damage, 1969, the Union of Soviet Socialist Republics considers it necessary to state that:

"(a) the provisions of article XIII, paragraph 2 of the Convention which deny participation in the Convention to a number of States, are of a discriminatory nature and contradict the generally recognized principle of the sovereign equality of States, and

(b) the provisions of article XVII of the Convention envisaging the possibility of its extension by the Contracting States to the territories for the international relations of which they are responsible are outdated and contradict the United Nations Declaration on Granting Independence to Colonial Countries and Peoples (resolution 1514(XV) of 14 December 1960)".

The depositary received on 17 July 1979 from the Embassy of the Union of Soviet Socialist Republics in London a communication stating that:

"...the Soviet side confirms the reservation to paragraph 2 of article XI of the International Convention of 1969 on the Civil Liability for Oil Pollution Damage, made by the Union of Soviet Socialist Republics at adhering to the Convention. This reservation reflects the unchanged and well-known position of the USSR regarding the impermissibility of submitting a State without its express consent to the courts jurisdiction of another State. This principle of the judicial immunity of a foreign State is consistently upheld by the USSR at concluding and applying multilateral international agreements on various matters, including those of merchant shipping and the Law of the sea.

In accordance with article III and other provisions of the 1969 Convention, the liability for the oil pollution damage, established by the Convention is attached to "the owner" of "the ship", which caused such damage, while paragraph 3 of article I of the Convention stipulates that "in the case of a ship owned by a state and operated by a company which in that state is registered as the ship's operator, "owner" shall mean such company". Since in the USSR state ships used for commercial purposes are under the operational management of state organizations who have an independent liability on their obligations, it is only against these organizations and not against the Soviet state that actions for compensation of the oil pollution damage in accordance with the 1969 Convention could be brought. Thus the said reservation does not prevent the consideration in foreign courts in accordance with the jurisdiction established by the Convention, of such suits for the compensation of the damage by the merchant ships owned by the Soviet state".

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[3] The following Governments do not accept the reservation contained in the instrument of accession of the Government of the Union of Soviet Socialist Republics, and the texts of their Notes to this effect were circulated by the depositary: Denmark, France, the Federal Republic of Germany, Japan, the Netherlands, New Zealand, Norway, Sweden, the United Kingdom.

Protocol to the International Convention on
Civil liability for oil pollution damage

(CLC PROT 1976)

Done at London,
19 November 1976
Entered into force: 8 April 1981

Protocole à la Convention Internationale sur la
Responsabilité civile pour les dommages dus à la pollution par les hydrocarbures

(CLC PROT 1976)

Signé à Londres,
le 19 novembre 1976
Entré en vigueur: 8 avril 1981

Contracting States
as at 30.VI.2006

	Date of deposit of instrument	Date of entry into force	Effective date of denunciation
Albania (accession)	6.IV.1994	5.VII.1994	
Antigua and Barbuda (accession)	23.VI.1997	21.IX.1997	
Australia (accession)	7.XI.1983	5.II.1984	
Azerbaijan (accession)	16.VII.2004	14.X.2004	
Bahamas (acceptance)	3.III.1980	8.IV.1981	
Bahrain (accession)	3.V.1996	1.VIII.1996	
Barbados (accession)	6.V.1994	4.VIII.1994	
Belgium (accession)	15.VI.1989	13.IX.1989	
Belize (accession)	2.IV.1991	1.VII.1991	
Brunei Darussalam (accession)	29.IX.1992	28.XII.1992	
Cambodia (accession)	8.VI.2001	6.IX.2001	
Cameroon (accession)	14.V.1984	12.VIII.1984	
Canada (accession)	24.I.1989	24.IV.1989	
China[4] (accession)[1]	29.IX.1986	28.XII.1986	22.VIII.2003
Colombia (accession)	26.III.1990	24.VI.1990	25.I.2006
Costa Rica (accession)	8.XII.1997	8.III.1998	
Cyprus (accession)	19.VI.1989	17.IX.1989	
Denmark (accession)	3.VI.1981	1.IX.1981	
Egypt (accession)	3.II.1989	4.V.1989	
El Salvador (accession)	2.I.2002	2.IV.2002	
Finland (accession)	8.I.1981	8.IV.1981	
France (approval)	7.XI.1980	8.IV.1981	
Georgia (accession)	25.VIII.1995	23.XI.1995	
Germany (ratification)[2]	28.VIII.1980	8.IV.1981	
Greece (accession)	10.V.1989	8.VIII.1989	
Iceland (accession)	24.III.1994	22.VI.1994	
India (accession)	1.V.1987	30.VII.1987	
Ireland (accession)	19.XI.1992	17.II.1993	15.V.1998
Italy (accession)	3.VI.1983	1.IX.1983	
Japan (accession)	24.VIII.1994	22.XI.1994	

	Date of deposit of instrument	Date of entry into force	Effective date of denunciation
Kuwait (accession)	1.VII.1981	29.IX.1981	
Liberia (accession)	17.II.1981	8.IV.1981	
Luxembourg (accession)	14.II.1991	15.V.1991	
Maldives (accession)	14.VI.1981	12.IX.1981	
Malta (accession)	27.IX.1991	26.XII.1991	6.I.2001
Marshall Islands (accession)	24.I.1994	24.IV.1994	
Mauritania (accession)	17.XI.1995	15.II.1996	
Mauritius (accession)	6.IV.1995	5.VII.1995	
Mexico (accession)	13.V.1994	11.VIII.1994	
Netherlands (accession)	3.VIII.1982	1.XI.1982	
Nicaragua (accession)	4.VI.1996	2.IX.1996	
Norway (accession)	17.VII.1978	8.IV.1981	
Oman (accession)	24.I.1985	24.IV.1985	
Peru (accession)	24.II.1987	25.V.1987	
Poland (accession)[1]	30.X.1985	28.I.1986	
Portugal (accession)	2.I.1986	2.IV.1986	
Qatar (accession)	2.VI.1988	31.VIII.1988	28.XI.2002
Republic of Korea (accession)	8.XII.1992	8.III.1993	
Russian Federation[3] **(accession)**[1]	2.XII.1988	2.III.1989	
Saudi Arabia (accession)[2]	15.IV.1993	14.VII.1993	
Singapore (accession)	15.XII.1981	15.III.1982	
Spain (accession)	22.X.1981	20.I.1982	
Sweden (ratification)	7.VII.1978	8.IV.1981	
Switzerland (accession)[1]	15.XII.1987	14.III.1988	
United Arab Emirates (accession)	14.III.1984	12.VI.1984	
United Kingdom (ratification)[1]	31.I.1980	8.IV.1981	15.V.1998
Vanuatu (accession)	13.I.1989	13.IV.1989	
Venezuela (accession)	21.I.1992	20.IV.1992	
Yemen (accession)	4.VI.1979	8.IV.1981	

Number of Contracting States: 54

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[1] With a notification under article V(9)(c) of the Convention, as amended by the Protocol.

[2] With a declaration.

[3] As from 26.XII.1991 the membership of the USSR in the Protocol is continued by the Russian Federation.

[4] Applies to the Hong Kong Special Administrative Region with effect from 1.VII.1997.

States which have denounced the Protocol

	Date of receipt of denunciation	Effective date of denunciation
Australia	22.VI.1988	[date of entry into force of 1984 CLC Protocol]
China (in respect of HKAR)	22.VIII/2002	22.VIII.2003
Colombia	25.I.2005	25.I.2006
Malta	6.I.2000	6.I.2001
Qatar	28.XI.2001	28.XI.2002
United Kingdom	12.V.1997	12.V.1998

Declarations, Reservations and Statements

Federal Republic of Germany

The instrument of ratification of the Federal Republic of Germany contains the following declaration (in the English language):
"...with effect from the date on which the Protocol enters into force for the Federal Republic of Germany it shall also apply to Berlin (West)".

Saudi Arabia

The instrument of accession of the Kingdom of Saudi Arabia contained the following reservation (in the Arabic language):
[Translation]
"However, this accession does not in any way mean or entail the recognition of Israel, and does not lead to entering into any dealings with Israel; which may be arranged by the above-mentioned Convention and the said Protocol".

Notifications

Article V(9)(c) of the Convention, as amended by the Protocol

China

"...the value of the national currency, in terms of SDR, of the People's Republic of China is calculated in accordance with the method of valuation applied by the International Monetary Fund."

Poland

"Poland will now calculate financial liabilities in cases of limitation of the liability of owners of sea-going ships and liability under the International Oil Pollution Compensation Fund in terms of the Special Drawing Right, as defined by the International Monetary Fund.

However, those SDR's will be converted according to the method instigated by Poland, which is derived from the fact that Poland is not a member of the International Monetary Fund.
The method of conversion is that the Polish National Bank will fix a rate of exchange of the SDR to the Polish zloty through the conversion of the SDR to the United States dollar, according to the current rates of exchange quoted by Reuter. The US dollars will then be converted into Polish zloties at the rate of exchange quoted by the Polish National Bank from their current table of rates of foreign currencies.
The above method of calculation is in accordance with the provisions of article II paragraph 9 item "a" (in fine) of the Protocol to the International Convention on Civil Liability for Oil Pollution Damage and article II of the Protocol to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage."

Switzerland

[Translation]
"The Swiss Federal Council declares, with reference to article V, paragraph 9(a) and (c) of the Convention, introduced by article II of the Protocol of 19 November 1976, that Switzerland calculates the value of its national currency in special drawing rights (SDR) in the following way:
The Swiss National Bank (SNB) notifies the International Monetary Fund (IMF) daily of the mean rate of the dollar of the United States of America on the Zurich currency market. The exchange value of one SDR in Swiss francs is determined from that dollar rate and the rate of the SDR in dollars calculated by IMF. On the basis of these values, SNB calculates a mean SDR rate which it will publish in its Monthly Gazette.

USSR

"In accordance with article V, paragraph 9 "c" of the International Convention on Civil Liability for Oil Pollution Damage, 1969 in the wording of article II of the Protocol of 1976 to this Convention it is declared that the value of the unit of "The Special Drawing Right" expressed in Soviet roubles is calculated on the basis of the US dollar rate in effect at the date of the calculation in relation to the unit of "The Special Drawing Right", determined by the International Monetary Fund, and the US dollar rate in effect at the same date in relation to the Soviet rouble, determined by the State Bank of the USSR".

United Kingdom

"...in accordance with article V(9)(c) of the Convention, as amended by article II(2) of the Protocol, the manner of calculation employed by the United Kingdom pursuant to article V(9)(a) of the Convention, as amended, shall be the method of valuation applied by the International Monetary Fund.

Protocol of 1992 to amend the International Convention on

Civil liability for oil pollution damage, 1969

(CLC PROT 1992)

Done at London,
27 November 1992
Entry into force: 30 May 1996

Protocole à la Convention Internationale sur la

Responsabilité civile pour les dommages dus à la pollution par les hydrocarbures, 1969

(CLC PROT 1992)

Signé à Londres,
le 27 novembre 1992
Entrée en vigueur: 30 May 1996

	Date of deposit of instrument	Date of entry into force
Albania (accession)	30.VI.2005	30.VI.2006
Algeria (accession)	11.VI.1998	11.VI.1999
Angola (accession)	4.X.2001	4.X.2002
Antigua and Barbuda (accession)	14.VI.2000	14.VI.2001
Argentina (accession)[2]	13.X.2000	13.X.2001
Australia (accession)	9.X.1995	9.X.1996
Azerbaijan (accession)	16.VII.2004	16.VII.2005
Bahamas (accession)	1.IV.1997	1.IV.1998
Bahrain (accession)	3.V.1996	3.V.1997
Barbados (accession)	7.VII.1998	7.VII.1999
Belgium (accession)	6.X.1998	6.X.1999
Belize (accession)	27.XI.1998	27.XI.1999
Brunei Darussalam (accession)	31.I.2002	31.I.2003
Bulgaria (accession)	28.XI.2003	28.XI.2004
Cambodia (accession)	8.VI.2001	8.VI.2002
Cameroon (accession)	15.X.2001	15.X.2002
Canada (accession)	29.V.1998	29.V.1999
Cape Verde (accession)	4.VII.2003	4.VII.2004
Chile (accession)	29.V.2002	29.V.2003
China (accession)[1, 4]	5.I.1999	5.I.2000
Colombia (accession)	19.XI.2001	19.XI.2002
Comoros (accession)	5.I.2000	5.I.2001
Congo (accession)	7.VIII.2002	7.VIII.2003
Cook Islands (accession)	12.III.2007	12.III.2008
Croatia (accession)	12.I.1998	12.I.1999
Cyprus (accession)	12.V.1997	12.V.1998
Denmark (ratification)	30.V.1995	30.V.1996
Djibouti (accession)	8.I.2001	8.I.2002
Dominica (accession)	31.VIII.2001	31.VIII.2002
Dominican Republic (accession)	24.VI.1999	24.VI.2000
Ecuador (accession)	11.XII.2007	11.XII.2008
Egypt (accession)	21.IV.1995	30.V.1996

	Date of deposit of instrument	Date of entry into force
El Salvador (accession)	2.I.2002	2.I.2003
Estonia (accession)	6.VII.2004	6.VII.2005
Fiji (accession)	30.XI.1999	30.XI.2000
Finland (acceptance)	24.XI.1995	24.XI.1996
France (approval)	29.IX.1994	30.V.1996
Gabon (accession)	31.V.2002	31.V.2003
Georgia (accession)	18.IV.2000	18.IV.2001
Germany (ratification)[1]	29.IX.1994	30.V.1996
Ghana (accession)	3.II.2003	3.II.2004
Greece (ratification)	9.X.1995	9.X.1996
Grenada (accession)	7.I.1998	7.I.1999
Guinea (accession)	2.X.2002	2.X.2003
Hungary (accession)	30.III.2007	30.III.2008
Iceland (accession)	13.XI.1998	13.XI.1999
India (accession)	15.XI.1999	15.XI.2000
Indonesia (accession)	6.VII.1999	6.VII.2000
Iran, Islamic Republic of (accession)	24.X.2007	24.X.2008
Ireland (accession)[2]	15.V.1997	16.V.1998
Israel (accession)	21.X.2004	21.X.2005
Italy (accession)	16.IX.1999	16.IX.2000
Jamaica (accession)	6.VI.1997	6.VI.1998
Japan (accession)	24.VIII.1994	30.V.1996
Kenya (accession)	2.II.2000	2.II.2001
Kiribati (accession)	5.II.2007	5.II.2008
Kuwait (accession)	16.IV.2004	16.IV.2005
Latvia (accession)	9.III.1998	9.III.1999
Lebanon (accession)	30.III.2005	30.III.2006
Liberia (accession)	5.X.1995	5.X.1996
Lithuania (accession)	27.VI.2000	27.VI.2001
Luxembourg (accession)	21.XI.2005	21.XI.2006
Madagascar (accession)	21.V.2002	21.V.2003
Malaysia (accession)	9.VI.2004	9.VI.2005
Maldives (accession)	20.V.2005	20.V.2006
Malta (accession)	6.I.2000	6.I.2001
Marshall Islands (accession)	16.X.1995	16.X.1996
Mauritius (accession)	6.XII.1999	6.XII.2000
Mexico (accession)	13.V.1994	30.V.1996
Moldova (accession)	11.X.2005	11.X.2006
Monaco (ratification)	8.XI.1996	8.XI.1997
Morocco (ratification)	22.VIII.2000	22.VIII.2001
Mozambique (accession)	26.IV.2002	26.IV.2003
Namibia (accession)	18.XII.2002	18.XII.2003
Netherlands (accession)[5, 6]	15.XI.1996	15.XI.1997
New Zealand (accession)[2]	25.VI.1998	25.VI.1999
Nigeria (accession)	24.V.2002	24.V.2003
Norway (ratification)	3.IV.1995	30.V.1996
Oman (accession)	8.VII.1994	30.V.1996
Pakistan (accession)	2.III.2005	2.III.2006

Panama (accession)	18.III.1999	18.III.2000
Papua New Guinea (accession)	23.I.2001	23.I.2002
Peru (accession)	1.IX.2005	1.IX.2006
Philippines (accession)	7.VII.1997	7.VII.1998
Poland (accession)	21.XII.1999	21.XII.2000
Portugal (accession)	13.XI.2001	13.XI.2002
Qatar (accession)	20.XI.2001	20.XI.2002
Republic of Korea (accession)[2]	7.III.1997	16.V.1998
Romania (accession)	27.XI.2000	27.XI.2001
Russian Federation (accession)	20.III.2000	20.III.2001
Saudi Arabia (accession)	203.V.2005	23.V.2006
Samoa (accession)	1.II.2002	1.II.2003
St. Kitts and Nevis (accession)	7.X.2004	7.X.2005
St. Lucia (accession)	20.V.2004	20.V.2005
St. Vincent and the Grenadines (accession)	9.X.2001	9.X.2002
Sierra Leone (accession)	4.VI.2001	4.VI.2002
Singapore (accession)	18.IX.1997	18.IX.1998
Slovenia (accession)	19.VII.2000	19.VII.2001
Solomon Island (accession)	30.VI.2004	30.VI.2005
South Africa (accession)	1.X.2004	1.X.2005
Spain (accession)	6.VII.1995	6.VII.1996
Sri Lanka (accession)	22.I.1999	22.I.2000
Sweden (ratification)	25.V.1995	30.V.1996
Switzerland (accession)	4.VII.1996	4.VII.1997
Syria (accession)[2]	22.II.2005	22.II.2006
Tonga (accession)	10.XII.1999	10.XII.2000
Trinidad and Tobago (accession)	6.III.2000	6.III.2001
Tunisia (accession)	29.I.1997	29.I.1998
Turkey (accession)[2]	17.VIII.2001	17.VIII.2002
Tuvalu (accession)	30.VI.2004	30.VI.2005
United Arab Emirates (accession)	19.XI.1997	19.XI.1998
United Kingdom (accession)[3]	29.IX.1994	30.V.1996
United Republic of Tanzania (accession)	19.XI.2002	19.XI.2003
Uruguay (accession)	9.VII.1997	9.VII.1998
Vanuatu (accession)	18.II.1999	18.II.2000
Venezuela (accession)	22.VII.1998	22.VII.1999
Viet Nam (accession)	17.VI.2003	17.VI.2004
Yemen (accession)	20.IX.2006	20.IX.2007

Number of Contracting States: 119

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[1] China declared that the Protocol will also be applicable to the Hong Kong Special Administrative Region.

[2] With a declaration.

[3] The United Kingdom declared its accession to be effective in respect of:

The Bailiwick of Jersey	
The Isle of Man	
Falkland Islands*	
Montserrat	
South Georgia and the South Sandwich Islands	
Anguilla	)
Bailiwick of Guernsey	)
Bermuda	)
British Antarctic Territory	)
British Indian Ocean Territory	) with effect from 20.2.98
Pitcairn, Henderson, Ducie and Oeno Islands	)
Sovereign Base Areas of Akrotiri and Dhekelia on Cyprus	)
Turks & Caicos Islands	)
Virgin Islands	)
Cayman Islands	)
Gibraltar	) with effect from 15.5.98
St Helena and its Dependencies	)

[4] Applies to the Macau Special Administrative Region with effect from 24 June 2005.

[5] Applies to the Netherlands Antilles with effect from 21 December 2005.

[6] Applies to Aruba with effect from 12 April 2006.

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* A dispute exists between the Governments of Argentina and the United Kingdom of Great Britain and Northern Ireland concerning sovereignty over the Falkland Islands (Malvinas).

Declarations, Reservations and Statements

Germany

The instrument of ratification of Germany was accompanied by the following declaration:
"The Federal Republic of Germany hereby declares that, having deposited the instruments of ratification of the protocols of 27 November 1992 amending the International Convention on Civil Liability for Oil Pollution Damage of 1969 and amending the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage of 1971, it regards its ratification of the Protocols of 25 May 1984, as documented on 18 October 1988 by the deposit of its instruments of ratification, as null and void as from the entry into force of the Protocols of 27 November 1992."

New Zeland

The instrument of accession of New Zeland contained the following declaration:
"And declares that this accession shall not extend to Tokelau unless and until a declaration to this effect is lodged by the Government of New Zeland with the Depositary".

International Convention relating to

Intervention on the high seas in cases of oil pollution casualties, 1969

(Intervention 1969)

Done at Brussels,
29 November 1969
Entry into force: 6 May 1975

Convention Internationale sur

L'intervention en haute mer en cas d'accident entraînant ou pouvant entraîner une pollution par les hydrocarbures, 1969

(Intervention 1969)

Signé a Bruxelles
le 29 Novembre 1969
Entrée en vigueur: 6 Mai 1975

	Date of signature or deposit of of instrument	Date of entry into force or succession
Angola (accession)	4.X.2001	2.I.2002
Argentina (accession)[1]	21.IV.1987	20.VII.1987
Australia (ratification)[1]	7.XI.1983	5.II.1984
Bahamas (accession)	22.VII.1976	20.X.1976
Bangladesh (accession)	6.XI.1981	4.II.1982
Barbados (accession)	6.V.1994	4.VIII.1994
Belgium (ratification)	21.X.1971	6.V.1975
Benin (accession)	1.XI.1985	30.I.1986
Brazil (ratification)	18.I.2008	17.IV.2008
Bulgaria (accession)[1]	2.XI.1983	31.I.1984
Cameroon (ratification)[1]	14.V.1984	12.VIII.1984
Chile (accession)	28.II.1995	29.V.1995
China (accession) [4, 5]	23.II.1990	24.V.1990
Côte d'Ivoire (ratification)	8.I.1988	7.IV.1988
Croatia (succession)	–	8.X.1991
Cuba (accession)1	5.V.1976	3.VIII.1976
Denmark (signature)	18.XII.1970	6.V.1975
Djibouti (accession)	1.III.1990	30.V.1990
Dominican Republic (ratification)	5.II.1975	6.V.1975
Ecuador (accession)	23.XII.1976	23.III.1977
Egypt (accession)	3.II.1989	4.V.1989
Equatorial Guinea (accession)	24.IV.1996	23.VII.1996
Fiji (accession)	15.VIII.1972	6.V.1975
Finland (ratification)	6.IX.1976	5.XII.1976
France (ratification)	10.IV.1972	6.IV.1975
Gabon (accession)	21.I.1982	21.IV.1982
Georgia (accession)	25.VIII.1995	23.XI.1995
Germany (ratification)[1,2]	7.V.1975	5.VIII.1975
Ghana (ratification)	20.IV.1978	19.VII.1978
Guyana (accession)	10.XII.1997	10.III.1998
Iceland (ratification)	17.VII.1980	15.X.1980
India (accession)	16.VI.2000	14.IX.2000

	Date of signature or deposit of of instrument	Date of entry into force or succession
Ireland (ratification)	21.VIII.1980	19.XI.1980
Iran (Islamic Republic of) (accession)	25.VII.1997	23.X.1997
Italy (ratification)	27.II.1979	28.V.1979
Jamaica (accession)	13.III.1991	11.VI.1991
Japan (acceptance)	6.IV.1971	6.V.1975
Kuwait (accession)	2.IV.1981	1.VII.1981
Latvia (accession)	9.VIII.2001	7.IX.2001
Lebanon (accession)	5.VI.1975	3.IX.1975
Liberia (accession)	25.IX.1972	6.V.1975
Marshall Islands (accession)	16.X.1995	14.I.1996
Mauritania (accession)	24.XI.1997	22.II.1998
Mauritius (accession)	17.XII.2002	17.III.2003
Mexico (accession)	8.IV.1976	7.VII.1976
Monaco (ratification)	24.II.1975	6.V.1975
Montenegro (succession)	–	3.VI.2006
Morocco (accession)	11.IV.1974	6.V.1975
Namibia (accession)	12.III.2004	10.VI.2004
Netherlands (ratification)	19.IX.1975	18.XII.1975
New Zealand (accession)	26.III.1975	6.V.1975
Nicaragua (accession)	15.XI.1994	13.II.1995
Nigeria (accession)	24.II.2004	24.V.2004
Norway (accession)	12.VII.1972	6.V.1975
Oman (accession)	24.I.1985	24.IV.1985
Pakistan (accession)	13.I.1995	13.IV.1995
Panama (ratification)	7.I.1976	6.IV.1976
Papua New Guinea (accession)	12.III.1980	10.VI.1980
Poland (ratification)	1.VI.1976	30.VIII.1976
Portugal (ratification)	15.II.1980	15.V.1980
Qatar (accession)	2.VI.1988	31.VIII.1988
Russian Federation (accession)[1,3]	30.XII.1974	6.V.1975
St. Kitts and Nevis (accession)	7.X.2004	5.I.2005
St. Lucia (accession)	20.V.2004	18.VIII.2004
St. Vincent & the Grenadines (accession)	12.V.1999	10.VIII.1999
Senegal (accession)	27.III.1972	6.V.1975
Serbia (succession)	–	27.IV.1992
Slovenia (succession)	–	25.VI.1991
South Africa (accession)	1.VII.1986	29.IX.1986
Spain (ratification)	8.XI.1973	6.V.1975
Sri Lanka (accession)	12.IV.1983	11.VII.1983
Suriname (succession)	–	25.XI.1975
Sweden (acceptance)	8.II.1973	6.IV.1975
Switzerland (ratification)	15.XII.1987	14.III.1988
Syrian Arab Republic (accession)[1]	6.II.1975	6.V.1975
Tanzania (accession)	16.V.2006	14.VIII.2006
Tonga (accession)	1.II.1996	1.V.1996
United Republic of Tanzania (accession)	16.V.2006	14.VIII.2006
Trinidad and Tobago (accession)	6.III.2000	4.VI.2000

	Date of signature or deposit of of instrument	Date of entry into force or succession
Tunisia (accession)	4.V.1976	2.VIII.1976
Ukraine (succession)	–	17.XII.1993
United Arab Emirates (accession)	15.XII.l983	14.III.l984
United Kingdom (ratification)	12.I.l97l	6.V.l975
United States (ratification)	21.II.l974	6.V.l975
Vanuatu (accession)	14.IX.1992	13.XII.1992
Yemen (accession)	6.III.l979	4.VI.l979

Number of Contracting States: 85

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[1] With a declaration, reservation or statement

[2] On 3 October 1990 the German Democratic Republic acceded to the Federal Republic of Germany. The German Democratic Republic had acceded1 to the Convention on 21 December 1978.

[3] As from 26 December 1991, the membership of the USSR in the Convention is continued by the Russian Federation.

[4] Applies to the Hong Kong Special Administrative Region with effect from 1 July 1997.

[5] Applies to the Macau Special Administrative Region with effect from 24 June 2005.

The United Kingdom notified the depositary that it extended the Convention to the following territories:

Hong Kong*	12.XI.1974	6.V.1975
Bermuda	19.IX.1980	1.XII.1980
Anguilla British Antarctic Territory** British Virgin Islands Cayman Islands Falkland Islands and Dependencies** Montserrat Pitcairn, Henderson, Ducie and Oeno Islands St. Helena and Dependencies	8.IX.1982	8.IX.1982
Turks and Caicos Islands	8.IX.1982	8.IX.1982
United Kingdom Sovereign Base Areas of Akrotiri and Dhekelia on the Island of Cyprus		
Isle of Man	27.VI.1995	27.VI.1995

The United States notified the depositary that it extended the Convention to the following territories:

Puerto Rico, Guam, Canal Zone, Virgin Islands, American Samoa, Trust Territories of the Pacific Islands	9.IX.1975	6.V.1975

The Netherlands notified the depositary that it extended the Convention to the following territories:

Suriname***, Netherlands Antilles	19.IX.1975	18.XII.1975
Aruba (with effect from 1 January 1986)	–	–

* Ceased to apply to Hong Kong with effect from 1 July 1997.

** The depositary received the following communication dated 12 August 1986 from the Argentine delegation to the International Maritime Organization:

[Translation]

"... the Argentine Government rejects the extension made by the United Kingdom of Great Britain and Northern Ireland of the application to the Malvinas Islands, South Georgia and South Sandwich Islands of the ... International Convention relating to Intervention on the High Seas in Cases of Oil Pollution Casualties ... and reaffirms the rights of sovereignty of the Argentine Republic over those archipelagos which form part of its national territory.

"The General Assembly of the United Nations has adopted resolutions 2065(XX), 3160(XXVIII), 31/49, 37/9, 38/12 and 39/6 which recognize the existence of a sovereignty dispute relating to the question of the Malvinas Islands, urging the Argentine Republic and the United Kingdom to resume negotiations in order to find, as soon as possible, a peaceful and definitive solution to the dispute through the good offices of the Secretary-General of the United Nations who is requested to inform the General Assembly on the progress made. Similarly, the General Assembly of the United Nations at its fortieth session adopted resolution 40/21 of 27 November 1985 which again urges both parties to resume the said negotiations.

"... the Argentine Government also rejects the extension of its application to the so-called "British Antarctic Territory" made by the United Kingdom of Great Britain and Northern Ireland and, with respect to such extension and to any other declaration that may be made, reaffirms the rights of the Republic over the Argentine Antarctic Sector between longitude 25° and 74° west and latitude 60° south, including those rights relating to its sovereignty or corresponding maritime jurisdiction. It also recalls the safeguards concerning claims to territorial sovereignty in Antarctica provided in article IV of the Antarctic Treaty signed at Washington on 1 December 1959 to which the Argentine Republic and the United Kingdom of Great Britain and Northern Ireland are Parties."

The depositary received the following communication dated 3 February 1987 from the United Kingdom Foreign and Commonwealth Office:

"The Government of the United Kingdom of Great Britain and Northern Ireland cannot accept the statement made by the Argentine Republic as regards the Falkland Islands and South Georgia and the South Sandwich Islands. The Government of the United Kingdom of Great Britain and Northern Ireland have no doubt as to the United Kingdom sovereignty over the Falkland Islands and South Georgia and the South Sandwich Islands and, accordingly, their right to extend the application of the Treaties to the Falkland Islands and South Georgia and the South Sandwich Islands.

"Equally, while noting the Argentine reference to the provisions of Article IV of the Antarctic Treaty signed at Washington on 1 December 1959, the Government of the United Kingdom of Great Britain and Northern Ireland have no doubt as to the sovereignty of the United Kingdom over the British Antarctic Territory, and to the right to extend the application of the Treaties in question to that Territory."

*** Has since become the independent State of Suriname and a Contracting State to the Convention.

Protocol relating to
Intervention on the high seas in cases of pollution by substances other than oil, 1973, as amended

(Intervention Prot. 1973)

Done at London,
2 November 1973
Entry into force: 30 March 1983

Protocole de 1973 sur
L'intervention en haute mer en cas de pollution par des substances autres que les hydrocarbures

(Intervention Prot. 1973)

Signé a London
le 2 Novembre 1973
Entrée en vigueur: 30 Mars 1983

	Date of deposit of instrument	Date of entry into force or succession
Australia (accession)[1]	7.XI.1983	5.II.1984
Bahamas (accession)	5.III.1981	30.III.1983
Barbados (accession)	6.V.1994	4.VIII.1994
Belgium (ratification)	9.IX.1982	30.III.1983
Brazil (accession)	18.I.2008	17.IV.2008
Bulgaria (accession)	21.XI.2006	19.II.2007
Chile (accession)	28.II.1995	29.V.1995
China (accession)[3, 4]	23.II.1990	24.V.1990
Croatia (succession)	–	8.X.1991
Denmark (signature)	9.V.1983	7.VIII.1983
Egypt (accession)	3.II.1989	4.V.1989
Finland (ratification)	4.VIII.1986	2.XI.1986
France (ratification)	31.XII.1985	31.III.1986
Georgia (accession)	25.VIII.1995	23.XI.1995
Germany (ratification)[1,2]	21.VIII.1985	19.XI.1985
Iran (Islamic Republic of) (accession)	25.VII.1997	23.X.1997
Ireland (accession)	6.I.1995	6.IV.1995
Italy (ratification)	1.X.1982	30.III.1983
Jamaica (accession)	13.III.1991	11.VI.1991
Latvia (accession)	9.VIII.2001	7.IX.2001
Liberia (accession)	17.II.1981	30.III.1983
Marshall Islands (accession)	16.X.1995	14.I.1996
Mauritania (accession)	24.XI.1997	22.II.1998
Mauritius (accession)	6.XI.2003	4.II.2004
Mexico (accession)	11.IV.1980	30.III.1983
Monaco (accession)	31.III.2005	29.VI.2005
Montenegro (succession)	–	3.VI.2006
Morocco (accession)	30.I.2001	30.IV.2001
Namibia (accession)	12.III.2004	10.VI.2004
Netherlands (ratification)	10.IX.1980	30.III.1983
Nicaragua (accession)	15.XI.1994	13.II.1995
Norway (accession)	15.VII.1980	30.III.1983
Oman (accession)	24.I.1985	24.IV.1985
Pakistan (accession)	13.I.1995	13.IV.1995

	Date of deposit of instrument	Date of entry into force or succession
Poland (ratification)	10.VII.1981	30.III.1983
Portugal (accession)	8.VII.1987	6.X.1987
Russian Federation (acceptance)[2]	30.XII.1982	30.III.1983
Serbia (succession)	–	27.IV.1992
St. Lucia (accession)	20.V.2004	18.VIII.2004
St. Vincent & the Grenadines (accession)	12.V.1999	10.VIII.1999
Slovenia (succession)	---	25.VI.1991
South Africa (accession)	25.IX.1997	24.XII.1997
Spain (accession)	14.III.1994	12.VI.1994
Sweden (ratification)	28.VI.1976	30.III.1983
Switzerland (accession)	15.XII.1987	14.III.1988
Tanzania (accession)	23.XI.2006	21.II.2007
Tonga (accession)	1.II.1996	1.V.1996
Tunisia (accession)	4.V.1976	30.III.1983
United Kingdom (ratification)[1]	5.XI.1979	30.III.1983
United States (ratification)	7.IX.1978	30.III.1983
Vanuatu (accession)	14.IX.1992	13.XII.1992
Yemen (accession)	6.III.1979	30.III.1983

Number of Contracting States: 51

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[1] With a declaration or reservation.

[2] As from 26 December 1991 the membership of the USSR in the Protocol is continued by the Russian Federation.

[3] Applies to the Hong Kong Special Administrative Region with effect from 1 July 1997.

[4] Applies to the Macao Special Administrative Region with effect from 24 June 2005.

The United Kingdom declared ratification to be effective also in respect of:		
Anguilla	)	
Bermuda	)	
British Antarctic Territory*	)	
British Virgin Islands	)	
Cayman Islands	)	
Falkland Islands and Dependencies*	)	
Hong Kong**	)	
Montserrat	)	30.III.1983
Pitcairn, Henderson, Ducie and Oeno Islands	)	
St. Helena and Dependencies	)	
Turks and Caicos Islands	)	
United Kingdom Sovereign Base Areas of Akrotiri and Dhekelia on the Island of Cyprus	)	
Isle of Man	)	27.VI.1995
The Netherlands declared ratification to be effective also in respect of:		
Netherlands Antilles	)	30.III. 1983
Aruba (with effect from 1 January 1986)	)	

* A dispute exists between the Governments of Argentina and the United Kingdom of Great Britain and Northern Ireland concerning sovereignty over the Falkland Islands (Malvinas).

** Ceased to apply to Hong Kong with effect from 1 July 1997.

International Convention on the

Establishment of an International Fund for compensation for oil pollution damage

(FUND 1971)

Done at Brussels, 18 December 1971
Entered into force: 16 October 1978

Convention Internationale portant

Création d'un Fonds International d'indemnisation pour les dommages dus à la pollution par les hydrocarbures

(FONDS 1971)

Signée à Bruxelles, le 18 decembre 1971
Entrée en vigueur: 16 octobre 1978

Cessation: 2.XII.2002
Contracting States at time of cessation of Convention

	Date of deposit of instrument	Date of entry into force or succession	Effective date of denunciation
Albania (accession)	6.IV.1994	5.VII.1994	
Algeria (ratification)	2.VI.1975	16.X.1978	3.VIII.1999
Antigua and Barbuda (accession)	23.VI.1997	21.IX.1997	14.VI.2001
Australia (accession)	10.X.1994	8.I.1995	15.V.1998
Bahamas (accession)	22.VII.1976	16.X.1978	15.V.1998
Bahrain (accession)	3.V.1996	1.VIII.1996	15.V.1998
Albania (accession)	6.IV.1994	5.VII.1994	
Algeria (ratification)	2.VI.1975	16.X.1978	3.VIII.1999
Antigua and Barbuda (accession)	23.VI.1997	21.IX.1997	14.VI.2001
Australia (accession)	10.X.1994	8.I.1995	15.V.1998
Bahamas (accession)	22.VII.1976	16.X.1978	15.V.1998
Bahrain (accession)	3.V.1996	1.VIII.1996	15.V.1998
Barbados (accession)	6.V.1994	4.VIII.1994	7.VII.1999
Belgium (ratification)	1.XII.1994	1.III.1995	6.X.1999
Benin (accession)	1.XI.1985	30.I.1986	
Brunei Darussalam (accession)	29.IX.1992	28.XII.1992	31.I.2003
Cameroon (accession)	14.V.1984	12.VIII.1984	15.X.2002
Canada (accession)[1]	24.I.1989	24.IV.1989	29.V.1999
China[2]	–	1.VII.1997	5.I.2000
Colombia (accession)	13.III.1997	11.VI.1997	
Côte d'Ivoire (accession)	5.X.1987	3.I.1988	
Croatia (succession)	–	8.X.1991	30.VII.1999
Cyprus (accession)	26.VII.1989	24.X.1989	15.V.1998
Denmark (accession)	2.IV.1975	16.X.1978	15.V.1998
Djibouti (accession)	1.III.1990	30.V.1990	17.V.2002
Estonia (accession)	1.XII.1992	1.III.1993	
Fiji (accession)	4.III.1983	2.VI.1983	30.XI.2000
Finland (ratification)	10.X.1980	8.I.1981	15.V.1998
France (accession)	11.V.1978	16.X.1978	15.V.1998

	Date of deposit of instrument	Date of entry into force or succession	Effective date of denunciation
Gabon (accession)	21.I.1982	21.IV.1982	
Gambia (accession)	1.XI.1991	30.I.1992	
Germany (ratification)[1]	30.XII.1976	16.X.1978	15.V.1998
Ghana (ratification)	20.IV.1978	16.X.1978	
Greece (accession)	16.XII.1986	16.III.1987	15.V.1998
Guyana (accession)	10.XII.1997	10.III.1998	
Iceland (accession)	17.VII.1980	15.X.1980	10.II.2001
India (accession)	10.VII.1990	8.X.1990	21.VI.2001
Indonesia (accession)	1.IX.1978	30.XI.1978	26.VI.1999
Ireland (ratification)	19.XI.1992	17.II.1993	15.V.1998
Italy (accession)	27.II.1979	28.V.1979	8.X.2000
Japan (ratification)	7.VII.1976	16.X.1978	15.V.1998
Kenya (accession)	15.XII.1992	15.III.1993	7.VII.2001
Kuwait (accession)	2.IV.1981	1.VII.1981	
Liberia (accession)	25.IX.1972	16.X.1978	15.V.1998
Malaysia (accession)	6.I.1995	6.IV.1995	
Maldives (accession)	16.III.1981	14.VI.1981	
Malta (accession)	27.IX.1991	26.XII.1991	6.I.2001
Marshall Islands (accession)	30.XI.1994	28.II.1995	15.V.1998
Mauritania (accession)	17.XI.1995	15.II.1996	
Mauritius (accession)	6.IV.1995	5.VII.1995	6.XII.2000
Mexico (accession)	13.V.1994	11.VIII.1994	15.V.1998
Monaco (accession)	23.VIII.1979	21.XI.1979	15.V.1998
Morocco (accession)	31.XII.1992	31.III.1993	25.X.2001
Mozambique (accession)	23.XII.1996	23.III.1997	26.IV.2003
Netherlands (approval)	3.VIII.1982	1.XI.1982	15.V.1998
New Zealand (accession)[3]	22.XI.1996	20.II.1997	25.VI.1999
Nigeria (accession)	11.IX.1987	10.XII.1987	
Norway (ratification)	21.III.1975	16.X.1978	15.V.1998
Oman (accession)	10.V.1985	8.VIII.1985	15.V.1998
Panama (accession)	18.III.1999	16.VI.1999	11.V.2000
Papua New Guinea (accession)	12.III.1980	10.VI.1980	23.I.2002
Poland (ratification)	16.IX.1985	15.XII.1985	21.XII.2000
Portugal (ratification)	11.IX.1985	10.XII.1985	
Qatar (accession)	2.VI.1988	31.VIII.1988	20.XI.2002
Republic of Korea (accession)	8.XII.1992	8.III.1993	15.V.1998
Russian Federation (accession)[4]	17.VI.1987	15.IX.1987	20.III.2001
Saint Kitts and Nevis (accession)	14.IX.1994	13.XII.1994	
Seychelles (accession)	12.IV.1988	11.VII.1988	23.VII.2000
Sierra Leone (accession)	13.VIII.1993	11.XI.1993	4.VI.2002
Slovenia (succession)	–	25.VI.1991	19.VII.2001
Spain (accession)	8.X.1981	6.I.1982	15.V.1998
Sri Lanka (accession)	12.IV.1983	11.VII.1983	22.I.2000
Sweden (ratification)	17.III.1975	16.X.1978	15.V.1998
Switzerland (ratification)	4.VII.1996	2.X.1996	15.V.1998
Syrian Arab Republic (accession)[1]	6.II.1975	16.X.1978	
Tonga (accession)	1.II.1996	1.V.1996	10.XII.2000
Tunisia (accession)	4.V.1976	16.X.1978	15.V.1998

	Date of deposit of instrument	Date of entry into force or succession	Effective date of denunciation
Tuvalu (succession)	–	16.X.1978	
United Arab Emirates (accession)	15.XII.1983	14.III.1984	24.V.2002
United Kingdom (ratification)	2.IV.1976	16.X.1978	15.V.1998
Vanuatu (accession)	13.I.1989	13.IV.1989	18.II.2000
Venezuela (accession)	21.I.1992	20.IV.1992	22.VII.1999
Yugoslavia (ratification)	16.III.1978	16.X.1978	

Number of Contracting States: 24

Upon the entry into force of the 2000 Protocol to the FUND 1971 Convention, the Convention ceased when the number of Contracting States fell below 25.

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[1] With a declaration, reservation or statement.

[2] Applies only to the Hong Kong Special Administrative Region.

[3] Accession by New Zealand was declared not to extend to Tokelau.

[4] As from 26.XII.1991 the membership of the USSR in the Convention is continued by the Russian Federation.

Declarations, Reservations and Statements

Canada
The instrument of accession of Canada was accompanied by the following declaration (in the English and French languages):
"The Government of Canada assumes responsibility for the payment of the obligations contained in articles 10, 11 and 12 of the Fund Convention. Such payments to be made in accordance with section 774 of the Canada Shipping Act as amended by Chapter 7 of the Statutes of Canada 1987".

Federal Republic of Germany
The instrument of ratification of the Federal Republic of Germany was accompanied by the following declaration (in the English language):
"that the said Convention shall also apply to Berlin (West) with effect from the date on which it enters into force for the Federal Republic of Germany."

Syrian Arab Republic
The instrument of accession of the Syrian Arab Republic contains the following sentence (in the Arabic language):
[Translation]
"...the accession of the Syrian Arab Republic to this Convention ... in no way implies recognition of Israel and does not involve the establishment of any relations with Israel arising from the provisions of this Convention."

Protocol to the International Convention on the
Establishment of an International Fund for compensation for oil pollution damage

(FUND PROT 1976)

Done at London, 19 November 1976
Entered into force:
22 November 1994

Protocole à la Convention Internationale portant
Creation d'un Fonds International d'indemnisation pour les dommages dus à la pollution par les hydrocarbures

(FONDS PROT 1976)

Signé a Londres, le 19 novembre 1976
Entré en vigueur:
22 Novembre 1994

	Date of deposit of instrument	Date of entry into force	Effective date of denunciation
Albania (accession)	6.IV.1994	22.XI.1994	
Australia (accession)	10.X.1994	8.I.1995	
Bahamas (acceptance)	3.III.1980	22.XI.1994	
Bahrain (accession)	3.V.1996	1.VIII.1996	
Barbados (accession)	6.V.1994	22.XI.1994	
Belgium (accession)	1.XII.1994	1.III.1995	
Canada (accession)	21.II.1995	22.V.1995	
China[3]	–	1.VII.1997	22.VIII.2003
Colombia (accession)	13.III.1997	11.VI.1997	25.I.2006
Cyprus (accession)	26.VII.1989	22.XI.1994	
Denmark (accession)	3.VI.1981	22.XI.1994	
Finland (accession)	8.I.1981	22.XI.1994	
France (accession)	7.XI.1980	22.XI.1994	
Germany (ratification)[1]	28.VIII.1980	22.XI.1994	
Greece (accession)	9.X.1995	7.I.1996	
Iceland (accession)	24.III.1994	22.XI.1994	
India (accession)	10.VII.1990	22.XI.1994	
Ireland (accession)	19.XI.1992	22.XI.1994	15.V.1998
Italy (accession)	21.IX.1983	22.XI.1994	
Japan (accession)	24.VIII.1994	22.XI.1994	
Liberia (accession)	17.II.1981	22.XI.1994	
Malta (accession)	27.IX.1991	22.XI.1994	6.I.2001
Marshall Islands (accession)	16.X.1995	14.I.1996	
Mauritius (accession)	6.IV.1995	5.VII.1995	
Mexico (accession)	13.V.1994	22.XI.1994	
Morocco (accession)	31.XII.1992	22.XI.1994	
Netherlands (accession)	1.XI.1982	22.XI.1994	
Norway (accession)	17.VII.1978	22.XI.1994	
Poland (accession)[1]	30.X.1985	22.XI.1994	
Portugal (accession)	11.IX.1985	22.XI.1994	

	Date of deposit of instrument	Date of entry into force	Effective date of denunciation
Russian Federation[2] (accession)	30.I.1989	22.XI.1994	
Spain (accession)	5.IV.1982	22.XI.1994	
Sweden (ratification)	7.VII.1978	22.XI.1994	
United Kingdom (ratification)	31.I.1980	22.XI.1994	15.V.1998
Vanuatu (accession)	13.I.1989	22.XI.1994	
Venezuela (accession)	21.I.1992	22.XI.1994	

Number of Contracting States: 31

[1] With a declaration or statement.

[2] As from 26.XII.1991 the membership of the USSR in the Protocol is continued by the Russian Federation.

[3] Applies only to the Hong Kong Special Administrative Region.

States which have denounced the Protocol

	Date of receipt of denunciation	Effective date of denunciation
China (in respect of HKAR)	22.VIII/2002	22.VIII.2003
Colombia	25.I.2005	25.I.2006
Ireland	15.V.1997	15.V.1998
Malta	6.I.2000	6.I.2001
United Kingdom	9.V.1997	15.V.1998

Declarations, Reservations and Statements

Federal Republic of Germany
The instrument of ratification of the Federal Republic of Germany contains the following declaration in the English language:
"... with effect from the date on which the Protocol enters into force for the Federal Republic of Germany, it shall also apply to Berlin (West)."

Poland
(for text of the notification, see page 458)

Protocol of 1992 to amend the International Convention on the

Establishment of an International Fund for compensation for oil pollution damage

(FUND PROT 1992)*

Done at London,
27 November 1992
Entry into force: 30 May 1996

Protocole de 1992 modifiant la Convention Internationale de 1971 portant

Creation d'un Fonds International d'indemnisation pour les dommages dus à la pollution par les hydrocarbures

(FONDS PROT 1992)

Signé a Londres,
le 27 novembre 1992
Entrée en vigueur: 30 may 1996

	Date of deposit of instrument	Date of entry into force
Albania (accession)	30.VI.2005	30.VI.2006
Algeria (accession)	11.VI.1998	11.VI.1999
Angola (accession)	4.X.2001	4.X.2002
Antigua and Barbuda (accession)	14.VI.2000	14.VI.2001
Argentina (accession)[1]	13.X.2000	13.X.2001
Australia (accession)	9.X.1995	9.X.1996
Bahamas (accession)	1.IV.1997	1.IV.1998
Bahrain (accession)	3.V.1996	3.V.1997
Barbados (accession)	7.VII.1998	7.VII.1999
Belgium (accession)	6.X.1998	6.X.1999
Belize (accession)	27.XI.1998	27.XI.1999
Brunei Darussalam (accession)	31.I.2002	31.I.2003
Bulgaria (accession)	18.XI.2005	18.XI.2006
Cambodia (accession)	8.VI.2001	8.VI.2002
Cameroon (accession)	15.X.2001	15.X.2002
Canada (accession)[1]	29.V.1998	29.V.1999
Cape Verde (accession)	4.VII.2003	4.VII.2004
China (accession)[2]	5.I.1999	5.I.2000
Colombia (accession)	19.XI.2001	19.XI.2002
Comoros (accession)	5.I.2000	5.I.2001
Congo (accession)	7.VIII.2002	7.VIII.2003
Croatia (accession)	12.I.1998	12.I.1999
Cyprus (accession)	12.V.1997	12.V.1998
Denmark (ratification)	30.V.1995	30.V.1996
Djibouti (accession)	8.I.2001	8.I.2002

* The 1971 Fund Convention ceased to be in force on 24 May 2002 and therefore the Convention does not apply to incidents occurring after that date.

	Date of deposit of instrument	Date of entry into force
Dominica (accession)	31.VIII.2001	31.VIII.2002
Dominican Republic (accession)	24.VI.1999	24.VI.2000
Ecuador (accession)	11.XII.2007	11.XII.2008
Estonia (accession)	6.VIII.2004	6.VIII.2005
Fiji (accession)	30.XI.1999	30.XI.2000
Finland (acceptance)	24.XI.1995	24.XI.1996
France (approval)	29.IX.1994	30.V.1996
Gabon (accession)	31.V.2002	31.V.2003
Georgia (accession)	18.IV.2000	18.IV.2001
Germany (ratification)[1]	29.IX.1994	30.V.1996
Ghana (accession)	3.II.2003	3.II.2004
Greece (ratification)	9.X.1995	9.X.1996
Grenada (accession)	7.I.1998	7.I.1999
Guinea (accession)	2.X.2002	2.X.2003
Iceland (accession)	13.XI.1998	13.XI.1999
India (accession)	21.VI.2000	21.VI.2001
Ireland (accession)[1]	15.V.1997	16.V.1998
Israel (accession)	21.X.2004	21.X.2005
Italy (accession)	16.IX.1999	16.IX.2000
Jamaica (accession)	24.VI.1997	24.VI.1998
Japan (accession)	24.VIII.1994	30.V.1996
Kenya (accession)	2.II.2000	2.II.2001
Latvia (accession)	6.IV.1998	6.IV.1999
Liberia (accession)	5.X.1995	5.X.1996
Lithuania (accession)	27.VI.2000	27.VI.2001
Luxembourg (accession)	21.XI.2005	21.XI.2006
Madagascar (accession)	21.V.2002	21.V.2003
Malaysia (accession)	9.VI.2004	9.VI.2005
Maldives (accession)	20.V.2005	20.V.2006
Malta (accession)	6.I.2000	6.I.2001
Marshall Islands (accession)	16.X.1995	16.X.1996
Mauritius (accession)	6.XII.1999	6.XII.2000
Mexico (accession)	13.V.1994	30.V.1996
Monaco (ratification)	8.XI.1996	8.XI.1997
Morocco (ratification)	22.VIII.2000	22.VIII.2001
Mozambique (accession)	26.IV.2002	26.IV.2003
Namibia (accession)	18.XII.2002	18.XII.2003
Netherlands (accession)[4,5]	15.XI.1996	15.XI.1997
New Zealand (accession)[1]	25.VI.1998	25.VI.1999
Nigeria (accession)	24.V.2002	24.V.2003
Norway (ratification)	3.IV.1995	30.V.1996
Oman (accession)	8.VII.1994	30.V.1996
Panama (accession)	18.III.1999	18.III.2000
Papua New Guinea (accession)	23.I.2001	23.I.2002
Philippines (accession)	7.VII.1997	7.VII.1998
Poland (accession)	21.XII.1999	21.XII.2000
Portugal (accession)	13.XI.2001	13.XI.2002

	Date of deposit of instrument	Date of entry into force
Qatar (accession)	20.XI.2001	20.XI.2002
Republic of Korea (accession)[1]	7.III.1997	16.V.1998
Russian Federation (accession)	20.III.2000	20.III.2001
St. Kitts and Nevis (accession)	2.III.2005	2.III.2006
St. Lucia (accession)	20.V.2004	20.V.2005
Saint Vincent and the Grenadines (accession)	1.II.2002	1.II.2003
Samoa (accession)	9.X.2001	9.X.2002
Seychelles (accession)	23.VII.1999	23.VII.2000
Sierra Leone (accession)	4.VI.2001	4.VI.2002
Singapore (accession)	31.XII.1997	31.XII.1998
Slovenia (accession)	19.VII.2000	19.VII.2001
South Africa (accession)	1.X.2004	1.X.2005
Spain (accession)[1]	6.VII.1995	16.V.1998
Sri Lanka (accession)	22.I.1999	22.I.2000
Sweden (ratification)	25.V.1995	30.V.1996
Switzerland (accession)	10.X.2005	10.X.2006
Tonga (accession)	10.XII.1999	10.XII.2000
Trinidad and Tobago (accession)	6.III.2000	6.III.2001
Tunisia (accession)	29.I.1997	29.I.1998
Turkey (accession)[1]	17.VIII.2001	17.VIII.2002
Tuvalu (accession)	30.VI.2004	30.VI.2005
United Arab Emirates (accession)	19.XI.1997	19.XI.1998
United Kingdom (accession)[3]	29.IX.1994	30.V.1996
United Republic of Tanzania (accession)	19.XI.2002	19.XI.2003
Uruguay (accession)	9.VII.1997	9.VII.1998
Vanuatu (accession)	18.II.1999	18.II.2000
Venezuela (accession)	22.VII.1998	22.VII.1999

Number of Contracting States 99

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[1] With a declaration.

[2] China declared that the Protocol will be applicable only to the Hong Kong Special Administrative Region.

[3] The United Kingdom declared its accession to be effective in respect of:
The Bailiwick of Jersey
The Isle of Man
Falkland Islands*
Montserrat
South Georgia and the South Sandwich Islands
Anguilla)
Bailiwick of Guernsey)
Bermuda)
British Antarctic Territory)

British Indian Ocean Territory	)	with effect from 20.2.98
Pitcairn, Henderson, Ducie and Oeno Islands	)	
Sovereign Base Areas of Akrotiri and Dhekelia on Cyprus	)	
Turks & Caicos Islands	)	
Virgin Islands	)	
Cayman Islands	)	
Gibraltar	)	with effect from 15.5.98
St Helena and its Dependencies	)	

[4] Applies to Netherlands Antilles with effect from 21 December 2005.

[5] Applies to Aruba with effect from 12 April 2006.

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* A dispute exists between the Governments of Argentina and the United Kingdom of Great Britain and Northern Ireland concerning sovereignty over the Falkland Islands (Malvinas).

Declarations, Reservations and Statements

Canada

The instrument of accession of Canada was accompanied by the following declaration:
"By virtue of Article 14 of the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992, the Government of Canada assumes responsibility for the payment of the obligations contained in Article 10, paragraph 1."

Federal Republic of Germany

The instrument of ratification by Germany was accompanied by the following declaration:
"The Federal Republic of Germany hereby declares that, having deposited the instruments of ratification of the protocols of 27 November 1992 amending the International Convention on Civil Liability for Oil Pollution Damage of 1969 and amending the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage of 1971, it regards its ratification of the Protocols of 25 May 1984, as documented on 18 October 1988 by the deposit of its instruments of ratification, as null and void as from the entry into force of the Protocols of 27 November 1992."

New Zeland

The instrument of accession of New Zeland contained the following declaration:
"And declares that this accession shall not extend to Tokelau unless and until a declaration to this effect is lodged by the Government of New Zeland with the Depositary".

Spain

The instrument of accession by Spain contained the following declaration:
[Translation]
"In accordance with the provisions of article 30, paragraph 4 of the above mentioned Protocol, Spain declares that the deposit of its instrument of accession shall not take effect for the purpose of this article until the end of the six-month period stipulated in article 31 of the said Protocol".

Protocol of 2003 to the International Convention on the Establishment of an International Fund for compensation for oil pollution damage, 1992

(FUND PROT 2003)

Done at London,
16 may 2003
Entry into force: 3 March 2005

Protocole de 2003 à la Convention internationale de 1992 portant création d'un fonds international d'indemnisation pour les dommages dus à la pollution par les hydrocarbures

(FONDS PROT 2003)

Signée a Londres
le 16 mai 2003
Entrée en vigueur: 3 Mars 2005

	Date of signature or deposit of of instrument	Date of entry into force
Barbados (accession)	6.XII.2005	6.III.2006
Belgium (accession)	4.XI.2005	4.II..2006
Croatia (accession)	17.II.2006	17.V.2006
Denmark (signature)[1]	24.II.2004	3.III.2005
Finland (accession)[2]	27.V.2004	3.III.2005
France (acceptance)	29.VI.2004	3.III.2005
Germany (accession)[2]	24.XI.2004	3.III.2005
Greece (accession)	23.X.2006	23.I.2007
Hungary (accession)	30.III.2007	30.VI.2007
Ireland (signature)	5.VII.2004	3.III.2005
Italy (accession)	20.X.2005	20.I.2006
Japan (accession)	13.VII.2004	3.III.2005
Latvia (accession)	18.IV.2006	18.VII.2006
Lithuania (accession)	22.XI.2005	22.II.2006
Netherlands (accession)	16.VI.2005	16.IX.2005
Norway (accession)	31.III.2004	3.III.2005
Portugal (accession)	15.II.2005	5.V.2005
Slovenia (accession)	3.III.2006	3.VI.2006
Spain (ratification)	3.XII.2004	3.III.2005
Sweden (accession)	5.V.2005	5.VIII.2005
United Kingdom (accession)	8.VI.2006	8.IX.2006

Number of Contracting States: 21

[1] Extended to Greenland (3 March 2005) and Faroe Islands (19 June 2006).

[2] With a declaration, reservation or statement.

Convention relating to Civil Liability in the Field of

Maritime Carriage of nuclear material (NUCLEAR 1971)

Done at Brussels,
17 December 1971
Entered into force: 15 July 1975

Convention relative 9 la Responsabilité Civile dans le Domaine du

Transport Maritime de matières nucléaires (NUCLEAR 1971)

Signée a Bruxelles,
le 17 décembre 1971
Entrée en vigueur: 15 juillet 1975

	Date of deposit of instrument	Date of entry into force
Argentina (accession)	18.V.1981	16.VIII.1981
Belgium (ratification)	15.VI.1989	13.IX.1989
Bulgaria (accession)	3.XII.2004	3.III.2005
Denmark (ratification)[1]	14.IX.1974	15.VII.1975
Dominica (accession)	31.VIII.2001	29.XI.2001
Finland (aceptance)	6.VI.1991	4.IX.1991
France (ratification)	2.II.1973	15.VII.1975
Gabon (accession)	21.I.1982	21.IV.1982
Germany* (ratification)	1.X.1975	30.XII.1975
Italy* (ratification)	21.VII.1980	19.X.1980
Latvia (accession)	25.I.2002	25.IV.2002
Liberia (accession)	17.II.1981	18.V.1981
Netherlands (accession)	l.VIII.1991	30.X.1991
Norway (ratification	16.IV.1975	15.VII.1975
Spain (accession)	21.V.1974	15.VII.1975
Sweden (ratification)	22.XI.1974	15.VII.1975
Yemen (accession)	6.III.1979	4.VI.1979

Number of Contracting States: 17

Declarations, Reservations and Statements

Federal Republic of Germany
The following reservation accompanies the signature of the Convention by the Representative of the Federal Republic of Germany (in the English language):
"Pursuant to article 10 of the Convention relating to Civil Liability in the Field of Maritime Carriage of Nuclear Material, the Federal Republic of Germany reserves the right to provide by national law, that the persons liable under an international convention or national law applicable in the field of maritime transport may continue to be liable in addition to the operator of a nuclear installation on condition that these persons are fully covered in respect of their liability, including defence against unjustified actions, by insurance or other financial security obtained by the operator."

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(1) Shall not apply to the Faroe Islands.

This reservation was withdrawn at the time of deposit of the instrument of ratification of the Convention.
The instrument of ratification of the Government of the Federal Republic of Germany was accompanied by the following declaration (in the German language):
[Translation]
"That the said Convention shall also apply to Berlin (West) with effect from the date on which it enters into force for the Federal Republic of Germany.

Italy
The instrument of ratification of the Italian Republic was accompanied by the following statement (in the English language):
"It is understood that the ratification of the said Convention will not be interpreted in such a way as to deprive the Italian State of any right of recourse made according to the international law for the damages caused to the State itself or its citizens by a nuclear accident".

Athens Convention relating to the Carriage of passengers and their luggage by sea (PAL 1974)

Done at Athens:
13 December 1974
Entered into force:
28 April 1987

Convention d'Athènes relative au Transport par mer de passagers et de leurs bagages (PAL 1974)

Signée à Athènes,
le 13 décembre 1974
Entrée en vigueur:
28 avril 1987

	Date of deposit of instrument	Date of entry into force
Albania (accession)	16.III.2005	14.VI.2005
Argentina (accession)[1]	26.V.1983	28.IV.1987
Bahamas (accession)	7.VI.1983	28.IV.1987
Barbados (accession)	6.V.1994	4.VIII.1994
Belgium (accession)	15.VI.1989	13.IX.1989
China[5] **(accession)**	1.VI.1994	30.VIII.1994
Croatia (accession)	12.I.1998	12.IV.1998
Dominica (accession)	31.VIII.2001	29.XI.2001
Egypt (accession)	18.X.1991	16.I.1992
Equatorial Guinea (accession)	24.IV.1996	23.VII.1996
Estonia (accession)	8.X.2002	6.I.2003
Georgia (accession)	25.VIII.1995	23.XI.1995
Greece (acceptance)	3.VII.1991	1.X.1991
Guyana (accession)	10.XII.1997	10.III.1998
Ireland (accession)	24.II.1998	25.V.1998
Jordan (accession)	3.X.1995	1.I.1996
Latvia (accession)	6.XII.2001	6.III.2002
Liberia (accession)	17.II.1981	28.IV.1987

	Date of deposit of instrument	Date of entry into force
Luxembourg (accession)	14.II.1991	15.V.1991
Malawi (accession)	9.III.1993	7.VI.1993
Marshall Islands (accession)	29.XI.1994	27.II.1995
Nigeria (accession)	24.II.2004	24.V.2004
Poland (ratification)	28.I.1987	28.IV.1987
Russian Federation[2] **(accession)**[1]	27.IV.1983	28.IV.1987
Spain (accession)	8.X.1981	28.IV.1987
St. Kitts and Nevis (accession)	30.VIII.2005	28.XI.2005
Switzerland (ratification)	15.XII.1987	14.III.1988
Tonga (accession)	15.II.1977	28.IV.1987
Ukraine (accession)	11.XI.1994	9.II.1995
United Kingdom (ratification)[3]	31.I.1980	28.IV.1987
Vanuatu (accession)	13.I.1989	13.IV.1989
Yemen (accession)	6.III.1979	28.IV.1987

Number of Contracting States: 32[4]

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[1] With a declaration or reservation.

[2] As from 26.XII.1991 the membership of the USSR in the Convention is continued by the Russian Federation.

[3] The United Kingdom declared ratification to be effective also in respect of:
Bailiwick of Jersey
Bailiwick of Guernsey
Isle of Man
Bermuda
British Virgin Islands
Cayman Islands
Falkland Islands*
Gibraltar
Hong Kong**
Montserrat
Pitcairn
Saint Helena and Dependencies

[4] On 3.X.1990 the German Democratic Republic acceded to the Federal Republic of Germany. The German Democratic Republic had acceded to the Convention on 29.VIII.1979.

[5] Applies to the Hong Kong Special Administrative Region with effect from 1.VII.1997.

[6] Applies to Macau Special Administrative Region with effect from 24 June 2005.

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* A dispute exists between the Governments of Argentina and the United Kingdom of Great Britain and Northern Ireland concerning sovereignty over the Falkland Islands (Malvinas).

** Ceased to apply to Hong Kong with effect from 1.VII.1997.

Declarations, Reservations and Statements

Argentina [1]
The instrument of accession of the Argentine Republic contained a declaration of non-application of the Convention under article 22, paragraph 1, as follows (in the Spanish language):
[Translation]
"The Argentine Republic will not apply the Convention when both the passengers and the carrier are Argentine nationals".
The instrument also contained the following reservations:
[Translation]
"The Argentine Republic rejects the extension of the application of the Athens Convention relating to Carriage of Passengers and Their Luggage by Sea, 1974, adopted in Athens, Greece, on 13 December 1974, and of the Protocol to the Athens Convention relating to the Carriage of Passengers and Their Luggage by Sea, 1974, approved in London on 19 December 1976, to the Malvinas Islands as notified by the United Kingdom of Great Britain and Northern Ireland to the Secretary-General of the International Maritime Organization (IMO) in ratifying the said instrument on 31 January 1980 under the incorrect designation of "Falkland Islands", and reaffirms its sovereign rights over the said Islands which form an integral part of its national territory".

German Democratic Republic
The instrument of accession of the German Democratic Republic was accompanied by the following reservation (in the German language):
[Translation]
"The German Democratic Republic declares that the provisions of this Convention shall have no effect when the passenger is a national of the German Democratic Republic and when the performing carrier is a permanent resident of the German Democratic Republic or has its seat there".

USSR
The instrument of accession of the Union of Soviet Socialist Republic contained a declaration of non-application of the Convention under article 22, paragraph 1.

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[1] A communication dated 19 October 1983 from the Government of the United Kingdom, the full text of which was circulated by the depositary, includes the following:
"The Government of the United Kingdom of Great Britain and Northern Ireland reject each and every of these statements and assertions. The United Kingdom has no doubt as to its sovereignty over the Falkland Islands and thus its right to include them within the scope of application of international agreements of which it is a party. The United Kingdom cannot accept that the Government of the Argentine Republic has any rights in this regard. Nor can the United Kingdom accept that the Falkland Islands are incorrectly designated".

Protocol to the Athens Convention relating to the Carriage of passengers and their luggage by sea (PAL PROT 1976)

Done at London,
19 November 1976
Entered into force: 30 April 1989

Protocole à la Convention d'Athènes relative au Transport par mer de passagers et de leurs bagages (PAL PROT 1976)

Signé à Londres,
le 19 novembre 1976
Entré en vigueur: 30 avril 1989

	Date of deposit of instrument	Date of entry into force
Albania (accession)	16.III.2005	14.VI.2005
Argentina (accession)[1]	28.IV.1987	30.IV.1989
Bahamas (accession)	28.IV.1987	30.IV.1989
Barbados (accession)	6.V.1994	4.VIII.1994
Belgium (accession)	15.VI.1989	13.IX.1989
China[5,6] **(accession)**	1.VI.1994	30.VIII.1994
Croatia (accession)	12.I.1998	12.IV.1998
Dominica (accession)	31.VIII.2001	29.XI.2001
Estonia (accession)	8.X.2002	6.I.2003
Georgia (accession)	25.VIII.1995	23.XI.1995
Greece (accession)	3.VII.1991	1.X.1991
Ireland (accession)	24.II.1998	25.V.1998
Latvia (accession)	6.XII.2001	6.III.2002
Liberia (accession)	28.IV.1987	30.IV.1989
Luxembourg (accession)	14.II.1991	15.V.1991
Marshall Islands (accession)	29.XI.1994	27.II.1995
Poland (accession)	28.IV.1987	30.IV.1989
Russian Federation[2] **(accession)**[3]	30.I.1989	30.IV.1989
Spain (accession)	28.IV.1987	30.IV.1989
Switzerland (accession)[3]	15.XII.1987	30.IV.1989
Tonga (accession)	18.IX.2003	17.XII.2003
Ukraine (accession)	11.XI.1994	9.II.1995
United Kingdom (ratification)[3, 4]	28.IV.1987	30.IV.1989
Vanuatu (accession)	13.I.1989	30.IV.1989
Yemen (accession)	28.IV.1987	30.IV.1989

Number of Contracting States: 25

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[1] With a reservation.

[2] As from 26.XII.1991 the membership of the USSR in the Protocol is continued by the Russian Federation.

[3] With a notification under article II(3).

[4] The United Kingdom declared ratification to be effective also in respect of:
Bailiwick of Jersey
Bailiwick of Guernsey
Isle of Man
Bermuda
British Virgin Islands
Cayman Islands
Falkland Islands*
Gibraltar
Hong Kong**
Montserrat
Pitcairn
Saint Helena and Dependencies

[5] Applies to the Hong Kong Special Administrative Region with effect from 1.VII.1997.

[6] Applies to Macau Special Administrative Region with effect from 24 June 2005.

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* With a reservation made by the Argentine Republic and a communication received from the United Kingdom.

** Ceased to apply to Hong Kong with effect from 1.VII.1997.

Declarations, Reservations and Statements

Argentina [(1)]
The instrument of accession of the Argentine Republic contained the following reservation (in the Spanish language):
[Translation]
"The Argentine Republic rejects the extension of the application of the Athens Convention relating to Carriage of Passengers and their Luggage by Sea, 1974, adopted in Athens, Greece, on 13 December 1974, and of the Protocol to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974, approved in London on 19 December 1976, to the Malvinas Islands as notified by the United Kingdom of Great Britain and Northern Ireland to the Secretary-General of the International Maritime Organization (IMO) in ratifying the said instrument on 31 January 1980 under the incorrect designation of "Falkland Islands", and reaffirms its sovereign rights over the said Islands which form an integral part of its national territory".

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(1) The depositary received the following communication dated 4 August 1987 from the United Kingdom Foreign and Commonwealth Office:

"The Government of the United Kingdom of Great Britain and Northern Ireland cannot accept the reservation made by the Argentine Republic as regards the Falkland Islands.

The Government of the United Kingdom of Great Britain and Northern Ireland have no doubt as to the United Kingdom sovereignty over the Falkland Islands and, accordingly, their right to extend the application of the Convention to the Falkland Islands".

Protocol of 1990 to amend the
1974 Athens Convention relating to the Carriage of passengers and their luggage by sea
(PAL PROT 1990)

Done at London, 29 March 1990
Not yet in force

Protocole de 1990 modifiant
La Convention d'Athènes de 1974 relative au Transport par mer de passagers et de leurs bagages
(PAL PROT 1990)

Fait à Londres, le 29 mars 1990
Pas encore en vigueur

	Date of deposit of instrument
Albania (accession)	16.III.2005
Croatia (accession)	12.I.1998
Egypt (accession)	18.X.1991
Luxembourg (accession)	21.XI.2005
Spain (accession)	24.II.1993
Tonga (accession)	18.IX.2003

Number of Contracting States: 6

Protocol of 2002
to the Athens Convention relating to the carriage of passengers and their luggage by sea, 1974

Done at London, 1 November 2002
Not yet in force

Protocole de 2002
à la Convention d'Athènes relative au Transport par mer de passagers et de leurs bagages, 1974

Fait à Londres, le 1 Novembre 2002
Pas encore en vigueur

Status as 30 June 2006

	Date of signature or deposit of instrument
Albania (accession)	16.III.2005
Latvia (accession)	17.II.2005
St. Kitts and Nevis (accession)	30.VIII.2005
Syrian Arab Republic (accession)	10.III.2005

Number of Contracting States: 4

Convention on
Limitation of Liability for maritime claims
(LLMC 1976)

Done at London, 19 November 1976
Entered into force: 1 December 1986

Convention sur la
Limitation de la Responsabilité en matière de créances maritimes
(LLMC 1976)

Signée à Londres, le 19 novembre 1976
Entrée en vigueur: 1 décembre 1986

	Date of deposit of instrument	Date of entry into force
Albania (accession)	7.VI.2004	1.X.2004
Algeria (accession)	4.VIII.2004	1.XII.2004
Australia (accession)	20.II.1991	1.VI.1991
Azerbaijan (accession)	16.VII.2004	1.XI.2004
Bahamas (accession)	7.VI.1983	1.XII.1986
Barbados (accession)	6.V.1994	1.IX.1994
Belgium (accession)[1, 2]	15.VI.1989	1.X.1989
Benin (accession)	1.XI.1985	1.XII.1986
Bulgaria (accession)	4.VII.2005	1.XI.2005
China[9]	–	1.VII.1997
Congo (accession)	7.IX.2004	3.II.2004
Cook Islands (accession)	12.III.2007	1.VII.2007
Croatia (accession)	2.III.1993	1.VI.1993
Cyprus (accession)	23.XII.2005	1.IV.2006
Denmark (ratification)	30.V.1984	1.XII.1986
Dominica (accession)	31.VIII.2001	1.XII.2001
Egypt (accession)	30.III.1988	1.VII.1988
Equatorial Guinea (accession)	24.IV.1996	1.VIII.1996
Estonia (accession)	23.X.2002	1.II.2003
Finland (ratification)	8.V.1984	1.XII.1986
France (approval)[1, 2]	1.VII.1981	1.XII.1986
Georgia (accession)	20.II.1996	1.VI.1996
Germany[3] **(ratification)**[1, 2]	12.V.1987	1.IX.1987
Greece (accession)	3.VII.1991	1.XI.1991
Guyana (accession)	10.XII.1997	1.IV.1998
India (accession)	20.VIII.2002	1.XII.2002
Ireland (accession)[1]	24.II.1998	1.VI.1998
Jamaica (accession)	17.VIII.2005	1.XII.2006
Japan (accession)[1]	4.VI.1982	1.XII.1986
Kiribati (accession)	5.II.2007	1.VI.2007
Latvia (accession)	13.VII.1999	1.XI.1999
Liberia (accession)	17.II.1981	1.XII.1986
Lithuania (accession)	3.III.2004	1.VII.2004
Luxembourg (accession)	21.XI.2005	1.III.2006
Marshall Islands (accession)	29.XI.1994	1.III.1995
Mauritius (accession)	17.XII.2002	1.VI.2003
Mexico (accession)	13.V.1994	1.IX.1994
Netherlands (accession)[1, 2]	15.V.1990	1.IX.1990

	Date of deposit of instrument	Date of entry into force
New Zealand (accession)[5]	14.II.1994	1.VI.1994
Nigeria (accession)	24.II.2004	1.VI.2004
Norway (ratification)[4]	30.III.1984	1.XII.1986
Poland (accession)[6]	28.IV.1986	1.XII.1986
Romania (accession)	12.III.2007	1.VII.2007
Samoa (accession)	18.V.2004	1.IX.2004
Sierra Leone (accession)	26.VII.2001	1.XI.2001
Singapore (accession)	24.I.2005	1.V.2005
Spain (ratification)	13.XI.1981	1.XII.1986
St. Lucia (accession)	20.V.2004	1.IX.2004
Syrian Arab Republic (accession)	21.IX.2005	1.I.2006
Sweden (ratification)[4]	30.III.1984	1.XII.1986
Switzerland (accession)[2, 6]	15.XII.1987	1.IV.1988
Tonga (accession)	18.IX.2003	1.I.2004
Trinidad and Tobago (accession)	6.III.2000	1.VII.2000
Turkey (accession)	6.III.1998	1.VII.1998
United Arab Emirates (accession)	19.XI.1997	1.III.1998
United Kingdom (ratification)[1, 7, 8]	31.I.1980	1.XII.1986
Vanuatu (accession)	14.IX.1992	1.I.1993
Yemen (accession)	6.III.1979	1.XII.1986

Number of Contracting States: 51
The Convention applies provisionally in respect of: Belize

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1 With a declaration, reservation or statement.
2 With a notification under article 15(2).
3 On 3.X.1990 the German Democratic Republic acceded to the Federal Republic of Germany. The German Democratic Republic had acceded1, 6 to the Convention on 17.II.1989.
4 With a notification under article 15(4).
5 The instrument of accession contained the following statement:
"AND WHEREAS it is not intended that the accession by the Government of New Zealand to the Convention should extend to Tokelau;".
6 With a notification under article 8(4).
7 The United Kingdom declared its ratification to be effective also in respect of:
Bailiwick of Jersey
Bailiwick of Guernsey
Isle of Man
Belize*
Bermuda
British Virgin Islands
Cayman Islands
Falkland Islands**
Gibraltar
Hong Kong***
Montserrat
Pitcairn
Saint Helena and Dependencies
Turks and Caicos Islands
United Kingdom Sovereign Base Areas of
Akrotiri and Dhekelia in the Island of Cyprus

Anguilla	)	
British Antarctic Territory	)	notification received
British Indian Ocean Territory	)	4.II.1999
South Georgia and the South Sandwich Islands	)	

[8] With notifications under articles 8(4) and 15(2).
[9] Applies only to the Hong Kong Special Administrative Region.

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* Has since become the independent State of Belize to which the Convention applies provisionally.

** A dispute exists between the Governments of Argentina and the United Kingdom of Great Britain and Northern Ireland concerning sovereignty over the Falkland Islands (Malvinas).

*** Ceased to apply to Hong Kong with effect from 1.VII.1997.

Declarations, Reservations and Statements

Belgium
The instrument of accession of the Kingdom of Belgium was accompanied by the following reservation (in the French language):
[Translation]
"In accordance with the provisions of article 18, paragraph 1, Belgium expresses a reservation on article 2, paragraph 1(d) and (e)".

China
By notification dated 5 June 1997 from the People's Republic of China:
[Translation]
"1. with respect to the Hong Kong Special Administrative Region, it reserves the right in accordance with Article 18 (1), to exclude the application of the Article 2 (1)(d)".

France
The instrument of approval of the French Republic contained the following reservation (in the French language):
[Translation]
"In accordance with article 18, paragraph 1, the Government of the French Republic reserves the right to exclude the application of article 2, paragraphs 1(d) and (e)".

German Democratic Republic
The instrument of accession of the German Democratic Republic was accompanied by the following reservation (in the German language):
[Translation]
Article 2, paragraph 1(d) and (e)
"The German Democratic Republic notes that for the purpose of this Convention there is no limitation of liability within its territorial sea and internal waters in respect of the removal of a wrecked ship, the raising, removal or destruction of a ship which is sunk, stranded or abandoned (including anything that is or has been on board such ship). Claims, including liability, derive from the laws and regulations of the German Democratic Republic."
Article 8, paragraph 1
"The German Democratic Republic accepts the use of the Special Drawing Rights merely as a technical unit of account. This does not imply any change in its position toward the International Monetary Fund".

Federal Republic of Germany
The instrument of ratification of the Federal Republic of Germany was accompanied by the following declaration (in the German language):
[Translation]

"...that the said Convention shall also apply to Berlin (West) with effect from the date on which it enters into force for the Federal Republic of Germany".
"In accordance with art. 18, par. 1 of the Convention, the Federal Republic of Germany reserves the right to exclude the application of art. 2, par. 1(d) and (e) of the Convention"

Japan
The instrument of accession of Japan was accompanied by the following statement (in the English language):
"...the Government of Japan, in accordance with the provision of paragraph 1 of article 18 of the Convention, reserves the right to exclude the application of paragraph 1(d) and (e) of article 2 of the Convention".

Netherlands
The instrument of accession of the Kingdom of the Netherlands contained the following reservation:
"In accordance with article 18, paragraph 1 of the Convention on limitation of liability for maritime claims, 1976, done at London on 19 November 1976, the Kingdom of the Netherlands reserves the right to exclude the application of article 2, paragraph 1(d) and (e) of the Convention".

United Kingdom
The instrument of accession of the United Kingdom of Great Britain and Northern Ireland contained reservation which states that the United Kingdom was "Reserving the right, in accordance with article 18, paragraph 1, of the Convention, on its own behalf and on behalf of the above mentioned territories, to exclude the application of article 2, paragraph 1(d); and to exclude the application of article 2, paragraph 1(e) with regard to Gibraltar only".

Notifications

Article 8(4)

German Democratic Republic
[Translation]
"The amounts expressed in Special Drawing Rights will be converted into marks of the German Democratic Republic at the exchange rate fixed by the Staatsbank of the German Democratic Republic on the basis of the current rate of the US dollar or of any other freely convertible currency".

China
[Translation]
"The manner of calculation employed with respect to article 8(1) of the Convention concerning the unit of account shall be the method of valuation applied by the International Monetary Fund;"

Poland
"Poland will now calculate financial liabilities mentioned in the Convention in the terms of the Special Drawing Right, according to the following method.
The Polish National Bank will fix a rate of exchange of the SDR to the United States dollar according to the current rates of exchange quoted by Reuter. Next, the US dollar will be converted into Polish zloties at the rate of exchange quoted by the Polish National Bank from their current table of rates of foreign currencies".

Switzerland
"The Federal Council declares, with reference to article 8, paragraphs 1 and 4 of the Convention that Switzerland calculates the value of its national currency in special drawing rights (SDR) in the following way:

The Swiss National Bank (SNB) notifies the International Monetary Fund (IMF) daily of the mean rate of the dollar of the United States of America on the Zurich currency market. The exchange value of one SDR in Swiss francs is determined from that dollar rate and the rate of the SDR in dollars calculated by IMF. On the basis of these values, SNB calculates a mean SDR rate which it will publish in its Monthly Gazette".

United Kingdom
"...The manner of calculation employed by the United Kingdom pursuant to article 8(1) of the Convention shall be the method of valuation applied by the International Monetary Fund".
Article 15(2)

Belgium
[Translation]
"In accordance with the provisions of article 15, paragraph 2, Belgium will apply the provisions of the Convention to inland navigation".

France
[Translation]
"...- that no limit of liability is provided for vessels navigating on French internal waterways;
- that, as far as ships with a tonnage of less than 300 tons are concerned, the general limits of liability are equal to half those established in article 6 of the Convention...for ships with a tonnage not exceeding 500 tons".

Federal Republic of Germany
[Translation]
"In accordance with art. 15, par. 2, first sentence, sub-par. (a) of the Convention, the system of limitation of liability to be applied to vessels which are, according to the law of the Federal Republic of Germany, ships intended for navigation on inland waterways, is regulated by the provisions relating to the private law aspects of inland navigation.
In accordance with art. 15, par. 2, first sentence, sub-par. (b) of the Convention, the system of limitation of liability to be applied to ships up to a tonnage of 250 tons is regulated by specific provisions of the law of the Federal Republic of Germany to the effect that, with respect to such a ship, the limit of liability to be calculated in accordance with art. 6, par. 1 (b) of the Convention is half of the limitation amount to be applied with respect to a ship with a tonnage of 500 tons".

Netherlands
Paragraph 2(a)
"The Act of June 14th 1989 (Staatsblad 239) relating to the limitation of liability of owners of inland navigation vessels provides that the limits of liability shall be calculated in accordance with an Order in Council.
The Order in Council of February 19th 1990 (Staatsblad 96) adopts the following limits of liability in respect of ships intended for navigation on inland waterways.
I. Limits of liability for claims in respect of loss of life or personal injury other than those in respect of passengers of a ship, arising on any distinct occasion:
1. for a ship non intended for the carriage of cargo, in particular a passenger ship, 200 Units of Account per cubic metre of displacement at maximum permitted draught, plus, for ships equipped with mechanical means of propulsion, 700 Units of Account for each kW of the motorpower of the means of propulsion;
2. for a ship intended for the carriage of cargo, 200 Units of Account per ton of the ship's maximum deadweight, plus, for ships equipped with mechanical means of propulsion, 700 Units of Account for each kW of the motorpower of the means of propulsion;

3. for a tug or a pusher, 700 Units of Account for each kW of the motorpower of the means of propulsion;

4. for a pusher which at the time the damage was caused was coupled to barges in a pushed convoy, the amount calculated in accordance with 3 shall be increased by 100 Units of Account per ton of the maximum deadweight of the pushed barges; such increase shall not apply if it is proved that the pusher has rendered salvage services to one or more of such barges;

5. for a ship equipped with mechanical means of propulsion which at the time the damage was caused was moving other ships coupled to this ship, the amount calculated in accordance with 1, 2 or 3 shall be increased by 100 Units of Account per ton of the maximum deadweight or per cubic metre of displacement of the other ships; such increase shall not apply if it is proved that this ship has rendered salvage services to one or more of the coupled ships;

6. for hydrofoils, dredgers, floating cranes, elevators and all other floating appliances, pontoons or plant of a similar nature, treated as inland navigation ships in accordance with Article 951a, paragraph 4 of the Commercial Code, their value at the time of the incident;

7. where in cases mentioned under 4 and 5 the limitation fund of the pusher or the mechanically propelled ships is increased by 100 Units of Account per ton of maximum deadweight of the pushed barges or per cubic metre of displacement of the other coupled ships, the limitation fund of each barge or of each of the other coupled ships shall be reduced by 100 Units of Account per ton of the maximum deadweight of the barge or by 100 Units of Account per ton of the maximum deadweight or per cubic metre of displacement of the other vessel with respect to claims arising out of the same incident; however, in no case shall the limitation amount be less than 200,000 Units of Account.

II. The limits of liability for claims in respect of any damage caused by water pollution, other than claims for loss of life or personal injury, are equal to the limits mentioned under I.

III. The limits of liability for all other claims are equal to half the amount of the limits mentioned under I.

IV. In respect of claims arising on any distinct occasion for loss of life or personal injury to passengers of an inland navigation ship, the limit of liability of the owner thereof shall be an amount equal to 60,000 Units of Account multiplied by the number of passengers the ship is authorized to carry according to its legally established capacity or, in the event that the maximum number of passengers the ship is authorized to carry has not been established by law, an amount equal to 60,000 Units of Account multiplied by the number of passengers actually carried on board at the time of the incident. However, the limitation of liability shall in no case be less than 720,000 Units of Account and shall not exceed the following amounts:

(i) 3 million Units of Account for a vessel with an authorized maximum capacity of 100 passengers;

(ii) 6 million Units of Account for a vessel with an authorized maximum capacity of 180 passengers;

(iii) 12 million Units of Account for a vessel with an authorized maximum capacity of more than 180 passengers;

Claims for loss of life or personal injury to passengers have been defined in the same way as in Article 7, paragraph 2 of the Convention on Limitation of Liability for Maritime Claims, 1976.

The Unit of Account mentioned under I-IV is the Special Drawing Right as defined in Article 8 of the Convention on Limitation of Liability for Maritime Claims, 1976."

Paragraph 2(b)

The Act of June 14th 1989 (Staatsblad 241) relating to the limitation of liability for maritime claims provides that with respect to ships which are according to their construction intended exclusively or mainly for the carriage of persons and have a tonnage of less than 300, the limit of liability for claims other than for loss of life or personal injury

may be established by Order in Council at a lower level than under the Convention.
The Order in Council of February 19th 1990 (Staatsblad 97) provides that the limit shall be 100,000 Units of Account.
The Unit of Account is the Special Drawing Right as defined in Article 8 of the Convention on Limitation of Liability for Maritime Claims, 1976."

Switzerland
[Translation]
"In accordance with article 15, paragraph 2, of the Convention on Limitation of Liability for Maritime Claims, 1976, we have the honour to inform you that Switzerland has availed itself of the option provided in paragraph 2(a) of the above mentioned article.
Since the entry into force of article 44a of the Maritime Navigation Order of 20 November 1956, the limitation of the liability of the owner of an inland waterways ship has been determined in Switzerland in accordance with the provisions of that article, a copy of which is [reproduced below]:
II. Limitation of liability of the owner of an inland waterways vessel
Article 44a
1. In compliance with article 5, subparagraph 3c, of the law on maritime navigation, the liability of the owner of an inland waterways vessel, provided in article 126, subparagraph 2c, of the law, shall be limited as follows:
a. in respect of claims for loss of life or personal injury, to an amount of 200 units of account per deadweight tonne of a vessel used for the carriage of goods and per cubic metre of water displaced for any other vessel, increased by 700 units of account per kilowatt of power in the case of mechanical means of propulsion, and to an amount of 700 units of account per kilowatt of power for uncoupled tugs and pusher craft; for all such vessels, however, the limit of liability is fixed at a minimum of 200,000 units of account;
b. in respect of claims for passengers, to the amounts provided by the Convention on Limitation of Liability for Maritime Claims, 1976, to which article 49, subparagraph 1, of the federal law on maritime navigation refers;
c. in respect of any other claims, half of the amounts provided under subparagraph a.
2. The unit of account shall be the special drawing right defined by the International Monetary Fund.
3. Where, at the time when damage was caused, a pusher craft was securely coupled to a pushed barge train, or where a vessel with mechanical means of propulsion was providing propulsion for other vessels coupled to it, the maximum amount of the liability, for the entire coupled train, shall be determined on the basis of the amount of the liability of the pusher craft or of the vessel with mechanical means of propulsion and also on the basis of the amount calculated for the deadweight tonnage or the water displacement of the vessels to which such pusher craft or vessel is coupled, in so far as it is not proved that such pusher craft or such vessel has rendered salvage services to the coupled vessels."

United Kingdom
"...With regard to article 15, paragraph 2(b), the limits of liability which the United Kingdom intend to apply to ships of under 300 tons are 166,677 units of account in respect of claims for loss of life or personal injury, and 83,333 units of account in respect of any other claims."

Article 15(4)

Norway
"Because a higher liability is established for Norwegian drilling vessels according to the Act of 27 May 1983 (No. 30) on changes in the Maritime Act of 20 July 1893, paragraph 324, such drilling vessels are exempted from the regulations of this Convention as specified in article 15 No. 4."

Sweden
"...In accordance with paragraph 4 of article 15 of the Convention, Sweden has established under its national legislation a higher limit of liability for ships constructed for or adapted to and engaged in drilling than that otherwise provided for in article 6 of the Convention.

Protocol of 1996 to amend the convention on Limitation of Liability for maritime claims, 1976

(LLMC PROT 1996)

Done at London, 2 May 1996
Entered into force: 13 May 2004

Protocole de 1996 modifiant la convention de 1976 sur la Limitation de la Responsabilité en matière de créances maritimes

(LLMC PROT 1996)

Signée à Londre le 2 mai 1996
Entrée en vigueur: 13 mai 2004

	Date of deposit of instrument	Date of entry into force
Albania (accession)	7.VI.2004	5.IX.2004
Australia (accession)	8.X.2002	13.V.2004
Bulgaria (accession)	4.VIII.2005	2.X.2005
Cook Islands	12.III.2007	12.VI.2007
Croatia (accession)[1]	15.V.2006	
Cyprus (accession)	23.XII.2005	23.III.2006
Denmark (ratification)	12.IV.2002	13.V.2004
Finland (acceptance)	15.IX.2000	13.V.2004
France	24.IV.2007	23.VIII.2007
Germany (ratification)	3.IX.2001	13.V.2004
Jamaica (accession)	19.VIII.2005	17.XII.2005
Japan (accession)	3.V.2006	1.VIII.2006
Latvia	18.IV.2007	17.VII.2007
Lithuania (accession)[1]	14.IX.2007	13.XII.2007
Luxembourg (accession)	21.XI.2005	19.I.2006
Malta (accession)[1]	13.II.2004	13.V.2004
Marshall Island (accession)	30.I.2006	30.IV.2006
Norway (ratification)[1]	17.X.2000	13.V.2004
Romania	12.III.2007	12.VI.2007
Russian Federation (accession)[1]	25.V.1999	13.V.2004
Samoa (accession)	18.V.2004	16.VIII.2004
Sierra Leone (accession)		1.XI.2001
Spain (accession)[1]	10.I.2005	10.IV.2005
St. Lucia (accession)	20.V.2004	18.VIII.2004
Sweden (accession)	22.VII.2004	20.X.2004
Syrian Arab Republic (accession)	2.IX.2005	1.XII.2005

	Date of deposit of instrument	Date of entry into force
Tonga (accession)	18.IX.2003	13.V.2004
United Kingdom (ratification)[1]	11.VI.1999	13.V.2004

Number of Contracting States: 28

[1] With a reservation or statement

International Convention on Salvage, 1989 (SALVAGE 1989)

Done at London: 28 April 1989
Entered into force: 14 July 1996

Convention Internationale de 1989 sur l'Assistance (ASSISTANCE 1989)

Signée a Londres le 28 avril 1989
Entrée en vigueur: 14 juillet 1996

	Date of deposit of instrument	Date of entry into force
Albania (accession)	14.VI.2006	14.VII.2007
Australia (accession)[1]	8.I.1997	8.I.1998
Azerbaijan (accession)	12.VI.2006	12.VI.2007
Belgium (accession)	30.VI.2004	30.VI.2005
Bulgaria (accession)	14.III.2005	14.III.2006
Canada (ratification)[1]	14.XI.1994	14.VII.1996
China[4,5] **(accession)**[1]	30.III.1994	14.VII.1996
Congo (accession)	7.IX.2004	7.IX.2005
Croatia (accession)[1]	10.IX.1998	10.IX.1999
Denmark (ratification)	30.V.1995	14.VII.1996
Dominica (accession)	31.VIII.2001	31.VIII.2002
Ecuador (accession)	16.III.2005	16.III.2006
Egypt (accession)	14.III.1991	14.VII.1996
Estonia (accession)[1]	31.VII.2001	31.VII.2002
Finland	12.I.2007	12.I.2008
France (accession)	20.XII.2001	20.XII.2002
Georgia (accession)	25.VIII.1995	25.VIII.1996
Germany (ratification)[1]	8.X.2001	8.X.2002
Greece (accession)	3.VI.1996	3.VI.1997
Guinea (accession)	2.X.2002	2.X.2003
Guyana (accession)	10.XII.1997	10.XII.1998
Iceland (accession)	21.III.2002	21.III.2003
India (accession)	18.X.1995	18.X.1996
Iran (Islamic Republic of) (accession)[1]	1.VIII.1994	14.VII.1996
Ireland (ratification)[1]	6.I.1995	14.VII.1996
Italy (ratification)	14.VII.1995	14.VII.1996
Jordan (accession)	3.X.1995	3.X.1996
Kenya (accession)	21.VII.1999	21.VII.2000
Latvia (accession)	17.III.1999	17.III.2000
Lithuania (accession)[1]	15.XI.1999	15.XI.2000
Marshall Islands (accession)	16.X.1995	16.X.1996

	Date of deposit of instrument	Date of entry into force
Mauritius (accession)	17.XII.2002	17.XII.2003
Mexico (ratification)[1]	10.X.1991	14.VII.1996
Netherlands (acceptance)[1, 2]	10.XII.1997	10.XII.1998
New Zealand (accession)	16.X.2002	16.X.2003
Nigeria (ratification)	11.X.1990	14.VII.1996
Norway (ratification)[1]	3.XII.1996	3.XII.1997
Oman (accession)	14.X.1991	14.VII.1996
Poland (ratification)	16.XII.2005	16.XII.2006
Romania (accession)	18.V.2001	18.V.2002
Russian Federation (ratification)[1]	25.V.1999	25.V.2000
Saudi Arabia (accession)[1]	16.XII.1991	14.VII.1996
Sierra Leone (accession)	26.VII.2001	26.VII.2002
Slovenia (accession)	23.XII.2005	23.XII.2006
St. Kitts and Nevis (accession)	7.X.2004	7.X.2005
Sweden (ratification)[1]	19.XII.1995	19.XII.1996
Switzerland (ratification)	12.III.1993	14.VII.1996
Syrian Arab Republic (accession)[1]	19.III.2002	19.III.2003
Tonga (accession)	18.IX.2003	18.IX.2004
Tunisia (accession)[1]	5.V.1999	5.V.2000
United Arab Emirates (accession)	4.X.1993	14.VII.1996
United Kingdom (ratification)[1, 3]	29.IX.1994	14.VII.1996
United States (ratification)	27.III.1992	14.VII.1996
Vanuatu (accession)	18.II.1999	18.II.2000

Number of Contracting States: 54

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[1] With a reservation or statement

[2] With a notification

[3] The United Kingdom declared its ratification to be effective in respect of:
The Bailiwick of Jersey
The Isle of Man
Falkland Islands*
Montserrat
South Georgia and the South Sandwich Islands
Hong Kong** as from 30.V.1997
Anguilla)
British Antarctic Territory)
British Indian Ocean Territory)
Cayman Islands)
Pitcairn, Henderson, Ducie and Oeno Islands) with effect from 22.7.98
St Helena and its Dependencies)
Turks and Caicos Islands)
Virgin Islands)

[4] Applies to the Hong Kong Special Administrative Region with effect from 1.VII.1997.

[5] Applies to Macau Special Administrative Region with effect from 24 June 2005.

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* A dispute exists between the Governments of Argentina and the United Kingdom of Great Britain and Northern Ireland concerning sovereignty over the Falkland Islands (Malvinas).

** Ceased to apply to Hong Kong with effect from 1.VII.1997.

Declarations, Reservations and Statements

Canada
The instrument of ratification of Canada was accompanied by the following reservation:
"Pursuant to Article 30 of the International Convention on Salvage, 1989, the Government of Canada reserves the right not to apply the provisions of this Convention when the property involved is maritime cultural property of prehistoric, archaeological or historic interest and is situated on the sea-bed".

China
The instrument of accession of the People's Republic of China contained the following statement:
[Translation]
"That in accordance with the provisions of article 30, paragraph 1 of the International Convention on Salvage, 1989, the Government of the People's Republic of China reserves the right not to apply the provisions of article 30, paragraphs 1(a), (b) and (d) of the said Convention".

Islamic Republic of Iran
The instrument of accession of the Islamic Republic of Iran contained the following reservation:
"The Government of the Islamic Republic of Iran reserves the right not to apply the provisions of this Convention in the cases mentioned in article 30, paragraphs 1(a), (b), (c) and (d)".

Ireland
The instrument of ratification of Ireland contained the following reservation:
"Reserve the right of Ireland not to apply the provisions of the Convention specified in article 30(1)(a) and (b) thereof".

Mexico
The instrument of ratification of Mexico contained the following reservation and declaration:
[Translation]
"The Government of Mexico reserves the right not to apply the provisions of this Convention in the cases mentioned in article 30, paragraphs 1(a), (b) (c) and (d), pointing out at the same time that it considers salvage as a voluntary act ".

Norway
The instrument of ratification of the Kingdom of Norway contained the following reservation:
"In accordance with Article 30, subparagraph 1(d) of the Convention, the Kingdom of Norway reserves the right not to apply the provisions of this Convention when the property involved is maritime cultural property of prehistoric, archaeological or historic interest and is situated on the sea-bed".

Saudi Arabia [(1)]
The instrument of accession of Saudi Arabia contained the following reservations:
[Translation]

[(1)] The depositary received the following communication dated 27 February 1992 from the Embassy of Israel:

"1. This instrument of accession does not in any way whatsoever mean the recognition of Israel; and

2. The Kingdom of Saudi Arabia reserves its right not to implement the rules of this instrument of accession to the situations indicated in paragraphs (a), (b), (c) and (d) of article 30 of this instrument."

Spain

The following reservations were made at the time of signature of the Convention:
[Translation]
"In accordance with the provisions of article 30.1(a), 30.1(b) and 30.1(d) of the International Convention on Salvage, 1989, the Kingdom of Spain reserves the right not to apply the provisions of the said Convention:

– when the salvage operation takes place in inland waters and all vessels involved are of inland navigation;
– when the salvage operations take place in inland waters and no vessel is involved.

For the sole purposes of these reservations, the Kingdom of Spain understands by 'inland waters' not the waters envisaged and regulated under the name of 'internal waters' in the United Nations Convention on the Law of the Sea but continental waters that are not in communication with the waters of the sea and are not used by seagoing vessels. In particular, the waters of ports, rivers, estuaries, etc., which are frequented by seagoing vessels are not considered as 'inland waters':

– when the property involved is maritime cultural property of prehistoric, archaeological or historic interest and is situated on the sea-bed".

Sweden

The instrument of ratification of the Kingdom of Sweden contained the following reservation:
"Referring to Article 30.1(d) Sweden reserves the right not to apply the provisions of the Convention when the property involved is maritime cultural property of prehistoric, archaeological or historic interest and is situated on the sea-bed".

United Kingdom

The instrument of ratification of the United Kingdom of Great Britain and Northern Ireland contained the following reservation:
"In accordance with the provisions of article 30, paragraph 1(a), (b) and (d) of the Convention, the United Kingdom reserves the right not to apply the provisions of the Convention when:

(i) the salvage operation takes place in inland waters and all vessels involved are of inland navigation; or
(ii) the salvage operation takes place in inland waters and no vessel is involved; or .
(iii) the property involved is maritime cultural property of prehistoric, archaeological or historic interest and is situated on the sea-bed".

"The Government of the State of Israel has noted that the instrument of accession of Saudi Arabia to the above-mentioned Convention contains a declaration with respect to Israel.

In the view of the Government of the State of Israel such declaration, which is explicitly of a political character, is incompatible with the purposes and objectives of this Convention and cannot in any way affect whatever obligations are binding upon Saudi Arabia under general International Law or under particular Conventions.

The Government of the State of Israel will, in so far as concerns the substance of the matter, adopt towards Saudi Arabia an attitude of complete reciprocity."

International Convention on Oil pollution preparedness, response and co-operation 1990

Done at London: 30 November 1990
Entered into force 13 May 1995.

Convention Internationale de 1990 sur la Preparation, la lutte et la cooperation en matière de pollution par les hydrocarbures

Signée a Londres le 30 novembre 1990
Entrée en vigueur: 13 Mai 1995.

Status as 30 June 2006

	Date of deposit of instrument	Date of entry into force
Albania (accession)	2.I.2008	2.IV.2008
Algeria (accession)	8.III.2005	8.VI.2005
Angola (accession)	4.X.2001	4.I.2002
Antigua and Barbuda (accession)	5.I.1999	5.IV.1999
Argentina (ratification)[1]	13.VII.1994	13.V.1995
Australia (accession)	6.VII.1992	13.V.1995
Azerbaijan (accession)	16.VII.2004	16.X.2004
Bahamas (accession)	4.X.2001	4.I.2002
Bangladesh (accession)	23.VII.2004	23.X.2004
Brazil (ratification)	21.VII.1998	21.X.1998
Bulgaria (accession)	5.IV.2001	5.VII.2001
Canada (accession)	7.III.1994	13.V.1995
Cape Verde (accession)	4.VII.2003	4.X.2003
Chile (accession)	15.X.1997	15.I.1998
China (accession)	30.III.1998	30.VI.1998
Comoros (accession)	5.I.2000	5.IV.2000
Congo (accession)	7.IX.2004	7.XII.2004
Croatia (accession)	12.I.1998	12.IV.1998
Denmark (ratification)	22.X.1996	22.I.1997
Djibouti (accession)	19.I.1998	19.IV.1998
Dominica (accession)	31.VIII.2001	30.XI.2001
Ecuador (ratification)	29.I.2002	29.IV.2002
Egypt (ratification)	29.VI.1992	13.V.1995
El Salvador (accession)	9.X.1995	9.I.1996
Finland (approval)	21.VII.1993	13.V.1995
France (approval)	6.XI.1992	13.V.1995
Gabon (accession)	12.IV.2005	12.VII.2005
Georgia (accession)	20.II.1996	20.V.1996
Germany (ratification)	15.II.1995	15.V.1995
Greece (ratification)	7.III.1995	7.VI.1995
Guinea (accession)	2.X.2002	2.I.2003
Guyana (accession)	10.XII.1997	10.III.1998

[1] With a reservation.

	Date of deposit of instrument	Date of entry into force
Iceland (ratification)	21.VI.1993	13.V.1995
India (accession)	17.XI.1997	17.II.1998
Iran (Islamic Republic of)(accession)	25.II.1998	25.V.1998
Ireland (accession)	26.IV.2001	26.VII.2001
Israel (ratification)	24.III.1999	24.VI.1999
Italy (ratification)	2.III.1999	2.VI.1999
Jamaica (accession)	8.IX.2000	8.XII.2000
Japan (accession)	17.X.1995	17.I.1996
Jordan (accession)	14.IV.2004	14.VII.2004
Kenya (accession)	21.VII.1999	21.X.1999
Latvia (accession)	30.XI.2001	28.II.2002
Lebanon (ratification)	30.III.2005	30.VI.2005
Liberia (accession)	5.X.1995	5.I.1996
Libyan Arab Jamahiriya (accession)	18.VI.2004	18.IX.2004
Lithuania (accession)	23.XII.2002	23.III.2003
Madagascar (accession)	21.V.2002	21.VIII.2002
Malaysia (accession)	30.VII.1997	30.X.1997
Malta (accession)	21.I.2003	21.IV.2003
Marshall Islands (accession)	16.X.1995	16.I.1996
Mauritania (accession)	22.XI.1999	22.II.2000
Mauritius (accession)	2.XII.1999	2.III.2000
Mexico (accession)	13.V.1994	13.V.1995
Monaco (accession)	19.X.1999	19.I.2000
Morocco (ratification)	29.IV.2003	29.VII.2003
Mozambique (accession)	9.XI.2005	10.II.2006
Namibia (accession)	08.VI.2007	18.IX.2007
Netherlands (ratification)	1.XII.1994	13.V.1995
New Zealand (accession)	2.VII.1999	2.X.1999
Nigeria (accession)	25.V.1993	13.V.1995
Norway (ratification)	8.III.1994	13.V.1995
Pakistan (accession)	21.VII.1993	13.V.1995
Peru (accession)	24.IV.2002	24.VII.2002
Poland (ratification)	12.VI.2003	12.IX.2003
Portugal (accession)	27.II.2006	27.V.2006
Qatar (accession)	8.V.2007	8.VIII.2007
Republic of Korea (accession)	9.XI.1999	9.II.2000
Romania (accession)	17.XI.2000	17.II.2001
Samoa (accession)	18.V.2004	18.VIII.2004
Senegal (ratification)	24.III.1994	13.V.1995
Seychelles (accession)	26.VI.1992	13.V.1995
Singapore (accession)	10.III.1999	10.VI.1999
Slovenia (accession)	31.V.2001	31.VIII.2001
St. Kitts and Nevis (accession)	7.X.2004	7.I.2004
St. Lucia (accession)	20.V.2004	20.VIII.2004
Spain (ratification)	12.I.1994	13.V.1995
Sweden (ratification)	30.III.1992	13.V.1995
Switzerland (accession)	4.VII.1996	4.X.1996
Syrian Arab Republic (accession)	14.III.2003	14.VI.2003

	Date of deposit of instrument	Date of entry into force
Thailand (accession)	20.IV.2000	20.VII.2000
Tonga (accession)	1.II.1996	1.V.1996
Trinidad and Tobago (accession)	6.III.2000	6.VI.2000
Tunisia (accession)	23.X.1995	23.I.1996
Turkey (accession)	1.VII.2004	1.X.2004
United Kingdom (accession)	16.IX.1997	16.XII.1997
United Republic of Tanzania (accession)	16.V.2006	16.VIII.2006
United States (ratification)	27.III.1992	13.V.1995
Uruguay (signature by confirmation)	27.IX.1994	13.V.1995
Vanuatu (accession)	18.II.1999	18.V.1999
Venezuela (ratification)	12.XII.1994	13.V.1995

Number of Contracting States: 91

Declarations, Reservations and Statements

Argentina [1]
The instrument of ratification of the Argentine Republic contained the following reservation:
[Translation]
"The Argentine Republic hereby expressly reserves its rights of sovereignty and of territorial and maritime jurisdiction over the Malvinas Islands, South Georgia and South Sandwich Islands, and the maritime areas corresponding thereto, as recognized and defined in Law No. 23.968 of the Argentine Nation of 14 August 1991, and repudiates any extension of the scope of the International Convention on Oil Pollution Preparedness, Response and Co-operation, 1990, which may be made by any other State, community or entity to those Argentine island territories and/or maritime areas".

Denmark
The instrument of ratification of the Kingdom of Denmark contained the following reservation:
[Translation]
"That the Convention will not apply to the Faroe Islands nor to Greenland, pending a further decision".
By a communication dated 27 November 1996 the depositary was informed that Denmark withdraws the reservation with respect to the territory of Greenland.

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[1] The depositary received, on 22 February 1996, the following communication from the Foreign and Commonwealth Office of the United Kingdom:

"The Government of the United Kingdom of Great Britain and Northern Ireland have noted the declaration of the Government of Argentina concerning rights of sovereignty and of territorial and maritime jurisdiction over the Falkland Islands and South Georgia and the South Sandwich Islands.

The British Government have no doubt about the sovereignty of the United Kingdom over the Falkland Islands, as well as South Georgia and the South Sandwich Islands. The British Government can only reject as unfounded the claims by the Government of Argentina."

Protocol on preparedness, response and co-operation to pollution incidents by hazardous and noxious substances, 2000

(OPRC-HNS 2000)

Protocole sur la préparation, la lutte et la coopération en matière d'incidents de pollution par des substances nocives et potentiellement dangereuses, 2000

(OPRC-HNS Protocole)

Done at London, 15 March 2000
Entered into force: 14 June 2007

Fait à Londres, le 15 Mars 2000
Entrée en vigueur: 14 Juin 2000

	Date of deposit of instrument	Date of entry into force
Australia (accession)	16.III.2005	14.VII.2007
Chile (accession)	16.X.2006	14.VII.2007
Ecuador (accession)	29.I.2002	14.VII.2007
Egypt (accession)	26.V.2004	14.VII.2007
France (accession)	16.III.2005	14.VII.2007
Greece (ratification)	24.IV.2007	24.VII.2007
Japan (accession)	9.III.2007	14.VII.2007
Korea, Republic of (accession)	11.I.2008	11.IV.2008
Malta (accession)	21.I.2003	14.VII.2007
Netherlands (accession)	22.X.2002	14.VII.2007
Poland (accession)	12.VI.2003	14.VII.2007
Portugal (accession)	14.VI.2006	14.VII.2007
Singapore (accession)	16.X.2003	14.VII.2007
Slovenia (accession)	5.IV.2006	14.VII.2007
Spain (accession)	27.I.2005	14.VII.2007
Sweden (accession)	8.I.2003	14.VII.2007
Syria (accession)	10.II.2005	14.VII.2007
Uruguay (accession)	31.VII.2003	14.VII.2007
Vanuatu (accession)	15.III.2004	14.VII.2007

Number of Contracting States: 19

International Convention on
Liability and Compensation for damage in connection with the carriage of hazardous and noxious substances by sea, 1996
(HNS 1996)

Done at London, 3 May 1996
Not yet in force.

Convention Internationale de 1996
sur la responsabilité et l'indemnisation pour les dommages liés au transport par mer de substances nocives et potentiellement dangereuses
(HNS 1996)

Signée a Londres le 3 mai 1996
Pas encore en vigueur.

	Date of signature or deposit of instrument
Angola (accession)	4.X.2001
Cyprus (accession)	10.I.2005
Lythuania (accession)[1]	14.IX.2007
Morocco (accession)	19.III.2003
Russian Federation (accession)[1]	20.III.2000
Samoa (accession)	18.V.2004
St. Kitts and Nevis (accession)	7.X.2004
Slovenia (accession)	21.VII.2004
Tonga (accession)	18.IX.2003

Number of Contracting States: 9.

[1] With a reservation or statement.

International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001

(BUNKER 2001)

Done at London, 23 March 2001
Will enter into force on 21 November 2008.

Convention Internationale sur la responsabilité civile pour les dommages dus à la pollution par les hydrocarbures de soute

(BUNKER 2001)

Signée a Londres le 23 Mars 2001
Entrera en vigueur le 21 Novembre 2008

	Date of signature or deposit of instrument
Bahamas (accession)	30.I.2008
Bulgaria (accession)	6.VII.2007
Croatia (accession)	15.XII.2006
Cyprus (accession)	10.I.2005
Estonia (accession)	5.X.2006
Germany (ratification)	24.IV.2007
Greece (accession)	22.XII.2005
Hungary (accession)	30.I.2008
Jamaica (accession)	2.V.2003
Latvia (accession)	19.IV.2005
Lithuania (accession)	14.IX.2007
Luxembourg (accession)[1]	21.XI.2005
Norway (ratification)	25.III.2008
Poland (accession)	15.XII.2006
Samoa (accession)	18.V.2004
Sierra Leone (accession)	21.XI.2007
Singapore (accession)	31.III.2006
Slovenia (accession)	20.V.2004
Spain (ratification)[1]	10.XII.2003
Tonga (accession)	18.IX.2003
United Kingdom (ratification) [1]	29.VI.2006

1,
representing approximately 21.52% of the world's merchant shipping

[1] With a reservation or declaration.

Convention for the suppression of unlawful acts against the safety of maritime navigation, 1988

(SUA 1988)

Done at Rome, 10 March 1988
Entry into force: 1 March 1992.

Convention pour la répression d'actes illicites contre la sécurité de la navigation maritime, 1988

(SUA 1988)

Signée a Rome le 10 Mars 1988
Entrée en vigueur: 1 Mars 1992.

	Date of deposit of instrument	Date of entry into force
Afghanistan (accession)	23.IX.2003	22.XII.2003
Albania (accession)	19.VI.2002	17.IX.2002
Algeria (accession)[1]	11.II.1998	12.V.1998
Argentina (ratification)[1]	17.VIII.1993	15.XI.1993
Armenia (accession)[1]	8.VI.2005	6.IX.2005
Australia (accession)	19.II.1993	20.V.1993
Austria (ratification)	28.XII.1989	1.III.1992
Azerbaijan (accession)[1]	26.I.2004	25.IV.2004
Bahamas (accession)	25.X.2005	23.I.2006
Bahrain (accession)	21.X.2005	19.I.2006
Bangladesh (accession)	9.VI.2005	7.IX.2005
Barbados (accession)	6.V.1994	4.VIII.1994
Belarus (accession)	4.XII.2002	4.III.2003
Belgium (accession)	11.IV.2005	10.VII.2005
Bolivia (accession)	13.II.2002	14.V.2002
Bosnia and Herzegovina (accession)	28.VII.2003	26.X.2003
Botswana (accession)	14.IX.2000	13.XII.2000
Brazil (ratification)[1]	25.X.2005	23.I.2006
Brunei Darussalam (ratification)	4.XII.2003	3.III.2004
Bulgaria (ratification)	8.VII.1999	6.X.1999
Burkina Faso (accession)	15.I.2004	14.IV.2004
Canada (ratification)[2]	18.VI.1993	16.IX.1993
Cape Verde (accession)	3.I.2003	3.IV.2003
Chile (ratification)	22.IV.1994	21.VII.1994
China (ratification)[1, 7]	20.VIII.1991	1.III.1992
Costa Rica (ratification)	25.III.2003	23.VI.2003
Croatia (accession)	18.VIII.2005	16.XI.2005
Cuba (accession)[2]	20.XI.2001	18.II.2002
Cyprus (accession)	2.II.2000	2.V.2000
Czech Republic (accession)	10.XII.2004	10.III.2005
Denmark (ratification)[1]	25.VIII.1995	23.XI.1995
Djibouti (accession)	9.VI.2004	7.IX.2004
Dominica (accession)	31.VIII.2001	29.XI.2001
Ecuador (accession)	10.III.2003	8.VI.2003

	Date of deposit of instrument	Date of entry into force
Egypt (ratification)[1]	8.I.1993	8.IV.1993
El Salvador (accession)	7.XII.2000	7.III.2001
Equatorial Guinea (accession)	15.I.2004	14.IV.2004
Estonia (accession)	15.II.2002	16.V.2002
Finland (ratification)	12.XI.1998	10.II.1999
France (approval)[1]	2.XII.1991	1.III.1992
Gambia (accession)	1.XI.1991	1.III.1992
Germany[3] **(accession)**	6.XI.1990	1.III.1992
Ghana (accession)	1.XI.2002	30.I.2003
Greece (ratification)	11.VI.1993	9.IX.1993
Grenada (accession)	9.I.2002	9.IV.2002
Guinea (accession)	1.II.2005	2.V.2005
Guyana (accession)	30.I.2003	30.IV.2003
Honduras (accession)	17.V.2005	15.VIII.2005
Hungary (ratification)	9.XI.1989	1.III.1992
Iceland (accession)	28.V.2002	26.VIII.2002
India (accession)[1]	15.X.1999	13.I.2000
Ireland (accession)	10.IX.2004	9.XII.2004
Italy (ratification)	26.I.1990	1.III.1992
Jamaica (accession)[2]	17.VIII.2005	15.XI.2005
Japan (accession)	24.IV.1998	23.VII.1998
Jordan (accession)	2.VII.2004	30.IX.2004
Kazakhstan (accession)	24.XI.2003	22.II.2004
Kenya (accession)	21.I.2002	21.IV.2002
Kiribati (accession)	17.XI.2005	16.II.2006
Kuwait (accession)	30.VI.2003	28.IX.2003
Latvia (accession)	4.XII.2002	4.III.2003
Lebanon (accession)	16.XII.1994	16.III.1995
Liberia (ratification)	5.X.1995	3.I.1996
Libyan Arab Jamahiriya (accession)	8.VIII.2002	6.XI.2002
Liechtenstein (accession)	8.XI.2002	6.II.2003
Lithuania (accession)	30.I.2003	30.IV.2003
Mali (accession)	29.IV.2002	28.VII.2002
Malta (accession)	20.XI.2001	18.II.2002
Marshall Islands (accession)	29.XI.1994	27.II.1995
Mauritania	17.I.2008	16.IV.2008
Mauritius (accession)	3.VIII.2004	1.XI.2004
Mexico (accession)[1]	13.V.1994	11.VIII.1994
Micronesia (accession)	10.II.2003	11.V.2003
Moldova (accession)[1]	11.X.2005	9.I.2006
Monaco (accession)	25.I.2002	25.IV.2002
Mongolia (accession)	22.XI.2005	20.II.2006
Morocco (ratification)	8.I.2002	8.IV.2002
Mozambique (accession)[1]	8.I.2003	8.IV.2003
Myanmar (accession)[1]	19.IX.2003	18.XII.2003
Namibia (accession)	10.VII.2004	18.X.2004
Nauru (accession)	11.VIII.2005	9.XI.2005

	Date of deposit of instrument	Date of entry into force
Netherlands (acceptance)[5]	5.III.1992	3.VI.1992
New Zealand (ratification)	10.VI.1999	8.IX.1999
Nicaragua (accession)	4.VII.2007	2.X.2007
Nigeria (ratification)	24.II.2004	24.V.2004
Norway (ratification)	18.IV.1991	1.III.1992
Oman (accession)	24.IX.1990	1.III.1992
Pakistan (accession)	20.IX.2000	19.IX.2000
Palau (accession)	4.XII.2001	4.III.2002
Panama (accession)	3.VII.2002	1.X.2002
Paraguay (accession)[2]	12.XI.2004	10.II.2005
Peru (accession)	19.VII.2001	17.X.2001
Philippines (ratification)	6.I.2004	5.IV.2004
Poland (ratification)	25.VI.1991	1.III.1992
Portugal (accession)[1]	5.I.1996	4.IV.1996
Qatar (accession)[1]	18.IX.2003	17.XII.2003
Republic of Korea (accession)	14.V.2003	12.VIII.2003
Romania (accession)	2.VI.1993	31.VIII.1993
Russian Federation (ratification)	4.V.2001	2.VIII.2001
St. Kitts and Nevis (accession)	17.I.2002	17.IV.2002
St. Lucia (accession)	20.V.2004	18.VIII.2004
St. Vincent and the Grenadines (accession)	9.X.2001	7.I.2002
Samoa (accession)	18.V.2004	16.VIII.2004
Sao Tome and Principe	5.V.2006	3.VIII.2006
Saudi Arabia (accession)[6]	2.II.2006	3.V.2006
Senegal (accession)	9.VIII.2004	7.XI.2004
Serbia and Montenegro (accession)	10.V.2004	8.VIII.2004
Seychelles (ratification)	24.I.1989	1.III.1992
Singapore (accession)	3.II.2004	3.V.2004
Slovakia (accession)	8.XII.2000	8.III.2001
Slovenia (accession)	18.VII.2003	16.X.2003
South Africa (accession)	8.VII.2005	6.X.2005
Spain (ratification)	7.VII.1989	1.III.1992
Sri Lanka (accession)	4.IX.2000	3.XII.2000
Sudan (accession)	22.V.2000	20.VIII.2000
Swaziland (accession)	17.IV.2003	16.VII.2003
Sweden (ratification)	13.IX.1990	1.III.1992
Switzerland (ratification)	12.III.1993	10.VI.1993
Syrian Arab Republic (accession)	24.III.2003	22.VI.2003
Tajikistan (accession)	12.VIII.2005	10.XI.2005
Togo (accession)	10.III.2003	8.VI.2003
Tonga (accession)	6.XII.2002	6.III.2003
Trinidad and Tobago (accession)	27.VII.1989	1.III.1992
Tunisia (accession)[1]	6.III.1998	4.VI.1998
Turkey (ratification)[1]	6.III.1998	4.VI.1998
Turkmenistan (accession)	8.VI.1999	6.IX.1999
Tuvalu (accession)	2.XII.2005	2.III.2006
Uganda (accession)	11.XI.2003	9.II.2004

	Date of deposit of instrument	Date of entry into force
Ukraine (ratification)	21.IV.1994	20.VII.1994
United Arab Emirates (accession)[1]	15.IX.2005	14.XII.2005
United Kingdom (ratification)[1, 4]	3.V.1991	1.III.1992
United Republic of Tanzania (accession)	11.V.2005	9.VIII.2005
United States (ratification)	6.XII.1994	6.III.1995
Uruguay (accession)	10.VIII.2001	8.XI.2001
Uzbekistan (accession)	25.IX.2000	24.XII.2000
Vanuatu (accession)	18.II.1999	19.V.1999
Viet Nam (accession)	12.VII.2002	10.X.2002
Yemen (accession)	30.VI.2000	28.IX.2000

Number of Contracting States: 136 representing approximately 91.76% of the gross tonnage of the world's merchant shipping..

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[1] With a reservation, declaration or statement.

[2] With a notification under article 6.

[3] On 3 October 1990 the German Democratic Republic acceded to the Federal Republic of Germany. The German Democratic Republic had acceded* to the Convention on 14 April 1989.

* With a reservation.

[4] The United Kingdom declared its ratification to be effective also in respect of the Isle of Man (notification received 8 February 1999).

[5] Extended to Aruba from 15 December 2004 the date the notification was received.

[6] With a reservation under articles 11 and 16, paragraph 1

[7] China declared that the Convention would be effective in respect of the Hong Kong Special Administrative Region (HKSAR) with effect from 20 February 2006.

Protocol for the
suppression of unlawful acts against the safety of fixed platforms located on the continental shelf, 1988

(SUA PROTOCOL 1988)

Done at Rome, 10 March 1988
Entry into force: 1 March 1992.

Protocole pour la
répression d'actes illicites contre la sécurité des plates-formes fixes situées sur le plateau continental, 1988

(SUA PROTOCOL 1988)

Signée a Rome le 10 Mars 1988
Entrée en vigueur: 1 Mars 1992.

	Date of deposit of instrument	Date of entry into force
Afghanistan (accession)	23.IX.2003	22.XII.2003
Albania (accession)	19.VI.2002	17.IX.2002
Argentina (ratification)	26.XI.2003	24.II.2004
Armenia (accession)	8.VI.2005	6.IX.2005
Australia (accession)	19.II.1993	20.V.1993
Austria (accession)	28.XII.1989	1.III.1992
Azerbaijan (accession)	26.I.2004	25.IV.2004
Bahamas (accession)	25.X.2005	23.I.2006
Bahrain (accession)	21.X.2005	19.I.2006
Bangladesh (accession)	9.VI.2005	7.IX.2005
Barbados (accession)	6.V.1994	4.VIII.1994
Belarus (accession)	4.XII.2002	4.III.2003
Belgium (accession)	11.IV.2005	10.VII.2005
Bolivia (accession)	13.II.2002	14.V.2002
Bosnia and Herzegovina (accession)	28.VII.2003	26.X.2003
Botswana (accession)	14.IX.2000	13.XII.2000
Brazil (ratification)[1]	25.X.2005	23.I.2006
Brunei Darussalam (ratification)	4.XII.2003	3.III.2004
Bulgaria (ratification)	8.VII.1999	6.X.1999
Burkina Faso (accession)	14.I.2004	13.IV.2004
Canada (ratification)[1]	18.VI.1993	16.IX.1993
Cape Verde (accession)	3.I.2003	3.IV.2003
Chile (ratification)	22.IV.1994	21.VII.1994
China (ratification)[2,6]	20.VIII.1991	1.III.1992
Costa Rica (ratification)	25.III.2003	23.VI.2003
Croatia (accession)	18.VIII.2005	16.XI.2005
Cuba (accession)[2]	20.XI.2001	18.II.2002
Cyprus (accession)	2.II.2000	2.V.2000
Czech Republic (accession)	10.XII.2004	10.III.2005
Denmark (ratification)[2]	25.VIII.1995	23.XI.1995
Djibouti (accession)	9.VI.2004	7.IX.2004

	Date of deposit of instrument	Date of entry into force
Dominica (accession)	12.X.2004	10.I.2005
Ecuador (accession)	10.III.2003	8.VI.2003
Egypt (ratification)[2]	8.I.1993	8.IV.1993
El Salvador (accession)	7.XII.2000	7.III.2001
Equatorial Guinea (accession)	15.I.2004	14.IV.2004
Estonia (accession)	28.I.2004	27.IV.2004
Finland (accession)	28.IV.2000	27.VII.2000
France (approval)[2]	2.XII.1991	1.III.1992
Germany[3] **(accession)**	6.XI.1990	1.III.1992
Ghana (accession)	1.XI.2002	30.I.2003
Greece (ratification)	11.VI.1993	9.IX.1993
Grenada (accession)	9.I.2002	9.IV.2002
Guinea (accession)	1.II.2005	2.V.2005
Guyana (accession)	30.I.2003	30.IV.2003
Honduras (accession)	17.V.2005	15.VIII.2005
Hungary (ratification)	9.XI.1989	1.III.1992
Iceland (accession)	28.V.2002	26.VIII.2002
India (accession)[2]	15.X.1999	13.I.2000
Ireland (accession)	10.IX.2004	9.XII.2004
Italy (ratification)	26.I.1990	1.III.1992
Jamaica (accession)[1]	19.VIII.2005	17.XI.2005
Japan (accession)	24.IV.1998	23.VII.1998
Jordan (accession)	2.VII.2004	30.IX.2004
Kazakhstan (accession)	24.XI.2003	22.II.2004
Kenya (accession)	21.I.2002	21.IV.2002
Kiribati (accession)	17.XI.2005	16.II.2006
Kuwait (accession)	30.VI.2003	28.IX.2003
Latvia (accession)	4.XII.2002	4.III.2003
Lebanon (accession)	16.XII.1994	16.III.1995
Liberia (ratification)	5.X.1995	3.I.1996
Libyan Arab Jamahiriya (accession)	8.VIII.2002	6.XI.2002
Liechtenstein (accession)	8.XI.2002	6.II.2003
Lithuania (accession)	30.I.2003	30.IV.2003
Mali (accession)	29.IV.2002	28.VII.2002
Malta (accession)	20.XI.2001	18.II.2002
Marshall Islands (accession)	16.X.1995	14.I.1996
Mauritania	17.I.2008	16.IV.2008
Mauritius (accession)	3.VIII.2004	1.XI.2004
Mexico (accession)[1]	13.V.1994	11.VIII.1994
Moldova (accession)[2]	11.X.2005	9.I.2006
Monaco (accession)	25.I.2002	25.IV.2002
Mongolia (accession)	22.XI.2005	20.II.2006
Morocco (ratification)	8.I.2002	8.IV.2002
Mozambique (accession)	8.I.2003	8.IV.2003
Myanmar (accession)	19.IX.2003	18.XII.2003
Namibia (accession)	7.IX.2005	6.XII.2005

	Date of deposit of instrument	Date of entry into force
Nauru (accession)	11.VIII.2005	9.XI.2005
Netherlands (acceptance)[2,5]	5.III.1992	3.VI.1992
New Zealand (ratification)	10.VI.1999	8.IX.1999
Nicaragua (accession)	4.VII.2007	2.X.2007
Norway (ratification)	18.IV.1991	1.III.1992
Oman (accession)	24.IX.1990	1.III.1992
Pakistan (accession)	20.IX.2000	10.XII.2000
Palau (accession)	4.XII.2001	4.III.2002
Panama (accession)	3.VII.2002	1.X.2002
Paraguay (accession)[1]	12.XI.2004	10.II.2005
Peru (accession)	19.VII.2001	17.X.2001
Philippines (ratification)	6.I.2004	5.IV.2004
Poland (ratification)	25.VI.1991	1.III.1992
Portugal (accession)	5.I.1996	4.IV.1996
Qatar (accession)	18.IX.2003	17.XII.2003
Republic of Korea (accession)	10.VI.2003	8.IX.2003
Romania (accession)	2.VI.1993	31.VIII.1993
Russian Federation (ratification)	4.V.2001	2.VIII.2001
St. Lucia (accession)	20.V.2004	18.VIII.2004
St. Vincent and the Grenadines (accession)	9.X.2001	7.I.2002
Sao Tome and Principe	5.V.2006	3.VIII.2006
Saudi Arabia (accession)	2.II.2006	3.V.2006
Senegal (accession)	9.VIII.2004	7.XI.2004
Serbia and Montenegro (accession)	2.III.2005	31.V.2005
Seychelles (ratification)	24.I.1989	1.III.1992
Slovakia (accession)	8.XII.2000	8.III.2001
Slovenia (accession)	18.VII.2003	16.X.2003
South Africa (accession)	8.VII.2005	6.X.2005
Spain (ratification)	7.VII.1989	1.III.1992
Sudan(accession)	22.V.2000	20.VIII.2000
Swaziland (accession)	17.IV.2003	16.VII.2003
Sweden (ratification)	13.IX.1990	1.III.1992
Switzerland (ratification)	12.III.1993	10.VI.1993
Syrian Arab Republic (accession)	24.III.2003	22.VI.2003
Tajikistan (accession)	12.VIII.2005	10.XI.2005
Togo (accession)	10.III.2003	8.VI.2003
Tonga (accession)	6.XII.2002	6.III.2003
Trinidad and Tobago (accession)	27.VII.1989	1.III.1992
Tunisia (accession)	6.III.1998	4.VI.1998
Turkey (ratification)[2]	6.III.1998	4.VI.1998
Turkmenistan (accession)	8.VI.1999	6.IX.1999
Ukraine (ratification)	21.IV.1994	20.VII.1994
United Arab Emirates (accession)[2]	15.IX.2005	14.XII.2005
United Kingdom (ratification)[2, 4]	3.V.1991	1.III.1992
United States (ratification)	6.XII.1994	6.III.1995
Uruguay (accession)	10.VIII.2001	8.XI.2001

	Date of deposit of instrument	Date of entry into force
Uzbekistan (accession)	25.IX.2000	24.XII.2000
Vanuatu (accession)	18.II.1999	19.V.1999
Viet Nam (accession)	12.VII.2002	10.X.2002
Yemen (accession)	30.VI.2000	28.IX.2000

Number of Contracting States: 125, representing approximately 87.34% of the gross tonnage of the world's merchant shipping.

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[1] With a notification under article 3.

[2] With a reservation, declaration or statement.

[3] On 3 October 1990 the German Democratic Republic acceded to the Federal Republic of Germany. The German Democratic Republic had acceded* to the Convention on 14 April 1989.

* With a reservation.

[4] The United Kingdom declared its ratification to be effective also in respect of the Isle of Man. (notification received 8 February 1999).

[5] Applies to Aruba with effect from 17 January 2006.

[6] China declared that the Protocol would be effective in respect of the Hong Kong Special Administrative Region (HKSAR) with effect from 20 February 2006.

STATUS OF THE RATIFICATIONS OF AND ACCESSIONS TO UNITED NATIONS AND UNITED NATIONS/IMO CONVENTIONS IN THE FIELD OF PUBLIC AND PRIVATE MARITIME LAW

ETAT DES RATIFICATIONS ET ADHESIONS AUX CONVENTIONS DES NATIONS UNIES ET AUX CONVENTIONS DES NATIONS UNIES/OMI EN MATIERE DE DROIT MARITIME PUBLIC ET DE DROIT MARITIME PRIVE

r	=	ratification
a	=	accession
A	=	acceptance
AA	=	approval
S	=	definitive signature

Notes de l'editeur / Editor's notes:

- Les dates mentionnées sont les dates du dépôt des instruments.
- The dates mentioned are the dates of the deposit of instruments.

United Nations Convention on a

Code of Conduct for liner conferences

Geneva, 6 April 1974
Entered into force: 6 October 1983

Convention des Nations Unies sur un

Code de Conduite des conférences maritimes

Genève, 6 avril 1974
Entrée en vigueur: 6 octobre 1983

Algeria	**(r)**	12.XII.1986
Bangladesh	**(a)**	24.VII.1975
Barbados	**(a)**	29.X.1980
Belgium	**(r)**	30.IX.1987
Benin	**(a)**	27.X.1975
Bulgaria	**(a)**	12.VII .1979
Burkina Faso	**(a)**	30.III.1989
Cameroon	**(a)**	15.VI.1976
Cape Verde	**(a)**	13.I.1978
Central African Republic	**(a)**	13.V.1977
Chile	**(S)**	25.VI.1975
China [1]	**(a)**	23.IX.1980
Congo	**(a)**	26.VII.1982
Costa Rica	**(r)**	27.X.1978
Croatia	**(r)**	8.X.1991
Cuba	**(a)**	23.VII.1976
Czech Republic	**(AA)**	4.VI.1979
Denmark (except Greenland and the Faroe Islands)	**(a)**	28.VI.1985
Egypt	**(a)**	25.I.1979
Ethiopia	**(r)**	1.IX.1978
Finland	**(a)**	31.XII.1985
France	**(AA)**	4.X.1985
Gabon	**(r)**	5.VI.1978
Gambia	**(S)**	30.VI.1975
Germany	**(r)**	6.IV.1983
Ghana	**(r)**	24.VI.1975
Guatemala	**(r)**	3.III.1976
Guinea	**(a)**	l9.VIII.1980
Guyana	**(a)**	7.I.1980
Honduras	**(a)**	12.VI.1979
India	**(r)**	14.II.1978
Indonesia	**(r)**	11.I.1977
Iraq	**(a)**	25.X.1978

[1] Applied to the Hong Kong Special Administrative Region with effect from 1.VII.1997.

Italy	**(a)**	30.V.1989
Ivory Coast	**(r)**	17.II.1977
Jamaica	**(a)**	20.VII.1982
Jordan	**(a)**	17.III.1980
Kenya	**(a)**	27.II.1978
Korea, Republic of	**(a)**	ll.V.1979
Kuwait	**(a)**	31.III.1986
Lebanon	**(a)**	30.IV.1982
Madagascar	**(a)**	23.XII.1977
Malaysia	**(a)**	27.VIII.1982
Mali	**(a)**	15.III.1978
Mauritania	**(a)**	21.III.1988
Mauritius	**(a)**	16.IX.1980
Mexico	**(a)**	6.V.1976
Morocco	**(a)**	11.II.1980
Mozambique	**(a)**	21.IX.1990
Netherlands (for the Kingdom in Europe only)	**(a)**	6.IV.1983
Niger	**(r)**	13.I.1976
Nigeria	**(a)**	10.IX.1975
Norway	**(a)**	28.VI.1985
Pakistan	**(S)**	27.VI.1975
Peru	**(a)**	21.XI.1978
Philippines	**(r)**	2.III.1976
Portugal	**(a)**	13.VI.1990
Qatar	**(a)**	31.X.1994
Romania	**(a)**	7.I.1982
Russian Federation	**(A)**	28.VI.1979
Saudi Arabia	**(a)**	24.V.1985
Serbia and Montenegro	**(d)**	12.III.2001
Senegal	**(r)**	20.V.1977
Sierra Leone	**(a)**	9.VII.1979
Slovakia	**(AA)**	4.VI.1979
Somalia	**(a)**	14.XI.1988
Spain	**(a)**	3.II.1994
Sri Lanka	**(S)**	30.VI.1975
Sudan	**(a)**	16.III.1978
Sweden	**(a)**	28.VI.1985
Togo	**(r)**	12.I.1978
Trinidad and Tobago	**(a)**	3.III.1983
Tunisia	**(a)**	15.III.1979
United Kingdom	**(a)**	28.VI.1985
United Republic of Tanzania	**(a)**	3.XI.1975
Uruguay	**(a)**	9.VII.1979
Venezuela	**(S)**	30.VI.1975
Zambia	**(a)**	8.IV.1988

United Nations Convention on the
Carriage of goods by sea

Hamburg, 31 March 1978
"HAMBURG RULES"

Entered into force:
1 November 1992

Convention des Nations Unies sur le
Transport de marchandises par mer

Hambourg 31 mars 1978
"REGLES DE HAMBOURG"

Entrée en vigueur:
1 novembre 1992

Albania	**(a)**	20.VII.2006
Austria	**(r)**	29.VII.1993
Barbados	**(a)**	2.II.1981
Botswana	**(a)**	16.II.1988
Burkina Faso	**(a)**	14.VIII.1989
Burundi	**(a)**	4.IX.1998
Cameroon	**(a)**	21.IX.1993
Chile	**(r)**	9.VII.1982
Czech Republic [1]	**(r)**	23.VI.1995
Dominican Republic	**(a)**	28.IX.2007
Egypt	**(r)**	23.IV.1979
Gambia	**(r)**	7.II.1996
Georgia	**(a)**	21.III.1996
Guinea	**(r)**	23.I.1991
Hungary	**(r)**	5.VII.1984
Jordan	**(a)**	10.V.2001
Kenya	**(a)**	31.VII.1989
Lebanon	**(a)**	4.IV.1983
Lesotho	**(a)**	26.X.1989
Liberia	**(a)**	16.IX.2005
Malawi	**(r)**	18.III.1991
Morocco	**(a)**	12.VI.1981
Nigeria	**(a)**	7.XI.1988
Paraguay	**(a)**	19.VII.2005
Romania	**(a)**	7.I.1982
Saint Vincent and the Grenadines	**(a)**	12.IX.2000
Senegal	**(r)**	17.III.1986
Sierra Leone	**(r)**	7.X.1988
Syrian Arab Republic	**(a)**	16.X.2002
Tanzania, United Republic of	**(a)**	24.VII.1979
Tunisia	**(a)**	15.IX.1980
Uganda	**(a)**	6.VII.1979
Zambia	**(a)**	7.X.1991

[1] The Convention was signed on 6 march 1979 by the former Czechoslovakia. Respectively on 28 May 1993 and on 2 Jun 1993 the Slovak Republic and the Czech Republic deposited instruments of succession. The Czech Republic then deposited instrument of ratification on 23 Jun 1995.

United Nations Convention on the

International multimodal transport of goods

Geneva, 24 May 1980
Not yet in force.

Convention des Nations Unies sur le

Transport multimodal international de marchandises

Genève 24 mai 1980
Pas encore en vigueur.

Burundi	**(a)**	4.IX.1998
Chile	**(r)**	7.IV.1982
Georgia	**(a)**	21.III.1996
Lebanon	**(a)**	1.VI.2001
Liberia	**(a)**	16.IX.2005
Malawi	**(a)**	2.II.1984
Mexico	**(r)**	11.II.1982
Morocco	**(r)**	21.I.1993
Rwanda	**(a)**	15.IX.1987
Senegal	**(r)**	25.X.1984
Zambia	**(a)**	7.X.1991

United Nations Convention on the Law of the Sea (UNCLOS 1982)

Montego Bay 10 December 1982
Entered into force:
16 November 1994

Convention des Nations Unies sur les Droit de la Mer

Montego Bay 10 decembre 1982
Entrée en vigueur:
16 Novembre 1994

Albania	23.VI.2003
Algeria	11.VI.1996
Angola	5.XII.1990
Antigua and Barbuda	2.II.1989
Argentina	1.XII.1995
Armenia	9.XII.2002
Australia	5.X.1994
Austria	14.VII.1995
Bahamas	29.VII.1983
Bahrain	30.V.1985
Bangladesh	27.VII.2001
Barbados	12.X.1993
Belgium	13.XI.1998
Belize	13.VIII.1983
Benin	16.X.1997
Bolivia	28.IV.1995
Bosnia and Herzegovina	12.I.1994
Botswana	2.V.1990
Brazil	22.XII.1988
Brunei Darusssalam	5.XI.1996
Bulgaria	15.V.1996

Burkina Faso	25.I.2005
Cameroon	19.XI.1985
Canada	7.XI.2003
Cape Verde	10.VIII.1987
Chile	25.VIII.1997
China	7.VI.1996
Comoros	21.VI.1994
Congo, Democratic Republic of	17.II.1989
Cook Islands	15.II.1995
Costa Rica	21.IX.1992
Côte d'Ivoire	28.VII.1995
Croatia	5.IV.1995
Cuba	15.VIII.1984
Cyprus	12.XII.1988
Czech Republic	21.VI.1996
Denmark	16.XI.2004
Djibouti	8.X.1991
Dominica	24.X.1991
Egypt	26.VIII.1983
Equatorial Guinea	21.VII.1997
Estonia	26.VIII.2005
European Community	1.IV.1998
Fiji	10.XII.1982
Finland	21.VI.1996
France	11.IV.1996
Gabon	11.III.1988
Gambia	22.V.1984
Georgia	21.III.1996
Germany	14.X.1994
Ghana	7.VI.1983
Greece	21.VII.1995
Grenada	25.IV.1991
Guatemala	11.II.1997
Guinea	6.IX.1985
Guinea-Bissau	25.VIII.1986
Guyana	16.XI.1993
Haiti	31.VII.1996
Honduras	5.X.1993
Hungary	5.II.2002
Iceland	21.VI.1985
India	29.VI.1995
Indonesia	3.II.1986
Iraq	30.VII.1985
Ireland	21.VI.1996
Italy	13.I.1995
Jamaica	21.III.1983
Japan	20.VI.1996
Jordan	27.XI.1995
Kenya	2.III.1989
Kiribati	24.II.2003
Korea, Republic of	29.I.1996

Kuwait	2.V.1986
Lao People's Democratic Republic	5.VI.1998
Latvia	23.XII.2004
Lebanon	5.I.1995
Lituania	12.XI.2003
Luxembourg	5.X.2000
Madagascar	22.VIII.2002
Malaysia	14.X.1996
Maldives	7.IX.2000
Mali	16.VII.1985
Malta	20.V.1993
Marshall Islands	9.VIII.1991
Mauritania	17.VII.1996
Mauritius	4.XI.1994
Mexico	18.III.1983
Micronesia, Federated States of	29.IV.1991
Monaco	20.III.1996
Mongolia	13.VIII.1996
Mozambique	13.III.1997
Myanmar	21.V.1996
Namibia, United Nations Council for	18.IV.1983
Nauru	23.I.1996
Nepal	2.XI.1998
Netherlands	28.VI.1996
New Zeland	19.VII.1996
Nicaragua	3.V.2000
Nigeria	14.VIII.1986
Norway	24.VI.1996
Oman	17.VIII.1989
Pakistan	26.II.1997
Palau	30.IX.1996
Panama	1.VII.1996
Papua New Guinea	14.I.1997
Paraguay	26.IX.1986
Philippines	8.V.1984
Poland	13.XI.1998
Portugal	3.XI.1997
Qatar	7.XII.2002
Romania	17.XII.1996
Russian Federation	12.III.1997
Samoa	14.VIII.1995
St. Kitts and Nevis	7.I.1993
St. Lucia	27. III.1985
St. Vincent and the Grenadines	1.X.1993
Sao Tomé and Principe	3.XI.1987
Saudi Arabia	24.IV.1996
Senegal	25.X.1984
Serbia and Montenegro	12.III.2001
Seychelles	16.IX.1991
Sierra Leone	12.XII.1994
Singapore	17.XI.1994

Slovakia	8.V.1996
Slovenia	16.VI.1995
Solomon Islands	23.VI.1997
Somalia	24.VII.1989
South Africa	23.XII.1997
Spain	15.I.1997
Sri Lanka	19.VII.1994
Sudan	23.I.1985
Suriname	9.VII.1998
Sweden	25.VI.1996
Tanzania, United Republic of	30.IX.1985
The Former Yugoslav Republic of Macedonia	19.VIII.1994
Togo	16.IV.1985
Tonga	2.VIII.1995
Trinidad and Tobago	25.IV.1986
Tunisia	24.IV.1985
Tuvalu	8.XII.2002
Uganda	9.XI.1990
Ukraine	26.VII.1999
United Kingdom	25.VII.1997
Uruguay	10.XII.1992
Vanautu	10.VIII.1999
Viet Nam	25.VII.1994
Yemen, Democratic Republic of	21.VII.1987
Zambia	7.III.1983
Zimbabwe	24.II.1993

United Nations Convention on Conditions for
Registration of ships

Geneva, 7 February 1986
Not yet in force.

Convention des Nations Unies sur les Conditions d'
Immatriculation des navires

Genève, 7 février 1986
Pas encore entrée en vigueur.

Albania	**(a)**	4.XII.2004
Bulgaria	**(a)**	27.XII.1996
Egypt	**(r)**	9.I.1992
Georgia	**(a)**	7.VIII.1995
Ghana	**(a)**	29.VIII.1990
Haiti	**(a)**	17.V.1989
Hungary	**(a)**	23.I.1989
Iraq	**(a)**	1.II.1989
Ivory Coast	**(r)**	28.X.1987
Liberia	**(a)**	16.IX.2005
Libyan Arab Jamahiriya	**(r)**	28.II.1989
Mexico	**(r)**	21.I.1988
Oman	**(a)**	18.X.1990
Syrian Arab Republic	**(a)**	29.IX.2004

United Nations Convention on
the Liability of operators of transport terminals in the international trade

Done at Vienna 19 April 1991
Not yet in force.

Gabon	**(a)**	15.XII.2004
Georgia	**(a)**	21.III.1996
Egypt	**(a)**	6.IV.1999
Paraguay	**(a)**	19.VII.2005

Convention des Nations Unies sur
la Responsabilité des exploitants de terminaux transport dans le commerce international

Signée à Vienne 19 avril 1991
Pas encore entrée en vigueur.

International Convention on
Maritime liens and mortgages, 1993

Done at Geneva,
6 May 1993
Entered into force: 5 September 2004

Convention Internationale de
1993 su les Privilèges et hypothèques maritimes

Signée à Genève
le 6 mai 1993
Entrée en vigueur: 5 septembre 2004

Ecuador	**(a)**	16.III.2004
Estonia	**(a)**	7.II.2003
Monaco	**(a)**	28.III.1995
Nigeria	**(a)**	5.III.2004
Peru	**(a)**	23.III.2007
Russian Federation	**(a)**	4.III.1999
Saint Vincent and the Grenadines	**(a)**	11.III.1997
Spain	**(a)**	7.VI.2002
Syrian Arab Republic	**(a)**	8.X.2003
Tunisia	**(r)**	2.II.1995
Ukraine	**(a)**	27.II.2003
Vanuatu	**(a)**	10.VIII.1999

International Convention on
Arrest of Ships, 1999

Done at Geneva,
12 March 1999
Not yet in force.

Convention Internationale de
1999 sur la saisie conservatoire des navires

Fait à Genève
le 12 Mars 1999
Pas encore en vigueur.

Algeria	**(a)**	7.V.2004
Bulgaria	**(r)**	27.VII.2000
Estonia	**(a)**	11.V.2001
Latvia	**(a)**	7.XII.2001
Liberia	**(a)**	16.IX.2005
Spain	**(a)**	7.VI.2002
Syrian Arab Republic	**(a)**	16.X.2002

STATUS OF THE RATIFICATIONS OF UNESCO CONVENTIONS

UNESCO Convention on the Protection of the Underwater Cultural Heritage

Done at Paris 2 November 2001
Not yet in force.

	Date of deposit of instrument
Bulgaria (ratification)	06.X.2003
Cambodia (ratification)	24.XI.2007
Croatia (ratification)	01.XII.2004
Ecuador (ratification)	01.XII.2006
Lebanon (acceptance)	08.I.2007
Libyan Arab Jamahiriya (ratification)	23.VI.2005
Lithuania (ratification)	12.VI.2006
Mexico (ratification)	05.VIII.2006
Nigeria (ratification)	21.X.2005
Panama (ratification)	20.V.2003
Paraguay (ratification)	07.IX.2006
Portugal (ratification)	21.IX.2006
Romania (acceptance)	31.VII.2007
Saint Lucia (ratification)	01.II.2007
Spain (ratification)	06.VI.2005
Ukraine (ratification)	27.XII.2006

STATUS OF THE RATIFICATIONS OF AND ACCESSIONS TO UNIDROIT CONVENTIONS IN THE FIELD OF PRIVATE MARITIME LAW

ETAT DES RATIFICATIONS ET ADHESIONS AUX CONVENTIONS D'UNIDROIT EN MATIERE DE DROIT MARITIME PRIVE

Unidroit Convention on
International financial leasing 1988

Done at Ottawa 28 May 1988
Entered into force.
1 May 1995

Convention de Unidroit sur
le Creditbail international 1988

Signée à Ottawa 28 mai 1988
Entré en vigueur:
1 Mai 1995

Belarus	**(a)**	18.VIII.1998
France	**(r)**	23.IX.1991
Hungary	**(a)**	7.V.1996
Italy	**(r)**	29.XI.1993
Latvia	**(a)**	6.VIII.1997
Nigeria	**(r)**	25.X.1994
Panama	**(r)**	26.III.1997
Russian Federation	**(a)**	3.VI.1998
Uzbekistan, Republic of	**(a)**	6.VII.2000

CONFERENCES
OF THE COMITE MARITIME INTERNATIONAL

I. BRUSSELS - 1897
President: Mr. Auguste BEERNAERT.
Subjects: Organization of the International Maritime Committee - Collision - Shipowners' Liability.

II. ANTWERP - 1898
President: Mr. Auguste BEERNAERT.
Subjects: Liability of Owners of sea-going vessels.

III. LONDON - 1899
President: Sir Walter PHILLIMORE.
Subjects: Collisions in which both ships are to blame - Shipowners' liability.

IV. PARIS - 1900
President: Mr. LYON-CAEN.
Subjects: Assistance, salvage and duty to tender assistance - Jurisdiction in collision matters.

V. HAMBURG - 1902
President: Dr. Friedrich SIEVEKING.
Subjects: International Code on Collision and Salvage at Sea - Jurisdiction in collision matters - Conflict of laws as to owner-ship of vessels.

VI. AMSTERDAM - 1904
President: Mr. E.N. RAHUSEN.
Subjects: Conflicts of law in the matter of Mortgages and Liens on ships. - Jurisdiction in collision matters - Limitation of Shipowners' Liability.

VII. LIVERPOOL - 1905
President: Sir William R. KENNEDY.
Subjects: Limitation of Shipowners' Liability - Conflict of Laws as to Maritime Mortgages and Liens - Brussels Diplomatic Conference.

VIII. VENICE - 1907
President: Mr. Alberto MARGHIERI.
Subjects: Limitation of Shipowners' Liability - Maritime Mortgages and Liens - Conflict of law as to Freight.

IX. BREMEN - 1909
President: Dr. Friedrich SIEVEKING.
Subjects: Conflict of laws as to Freight - Compensation in respect of personal injuries - Publication of Maritime Mortgages and Liens.

X. PARIS - 1911
President: Mr. Paul GOVARE.
Subjects: Limitation of Shipowners' Liability in the event of loss of life or personal injury - Freight.

XI. COPENHAGEN - 1913
President: Dr. J.H. KOCH.
Subjects: London declaration 1909 - Safety of Navigation - International Code of Affreightment - Insurance of enemy property.

XII. ANTWERP - 1921
President: Mr. Louis FRANCK.
Subjects: International Conventions relating to Collision and Salvage at sea. - Limitation of Shipowners' Liability - Maritime Mortgages and Liens - Code of Affreightment - Exonerating clauses.

XIII LONDON - 1922
President: Sir Henry DUKE.
Subjects: Immunity of State-owned ships - Maritime Mortgage and Liens. - Exonerating clauses in Bills of lading.

XIV. GOTHENBURG - 1923
President: Mr. Efiel LÖFGREN.
Subjects: Compulsory insurance of passengers - Immunity of State owned ships - International Code of Affreightment - International Convention on Bills of Lading.

XV. GENOA - 1925
President: Dr. Francesco BERLINGIERI.
Subjects: Compulsory Insurance of passengers - Immunity of State owned ships - International Code of Affreightment - Maritime Mortgages and Liens.

XVI. AMSTERDAM - 1927
President: Mr. B.C.J. LODER.
Subjects: Compulsory insurance of passengers - Letters of indemnity - Ratification of the Brussels Conventions.

XVII. ANTWERP - 1930
President: Mr. Louis FRANCK.
Subjects: Ratification of the Brussels Conventions - Compulsory insurance of passengers - Jurisdiction and penal sanctions in matters of collision at sea.

XVIII. OSLO - 1933
President: Mr. Edvin ALTEN.
Subjects: Ratification of the Brussels Conventions - Civil and penal jurisdiction in matters of collision on the high seas - Provisional arrest of ships - Limitation of Shipowners' Liability.

XIX. PARIS - 1937
President: Mr. Georges RIPERT.
Subjects: Ratification of the Brussels Conventions - Civil and penal jurisdiction in the event of collision at sea - Arrest of ships - Commentary on the Brussels Conventions - Assistance and Salvage of and by Aircraft at sea.

XX. ANTWERP - 1947
President: Mr. Albert LILAR.
Subjects: Ratification of the Brussels Conventions, more especially of the Convention on Immunity of State-owned ships - Revision of the Convention on Limitation of the Liability of Owners of sea-going vessels and of the Convention on Bills of Lading - Examination of the three draft conventions adopted at the Paris Conference 1937 - Assistance and Salvage of and by Aircraft at sea - York and Antwerp Rules; rate of interest.

XXI. AMSTERDAM - 1948
President: Prof. J. OFFERHAUS
Subjects: Ratification of the Brussels International Convention - Revision of the York-Antwerp Rules 1924 - Limitation of Shipowners' Liability (Gold Clauses) - Combined Through Bills of Lading - Revision of the draft Convention on arrest of ships - Draft of creation of an International Court for Navigation by Sea and by Air.

XXII. NAPLES - 1951
President: Mr. Amedeo GIANNINI.
Subjects: Brussels International Conventions - Draft convention relating to Provisional Arrest of Ships - Limitation of the liability of the Owners of Sea-going Vessels and Bills of Lading (Revision of the Gold clauses) - Revision of the Conventions of Maritime Hypothèques and Mortgages - Liability of Carriers by Sea towards Passengers - Penal Jurisdiction in matters of collision at Sea.

XXIII. MADRID - 1955
President: Mr. Albert LILAR.
Subjects: Limitation of Shipowners' Liability - Liability of Sea Carriers towards passengers - Stowaways - Marginal clauses and letters of indemnity.

XXIV. RIJEKA - 1959
President: Mr. Albert LILAR
Subjects: Liability of operators of nuclear ships - Revision of Article X of the International Convention for the Unification of certain Rules of law relating to Bills of Lading - Letters of Indemnity and Marginal clauses. Revision of Article XIV of the International Convention for the Unification of certain rules of Law relating to assistance and salvage at sea - International Statute of Ships in Foreign ports - Registry of operations of ships.

XXV. ATHENS - 1962
President: Mr. Albert LILAR
Subjects: Damages in Matters of Collision - Letters of Indemnity - International Statute of Ships in Foreign Ports - Registry of Ships - Coordination of the Convention of Limitation and on Mortgages - Demurrage and Despatch Money - Liability of Carriers of Luggage.

XXVI. STOCKHOLM - 1963
President: Mr. Albert LILAR
Subjects: Bills of Lading - Passenger Luggage - Ships under construction.

XXVII. NEW YORK - 1965
President: Mr. Albert LILAR
Subjects: Revision of the Convention on Maritime Liens and Mortgages.

XXVIII. TOKYO - 1969
President: Mr. Albert LILAR
Subjects: "Torrey Canyon" - Combined Transports - Coordination of International Convention relating to Carriage by Sea of Passengers and their Luggage.

XXIX. ANTWERP - 1972
President: Mr. Albert LILAR
Subjects: Revision of the Constitution of the International Maritime Committee.

XXX. HAMBURG - 1974
President: Mr. Albert LILAR
Subjects: Revisions of the York/Antwerp Rules 1950 - Limitation of the Liability of the Owners of Seagoing vessels - The Hague Rules.

XXXI. RIO DE JANEIRO - 1977
President: Prof. Francesco BERLINGIERI
Subjects: Draft Convention on Jurisdiction, Choice of law and Recognition and enforcement of Judgements in Collision matters. Draft Convention on Off-Shore Mobile Craft.

XXXII MONTREAL - 1981
President: Prof. Francesco BERLINGIERI
Subjects: Convention for the unification of certain rules of law relating to assistance and salvage at sea - Carriage of hazardous and noxious substances by sea.

XXXIII. LISBON- 1985
President: Prof. Francesco BERLINGIERI
Subjects: Convention on Maritime Liens and Mortgages - Convention on Arrest of Ships.

XXXIV. PARIS - 1990
President: Prof. Francesco BERLINGIERI
Subjects: Uniformity of the Law of Carriage of Goods by Sea in the 1990's - CMI Uniform Rules for Sea Waybills - CMI Rules for Electronic Bills of Lading - Revision of Rule VI of the York-Antwerp Rules 1974.

XXXV. SYDNEY - 1994
President: Prof. Allan PHILIP
Subjects: Review of the Law of General Average and York-Antwerp Rules 1974 (as amended 1990) - Draft Convention on Off-Shore Mobile Craft - Assessment of Claims for Pollution Damage - *Special Sessions:* Third Party Liability - Classification Societies - Marine Insurance: Is the doctrine of Utmost Good Faith out of date?

XXXVI. ANTWERP – 1997 - CENTENARY CONFERENCE
President: Prof. Allan PHILIP
Subjects: Off-Shore Mobile Craft - Towards a Maritime Liability Convention - EDI - Collision and Salvage - Wreck Removal Convention - Maritime Liens and Mortgages, Arrest of Ships - Classification Societies - Carriage of Goods by Sea - The Future of CMI.

XXXVII. SINGAPORE – 2001
President: Patrick GRIGGS
Subjects: Issues of Transport Law - Issues of Marine Insurance - General Average - Implementation of Conventions - Piracy - Passengers Carried by Sea.

XXXVIII. VANCOUVER – 2004
President: Patrick GRIGGS
Subjects: Transport Law - General Average - Places of Refuge for Ships in Distress - Pollution of the Marine Environment - Maritime Security - Marine Insurance - Bareboat Chartered Vessels - Implementation of the Salvage Convention.