YEARBOOK
2014
ANNUAIRE

Richard Shaw – 1940 to 2013

I start with some words from an email which Avril received from a Latvian lawyer during Richard's final illness: "When I think of Richard it is always of a smiling sunshine man, never angry or dissatisfied." Not a bad epitaph. I'll return later to those words.

Richard's mother, heavily pregnant with Richard, was on the last ship out of France where she and Richard's father, Arthur, were living before the War. Richard was born at Southport in Lancashire (the home of his maternal grandparents) in May 1940 and in later life was proud to claim his Lancashire roots. For the rest of the War the family moved around England as Arthur was posted. His first experience of school was in Herefordshire. When the war finished they moved to Woodford where Richard attended a prep school before getting a full scholarship to Bancroft's School. He left Bancroft's in 1958 and went up to Magdalen College, Oxford to read Law. By the time he graduated in 1961 National service had been abolished and through Arthur's shipping connections Richard was able to sign on as an ordinary seaman first on a Swedish and then on a British flag ship. He paidoff in Australia and found work in aerial photography and also spent some time picking apples. At a party

one night when he was looking for work and for somewhere to live he met someone who offered him not only a flat but also a job teaching law. He accepted both the offer of the flat and the job and taught law at Adelaide University for a full academic year.

He then returned to England and signed on at the Guildford Law School for the Law Finals course. There, he was one of 200 male and 5 female students (such was the ratio in those days). One of those ladies was Avril. It says a great deal for his charm and determination that he was victorious against such daunting odds.

Then articles of clerkship with Bill Wilson at what was then Richards Butler. He worked there as an assistant solicitor for some years before joining the recently created firm of Elborne Mitchell where he became a partner in 1972. In 1980 he, Roger Croft, Adrian Hand and his secretary, Sue Patmore, left Elborne's to create the firm of Shaw and Croft. (I only discovered on Friday that the "and" rather than an ampersand in Shaw and Croft was a disguised tribute to Adrian Hand whose name could not formally appear in the title as he was not a qualified lawyer.) Avril joined the firm to deal with conveyancing cases but quickly decided that she could best contribute to the prosperity of the firm by counting the pennies in and out – she became the part time bookkeeper until the firm was safely established financially.

I will not track the great success of the firm but, because it was compact, staffed with competent lawyers and operating off a low cost base, it was able to charge very competitive rates and therefore prospered. (I know that it was a great sadness to Richard that the firm was absorbed into another, bigger practice some years ago and the name of his brave enterprise does not live on.)

A series of larger and (slightly) smarter (but never luxurious) offices followed until the IRA blew up the Baltic Exchange on April 10th 1992 (thinking that it was the Stock Exchange) and blew up the St Mary's Axe offices of Shaw and Croft in the process. Richard and Avril were due to go on holiday in Sicily the following morning and Richard was all for canceling the trip but the rest of the firm (egged on by Avril) persuaded him to go. When he returned from Sicily it was to a working (if temporary) office. This set Richard to thinking that his colleagues could manage perfectly well without him and he started to plot his exit - finally retiring in 1995.

Still only 55 and as ever full of energy and enthusiasm it was not long before people were looking to put his talents to good use. He became an Arbitrator and joined the teaching staff at IML Southampton as a Senior Visiting Research Fellow. Apart from teaching (which he loved and was very good at) he carried out research, wrote extensively and was in great demand as a speaker at seminars and conferences. He became deeply involved with the work of the CMI and for the past 16 years has been the CMI Observer at meetings of IOPCFunds (the UN/IMO organization which monitors oil

pollution cases). During that period he also attended IMO Legal Committee meetings and Diplomatic Conferences which led to the creation of no less than six international conventions. (Salvage convention(1989), the Hazardous Noxious Substances Convention (1996), Arrest of Ships (1999), the Bunker Pollution Convention (2001), the Athens Convention (2002) and the Wreck Removal Convention). At most of the Diplomatic Conferences which led to these conventions he found himself appointed to the Drafting Committee – his facility with words his communication skills and fluency in French made him an obvious choice for these important roles. He also became involved with a series of projects for CMI including one on pollution from offshore oil rigs which was particularly close to his heart.

Despite all that was going on in the office he had time for a happy family life. First children (Nicolas, Alexia and Christopher), then a daughter-in-law and finally two grandsons completed the family. Much of the family life was lived at the family home in Battledean Road in Islington. Not only was the house full of the family growing up and their friends but whenever you visited you could be sure to encounter a lodger, whether friend, itinerant academic or other deserving case - all part of the Shaw's extended international family.

May I at this point just say how much we have admired the strength and courage shown by Avril over the past few very difficult months. With valiant support from the family and, of course the local doctors, District Nurse, Marie Currie nurses and the team of carers it was possible for Richard to remain at his beloved Boldre Grange Cottage until the end.

So much for the bare facts of his life. What about the man himself whom we will all miss in different ways? He was not a solemn man and would be disappointed if this was an over solemn occasion. We should concentrate on the good times shared and laughs we have had together. You will all have your own individual memories. I have mine and would like before finishing to share just a few of these with you.

Our careers in the City ran for the most part on parallel paths but frequently those paths ceased to run parallel and crossed when we found ourselves on opposite sides in a case. Looking back (as we have done from time to time over a glass of something) we have congratulated ourselves on the fact that none of the cases in which we were involved (some of them very big ones) ever got to court. We both believed that an early, sensible settlement, acceptable to both sides was preferable to a long drawn out, hard fought and (inevitably) costly victory. I fear that this would now be regarded as rather an old fashioned approach to litigation.

We both retired at the same time and through our work for CMI and at IMO we saw a great deal of each other. We used to visit IMLI in Malta where we lectured to the annual intake of 30 + lawyers, mostly from third world countries, who came to study international maritime law for an academic year. We would share the visiting lecturers suite (sounds grander than it was) and

deliver lectures. The final morning always involved splitting the students into two teams, creating a factual case (generally a collision) and then working out the best way of presenting the opposing cases, then appointing a spokesman for each team to argue the case. Richard and I and (I hope) the students learnt a lot from this. One of those students was Inara Plankova from Latvia whose words I quoted earlier.

Richard and I jointly represented the CMI at meetings of the IMO Legal Committee. From time to time we would be sitting at our shared desk at the back of the conference room at IMO Headquarters and one of our exstudents would appear – now elevated to the role of national representative for their country and would greet Richard. A warm hand-shake from the men and a big hug from the ladies – people on whom Richard had made a lasting impression. And he'd remembered their names! Proud and happy this made him feel.

When I attend the next meeting of the Legal Committee in April next year I shall look at the empty seat beside me which Richard has occupied for so long and I shall feel lonely. As I said to Avril the other day – as a team we were more effective than the sum of our parts.

He was a man of action. We played hockey together (briefly) at Crostyx in Woodford before he moved to north London and started to play for Hampstead. Crostyx had an annual fixture with Hampstead and Richard and I (playing for our respective 3rd XIs) then found ourselves on opposite sides. If you play on the right wing (as I did) you will be marked by the opposing left half – in this case Richard. I was rather faster in a straight line than Richard but it won't surprise you to hear that he was pretty nippy. Time and again I would be off and away down the right wing when a stick would appear (sometimes between my legs) and there I was still running at speed down the right wing but without the ball leaving Richard with the ball ready to launch a counter-attack!

In 1990, with our wives and other friends, we completed the 10 day circumnavigation on foot of Mont Blanc through France, Switzerland and Italy. In 1996 we tackled the first part of the South West Coastal Path from Bude to St Ives and in 2011 we teamed up again for the final section of the S.W. Costal Path finishing in Poole in Dorset. In between times we made time for other exhilarating walks in the New Forest and elsewhere. When our wives were with us they imposed a rule that we should not talk shop. We did, generally, stick to this but I confess that every now and then (after checking that the ladies were not listening) we did break this rule.

Enough of that. We must, each in our own way, get used to the fact that Richard is no longer with us. The Bible tells us that the span of a man's life is three score years and ten. Richard made that with a couple of years to spare. But don't we all hope for ourselves and for our friends that we may be granted a little longer? We, his many friends, feel slightly cheated by the loss of a good friend and the loss of his stimulating company.

I finish where I started with the words of Inara Plankova's epitaph: Richard:-

"smiling sunshine man" – yes, of course.

"never angry" – well, maybe just occasionally.

"never dissatisfied" – he had a great deal to be satisfied about. Indeed, Avril has told us that towards the end she talked to Richard about his life. He said that he'd had a wonderful life, a career which he'd loved and which had involved meeting so many interesting people. Against that background, he said, he was not afraid of what the future held.

I've said quite enough and will stop there – leaving you with your own thoughts.

Patrick Griggs

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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]

I[ère] PARTIE - DISPOSITIONS GENERALES

Article 1[er]
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

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

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 (and Head Office Director) (hereafter "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 (et Directeur en chef du bureau) (ci-après «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 three 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 three 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 three 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 trois 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 trois 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 trois 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 three 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 three years, and shall be eligible for re-election without limitation upon the number of terms. If a body having juridical personality, the Administrator shall be appointed by the Assembly upon the recommendation of the Executive Council, and shall serve until a successor is appointed.

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 three 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 trois 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 trois 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 trois 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 determine first:

a) whether any officers eligible for re-election are available to serve for an additional term and to receive a statement from such officers as to the contributions they have made to the Executive Council during their term;
b) whether Member Associations wish to propose candidates for possible nomination by the Nominating Committee as an Executive Councillor, or other Officer.

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

Following the decisions of the Nominating Committee, the chairman shall forward its nominations to the Administrator in ample time for distribution not less than 45 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 15 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.

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.

Au nom du comité de nomination, le Président devra premièrement déterminer:

a) si des membres du conseil exécutif, éligibles à réélection, sont disponibles pour effectuer un mandat supplémentaire et recevoir une déclaration de ces membres sur leurs contributions au Conseil Exécutif au cours de leur mandat;
b) si des Associations membres souhaitent proposer des candidats pour une possible nomination par le comité de nomination en tant que conseiller exécutif, ou autre membre du conseil exécutif.

Le Président devra ensuite informer les associations membres et rechercher leurs avis concernant le candidats à la nomination. Le comité de nomination devra ensuite procéder aux nominations en tenant compte de ces avis.

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 45 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 15 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.

PART IV - EXECUTIVE COUNCIL

Article 17
Composition

The Executive Council shall consist of:

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 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;

4ème PARTIE - CONSEIL EXÉCUTIF

Article 17
Composition

Le Conseil exécutif est composé:

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

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) 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.

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.

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.

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.

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

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

PART VII - ENTRY INTO FORCE AND DISSOLUTION

Article 24
Entry into Force [2]

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

Article 25
Dissolution and Procedure for Liquidation

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

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

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 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.

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

RULES OF PROCEDURE*

1996[1]

Rule 1
Right of Presence

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

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

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

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

Rule 2
Right of Voice

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

Rule 3
Points of Order

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

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1. Adopted in Brussels, 13th April 1996.

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

Rule 4
Voting

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

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

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

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

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

Rule 5
Amendments to Proposals

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

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

Rule 6
Secretary and Minutes

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

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

Rule 7
Amendment of these Rules

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

Rule 8
Application and Prevailing Authority

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

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

GUIDELINES FOR PROPOSING THE ELECTION OF TITULARY AND PROVISIONAL MEMBERS

1999[1]

Titulary Members

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

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

Provisional Members

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

Periodic Review

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

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

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[1] Educated: Wellington College, UK; read Law at Pembroke College, Cambridge, UK, awarded Exhibition 1971, MA 1975. Partner Ebsworth and Ebsworth, Sydney. 1981-1997. Withnell Hetherington 1998-2005, Partner Colin Biggers and Paisley 2005. 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".

[2] 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

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fellow, Scandinavian Institute of Maritime Law, Oslo, Norway. 1982-2010: Attorney at law, Northern Shipowners Defence Club, Oslo, Norway. 2012: Partner, Arntzen de Besche, 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. 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.

[3] Advocate to the Supreme Court of Cassation, Senior Partner Studio Legale Berlingieri, Titulary Member Comité Maritime International, President Italian Maritime Law Association, associated editor of *Il Diritto Marittimo* and member of the Contributory Board of *Droit Maritime Français*.

[4] 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 a former member of 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.

[5] BComm LLB (Cape) LLM (Lond) LLD (Cape) *Professor Emeritus* in Shipping Law, Born 1947 in Cape Town. Attorney and Notary Public of the Republic of South Africa – admitted 1975 and practised shipping law full time in Cape Town for 20 years. Convenor of graduate teaching of shipping law at the University of Cape Town for 25 years teaching Maritime Law, Carriage of Goods, Admiralty Jurisdiction & Practice, and Marine Insurance to a cosmopolitan class. Retired from full-time UCT teaching post end-2012, and elected *Professor Emeritus* of Shipping Law by the Senate of the University in December 2012. Author of *Shipping Law & Admiralty Jurisdiction in South Africa* (2nd Ed) Juta, 2009 (1000pg) and numerous journal articles on shipping law and marine insurance. Holder of a Diploma in the Science and Technology of Navigation, Sir John Cass College, London 1973. Associate Fellow of the Nautical Institute and Honorary Member of The Society of Master Mariners of South Africa. Holder of a 100 ton motor vessel skipper's ticket. Past Councillor and President of the South African Maritime Law Association, and two-term Executive Council member of the Comité Maritime International. Appointed Secretary-General of the CMI in October 2013.

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[6] Lawrence Teh is a partner in Rodyk & Davidson LLP's Litigation & Arbitration Practice Group. Lawrence advises clients and acts as an advocate in all areas of commercial law and appears regularly as leading counsel in the Singapore Courts, and in arbitration and in other forms of dispute resolution. He has particular experience in maritime and aviation, international trade and commodities, banking and financial services, onshore and offshore construction, mergers acquisitions joint ventures and other investments, and insurance in related fields. He is a Fellow of the Chartered Institute of Arbitrators, a Fellow of the Singapore Institute of Arbitrators, a panel arbitrator at the Singapore International Arbitration Centre, and the Secretary of the Maritime Law Association of Singapore. He chaired the committee that drafted the Law Society Arbitration Rules and is panel arbitrator of the Law Society Arbitration Scheme. He is named in the Asia Pacific Legal 500 for Dispute Resolution and in the International Who's Who for Commercial Litigation. He is also named in International Who's Who of Shipping & Maritime, and has been an Asialaw Leading Lawyer since 2006 for Shipping, Maritime & Aviation and on the Guide to the World's Leading Aviation Lawyers.

[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] Ann Fenech graduated from the University of Malta in 1986. She obtained her Masters degree in maritime law from the University of London in 1989. She is the Managing Partner and Head of the Marine Litigation Department of Fenech & Fenech Advocates - Malta. In 1986 she joined Holman Fenwick and Willan in London until 1991 when she moved to the New Orleans firm Chaffe, McCall. In 1992 she joined Fenech & Fenech Advocates Malta and set up the Marine Litigation Department. She deals with a cross section of marine related disputes ranging from collisions to ship building contracts. She has assisted in the drafting of a number of maritime related laws in Malta and lectures extensively on the subject in Malta and abroad; she was the Chairman of the Pilotage Board from 2000 up to 2010, she is the President of the Malta Maritime Law Association, a Council Member of the European Maritime Law Organisation and in June 2012 she was awarded Best in Shipping Law at the European Women in Business Awards held in London. In March 2012 she was appointed Director on Premier Capital plc and in December 2012 she was appointed Director of Bank of Valletta plc. She is also a Board member of the Yachting Section in the Maltese Chamber of Commerce.

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PART II

The Work of the CMI

DUBLIN SYMPOSIUM

Shelbourne Hotel, 29 September-1 October

[The slides of all presentations may be found on
www.cmi2013dublin.com/page/113/presentations/]

SPEAKER'S PRESENTATIONS

CASUALTIES / LIABILITIES IN THE OFFSHORE SECTOR

THE *COMMUNE DE MESQUER* CASE

Dr. Vincent J.G. Power*

PART A: INTRODUCTION

The purpose of this paper

This paper examines the very important "preliminary ruling" delivered by the Court of Justice of the European Union ("CJEU") in the *Commune de Mesquer v Total France and Total International Limited* case.[1]

This preliminary ruling or judgment is fascinating because it deals with the complicated and complex interplay of public international law (and, in particular, international maritime law) with European Union ("EU") law. It is not the only case to address the issue[2] but it is, in many ways, one the most

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1 Case C-188/07 [2008] ECR I-4501, [2009] All E.R. (EC) 525, [2009] P.T.S.R. 588, [2008] 2 Lloyd's Rep. 672, [2008] 3 C.M.L.R. 16 and [2009] Env. L.R. 9 .The preliminary ruling was given on 24 June 2008. See http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62007J0188:EN:HTML. See case note by Eckes at (2010) 47 CMLRev.899. For consideration of the case see Anon., "ECJ Rules on Responsibility for Cost of Cleaning up after Oil Tanker Wreck" 2008 *EU Focus* 23; Anon, "Waste Directive 75/442/EEC – Waste Management" (2008) 5 Journal for European Environmental & Planning Law 381; Bleeker, "Does the Polluter Pay? The Polluter-Pays Principle in the Case Law of the European Court of Justice" (2009) 18(6) *European Energy and Environmental Law Review* 289; Edwards, "Waste" [2009] 21(1) *Journal of Environmental Law* 158; de Sadeleer, "Liability for Oil Pollution Damage versus Liability for Waste Management: The Polluter Pays Principle at the Rescue of the Victims: Case C-188/07, *Commune de Mesquer v Total France SA*" [2008] 3 CMLR 16, [2009] *Environmental Law Review* 9; Flynn, "Recent European Environmental Developments" (2008) 18(1) *Irish Planning and Environmental Law Journal* 171; Gonciari, "Sailing Carefully through EU Waters" (2010) 24(5) *Maritime Risk International* 8; Mossoux, "Causation in the Polluter Pays Principle" (2010) *European Energy and Environment Law Review* 279; Somers and Gonsaeles, "The Consequences of the Sinking of the M/S ERIKA in European Waters: Towards a Total Loss for International Shipping Law" (2010) 41 *Journal of Maritime Law & Commerce* 57; and Thomson, "ECJ's View on Waste Law will Widen Liability" (2008) *Lloyd's List Insurance Day*, October 10, page 7. See also Hart, "The *Erika*: Cour de Cassation Finds against Total" [2013] 22(6) *Water Law* 266.

2 Examples include cases such as Cases C-402/05 P and C-415/05 P *Yassin Abdullah Kadi and Al Barakaat International Foundation V Council of the European Union and Commission of the European Communities* [2008] ECR I-6351; Case C-459/03 *Commission v Ireland (Mox Plant)* [2006] ECR I-4635; Case C-308/06 *International Association of Independent Tanker Owners (Intertanko) v Secretary of State for Transport* [2008] ECR I-4057; and Cases 21-24/72 *International Fruit Company and Others* [1972] ECR 1219.

significant ones from the perspective of those interested in international maritime law. In particular, it is important because it:

(a) addresses the interplay between, on the one hand, the Liability and Fund Conventions with, on the other hand, various EU measures;
(b) decided that heavy fuel oil which is spilt accidentally at sea is "waste" for the purposes of the Waste Directive; and
(c) decided that, in certain circumstances, the supplier or seller of the oil and those who chartered the ship could be held liable for the clean-up costs for the spilt oil in a way which circumvents the Conventions.

In regard to the interplay between the Conventions and EU law, it is worth noting that the Liability Convention imposes strict liability on ship-owners for damage caused by oil spills but this liability is subject to a tonnage limit and no claim lies against the ship's charter or operator unless the damage resulted from an intentional or reckless act or omission. In that context, the availability of another route of redress such as the EU's Waste Directive could present opportunities for those affected by pollution but problems for those who were involved in pollution. The *Commune de Mesquer* was the very case to decide whether that was alternative route was available.

Cross-border maritime pollution incidents are not unusual; examples include the *Nestucca* in 1988 involving Canada and the United States of America. Almost invariably, there is a multidimensional element to these cases because of different states of registration and location of the incident (e.g., the British tanker *Kurdistan* breaking in two off the coast of Nova Scotia in Canada in 1979). What makes this case different from other international pollution incidents is the interplay between *at least* three legal regimes: the public international law regime (dealing with the conventions); the coastal State; and, this is the important element in this case, the EU. (There could be other dimensions as well in this multidimensional chess game involving the law of the flag of the vessel, the law of the forum and so on.)

Before considering the case further, it is useful to pause to understand how the CJEU became involved in the matter in deciding whether spilt oil constituted waste for the purposes of the Waste Directive. There was litigation in a French court between the Commune de Mesquer and two Total oil companies. The French court needed to obtain the CJEU's advice or opinion (a so-called "preliminary ruling") on issues of EU law so the French court referred the matter to CJEU. The CJEU then delivered a preliminary ruling answered the questions posed by the French court but how the case will be decided is ultimately for the national court but it must comply with EU law and abide by the answers is receives from the CJEU. This paper considers that preliminary ruling.

Facts

Introduction

The factual background to the case is straightforward. The case concerned the ill-fated 1975 Japanese-built Maltese-registered oil tanker *Erika* and her sinking in 1999. It led to France's worst oil disaster ever because much of the 31,000 tons of heavy fuel oil spilled into the sea and washed up on 400 kilometres of the French coastline requiring an enormous clean up and even a secondary clean up in 2000 and 2001. While it is estimated that about two thirds of the 31,000 tonnes were spilled into the sea, some 250,000 tonnes of waste oil was collected. It is ironic but marginally helpful that the *Erika* was such a small vessel. Indeed her small size meant that the funding available under the international Conventions regime was limited to 135 million Special Drawing Rights (c.$200 million) but the 7,000 or so claims following the incident amounted to three times that amount. Hence there was a need to find an alternative route over and above the Conventions regime.

The oil was being carried on board the vessel for Total. In this context of this case, Total comprised of two companies: Total Raffinage Distribution (later called Total France) and Total International Limited. For the purposes of the Waste Directive, the former was the "producer" of the waste while the latter was the seller and carrier and therefore was the "holder" of the waste.

The customer for the oil was destined for ENEL which is the main Italian electricity company. ENEL needed heavy fuel oil transported to Italy to be used in one of its power stations there. ENEL concluded a contract with Total International Limited for the delivery of the heavy fuel oil.

In order to fulfil the contract, Total raffinage distribution (now Total France SA) sold the oil to Total International Limited.

Total International Limited then chartered the *Erika* to transport the oil from Dunkirk in France to the port of Milazzo in Sicily in Italy. She set sail on 8 December 1999, four days later, she met her end.

The Incident at Issue

On 11-12 December 1999, the Maltese-registered *Erika* sank off the Brittany coast -specifically, the vessel sunk about 35 nautical miles south west of the Pointe de Penmarc'h in Finistère in France. She sunk in France's Exclusive Economic Zone.

A very large proportion of the *Erika'*s cargo and oil from her bunkers spilled into the sea and caused pollution on the French coastline. The oil affected the coastline of Commune de Mesquer in France particularly badly. The Commune spent enormous amounts of money on the clean up operation.

The Commune then sued Total in the French courts seeking compensation for the damage caused by the waste spread on the territory of that municipality following the sinking. The case was lost by the Commune in several French

courts but ultimately reached the Cour de cassation which referred three questions to the CJEU.

Essence of the CJEU Proceedings

The case involved a reference to the CJEU for a preliminary ruling on the interpretation of Articles 1 and 15 of and Annex I to Council Directive 75/442/EEC of 15 July 1975 on waste,[3] as amended by Commission Decision 96/350/EC of 24 May 1996[4] ("Directive 75/442" or the "Waste Directive").

French Court Proceedings

On 9 June 2000, the Commune instituted proceedings against the Total companies on the basis of its alleged responsibility for the pollution. By these proceedings, the Commune sought to recover its costs.

The Commune instituted these proceedings in the Tribunal de commerce de Saint-Nazaire (i.e., the Commercial Court in Saint-Nazaire). It relied on French Law No.75-633. The Commune claimed that the Total companies should be liable for the consequences of the damage caused by the waste spread on the territory of the municipality and be ordered jointly and severally to pay the costs incurred by the municipality for cleaning and anti-pollution measures. The claim was not an enormous one – it was for €69,232,42 – but a claim for less than €70,000 has produced an extremely important precedent in EU and international maritime law.

The Commune lost its claim before the Tribunal de Commerce. The Commune then appealed to the Cour d'appel de Rennes (i.e., the Rennes Court of Appeal). On 13 February 2002, the Cour d'appel de Rennes confirmed the decision at first instance (namely, the decision of the Tribunal de Commerce).[5] The Cour d'appel was of the view that the heavy fuel oil did not constitute waste in this case but was a combustible material for energy production manufactured for a specific use. The Cour d'appel did accept that the heavy fuel oil did spill into the water and was therefore mixed with water and sand but the court nonetheless believed that there was no basis under which Total could be held liable since they could not be regarded as "producers" or "holders" of the "waste".[6]

The Commune appealed to the Cour de cassation – France's final court of appeal. The net issue before the French court, the *Cour de cassation*, was whether Total could be held liable for pollution damage under the Waste Framework Directive (i.e., Directive 75/442/EEC on waste[7]) and the French court believed that it needed the assistance of the CJEU under the preliminary

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3 OJ 1975 L 194, p. 39.
4 OJ 1996 L 135, p. 32.
5 http://www.proprietairesmesquer.fr/vie_locale/appel_rennes_erika.pdf
6 Judgment, para.27.
7 OJ 1975 L194/39 (as amended).

reference regime[8] because the case "raised a serious problem of interpretation of Directive 75/442".[9]

Reference from the Cour de cassation in France to the CJEU

On 28 March 2007, the Cour de cassation therefore decided to refer three questions to the CJEU for its advice. The CJEU summarised the three questions as follows:

> "1. Can heavy fuel oil, as the product of a refining process, meeting the user's specifications and intended by the producer to be sold as a combustible fuel, and referred to in [Directive 68/414] be treated as waste within the meaning of Article 1 of [Directive 75/442] as…codified by [Directive 2006/12]?
>
> 2. Does a cargo of heavy fuel oil, transported by a ship and accidentally spilled into the sea, constitute – either in itself or on account of being mixed with water and sediment – waste falling within category Q4 in Annex I to [Directive 2006/12]?
>
> 3. If the first question is answered in the negative and the second in the affirmative, can the producer of the heavy fuel oil (Total raffinage [distribution]) and/or the seller and carrier (Total International Ltd) be regarded as the producer and/or holder of waste within the meaning of Article 1(b) and (c) of [Directive 2006/12] and for the purposes of applying Article 15 of that directive, even though at the time of the accident which transformed it into waste the product was being transported by a third party?"

It is worth recalling that under the preliminary reference regime, the CJEU does not decide the case for the referring court. Instead, the CJEU answers the somewhat abstract questions posed by the referring court and then the latter decides the matter with the benefit of the answers given by the CJEU. It is for that reason that the "judgment" by the CJEU is sometimes referred to, in these circumstances, as preliminary.

Before the CJEU could even consider answer the three questions, it faced a claim of inadmissibility by Total.[10] Total claimed that the CJEU should not entertain the reference for the preliminary ruling because the Commune had already been compensated from the International Oil Pollution Compensation Fund and therefore it had no legal interest in bringing proceedings. Total argued that the reference was therefore hypothetical or moot and therefore should not be entertained.[11] The CJEU rejected this inadmissibility argument without too much concern:

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8 Treaty on the Functioning of the European Union, Art.267.
9 Judgment, para.28.
10 Judgment, paras.29-34.
11 Judgment, para.25.

"30 It is settled case-law that questions on the interpretation of Community law referred by a national court, in the factual and legislative context which that court is responsible for defining and the accuracy of which is not a matter for the Court to determine, enjoy a presumption of relevance. The Court may refuse to rule on a question referred by a national court only where it is quite obvious that the interpretation of Community law that is sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (see, to that effect, Joined Cases C-222/05 to C-225/05 *Van der Weerd and Others* [2007] ECR I-4233, paragraph 22 and the case-law cited).

31 Moreover, according to settled case-law, it is for the national court hearing a dispute to determine both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court (Joined Cases C-393/04 and C-41/05 *Air Liquide Industries Belgium* [2006] ECR I-5293, paragraph 24 and the case-law cited).

32 It may be seen from the documents in the case that the Commune de Mesquer has indeed received payments from the Fund, made following the claim for compensation it brought against *inter alia* the owner of the *Erika* and the Fund. Those payments were the subject of settlements by which the municipality expressly agreed not to bring any actions or proceedings, on pain of having to repay the sums paid.

33 It is apparent that the Cour de cassation had that information before it, but none the less did not consider that the dispute in the main proceedings had ceased or that the Commune de Mesquer had lost its legal interest in bringing proceedings, and did not decide not to refer its questions to the Court for a preliminary ruling.

34 In those circumstances the questions put by the Cour de cassation must be answered."

Having established admissibility, the CJEU then had to consider the legal background before considering the three questions.

PART B: LEGAL BACKGROUND

Introduction

In the typical CJEU case, the court has to consider EU law and possibly Member State law but the CJEU had to deal in this case with EU law, Member State law and public international law.

PUBLIC INTERNATIONAL LAW BACKGROUND

Introduction

There are two conventions which are relevant to the case:

Liability Convention

International Convention on Civil Liability for Oil Pollution Damage adopted at Brussels on 29 November 1969, as amended by the Protocol signed in London on 27 November 1992 (the "Liability Convention") (OJ 2004 L78/32)

Fund Convention

International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage adopted at Brussels on 18 December 1971, as amended by the Protocol signed in London on 27 November 1992 (the "Fund Convention") (OJ 2004 L 78/40)

The Liability Convention

The Liability Convention governs the liability of shipowners for damage caused by the spillage of oil from oil tankers.

The Liability Convention embodies the principle of strict liability but limited to an amount calculated by reference to the tonnage of the ship and establishes a system of compulsory liability insurance.

Under Article II(a) of the Liability Convention, the Convention applies to pollution damage caused in the territory, including the territorial sea, of a Contracting State, and in the exclusive economic zone of a Contracting State established in accordance with international law or, as the case may be, in an area beyond and adjacent to the territorial sea of that State determined by that State in accordance with maritime law and extending not more than 200 nautical miles from the baselines from which the breadth of its territorial sea is measured.

Under Article III(4) of the Liability Convention, "no claim for compensation for pollution damage under this Convention or otherwise may be made against … any charterer (howsoever described, including a bareboat charterer), manager or operator of the ship … unless the damage resulted from their personal act or omission, committed with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result". In the context of this case, that is an important provision because if Total was not guilty of conduct under the last limb of Article III(4) then it would have had no liability to the Commune – the question was therefore could Total (as charterer) be liable under the EU's Waste Directive.

The Fund Convention

The Fund Convention "complements"[12] the Liability Convention by

[12] Judgment, para.6.

establishing a system for compensating victims. The CJEU recalled[13] that the International Oil Pollution Compensation Fund (the "Fund"), which is financed by contributions from the oil industry, can cover up to 135 million SDR (special drawing rights) for an incident before 2003. Under Article 4 of the Fund Convention, victims may bring claims for compensation before the courts of the Contracting State where the damage has been caused, in particular where the Liability Convention does not provide for any liability for the damage in question or where the shipowner is insolvent or released from liability under that Convention. The Protocol of 2003 to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992,[14] establishes an international supplementary fund for compensation for oil pollution damage, to be named 'The International Oil Pollution Compensation Supplementary Fund, 2003', which together with the Fund makes it possible to cover up to 750 million units of account in respect of any one incident after 1 November 2003.

EU LAW BACKGROUND

Introduction

When one examines the judgment, it would appear that the EU law background to the case seems more complicated than it is in reality. This is because there are several directives at play and then there are several provisions within some of those directives at issue.

Directive 75/442: Waste Directive

Directive 75/442 is the main directive at issue. This is the Waste Directive.

The objective of Directive 75/442 is set out in the recitals to the Directive and the third recital provides that the essential objective of all provisions relating to waste disposal must be the protection of human health and the environment against harmful effects caused by the collection, transport, treatment, storage and tipping of waste.

Article 1 of the Waste Directive (Directive 75/442) provides:

"For the purposes of this Directive:

(a) "waste" shall mean any substance or object in the categories set out in Annex I which the holder discards or intends or is required to discard. The Commission … will draw up … a list of wastes belonging to the categories listed in Annex I …

(b) "producer" shall mean anyone whose activities produce waste ("original producer") and/or anyone who carries out pre-processing, mixing or other operations resulting in a change in the nature or composition of this waste;

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13 Judgment, paras.7-8.

14 OJ 2004 L 78, p. 24.

(c) "holder" shall mean the producer of the waste or the natural or legal person who is in possession of it;

…

(e) "disposal" shall mean any of the operations provided for in Annex II, A;

(f) "recovery" shall mean any of the operations provided for in Annex II, B;

(g) "collection" shall mean the gathering, sorting and/or mixing of waste for the purpose of transport."

It is notable that the word "discard" is used in Article 1. This word will be very significant in the ruling.

Article 8 of the Waste Directive (Directive 75/442) provides:

"Member States shall take the necessary measures to ensure that any holder of waste:

– has it handled by a private or public waste collector or by an undertaking which carries out the operations listed in Annex II A or B, or

– recovers or disposes of it himself in accordance with the provisions of this Directive."

Article 15 of the Waste Directive (Directive 75/442) embodies the "polluter pays" principle. It would become the heart of the Commune de Mesquer's case against Total. Article 15 provides:

"In accordance with the "polluter pays" principle, the cost of disposing of waste must be borne by:

– the holder who has waste handled by a waste collector or by an undertaking as referred to in Article 9, and/or

– the previous holders or the producer of the product from which the waste came."

This latter limb – the previous holders or producers of the product from which the waste came – would prove again a central part of the case.

Categories Q4, Q11, Q13 and Q16 in Annex I to Directive 75/442, 'Categories of waste', read as follows:

"Q4 Materials spilled, lost or having undergone other mishap, including any materials, equipment, etc., contaminated as a result of the mishap…

Q11 Residues from raw materials extraction and processing (e.g. mining residues oil field slops, etc.)

Q13 Any materials, substances or products whose use has been banned by law…

Q16 Any materials, substances or products which are not contained in the above categories."

Annex II A to the Directive, 'Disposal operations', is intended to list disposal operations such as they occur in practice, while Annex II B, 'Recovery operations', is intended to list recovery operations in the same way.

Directive 2006/12/EC of the European Parliament and of the Council of

5 April 2006 on waste[15], which drew up a codification of Directive 75/442 in order to clarify matters, repeats the above provisions in Articles 1 and 15 and Annexes I, II A and II B. Directive 2006/12 was not adopted until after the events that are the subject of the main proceedings, however, so that it does not affect those proceedings.

Minimum Oil Stocks Directive: Directive 68/414/EEC

Article 2 of Council Directive 68/414/EEC of 20 December 1968 imposing an obligation on Member States of the EEC to maintain minimum stocks of crude oil and/or petroleum products,[16] as amended by Council Directive 98/93/EC of 14 December 1998,[17] which lays down such an obligation inter alia to cope with any shortages or supply crises, treats fuel oils as a category of petroleum products.

Environmental Liability Directive: Directive 2004/35/EC

Recital 10 in the preamble to Directive 2004/35/EC of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage[18] reads as follows:

> "Express account should be taken of the Euratom Treaty and relevant international conventions and of Community legislation regulating more comprehensively and more stringently the operation of any of the activities falling under the scope of this Directive..."
>
> Article 4(2) of Directive 2004/35 provides:
>
> "This Directive shall not apply to environmental damage or to any imminent threat of such damage arising from an incident in respect of which liability or compensation falls within the scope of any of the International Conventions listed in Annex IV, including any future amendments thereof, which is in force in the Member State concerned."
>
> Annex IV to Directive 2004/35 reads as follows:
>
> "INTERNATIONAL CONVENTIONS REFERRED TO IN ARTICLE 4(2)
>
> (a) the International Convention of 27 November 1992 on Civil Liability for Oil Pollution Damage;
>
> (b) the International Convention of 27 November 1992 on the Establishment of an International Fund for Compensation for Oil Pollution Damage;
>
> …"

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15 OJ 2006 L 114, p. 9.
16 OJ, English Special Edition 1968(II), p. 586.
17 OJ 1998 L 358, p. 100.
18 OJ 2004 L 143, p. 56.

Fund Decision: Decision 2004/246/EC

On 2 March 2004, the Council adopted Decision 2004/246/EC authorising the Member States to sign, ratify or accede to, in the interest of the European Community, the Protocol of 2003 to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992, and authorising Austria and Luxembourg, in the interest of the European Community, to accede to the underlying instruments.[19]

Recital 4 in the preamble to Decision 2004/246 reads as follows:

'Pursuant to the Supplementary Fund Protocol, only sovereign States may be party to it; it is not therefore possible for the Community to ratify or accede to the Protocol, nor is there a prospect that it will be able to do so in the near future.'

Articles 1(1) and 4 of Decision 2004/246 read as follows:

"Article 1

1. The Member States are hereby authorised to sign, ratify or accede to, in the interest of the European Community, the Protocol of 2003 to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992, (the Supplementary Fund Protocol) subject to the conditions set out in the following Articles.

…

Article 4

Member States shall, at the earliest opportunity, use their best endeavours to ensure that the Supplementary Fund Protocol, and the underlying instruments, are amended in order to allow the Community to become a Contracting Party to them."

NATIONAL LAW

The CJEU recalled the relevant provisions of French national law in a single paragraph:

"23 Article 2 of Loi n° 75-633 relative à l'élimination des déchets et à la récupération des matériaux (Law No 75-633 on the disposal of waste and the recovery of materials) of 15 July 1975 (JORF, 16 July 1975, p. 7279), now Article L. 541-2 of the Code de l'environnement (Code of the Environment), provides:

'Any person who produces or holds waste under conditions likely to produce harmful effects on soils, flora and fauna, to damage sites or landscapes, to pollute the air or water, to cause noise and odours and, in general, to harm human health or the environment, is obliged to dispose of it or have it disposed of in accordance with the provisions of this

[19] OJ 2004 L 78, p. 22.

Chapter, under the conditions required to avoid the above effects.
The disposal of waste includes the operations of collection, transport, storage, sorting and treatment required for the recovery of reusable elements and materials or energy, and for the deposit or discharge into the natural environment of all other products under the conditions required to avoid the harmful effects mentioned in the previous paragraph."

RELATIONSHIP BETWEEN EU AND PUBLIC INTERNATIONAL LAW

There have been several CJEU cases dealing with the issue of the relationship between the international law of the sea and EU law. Among these cases are the *Mox Plant*[20] and the *Intertanko*[21] cases. This case clarifies the matter further.

PART C: JUDGMENT BY THE CJEU

Introduction

The preliminary ruling (or, in practical terms, judgment) of the CJEU was delivered by a Grand Chamber of the CJEU. The fact that it was a Grand Chamber reflects the importance of the case.[22]

First question: is heavy fuel oil sold as a combustible fuel "waste" within the meaning of article 1(a) of Directive 75/442?

The first question seems a relatively simple one. The Cour de cassation asked whether heavy fuel oil sold as a combustible fuel may be classified as waste within the meaning of Article 1(a) of Directive 75/442.[23]

The answer seems simple but when money is at stake, everyone can take a different view! Not surprisingly, the Total companies urged the CJEU to take the negative view (namely, that such heavy fuel oil was not waste and therefore outside the Directive) and the Commune argued the opposite (namely, that it was waste and within the scope of the Directive). The Commune argued that

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[20] Case C-459/03 *Commission of the European Communities v Ireland* [2006] ECR I-4635.

[21] Case C-308/06 *The Queen on the application of: International Association of Independent Tanker Owners (Intertanko) and Others v Secretary of State for Transport* [2008] ECR I-04057.

[22] There was an opinion by Advocate General Kokott but this paper is concentrating on the ruling by the CJEU itself. Suffice it to say that the CJEU very largely followed the opinion of the very experienced and expert Advocate General Kokott.

[23] Judgment, para.35.

heavy fuel oil was not only waste but was also within the category of dangerous and illegal products. However, all the Member States which had submitted observations to the CJEU and the Commission took the view that the question should be answered in the negative. How was the CJEU going to address the issue?

The CJEU recalled that under Article 1(a) of Directive 75/442 any substance or object in the categories set out in Annex I to the Directive which the holder *discards or intends or is required to discard* is to be regarded as waste.[24]

So, the issue then turned on the meaning of the term "discard". The CJEU then proceeded on the following lines:

> "38 Thus, in the context of that directive, the scope of the term 'waste' turns on the meaning of the term 'discard' (Case C-129/96 *Inter-Environnement Wallonie* [1997] ECR I-7411, paragraph 26), and consequently, in accordance with the Court's case-law, those terms must be interpreted in the light of the aim of the directive (Joined Cases C-418/97 and C-419/97 *ARCO Chemie Nederland and Others* [2000] ECR I-4475, paragraph 37), which, in the words of the third recital in the preamble to the directive, consists in the protection of human health and the environment against harmful effects caused by the collection, transport, treatment, storage and tipping of waste, having regard to Article 174(2) EC, which provides that Community policy on the environment is to aim at a high level of protection and is to be based, in particular, on the precautionary principle and the principle that preventive action should be taken (see Case C-457/02 *Niselli* [2004] ECR I-10853, paragraph 33).
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> 39 The Court has also held that, in view of the aim pursued by Directive 75/442, the concept of waste cannot be interpreted restrictively (see *ARCO Chemie Nederland*, paragraph 40).
>
> 40 That concept can cover all objects and substances discarded by their owner, even if they have a commercial value and are collected on a commercial basis for recycling, reclamation or reuse (see, in particular, Case C-9/00 *Palin Granit and Vehmassalon kansanterveystyön kuntayhtymän hallitus* [2002] ECR I-3533, paragraph 29 and the case-law cited).
>
> 41 In this respect, certain circumstances may constitute evidence that a substance or object has been discarded or of an intention or requirement to discard it within the meaning of Article 1(a) of Directive 75/442. That will be the case in particular where the substance used is

[24] Judgment, para.37.

a production residue, that is to say, a product not sought as such (*ARCO Chemie Nederland*, paragraphs 83 and 84). The Court has thus said that leftover stone from extraction processes of a granite quarry which is not the product primarily sought by the operator in principle constitutes waste (*Palin Granit*, paragraphs 32 and 33).

42 However, goods, materials or raw materials resulting from a manufacturing or extraction process which is not primarily intended to produce that item may constitute not a residue but a by-product which the undertaking does not wish to discard but intends to exploit or market on economically advantageous terms in a subsequent process without prior processing (see Palin Granit, paragraph 34, and order in Case C-235/02 *Saetti and Frediani* [2004] ECR I-1005, paragraph 35).

43 There is no reason to apply the provisions of Directive 75/442 to goods, materials or raw materials which have an economic value as products regardless of any form of processing and which, as such, are subject to the legislation applicable to those products (see *Palin Granit*, paragraph 35, and order in *Saetti and Frediani*, paragraph 35).

44 However, having regard to the obligation to interpret the concept of waste widely in order to limit its inherent nuisance and harmful effects, the reasoning concerning by-products should be confined to situations in which the reuse of goods, materials or raw materials is not a mere possibility but a certainty, without prior processing and as an integral part of the production process (*Palin Granit*, paragraph 36, and order in *Saetti and Frediani*, paragraph 36).

45 In addition to the criterion of whether a substance constitutes a production residue, a second relevant criterion for determining whether or not the substance is waste within the meaning of Directive 75/442 is thus the degree of likelihood that the substance will be reused without prior processing. If, in addition to the mere possibility of reusing the substance, there is also an economic advantage to the holder in so doing, the likelihood of such reuse is high. In that case, the substance in question can no longer be considered a substance which its holder seeks to 'discard' and must be regarded as a genuine product (see *Palin Granit*, paragraph 37).

46 In the case at issue in the main proceedings, it appears that the substance in question is obtained as a result of the process of refining oil.

47 However, this residual substance is capable of being exploited commercially on economically advantageous terms, as is confirmed by the fact that it was the subject of a commercial transaction and meets the buyer's specifications, as the referring court points out."

The CJEU thereby had regard to the purposive interpretation of the Directive,[25] the notion that the concept of waste cannot be construed restrictively[26] and indeed the concept of waste should be construed widely in order to limit its inherent nuisance and harmful effects,[27] the concept that waste could include something of value[28] and that it was a question of fact as to whether the item was a by product which would not be used again[29] or something which could be exploited or marketed "on economically advantageous terms in a subsequent process without prior processing".[30] However, the CJEU emphasised "the degree of likelihood that the substance will be reused without prior processing. If, in addition to the mere possibility of reusing the substance, there is also an economic advantage to the holder in so doing, the likelihood of such reuse is high. In that case, the substance in question can no longer be considered a substance which its holder seeks to 'discard' and must be regarded as a genuine product."[31]

It followed therefore that the CJEU answered the Cour de cassation's first question in the negative:

> "48 The answer to the first question must therefore be that a substance such as that at issue in the main proceedings, namely heavy fuel oil sold as a combustible fuel, does not constitute waste within the meaning of Directive 75/442, where it is exploited or marketed on economically advantageous terms and is capable of actually being used as a fuel without requiring prior processing."

In other words, where the oil had not been discarded but was actually being transported to be delivered to a customer then it was not waste.

The Schedule of the Waste Directive contained a category which included "materials spilled, lost, or having undergone other mishap, including any materials equipment, etc, contaminated as a result of such a mishap". However, as the CJEU said, this did not mean that the substance was waste, it was necessary to establish that the holder of the waste had intended to "discard" the substance. The heavy duty oil on board the *Erika* was a by-product of the oil-refining process. In earlier judgments, the CJEU had held that by-products or residues could constitute waste if the holder intended to discard the substance. This was so even if the substance had economic value. In this case, the CJEU held that once the oil had spilled into the sea, there was little technical or economic possibility that it could be reused therefore it was waste as it had been "discarded".

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25 Judgment, para.38.
26 Judgment, para.39.
27 Judgment, para.44.
28 Judgment, para.40.
29 Judgment, para.41.
30 Judgment, para.42.
31 Judgment, para.45.

Second question: is heavy fuel oil that is accidentally spilled into the sea following a shipwreck waste within the meaning of category Q4 in Annex I to Directive 75/442?

Introduction

The second question from the Cour de cassation to the CJEU concerned whether "heavy fuel oil that is accidentally spilled into the sea following a shipwreck must in such circumstances be classified as waste within the meaning of category Q4 in Annex I to Directive 75/442."[32]

Submissions to the CJEU

There had been some division in regard to the first question: the Commune on one side (saying pure heavy fuel oil was waste and worse) while Total, the Commission and the Member States, on the other hand, were saying it was not waste. However, there were more complicated and complex divisions opened up by the second question. It is easier to understand those divisions by examining the issue in tabular form:

Party	***Argument***
Commune de Mesquer France Italy Commission	Where hydrocarbons are discharged into the sea, and all the more so if they are mixed with water and sediment, they must be classified as waste within the meaning of Directive 75/442[33]
Total	The mixture consisting of hydrocarbons, water and sediment from the coast constitutes waste only if there is an obligation to dispose of, or recover accidentally spilled hydrocarbons as such and they are indissolubly mixed with the water and sediment[34]
Belgium	The products spilled at sea should be classified not as waste within the meaning of Directive 75/442 but as heavy hydrocarbons within the meaning of the Liability Convention and the Fund Convention[35]
United Kingdom	Accepted that such hydrocarbons may be classified as waste within the meaning of the Directive but considers it preferable for the

32 Judgment, para.49.
33 Judgment, para.50.
34 Judgment, para.51.
35 Judgment, para.52.

accidental spillage of hydrocarbons at sea to be covered *exclusively* by the Liability Convention and the Fund Convention so that Directive 75/442 does not apply in such circumstances[36]

How did the CJEU deal with these arguments?

The CJEU begun by saying that the lists in Directive 75/442 amounted to guidance and that one should look primarily at the holder's actions and the meaning of the term "discard":

> "53 It should be noted, to begin with, that Annex I to Directive 75/442 provides lists of substances and objects that may be classified as waste. However, the lists are only intended as guidance, and the classification of waste is to be inferred primarily from the holder's actions and the meaning of the term 'discard' (see Case C-1/03 *Van de Walle and Others* [2004] ECR I-7613, paragraph 42)."[37]

The CJEU then stated:

> "54 The fact that Annex I to Directive 75/442, entitled 'Categories of waste', refers in point Q4 to 'Materials spilled, lost or having undergone other mishap, including any materials, equipment, etc., contaminated as a result of the mishap' thus merely indicates that such materials may fall within the scope of waste. It cannot therefore suffice to classify as waste hydrocarbons which are accidentally spilled at sea and cause pollution of the territorial waters and then the coastline of a Member State (see, to that effect, *Van de Walle*, paragraph 43)."

Therefore the CJEU had to consider, in the light of the circumstances, "whether such an accidental spillage of hydrocarbons is an act by which the holder discards them within the meaning of Article 1(a) of Directive 75/442"[38] and, in that context, cited paragraph 44 of *Van de Walle*.

The CJEU then turned to the essence of the issue and came to a conclusion on the second question:

> "56 Where the substance or object in question is a production residue, that is to say, a product which is not itself wanted for subsequent use and which the holder cannot reuse on economically advantageous terms without prior processing, it must be regarded as a burden which the holder 'discards' (see *Palin Granit*, paragraphs 32 to 37, and *Van de Walle*, paragraph 46).

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[36] Judgment, para.52.

[37] *Van de Walle and Others* was a controversial decision to the effect that oil which had leaked from a filling station into the ground amounted to waste.

[38] Judgment, para.55.

57 In the case of hydrocarbons which are accidentally spilled and cause soil and groundwater contamination, the Court has held that they do not constitute a product which can be reused without prior processing (see *Van der Walle*, paragraph 47).

58 The same conclusion must be reached in the case of hydrocarbons which are accidentally spilled at sea and cause pollution of the territorial waters and then the coastline of a Member State.

59 It is common ground that the exploiting or marketing of such hydrocarbons, spread or forming an emulsion in the water or agglomerated with sediment, is very uncertain or even hypothetical. It is also agreed that, even assuming that it is technically possible, such exploiting or marketing would in any event imply prior processing operations which, far from being economically advantageous for the holder of the substance, would in fact be a significant financial burden. It follows that such hydrocarbons accidentally spilled at sea are to be regarded as substances which the holder did not intend to produce and which he 'discards', albeit involuntarily, while they are being transported, so that they must be classified as waste within the meaning of Directive 75/442 (see, to that effect, *Van der Walle*, paragraphs 47 and 50).

60 Moreover, the applicability of that directive is not called into question by the fact that the accidental spillage of hydrocarbons took place not on the land territory of a Member State but in its exclusive economic zone."

This is significant because the CJEU decided that because the spillage occurred within the Exclusive Economic Zone (EEZ) of a Member State then the Waste Directive was applicable. Even if the spillage had occurred outside the EEZ then it would still be subject to the Waste Directive because the oil had washed up onto a Member State's territory.

"61 Without there being any need to rule on the applicability of the directive at the place where the ship sank, it suffices to observe that the hydrocarbons thus accidentally spilled drifted along the coast until they were washed up on it, so being discharged on the Member State's land territory.

62 It follows that, in the circumstances of the sinking of an oil tanker such as those at issue in the main proceedings, Directive 75/442 applies *ratione loci*.

63 Consequently, the answer to the second question must be that hydrocarbons accidentally spilled at sea following a shipwreck, mixed with water and sediment and drifting along the coast of a Member State until being washed up on that coast, constitute waste within the meaning of Article 1(a) of Directive 75/442, where they are no longer capable of being exploited or marketed without prior processing."

In essence, the CJEU held that hydrocarbons accidentally spilled at sea following a shipwreck, mixed with water and sediment and drifting along the

coast of a Member State until being washed up on that coast, constitute waste within the meaning of Article 1(a) of Directive 75/442, where they are no longer capable of being exploited or marketed without prior processing.

Third question: whether, in the case of a sinking of an oil tanker, the producer of the oil spilled at sea and/or the seller of the oil and charterer of the ship may be required to pay for the disposing of the waste generated even though the substance was being transported by a third party?

Introduction

The third question from the Cour de cassation to the CJEU concerned whether in the event of the sinking of an oil tanker, the producer of the heavy fuel oil spilled at sea and/or the seller of the fuel and charterer of the ship carrying the fuel may be required to bear the cost of disposing of the waste generated, even though the substance spilled at sea was transported by a third party, in this case a carrier by sea.

Observations Submitted to the CJEU

Just as there had been some division in regard to the first and second questions, there was further division on the third question. It is easier to understand those divisions by examining the issue in tabular form:

Party	***Argument***
Commune de Mesquer	For the purposes of the application of Article 15 of Directive 75/442, the producer of the heavy fuel oil and the seller of that fuel oil and charterer of the ship carrying it must be regarded as producers and holders, within the meaning of Article 1(b) and (c) of that directive, of the waste resulting from the spillage into the sea of that substance[39]
Total	In the circumstances of the case, Article 15 of Directive 75/442 does not apply to the producer of the heavy fuel oil or to the seller of the oil and charterer of the ship carrying that substance, in that, at the time of the accident which converted the substance into waste, it was being carried by a third party.[40] Furthermore, that provision also does not

[39] Judgment, para.65.
[40] Judgment, para.66.

	apply to the producer of the heavy fuel oil simply because it produced the product from which the waste came,[41]
France Italy Commission	The producer of the heavy fuel oil and/or the seller of the oil and charterer of the ship carrying that substance may be regarded as producers and/or holders of the waste resulting from the spillage at sea of that substance *only* if the shipwreck that converted the cargo of heavy fuel oil into waste was attributable to various actions capable of making them liable[42]
Commission	The Commission added however that the producer of a product such as heavy fuel oil may not, merely because of that activity, be regarded as a 'producer' and/or 'holder' within the meaning of Article 1(b) and (c) of Directive 75/442 of the waste generated by that product on the occasion of an accident during transport. Such a person is none the less obliged under the second indent of Article 15 of that directive to bear the cost of disposing of the waste, in his capacity as 'producer of the product from which the waste came'[43]
Belgium	The application of Directive 75/442 is excluded because the Liability Convention applies[44]
United Kingdom	The CJEU should not answer this question, in that the case at issue in the main proceedings relates to issues of liability for the spillage of heavy fuel oil at sea[45]

Findings of the Court on the Third Question

Initially, the CJEU recalled:

"69 In circumstances such as those of the main proceedings, having regard to the aim of Directive 75/442 as stated in the third recital in the preamble

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41 Judgment, para.66.
42 Judgment, para.67.
43 Judgment, para.67.
44 Judgment, para.68.
45 Judgment, para.68.

to the directive, the second indent of Article 15 of the directive provides that, in accordance with the 'polluter pays' principle, the cost of disposing of the waste is to be borne by the previous holders or the producer of the product from which the waste came.

70 Under Article 8 of Directive 75/442, any 'holder of waste' is obliged to have it handled by a private or public waste collector or by an undertaking which carries out the operations listed in Annex II A or B to the directive, or to recover or dispose of it himself in accordance with the provisions of the directive (Case C-494/01 *Commission v Ireland* [2005] ECR I-3331, paragraph 179).

71 It follows from those provisions that Directive 75/442 distinguishes the actual recovery or disposal operations, which it makes the responsibility of any 'holder of waste', whether producer or possessor, from the financial burden of those operations, which, in accordance with the 'polluter pays' principle, it imposes on the persons who cause the waste, whether they are holders or former holders of the waste or even producers of the product from which the waste came (*Van de Walle*, paragraph 58).

72 The application of the 'polluter pays' principle within the meaning of the second sentence of the first subparagraph of Article 174(2) EC and Article 15 of Directive 75/442 would be frustrated if such persons involved in causing waste escaped their financial obligations as provided for by that directive, even though the origin of the hydrocarbons which were spilled at sea, albeit unintentionally, and caused pollution of the coastal territory of a Member State was clearly established."

As the oil constituted waste for the purposes of the Waste Directive, the CJEU then considered the issue of the apportionment of liability. The CJEU court noted that as Article 15 of the Waste Directive provides that having regard to the "polluter pays" principle, the costs of the disposal of waste must be borne by the waste holder who has waste handled by a waste collector or a waste undertaking, and/or the previous holder or producer of the product from which the waste came.

Consideration by the CJEU of the Terms 'Holder' and 'Previous Holders'

The CJEU spent time on the meaning of the terms "holder" and "previous holders":

"73 The Court has held, in the case of hydrocarbons spilled by accident as the result of a leak from a service station's storage facilities which had been bought by that service station to meet its operating needs, that those hydrocarbons were in fact in the possession of the service station's manager. The Court thus found that, in that context, the person who, for the purpose of his activity, had the hydrocarbons in stock when they became waste could be regarded as the person who 'produced' them within the meaning of Article 1(b) of Directive 75/442. Since he is at once the possessor and

the producer of that waste, such a service station manager must be regarded as its holder within the meaning of Article 1(c) of that directive (see, to that effect, *Van de Walle*, paragraph 59).

74 In the same way, in the case of hydrocarbons spilled by accident at sea, it must be held that the owner of the ship carrying those hydrocarbons is in fact in possession of them immediately before they become waste. In those circumstances, the shipowner may thus be regarded as having produced that waste within the meaning of Article 1(b) of Directive 75/442, and on that basis be categorised as a 'holder' within the meaning of Article 1(c) of that directive.

75 However, that directive does not rule out the possibility that, in certain cases, the cost of disposing of waste is to be borne by one or more previous holders (*Van de Walle*, paragraph 57)."

Determination of Who is Liable to bear the Costs of Disposing of the Waste

The CJEU then continued:

"76 …the question which arises is whether the person who sold the goods to the final consignee and for that purpose chartered the ship which sank may also be regarded as a 'holder', a 'previous' one, of the waste thus spilled. The referring court is also uncertain whether the producer of the product from which the waste came may also be responsible for bearing the cost of disposing of the waste thus produced.

77 On this point, Article 15 of Directive 75/442 provides that certain categories of persons, in this case the 'previous holders' or the 'producer of the product from which the waste came', may, in accordance with the 'polluter pays' principle, be responsible for bearing the cost of disposing of waste. That financial obligation is thus imposed on them because of their contribution to the creation of the waste and, in certain cases, to the consequent risk of pollution.

78 In the case of hydrocarbons accidentally spilled at sea following the sinking of an oil tanker, the national court may therefore consider that the seller of the hydrocarbons and charterer of the ship carrying them has 'produced' waste, if that court, in the light of the elements which it alone is in a position to assess, reaches the conclusion that that seller-charterer contributed to the risk that the pollution caused by the shipwreck would occur, in particular if he failed to take measures to prevent such an incident, such as measures concerning the choice of ship. In such circumstances, it will be possible to regard the seller-charterer as a previous holder of the waste for the purposes of applying the first part of the second indent of Article 15 of Directive 75/442.

79 As noted in paragraph 69 above, in circumstances such as those of the main proceedings, the second indent of Article 15 of Directive 75/442 provides, by using the conjunction 'or', that the cost of disposing of the

waste is to be borne either by the 'previous holders' or by the 'producer of the product from which' the waste in question came.

80 In this regard, in accordance with Article 249 EC, while the Member States as the addressees of Directive 75/442 have the choice of form and methods, they are bound as to the result to be achieved in terms of financial liability for the cost of disposing of waste. They are therefore obliged to ensure that their national law allows that cost to be allocated either to the previous holders or to the producer of the product from which the waste came.

81 As the Advocate General observes in point 135 of her Opinion, Article 15 of Directive 75/442 does not preclude the Member States from laying down, pursuant to their relevant international commitments such as the Liability Convention and the Fund Convention, that the shipowner and the charterer can be liable for the damage caused by the discharge of hydrocarbons at sea only up to maximum amounts depending on the tonnage of the vessel and/or in particular circumstances linked to their negligent conduct. That provision also does not preclude a compensation fund such as the Fund with resources limited to a maximum amount for each accident from assuming liability, pursuant to those international commitments, in place of the 'holders' within the meaning of Article 1(c) of Directive 75/442, for the cost of disposal of the waste resulting from hydrocarbons accidentally spilled at sea.

82 However, if it happens that the cost of disposal of the waste produced by an accidental spillage of hydrocarbons at sea is not borne by that fund, or cannot be borne because the ceiling for compensation for that accident has been reached, and that, in accordance with the limitations and/or exemptions of liability laid down, the national law of a Member State, including the law derived from international agreements, prevents that cost from being borne by the shipowner and/or the charterer, even though they are to be regarded as 'holders' within the meaning of Article 1(c) of Directive 75/442, such a national law will then, in order to ensure that Article 15 of that directive is correctly transposed, have to make provision for that cost to be borne by the producer of the product from which the waste thus spread came. In accordance with the 'polluter pays' principle, however, such a producer cannot be liable to bear that cost unless he has contributed by his conduct to the risk that the pollution caused by the shipwreck will occur."

As the CJEU observed that "a producer cannot be liable to bear that cost unless he has contributed by his conduct to the risk that the pollution caused by the shipwreck would occur", the CJEU basically held that there would be a requirement that a degree of "negligence" is required before imposing liability in these circumstances.

"83 The obligation of a Member State to take all the measures necessary

to achieve the result prescribed by a directive is a binding obligation imposed by the third paragraph of Article 249 EC and by the directive itself. That duty to take all appropriate measures, whether general or particular, is binding on all the authorities of the Member States including, for matters within their jurisdiction, the courts (see Case C-106/89 *Marleasing* [1990] ECR I-4135, paragraph 8, and *Inter-Environnement Wallonie*, paragraph 40).

84 It follows that, in applying national law, whether the provisions in question were adopted before or after the directive or derive from international agreements entered into by the Member State, the national court called on to interpret that law is required to do so, as far as possible, in the light of the wording and the purpose of the directive, in order to achieve the result pursued by the directive and thereby comply with the third paragraph of Article 249 EC (see, to that effect, *Marleasing*, paragraph 8).

85 Moreover, contrary to the arguments put forward by the Total companies at the hearing, the Community is not bound by the Liability Convention or the Fund Convention. In the first place, the Community has not acceded to those international instruments and, in the second place, it cannot be regarded as having taken the place of its Member States, if only because not all of them are parties to those conventions (see, by analogy, Case C-379/92 *Peralta* [1994] ECR I-3453, paragraph 16, and Case C-308/06 *Intertanko and Others* [2008] ECR I-0000, paragraph 47), or as being indirectly bound by those conventions as a result of Article 235 of the United Nations Convention on the Law of the Sea, signed at Montego Bay on 10 December 1982, which entered into force on 16 November 1994 and was approved by Council Decision 98/392/EC of 23 March 1998 (OJ 1998 L 179, p. 1), paragraph 3 of which confines itself, as the French Government pointed out at the hearing, to establishing a general obligation of cooperation between the parties to the convention."

The CJEU thus held, at paragraph 85 of the ruling, that the EU cannot succeed the Member States as party to an international agreement where not all the EU Member States are parties to the agreement. Put another way, the EU was not a party to the Conventions nor were all its Member States; accordingly, it was not bound by these treaties.

"86 Furthermore, as regards Decision 2004/246 authorising the Member States to sign, ratify or accede to, in the interest of the Community, the Protocol of 2003 to the Fund Convention, it suffices to state that that decision and the Protocol of 1993 cannot apply to the facts at issue in the main proceedings.

87 It is true that Directive 2004/35 expressly provides in Article 4(2) that it is not to apply to an incident or activity in respect of which liability or compensation falls within the scope of any of the international conventions

listed in Annex IV, which mentions the Liability Convention and the Fund Convention. The Community legislature, as stated in recital 10 in the preamble to that directive, found it necessary to take express account of the relevant international conventions regulating more comprehensively and more stringently the operation of any of the activities within the scope of that directive.

88 However, Directive 75/442 does not contain a similar provision, even in the codified version resulting from Directive 2006/12."

The CJEU thus answered the third question as follows:

"89 In the light of the above considerations, the answer to the third question must be that, for the purposes of applying Article 15 of Directive 75/442 to the accidental spillage of hydrocarbons at sea causing pollution of the coastline of a Member State:

– the national court may regard the seller of those hydrocarbons and charterer of the ship carrying them as a producer of that waste within the meaning of Article 1(b) of Directive 75/442, and thereby as a 'previous holder' for the purposes of applying the first part of the second indent of Article 15 of that directive, if that court, in the light of the elements which it alone is in a position to assess, reaches the conclusion that that seller-charterer contributed to the risk that the pollution caused by the shipwreck would occur, in particular if he failed to take measures to prevent such an incident, such as measures concerning the choice of ship;

– if it happens that the cost of disposing of the waste produced by an accidental spillage of hydrocarbons at sea is not borne by the Fund, or cannot be borne because the ceiling for compensation for that accident has been reached, and that, in accordance with the limitations and/or exemptions of liability laid down, the national law of a Member State, including the law derived from international agreements, prevents that cost from being borne by the shipowner and/or the charterer, even though they are to be regarded as 'holders' within the meaning of Article 1(c) of Directive 75/442, such a national law will then, in order to ensure that Article 15 of that directive is correctly transposed, have to make provision for that cost to be borne by the producer of the product from which the waste thus spread came. In accordance with the 'polluter pays' principle, however, such a producer cannot be liable to bear that cost unless he has contributed by his conduct to the risk that the pollution caused by the shipwreck will occur."

PART D: CONCLUSIONS

Ultimately, however complicated the preliminary ruling by the CJEU would appear, it is nothing compared to the ultimate process in France. The Cour de cassation gave a judgment in 2012. The judgment was, in the finest French tradition, just one sentence long. However, that sentence was 330 pages long! The Cour de cassation found that Total was, no pun intended and with a little poetic licence, totally liable.

The *Commune de Mesquer* reasoning has been followed by the CJEU since. For example, Advocate General Kokott followed the approach on 13 December 2012 in Case C-358/11 *Lapin elinkeino-, liikenne- ja ympäristökeskuksen liikenne ja infrastruktuuri –vastuualue*. Equally, Advocate General Jääskinen followed the same approach on 18 June 2013 in Joined Cases C-241/12 and C-242/12 *Shell Nederland Verkoopmaatschappij BV and Belgian Shell NV*. Moreover, the CJEU followed the approach on 28 February 2012 in *Inter-Environnement Wallonie ASBL, Terre Wallonne ASBL v Région Wallonne*.[46] Equally, the reasoning has been followed in Member State courts as well in a non-maritime context.[47]

The case is extremely important because it not only decides that oil spilt from tankers becomes waste and thereby give the opportunity for third parties to claim compensation under the Waste Directive over and above any compensation which they could obtain under public international law. However, the case probably has a greater significance: it demonstrates how the CJEU will almost always ensure that no law (whether national or international) will stand in the way of EU law. And, in that regard, the result was perhaps not surprising: the CJEU has since the outset insisted that EU law is a special legal regime and has fought valiantly to ensure the supremacy of EU law over Member State law and that Member States or public international law do nothing to undermine EU law; this case is another example, but in a new field, of that intention and commitment by the EU's highest court.[48]

This is a conference paper only. No liability is accepted for its contents. Readers should seek specialist legal advice before making a decision on the matters considered in the paper. Comments welcome: vpower@algoodbody.com

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[46] Case C 41/11.

[47] *Usk and District Residents Association Ltd v An Bord Pleanála, Ireland and the Attorney General, Kildare County Council (Notice Party) and Greenstar Recycling Holdings Ltd (Notice Party),* 2008 No.1071JR, High Court of Ireland, 8 July 2009, [2010] 2 I.L.R.M. 235 (MacMenamin J.).

[48] Case 26/62 *NV Algemene Transporten Expeditie Onderneming van Gend en Loos v Nederlandse Administratis der Belastingen* [1963] ECR 1 and Case 6/64 *Flaminio Costa v ENEL* [1964] ECR 585.

THE "PRESTIGE" IN THE AMERICAN COURTS

Carlos Llorente*

This is a brief description and analysis of the Prestige case in the American Courts. I will mention first some general facts and information about the story (The "Facts") and abut the legal proceedings arising out of the sinking of the vessel ("Litigation: A General Perspective") and, afterwards, I will focus on the long and winding road followed by the parties in conflict before the US federal courts ("The US decisions"). Some final conclusions will also be provided ("Conclusions")

1. The Facts

The Prestige was a single-hull oil tanker built in accordance to ABS Rules 1973. She was delivered in 1976. The Prestige was inspected periodically by ABS and listed in the ABS Record of Vessels with her class at all times. Right before the incident affecting the Prestige, she was inspected in Guangzhou (China) in April 2-19, 2001 (5-year revision) and in the United Arab Emirates in May 15-22, 2002 (annual revision). At the time of the sinking, the Prestige was flagged in the Commonwealth of the Bahamas (1994) and her registered owner was a Liberian company, Mare Shipping, Inc. The shipowner was Universe Maritime, Ltd. (Greece) and she was chartered to a Swiss company, Crown Resources, AG, owner of the oil carried by the ship at the time.

The Prestige was loaded with fuel oil at Saint Petersburg (Russia) on October 2002 and at Ventspils (Latvia) on November 2002. She was bound for Gibraltar where she was to receive further orders. On November 13, 2002, the Prestige was located near the Spanish coastline when waters entered into her in the middle of a storm suffering structural damages, which lead to her breaking in two and sinking on November 19 with 77,000 tons of fuel oil (+ 3 million gallons) at 140 miles off Finisterre (La Coruña, Spain). Environmental and economic damages were enormous.

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2. Litigation: A general Perspective

Out of the Prestige catastrophe, several legal proceedings were initiated. The most important ones arose in Spain and in the USA.

In Spain, criminal charges were filed against the master, the engineer officer, the first officer and the Merchant Shipping General Director (a Spanish Government official). Civil liability (tort) was also instituted simultaneously, before the same Court, against the insurer (London Club) and the FIDAC (direct liability) and against the registered owner, the shipowner and the "Reino de España" (subsidiary liability). ABS took no part in the proceedings.

The Spanish proceedings were investigated by the local court ("Juzgado de Primera Instancia e Instrucción nº 1") of Corcubión (La Coruña) and heard and decided by the Provincial Court ("Audiencia Provincial") of La Coruña. The decision was rendered in November 13, 2013. The accused parties were acquitted of criminal liability for environmental damages and only the Master, Mr. Mangouras, was declared guilty of disobedience to the authorities. No tort liability was imposed. The decision sent general waves of discomfort, but the Court was very clear in declaring that no liability could be imposed if no evidence of the origin of the disaster was provided.

Almost in parallel with the Spanish proceedings, claims against ABS, the Prestige's classification society, were initiated in the USA. At first, some Spanish regional authorities tried to open the way but they were soon *convinced* to let this task in the hands of the national government. Therefore, the "Reino de España" in its own name and in the name of others, as trustee, filed a claim against ABS (head and subsidiaries) before the federal courts of New York in petition of compensatory and punitive damages on the basis of ABS reckless classification, certification and inspection of the Prestige as a ship qualified to carry fuel oil (tort liability). Proceedings started in May 16, 2003 and finished in August 29, 2012 (over 9 years). The Courts involved were a) the District Court for the Southern District of New York (DC) and b) the Court of Appeals for the Second Circuit (CA). And four decisions were issued during the proceedings. The first one (January 2, 2008) dismissed the claim (DC). The second one (June 12, 2009) vacated the first decision and remanded for further proceedings (CA). The third decision (August 3, 2010) dismissed the claim again (DC). And, finally, the fourth decision (August 29, 2012) confirmed the previous decision from the DC (dismissal) but on alternative grounds (CA).

3. The US decisions

a) First decision

In this first stage of proceedings, ABS essentially moved for "summary judgment" dismissing the claim of Spain on the basis of the CLC (one of ABS's dismissal grounds).

[The CLC is the International Convention on Civil Liability for Oil Pollution Damage 1969/1992, where a strict and limited liability system is applied to the owner of the polluting ship (article III.1 and 4) and exceptionally to "other persons" (article III.4). The CLC contains specific jurisdiction rules in article IX]

The DC accepted ABS's arguments and dismissed the claim on the basis of articles III.4b and IX.1 CLC.

The decision's rationale was as follows:

a) CLC applied to ABS since classification societies were a "person" in the sense of article III.4b ("*the pilot or any other person who, without being a member of the crew, perform services for the ship*").

b) Exclusive jurisdiction to hear cases based on the CLC is vested on the courts of the Contracting State in whose territory the incident had caused pollution (article IX.1). Pollution had affected Spain, which, as a Contracting State, must have filed its claim before the Spanish Courts. Therefore, on the basis of the CLC, US Courts had no jurisdiction to hear the claim.

The decision from the DC merits two comments:

a) The USA was not a CLC Contracting State (and the DC knew this), so the DC's jurisdiction should have been determined in accordance with the proper jurisdiction rules in force in the US.

b) The DC develops a "contractual theory" in support of the CLC's application: Spain is a CLC Contracting State. International Conventions, like CLC, create legal obligations akin to those created by contracts. Spain must respect its compromises under the CLC and refrain from filing claims out of the courts expressly mentioned in article IX.1 CLC.

b) Second decision

Spain appealed the DC decision and the CA vacated it and remanded for further proceeding consistent with its decision.

The decision's rationale was based on the following arguments:

a) The DC erred in holding that the CLC deprived it of jurisdiction to hear the claim. The US is not a CLC Contracting State and the CLC therefore is not applicable in the US.

b) The DC must ground its jurisdiction on the jurisdiction rules in force in the US.

c) The DC is not required to exercise its jurisdiction if discretionarily decides to apply principles of "forum non conveniens" or international comity.

d) If the DC wants to exert jurisdiction, a proper conflicts-of-law analysis must be conducted to determine which law governs the case.

The CA arguments were simply "PIL in a nutshell", a swift and concise reminder of the basic PIL concepts which the DC should have applied (but did not, for unclear reasons). The CA was also kind enough to provide the DC with arguments to step out of the case by pointing to venues like the "forum non conveniens" or international comity.

c) Third decision

When the litigation returned to the DC, the jurisdiction of the Court was no longer an issue. The DC accepted its subject-matter jurisdiction on the basis of diversity/admiralty grounds in accordance with jurisdiction rules in force in the US (page 1 of the decision: "*The Court has jurisdiction of the action pursuant to 28 §§ 1332 and 1333*"). The road was now open for the real battle: the determination of the applicable law and the analysis of the ground issues in accordance with such law.

In this respect, the DC performed first a conflict-of-laws analysis on the basis of federal maritime case-law (the "Lauritzen Triad" and subsequent decisions) and concluded that US law was applicable (federal maritime law + NY common law of torts) because the US was the place where the facts leading to the claim occurred (ABS acted following instructions coming from the US, irrespective of the inspection places). Spain had argued for the application of US law (or, alternatively, Spanish law). And ABS had requested the application of the law of the Bahamas (flag) or, alternatively, the law of China (inspection country) or of the United Arab Emirates (inspection place).

Moving to the ground issues, the DC identified the legal question as the following: whether a classification society which has provided services in respect of a vessel is liable for damages caused to a third party (coastal State) by a vessel's failure, on the basis of a recklessly-performed classification.

And the DC answered in the negative.

The DC argued that no precedent existed (or had not been provided) supporting the proposition advanced by Spain (framed in the legal question described above). On the contrary, previous court decisions on similar cases had put forward another arguments: a) the shipowner is ultimately (and the only person) responsible for furnishing a seaworthy vessel); b) Fees earned by classification societies are disproportionately inferior to claimed damages; c) Agreements between classification societies and shipowners clearly and expressly exclude classification societies liability vis a vis third parties; and d) there is no relation or contact whatsoever between classification societies and damaged third parties (principle of proximity).

d) Fourth decision

Finally, the CA affirmed the DC decision, but on alternative grounds.

Two ideas deserve some attention here.

First. The CA ignored the legal rule discussed at the DC level, i.e., that classification societies are not liable to coastal states for damages originated by ships recklessly classified by them.

And second. The dismissal of the claim, affirmed by the CA, was based on the fact that Spain had not provided enough evidence to convince a reasonable jury that ABS acted recklessly in the classification of the Prestige. This is probably the weakest part of the decision, which is as to say its biggest flaw. Probably, the letter (the "Kostazos fax") sent in August 2002 to an ABS

subsidiary by a former Prestige master alerting ABS of grave mechanical and structural problems aboard the vessel would have received a different evidentiary treatment by a court in another jurisdiction. But, apparently, according to standard agency principles in force in US law such communication was of no use at all as a warning to prevent a catastrophe like the Prestige.

4. Conclusions

The outcome of the proceedings brought by the Reino de España against ABS in the US suggests several conclusions:

a) Spain was really unlucky with the management of the case by the DC in its first decision. Almost 5 years passed by before the issue of jurisdiction was finally solved. This is absurd in terms of time and of the quality of the work that should have been expected from the DC. Another court with a basic understanding of PIL issues would have produced a faster and fairer result. And Spain (both parties, in fact) would have saved time and money.

b) Spain was lured into the nightmare of "mermaid calls" of (punitive) damages with unfortunate consequences. It is not the first time foreign claimants get similar results after similar attempts to obtain what they cannot get in their own jurisidiction. But the Reino of Spain should have known better.

c) One could also question whether the liability of classification societies in US law vis a vis third parties was well-settled law so as to authorize entering into a long litigation abroad, having in mind in particular the litigation costs, which in the end fall on the (Spanish) tax payer.

IS THERE A PLACE FOR THE REGULATION OF OFFSHORE OIL PLATFORMS WITHIN INTERNATIONAL MARITIME LAW? IF NOT, THEN WHERE?

Dr Rosalie Balkin*

The topic for discussion is whether there is a place for the regulation of offshore oil platforms within international maritime law. More specifically, I have been asked to comment on whether such platforms are to be regarded as "ships" and whether their regulation fits within the legal framework governing maritime matters or whether it falls more properly within the ambit of another sector.

Whether or not to regulate is not just a legal issue

The first point to note is that **the international regulation of offshore platforms is not purely a legal issue** but one involving a number of other factors, including financial and political implications, and, at least in the IMO context, it has largely been these other factors that have been decisive () as to whether or not to regulate in any specific situation.

So, for example, in the wake of the **Achille Lauro** terrorist incident, the international community, acting through IMO, showed no hesitation in adopting not only a convention to provide an international legal basis for action to be taken against persons suspected of committing unlawful acts against ships-introducing for the first time the "prosecute or extradite" principle- but also a protocol extending that legal basis in respect of fixed platforms located on the continental shelf, the so-called **Suppression of Unlawful Acts Convention and Protocol of 1988**.

Then again, following the 9/11 terrorist attacks in the United States, the SUA instruments were reviewed by IMO's Legal Committee, and two new instruments were adopted in 2005, with the specific purpose of strengthening the ability of states to take action in such circumstances—including widening the list of offences which would qualify as unlawful acts and allowing for the right of boarding vessels suspected of being involved in such unlawful acts.

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Both the 1988 treaty instruments as well as their 2005 counterparts entered into force relatively quickly.

In the oil pollution context, IMO has regulated offshore structures. One example being the **1990 International Convention on Oil Pollution Preparedness, Response and Cooperation (OPRC)**, which, *inter alia,* requires parties to respond to oil pollution incidents from offshore oil rigs, without, however, establishing a liability and compensation regime.

IMO has also produced a number of **recommendations and resolutions** concerning pollution caused by offshore installations. For example, in **2009**, IMO adopted a **Code for the Construction and Equipment of Mobile Offshore Drilling Units**, aimed at facilitating the international movement and operation of MODUs, and ensuring a level of safety for both the units and their personnel, equivalent to that required by the SOLAS and Load Lines Conventions, but not addressing liability and compensation issues. The Code does not contain a definition of "ship".

No need to limit regulation of offshore oil structures to "ships"

In none of the above instances was the question specifically whether the offshore rigs qualified as ships—despite the fact that IMO's mandate, as set out in **article 1(a) of the Convention on the International Maritime Organization** revolves around the regulation of "**shipping engaged in international trade"** and **the facilitation** of the **"adoption of the highest practicable standards in matters concerning maritime safety, efficiency of navigation and prevention and control of marine pollution from ships"**.

Nor has article 1(a) precluded the Organization from regulating, over the years, matters as diverse as piracy, ship recycling and air pollution from ships, even though these do not fall strictly within the precise terms of the article. In other words, a measure of "jurisdictional creep" can be said to have happened. This is a perfectly healthy development and one that has been tacitly approved by Member States of the Organization and indeed by the United Nations itself in its annual UN General Assembly resolution on Oceans and the Law of the Sea.

However, when the Delegation of Indonesia, in the wake of the **Montara** incident, recently sought to have the Legal Committee develop an international treaty regime governing liability and compensation for damage resulting from offshore oil exploration and exploitation, following intensive debate over several sessions, the Committee ultimately decided not to develop such a treaty regime, but rather merely to develop guidance to assist states interested in pursuing bilateral or regional arrangements.

This was a far cry from the Committee's initial decision, at its ninety-seventh session, to recommend to the IMO Council that the High Level Action Plan of the Organization be changed to accommodate within the Committee's work programme the study of liability and compensation issues for

transboundary pollution damage resulting from offshore oil exploration and exploitation activities- which did not preclude the development of an international treaty regime (though it also did not expressly include it).

What led to this change of heart?

The IMO Council, instead of agreeing to the Committee's recommendation, had requested the Committee to re-examine this issue and report back to it on the outcome of this re-examination- a clear signal that it did not wish the Committee to proceed with the development of a new treaty regime covering such damage.

The Council had been influenced in its decision by the arguments put forward by those Council Member States opposed to any idea of international regulation including the argument that this was not part of IMO's mandate, which was said to be confined to vessel-sourced pollution. Another such argument put forward against the Legal Committee's development of an international liability and compensation treaty regime was that oil spills from offshore rigs differ from those from ships, in that offshore exploration and exploitation activities are normally carried out on the continental shelf of states and are regulated by national law and bilateral or regional arrangements, making the need for a uniform, global regime, questionable.

But these arguments, in my estimation, were really just smokescreens. As we have just seen, IMO's mandate has, over the years, been significantly expanded where there has been the political will to do so. The Council and the Committee's ultimate change of heart in this instance were based on political rather than legal considerations. It had very little to do with whether offshore oil platforms can be defined as ships or indeed whether IMO is the competent international body to deal with such matters. The delegations most vigorous in pursuing the line that IMO was not the proper forum to develop a liability and compensation regime for damage consequent on spills from oil exploration and exploitation were mainly those from states with large or growing oil exploration and exploitation industries, which did not relish the idea of international regulation.

Can offshore oil platforms be properly described as "ships"?

As to the question whether offshore oil platforms may properly be described as ships, it is also interesting to survey the IMO conventions, for again we find no consistency in approach and, indeed, even the term "ship" itself has been differently defined in different contexts.

The IOPC Funds, in 2011, commissioned an analysis by Professor Vaughan Lowe QC as to whether the term "ship" in the **1992 Civil Liability and Fund Conventions** includes vessels that are for the time being used for the storage of oil, i.e., "floating storage and offloading units" (FSUs).

His analysis centred on the definition of the term "ship" in **article 1 of both of the Conventions**, namely:

"**any seagoing vessel and any seaborne craft of any type whatsoever constructed or adapted for the carriage of oil in bulk as cargo**, provided that a ship capable of **carrying oil and other cargoes** shall be regarded as a ship only when it is **actually carrying oil in bulk as cargo** and **during any voyage** following such carriage unless it is proved that it has no residues of such carriage of oil in bulk aboard".

Professor Lowe's conclusion was that FSUs were not ships within this definition, taking into account particularly that the elements of "carriage of oil" "as cargo" and that of undertaking a "voyage" need to be present and that the main criterion implicit in the definition is the capacity to navigate at sea. Nor do FSUs, designed and constructed as stationary facilities, satisfy that element of the definition that requires the seagoing vessel or craft to be "constructed or adapted" for the carriage of oil by sea.

However, purpose –built FSUs which have their own independent motive power and steering equipment for seagoing navigation, so as to be employed **either as storage units or for carriage of oil in bulk as cargo,** would classify as ships under the CLC/Fund definitions.

Based on this analysis, a fortiori, fixed offshore installations would also not generally qualify as "ships" for CLC/Fund purposes.

The Lowe analysis has not been without its critics, an alternative view being that, where a vessel is constructed **solely** for the carriage of oil (and **not** for other cargoes as well), the proviso is not applicable and therefore it is irrelevant whether the vessel is actually engaged on a voyage or not.

This notion that the proviso only applies to combination carriers was upheld by the Greek Supreme Court in the *Slops* case (the only decision of a national court directly on the point). The court held that, in order to fall within the definition of "ship" under the CLC/ Fund Conventions, it was sufficient for seaborne vessels merely to have the capability of movement by self-propulsion or by towage, as well as the ability to carry oil in bulk as cargo.

Irrespective of whether one accepts the Lowe point of view, it does not necessarily follow that offshore installations, whether of the floating or fixed variety, could never be regarded as "ships". As Lowe also recognised in his opinion, there is no single internationally accepted definition of the term "ship". This is not a deficiency in international law because what counts as a "ship" may vary from one context to the next. This all depends on the will of states when drawing up any particular international convention.

Contrast, for example, the **2001 International Convention on Civil Liability for Bunker Oil Pollution Damage**, which defines the term "ship" differently, as meaning simply:

"any seagoing vessel and seaborne craft, of any type whatsoever".

Without the qualifiers contained in the Civil Liability and Fund Conventions, this definition is arguably wide enough to cover floating and perhaps also fixed oil installations and to trigger the compulsory insurance

mechanism of that Convention. A Correspondence Group established under the aegis of the Legal Committee to facilitate ratification and to promote harmonized implementation of the Bunkers Convention was convinced that mobile offshore drilling units (MODUs) were "ships" for this purpose—they did not however address the issue of fixed platforms. The **1996 Hazardous and Noxious Substances Convention** contains a similarly worded definition.

With regard to offshore oil platforms, it is interesting to compare the definition of "ship" contained in the 1969 Civil Liability Convention with another IMO convention of the same date, namely, the **International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties**. The Intervention Convention (article I(2)) defines a "ship" as meaning:

> "(a) any seagoing vessel of any type whatsoever, and
>
> (b) any floating craft, with the **exception** of an installation or device engaged in the exploration and exploitation of the resources of the seabed in the ocean floor and the subsoil thereof".

It accordingly expressly and deliberately excludes oil platforms from the ambit of the Convention.

The Intervention Convention, like the Civil Liability Convention, was negotiated and adopted by the Legal Committee in the direct aftermath of the **Torrey Canyon** disaster. Both were consciously intended to fill a gap in international maritime law, which at that time, was not sufficiently developed so as to allow coastal states to intervene and take action to protect their shorelines from oil spills caused by foreign registered ships on the high seas. The two Conventions were intended to complement each other. The Intervention Convention provided the legal basis for coastal states to take practical action that might be considered "reasonably necessary" in such circumstances, (without, however, actually listing any such measures). One example might be moving the vessel further out to sea. The Civil Liability Convention, by comparison, provided the legal basis for recovery of damages consequent upon such disasters.

For the purposes of the Intervention Convention and, if one accepts the Lowe opinion, also the Civil Liability and Fund Conventions, offshore oil platforms appear to be treated as part of the offshore exploration and exploitation operation, under the jurisdiction of the coastal state, rather than as seagoing "ships" under the jurisdiction of the flag state.

The different definitions of "ship" in the various IMO conventions are instructive in that they are tailored to what the parties want to achieve, and not to any preconceived or immutable definition of a "ship". Other international treaty regimes, not developed under IMO, have been more direct in their approach.

The **1974 (London) Convention on Civil Liability for Oil Pollution Damage resulting from Exploration and Exploitation of Seabed Mineral**

Resources (CLEE), although it never entered into force, is a case in point. It contains liability and compensation provisions modelled on the Civil Liability Convention (strict liability/limited liability/channelling/direct action) but applies these expressly to offshore installations (as defined in the convention) rather than to "ships".

In similar vein the **1974** industry agreement among major oil companies, the **Offshore Pollution Liability Agreement (OPOL)** similarly provides compensation for damage caused by oil pollution originating from offshore fixed or mobile facilities belonging to these companies which operate in the waters of one of the designated European states.

Does regulation of offshore oil platforms fall within the legal framework governing maritime matters?

The final issue I was asked to address was whether the regulation of offshore platforms falls within the legal framework governing maritime matters or whether it falls more properly within the ambit of another sector.

To answer this question one perhaps needs to go back to **basic principles of international maritime law**, including the various provisions in **UNCLOS**:

– imposing obligations on states to prevent, reduce and control pollution of the marine environment from seabed activities and from artificial islands, installations and structures under their jurisdiction (articles 192 and 2O8);
– requiring states to adopt laws and take other measures to implement applicable international rules and standards established through competent international organizations or diplomatic conferences to prevent, reduce and control pollution of the marine environment arising from or in connection with seabed activities subject to their jurisdiction and from artificial islands, installations and structures under their jurisdiction (article 214);
– requiring states to ensure that recourse is available in accordance with their legal systems for prompt and adequate compensation or other relief for damage caused by pollution of the marine environment by natural or juridical persons under their jurisdiction (article 235(2)); and
– requiring states to cooperate in the development of international law relating to responsibility and liability for compensation for damage caused by pollution of the marine environment, as well as, where appropriate, development of criteria and procedures for payment of adequate compensation, such as compulsory insurance or compensation funds (article 235(3)).

These provisions of UNCLOS do not in themselves establish an existing international liability and compensation regime for such damage, but rather impose a legal obligation on states to establish such a regime or regimes.

UNCLOS therefore clearly envisages that these issues belong in the maritime sector.

There are other international instruments that call on states to amend their national law to recognize a transboundary pollution claim, such as **article 15** of the **ILC Articles on Prevention of Transboundary Harm from Hazardous Activities, 2001**, or to develop international law to cover liability and compensation for adverse effects of environmental damage caused by activities under their jurisdiction, for example, **principle 13** of the **Rio Declaration on Environment and Development**, but these do not explicitly single out the marine environment. Nonetheless, they do not detract from the view that the regulation of structures such as offshore installations rightly belongs in the maritime sector.

Perhaps the more pertinent question is **whether IMO is the proper forum** for the development of such regulations or whether other United Nations agencies, such as the International Seabed Authority or the United Nations Environment Programme (UNEP), possibly acting together with IMO, might be more appropriate candidates for championing any international convention for such purposes; or whether none of the above is suitable and whether the matter is better left to regional or bilateral negotiations between states.

Concluding remarks

By way of concluding I would just reiterate that:

– there appears to be no internationally accepted definition of "ship";
– different conventions employ the term to cover whatever it is they wish to include;
– whether or not to regulate offshore platforms is not just a legal issue;
– no need to limit regulation of offshore oil structures to "ships";
– these issues belong in the maritime sector.

LIMITATION OF LIABILITY

CMI COMMENTARY AND LIST OF ISSUES FOR CONSIDERATION OF FUTURE WORK

Helen Noble*

1. The background and work of the International Sub-Committee on Limitation of Liability in Maritime Law to date

In 2004 a questionnaire was prepared and distributed to the NMLA's with a view to finding out what rules of procedure had been enacted in the 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 in order to implement the provisions of these conventions.

The questionnaire was prepared by Professor F. Berlingieri (Italy) with the assistance of Dr. G Timagenis (Greece).

The responses were digested and analysed and the findings presented at the colloquium held in Cape Town in February 2006 and published in the Yearbook 2005-2006.

In November 2006, 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 HNS Convention. The mandate of the International Sub-Committee was to prepare draft guidelines relating to procedural rules in maritime law.

The first meeting of the International Sub-Committee was held in Dubrovnik during the joint symposium of the CMI and the Croatian Maritime Law Association on Saturday 12 May 2007 under the chairmanship of Professor F. Berlingieri (Italy) and Dr G. Timagenis (Greece) as Co-chairman and Rapporteur.

A second meeting of the International Sub-Committee was held in Paris on 13-14 September 2007 under the chair of Dr Timagenis. Draft guidelines were prepared and considered. Mrs Helen Noble (Ireland) was subsequently appointed as Rapporteur of the International Sub-Committee.

Following the meeting of the International Sub-Committee in Paris considerable work was undertaken drafting guidelines at the 39th CMI

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conference in Athens in October 2008 and the "Guidelines in respect of Procedural Rules Relating to Limitation of Liability in Maritime Law" being adopted at the Plenary Session in Athens in October 2008.

The International Sub-Committee met in London on 25-26 March 2010. A report of that meeting and a list of further questions/issues for consideration was circulated to the NMLA's.

This material was also circulated with the papers for the assembly in Buenos Aires in October 2010.

Although the subject matter was not included in the business for the Buenos Aires colloquium, the International Sub-Committee held a brief informal meeting in Buenos Aires. It was decided to undertake some further editing on the list of questions and issues and to update the Commentary on the "Procedural Rules relating to Limitation of Liability in Maritime Law" adopted at the Athens Conference.

The editing and update to the commentary was completed and prepared for circulation at the Assembly in Oslo September 2011. A further brief report on the work of the International Sub-Committee following the Athens conference and a list of substantive issues relating to Limitation of Liability In Maritime Law was circulated on 13 February 2012 to all NMLAs and to members of the International Sub-Committee.

2. Introductory Notes and Commentary on the Guidelines in Respect of Procedural Rules Relating to Limitation of Liability in Maritime Law

At the Athens conference final guidelines were adopted at the Assembly. During the process of drafting guidelines the International Sub-Committee had prepared Introductory Notes and commentary on each of the proposed guidelines. These introductory notes and the commentary were not circulated at the Athens conference in advance of the Guidelines being adopted at the Assembly.

Following adoption of the Guidelines at the Assembly, the introductory notes and commentary were adjusted so as to be in line with the final version of the Guidelines and were circulated amongst the International Sub-Committee for final agreement in July 2012.

On receipt of all comments from the International Sub-Committee, in particular from Måns Jacobsson and Tomotaka Fujita, the introductory notes and commentary were finalised in August/September 2012

The final version of the Guidelines together with introductory notes and commentary are available on the CMI website. A copy is also available on the symposium website under the section "Presentations".

3. Substantive issues

The purpose behind circulating the list of substantive issues to the

NMLA's on 13 February 2012 was not to invite comment on the substantive issues or to obtain replies to the questions posed but for the International Sub-Committee to finalise its list of further questions the NMLA's and the International Sub-Committee might consider in undertaking further work in the future on this area.

Replies were received from Denmark, Turkey, China, Norway, Argentina and Belgium. Belgium posed additional questions it believes should be considered by the NMLA's. These additional questions have been incorporated into an updated list of issues which is as follows:

1. What are the Consequences of non participation to the Limitation Fund? Can the claims be exercised against other assets of the owner? What is the purpose/value of limitation of liability by the shipowner (or any other person entitled to limit its liability) in circumstances where participation in the fund is optional and/or there is nonparticipation and claims can be exercised against other assets?

2. What time limits should apply for Filing Claims with the Limitation Fund? Is it appropriate to co-ordinate the time limit for filing claims with the applicable time bar of the claims subject to limitation or may/should the time limit for participation in the limitation proceedings be shorter?

3. What are the effects of a declaration of bankruptcy on limitation of liability, if bankruptcy is declared [a] after the limitation or [b] before the limitation? Does the bankruptcy of one of the persons entitled to limitation for a particular incident affect the position of the others? If the shipowner becomes bankrupt, is its liability insurer (e.g. P&I Club, especially if it becomes directly liable) entitled to limit liability? Is a claimant entitled to participate in both the limitation fund and bankruptcy proceedings or not?

4. Do maritime liens survive after limitation? Do actions in rem, i.e. against the vessel, fall under Art. 1 and 2 of LLMC? Is there a possibility of maritime liens in relation to pollution damage claims and, if so, do such liens survive limitation of liability?

5. Should interim payments out of the limitation fund be permitted? if so, against a security or without security?

6. How do you resolve the conflicts between Article XII and XII of the CLC, Art. 42 HNSC and Art. 6 Bunker Convention?

7. How do you resolve conflict of law issues between Arts. 14 and 15 of the LLMC and Art. 15 of Rome II?

8. How do you resolve the jurisdiction, recognition and enforcement issues raised by the ECJ decision Maersk Olje)?

9. What rate of interest on the limitation amount should accrue before and/or after the fund is established?

10. Which court is entitled to hear and decide on challenges to the validity of a limitation fund? Is it the country where the limitation fund

is constituted or can claimants filing suit in other countries raise objections to the validity of the fund in the courts where they have filed suit?

11. How do you deal with limitation in relation to ships not measured under the 1969 Tonnage Convention?

12. What is the ship owner's right to limit liability vis-à-vis other persons (in particular charterers)?

13. When and where can limitation proceedings be initiated and the fund established under the LLMC?

14. How is the LLMC applied to ships with dual passenger capacity?

15. Can Claimants challenge (in the context of limitation proceedings) claims of other claimants adjudicated in proceedings in which the challenging claimants did not participate under the CLC and / or HNSC?

16. What procedure applies in your country for invoking limitation? Is there a specific method for filing an application to invoke limitation of liability? How long does this procedural step take?

17. What is the nature of a recourse claim in your country? For example, if there is a collision between Vessel A and Vessel B. Two crew members on board Vessel B die. The claims of the relatives of the crew members against the shipowner of Vessel B are claims for loss of life. If shipowner B then files a recourse claim still a claim in respect of loss of life (which could require a separate fund) or is it a claim for consequential loss under Article 2.19a) of the LLMC?

A copy of this updated outstanding list of issues is contained in the conference papers and is available on the symposium website.

Helpfully as it transpired, substantive replies to the list of questions were in fact received from the NMLA's of Denmark, Turkey, China, Norway and Argentina. The responses from these NMLA's are to be found again on the conference website. I have taken the liberty of collating these into one document in an accessible format to make the responses easier for review and to compare. The responses demonstrate that the issues raised are problematic and that the issues are treated differently (as anticipated) in different jurisdictions and/or their national laws do not deal at all with the issues raised. There appears to be no uniform approach to the issues raised. There may therefore be potentially a gap for further assistance at the international level in the form of additional guidelines.

4. The effects of a declaration of bankruptcy on limitation of liability, if the bankruptcy is declared before or after the limitation, and other issues. Consideration of future work on this topic for the CMI and linkage to cross border insolvencies

One of the questions posed was what are the effects of a declaration of

bankruptcy on limitation of liability, if the bankruptcy is declared [a] after the limitation or [b] before the limitation?[1]

The preliminary view of the International Sub-committee was that (a) if bankruptcy becomes effective prior to limitation, there should be no entitlement to limit liability and (b) if the bankruptcy became effective after the limitation, the limitation fund should not be affected.

The replies from China, Argentina, Turkey, Denmark and Norway demonstrate that this may well not be the case in all jurisdictions.

In accordance with the view of the International Sub-Committee, the Chinese NMLA, noted that in China, if a debtor has been declared bankrupt, a debtor would not be permitted subsequently to apply to the maritime courts to constitute a limitation fund as a debtor is not permitted to constitute special security for only some of its creditors.

However in China where the fund is constituted before a debtor is declared bankrupt, it appears the limitation fund, if constituted by the debtor's own capital, should be treated as part of the debtor's property and should be distributed amongst all creditors.

In Argentina the position is prescribed under section 5577 of the Navigation Act which provide that where a bankruptcy becomes effective after the commencement of limitation proceedings, the limitation fund continues even if the ship owner is declared bankrupt, provided the owners right to limit has not been challenged or declared to have lapsed. There is no provision dealing with the situation where the bankruptcy becomes effective prior to the commencement of limitation proceedings but it is assumed the same solution applies.

Preferential creditors will be entitled to pursue their claims against the vessel and the ship owner will still be able to limit its liability.

Under Turkish law it appears the ship owner would still have the benefit of limitation even in the case of bankruptcy and would be entitled to limitation upon the arrest of his vessel. In accordance with the list of priorities set out in Article 1390 – 1397 of the New Turkish Commercial Code ("N. TCC" – in effect from 1 July 2012), all creditors that remain unsatisfied after distribution of the ship's judicial same may participate in bankruptcy proceedings. However, a maritime claimant who has received its pro rata share form the limitation fund is not permitted to apply to the bankruptcy proceedings for any shortfall.

In Denmark it appears the position is that there are no rules which specifically govern the situation. It is not clear exactly therefore what the

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[1] In this regard after or before limitation means after or before the establishment of the fund under Guideline 6 (c) which provides that the Limitation of Liability becomes provisionally effective at the time of the establishment of the Fund.

consequences of bankruptcy are when declared after a limitation fund has been established. There is a suggestion that the fund may not be amalgamated into the bankruptcy estate for distribution to all creditors on equal terms -the argument being that limitation funds are set up to cover claims for damage and should only be available for payment of claims subject to the limitation of the ship owner's liability.

Where the bankruptcy is declared before the establishment of the limitation fund, the Danish NMLA point out that an issue is only likely to arise if the claims against the ship owner are not covered by his P&I Club. Ordinarily, bankruptcy means that the claimants will instead raise their claim directly against the P&I Club who may then in turn invoke limitation and establish a limitation fund with the same rights at the ship owner. Such limitation fund established by the P&I Club (albeit in the name of the ship owner) after bankruptcy would in their view be dealt with independently and separately from the bankruptcy.

The Danish NMLA add, that in their opinion, a bankruptcy estate is strictly speaking not precluded from establishing a limitation fund itself if it considers this to be to the advantage of the creditors. However, since the liquidator/trustee of the bankruptcy estate could be held liable for such a decision if it turns out to be to the detriment of the other creditors, it is difficult to envisage a situation in which this would occur.

In Norway, in accordance with article 177 sub-paragraph 3 of the Maritime Code it appears the limitation fund established is regarded as constituted only for the benefit of and payment of all claims subject to such limit of liability. The fund has the character of a special security for the payment of the limitable claims, and the court shall distribute the fund and effect payments of the amount allocated to the particular established claims even if the person having established the limitation fund is subsequently declared bankrupt.

If the person liable has been declared bankrupt before a limitation fund has been established, in Norway any claim has to be submitted in the bankruptcy proceedings. However, the amount of each of the limitable claims to be taken into account as a debt in the bankruptcy proceeding is equivalent to the actual liability of the debtor i.e. proportionate to the limitation amount.

As pointed out by the Norwegian NMLA, questions relating to the effect of the person liable being declared bankrupt before a limitation fund has been established are not likely to arise in cases where the person liable has adequate liability insurance. According to the CLC and Bunkers Conventions (and corresponding provisions of the Norwegian Maritime Code) the rules on compulsory liability insurance and the rules on the claimants' right to direct action against the liability insurers mean that in such a case a limitation fund to cover the limitable claims will have to be established by the liability insurer. According to the Norwegian Insurance Contract Act 1989 claimants generally

are granted a direct action against the liability insurer if the person liable has become insolvent. This provision will be applicable in cases where the person liable has been declared bankrupt before a limitation fund has been established according to the 1976/1996 Convention. However, a liability insurer being held liable for claims subject to limitation according to the 1976/1996 Convention is entitled to limit his liability e.g. by establishing a limitation fund on behalf of the assured.

Following on from this first question on the effect of bankruptcy, the International Sub-Committee queried whether the bankruptcy of one of the persons entitled to limitation for a particular incident affects the position of the others. The answers to this question suggest that there may be more uniformity in approach. In China it appears if others are involved in the same accident, and they bear respective liabilities with the bankrupt, the bankruptcy does not affect the position of them. In Argentina, the bankruptcy of one of the persons entitled to limitation, does not affect the position of the others. In Denmark the position is that it does not directly affect the position of others. However, if the parties are jointly liable, the bankruptcy of one party could mean that the claims against other the party will increase. Finally In Norway, according to Article 171 of the Maritime Code, which is based on 1976/1996 Convention article 1, a number of persons are granted the right to invoke limitation of liability. Any of these persons being liable for limitable claims is entitled to invoke limitation of liability, regardless of whether one or more of the other persons mentioned is without liability for such claims or does not invoke limitation. The fact that one or more of such persons has been declared bankrupt does not affect the right to limitation of liability of the others.

China, Argentina, Demark and Norway are also harmonised in their approach that when an owner becomes bankrupt, it's liability insurer (e.g. the P&I Club, especially if it becomes directly liable) is entitle to limit liability.

Finally a question that appears to have largely not be considered is whether a claimant is entitled to participate in both the limitation fund and bankruptcy proceedings? In China although there is no decided case, the answer seems to lie in the timing of the bankruptcy proceedings. In Argentina it appears a claimant can participate in both proceedings if necessary. In Denmark again timing is possibly where the answer lies. The Danish NMLA have pointed out in their replies that it is not exactly clear what the consequences of bankruptcy are when declared after a limitation fund has been established. If the claimant has filed his claim in the limitation fund, and the claim is subject to limitation and the limitation fund is upheld irrespective of the bankruptcy, then it would seem to follow that the claimant has no grounds to claim anything further against the bankruptcy estate because the claimant is then already fully secured for his (limited) claim.

In Norway a claimant is entitled to submit his claim both in the limitation proceedings and the bankruptcy proceedings. However, if the claim as subject

to limitation is paid out of the fund, the liability of the debtor is extinguished, and claimant may not also receive a dividend from the bankruptcy proceedings. If the limitation fund has been established by an insurer, the insurer may be entitled by way of subrogation to enforce the claim made in the bankruptcy proceedings.

5. Summary

The answers to the questions relating to the bankruptcy certainly suggest there may be scope to consider whether further procedural rules might assist in a uniform approach to implementation of the limitation conventions, particularly given certain issues do not seem to have been considered in the implementing legislation in individual jurisdictions.

MARINE INSURANCE

THE PROSPECTIVE REFORM OF MARINE INSURANCE LAW IN THE UK

D. Rhidian Thomas*

Introduction

In 2006 the Law Commissions for England and Wales and Scotland (hereafter the 'Law Commissions') embarked upon a joint review of insurance law contracts (hereafter the' joint project'). The object was not to examine the law of insurance in its generality but to focus on some of the most often identified criticisms of the law and, if merited, to formulate reform proposals. The review was not directed in the particular direction of marine insurance though some issues relating to marine insurance were identified. Nonetheless, the wider recommendations of the Law Commissions, if accepted, will inevitably have a potential impact on marine insurance.

The Law Commissions have so far published a number of very valuable documents which reward study, composed of 9 issues papers, 3 consultation papers, six summaries of responses to the consultation papers and one report. These documents are available at http://lawcommission.justice.gov.uk

The deliberations of the Law Commissions in relation to business insurance (as compared with consumer insurance) have yet to materialise as firm proposals but it is anticipated that their recommendations will be contained in a final report and draft bill to be published in early 2014, with the possibility of new legislation being enacted in the 2014-2015 session of Parliament.

It is important, therefore, to bear in mind that the topics identified and comments made in this paper are about prospective reform; they do not indicate firm and final proposals for reform. It is also not to be assumed that the conclusions of the Law Commissions, to the extent that they may be anticipated, attract universal agreement. On some issues there remains an animated debate.

It is also important to be aware that the Law Commissions have indicated

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that whatever they propose will be in the nature of default and not mandatory provisions. They will apply, therefore, only to the extent that the parties have not provided for the contrary. It follows that ultimate control will continue to reside with contracting parties.

It has also been indicated by the Law Commissions that some of their recommendation, which they consider not to be contentious, will be proceeded with immediately, in the hope that they will pass quickly into law. Others will be deferred.

Recommendations to be advanced expeditiously relate to:

(a) duty of pre-contract disclosure;
(b) law of warranties;
(c) damages for late payment of claims, and
(d) insurer's remedies for fraudulent claims
(e) contracting out of the proposals

(A) Duty of pre-contract disclosure

The core of the existing law is set out in s.18 (1) and (2) of MIA 1906.

(1) Subject to the provisions of this section, the assured must disclose to the insurer, before the contract is concluded, every material circumstance which is known to the assured, and the assured is deemed to know every circumstance which, in the ordinary course of business, ought to be known by him. If the assured fails to make such disclosure, the insurer may avoid the contract.

(2) Every circumstance is material which would influence the judgment of a prudent insurer in fixing the premium, or determining whether he will take the risk.

Proposals for reform:

(i) The assured's duty is to make a 'fair presentation' of the risk; the test to be applied from the perspective of the insurer.

The assured must make an accurate summary of the risk and in appropriate circumstances the insurer should be prompted by the information provided to make further enquires. The parties must be encouraged to have regard to each other's interests. The duty will encompass substantive and procedural obligations, so to bury a material piece of information in a mountain of documentation would not necessary amount to a fair presentation of the risk.

(ii) Where the assured is a corporate entity, the concept of 'actual and constructive knowledge' should be clarified, particularly the question of attribution.

(a) With regard to actual knowledge – the knowledge of the highest level of management, ie the board or equivalent, and of the person who

arranged the insurance, should represent the actual knowledge of a corporate insured.

(b) With regard to constructive knowledge – the knowledge which a corporate insured 'ought to know' to be defined with particularity - should know the information which would have been discovered by reasonable enquires which are proportionate to the size, nature and complexity of the company.

(iii) Remedies for non-disclosure

(a) dishonest non- disclosure – insurer may avoid the policy and retain the premium;

(b) innocent/negligent non-disclosure- insurer's remedy varies according as to how the insurer would have responded had the insured made a fair presentation of the risk.

(i) refused the insurance – avoid the policy
(ii) insisted on different terms – those terms deemed to exist from inception
(iii) demanded a higher premium – reduce proportionately the amount to be paid on claims

(B) Warranties

Under the existing law a breach of warranty results in the automatic and irrevocable termination of cover, unless the policy provides otherwise.

MIA 1906 s.33(3) provides –

A warranty…is a condition which must be exactly complied with, whether it be material to the risk or not. If it be not so complied with, then, subject to any express provision in the policy, the insurer is discharged from liability as from the date of the breach of warranty, but without prejudice to any liability incurred by him before that date.

Proposals for reform:

(i) Breach of warranty to be treated as 'suspensive' – insurer not liable for the period the assured is in breach;
(ii) breach of a warranty which is designed to reduce a particular risk (e.g. fire) – the insurer is entitled to reject only claims relating to that risk;
(iii) 'basis of contract' clauses rendered void – these are clauses which

(C) Damages for late payment of claims

Under the existing common law damages are not recoverable for the late settlement of an insurance claim. This is because of the way compensation payable under an insurance policy is characterised under the common law as the payment of damages.

Proposal for reform:

A term be implied into an insurance contract that the insurer will pay valid claims within a reasonable period of time. In the event of breach of the implied term, damages only recoverable. It would not be capable of amounting to a repudiatory breach which could be accepted as terminating the insurance.

(D) Insurer's remedies for fraudulent claims

Over the last twenty years or so this issue has been developed significantly in the case-law. The outcome was that a fraudulent claim did not amount to breach of the duty of utmost good faith, but at common law the entire claim was forfeited, both the dishonest and any honest elements of the claim. There continues to be uncertainty on the question whether a fraudulent claim amounts to a repudiatory breach of the insurance contract, which the insurer can elect to accept as terminating the contract, with resulting loss of cover as to the outstanding part of the contract.

Proposals for reform:

Remedies of insurers

(i) assured forfeits the whole claim to which the fraud relates, and also
(ii) forfeits any claim arising after the date of the fraud, but
(iii) retains the right to recover in respect of legitimate claims made before the fraud was perpetrated.

(E) Contracting out of the proposals

As previously indicated, parties will be free to contract out in whole or part from these proposals should they become law.

To achieve such an opt-out the Law Commissions have proposed that to be valid the clause which seeks to produce this result must be clear and unambiguous, and with its consequences sufficiently brought to the attention of the assured.

Recommendations to be deferred

(1) Marine policies

This is an aspect of the law which continues to carry some historical baggage which rests uneasily with modern practice.

MIA 1906 s.22 provides –

…a contract of marine insurance is inadmissible in evidence unless it is embodies in a marine policy in accordance with this Act. The policy may be executed and issued either at the time when the contract is concluded, or afterwards.

s.88 provides:

Where there is a duly stamped policy, reference may be made, as heretofore, to the slip or covering note, in any legal proceedings.

Proposal for reform:

The legal requirement of a formal marine policy be abolished and necessary amendments be made to other sections of the MIS 1906.

(2) Placing brokers

This is an area of the law addressed by sections 53 and 54 of MIA 1906. The existing law may be reduced to the following proposition:

Where marine cover is effect by a broker acting on behalf of an assured the following propositions apply –

(a) The broker is responsible for payment of the premium but retains the right to claim the premium from the assured;

(b) The broker has a lien upon the policy as against the assured for the amount of the premium and associate charges; and a general lien for monies owing under all accounts.

(c) If the policy acknowledges receipt of the premium, this is conclusive as against the assured but not the broker.

(d) Following payment of the premium by the assured to the broker, in the event that it is not transmitted onwards to the insurer, the insurer has no right to sue the assured.

(e) The insurer is directly responsible to the assured for the payment of losses under the policy.

Proposals for reform:

The law relating to brokers be recast in the traditional framework of the law of agency. The primary obligation to pay premium to be on the assured, but it remains the case that the obligation could be discharged through a broker. When this is the case the broker is acting as agent of the assured. It remains open to the broker to assume a personal contractual obligation to pay the premium to the insurer. Independently of contract, the broker is to continue to guarantee payment of the premium, to be achieved by imposing on broker and assured a joint and several obligation to pay the premium.

The implications of this approach are –

(a) The insurer has a direct right of action against the assured for the premium. He may sue either the broker or the assured;

(b) Premium paid by the assured to the broker is received by the latter as agent, and does not amount to payment to the insurer. In the event of the broker's insolvency, insurer and assured take their protection under the relevant client money rules formulated by the Financial Services Authority; and

(c) The broker does not possess an independent right to sue the assured for the premium

It is also proposed that the broker's lien be retained but in the form of a right of retention, and not restricted to a lien over the physical policy. The right of retention is established when the broker has paid the premium, when under an obligation to do so.

It is also proposed that the broker's general lien be retained as a matter of law, but the extent to which third party interests are protected from the application of the lien should be clarified.

(3) Insurable interest

Although recommendations are made in respect to the concept of insurable interest in other areas of insurance, it is proposed that the MIA 1906, sections 4 – 15, which address the subject of insurable interest, should continue without amendment.

Conclusion

This paper provides a very terse summary of what has been and continues to be a very comprehensive and detailed review of insurance law.

It has not been the occasion to analyse and comment on the proposals.

The right to contract out from the proposals which ultimately come forth from the Law Commissions has previously been noted and it is anticipated that contracting out will be widespread in the marine insurance market, as is candidly acknowledged by the Law Commissions.

YOUNG LAWYERS

LIMITATION OF LIABILITY – CUTTING CABLES AND BREAKING LIMITATION.

David Kavanagh*

Introduction

The recent Canadian Federal Court decision of the honourable Sean J. Harrington and the subsequent Federal Court of Appeal decision in Société Telus Communications –v- Peracomo Inc. 2011 FC 494 caused quite a stir.

Those decisions gouged a large hole in the Convention on Limitation of Liability for Maritime Claims (the "London Convention") which had provided a limitation of liability which up until these cases had been considered, in common law jurisdictions at any rate, virtually unbreakable.

The limitation of liability of ship owners and other parties is a key factor in the smooth working of the shipping industry. Historically, by limiting the liability of ship owners in certain prescribed circumstances to maximum amounts the growth of shipping has been encouraged.

In this case, a claim made was made against a shipowner for $980,433.54, of which $892,395.32 was admitted. Interest of almost $250,000 arose on top of that sum. If the limitation under the London Convention applied, the shipowner's liability would have been limited to $500,000. So the importance of securing the limitation for the shipowner was clear.

The Facts

The case concerns the liability for damage to a fibre optic cable which had been laid by Société Telus ("Telus") across the St Lawrence River in Quebec.

In 1999 Telus laid two fibre optic cables across the St. Lawrence river. One of those cables was called the "Sunoque 1".

Peracomo Inc., a company, was the owner of the vessel, the Realice, which was engaged in snow crab fishing at the time of the incident. Mr Réal Vallée was the sole shareholder and the president of Peracomo Inc. He had been a fisherman since the age of 15 and he was 57 years old when the incident occurred in 2006.

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In June 2005 one of the anchors used by Mr. Vallée became caught on the Sunoque 1. Mr Vallée pulled the anchor to the surface. The cable was brought to the surface with the anchor. The anchor was freed from the cable.

The next year on 6th June 2006, while fishing again in the same area, one of Mr Vallée's anchors again became hooked on the cable. This time when the cable was brought to the surface, Mr Vallée was able to take the cable onto his boat and cut through it with a circular saw, having been unable to do so with a hand saw, in order to free his anchor. A few days later, when he once again became hooked on the cable, he brought the cable to the surface and cut through it again.

Some weeks later, when Mr. Vallée realised what he had done he contacted his lawyer and his insurers. His insurers denied coverage. He made a voluntary statement to the Quebec police force and was charged with committing mischief by wilfully damaging property and interfering with the lawful use, enjoyment or operation of a communication service but was later acquitted.

The Realice was arrested by Telus who also took an action in personam against Peracomo and Mr Vallée for the damage to the cable. Mr Vallée and Peracomo joined their insurers, RSA, as third party to the proceedings.

In the Federal Court, the Defendants were found liable for the damage and the action against the third party was dismissed.

Facing an order for damages in excess of $1 million, understandably Mr. Vallée and Peracomo tried to limit their liability under Article 4 of the London Convention.

Article 4 of the London Convention provides that:

> " A person shall not be entitled to limit his liability if it is proved that the loss resulted from his *personal* (emphasis added) act or omission, committed with the intent to cause such loss, or recklessly and with knowledge that such loss would probably result.

Limitation of Liability under the London Convention

The requirement to prove the "personal" act or omission in Article 4 of the London Convention is an onerous one. There are no examples of the burden being overcome in Irish law or English Law. The Realice case is a Canadian case. There was a suggestion in the English case of Gudermes and St Jacques II, discussed later, that the court may have been prepared to break the limitation but as the matter was only discussed at a preliminary application stage, no decision was ever made by the Court on the point in that case.

Generally, this is how the Convention works.

The person seeking the protection of the limitation (the "claimant") simply invokes the limitation or constitutes a fund with a competent authority such as the Court in which proceedings have been instituted.

Article 1 of the Convention tells us who is entitled to claim the limitation. Amongst those parties is a Shipowner which is defined as "an owner, charterer,

manager and operator of a seagoing ship". The Irish implementing legislation, The Merchant Shipping (Liability of Shipowners and Others Acts) 1976, removes the necessity for a ship to be "seagoing".

Once it is established that the claimant is entitled to the benefit of the limitation, then the burden of proof to show that the claimant is not entitled to its protection shifts to the person seeking to remove it.

In order to succeed, the person seeking to avoid the limitation must prove that the act or omission of the claimant which caused the loss was a personal act or omission. This has been construed very narrowly to date.

It must then be shown that the personal act or omission was committed either

(a) With intent to cause such loss; or

(b) Recklessly and with knowledge that such loss would probably result.

Each of those points will now be discussed in relation to the Realice decision.

Shipowner & Loss

First of all, it was necessary to show that the loss and the party claiming the protection of the Convention fall within its definitions. The Court in this case found as a matter of fact that the loss was of a nature that allowed the Peracomo and Mr. Vallée to invoke the limitation. Furthermore both Peracomo and Mr. Vallée were eligible to invoke the limitation as both fall within the definition of Shipowner in Article 1.

Personal Act or Omission

The next part of the formula that had to be examined was the idea of "personal act or omission".

The Court examined whether Peracomo and Mr. Vallée had caused the loss by their personal act or omission. It found on the facts that the personal act or omission of Mr. Vallée and Peracomo, as Mr. Vallée was its alter-ego, had been clearly established.

It found that Mr. Vallée intentionally and deliberately cut the cable in two with an electric saw.

It found that the owner of the Realice, Peracomo Inc. was liable for Mr. Vallée's actions, not only vicariously, but, more importantly with respect to Article 4, also personally. Peracomo Inc. was a one-man company. Mr. Vallée was its directing mind or alter-ego. His act or omission was the corporation's act or omission.

With intent to cause such loss

The Court then looked at whether Mr. Vallée and Peracomo had acted with intent to cause such loss and found that they had.

The Court found that the "loss" was the diminution in value of the cable, not the cost of its repair. Mr. Vallée intentionally cut the cable. He intended the damage to it. He didn't think that the cable would be repaired because he thought it had no value. However, as far as the Court was concerned, that did not mean that he did not intend to damage the cable thereby causing the loss to Telus.

On that basis, the Court found that Mr. Vallée and Peracomo had lost the protection of the London Convention.

Recklessly and with knowledge that such loss would probably result

Although it was not required to do so as it had already decided that the limitation of liability had been overcome, the Court went on to look at the second possibility that Peracomo and Mr. Vallée committed the act recklessly and with knowledge that such loss would probably result. It was stressed that both elements must be present. It was not enough to merely establish one.

In relation to recklessness, the Court stated that recklessness connotes a "mental attitude or indifference to the existence of risk". He cited the cases of "The Leerort" and "The Saint Jacques II and Gudermes" in deciding that Mr. Vallée's act was reckless and was committed with knowledge that that loss which actually occurred would likely result. Both cases are instructive in fleshing out our understanding of the framework in which a claim for limitation can be challenged.

In "The Leerort", the Leerort was anchored on a berth in Colombo harbour when it was struck by another vessel, the Zim Piraeus, as it entered the harbour. The collision resulted in a breach in one hold of the Leerort, which caused flooding and damage to its cargo. The owners of the Zim Piraeus sought a decree of limitation. This was contested. It was held that the test required a foresight of the loss that actually occurred. Both reckless conduct and knowledge that the relevant loss would probably result must be established. In the case of a collision, the limitation could only be avoided if it could be shown that the ship that was responsible for the collision either intended to collide or acted recklessly and with knowledge that it was likely to collide with the ship.

In "The Gudermes and Saint Jacques II" case the Saint Jacques II was navigating across the Traffic Separation Scheme, as a rogue vessel contravening regulation 10 of the Collisions Regulations. Both the skipper, who owned the vessel, and the deckhand were aware of the contravention. They were doing it to reach the fishing grounds before the other vessels. The Saint Jacques II collided with the Gudermes. The owners of the Gudermes issued proceedings against the owners of the Saint Jacques II claiming damages. The owners of the Saint Jacques II applied summarily for judgment and a limitation decree and sought that the Defence of the owners of the Gudermes be struck out. The Admiralty Registrar at first instance dismissed

the application of the owners of the Saint Jacques II. The matter was appealed to the Queen's Bench Division where it was again dismissed. It was dismissed because as Mr. Justice Gross put it,

> *"there was was a real prospect of the first defendants (owners of Gudermes) succeeding at trial in defeating the claimants' (owners of Saint Jacques II) right to limit"*

He discussed the test and found that while it is necessary to establish "knowledge" separately, risk and knowledge are not unconnected and will often stand or fall together. Although it was not before the court at that point, as it was a summary application, Mr. Justice Gross said that knowledge of the probability of a collision, whether with Gudermes or with some other vessel, would suffice for the purposes of Article 4.

From the discussion of Article 4 the difficulty for any party that tries to contest the invoking of the limitation of liability is clear to see.

Conclusion

The decisions in the Realice case, while interesting, do not, in my view, weaken the protection offered by the London Convention.

The Realice decision turned on its own facts. If anything can be drawn from the case, it is the possible vulnerability of vessels which are owned and operated by the same party. The personal act required by Article 4 is unlikely to be found in cases involving large corporations. In the case of a vessel owned by a large corporation, it is unlikely that the Shipowner will ever be close enough to the vessel to have carried out the personal act required.

Therefore, the limitation under the London Convention remains a very strong protection and the Realice decision, although instructive, hardly changes matters.

AN OVERVIEW OF THE MARITIME LABOUR CONVENTION AND ITS IMPLICATIONS FOR MODERN SHIPPING[1]

Darren Lehane BL[2]

I. Introduction

1.1 The Maritime Labour Convention was adopted at the 94th (Maritime) Session of the International Labour Conference (ILO) in Geneva on 23 February 2006.[3] The ILO is a specialised UN agency which seeks to promote social justice and internationally recognised human and labour rights.

1.2 The aim of the conference was to draft an international labour convention, worded in clear and simple language, which would consolidate almost all of the existing maritime labour conventions and recommendations in a single instrument setting out the conditions for decent work in the maritime sector. The Convention was intended to become the 'Fourth Pillar' of the international regime of shipping complementing the SOLAS, MARPOL and STCW conventions.[4]

1.3 Ireland was represented at the Conference by a tripartite delegation consisting of government, employer and employee officials.[5]

1.4 The Convention entered into force on 20 August 2013 twelve months after the date upon which at least 30 member states with a total share in the world gross tonnage of ships of 33% deposited their instruments of ratification with the ILO.[6] In fact on the date it entered into force, the

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[1] This article is based on a paper presented at the CMI Symposium held in Dublin between 29 September and 1 October 2013.

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[3] For the records of this session see http://ilo.org/ilc/ILCSessions/94thSession/lang—en/index.htm

[4] Conference Guide – Maritime Session at page 1.

[5] See Final List of Delegations at page 17.

[6] The Convention had the most stringent entry into force requirements of any ILO convention to date.

The purpose of the '30/33' requirement was to ensure that the Convention would have a real impact and would not become yet another 'paper tiger.' The 33% tonnage requirement was met in 2009 and the 30 member requirement was met on 20 August 2012.

Convention had been ratified by more than 45 ILO member States representing more than 70% of global gross shipping tonnage. As of 31st October 2014, the Convention had been ratified by 63 member States representing 80% of global gross shipping tonnage.[7]

1.5 The Convention will enter into force in Ireland on 21 July 2015 twelve months after the State deposited its instrument of ratification with the ILO. Ireland was the 21st member state of the European Union to do so and became the 61st member state of the Convention.[8] Ireland has 88 ships with 88 a deadweight tonnage of 244 representing 0.02% of the world total dwt.

1.6 The Convention was amended by the ILO at its 103rd Session held in Geneva on 11 June 2014.[9]

II. Why was the Convention needed?

2.1 The Convention was needed because shipping is a global industry. At present, over 50,000 merchant ships, registered in 150 nations, and manned by over a million seafarers, from almost every nationality, carry around 90% of the world's trade. Most seafarers spend their working lives outside their home jurisdictions and their employers are often based in different jurisdictions. Accordingly, effective international standards are required to ensure the well-being of seafarers and the ships on which they work.

2.2 Many jurisdictions have laws and regulations to ensure the health and safety of seafarers' and the ships upon which they work but unfortunately other countries do not. In addition, while there were a large number of maritime conventions, many of these were outdated and had low levels of ratification. As well as putting the safety of seafarers at risk, this disparity in the market place had the effect of distorting the market place since ship operators from jurisdictions with substandard labour practices were able to undercut the price offered by ship operators from jurisdictions with decent conditions.

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[7] See the MLC website http://www.ilo.org/global/standards/maritime-labour-convention/lang—en/index.htm

[8] Ireland had not yet ratified the Convention at the time of the Dublin Symposium. However, the legal framework to allow Ireland to do so had been in place since 2010 with the enactment of the *Merchant Shipping Act 2010*. Section 87(2) of that Act provides as follows:

"(a) The Regulations, and the Standards of the Code, of the Convention have the force of law in the State and judicial notice shall be taken of them.

(b) A copy of the Convention or the Regulations, or the Standards of the Code, of the Convention purporting to be published by the International Labour Organisation may be produced in every court and in all legal proceedings and is evidence, unless the contrary is shown, of the Convention, the Regulations, or Code of the Convention, as the case may be."

Section 87 was commenced on 5 June 2014 by the Merchant Shipping Act 2010 (Section 87) (Commencement) Order 2014 S.I. No. 241/2014.

[9] See the text of the amendments relating to financial security and shipowners' liability at: http://www.ilo.org/ilc/ILCSessions/103/reports/WCMS_248905/lang—en/index.htm

2.3 It was thus the promotion of competition as well as the fair treatment of seafarers which motivated governments, seafarers and ship-owners to promote the Convention.

III. Structure of the Convention

3.1 The Convention comprises three different but related parts:
– the Articles,
– the Regulations; and
– the Code.

The Articles and Regulations set out the core rights and principles and the basic obligations of Members ratifying the Convention. The Code contains the details for the implementation of the Regulations. It comprises Part A (mandatory Standards) and Part B (non-mandatory Guidelines).

3.2 The Regulations and the Code are organized into general areas under five titles:

Title 1: Minimum requirements for seafarers to work on a ship
Title 2: Conditions of employment
Title 3: Accommodation, recreational facilities, food and catering
Title 4: Health protection, medical care, welfare and social security protection
Title 5: Compliance and enforcement.

IV. An Overview of some of the key Articles

A. A. General Obligations

4.1 Article 1 sets out the 'General Obligations' of Member States:

"1. Each Member which ratifies this Convention undertakes to give complete effect to its provisions in the manner set out in Article VI in order to secure the right of all seafarers to decent employment.

2. Members shall cooperate with each other for the purpose of ensuring the effective implementation and enforcement of this Convention."

4.2 Article VI deals with the Regulations and the Code. It provides that:

1. The Regulations and the provisions of Part A of the Code are mandatory. The provisions of Part B of the Code are not mandatory.

2. Each Member undertakes to respect the rights and principles set out in the Regulations and to implement each Regulation in the manner set out in the corresponding provisions of Part A of the Code. In addition, the Member shall give due consideration to implementing its responsibilities in the manner provided for in Part B of the Code.

3. A Member which is not in a position to implement the rights and principles in the manner set out in Part A of the Code may, unless expressly provided otherwise in this Convention, implement Part A

through provisions in its laws and regulations or other measures which are substantially equivalent to the provisions of Part A.

4. For the sole purpose of paragraph 3 of this Article, any law, regulation, collective agreement or other implementing measure shall be considered to be substantially equivalent, in the context of this Convention, if the Member satisfies itself that:

(a) it is conducive to the full achievement of the general object and purpose of the provision or provisions of Part A of the Code concerned; and

(b) it gives effect to the provision or provisions of Part A of the Code concerned."

B. Definitions and Scope of the Convention

4.3 Article II deals with definitions and the scope of the Convention.

4.4 Article II(1)(f) defines 'seafarer" as

"any person who is employed or engaged or works in any capacity on board a ship to which this Convention applies."

4.5 Accordingly, the Convention applies not just to the crew involved in operating or navigating the ship but also to catering staff or, in the case of a cruise ship, hotel personnel working on the ship. In the event of a dispute, for example as to whether an entertainer on a cruise ship, is a 'seafarer' for the purposes of the Convention, Article II(3) provides:

"In the event of doubt as to whether any categories of persons are to be regarded as seafarers for the purpose of this Convention, the question shall be determined by the competent authority in each Member after consultation with the shipowners' and seafarers' organizations concerned with this question."

4.6 Article II(1)(i) defines "ship" as

"a ship other than one which navigates exclusively in inland waters or waters within, or closely adjacent to, sheltered waters or areas where port regulations apply."

4.7 Article II(4) provides that:

"Except as expressly provided otherwise, this Convention applies to all ships, whether publicly or privately owned, ordinarily engaged in commercial activities, other than ships engaged in fishing or in similar pursuits and ships of traditional build such as dhows and junks. This Convention does not apply to warships or naval auxiliaries."

4.8 In the event of a dispute as to whether the Convention applies to a ship or category of ships, for example is an offshore oil platform a ship, Article II(5) provides:

"In the event of doubt as to whether this Convention applies to a ship or particular category of ships, the question shall be determined by the competent authority in each Member after

consultation with the shipowners' and seafarers' organizations concerned."

4.9 It should be noted that the Convention does not define the phrase "*ordinarily engaged in commercial activities*." The same issue arises in relation to the definition of *'sheltered waters.'* These issues will therefore fall to be determined by the competent authority of the individual Member State concerned, subject of course to the ILO's supervisory system. The 'competent authority' is defined in Article II(1)(a) as "*the minister, government department or other authority having power to issue and enforce regulations, orders or other instructions having the force of law in respect of the subject matter of the provision concerned*." In Ireland, the 'competent authority' is that part of the Department of Transport, Tourism and Sport which is known as the Marine Survey Office;

4.10 It should also be noted that while there is no general tonnage limitation in the Convention, there is some flexibility in relation to ships under 200 GT that do not go on international voyages. Under Article II(6) the competent authority of a Member State can, where it deems it reasonable and practicable, determine not to apply the Code to such vessels where the Code is different to national laws, regulations or collective bargaining agreements. Article II(6) contains an important protection against the abuse of this opt out by requiring that:

"*Such a determination may only be made in consultation with the shipowners' and seafarers' organizations concerned…"*

4.11 Any determinations made by Member States in relation to whether a person is a 'seafarer,' or a 'ship' is covered by the Convention, or that vessels under 200 GT are not covered by the Code must, subject to Article II(7) be notified to the ILO. The ILO regularly examines the application of standards in member states and points out areas where they could be better applied. If there are any problems in the application of standards, the ILO seeks to assist countries through social dialogue and technical assistance.

4.12 Article II(1)(j) defines a 'ship-owner' as:

"the owner of the ship or another organization or person, such as the manager, agent or bareboat charterer, who has assumed the responsibility for the operation of the ship from the owner and who, on assuming such responsibility, has agreed to take over the duties and responsibilities imposed on ship-owners in accordance with this Convention, regardless of whether any other organization or persons fulfil certain of the duties or responsibilities on behalf of the ship-owner."

4.13 This comprehensive definition of ship-owner was designed to ensure that there would be a single entity responsible for the living and working conditions of seafarers regardless of the commercial or other agreements that may have been entered into regarding a ship's operations.

C. Fundamental Rights and Principles

4.14 Article III sets out the fundamental rights of seafarers:

> *"Each Member shall satisfy itself that the provisions of its law and regulations respect, in the context of this Convention, the fundamental rights to:*
>
> *(a) freedom of association and the effective recognition of the right to collective bargaining;*
>
> *(b) the elimination of all forms of forced or compulsory labour;*
>
> *(c) the effective abolition of child labour; and*
>
> *(d) the elimination of discrimination in respect of employment and occupation."*

<u>*Seafarers Employment and Social Rights*</u>

4.15 Article IV sets out the employment and social rights of seafarers:

> *"1. Every seafarer has the right to a safe and secure workplace that complies with safety standards.*
>
> *2. Every seafarer has a right to fair terms of employment.*
>
> *3. Every seafarer has a right to decent working and living conditions on board ship.*
>
> *4. Every seafarer has a right to health protection, medical care, welfare measures and other forms of social protection.*
>
> *5. Each Member shall ensure, within the limits of its jurisdiction, that the seafarers' employment and social rights set out in the preceding paragraphs of this Article are fully implemented in accordance with the requirements of this Convention. Unless specified otherwise in the Convention, such implementation may be achieved through national laws or regulations, through applicable collective bargaining agreements or through other measures or in practice."*

<u>*Implementation and Enforcement Responsibilities*</u>

4.16 Article V(1) imposes an obligation on Member States to *"… implement and enforce laws or regulations or other measures"* in respect of ships and seafarers under its jurisdiction in order to fulfil its commitments under the Convention.

4.17 Article V(2) requires Member States to *"effectively"* exercise jurisdiction and control over ships fly their flags by establishing a system for ensuring compliance with the requirements of the Convention, including regular inspections, reporting, monitoring and legal proceedings under the applicable laws.

4.18 Article V(3) requires Member States to ensure that ships that fly its flag carry a maritime labour certificate and a declaration of maritime labour compliance as required by the Convention.

4.19 Importantly, Article V(4) provides that:

> *"A ship to which this Convention applies may, in accordance with international law, be inspected by a Member other than the flag*

State, when the ship is in one of its ports, to determine whether the ship is in compliance with the requirements of this Convention."

4.20 Article V(5) provides that Member States shall 'effectively' exercise jurisdiction and control over seafarer recruitment and placement services established in their territory.

4.21 Article V(6) requires Member States to prohibit violations of the requirements of the Convention and establish sanctions or require the adoption of corrective measures under its laws which are 'adequate' to discourage such violations.

4.22 Article V(7) provides that each Member State shall implement its responsibilities under the Convention in such a way as to ensure that the ships that fly the flag of any State that has not ratified the Convention do not receive more favourable treatment than the ships that fly the flag of any State that has ratified it.

V. An Overview of the Regulations and the Code

5.1 The Regulations and the Code are integrated and are organised under five titles.

Title 1. Minimum requirements for seafarers to work on a ship
Regulation 1.1 Minimum age
Regulation 1.2 Medical certificate
Regulation 1.3 Training and qualifications
Regulation 1.4 Recruitment and placement
Title 2. Conditions of employment
Regulation 2.1 Seafarers' employment agreements
Regulation 2.2 Wages
Regulation 2.3 Hours of work and hours of rest
Regulation 2.4 Entitlement to leave
Regulation 2.5 Repatriation[10]
Regulation 2.6 Seafarer compensation for the ship's loss or foundering
Regulation 2.7 Manning levels
Regulation 2.8 Career and skill development and opportunities for seafarers' employment.
Title 3. Accommodation, recreational facilities, food and catering
Regulation 3.1 Accommodation and recreational facilities
Regulation 3.2 Food and catering
Title 4. Health protection, medical care, welfare and social security protection

[10] An additional title 'Standard A2.5.2 – Financial Security' was added by the ILO at its 103rd Session held in Geneva on 11 June 2014.

Regulation 4.1 Medical care on board ship and ashore
Regulation 4.2 Shipowners' liability[11]
Regulation 4.3 Health and safety protection and accident prevention
Regulation 4.4 Access to shore-based welfare facilities
Regulation 4.5 Social security
Title 5. Compliance and enforcement
Regulation 5.1 Flag State responsibilities
Regulation 5.1.1 General principles
Regulation 5.1.2 Authorisation of recognized organizations
Regulation 5.1.3 Maritime labour certificate and declaration of maritime labour compliance
Regulation 5.1.4 Inspection and enforcement
Regulation 5.1.5 On-board complaint procedures
Regulation 5.1.6 Marine casualties
Regulation 5.2 Port State responsibilities
Regulation 5.2.1 Inspections in port
Regulation 5.2.2 Onshore seafarer complaint-handling procedures
Regulation 5.3 Labour-supplying responsibilities

VI An Overview of Title 5 - Compliance and Enforcement

6.1 The Regulations in Title 5 set out the responsibilities of Member States to fully implement and enforce the principles and rights set out in the Convention. It should be noted that the requirements of Title 5 cannot be implemented through substantially equivalent provisions.

6.2 Regulation 5.1 deals with the responsibilities of Flag States. Regulation 5.1.1(1) provides that Member States are responsible for ensuring the implementation of the obligations of the Convention on ships that fly its flag.

6.3 Regulation 5.1.1(2) provides that Member States must establish an "*effective system"* for the inspection and certification of maritime labour conditions thus ensuring that the working and living conditions for seafarers on ships that fly its flag meet, and continue to meet, the standards in the Convention. Regulation 5.1.1(3) allows Member States to delegate their responsibilities to public institutions, organisations or even another Member State, subject to the proviso that the Member State remains *"fully responsible for the inspection and certification of the working and living conditions of the seafarers concerned on ships that fly its flag."*

6.4 Regulation 5.1.1(4) provides that a maritime labour certificate, complemented by a declaration of maritime labour compliance, shall

[11] This was amended by the ILO at its 103rd Session held in Geneva on 11 June 2014.

constitute prima facie evidence that the ship has been duly inspected by the Member whose flag it flies and that the requirements of this Convention.

6.5 Regulation 5.1.3 deals with the maritime labour certificate and the declaration of maritime labour compliance. Regulation 5.1.3(1) provides that certification is mandatory for ships of:

> *"(a) 500 gross tonnage or over, engaged in international voyages; and*
>
> *(b) 500 gross tonnage or over, flying the flag of a Member and operating from a port, or between ports, in another country."*

Regulation 5.1.3(2) provides that a ship-owner whose ship does not fall under the mandatory certification provisions can request that the ship be certified after inspection.

6.6 Standard A5.1.3(1) provides that the maritime labour certificate shall be issued to a ship by the competent authority, or by a recognized organization duly authorized for this purpose, for a period which shall not exceed five years. A list of matters that must be inspected and found to meet national laws and regulations or other measures implementing the requirements of this Convention regarding the working and living conditions of seafarers is set out in Appendix A5-I.

6.7 These are as follows:

a. Minimum age
b. Medical certification
c. Qualifications of seafarers
d. Seafarers' employment agreements
e. Use of any licensed or certified or regulated private recruitment and placement service
f. Hours of work or rest
g. Manning levels for the ship
h. Accommodation
i. On-board recreational facilities
j. Food and catering
k. Health and safety and accident prevention
l. On-board medical care
m. On-board complaint procedures
n. Payment of wages

6.8 Standard A5.1.3(10) provides that the declaration of maritime labour compliance shall be attached to the maritime labour certificate. It is composed of two parts:

> *a) Part I shall be drawn up by the competent authority which shall:*
> *1. identify the list of matters to be inspected in accordance with paragraph 1 of this Standard (i.e. the 14 matters referred to above);*
> *2. identify the national requirements embodying the relevant provisions of the Convention by providing a reference to the*

relevant national legal provisions as well as, to the extent necessary, concise information on the main content of the national requirements;

3. refer to ship-type specific requirements under national legislation;

4. record any substantially equivalent provisions adopted;

5. clearly indicate any exemption granted by the competent authority as provided in Title 3; and

b) Part II shall be drawn up by the ship-owner and shall identify the measures adopted to ensure on-going compliance with the national requirements between inspections and the measures proposed to ensure that there is continuous improvement.

6.9 Standard A5.1.3(12) provides that a current valid maritime labour certificate and declaration of maritime labour compliance, accompanied by an English-language translation where it is not in English, must be carried on the ship and a copy shall be posted in a conspicuous place on board where it is available to the seafarer.

6.10 The maximum validity for a maritime labour certificate is five years although a Member States' law may provide for a shorter period. Standard A5.1.3(14) provides that a maritime labour certificate will cease to be valid:

a) if the relevant inspections are not completed;

b) if the certificate is not endorsed following an immediate inspection;

c) when a ship changes flag;

d) when a ship-owner ceases to assume the responsibility for the operation of a ship; and

e) when substantial changes have been made to the structure or equipment covered in Title 3.

6.11 Standard A5.1.3(16) provides that a maritime labour certificate may be withdrawn by the flag State if there is evidence that the ship concerned does not comply with the requirements of the Convention and any required corrective action has not been taken.

6.12 Standard A5.1.4(7) provides that inspectors shall be empowered:

a) to board a ship that flies the Member's flag;

b) to carry out any examination, test or inquiry which they may consider necessary in order to satisfy themselves that the standards are being strictly observed; and

c) to require that any deficiency is remedied and, where they have grounds to believe that deficiencies constitute a serious breach of the requirements of this Convention (including seafarers' rights), or represent a significant danger to seafarers' safety, health or security, to prohibit a ship from leaving port until necessary actions are taken.

6.13 Regulation 5.2 deals with the responsibilities of Port States. Regulation 5.2.1 provides that:

> *"Every foreign ship calling, in the normal course of its business or for operational reasons, in the port of a Member may be the subject of inspection … for the purpose of reviewing compliance with the requirements of this Convention (including seafarers' rights) relating to the working and living conditions of seafarers on the ship."*

6.14 Regulation 5.2.2 provides that a maritime labour certificate and declaration of maritime labour compliance are prima facie evidence of compliance with the requirements of the Convention (including seafarers' rights). The only circumstances where there can be a further inspection of vessels with such documentation is under Standard A5.2.1 where:

> *"(a) the required documents are not produced or maintained or are falsely maintained or that the documents produced do not contain the information required by this Convention or are otherwise invalid; or*
>
> *(b) there are clear grounds for believing that the working and living conditions on the ship do not conform to the requirements of this Convention; or*
>
> *(c) there are reasonable grounds to believe that the ship has changed flag for the purpose of avoiding compliance with this Convention; or*
>
> *(d) there is a complaint alleging that specific working and living conditions on the ship do not conform to the requirements of this Convention."*

6.15 Standard A5.2.1(6) provides that a ship may be detained where:

> *"the ship is found not to conform to the requirements of this Convention and:*
>
> *(a) the conditions on board are clearly hazardous to the safety, health or security of seafarers; or*
>
> *(b) the non-conformity constitutes a serious or repeated breach of the requirements of the Convention (including seafarers' rights)*

6.16 Since a Port State is entitled to insect "every foreign ship" calling to the Port and since a foreign ship flying the flag of a State that has not ratified the Convention will not be able to produce a maritime labour certificate and declaration of maritime labour compliance issued under the Convention, such vessels will always be subject to inspection and if necessary detention.

VII. The Convention in Action

7.1 Denmark was the first country to detain a vessel under the Convention on 10 September 2013. During a routine inspection of a vessel flying the Liberian Flag, the Danish Maritime Authority discovered that the crew did not have employment contracts in breach of Standard A2.1, paragraph

1(c) which requires that both the ship-owner and the seafarer must have a signed original of the seafarers' employment agreement. The 24 hour detention ended when the situation was rectified. A second vessel was detained in Canada in the same week after authorities received complaints from the crew which included inter alia complaints of unpaid wages, lack of medical access and being forced to sign blank contracts.[12] At the end of the first month of its operation a further five ships had been detained for breaches of the Convention in Canada, the Russian Federation, Spain.[13] In recent weeks a ship has been banned from Australian waters for a period of three months due to repeated breaches of the Convention.[14] So it is clear that the Convention is starting to bite.

7.2 In Ireland, preparation for the entry into force of the Convention on 21 July 2014 continues. The Government has enacted a suite of statutory instruments to enable Ireland to comply with its obligations under the Convention. These include:

- *S.I. No. 245/2014 - European Communities (Merchant Shipping) (Organisation of Working Time) (Amendment) Regulations 2014.*
- *S.I. No. 246/2014 - Merchant Shipping (Medical Examinations) Regulations 2014.*
- *S.I. No. 357/2014 - Protection of Young Persons (Employment)(Exclusion of Workers in the Fishing and Shipping Sectors) Regulations 2014.*
- *S.I. No. 373/2014 - Merchant Shipping (Maritime Labour Convention) (Seafarer Employment Agreement and Wages) Regulations 2014.*
- *S.I. No. 374/2014 - Merchant Shipping (Maritime Labour Convention) (Accommodation, Recreational Facilities, Food, Catering and Ships Cooks) Regulations 2014.*
- *S.I. No. 375/2014 - Merchant Shipping (Maritime Labour Convention) (Shipowners' Liabilities and Repatriation) Regulations 2014.*
- *S.I. No. 376/2014 - Merchant Shipping (Maritime Labour Convention) (Flag State Inspection and Certification) Regulations 2014.*

7.3 In conclusion, it is submitted that since its commencement the Convention has gone a long way towards its twin aims.

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[12] See Clyde & Co, Maritime Labour Convention First Detentions 13 September 2013 (http://www.clydeco.com/insight/updates/maritime-labour-convention-2006-first-detentions%20).

[13] See Paris MoU Press Release 14 October 2013. https://www.parismou.org/system/files/Press%20release%20first%20results%20MLC%202006%20%28adjusted%29.pdf

[14] See Ship ban: new AMSA CEO changes course, October 2014, Holman Fenwick Willan LLP Robert Springall and Simon Gamboni https://www.lexology.com/library/detail.aspx?g=2a2b41f7-bac4-41b4-8fc6-ac292c730497

A LEGAL ANALYSIS OF THE LIMITATION OF LIABILITY OF CLASSIFICATION SOCIETIES

Dr. Denise Micallef LL.D, LL.M (I.M.L.I)[1]

In recent years, the maritime world has undergone several changes which in turn have altered the working environment of Classification Societies. Perhaps the recent economic crisis was one of the main factors which intensified competition within the shipping industry. Many shipping companies had to cut operation costs in their fight for survival.

Alas, as Newton's law predicts, to every action there is always an equal and opposite reaction. This is precisely what happened in the shipping industry during the economic crisis – there was a rise in shipping accidents, as the shipping market fell. [2] This is where classification societies play an essential role.

Classification societies have been in existence for more than 200 years and have played a fundamental role in improving and securing safety in the maritime industry though their expert surveyors and their knowledge of vessels. These societies have developed rules and standards, through scientific research and by gathering empirical data over decades, which if followed will ensure that vessels are seaworthy and fit for their intended purpose. Miller observes that as vessels become more complex, as the demands for prompt and efficient service grow, and as the pressure of operating vessels as economically as possible increases, the maritime industry is growing to depend heavily on their role.[3]

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[2] International Maritime Organisation; International Shipping Facts and Figures – Information Resources on Trade, Safety, Security, Environment, Maritime Knowledge Centre, 6th March 2012, p. 8.

[3] Miller, Machale A.; Liability of Classification Societies from the perspective of United States Law, Tulane Maritime Law Journal, Vol. 22, Tulane University, 1997, p. 3.

Every classification society has a dual role, that is, on the one hand to express its opinion mainly towards shipowners about the degree of their ships' compliance with the classification society's technical rules, while on the other, to execute a public service by ascertaining, on the basis of an authorisation by the flag State, the compliance of national ships with the national and international regulations in relation to the ships' safety and the issuance of relevant certificates.[4]

Indeed, by ensuring the ongoing seaworthiness of ships, the role of classification societies is considered as one of the preventive measures of maritime safety. This role no longer constitutes a simple private matter as between themselves and the contracting party[5], but also seeks to protect the general interest of society.[6]

If classification societies do their task well, there would be an automatic reduction of risk of catastrophe. However, when classification societies fail to perform their job as required, serious consequences are inevitable. That being said, a classification certificate should not be construed as a warranty of safety, fitness for purpose or seaworthiness of the ship. It is merely an attestation that the vessel is in compliance with the rules that have been developed and published by the society issuing it.

Classification societies are not guarantors of safety of life or property at sea, or the seaworthiness of a vessel. Although classification is based on the understanding that the vessel is loaded, operated and maintained in a proper manner by competent and qualified personnel, the society has no control over how a vessel is operated and maintained between the periodical surveys it conducts.[7] The responsibility to ensure the vessels' seaworthiness ultimately rests with the shipowner.

The non-delegable duty of the shipowner is of particular relevance when dealing with the liability of the ship's classification society in maritime claims. Indeed, the liability of classification societies may arise from three main claimants: the contracting party, a third party or a State.

The most clear cut situation is, by far, the liability that arises out of the contractual relationship between parties and classification societies – which can take the form of either a breach of contractual duty or a breach of an implied duty to exercise skill and care.

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[4] Antapassis, Anthony M.; Liability of Classification Societies, Netherlands Comparative Law Association, Vo. 11.3, December 2007, p. 1.

[5] The shipowner, the charterer, the new buyer, the ship's insurer or another person interested in the ship.

[6] Antapassis, Anthony M.; *op. cit.*, p. 2.

[7] International Association of Classification Societies; Classification Societies – Their Key Role, < http://www.iacs.org.uk/document/public/explained/CLASS_KEY_ROLE.pdfp>

In terms of third party claims, the situation is rather ambiguous. Since there is no contractual relationship protecting the third party, disputes mostly arise out of tort. Indeed, Lux comments that '[t]he obligations of classification societies towards third parties raise the largest number of problems, and are some of the most difficult to solve'.[8] However, for a classification society to be held liable to a third party, three elements should subsist: damages, negligence and a causal link between the two.

In the *Morning Watch*[9] the Court found that the claimant purchaser had not been able to prove a sufficient relationship of proximity and stated that '[t]he primary purpose of the classification system is, as Lloyd's Rules make clear, to enhance the safety of life and property at sea, rather than to protect the economic interests of those involved, in one role or another in shipping'.[10]

Additionally, in the *Nicholas H*[11] the Court held that NKK owed no legal duty to the cargo interests in order:

> [to avoid] the outflanking of the bargain between shipowners and cargo owners; the negative effect on the public role of NKK, and the other considerations of policy…It would also be unfair, unjust and unreasonable towards classification societies, to impose a legal duty of care to the claimant notably because they act for the collective welfare and unlike shipowners would not have the benefit of any [statutory] limitation provisions.[12]

Conversely, the US Courts are more willing to find classification societies liable for negligent misrepresentation towards third parties. A successful claim was brought by the new purchaser of a vessel in the *Speeder*.[13] The US Court of Appeals for the Fifth Circuit affirmed a District Court ruled that 'general maritime law cautiously recognises the tort of negligent misrepresentation as applied to classification societies'.[14]

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[8] Lux, Jonathan; Classification Societies, Lloyd's of London Press Ltd, London, 1993, p. 16.

[9] Mariola Marine Corporation vs. Lloyd's Register of Shipping, 1990, 1 Lloyd's Rep. 547 ('Morning Watch').

[10] Kennedy, Andrew; Classification Societies & the Law – The Inside Story, Lecture at the Institute of Maritime Law, Southampton University, 9th December 2009, p.9.

[11] Marc Rich & Co. AG and Others vs. Bishop Rock Marine Co. Ltd Bethmarine Co. Ltd. and Nippon Kaiji Kyokai, 1995, 2 Lloyd's Rep. 299. ('Nicholas H').

[12] Ibid, p. 28-29.

[13] Otto Candies LLC vs. Nippon Kaiji Kyokai Corp, US Court of Appeals, Fifth Circuit No. 02-30842, 2003 ('Otto Candies'). The Court held that the following criteria must be satisfied in order for Otto Candies to bring a claim for negligent misrepresentation: (1) NKK, in the course of its profession, supplied false information for Otto Candies' guidance in a business transaction; (2) NKK failed to exercise reasonable care in gathering the information; (3) Otto Candies justifiably relied on the false information in the transaction that NKK intended to influence; and (4) Otto Candies thereby suffered pecuniary loss.

[14] 14 Ibid, p. 1.

Being delegated by States to certify vessels in terms of the various international safety conventions, classification societies could also be found liable in tort or contract (depending on the type of relationship at hand), should a State incur any liability for the issuance of incorrect certification due to reliance on certification and surveys issued by the societies.

The increasing number of lawsuits against classification societies should have served as a wakeup call to classification societies to be more cautious and responsible. Regrettably, in the aftermath of the *Erika* and *Prestige*, and the several lawsuits that followed claiming compensation for damages, their role and credibility has been seriously undermined. These cases in particular have demonstrated that third party claims against classification societies can give rise to potential considerable liability exposure.

Needless to say, due to a variety of services they provide and the growing trend of claimants to seek compensation from them, classification societies are increasingly exposed to be sued for negligence. Since no internationally liability regime or harmonised legal framework exists, the liability of classification societies depends on which State has jurisdiction over the claim. Such discrepancy in approaches, even between civil and common law jurisdictions, may lead to undesirable 'forum shopping'.

Vaughan precisely opines 'that the stage is being reached where the question of liability of classification societies will no longer be a question of "if", but rather of "when" and thereafter, "to what limit?".' [15]

This paper will consider the possibility of limiting the liability of classification societies once it has been carved in stone that indeed civil liability can be attributed; and the salient features that should be taken into consideration when proposing the promulgation of a new international convention or the amendment of an already existing one.

Shielding classification societies from liability: is this possible?

Classification societies are frequently in the limelight especially when a shipping incident leaves hundreds of casualties, or devastating effects on the environment, and are considered by claimants to be easy targets. To date, attempts at regulating this issue have been few and far between, although the CMI and, on a more regional level, the EU have tackled this issue several times.

Limitation of liability regimes in maritime law

The concept of limitation of liability evolved with the shipping industry itself. In the early shipping days, shipowners had no or inadequate means to

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[15] aughan Barbara; The Liability of Classification Societies, University of Cape Town, LL.M (Shipping Law) Class of 2006, p.12.

ensure safety of navigation or to forecast the weather. Not only did vessels face the perils of the sea, but were also prone to accidents.[16] In the event of loss of cargo during a shipping incident, cargo owners would turn on shipowners to satisfy cargo claims. In that day and age, vessels carrying cargo were of a lower value than the cargo itself, and could have been the only asset the shipowner had, in which case the latter would be unable to entertain the claim due to lack of funds.

Having envisioned the potential bankruptcy of shipowners faced with hefty maritime claims, the shipping industry, as the main means of international trade at the time, had to develop a system of distribution of losses in the form of marine insurance and general average contributions.

Notwithstanding such development, some shipowners were still faced with bankruptcy. In order to safeguard the position of shipowners in the industry, the concept of limitation of liability had to be devised, whereby a shipowner would be able to limit his liability irrespective of the actual amount of the claim.

Connected to limitation of liability, there is the phenomenon of 'legal channelling', that is, liability will be channelled to the registered shipowner while other members of the shipping industry, are exempted from liability.[17] Hence, only one person or a small group of persons, are held accountable for damages. The notion of channelling of liability on the registered shipowner, who manages, controls and derives revenue from the operation of the ship, is mostly evident in the CLC[18] and HNS Convention.[19] Ultimately the shipowner is responsible for the operation and seaworthiness of the ship.[20] Thus, by implication, the channelling of liability on the shipowner reflects his responsibilities.

With regards to the limitation of liability in the maritime field, the LLMC[21], HNS Conventions and CLC are of paramount importance. Having

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16 Martínez Gutiérrez, Norman A., Limitation of Liability in International Maritime Conventions: The relationship between global limitation conventions and particular liability regimes, Routledge, Oxon, 2011, p. 1.

17 In contrast, there exists 'economic channelling' whereby an injured person prefers, for economic reasons, to sue a person other than the one who is primarily liable under the law. Thus, an injured person might sue a classification society instead of the shipowner knowing very well that their liability is not limited.

18 International Convention on Civil Liability for Oil Pollution Damage (CLC), 1969 replaced by 1992 Protocol.

19 International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea (HNS), 1996 superseded by the 2010 Protocol.

20 Lagoni, Nicolai; The Liability of Classification Societies, Springer, 2007, p. 259.

21 International Convention on Limitation of Liability for Maritime Claims (LLMC), 1976 and the 1996 Protocol.

internationally recognised Conventions and Rules creates harmonisation and uniformity rather than having different claims brought in various jurisdictions.

The LLMC Convention sets specified limits of liability for two types of claims against shipowners – claims for loss of life or personal injury, and any other claims such as damage to other ships, property or harbour works. Taking into account the experience of incidents, as well as inflation rates, the limits set in the 1996 Protocol have, in recent years, been seen to be inadequate to cover the costs of claims, especially those arising from incidents involving bunker fuel spills; hence the revision in 2012.[22]

Under the LLMC Convention, which provides a 'global limitation system', limitation of liability is not only afforded to the shipowner but also the charterer, manager or operator of a seagoing ship; that is, those people included in the definition of 'shipowner' as well as all person for whose act, negligence or default those persons are responsible[23], such as crew members and other servants. However, the LLMC Convention does not envisage classification societies, since they are not included in the definition of 'shipowner', and considering that they are independent contractors, they do not fall under Article 1(4).[24]

In turn the CLC, as amended in 1992, channels liability on the registered shipowner in the event of pollution damage caused by persistent oil, which liability is strict. Certain third parties are exempted from direct liability to victims of pollution damage unless compensation for damage is sought where such damage emanates from personal act or omission, committed with intent and recklessness. Article III.4 provides a list of other parties against whom no claim for compensation for pollution damage under the CLC may be made. Amongst the listed parties, the phrase 'performs services to the ship' in paragraph (b)[25] is of particular relevance to classification societies.

This provision came into play in the proceedings brought against RINA and ABS in the *Erika* and *Prestige*, respectively. Both classification societies attempted to submit to the French and the US Courts the thesis that Article III.4 of the CLC protects classification societies by channelling liability to the shipowner. Although providing different reasoning, the Courts in both cases reached the same conclusion – CLC did not apply to classification societies in those particular scenarios.

In the *Prestige*, Spain hit ABS with a 'gross negligence suit' for failing

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[22] For a full discussion on the revision to the 1996 Protocol's limits see Norman A. Martinez Gutiérrez, 'New Global Limits of Liability for Maritime Claims', 2013 International Community Law Review, 15(3) pp 341-357.

[23] Article 1(2).

[24] Martínez Gutiérrez, Norman A., *op. cit.*, p. 208.

[25] 'the pilot or any other person who, without being a member of the crew, performs services for the ship'.

to detect corrosion and other defective materials; to which ABS reacted by relying on the CLC (although the US had not ratified the Convention). The Southern District Court of New York in 2008 accepted the fact that ABS fell within the faction provided by Article III.4(b) and thus could enjoy protection similar to pilots. However, the Court could not rely on the CLC and dismissed it on jurisdictional grounds. Had the Spanish State, as a signatory to the CLC, pursued the claim before its own Courts then this would have been successful.

On the other hand, in the *Erika*, RINA was prosecuted before the Criminal Section of the Court of Cassation in France where it was held criminally liable for imprudence in renewing the *Erika*'s classification certificates. With regards to civil liability, the Court of Cassation disagreed with the decision of the Court of Appeal were it had held that classification societies could not benefit from the provisions contained in Article III.4 of the CLC, and decided that RINA was not protected by the channelling provisions of the CLC since it did not participate in the navigational or nautical operation of the *Erika* on the incident voyage.[26] Nevertheless, it still could not rely on these provisions since the damage was a result of RINA's personal act or omissions, committed with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result.

Furthermore, to date there have been no reported cases of classification societies found civilly liable in relation to claims for damages arising from noxious and hazardous substances. That being said, since Article 7(5) of the HNS Convention is a replica of Article III.4 of the CLC, courts may find that classification societies can channel their liability under the HNS Convention.

Despite the fact that exposure to liability exists, the position is still unclear as to what extent classification societies can be hit by a suit. Against this backdrop, it is pertinent to consider the reasons why societies should be protected.

Why protect classification societies?

Firstly, the activities of classification societies are carried out to assets of very high value which are exposed to even higher liabilities. However, more often than not, these societies do not charge fees related to such an exposure, but the charges for the services performed, and fees are not related to the size or value of the asset. The fees for services rendered to a particular piece of equipment do not vary from one type or size of ship to another.

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[26] Foley, J. Vincent and Nolan, R. Christopher, The Erika Judgment – Environmental Liability and Places of Refuge: A sea changing in Civil and Criminal Responsibility that the Maritime Community must heed, Tulane Maritime Law Journal, Vol. 33, Winter 2008, No.1, p. 69.

Secondly, classification services do not contribute to the risk level. Classification societies contribute to reduce risk, and they do not take the place of other participants in the industry. It is true that the society is paid by the shipowner, but the shipowner retains the operation of the ship itself. Therefore, it might be challenging to prove that a classification society caused or is responsible for an incident. This not to mention the fact that the ultimate responsibility for seaworthiness cannot rest on organisations with only fleeting contact with and brief opportunity to observe the vessel.

The potential error or default by the classification society in most cases is the omission on its part to discover and recommend what should have been discovered or if it wrongly certifies a vessel.[27] Classification societies survey ships at determined intervals. Shipowners should be controlling them at all times. This notwithstanding the fact that they have no control over the level of maintenance, training, manning, and supervision of the vessel and the areas the vessel trades, or the cargo it carries. This is the shipowner's sole responsibility. It would be quite unjust to expose two parties with such an unequal part of the risk to the same level of liability.[28]

Thirdly, there has been an increase in exposure of classification societies to multiple third party actions. Although the shipowner contracts and pays the society, the service rendered does not only affect the shipowner but all those who ultimately rely on the classification certification. Underwriters, charterers, cargo owners, vessel purchasers, government authorities all rely in one way or another on proper certification. Indeed, the higher the number of parties linked with classification societies is, the higher the risk of exposure becomes.

Fourthly, there is an element of public interest. If the exposure to liability of serving the public interest rises, classification societies will be forced to discontinue their activities. Government authorities, which are afforded sovereign immunity, would be forced to take over their tasks. Unfortunately, most governments do not have the necessary expertise or the right mechanisms in place to replace these societies. Consequently, should a calamity occur, governments are protected by immunity.

It is often argued that higher exposure will lead to higher quality. However, Skou is of a different view:

> [t]he highest motivating factor for class societies is our dependence on the trust and confidence of the market. If customers, flag authorities,

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[27] Skou, Amund; Presentation on behalf of IACS to the Centenary Conference of the CMI', paper submitted to the CMI Centenary Conference (Antwerp, Belgium), 9-13 June 1997, CMI Yearbook 1997, p. 181.

[28] Boisson, Philippe; Are classification societies above the law? http://www.maritimeadvocate.com/classification/are_classification_societies_above_the_law.htm.

> underwriters and others do not have confidence in the individual society, that society will wither and die. That is the driving force behind all quality-driven classification societies.[29]

These are strong arguments for the establishment of a limitation regime, but still do not address the problem of fixing an appropriate level of limitation. The potential risk and loss is the same for levels of service and fees which can vary from less than 1,000 USD to over 1 million USD. It is almost inevitable that a potential claim will be higher than the fee. Yet the international community, and the CMI, seem to accept the fee charged as an acceptable basis for setting liability limits. The major classification societies certainly accept this principle.

Moreover, there has been a suggestion that limitation should be based on the tonnage of the ship.[30] This would be unacceptable to all the major classification societies, as ship size has is of no relevance to the value of a class service and there would be the fear that the societies become the insurers of shipowners.[31] However, the status of 'insurers' should never be attributed to classification societies. As things stand today, the insurance industry is already a major driving force in the shipping industry and classification societies should not be pawns in the hands of insurers![32]

Initiatives on the limitation of liability for classification societies

In principle, contracts between classification societies and their clients, besides defining the obligations of both, also lay down the liabilities of the parties to the contract and restrictions as to the amount of compensation payable in case of negligence. A classification society can exclude its contractual liability through special clauses inserted in its general rules. The risk of unlimited liability is therefore beyond the contractual relationship a classification society has with the shipowner, and mostly relates to their exposure to third parties.

The Comité Maritime International Initiatives

The Joint Working Group on a Study of Issues regarding Classification

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29 Skou, Amund; *op. cit.*, p. 182.

30 The limitation of liability regime for shipowners is based on tonnage.

31 Kröger, Bernd; Presentation on behalf of the German Shipowners' Association and of the Maritime Law Committee of ICS, paper submitted to the CMI Centenary Conference (Antwerp, Belgium), 9-13 June 1997, CMI Yearbook 1997, p.188.

32 In the Great American Insurance Co. vs. Bureau Veritas ('The Tradeways II'), US District Court New York, 333 F. Supp. 999, 1972, the Court held: "Not only is the liability not commensurate with the amount of control that a classification society has over a vessel; it is also not in accord with the intent of the parties, the fees charged or the services performed".

Societies (CSJWG)[33] was formed in 1992[34] upon an initiative of the Executive Council of CMI.[35] The issues taken into consideration centred upon the legal rights, duties and liabilities of the classification societies, and the relationship between the societies and the shipowners. The Group was concerned with the increasing number of claims against these societies due to their reputation as 'deep pocket' defendants. The thought behind this concern was that if the claims against societies were to rise, the societies would be forced to withdraw some of the services leading to a deterioration in maritime and environmental safety.

Hence, Wiswall, the Chairman of the CSJWG, contended that disastrous results could ensue should classification societies not enjoy limited liability. He explained that, should limited liability not be provided, insurers would apply pressure on classification societies to adapt their operations so as to minimise their exposure to 'danger areas'.

The CSJWG drafted 'Principles of Conduct for Classification Societies', setting out standards which could be applied to measure the conduct of a society in a stipulated case. The Principles of Conduct cover the activities of the societies with respect to statutory, as well a classification surveys; and in order to achieve the desired end, the Principles are intended to be applicable to all classification societies including those who are not members of IACS.[36] The CMI's project was viewed as 'breaking new ground' as it provided an internationally recognised 'yardstick' to assess classification society performances.[37]

From the outset of its work, the Group has considered whether these societies should be brought within the ambit of the LLMC Convention, since the Group believes that classification societies should be put on an equal footing and afforded protection like other presently-covered persons in the industry. That being said, since neither an international instrument on

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[33] Hereinafter also referred to as 'the Group'.

[34] The Group discussed the proposed Model Contractual Clauses, examined hereunder, between 1992-1999.

[35] Representatives from the IACS; the International Group of P & I Clubs; the International Chamber of Shipping (ICS); the International Chamber of Commerce (ICC); the International Association of Dry Cargo Shipowners (INTERCARGO) participated in the discussions, with IMO; and the International Union of Marine Insurers (IUMI) attending as observers.

[36] Likewise, the Principles must apply whether or not a given society is organised as a privately-owned corporation, or is established and/or owned by a Government and organised as a public corporation. see Clause 2 of Annex A of the Principles of Conduct for Classification Societies.

[37] Durr, Sean; An Analysis of the Potential Liability of Classification Societies: Developing Role, Current Disorder & Future Prospects, Master of Laws in Maritime Law, Faculty of Laws, Cape Town, p. 32.

limitation of liability for classification societies, nor the inclusion of the societies under the umbrella of the LLMC Convention were foreseeable, the CSJWG had produced a set of Model Contractual Clauses,[38] which, *inter alia*, regulate and limit the liability of the societies. The proposed set of clauses are recommended models for use by individual societies, which may wish to modify them in accordance with commercial practice, particular national law and regulation.[39]

The Model Clauses are divided into Part I, dealing with agreements between the societies and Governments concerning statutory surveys and certification work; and Part II dealing with the Rules for classification of ships, which enumerate the responsibilities of the societies and the shipowners respectively on the one hand, and the liability and contractual limitation of the societies on the other.

In developing the Clauses, which provide some limitation of civil liability, a number of alternatives were considered. Owners and insurers contend that classification society liability should be based upon the tonnage of the ship as under the LLMC Convention. But while the classic limitation of shipowner's liability has been based on the value of the ship, tackle and pending freight, this is not a proper yardstick to measure the risk of classification societies which perform the same service regardless of the size or value of the vessel. It is not the ship, but the service rendered by the society which, in the judgement of the Group forms the fairest and most accurate basis upon which to calculate a limitation of liability.[40]

Since the classification societies and shipowners could not agree on a maximum limit of liability to be inserted in the Clauses, either being a fixed sum or one based on fees, the Model Clauses serve as mere guidelines for classification societies when drafting their General Conditions.[41] Another perceived weakness in the CMI initiative was that, although it focuses on the contractual relationships, it does not deal with third party claims. Indeed, such claims are increasing and enjoy less legal certainty than contractual claims.[42]

The European Union Initiatives

Following the Erika tragedy in 1999, the EU reacted by adopting the Erika Packages intended to improve safety in the shipping industry and reduce environmental damage by ensuring that substandard vessels no longer ply our

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38 Annex B of the Group's Report found in CMI Yearbook 1995, p. 103.

39 Joint Working Group; A study of issues re classification societies, Hamburg, 16 January 1996, CMI Yearbook 1995, p. 96.

40 Joint Working Group; CMI Yearbook 1995, p. 98.

41 Lagoni, Nicola; *op. cit.*, p. 299.

42 Durr, Sean; *op. cit.*, p. 34.

seas. However by 2005, it was clear that much remained to be done and that the matter could not be deferred any longer.

The third maritime safety package came into effect in November 2005 and included two Regulations and six Directives which had to be transposed between November 2010 and January 2012. The scope of this package was, *inter alia*, to amend inadequate legislation aimed at harmonising the financial liability regimes of classification societies working in EU Member States[43], since not having a detailed and clear liability regime for classification societies created ambiguity.

Indeed, the purpose behind the enactment of Directive 2009/15/EC was precisely to ensure that a harmonised legal regime is in place.[44] The Directive establishes measures to be followed by Member States in their relationship with organisations entrusted with the inspection, survey and certification of ships for compliance with the international conventions on safety at sea and prevention of marine pollution.[45] It also includes clauses to express certain amounts as minimum liability to be compensated by classification societies to Member States in the case of a casualty caused by a negligent or reckless act or omission of classification societies.[46]

At any rate, these measures have no bearing on the liability of classification societies to buyers of second-hand tonnage, since the legislation addresses the contractual relationship between the societies and EU flag States. Therefore, the Directive only concerns the limitation of liability of classification societies where a government has recovered against a society after having compensated injured parties.[47]

How realistic is the promulgation of a convention on classification societies? The best approach – International or European?

The ideal scenario would without any doubt be a convention under the

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[43] Directive 94/57/EC was re-cast in two different Community legal instruments namely Directive 2009/15/EC of the European Parliament and of the Council of 23 April 2009 on common rules and standards for ship inspection and survey organisations and for the relevant activities of maritime administration, and Regulation (EC) No 391/2009 of the European Parliament and the Council of 23 April 2009 on common rules and standards for ship inspection and survey organisations.

[44] Paragraph 17 of the Preamble: "Divergence in terms of financial liability regimes among the recognised organisations working on behalf of the Member States would impede the proper implementation of this Directive. In order to contribute to solving this problem it is appropriate to bring about a degree of harmonisation at Community level of the liability arising out of any marine casualty caused by a recognised organisation, as decided by a court of law."

[45] Article 1.

[46] Article 5(2)(b)(i)-(iii)

[47] Lixin Han and Ping Yu, New Developments regarding the liability of classification societies, International Maritime Law Journal, 2006, Vol. 12, Issue 4, No. 22 p. 249.

auspices of the IMO since it has the competence to draft conventions and to convene conferences when necessary, on matters concerning shipping. That being said, since there are currently 170 Member States such a convention would take a considerable time to promulgate and a consensus would most probably never be reached.

Perhaps, on a regional level an EU Directive or a Regulation would seem more plausible. The EU has the competence for sea transport as conferred to it by Article 100(2) TFEU[48] and can adopt regulation pursuant to Article 288 TFEU. Similar to the law-making process of international conventions, EU regulation is also a lengthy process. However, the number of EU Member States, which presently stands at 28, is merely a fraction of that of IMO; thus, once discussions are finalised and a regulation or directive is adopted, it would be binding on all the Member States.

If opting for a more regional approach, one must bear in mind that shipping operates at an international level. What might work out well between EU Member States might not satisfy the various international demands. This besides the fact that classification societies, even if established in a particular Member State, are not confined to only render their services there. Indeed, classification societies are known for being virtually in every port.

Therefore, one might have to reconsider the international approach. Lixin and Ping opine that a limitation of liability regime for classification societies will eventually need to be established.[49] Martinez proposes that this can be achieved if classification societies are 'recognized as persons falling under Article 1(4) of LLMC Convention or by expressly extending to them the right to limit their liability' under the said Convention.[50] Hence, he proposed that a new paragraph follows the current Article 1(6) of the LLMC Convention:

> A classification society shall, in respect of claims subject to limitation in accordance with the rules of this Convention, be entitled to the benefits of this Convention to the same extent as the shipowner himself.[51]

This seems to be a way forward, but it is not plain sailing. The LLMC Convention has not been ratified by all the States in which a classification society can be sued, although some States enacted it in their national law without ratification. Against this background, Lagoni believes that '[o]ne should, therefore, start with a clean slate and envisage a new international convention which is confined to the liability of classification societies',[52]

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48 Treaty on the Functioning of the European Union, 2010, OJ C 84/47.
49 Lixin and Ping; *op. cit.*, p. 249.
50 Martínez Gutiérrez, Norman A., *op. cit.*, p. 209.
51 Ibid.
52 Lagoni, Nicola; *op. cit.*, p. 317.

perhaps one which '...adopts the minimum standard of limitations which are laid down in the LLMC – however without its protocols...'[53]

Level of Liability – Strict or Fault based?

The ideal scenario would be that where a convention would be promulgated harmonising the liability of classification societies and providing for the limitation of such liability. From the outset what would need to be determined would be whether the liability is strict or fault-based. Although classification societies have various responsibilities, these should not undermine those of shipowners.

Under the CLC and the HNS Convention, the shipowner is strictly liable for damage to the environment even in the absence of fault or negligence. It is understood that strict liability would be prejudicial to classification societies since the activities performed by classification societies are merely related to the inspection and classification of vessels, ensuring that there are no deficiencies; whereas shipowners have the non-delegable duty of seaworthiness. Against this background, it would seem unfair for classification societies to be strictly liable for an event beyond their control. Perhaps fault-based liability would be more appropriate.

In relation to contracts between classification societies and their clients, the determination of strict or fault-based liability is superfluous, since the liability between them is generally regulated by contract law. Third parties cannot resort to contract law even if the damage arises from breach of contract since there is no contractual relationship with classification societies. Thus, this lacuna must be catered for in a convention which would expressly define the classification societies' duty of care toward third parties, and make provision for repercussions in the event of a breach of duty. This would not only provide a framework by which third parties are protected, but classification societies would foresee their possible exposure; provided a causal link between the damage or loss and the breach of duty of classification societies is found.

Once the legal instrument contains clear parameters of liability in tort for third parties, reasonable levels of limitation would have to be in place.

Basis of limitation – tonnage or classification fee?

The CSJWG had for long considered whether tonnage or fees charged by the classification society should be the determining factors for the calculation of maximum amount of liability. The classification societies were in favour of a system based on classification fees since it was opined that a tonnage based system would turn them into insurers of the vessel or similar to shipowners.[54]

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53 Ibid.

54 Skou, A.W; *op. cit.*, pp. 182-183.

On the other hand, shipowners believed that the limitation should be based on the tonnage of the ship.

Conversely, in the case of compensation to third parties, who are not afforded protection as contracting parties, the classification fee structure would be inappropriate, the reason being that such limitation will vary depending on the classification society involved. Whereas, if the limitation is based on tonnage, then there would be unvarying amount for vessels with comparable tonnage.

A tonnage system, the system upon which limitation of liability under LLMC Convention is based, seems to be the most plausible system. However, the author believes that ultimately, IACS should have the final say on which system would protect them best in an era where classification societies no longer remain 'untouchable'.

Conclusion

Current challenges facing classification societies

As the world demands higher standards of ship safety, operation and environmental protection, the burden of making it happen will inevitably fall primarily on classification societies. Nonetheless, as the scope of classification societies work grows, so do the potential liabilities they expose themselves to. It is very tempting for some to see classification societies as 'deep pocket' defendants to satisfy their claims. If liabilities grow too great and the societies are sued too often, they could be forced to withdraw or limit some of the services they presently perform in the public interest.[55]

Where the liability of classification societies is concerned, one should first carefully consider the important role of the societies. The potential financial liability of classification societies should be proportionate to its limited role. It must be borne in mind that they do not design, install, operate, manage, manufacture, control, repair, maintain or derive commercial benefit from the vessels, its equipment or any installations being surveyed. International treaties and case law have established a system of liability apportionment, which primarily places responsibility for the safe operation of ships, and for damage and losses arising from failure to operate them properly, on the shipowner.[56]

At law, the person who is 'primarily responsible for the danger shall have to bear the consequences and not a person who is remote and does not possess similar means to control the risk.'[57] However, with the emergence of the

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[55] Boisson, Philippe; Are classification societies above the law?, *op. cit.*

[56] Hidaka, Masataka; The Legacy of the "Erika" – A vision for marine safety, IUMI Liability Workshop, 12th September 2000, p. 6.

[57] Lagoni, Nicolai; *op. cit.*, p. 303.

possibility of 'economic channelling', classification societies are being forced to answer for risk instigated by others. This is unjust since classification societies are liable to an unlimited amount, whereas shipowners may limit their liability.

This goes contrary to the limited control these societies have over a vessel and the fact that the shipowner is responsible for seaworthiness. Indeed, there is no international statutory rule which imposes such a responsibility on classification societies. If the non-delegable duty of seaworthiness rests on the shipowner, one can conclude that if the classification societies are to be held accountable for unseaworthiness of a vessel, then they should enjoy the same protection of the shipowner; that is, allowed to limit liability.

If classification societies' risk is too high and their liability cannot be limited, they will either have to increase their fees or 'wither and die'.[58] Indeed, one of the main reasons why courts are generally reluctant to find these societies liable is because they are unable to limit their liability. That being said, the *Erika* judgement has shown that classification societies can be held liable. However, in terms of contractual relationships, classification societies have protected themselves from liability by inserting exemption or limitation clauses in contracts for services.

Having a culture of liability against classification societies, will not necessarily set them back from any other player in the shipping field. On the contrary, this will encourage them to maintain or improve their standards provided they are adequately protected by a limitation to liability especially invoked by third parties in tort.

After more than 20 years since the establishment of CSJWG, the issue of limitation of liability has not been settled. Conceivably, the first step towards this regime was the EU Directive but, needless to say, there still remains a long way to go.

Perhaps, the limitation of liability regime must be amended to incorporate and protect classification societies. Nonetheless, a logical question arises: 'why should a shipowner, who is said to have the responsibility of providing a seaworthy vessel, be protected financially by a limitation regime, whereas the classification society which he employs to survey his vessel enjoys no such cover? [59] Consequently, third parties sue classification societies because of their unlimited liability exposure.

Classification societies expressed their desire to fall under a limitation of liability regime, but rightly argue that this may not be achieved in the near future. At the same time, however, classification societies do not want their liability to be based on a ship's tonnage, as under the LLMC Convention, since

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58 Skou, Amund; *op. cit.*, p. 182.

59 Durr, Sean; *op. cit.*, p. 37.

this does not reflect the amount of work undertaken by them.

In this light, a dilemma arises: should classification societies be afforded limitation, exemption from liability or unlimited liability, especially in respect to third party claims?

A complete exemption from liability is perhaps the ideal situation since classification societies would no longer need to insure their risks. In turn, this could lead to insufficient compensation where such risk would not be entirely insured by the shipowner. Lagoni believes that should this approach be favoured, then this 'would most probably cause lack of accountability and credibility of these societies'.[60]

Conversely, unlimited liability would not be economically viable for classification societies since in order to insure such liability the premium would be costly. Consequently, the classification societies would have to increase their fees in order to balance out the expenses. An increase in the fees might stimulate shipowners to seek the services of a competing society.

In view of these approaches, the most reasonable choice seems to be to limit the liability of classification societies. This would balance out the interest of the injured party and his right to claim compensation, whilst keeping classification societies in business.

Promulgating an international convention which establishes a fault-based liability, the right to limit liability, the circumstances in which such right is to be forfeited, and in certain cases, specific limitation amounts, would be ideal. However, the author believes that at a time when the shipping industry is still recovering from the aftermath of recession, embarking on an international project to promulgate such a convention will probably not feature prominently on the agenda of any Government or international institution.

In this day and age, classification societies no longer remain 'untouchable' within the shipping industry. Ultimately, it is purely in the interest of IACS to come up with the best solution, preferably before another major tragedy strikes!

Practical solutions for these challenges: the way forward

The CMI initiatives relating to the formulation of 'Principles of Conduct for Classification Societies' and 'Model Contractual Clauses' and the regulatory framework set out by the EU were undeniably a positive step forward. Durr believes that 'to cut the Gordian knot that, since 1880, has bound classification societies to their shipowner clients is an unrealistic view and it is furthermore doubtful whether marine insurers would once again be in a position to 'employ' classification societies.'[61]

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60 Lagoni Nicolai; *op. cit.*, p. 315.
61 Durr, Sean; *op. cit.*, p. 37.

Insurers are not willing to ensure the unlimited risk of classification societies. Indeed, no insurance company would be willing to subject itself to unlimited liability arising from claims against classification societies, which claims can vary from pollution to passenger claims. Indeed, it appears highly improbable that any insurance company will offer cover to classification societies if their liability is unlimited. That being said, like any entity within the shipping industry, classification societies should have the possibility of insuring themselves against the potentially disastrous effects of liability.

It has been suggested that perhaps mutual insurance through an institution similar to Protection & Indemnity Club could offer higher coverage. The members of the P&I Clubs would be classification societies which form an association to protect one another against large financial losses. That is, if a loss occurs to one of the societies as members, all others have to contribute accordingly. Therefore, the thought behind P&I Clubs is specifically to cover liabilities and claims which are otherwise not insurable.

However, sharing the risk mutually between classification societies might prove to be challenging since classification societies vary, as between themselves, when it comes to the types of vessels they classify.[62] In the event that IACS wishes to establish such a club, it would then have the intricate task of agreeing on a minimum amount as premium. That is, the more different the risk structure, the more difficult it is to establish a consistent premium which is accepted by all members of the club.[63] A solution to this might be by having classification societies contribute according to the tonnage they class.

The most prominent concern when there is a shipping accident revolves around the impact of the incident on the environment. This could be seen in the *Erika*, which maritime claim mainly concerned the detrimental effect on the environment from an oil spill. In these cases, the shipowner is, in some way or another, able to limit his liability by means of international funds[64] which compensate for such damage. The concept behind these funds is that '[t]here is no single legal entity that should have to shoulder all consequences of a casualty even if it was responsible for the incident' and they ensure that no one would be 'liable to an unlimited amount even if his responsibility for the incident was proven'.[65]

Against this background, it is reasonable to say that the consequence for any damage emanating from a maritime incident is to be borne by the perpetrator. Therefore, whether it is the shipowner, the classification societies or any other person, liability should be attributed. However, if the same degree

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62 For instance, one may appreciate, passenger vessels and container vessels vary in risk.

63 Lagoni, Nicolai; *op. cit.*, p. 305.

64 Such an international fund is provided by the CLC.

65 Lagoni, Nicolai; *op. cit.*, p. 307.

of exposure to liability is allowed, then by implication there should be an equivalent regime of protection from this liability.

The author believes that classification societies should be found liable in so far as they are negligently involved in a maritime incident through a fault-based system of liability. Nonetheless, the societies should be allowed to cap such liability to an extent which, on the one hand, does not discourage them from remaining in business, while on the other, will not allow them to get too comfortable with the thought of being protected.

Indeed, the *Erika* ruling provides a compelling and persuasive basis upon which courts can structure existing precedent to hold classification societies liable for damages caused, negligently and recklessly through their services, to third parties. If courts decide to take that route, a strong message will be sent to the classification community that they 'require higher ethical standards from their surveyors actively to prevent succumbing to the pressure of financially based shipowner demands'.[66] This is logical, considering that classification societies have the most historical knowledge in ship structure and surveyors with highly specialised expertise.

Therefore, in conclusion, it is indispensable that the work within CMI continues in regulating classification societies so that the necessary changes can be made without delay. The role of classification societies is still very relevant and crucial in securing a proper maritime regime operating under meaningful concern for shipping safety and environmental consideration.

Classification societies are, and remain, a vital link in the chain of interests and responsibilities in modern day shipping. Severing that link would have wide-spread repercussions on the state of maritime affairs for years to come. The author believes that it is imperative that full efforts be made by those concerned to ensure that classification societies will be assured a viable future for the proper exercise of their important functions, within a widely-endorsed legal framework.

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[66] Foley, J. Vincent and Nolan, R. Christopher, *op. cit.*, p. 72.

SALVOR'S LIABILITY FOR PROFESSIONAL NEGLIGENCE

Dr. Mišo Mudrić*

1. Introduction

The salvage case law is abundant with examples where salvors intentionally caused damage to the salvee's property in order to gain certain financial benefit.[1] Plunder, theft, fraud, exaggeration of peril, forcing aid and other examples have often led to such outcomes where courts and arbitral tribunals found the salvors responsible and liable to the full amount of damage, without earning a right to a salvage award, often followed by criminal charges. Similarly, salvors were, at occasion, found to have been exploiting the salvee's peril in order to enhance the salvage award payment by unreasonably extending the duration of a salvage service,[2] waiting for the maritime peril to increase ("*waiting for a bump*"),[3] and choosing a distant port of delivery.[4]

In most cases, as to be expected, (professional) salvors genuinely strive to provide a proper assistance to the imperilled property. When a salvor acts professionally and achieves a certain result in terms of preserving some or all endangered property, a salvor has a right to claim a salvage award. If not acting with proper care, a salvor may be held responsible for damage resulting out of

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1 For case examples, see: *Norris, Martin J.*, Vol. 3A: The Law of Salvage, in: *Benedict, Erastus C./Knauth, Arnold Whitman*, Knauth's Benedict On Admiralty (New York: Mathew Bender, 7th ed., 2012), at 102, *Camarda, Guido*, Il soccorso in mare (Milano: Giuffrè, 2006), at 323, *Hernandez, Eduardo F/Peñasales, Antero A.*, Philippine Admiralty and maritime law (Manila: Rex Book Store, 1987), at 929, *Lucas, Jo Desha*, Cases and materials on admiralty (Mineola: Foundation Press, 2nd ed., 1978), at 721 *et seq*., and, *Prüssmann, Heinz/Rabe, Dieter*, Seehandelsrecht: fünftes Buch des Handelsgesetzbuches; mit Nebenvorschriften und internationalen Übereinkommen (München: Beck, 4th ed., 2000).

2 See: *The Byron*, F. Cas. 2275 (D. Fla. 1854), *The Arakan*, 283 F. 861 (N.D. Cal. 1922), and, *The Minnie Miller*, F. Cas. 9638 (E.D.N.Y. 1872).

3 See: *Key Tow, Inc. v. M/V Just J's*, 2005 U.S. Dist., 27, 2005 A.M.C. 2840 (S.D. Fla. 2005), *The Pergo*, [1987] 1 Lloyd's Rep. 582, and, *The Aurora*, F. Cas. 659 (Fla. 1840), *Nicastro v. The Peggy B.*, 173 F. Supp. 61, 1960 A.M.C. 914 (D. Mass., 1959).

4 See: *The Haarlem*, June 25, 1935, N.J. 1937, 203. aff by Hof Amsterdam June 2, 1938 N.J. 1940, 718., and, *The West Harshaw*, 69 F.2d 521 (2d Cir. 1934).

such careless conduct. Depending on the gravity of such carelessness and the damage so sustained, a salvage award may be diminished or even forfeited. The *doctrine of affirmative damages*, primarily developed in the United States (US) jurisprudence, defines a number of criteria that must be fulfilled in order to hold a salvor liable for damage exceeding the figure of the forfeited salvage award. This implies that a salvor not only losses the opportunity to earn a salvage award, but is additionally placed under an obligation to compensate the damage to the salvee.

General professional liability contractual and non-contractual rules, developed in the second half of the 20th century, dictate that a service provider is responsible to exhibit a certain level or standard of care while rendering a particular service, and that a breach of that duty may lead to responsibility and liability to compensate the damage arising out of poor performance or non-performance. However, existing international salvage regulation provides a limited remedy to the salvee, stipulating the forfeiture of the salvage award as an ultimate sanction. In addition, a long line of judicial policy of leniency towards salvors questions the full applicability of general liability rules in salvage matters. On the other hand, the international legislation concerning the issue of limitation of liability stipulates a number of particular provisions applicable in situations when a salvor is potentially exposed to liability, allowing the salvors to utilize a right to limit the scope of financial liability when performing below the expected standard of performance.

2. Public Policy of Leniency

The public policy of leniency towards salvors, developed by the English jurisprudence in the second half of 19th century, and fully endorsed by the US and European courts until the present day, exerts a special kind of an allowance for salvage services. Recognizing salvage as primarily a *bona fide* service protecting and preserving life and property at sea, and taking into consideration the dangers faced by salvors when approaching and boarding endangered vessels and other property, the public policy offers a unique judicial incentive of narrowing the scope of salvor's liability exposure. In the *Alenquer* case, Justice Willmer described the public policy of leniency by stipulating that it is the duty of judges and arbitrators to "… *err, if anything, on the side of leniency towards salvors in so far as their behaviour is criticized*".[5] Anyone alleging misconduct on the side of a salvor will have to overcome not only the difficulty of proving the negligent performance, but

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[5] *The Alenquer (The Rene (Owners) v. The Alenquer (Owners))*, [1955] 1 Lloyd's Rep. 101., at 112.

also the discretionally power of a judge or an arbitrator[6] who should endeavour to take into consideration all possible factors[7] that might reduce or even deny salvor's negligence[8] in order to prevent salvors from being discouraged to render salvage services out of fear from excessive liability claims.

Although the public policy of leniency is, as stated earlier, abided to the present day, its interpretation merits attention, as the conditions of rendering salvage services have greatly changed within the time-span of the 20th century. In the second half of the 19th century, most salvage operations were performed by non-professional salvors independent of contractual stipulations. [9] Considering the expected performance of a passing-by salvor, Dr. Lushington stated his contemplations of the salvor's standard of care in the *Cape Packet*,[10] stipulating that a salvor is under a general duty to exercise ordinary skill and prudence inherently present in the group of persons performing salvage operations.[11] At that time, salvage operations were relatively seldom and random, performed by ordinary seamen. Therefore, the skill and knowledge concerning salvage performance could only relate to the skill and knowledge of a prudent sailor.

With the emergence of steamers, the rendering of salvage services became easier and more effective, and by the end of the 19th century, a number of professional salvage companies started offering their services on a contractual basis. The first issue of the Lloyd's Open Form contract (LOF 1908) incorporated a duty to take best endeavours to salve the vessel and cargo on board (Clause 1),[12] emphasizing the nature of a salvage service directed

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[6] 6 See the comments of Brett MR, in: *The City of Chester*, (1884) 9 P.D. 182, at 187. Also see: the *Glengyle*, [1898] AC 519; 67 L.J.P. 87, P. 97, at 102, and, *The Saint Blane*, [1974] 1 Lloyd's Rep. 557.

[7] 7 Lord Browne-Wilkinsons warns of the necessity of "*potent considerations*" that need to be shown before a public policy of leniency can be applied in an individual case, see: *X (Minors) v Bedfordshire County Council*, [1995] 2 AC 633, at 749. In the salvage context, the "potent considerations" are usually understood as the public function performed by the salvage industry and its irreplaceable role in the maritime sector.

[8] *Rose, Francis D.*, Kennedy and Rose – Law of Salvage (London: Sweet & Maxwell, 6th ed., 2002), at 162.

[9] Rudolph gives an account of the assessment of salvor's negligence in the Antiquity, referring to the *Rhodian code*, see: *Rudolph, James L.*, Negligent Salvage: Reduction of Award, Forfeiture of Award or Damages?: J. Mar. L. & Com. 7 (1975-1976) 419, at 420. For various judicial interpretations of the "*good faith*" required from a salvor, see, *ie*: *The Blaireau*, (1802) 2 Cranch 240, *The Duke of Manchester*, (1847) 6 Moore P.C. 90, *The Marie*, 7 P.D. 203, and, *The Capella*, (1892) P. 70.

[10] *The Cape Packet*, (1848) 3 W. Rob. 122, at 125.

[11] *The Cape Packet*, *ibid.*, at 125. *Cf.: The Perla,* (1857) Swab. 230, 166 ER 1111, and, *The Neptune*, (1842), 1 W. Rob. 297, at 300.

[12] Courtesy of Mr. Mike Lacey, Secretary General, International Salvage Union, e-mail correspondence, 17 August 2012.

primarily towards a specific standard of performance, rather than a specific result as expected.[13] This, in turn, enabled a possibility of an objective evaluation of a salvage performance with that of a professional salvor, keeping in mind the notion of profit arising out of successful salvage operations.

Prior to the above described development, the salvage case law indentified the sanction of forfeiture as an ultimate sanction, based on the public policy restriction. The same rationale prevailed during the 1910 Salvage Convention and 1989 Salvage Convention drafting discussions[14]. However, through the course of the 20th century, a number of separate factors arose, offering incentive to the judges and arbitrators to re-interpret the public policy. The development of the tort of negligence, the modern understanding of a professional service and the protection of consumers of such services placed more emphasis on a salvee, stressing the fact that a salvee is paying for a professional service, and thus deserves comprehensive legal protection in cases when poor performance or non-performance leads to undesired results. The establishment of the salvage industry as a separate and strong industry, with its own code of conduct and an international association, requires the application of professional liability rules, not only to protect the consumers, but to provide protection to the industry itself, through identifying and sanctioning below-standard performance of those subjects who profess to possess certain skill and knowledge, but lack the same. In addition, the modern appreciation of rescue services, recognizing instances of holding police and fire departments, coast guards and similar subjects liable for damage[15], contributed to the fact that the century old public policy was facing a strong dilemma in the eyes of contemporary judges and arbitrators.

What became the central issue of debate was the question whether the limited scope of salvor's liability exposure should be extended. The maritime tribunals of several important maritime jurisdictions slowly started to recognize and appreciate changing conditions, and began to question the concept of (full) leniency applicable to the (professional) salvor's performance. The landmark cases appearing before the common law tribunals in the 1960's, and before the civil law tribunals in the 1980's, offered a new and complex interpretation of the salvor's exposure to liability for negligent performance. The new codification of salvage law, the 1989 Salvage Convention, to some

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[13] *Brice, Geoffrey/Reeder, John (ed.)*, Brice on Maritime Law of Salvage (London: Sweet & Maxwell, ed., 2003), at 547.

[14] Article 8 of the 1910 Salvage Convention and Article 18 of the 1989 Salvage Convention on the salvor's misconduct.

[15] *Capital and Counties v Hants CC*, [1997] Q.B. 1004, [1997] W.L.R. 331, [1997] 2 All E.R. 865. See also: *Watson v British Boxing Board*, [2001] 2 W.L.R. 1256, *Miller v. United States*, 614 F. Supp. 948 (D. Me. 1985), and, *Hoff v. Pacific Northern Environmental Corp., et al.*, WL 3043111 (D. Or., 2006), and, *Northern Voyager Limited Partnership, et al. v. Thames Shipyard and Repair Company, et al.*, 2006 A.M.C. 2431.

extent modified and modernized the concept of salvor's misconduct, but, despite the established practice, decided against directly resolving this issue[16], thus retaining the old position of the forfeiture as a final sanction available through international law. Whereas such drafting led some authors to believe that the international law draws a clear line[17], a predominant number of authors are of an opinion that there is no hindrance to apply the domestic law provisions and case practice[18].

3. Doctrine of Affirmative Damages

Provided that the salvee can prove the salvor's negligent performance, the salvor's claim for a salvage award can be confronted with the salvee's counterclaim for damage. A professional salvor, when negligently performing salvage services, may be faced with the following prospects: a salvage award may be reduced, a salvage reward may be forfeited, and, a salvor may be held liable to the amount of damage exceeding the forfeiture of a salvage award. The first two options are stipulated through the 1989 Salvage Convention (Article 18). Major cases in support of the third option include the English case *Tojo Maru*[19], the American cases *Noah's Ark*[20] and *Kentwood*[21], the French Case *Germain*[22], and the German case occurring on

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[16] See: *Selvig, Erling C.*, Revision of the International Convention for the Unification of Certain Rules of Law Respecting Assistance and Salvage at Sea, 1981, in: *Berlingieri, Francesco (ed.)*, The Travaux Préparatoires of the Convention on Salvage 1989 (Antwerpen: Comité Maritime International, 1981), 27, Annex 5, at 32.

[17] Montas examines this option, although clearly disagreeing with the same, see: *Montas, Arnaud*, Le quasi-contrat d'assistance: essai sur le droit maritime comme source de droit (Paris: Librairie Générale de Droit et de Jurisprudence, 2007), at 87-88.

[18] *Rose, supra note 8*, at 502. *Brice, Geoffrey*, The Law of Salvage: A Time for Change? "No Cure-No Pay" No Good?: Tul. L. Rev. 73 (1999) 1831, at 1841. The Australian delegation was concerned about the possibility of salvors being held liable for actions taken under the directions of a Coastal State, see: *Government of Australia*, Document LEG/CONF.7/9, Proposals on duties of salvors in relation to protection of the environment, in: *Berlingieri, Francesco (ed.)*, The Travaux Préparatoires of the Convention on Salvage 1989 (Antwerpen: Comité Maritime International 2003), at 18. *Cf.: Trappe, Johannes*, L'Arbitrage en Matiere d'Assistance Maritime: ETL 18 (1983) 719, at 734.

[19] *The Tojo Maru (Owners of the Motor Vessel Tojo Maru v. N.V. Bureau Wijsmuller)*, [1972] AC 242.

[20] *The Noah's Ark v Bentley & Felton Corp.*, 292 F2d 437 (5th Cir. 1963), 322 F.2d 3, 1964 A.M.C. 59.

[21] *Kentwood v. United States*, 930 F. Supp. 227, 1997 A.M.C. 231 (E.D.Va., 1996).

[22] *Navire "Germaine",* Cour d'appel d'Aix-en-Provence, 8 juin 1983, DMF 1985, 435 - One of the rare cases where the issue of salvor's fault was reviewed before the French courts. After concluding that a salvor is under the *obligation of means*, the court determined that a salvor's responsibility arises when his actions are either intentional or negligent. Upon reviewing the facts of the case – according to which the salvor towed a yacht to deep waters where the (new) damage to the yacht occurred – the court held that the salvor was not to be blamed (no fault was determined) due to the fact that he was not in a position to assess the impact of the already sustained damage to the occurrence of possible new damage. The salvee's claim for damage was, thus, dismissed.

the river Elbe[23]. The mentioned case law defines the so-called *doctrine of affirmative damages*, according to which a professional salvor can be held liable for the damage caused due to negligent performance of salvage services, even if such liability goes beyond the threshold regulated by the Salvage Convention.[24]

The first notion of assigning salvor's responsibility beyond the forfeiture of a salvage award appeared in the US case *Henry Steers*,[25] where Judge Thomas recognized different circumstances surrounding negligent performance, leading to different possible results. According to the deliberations of the American judge, in circumstances where salvor's elevated ("*culpable*") negligence results in a distinguishable damage to the salved object, the salvage award may be diminished or completely forfeited, and the owners of damaged salved property may demand compensation.[26] Based on such deliberation, it can be argued that the early development of the US salvor's liability case law differs from the English practice by employing a more liberal imposition of stricter sanctions that allowed a consideration of claims for damage beyond the forfeiture of a salvage award. Additionally, US courts were obviously responding to the emergence of professional salvage companies through differentiating between the professional and non-professional salvors in respect of the expected measure of skill and care. A professional salvor should adhere to the behaviour reflecting such skill and care as visible in the behaviour of a person in the same industry who is employing "*ordinary prudence and capacity*", whereas a non-professional salvor should use good faith to the best of his individual capabilities.[27]

The notion of a distinguishable damage, already present in the *Henry Steers* and previous case law, found its full application within the doctrine of

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[23] Urteil des OLG Hamburg vom 5.1.1984 (6 U 207/83) - Following the capsizing of a yacht on the river Elbe, a subsequent (non-contractual) rescue operation, and the damage occurring on the yacht during the rescue operation – the owners of a yacht demanded a reduction of a salvage award based on Article § 746 of the German Commercial Code, due to the alleged contributory fault of the salvor, and additionally claimed damage (stipulated as an independent claim, and not a counterclaim) arising from the salvage operation based on benevolent intervention into another's affairs. The court found no evidence that the salvor's conduct was either intentional or grossly negligent, and concluded that the salvor successfully averted the danger threatening the yacht, and the general danger that the capsized yacht constituted for the safe inland waterways navigation. Accordingly, the court dismissed the claim regarding the benevolent intervention and the arising damage, at the same time stipulating that the same logic is to be applied regarding the first claim (counterclaim – reduction), based on a general tort rule as stipulated in Article § 823 of the German Civil Code.

[24] *Vincenzini, Enrico*, International Salvage Law (London: Lloyd's of London Press, 1992), at 185.

[25] *The Henry Steers, Jr.*, (1901) 110 F. 578 (D.C.N.Y., 1901).

[26] *The Henry Steers*, ibid., at 14. Cf.: The S.C. Schenk, (1907) 158 F. 54.

[27] *The Henry Steers*, ibid., at 28.

affirmative damages, fully constituted in the US case *Noah's Ark*,[28] where the court held a non-professional salvor responsible for causing a distinguishable damage (the danger of salvee's vessel running aground did not exist prior to the salvor's negligent performance) due to the salvor's negligent performance. Justice Brown employed a very concise method of assessing salvor's liability, according to which the existence of *negligence* plays a limited, *secondary role*. The key element of salvor's liability is the existence of a *distinguishable* damage caused by the salvor, which is different from the damage that was threatening the salved object from the original peril. In cases where a damage sustained by the salvee due to salvor's negligent performance is equal to the damage that was threatening the salvee under the original peril, such damage is to be considered as a *non-distinguishable* damage, according to which a salvor can be held liable only in cases of wilful or gross negligence.

Interestingly enough, although the concept of a distinguishable damage was formulated in the US jurisprudence, English salvage cases from the second half of the 19th century contain deliberations strongly resembling the concept developed by their American counterparts several decades later. In the *Thetis*,[29] Sir Phillimore held a salvor liable for the damage caused by negligent performance, especially having in mind the fact that the collision and sinking, not previously directly threatening the salvee, were neither necessary nor unavoidable. The same judge, deciding in the *C.S. Butler*,[30] required a proof of an elevated negligent performance ("*crassa negligentia*"[31]) in order to hold a salvor liable. Thus, the English jurisprudence, preceding the relevant US case *Noah's Ark* by almost a hundred years, contained both key provisions – distinguishable damage and an enhanced degree of negligence – that formulate the original US doctrine of affirmative damages.

Whereas the *Noah's Ark* case clearly differentiates between distinguishable and non-distinguishable damages, the US case *Kentwood v. United States*[32] marks one step further in the assessment of salvor's liability and the formulation of affirmative damages doctrine. Contrary to the previous

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[28] *The Noah's Ark v Bentley & Felton Corp.*, 292 F2d 437 (5th Cir. 1963), 322 F.2d 3, 1964 A.M.C. 59. *Cf.*: the older US case law where the principle of compensation of damage was fully endorsed, although lacking a clear definition and classification as visible in the *Noah's Ark* case: *Serviss v Ferguson*, (1897) 84 F. 202 – a US case, where the court reasoned that the salvor's duty to compensate the salvee for damage equals the same duty of a bailee regarding the hire (at 203), holding the salvor liable to pay for the damage suffered by the salvee due to salvor's exhibited lack of due diligence, *The Ashbourne*, 99 F 111 (D.C.N.Y., 1899), *The Cape Race*, 1927 A.M.C. 628, 18 F.2d 79, and, *The Albany*, 44 F. 431 (D.C.Mich., 1890).

[29] *The Thetis*, (1867-69) L.R. 2 A. & E. 365.

[30] *The C.S. Butler (The Baltic)*, (1872-75) L. R. 4 A. & E. 178.

[31] *The C.S. Butler, ibid.*, at 183. The older general English case law refers to *crassa negligentia* as a method of assessing the degree of duty owed in particular circumstances, see, *ie: Pentecost v London District Auditor*, [1951] 2 K.B. 759.

[32] *Kentwood v. United States*, 930 F. Supp. 227, 1997 A.M.C. 231 (E.D.Va., 1996).

case law, Judge Clark stated that in cases of non-distinguishable damages a professional salvor that renders a service without proper equipment and experience in a non-emergency environment could be held liable for affirmative damage regardless of the degree of negligence observed.[33] According to such determination, a professional salvor needs to adhere to a high standard of responsibility and care, and is responsible for damage even in the absence of gross negligence, willful misconduct or distinguishable injury. Thus, a simple negligence resulting in a breach of a contract is a sufficient cause to grant a salvee an opportunity to claim damage against a professional salvor.[34]

Similar to the comparison of American and English practice concerning the concept of distinguishable damages and the required degree of negligence, more than one hundred years earlier, an English adjudicator, Judge Hannen, delivered a comparable deliberation to that of the *Kentwood* case. In the *Yan-Yean*,[35] a salvor was held responsible for the damage that would have occurred irrespective of salvor's (non-distinguishable damage) negligent performance, due to the fact that the salvor was deemed inexperienced for the task at hand, at the same time finding salvor responsible for refusing the assistance of another tug[36]. Although Judge Hannen did not feel restricted by the notion that a maximum penalty for a misconduct is a forfeiture of a reward (a restriction perceived by the admiralty judges before and after him[37]), he forfeited the award, due to the lack of evidence to support the notion of holding the salvor liable for damage beyond the forfeiture of the award.[38] Had there been more evidence to support salvee's claim, such a decision would have coincided with the early development of the affirmative damages doctrine in US case practice.

Also preceding the relevant US salvage cases is the English case *Dwina*,[39] where Sir Butt diminished the salvage award, but asserted that salvor's performance was not an act of gross negligence,[40] and that an ordinary

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[33] *Kentwood v. United States, ibid.*, at 240. *Cf.: Sea Tow Servs. of Carteret County, Inc. v. S/V Nautilus*, 2000 A.M.C. 799.

[34] In: *D. Evanow and Others, v. The Tug Neptune, and Others*, 163 F.3d 1108 (9th Cir., 1998), the Court of Appeals affirmed the *Kentwood* principle of applying simple negligence for professional salvors. The towage operator (tug *Paul C*) was the sole person accountable for creating (due to his negligence) the situation of "sudden emergency".

[35] *The Yan-Yean*, (1883) L.R. 8 P.D. 147.

[36] *The Yan-Yean, ibid.*, at 149-150.

[37] For more on the issue, see: *Williams, Robert G./Bruce, Gainsford*, The Jurisdiction and Practice of the High Court of Admiralty (London: Maxwell, 1869), at 168. *Cf.: The John and Thomas*, 1 Hagg. 157, *The Charles Adolphe*, (1856) Swab. 153, *The Lady Worsley*, (1855) 2 Sp. 256, *The Magdalen*, (1861) 31 L. J. Adm. 24, *The Florence*, (1852) 16 Jur. 576, *The Houthhandel*, (1853) 1 Spk. 29, *The Louisa*, (1848) 2 W. Rob. 24, and, *The Wear Packet*, (1855) 2 Spk. 256.

[38] *The Yan-Yean, supra note 35*, at 150.

[39] *The Dwina*, [1892] P. 58.

[40] *The Dwina, ibid.*, at 64. Cf.: *The Lowmoor*, (1921) 6 Ll.L.Rep. 63, and, *The Royal Firth*, (1923) 17 Ll.L. Rep 204.

negligence can make a salvor liable,[41] suggesting that the salvor's behaviour ought to be reviewed under the auspices of the standard rules of common law. The proposed notion was explored in the *Unique*,[42] where Justice Bucknill questioned the concept of maximum sanctions limited to the forfeiture of the salvage award,[43] recognizing the claim for damage as entitled to a separate legal consideration. Referring to a "*reasonably good owner*", Justice Bucknill found the salvor negligent for a breach of the duty of care,[44] thus, legally liable for the damage arising from the breach.[45]

The concept explored by Justice Bucknill was fully endorsed in the *Delphinula*,[46] where Justice Atkinson held salvor responsible for failing to take reasonable precautions in order to prevent or minimize the damage, and allowed the salvee to claim damage, thus marking the initial point where the notion of negligence in maritime law was understood to be consistent with its conventional understanding under a general common law assessment of liability.[47] In addition, this was the first major English case where affirmative damages were introduced into case practice. This practice was soon reconfirmed in the *Alenquer*, [48] where Justice Willmer held the salvor liable for negligent manoeuvring,[49] deprived him of the salvage award, and allowed the salvee to recover damage.[50]

Perhaps the most important case concerning the issue of salvor's liability for negligent performance, the *Tojo Maru*,[51] marked a final reconciliation of the US and the English principles of salvor's liability assessment. In 1965, the tanker *Tojo Maru* collided with another tanker, sustaining serious damage on the hull, with the engine room and fuel tank flooded. A professional salvor signed a salvage contract (LOF), stopped the leak, pumped out the water, and removed most of the cargo (crude oil). Upon the successful completion of the

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41 *The Dwina, ibid.*, at 61.

42 *The Unique*, (1939) 63 Ll.L.Rep. 75.

43 *The Unique, ibid.*, at 77.

44 Failing to observe due diligence while mooring the barge.

45 *The Unique, supra note 43*, at 80.

46 *The Delphinula (Anglo-Saxon Petroleum Co. Ltd. and another v. Admiralty), Same v. Damant,* [1947] 82 Lloyd's Rep. 459.

47 *The Delphinula, ibid.*, at 632.

48 *The Alenquer (The Rene (Owners) v. The Alenquer (Owners)*, [1955] 1 Lloyd's Rep. 101.

49 *The Alenquer, ibid.*, at 102.

50 *The Alenquer, id. Cf.: Cadwallader, F.J.J.*, The Salvor's Duty of Care: Marit. Stud. Mgmt. 1 (1973) 3, at 9, and, *Thomas, D. Rhidian*, Aspects of the Impact of Negligence upon Maritime Salvage in United Kingdom Admiralty Law: Mar. Law. 2 (1976-1977) 57, at 89.

51 *The Tojo Maru (Owners of the Motor Vessel Tojo Maru v. N.V. Bureau Wijsmuller)*, [1972] AC 242. There are a number of other prominent cases in existence, which, unfortunately, cannot be researched due to the confidentiality of the arbitration proceedings. See, *ie: The Eschersheim Erkowit (Owners) and Others v. Salus (Owners) and Others*, [1976] 2 Lloyd's Rep. 1.

first phase of the salvage operation, the vessel required additional repairs before being fit for towage. Well over a month after the commencement of salvage operation, in calm seas and with an abundance of time to plan and consider further salvage tasks, the salvor's chief diver, contrary to the salvage tug master's instructions, dived under the tanker in an attempt to seal a crack in the outer hull with a metal plate using a Cox Bolt Gun. Failing to ensure that the cargo hold was free of any gas residue, the diver proceeded with the underwater operation, and caused an explosion when the Bolt gun came in touch with the gas. The explosion caused a substantial damage to the vessel. The salvor nevertheless managed to complete the salvage operation and tow the tanker to the designated port, claiming the right to the salvage award. The salvee refused to pay the salvage award and counterclaimed damage caused by the explosion.

According to the decision of the arbitrator J. V. Naisby Q.C., the salvor was held liable for a breach of duty of care, based on a negligent act of the diver who caused a foreseeable damage to the tanker. After assessing the figure of salvage award[52], sum of damages suffered by the salvee[53], and the figure of salvor' limitation of liability[54], the arbitrator set-off the claim for salvage award with the counterclaim for damage, and applied the limitation to the balance, leaving the salvor empty-handed, with an additional burden of compensating the salvee in the amount of salvor's limitation fund. Both parties were unsatisfied with the findings of the arbitrator, and the case was referred to Judge Willmer L.J. at the Probate, Divorce and Admiralty Division, who affirmed arbitrator's conclusions, with an exception concerning the salvor's right to limitation of liability. Judge Willmer held that the salvor had no right to limit the liability, based on the relevant provision of the 1957 Limitation Convention[55]. This determination was affirmed by the House of Lords.

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[52] The arbitrator assessed the salved value in the following amounts: (a) £ 1.280.627 in respect to vessel; (b) £ 49.248 in respect of the freight; and, (c) £ 142.348 in respect of the cargo.

[53] The damage was assessed by calculating the difference between the value that the vessel would have possessed upon completion of the salvage service if there had been no negligence, and the actual value of the ship in light of the negligence (nominal salvage award). The resulting figure was then capped having in mind the salvor's right to limit liability. During the court procedure to follow, this point was thoroughly debated, resulting in the loss of the right to limit the liability).

[54] Based upon the tonnage of the salvage tug *Jacob van Heemskerck*.

[55] Article 1(1b), *1957 Limitation Convention*. The relevant norm upon which the court based its decision was Section 503 (1) of the 1894 Merchant Shipping Act, as amended by the 1958 Merchant Shipping Act, *The 1894 Merchant Shipping Act, 57 & 58 Vict. C. 60, and, the 1958 Merchant Shipping (Liability of Shipowners and Others) Act, Amended Article 503*. For more information, see: *McNair, William Lennox/Honour, John Philippe*, Temperley's Merchant Shipping Acts (London: Stevens, 5th ed., 1954), at 558-561, and, *Marsden, Reginald G./McGuffie, Kenneth C.*, The Law of Collisions at Sea (London: Stevens, 11th ed., 1961-70), at 128 *et seq*. See also: *Porges, Waldo/Thomas, Michael*, The Merchant Shipping Acts (London: Stevens, 6th ed., 1963), at 800 *et seq*.

The case was further referred to the Court of Appeal. The Court of Appeal was of an opinion that the salvors should not be held liable for any counterclaims due to the fact that they did *more good than harm*, and that the public policy protects the salvors and encourages salvage services. The Court of Appeal argued that where the actual salved value (taking into account a damage caused by a negligent act of a salvor) exceeds the value of the vessel at the time of the commencement of a salvage operation (taking into consideration the perilous situation and the damage suffered by the vessel at that time), a salvor has done more good than harm, and therefore should not be made responsible to compensate the additional damage (beyond the forfeiture of the award).[56] In contrast, should a salvor have done *more harm than good*, a salvage award was to be forfeited and the liability for a negligently caused damage would need to be ascertained.[57] The doctrine of "*more good than harm*" was understood as a method of assessing a possible salvor's liability in which a salvage operation was to be considered through a comparison of the beneficial and non-beneficial performance of a salvor. The salvee appealed further.

The House of Lords rejected the findings of the Court of Appeal. Lord Diplock opposed the proposed method of assessing salvor's liability (more good than harm doctrine), arguing that, based on the general English law on recovery of damage due to negligence, the above-described "measure of harm" figure would in itself constitute a claim for damage.[58] The doctrine of more good than harm inserts into the equation the full benefit of a salvage service, neglecting that a salvor is rewarded on the basis of *quantum meruit*,[59] and that the full benefit assessment would render salvage assistance unnecessary, as the cost of salvage would equal the total damage sustained, or even more.[60] Lord Morris objected the assessment of measure of good as the value of the salvee's vessel, stating that in cases where a high priced vessel, in no immediate danger, is in a need of a salvage assistance of a moderate value (with a low–figure expected salvage award), it would be unfair to consider the measure of good as achieved by a salvage operation in the original value of the vessel.[61] Lord Reid rejected the proposed doctrine in cases where there is no *sudden emergency* or other mitigating circumstances present, such as was the

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[56] *The Tojo Maru, supra note 51*, at 268.

[57] *The Tojo Maru, id.*

[58] *The Tojo Maru*, [1971] 1 Lloyd's Rep. 341 the LOF form as a typical contract for work and labor, showing that the principles of "success", "*quantum meruit*" and "discretion of the court" are present in general (non-maritime) contractual relationships and contract forms.

[59] *The Tojo Maru, supra note 51*, at 293-294.

[60] For an example of an unreasonable figure of a salvage claim see: Sea *Tow Services of Carteret County, Inc. d/b/a Sea Tow Beaufort, Inc. v. S/V Nautilus*, 2000 A.M.C. 799, at 560-561, where the salvor's claim for a salvage award amounted to a sum of 113% of the salved value.

[61] *The Tojo Maru, supra note 51*, at 274.

case *Tojo Maru*, where there was no danger of a total loss in the absence of salvage services, and where the salvor, after successfully completing the initial phase of the salvage operation, was at liberty to carefully plan and execute the repairs.[62] Lord Reid further considered the availability of alternative salvors in the area,[63] stating that even in the case of sudden emergency, if there were additional salvors on a scene that could have successfully completed the operation, a salvor who negligently caused damage would find it difficult to defend against negligence. With regard to the public policy issue, Lord Reid openly questioned a policy of rewarding salvors for not taking reasonable care,[64] having in mind that the acceptance of the duty to take care corresponds to liability for breach of that duty and the damage thus caused,[65] placing forward the right of an injured person to seek compensation.[66]

In conclusion, the House of Lords held that the salvor's right to a reward and his obligation to pay the damage are two separate entities, subject to a set-off.[67] Furthermore, the salvor's negligent performance is not just one of the factors to be taken into account when assessing the (diminution or forfeiture of) salvage award, but can also serve as a separate cause of action in damage.[68] Finally, the salvor should not be treated any differently from any other person who receives a reward for certain performance, at the same time being exposed to liability for negligent performance.[69]

4. Limitation of Liability

The decision in the *Tojo Maru* pointed to the fact that the 1957 Limitation of Liability Convention contained several loop-holes with regard to the salvor's right to utilize the right to limit the liability[70]. In accordance with the 1976

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62 *The Tojo Maru, ibid.*, at 268-269.

63 *The Tojo Maru, ibid.*, at 265 and 298.

64 Stipulating a reasonable care as expected from a person of the same profession, see: *The Tojo Maru, ibid.*, at 293.

65 *The Tojo Maru*, id.

66 *The Tojo Maru, ibid.*, at 252.

67 Cf.: *Rose, supra note 8*, at 511.

68 *Kerr, Donald A.*, The 1989 Salvage Convention: Expediency or Equity: J. Mar. L. & Com. 20 (1989) 505, at 517. The salvor lost the award, and had to, ultimately, pay a sum of approximately US$ 700,000 to the salvee.

69 Cf.: *Davison, Richard/Snelson, Anthony*, The Law of Towage (London, Hamburg: Lloyd's of London Press, 1990), at 71-72. A reference was made to the Teh Hu case, where the Court of Appeal applied common law rules without making any distinction with regard to the maritime law or the law of salvage *per se*, see: *The Teh Hu*, [1970] P. 106.

70 During the discussions at the CMI meetings, IMO's Legal Committee meetings and the Conference Working Groups sessions, all the delegates were aware of the necessity to grant salvors a (clear) right to limit their liability when not acting from a salvage tug, as well as in the instances where no salvage tugs are involved (i.e., when the salvage services are rendered with the use of aircrafts, helicopters, submarines or cranes). The mentioned deficiency became apparent in the *Tojo Maru* case. According to the 1957 Limitation Convention, salvors are allowed to limit their

Limitation of Liability Convention, the salvors are allowed to calculate the limitation fund by one of the two following methods: through a general provision of Article 6(1), according to which a salvage tug is understood as being equivalent to any other vessel,[71] or, through the special provision of Article 6(4),[72] according to which under certain conditions, the salvor has a right to limit his liability according to a specified tonnage value (1.500 tons). The latter is applicable in two instances: when a salvor is performing outside of a vessel – the typical situation being when a "chief" salvor is conducting a salvage operation from the salvage firm headquarters, helicopter or a shore location, and, when a salvor is performing on the salvee's vessel or in respect to the salvee's vessel – this wording being a direct consequence of the *Tojo Maru*. The 1996 Limitation of Liability Protocol sets the limit to the figure of 2.000 tons,[73] creating the overall limitation figure for personal injury claims in the amount of 2 million SDR, and for other claims in the amount of 1 million SDR.

The negligent performance may affect the salvage operation in three distinct instances.[74] First, the negligent performance may reduce the amount of the salved property, thus decreasing the overall salved fund – calculated either on the basis of the value of an unrepaired vessel, or on the basis of the value of a repaired vessel decreased by the value of costs of repairs necessitated – and, subsequently, decreasing the figure of salvage award which is calculated in respect to the salved fund. Second, the negligent performance has a direct effect on the salvage award by means of reduction (or forfeiture) of the overall figure due to bad performance. Finally, the negligent performance imposes an obligation (liability) on the salvor to pay for the damage so caused.

It is necessary to bear in mind that all three described instances are arising out of the same negligent conduct (same occurrence), and all result in the same damaging consequence(s). As Brice notes,[75] penalizing a salvor through each

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liability when they operate from a vessel and/or when the act in question has been performed on board the vessel. Since the negligent act of the diver was performed *off board* (the diver was in the water at the time of the explosion), and was deemed not to be in connection with the *navigation or management* of the vessel, the salvor was denied the right to limit his liability. Such a common understanding, however, took some time to be generally accepted, as some early records show, see, *ie: Berlingieri, Francesco,* Salvage News: CMI Newsletter October (1975) 3, at 7. During the discussions, however, an unanimous decision was reached within the CMI to provide salvors a right of limitation when not operating from their ship, or even when no ship is involved, see: *Legal Committee*, Hamburg Draft Convention – Introductory Report to IMCO, in: *Berlingieri, Francesco (ed.)*, The Travaux Préparatoires of the LLMC Convention, 1976 and of the Protocol of 1996 (Antwerpen: Comité Maritime International, 2000), at 48.

71 Article 6(1), 1976 *LLMC Convention*.

72 Article 6(4), 1976 *LLMC Convention*.

73 Article 3, 1996 *LLMC Protocol*.

74 *Cf.: Rose, supra note 8*, at 518.

75 *Brice, supra note 13*, at 575.

mode separately would be highly dubious and unfair. Such a process would involve a decreased or forfeited salvage award due to a reduced salved fund and a bad performance; and, a claim for damage based on the same cause affecting the salvage award as stipulated earlier. This would *de facto* make a salvor liable twice, and such a "double penalty", according to Brice, would not correspond to a fair result.[76] The so-called "set-off" model of assessment, as established through the relevant case law, requires that a salvage award is first estimated as if the salvage operation has been performed successfully, free from salvor's errors (nominal salvage award – calculated by ignoring the reduced salved fund and bad performance factors), and, that such a figure is then deducted from the figure of damage caused by salvor's negligent conduct.[77] This method refers to the third option of remedies available to a salvee in cases of salvor's negligent performance. Whereas the reduced salved fund factor is included in the figure of damage factor – in order to avoid the above described double penalty occurrence – the bad performance factor should remain an element necessary to be considered when assessing salvor's liability. A pure figure of damage will not, on its own, suffice to impose the full application of the liability rules in salvage operations, having in mind both the theoretical background of the liability framework in salvage law, and the particularities of salvage services that, apart from assessing a breach of duty in a general context, require an assessment of additional factors necessary to be considered before deciding on whether to hold a salvor (fully) liable. Considering the above stated, Deschamps is of opinion[78] that the factor of fault (ie negligence) should not directly correspond to the calculation of damage, as it is the scope of actual damage that should correspond to the volume of sanctions imposed, but recognizes that in the salvage context, a breach of the duty to take care is not always necessarily comparable with the actual damage suffered.[79] In instances where the figure of damage is small and (obviously) lower than the value of the salvage award calculated taking both the reduced salved fund and bad performance factors into consideration (actual salvage award), there is no need to proceed with the calculation of nominal salvage award, as the salvor's negligence has not caused such damage to require a simultaneous forfeiture of the salvage award and the application of the affirmative damages doctrine. In such an instance, the reduced salved fund factor represents (equals) the figure of damage factor, whereas the bad performance factor may bring about a further decrease in the final assessment

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[76] *Cf.: Darling, Gerald/Smit, Christopher*, LOF 90 and the New Salvage Convention (London: Lloyd's of London Press, 1991), at 16-17, and, *Rose, supra note 8*, at 518.

[77] *Brice, supra note 13*, at 518-519.

[78] *Deschamps, Aude Lapovade*, La Convention internationale de Londres sur l'assistance maritime et le droit français des contrats: DMF 533 (1993) 684 at 699.

[79] *Cf.: Volli, Enzio*, Assistenza e salvataggio (Padova: Cedam, 1957), at 269.

of the figure of salvage award, depending on the scope of bad performance exhibited.

What is perhaps unclear is whether the limitation of liability is to be applied before the set-off, or after the set-off between the salvage award and a counterclaim for damage has been made. The difference in the practical utilization of set-off may be considerable, as the following arbitral decisions demonstrate. In an unreported case appearing before the LOF arbitration,[80] the salvor was found negligent during the performance of a salvage service, and the figure of damage exceeded the figure of a nominal salvage award (calculated on the basis as if the salvage service was performed free of errors). The arbitrator calculated that the salvor's exposure to liability would be twice as much if the right to limit was applied on the balance of the two claims, than if the claim for damage was first submitted to the limitation rule, and the resulting figure (the limitation fund) set-off with the claim for a salvage award. The arbitrator then concluded that the provision of Article 5 of the 1976 Limitation Convention is available only if both claims are a subject to Article 2 of the same Convention, found that this is not the case, and, subsequently, allowed the salvor to limit his liability prior to the set-off.

Contrary to such reasoning, the arbitrator in the *Tojo Maru* allowed the application of the limitation rule only after the set-off between a claim for a salvage award and a claim for damage was made. The arbitrator required an express wording in respect of a "claim" being understood as a claim falling under the provision of Article 2, and found that not to be the case, whereas in the former case, the arbitrator understood such categorization by implication. The matter is, thus, left unresolved[81] (based on the matter of construction [whether Article 2 is expressly or by implication relevant for the assessment of Article 5 claims]), and, therefore, subject to the further determination in the practice.

It is, thus, clearly visible that the salvor's right to limit the liability can potentially produce two different results (considering the monetary value of the remuneration/reparation). Whereas the financial limit of liability is a fixed variable (calculated either on the tonnage of the employed tug, or in accordance with a special tonnage rule), the application of the right to limit the liability may considerably influence the final (monetary) exposure of a salvage company. Based on the first (unreported) arbitral case as examined above, the following figures are given as an example to support the previously stated conclusion. The value of a nominal salvage award is set to 100 units of account, the value of claim for damage is set to 200 units of account, and the limitation fund is set to 150 units of account. A decision to grant a right to

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80 *Lloyd's*, LOF Digest (London: Salvage Arbitration Branch, 2001), at 37.

81 *Cf.: Darling/Smit, supra note 76*, at 68.

limit the liability after the set-off of nominal salvage award with the claim for damage (After Set-Off) will produce the following effect: nominal salvage award 100 – claim for damage 200 = 100 / limitation fund 150 = 100 units of account, as the balance of 100 is lower than the limit of limitation fund. A decision to grant a right to limit the liability before the set-off of the nominal salvage award with the claim for damage (Before Set-Off) will produce the following effect: claim for damage 200 / limitation fund 150 = 150 – nominal salvage award 100 = 50 units of account. If the value of claim for damage increases, for example, to 1000 units of account, the After Set-Off situation will result in the final figure of 150 units of account, subject to the overall limit of the value of limitation fund, whereas the figure in Before Set-Off will remain the same. It is, therefore, obvious that the Before Set-Off option is more favorable for a salvor. The practice utilizes both options, and there is no clear determination as to which option should have an advantage. It is submitted that the correct approach would be to adhere to the After Set-Off option, irrespective of whether the negligence arose as a result of professional or non-professional salvor's performance, having in mind the scope of negligence required for a non-professional to be held liable according to the concept of affirmative damages. The rationale behind such a recommendation is based on the premises according to which the choice between appropriate methods of calculating the limitation of liability is made taking into consideration the best interests of an injured party (the salvee).

5. Conclusion

The affirmation of the doctrine of affirmative damages in the second half of the 20th century has brought upon important considerations regarding the role and interpretation of the salvor's obligations as stipulated through either a contractual clause, or implied through an appropriate international and national norm.

The 1989 Salvage Convention does not expressly or by implication prevent the courts and arbitration tribunals from utilizing the full scope of remedies as available through applicable domestic law. The application of sanctions as understood by the affirmative damages doctrine is applicable on the professional salvors in all instances, regardless of the level of exhibited lack of proper performance, and the type of damage caused through such irresponsible performance. The application of sanctions as understood by the affirmative damages doctrine is applicable regarding the non-professional salvors in instances when they cause a distinguishable damage, or, when they cause a non-distinguishable damage due to a gross negligent performance. The application of sanctions as understood by the affirmative damages doctrine may not be enforced if it can be proven that the breach of duty resulted due to an imminent danger factor. The application of sanctions as understood by the affirmative damages doctrine may not be enforced if it can be proven

that the breach of duty resulted due to a sudden emergency factor that was not caused by a salvor, provided that, in case a service is performed by a professional salvor, a reasonably prudent professional salvor would not have been able to resolve such emergency adequately. The application of sanctions as understood by the affirmative damages doctrine may exceptionally be enforced in instances where a total loss was certain and imminent, and where a salvor, irrespective of the level of exhibited performance, failed to salve the vessel and other property, but it can be proven that alternative salvors would have been able to render the salvage service successfully.

With regard to the salvor's right to utilize the right to limit the liability, the following can be concluded. In cases where the volume of damage suffered by a salvee is severe, the set-off should be made by subtracting the figure of a nominal salvage award with the figure of damage. The right to utilize the instrument of limitation of the liability should be allowed after the set-off has been made, provided that the figure of damage surpasses the figure of a nominal salvage award, in order to favor the injured party (salvee). When a salvor is in a position to choose between two available methods of applying the limitation, advantage should be given to the method that protects the interests of the injured party (salvee). Finally, in cases where the volume of damage suffered by a salvee is small, no set-off is required, as the salvor's negligent performance is to be taken into consideration when assessing the final figure of the salvage award.

PROCEEDINGS *IN REM* IN SPANISH LAW. SEARCHING FOR YOUR STRONGEST POSITION

F. Javier Zabala*

(i). Introduction to the, so called, ius in rem.

It must be initially mentioned that, although we are focusing in a vastly mentioned and studied concept, there is no actual definition under Spanish Law of what a *ius in rem* is.

It is however mentioned in many different articles of our Civil Code such as:

> Art. 609 C.c.: "*Ownership and other rights in rem are acquired by law, by gift , by testate and intestate succession and as a result by certain contracts by tradition"*
>
> Art. 1095 C.c.: "*The creditor is entitled to the fruits of the thing from the time when the obligation to deliver it should arise. Notwithstanding the foregoing, he shall not aquire a right in rem over it until it is delivered to him"*
>
> Art. 1280.1 C.c.: "*The following must be set forth in a public instrument: 1- Acts and contracts whose purpose is the creation, transfer, amendment or extinguishing of rights in rem over immovable property"*

Hence, there is no concept (as we, civil law practitioners, are used to) of *ius in rem* but a list of characteristics that Scholars have found in the relation of *ius in rem*.

It has traditionally been explained the *ius in rem* in comparison to the *ius in personam* and, based on this, many description theories have been established, being the most followed one, the Classic theory.

According to such, the *ius in rem* grant a direct and immediate power over the asset. On the other hand, when dealing with a *ius in personam* there is only a relation between two persons where on of them has the right to claim something to the other.

Also, as per same Classic theory, a *ius in rem* allows its opposition *erga omnes,* this is, against any person or entity with an aim over the asset. However, *ius in personam* can only be enforced against the actual debtor of such.

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This description and main theory has, according to most of the Spanish Scholars many lacks as; for example and between others, the impossibility to explain which is the direct and immediate power of the beneficiary of a mortgage.

Bearing in mind the above, we could defend that this distinction provides an approach to the concept and characteristics of the *ius in rem* according to Spanish Law but which may not be applicable to all *ius in rem.*

It must be finally mentioned that there are other Scholars who defend the non distinction Doctrine, by means of which, they argue there are no actual or, at least, remarkable differences between the *ius in rem* and the *iur in personam.*

ii). Actions in rem.

The definition of an *actio in rem* might be as simple or as difficult as the concept of *ius in rem.*

To put it in a very simple way, we could define them as those actions that are available to the legitimate holder of a *ius in rem.*

The relevance and importance of these kind of actions may be great as they might possibly allow the actor to follow an asset independently of any potential transmission and provide a preference over other rights and/or actions against the same asset.

This is, we would be facing a privileged action to be used against any person (*erga omnes*) and that would follow the asset with very limited exemptions (*bonna fides* of a third party).

Although obvious, when dealing with shipping matters, the possibility of starting an *action in rem* could be crucial for the outcome of the right. We could think about the expanded existence of single ship companies, the multiplicity of actors in the playground (charterers, managers, agencies,…) and, not to forget, the *forum shopping.*

(iii). Actions in rem in Shipping Law.

What are we talking about when we mention *actio in rem* in Shipping Law? Obviously, we could think about the genuine actions in rem which see green light when dealing with a mortgage or, among others, ownership of a Vessel. But, are these the only rights that generate actions in rem?

Yes, we are thinking about the MARITIME LIENS which are ruled in Spanish Commercial Code (articles 580 to 584) and in the 1993 international Convention on Maritime Liens and Mortgages.

According to the Spanish Scholars, a privilege is to be understood as a prerogative granted by law to certain maritime claims which provides its lawful holder the faculty to pursuit and execute against a particular asset, the Vessel. In other words, it becomes and *actio in rem.*

Above mentioned 1993 Maritime Liens Convention did substitute the

previous 1926 International Convention which applicability to Spanish Vessels within the Spanish Jurisdiction was extensively argued.

Nowadays this is not an issue anymore. The 1993 Convention expressly applies to Vessels flagging a contracting or a non contracting State flag. Additionally, Spanish Commercial Code will only have a subsidiary and complementary applicability in case it does not contradict the Convention.

1993 Convention grants a Lien over the following Maritime credits:

a) Claims for wages and other sums due to the master, officers and other members of the Vessel s complement in respect of their employment on the vessel, including costs of repatriation and social insurance contributions payable on their behalf.

b) Claims in respect of loss of life or personal injury occurring, whether on land or on water, in direct connection with the operation of the vessel.

c) Claims for reward for the salvage of the vessel.

d) Claims for port, canal and other waterway dues and pilotage dues.

e) Claims based on tort arising out of physical loss or damage caused by the operation of the vessel other than loss of or damage to cargo, containers and passengers effects carried on the vessel.

All these actions could be characterized as per the following points:

1. Legal Origin:

These actions/liens are born legally, simultaneously to the credit. The actual debtor could be either the owner of the vessel or any other in charge of her/of her operation (such as a bareboat charterer, a manager, etc.). Also, there is no need to give any kind of publicity to these credits in order to generate the action/lien (as it would happen, for example and between others, with a mortgage).

2. Speciality:

The Vessel as a whole would be subject to enforcement, but excluding accessories.

It will neither be allowed (as per article 10.2 of 1993 Convention) the subrogation to the compensation payable to the owner under an insurance contract.

3. Accessoriness and Indivisibility:

The privileged action will always be considered as accessorial to the maritime credit it protects. Hence, upon satisfaction of the credit, the action disappears.

On the other hand, the action remains alive as a whole even if the credit is partially settled. Additionally, in case of a partial loss of the Vessel, the lien will survive over the remaining part of said Vessel.

4. Right of pursuit:

A creditor granted with an *action in rem* (lien) over a Vessel can enforce it even when said Vessel has been transferred to a third *bona fides* party.

5. Realization:

Creditor is entitled to request the sale of the Vessel in order to get full payment of its credit. 1993 Convention refers to domestic procedural rules of the Jurisdiction where the Vessel is detained.

6. Preference:

Legitimate holder of one of these actions is granted with preference over any other creditor.

Maritime liens do not have a perpetual existence. The extinction of any of these happens by any of the three following situations:

- Extinction of the credit: This is a direct consequence of the accessoriness characteristic. Once the credit has been settled, the action dies.
- Time bar: 1 year. Special attention must be paid to article 9 of 1993 Convention which refers to particular exemptions (detention of the Vessel).
- Judicial sale of the Vessel: In case of a judicial sale of the Vessel, the action will no longer exist (if provisions of article 11 of same International Convention are met).

(iv) Other actions in rem. Judicial Deposit of the cargo.

We have gone through – in the previous paragraphs – the different weapons in hand of maritime creditors against Ship owners. Do Shipowners also have any useful tool to protect their basic revenues?

Although obvious, freight, dead-freight and demurrages represent the monies that Shipowners earn by chartering their Vessels. Thus, the possibility of protecting and collecting these amounts by means of an easy and fast procedure can become crucial for the owning/time chartering companies.

On this regard, I would like to raise your attention to the following provisions of Spanish Commercial Code:

Art. 665: "*The cargo will be specially affected to the payment of the freight, costs ad rights caused by the same cargo and to the proportional part of the general average due by the charterers (…). In case of doubt of payment, the Judge or Tribunal, by request of the Captain, will grant the deposit of the cargo until full payment is confirmed.*"

Art. 666: "*Captain will be allowed to request the sale of the cargo in the necessary proportion for payment of the freight, costs and rights that may correspond, reserving the right to claim the rest of these concepts still owed should the amount obtained fail to cover the credit.*"

Art. 667: "*The cargo will be affected to the payment of the freight and costs during 20 days since delivery or its deposit . Along this time frame, it will be possible to request the sale of same even if there are other creditors and in case of insolvency of the charterer or consignee".*

According to above articles, we face a privilege in favour of Shipowners with preference over the rest of the creditors even in case of insolvency of the debtor (whether the charterer or the consignee). This is a clear exemption to the *par condition creditorum.*

It must be stated however that this right will not be enforceable against the cargo which, after delivery, has been transferred to a third party with good faith and upon payment of its price.

As provided in art. 666, in connection with the deposit of the cargo, Master can jointly request through the Court to the Charterer/Consignee the immediate payment of the amount owed.

Should Charterer/Consignee fail to proceed immediately, the judicial sale of the cargo will happen, according to art. 2161.11 of the old Civil Procedural Act, which is still applicable to this procedure.

We are talking about an *ex parte* application to the Court. The mere allegation of the credit is enough. Adversely to what happens with a Ship arrest request, no counter–security will be requested by Court.

Once the Court grants the Judicial Deposit in most of the occasions, according to our experience, freight and related expenses are paid via acting Court. Otherwise the judicial bailee (a private company) accepts its appointment, receives the cargo and takes care of same until it is auctioned.

(v) Future trends.

As a last point of this presentation, I would like to mention that Spanish Parliament might, in the near future, pass the new Spanish Navigation Act, overruling the Maritime related articles of the Commercial Code (between others, those just mentioned above).

Will this new act protect Shipowners rights in the way it was done by the Commercial Code? Or, will Shipowners have to take care of including lien clauses in their charter parties?

Well, the answer cannot be totally certain but, it is a fact that, current draft of this Navigation Act does indeed contain (arts 302 to 304) not only the possibility of the Judicial Deposit of the cargo but also the right of detention which (as per current wording) will be enforceable even in case that nothing is stated in the Charter Party.

However, we are not aware of when it will come into force or what wording will include the approved version. In any event, we will be happy to update as further news are heard from our Parliament.

HAMBURG CONFERENCE

Hamburg and Berlin (add-on) 14-19 June 2014

[Audio visual recordings of all presentations and speakers' slides are available at the Download Centre of the Conference website at www.cmi2014hamburg.org/downloadcenter or on the CMI site at www.comitemaritime.org/videolibrary

CONFERENCE DOCUMENTS

OPENING SPEECH

Hubert Weis*

Mr. President, Ladies and Gentlemen,

As a representative of the German Federal Ministry of Justice and Consumer Protection, it is my pleasure to be able to welcome you to Hamburg for the 41st International Conference of the Comité Maritime International.

You made an excellent choice in selecting Hamburg as the host city for your conference. After all, Hamburg is a beautiful city, as the view of the Alster so perfectly demonstrates. But what makes the city so interesting for you in particular, of course, is that Hamburg is the centre of Germany's maritime economy. This is the location of Germany's largest sea port, which is also the second-largest sea and container port in Europe. The city is also home to some major law firms specialising in maritime law. Hamburg has become a centre for maritime arbitration. And, since 1996, it has also been home to the International Tribunal for the Law of the Sea.

Ladies and Gentlemen,

When choosing Hamburg, you also demonstrated a strong sense of tradition. Since time immemorial, Hamburg has been a centre for legal harmonisation. In the middle ages, Hamburg joined forces with a number of other cities, including Bremen and Lübeck, to form the Hanseatic League and establish a single body of maritime law. Continuing this tradition, the CMI has held a number of conferences in Hamburg over the past hundred-or-so years: in 1902, under the chairmanship of the highly respected Hamburg Lawyer, Dr. Ernst Friedrich Sieveking; and in 1974, under the chairmanship of Professor Albert Lilar, Belgian Justice Minister, acclaimed specialist in maritime law, and, from 1947 to 1976, CMI President.

The subjects discussed exactly 40 years ago at the 1974 conference included the revision of the Hague/Visby Rules, amendments to the 1957 International Convention relating to the Limitation of the Liability of Owners of Sea-Going Ships, and the reform of the 1950 York Antwerp Rules.

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* Director General .

These instruments, albeit in revised form, are still of major significance in maritime practice today. And this comes as no surprise. After all, the CMI, as one of the world's oldest international organiasations committed to legal harmonisation, boasts remarkable expertise in maritime law. For many decades the CMI was the only body with a real sense of the areas that were in need of international harmonisation. Many of the instruments produced by the CMI were adopted at diplomatic conferences by countries affected by maritime law, and have entered the statute books of these nations.

The CMI has an impressive track record. I would like to mention just a few of these international conventions, which still apply today: the 1910 Convention for the Unification of Certain Rules of Law with respect to Collisions between Vessels, the aforementioned Hague Rules of 1924, and the 1952 International Convention Relating to the Arrest of Sea-Going Ships.

Ladies and Gentlemen,

The 1974 CMI Conference came at a time when the organisation's position was changing.

Intergovernmental organisations were becoming more influential in shaping maritime conventions, and were taking the lead in the bid to harmonise maritime law at the international level. These organisations included the Inter-Governmental Maritime Consultative Organization (later the IMO), the UN Conference on Trade and Development, and the UN Commission on International Trade Law.

More than anything else, these developments were driven by regulatory considerations and the doctrine that legal provisions should no longer be written by the stakeholders themselves.

The Torrey Canyon oil spill off the coast of the UK in 1967 led to strict liability being imposed on ship owners and compulsory insurance being introduced for certain types of damage resulting from shipping accidents.

However, this does not mean that the CMI has since become any less important. The key role of the CMI has now become that of an advisor – a role which remains crucial. Over the past 40 years, many major conventions have been concluded in key areas of maritime law with the help and support of the CMI. For example: the 1974 Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, the 1976 Convention on Limitation of Liability for Maritime Claims, the 1989 International Convention on Salvage, and the 1993 International Convention on Maritime Liens and Mortgages – to name but a few.

Ladies and Gentlemen,

The growing tendency for regulatory policy to dominate the agenda in private maritime law continues, and is also reflected in the programme of this year's conference.

It was interesting to read that you are focusing not only on the more-or-less "classic" CMI products, such as the York Antwerp Rules, but also on a draft international instrument to regulate the judicial sales of ships, as well as on issues of a more regulatory nature, which you bring together under the headings "Ships in Hot Water" and "Ships in Cold Water".

These issues include the liability of classification societies, which the CMI has discussed before. As you know, given the responsible job that classification societies have of surveying ships, the European Union issued a Directive in 2009 on ship inspection and survey organisations. However, liability on the part of classification societies is still not subject to uniform rules at the international level. Thus it is still the applicable national law in each individual case that determines whether a classification society is liable vis-à-vis the purchaser of a ship that turns out to be deficient despite having been inspected. The applicable law might even foresee liability vis-à-vis third parties who have suffered injury as the result of a maritime accident involving a deficient vessel of this type. The same applies to the question of whether an effective limitation-of-liability agreement can be concluded. I look forward to seeing whether this year's conference can provide new momentum for an international regulation.

Ladies and Gentlemen,

Piracy is also an issue very heavily influenced by regulatory considerations. The international community has taken measures resulting in a reduction in the number of piracy cases in the waters around the Horn of Africa, which for many years was a particularly dangerous area.

Between April 2013 and March 2014, only ten cases were reported involving cargo ships and fishing vessels in the Gulf of Aden and off the coast of Somalia. However, further efforts are still required to put an end to this phenomenon. Successful programmes have so far included the deployment of naval ships as part of the EU's Operation ATALANTA as well as wide-ranging action to stabilise the region.

The use of private, armed guards has proven particularly effective in the fight against piracy. To date, Somali pirates have not succeeded in capturing a single vessel protected by a private maritime security company. The Federal Government is pleased that the recognition of "private security providers aboard sea-going vessels" in the Act Regulating the Conduct of Trade has created legal certainty for the use of armed guards.

Ladies and Gentlemen,

I was particularly interested to see that you are dedicating some of your time to issues concerning the Arctic region. This area has been the subject of growing attention since the Northern Sea Route proved navigable during the summer months. This shipping lane connects Europe with Asia. It is a shorter

route than that passing through the Gulf of Aden, and is not home to any pirates. There are, however, other risks involved: Shipping accidents – for example those involving collisions with icebergs – can result in immeasurable environmental damage. There is also a lack of certainty regarding permits to travel the passage. There is thus a pressing need to create a clear legal framework for this region in particular.

This includes securing free navigation in the Arctic. Unlike Antarctica (the Southern Ocean), the Arctic region is unfortunately not the subject of an international treaty. There is a series of international instruments and mechanisms that contain relevant provisions or deal explicitly with this area. Examples include the United Nations Convention on the Law of the Sea, as well as the IMO rules. But in my opinion, it is important for us to put further framework conditions in place in order to allow safe and environmentally friendly carriage. Binding international provisions based on the Polar Code could make an important contribution in this area. I welcome the fact that you support the advancement of the legal framework.

The same applies to environmental protection. Looking at your programme, I see you will also be examining the legal framework governing ship emissions. As you know, international efforts to stem global warming have long since had an impact on maritime navigation. In 2011, the IMO's Maritime Environment Protection Committee took initial steps to reduce maritime CO2 emissions. However, this only applies for new vessels. We therefore need to find ways of making existing vessels more energy-efficient. Initially, this might include installing simple, easy-to-use systems that collate existing data in order to reduce fuel consumption on board. No doubt further discussion will be required here.

Ladies and Gentlemen,

These are just some of the issues you will be dealing with at this year's conference. You have an impressive programme lined up. I'm sure this will result in some lively discussions.

We will be following these very keenly.

This also applies to the last part of your event, the Berlin "add-on", which will give you the opportunity to get to know our capital city at the same time as learning more about one of this country's most significant maritime law reforms: the reform of maritime law, which entered into force a year ago.

With this reform, our legislature significantly rewrote Germany's maritime law, large parts of which heralded from the 19th century.

Although we had ratified, implemented (and indeed applied!) numerous more recent international conventions over the last few decades, these govern only certain areas of maritime law, such as liability for collisions or the rights and duties of salvors.

In a number of other fields, German maritime law was no longer up-to-

date with economic and legal developments. Many of the provisions heralded from an age where maritime navigation was dominated by sailing-ships. The legislation has now been changed. For the first time, for example, the law now governs bareboat charters[1] and time charters.[2]

Amendments to the law governing contracts for the carriage of goods were particularly significant, even though this area is governed by international conventions. Because so many instruments are applicable in this area, clarity was required as to which legal framework should apply in Germany. Discussions were particularly intense on how to incorporate the Rotterdam Rules in the German Commercial Code. Ultimately, our lawmakers decided to take the Visby Rules as the basis for their new legislation – as was the case before. This was chiefly because the Rotterdam Rules have not yet entered into force, and the international maritime industry still operates to a large extent on the Visby Rules. Adopting the liability regime of the Rotterdam Rules – which in certain aspects is considerably stricter – would have placed an unreasonable burden on those parts of the maritime industry operating pursuant to German legislation.

Ladies and Gentlemen,

The law governing contracts for the carriage of goods was, however, modernised carefully. It is now clear, for example, that "voyage charter contracts" sit alongside "contracts for the carriage of general cargo" as subcategories of "contracts for the carriage of goods by sea". Furthermore, the law now contains the legal concept of the "performing carrier", who – similar to the "maritime performing party" within the meaning of the Rotterdam Rules – may be held directly liable if goods in his custody are damaged.

In part, the new law is also based on the Rotterdam Rules if the carrier is liable. Just like the Rotterdam Rules, it foresees mandatory carrier liability for goods damaged whilst in the carrier's custody. In addition, the statutory exemptions from liability for fire and nautical error have been deleted; contrary to the Rotterdam Rules, however, these exemptions from liability will continue to be recognised if agreed.

The new law also "goes it alone" as far as the freedom of contract is concerned. German law has adopted the principle that rules of liability are binding, irrespective of whether a bill of lading has been issued or not. However, as a rule, the law only prohibits divergence from the statutory rules of liability to the disadvantage of a contracting party when such divergence is based on standard terms and conditions. Individual agreements between the contracting parties are, on the other hand, generally recognised.

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1 Hiring a boat without crew.

2 Hiring a boat with crew.

You will discover more about the reform of German shipping law when you arrive in Berlin. I hope that many of you will take advantage of this "add-on". Because, quite apart from the benefits of learning more about our maritime-law reform, visiting the capital at the same time will give you the opportunity to get to know another fascinating German city.

Ladies and Gentlemen,

I wish you every success for the conference and some interesting discussions.

Have a good time in Germany!

Thank you very much for your attention!

MARITIME DEBT – RESTRUCTURING SHIPFINANCE, CROSS-BORDER INSOLVENCY AND WRONGFUL ARREST LIABILITY OF CLASSIFICATION SOCIETIES & PIRACY

THE LIABILITY OF CLASSIFICATION SOCIETIES – SOME PRACTICAL ISSUES

Henning Jessen*

Recently, there has been a "*renaissance"* of academic literature discussing the liability of classification societies.[1] The case law of different legal orders might support this revival but – very often – disputes between classification societies and other legal stakeholders are settled amicably and are thus not officially reported.[2] The CMI has addressed the related problems extensively in the past (especially between 1990 and 1998)[3] and again during the last two conferences in Dublin (2013)[4] and in 2014 (Hamburg).[5] For the Hamburg meeting it has been agreed that this short presentation will focus on just two practical issues of this rather sensitive issue, i.e., first, the legal effects of European Union (EU) law on the liability of classification societies. Second, some possible legal consequences will be addressed which could be drawn from the analysis of EU law and recent case law on the topic of limitation of liability. Due to limited space and time, reference is made in the footnotes for further academic reading and legal analyses.

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1 See, e.g., *de Bruyne/Vanleenhove*, An EU Perspective on the Liability of Classification Societies: Selected Current Issues and Private International Law Aspects, 20 Journal of International Maritime Law (2014), pp. 103; *de Bruyne*, Liability of Classification Societies: Cases, Challenges and Future Perspectives, 45 Journal of Maritime Law & Commerce (2014), pp. 181; *Mansell*, Flag State Responsibility (2010), pp. 117; *Lagoni*, The Liability of Classification Societies (2007), pp. 259.

2 For example, on a possible liability of classification societies, there is very few case law available under German law and only one case involving a classification society has been decided by the German Federal Court, see BGH NJW-RR 1998, p. 1027, the case related to a new-building project and mainly dealt with negligent supervision of a shipyard by the classification society, see generally *Basedow/Wurmnest*, Third Party Liability of Classification Societies (2005).

3 By 1999, the CMI had drafted rules for principles of conduct for classification societies and their possible liability as well as "*Model Contractual Clauses for Use in Agreements Between Classification Societies and Governments and Classification Societies and Shipowners*".

4 Presentation of *Denise Micallef*, available online at <http://www.cmi2013dublin.com/download/file/191/>.

1. Binding EU Law Directed at Classification Societies (Regulation EC/391/2009)

On a global level, there are estimates that currently more than 100 private organizations offer services under an official label marked as "classification societies" to the maritime industry.[6] This evidences at least two effects: First, the global market for marine surveying and certification is generally not limited to a handful of "traditional names" of the classification business. Rather, there has been an intense commercialization of those services including rigorous competition and even attempts of hostile takeovers between different classification societies. The issue of commercialization includes both the private classification functions performed on behalf of ship owners as well as the public functions – known as statutory certification – performed on behalf of flag states.[7] The importance of this dual role of today's classification societies, performing "twin functions" for both private and public clients, also in the area of offshore oil and gas or in "soft" sectors like maritime education, cannot be stressed enough.[8] Both functions of classification societies are essential to fight against "substandard shipping".[9]

However, this is also a source of problems as, invariably, the dual role of classification societies may create situations of conflict of interest. Second, shipping accidents and marine casualties still happen[10] and sometimes the results of marine casualty investigations – especially in cases of structural failure – may point to the organization which has "officially" certified the safety of the vessel, even if it is a highly reputable institution with a long history of "clean" certification activities. And sometimes the possible reasons for a marine casualty can only be explained by using scientific data and research results of classification societies. The recent breaking apart and loss of the vessel "*MOL Comfort*" in 2013 is a good example for this.

Since two major marine casualties occurred in European waters in 1999

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[5] Presentations of *John Hare* and *Henning Jessen*, available online at <http://www.cmi2014hamburg.org/down-loadcenter/documents/>.

[6] See *Mansell*, Flag State Responsibility (2010), at p. 139, referring to the GISIS database of the International Maritime Organisation (IMO).

[7] The main elements of statutory certification relate to almost all IMO-governed aspects of ship design (especially load lines, stability, propulsion, steering equipment, etc.), pollution control, accident and fire prevention, etc.

[8] See, e.g., *Honka,* The Classification System and Its Problems with Special Reference to the Liability of Classification Societies, 19 Tulane Maritime Law Journal (1994), pp. 3; *de Bruyne*, Liability of Classification Societies: Cases, Challenges and Future Perspectives, 45 Journal of Maritime Law & Commerce (2014), pp. 181, at 182.

[9] See generally: *Witt*, Obligations and Control of Flag States (2007), p. 274.

[10] The "2*014 Allianz Safety and Shipping Review*" refers to an annual number of 93 large ship losses as well as 2.596 reported marine casualties, both in 2013. These numbers mean that – on a global scale – eight ships are lost per month while far more than 200 marine casualties happen every month.

("*M/V Erika*") and 2003 ("*M/V Prestige*") the EU intensified its maritime-related regulatory activity, especially via the so-called "Erika Packages I - III" between 1999 and 2009.[11] But already in 1994, an EU Directive had stated that "… *worldwide a large number of the existing classification societies do not ensure either adequate implementation of the rules or reliability when acting on behalf of national administrations as they do not have adequate structures and experience to be relied upon and to enable them to carry out their duties in a highly professional manner.*"[12] This remark stands in sharp contrast to a highly sophisticated self-regulation of the most advanced classification societies, both in quality and quantity. Nevertheless, by 2009, the EU agreed on an extensive recast of the former Directive 94/57/EC and the act was split into a Directive (2009/15/EC)[13] and a Regulation (EC/391/2009).[14]

Regulation EC/391/2009 is directed primarily at the classification societies and has empowered the European Commission with extensive competencies and enforcement instruments at the EU level. These powers have been identified already – at least partly – as problematic from the perspective of public international law.[15] Above all, under Regulation EC/391/2009, EU members have transferred their rights to grant recognition to classification societies and to withdraw recognition again in case of serious irregularities exclusively to the Commission (see articles 4 and 7). The Commission has pushed forward a rather "delicate" agenda of mutual recognition of class certificates (art. 10)[16] and it may impose severe financial penalties on classification societies in cases of "*serious or repeated failure to fulfil the minimum criteria […]*" or if "*worsening performance reveals serious shortcomings in its structure, systems, procedures or internal controls*" (art. 6).

Effectively, Regulation EC/391/2009 ensures that only those classification societies which are members of the International Association of

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[11] See generally *Jenisch*, The European Union as an Actor in the Law of the Sea: The Emergence of Regionalism in Maritime Safety, Transportation and Ports, 48 German Yearbook of International Law 2005, pp. 223; *Reuß/Pichon*, The European Union's Exercise of Jurisdiction Over Classification Societies, 67 Zeitschrift für ausländisches öffentliches Recht und Völkerrecht (2007), pp. 119, at 125.

[12] Introduction to Council Directive 94/57/EC on common rules and standards for ship inspection and survey organizations and for the relevant activities of maritime administrations; for an extensive discussion of this legal act see: *Begines*, The EU Law on Classification Societies, 36 Journal of Maritime Law and Commerce (2005), pp. 487; *Lagoni*, The Liability of Classification Societies (2007), p. 291.

[13] OJ 2009 L 131.

[14] OJ 2009 L 131/11.

[15] *Reuß/Pichon*, The European Union's Exercise of Jurisdiction Over Classification Societies, 67 Zeitschrift für ausländisches öffentliches Recht und Völkerrecht (2007), pp. 119, at 130.

[16] See Fairplay Magazine of 4 November 2010, pp. 22 ("*ROs must learn to share in class*"); Tradewinds of 27 April 2012, p. 2 ("*Brussels smells a class 'conspirary'*").

Classification Societies (IACS) can be recognized under EU Law.[17] The Regulation also ties EU regulatory activity to the parallel global agenda of the IMO. The fourth Recital of the Regulation states that the objective of equal levels of safety and of environmental protection and uniform establishment and application of the necessary professional standards for activities of classification societies "*should be pursued through measures that adequately tie in with the work of the [IMO] and, where appropriate, build on and complement it. Furthermore, the Member States and the Commission should promote the development by the IMO of an international code for recognized organisations*." This so-called "RO Code" as referred to in Recital 4 of the Regulation has now been agreed after years of negotiations at the IMO level.[18] By 2015, the "RO Code" will provide a consolidated IMO instrument containing criteria against which ROs (i.e. classification societies) are assessed and authorized on the global level. It will also give guidance for subsequent monitoring of ROs by flag state administrations. Ultimately, in 2015, the IMO's success in drafting the RO Code as a consolidated instrument will mandate at least some editorial updates in Regulation EC/391/2009.

2. Public Issues Relating to Limitation of Liability (Directive 2009/15/EC)

Regulation EC/391/2009 remains quite silent on the issue of liability of classification societies.[19] On a global scale, the IMO's new "*RO Code*" has also eschewed any new "hard law" on the liability of classification societies and has just included a soft remark in footnote 3 of para. 8.4 ("*Liability*") that "*flag states may also consider placing a limitation on the level of liability and indemnification to be covered under […] insurance or other compensation arrangements*".

However, the liability of recognized organizations is addressed in Directive 2009/15/EC which is primarily directed to the EU Members and mandates them to establish a "*working relationship*" with recognized organizations, i.e. classification societies (art. 5 para. 1 of the Directive) in

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[17] On the role of the IACS see, e.g., *de Bruyne*, Liability of Classification Societies: Cases, Challenges and Future Perspectives, 45 Journal of Maritime Law & Commerce (2014), pp. 181, at 183; *Begines*, The EU Law on Classification Societies, 36 Journal of Maritime Law and Commerce (2005), pp. 487, at 500; *Lagoni*, The Liability of Classification Societies (2007), pp. 24.

[18] The RO Code was adopted by the IMO's Marine Environment Protection Committee (MEPC), at its 65th session, by means of resolution MEPC.237(65) and by the IMO's Maritime Safety Committee (MSC), at its 92nd session, by means of resolution MSC.349(92). The Committees also adopted amendments to mandatory instruments which are expected to enter into force on 1 January 2015 by means of resolutions MEPC.238(65), MSC.350(92) and MSC.356(92) to make parts 1 and 2 of the RO Code mandatory under MARPOL annexes I and II, SOLAS and the 1988 Load Line Protocol.

[19] Apart from two rather general remarks in Recitals 7 and 18 of the Regulation.

the form of a "*formalized written and non-discriminatory agreement*" art. 5 para. 2). Effectively, those agreements are international public-private partnerships.[20] The "*strange*", *cumbersome*", "*confusing*" and "*unclear*" wording of the following art. 5 para. 2 b) of Directive 2009/15/EC (and its predecessors) has been analyzed and criticized extensively elsewhere.[21] In fact, this miscarried sub-provision should be clarified and updated completely whenever there is a suitable occasion for the EU in the future.

However, at least the case-based scenarios of art. 5 para. 2 b) of Directive 2009/15/EC evidence a political acceptance within the EU that a possible liability for classification societies should be established as part of the "*working relationship*" between EU flag states and their recognized organizations (which is, in most cases, a contractual relationship). Recital 17 of the Directive adds a strong harmonization argument to this legal and political debate.[22] A majority of the 28 EU members now applies the principle of limitation of liability in their function as flag states and "public clients" of classification societies. Denmark, for example, has slightly increased the financial limits as mentioned in art. 5 para. 2 of Directive 2009/15/EC and has included provisions in its "*RO Agreement*" that it "*shall be entitled to financial compensation from the RO to the extent that […] personal injury or death was, as decided by […] court, caused by the RO, up to but not exceeding an amount of €5,000,000,-*".[23] A following clause states the same for "loss or damage" and limits liability of classification societies "*up to but not exceeding an amount of €2,500,000,-.*"[24] These contractual clauses provide at least appropriate legal foreseeability for both contractual partners and they

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[20] *Reuß/Pichon*, The European Union's Exercise of Jurisdiction Over Classification Societies, 67 Zeitschrift für ausländisches öffentliches Recht und Völkerrecht (2007), pp. 119, at 121.

[21] See especially (relating to the original text of the preceding Directive 94/57) *Begines*, The EU Law on Classification Societies, 36 Journal of Maritime Law & Commerce (2005), pp. 487, at 521: "*[…] strange and cumbersome wording […]*", at 524: *"[…] the whole liability scheme is confusing and presents several problems of construction.*"; *de Bruyne*, Liability of Classification Societies: Cases, Challenges and Future Perspectives, 45 Journal of Maritime Law & Commerce (2014), pp. 181, at 189: "*One of the problems is the unclear phrasing and the use of undefined terms in the Directive. There seems to be no difference in treatment between the notions of 'reckless act' and 'gross negligence'*".

[22] The provision states that "*divergence in terms of financial liability regimes among the recognised organisations working on behalf of the Member States would impede the proper implementation of this Directive. In order to contribute to solving this problem it is appropriate to bring about a degree of harmonisation at Community level of the liability arising out of any marine casualty caused by a recognised organisation, as decided by a court of law, including settlement of a dispute through arbitration procedures.*"

[23] See clause 6.2 of the Agreement Governing the Authorisation of [Recognised Organisation (RO)] to Undertake Statutory Certification Services on Behalf of the Danish Maritime Authority, available online at <http://www.dma.dk/ships/recognizedorganisations/sider/thedanishclassagreement.aspx>.

[24] *Ibid*., clause 6.3 of the Danish "RO Agreement".

make the inherent risks of statutory certification services insurable for classification societies.

3. Concluding Thoughts on Limitation of Liability for Classification Societies

Attorneys might wonder what the benefit could be for the private law discussion of liability of classification societies by gazing at protracted subparagraphs of an EU Directive and by analyzing deeply hidden clauses of "*RO Agreements*" between some EU flag states and their chosen recognized organizations. After all, the cases on a possible third-party liability of classification societies to cargo-owners or buyers of vessels have no public element but are solely questions of private law, especially of so-called "*negligent misrepresentation*" or general tort law.[25]

However, the answer is quite simple: Different legal orders do increasingly accept the legal concept that a possible liability of classification societies should be limited to a maximum amount. This should be true even if the "classes" are not explicitly mentioned in the applicable and existing limitation conventions. On a supranational level, the EU refers to political "harmonization" and is thus actively supporting the inclusion of limitation provisions in contractual agreements between "public clients" (i.e. EU flag states) and classification societies. And both the French "*Erika"* judgment[26] and the final verdict from New York on the "*Prestige"*[27] serve as another recent confirmation (remarkably from two different legal orders) that classification societies might generally benefit from the channeling provision of the Civil Liability Convention of 1992 (CLC 1992) as "*any other person who, without being a member of the crew, performs services for the ship*" (see art. Article III para. 4 b) 1992 CLC).

The CMI has discussed the related problems of the liability of classification societies extensively between 1990 and 1998 and is now pondering to re-open the international debate. Specifically, there is still a legal gap in the balanced global maritime system of limitation of liability as classification societies are missing their share in the conventions. For historic

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[25] On the tort of "negligent misrepresentation" in different legal orders see, e.g., *Daniel*, Potential Liability of Marine Classification Societies to Non-Contracting Parties, 19 University of San Francisco Maritime Law Journal (2007), pp. 183, at 233; *Lagoni*, The Liability of Classification Societies (2007), pp. 160.

[26] Cour de Cassation, Judgment of 25 September 2012; see also *Tradewinds* 27 September 2012, p. 9 ("*Erika ruling pushes liability in spill cases"*).

[27] Reino de España v. American Bureau of Shipping, Inc., 691 F.3d 461, 476, 2012 AMC 2113, 2136 (2d Cir. 2012), 29 August 2012; for a discussion of the proceedings see *Naeemullah*, A Decade Later, $1 Billion Saved: The Second Circuit Relieves a Maritime Classification Society of Unprecedented Liability for Environmental and Economic Damages in Reino de España v. American Bureau of Shipping, Inc., 37 Tulane Maritime Law Journal 2012-2013, pp. 639.

reasons, they are not mentioned explicitly anywhere, neither in the CLC 1992 nor in the London Limitation Convention of 1976/1996 (LLMC). The same is true for the Bunkers Convention, the Wreck Removal Convention or the HNS Convention (the latter not being in force). However, drafting a specific liability convention for classification societies will not be easier in 2014/2015 (and the years to come) as it already was in the 1990s. Old debates and frictions would most probably re-appear, such as a discussion of the advantages of a fee-based limitation system as preferred by the classification societies themselves. This approach will nevertheless still be rejected as unfeasible by a lot of other legal stakeholders. In any case, fee structures of "classes" are irrelevant and not comprehensible to third parties.[28]

Instead of drafting a completely new convention one could remind international regulators – i.e. primarily the IMO – of the legal developments of the past decade and as suggested by this short contribution to the 2014 CMI Conference in Hamburg. In the 21st century, it seems to be time for some explicit legal clarifications, at least in the LLMC (preferably a new sub-paragraph including "classification societies" in art. 1) and in the CLC 1992 (preferably a new sub-paragraph including "classification societies" in art. III para. 4). By doing this, it would be possible to undisputedly identify classification societies as "*persons entitled to limit liability"*. It has been argued, however, that – from a political point of view – it is even easier to draft a completely new convention as compared to amending an existing one. However, this is not ultimately convincing as – in the case of a possible new liability convention for classification societies – there still seems to be a number of highly sensitive and controversial legal questions.[29]

Generally, the case of classification societies may serve as an illustration of the complexity of multi-layered systems, where national, EU and international legislation and administration is closely intertwined and even supplemented by private contracts. Pushing for an explicit inclusion of classification societies in existing conventions and, thus, achieving a necessary legal clarification in the area of limitation of liability is – in my opinion – preferable to drafting a new act which might, in the end, only add another complicated legal layer to the already fragmented world of maritime liability conventions.

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28 See explicitly *Lagoni*, The Liability of Classification Societies (2007), p. 323.

29 Summarized by *Lagoni*, The Liability of Classification Societies (2007), pp. 316-330.

WRONGFUL ARREST OF SHIPS: A CASE FOR REFORM

Aleka Mandaraka Sheppard*

There should always be good reasons for reform in the law and such reasons, undoubtedly, include 'balance of justice' and 'uniformity'. The attraction of the common law is that, if the judges are unrestrained by International Convention rules or statutes, it is their prerogative to develop the law by adapting old principles or creating new ones, when changes in other spheres of the law, or society, or the commercial world, call for new law. Wrongful arrest of ships is an area in need of such reform.

1. Introduction[1]

Under English law,[2] the test for wrongful arrest, as derived from the old authorities of the Privy Council, *The Evangelismos*[3] and *The Strathnaver*,[4] requires proof by the owner of the arrested ship of mala fides or *crassa negligentia* on the part of the arresting party. This is the phraseology most commonly used to represent the test derived from these decisions, although it has been elaborated by subsequent cases, as will be seen below. The question is, therefore: Is it necessary to disturb the law which has been settled for more

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1 This is an extended version of the subject dealt with in the forthcoming 3rd edition of 'Modern Maritime Law' by this author, expected later in 2013.

2 The Arrest Convention 1952 does not deal with wrongful arrest of a ship but leaves the matter to be decided by the law of the state in whose jurisdiction the ship is arrested. The issue of whether the Convention should contain a provision on the right of the owner to claim damages for wrongful arrest was hotly debated; the civil law countries were in favour of such a provision and the common law countries were against it: see Berlingieri Arrest of Ships (5th edn Informa 2011) ch 16. Thus, the situation in which such liability arises differs from country to country; the law of each country, State Party to the Convention, can be found in this chapter.

3 *The Evangelismos* (1858) 12 Moo PC 352; *Walter D Wallet* [1893] P 202 (proof of actual damage is not necessary to sustain an action in a court of Admiralty for wrongful arrest, if the seizure of the vessel was the result of *mala fides* or *crassa negligentia*, implying malice).

4 (1875) 1 App Cas 58 ('*mala fides'* or 'malicious negligence').

than 150 years? Are there any compelling reasons for its re-examination? The fact that the test was formulated in very different conditions and has not been critically examined in the context of modern commercial litigation is itself a reason for its reassessment. Some other reasons are explored below.

The complacency with, or resistance to disturbing, this test can be explained by the reason that claimants should be protected by affording them the right to arrest a ship to obtain security for their legitimate claims against the defendant who is, in many, if not most, cases a one-ship company with one tangible asset moving from one jurisdiction to another; claimants are faced with the risk of that asset being either sold or lost at sea. In addition, there is a policy reason that English jurisdiction should be amenable to claimants and a lower threshold of the test for possible wrongful arrest might discourage them from bringing their claims to this jurisdiction.

In some other common law jurisdictions that have applied this test, however, the attitude of courts is changing,[5] as will be seen later, and an emphasis is placed on providing a balance between claimants and defendants and recognising that the interests of justice must be served.

The rigid English test, in effect, provides claimants with immunity from being sued for damages because they know that the defendant will be discouraged from seeking compensation for wrongful arrest. There have been cases where claimants have abused the 'right to arrest', again discussed further below, including: when an unreasonable demand for high security was made; when an undertaking from the owners' P&I club was not accepted and the arrest continued until the arrestor's demands were met; when the foundation of the claim had not been thoroughly examined; when the claimant did not have the requisite standing to arrest; and when the ship was not in the beneficial ownership of the alleged defendant. In such situations, the owner has not been able to discharge the burden of proof that the claimant acted out of malice, bad faith or *crassa negligentia*, except in exceptional cases. The present law does not help the owner to obtain justice for his losses incurred by reason of a wrongful arrest not only in terms of the costs to put up security, but also commercial losses and liabilities paid to third parties. Granting an owner his legal costs when he succeeds in litigation on the merits or in his application that the arrest was not justified is not sufficient compensation.

Would the reason of justice, alone, not be sufficient to justify revision of the test? The time is ripe to do so, particularly because of the developments in other common law jurisdictions.[6] These show, however, that there are

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[5] For example see the Singaporean case of *The Vasiliy Golovnin* [2008] SGCA 39 (albeit obiter comments).

[6] A most thorough and critical analysis of the law as developed in common law jurisdictions is provided by Michael Woodford 'Damages for wrongful arrest: section 34, Admiralty Act 1988' (2005) 19 *MLAANZ Journal* 115-47.

inconsistencies in the application of the test because of different phrases that have been used by the judges, and the need for uniformity is another important reason for reform of the law in this area.

This article sets out the problems arising from the current test, its history and the tort of malicious prosecution, examines some decisions which have applied the test, looks for modern trends and explores the available options as to whether reform, if at all possible, can be achieved.

2. The problem

2.1 The test of malice or crassa negligentia

When *The Evangelismos* was decided by the Privy Council in 1858, the arrest of the ship, rather than the issue of the writ, constituted the commencement of the action in order to found jurisdiction, so the claimants' right to proceed in rem needed to be protected. In addition, no precedent could be found in Admiralty law of an action for the wrongful arrest of a ship by means of Admiralty process, nor was such an action available in the common law courts.[7]

In *The Evangelismos*, a collision occurred on the Thames in darkness, and the vessel that had caused the damage escaped. On the morning of the next day, the owners of the damaged ship, the *Hind*, arrested the *Evangelismos* which was found in the docks. By reason of having damage to her bow, she was taken to be the missing colliding ship. She was kept under arrest for three months and could not perform her voyage to carry coal to the Levant, until bail was found for her release. After examination of witnesses, Dr Lushington found that it had not been sufficiently proved that the *Evangelismos* was the guilty ship and dismissed the action with costs. Upon application for wrongful arrest and detention, damages were refused to her owner because the judge considered that the arrest had been made in the bona fide belief that she was the ship that had been in collision and that there had been no *mala fides* in the proceedings.

On appeal (the case reached the Privy Council), it was argued that the arrest was without robable cause, in that there was no shadow of reason for charging the *Evangelismos* as being the guilty ship. Reliance was placed on previous decisions, including: *The Orion*,[8] in which damages were awarded for having been arrested by mistake for six days; *The Glasgow*,[9] where the ship was arrested upon mistake of law and demurrage and costs were awarded; *The Nautilus*,[10] which was arrested by the salvor, who had already been paid for its services and was condemned to pay damages in costs and expenses for groundless arrest.

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[7] Procedures changed with the merger of the common law courts with the Admiralty Court by the Supreme Court of Judicature Act 1873.

[8] (1852) 14 ER 946.

[9] (1855) 166 ER 1065.

[10] (1856) 14 ER 1044.

The defendants argued that the arrest was bona fide and invoked the jurisdiction of the court. There being no authorities with regard to granting damages for wrongful arrest in Admiralty courts, they relied on common law authorities concerning false imprisonment and malicious prosecution of a person, as applied by the common law courts.[11] In cases of malicious prosecution, malice and the absence of reasonable and probable cause were, and still are, required to be proved by the person contesting the prosecution in order to succeed.[12]

Applying this principle by analogy, the Privy Council affirmed the decision of the court below and held there was nothing whatever to establish the appellant's proposition. Although it was true that the identity of the ship was not proved, there were circumstances which afforded ground for believing that this ship was the one that had been in collision with the *Hind*.[13] The appeal was dismissed and the owner, whose vessel should not have been arrested and detained for three months, was not even compensated for the legal costs incurred to contest the wrongful arrest.[14]

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[11] For an explanation of this see *Walter D Wallet* (n 3) at 206 (Sir Francis H Jeune): 'No precedent, as far as I know, can be found in the books of an action at common law for the malicious arrest of a ship by means of Admiralty process. But it appears to me that the onus lies on those who dispute the right to bring such an action of producing authority against it. As Lord Campbell said in *Churchill v Siggers*: "To put into force the process of law maliciously and without any reasonable or probable cause is wrongful; and, if thereby another is prejudiced in property or person, there is that conjunction of injury and loss which is the foundation of an action on the case". Why is the process of law in Admiralty proceedings to be excepted from this principle? It was long ago held that an action on the case would lie for malicious prosecution, ending in imprisonment under the writ de ex communicato capiendo in the spiritual court: *Hocking v Matthews*. It can, therefore, hardly be denied that it would have lain for malicious arrest of a person by Admiralty process in the days when Admiralty suits so commenced, just as for malicious arrest on mesne process at common law. But if for arrest of a person by Admiralty process, why not for arrest of a person's property? I can imagine no answer, and the language of the reasons of the Privy Council in the case of *The Evangelismos*, quoted with approval in the late case of *The Strathnaver* appears to me to treat the existence of such an action at common law as indisputable'. In *Walter D Wallet* (n 3) 205-206, where the action of the defendant was commenced clearly without reasonable or probable cause, or was the result of *crassa negligentia*, the court awarded nominal damages.

[12] See eg *Mitchell v Jenkins* (1833) 5 B and Ad 588. For malicious prosecution the plaintiff must prove that the prosecution or arrest was malicious and without reasonable and probable cause; 'malice is not in the sense of spite or hatred but of "*malus animus*" denoting that the party acted by improper motives'. See *Herniman v Smith* [1938] AC 305 (HL), where Lord Atkin held: it is for the judge to decide whether there was want of reasonable and probable cause; and for the jury to decide whether there was malice, eg motives other than a desire to bring to justice someone whom the prosecution honestly believed, on the facts before it, to be guilty [synopsis]. In *Glinski v McIver* [1962] AC 726 (HL), Lord Devlin concurred with Lord Atkin in *Herniman* and added that if there is no proof of reasonable and probable cause, no questions are for the jury. The judge should keep questions of fact to himself.

[13] *The Evangelismos* (n 3) 359, applied by the PC in *The Strathnaver* (n 4).

[14] However, in the following cases costs were awarded: *The Active* (1862) 5 LT(NS) 773; *The Volant* (1864) Br & L 321; *The Eudora* (1879) 4 P 208; *The Keroula* (1886) 11 PD 92; and *The Village Belle* (1985-86) 12 TLR 630.

> In particular, the Rt Hon T Pemberton Leigh stated the test:
> Their Lordships think there is no reason for distinguishing this case, or giving damages. Undoubtedly there may be cases in which there is either *mala fides*, or *crassa negligentia*, which implies malice, that would justify a Court of Admiralty giving damages, as in an action brought at Common law damages may be obtained. . . .
> The real question in this case, following the principles laid down with regard to actions of this description, comes to this: is there or is there not, reason to say, that the action was so unwarrantably brought, or brought with so little colour, or so little foundation, that it rather implies malice on the part of the Plaintiff, or gross negligence which is equivalent to it? ... (emphasis added)

It should be noted at this point, however, that in malicious prosecution cases (see further below) malice is not to be inferred from a finding of groundless prosecution.

3. Is the Evangelismos test appropriate?

One commentator, Nossal,[15] interprets this test as containing a narrow rule and a broader rule. He argues that the latter could be applied and damages for wrongful arrest may be awarded in, at least, three circumstances: (i) where the arrest is initiated 'maliciously'; or (ii) 'negligently'; or (iii) 'unwarrantably', or with 'so little foundation'. The latter includes cases, the author submits, where the court has no jurisdiction to hear the matter. He contends that the Privy Council did not, perhaps, mean the narrow scope of the rule which has been attributed to it by subsequent cases, and were the House of Lords (now the Supreme Court) invited to re-examine the rule, it would decide that there are, in modern times, insufficient grounds for its stringency. There are some valid points in Nossal's commentary but, as it appears from later interpretations of the decision, the test, even in its most liberal interpretation, does not warrant the inclusion of merely negligent,[16] or even unwarranted, arrest without an assessment of the subjective state of mind of the arresting party.

Considering the background against which *The Evangelismos* was decided, the test is no longer appropriate at the present time. But judges, in subsequent cases, felt bound by this decision, known as the 'Admiralty law test'[17] or the 'historic pedigree', as opposed to the common law test, discussed

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[15] S Nossal 'Damages for the wrongful arrest of a vessel' (1996) *LMCLQ* 368, at 377-78.

[16] Although the Singaporean judge in *Ohm Mariana* [1992] 2 SLR 623 said at 636: 'the expression "*crassa negligentia"* or "gross negligence" simply means negligence. The vituperative epithet adds nothing to its meaning'. (Reversed by the Singapore CA [1993] 2 SLR 698.)

[17] Referred to by the Singaporean Court of Appeal in *The Kiku Pacific* [1992] 2 SLR 595.

below. The fact that the test derives from the test applicable to malicious prosecution cases has caused confusion.[18] Even in malicious prosecution cases, in which a stringent test is required because public prosecutions are concerned with the interests of the public, the test has been, it seems (see below), adapted to present times. 4. Malicious prosecution cases: the common law test The very early cases in this area had established that to support an action for the tort of malicious prosecution, there must be a want of reasonable and probable cause and malice.[19] Hawkins J in *Hicks v Faulkner*[20] defined the two limbs of the test. With regard to reasonable and probable cause, the prosecution must have had:

> An honest belief in the guilt of the accused based upon a full conviction, founded upon reasonable grounds, of the existence of a state of circumstances, which, assuming them to be true, would reasonably lead any ordinarily prudent and cautious man, placed in the position of the accuser, to the conclusion that the person charged was probably guilty of the crime imputed.[21]
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> With regard to malice, he said:
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> As a general proposition, want of probable cause is evidence of malice; but this general proposition is apt to be misunderstood. In an action of this description the question of malice is an independent one – of fact purely – and altogether for the consideration of the jury, and not at all for the judge. The malice necessary to be established is not even malice in law such as may be assumed from the intentional doing of a wrongful act, but malice in fact – malus animus – indicating that the party was actuated either by spite or ill-will towards an individual, or by indirect or improper motives, though these may be wholly unconnected with any uncharitable feeling towards anybody.[22]

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[18] See Woodford (n 6).

[19] See *Reed v Taylor* (1812) 128 ER 472; *Gibson v Chaters* (1800) 126 ER 1196. There must be both a want of probable cause and malice proved to support the action. This was an action for maliciously and without any just or probable cause arresting the plaintiff and holding him on bail.

[20] *Hicks v Faulkner* (1878) 8 QBD 167, test approved by Lord Atkin in *Herniman v Smith* (n 12).

[21] Ibid at 171. The House of Lords in *Herniman v Smith* (n 12) approved the judge's definition of 'no probable and reasonable cause'; their lordships only disapproved the judge's statement at 172 that 'the reasonableness of the accuser's belief in the existence of the facts on which he acted is a question of fact for the jury'. The test was considered more recently by the Court of Appeal in *Moulton v Chief Constable of the West Midlands* [2010] EWCA Civ 524, where it was held that the judge had directed himself correctly as to the meaning of 'reasonable and probable cause': he had set out the standard definition, which required a finding as to the subjective state of mind of the officer responsible and an objective consideration of the adequacy of the evidence.

[22] Ibid at 175; but see *Mitchell v Jenkins* (n 12) that 'malice is not in a sense of spite'.

As private prosecutions and arrests of individuals were proliferating in the 17th and 18th centuries, this stringent test was not justified because it discouraged actions to be brought for holding someone on bail in a mere civil suit.[23] The test for malicious prosecution and which questions are for the jury were clarified by the House of Lords in *Herniman v Smith*.[24] The House of Lords had another opportunity to refine the test in *Glinski v McIver*,[25] where the judge had again put to the jury the wrong questions; Herniman was applied.

It was held that:

(i) it is for the judge to determine whether there was want of reasonable and probable cause, and for the jury to determine any disputed facts relevant to that determination on which he needed their help;[26]

(ii) the question of want of honest belief is relevant to that of want of reasonable and probable cause, but that question may be put to the jury only if there is affirmative evidence of want of honest belief;[27]

(iii) in the present case there was no such evidence, nor other evidence of want of reasonable or[28] probable cause for the prosecution.

The following guidelines for the judges were put forward by their lordships as to the meaning of 'no reasonable and probable cause':

> In deciding whether there was reasonable and probable cause for the prosecution, the judge cannot ignore the fact of the prosecutor's belief, which is therefore relevant. Want of reasonable and probable cause is not to be inferred from malice. When a police officer preferring a charge has, at every step, acted on competent advice, and has put all the relevant facts known to him before his advisers, it would be hard to say that he acted without reasonable and probable cause.[29]
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> Reasonable and probable cause means that there are sufficient grounds for thinking that the accused was probably guilty but not that the prosecutor necessarily believes in the probability of conviction . . . Objectively there must be reasonable and probable cause for the prosecution, and the prosecutor must not disbelieve in his case . . . even though he relies on legal advice.[30]

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[23] *Gibson v Chaters* (1800) 126 ER 1196. In *Sinclair v Eldred* (1811) 128 ER 229 Mansfield CJ said: 'With respect to the malicious arrest, there never was a period when this species of action ought more to be encouraged, for there is much abuse made of the power of arrest'.

[24] Note 12.

[25] [1962] AC 726 (HL).

[26] Ibid 742, 768, 779.

[27] Ibid 742, 744, 752, 753, 768.

[28] It is noted that the conjunctive 'and' is used interchangeably with the disjunctive 'or', which has caused confusion in subsequent cases.

[29] Ibid (Viscount Simonds, Lord Reid concurring) at 742-45.

[30] Ibid (Lord Devlin) at 766, 769-70 and 777.

> If the prosecutor can be shown to have initiated the prosecution without himself holding an honest belief in the truth of the charge, he cannot be said to have acted upon reasonable and probable cause . . . mere belief in the truth of the charge would not protect him, if the circumstances would not have led an ordinarily prudent and cautious man to conclude that the person charged was probably guilty.[31]
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> A prosecutor . . . must have reasonable and probable cause in fact and not merely think that he has.[32]

Although there are some slight discrepancies between the dicta cited above, their lordships were in agreement that reasonable and probable cause requires a finding as to the subjective state of mind of the officer responsible and an objective consideration of the adequacy of the evidence.[33] Malice is an independent question of fact and for the jury to decide provided there is a case of no reasonable and probable cause for the prosecution, as the judge may determine following the process explained above. One of the issues considered by the House of Lords was whether it was correct to put to the jury the question of the belief of the prosecutor and this was extensively analysed by Viscount Simonds. It was argued that although the belief of the prosecutor in the guilt of the accused may be relevant to malice, it is not relevant to the question of reasonable and probable cause as to which the test is purely objective. Viscount Simonds thought that this entailed a confusion of thought. The question of belief can only be left to the jury if there is affirmative evidence of the want of it, he firmly stated (at paras 743-44). The reasoning seems to be somewhat circular but the space here does not permit further elaboration on this point, nor is it necessary to do so for the present purposes.

It suffices to say on this issue that it is strikingly surprising that this complex test (involving questions for both the judge and the jury), which is undoubtedly suitable to criminal cases, should be the starting point for and be applicable, by analogy, to Admiralty cases of wrongful arrest of ships.

It has been suggested[34] that, in current times, having in mind the Human Rights Convention, the test of 'no reasonable and probable cause' should be based on the guidance applying to public prosecutors in making charging decisions. Current Guidance on 'Charging' to Police Officers and Crown Prosecutors requires both the police and CPS to apply the principles in the Code for Crown Prosecutors when determining charges. The 'Full Code' test requires the prosecutor to charge if there is enough evidence to provide a 'realistic prospect of conviction', and if it is in the public interest to proceed.

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31 Ibid (Lord Radcliffe) at 753-54.
32 Ibid (Lord Denning) at 758, 759.
33 Applied in *Moulton v Chief Constable of the West Midlands* [2010] EWCA Civ 524.
34 *Clerk & Lindsell on Torts* 20th edn ch 16 section 3 - malicious prosecution.

The 'realistic prospect' is essentially a sufficient evidence test and involves determination of whether a fair minded tribunal properly applying the law would be more likely than not to convict. In some circumstances, a lower 'Threshold Test' is applied, where the police do not wish to release on bail for prescribed reasons and where not all of the likely evidence is available as yet. This test requires there to be 'at least reasonable suspicion', being compatible with Article 5 of the ECHR.

4.1 The difficulty in applying this test to wrongful arrest of ships

There have been a few older decisions in which the court awarded damages for wrongful arrest of a ship without insisting on proof of malice. In these cases, the underlying claim was not justified and therefore failed.[35] In other decisions, the court awarded only costs to the shipowner and not damages because no *mala fides* or *crassa negligentia* was found.[36] In another strand of cases, where the test of *mala fides* or *crassa negligentia* was met, [37] damages were awarded.

In more recent years, in *The Saetta*,[38] Clarke J (having no further

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[35] See eg *The Victo*r (1860) Lush 72 (where the cargo on board ship was arrested wrongfully after a collision because the value of the ship and freight was insufficient to meet the collision damage. The cargo was released with costs and damages for its improper detention); *The Cheshire Witch* (1864) Br & L 362 (substantive claim in rem dismissed); *The Cathcart* (1867) LR 1 A & E 333 (wrongful arrest by a mortgagee who ought to have been aware of the facts); *The Margaret Jane* (1869) LR 2 A & E 345 (salvors became aware, after the arrest, of the appraised value of the wreck, which was lower than the sum for which they arrested, therefore they dropped the proceedings. The court condemned them to pay damages although malice was not shown); cf *The Strathnaver* (n 4) where there was error of judgment and no damages were awarded.

[36] See eg *The Active* (n 14); *The Volant* (n 14); *The Eudora* (n 14); *The Keroula* (n 14); *The Village Belle* (n 14).

[37] In *The Eleonore* (1863) 167 ER 328 arrest of the vessel for salvage in excess amount was wrongful and *crassa negligentia* was shown. In *The Vindobala* (1888) 13 PD 42, (1889) 14 PD 50 (CA), the managers and part owners of the ship had no right to arrest her and were liable to the other owners for any damages resulting from their wrongful act. See also *Walter D Wallet* (n 3), where the concept of 'without reasonable or probable cause' from common law was equated to *crassa negligentia* and nominal damages were awarded.

[38] [1993] 2 Lloyd's Rep 268. Upon withdrawal of the ship from the charterers by the owners for non-payment of hire, there was a quantity of bunkers on board which was involuntarily transferred to the owners by the transfer of possession of the vessel back to the owners on termination of the charter. Unbeknownst to the owners, the bunkers, which were subject to a retention clause, had not been paid for by the charterers and so the ship was arrested for conversion. It is interesting, in this connection, to refer to *The Kos* [2010] 1 Lloyd's Rep 87, where the ship was withdrawn for unpaid hire and the charterers, challenging the right of withdrawal, threatened to arrest the ship unless security was put up for their counterclaim. The owners gave a bank guarantee without prejudice to their contention that the demand was unjustified and obtained a declaration from the court that their withdrawal was lawful and valid and the charterers' counterclaim for damages on basis of wrongful withdrawal had been dismissed with costs at a previous hearing. One of the issues before Smith J was whether the costs of providing the guarantee were recoverable. He held the cost of the guarantee was recoverable as costs incidental to the proceedings within the meaning of s 51 of the SCA 1981. It was also argued whether such

guidelines from higher courts) applied the *Evangelismos* test of *mala fides* or *crassa negligentia* and on the facts of the case he held that even if the owners were not liable to the claimants for conversion of the bunkers, it could not be said that the claimants or their solicitors acted with *crassa negligentia* in arresting the ship for payment of the bunkers.

Unfortunately, the test of 'malice or *crassa negligentia'* was not in issue before the Court of Appeal in *The Borag*[39] and an opportunity for its review was lost. The ship had been under arrest for 14 days at the action of her managers who colluded with the master to sail to Cape Town, a port which was always avoided upon the instructions of the owners considering the ease with which arrest of ships is obtained there. However, the court recognised that the owners of a ship which was wrongfully arrested were entitled, at least, to all reasonable expenditure which they had incurred as a result of the wrongful arrest; it said further that, subject to proof, the owners would be entitled to recover loss of profit and expenses thrown away during the time of the ship's detention, but it did not have to decide these items of damages.

The decision of Colman J in *The Kommunar (No 3)*[40] shows how difficult it is for the owner to succeed in his claim for damages for wrongful arrest. Although the arresting party knew that the beneficial owners and the person in possession of the ship were, when the cause of action arose, a different entity from the owners of *The Kommunar* at the time of the arrest (owing to privatisation of the company which would be liable in personam), the owners did not succeed in their claim for damages. Contesting the arrest, they argued that the conduct of the arresting party amounted to *crassa negligentia* and on that basis they claimed damages. Colman J, referring to the Rt Hon T Pemberton Leigh of the Privy Council in *The Evangelismos*, understood the test to be as follows:

> Two types of cases are thus envisaged. Firstly, there are cases of *mala fides*, which must be taken to mean those cases where on the primary evidence the arresting party has no honest belief in his entitlement to arrest the vessel. Secondly, there are those cases in which objectively there is so little basis for the arrest that it may be inferred that the

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costs could be recovered as damages on the basis of breach by charterers of an implied term of the contract not to bring invalid claims. Counsel for the owners submitted that an invalid claim is one which is brought without reasonable or probable cause justifying the threats of arrest the charterers made (in the sense of *Walter D Wallet*), but that argument was rejected in the circumstances of this case.

[39] [1981]1 Lloyd's Rep 483. Another Court of Appeal decision was *Astro Vencedor Compania Naviera v Mabanaft GmbH* [1971] 1 Lloyd's Rep 502, in which Lord Denning MR had to decide only whether the umpire, Mr Barclay, had jurisdiction in the arbitration proceedings to decide the issue of wrongful arrest and he held that he had. The umpire, upon the dismissal of the claimants' claims, had awarded damages to the owners for wrongful arrest of the ship by the claimants but his reasons for doing so were not given in the judgment.

[40] [1997] 1 Lloyd's Rep 22.

> arresting party did not believe in his entitlement to arrest the vessel or acted without any serious regard to whether there were adequate grounds for the arrest of the vessel [emphasis added]. It is, as I understand the judgment, in the latter sense that such phrases as '*crassa negligentia*' and 'gross negligence' are used and are described as implying malice or being equivalent to it . . . Taking the judgment as a whole, it would not appear that the mere absence of reasonable care to ascertain entitlement to arrest the vessel would necessarily amount to CN [*crassa negligentia*] in the sense there used.[41]

For convenience, the test will be referred to below as the '*Evangelismos/Kommunar*' test, unless reference to the former case is only relevant contextually. On the evidence of the *Kommunar*, Colman J considered that whether or not the conduct amounted to *crassa negligentia* it was quite impossible to say that it should have been obvious to the arresting party, or their legal advisers, that the claim in England was bound to fail, given the relatively complicated privatisation process and the complex analysis of the Russian legislation. He further said that the difficulty in granting damages, including wasted costs or other expenses incurred during a wrongful arrest, is inherent in the procedural rules of arrest of ships under English law. This is so because the in rem jurisdiction of the Admiralty Court requires no undertaking in damages from a claimant who obtains the benefit of security for his claim by arresting a vessel, even if he has wrongfully invoked the jurisdiction. He continued:

> ... [h]e will not have to compensate the shipowner for the expenses and losses arising out of the arrest unless *mala fides* or *crassa negligentia* is proved. This is a rule of English law which can bear very harshly on shipowners who for some special reason may be unable to obtain release of their vessel by putting up security. It is not a rule which is found in the civil law systems. The more widely used procedure for obtaining security for a claim in *personam* in English law is the Mareva injunction, but there is an undertaking in damages required and the liability in respect of that undertaking arises upon the basis that, if the underlying claim fails, the plaintiff is liable for all losses caused by the injunction.[42]

The absence of a similar provision in the CPR (Admiralty proceedings in rem) leaves without remedy an innocent defendant shipowner who has suffered loss by an unjustified arrest but who is unable to establish malice or *crassa negligentia*. Recognising the injustice suffered by the shipowner, the judge did not exercise his discretion to allow a reduction of the shipowner's

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41 Ibid 30.
42 Ibid 33.

recoverable costs (incurred as a result of the wrongful arrest) in order to give credit for the benefit of the bunkers remaining on board.

At about the same time, the English court held in *The Peppy*[43] (arrested by the manager for alleged outstanding balance of account) that the arrest, which amounted to a repudiatory breach of the management agreement, was wrongful and the owners suffered recoverable loss by reason of the arrest. It was shown, however, in this case that the conduct of the director of the managing company was dishonest. On the facts, it was found that there was no outstanding balance of account at the time of the arrest because there was a variation of the agreement to defer payments until the vessel was sold.

4.2 The confusion

From the interpretation of the test by Colman J above, there seem to be two categories of cases which will fall within the current test of wrongful arrest:

(i) '*mala fides* arrest', where it is shown from primary evidence that the arrestor did not have an honest belief in the reason for the arrest or

(ii) 'obviously groundless arrest, objectively judged, from which it can be inferred that the arrestor did not believe in, or did not give serious regard to, its entitlement'. What this entails is that there should be an objective assessment of the subjective state of mind of the arresting party (i.e. assessing the reasonableness of his belief). Mere absence of reasonable care to ascertain entitlement to arrest the vessel would not necessarily amount to *crassa negligentia*.

This alternative test has been taken to be equivalent to the test of 'without reasonable and probable cause' (objectively judged). But it is important to note what Colman J said about this phrase in *The Kommunar*:

> ... To characterise their continued pursuit of the proceedings and maintenance of the arrest as without reasonable and probable cause would be putting the threshold of *crassa negligentia* far too low.[44]

What Colman J meant is that without an assessment of the subjective state of mind of the arrestor, the threshold would be too low. The phrase probably stems from the interpretation given to the test in *Walter D Wallet*,[45] in which the concept of 'without reasonable or[46] probable cause' was borrowed from the common law malicious prosecution cases and was equated to *crassa negligentia*. It seems to the author that, upon a literal construction, 'without

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43 [1997] 2 Lloyd's Rep 722.

44 *The Kommunar* (No 3) (n 40) at 32.

45 Note 3.

46 As noted earlier (n 28), the conjunctive 'and' is used interchangeably with the disjunctive 'or'.

reasonable and probable cause', in the context of wrongful arrest of ships, should mean that there are no reasonable grounds for the arrest and/or the cause for the arrest is 'more likely than not' to fail. It is submitted that this phrase, in civil cases, as opposed to the malicious prosecution cases, should require only an objective assessment of the situation without inquiring about the subjective belief of the arrestor. When courts use this phrase as being the test for wrongful arrest of ships, confusion arises because different meanings can be ascribed to it.

To compound the confusion, 'no reasonable and probable cause' has been regarded to be the common law test applicable to the malicious prosecution cases, as opposed to the Admiralty law test.[47] However, as seen in *Glinski v McIver*,[48] the 'common law' test requires also malice, which cannot be inferred from a finding of 'no reasonable and probable cause', although the latter was defined to include the subjective aspect of 'no honest belief' in the prosecution. By comparison, as discussed above, the Rt Hon T Pemberton Leigh suggested that the real question to be asked in cases of wrongful arrest of a ship is this: 'is the action so unwarrantably brought, or brought with so little foundation, that it rather implies malice, or gross negligence which is equivalent to it?' In a sense, he conflated the two limbs of the test applicable to malicious prosecution cases by using the word 'malice'. Thus, there has been confusion as to the application of the test as is apparent from the decisions analysed by Michael Woodford[49] in his scholarly article mentioned earlier.

5. Recent decisions – are new trends emerging?

In *Gulf Azov v Idisi*,[50] the Court of Appeal applied the test, namely: 'in the absence of any serious regard to whether there were adequate grounds for the arrest of the vessel', and damages were awarded. In this case, there was clear evidence of wrongful detention of both the ship and her crew in Nigeria by the owners of the cargo. They demanded US$17 million (an extortionate amount) as security for the release of the ship. Although the P&I club offered security in an LOU for US$1.5 million, it was rejected. After an impasse in negotiations, US$3 million was accepted as security. The claimants in the English action (owners and P&I club) obtained a freezing order on the sum of

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47 It is interesting to note that the Singaporean court (1st instance) in *The Ohm Mariana* [1992] 2 SLR 623 endorsed the test of 'no reasonable and probable cause', while the Court of Appeal of Singapore rejected it in *The Kiku Pacific* (n 17), as it thought it was the common law test applicable to malicious prosecution cases and was different from the Admiralty law test of *The Evangelismos*, being the appropriate test to be applied to wrongful arrest of ships.

48 Note 25.

49 Note 6.

50 [2001] 1 Lloyd's Rep 727.

US$3 million pending execution of the agreement and instituted proceedings alleging that the agreement to pay US$3 million was voidable for duress and that the vessel had been wrongly detained. They obtained a judgment in default and the defendants applied to set it aside. The judge decided in favour of the claimants and, on appeal, the Court of Appeal affirmed the judgment and held, on the point of wrongful detention, that there was no objective justification for the amount claimed and the question was whether the arresting party believed that there was. It appeared from the evidence that, in the absence of any serious regard as to whether there were adequate grounds for the arrest for which they demanded such a high amount of security, wrongful arrest was overwhelmingly established (ie the *Evangelismos/Kommunar* test was met).

In *The Kallang (No 2)*,[51] Axa Senegal, the insurer of cargo receivers, knowing that the disputes between the owners and receivers were subject to London arbitration arrested the ship in Dakar (the discharge port) not just for obtaining security for the receivers' claim but for establishing jurisdiction. An offer of security from the owners' P&I club was rejected. Axa insisted that the ship would only be released against a bank guarantee answerable to Senegalese jurisdiction. As the court found, it was Axa's intention to use the arrest to force the owners to relinquish the London arbitration clause, which was a breach of the agreement between the owners and the receivers; therefore, they were liable in damages on the basis of the tort of procuring breach of contract (*OBG v Allan*[52]). There was no need to apply the *Evangelismos/Kommunar* test of wrongful arrest, although the result, on the evidence, might have been the same. Damages were assessed for 10 days' unjustified period of the arrest during which the owners lost the use of the vessel, loss of hire from the next fixture (US$120,000) and incurred consumption of gas oil and port charges, totalling US$130,350.

The same tactics were used by the same insurers in *The Duden*[53] and the judge decided in the same way on the application of the principle. The only difference here was that the loss had been suffered by the subsidiary bareboat charterer and not by the shipowner. Unfortunately, it was too late to allow the shipowner to amend its case or to join the subsidiary as a party. He was entitled only to an injunction restraining the proceedings in breach of the arbitration clause but not to damages.

By analogy to a wrongful arrest of a ship, it is interesting to note *The Nicolas M*,[54] which shows the type of conduct of the arresting party that would

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51 [2009] 1 Lloyd's Rep 124.

52 [2008] 1 AC 1 and see further below.

53 [2009] 1 Lloyd's Rep 145.

54 [2008] 2 Lloyd's Rep 602. The substantive matter was within the jurisdiction of London arbitrators.

be examined by the court. Flaux J decided that the charterers, who applied for a freezing order to obtain security against the owners for their counterclaim in London arbitration, had shown a good arguable case of wrongful attachment in New York[55] by the owners in support of an unsustainable cause. On the facts of this case, the owners of the ship 'had engaged in what, at its lowest, was a discreditable conduct involving perjury' on the part of the captain, in relation to the maintenance of the attachment obtained under Rule B. The judge commented that these owners were the sort of people who would stop at nothing to frustrate the charterers from making any substantial recovery by dissipating their assets, unless restrained by the freezing order.

Do these cases support a new trend? Other than the first and the last decisions referred to above in which there was no difficulty in applying the *Evangelismos/Kommunar* test, the bold tactics used by the claimants in *Kallang* and *Duden*, which are not novel, could be dealt with by applying the *OBG v Allan*[56] principle, as Lord Hoffmann delineated the tort for wrongfully inducing breach of contract from the tort of causing loss by unlawful means. Proceeding in a cavalier fashion to put pressure on the owner to accede to higher demands of security may not always be said to amount to bad faith, if legal advice had been obtained.[57]

6. Other common law jurisdictions

The test of the *Evangelismos* is also applicable in other common law jurisdictions.[58] There is no need to refer to these decisions in this article other than to mention some of them briefly as a full account about such decisions has been given elsewhere.[59] It should be noted that in Australia the Admiralty Act 1988 included section 34,[60] which is headed 'Damages for unjustified arrest' and provides a different test from the *Evangelismos/Kommunar* test, namely that where a party 'unreasonably and without good cause' demands excessive security, or obtains the arrest of a ship, or fails to give consent for the release of the ship from arrest, that party will be liable in damages.

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[55] US federal law recognises the tort of wrongful attachment only on showing bad faith, or malice or gross negligence.

[56] [2008] 1 AC 1.

[57] See similarly the judgment of the Court of Appeal of Hong Kong in *The Maule* [1995] 2 HKC 769.

[58] Canada: *Armada Lines Ltd* [1997] 2 SCR 617, although the court below had awarded damages on the basis that the arrest of the cargo was without legal justification, the Supreme Court held that there was no bad faith. Hong Kong: *The Maule* (n 57), mortgagee who arrested the ship without cause of action, as the judge found at first instance, was not held liable in damages by the Court of Appeal because it could not be said he acted in bad faith. Singapore: see nn 16 and 47. In both *The Evmar* [1989] 2 MLJ 460 (Sing HC) and *The Ohm Mariana* (n 16) the test was met and damages were awarded. USA: *Fruit Co Inc v Dowling* 91 F 2d 293 (5th Cir, 1937).

[59] Woodford (n 6).

[60] See analysis of this and comparisons with other jurisdictions in Woodford (n 6).

Similarly, in Nigeria the same test is used in the Admiralty Jurisdiction Decree section 13:[61] 'unreasonably and without good cause'.

South Africa also has a legislative provision in the Admiralty Jurisdiction Regulation Act 105 of 1983 (SAF), as amended in 1992.[62] It includes claims for wrongful or malicious arrest, attachment or detention in the list of maritime claims. The provision is read with section 5(4), which was amended[63] in 1992 to mirror the South African common law requirements for damages for wrongful arrest of persons, and reads:

> Any person who makes an excessive claim or requires excessive security or without reasonable and probable cause obtains the arrest of property or an order of the court, shall be liable to any person suffering loss or damages as a result thereof for that loss or damage.

It should be noted that the judge of Appeal, Scott JA, had no difficulty in awarding damages in *The Snow Crystal*[64] for loss of future charter hire as a foreseeable loss consequent upon delay of the vessel in breach of a dry-docking contract following the arrest.

The amended wording was dealt with in *The Cape Athos*,[65] in which both the arrestor and the local and foreign instructing attorneys were held jointly and severally liable to the owner of the arrested ship. 'Without reasonable and probable cause' was interpreted by the judge to bear a similar meaning to that given to it in the context of the tort of malicious prosecution, namely that a lack of honest belief negates the defence of reasonable and probable cause. Furthermore, the judge held that the value to be attached to the legal adviser's advice would depend upon whether or not the client had given the adviser all the relevant facts.

The Supreme Court of Appeal considered the notion of 'excessive claim' in *The H Capelo*[66] and adopted an objective standard to determine what the arrestor should reasonably have regarded as having been recoverable.

In so far as this article is concerned, it is important to refer to a couple of relatively recent decisions which show new trends, particularly with regard to Singapore and Hong Kong where judges, in recent years, have decided that the *Evangelismos* test is too harsh.

The Singaporean courts have recently taken a more liberal approach to

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61 Ibid.

62 The references to South African law and decided cases are available at http://web.uct.ac.za/depts/shiplaw/booknew (2011) by Professor John Hare who states, at para 2-1.3 on disclosure that 'claimants and attorneys who play their cards close to their chest run the risk, and rightly so, of being found to have proceeded without reasonable and probable cause'.

63 Prior to the amendment, the test was that the arrest was without 'good cause'.

64 Case 250/07 *The Snow Crystal* (judgment delivered 27 March 2008).

65 *MV Cape Athos 2000* (2) SA 327 (D).

66 1990 (4) SA 850 (SCA).

this issue[67] and there has been a U-turn in the attitude of the courts since *The Kiku Pacific*.[68] This was shown in *The Vasiliy Golovnin*,[69] where the Court of Appeal set aside the second arrest effected in Singapore by the bank (lawful holder of the bill of lading) of the sister ship of the carrying ship (which had been arrested at Lomé, Togo, and released) on the grounds that (i) there was no arguable case shown by the bank for non-delivery of the cargo that had been discharged at Lomé, and (ii) the bank failed to disclose material facts that there had been an *inter partes* hearing at Lomé on the same issues which was resolved in favour of the owners.

In relation to the disclosure, it held that it was not only prudent but indeed necessary for a party intending to rely on the arrest of a vessel as security for a potential arbitration award to disclose in the body of the affidavit in support of the ex parte application for a warrant of arrest the material facts. Such facts included that the bills of lading had been switch bills by which the discharge port had been changed, and that the court of the port of discharge had set aside a previous arrest of the ship for the same claims. The disclosure of these facts would have alerted the court to the fact that the owner had delivered the cargo at the correct port.

On the cross-appeal by the owner of the ship for wrongful arrest, it was held that the arrest was wrongful. Although the higher threshold of the test of *crassa negligentia* was satisfied, it was further found that the bank could not in all honesty have believed in the validity of its claim, and the court discussed (obiter) the *Evangelismos* test. It questioned the continued validity of the test and conjectured that it might be out of step with modern practice stating (at para 26):

> With the historical background in mind and in the light of the legislative reforms undertaken by some other Commonwealth countries, it may be rightly asked if the Evangelismos test, which appears conceptually anachronistic, should continue to be the governing rule for wrongful arrest in Singapore. Should not a lower threshold be adopted instead?[70]

In Hong Kong, the court in *The Avon*[71] thought that the test of malice is harsh and something less than that should be required for wrongful arrest, but generally, there is no consistent approach by the courts in adopting a less harsh test.

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67 *The Evmar* (n 58) (Singapore HC): the continuation of the arrest after a promise by the shipowner to give security under protest was regarded as wrongful.

68 Note 17.

69 [2008] 756 LMLN 3, [2008] SGCA 39; the court usefully reviews wrongful arrest decisions of various jurisdictions.

70 The 'reasonable or probable cause' test was endorsed in *The Ohm Mariana* (n 16).

71 HKHC (unreported) (27 January 1992).

7. Civil law jurisdictions

In the civil law systems there is no unified approach to wrongful arrest among the civil law countries in Europe. According to Professor Frank Smeele,[72] there is a north-south divide on the European Continent. In the northern countries, the applicant for arrest is faced with strict liability if his claim fails on the merits, irrespective of fault or good faith. In the south, the law is similar to English law, namely, it requires the various degrees of fault (abuse of rights, gross negligence or bad faith).

For example,[73] in Denmark, Finland, Norway, Poland and Germany, the arrestor will be liable in damages when his claim fails, or the arrest was unnecessary or unjustified, irrespective of fault. Similarly, in the Netherlands, the arrestor will make good any loss caused by the arrest if the claim is rejected, even if he reasonably believed that his claim was well grounded. It will be abuse of justice if he demands excessive security. In Italy and Greece, proof of bad faith or gross negligence is required.

Different tests apply in other civil law countries. In Belgium, the claim of wrongful arrest is in tort and the claimant has to prove fault of the arrestor, his damages and causation. Fault is presumed if the arrestor acted recklessly and with knowledge that his action would probably cause damage. In France, the arrestor will be liable in damages if it is subsequently established that he abused his right. Abuse can exist when the arrest was unjustified or the security requested was excessive. In Portugal, there must be proof of carelessness on the part of the arrestor and he will be liable if the arrest proves to be wrongful or the proceedings on the merits did not commence on time. In Spain, the arrestor will be liable if the arrest proves to be wrongful, in the sense that it does not meet the conditions for arrest, or the claim fails, or he does not commence proceedings within the prescribed time. It should be noted that Spain has acceded to the Arrest Convention 1999 (see below).

8. The Arrest Convention 1999

A major objective of this Convention is to achieve a balance between the interests of claimants and owners. For the owner to succeed in his application for wrongful arrest under Article 6(1)(a) of the Arrest Convention 1999,[74] he must show that 'the arrest is wrongful or unjustified' (emphasis added).

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[72] Professor Frank Smeele 'Liability for wrongful arrest of ships from a civil law perspective' in *Liability Regimes in Contemporary Maritime Law* Rhidian Thomas (ed) (Informa London 2007) ch 14.

[73] See Berlingieri (n 2).

[74] It is interesting to note that Turkey has enacted a new Turkish Commercial Code (TCC) 2012, which contains rules for the arrest of ships. Although Turkey is not a party to any of the Arrest Conventions, it has adopted the Rules of the 1999 Arrest Convention.

Various views about the meaning of these terms were proposed by different delegations.[75] Although the words used are not defined, it is submitted that they could be interpreted to mean that there was no legal ground for the arrest and thus it was wrongful or unjustified, judged objectively without looking at the belief of the arrestor; in other words, the arrestor should have taken reasonable care to find out whether there were reasonable grounds for the arrest.

In the English dictionary,[76] 'unjustified' is defined as something 'wrong, indefensible, inexcusable, unacceptable, outrageous, unjust, unforgivable, unjustifiable, unpardonable, unwarrantable. Such words would seem to indicate that the conduct is to be judged objectively, applying the standard of what a reasonable man would have done had he been in the position of the arrestor at the time of the arrest. Since the philosophy behind the Convention has been to balance the interests of the parties, the draftsman must have intended to make the test of a lower threshold than malice or *crassa negligentia*, unlike the contrary views expressed by Professor William Tetley.[77] The Convention also requires that an undertaking in damages is put in place by the arrestor, which is in line with the philosophy of the Convention to provide balance between the interests of the parties.

On 14 September 2011 the Convention came into force amongst its acceding states, following accession by the tenth state, Albania. The 10 states to which the 1999 Convention applies are: Albania, Algeria, Benin, Bulgaria, Ecuador, Estonia, Latvia, Liberia, Spain and the Syrian Arab Republic. In the remaining 77 countries, the 1952 Convention is still, in force.

9. Why the preceding analysis strengthens the case for reform

It is apparent from the decisions in which wrongful arrest has been upheld that the evidence was clear and there was no difficulty in meeting the higher standard test. However, such cases seem exceptional and the problem of discharging the burden of proof of the present harsh test lies with the run-of-the-mill cases.

The *Evangelismos* test, otherwise referred to as the 'Admiralty law' test, is confusing and deters deserving shipowners from pursuing wrongful arrest claims. Although costs may be awarded to an aggrieved shipowner against a frivolous litigant, that would not be enough to compensate him for serious financial losses that may result from the disruption of business. It is common

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[75] See Woodford (n 6) and Berlingieri (n 2) on the debate that took place regarding the word 'unjustified' before the passing of the Convention.

[76] Collins Thesaurus of the English language.

[77] W Tetley 'Arrest, attachment and related maritime law procedures' (1999) 73(5-6) *Tulane Law Review*, cited in Woodford (n 6) at 128-29.

knowledge in the shipping world that ships operate on tight schedules and to delay a ship or disrupt its schedule can, and usually does, have far reaching commercial consequences.[78] This test makes the law less than even-handed, so that there is no balance between the interests of the respective parties. Furthermore, the procedural background against which *The Evangelismos* was decided has changed and the law in other jurisdictions has been developing, or reformed, to fit present commercial realities.

Reasons of uniformity and justice require that this outdated test is abandoned.

The objective of uniformity has led to reform in many other areas of the law concerning international trade, shipowners' liabilities and limitation, so that there is consistency and certainty in the application of the law. Why not in this area? Changing the rule in English law may lead other countries, in the common law jurisdictions at least, to follow suit. However, it seems that some of these countries are taking, or have taken, the lead in the reform. Perhaps the easiest solution for broader uniformity would be if the Arrest Convention 1999 was adopted, provided the terms used were clearly defined.

The so called 'common law' test of 'no reasonable and probable cause' as derived from the tort of malicious prosecution has caused confusion. The civil law test is not just one uniform test but entails a diverse terminology and even when the word 'unjustified' arrest is used, it does not have a uniform definition.

The 1999 Convention test, as seen above, would require precise definition of the words 'wrongful' and 'unjustified' for uniformity purposes. It seems to the author that this test is intended to be of objective standards without requiring an examination of the subjective state of mind of the arrestor.

10. Suggestions for reform

10.1 (i) By judicial initiative

First, it is suggested that the English courts themselves should revise the test. It seems that English judges are not precluded by the doctrine of precedent. Although there are two Privy Council decisions, there is not yet a decision of the Supreme Court on the issue. The Court of Appeal in *The Borag*[79] or *Gulf Azov v Idisi*[80] did not have to consider whether or not the *Evangelismos* test was suitable. Therefore, a bold judge in a future case might feel able to say he is not bound by *The Evangelismos* or *The Strathnaver* because the Privy Council has an advisory role; or he or she may be able to

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78 As observed by Scott JA in *The Snow Crystal* (n 64).
79 Note 39.
80 Note 50.

distinguish them in the light of changes in the procedure of arrest of ships and the views held by other judges in England and in the other common law jurisdictions. Thus, a judge might say that the 'orthodox authority' is old, weak and unsuitable for present legal and commercial reality. Another judge might feel bound by the Privy Council authorities but might, nevertheless, express his or her view about what the modern test should be and give leave to appeal.

10.2 (ii) By requiring a cross-undertaking in damages to be provided

It was argued in 1996 by Bernard Eder[81] that English law should be changed and an undertaking in damages should be ordered by the court as a condition of arrest in case of wrongful arrest, as in the case of interim injunctions. He strongly advocated that if it was possible to 'invent' the Mareva injunction, why is it not possible for the Admiralty Court to adopt a practice of extracting a cross-undertaking in damages from an arresting plaintiff? He stated:

> There is nothing, so far as I am aware, in any statute prohibiting such practice. And, if necessary, the rules of court can always be changed to recognise the change in practice. It is because the law does not permit a claim for damages to lie absent *mala fides* or *crassa negligentia* that I would suggest that the Admiralty Court should, like the courts of Equity, insist upon such a cross-undertaking in damages.[82]

This proposal, as a second solution, could be workable to compensate the defendant either for his loss caused by the arrest, if the claim fails, or for the expenses incurred to put up security, in the event the demand is excessive, or in the event the claimant is using abusive tactics to force the owner to accept his terms. Before considering the viability of this solution in the instance of arrest of ships, a brief account of cross-undertakings relating to interim injunctions is given below.

A cross-undertaking in damages is normally a condition for the grant of an interim injunction, whether ex parte or on notice. This principle developed in the area of applications for injunctions as early as the 1850s, and Mareva injunctions[83] (now freezing injunctions) are merely a particular example of this general rule. But an injunction, as opposed to the arrest of a ship, is a discretionary remedy. There are two reasons why the undertaking in damages is required: first the court is not in a position at the time of the application to

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[81] See B Eder QC 'Wrongful arrest of ships: revisited', paper delivered at a seminar held by the London Shipping Law Centre in 1996 and at ICMA XV. It is interesting to note that German courts sometimes require counter-security before the bailiff is entitled to detain the vessel.

[82] Ibid 13.

[83] S Gee QC 'The undertaking in damages' (2006) *LMCLQ* 181, where he makes a case for reform of cross-undertakings for the protection of third parties affected by them who are not mentioned in the order.

determine the rights of the parties but must decide whether there is a serious issue to be tried; if there is, then it considers whether, in all the circumstances, it is just and convenient to make the order sought.[84] Given the serious damage that can be done to the respondent (the person(s) actually enjoined under the order) its business and reputation by an interim injunction and, especially, by a freezing injunction which is served on third parties, a cross-undertaking became a condition to issuing an injunction (CPR 25, PD 25A para 5.1) and, although the court does not have power to compel the applicant to provide an undertaking, it can withhold the granting of the injunction. So the cross-undertaking is the 'price' and is given to the court (not to the respondent) in return for the court making an interim order without having determined the facts or the claimant's entitlement to it. Otherwise, if the claim fails, the court would not have power, without the undertaking, to award damages to the successful respondent for any loss he may have suffered.[85] If the claimant later fails to establish his right to the injunction, or if he had failed to make full disclosure and the injunction is set aside, the undertaking can be enforced, at the court's discretion when it examines all the circumstances, by an application of the respondent. If enforcement is granted, damages can be assessed (on normal principles applying to damages and there is no discretion),[86] or an enquiry can be ordered as to what loss the respondent has suffered, when there is a reasonably arguable case that the injunction has caused some loss or damage.[87]

Similarly, with regard to applying the cross-undertaking solution to an arrest of a ship (which is a without notice application), the court is not in a position to determine the rights of the parties and a cross-undertaking could be the price in return for the issue of the warrant of arrest. However, under the present CPR, strangely, the issue of a warrant of arrest is no longer a discretionary remedy, as confirmed by the court in 1993[88] and it is accepted since *The Varna*[89] that there is no scope for full and frank disclosure. If the statutory requirements set out in PD 61 r 61.5.3 are complied with, the claimant is entitled to have the warrant issued. The only provision in the CPR

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84 *Lichter v Rubin* [2008] EWHC 450 (Ch).

85 According to Lewison J in *SKB v Apotex* [2005] EWHC 1655 (Ch); *Harley Street Capital Ltd v Tchigirinski* [2005] EWHC 2471 (Ch): to compensate the innocent party for loss caused by the injunction which ought not to have been granted.

86 *Hoffmann-La Roche v Secretary of State for Trade & Industry* [1975] AC 295, at 361; the legal principles as to damages are essentially contractual: *Triodos Bank v Dobbs* [2005] EWHC 108.

87 White Book paras 15-33 to 15-36 (Interim remedies).

88 *The Varna* [1993] 2 Lloyd's Rep 253. The procedure rules had changed in 1986 and they were interpreted in *The Varna* to mean that the arrest is as of right, unlike the position that existed previously where the court had discretion and the arrestor had to comply with the disclosure rule: *The Vasso* [1984] 1 Lloyd's Rep 235 (CA). It should be noted that in other common law jurisdictions, eg Hong Kong, Singapore and South Africa, the requirement of full and frank disclosure has not been abandoned, since the application is ex parte.

89 Ibid.

which allows a warrant of arrest not to be issued as of right is in the event the ship was sold after the issue of the writ by any court in any jurisdiction exercising admiralty jurisdiction in rem as a result of which the beneficial ownership has changed (CPR Part 61 r 61.5(4)). It might be argued, therefore, that the court may not have the power, at present, to withhold the stamping of the warrant until a cross-undertaking is provided, unless the CPR are changed.

This has been considered to be the stumbling block unless the relevant rule in the CPR on the issue of a warrant of arrest is reconsidered and amended, so as to make the requirement of a cross-undertaking a condition of the arrest. If need be, the CPR could revert to the pre-1986 position when the court had discretion whether or not to issue the warrant of arrest.[90] With regard to discretion which is linked to disclosure, it should be noted that the Admiralty and Commercial Court Guidelines 2011 (at F2.5), provide expressly that on all applications without notice it is the duty of the applicant and those representing him to make full and frank disclosure of all matters relevant to the application. Such a duty goes back to *Castelli v Cook*[91] and it has been regarded as a perfectly well settled principle. It is an essential part of the quid pro quo for the court entertaining a departure from the fundamental principle of fairness that an order should not be made without giving the person who is the subject of it a chance to be heard, except in some cases in which short or informal notice can be given unless the circumstances of the application require secrecy. Logically, one would expect the principle of full and frank disclosure to apply also to the arrest of a ship, being a without notice application, as it used to before 1993, or before the CPR changed in 1986. The next step would be to change, or clarify, the Admiralty rule on arrest of ships so that there is consistency with the above principle and guideline.

It would not be difficult for a claimant to provide an undertaking even in situations where the arrest has to take place in a very short time, as happens in the case of a freezing injunction. Claimants prepare long in advance when they know that the relevant ship is about to come within the jurisdiction and, by and large, obtain security for their claim from the owners' P&I club. Alternatively, the undertaking should be required to be provided at the hearing of an application made by the defendant to set aside the arrest.

It is for the Civil Procedure Rules Committee (CPRC) to undertake the amendment to the CPR[92] and prescribe the conditions as to when a cross-undertaking should be required. The attraction of this solution is, it is submitted, threefold: (i) it will not delay the process of arrest (as the claimant

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90 See *The Vasso* (n 88); see also Eder (n 81).

91 (1849) 7 Hare 89.

92 The only situation under the CPR where payment of compensation to the shipowner is envisaged is under CPR rule 61.7(5), in the event of arrest notwithstanding the filing of a caution against arrest.

will be well prepared to give the undertaking); (ii) it will balance the claimant's right of arrest with the owner's right to be able to claim damages should the case warrant it; and (iii) the procedure applicable to the enforcement of cross-undertakings given in the case of interim injunctions[93] should be followed, in which case, it is submitted, the judge will have discretion, when an application is made for the enforcement of a cross-undertaking given in the event of a wrongful arrest, as to how to proceed regarding the enforcement of that undertaking and what evidence will be required. In the view of the author, this would help the court to ascertain the position of both parties at that stage when it determines the issue of damages.

10.3 (iii) By the application of the tort of wrongful interference with goods

A third solution may be to equate wrongful arrest of a ship with the tort of wrongful interference with goods rather than applying the test which is suitable to malicious prosecution cases. Conversion under the Torts (Interference with Goods) Act 1977 exists now in three forms: (i) the first form requires a positive wrongful act of dealing with goods in a manner which is inconsistent with the owner's rights and an intention in so doing; the gist of the action is the element of inconsistency with the owner's rights; there need not be any knowledge on the part of the person sued that the goods belonged to someone else nor need there be any positive intention to challenge the true owner's rights; liability is strict and fraud or other dishonesty is not a necessary ingredient in the action; (ii) the second form of conversion is committed where goods are wrongfully detained by the defendant, being equivalent to the old action for detinue; to establish wrongful detention there must have been a refusal to a demand for the return of the goods within a reasonable time; (iii) the third form of conversion lies for loss or destruction of goods which a bailee has allowed to happen in breach of his duty to his bailor.[94] For example, if the arrest was without foundation, it would be inconsistent with the owner's rights. Applying the test of the first form of conversion to the facts of the *Evangelismos* case, there would be no need to examine the knowledge of the arrestor that the ship was not the right ship to arrest nor would there be a need to prove a positive intention to challenge the rights of the owner or to show no honest belief in the right to arrest. Another example in this connection would, perhaps, be fitting the second form of conversion, if the arrestor had not taken

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93 Note 87.

94 The Torts (Interference with Goods) Act 1977 applies in large part to proceedings for wrongful interference. 'Wrongful interference with goods' means conversion of goods, trespass to goods or negligence insofar as it results in damage to goods, or to an interest in goods, and any other tort insofar as it results in damage to goods, or to an interest in goods. The Act is confined to proceedings in tort. 'Goods' includes all personal chattels other than 'choses in action' and money. See *Halsbury's Laws* vol 45(2) paras 545-48; for new procedural rules see CPR rule 19.5A (added by SI 2001/256).

reasonable care to ascertain the foundation of his right to arrest the property of the owner which resulted in causing damage to the latter, damages could be awarded upon an action in tort.[95]

To the knowledge of the author, there is one shipping case that points to the possibility of suing for damages for wrongful interference with goods in case of an unjustified or unlawful arrest. *The Van Gogh*[96] was concerned with a claim for an alleged invalid detention of the ship by the MCA under sections 94 and 95 of the MSA 1995 when it was alleged by the MCA that the ship was dangerously unsafe. The claimant's case against the DoT was that the detention was unlawful, or not justified, and he claimed compensation under the Act or damages on the basis of the tort of wrongful interference with goods, namely conversion. The court held that to justify a detention under sections 94 and 95, the inspector had to have reasonable grounds for his opinion that the ship was dangerously unsafe and the evidence did not support that. On the assumption that the detention was invalid the court held, however, that since the claimant did not commence arbitration proceedings, as provided by section 96 of the MSA 1995, he could not recover compensation. On the issue whether the defendant had committed the tort of conversion, the case advanced by the claimant's counsel was that the test should be 'assumption of control' of the ship by the detention. The judge, referring to previous authorities defining the test of conversion in broad terms, held that the detention notice was not inconsistent with the owners' rights over the ship. The intention of the notice was to prevent the owner from using the ship for a short period and did not involve a sufficiently extensive encroachment on the claimant's rights to constitute conversion; rather, it was a lesser act of interference.

This case may be limited to its own facts because of the special provisions of the detention notice applicable pursuant to the Merchant Shipping Act 1995 and, therefore, be distinguishable from a case of an actual wrongful arrest of a ship where there is interference with the ownership rights of possession and control.

10.4 (iv)A temporary solution

As a solution for owners, in the meantime and in an appropriate case, where an owner becomes liable to a third party by reason of the arrest because

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[95] *Jarl Tra AB & Ors v Convoys Ltd* [2003] EWHC 1488 (Comm) concerning a successful claim by shippers of timber against the defendant stevedores (sub-bailees of the carrier) for delivery up of certain timber cargoes and damages for wrongful interference; upon the insolvency of the carrier, the stevedores exercised lien over the claimants' goods in respect of handling charges due to them by the carrier, but it was held that the lien clause did not cover such charges. See further a novel theory about liability for the tort of wrongful interference with chattels developed by S Douglas Liability for Wrongful Interferences with Chattels (Hart Publishing Oxford 2011).

[96] [2009] 1 Lloyd's Rep 201.

he cannot perform the contract with that party, a cause of action may lie in the tort of wrongful inducement of breach of contract, as was reformulated by Lord Hoffmann in *OBG v Allan*, provided the conditions of that tort are met as they were in the *Kallang* case (both cited above). The elements of this tort are: (i) knowledge by the inducer that he is inducing breach of contract; (ii) intention to do so in order to achieve a further end; and (iii) actual breach of contract by the third party.

11. Conclusion

From the foregoing analysis of the problems surrounding the present test applicable to wrongful arrest of ships, it is believed that a case for reform has been made. In the view of the present author, judges are free from precedent and they may consider adopting a test which is based on negligence on the part of the arrestor. Alternatively, it may be easier if the test 'no reasonable or probable cause' is defined to the effect that it should be simply an objective standard test, namely that it means there are no reasonable grounds of arrest, or that the case was more likely than not to fail, upon an objective assessment without examining what the arrestor believed his case to have been.

Endorsing an old test, on historical grounds, is less than satisfactory, less than just and obstructs uniformity. The reform should aim for a test which must facilitate the balance of justice and enable uniformity in its application.

To speed reform up, however, the solution of amending the rules in the CPR relating to the arrest of ships and/or providing a new rule for the provision of a cross-undertaking in damages, seems attractive.

If policy considerations were in issue, such as that a less stringent test would deter claimants from this jurisdiction, or that it would lead to satellite litigation, it is submitted that:

(i) lowering the threshold of the test and providing a precise definition of the term used, or providing a new rule in the CPR for a cross-undertaking in damages, will provide balance between the interests of claimants and shipowners which will work for the benefit of this jurisdiction and, most importantly, will serve the interests of justice;

(ii) in the majority of cases, as admiralty practitioners would be able to confirm, claimants do have a good cause for the arrest; the cases in which the owner needs the assistance of the law for wrongful arrest would not be great in number so as to lead to much satellite litigation, were the threshold of the test to be lowered.

If there is no English reform as suggested in this article or otherwise, it is hoped that, since it has been appreciated by judges in this and other jurisdictions and by commentators (as shown in this article) that the present test of wrongful arrest poses a real problem, it will be for the remaining 77 maritime nations to react collectively and accede to the Arrest Convention 1999 or adopt it wholly or partly into their national law.

PIRACY AND LEGAL ISSUES ARISING FROM THE USE OF ARMED GUARDS – AN OVERVIEW

Kiran Khosla*

Thank you and good afternoon everyone and my thanks to CMI for inviting me here today to speak with you on the matter of piracy and the legal issues arising from the use of armed guards on ships.

When I was asked to give this presentation, I thought this would be largely an exercise of "lessons learned" given that in the Gulf of Aden, which had until recently posed the greatest risks for ships in terms of the number of pirates operating from that region, but which now, with the measures taken by industry and the international community, successful hijacks have reduced to nil, but with opportunistic attacks continuing.

These measures include:

1. The structures in place in the Gulf of Aden for the reporting of ships entering the area through the Maritime Security Centre Horn of Africa ("MSCHOA");

2. The development of the widely followed Industry Best Management Practice, now in its fourth version, guiding ships on the steps to be taken when entering the designated "high risk area" with regard to reporting the ship's presence and taking defensive measures on board the ship to protect it from attack;

3. The use of armed guards now being widely recognised and regulated in many flag States which is supported by the extensive guidance agreed and adopted in the IMO series of Interim of Guidance [(1405-1443), aimed at Flag States and shipowners.

4. The development of a contract for the employment of armed guards in the form of the BIMCO Guardcon form, developed in 2012 with the participation of shipowners, insurers, private armed guards, and lawyers and which establishes a contractual framework with assigned and recognised rights, obligations and responsibilities as between the master and crew and the private armed guards on board;

5. The political situation in Somalia has now also evolved and some of

* International Chamber of Shipping.

the fundamental issues which had been leading to the increase in piracy are beginning to be addressed.

As a result of all these measures, there has been no successful hijacking in that region since 2012.

So in the light of these provisions and the successful outcome in that region, it would seem that the legal issues governing the use of armed guards have been well-settled. So, I had to ask myself, would a presentation on the legal issues of employing armed guards still be of interest? Has it not been covered extensively already?

Well, actually, there is still much to discuss and to resolve. Because while the problems in the Gulf of Aden have been addressed with a good measure of success, a parallel crisis, involving disturbing levels of violence against ships' crews, continues in West Africa. Our recent experience derived in the Indian Ocean is already proving useful but in many respects the situation that prevails in the Gulf of Guinea is very different.

The crucial difference being that in Somalia, there was an absence of a functioning government and therefore no legal system and no system of policing and enforcement. Whilst this presented seeming unsurmountable problems at the outset of the crisis, it was possible, albeit with some delay while the international community came to terms with the scale of the problem, to agree an international response through first a UN Resolution and from there, to proceed to forming the international cooperation leading to the highly effective naval response in that region, patrolling the area and organising a convoy system for the safe transit of ships.

Moreover, those attacks took place largely in the high seas, outside territorial waters, with the pirates going out to the ships on board skiffs. This greatly facilitated international co-operation there once a political will was in place.

In the West Coast of Africa however, the attacks are taking place largely on vessels entering and leaving ports or engaged in offshore activity. In other words, the attacks often take place in the territorial waters of littoral states. These states, which include Nigeria, Benin and Togo – unlike Somalia – are functioning states, they apply the rule of law and have a police and military presence, albeit that it may not be very effective in addressing the problem. However, the basic characteristics are very different to those experienced in the Horn of Africa and they require therefore a different response.

In defining this response, we are finding it necessary to revisit the international legal framework concerning the use of armed guards on board.

I think it would be useful at this point therefore to just remind ourselves of what exactly is the international legal framework here and I apologise to those who are very familiar with this framework already:

First, the governments and Industry remain governed by the UN Convention on the Law of the Sea, UNCLOS.

According to UNCLOS:

a. The Role of Flag State is crucial:

Under UNCLOS, Flag States have been given the right to sail ships on the high seas and the right to fix conditions for registering ships under their flag and give their nationality to these ships – Art. 90 and 91 UNCLOS.

Save for a few exceptions, the flag State has exclusive jurisdiction over its registered ships - Art. 94 UNCLOS.

As part of its general jurisdiction and oversight, the flag State has the primary responsibility for the safety of the ship and for ensuring that seafarers have a safe and decent workplace.

So that's the Flag state's role, what about the shipowner?

b. Shipowners' Duty to Ensure Safety On Board Ship

As Employers, ship owners have a duty to the crew to ensure their safety. Under English law, this duty exists under Common Law and Statute. It encompasses the obligation to provide a safe place of work and, arguably, by extension this encompasses an obligation to ensure the crew is safe from pirate attacks. If a shipowner does not take adequate steps to prevent a pirate attack and pirates successfully overtake the vessel, the crew members may have a claim in civil damages against the shipowner.

In addition, the shipowner might also have criminal liability depending on the law of the Flag State for example, if his negligence is very severe and results in a failure to protect his ship and crew from pirate attacks.

c. Finally, what of the Master and crew?

As a matter of custom, and also as implicitly read from SOLAS, the Master is in overall charge of the ship for safety and security of both the ship and its crew.

Article 34 - SOLAS provides:

"The Owner, Charterer, the Company operating the ship … or any other person shall not prevent or restrict the Master of the ship from taking or executing any decision which, in the Master's professional judgment, is necessary for the safety of life at sea and protection of the marine environment".

This is reinforced in the ISPS Code:

"At all times the master of a ship has the ultimate responsibility for the safety and security of the ship…."

In short: the master of a vessel is responsible for the safe passage of that vessel at sea, and has the ultimate authority to take any steps to avoid a threat to safe passage or danger to the crew.

d. Freedom of Navigation and Innocent Passage

Before going on to look at the issues arising from the use of private armed guards on board ships, I would mention another important aspect of the UNCLOS regime: this is that UNCLOS also provides that in the High Seas, ships have the right of freedom of navigation without intervention other than

by the flag State. And within territorial seas, up to 12 Nautical Miles from the coastal baseline, vessels enjoy the right of innocent passage. This aspect of UNCLOS has now become particularly pertinent in the light of events in the Gulf of Guinea.

So, the legal framework essentially is:

– the flag State has jurisdiction over the vessel,
– the flag State and the shipowner has the responsibility to provide a safe workplace;
– the Master has ultimate authority on board the ship;

Development of the use of private armed guards in the Gulf of Aden

Going back for just a minute or two, by the end of 2011, there were a reported 439 (179 ships boarded) attacks and over 1000 seafarers taken hostage. (IMO figures). In the face of increasing boldness by pirates, and a corresponding reluctance by flag States to intervene directly through the provision of State sanctioned protection on board (for example through state vessel protection Detachments – "VPDs"), shipowners who originally were prepared to go only so far as to rely on and comply with, the guidance recommended by the Industry Best Management Practice Guide (BMP) to supplement the measures and assistance being provided by the international naval forces patrolling the Gulf of Aden and were vehemently opposed - as a matter of policy – to any form of arms and the use of third party armed guards, began to seriously consider hiring private armed security guards as a last resort, to accompany the vessel through zones with high levels of pirate activity and to defend the crew and vessel from pirate attack. Industry took the view, somewhat naively, perhaps, that because of the provisions of UNCLOS in which their ships were registered and trading, the flag States and the international community had a duty and responsibility to the international shipping industry, which was after all, carrying 90% of the world's trade, to protect the ships and the crew on board and keep it safe from third party attacks outside the vessel.

But recognising that it was not possible for flag States to supply enforcement officers on board all ships, we did nonetheless believe it was incumbent on states to provide advice and guidance and a framework on which we could rely, for the use of third parties to fulfil this role and to take on the responsibility for the safety of ships from pirate attacks.

In fact there was a very large grey area on very important issues arising from the use of third party armed guards on board vessels. I'll highlight just a few of these areas of uncertainty:

– There were no universal, internationally agreed rules on the use of force on board ships when armed guards were taken on board ships to provide guidance on:
  - when force could be used;
  - who had the authority as between the master and the private armed guards over the orders to use force;

- Who had authority to stop the use of force?

– There were no internationally agreed rules governing the relationship between the private armed guards and the flag State and the shipowner, so:

- If a shipowner were to take on private armed guards with the consent of the flag State, were the armed guards acting *qua* state enforcement authorities or acting as private actors in a private commercial contract with the shipowner? If the former, it would make of course it simpler to designate command of the use of force to them when the use of force became necessary; if the latter, there were questions as to liability as between the master and crew and the private armed security company in the event of injury or death from the use of force;

– Questions also arose as to what the division of responsibility and liability as between the master and the third party security company in the event of the need to use force. Would indemnities be required as between them?

– What about insurance of any liabilities incurred by either party?

– What about defences if the use of force was deemed to be disproportionate to the threat? It was noted in this respect that there is no inherent, automatically available "right" of self-defence available to a shipowner or the individuals on board to justify the presence of arms on board or armed guards. If a concept of self-defence does exist for the ship and crew, it does so at national law level and invariably, it serves as a defence or justification to some otherwise criminal act rather than as a "right".

– How could the shipowner assess the security company in terms of professionalism and accountability? What aspects of the company should be assessed? What level of due diligence would be required before contracting with the security company? What would the flag State require, if anything by way of accreditation of the security company?

Taking all of these factors into account, there was a great deal of uncertainty for a shipowner who might be considering the use of private armed guards.

Now, the industry, in view of the governments' and flag states' resistance to providing military or security presence on board ships, sought governments' agreement to permitting the use of armed guards on board ships. In support of the option to use armed guards, it was argued that flag States carry out their obligation towards the safety of the crew by permitting ships to take action against pirates under the concept of exercising legitimate self-defence. In the face of the crisis in the Gulf of Aden in terms of number of attacks and hostages taken, a growing number of flag States began the process of amending their legislation to permit such personnel on board.

They were assisted in this respect through the series of interim guidance produced at IMO, with the very active participation by the Industry.

These are:

– The IMO Marine Safety Committee approved Interim Recommendations for flag States regarding the use of privately contracted armed security personnel on board ships in the High Risk Area (MSC.1/Circ.1406); and

– Interim Guidance to shipowners, ship operators, and shipmasters on the use of privately contracted armed security personnel (PCASP) on board ships in the High Risk Area (MSC.1/Circ.1405);

and

– Interim Guidance (MSC 1408).

These sets of guidance are aimed at addressing the complex issue of the employment of private, armed security on board ships.

The guidance to shipowners notes that flag State jurisdiction and any laws and regulations imposed by the flag State concerning the use of private security companies apply to their vessels. Port and coastal States' laws may also apply to such vessels.

The guidance notes that the use of privately contracted armed security personnel (PCASP) should not be considered as an alternative to the Best Management Practices to Deter Piracy off the Coast of Somalia and in the Arabian Sea area (BMP) and other protective measures.

Placing armed guards on board as a means to secure and protect the vessel and its crew should only be considered after a risk assessment has been carried out. It is also important to involve the Master in the decision making process. The guidance includes sections on risk assessment, selection criteria, insurance cover, command and control, management and use of weapons and ammunition at all times when on board and rules for the use of force as agreed between the shipowner, the private maritime security company and the Master.

The interim recommendations for flag States recommend that flag States should have in place a policy on whether or not the use of PCASP will be authorized and, if so, under which conditions. A flag State should take into account the possible escalation of violence which could result from the use of firearms and carriage of armed personnel on board ships when deciding on its policy.

In addition, there is now the contractual framework established by the BIMCO Guardcon form for use when shipowners contract with PSCs.

This contains rules for the designation of responsibilities and liabilities and contains clear provisions on indemnities, knock for knock liability provisions and provisions on insurance for liabilities.

It is important to note that the IMO recommendations are not intended to endorse or institutionalise the use of private armed security companies.

And they do not address all the legal issues that might be associated with

their use on board ships. For example, there is still no internationally agreed guidance or rules as to what measures may be reasonably taken in self-defence and if this extends to the use of armed force.

But the situation is a vast improvement on what there was before and the sets of guidance have greatly assisted flag states in designing their own rules applicable to their vessels if they are prepared to allow the use of armed guards on board. There is of course divergent approaches taken on the level and degree of control and oversight that a flag State may exercise with regard to the armed guards on board. Some jurisdictions insist on state approved accreditation (for example, Germany), others are relying on the shipowner to make this assessment, providing guidance on aspects that should be considered when the shipowner makes his assessment/due diligence (for example, the UK).

Then there is of course also the ISO standard (28007) that has been agreed with regard to accreditation of PSCs.

So now, with these structures now in place, we have an immeasurably improved situation in the Gulf of Aden. But the problem hasn't gone away, and as I indicated at the outset, there are new problems in addressing the violent attacks in the Gulf of Guinea.

The littoral states in that region do not allow PMSCs to operate with weapons inside territorial waters, taking the view that a ship entering their waters with arms on board or PMSCs is not on "innocent passage" within the terms of UNCLOS. Further, the fact that most vessels are not in transit with obvious embarkation and disembarkation points for arms on board and PMSCs makes the logistics of operating in the region difficult.

Some of these states are also insisting on providing their own security forces on-board ships operating in the area and in the territorial sea, This raises a whole set of new uncertainties, for example, there are no clearly defined designated duties and responsibilities, and liabilities between the shipowner, master and the state appointed guards. There is no assessment/accreditation possible of the guards. The position of the flag State with regard to liabilities from the use of these unknown and unaccredited companies (accredited by the flag State), is uncertain too.

It has been noted also that much less certain is the situation in which owners have the same military guards on-board as a result of a commercial relationship under which the military personnel have been arranged through an independent PMSC. The position on responsibility and liability as between the shipowner and the PMSC for the actions of the military guards has not been clarified.

So clearly, there is more thinking to be done. This process has started: The BIMCO Guardcon form now has an Addendum addressing the issues raised with the use of PMSCs in the West Africa region; the littoral states in the region have initiated a programme of co-operation to try and address the

problems there. There have also been initiatives to facilitate the disembarkation of arms and private armed guards off ships before they enter the territorial waters of these states, through the use of "floating armouries". But much more needs to be done.

I think, having raised more questions than have possibly been answered, I'll leave it there.

GERMAN LEGISLATION REGARDING PRIVATE MARITIME SECURITY COMPANIES – A BLUEPRINT FOR OTHER NATIONS?

Dieter Schwampe*

The background of the German legislation on Private Maritime Security Guards (PMSCs) on board of ships flying the German flag, and other flags in case of a German PMSC, is the development of the piracy threat in the Gulf of Aden and adjacent waters off Somalia. As it is common knowledge, piracy incidents in the region Somalia rose sharply in the years leading to and peaked in 2011 and this despite Best Management Practices (BMP) being recommended and widely adopted on ships trading in the area, despite respective "hardening" of vessels and despite the joint efforts of naval forces of various countries trying to improve the security for ships. Protection of German flagged vessels by German armed forces had been discussed but put aside, not only for constitutional reasons. As a consequence, in Germany as in other states shipowners claimed for permission to employ armed guards on board of their ships in order to protect their ships and their crews. Due to the fact that German flagged vessels outside territorial waters are considered under German law to be part of the German territory, German laws apply on such vessels. Especially the rather strict German weapon laws apply. The German weapon law does not allow persons to possess weapons without permission and the requirements to obtain such permissions are rather high. The law did not contain special rules for PMSCs The same applied for the German trade law. The Government, therefore, decided that putting armed guards on board of German flagged vessels required amendments to the existing German laws

Developments in Germany were accompanied by international developments. Most notably, the International Maritime Organization (IMO) issued non-binding Guidelines and Recommendations for Flag States, Shipowners, Ship Operators, Masters and Private Maritime Security Companies[1]. In parallel, the industry was working on own solutions like the

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* Resumé of a presentation held by Prof. Dr. Dieter Schwampe, partner at the law firm of Dabelstein & Passehl, Hamburg, President of the German Maritime Law Association, during the 2014 Conference of CMI in Hamburg, Germany

[1] http://www.imo.org/OurWork/Security/PiracyArmedRobbery/Pages/Private-Armed-Security.aspx

International Code of Conduct for Private Maritime Service Providers (ICoC)[2], the ISO/PAS 28007 for PMSCs[3] and the ANSI/ASIS PSC.1[4].

The German government decided not only to amend requirements and procedures for licensing of the possession of weapons and security services, but opted for the introduction of a new German PMSC law as such. Shipowners trading under the German flag would be allowed to employ armed guards on board of their vessels only from PMSCs licensed under the new law. The new legislation came in stages. The first step was on 04 March 2013 the amendment of the German Trade Regulation ("Gewerbeordnung") by a new § 31, dealing with a special trade license for PMSCs[5]. These trade licenses are to be issued by a federal body, namely the Federal Office of Foreign Trade Control (BAFA). At the same time a new § 28 of the Firearms Act was introduced[6], providing for a special firearms license for PMSCs. Generally, fire arms law is not administered on federal but state level. In case of the fire arms licensing of PMSCs, regardless of the place of business of the PMSC, these licenses are to be issued by the Firearms Licensing Department of the City of Hamburg, thus allowing the experience in this sector to be concentrated on one public body. Once these licensing laws were in place, on 11 June 2013 the Ocean-Going Vessel Security Ordinance (Seeschiffbewachungsverordnung)[7] followed, supplemented on 21 June 2013 by an Ordinance implementing the mentioned Ocean-Going Vessel Security Ordinance (Seeschiffbewachungs-Durchführungsverordnung)[8]. The main purpose of the new licensing scheme is to secure adequate organizational structures and procedures for armed guards on board of German flagged vessels. Only such companies shall be licensed, which can show not only a professional management but also personal reliability of its managers as well as professional and personal reliability of guards actually employed onboard of a vessel. A further important element is the requirement and evidence of liability insurance.

The organizational requirements are rather strict. Main features are that an applicant must disclose its organizational structures and process frameworks and submit a process manual. It must show that it has proper rules and procedures in place for selection, training and supervision of guards and onboard operations, including a written Code of Conduct. The management

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2 http://www.icoc-sp.org/uploads/INTERNATIONAL_CODE_OF_CONDUCT_Final_without_ Company_Names.pdf

3 http://www.iso.org/iso/catalogue_detail?csnumber=42146

4 http://www.acq.osd.mil/log/PS/p_vault/item_1997-PSC_1_STD.PDF

5 http://www.bgbl.de/banzxaver/bgbl/start.xav?startbk=Bundesanzeiger_BGBl&start=//*%5b@attr_id='bgbl113s0362.pdf'%5d#__bgbl__%2F%2F*%5B%40attr_id%3D'bgbl113s0362.pdf'%5D__1413798902232 (in German).

6 Cf. supra.

7 http://www.bafa.de/bafa/en/other_tasks/pmsc/publications/seeschiffbewvo_en.pdf

8 http://www.bafa.de/bafa/en/other_tasks/pmsc/publications/seeschiffbew_dvo_en.pdf

must show that it has installed a sufficient verification and control system, including the appointment of a designated executive as well as an internal communication system being able to handle all expectable situations. A Stand-by legal counsel must be appointed for legal advice and assistance when so requested by the PMSC or the individual guards on matters concerning their PMSC services.

The legislation also contains detailed requirements in respect of onboard operations, in particular in respect of composition (a team of minimum 4 guards per ship regardless of its type and size, a requirement criticized by PMSCs) and qualification of guards. Each team needs to have a team leader with a defined role. Special attention is made to the interaction between the team leader and the master, which must be defined in detail. In respect of weapons to be put on board, there must be rules on the procurement, transport, loading onto and unloading from the vessel, storage and protection against loss, use and disposal. But the law does not only address weapons but also other required equipment, which the PMSC has to provide for its guards. The list is long and detailed: not only rifles but also a pistol (the latter being debated due to the further security risk and the fact that the principle aim is to prevent pirates boarding a ship rather than fighting onboard) with sufficient ammunition night vision devices, range finders, binoculars, ballistic vests and helmets, cameras, radio equipment with microphone headsets, satellite telephones, automatic life vests and, medical equipment. Finally and most important, clear and strict rules on the application of force on board of a vessel must be set up.

As to the rules on use of force, the law is very detailed and does not leave much room for individual rules when it comes to the principles. Section 12 para 4 of the implementing Ordinance provides: "*In areas where attacks on the ocean-going vessel are threatened, the deployed security operatives must carry their weapons with them ready for use. If an attack is in progress and other milder defensive measures are unsuccessful or if their use is unpromising, the team leader gives the instruction – after the captain has expressly ordered it – to occupy the defensive positions and make preparations to fire. With consideration to the general circumstances in individual cases, the following basic escalation levels are provided for: 1. Warning shots into the air, 2. Warning shots into the water in the vicinity of the attackers, 3. Targeted shots at objects, particularly at the motor or hull, 4. As a last resort, if all milder defensive measures are ineffective, it is possible to use firearms directly against the attackers."* The legislation, thus, does not leave it to the PMSCs to develop their own ideas of rules of force, but the core of these rules are actually already laid down in the law.

The German law aims at securing that guards put on board of German flagged vessels are well trained. The requirements for this training are rather onerous. These requirements include: 6 hours of training in respect of technical

knowledge with reference to ocean-going vessels and equipment; 18 hours of training in respect of technical knowledge of weapons; 6 hours of training in respect of the German Weapons Law and the German Foreign Trade Legislation as well as the respective legislation in relevant port and coastal states; 12 hours of training in respect of first aid and lifesaving at sea; 8 hours of training in respect of knowledge of threat levels in high risk areas, particularly strategies and weaponry of specific criminal groups and their objectives of attacks; 3 hours of training in respect of military operations in high risk areas, particularly reporting procedures and possible intervention measures by deployed armed forces; 8 hours of training in respect of relevant guidelines of the International Maritime Organization (IMO); and others. In total 120 hours of training are required – for every guard, and to be repeated annually.

Guards thus trained, however, are not left alone in respect of legal matters. Rather the Ordinance provides: "*Guards must be guaranteed access around the clock to legal advice. For this purpose persons experienced in providing legal advice shall be engaged. The contact information for such persons or employees shall be provided to all guards. All guards must be promptly informed of changes in responsibility.*"

Contrary to the German approach, which provides for a state licensing, other states and jurisdictions have opted for a private certification scheme. The differences of the concepts are obvious. The state certification is done by independent governmental bodies, whilst private certification may bring along commercial interests of commercially driven certification bodies. State certification, at least in Germany, is compulsory for putting armed guards on board of vessels, whilst private certification may only be voluntary. State certification can be complemented by state supervision and enforcement, including criminal offences and loss of license. Such governmental enforcement possibilities will usually not be available in case of private certification.

The German legislation on armed guards has pros and cons. Pros are that there exists one clear legal framework and that the same rules apply for everyone. The state license serves as a proof of the fulfilment of a minimum of statutory standards, and insurance, with the consequence of loss of the license in case of breach of the rules. The required continuous mandatory training is meant to secure a high level of training and education of guards actually deployed on ships. A bi-annual renewal process for the license secures that the administration looks on the companies in regular intervals. The cons, which come along with the pros, are considerable costs for the application, bi-annually repeated due to the required renewal process. On top come costs for annual training requirements and for the required constant availability of legal advice. Some may also say that the standards on personnel and equipment may be somewhat inflexible.

When answering the question whether the German legislation is a blueprint for other nations, the answer should be: yes. But the legislation alone will not bring the desired results. Legislation of this kind is not a value of its own, but depends on an administration which is on the one hand quick and efficient, objective an neutral, but still sufficiently flexible to deal with unexpected situations. The German administration is partly not known for a combination of all these requirements. But in the area of licensing PMSCs, so far the practical experience is encouraging.

GENERAL REVIEW OF THE RULES ON GENERAL AVERAGE FROM BEIJING TO HAMBURG: THE WORK DONE SO FAR

Taco van der Valk *

On Saturday 14 June 2014 the International Subcommittee on General Average (ISC) met in Hamburg to discuss three reports prepared by (subgroups of) the International Working Group on General Average (IWG). The three reports and the Hamburg ISC meeting mark the second phase of the work of the IWG and the ISC for a possible review of the York-Antwerp Rules (YAR).

After the 2012 Beijing conference a new IWG was formed with the aim of striving for a consensus between shipowning and other interests regarding a possible review of the YAR.

The *first phase* was aimed to get a clear view about the topics to which the review process needed to be limited. In May 2013 the IWG consulted the CMI membership by means of a questionnaire. The preliminary conclusions drawn by the IWG from the replies to the questionnaire were put before the ISC meeting during the 2013 Dublin Symposium.

In the *second phase* the IWG was to do more preparatory work on the topics/problems remaining after the Dublin ISC meeting, to make sure everybody had a firm grasp of them. The ISC meeting in Hamburg would be used to see whether broad consensus on the remaining topics could be reached between the different interests.

After reaching broad consensus on the different topics the IWG would turn to the *third phase*, i.e. the drafting of revised YAR. The drafts would have to be discussed in the ISC and Assembly meetings in Istanbul (2015) and New York (2016).

The Hamburg ISC meeting focused on three reports:

– Salvage (Salvage in or out of GA?; differential salvage; contributory values)

– Financial Issues (Currency of the adjustment; Commission; Rate of interest; Treatment of cash deposits)

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– Rules X and XI (Wages & maintenance at a port of refuge; Port charges (after Trade Green judgment); Bigham cap), Security Documents, Low Value Cargo, Rule E (time limit; treatment of recoveries)

While the discussions at the meeting provided greater clarity as to the items to be resolved and the manner in which they might be resolved, no true consensus or compromise could be reached at this stage: representatives of certain interest groups and MLA's indicated during the meeting that they had no definitive mandate in Hamburg as formal meetings within their respective organizations were still to take place within the months following the Hamburg conference.

In order not to lose too much time the IWG will now prepare the report of the Hamburg ISC meeting as soon as possible, and shortly thereafter arrange for a meeting of the representatives of the relevant interests groups. The aim is to make sure that the interest groups will know exactly what the issues are, and what mandate they may need to give at their formal meetings to their representatives for the run-up to the CMI Istanbul Symposium.

Hamburg, 16 June 2014

Note: For the latest information on the project of the General Review of the Rules on General Average (YAR) please click the dedicated page on the CMI website (http://www.comitemaritime.org/Review-of-the-Rules-on-General-Average/0,27140,114032,00.html)

LIABILITY OF CLASSIFICATION SOCIETIES – CURRENT STATUS AND PAST CMI INITIATIVES

John Hare[1]

Preamble

Why are we here in Hamburg talking about Classification Societies a mere ten months after the subject was so comprehensively dealt with in Dublin?[2] There has of course been an enormous amount written on classification societies over the last few decades but the suggestion to put class onto the program this year again came initially from the DVIS - because of the DNV/GL presence in Hamburg, class is a relevant topic in this city. I picked up the suggestion because it seemed to me that in relation to the issue of the liability of class, we going nowhere and rather slowly. While there has been some progress in terms of EU directives and the IACS internal guidelines, the broader issues of what liability class has for its errors and negligence have not been resolved, nor has the issue of possible limitation of that liability. Not surprisingly, there is little or no harmony in the approaches of the world's courts.

I was on the CMI EXCO when a Joint Working Group of the CMI under the leadership of Frank Wiswall produced its report which was published in the 1996 year book. The Group tabled Model Contractual Clauses for contracts between class and both shipowners and governments, and Principles of Conduct for Classification Societies. But neither document has ever been used. It occurred to me that this is an ideal example of a situation where the CMI and an enormous number of participating experts spent a decade working on a

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[1] Professor Emeritus of Shipping Law at the University of Cape Town. Secretary-General of the Comité Maritime International. This is a pared down transcript of a talk given to invite delegates of the Hamburg Conference to consider whether the CMI ought to re-open the issue of the liability of classification societies. It was not intended to be an academic paper and should not be construed as such. An audio-visual recording of this talk, and of the slides presented during it, is available from the Download Centre of the Hamburg Conference website at http://www.cmi2014hamburg.org/downloadcenter/speaker/. Links will also be available on the CMI site at www.comitemaritime.org.

[2] Dr Denise Micallef's paper can be found at www.cmi2013dublin.com/download/file/191/.

project and produced instruments but the matter then went to rest - though they may have had bearing on class's own general internal guidelines. To get to the end of the story at the beginning - the recommendation of the CMI working group was that it favoured a convention imposing liability on class in appropriate circumstances in tort and in contract, without immunity. But the group also favoured some form of limitation and this was where the project ground to a halt: no agreement could be reached on the extent or method of limitation. Would the measure be a factor of the fee or a factor of the tonnage or combination? In the end the project was filed.

It is clear that both sides are unhappy with the present situation where undoubtedly there is a hole in the law - though one should not talk about 'sides' because this should be a combined effort of class, shipowners/charterers and governments to close that hole. And it thus seemed to me that this was possibly a valid project that might well warrant revival by the CMI through its planning committee. The purpose of these sessions on the liability of class is thus to ask you to consider whether the CMI should start work on the liability of classification societies anew.

This audience is ideally suited to debating the issue: Past CMI President Karl-Johan Gombrii, CMI Council member Alex von Ziegler, and the doyen of the German maritime law fraternity, Dr Bernd Kröger all served on the Joint Working Group, and all are present. This formidable Working Group which included Dr Allan Phillip, Charles Goldie, Jim Horrocks, and representatives of IACS, ABS, and the ICS produced documents that remain as useful and significant as the day they were written. And especially so, because nothing has changed since. We have access to their research, and we can surely make use of it in order to try and see whether there is some support for an initiative to try again to close this hole in our maritime laws.

The basic law of liability of class

Owing to time constraints, let me gallop across the basic issues the law faces in relation to the liability of class. You will all be aware of the generally recognised dual function of classification societies. The first is their *public function* in which they act on behalf of flag states, generally through the maritime safety department of those states. For those flag states as their clients they class exercises a delegated governmental authority and issue compliance certificates with SOLAS and other international regulations.

Then there is a second string to class's bow which is the more *private function* I say 'more' because as we will see with a quick glimpse through some of the cases, the distinction between the public and private function of class is not as defined as it used to be. Essentially, the private function is where shipowners ask and employ class to certify the condition of their vessel and to issue some form of a certificate with which they can trade their vessels.

In both the private and the public function, it is generally accepted that

the world at large and business in particular should be able to make use of and rely upon the veracity of the certificate. And this is where much of the blurring of the two functions arises.

Where class acts or fails to act in dereliction of its duty (either to the shipowner client or the government principal, or perhaps even to the maritime world at large) then the issue of liability arises. Direct client claims from whoever has employed class are relatively simple. It's not much different from clients claiming from solicitors for professional negligence: generally the solicitor will stand responsible for his/her action measured against contractual requirements or the performance norms of society. But the liability with which we are particularly concerned - and clearly the most problematic - is the liability of class against third party claims from those outside the contractual *nexus* of the parties. The reality is that the sort of claims that come out of damage to or done by vessels are so colossal that any enthusiastic lawyer will grab whoever they can to join as co-defendants to a claim. It has happened frequently. And what must be most disquieting to class, is that the world's maritime courts have no uniform approach.

Significant cases on liability

On this occasion I can only skip through a few of the leading cases.[3] *The Tradeways* is perhaps the starting point. In a claim against BV which had inspected a vessel for both owners and charterers, a breach of duty of care was alleged after the vessel sank. The court recognised (albeit *obiter*) that there were two duties of care: surveying and classifying in accordance with class rules where owners cannot delegate their responsibility for the condition of the vessel even where class has erred; and the duty to detect and notify class related defects, where third parties suffering loss could possibly claim against class. This recognised the private/public functions of class.

Next, and more significant, was *The Sundancer*. Here a claim was brought against class based on the tort liability of US misrepresentation law. The claim was disallowed, but the interesting thing about *The Sundancer* is that the owners had relied on what they averred to as an incorrect class report as the factual cause of the loss of the vessel. The court finding, which was signal and which established a trend in Anglo-American Law was that class does not

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[3] This is a selection of cases that illustrate the variety in the approach of courts to the issue: *The Tradeways* (USA); *The Sundancer* (USA); *The Morning Watch* (UK); *The Nicholas H* (UK); *The Spero* (Belgium); *The Paula* (Belgium); *The Elodie II* ; *The Cap de la Hague* (France); *The Erica* (France); *The Prestige* (everywhere –but especially the French decision on immunity from jurisdiction); *The Redwood* (Genoa). For full citations and analyses of these and other cases, see Micallef *supra* and the author's *South African Shipping Law & Admiralty Jurisdiction* (Juta, 2nd Ed 2009 §6-3.1) and works referred to therein.

in any way guarantee the condition of the vessel and that the shipowner's responsibility in relation to the condition of the vessel was absolute and non-delegable. The shipowner could not then hide behind the class certificate and leave the claimant to sue class direct. Presiding Judge Pratt put the issue very simply: the purpose of the classification certificate is not to guarantee safety but merely to permit the owners of the vessel to take advantage of the insurance rates available to a vessel in class. This is a very narrow interpretation of what class does. The consequence of *The Sundancer* was that to my knowledge there has never since been a successful claim against class in the United States.

The English courts followed the same trend, and *The Morning Watch* probably set the bar. In *The Morning Watch* there was a defective yacht survey and the court analysed the duty of care that applied to the actions of class in relation to that survey. The court set out the three basic requirements for liability to arise in English law: reasonable foreseeability, proximity and that the outcome should be fair, just and reasonable. *The Morning Watch* found the claim lacking in all three and ruled that the primary purpose of class is to enhance safety of life and property at sea rather than to protect the economic interests of those involved in shipping.

This was clearly a convenient approach for the courts at that time and it is an approach that carried through to the celebrated case of *The Nicholas H* where a claim against class was similarly disallowed. Steyn LJ in his judgment however made it quite clear that he preferred to come out with a result that was comfortable within the workings of the shipping industry and it was completely unthinkable to transfer the sort of risks that this sort of liability and exposure would put onto classification societies. He debunked in that judgment the fact that class is a deep-pocket defendant: to be sued when you have no possibility of a successful claim against anyone else. The learned Judge of Appeal tried to tailor the outcome of the case to what he perceived to be a good business solution. That is not unusual in English common law, and though in most in such judgments there is a satisfactory outcome, it is quite difficult to anticipate and indeed to advise a client on what that outcome is likely to be. If the trial judge takes a purely business view and in the process ignores some established legal principles, new law can emerge. But so be it: that is how the common law evolves.

Now that is the western side of the English channel. This common law/civilian divide with which we are burdened depending on whether we are common lawyers or civilian lawyers (or some of us sitting somewhere in the hybridized middle) can give rise to different outcomes in similar disputes. The liability of class is perhaps an example - because whereas the English side of the channel (English Law, United States law and to an extent some Australian and New Zealand Law) has ruled class out of bounds, classification societies have not enjoyed the same comfort in Europe.

I cannot unfortunately go through these in any other detail than to alert you to the Belgian cases of *The Spero* where liability was allowed, and *The Paula* which held that a clause in which class tried to contract out of liability was unenforceable - and therefore presumably the same fate would suffer a contractual limitation clause. Neither case can give class much comfort.

The French cases of *The Elodie II* and *The Cap de la Hague* (the latter with the criminal element to it) also seem to me to produce results that raise the possibility of a claim against class. We have no time here to debate these cases.

But then we come to more recent cases. *The Erika* and *The Prestige* produced more than their fair share of litigation but there were two issues that interest me in recent decisions concerning each vessel. The first was in *The Erika* Court of Cassation finding that over-ruled the Court of Appeal and accordingly found that the channeling provisions of CLC[4] could have been applied to the claim against RINA but for the presence of gross negligence and recklessness (the presence of which rules channeling out). The implication was therefore that class was grossly negligent or reckless.

And the Prestige too has produced an interesting recent decision: When it was the French government's turn to claim its losses from class, the French sued ABS for its "failure to detect an important structural defect in vessel" and for "allowing flag registration certificates to be issued without establishing that the vessel complied with required safety standards". Is this the private or public function or was there overlap of the two? The latter does appear to be how the French court viewed the actions of class. The Bordeaux Court found that ABS's functions all related to the classification and certification of vessels. "They are mandated to monitor compliance with the rules applicable to the design, construction and maintenance of ships, and to evaluate the resistance of the ship's structure and the viability of their engines". This would appear to be recognition of the two separate functions as linked activities. And then came the really interesting issue: whether ABS could claim to be an organ of the Bahamas government. Was it acting simply as a contractual appointee, was it acting as an independent contractor or was it an organ of the government of a nature and to an extent that it could rely on the principles of immunity from jurisdiction? The court's decision in March 2014 was that this principle of immunity from jurisdiction was an established part of the customary law of France that enables entities other than government or administrative bodies including private companies to rely on the immunity provisions of the law and therefore be exempt from claims, where they act for and on behalf of a foreign state. The French claimed that immunity can only arise where class acts in the

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4 Article III.4 of the 1992 Civil Liability Convention.

exercise of a public authority, safety authority or flag authority or in the interest of a public service. Further, said France, to rely on this immunity, class must be a genuine extension of the state and cannot simply be a commercial operation performing a contractual obligation for the state. ABS should not therefore be regarded as an organ of the state of the Bahamas because in issuing classification certificate they were acting in a purely private capacity.

The Bordeaux Court in March ruled that the criteria for immunity is that the perpetrator may be a private company provided that it is acting for and on behalf of the state as an agent acting for the state. An entity that is thus appointed and who certainly has delegated powers, acts then in the exercise of a public authority. The court's opinion was that "classification activities and the activities delegated by Bahamas concerning inspection and certification of vessels constitute in reality one and the same activity, and at the very least, are very closely connected activities". This decision seems to blur the separation of the two functions - private and public - and looks at them together as indivisible functions. "The distinction between certification and classification activities is impossible in practice as both activities are indivisible in nature", said the court. Consequently, notwithstanding that there was a private element to ABS issuing certificates this did not defeat the right of ABS to rely on immunity, which was upheld. ABS was off the hook, not because it was neither reckless nor negligent, but because in issuing its certificates an organ of the state of the Bahamas, and acting as such it was immune from claims.

The EU measures[5] which may have influenced the outcome of the case (with which Prof Jessen is dealing in his paper to follow) did not apply because the Bahamas are not part of the EU - and the Directive only applies to EU countries. This is perhaps evidence of a weak link which does little to fill the hole in the law: commendable steps by the EU in relation to classification are not applicable to non-EU classification societies. Similarly IACS's guidelines on the conduct of classifications apply only to IACS members and not to the more delinquent of classification societies.

I must in the limited time left to me draw your attention to the Genoa case of *The Redwood* which I picked up from the company note of Maurizio Dardani. There has in this case been a judgment against Lloyds in relation to defective surveys of a vessel that were done three years before loading in Hamburg on a voyage to Libya. The claimant averred that the vessel should not have been cleared by class because she had defects which resulted in losses during cargo discharge. An appeal to the judgment has been filed by Lloyds, and a further appeal could follow.

All of this points to a singular lack of consistency of approach in the world's courts. And leaves the liability of classification societies in a great

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5 For example the EU Directive, 23 April 2009 and Directive 94/57/EC 22 Nov 1994.

state of uncertainty. This is the hole in the law that I would ask if we in the CMI should again seek to address.

Past & Future role of the CMI

The CMI's Joint Working Group laboured from 1992 to 1997 over 13 sessions to find a compromise. The Group was chaired by Dr Wiswall, and the CMI duly adopted its two instruments: Principles of Conduct for Classification Societies, and Model Contractual Clauses, of which Part I deals with Statutory Surveys for governments and Part II, Classification of ships for shipowners and charterers. The Group in its report came out in favour of the recognition of a liability of classification societies for dereliction of their duties, without immunity such as was claimed in *The Prestige.* It favoured limitation of that liability, and absent any other formula such as a factor of the fee or the tonnage, it suggested fall-back on LLMC 1976. It suggested that contractual limitation should be recognised. One should note that there was sound representation on the group of shipowners, insurers and class.

What are the possibilities of a way forward? Should we as a body of maritime lawyers not again recognise that there is a hole in the law. That we are failing our constituency of the societies themselves, owners and charterers, cargo, business and the courts if we ignore the problem in the vain hope that it will go away. It will not. Class will continue to be sued, and that suit could happen in jurisdictions where there is perhaps a lack of understanding of the business of shipping and of insurance. Class cannot in today's world and particularly in jurisdictions new to shipping law, expect the courts to be as accommodating as Pratt J and Steyn LJ. Shipping litigation has become increasingly visible, emotive and public. Crippling judgments could result which could ruin otherwise sound societies. Class is an essential player in our industry, yet there is no consistent internationally harmonised approach on whether they should be liable for errors and omissions, and to what extent. Fallacious as it may be, claimants regard class as having deep pockets. The bigger the claims, and the more far-removed the jurisdiction, the more likely it is that class would be joined to an action against a penniless or unavailable shipowner. IMO measures dealing with classification do not settle liability nor limitation. EU measures do not reach beyond the EU nor do IACS controls affect the very classification societies that we would seek to bring to book. Uncertainty of this scale is bad for the shipping, freight and insurance markets. Only the lawyers benefit.

Yet it is we as lawyers who do recognise the inadequacies in the law as it stands. And I suggest that we should not give up the attempts that were made by the CMI with the industry in the 1990's that came so close to an agreement between classification societies and the industry they serve. I would have thought that the starting point would be to form an ad hoc committee within the CMI, hopefully served by Karl-Johan Gombrii and Alex von Ziegler, and

then consult with the industry and see whether the main players would like the CMI again to become involved.[6] But we would then need all their participation and help - because to go at alone would be a hiding to nothing: we would go still further nowhere and probably even slower.

[6] After an enthusiastic response to this talk and to the subsequent presentation of Prof Henning Jessen, the CMI EXCO in Hamburg established an ad hoc committee to look into the issue further.

SHIPS IN COLD WATER – ARCTIC ISSUES EXAMINED

THE POLAR CODE SHIPS IN COLD WATER – ARCTIC ISSUES EXAMINED

Tore Henriksen*

1. Introduction

Climate change is affecting the Arctic. The sea ice of the Arctic Ocean is retreating and thinning.[1] The Arctic Ocean is projected to be ice-free in September by the middle of this century. This will affect the ecosystems, species and biodiversity of the Arctic Ocean.[2] The retreat of the sea ice is opening the region to new and expanded human activities exposing the Arctic marine environment to extra pressure.[3] Fishing, petroleum activities, marine scientific research and shipping (including transport, tourism and naval activities) will all affect the marine environment.

The theme of this presentation is Arctic shipping and international regulation of this activity. The objective is to present and offer a preliminary assessment of the Polar Code, which currently is being negotiated through the International Maritime Organization of the UN (IMO). Shipping is the activity that is most likely to increase over the next few years. Indeed, the prospect of trans-Arctic navigation routes reducing the distance between Europe and Asia by up to 40% has led to enormous attention being focused on Arctic shipping.[4] However, increased Arctic shipping activities will increase the risk of pollution from operational discharges and from accidents, noise and introduction of

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1 IPCC, 2013: *Climate Change 2013: The Physical Science Basis. Contribution of Working Group I to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change,* Stocker, T.F. et al (eds.), Cambridge University Press: Cambridge, 2013, p.995-996.

2 IPCC 2014: *Climate Change 2014: Impacts, Adaptation, and Vulnerability. Contribution of Working Group II to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change, Ba* Barros, V.R. et al (eds), Chapter 6 Oceans systems (p.16 and p. 38) and Chapter 28 Polar regions (p.25-26), available at http://www.ipcc.ch/report/ar5/wg2/ (August 2014).

3 *Ibid*.

4 Arctic Marine Shipping Assessment 2009 Report. Arctic Council, April 2009, second printing, p.44 and 102.

invasive species through ballast water exchange.[5] What distinguishes shipping in Arctic waters from other areas is that the risk of environmental damage is higher. The risk is affected both by the vulnerability of the marine environment and by the conditions under which shipping is conducted. Pollution may have greater impact on the Arctic environment and may take longer to restore. Sea ice, icing, low temperatures, remoteness from ports and search and rescue, darkness, rapidly changing weather conditions, lack of experience of crew, and lack of charting are some of the factors that affect the probability of incidents with consequential pollution. As will be demonstrated, the Polar Code aims to mitigate some of these risks.

This paper starts by setting out the background of the Polar Code to provide the reader with the necessary context and proceeds with a presentation and assessment of the Polar Code.

2. Background

2.1 From the Arctic Council to the IMO

The *Arctic Marine Shipping Assessment 2009 Report* (AMSA) was commissioned by the Arctic Council and included extensive analyses of the status, prospects and challenges of Arctic shipping.[6] The Arctic Council was established in 1996 as a "high level intergovernmental forum to provide a means for promoting cooperation, coordination and interaction among the Arctic States" and has been involved in Arctic shipping issues.[7] The report concluded with a series of recommendations including that the Arctic States should support the efforts of the IMO to update and make the Arctic shipping guidelines mandatory.[8]

The Arctic Council approved the recommendations[9] and has started work towards their implementation.[10] This includes projects on identifying risks from the use and carriage of heavy fuel oil and mapping of vulnerable areas in need of particular protection. The projects may result in proposals to the IMO for adoption of measures under the International Convention for the Prevention of Pollution from Ships, 1973/78 (MARPOL) or other conventions.

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5 Ibid. p. 136-152.

6 Arctic Marine Shipping Assessment 2009 Report, Arctic Council, April 2009, second printing, available at http://pame.is/arctic-marine-shipping/amsa (August 2014).

7 Declaration on the Establishment of the Arctic Council, Ottawa 19 September 1996, ILM (1996) 1386.

8 AMSA Report, *op.cit*., 6-7.

9 Tromsø Declaration, on the occasion of the Sixth Ministerial Meeting of the Arctic Council, the 29th of April, 2009, Tromsø, Norway, available at http://www.arctic-council.org/index.php/en/document-archive/category/5-declarations

10 Arctic Council, Status on Implementation of the AMSA 2009 Report Recommendation, May 2013, available at http://pame.is/images/PAME_NEW/AMSA/AMSA_Progress_Report_May_2013.pdf

Other results already include the adoption of Arctic regional agreements on search and rescue[11] and oil pollution preparedness and response.[12] The Arctic coastal States and Arctic Council have been clear in identifying the IMO as the relevant body for developing international rules and standards for Arctic Shipping, which include the Polar Code (full title: International Code for Ships Operating in Polar Waters).

The objectives of the IMO are "[…] to encourage and facilitate the general adoption of the highest possible standards in matters concerning maritime safety, efficiency of navigation and prevention and control of marine pollution from ships."[13] The environmental protection objective was added following the "Torrey Canyon" incident.[14] Two of its subsidiary bodies, the Maritime Safety Committee (MSC) and the Marine Environmental Protection Committee (MEPC), are charged with fulfilling the maritime safety and environmental protection objectives respectively, and are accorded functions under the conventions adopted through the Organization.[15]

States are required by the United Nations Convention on the Law of the Sea, 1982 (LOSC)[16] to cooperate through the competent international organization to establish rules and standards for the protection of the environment.[17] Consequently, the IMO is tasked under the LOSC with establishing common international ground rules for maritime safety and protection of the marine environment.[18] As these regulations are reviewed regularly, the LOSC facilitates the dynamic development of the norms. By negotiating the Polar Code through the IMO, States are complying with their obligations under the LOSC and the IMO is fulfilling its tasks. Importantly the rules and standards adopted under the IMO have an empowering function in respect of the coastal States. Their environmental protection (prescriptive) jurisdiction in the EEZ and partly in the territorial sea is defined by the rules

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[11] The Agreement on Cooperation in Aeronautical and Maritime Search and Rescue in the Arctic, Nuuk 21 April 2011, available at http://www.arctic-council.org/index.php/en/document-archive/category/20-main-documents-from-nuuk# (February 2014).

[12] Agreement on Cooperation on Marine Oil Pollution, Preparedness and Response in the Arctic, Kiruna 15 May available http://www.arctic-council.org/index.php/en/document-archive/category/425-main-documents-from-kiruna-ministerial-meeting (February 2014).

[13] Convention on the International Maritime Organization, Article 1(a), Geneva 6 March 1948, in force 17 March 1958, 289 UN *Treaty Series*, p.48 as amended.

[14] Amendments to the Convention on The Inter-Governmental Maritime Consultative Organization 1380 UN *Treaty Series* 269;Alan Khee-Jin Tan, *Vessel-Source Marine Pollution. The Law and Politics of International Regulation* (Cambridge University Press, 2006) 76.

[15] Convention on the International Maritime Organization, *supra* note 13, Articles 27-31 (MSC) and Articles 37-41 (MEPC).

[16] United Nations Convention on the Law of the Sea, Montego Bay, 10 December 1982, in force 16 November 1994, United Nations *Treaty Series*, vol. 1833, p. 3.

[17] LOSC, Article 211(1).

[18] James Harrison, *Making of the Law of the Sea. A study in the Development of International Law* (Cambridge University Press, 2011) 154-155; LOSC, Article 211 (1).

and standards developed through the IMO.[19] The adoption of the Polar Code will not only affect the obligations flag States, which have accepted it; it will also have implications for the obligations of other flag States, which are parties to the LOSC and the rights of the Arctic coastal States to regulate navigation by foreign-flagged vessels within their zones. In addition, Arctic coastal States are entitled under LOSC Article 234 to extended environmental jurisdiction within their EEZ. As the IMO is developing specific regulations for shipping in Arctic waters, questions may be raised on if and how this extended jurisdiction will be affected. These questions will not be addressed here.

2.2 The IMO and Arctic Shipping

The IMO has exercised its mandate to facilitate the adoption of conventions for, among other, the protection of the marine environment. They include the International Convention for the Safety of Life at Sea, 1974 (SOLAS 74),[20] MARPOL 73/78[21], International Convention for the Control and Management of Ships' Ballast Water and Sediments, 2004 (BWM Convention),[22] International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (STCW Convention)[23] and the International Convention on the Control of Harmful Anti-fouling Systems on Ships, 2001 (Anti-fouling Convention).[24] They are all applicable to navigation in Arctic waters. Some of them include provisions recognising the need for additional and special regulations for shipping in the Arctic.[25] In the aftermath of the "Exxon Valdez" disaster proposals were put forward for the adoption of specific IMO construction, design, equipment and manning (CDEM) standards and rules for vessels operating in ice-covered waters.[26]

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[19] LOSC, Article 211(5) and Article 21(2).

[20] International Convention for the Safety of Life at Sea (SOLAS), Article VIII (a), London 1 November 1974, in force 25 May 1980, UN *Treaty Series*, vol. 1184, p. 278.

[21] International Convention for the Prevention of Pollution from Ships, as modified by the Protocol of 1978 relating thereto (*MARPOL 73/78*), Article 16 (2), London 2 November 1973 and 17 February 1978, in force 2 October 1983, UN *Treaty Series,* vol. 1340, p.62.

[22] International Convention for the Control and Management of Ships' Ballast Water and Sediments, London 16 February 2004 (not in force), BWM/CONF/36.

[23] International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, London 7 July 1978, UN *Treaty Series*, vol.1361, I-23001. Its annex has been amended , Adoption of Amendments to the Annex to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW), 1978 STCW/CONF.2/DC/1, 24 June 2010.

[24] International Convention on the Control of Harmful Anti-fouling Systems on Ships, London 5 October 2001; Entry into force: 17 September 2008, AFS/CONF/26, 18 October 2001.

[25] Heike Deggim, "Ensuring Safe, Secure and Reliable Shipping in the Arctic Ocean", P.A. Berkman and A.N. Vylegzhanin (eds.), *Environmental Security in the Arctic Ocean*, Springer: Dordrecht, 2013, 241-254 (243-244).

[26] Øystein Jensen, "Arctic shipping guidelines: towards a legal regime for navigation safety and environmental protection?" *Polar Record*, vol.44:2, 2008: 107–114 (108).

They resulted in the adoption of the 2002 Guidelines for Ships Operating in Arctic Ice-Covered Waters (Arctic Shipping Guidelines),[27] which were succeeded by the 2009 Guidelines for Ships Operating in Polar Waters (Polar Shipping Guidelines).[28] The latter Guidelines were made applicable to the Antarctic waters on the initiative of the Antarctic Consultative Meeting.[29] The Guidelines set out norms for construction, equipment and operational procedures *inter alia* to ensure that all ship systems are capable of functioning effectively under anticipated operating conditions and providing adequate levels of safety in accident and emergency situations.

Following the adoption of the Polar Shipping Guidelines, the MSC, on the initiative of *inter alia* Denmark, Norway and the US, with the endorsement of the MEPC, agreed to develop them into a mandatory Polar Code.[30] The subcommittee on Design and Equipment (DE) under the MSC was charged with developing the Polar Code by 2012.[31] Its work was delayed and a draft Polar Code was submitted to the MSC and MEPC for approval and adoption in early 2014. The MSC and MEPC are competent treaty bodies under SOLAS 74 and MARPOL 73/78 respectively, which are the main legal instruments affected by the Polar Code. The MSC approved in principle the maritime safety part of the Polar Code at its meeting in May 2014 and aimed at adopting it at its meeting later that year.[32] The MEPC was not able to approve the pollution prevention part Polar Code at its meeting in March 2014. It established a correspondence group tasked with finalising the relevant parts of the Polar Code with the aim to approve them at its next meeting in late 2014.[33] It may take some time before the Polar Code enters into force. This presentation is based on the draft text submitted to the committees in early 2014[34] and the amendments made by the MSC.[35] It focuses on the main features of the future Polar Code.

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[27] Guidelines for Ships Operating in Arctic Ice-Covered Waters**,** MEPC/Circ.399 23 December 2002.

[28] Guidelines for Ships Operating in Polar Waters, Resolution A.1024(26), adopted on 2 December 2009.

[29] Deggim, *supra* note 25, 244.

[30] Report of the Maritime Safety Committee on Its Eighty-Sixth Session, paragraph 23.32, MSC 86/26. MEPC concurred with the proposal, Report of the Marine Environment Protection Committee on its Fifty-Ninth Session, paragraph 20.9, MEPC 59/24.

[31] The subcommittees have been restructured and the responsibility for the Polar Code is located in the subcommittee on Ship Design and Construction, which is a merger of three subcommittees.

[32] Report of the Maritime Safety Committee on Its Ninety-Third Session**,** item 10.50, MSC 93/22.

[33] Report of the Marine Environmental Protection Committee at its Sixty-Sixth Session, item 11.53, MEPC 66/21.

[34] Development of a Mandatory Code for Ships Operating in Polar Waters, draft text of the Polar Code, submitted by Norway, SDC 1/INF.10

[35] Draft International Code for Ships operating in Polar Waters, Report on the Ninety-Third Meeting of the Maritime Safety Committee, MSC 93/22/Add. 3, Annex 24.

3. The Polar Code

3.1 General

In addition to the preamble and the Introduction, the Polar Code will have two main parts: Part I on maritime safety and Part II on pollution prevention.[36] They each consist of mandatory and recommendatory sections.[37] Together with the mandatory sections, the Introduction will be made legally binding by adding a new chapter XIV to SOLAS 74[38] and by amending relevant annexes of MARPOL 74/78.[39] This will be done by reference to the Polar Code, partly to ensure that it remains a stand-alone instrument.[40]

The Polar Code will be applicable to vessels operating in polar waters.[41] Polar waters include both Arctic and Antarctic waters. Arctic waters are defined according to geographical coordinates, identical to the definition of the Polar Shipping Guidelines.[42] It will be applicable to vessels certified under SOLAS 74 (safety part) and MARPOL 73/78 (pollution prevention part) respectively.[43] State-owned or operated vessels, smaller vessels, leisure boats and fishing boats will be excluded. Smaller vessels and fishing vessels may be included at a later stage.[44] During the negotiations Canada and Russia, in particular, argued that the Polar Code should not infringe on their extended environmental jurisdiction under Article 234 of the LOSC to regulate shipping in ice-covered areas.[45] The amendments to SOLAS 74 and MARPOL 73/78 annexes could be read as restricting this jurisdiction. The new chapter of SOLAS 74 on polar shipping will include a provision on the relationship with international law.[46] The amendments to MARPOL 73/78 annexes have not yet been approved or adopted. Some member States have argued there is no need

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[36] Polar Code, *supra* note 35, Introduction, Section 3.

[37] Part I-A Safety measures and part I-B Additional Guidance regarding the provisions and part I-A; Part II-A Pollution Prevention Measures and part II—B Information and additional guidance to part II-A.

[38] Draft New SOLAS Chapter XIV, Report of the Maritime Safety Committee on its Ninety-Third Session, Annex 23.

[39] A Correspondence group established by the MEPC is charged with revising the relevant parts of the Polar Code and proposals by DE/SDC for amendments of MARPOL 73/78 annexes to be submitted to the MEPC for adoption and approval, Report of the Marine Pollution Prevention Committee on its Sixty-Sixth Session, paragraphs 11.46 and 11.53, MEPC 66/21.

[40] Report of the Maritime Safety Committee on its ninety-first session, paragraph 8, MSC 91/22; Report of the Marine Environmental Protection Committee on its sixty-third session, paragraphs 11.14-11.17, MEPC 63/23.

[41] Draft New SOLAS Chapter XIV, *supra* note 358, Regulation 2(1), cf. Regulation 1(4).

[42] Draft New SOLAS Chapter XIV, *supra* note 38, Regulation 1(3).

[43] Draft New SOLAS Chapter XIV, *supra* note 358, Regulation 2(1).

[44] DE, Report to the Maritime Safety Committee, paragraphs 10.7 and 10.10, DE 56/25.

[45] Development of a Mandatory Code for Ships Operating in Polar Waters. Procedure of accounting for national regulations. Submitted by the Russian Federation, paragraph 4, DE 55/12/23; Report of the Marine Environment Protection Committee on Its Sixty-Sixth Session, MEPC 66/21, paragraph 11.47.

[46] Draft New SOLAS Chapter XIV, *supra* note 38, Regulation 2(5).

for any new provisions because Article 9(2) of MARPOL provides adequate regulation on the relationship between MARPOL 73/78 annexes and LOSC.[47]

The Polar Code can be characterized by its two main approaches: it is risk and goal-based.[48] Its overall goal is to provide for maritime safety and environment protection by addressing risks in polar waters which are not adequately addressed by other IMO instruments.[49] Thus, the Polar Code includes requirements supplementing the SOLAS 74 and MARPOL 73/78. It lists the typical hazards which affect the risk (probability of occurrence and/or more severe consequences) of polar shipping, including: sea ice, icing, low temperatures, darkness, weather conditions, remoteness from infrastructure (inadequate functioning of navigation and communication systems, navigational aids), lack of data (charts), lack of crew experience and the sensitivity of the environment.[50]

They are to be mitigated through requirements on CDEM and operation of the vessels as provided for in Part I-A on Safety measures and in Part II-A on Pollution prevention. The relationship between safety measures and protection of the environment is expressly recognised as these measures will reduce the likelihood of accidents.[51]

3.2 Safety measures

The Polar Code includes chapters on structural requirements for operating in ice-covered areas, for the machinery to operate in low temperatures, adequate fire protection and life-saving appliances, navigational and communication equipment as well as requirements for manning and training of the crew.[52] These chapters are to be implemented and applied taking into account the recommendations of the Polar Code.[53]

This paper refers only to some of the safety measures in the Code. There are three categories of vessels defined according to their ability to navigate through or in ice-covered areas. While vessels in category A must be able to operate at least in medium first year ice, category B vessels shall be constructed to operate in thin first year ice and category C vessels are designed to operate in open waters where the sea ice concentration is less than 1/10.[54]

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47 Report of the Marine Environment Protection Committee on Its Sixty-Sixth Session, MEPC 66/21, paragraph 11.47.

48 Polar Code, supra note 35, Preamble.

49 Polar Code, supra note 35, Introduction, Section 1. Note that there is no agreement on whether the goal is to prevent pollution from ships or protect the Polar environment. This relates to the scope of part II of the Polar Code.

50 Polar Code, *supra* note 35, Introduction, Section 3.

51 Polar Code, *supra* note 35, preamble, paragraph 4.

52 Polar Code, *supra* note 35, Part I-A.

53 Polar Code, *supra* note 35, Part I-B.

54 Polar Code, *supra* note 35, Introduction, Sections 2.1 - 2.3.

First year ice is defined as having a thickness between 0,3 - 3,0 m.[55] The Polar Code includes demands on the construction or ice-strengthening, stability and machinery for the vessel to qualify for the categories.[56] It is worth noting that a vessel in category C may navigate in sea ice with thickness of less than 30 cm without being ice-strengthened.[57] Particular requirements are applicable to vessels intended to operate under low temperatures.[58] Their systems and equipment are to be fully functional at very low temperatures, including survival systems and equipment.[59] There are also requirements on choice of construction materials, machinery, fire safety systems and navigational equipment to ensure the functionality of vessels at low temperatures.[60] The vessels shall be manned by adequately qualified, trained and experienced personnel.[61] Requirements that are more specific will be provided in the STCW Convention,[62] which is expected to be further amended.[63] The Polar Code as adopted in May 2014 does not include any requirement for ice navigators as is the case under the Polar Shipping Guidelines.[64] However, such requirement may be included in the final text to be adopted in November 2014.[65]

The consequence of this risk-based approach is the requirement to identify specific operational limitations as to when, which, where and under what conditions vessels may navigate in polar waters. These limitations shall be stipulated in the Polar Ship Certificate, which all relevant vessels are required to have on board.[66] Further, Part I-A includes requirements on the operation of vessels by the use of a Polar Water Operational Manual (PWOM). The PWOM shall set out procedures for reducing risks by ensuring that the vessel operates within these limitations or capabilities and procedures for situations where the vessel is confronting conditions exceeding its capabilities.[67] Voyage planning shall be used to ensure that the hazards of the

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55 Polar Code, *supra* note 35, Introduction, Sections 2.4. Medium first-year ice is

56 Polar Code, *supra* note 35, Part I-A, sections 3.3, 4.2.1.2 and 6.6.3.

57 Polar Code, *supra* note 35, Part I-A, section 3.3.2.4.

58 It is defined as areas where the mean daily low temperature is below minus 10 degrees Celsius, Part I-A, Section 1.2.8ter.

59 Polar Code, *supra* note 35, I-A, Section 1.4.

60 Polar Code, *supra* note 35, Part I-A Section 3.2.1,

61 Polar Code, *supra* note 35, Part I-A, Section 12.1.

62 International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, *supra* note 25.

63 Sub-Committee on Human Element, Training and Watchkeeping, Report to the Maritime Safety Committee, HTW 1/21, paragraph 11.

64 Polar Shipping Guidelines, *supra* note 28, sections 14.1.2 and 14.2.

65 Report of the Maritime Committee on its Ninety-Third Session, MSC 93/22, paragraph 10.38.

66 Polar Code, *supra* note 35, Part I-A, section 1.3. A model Polar Ship Certificate is found in Appendix 1.

67 Polar Code, *supra* note 35, Part I-A, chapter 2.

particular route are taken into account.[68] These hazards could include limited information on hydrography, available information on extent and type of sea ice and distance to search and rescue capabilities.

The fact that the risks within polar waters vary depending on spatial, temporal and climatic conditions may be viewed as the rationale for the goal-based approach.[69] There is a need for flexible regulations to meet these changing circumstances. The goal-based approach is increasingly in use in IMO instruments and particularly in SOLAS 74.[70] The goal-based standards consist of norms at different levels: the goals setting the high-level objectives, the functional requirements including the criteria to be met to fulfil the goals, and the regulations set out the detailed requirements for meeting the functional requirements and the goals. Part I-A of the Polar Code is structured based on this approach.[71] Depending on the level of detail of the regulations, the addressees of the Polar Code – the flag States – are provided with a certain degree of discretion in the regulation of Arctic shipping. The goal-based approach will not be used in Part II-A on pollution prevention measures.[72] The US delegation was critical of the legal character of the functional requirements.[73]

One example to illustrate the goal-based approach is found in the chapter on ship structure, which includes construction requirements for vessels to operate in areas with sea ice and low temperatures. The goal of the chapter is for the material and scantling of the structure to retain its integrity when responding to the environmental loads and conditions. Ice strengthened vessels shall be designed to resist loads that are anticipated under the foreseen ice conditions. This functional requirement is to be met by the regulation where the flag States are required to approve the scantling of category A and B vessels and ice strengthened category C vessels on the basis of "standards acceptable" to the IMO or other standards offering an "equivalent level of safety".[74] Thus, the Polar Code does not include any separate regulations for ice-strengthening of vessels. Instead, the Polar Class standards, as developed by the International Association of Classification Societies, are made

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[68] Polar Code, *supra* note 35, Part I-A, chapter 11.

[69] Polar Code, *supra* note 35, Introduction, Section 3.2.

[70] Generic Guidelines for Developing IMO Goal-Based Standards, MSC.1/Circ.1394; Goal-based construction standards for new ships, available at www.imo.org/OurWork/Safety/Topics/Pages/Goal-BasedStandards.aspx (accessed August 2014).

[71] Polar Code, *supra* note 35, Part I-A, section 1.1.

[72] Report of the Marine Environment Protection Committee on Its Sixty-Sixth Session, MEPC 66/21, paragraph 11.27.

[73] MEPC, Reports of Sub-Committees, Use of goal-based standards in part II-A of the Polar Code, Submitted by the United States, DE 66/11/13.

[74] Polar Code, *supra* note 35, Part I-A, Chapter 2, Section 3.3.3 The standards acceptable to IMO refers to the IASC Unified requirements for Polar Ships. Footnotes to Section 3.3 suggest which Polar Classes are consistent with Category A and B vessels.

applicable by reference.[75] However, vessels are not required to be classified under the Polar Class standards. Other ice classification may be used. Under the Polar Code, vessels may have alternative design and arrangements including for the structure and machinery, if these provide an equivalent level of safety.[76] Part I-B provides additional guidance on equivalent ice class.[77]

3.3 Environmental protection/pollution prevention

As mentioned, the safety measures may reduce the likelihood of accidents in Arctic waters having impacts on the environment, species and ecosystems. Further, through voyage planning vessels may avoid navigating through areas with densities of marine mammals or through marine protected areas.[78] Part II-A of the Polar Code addresses how to prevent impacts of harmful substances from shipping on the environment.

When the work on a separate environmental protection chapter was initiated the themes to be covered by the Polar Code were set out quite broadly.[79] It was suggested that in developing the chapter a problem-oriented approach should be applied to assess what additional measures were necessary to meet the particular environmental and climatic conditions of polar waters.[80] The focus has been on measures to prevent negative effects of operational discharges of pollutants and preventing pollution following incidents or accidents.[81]

The possible measures include restrictions on the permissions under annex I of MARPOL 73/78 on operational discharges of oil and oily mixtures from cargo spaces and other parts of the vessel. Additional requirements regarding treatment and discharge of sewage (Annex IV) should be considered as included because polar conditions entail slower decomposition. Discharges from passenger vessels have been a particularly major concern, including the discharges of grey water (wastewater) which currently are not regulated by MARPOL 73/78. Stricter regulations of discharges of garbage such as food waste and animal carcasses were expected to be considered for the same reason as sewage. Floating garbage could also pose a threat to marine mammals.

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[75] The standards "acceptable" to IMO refers to the IASC Unified requirements for Polar Ships. The footnotes to the regulations for category A and B vessels in Section 3.3.3 indicate which Polar Class are consistent with Category A and B vessels.

[76] Draft New SOLAS Chapter XIV, *supra* note 38, Regulation 4.

[77] Polar Code, *supra* note 35, Part I-B, Section 4.

[78] Polar Code, *supra* note 35, Part I-A, Section 11.3.

[79] Report of the Marine Environment Protection Committee on its sixtieth session, paragraphs 21.5-21.11, MEPC 60/22, with reference to "Any other Business: Environmental aspects of polar shipping, submitted by Norway, MEPC 60/21/1.

[80] Any other business: Environmental aspects of polar shipping, submitted by Norway, MEPC 60/21/1.

[81] *Ibid*.

Another theme for consideration was the black carbon or soot and particles originating from fossil fuel combustion, which impacts on climate by reducing the reflecting effect of snow and sea ice and thus contributing to the acceleration of ice melting.[82]

The problems of combating oil spills in polar waters due to inadequate emergency preparedness (capacity and techniques) and the vulnerability of the environment constituted the background for raising question regarding the banning of transport and use of heavy fuel oil. Accidental oil spills are considered one of the major threats to the Arctic environment.[83]

The five chapters of Part II-A of the Polar Code correspond to annexes of MARPOL 73/78. It is likely that negotiations of these provisions were the most contentious. Several environmental NGOs were actively involved in submitting extensive proposals for regulating shipping activities.[84]

The Polar Code will include a ban on the discharge of oil and oily mixtures from any ship sailing in Arctic waters.[85] An equivalent ban is already in place in respect of Antarctic waters. The ban might be linked to a requirement for Arctic coastal States to provide reception facilities. A ban on transport and use of heavy grade fuel oil has not been included. The MEPC concluded that it was premature to adopt such regulations.[86] A project under the Arctic Council on implementing the AMSA recommendations is investigating ways of mitigating the risks, which may end with proposals for new IMO regulations.[87] A ban on discharges of noxious liquid substances and stricter distance regulations for discharge of sewage and garbage are also included.[88]

The other proposals on regulating discharges of grey water, prevention of loss of containers with packaged dangerous goods in Arctic waters and of discharges of black carbon have not been considered and included in the Polar Code.[89] The reason is probably that these issues have relevance beyond the polar waters and thus are not considered suitable for inclusion in the Polar Code.

The environmental protection chapter does not limit protection to the

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82 AMSA report, *supra* note 6, p.140.

83 AMSA Report, *supra* note 6, p.135.

84 See e.g. Development of a Mandatory Code for Ships Operating in Polar Waters: Wider environmental provisions for the Polar Code (FOEI, IFAW, WWF, Pacific Environment and CSC), DE 54/13/9Code (Friends of the Earth International (FOEI), World Wide Fund For Nature (WWF), International Fund for Animal Welfare (IFAW) and Pacific Environment), SDC 1/3/15.

85 Polar Code, *supra* note 34, Part II-A, Section 1.5.1.2.

86 Report of the sixty-fifth meeting of the Marine environmental Protection Committee, paragraphs 11.52-.53, MEPC 65/22.

87 See AMSA Progress Report, *supra* note 10 and http://www.pame.is/about-amsa for more information.

88 Polar Code, *supra* note 34, Part II-A, Sections 2.5, 4.4 and 5.5.

89 Report to the Maritime Safety Committee**,** paragraph 12.13, DE 55/22.

pollution prevention under MARPOL 73/78 annexes. Ballast water management and anti-fouling include measures to reduce the risk of transfer of alien aquatic species into the Arctic environment.[90] The Ballast Water Management Convention and the Anti-fouling convention are both applicable to the polar waters.[91] The reason why Part II-A does not include any provisions on prevention of alien species is probably because the Polar Code is intended to address new issues and additional requirements.[92] The recommendatory part includes guidance on the application of these instruments in polar waters.[93]

4. Conclusions

The task of assessing whether the Polar Code addresses the risks of Arctic shipping in a comprehensive and adequate manner is challenging. The Polar Code instructs the operators to apply a goal-based approach in applying safety measures. The flag State is provided with latitude in achieving the goals and functional requirements. It provides the necessary flexibility to find solutions that ensure seaworthiness of ships operating under different and changing conditions and risks. However, are the solutions adequate? In contrast, it is easier to evaluate the requirements of Part II-A on pollution prevention. They consist of traditional prescriptive regulations with detailed instructions on operational discharge.

But in assessing this part, the focus is on the regulations that are missing rather than those that are included. The Polar Code is developed through DE (now renamed the SDC), a sub-committee of MSC. Consequently, the focus has been on developing safety measures. The lack of a clear mandate and instructions from the MEPC has affected the work on the environmental protection part. The work started out broadly as the intention was to base the development of regulations on a systematic approach to regulatory needs. Such evaluations do not seem to have been undertaken. There were early signs of scepticism to proposals on banning use and transport of heavy fuel oil, surprisingly because they were considered premature. The MEPC also emphasized that the proposals should only include new and additional requirements that did not appear in other instruments. While at the outset the intention was to include changes to the ballast water management and antifouling conventions, this intention was gradually abandoned and the focus

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[90] Development of a mandatory Code for ships operating in polar waters (New Zealand), paragraphs 17-18, DE 55/12/3.

[91] Development of a Mandatory Code for Ships Operating in Polar Waters. Environmental aspects of the Code (Norway) DE 60/21/1.

[92] Report of the Marine Environment Protection Committee on its Sixty-third Session, paragraph 11.18, MEPC 63/23.

[93] Polar Code, *supra* note 34, Part II-B, paragraph 3.

has been on necessary amendments to the annexes of MARPOL 73/78. Even so, not all annexes were considered. The issues of black carbon and requirements to prevent loss of containers were not addressed. They were already under consideration by IMO sub-committees. This suggests that it has been more important to have an early adoption of the Polar Code than a comprehensive Code. However, the Polar Code may be amended at a later stage to include these issues.

The flexibility of the Polar Code is also challenging. While on the one hand the flag State may approve alternatives to provide equivalent standards of safety, on the other hand there is no uniform set of rules. The jurisdiction of the coastal State to regulate foreign-flagged vessels navigating through their EEZ and territorial sea is to a large degree nourished by the existence of generally accepted and uniform rules and standards.[94] States might not be able to legislate competently when these are missing. Port State Control might easily be confined to inspection of the Polar Ship Certificate. In the event the design and arrangement of the vessel is different from the regulations of the Polar Code, the Polar Ship Certificate will have to record this.[95] If the Port State proceeds further than merely inspecting certificates, its inspectors may need to be made aware of possible alternatives and this may lead to more detail physical inspection than is normal.[96] Inspection procedures should provide for transparency and verifiability. On the other hand, it will be easier to ensure compliance with the prescriptive requirements of Part II-A. In addition to the flag State, both coastal States and port States are provided with enforcement jurisdiction under the LOS Convention.[97]

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[94] LOS Convention, Article 21(2) in respect of the territorial sea and Article 211(5) in respect of the EEZ.

[95] Draft New SOLAS Chapter XIV, *supra* note 38, Regulation 4(4).

[96] Guidelines for the Approval of Alternatives and Equivalents as provided for in various IMO Instruments, MSC.1/Circ.1455, paragraphs 3.8 and 7.5.

[97] LOS Convention, Articles 218 in respect of the port State and Article 220 in respect of the coastal State.

"POLAR LOAD LINES" FOR MARITIME SAFETY: A NEGLECTED ISSUE IN THE INTERNATIONAL REGULATION OF NAVIGATION AND SHIPPING IN ARCTIC WATERS?

Aldo Chircop, Nicoló Reggio, David (Duke) Snider, Bert Ray

Introduction

This paper discusses load lines for safe loading arrangements of vessels for international shipping in polar waters within the framework of a global system designed for safe carriage of goods and passengers. The International Convention on Load Lines (LLC), 1966 as amended, establishes a regulatory framework for the limits of loading of ships on international voyages.[1] The LLC is an important technical instrument that safeguards life and property at sea, but it is silent on load lines for international shipping in polar regions.

In recent years the International Maritime Organization (IMO) has had a flurry of regulatory activities resulting from concern over safety and environmental implications of increased international shipping in polar regions, especially in the Arctic. These include: an update to the International Convention for the Safety of Life at Sea, 1974 (SOLAS)[2] to include ice data in meteorological services and warnings, Ice Patrol Service and danger messages including for ice conditions;[3] the Intact Stability Code, 2008 recommendations regarding icing allowances in loading to ensure stability;[4] new navigation areas (NAVAREAS) and meteorological areas (METAREAS) and expansion of the World-Wide Navigational Warning System (WWNWS) into Arctic waters;[5] amendment of the Guidelines for Ships Operating in Arctic Waters, 2002 in 2009 to include Antarctic waters, now known as the Polar

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1 International Convention on Load Lines, 5 April 1966, 640 UNTS 133 (in force 21 July 1968) [hereafter LLC].

2 International Convention for the Safety of Life at Sea, 1 November 1974, 1184 UNTS 2 (in force 25 May 1980) [hereafter SOLAS].

3 SOLAS, ibid., Chap. V, Arts. 5, 6, 31, 32.

4 Intact Stability Code, IMO Doc. MSC 85/26/Add.1/Annex 2, 4 December 2008 (in force 1 July 2010), Chap. 6.

5 Global Maritime Distress and Safety System (GMDSS), report on the Arctic MSI Services, IMO Doc. COMSAR 15/3/9, 23 December 2010.

Guidelines;[6] amendments to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (STCW) regarding training for Arctic seafarers;[7] adoption of the Guidelines on Voyage Planning for Passenger Ships in Remote Areas[8] and Guide to Cold Water Survival;[9] a mandatory ship reporting system for vessels of 5000 and more tons for the Barents Area;[10] and consideration of a proposal to include the Iridium mobile satellite system, with its cover of polar regions, in the Global Maritime Distress and Safety System (GMDSS).[11] Recent amendment of the International Code for the Construction and Equipment of Ships Carrying Liquefied Gases in Bulk (IGC Code) provides a procedure for carriage of cargo at low temperature.[12] Currently, the IMO is developing a mandatory Polar Code[13] to apply in association with a new Chapter XIV of SOLAS and amendments to Annexes 1, 2, 4 and 5 of the International Convention for the Prevention of Pollution from Ships, 1973/78 (MARPOL).[14] This paper raises the question whether the regulation of navigation in the Arctic should also address load lines requirements.

The paper starts by setting out the historical context of load lines, presents a rationale for discussion of the LLC in a polar context, revisits the functions and framework of the LLC with an Arctic perspective, and considers intact stability provisions in the emerging mandatory Polar Code, SOLAS requirements and the Intact Stability Code. The presentation concludes with reflections on the nascent standard of polar worthiness. Given the fundamental physical change occurring in Arctic waters and growing international polar

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[6] Guidelines for Ships Operating in Polar Waters, Resolution A.1024(26), 2 December 2009, IMO Doc. A 26/Res.1024 18 January 2010 [hereafter Polar Guidelines].

[7] International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, London, 7 July 1978, 1361 UNTS 2, as amended by the Manila Amendments, Final Act of the Conference of the Parties, IMO Doc. STCW/CONF.2/33, 1 July 2010), Resolution 11 and Section B-V/g.

[8] Guidelines on Voyage Planning for Passenger Ships Operating in Remote Areas, IMO Doc. A25/Res.999, 3 January 2008.

[9] Guide to Cold Water Survival, IMO Doc. MSC.1/Circ.1185, 31 May 2006.

[10] Adoption of a New Mandatory Ship Reporting System in the Barents Area (Barents SRS), Resolution MSC.348(91), 28 November 2012, IMO Doc. MSC 91/22/Add.2, Annex 27.

[11] Radiocommunications and Search and Rescue, Recognition of the Iridium Mobile-satellite system, IMO Doc. MSC92/9/2, 9 April 2013.

[12] International Code for the Construction and Equipment of Ships Carrying Liquefied Gases in Bulk, Art. 18.5, in Amendments to the 1974 SOLAS Convention and associated instruments, IMO Doc. , MSC 93/3, 6 December 2013, Annex 6.

[13] Ship Design and Construction: Development of a Mandatory Code for Ships Operating in Polar Waters, Report of the Working Group (part 2), IMO Doc. MSC 93/WP.7/Add.1, 21 May 2014. The report consists of a narrative [hereafter SDC Report] and an annex containing the code [hereafter Draft Polar Code].

[14] International Convention for the Prevention of Pollution from Ships, 2 November 1973, 1340 UNTS 184 as amended by Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships of 1973, 17 February 1978, 1340 UNTS 61 (in force 2 October 1983, Annexes I & II) [hereafter MARPOL].

shipping, an important question is whether we can or should assume that the LLC at this time is sufficient to address the loading safety needs of Arctic shipping, and if not, whether it should be revisited to consider dedicated load lines and practises for loading operations in Arctic waters.

Historical context

Load lines are possibly one of the oldest maritime safety issues to be addressed by regulation. Concern with the safe loading of ships can be traced as far back as the Rhodian Sea Law and Roman times, but the earliest precursors of load lines as regulated markings on the hull of a vessel likely date back to the practices of maritime city states in the 13th and 14th century Mediterranean, in particular Venice and Genoa.[15] As a subject of international regulation, at least at a bilateral or subregional if not global level, the pre-modern era of load lines regulation started with the United Kingdom, in particular with the legislation of the "Plimsoll Act" in the last quarter of the 19th century.[16] The national regulation of load lines thereafter spread to other maritime trading nations in the late 19th and early 20th centuries with the effect that national load lines regulations were applied to international shipping calling in those ports. Much as load lines were considered important for maritime safety, there was lack of uniformity among national standards as a result of competitive loading practices often undertaken at the expense of safety.[17]

The modern era of load lines regulation started with the advent of intergovernmental organizations dedicated to navigation and shipping.[18] These organizations elevated load lines regulation from a national, bilateral and sub-regional level to a global level. The first international convention on load lines was adopted in 1930,[19] with five States as parties, but including the United Kingdom which at the time accounted for the largest fleet in the world. It was not until the advent of the IMO that a truly global international instrument would be adopted. The LLC was adopted on 5 April 1966 and came into force on 21 July 1968. Its subscription consists of a large number of States representing more than 99% of global tonnage.[20] It was substantially amended

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15 P. Boisson, *Safety At Sea. Policies, Regulations and International Law* (Paris: Edition Bureau Veritas, 1999).

16 Nicolette Jones, *The Plimsoll Sensation. The Great Campaign to Save Lives at Sea*, (London: Little, Brown, 2006).

17 Boisson, supra note 15; C. Earnest Fayle, *A Short History of the World's Shipping Industry* (New York: Routledge, 2010).

18 Boisson, supra note 15.

19 International Convention respecting Load Lines, 5 July 1930, TS 858 vol. 2, 1076.

20 IMO, online: <http://www.imo.org/About/Conventions/ListOfConventions/Pages/International-Convention-on-Load-Lines.aspx>.

in 1988,[21] 2003[22] and more recently with regard to the code for recognized organizations and the Code for the Implementation of IMO Mandatory Instruments, 2011.[23] The purpose of the Convention is described as a desire "to establish uniform principles and rules with respect to the limits to which ships on international voyages may be loaded having regard to the need for safeguarding life and property at sea."[24] In reality, the LLC contains more than load lines regulations and addresses broader safety matters through technical requirements for structure, openings, guard rails and means for safe passage for crew protection, stowage, etc.[25] A particular feature of the LLC is the designation of load lines for particular zones (covering the various maritime trading regions) and seasonal (summer and winter) loading limits with start and end dates.[26]

Rationale for discussing load lines in a polar context

In comparison to established trade routes, the Arctic is a new maritime trading region where navigation conditions are different. There are at least three reasons why a discussion of load lines for Arctic waters is appropriate and timely. First, Annex II of the LLC does not contain dedicated Arctic zones and seasons as is the case for other maritime trading regions.[27] This was not a gap at the time the Convention was negotiated and adopted because in the 1960s international navigation and maritime trade in the Arctic were very limited and national. Polar-specific load lines for international shipping were unnecessary. Since then commercial activities in the Arctic have increased to the extent that there is discrete but visible growth in international maritime trade in and through the region.[28] Vessels transiting the Northern Sea Route (NSR) generally commence their voyages in North Atlantic Waters, North Sea or Baltic Sea and terminate in the Sea of Japan or China Sea, and vice versa. The voyage entails different zones and seasons. Given the absence of dedicated international "polar load lines" the current practice is to utilize the North

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[21] Protocol of 1988 relating to the International Convention on Load Lines, 1966, 11 November 1988, 2 UST 102 (in force 3 February 2000; further amendments adopted in 2003 came into force on 1 January 2005). The 1988 Protocol streamlined surveying and certification requirements with those of SOLAS and MARPOL and simplified the amendment procedure to provide for tacit acceptance.

[22] Consisting of comprehensive revision of technical regulations. Adopted through the tacit approval procedure in June 2003 and entered into force on 1 January 2005.

[23] IMO Doc. A 27/Res.1054(27), 20 December 2011.

[24] LLC, supra note 1, Preamble.

[25] LLC, ibid., Annex I.

[26] LLC, ibid., Annex II.

[27] LLC, supra note 1, Annex II.

[28] For example, see transit statistics for the Northern Sea Route, online: http://www.arctic-lio.com/nsr_transits.

Atlantic Winter Zone 1 (NAW 1) and North Atlantic Winter 2 (NAW 2) load lines for international shipping in the Arctic. Ice navigation may affect the freeboard of a vessel.

Second, recent and current initiatives to develop international polar standards for navigation safety do not address load lines. The Polar Code has no provisions and makes no mention of load lines in the Arctic and Southern Ocean. The development of the Code has considered a broad range of other safety and environmental instruments, including intact stability. Discussions in the IMO did not consider whether polar-specific, let alone Arctic load lines, should be developed or existing practices validated or confirmed. This appears to be also the case in the International Association of Classification Societies (IACS). In operation since 2008, the IACS Unified Requirements for Polar Class, while referring to ice loads for polar class ships and providing for upper and lower ice waterlines, do not address load lines, for example to elaborate on upper and lower water ice waterlines.[29]

Third, the load line requirements distinguish between requirements for sea water and fresh water.[30] Fresh water is less dense than saline sea water, affecting draught and loading capacity. Thus Canada has load lines for vessels navigating the Great Lakes that differ from those for seagoing vessels.[31] The justification lies in the nature of the water regime. Although the presence of fresh water in the Arctic Ocean has been known for some time, recent scientific literature suggests that there may be more fresh water on the surface than previously thought. Rabe et al. note that "liquid freshwater determines upper ocean stratification and plays a major role in Arctic Ocean dynamics, and the formation of water masses and sea ice."[32] They note that as much as 10% of worldwide river runoff goes into the Arctic Ocean. Their work focused on liquid freshwater content above the 34 isohaline. For the 1992-2012 the change amounted to an increase of 30% of liquid freshwater reservoir, larger than the average annual export of liquid and solid freshwater. In another study, De Steur et al. concluded that "[H]ydrographic data from the Arctic Ocean show that fresh water content in the Lincoln Sea, north of Greenland, increased significantly from 2007 to 2010, slightly lagging changes in the eastern and

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[29] International Association of Classification Societies, Requirements Concerning Polar Class, IACS Req. 2011, online: http://www.iacs.org.uk/document/public/Publications/Unified_requirements/PDF/UR_I_pdf410.pdf.

[30] LLC, supra note 1, Art. 12 (submersion rule).

[31] Load Line Regulations (SOR/2007-99), s 8.

[32] B. Rabe et al., "Liquid export of Arctic freshwater components through the Fram Strait 1998 – 2011," *Ocean Science* 9, 91-109 (2013); see also B. Rabe et al., "An assessment of Arctic Ocean freshwater content changes from the 1990s to the 2006-2008 period," *Deep-Sea Research* I, 58185, 173 (2011) .

central Arctic."[33] They noticed an anomaly produced by a decrease in the upper ocean salinity. The total volume of anomalous fresh water in the Lincoln Sea was approximately 13% of the total estimated fresh water in the region in 2008 before it was exported. This science does not appear to have yet proposed a connection between increased fresh water amounts and sufficient change in the water regime as to affect navigation safety. Considered from a maritime perspective, is the increase of fresh water on the surface of the Arctic Ocean to such an extent as to make a difference for navigation safety? Are the changes in the water regime (i.e., surface navigable waters) temporary or prolonged? Is the water regime still fundamentally seawater or is it analogous to the mixed waters of an estuary or perhaps closer to the Great Lakes, i.e., fresh water? Are there seasonal salinity changes to be concerned about? Is it conceivable that the reserve buoyancy and freeboard requirements should be different than those for the North Atlantic Winter? More scientific work and consideration by marine architects are needed.

Regulatory framework for load lines and ship stability

A closer look at some of the key provisions of the LLC with an Arctic perspective provides more insights. The Convention applies to vessels on international voyages,[34] but does not include every category of vessel[35] navigating in all waters.[36] Thus in principle, if the LLC were to apply to all Arctic waters, the Convention would cover transit shipping (e.g., from Shanghai to Rotterdam) and international destination traffic (e.g., export of iron ore from Kirkenes, Northern Norway, to Qingdao, China) in the Arctic. The rules apply to designated marine regions as defined in Annex II,[37] although as will be seen below, they expressly apply to Arctic waters only in part.

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[33] L. de Steur et al., "Hydrographic changes in the Lincoln Sea in the Arctic Ocean with focus on an upper ocean freshwater anomaly between 2007 and 2010," *Journal of Geophysical Research: Oceans*, 118, 4699–4715 (2013); see also L. de Steur et al., "Freshwater Fluxes in the East Greenland Current: A decade of observations," *Geophysical Research Letters*, 36, L23611 (2009).

[34] "International voyage" means a sea voyage from a country to which the present Convention applies to a port outside such country, or conversely. LLC, supra note 1, Art. 2(4).

[35] Fishing vessels are exempted; LLC, supra note 1, Art. 5. Art. 6 provides for other exemptions. There are specific rules for fishing vessels in the Intact Stability Code, supra note 4, and Cape Town Agreement of 2012 on the Implementation of the Provisions of the 1993 Protocol relating to the Torremolinos International Convention for the Safety of Fishing Vessels, 11 October 2012 (not yet in force).

[36] Vessels navigating solely in specified waters within national jurisdiction and which are essentially fresh water regimes (e.g., Great Lakes and St Lawrence Seaway, Caspian Sea and Rio de la Plata estuary and inland waters) are not subject to the Convention. LLC, supra note 1, Art. 5. In Canada and Russian waters on the landward side of straight baselines from which the outer limits of the territorial sea are determined raise an interesting question of application.

[37] LLC, ibid., Art. 11.

A key requirement of the LLC is the issuance of the required International Load Line Certificate, where appropriate, an International Load Line Exemption Certificate.[38] No ship is permitted to leave port without this certificate.[39] There is a system of reciprocal recognition of such certificates by State Parties.[40] While baseline standards are set out in the Convention, national maritime administrations may assign a greater freeboard than the minimum freeboard determined in accordance with Annex I.[41] States will not do this lightly as in practice it entails a self-imposed loading restriction that might be unattractive to shipowners seeking to register their vessels under conditions that maximise their loading and consequently trading potential. The Convention also foresees situations where a maritime administration requests another to survey a particular ship and issue the international load line certificate.[42] This provision could be useful for those flags which lack capacity or may not have the surveying capacity in the port where the vessel concerned is located. For example Arctic coastal States can perform this function on behalf of non-Arctic requesting flag States. International certificates are accepted by other State Parties.

The Convention has a rule regarding submersion, which essentially maintains a distinction between sea water and fresh water for load line purposes.[43] This could be useful if it turns out that the change in water regime in the Arctic should lead to different load lines for different areas. An interesting question to consider is whether the Arctic Ocean might need a dedicated system of zones and seasons, reflecting the navigable periods and water and ice regimes. The LLC permits special rules that may be drawn up by all or some States by agreement, but in accordance with the Convention.[44] This could be of interest to Arctic States, should they decide that polar load lines are needed. There are good reasons why Arctic States should cooperate together, as well as through the IMO, not least of which because of a recommendation concerning the harmonization of standards for shipping regulation in the region made in the Arctic Council's *Arctic Marine Shipping Assessment* 2009 report.[45] Should they

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38 LLC, ibid., Art. 3(1).

39 LLC, ibid., Art. 3(1).

40 LLC, ibid., Art. 20. An interesting question is whether certificates issued by Arctic States stipulating load line requirements different from those in the LLC would also be recognized by other States. Art. 22(2) of the United Nations Convention on the Law of the Sea provides that in regulating innocent passage coastal State "laws and regulations shall not apply to the design, construction, manning or equipment of foreign ships unless they are giving effect to generally accepted international rules or standards." United Nations Convention on the Law of the Sea, 10 December 1982, 1833 UNTS 3.

41 LLC, supra note 1, Art. 3(2).

42 LLC, ibid., Art. 17.

43 LLC, ibid., Art. 12.

44 LLC, ibid., Art. 25.

45 *Arctic Marine Shipping Assessment 2009 Report* , recommendation I/B at p. 10, online: <http://www.pame.is/amsa-2009-report>.

agree on regional special rules, the LLC requires them to communicate these to the IMO for circulation to other State Parties.[46] However, this provision permits Arctic States to develop regional rules applicable only to ships flying their flags. The LLC does not confer any additional jurisdiction to coastal States and for port state inspection purposes the applicable rules are those in the Convention itself.

The technical regulations for determining load lines are set out in Annex I. They are based on the assumption that cargo is properly stowed, ballast is proper and stability requirements under other regulations are properly met (e.g., Intact Stability Code).[47] The Intact Stability Code is a mandatory SOLAS code and vessel stability standards and rules have also been made mandatory for the LLC by the 1988 Protocol.[48] In Chapter 6 the Code stipulates an icing allowance requirement for loading conditions for ships operating in areas where ice accretion which could affect ship stability.[49] This requirement is accompanied by advice to maritime administrations "to take icing into account and are permitted to apply national standards where environmental conditions are considered to warrant a higher standard than those recommended in the following sections." This provision supports Arctic coastal State requirements to apply higher safety standards.

Ships are required to comply with intact stability standards and the maritime administration is responsible for satisfying itself that the ship's general structural strength is adequate for the draught corresponding to the assigned freeboard. Compliance with class requirements in accord with national standards may satisfy this requirement.[50] Shipmasters are to be provided with information for the loading and ballasting of their ships to minimize structural stresses.[51] The LLC does not appear to factor additional risks encountered in navigating polar environments, such as the extreme cold temperatures, navigating through ice fields and including icebreaking for higher polar class vessels. These factors are likely to pose further stresses on the hull, in addition to the nature, stowage, and lashing of cargo and ballast segregation. It would be appropriate to contextualize loads with reference to the voyage and type of the vessel.

The LLC's Annex II prescribes the zones and seasonal areas and periods for load lines (see Map 1). The northernmost LLC zones in Arctic waters are covered by the definition of North Atlantic Winter Seasonal Zone I. This zone "lies within the meridian of longitude 50°W from the coast of Greenland to

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46 LLC, supra note 1, Art 25.

47 LLC, ibid., Annex I, Chap. 1.

48 LLC Prot, supra note 21, Arts. 10 (information supplied to the master), 27 (freeboards/conditions of equilibrium), and 44 (stowage).

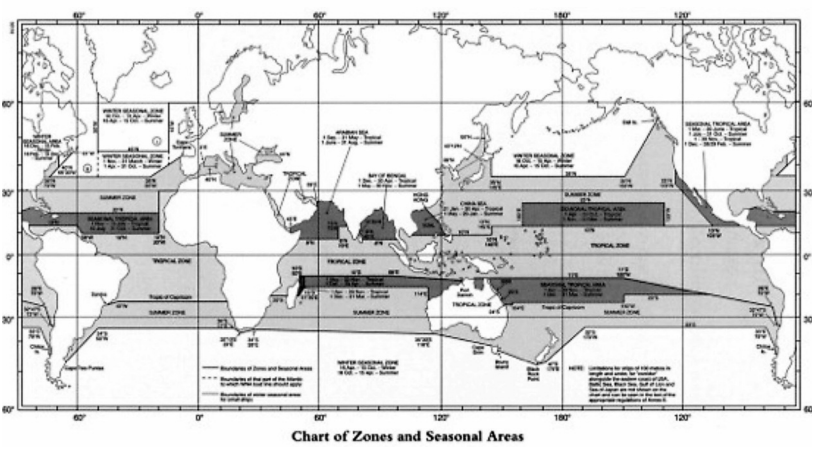
49 Intact Stability Code, supra note 4, Art. 6.1.1.

50 LLC, supra note 1, Annex I, Reg. 1.

51 LLC, ibid., Annex I, Art. 10(1).

latitude 45°N, thence the parallel of latitude 45°N to longitude 15°W, thence the meridian of longitude 15°W to latitude 60°N, thence the parallel of latitude 60°N to the Greenwich Meridian, thence this meridian northwards."[52]

MAP 1: Load Lines Convention



Even if this definition is interpreted to continue indefinitely northwards into the Central Arctic Ocean, only a relatively small area of the region is covered and the current major maritime routes through the Northwest Passage and Northern Sea Route are not included. A strict interpretation suggests that the North Atlantic Winter Seasonal Zone 1 applies only to Eastern Greenland's waters. The definition of the North Atlantic Winter Seasonal Zone II is not of assistance either.[53] Thus the general load line for the Winter North Atlantic was not expressly intended to apply for much of the Arctic.[54] Its application

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[52] LLC, ibid., Annex II, Art. 46(1).

[53] "The North Atlantic Winter Seasonal Zone II lies within the meridian of longitude 68°30'W from the coast of the United States to latitude 40°N, thence the rhumb line to the point latitude 36°N, longitude 73°W, thence the parallel of latitude 36°N to longitude 25°W and thence the rhumb line to Cape Toriñana." "Excluded from this zone are the North Atlantic Winter Seasonal Zone I, the North Atlantic Winter Seasonal Area and the Baltic Sea bounded by the parallel of latitude of the Skaw in the Skagerrak. The Shetland Islands are to be considered as being on the boundary of the North Atlantic Winter Seasonal Zones I and II." LLC, Annex II, Reg. 46(1). Similarly unhelpful is the North Atlantic Seasonal Area, defined as "is the meridian of longitude 68°30'W from the coast of the United States to latitude 40°N, thence the rhumb line to the southernmost intersection of the meridian of longitude 61°W with the coast of Canada and thence the east coasts of Canada and the United States." LLC, ibid., Art. 46(2).

[54] "The part of the North Atlantic referred to in Regulation 40 (6) (Annex I) comprises:
(a) that part of the North Atlantic Winter Seasonal Zone II which lies between the meridians of 15°W and 50°W;

to other Arctic waters appears to have been a matter of convenience. As international shipping in the region increases, the scope of application of the LLC to Arctic waters is likely to be unsatisfactory and could require the inclusion of new Arctic zone(s) in Annex II or an extension of the Winter North Atlantic Zone 1 to Arctic waters.

Work on the mandatory Polar Code is vital for promoting maritime safety in international Arctic (and Antarctic) shipping. The current version of the draft Code addresses requirements for maritime safety (design, construction, equipment, operational, training), search and rescue and pollution from ships.[55] The definition of Arctic waters originally drawn from the 2009 Polar Guidelines is relegated to the new Chapter XIV of SOLAS.[56] "Arctic waters" as understood in the IMO for regulatory purposes to date do not coincide with the geographical scope of any of the LLC zones (see Figure 2).

The Polar Code provisions of closest relevance to the LLC concern intact stability, but they largely address topside icing and a vessel's stability after it suffers damage, e.g., if it sustains water ingress as a result of hull penetration after striking ice.[57] The Code provides for the issuance of a Polar Ship Certificate,[58] required to be kept on board just like the international load lines certificate.[59] The issuance of the certificate does not appear to need to consider

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(b) the whole of the North Atlantic Winter Seasonal Zone I, the Shetland Islands to be considered as being on the boundary."

LLC, ibid., Annex II, Art., 52. Art. 40(6) provides the Winter North Atlantic freeboard as follows: "The minimum freeboard for ships of not more than 100 m in length which enter any part of the North Atlantic defined in regulation 52 (Annex II) during the winter seasonal period shall be the winter freeboard plus 50 mm. For other ships, the winter North Atlantic freeboard shall be the winter freeboard."

[55] Draft Polar Code, supra note 13.

[56] SDC Report, supra note 13, para. 5. Arctic waters are defined as "[… those waters which are located north of a line from the latitude 58º00´0 N and longitude 042º00´0 W to latitude 64°37´0 N, longitude 035°27´0 W and thence by a rhumb line to latitude 67º03´9 N, longitude 026º33´4 W and thence by a rhumb line to Sørkapp, Jan Mayen and by the southern shore of Jan Mayen to the Island of Bjørnøya, and thence by a great circle line from the Island of Bjørnøya to Cap Kanin Nos and hence by the northern shore of the Asian Continent eastward to the Bering Strait and thence from the Bering Strait westward to latitude 60ºN as far as Il'pyrskiy and following the 60th North parallel eastward as far as and including Etolin Strait and thence by the northern shore of the North American continent as far south as latitude 60ºN and thence eastward along parallel of latitude 60ºN, to longitude 56º37´1 W and thence to the latitude 58º00´0 N, longitude 042º00´0 W (see figure 2).]" Polar Guidelines, supra note 6, Art. G-3.3.

[57] Draft Polar Code, ibid., Part I - A, Chap. 4, Stability and Subdivision.

[58] Defined as "… a certificate issued by the Administration or by an organization recognized by the Administration [indicating] [defining] the environmental conditions and operational capability for which the ship has been designed for operation in polar waters." Draft Polar Code, ibid., Part I – A, Art. 2.15.

[59] Draft Polar Code, ibid., Part I – A, Chap. 1, Art. 1.4. As in the case of the load lines certificate, the Polar Ship Certificate shall be issued or endorsed either by the Maritime Administration or by any person or organization (e.g., a classification society) recognized by it in accordance with SOLAS regulation XI-1/1. Ibid., Art. 1.4.2. Endorsement and renewal dates are expected to be harmonized with other SOLAS certificates.

load line issues, although it is expected to take into consideration the anticipated range of operating conditions.[60] The Code also introduces the concept of "Polar Service Temperature" requiring that ship systems and equipment are fully functional at the expected low temperatures.[61] The explanation provided by the SDC Working Group is that

> 18. For ships intended to operate in low air temperatures, the Polar Service Temperature will be shown on the Polar Ship Certificate. This indication of capability will be used in voyage planning and operations to reduce the risk of experiencing conditions that may reduce the functionality of essential safety equipment.
>
> 19. Using this approach to the implementation of temperature-related requirements is intended to clarify the threshold below which ships may be required to adopt additional design and operational measures and which can be readily adapted into the testing and certification systems used in the few areas in which SOLAS currently addresses temperature. It was noted by IACS that the approach could be aligned with existing standards developed by IACS.[62]

Concern has been raised that the concept of Polar Service Temperature may have been developed "in haste, without a sufficient understanding of the technical justification and likely impact on the design and equipping of both new and existing ships."[63] It is also to be noted that load line issues do not appear to have been addressed in formulating the concept of Polar Service Temperature.

Against this backdrop, the question to consider is whether the Polar Code will also need to cross-refer to the LLC as a key instrument in maritime safety. The Code anticipates review and possible amendment within a few years of entry into force in response to technological and other developments.[64]

Conclusion: towards polar worthiness?

Regulatory activity in the IMO, in particular on the Polar Code, amendments to SOLAS and MARPOL, ice provisions in the Intact Stability Code and polar seafarer training in STCW collectively may be characterized as steps towards the development of a new standard of seaworthiness appropriate for polar regions, i.e., polar worthiness. These are initial steps in

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[60] Draft Polar Code, ibid., Art. 4.1.

[61] Defined as "…a temperature at least [100C] [2] below MDLT for the intended operation in polar areas." Draft Polar Code, ibid., Art. 2.14 and 1.5.

[62] Development of a Mandatory Code for Ships Operating in Polar Waters: report of the Working Group, IMO Doc. SDC 1/WP.4, 24 January 2014, paras. 18-19.

[63] A concern expressed by the International Chamber of Shipping and Cruise Lines International Association. Ibid., para. 20.

[64] Draft Polar Code, supra note 13, Art. 1.6.1.

an iterative and adaptive process of regulation. Polar standards should be expected to evolve considerably as understanding of ocean change increases, commercial interest continues to grow, impacts of shipping on the environment are better defined, connections between various IMO instruments are enhanced, polar technology develops further and training of polar seafarers expands.

Ultimately, the rationale for revisiting the LLC is to underscore the need for a better understanding of the standard and elements of seaworthiness in a changing polar environment. The difficult navigation conditions in the Arctic require a high standard of seaworthiness in all its aspects. It should be remembered that seaworthiness as a key concept in domestic and international public and private maritime law and is of significance not only for maritime safety purposes, but also as a principle that guides risk distribution in maritime contracts. Seaworthiness plays an important role in charterparties, bills of lading, passenger carriage, marine insurance and towage, among other standard forms. Historically, it can be demonstrated that advances in maritime safety standards have tended to enhance international shipping. In the Arctic, high standards speak to viability in the first place.

CIVIL LIABILITY (FOR OIL POLLUTION) IN POLAR MARINE ENVIRONMENTS*

Lars Rosenberg Overby**

Introduction

The scope of this article is to describe the existing legal infrastructure that regulates oil pollution by persistent[1] oil from tankers in the Arctic. It will not describe the various national rules in detail, as the purpose is to provide an overview. The article will thus not deal with oil pollution from pipelines and production facilities in the context of E&P.

The matter of oil pollution regulation in this region has become a highly relevant topic because of the increased traffic in the Arctic due to climate changes and growing activities. Further, the fact that 2014 is the 25th "anniversary" of the EXXON VALDEZ oil spill in Prince William Sound, Alaska, lends itself as a good reason to consider this area of the law.

The Arctic is a vast area involving no less than eight legal regimes and territories which are not even part of any state and hence High Seas in accordance with UNCLOS article 86[2] and international law. Though, in reality it is the coastal states Denmark (Greenland), Norway, USA, Canada and Russia that are likely to face the biggest challenges in the event of an oil pollution.

A review of the legal regimes should not stand alone, as the practical aspects of responding to oil pollution in polar environments are relevant. Equally, one should not forget the funding side of oil pollution. First and foremost, this is insurance and pollution damage funds; in particular the International Oil Pollution Compensation Funds (the "IOPC Funds")[3]. Finally,

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1 Thus, pollution by non-persistent oil and pollution by persistent oil from e.g. large passenger vessels fall outside the scope.

2 United Nations Convention on the Law of the Sea.

3 These Funds, the 1971 Fund, the 1992 Fund and the supplementary Fund have been established by the International Convention on the Establishment of an International Fund for Compensation of Oil Pollution Damage 1971 and 1992 1992 and the 2003 protocol to the 1992 Fund Convention.

one may wonder if there are really any special polar shipping related compensation issues or whether oil pollution in polar marine environments is basically no different from oil pollution in other sensitive marine environments.

Back ground; new trade and expansion of existing trade

The climate changes have firstly facilitated a longer trading seasons in the Arctic and made the North Western passage available (albeit currently not really an option for commercial traffic). The Northern Sea Route (or the North Eastern passage) has been open for many years but it has become increasingly used in recent years. The Northern Sea Route offers substantial benefits: 1) the journey is one third shorter and will cut journey times by around two weeks[4]; 2) it is estimated to cut fuel costs by around $180,000; and 3) there is a drastically reduced risk of piracy which again reduces costs. The statistics published by the Northern Sea Route Information Office[5] reveal that in the period 1st May - 1st October 2013, 10 different vessels used the Northern Sea Route: 4 tankers, 2 bulk carriers, 1 LNG carrier, 2 general cargo vessels and 1 fish carrier. It has been reported that in October 2010 the first passenger vessel, the GIO OTS, navigated the Northern Sea Route from St. Petersburg to Vladivostok. It has also been reported that an Australian expedition cruise company completed a cruise along the Northern Sea Route in August 2011 with the Russian vessel AKADEMIK SHOHALSKY. Earlier this year Hapag-Lloyd Cruises' HANSEATIC published a new record for passenger ships in the Russian Arctic when she reached 85° 40.7 north and 135° 39.6 east 259 nautical miles from the North Pole. Presumably, commercial traffic of this kind will continue to develop. Further, developments within the field of exploration and production of hydrocarbons in the Arctic will generate more traffic: The Arctic Region produces about one tenth of the world's oil and a quarter of its natural gas. Experts have further calculated that as much as 25% of the world's remaining fossil fuel reserves are located in the Arctic Ocean. A matter of interest in this connection is of course that the first Arctic oil was carried to Rotterdam by the Russian tanker MIKHAEL ULYANOV in May 2014.

Navigational aid

Various navigational aids are available in the Arctic. Firstly, there are traditional marine paper charts and naturally also electronic charts and navigational equipment. The available aids may be insufficient in certain areas, as much of the information that has been fed into these navigational aids

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4 Assuming Rotterdam is the port of departure.

5 See www.arctic-lio.com

originate from old fashioned visual measurements from land (that do not take into account the roundness of the Earth) and huge parts of the sea have still only been measured with modern marine equipment to a limited extent. I understand that the Russian marine charts are the most comprehensive. Also, pilots are required in certain areas and there may be a shortage. From a practical point of view this is likely to be resolved by national maritime administrations collaborating with commercial shipowners trading in the area. Due to article III, 2 (c), of the CLC, these circumstances can suddenly become very important in the context of an oil spill that can be traced back to defective navigational aids.

Identified additional Arctic hazards

Shipping and in particular carriage of oil and hazardous substances is not risk free. In connection with the development of the Polar Code[6] 20 Arctic specific hazards were identified; including unsurprisingly icebergs as collision hazard and ships being pushed around by moving ice. Weak or non-existent conventional navigational aids (lights, distinguishable features for bearings, etc.) and high latitude effects on navigation systems (lack of GPS, cosmic radiation effects) plus weak primary radar returns from icy shorelines are also mentioned. Finally, human factors such as long days or long nights resulting in interrupted sleep patterns, loss of alertness, poor decision making are on list too. Accordingly, it must be recognised that a serious oil spill in this area is a realistic possibility.

The arctic eight legal regimes

Broadly speaking, the Arctic eight legal regimes consists of the American Oil Pollution Act 1990 ("OPA 90") and the CLC 1992 plus the 1992 Fund Convention. Apart from Russia, the states (not including USA obviously) are parties to the 2003 Supplementary Fund Protocol. Russia still is only party to the 1992 Convention but not to the Protocol. Canada further has a domestic Ship-source Oil Pollution Fund. Equally, Finland has a special environmental fund.

CLC 1992 overview[7]

The scope of the CLC 1992 is actual or threatening oil pollution by persistent oil from tankers in the national territory and EEZ (Exclusive Economic Zone) of the state parties.[8] The convention provides for strict

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[6] The IMO international code of safety for ships operating in polar waters.

[7] Reference is made to general commentaries on the act such as "Pollution of the Sea: prevention and compensation" (ed. Basedow/Ulrich) 2007, Edgar Gold: "Gard Handbook on Marine Pollution, 2006 and Måns Jacobsson: "The International Liability and Compensation Regime for Oil Pollution from Ships - International Solutions for Global Problems" in Tulane Maritime Law Journal, volume 32, winter 2007 number 1.

[8] Article II; i.e. basically the area within 200 nautical miles from the coast line.

liability on the part of the registered owner of the tanker to pay compensation for pollution damage[9]. The liability only applies to losses due to damage (or threat of same) outside the tanker caused by contamination by oil from the tanker[10]. Further, the compensation for impairment of the environment other than loss of profit shall be limited to the costs of reasonable measures in terms of reinstatement[11]. Accordingly, loss of use and similar losses are not recoverable under the convention. The liability is channelled to the registered owner and as such an operator or bareboat charterer has no liability (except if the damage resulted from their personal act or omission, committed with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result) but may, however, be subject to recourse claims[12]. Although the basis of the liability is strict, there are a few defences available to the registered owner: a) damage resulting from war etc. b) damage wholly caused intentionally by third parties and c) damage caused by negligence of a government or other authority responsible for maintenance of lights and navigational aids in the exercise of that function[13]. The registered owner's liability may, however, be limited to sums calculated by reference to the tonnage of the vessel: < 5.000 GT max. SDR 4.51m and > 5.000 GT max SDR 89.77m[14]. In rare circumstances, the limit of limitation may be breached. Still, that requires that the incident resulted from the owner's act or omission committed with intent to cause pollution damage or recklessly and with knowledge that such damage would probably result[15]. The registered owner is under a duty to insure his liability under the convention and the tanker must carry evidence of this insurance by way of so-called "CLC certificates"[16]. The liability regime described in the above is not alone, and if the loss exceeds the said limitation amount or if the owner is exempt from liability, the International Oil Pollution Compensation Fund(s) will provide additional funding to the claimants (see below).

OPA 90 overview[17]

The American Oil Pollution Act of 1990[18] (OPA 90) is intended to cover oil pollution in the broad sense. Accordingly, it does not only apply to vessels

[9] Article III, 1.
[10] Article I, 6. and 8.
[11] Article I, 6. (a).
[12] Article II, 4. and 5.
[13] Article III, 2.
[14] Article V, 1. and. 9.
[15] Article V, 2.
[16] Article VII.
[17] Reference is made to general commentaries on the act such as Christopher Kende: "The United States approach" in *Liability for Damage to the Marine Environment* (ed. de la Rue) 2009 and J.E Nichols: "Oil Pollution Act of 1990 (OPA): Liability of responsible parties", 2013.
[18] 33 U.S.C. 2701-2761.

but also other facilities such as refineries, pipelines etc.[19]. Further, the scope of OPA 90 extends to more than persistent oil and hence applies to all sorts of oil pollution[20]. The scope of OPA 90 is akin to the CLC 1992 convention in that it applies to navigable waters, adjoining shorelines and the EEZ[21]. OPA 90 provides for liability to pay compensation in respect of much broader categories of losses than CLC 1992: a) response, removal, clean-up costs and "other damages" arising from a discharge or threatening discharge of oil; b) natural resource damages and the cost of assessing them; c) real and personal property damages; d) net loss of taxes, royalties, rents, fees and other loss of revenues; e) lost profits or impairment of earning capacity; f) net cost of public services necessitated by a spill response; and g) loss of subsistence use of natural resources[22]. The liability is strict and imposed upon the "responsible party"[23]. The responsible party is not only the owner of the vessel but can also be the operator and bareboat charterer. The liability under OPA 90 is not without exceptions and some defences are available to the responsible party: a) the act of God; b) the act of war; and c) the act or omission by a party not in a contractual relationship with the responsible party[24]. The liability under OPA 90 is limited but the right of limitation can easily be broken. . The limits are calculated by reference to the tonnage of the vessel. As regards double hull tankers, the limit is the greater of USD 1,900 per gross ton or either USD 16m (more than 3,000 GT) or USD 4m (3,000 gross tons or less[25]). The said limit is not absolute and may be breached, a) if the incident was proximately caused by violation of federal safety, construction or operating regulations; b) if the incident was proximately caused by gross negligence or willful misconduct; or c) if the responsible person fails or refuses to report the incident or to cooperate and assist in connection with the oil removal activities[26]. Under OPA 90 claims must be made against the responsible party or its guarantor for the reimbursement and compensation[27]. The responsible party is therefore under a duty to procure evidence of financial responsibility (so-called "COFR")[28]. This liability regime works in conjunction with the American Oil Spill Liability Trust Fund (the "OSLTF")[29]. The ultimate sum in terms of

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19 §10002(a).
20 §270[02](a).
20 §2701(23).
21 §2702(a).
22 §2702(b) (2) and §2706 (d)(1).
23 §2702(a).
24 §2703(a).
25 §10004.
26 §2703(b) and (c).
27 §2705(a).
28 §2716(a).
29 26 U.S.C 9509.

compensation by the fund is USD 1 bn. Further, specific state law regulation may be relevant in the individual cases.

Practical response to oil pollution in polar environments

How to respond to an oil pollution in a polar environment is of course highly relevant, both as a preventive or responsive measure but also in relation to the matter of calculating compensation as well as accepting claims when these are considered by the oil pollution compensation funds.[30] There is a number of bodies, which specialises in this type of problems. Firstly, the International Tanker Owners Pollution Federation Ltd ("ITOPF") is concerned with these challenges. So is the Oil Spill Recovery Institute in Prince Williams Sound established after the EXXON VALDEZ oil spill. Further, under the auspices of the Arctic Council, the Arctic Council Working Group on the Protection of the Arctic Marine Environment ("PAME") also researches these issues. In particular, the behaviour of oil in Arctic conditions creates Arctic specific difficulties: Extreme cold reduces the natural weathering processes. Further, pack ice dampens wave energy and reduces natural dispersion and emulsification. Finally, fast ice means that oil may become encapsulated. There are in reality three options in terms of response, namely 1) mechanical recovery, 2) chemical dispersion and 3) in-situ burning. These measures are also used in "traditional" oil spill response situations, but the Arctic conditions mean that these measures are not readily available always. Mechanical recovery firstly requires that necessary equipment and manpower is available. That is not the case as the coastal states' response apparatus is apparently not sufficient (at the moment but reportedly this is about to be remedied at least in some states). In any event, the likely remoteness of the place where an oil spill happens means that there will probably be significant lead time in terms of mobilising the response equipment, as such equipment either has to be chartered from other parts of the world and brought to the site or brought from bases in an Arctic coastal state. Secondly, the necessary manpower would often need to be transported to the site and indeed the site itself may not be difficult to get to; if accessible at all. Chemical dispersion is a remedy that is subject to the additional difficulty in that none of the Artic coastal states allow chemicals to be used in oil spill response at present. Accordingly, a specific permit would be required, if the need arises. Finally, in-situ burning requires that the oil is lit (usually by a so-called "HELI-torch") and hence lighting the oil may be impossible from a practical point of view.

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[30] See also Responding to Oil Spills in the U.S Arctic Marine Environment published by the National research Council 2014.

The pollution response infrastructure in the Arctic; legal framework

In 2013 the Arctic Council reached an agreement on cooperation on marine oil pollution preparedness and response in the Arctic. Under this agreement the parties are obliged to establish and maintain response facilities and to make these available amongst the members of the Arctic Council. Further, the 1990 International Convention on Oil Pollution Preparedness, Response and Cooperation applies in the Arctic and under this convention the member states are obliged to make their response facilities available to the other member states. Again, the real value of such undertakings is entirely dependent on there being the necessary hardware and software available. However, the activities in the Arctic region means that it is constantly being developed and the Russian government has made huge infrastructure investments in the area to aid further growth and shipping (e.g. the construction of a modern Arctic port at Sabeta). That should entail better conditions for building a proper oil pollution infrastructure in the Arctic. There are moreover port of refuge issues as coastal states would have to perform a proper risk assessment before allowing a vessel to enter a port of refuge. The coastal state's decision to allow or not allow a vessel to enter its ports will eventually also be subject to a reasonableness test when considering whether or not to compensate such coastal state later on. It should be mentioned in passing that in parallel the Arctic coastal states have entered an agreement[31] on search and rescue in 2011. This agreement requires these states to assist in search and rescue operations.

Insurance, IOPC Funds and OSLTF

By virtue of article VII, 1. of the CLC 1992 convention, an owner of a tanker is obliged to be insured for an amount up to the limitation amount. The 1992 Fund Convention offers compensation when: a) the damage exceeds the limit of a shipowner's liability under the CLC 1992; b) the shipowner is exempt from liability; or c) the shipowner is financially incapable to pay or the insurance cover is insufficient. The amount available (including the compensation available under CLC 1992 and the 1992 Fund Convention) is SDR 203m. The 2003 Supplementary Fund protocol provides for a supplementary fund with a limit of SDR 750m (including 1992 CLC and 1992 Fund Convention compensation). So far as the USA is concerned, the OSLTF provides additional funding so as to establish a maximum of USD 1 bn. per incident. The OSLTF is administered by the National Pollution Fund Centre (NPSC).

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[31] The Agreement on Cooperation on Aeronautical and Maritime Search and Rescue in the Arctic.

Assessing and admitting claims

The IOPC Funds have published a claims manual in 2013 to assist claimants. The main features of this manual concern: Clean-up and preventive measures, property damage, economic loss in the fisheries, mariculture and fish processing sectors, economic loss in the tourism sectors, measures to prevent pure economic loss, environmental damage and post spill studies[32]. By the same token, the CMI has drafted guidelines on oil pollution damage in 1994, which are largely based on the principles for admissibility of compensation claims developed by the Funds. When dealing with an oil spill in the United States, the practice of the NPFC will be relevant[33].

"Special" polar related compensation issues

An oil spill in the Arctic may trigger a number of problems, of which some are particular to this geographical area: The first concerns trans-frontier pollution because where an oil spill causes or threatens to cause pollution in more than one coastal state, the CLC 1992 will still only make one limitation amount available. That is also the case with the IOPC Funds and so claimants must compete. Where an oil spill causes or threatens to cause pollution both in a CLC 1992 state and in USA, the two legal regimes will work in parallel and that may create less or more tension among the claimants[34]. "Take the victim as you find him"? The fact that the oil pollution in the Arctic causes special problems as stated above means that one may question whether specific defences are available to the shipowners and responsible parties. Possibly, the fact that pollution response methods (currently) may be scientifically inadequate means that the damage and hence losses may be greater than in other marine environments. If so, who should bear the risk of this? As the legal regimes described in the foregoing do not distinguish sensitive environments, the short answer would appear to be that the victim must be taken as he is found. Hence, the fact that the infrastructure at the moment is insufficient, would entail greater losses than if the necessary aircraft, vessels, personnel and equipment were available locally. Port of refuge[35] is already a sensitive subject following the PRESTIGE oil spill in 2002 and one could envisage

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[32] See www.iopcfunds.org.

[33] See www.uscg.mil/npfc/.

[34] See also A.H.E. Popp: "A North American perspective on liability and compensation for oil pollution caused by ships" in *Liability for Damage to the Marine Environment* (ed. de la Rue) 2009.

[35] See generally Simon Baughen: "Maritime pollution and state liability" in *Pollution at Sea, law and liability*, 2012 (ed. Soyer and Tettenborn), p. 225 and specifically Måns Jacobsson: "Places of Refuge: Who Pays Compensation When Things Go Wrong?", in *Selected Issues in Maritime Law and Policy, Liber Amicorum Proshanto K. Mukherjee*, Nova Science Publishers New York 2013, p. 135-163.

Arctic coastal states denying access to a distressed tanker vessel simply on the basis that is impossible to perform a proper risk assessment. What measures are then "reasonable"? A claim must meet this test[36]. As fighting an oil spill will presumably be costly and maybe the fact that the result (and thus in reality return on the investment) can difficult to predict, discussions as to what measures are reasonable to take by a coastal state may arise. By virtue of article VI (a) of the CLC 1992, only reasonable reinstatement costs are admissible for compensation, but how does one reinstate or replace damage Arctic resources? The Arctic marine environment is likely to require many years to recover from an oil spill and the wild life can presumably simply not be replaced. If that is the case, how should protracted recovery periods and permanent damage to Arctic resources be dealt with under the CLC 1992 and the 1992 Fund Convention? Once arctic resources have been damaged by an oil spill, coastal states and/or private individuals may suffer losses until the environment has recovered. This puts a challenge in terms of how one should access such diminution in value. This is something that has been debated in the context of OPA 90[37] and it would seem to be a debatable matter in the Arctic. Finally, what if the pollution occurs in a High Seas area and does not threaten the geographical scope of CLC 1992 or OPA 90?[38]

Conclusion

The increased traffic in the Arctic inherently increases the risk of an oil spill. Indeed, some might say that such oil spill is an accident waiting to happen considering that the traditional navigational risks are accelerated in the Arctic and considering the other objective hazards. Equally, damage suffered by wild life and the environment would probably be far reaching and the lack of response infrastructure and methodology only serves to upscale the financial consequences of a spill. Further, there would appear to be special issues arising, if such oil spill affects international waters without threatning the Arctic coastal states. These issues warrant an investigation and a careful analysis as to whether the existing legal regimes are adequate to deal with the special challenges that face all stakeholders involved in polar shipping. Such deliberations are meaningless without also considering the current limitation and funding regimes and whether these can be considered sufficiently in this scenario. The CMI Polar Shipping working group is currently conducting an

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[36] On this topic generally see Måns Jacobsson: "How clean is clean? The concept of 'reasonableness' in the response to tanker oil spills", in *Scritti in Onore di Francesco Berlingieri, special issue of Il Diritto Marittimo*, 2010 p. 565.

[37] About the process see Kristina Alexander: "The 2010 Oils Spill: Natural Resource Damage Assessment under the Oil Pollution Act", publish by Congressional Research Service, 2010.

[38] The Norwegian Mechant Shipping Act has wisely taken such scenario into account.

in-depth study on the issues that can be expected to arise now and in the future with regard to claims for preventative measures and pollution damage in a Polar context. The working group will produce a paper that shall describe the international liability and compensation regimes in a polar context; applicable national environmental laws and emergency response measures in the Polar regions, any potential gaps that may exist with regard to liability and compensation in the event of pollution damage in the Polar regions and the resources need to respond to such event. The report will hopefully assist in the debate about the existing legal framework and the interest(s) that it should serve.

A MARITIME MISCELLANY

SHIP EMISSIONS – CHANGES DRIVEN BY NEW REGULATIONS

Peter Hinchliffe *

I suspect that this session is designed to give you all a break from the legal matters that are at the core of your meeting but the two issues that I want to discuss are at the very top of the agenda for the world's shipowners' as represented by ICS.

There are actually three regulatory subjects that dominate all high level ICS discussion at present; the Ballast Water Convention, the reduction of sulphur emission and the reduction of CO2 emission. They are positioned at the very top of our order of priority simply because of the cost impact across the entire industry – cost impacts that either are already - or have the potential to be - the biggest economic drivers that the industry has ever seen. I was asked to cover air emissions today and so I will set aside the problems of the Ballast Water Convention but can return to it in questions if you wish.

I am going to turn first to the reduction of sulphur emissions – on the face of it this is simply a matter of implementing MARPOL Annex VI. The regulatory requirement is a phased reduction in the amount of sulphur permitted in the fuel burned on board ships engaged in international trade. The current global limit for sulphur is 3.5% and 1.5% in certain designated Emissions Control Areas and the phased reduction takes this first to 0.1% in the ECAs next year and globally down to 0.5% in 2020. It sounds relatively simple but, in practice, it changes the very nature of the fuel that ships must burn.

Over the last 20 years or so shipping has fallen into an easy relationship with the refining industry – refineries have a waste product at the end of their process which they have a need to dispose and ships' engines can actually burn this – it is known as heavy fuel oil (HFO). Until now, this has been a symbiotic relationship that has provided shipping with a relatively cheap source of fuel, although the price has trebled in the last 10 years – the price today is around $600/tonne.

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The sulphur level can be reduced by blending down to around 0.5%. However, anything less than this will involve changing fuel to a distillate product. HFO is so thick and tarry that it can only be burned after heating; distillate may best be thought of as diesel. You can quickly see, for example, that the fuel handling arrangements required for each of these very different fuels will be different. It is possible to arrange the engine to burn either fuel but this involves a lengthy change over process and the provision of enough segregated tank space to hold adequate quantities of both fuels.

Another way of being compliant with MARPOL Annex VI is to fit some mitigating technology such as an Exhaust Gas Scrubber and to continue to burn HFO. But despite the fact that the Annex VI requirements were adopted in 2008, and trials of scrubbers and other technologies have been undertaken reliability of operation does not appear to have been proven. The industry does not yet have widespread confidence in the technology although some individual companies are persevering with trials.

It would seem then that most ships are likely to switch to distillate fuel. No problem you may think - but today the price of 0.1% low Sulphur fuel is around 50% more than that of HFO and fuel is already the dominant component of operating cost.

Rather unbelievably neither the regulator nor the industry has any clear idea of whether there is enough commercially available distillate fuel in the world to provide for 80,000 ships without a significant detrimental impact on other fuel markets such as road and domestic heating fuel.

For completeness I should mention that MARPOL Annex VI – which can be thought of as IMO's local air quality regulation - also includes regulation of other emissions such as NOx, but at this point I am changing subject to the other emission to air that shipping has to deal with – that of CO2. Please bear with me!

CO2 is a problem for all of us – how is global society ultimately going to deal with climate change? The UN Framework Convention on Climate Change has undertaken to agree a replacement for the Kyoto Protocol by 2016. But after years of wrangling and the resultant polarisation of member governments into developed and developing nations it does not yet even have a draft text on the table. The UNFCCC principle of Common But Differentiated Responsibility has become a millstone around its neck. Under the CBDR principle, the developed world bears responsibility for the historic emission of CO2 and must bear the cost of mitigation and adaption.

Once IMO had taken on the responsibility for reducing shipping's CO2 emissions it was in the interest of the shipping industry to work in concert with IMO member States to develop a regulatory system. We were starting from an acknowledged outstanding efficiency performance – 90% of world trade delivered for an emission cost of only 2.7% of the global CO2 inventory but we knew that with the help of technology, designers and builders and with

greater operational awareness of efficiency we could do a bit better. We ended up with a rather good piece of regulation – incorporated into MARPOL Annex VI – that ensured that all new ships from 2013 would be built with an efficiency index (like the white goods ABC rating but more complex) and that owners had to provide ships with an Energy Efficiency Management System advising on operational efficiency. We are therefore already on a pathway to deliver ships by 2030 that will be 30% more efficient than those of just a couple of years ago. The efficient operation of ships was also aided by the global economic downturn – in a quest to reduce the enormous economic impact of very low freight rates, operators in some trades were able to reduce passage speed and thereby save both fuel cost and CO2 emissions. We have yet to understand whether so called slow steaming will be an enduring feature of maritime trade. Other evolutionary changes in the industry have also made a great contribution to the efficiency of maritime trade. Most notable has been the trend for larger ships with much greater cargo capacity that not only needed investment during design and construction but also required supporting infrastructure changes in ports and terminals. There is a clear mood to address supply chain efficiency at every stage.

Unfortunately some governments felt that this was not enough and instead of waiting for the fleet replacement - with new efficient ships - that MARPOL is driving they wanted (and still want) to drive CO2 emissions down in the existing fleet. An objective probably shared by all owners in the interest of saving fuel cost but a measure that could not be accepted "at any cost". It was originally envisaged that IMO should discuss incentivising efficiency by requiring owners to engage in some form of Market Based Measure (MBM) – most famously either by requiring the trading of carbon credits or by applying a levy – an additional cost – to every tonne of fuel. The concept of an MBM was deeply troubling to an industry struggling with the global economic situation, the cost of the fuel change I described earlier and incidentally the enormous cost of buying and fitting ballast water treatment equipment. It was divisive inside the industry – some larger companies were happy to accept a trading requirement as they already engaged in commodity trading but the vast majority of smaller shipowners were very disturbed at having to invest in a system that sought to incentivise them to be more efficient and would at the same time cost money. Eventually ICS took the view and argued strongly that the only acceptable MBM - if one was required at all - was a levy. A position we still hold today - but the situation has moved on quite recently.

I mentioned earlier the UNFCCC principle of CBDR and it became the stumbling block for MBM discussion in IMO – IMO has a principle of No More Favourable Treatment – that all ships no matter where flagged should be treated equally and nobody could find an acceptable way of aligning the two principles. It can fairly be said that the IMO debate on MBM is on hold for the time being.

However, not to be defeated, some governments decided that a new mechanism – Monitoring, Reporting and Verification (MRV) – should be explored with a view to indexing ship efficiency against some metrics that might include distance travelled and some proxy for transport work done. This is the stage that IMO is at today – work is being done on the elements of a measuring and reporting system. We are happy to support the current work as we feel that measuring fuel consumption overall is a good thing and are fairly confident that we have a good story to tell. If it was to end there then perhaps some good would come of a new regulatory measure. But the reality is that there are some threats in the near future. Probably you are aware that UNFCCC has established a Green Climate Fund to provide a source of funding for adaptation and mitigation of climate change effects and decided that a significant proportion of the fund will be sourced from the private sector. There are only two truly global industries – aviation and shipping – and it is no surprise that both are in the firing line. There can be no doubt that the purpose of the MBM debate at IMO was to provide shipping's contribution to that fund and now we have to worry that perhaps the ultimate objective, for some States, of MRV is to index ships and charge less efficient older ships in order to feed that fund. Such a measure if applied without very considerable care could unbalance the market with severe impact on the structure of the industry. It is important to question whether the regulatory process should be about actually reducing CO2 emissions from ships or about drawing funds out of the industry for other purposes. At the moment, the motivation is far from clear and consequently very worrying.

To conclude, I am certain that the shipping industry is on a pathway to a low carbon future globally and low sulphur emissions locally. Nevertheless, our immediate concern is about the adoption of regulations without truly exploring the overall impact – impacts that actually go beyond the intended outcome. I haven't had time today to explore the interaction between regulations but will just briefly say that often they work against each other. A good example is the need to power new ballast water treatment equipment that works against the need to save fuel under CO2 regulations. Incidentally the reduction of NOx works in a contrary manner to the reduction of SOx.

My conclusion is that we have reached the point where a study of cost effectiveness and impact must be a fundamental part of regulatory development. It is no longer acceptable to develop each regulation in splendid isolation.

I hope I have given you a flavour of the regulatory challenge faced by shipping and thank you for listening.

THE WRECK REMOVAL CONVENTION – CURRENT STATUS AND ISSUES

Klaus Ramming*

The Nairobi International Convention on the Removal of Wrecks, 2007 (WRC), will enter into force on 14 April 2015, after Denmark, as the tenth contracting state, declared the ratification on 14 April 2014. The State Parties are Bulgaria, Denmark, Germany, India, Islamic Republic of Iran, Malaysia, Morocco, Nigeria, Palau, and the United Kingdom. Other states are expected to follow shortly. It is quite remarkable how quickly the Convention has come alive within a relatively short period of time since it was agreed upon in Nairobi on 18 May 2007.

In many respects the WRC corresponds to other liability conventions such as the International Convention on Civil Liability for Oil Pollution Damage, 1992 (CLC 1992), the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (Bunker Oil Convention) 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, not yet in force). However, the WRC goes beyond these Conventions. Although it is not expressly addressed in the WRC, one of the principal purposes of the Convention is to establish and clarify the rights of the coastal states in relation to the removal of wrecks outside of their territory, i.e. outside of the territorial sea, within the coastal state's exclusive economic zone and thus in an area where the coastal state has only limited powers, see Art. 55 et seq. of the United Nations Convention on the Law of the Sea (UNCLOS). In fact, the WRC rests and is built on UNCLOS, as the repeated references to UNCLOS in the WRC's preamble and in a number of Articles confirm. The WRC seeks to settle the potential conflict between the flag state's protection of the ship (or wreck) and the coastal state's interests to have the wreck removed. Remarkably, however, there is no requirement in the WRC that the ship (or wreck) flies the flag of a contracting state. And given the limited number of contracting states, any Affected State would normally apply the WRC against ships sailing under the flag of non-contracting states.

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* Co-President German MLA, Lebuhn & Puchta.

Geographical Scope of Application

The WRC applies to wrecks located within the Convention Area (Article 3.1). The Convention Area is defined in Article 1.1 as the exclusive economic zone of a State Party or, alternatively, if the State Party has not established an exclusive economic zone, as a corresponding area beyond the territorial sea of that state. In principle, the WRC is not applicable in the territorial sea of a contracting state. Here, the coastal state has full sovereignty with regards to wrecks, which are subject to the national law. Therefore, the coastal state's rights regarding wrecks may deviate if the wreck is located in the territorial sea or inner waters as compared to the exclusive economic zone.

However, under Article 3.2 WRC, a State Party may extend the application of the Convention to wrecks located within its territory, including the territorial sea ("Opt-in"). Declarations to this effect have been made by Bulgaria and the United Kingdom. The Convention Area, as per Article 1.1, therefore includes the Bulgarian and the United Kingdom's territorial sea. However, the WRC provides for certain reservations if it is applied in the territorial sea of a contracting state; see Article 4.4.

Application to Wrecks

The concept of a wreck under WRC is broader than one would normally expect. According to Article 1.4, wrecks include sunken or stranded ships or any part of such a ship, including any object that is or has been on board. This would include packed cargo such as containers but not liquids such as oil carried as cargo, for example, or the ship's fuel oil. The WRC also applies to any objects that are sunken, stranded or adrift at sea or if they have been lost at sea from a ship. In practice, quite a number of containers have been lost in bad weather. If they remain afloat, perhaps barely visible, they can prove to be a serious hazard to other ships. If these lost units are adrift within the exclusive economic zone of a State Party of the WRC, the Convention provides that the affected coastal state may take the necessary steps, ultimately at the cost of the Registered Owner of the vessel from which the containers were lost. Finally, the Convention also applies to ships which are reasonably expected to sink or strand.

The ship, the part of a ship or the respective object only constitutes a wreck if the relevant situation is the result of a maritime casualty, see Article 1.4. As per Article 1.3, this includes a collision of ships, stranding or other incident of navigation, or any 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.

Affected State vs. Registered Owner

One of the aims of the WRC is to determine which state should take the

lead as far as the removal of the wreck is concerned. That state is the Affected State as defined in Article 1.10 WRC. The Affected State is the state in whose Convention Area, i.e. exclusive economic zone or, in case of an "Opt-in", territorial sea is located. Other states, whether contracting states or not, will only play a minor role. The identity of the Affected State may change if the wreck moves from the Convention Area of one state to the Convention Area of another state. The opposite of the Affected State is the Registered Owner, i.e. the person registered as the owner of the vessel or, in absence of registration, the person owning the ship at the relevant time (Article 1.8 WRC). It is the Registered Owner who is liable for the removal of the wreck and any costs which the Affected State may incur in this respect. The WRC does not provide for the liability of other parties such as the charterers or the manager of the ship.

Hazard Determination

The linchpin of the WRC is the formal declaration made by the Affected State that the wreck constitutes a hazard. Article 6 lists a number of criteria which shall be considered by the Affected State when making that determination. The most important consequence of such a determination is the fact that the Registered Owner will thereafter be obliged to remove the wreck (see Article 9.2 WRC). The determination made by the Affected State may be subject to judicial review under national law. In Germany, a determination of this kind would be considered in an administrative act which may be challenged under the relevant principles of administrative law. However, it should be noted that it follows from the concept of the WRC that the Affected State has a certain scope for evaluation. As a matter of German administrative law, the courts would have very limited rights to interfere in this respect and would only be allowed to verify whether the administration observed the limits of its discretional powers and executed its discretion in a reasonable manner.

Reporting, Marking, Locating of Wrecks

As per Article 5, the State Parties shall require the masters and the operators of ships flying their flag to report to the Affected State without delay upon their ship being involved in a maritime casualty resulting in a wreck.

Under Article 7.1, upon becoming aware of a wreck, the Affected State shall use all practicable means to warn mariners and the states concerned of the wreck as a matter of urgency. If the wreck poses a hazard, the Affected State shall seek to establish the precise location of the wreck.

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.

Removal of the Wreck

If the Affected State determines that the wreck constitutes a hazard, the Registered Owner will have a duty to remove the wreck (Article 9.2 WRC). The Registered Owner must take all necessary steps to achieve this. He may contract with a salvor or any other person of his choice to remove the wreck. The Affected State's rights to stipulate conditions for such removal are restricted. It may only do so 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 9.4 WRC). Also, once the removal of the wreck has commenced, the Affected States' rights to intervene are limited in the same manner (Article 9.5 WRC).

However, if the Registered Owner fails to remove the wreck before the deadline set by the Affected State, or if the Affected State is unable to contact the Registered Owner, the Affected State may take the necessary steps to have the wreck removed by the most practical and expeditious means available, consistent with considerations of safety and protection of the marine environment (Article 9.7 WRC).

Independent of this, in circumstances where immediate action is required, the Affected State may immediately take the necessary steps to remove the wreck, again by the most practical and expeditious means available, consistent with considerations of safety and protection of the marine environment (Article 9.8 WRC).

The Registered Owner's Liability

Under Article 10.1 WRC the Registered Owner is liable for the costs of locating and marking the wreck as well as for its removal (unless this was carried out by Registered Owner himself as contemplated in Article 9.2). The Registered Owner's liability is only excluded in limited circumstances, i.e. if they resulted from an act of war or a natural phenomenon, if it was caused by a terrorist attack or by negligence of any authority responsible for the maintenance of navigational lights. This catalogue of exceptions corresponds with other conventions such as CLC 1992, the Bunker Oil Convention or the HNS Convention. Article 10.2 WRC clarifies that the Registered Owner's right to limit liability for the costs of locating, marking and removing the wreck, e.g. under the Convention on Limitation of Liability for Maritime Claims, 1976 (LLC), as amended, shall remain unaffected.

Article 11 WRC clarifies that other liability régimes such as CLC 1992, the HNS Convention and the Bunker Oil Convention shall take precedence over the WRC. Likewise, if the measures taken to remove the wreck are considered to be salvage, questions of remuneration or compensation shall be subject to the applicable salvage law.

Compulsory Insurance

In line with corresponding provisions in other Conventions such as the CLC 1992, the Bunker Oil Convention and the HSN Convention, Article 12.1 WRC requires the Registered Owner of a ship of 300 gross tonnage and above flying the flag of the State Party to maintain insurance cover (or an equivalent) in respect of his liability under WRC. The insurance should cover an amount equal to the limits of liability under the applicable law, but not exceeding an amount calculated in accordance with LLC 1996, as amended. The fact that an insurance is in force must be confirmed in a formal insurance certificate (Article 12.2-4 WRC). This document is issued by the state of the ships registry, if the ship is registered in a State Party. In other cases, the certificate is issued by the respective authorities of any State Party. Certificates issued by a State Party are recognized by all other State Parties (Article 12.9 WRC). Any claims for costs arising under WRC may be brought directly against the insurer (Article 12.10 WRC). The State Parties shall require all ships of 300 gross tonnage or above, even if not registered in a State Party, which enter or leave a port in its territory or arrive at or leave from an offshore facility in its territorial sea, to have an insurance in force in respect of wreck removal liability under WRC (Article 12.12).

Conclusion

The WRC is a further step to internationally unify the ship owners' liability for damages arising from the operation of a ship. After CLC 1992 and the Bunker Oil Convention, the WRC covers another type of risk related to ships. Once the HNS Convention is added to the catalogue, the system of ship owners' liability will be complete.

LOSS OF THE RIGHT TO LIMIT UNDER ARGENTINE MARITIME LAW

Eduardo Adragna*

A) Introduction

The aim of this paper is to explain a particular cause for which ship-owners and carriers may lose their right to limit liability under Argentine law.

My approach to the subject will be purely theoretical, taking into account that Argentine courts have not considered the issue[1].

As it is provided in international conventions, loss of limitation requires the claimant to prove that the damage resulted from an act or omission done with intent to cause (such) damage/loss, or recklessly and with knowledge that (such) damage/ loss would probably result.

In this sense, I must point out that Argentina is part of the Hague Rules, but not of the Visby Rules, which make reference to the topic at hand. Nevertheless, as you will see, the provisions of the Hague Visby Rules were incorporated to the shipping act of 1973.

Furthermore, Argentine is not part of the Convention on Limitation of liability for maritime claims (London 1976), but accepted the CLC/FUND protocols of 1992.

On the other hand, Lawmakers and judges have been reluctant to recognize degrees of fault.

In this context, the sanction of loss of the right to limit is provided in three areas:

- Ship-owners' liability
- Carriers' liability (cargo/passengers)
- Liability for oil spills.

Appealing to brevity I will only refer to the first two subjects.

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1 An explanation may come from the fact that gold parameters in the limitation system in force make limits too high – often beyond the value of the damages involved-. On the other hand, air carriers/operators liability rules are not of direct application in maritime cases as stated inter alia in "Antartida Compañía de Seguros c/ The Paola C" Court of Appeals in Federal Civil and Commercial matters, Buenos Aires, 13/09/1988.

B) Shipowners Liability

Regarding ship-owners liability[2], the system is similar to the outcome of the US Sirovich Act of 1.936: a mixed of abandonment and gross tonnage limitation in case of personal injuries or death.

According to art. 175 of the shipping act, the owner cannot limit liability when there is personal fault from his part[3].

But on the other hand, seafarers cannot limit when the damage was intentional or if they acted being aware that their acts would cause damage, as states art. 181 2nd paragraph.

C) Carriers Liability

With regard to carriers' liability, I must point out that according to the applicable local rules, both to Bill of Ladings and voyage charter parties.

In this sense, the act is clear and provides in art. 278 that the carrier shall not be entitled to limitation if the damage resulted from an act or omission done with intent to cause damage, or recklessly and with knowledge that damage would probably result (*dolus eventualis*).

In the same cases, servants or agents cannot invoke the provisions regarding the benefit of limitation, according to article 290[4]5 .

As you see, the Argentine regime accepts in this respect the provisions of article 4 point 5 e) of the Hague Visby Rules.

D) To conclude.

By way of conclusion with this brief review, I would like to make a final comment and to pose a question.

It deserves clarification that while Argentina is not part of neither the Hague Visby rules nor to the 1976 Convention on Limitation of liability, this fact does not imply that the parties involved in a particular claim, at time to solve it privately, would not take into account the legal extent of the benefit of limitation, which parties know may be invoked if the case is presented before courts. Then, at some point, the risk of loss of the right to limit determines the way the conflicts are actually settled.

Moreover, a question may arise minding any insertion of paramount

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2 The shipping act of 1973 was modelled following the Italian Code of 1942.

3 Note that Argentine is not part of 1957 Convention on limitation (Nor to the 1924 Convention).

4 Art. 340 of the shipping act -related to liability of carriers of passengers – refers to an act or omission done with intent to cause damage, or recklessly and with knowledge that damage would probably result. Same formula as the Athens convention 1974, art. 13 (accepted by Argentina).

clauses, is fully permitted under argentine law. All of the sudden, we need to answer:

Up to what extent Argentine judges should apply, in international cases governed by the Hague rules, the sanction of loss of limitation, as an application of the international public policy from internal/local source?

RECKLESSNESS WITH KNOWLEDGE

Duygu Damar*

Ladies and gentlemen,

The topic of today's panel is "recklessness with knowledge of the probable consequences", a fault degree, which deprives the actors of the maritime sector of their privilege to limit their liability. I would like to start with a brief look at the historical background and explanations on this fault degree in common and civil law[1]. Thereafter, in the light of these explanations, I would like to share my comments on a recently decided case by the Canadian Supreme Court.

The phrase "intent to cause damage, or recklessly and with knowledge that damage would probably result" has its roots in English law. Sec 55 Marine Insurance Act of 1906 first states the general principle that the insurer is liable for any loss proximately caused by a peril insured against. Then, the provision states another general principle and provides that the insurer is not liable for any loss, which is not proximately caused by a peril insured against; the insurer, particularly, is not liable for the loss caused by the wilful misconduct of the assured. Thus, if the assured deliberately caused the loss, it will not be entitled to the insurance benefit.

The term "wilful misconduct" was first employed in an international transport law convention by the Warsaw Convention on international air carriage in 1929. Art 25 of the Convention provides that the carrier will be deprived of its right to limit, if the damage was caused by its wilful misconduct or by such fault which is considered to be equivalent to wilful misconduct. This awkward formulation goes back to the discussions held during the diplomatic conference, which has given its final shape to the Convention. The authentic version of the Warsaw Convention is in French. The French term "*dol*", which was first used to define the fault degree resulting in unlimited liability, caused heated discussions at the diplomatic conference. In order to

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1 For more information see Duygu Damar, *Wilful Misconduct in International Transport Law* (Springer 2011).

enable jurisdictions to choose the equivalent legal term used by their own legal system, the drafters came up with the phrase "*dol* or fault considered being equivalent to *dol*". Thus, courts of the civil law system would deprive the air carrier of liability limits in case of *dol,* which corresponds to the Roman law fault degree *dolus*; and courts of the common law or other law systems alien to the concept *dol* would use an equivalent fault degree to break the liability limits. After the final version of the provision had been adopted, the British delegation stated that it is a question of legal terminology and that they will translate the French term *dol* into English as wilful misconduct which is a well-known and well-defined term in English law.

In the application of the provision, courts of common law analysed wilful misconduct only, since common law system is not familiar with any type of fault that is equivalent to wilful misconduct. Therefore, they have emphasized the state of mind of the wrongdoer and analysed whether the wrongdoer intentionally caused damage or harm, or whether the wrongdoer's act or omission was accompanied with reckless and wanton disregard of the probable consequences. In contrast, courts of civil law based their judgements not only on the Roman law concept of *dolus*, but also on gross negligence which was considered an equivalent fault degree to *dolus* by all civil law jurisdictions. Regarding gross negligence, the crucial point is whether the wrongdoer showed the necessary care that is expected of a reasonable person; not his/her state of mind.

This difference in the interpretation of Art 25 led to a severe difference between common and civil law judgements which in return caused forum shopping. Therefore, among other provisions, Art 25 has been amended by the Hague Protocol of 1955. Instead of making reference to legal terminology, condition giving rise to unlimited liability has been defined. As a result, according to the amended version of Art 25 of the Warsaw Convention, the air carrier is deprived of its right to limit if the damage is the result of an act or omission done with intent to cause damage, or recklessly and with knowledge that damage would probably result. It is clear that this phrase is the definition of the common law fault degree of wilful misconduct.

This phrase has been employed by nearly all international conventions on transport law, including by international conventions on the carriage of passengers and goods by sea, pollution conventions and convention on limitation of liability. With slight variations, all of these conventions provide that the person in question is not entitled to limit its liability if it is proved that the damage is caused by its act or omission done with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result.

The fault degree in this phrase has two components: the first one is an "act or omission done with the intent to cause damage." It refers to the gravest degree of fault for which it is necessary that the person in question have acted

or omitted to act intentionally and in order to cause the damage he or she has foreseen and chosen to cause. This component poses no difficulty for civil law systems: It is intentional wrongdoing which is known as *dolus directus*.

However, the second component, an "act or omission done recklessly and with knowledge that such damage would probably result" is quite unfamiliar to civil law systems. This degree of fault requires both a reckless act or omission, and knowledge of the probable consequences of that act or omission. A reckless act or omission requires a conduct of conscious and unjustifiable risk taking. Moreover, the person in question must foresee the consequences of the reckless act or omission. Thus, perception of the wrongdoer as to the existence of the unjustifiable risk plays a crucial role for the second component. Finally, it is not sufficient that the wrongdoer foresees the risk; he/she should also believe that it will not occur. In short, the wrongdoer's act or omission is reckless, if not intentional. And the wrongdoer foresees the probable result of that act or omission, but simply is not concerned with whether it may occur or not.

This second component causes difficulties in determining the corresponding fault degree in civil law. There have been a variety of views on the issue ranging from advertent gross negligence to *dolus eventualis*. In advertent gross negligence, the person in question violates the duty of care in an unusually grave manner and foresees the probable consequences; however believes that the harmful result will not occur. Where recklessness with knowledge differs from advertent gross negligence is the attitude of the wrongdoer towards the probable consequence of the act or omission. In advertent gross negligence, the wrongdoer sincerely believes that the act or omission will not result in damage; whereas in recklessness with knowledge, the wrongdoer just does not care. Therefore, in my opinion, the phrase "recklessly and with knowledge that the damage would probably result" corresponds to the civil law fault degree *dolus eventualis*.

With this historical background and explanations in mind, I now would like to focus on the Peracomo decision of the Canadian Supreme Court[2] which has been brought to our attention by the organizers of this panel[3]. Mr Vallée who is the sole shareholder of the Peracomo Incorporation which owns a fishing vessel, was fishing in the St. Lawrence River when the anchor snagged a submarine cable on the river bottom. Mr Vallée was aware of the risk that the cable might be in use, but believed that it was not and therefore cut the cable. It was a live fiberoptic cable and the cut resulted in almost $ 1 million damage. The court of first instance and the Court of Appeal ruled that Mr Vallée was

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[2] *Peracomo Inc. v. Telus Communications Co.*, 2014 SCC 29.

[3] For a detailed comment on the case see Duygu Damar, 'Limitation of Liability without Insurance Benefit', LMCLQ (forthcoming).

not entitled to limit his liability according to Art 4 LLMC, and he has also lost his insurance cover according to the Canadian Marine Insurance Act, which states – like the English Marine Insurance Act – that the insurer is not liable for the loss caused by the wilful misconduct of the assured. On appeal, the Supreme Court ruled that the fault standard in Art 4 LLMC and the Marine Insurance Act are not the same; that the Convention requires a higher degree of fault compared to the Marine Insurance Act; thus that the "breakability and insurability are [not] coextensive." The Court further took the view that the fault degree wilful misconduct does cover not only intentional wrongdoing but also "conduct exhibiting reckless indifference in the face of a duty to know". According to the Court, Mr Vallée's "conduct exhibited a reckless indifference to the possible consequences of his actions of which he was actually aware" and that wilful misconduct "requires, […], simply misconduct with reckless indifference to the known risk despite a duty to know." As a result, the Supreme Court decided that Mr Vallée did not lose his right to limit liability, but did lose his insurance cover.

First of all, I – with reference to the historical background of the phrase "recklessness with knowledge of the probable consequences" – respectfully disagree that the fault degree employed by Art 4 LLMC and the wilful misconduct are not the same. As addressed earlier, the phrase which is commonly used in international maritime conventions is the definition of the common law fault degree "wilful misconduct". Therefore, the criterion for unlimited liability and loss of the insurance cover is the same. If a person is guilty of wilful misconduct, he/she can benefit neither from limitation of liability nor from insurance cover. The breakability starts, indeed, where insurability ends.

Secondly, in my opinion, the phrase "reckless indifference in the face of a duty to know" is somewhat problematic. The Court uses this phrase as a component of wilful misconduct. However, duty to know relates to the standard of the duty of care expected of a reasonable person, thus to the standard of negligence. For wilful misconduct, actual knowledge is required. The wrongdoer must be actually aware of the possible consequences of the act or omission, and must be nevertheless indifferent to those consequences. Thus, reckless indifference "in the face of a duty to know" is not sufficient for a finding of wilful misconduct; reckless indifference despite the knowledge of the probable consequences is required.

"RECKLESSLY AND WITH KNOWLEDGE" IN JAPANESE LAW

Gen Goto*

I. Introduction

Current Japanese law utilizes two types of standard for breaking the limitation of carrier's liability. One is "recklessly and with knowledge that damage would probably result",[1] which derives from various international conventions. The other is "gross negligence",[2] which is more traditional to Japanese law.[3]

This paper analyzes how these two standards have been interpreted by Japanese courts.

II. Gross Negligence

Let's start with the traditional "gross negligence".

This concept is used in various areas of law, such as tort, contract, insurance and corporation law, in Japan, but in two different meanings.[4] One is

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1 Art.13-2 of the International Carriage of Goods by Sea Act (Japanese COGSA) (based on the limitation break provision of the Hague-Visby Rules, Art.4(5)(e), but also used for excluding the benefits of damage-computation rule (Hague-Visby Rules, Art.4(5)(b)); Art.3(3) of the Act on Limitation of Liability of Shipowner (based on LLMC '76/96, Art.4); Art.25 of the Warsaw Convention amended by the 1955 Hague Protocol; Art.22(5) of the Montreal Convention.

2 There is no statutory limitation of liability for land and domestic sea carriage in Japanese law. Art.581 and Art.766 of the Commercial Code, however, deny benefit of damage-computation rule to grossly negligent carriers for those carriers. Also, case law has applied the same standard for excluding exemption of carrier's liability for undeclared precious goods (Art.578, Commercial Code) and breaking contractual limitation of liability.

3 There is a possibility that the standard of Art.581 will be modified to "recklessly and with knowledge that damage would probably result" as a result of the current law reform project of transport and maritime law. No final decision has been made on this point yet as of September 30, 2014. For the backgrounds of this reform process, *see*, Manami Sasaoka, *Reform of Transport Law in Japan*, 35 Zeitschrift für Japanisches Recht/Journal of Japanese Law 39 (2013).

4 *See generally*, Hiroto Dogauchi, *Jyu-kashitsu Gainen ni tsuite no Oboegaki [On the Concept of Gross Negligence]*, in Minpo-gaku ni Okeru Ho to Seisaku [Law and Policy Making in Civil Law] (Yoshihisa Nomi et al. ed., 2007) 537.

state of mind that is nearly equal to "intentional" or "willful", focusing on the easiness of foreseeing the damage, and the other is significant lack of due care, focusing on the degree of deviation of the actual conduct from the expected conduct.[5] The former is a subjective standard whereas the latter is an objective standard, and it would be easier to establish gross negligence with the latter.

For "gross negligence" used in transport law, the Supreme Court of Japan seems to have adopted the latter meaning. For example, in a case where a cardboard box containing jewelry was lost presumably because it fell off from the carrier's minivan as the hatchback door of the van opened while driving, the court found that the driver was grossly negligent for the loss of the goods since he significantly lacked due care as he started the car without checking whether the door was completely locked, even though he had never experienced similar accident.[6] Also, in a case where a box of diamonds, marked as precious goods and received for air carriage, was found to be missing upon arrival of the aircraft, the court held that the cause of the loss of the box must be theft by employees of the carrier or mistake of them during loading or unloading, and that in the latter case the employees were grossly negligent as it should have been easy to notice a mistake by paying only a little attention.[7]

III. Recklessly and with Knowledge

1. How Different from Gross Negligence?

Then, is the standard of "recklessly and with knowledge that damage would probably result" interpreted differently from "gross negligence"? In the literature, it has been emphasized that the "recklessly" standard is a different concept from "gross negligence", closer to *dolus eventualis*, and should be interpreted as such. So, how about case law?

Unfortunately, there is no maritime case law interpreting the standards for the limitation break under Japanese COGSA or Japanese LLMC. The only published court decision on this subject regards a tragic accident of a passenger aircraft.[8]

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[5] Some cases and commentators use mixed expression such as "a significant lack of due care that is nearly equal to 'intentional' or 'willful'" to define gross negligence. They vary on whether to emphasize the first half or the latter half.

[6] Supreme Court of Japan, March 25, 1980, 967 Hanrei Jiho [Case Law Times] 61 (denied the carrier of exemption of liability for undeclared precious goods under Art.578 of Commercial Code, but at the same time reduced the amount of damage awarded to the shipper by taking the account of the shipper's fault for not declaring the value).

[7] Supreme Court of Japan, March 19, 1976, 30 Saiko Saibansho Minji Hanreishu [Private Law Cases of the Supreme Court] 128. This was a case regarding Art.25 of the original Warsaw Convention, and the court held that "fault —- considered to be equivalent to willful misconduct" meant gross negligence.

[8] Nagoya District Court, December 26, 2003, 1854 Hanrei Jiho [Case Law Times] 63, *affirmed by* Nagoya Court of Appeals, February 28, 2008, 2009 Hanrei Jiho [Case Law Times] 96.

2. In re China Airlines

On April 26, 1994, Flight 140 of China Airlines, departed from Taipei, clashed into Nagoya Airport just before its landing, killing 249 out of 256 passengers and all 15 crews. The main cause of the crash was an operational error by the co-pilot. Specifically, he first accidentally turned on the go-around mode switch during the landing procedure, which made the aircraft to go upwards. In an attempt to recover, he turned on the landing mode switch and the auto-pilot system without notifying the captain. As the aircraft was designed to be unable to cancel the go-around mode just by turning on the landing mode switch, the auto-pilot system was turned on under the go-around mode and the aircraft kept going upwards. The co-pilot then tried to override the auto-pilot system by pushing down the control lever very hard. This attempt made matters worse, as it moved the stabilizer and the elevator of the rear wing in the opposite directions and led the aircraft to a dangerous situation called "out of trim". This caused the auto-pilot system to increase propelling power. Eventually, the captain took over the co-pilot, and decided to give up landing and try again. This decision suddenly left the aircraft with a strong power to go upwards, and as the aircraft ascended in a sharp angle, it lost its speed and crashed.

One of the survivors and families of 87 victims sued the airline (and the manufacturer of the aircraft for serious design errors). China Airline invoked the limitation of liability under Warsaw Convention as amended by the Hague Protocol, which was 250,000 francs (approximately 20,000 USD) per passenger. Nagoya District Court, however, found that the damage resulted from an act that was done "recklessly and with knowledge that damage would probably result", and denied the benefit of limitation.

The court's logic to break the limitation of liability was as follows: First, the court found from evidences including conversation recorded in the flight recorder that the co-pilot recognized that the control lever was heavy and that the co-pilot knew from the heaviness of the control lever that he was trying to override the auto-pilot system. From the basics of aircraft operation, highlighted warnings in the operation manual and particular training that the co-pilot took with a flight simulator, this knowledge meant that he knew that his attempt would put the aircraft in out-of-trim and might cause crash. Thus, the co-pilot had knowledge that damage would probably result, and continuing to push down the control lever with such knowledge was indeed reckless.

3. Analysis

This case might be a rare one that found an operator of an aircraft acted "recklessly and with knowledge that damage would probably result" even though his own life was at stake.[9] To reach such conclusion, the court inferred

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[9] *See*, Duygu Damar, Wilful Misconduct in International Transport Law (2011) at 104.

the co-pilot's "knowledge" from objective circumstances such as basics of aircraft operation. This is quite similar to questioning whether he has acted as he should have.[10] Although there is no reference to "gross negligence" in the decision, this is in line with the Supreme Court's cases discussed in Part II above.

Would this decision on air transportation affect future maritime case law? In author's view, the stance of Nagoya District Court is applicable to "recklessly and with knowledge" standard in maritime law and not specific to air transportation, as the court rejected the plaintiffs' argument that the limitation break should be made easier since the limitation of liability for passenger damage in air carriage is out of date.[11] There is, however, a large difference between air transport conventions and maritime conventions that recklessness of servants and agents counts for limitation break in the former but not in the latter.

Thus, court decisions breaking limitation of liability of carriers of international sea carriage or liability of shipowners would still remain rare.

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[10] Interestingly, the court also held that it cannot break the limitation of liability with a finding that the actor "should have known" that damage would probably result, by referring to the drafting process of the Hague Protocol.

[11] The plaintiffs referred to the so-called "Japanese Initiative" in 1992 (Japanese airlines declared not to invoke the limitation of liability for passengers) and the formation in 1999 and entry into force in 2003 of Montreal Convention that has no limitation of liability for passengers.

RECKLESSLY AND WITH KNOWLEDGE THAT DAMAGE WOULD PROBABLY RESULT: THE INTERPRETATION OF TERM BEFORE THE CROATIAN COURTS

Mišo Mudrić*

1. Introduction

The application of term "*recklessly and with knowledge that damage would probably result*" before the Croatian courts has not, as of yet, made an impact with regard the loss of right to limit liability in the maritime related cases.[1] The older case practice (dating to the Yugoslavian jurisprudence) did, however, recognize and apply the term with regard the issue of limitation of liability. The article analyzes older, Yugoslavian case practice, and discusses the impact of that practice on the current Croatian law and practice, especially due to the fact that a number of recent cases, also to be discusses in the article, demonstrate the (negative) impact of the reckless behavior on the loss of marine insurance coverage. The term recklessness is readily interpreted and employed before the Croatian criminal and minor offences courts (usually applied in cases of the breach of statutory norms in general and the breach of traffic regulation with regard the application of mandatory motor vehicle liability insurance). In relation to the maritime related regulation, the reckless behavior standard is regularly utilized within the Croatian Maritime Code,[2] usually following the ratification and implementation of relevant international law.[3] Thus, the term can be found, to name a few examples, in Article 390 in

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1 This being of no surprise, given the perceived lack of similar case law in other jurisdictions. See, for example, the decision of the Canadian Supreme Court in: *Peracomo Inc. v. TELUS Communications Co., 2014 SCC 29*; and, the opinion of Lord Phillips MR in: *Schiffahrtsgesellschaft MS 'Merkur Sky' m.b.H. v Ms Leerort Nth Schiffarhts G.m.b.H (The 'Leerort')* [2001] 2 Lloyd's Rep 291, CA, at 294, para 11 and para 13. See, however: *Margolle and Another v. Delta Maritime Co. Ltd. and Others* (*The "Saint Jacques II" and "Gudermes"*), [2002] EWHC 2452 (Admtly.).

2 Maritime Code (Official Gazette, No. 181/04, 76/07, 146/08, 61/11 i 56/13)

3 For more general information on the Croatian maritime related regulation, see: Mudrić, Mišo "*Panorama del derecho comparado: Croacia*", Anuario de derecho marítimo, vol. 29 (2012), at 309 *et seq*.

relation to the 1976 Convention on Limitation of Liability for Maritime Claims, in Article 566 in relation to the Hague-Visby Rules, in Article 623 in relation to the Athens Convention, in Article 816 in relation to the 1992 CLC Convention, and in Article 823b in relation to the Bunkers Convention.

2. *Overview of Legal Theory*

The Croatian legal theory classifies the term "*recklessly and with knowledge that damage would probably result*" as a type of *dolus* (intentional behavior) with a subjective element.[4] The recklessness is considered to be an ultimate breach of due diligence (the objective criteria to be determined by the court) with an actor's awareness that the damage will probably occur. The latter implies that it is necessary to establish a link between the actual damage and the actor's cognitive recognition, at that precise moment under those precise circumstances, of a strong possibility that such damage will occur (the subjective criteria to be determined by the court).[5] Thus, the reckless behavior is generally perceived as an intentional conduct of a lesser magnitude (*dolus eventualis*). In comparison to other legal systems, the Croatian theoretical approach predominantly resembles the German theory and practice, where the recklessness is included in the wider definition of intentional conduct (the actor has had knowledge of all the relevant circumstances and a clear understanding of obligations, but was indifferent as regards the consequences of the conduct[6]). The German court practice also recognizes such instances where a gross negligent conduct (*grobe Fahrlässigkeit*)[7] constitutes such a grave violation of professional duties (*grober Verstoß gegen Berufspflichten*), that it is automatically presumed that the actor has caused the damage.[8]

The Croatian approach to a certain extent resembles the French theory and practice with regard the instance where the gross negligent conduct (*faute*

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[4] For an analysis of relevant case law with regard the loss of limitation of liability, see: Marin, Jasenko, "*General and particular limitation of liability for maritime claims in the recent foreign court practice*", Comparative Maritime Law, vol. 50 (2011), 165, (in Croatian) at 91-115. For more general information, see: Grabovac, Ivo, "*A note on the contemporary interpretation of the term recklessly and with knowledge that damage would probably result: with regard the case practice*", Split Faculty of Law Collection of Papers, vol. 49, 3/2012, (in Croatian) at 443-448.

[5] Compare: *Peracomo Inc. v. TELUS* Communications, *supra note 1*, where the Canadian Supreme Court argued that the defendant was not aware of the actual loss that has occurred due to his conduct; *MSC Mediterranean Shipping Co SA v Delumar BVBA* (*the* "*Rosa M*") [2000] 2 Lloyd's Rep 399; and, *Schiffahrtgesellschaft MS Merkur Sky MBH & Co v MS Leerort Nth Schiffahrts Gmbh &Co KG*, *supra note 1*.

[6] See: *Markesinis, Basil S./Unberath, Hannes/Johnston, Angus/Hirsch, Günter*, The German Law of Contract, A Comparative Treatise (Oxford: Hart, 2nd ed., 2006), at 439.

[7] See: *Grundmann, Stefan,* Verantwortlichkeit des Schuldners, in: Münchener Kommentar zum Bürgerlichen Gesetzbuch, Band 2, Schuldrecht, Allgemeiner Teil, §§ 241-432 (München: Beck, 6th ed., 2012), 752, Rn. 83 *et seq*. (at 786 *et seq*.).

[8] See: *Sprau, Hartwig,* Unerlaubte Handlungen, in: Palandt Bürgerliches Gesetzbuch (München: Beck, 72nd ed., 2013), 1312, § 823, Rn. 45, at 1324

lourde and *faute inexcusable*) – perceived as an extremely serious negligence[9] – includes the reckless behavior,[10] in which case it is plausible that the court will decide against allowing the right to limit the liability.[11] The English (England and Wales) case practice tends to merge the effects of gross negligent and reckless behavior, as visible from the *Hellespont Ardent*,[12] where the court determined that a gross negligent conduct is to be understood as a serious negligence consisting of a reckless disregard of the risk involved and the consequences of a specific conduct.[13] The American (United States) approach retains the objective criteria in assessing the reckless behavior. The Third Restatement of Torts defines a reckless behavior as such behavior where an actor has the knowledge that the harm will occur, but fails to adopt such minimal precautions in order to prevent the harm from occurring, thus being indifferent to the harm occurring.[14] American authors predominantly consider the difference between willful, wanton or reckless and gross negligent conduct to be more a question of quality than a degree of lack of care.[15]

3. *Older Case Practice*

3.1. Reckless behavior leading to the loss of right to limit liability

During the last 24 years, there is no Croatian maritime related case practice in existence that would demonstrate the application of the term recklessness with regard the loss of right to limit liability. It is, therefore, necessary to examine the older case practice from the Yugoslavian period,

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[9] See: *Fabre-Magnan, Muriel*, Droit des obligations, Vol. 2: Responsabilité civile et quasi-contrats (Paris: Presses Universitaires de France, 2nd ed., 2010), at 260 *et seq*.

[10] For more information, see: *Viney, Geneviève/Jourdain, Patrice*, Traité de Droit Civil, Les Conditions de Responsabilité (2006), at 644-659; and, Katisvela, Marel, "*Loss of the Carrier's Limitation of Liability under the Hague-Visby Rules and the Warsaw Convention: Common Law and Civil Law Views*", (2012) 26 A&NZ Mar LJ, at 128-129. Also see: Cass. com., Bull. civ. 2006 IV No. 143 p. 152.

[11] For more on this issue, see: Miribel, Stéphane, "*L'*affaire Rosa Delmas*:* Limitation *et* faute inexcusable*, une* nouvelle approche*?*", Le Droit Maritime Français, vol. 63, No. 730, (2011), at 863-872.

[12] *Red Sea Tankers Ltd v Papachristidis* (*The Hellespont Ardent*), [1997] 2 Lloyd's Rep. 547.

[13] Compare to: *Joint Stock Discount Co. v. Brown*, (1869) L.R. 8 Eq. 381, "willful neglect" – a conduct where a person is aware that such a conduct will result in a breach of duty, and intends to undertake such a conduct, or is reckless by not caring whether the breach of duty occurs; *Albert E. Reed & Co., Ltd. v. London & Rochester Co. Ltd.*, [1954] 2 Lloyd's Rep. 463, at 475; *Nugent and Killick v. Michael Goss Aviation Ltd. and Others*, [2000] 2 Lloyd's Rep. 222; and, *Shawinigan, Ltd. v. Vokins & Co., Ltd.*, [1961] 2 Lloyd's Rep. 153. – on the term "recklessness".

[14] *American Law Institute*, Restatement of the Law Third: Torts – Liability for Physical and Emotional Harm (St. Paul: American Law Institute Publications, 2010), Volume 1, § 2., Recklessness, at 16-17.

[15] *Prosser, William Lloyd/Keeton, W. Page*, On the Law of Torts (St. Paul: West, 5th ed., 1984), at 212-214.

delivered by the same courts (in terms of jurisdiction and location), but within a (to a certain effect) different maritime legal setting and court order setting. It is important to note that, with regard the older case practice to be discussed in the further text, the Hague-Visby Rules were still not in force. Thus, in order to successfully deny the defendant's right to limit the liability, it was necessary to prove either the intentional conduct (*dolus omnia corumpit*) or the gross negligent conduct (Hague Rules standard) on the side of the defendant (concerning the case practice to be analyzed, the courts have, nevertheless, attempted to incorporate a more burdensome standard into their deliberations).[16] Although the Croatian legal system does not apply the Law of Precedence principle, the lower courts and practitioners tend to carefully consider the decisions of higher courts. In addition, it is not unusual to find recent judgments where both the parties and the courts have referred to the older practice, dated before the 1990's.

3.2. More than gross negligent

In the case Pž-1367/80-2,[17] held before the High Commercial Court in Zagreb in 1981, the consignor (claimant) claimed damages against the carrier (defendant) for the breach of contract of carriage. The consignor contracted the sea carrier to carry the cargo (state owned museum pieces and other artifacts to be show in an exhibition abroad). The carrier issued the Bill of Lading (in further text: B/L), but never actually loaded the cargo on-board. Upon arrival to the port of destination, this was discovered. The consignor – due to the timing of the exhibition – could not afford to await the second voyage of the same carrier's vessel or an alternative voyage of the same carrier's other vessel, or contract an alternative sea carrier, but instead contracted a road carrier and an air carrier to deliver the cargo to the place of delivery (location of the exhibition). After the carriage was completed, the consignor (acting as a shipper), demanded compensation from the sea carrier for the road and air carriage costs, which were necessary, as the claimant argued, due to the fact that the sea carrier breached the contract by not delivering the goods in due time. The first instance court held the carrier liable for the damage (the carrier was held to be in the breach of contract for the non-delivery of cargo) and furthermore held that the carrier is not to be allowed to limit his liability. The

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[16] The Hague-Visby standard reads as follows: Article IV, 4., (e) "*Neither the carrier nor the ship shall be entitled to the benefit of the limitation of liability provided for in this paragraph if it is proved that the damage resulted from an act or omission of the carrier done with intent to cause damage, or recklessly and with knowledge that damage would probably result*", The Hague-Visby Rules - The Hague Rules as Amended by the Brussels Protocol 1968.

[17] Pž-1367/80-2, High Commercial Court, 1981. See: Vujović, Veljko, "*Decisions of domestic courts and other state authorities: Compensation of damage due to non-completion of the contract of sea carriage*", Comparative Maritime Law, vol. 24 (93), (1982), (in Croatian) at 56-57.

first instance court refused the defendant's plea to utilize the right to limit liability, arguing that the road and air carriage related costs did not occur during the sea carriage, thus rendering the maritime related provisions (including the carrier's right to limit the liability) irrelevant. The second instance court – the High Commercial Court – acting upon the defendant's appeal, confirmed the first instance court's decision, but offered an alternative reason with regard the loss of right to limit the liability. The Court argued that the defendant's conduct was "*almost intentional*", stipulating that the carrier was "*more than gross negligent*". Although the law in force (Hague Rules), as noted earlier, required the proof of intentional conduct or gross negligent conduct to prevent the defendant from availing the right to limit, the Court found it necessary to highlight the defendant's lack of proper conduct that constituted an ultimate breach of due diligence and disregard of the expected professional behavior standard. It is likely, although not clearly expressed in the Court's decision itself, that the adjudicators handling the case were fully aware of the change in the relevant international law (Hague-Visby Rules coming into force, and the significant change of the standard – reckless behavior instead of gross negligent behavior) – expecting this law soon to be ratified and incorporated into the relevant domestic law – and thus, already at that time, making an attempt to reason *de lege ferenda*. The Court, however, did not offer an explanation on what is meant by the expression "*more than gross negligent*", but, instead, pointed to the fact, established before the Court, that the sea carrier was dully informed about the time-frame (and the start) of the exhibition, therefore knowing in advance that the late delivery or non-delivery will cause serious problems to the consignor. The carrier attempted to escape liability by blaming the consignor for failing to oversee the loading operation, but the Court dismissed such claim. Instead, due to the fact that the defendant never actually loaded the cargo on-board, the Court determined that the carrier forged the B/L, exposing himself to the criminal charges and criminal responsibility. It is likely that the Court took into consideration the criminal courts' and minor offences courts' practice where such (or similar) behavior has been thoroughly analyzed and classified under the term recklessness.

3.3. Carrier knew and had to know that the damage will most probably result

Several years later, the same Court delivered a definitive explanation on what is to be understood by the phrase "*more than gross negligent*". In the case Pž-3312/87-2,[18] held before the High Commercial Court in Zagreb in

[18] Pž-3312/87-2, High Commercial Court, 1988. See: Eraković, Andrija, "*Decisions of domestic courts and other state authorities: Carriage of goods over sea – application of law*", Comparative Maritime Law, vol. 32 (3-4), (1990), (in Croatian) at 285-290.

Recklessly and with knowledge that damage would probably result, Mišo Mudrić

1988, the three insurers (claimants), who insured the cargo during carriage, claimed damages against the carrier (defendant) for the breach of contract of carriage. The carrier issued the B/L and promised to carry the cargo of jute (natural fiber) from the port of Calcutta (India), via port of Rijeka (at that time Yugoslavia, today Croatia), to the port of Valparaiso (Chile). The port of Valparaiso was a named port of delivery in the B/L. The sea voyage consisted of three major routes: the Indian Ocean, the Mediterranean Sea and the South Atlantic Ocean. Upon arriving to the South America, instead of circumnavigating the continent, the carrier discharged the cargo at the port of San Antonio (Argentina), this being a usual port of discharge (both for the operation of said carrier, and in general) when goods are delivered to Chile from the Atlantic approach to the South American continent. Following the discharge of the cargo, the carrier has first arranged for the cargo to be stored in the customs warehouse (customs was contracted as a storekeeper), and then contracted a road carrier to deliver the cargo to the port of delivery. Both the customs and the road carrier declared the cargo damaged. The packages of jute have been reported wet, with obvious damage to the goods themselves, and when the packages were opened at the port of delivery, it was found that more than 50% of the goods were completely lost.

The following points were disputed between the parties of the claim: (a) whether the carrier has notified the consignee of the discharge and whether such a notification is relevant for the case, (b) whether the carrier is liable for the cargo until it is delivered to the port of delivery, and, (c) whether the carrier can avail the right to limit the liability in case he is held liable for the breach of contract of carriage. The first instance court (P 398/82-31) held the carrier liable for the damage to cargo, and further held that the carrier is not to be allowed to limit the liability. The High Commercial Court, following the defendant's appeal, (fully) reconfirmed the position of the first instance court, and provided a very detailed explanation of the first instance court's decision. The defendant claimed that he has notified the consignee that the cargo is discharged at the port of discharge (San Antonio), and that from that point on, he is no longer to be held responsible for the risk of damage and/or loss of the cargo. The Court held that the defendant failed to prove that the consignee was actually informed of the fact that the cargo was discharged at the port of San Antonio. Nevertheless, as the Court explained, the consignee, unless specifically stipulated by the parties in the B/L, has a duty to receive the cargo at the B/L stipulated port of delivery (and not, as the defendant argued, at any point before the cargo is delivered to the said port).[19] Therefore, even if the

[19] Articles 470-472 and 530, Maritime and Internal Waterways Navigation Act (Official Gazette SFRY, No. 22/77, 13/82 and 30/85). The corresponding norms in the Croatian Maritime Code are Articles 526 *et seq*.

consignee has been notified, this would have been irrelevant with regard the issue of carrier's liability for the damage on cargo occurring before the cargo is delivered at the port of delivery. The Court further held the carrier liable for the cargo until the same is delivered at the port of Valparaiso (the B/L stipulated port of delivery).[20] Thus, the Court held the carrier in breach of contract for failing to deliver undamaged cargo to the final destination. With regard the fact that the cargo was stored in (customs) warehouse, the Court held that the carrier is responsible both for the choice and work of the storekeeper. The carrier attempted to escape liability by claiming that his responsibility for the damage to or loss of the cargo ended at the point when the cargo was delivered to the storekeeper. The carrier argued that, in accordance with the law, he was responsible for the choice of the storekeeper, and not the work of the storekeeper. The Court denied the defendant's claim, stating that such a rule is applicable only in particular circumstances. In accordance with the law, if the cargo is stored at the port of discharge, the carrier will be liable both for the choice and work of the storekeeper, and remain liable until the cargo is delivered to the port of delivery.[21] The carrier will only be liable for the choice of storekeeper if the cargo has been delivered to the storekeeper at the port of delivery if: (a) the consignee did not appear at the port of delivery to receive the cargo after being notified, (b) the consignee could not be found, (c) the consignee refuses or is unable to receive the cargo, or, (d) several persons are claiming to be the valid consignee. In such circumstances, the carrier must seek advice from the consignor with regard the cargo, and only if no such instruction is received, or the instructions cannot be followed, the carrier has a right to store the cargo,[22] being liable for the choice of the storekeeper,[23] without being liable for the work of the storekeeper.[24] Due to the fact that, in the present case, the cargo was stored at the port of discharge (and not the port of delivery), the Court found that the

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[20] Article 529, Maritime and Internal Waterways Navigation Act. The corresponding norm in the Croatian Maritime Code is Article 547.

[21] In accordance with Article 523, paragraphs 1 and 2, Maritime and Internal Waterways Navigation Act, the carrier is required to complete the carriage in the contracted route, and in the absence of a contracted route, in a usual route. Any deviation, absent of justifiable reasons, and resulting in damage or late delivery of the cargo, falls under the carrier's responsibility. The corresponding norm in the Croatian Maritime Code is Article 521. The rules on carrier's right to release the cargo to the storekeeper have not substantially changed in the Croatian Maritime Code.

[22] Article 545, Maritime and Internal Waterways Navigation Act. The corresponding norms in the Croatian Maritime Code are Articles 536 and 540.

[23] Article 544, Maritime and Internal Waterways Navigation Act. The corresponding norm in the Croatian Maritime Code is Article 543.

[24] Article 546, Maritime and Internal Waterways Navigation Act. The corresponding norm in the Croatian Maritime Code is Article 550, paragraph (1) – referring to the carrier's responsibility for all persons working for him (absent of the special preconditions as noted in previous text).

carrier continued to be liable for all damage occurring prior to the delivery of the cargo to the consignee at the B/L stipulated port of delivery. Furthermore, irrespective of the fact that the cargo in question (jute) was extremely sensitive to the elements, and necessitated a diligent care and special storage requirements (an in-door storage facility), the cargo was, upon discharge and delivery to the customs for storekeeping, kept in open, due to the scarce in-doors facilities available at the customs warehouse in San Antonio port. The claimant provided a witness testimony stating that the carrier was aware of the conditions and the capacity of the customs warehouse in San Antonio, as the carrier had previously carried the same or similar cargo to (or via) the same port, and had similar issues with regard the damage on the cargo occurring during the storekeeping. The Court accepted the witness testimony, and held that, due to the fact that the carrier had previous knowledge of the warehouse capacity (and the noted lack of proper capacity) in the port of discharge, the carrier was not just in breach of due diligence,[25] but also in breach of the general duty of fairness and diligent conduct,[26] as well as in breach of a general duty to act in accordance with the fair trade customs.[27]

In accordance with the law at that time, the carrier could not avail the right to limit the liability if the damage occurred as a result of his personal[28] intentional conduct or gross negligent conduct.[29] The Court summarized the findings, and provided the following logical progression of the decision held. The carrier, first of all, knew (based on the previous experience in the same port) that the in-door storage capacity of the customs warehouse in San Antonio port is small, and that, therefore, the discharged cargo will be kept in open. The carrier, furthermore, knew that the nature of the cargo demands in-door storage in order to prevent the damage to the cargo. And finally, the carrier knew that keeping the cargo in open creates a real and high possibility of the damage occurring. Thus, the Court held that the carrier knew and had to know that the damage would most probably occur, and nevertheless acted in a way that obviously exposed the cargo to the danger and the consequent damage. Therefore, the carrier was not allowed to avail the right to limit his

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[25] Article 553, Maritime and Internal Waterways Navigation Act. The corresponding norm in the Croatian Maritime Code is Article 549.

[26] Article 12, Obligations Act (Official Gazette SFRY, No. 29/1978, 39/1985, 46/1985, 57/1989). The corresponding norm in the Croatian Obligations Act (Official Gazette, No. 35/2005, 41/2008, 125/2011) is Article 4.

[27] Article 21, Obligations Act. The corresponding norm in the Croatian Obligations Act is Article 12.

[28] On this point, see the decision in: *Tasman Orient Line CV v New Zealand China Clays Ltd & Ors* (*the "Tasman Pioneer"*) [2010] 2 Lloyds Rep 13.; and, *Sellers Fabrics Pty Limited and Anor v Hapag-Lloyd Ag*, Matter No 12/96 [1998] NSWSC 646 (29 October 1998).

[29] Article 570, paragraph 1, Maritime and Internal Waterways Navigation Act, based on the Hague rules. The corresponding norm in the Croatian Maritime Code is Article 566, incorporating the Hague-Visby standard.

liability for the damaged cargo. Such finding of the Court perfectly adheres to the reckless behavior threshold as established by the Hague-Visby rules, and represents an important, ground-breaking decision to be followed in future cases.

4. Recent Case Practice

4.1. Unseaworthiness

More recent court practice recognizes instances where the unseaworthiness of the vessel has led to the inability of the owner to avail the right to limit the liability. The following two cases, to be briefly noted, refer to a breach of statutory norms concerning the safety of navigation and a breach of due diligence in selecting the appropriate crew (choice of crew), leading to a direct loss of right to limit the liability. In the case Pž-2542/90,[30] held before the High Commercial Court in Zagreb in 1990, it was held that, following the collision of two vessels, due to the fact that the defendant failed to ensure the seaworthiness of his vessel (the lack of the required number of crew aboard, including the steering master), the vessel in blame is personally responsible for the collision, thus not being allowed to avail the right to limit the liability.[31] In the case Pž-2187/96,[32] held before the High Commercial Court in Zagreb in 1997, the Court held the members of the crew guilty for stealing the goods on-board (case of theft on-board), and additionally held the owner liable for the poor choice of crew (*culpa in eligendo*), determining such conduct to be gross negligent, and not allowing the owner to avail the right to limit the liability.

4.2. Loss of Marine Insurance Cover

In the case Revt-116/06-2,[33] held before the Supreme Court of Republic of Croatia in 2006, following an incident at sea resulting in the loss of life aboard and the sinking of the vessel, the owner of the vessel (claimant) claimed the insurance payment (loss of vessel), whereas the insurer (defendant) denied the insurance coverage on the basis of improper behavior of the insured. In accordance with the Maritime Code, the insurance coverage is excluded if the insured intentionally or gross negligently fails to act in due diligence.[34] The general insurance terms and conditions, that were relevant for the case, indicate several reasons for coverage exclusion: the inadequate technical equipping of the vessel, the lack of a required number of and properly trained

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30 Pž-2542/90, High Commercial Court, 1990.

31 See: Vujović, Veljko, "*Decisions of domestic courts and other state authorities: Carrier's guilt – lispendence*", Comparative Maritime Law, vol. 35 (1-4), (1993) at 161-164.

32 Pž-2187/96, High Commercial Court, 1997.

33 Revt-116/06-2, Supreme Court, 2006.

34 Article 719, paragraph (2), point 1), and paragraph 3, Croatian Maritime Code.

crew, irregular or excessive loading of the cargo, and etc. In accordance with the decision of the High Commercial Court (Pž-523/05-3) in 2005, in the same case, based on the findings of independent surveyor, and the official investigation of the local port authority and the relevant Ministry (for maritime affairs), (a) the owner of the vessel failed to procure all the necessary requirements to ensure the seaworthiness of the vessel (the lack of the required number of crew aboard)[35] and the cargoworthiness (the cargo was not properly stored and secured),[36] (b) the single crew member present at the bridge during the accident failed to take proper measures to prevent the accident, and, (c) the captain of the vessel continuously and relentlessly committed various maritime offences (multiple entries and exits from various ports despite clear prohibition, being sanctioned several times for such behavior). The Supreme Court reconfirmed the decision of the High Commercial Court, and denied the claimant's right to receive insurance payment. The Court argued that the said captain was evidently unfit (element of social irresponsibility) to perform the Master's duties, especially with regard to ensuring the safety and security of the vessel, its crew, and cargo on-board. The Court further held that, in accordance with the law – which allows a court determination of a reason justifying the unseaworthiness of the vessel[37] – the decision of the owner of the vessel to employ and retain such a person as the Master of the vessel, despite all the noted offences and lack of proper behavior, definitively corresponds to the classification of unseaworthiness. The Court argued that the noted behavior of the captain (and the vessel) could not be prolonged indefinitely without serious repercussions for the vessel, the crew, the cargo on-board and (possibly) third parties. The fact that, after around 20 voyages on the same route, with the same kind of misbehavior, the accident has ultimately occurred, points to the fact that this was not an occurrence of an Act of Good (*vis major*), a blameless incident or a bad luck, but a foreseeable consequence of intentional and continuous violation of the safety of navigation regulation. Due to the fact that the insurance contract, the Court concluded, is based on good faith between the contracting parties, the insured is under an obligation to perform to his best abilities to prevent the occurrence of an insured peril. In this case, this was obviously not the case.[38] Therefore, the Court denied the insurance coverage.

As the Canadian Supreme Court's decision in the *Peracomo*

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35 Articles 147 and 148, Croatian Maritime Code.

36 Article 110, Croatian Maritime Code

37 Article 427, Croatian Maritime Code.

38 Compare: *Peracomo Inc. v. TELUS* Communications, *supra note 1*, where the Court held that, for the purpose of denying the insurance coverage, it was sufficient to prove willful misconduct without having to proving the actor's subjective knowledge of that fact that the damage would occur.

demonstrates,[39] the loss of insurance coverage does not directly lead to the loss of the right to limit the liability. The Canadian decision, although recognizing the reckless behavior on the side of the insured, required establishing a clear link between the awareness of the actor that a particular ("*such*") loss will occur as a result of the noted behavior, in order to prevent the utilization of the right to limit liability. The question that comes to mind with regard the last analyzed case is whether the hiring and/or retaining such a Master constitutes a serious breach of due diligence and a reckless behavior on the part of the owner of the vessel (or a designated person/an *alter ego* acting on behalf of a shipping company). In the previously examined case Pž-2542/90, the High Commercial Court held that the absence of a steering master is directly linked to the resulting collision, and that the owner of the vessel had to know that the absence of a steering master is likely to (will most probably) result in such an event. It could be argued that, in connection to the last analyzed case, the owner's knowledge of Master's behavior – continuous breach of the safety of navigation and the security of the vessel, most probably leading to a serious damage (including collision, sinking, damage to the cargo, and probable loss of life) – constitutes a reckless behavior (not actually wanting the damage to occur, but being aware of the high possibility of such occurrence, and being indifferent about it). Such a claim, however, never appeared before a court, and remains open for further consideration.

[39] See: *supra note 5*.

INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA

THE INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA AND THE SETTLEMENT OF DISPUTES RELATING TO MARITIME MATTERS

Philippe Gautier[1]

Ladies and Gentlemen,

In my presentation, I will highlight the role that the International Tribunal for the Law of the Sea may play with respect to disputes relating to maritime matters. As you are aware, the core function of the Tribunal – an autonomous institution set up by the 1982 United Nations Convention on the Law of the Sea – is to deal with inter-State disputes arising from the Convention.

However, I will show to you that the Tribunal may also be a useful tool for specific issues of interest to the international maritime community.

First of all, allow me to say a few words of introduction regarding the organization of the Tribunal.

An introduction to the Tribunal

The Tribunal is composed of 21 judges elected by the States Parties to the Convention for terms of nine years. At the first election in August 1996, one third of the judges were elected for a term of three years, another third for a term of six years and the third for nine years. This implies that, every three years, the mandate of seven members of the Tribunal comes to an end and elections are held at the meeting of States Parties.

Cases are handled by the full Tribunal or the Seabed Dispute Chamber (composed of eleven elected members of the Tribunal) for matters concerning activities of exploration and exploitation of several resources in the Area (Part XI). If the parties to a dispute so agree, a case may be dealt with by an *ad hoc* chamber constituted of three or more elected judges.

In addition, if there is no judge on the bench having the nationality of the parties to the dispute, the party concerned is entitled to choose a judge *ad hoc*

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who will "participate in the decision on terms of complete equality with their colleagues" (Statute of the Tribunal, Annex VI, art. 17, para. 6).

The Tribunal constitutes an independent international institution and, therefore, in order to discharge its functions, it needs to rely on different services: operation and maintenance of the premises in Hamburg, security services, legal research, conference services, interpretation and translation, budget contributions from States Parties, purchase of equipment, finances, staff matters, library, archives, press office, publications ... All these administrative services are provided by an international secretariat: the Registry. The Registry currently consists of 37 staff members, a cost-effective size if you keep in mind the number and variety of tasks to be discharged.

After this brief introduction, it is time for me to turn to maritime matters. In this respect, it could be possible to examine provisions of the Convention which raise issues of maritime law (e.g. article 91 - Nationality of ships; article 92 - Duties of the flag State, …). However, I will take a more pragmatic approach and will give an overview of particular issues of interest for maritime law which were addressed in cases submitted to the Tribunal.

Genuine link

My first comment relates to the *M/V "Saiga" (No. 2) Case*, a case on the merits dealt with by the Tribunal in 1999.

The *M/V Saiga*, flying the flag of Saint Vincent and the Grenadines, was arrested while bunkering fishing vessels in the exclusive economic zone (EEZ) of Guinea. On that occasion, force was used by the Guinean coastguard and some crew members were injured. The legality of the conduct of the coastal State was challenged by the flag State of the vessel, Saint Vincent and the Grenadines, and the Tribunal was then faced with several legal issues. These included, *inter alia*, the legality of bunkering activities conducted in the EEZ of Guinea without the authorization of that State; the meaning of the requirement of a genuine link between the flag State and the vessel flying its flag as provided for under article 91, paragraph 2, of the Convention; the legality of the use of force in the exercise of law enforcement activities and reparation for damages caused to persons. At this stage, I will limit myself to address one of the questions handled by the Tribunal, i.e., the requirement of a genuine link between a ship and its flag State.

Indeed, in the *M/V "Saiga" (No. 2) Case*, the respondent (Guinea) invoked the lack of genuine link between the *M/V Saiga* and its flag State (Saint Vincent and the Grenadines) to reject the nationality of the vessel and deny the right of Saint Vincent and the Grenadines to bring an international claim for damage caused thereto.

This argument gave the Tribunal the opportunity to examine the notion of "genuine link" under article 91, paragraph 1, of the Convention. In this matter, the Tribunal adopted two important decisions. First, it considered that

the absence of a genuine link between a flag State and a ship cannot be a reason for another State to challenge the nationality of the ship. This does not mean, however, that the genuine link has no relevance. On the contrary, but it comes into play at another level. For the Tribunal, the purpose of the provisions of the Convention on the need for a genuine link between a ship and its flag State is to secure more effective implementation of the duties of the flag State, and not to establish criteria by reference to which the validity of the registration of ships in a flag State may be challenged by other States (*M/V "Saiga" (No. 2) (Saint Vincent and the Grenadines* v. *Guinea), Judgment, ITLOS Reports 1999*, p. 10, at p. 42, para. 83)

This finding has practical consequences since it reinforces the duty of the flag State to exercise its jurisdiction and control over the vessel flying its flag as defined, for example, in article 94 of the Convention. This means that the flag State could be held liable for a breach of such an obligation.

Compensation for damages suffered by private persons involved in the operation of a ship

Another item illustrating the link between the Tribunal and the shipping world concerns compensation claims for damages caused to a ship and its crew as a result of a violation of international law. At first look, lawyers dealing with shipping matters may consider that inter-State litigation is not the preferred way for handling claims from private persons. A reason for such a view may be the requirement under public international law that local remedies must first be exhausted by private persons who seek reparation for prejudice caused to them by a breach of international law before their national States may bring a case to an international court. The local remedies' rule is relevant in cases involving diplomatic protection of nationals abroad, which are not exactly similar to the situation of a flag State claiming reparation for damages to a ship flying its flag, independently of the nationality of the crew members or the shipowner.

That being said, the Tribunal considered the application of the local remedies' rule in the context of the *M/V "Saiga" (No. 2) Case*. In that case, the applicant claimed compensation for the prejudice suffered by the shipowner and crew members as a result of an unlawful arrest of the *M/V Saiga* in the EEZ of Guinea and excessive use of force in relation thereto. It is interesting to observe that, in the circumstances of this case, the Tribunal considered that the local remedies' rule was not applicable, for the reason that the case mainly related to a direct violation of the right of the flag State, i.e., the right of navigation as contained in article 90 of the Convention. The wording of this provision is indeed clear: "Every State … has the right to sail ships flying its flag on the high seas". Therefore, in cases where there is direct violation of the right of the flag State, that State is entitled to bring a claim to an international court, not only to claim reparation for the prejudice caused to the State itself

but also for damage to persons involved in the operation of the ship arising from such a violation.

Another issue which could be seen as an obstacle to the submission of claims of individuals to international courts is the fact that, in cases of diplomatic protection, the amount of compensation is paid to the applicant State. It is then for that State to decide on how to allocate this amount among the persons who suffered prejudice. However, there is no rule preventing an international court from deciding in its judgment on the amount to be granted to individuals who suffered damage in violation of international law.

That is what the Tribunal did in its Judgment in the *M/V "Saiga" (No. 2) Case.* The Judgment[2] gives precise indication as to the allocation of damages, including compensation for medical expenses and moral damage regarding two persons injured during the arrest of the vessel as well as the captain and the members of the crew who had been detained. The amount of damage for detention is further detailed in an annex to the Judgment, which lists each person with the amount allocated to him.

Prompt release of vessels and/or crews

My third comment relates to the possibility of submitting to the Tribunal applications for the release of detained vessels and their crew, the so-called "prompt release proceedings". These proceedings are of particular relevance for private parties having an interest in the operation of the vessel (shipowner, owner of the cargo). It may therefore be useful to explain briefly the gist of this procedure.

Under article 292 of the Convention, whenever a State Party to the Convention detains a vessel flying the flag of another State Party for specific categories of offences (pollution offences or fishery offences in the EEZ), it has the obligation to release the vessel upon the posting of a reasonable bond. If the flag State contends that the detaining State does not comply with this obligation, it may submit the dispute to the Tribunal after a period of 10 days from the time of detention of the vessel. The Tribunal will then decide whether it has jurisdiction over the dispute and, if so, will determine the amount of the bond to be posted for the release of the vessel. Prompt release proceedings are urgent cases and a judgment is delivered by the Tribunal within a period of one month.

In my presentation, I will not enter into too many details. I simply wish to make five comments which may be of interest to those involved in shipping activities:

- First, it should be underlined that the application for the prompt release

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[2] *M/V "Saiga" (No. 2) (Saint Vincent and the Grenadines* v. *Guinea), Judgment, ITLOS Reports 1999*, pp. 66-67, para. 175.

of a vessel and/or its crew may be made, not only by the flag State, but also by another person acting on its behalf, e.g., by the vessel's owner or a legal representative, if he/she is so authorized by the flag State[3].

- Second, while all prompt release proceedings submitted to the Tribunal so far have been based on article 73, paragraph 2, of the Convention[4] relating to fishery offences in the EEZ, no State has yet made use of other provisions in the Convention which provide for the release of the vessel upon the posting of a bond in the case of the detention of a vessel for pollution offences (see article 220, paragraphs 6 and 7, and article 226, paragraphs 1(b) and (c), of the Convention).

- Third, in certain circumstances, only the captain and crew members are detained, for example for pollution offences, while the vessel has sunk. In such a situation, would it be possible to have recourse to prompt release proceedings? In light of the title of article 292 of the Convention ("prompt release of vessels and crews"), we might be tempted to conclude that proceedings under this provision could not be instituted for the release of crew members only. But this would not necessarily be the correct approach. This issue has not yet been settled by the Tribunal and a cautious approach needs to be taken. Nevertheless, it may be pointed out at this stage that a response to this question is not so straightforward, in particular if we keep in mind that the French text of article 292 – French and English being the two official languages of the Tribunal – refers to prompt release of vessels "or" crews ("*Prompte mainlevée de l'immobilisation du navire ou prompte libération de son équipage"*).

- Fourth, in prompt release proceedings, the task of the Tribunal is limited. It has to assess whether the conditions fixed by article 292 are met and, if so, to determine the amount of the reasonable bond which should be posted to obtain the release of the vessel. It is not requested to deal with the merits of the case regarding the alleged violation of national regulations. This case will continue to be handled by the national court concerned and if, eventually, a fine is imposed, the amount of the bond will be used for that purpose. If the detaining State alleges that, in the circumstances of the case – for example in a case of serious pollution caused by a lack of proper maintenance of the vessel – the flag State did not comply with its duty to exercise an effective control over its vessel, it could not make such a claim in the context of prompt release

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[3] In six cases, out of nine in total, proceedings were instituted on behalf of the flag State: *The M/V "SAIGA" Case (Saint Vincent and the Grenadines* v. *Guinea)*; *The "Camouco" Case (Panama* v. *France)*; *The "Monte Confurco" Case (Seychelles* v. *France*); *The "Grand Prince" Case (Belize* v. *France)*; *The "Chaisiri Reefer 2" Case (Panama* v. *Yemen)*; *The "Juno Trader" Case (Saint Vincent and the Grenadines* v. *Guinea-Bissau)*.

[4] "Arrested vessels and their crews shall be promptly released upon the posting of reasonable bond or other security".

proceedings. It would have to institute separate proceedings under the Convention, invoking for example a breach, by the flag State, of its duties under articles 94, paragraph 3, or 217 of the Convention.

- Finally, it is important to keep in mind the situation of seafarers who sometimes need to stay on board of detained vessels in difficult conditions. For them, prompt release proceedings may represent a possibility to come back home. In this respect, I may invite you to visit the exhibition on display near the courtroom. You will see a model ship of the *Juno Trader*, a ship which was detained in Bissau for alleged fishery offences and was released upon the posting of a bond further to a Judgment of the Tribunal. The model ship was built by a crew member during his detention in Bissau and was given to us, after the release of the ship and the crew.

Provisional measures

My next comment relates to another specific procedure which is provided for in article 290, paragraph 5, of the Convention. This provision concerns the situation of parties to arbitral proceedings (arbitration under Annex VII is the compulsory procedure when States have not made a declaration selecting the Tribunal or the ICJ under article 287 of UNCLOS) pending the constitution of the arbitral tribunal. Several months may be necessary in order to constitute the arbitral tribunal and, during this period of time, the Tribunal is available to the parties to the dispute whenever urgency requires that provisional measures be prescribed in order to protect the respective rights of the parties or to prevent serious harm to the marine environment. This procedure has been used in several cases involving environmental matters. Nevertheless, it is interesting to note that, in the two latest cases submitted to the Tribunal under article 290, paragraph 5, the provisional measure sought by the applicant was the release of a detained ship and its crew members.

In these two cases, prompt release proceedings were not available since none of them related to fishery offences in the EEZ or to pollution offences. In the *"ARA Libertad" Case*, Argentina requested the release of its navy ship, the *ARA Libertad*, detained by the Ghanaian authorities in the context of a commercial litigation. In the *"Arctic Sunrise" Case*, the Netherlands sought the release of an ice breaker operated by Greenpeace, which had been arrested in the EEZ of the Russian Federation further to a protest action against a drilling platform (Prirazlomnaya) in Arctic waters.

The fact that in both cases the Tribunal ordered the release of the ship and its crew as a provisional measure illustrates the useful role that the Tribunal may play in disputes relating to the arrest and detention of vessels and crews. That said, this does not mean that the Tribunal, in such cases, will always decide to order the release of the detained vessels. Provisional measures proceedings are subject to certain conditions and, in particular, the applicant has to demonstrate that the measure sought is necessary to preserve its rights

as a matter of urgency, during the few months which will be needed for the arbitral tribunal to be put into place.

Capacity building

My last comment relates to the training activities organized at the Tribunal. While the primary task of the Tribunal is to deal with cases, it is also important to ensure that information on the settlement of law of the sea disputes is transmitted to the younger generation. In this respect, a three-month internship is available to students enrolled in a university degree-granting programme. The Tribunal also organizes, with the assistance of the Nippon Foundation, a nine-month capacity building programme for young government officials. In addition, the Tribunal developed a series of regional workshops to which are invited officials dealing with law of the Sea matters in their respective countries. Workshops have taken place in Dakar, Libreville, Buenos Aires, Kingston, Bahrain, Singapore, Fiji, Mexico. The next workshop will take place in Nairobi, in August 2014. Finally, the Tribunal hosts every year a summer academy, organized by the International Foundation for the Law of the Sea. The summer academy gives to scholars and lawyers the opportunity to attend a one-month programme of lectures on maritime law and law of the sea.

MAINTAINING MARITIME LAWS

THE NEW BRAZILIAN COMMERCIAL CODE

Camila Mendes Vianna Cardoso*

Current scenario of the brazilian shipping industry

Brazil is a country well known for its Carnival, football, beautiful beaches and friendly people. However, on another angle, the country is also emerging as an important place for business, being currently ranked as the seventh largest economy in the world and with all the possibilities of achieving even better results.

Brazil is the largest economy in Latin America, with a population of more than 201.000.000 people and a territory of 8.515.767,049 km^2, which makes the country an important player in the international trade scenario.

Being Brazil a major exporter of commodities, a strong importer of goods and with a vast coastline of 8,500 km of navigable waters, the Brazilian shipping industry plays an important role in the country's developing economy. In fact, the ports are the country's main gate, through which approximately 95% of the foreign trade is made.

There are currently 37 public ports in Brazil, between sea and inland waterway, and 146 private terminals, with an increasing number of investments in this sector and an estimate of USD 22 billion in investments for the next 10 years.

Similarly, the number of vessels operating in Brazil has increased more than 42% over the last four years, especially in the offshore sector, where the great discoveries of oil and gas in the sub-salt layer have contributed to an evident boom on the country's shipping industry.

Brazilian maritime law

Despite of all the developments and the prosperous market trends, Brazil still struggles with governmental bureaucracy and with a very complex and, in some occasions, outdated legal system.

Indeed, the Brazilian Legislation pertaining to maritime law consists of a highly complex set of rules, being governed by International and Internal

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Public and Private Laws of different dates and degrees of hierarchy. This entails a great effort of interpretation and hermeneutics from those who operate in this legal field and a lack of a uniform understanding by the Brazilian Courts.

The main maritime rules in Brazil are incorporated in the Commercial Code, enacted in 1850 when the country was still under an Empire regime. The Brazilian Commercial Code is based on the Portuguese Commercial Code and the 1808 Napoleon Code. In more recent years it has been partially amended by the 2002 Brazilian Civil Code, which is also an important source of law when it comes to carriage of cargo, in addition to several other sparse legislations.

Despite the above, the provisions pertaining to maritime law in Brazil have not been updated, which is a point of concern, especially considering that the country is not known for having a tradition in ratifying the most important international conventions related to shipping and carriage of cargo.

The project for a new commercial code

To aggravate the above scenario, on 2011 the Chambers of Deputy of the Brazilian National Congress issued a project of law for the enactment of a new Commercial Code to revoke the 1850 Commercial Code and provide fresh regulations on important commercial and corporate relationships, titles of credit, bankruptcy and other commercial matters.

This Bill, registered under number 1,572/2011, immediately drew the attention of the maritime community in Brazil, as the new Code, in its first draft, provided for the revocation of all the provisions pertaining to maritime commerce from the old Commercial Code and did not bring any new regulations for the maritime commerce.

This situation would create a huge gap in the Brazilian legislation that would affect the entire maritime industry in Brazil. Therefore, a reduced number of experts from the Brazilian Association of Maritime Lawyers joined forces to prepare quick draft of an entire chapter with 262 articles related to maritime commerce to be included in the project for the new Commercial Code. The result of such work was presented to the Chamber of Deputies as amendment number 56 to be incorporated to the Bill.

Still up to the present date additional studies and contributions are being made by lawyers and professionals of the maritime sector to try to improve the wordings and provisions of the new Bill and its amendments.

Further to the above, considering that the legislative activities at the Chambers of Deputies were developing in a very slow pace since 2011, on 2013 a similar project of a new Commercial Code was presented at the Senate, incorporating most of the provisions of the original Bill presented in the Chambers of Deputies, including the amendments proposed.

Both the Senate and the Chambers of Deputies are houses that belong to

the Brazilian National Congress and every federal law to be enacted needs to be approved before both houses.

Currently these two similar Bills are pending to be voted before the National Congress, one being the Bill no. 1,572/2011 at the Chambers of Deputies, and the latter being the Bill registered under no. 487/2013 before the Senate. The first Bill to be approved in one of the houses will be submitted to the other house and the other pending Bill will be automatically be dropped. After one of the Bills be approved in both houses of the National Congress, the final text will be submitted to the sanction by the Brazilian president, before being enacted as a national law.

In summary, the Maritime book on the Bill for the new Commercial Code brings provisions and regulations of the following nature: Principles of maritime law; definitions and players of the maritime commerce; maritime contracts for charters and carriages; losses; liabilities and limitation of same; maritime liens; insurance; and maritime procedural law, here including provisions related to maritime claims, arrest lawsuits, detention, security, enforcement of freight and others.

Some of the main important regulations in the maritime chapter of the bill for the new commercial code

Time Bar

Among some of the most important aspects regulated in the Project for the new Commercial Code is the time bar period for cargo claims arising out of a maritime carriage.

Although the Commercial Code of 1850 used to establish a time bar period of 1 year for cargo claims related to losses arising out of maritime carriages, this provision was revoked by the 2002 Civil Code.

In fact, the 2002 Civil Code revoked the entire first part of the old Commercial Code, including the time bar provision, and did not bring any specific provision for the time bar period for cargo claims arising out of maritime carriage.

Besides some specific time bar provisions that are not related to maritime claims, the Civil Code brought a general provision of three years for the time bar period for civil liability disputes. Such general provision is only applicable in the absence of any specific provision to regulate the matter in dispute. This created a controversy on whether such three year period would hence apply for cargo claims or whether the one year time bar would still be applicable, especially because some other sparse legislation that are still in force continue to provide a one year time bar for cargo carriage claims. This is the example of the Decree-Law 116/67, the law of multimodal transportation and the law of road carriage, which followed the principles of the old Commercial Code.

Making this grey area even murkier, some judges and scholars consider

that the rules of the Brazilian Consumer Act could be applied for cargo carriages and, therefore, the five-year time-bar provided by the Consumer Act should be observed.

For the avoidance of doubts and to solve any controversy, the project for the new Commercial Code expressly provides for the applicability of a one-year time bar period for cargo claims arising out of maritime carriage, as per already established by the old Commercial Code, thus bringing more legal security in respect to this matter.

Consumer Act

In addition to applying the one-year bar period, the project for the New Commercial Code also provides that the rules of the Brazilian Consumer Act do not apply for maritime carriage involving corporate entities.

Hence, with the exception of carriage for private individuals and passengers, this rule for the non-applicability of the Consumer Act would solve several court disputes and would consolidate the understanding that is already adopted by the majority of the courts in Brazil, in the sense that the Consumer Act should not be applied for the majority of the cargo carriages.

Limitation of Liability

Another very important aspect of the Project for the New Brazilian Commercial Code is the chapter pertaining to limitation of liability.

In terms of limitation of liability on maritime claims, the 1850 Commercial Code did not bring any specific provision rather than the abandonment of the vessel. Subsequent to that, Brazil ratified the Brussels 1924 International Convention for the Unification of Certain Rules relating to the Limitation of Liability of Owners of Sea-going Vessels, but did not ratify the Hague-Visby Rules, the Hamburg Rules, the Rotterdam Rules, nor the 1976 London Convention.

Despite of the above, the project for the New Commercial Code brings express provisions pertaining to the shipowner's limitation of liability, establishing procedures for the constitution of a limitation fund and providing limits that are a bit higher than the 1996 Protocol to the 1976 London Convention.

Such limitation, as per provided by the new Bill, would be applicable to injury or death during maritime operations, cargo losses, damage to third party's property and tort claims.

However, the limitation would not be applicable to salvage, gross average, wreck removal, liability for environmental pollution, nuclear damages and crew wages.

Arrest of vessels

Finally, another relevant topic provided in the Bill for the New Brazil

Commercial Code is related to the arrest of vessels.

Brazil has not ratified the international arrest Conventions of 1952 and 1999 and, in accordance with the Civil Procedure Rules in force, in order for a party to be able to arrest a vessel in Brazil it is necessary to obtain jurisdiction of the Brazilian Courts.

To this effect, to obtain Brazilian jurisdiction in a lawsuit one of the circumstances provided in the section 88 of the Civil Procedure Code must the obligatorily exist:

"Article 88 — The Brazilian judiciary authority has jurisdiction where:
I - the defendant, whatever its nationality, is domiciled in Brazil;
II - the obligation is to be performed in Brazil;
III- the fact which gave rise to the claim results from a fact occurred or an act performed in Brazil
Sole Paragraph: A company is considered domiciled in Brazil, when said company has an agency, branch or subsidiary located here."

Hence, it is currently not possible to seek the arrest of a vessel in Brazil as a mean of security for a claim subject to the jurisdiction of a foreign court. An arrest would only be possible in circumstances where the substantive claim and the merits of the case can be decided under the jurisdiction of the Brazilian Courts.

However, in order to soften these procedural requirements and align the Brazilian law with some of the concepts applied in the international scenario, the Project for the New Commercial Code brings some provisions and concepts that are new to the Brazilian system, allowing the arrest of vessels in Brazilian waters as a security for a foreign claim or dispute, as well as provisions related to the arrest of sister ships, arrest of bunkers and wrongful arrest.

Conclusion

Although there is still some legislative procedures to be overcome, the Bills for the new Commercial Code currently underway before the National Congress and the mere fact that maritime law is being discussed in Brazil are an element that brings joy and at the same time agitation to the maritime community in Brazil.

This is indeed a great opportunity for inserting in the Brazilian Legal System some updated concepts and provisions established in international conventions that were not ratified by the country. It is also a way to align the country's internal rules with the international practice, bringing more legal security and improving the business environment and commercial trade.

MARITIME LAW REFORM IN JAPAN

Tomotaka Fujita*

I. Introduction

A comprehensive reform of transport and maritime law is under way in Japan. This short presentation addresses three basic questions: (1) What the current Japanese maritime law is and why it should be revised, (2) What the schedule and scope of the revisions are, and (3) What the expected contents of the revisions are.

II. What the Current Japanese Maritime Law Is and Why It Should Be Revised

In 1881, the Japanese Government commissioned a German professor, Herman Roelser, to draft a commercial code, which was completed in 1884[1]. The first Japanese Commercial Code (the "Old Code") was enacted in 1890, based on Roelser's draft. Although the Old Code was partly promulgated in 1893 the provisions on maritime were not. The Old Code as well as the Roesler's draft was a piece of extensive comparative law.[2] The Old Code had a very short life, though. The merchant community criticized it, saying it ignored traditional trade customs and practices; the New Commercial Code ("New Code"), which came into force in 1899,[3] replaced it. The new Code was much influenced by German law. Book V[4] of the Commercial Code 1899

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1 For the history of Japanese Commercial Code, *See* Harald Baum and Eiji Takahashi, *Commercial and Corporate Law in Japan: Legal and Economic Developments after 1868, in* Wilhelm Röhl, History of law in Japan since 1868 (Brill, 2005) pp.330, 350-362.

2 Roesler referred to the French Commercial Code 1807, the Spanish Commercial Code 1830, the Dutch Commercial Code 1838, the General German Commercial Code 1861, the Italian Commercial Code 1865, and the Egyptian Commercial Code 1874. Curiously the Roesler's Draft is more heavily influenced by French than General law.

3 Law No. 48, 1899.

4 It is now Book III since the provisions on Commercial Paper (originally Book III) and on Insurance (originally Book IV) were deleted and formed an independent law in 1933 and 2008.

was entitled "Maritime."[5] The provisions resembled those of the General German Commercial Code (Allgemeines Deutsches Handelsgesetzbuch: ADHGB) 1861[6], which embodied European commercial practices in the mid-19th century. Although the Commercial Code was revised many times after its promulgation, there have been very few attempts[7] to revise this part of the Code.

While Japan has maintained the Commercial Code almost intact, it has also joined international maritime legal regimes in many areas.[8] These include the Salvage Convention 1910; the Collision Convention 1910; the Hague Rules 1924, as amended by the 1968 and 1979 Protocols; the Limitation Convention 1957; the Convention on Limitation of Liability for Maritime Claims (LLMC) 1976, as amended by the 1996 Protocol with a tacit amendment in 2004; the Civil Liability Convention for Oil Pollution (CLC) 1969, as amended by the 1992 Protocol; and the 1971 Fund Convention, as amended by the 1992 and 2003 Protocols.

The above explanation clearly shows why the current Japanese maritime law should be revised. Japanese maritime law is mostly a 19th century product that has been partially modernized by ratifying international conventions. There are substantial inconsistencies between the rules applicable to domestic trade and to international trade. Domestic rules are completely obsolete in their form and substance. One might wonder how such old rules could have survived for more than 100 years.

In addition to this background, there is another force that leads the maritime law reform. Since the mid-1990s, the Japanese government has undertaken the modernization of its basic legal regime. This has resulted in the Civil Procedure Act 1996, the Bankruptcy Act 2004, the Companies Act 2005, the Trust Act 2006, and the Insurance Act 2008. A comprehensive revision of the Civil Code is now under way. Transport and maritime laws are the only major areas remaining in the Commercial Code,[9] and it is necessary to revise them to complete the modernization project.

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[5] For the current situation of Japanese maritime law, *see* Manami Sasaoka, *Reform of Transport Law in Japan*, ZEITSCHRIFT FÜR JAPANISCHES RECHT, No. 35, pp. 41-42 (2013).

[6] It is worth noting that the German Commercial Code (HGB) 1897 which was promulgated only two years before was not much referred to when the new Code was drafted.

[7] *See* Sasaoka, *supra* note 5, p. 40, fn.4.

[8] A ratification of international convention sometimes accompanies domestic legislation in order to implement it. In other cases, a convention is simply promulgated and entered into force as a national law. For a more detailed explanation, *see* Sasaoka, *supra* note 5, pp. 43-44.

[9] For the current status of the Japanese Commercial Code, *see* Tomotaka Fujita, *The Commercial Code in Japan, in* Wen-Yeu Wang ed., Codification in East Asia (Springer 2014), p. 121.

III. The Schedule and Scope of the Revisions

In February 2014, the Minister of Justice submitted an inquiry[10] as to the possibility of revising the Commercial Code (reform of transport and maritime law) to the Legislative Council of Ministry of Justice ("Council") for deliberation. The Council set up the Working Group on Commercial Code (Transport and Maritime) ("Working Group") to respond to this inquiry. This is an ordinary procedure for the revision of major legislation over which the Ministry of Justice has jurisdiction. The Council is supposed to submit its recommendation to the Minister in the form of a Legislative Guideline ("Guideline").

The Working Group has held regular sessions since April 2014. The Working Group is expected to publish an "Interim Draft Guideline" in 2015 for public comment. The Working Group will likely finalize the Guideline in 2016. Upon the approval of Council, it will be submitted to the Minister. Once the Guideline is submitted, the legislative bill based on the Guideline will be submitted to the Diet as a government-sponsored bill. In most cases, it takes less than one year for a bill to be drafted and finally approved by the Diet.[11] One can expect that the new law will be adopted in 2016 or 2017 and will enter into force shortly thereafter.

Some preparatory work was completed before the Minister of Justice submitted the inquiry.[12] The Transport Law Study Group ("Study Group"), established in 2012, has examined the problems under the current law. Although the Study Group is a private body sponsored by a private foundation, members from the Ministry of Justice are involved. In December 2013, the Study Group published its final report ("SG Report")[13], which contained specific proposals for how to revise the provisions in the current Commercial Code. There were two research projects preceding the Study Group. One conducted a comparative study, and the other was an investigation of customs and practices. The results of these research projects were referred to during the Study Group's examination.

Although this presentation focuses exclusively on maritime law, the scope of the reform includes not only maritime but also transport law, which includes

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[10] Inquiry No. 99 (February 2012) reads as follows: "In order to catch up to social and economic changes since the enactment of the Commercial Code, to reasonably coordinate the interests of the cargo, carriers and other relevant parties, and to respond to the global trend with respect to the maritime law regime, the revision of the provisions in the Commercial Code and other legislation with respect to transport and maritime law is necessary. Submit the Draft Guideline for this purpose."

[11] It is quite unlikely that the Diet will not pass a bill of such a technical nature, although there may be some minor amendments to the original text.

[12] For these preparatory works, *see* Sasaoka, *supra* note 5, pp. 50-55.

[13] Transport Law Study Group Report, December 2013 (in Japanese) available at http://www.shojihomu.or.jp/unsohosei/unsohosei.pdf

transport by land and air. Second, the reforms are focused primarily on the revision of the Commercial Code and do not include the new ratification of international conventions. Although it may highlight specific rules in the international convention and incorporate some of them, the Council does not discuss whether to ratify, for example, the United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea, 2008 (Rotterdam Rules) or any other instrument. This is one of the disappointing aspects of the revision.

IV. Expected Contents of the Revisions

Since the discussions of the Working Group[14] have just begun, it is impossible to predict the exact contents of the final legislation at this stage. However, we can at least imagine the basic issues that will be discussed by the Working Group, based on the SG Report. Let us consider some important elements.

1. Contracts for the Carriage of Goods by Sea

The provisions on contracts for the carriage of goods by sea will be modernized. Customs and practices that did not exist when the Commercial Code was enacted will be incorporated. For example, the SG Report proposes that a set of provisions that regulate sea waybills along the lines of CMI Uniform Rules be introduced.[15] The SG Report also discusses special rules for dangerous goods.[16]

International and domestic carriages are regulated under different legal regimes. The international carriage of goods by sea is governed by the International Carriage of Goods by Sea Act,[17] which implements the Hague-Visby Rules, while domestic carriage is regulated by the Commercial Code. Once the revisions are complete, these will be aligned to some extent. For example, the obligation to make a ship seaworthy[18] and regulations on bills of lading[19] will be amended in line with the International Carriage of Goods by

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[14] The minutes of the Working Group sessions are available on the Ministry of Justice website (only in Japanese). http://www.moj.go.jp/shingi1/shingikai_syoho.html

[15] The issue of transport documents, including sea waybills, was discussed during the 4th session of the Working Group (July 23, 2014). There was no disagreement with the inclusion of provisions on sea waybills.

[16] Although including provisions on dangerous goods was supported, the views were divided at the 2nd session of the Working Group (May 28, 2014) as to the basis of a shipper's liability for damage caused by dangerous goods.

[17] Law No. 172, 1957 revised in 1992.

[18] The Commercial Code provides carriers' strict liability (warranty) on a mandatory rule basis when the ship is not seaworthy (Art. 738 and 739).

[19] Although bills of lading are rarely used in the domestic carriage of goods by sea, there was support during the 4th session of the Working Group (July 23, 2014) for provisions regarding them in the Commercial Code.

Sea Act. However, different rules for domestic and international carriage will remain under the new legislation. The current provisions in the Commercial Code on domestic sea carriage are mostly non-mandatory rules and impose unlimited liability on the carrier. This makes the domestic regime quite different from the international one. The situation is unlikely to change.[20] A carrier's unique defenses under the Hague-Visby Rules (and under the International Carriage of Goods by Sea Act), such as "error in navigation" or "fire," will not be incorporated for domestic carriage. Therefore, even after the modernization of the provisions on the carriage of goods, significant differences will remain between the legal regimes for international and domestic carriage.

2. Multimodal Transport

The SG Report proposes to introduce rules on multimodal transport. According to it, the new legislation includes "general provisions" applicable to contracts for carriage. They will apply to any contract of carriage regardless of the mode of transport, and will apply to contracts for multimodal transport. Parties to a contract for multimodal transport, however, can invoke special rules for a specific mode of transport (e.g., the obligation to make a ship seaworthy, which is unique to carriage by sea) if it is proved that a loss of or damage to the goods, or a delay in delivery, occurred during the mode of transport in question. In addition, the SG Report proposes a presumption that the loss or damage occurs during the longest leg of transportation. Under the proposal, the rules governing the longest leg will apply when the loss, damage, or delay is not "localized." However, there is disagreement about whether to introduce such a presumption.[21]

3. Charter Parties

The current law provides for rules on voyage charters[22] and bareboat charters (lease of a ship)[23] In addition to the modernization of these provisions on voyage and bareboat charters, the SG Report proposes introducing a set of rules relating to time charters, which will impose typical contractual obligations of a ship owner and a time charterer on a default rule basis. The legal nature of a time charter has long been discussed in Japan, and there still is uncertainty whether and to what extent the provisions on bareboat charters

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[20] The issue was discussed during the 2nd and 3rd sessions of the Working Group (May 28 and June 25, 2014).

[21] The presumption was heavily criticized during the 4th session of the Working Group (July 23, 2014).

[22] Many provisions in Chapter 3 (Carriage) of Book 3 of the Commercial Code refer to a charter party, which is understood as a voyage charter party.

[23] Art. 703 and 704.

apply analogously to time charters.[24] If the Commercial Code recognizes time charters as an independent type of contract, the application of the rules would become clearer.[25] There are discussions as to whether the new legislation should also create a basis for the time charterer's liability against a third party.[26]

4. General Average

The current law on general average[27] is completely out of date and will be revised based on the York-Antwerp Rules 1974 (as amended in 1990) and 1994.[28]

5. Collision

The current Commercial Code has only two provisions on collision.[29] The SG Report proposed to revise them in accordance with the Collision Convention 1910, to which Japan is a party. As a result, insofar as an action is brought under a Japanese court and the Japanese law applies, essentially the same rules apply regardless of the applicability of the Convention.

6. Salvage

Although the provisions[30] of the current Commercial Code are understood as being applied mostly to a voluntary salvage, i.e., salvage activities conducted without prior agreement, there are casual references to "agreement". The SG Report proposes to amend the provisions on salvage along the lines of the Salvage Convention 1910, to which Japan is a party so that the new legislation expressly covers both voluntary and contractual salvage. It also proposes to introduce one element from the Salvage Convention 1989: "special compensation" for the salvage operation in respect to a vessel that, by itself or its cargo, threatens damage to the environment.[31] If new legislation adopts the proposal, it will be the first case in which the Commercial Code explicitly pays attention to the environment.

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[24] For example, Supreme Court Decision April 28, 1992 imposed the liability for collision on the time charterer under specific facts of the case, applying the provisions on bareboat charters by analogy. The time charterer in the case was unique in that it "daily controlled and supervised" the ship and had "continuous and exclusive use of the ship." Therefore, it is understood that the same conclusion does not necessarily apply to a case of an ordinary time charter.

[25] If the Commercial Code recognizes a time charter as an independent type of contract, it would become difficult, if not impossible, to apply the provisions on bareboat charters analogously to time charters.

[26] Cautious voices were heard at the 3rd session of the Working Group (May 28, 2014) against a possible provision on time charterers' liability.

[27] Commercial Code Art. 800-814.

[28] York-Antwerp Rule 2004 is not referred to, since it is seldom used in practice.

[29] Art. 797 and 798.

[30] Art. 800-814

[31] *See* Art. 14 of the International Convention on Salvage, 1989.

7. Marine Insurance

The Japanese insurance industry strongly wishes to have provisions on marine insurance, and the SG Report proposes to include them. In particular, there has been concern caused by the enactment of the Insurance Act 2008. The Act applies to marine insurance on a default rule basis, and it requires the insured to disclose information relevant to the insurance risk only to the extent that the insurer explicitly demands. There is no duty for the insured to disclose information, however relevant it is, unless the insurer demands it. This is quite a different rule from the ordinary custom and practice of marine insurance. Although insurers can contract out such rules,[32] the insurance industry feels uneasy with the current rule, even as a non-mandatory one.

8. Maritime Liens

The SG Report does not provide clear guidance related to many aspects of maritime liens in the current commercial code.[33] On one hand, it was argued that the scope of the claims that are protected by maritime law should be reasonably restricted to avoid unnecessary adverse effects against other claimants who are involved in ship finance. On the other hand, it was pointed out that, under the Japanese legal system, maritime liens work as a substitute for *in rem* action in common law countries, and one should be careful not to undermine such a function. At this stage, however, one cannot predict how this policy debate will finally lead to specific revisions of the current provisions.

V. Conclusion

This presentation briefly explained ongoing maritime law reforms in Japan. Although it may look like a parallel movement to reforms in many other countries, such as Belgium, Brazil, Germany, and Spain, the reforms are inspired by domestic motivations. All Japanese maritime lawyers and academics are interested in what will happen because this is the first fundamental maritime law reform since the Commercial Code was adopted in 1899. At the same time, one should note that the reforms will not cover everything. In particular, they do not examine whether Japan should ratify international conventions to which it is not a party. That issue will be discussed independently in a different forum. If everything goes smoothly, we will see the new legislation in two or three years.

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32 Art.36(i) of the Insurance Act.

33 Art. 842-851.

MAINTAINING MARITIME LAWS: AN OVERVIEW OF THE RECENT LAW REFORM IN SPAIN

Jesús Casas*

1. Brief milestones in a long history

According to Plutarch (Life of Pompey, 50.2), when his crew refused to sail due to the rough weather conditions, Pompey uttered the famous phrase: "*Navigate necesse est, vivere non necesse*" ("To sail is necessary, to live is not"). Whether this most remarkable and famous sentence was actually said or not is irrelevant for it stresses the importance of maritime navigation.

Spain has a millenary maritime history and its maritime law has a background that is also quite long and remarkable. It originates in one of the first World's book on maritime customs, the "Consulate of the Sea" of the City of Valencia ("Llibre del Consolat del Mar"), which dates back to the middle of the 14th century, was first printed in 1407 and is said to be the most comprehensive code of maritime customs regarding the Mediterranean Sea, from Barcelona to Byzantium. It occupies a similar position to that held by the Rôles d'Oléron (the "original" Rules of Wisby) of 1160 in the North and Baltic Seas. However, other Mediterranean books on maritime customs are also noteworthy, including some older ones such as: Amalfi [1010], Trani [1063], Mesina [1128], Constatinople, Venice [1250], Genoa [1280], or others published later on: Marseille [1474], Nice, Malta…).

These were times in which the words "maritime adventure" had to be read literally and in which the captain was a man of commerce and the captain of the vessel was the pilot. It may be important to point out here that in the 12th and 13th centuries Barcelona, whose Royal Shipyard ("Reales Atarazanas") still exists as a maritime museum, armed as many merchant ships as Venice and Genoa, as the Kings of Aragon also ruled over the Balearic Islands, Sicily and Naples and the Kings of Castille and Leon owned lands in the north of Africa. A fleet was necessary and sailing was necessary, as it has been up until today, to keep the world's population moving forward.

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In those times the foundations of modern commercial practices were laid down by customs and traditions that are presently called "*Lex Mercatoria*" (the Law of Commerce, as "Mercator" is "merchant" and its etymology comes from the latin word "merx", the thing that is sold, a part of which is what we still call "*Lex Maritima*", not to be translated as "Law of the Sea" but as "Law of Shipping" or "Navigation Law"). And these customs and traditions, which were updated by the case-law seen in the arbitration courts of the Consulates of the Sea in different cities and towns, were enough for national and international maritime commerce over the next three centuries.

2. Renaissance, enlightenment and written laws

As the wind changes on board, so it does on land and during the 15th and 16th centuries many of the customs of the sea that were not written down or were only partially written down and which had been useful foundations for the *Lex Maritima* had to be noted down and organized in books. In the Kingdom of Spain the first ordinances to be enacted by the King were in the City of Burgos [1495], followed by the ordinances of Bilbao [1737], published during the reign of the first Spanish King from the Bourbon family, Philip V, which followed the rationale of the French *ordonnances* (Colbert) of commerce [1673] and marine [1681], enacted during the reign of Louis XIV (Le Roi Soleil).

As you most surely know, these initial codes from the age of enlightenment were followed, after the English and French Revolutions of 1868 and 1789 and US independence, by bigger and more systematic codes that copied the patter of the "Côde" (the French Civil Code of Napoleon, based on Roman law and which has inspired not just the system but also the wording of most of the codes of continental Europe's private laws, even where French troops did not leave a good impression behind). It would not be fair, having the honour to speak at the Bundestag in Berlin, not to remember here the absolute importance of both the French "codifiers" and also the German "pandectists" (Savigny, Ihering, Wolf, Puchta and many others) on continental law. As Newton said of his work in the arena of physics, it is fair to recognize that our legal systems are what they are because we have worked "on the shoulders of giants". Their echoes are still heard around Humboldt University.

Spain enacted its first Code of Commerce in 1829, followed by the – still in force- 1885 Code of Commerce, whose third book (articles 573 to 869) "On Maritime Commerce" contained our shipping law during the steady decline of Spain's previously huge merchant fleet. Steam ships ended the glorious days of sailing ships and time began to race by for everyone, for -as a Senegalese proverb says - "all Europeans have a clock, but none of them has time".

The 1885 Code of Commerce has been in force in Spain since the end of the 19th century with few amendments to its third book, although throughout the 20th century, the Kingdom of Spain ratified most of the international

maritime conventions (whether referred to as Law of the Sea - including the 1982 UNCLOS - or Shipping Law). However, some specific laws were passed by parliament, such as:

- Spain's 1949 COGSA, which was passed the same year in which the Spanish Maritime Law Association was formed.
- The 1962 Salvage and Towage Law.

Professor Joaquin Garrigues, the founder of Spain's new School of Commercial Law in the 1950s, used to say, perhaps criticising the situation of the General Codification Commission that "*the Codes sleep on their shelves whilst the laws live in practice*" and the same happened to our old fashioned 1885 Code of Commerce, particularly regarding shipping law.

If one adds the importance of the "forms law", meaning the widespread use of charter parties, bills of lading and other commercial and maritime law contracts (e.g.: the Lloyd's Open Form) drafted and based upon common-law, mostly subject to English law and with London jurisdiction or arbitration clauses, the true problem of Spanish maritime law is unveiled: it has been difficult to harmonize internal laws, international conventions and international practice. And this situation that we have been suffering from is not just a problem of more or less inconsistency between common and continental law systems, it is a daily problem before the courts, to which one must add the fact that until 2004 Spain had no commercial courts so that matters concerning maritime law were under the jurisdiction of the civil courts and thus case-law has a clear "civil flavour".

3. 1978 and beyond: The path to Spain's new Maritime Law

The present constitution in force in Spain was enacted, after its approval by referendum, on the 6 December 1978. Since then, our private maritime law has not undergone any changes at all although public maritime law has been reformed mainly by:

- The Coastal Law 22/1988 of 28 July, which has also been updated from time to time (lastly in 2013).
- Law 27/1992 of 24 November on Ports and the Merchant Marine. Its current re-wording was recently approved by Royal Decree 2/2011.

The principles of UNCLOS and administrative continental law are quite similar to the families of German and French legal systems, and this means that they are the same for all continental public-law traditions and written laws, including Spain's.

If there is a new phenomenon to be underlined in our public maritime law, perhaps it would be the growing influence of the European Union Shipping Directives and Regulations that are leading to a common compulsory legal system in all the Member States of the European Union.

But in the last three decades, private shipping law has not been updated. The General Codification Commission has discussed two main possibilities

for years:

i. to reform the third book of the Code of Commerce

ii. to submit a draft Maritime Law following the most recent developments of other continental-law nations (e.g. Italy and France).

Finally, in 2003 a first draft of the Maritime Law (Spanish: *Anteproyecto de Ley de Navegación Marítima*) was prepared by an experienced group of professors, magistrates and practitioners and submitted to the Ministry of Justice to be widely discussed in the maritime community. The draft, as amended, was approved by the government in 2004 and sent to parliament, where successive general elections in 2004, 2008, and 2012 stopped the enactment of what today is our new private maritime law, the *Ley de la Navegación Marítima*.

In 2012 the draft was again subject to public examination and on the 23 November 2013 the government sent the final draft bill to parliament and, following debate and a few amendments by the Congress and Senate, it was finally passed in July 2015 and published on the 25 July in the Official State Gazette (it will enter into force on the 25 September of this year, which is the Maritime Day approved by the IMO), meaning that in 2014 Spain will have a brand new, widely discussed and comprehensive Maritime Law in force.

4. The shape and contents of Spain's new Maritime Law

Our new Maritime Law is divided into 10 headings, which are split up into chapters totalling 524 articles and around fifteen additional sections over 150 pages. The law regulates:

- Administrative issues surrounding navigation.
- Navigation vehicles: the vessel / boat (length 24 metres).
- Coordinating the vessel's commercial and administrative registry.
- Vessel safety and classification societies (general ex tort and contract law).
- The shipbuilding contract (not yet regulated by Spanish Laws, save for reference to the Civil code).
- Mortgage and maritime privileges.
- The shipowner, master, crew and other individuals in navigation.
- Charter parties and other contracts, from bareboat to carriage of goods by sea, including ship agency, towage, pilotage and chartering of leisure yachts.
- Freedom of contract with few exceptions.
- Bills of lading, sea waybills and multimodal documents: Hague-Visby
- The Law shall be adapted to the Rotterdam Rules, if they enter into force
- Transport of passengers by sea
- Navigation incidents including collision, gross average, salvage, pollution and findings.

- Limitation of liability.
- Marine insurance: common-law/ direct action.
- Special litigation law rules regarding maritime laws (including, for the first time, proceedings for limit liability) adding some admiralty rules regarding salvage and some new notary documents applicable to shipping matters.
- Arrest: minimum guarantee -15% of the quantum of the claim.
- Pre-printed jurisdiction/arbitration clauses: void if not negotiated.

We expect that the aforementioned "civil flavour" of our shipping case-law may come to an end because article 2 of the new Law states that it must be interpreted according to international conventions in force in Spain, meaning that our split shipping law system will no longer cause terrible interpretation headaches and will result in more predictable case-law, or so we hope.

If one takes into account that the government is authorised by this new maritime law to rewrite it, in combination with the Ports and Merchant Marine Law, into a "Code of Maritime Laws" within a period of three years, we may conclude that Spain has stepped firmly into the 21st century directly from the 19th century regarding maritime law.

As the government has also approved a new draft Code of Commerce [2014] for public discussion, this means that our commercial law may be totally updated before 2020.

To conclude as we started, let us remember that, as Ulpian wrote, "*Ad summam reipublicae utilitatem navium exercitio pertinet*" (Digest, 14,1,1,20), "the management of the vessel is of utmost interest for the republic".

(The full official text of the new law is available (in Spanish) here: https://www.boe.es/diario_boe/txt.php?id=BOE-A-2014-7877).

ASSEMBLY DOCUMENTS

REPORT ON THE WORK OF THE INTERNATIONAL WORKING GROUP ON CROSS-BORDER INSOLVENCY

Christopher Davis

An International Working Group ("IWG") on Cross-Border Insolvency was formed in 2010, following the 2008 financial crisis which adversely impacted the maritime sector. The IWG held its preliminary meeting in Buenos Aires in October 2010, in conjunction with the CMI Colloquium held in that city, and currently consists of the following members from civil and common law jurisdictions:

Christopher DAVIS, United States of America (Chairman)
Sarah DERRINGTON, Australia (Rapporteur)
William SHARPE, Canada
Beiping CHU, China
Sebastien LOOTGIETER, France
Maurizio DARDANI, Italy
Manuel ALBA, Spain

The IWG's comprehensive questionnaire on cross-border insolvency was sent to National Maritime Law Associations ("NMLAs") in May 2012. 15 replies have been received to date, including 14 from NMLAs (Brazil, Canada, China, Croatia, Denmark, France, Ireland, Italy, Japan, Malta, Norway, Singapore, Spain, and United States of America), and one from a Titulary Member (Jose M. Alcántara).

A comparative analysis of the replies to the questionnaire received was presented during a panel discussion held in conjunction with the CMI Beijing Conference work programme in October 2012, which included Canadian, Chinese, Korean, Spanish and United States perspectives on cross-border insolvency.

Inasmuch as the subject of cross-border insolvency has remained topical, as evidenced by the continued filing of high-profile bankruptcies reported in Lloyd's List and TradeWinds, an updated (albeit shorter) panel discussion formed part of the Dublin Symposium work programe in October 2013, which included presentations by Olaf Hartenstein of Germany on the reform of German insolvency law and Prof. Martin Davies of Tulane Law School on the

interrelationship between limitation of liability and insolvency proceedings.

The subject is also scheduled to be included in the seminar programme for the upcoming CMI Hamburg Conference in June 2014, where a speaker will address the topic of cross-border insolvency in the maritime context.

The IWG is continuing to receive replies to its questionnaire, which are being analyzed and uploaded to the CMI's website as they are received.

Analysis of the questionnaire replies received so far shows three principal legal settings for cross-border marine insolvencies. For insolvencies involving debtors and assets within the European Union ("EU") EC Regulation 1346/2000 regulates conflicts of law and jurisdiction between member states (some Scandinavian EU member states are parties to a Nordic convention on cross-border insolvency which is similar to the EU regulation). For those countries which have adopted domestic legislation based upon the UNCITRAL Model Law on Cross-Border Insolvency, there is a developing trend of mutual recognition and coordinated administration of cross-border insolvency proceedings with cooperation between courts. Outside of those settings, the effect, operation and outcome of creditors' enforcement of insolvency proceedings with multinational aspects is much less certain. Such uncertainty extends to cross-border insolvencies involving one jurisdiction to which EC Regulation 1346/2000 or the UNCITRAL Model Law applies and other jurisdictions which are not subject to either regime. Another area of uncertainty is the extent to which foreign recognition may be granted to reorganization proceedings such as those under Chapter 11 of the United States Bankruptcy Code, in which eventual restructuring of debt or payment to credits may differ from generally accepted priority ranking of creditors' claims against a ship.

The IWG is now looking ahead to determine the best way forward for its work and will forward its recommendations in due course to the Executive Council. Some of the proposals under consideration include recommending a protocol to the UNCITRAL Model Law specifically addressing *in rem* actions, developing a set of best practices based on the comparative analysis of the replies to the questionnaire received to date, identifying conflicts between existing cross-border insolvency legal regimes and international maritime conventions, promoting certainty and uniformity in the legal effect given to judicial sales of ships following a cross-border insolvency, and perhaps encouraging countries that have a substantial maritime sector and have yet to adopt a cross-border insolvency legal regime to do so in an effort to promote harmonization of the law in this area.

The IWG will provide a short report on the current status of its work during the 17 June 2014 Assembly in Hamburg.

CMI INTERNATIONAL WORKING GROUP ON THE FAIR TREATMENT OF SEAFARERS – REPORT TO THE ASSEMBLY (IWG)

Olivia Murray*

1. Recent activities of the IWG

The IWG welcomed new member, Kate Lewins to the group.

Patrick Griggs and the Chair of this IWG attended the IMO LEG 101 in April 2014 for CMI. Points of particular note on this subject include:

The CMI Co-Sponsored LEG 101/4/1 regarding the Questionnaire on the implementation of the 2006 guidelines on the fair treatment of seafarers in the event of a maritime accident.

- This paper was submitted by the International Transport Workers' Federation (ITF), the International Federation of Ship Masters' Associations (IFSMA) and the CMI. The ITF introduced the document thanking the Chairman and the IMO for their initiatives in relation to reducing casualties; the purpose of the survey regarding the guidelines on fair treatment of seafarers in the event of a maritime accident was explained and the fact that this was conducted by Seafarers Rights International (SRI).
- Deidre Fitzpatrick of SRI then spoke reporting the results of the survey and said that there was an encouraging response rate from governments and thanked them for responding. Broadly there were three categories of replies: some states said that all the guidelines had passed into their laws; some said that existing laws already protected seafarers sufficiently and thirdly, some states said that model legislation and information and assistance from the IMO would assist them regarding passing the guidelines into law.
- The paper requested the IMO to encourage implementation of the Fair Treatment Guidelines. Also it was stated that it would be helpful to have more responses from governments in regard to the survey in whatever form is convenient to those governments. In relation to the replies to the survey already received it was noted that the co-sponsors

* Current Chair

(which in practice means work done by the CMI's IWG and by SRI) proposed to analyse the replies and to bring the analysis back to the next session of the Legal Committee (LEG102).

– There were several positive interventions in relation to this paper and the IMO LEG Chair summed up this item, expressed thanks to those submitting the paper, supported the efforts and encouraged more responses from states and is looking forward to the analysis.

Activities by the IWG in recent years also include the following: firstly, submission to the IMO Legal Committee of a 'short document' in relation to UNCLOS Art. 230 not only on behalf of the CMI but also on behalf of other industry bodies. Secondly, the publication of an article in the Journal of International Maritime Law on the Fair Treatment of Seafarers. Both of these documents are available on the IWG website.

2. Current Work – On-going project with Seafarers' Rights International

As previously reported, in October 2013 the CMI Executive Council approved a joint project with Seafarers' Rights International (SRI) a broad outline of which is as follows:

Drafting and sending a questionnaire to IMO Governments and Maritime Law Associations (MLAs) on behalf of the CMI/SRI with an overall objective of promoting generally the subject of fair treatment for seafarers in the event of a maritime accident. This has now been completed. SRI sent a shorter version of the Questionnaire to the Governments and CMI sent a slightly expanded version to MLAs.

Present initial submission to the IMO presenting the results of any such questionnaire at LEG 101 in April 2014. As detailed above, the initial results/responses from Governments were presented at the IMO by SRI. CMI co-sponsored this paper.

Update the information gleaned from the CMI 2005 questionnaire (this was submitted to MLAs and a summary of the results is on the CMI IWG website).

Ascertain the country's position in respect of the (albeit non-binding) Fair Treatment Guidelines and other key legislation/legal instruments (e.g. are they reflected in binding provisions under local law).

Seek input as to why there may be difficulties implementing the Guidelines or fulfilling international obligations on seafarer rights and ascertaining how such compliance can be facilitated.

Present a more detailed analysis of the Questionnaire results within a 'short document' for LEG 102.

As mentioned above, an initial submission to IMO was made in relation to this project. The Government and MLA responses will continue to be encouraged and the responses received will be more fully analysed over the coming year.

It is hoped that this project may provide a greater understanding of the 'true picture' in the various states as far as the IMO Guidelines on the Fair Treatment of Seafarers is concerned and, consequently, how the industry may encourage and facilitate adherence to those Guidelines in a positive and appropriate manner.

REPORT OF THE INTERNATIONAL WORKING GROUP ON GENERAL AVERAGE

Taco van der Valk*

On Saturday 14 June 2014 the International Subcommittee on General Average (SC) met in Hamburg to discuss three reports prepared by (subgroups of) the International Working Group on General Average (IWG). The three reports and the Hamburg ISC meeting mark the second phase of the work of the IWG and the ISC for a possible review of the York-Antwerp Rules (YAR).

After the 2012 Beijing conference a new IWG was formed with the aim of striving for a consensus between shipowning and other interests regarding a possible review of the YAR.

The first phase was aimed to get a clear view about the topics to which the review process needed to be limited. In May 2013 the IWG consulted the CMI membership by means of a questionnaire. The preliminary conclusions drawn by the IWG from the replies to the questionnaire were put before the ISC meeting during the 2013 Dublin Symposium.

In the second phase the IWG was to do more preparatory work on the topics/problems remaining after the Dublin ISC meeting, to make sure everybody had a firm grasp of them. The ISC meeting in Hamburg would be used to see whether broad consensus on the remaining topics could be reached between the different interests.

After reaching broad consensus on the different topics the IWG would turn to the third phase, i.e. the drafting of revised YAR. The drafts would have to be discussed in the ISC and Assembly meetings in Istanbul (2015) and New York (2016).

The Hamburg ISC meeting focused on three reports:

– Salvage (Salvage in or out of GA?; differential salvage; contributory values)
– Financial Issues (Currency of the adjustment; Commission; Rate of interest; Treatment of cash deposits)
– Rules X and XI (Wages & maintenance at a port of refuge; Port charges

* Rapporteur.

(after Trade Green judgment); Bigham cap), Security Documents, Low Value Cargo, Rule E (time limit; treatment of recoveries).

While the discussions at the meeting provided greater clarity as to the items to be resolved and the manner in which they might be resolved, no true consensus or compromise could be reached at this stage: representatives of certain interest groups and MLA's indicated during the meeting that they had no definitive mandate in Hamburg as formal meetings within their respective organisations were still to take place within the months following the Hamburg conference. In order not to lose too much time the IWG will now prepare the report of the Hamburg ISC meeting as soon as possible, and shortly thereafter arrange for a meeting of the representatives of the relevant interest groups. The aim is to make sure that the interest groups will know exactly what the issues are, and what mandate they may need to give at their formal meetings to their representatives for the run-up to the CMI Istanbul Symposium.

REPORT OF THE INTERNATIONAL WORKING GROUP ON JUDICIAL SALE OF SHIPS

Henry Hai Li

After the Dublin ISC Meeting, a revised draft of the Beijing Draft prepared by Andrew Robinson, a draft commentary on the Revised Beijing Draft prepared by Frank Smeele and a draft overall report prepared by Henry Hai Li were circulated amongst the IWG members for discussion and finalization. As planned, the Overall Report, among other things, should contain a historical review of this project, while the Revised Beijing Draft should incorporate all the proposed changes supported by the majority view expressed during the discussion at Dublin. On 3 February 2014, the aforementioned documents together with all the attachments to the Overall Report were sent to the CMI President, who has circulated the documents to the national maritime law associations on 4 February 2014.

The IWG would like to take this opportunity to express its gratitude to Mr. Måns Jacobsson for his valuable advice and proposals on the revised Beijing Draft from a treaty law prospective both of substance and of treaty style. In addition, the IWG is also grateful to Prof. John Hare for his "professor proof-correcting" the draft of the Overall Report.

At the moment, the IWG has not yet received any comment and/or amendment proposal from the NMLAs on the Revised Beijing Draft. It is difficult to know precisely at the moment what is likely to come up during the Hamburg Conference, but the IWG is trying to make preparations in advance to deal with any problem that might arise during the next ISC meeting and the Plenary of the Hamburg Conference.

REPORT OF THE INTERNATIONAL WORKING GROUP ON MARINE INSURANCE RULES

Dieter Schwampe*

The International Working Group consists of the following members:
Prof. Pierangelo Celle, Italy
Dr. Sarah Derrington, Australia
Joseph Grasso, USA
Prof. Dr. Marc Huybrechts, Belgium
Jiro Kubo, Japan
Prof. Pengnan Wang, China
Prof. Dr. Dieter Schwampe, Chairman
Prof. Dr. Rhidian Thomas, United Kingdom

During the Dublin colloquium, as Chairman of the IWG I gave a presentation of the then present deliberations of the IWG. This presentation is available on the IWG's website (as part of the *Work in Progress* website).

The IWG used the opportunity of the Dublin colloquium for a personal meeting of those IWG members attending the colloquium, namely Pierangelo Celle, Sarah Derrington, Jiro Kubo, Pengnan Wang, Rhidian Thomas and myself. Given the geographical spread of the IWG members around the world, this was the only personal meeting of the IWG. But the IWG members engaged in a lively email exchange on the main subject of the IWG's work, the consideration of guidelines for national governments in respect of mandatory provisions in international conventions.

After Dublin, the IWG had identified for areas for further considerations:

– Is there a need for guidelines in respect of how to secure that insurance cover provided under the conventions is in line with the respective requirements of those conventions?
– Is there a need for guidelines in respect of how to secure the financial strength of insurers providing cover under the conventions?
– Is there a need for guidelines in respect of harmonization of time limits for direct claims against an insurer providing insurance cover under a convention?

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* Prof. Dr., Chairman of the IWG.

– Is there a need for guidelines in respect of the practice of national administrations in case of termination of insurance cover und a convention?
The deliberations of the IWG lead to the following results:

Is there a need for guidelines in respect of how to secure that insurance cover provided under the conventions is in line with the respective requirements of those conventions?

As reported previously, with the approval of the Executive Committee of CMI, the Chairman of the IWG had met with representatives of the International Chamber of Shipping (ICS) and the International Group of P&I Associations (IG). Those representatives had made clear that in their views the current administrative procedures for issuing certificates under conventions on basis of blue cards issued by members of the IG had created a well-established system. The IG and the ICS indicated that they would not welcome any steps which would complicate matters for owners and the P&I Clubs forming the IG.

The IWG does not stand back to agree that cover provided by IG Clubs and evidenced by blue cards issued by such clubs, in the absence of unusual agreements between owners and clubs (e.g. on self-retentions or limits), generally fulfils all requirements under current conventions. The IWG has considered, however, whether this alone is enough not to continue developing ideas and propose practices in respect of such ships, which are not covered by IG clubs. Without having made any own detailed investigations, but merely relying on readily available information, the IWG understands some 10% of the world fleet is covered outside the IG world. Recent cases have proven that there do exist situations in which vessels are trading with state certificates evidencing insurance cover under conventions, but in which the actual insurance cover for such vessels is not up to the standards provided for in the conventions (the "ALFA I" case in Greece, reported in the 100th session of the IMO Legal Committee; the "VOLGONEFT" case in Russia). These cases may be the only cases of insufficient cover, but they might also be just the tip of the iceberg. The IWG, thus, believes it cannot be said that there a generally no problems with vessels trading despite having only insufficient insurance cover. The fact that for about 90% of vessels the risk may be minimal, does not mean that risk with at least a part, and if only a small part, of the remaining 10% may be completely neglected. The IWG is careful to avoid any impression that either cover by insurance providers outside the IG is of less quality, of that vessels covered with such providers are of inferior standards. But the IWG treats it as a fact that the IG system of risk sharing and reinsurance and its scope of cover are transparent for everyone, providing comfort to national administrations as regards scope of cover. Against that, the scope of cover provided by insurance providers outside the IG is a less standardized product,

which may differ from insurer to insurer. Whilst this might call for more investigation and scrutiny of such covers, the IWG is fully aware that states might not only feel uncomfortable in view of but actually hindered by anti-trust considerations, should practices be different for insurers inside and outside the IG.

In this situation the IWG does not want to go beyond recommending that national administrations in charge of issuing certificates evidencing insurance cover under conventions should at least make sure that documents submitted to them (blue cards, insurance policies, confirmations, undertakings) expressly contain the undertaking of the insurance provider that the cover provided to the respective owner meets the minimum requirements of the respective convention, under which the certificate shall be issued. Such an undertaking, if wrong, may not change the fact that insurance cover actually provided may be insufficient. But it is hoped that in such situations courts dealing with direct actions of injured parties in convention states will not allow such an insurer to escape cover with reference to any inferior content of the actual insurance cover available, and rather hold the insurer responsible under his undertaking to convention state authorities up the minimum standards of the respective convention. The IWG would consider going beyond this only if court practice showed that insurers are successful avoiding liability up to the minimum convention standards despite undertakings given.

Is there a need for guidelines in respect of how to secure the financial strength of insurers providing cover under the conventions?

It is the view of the IWG that financial security of the insurance provider is an important element of the conventions. The best regulatory regime turns out to be useless if those who under such regime are designed to make good damage do not have sufficient financial strength. Yet, none of the conventions addresses the subject. For the IWG this is no surprise as financial stability of financial institutions, including insurers, is not a matter of international maritime law. It is a matter of financial and insurance supervision, which widely seems to lack international harmonization, despite considerable regulatory activity in certain regions of the world.

The IWG is aware that the IMO has addressed this aspect already in the context for the Bunkers Convention (Circular Letter No. 3145 of 06.01 2011, attached to this report). Its annex 3 contains detailed suggestions of how states should deal with the solvency issue. After the IMO had addressed the problem already, though only for one of the relevant conventions, in the latest meeting of the IMO Legal Committee the problem was addressed in a broader respect. This development should be monitored. If it leads to guidelines for all relevant conventions nothing further would have to be done in this respect.

Is there a need for guidelines in respect of harmonization of time limits for direct claims against an insurer providing insurance cover under a convention?

The IWG believes that harmonized time limits would be beneficial, in particular in multi-jurisdictional cases. Technically the issue of prescription seems to fall outside the scope of what the conventions deal with anyhow. There is the further difficulty that in some countries time limits are part of substantive law, in others part of procedural law. The answers of the national MLAs to a Questionnaire prepared by the IWG have shown the great diversity of regulations. Though harmonization might be desirable, the IWG believes that this should be something considered further only if the Executive Council decide on guidelines anyhow.

Is there a need for guidelines in respect of the practice of national administrations in case of termination of insurance cover und a convention?

The IWG believes that this is an area which justifies further activity. The IWG was made aware of problems in this area only after its Questionnaire had been sent out. The IWG, thus, does not have the benefit of information from national MLAs on how their national administrations deal with notices of cancellation in individual cases. Obviously, reports from main flag states would be the most relevant here. The conventions generally provide protection in case of cover termination, but only for period of three months. After expiry of the period an insurer cannot be called to cover convention liabilities anymore. There should be procedures in place, accordingly, which prevent that ships are trading with certificates issued by national authorities evidencing insurance cover which in fact has been terminated and is not available anymore for injured parties after expiry of the three months additional convention period. Due to the lack of information from national MLAs, the IWG is not in a position to form a view whether the problem described is more of theoretical or practical relevance. One case has been made known to the IWG, however, in which termination of cover had been notified to the administration of a certain flag state. The respective flag state did nothing but file this notice. In particular, no steps were taken with the respective owners to request evidence of new insurance cover. Instead, the administration remained inactive, resulting in the vessel entering ports and evidencing insurance cover by producing the respective flag state certificate. In that particular case a bunker oil spill occurred, which finally only was covered as it happened to occur two weeks before the three months period expired, for which the previous insurer remained liable under the Bunkers Convention. Had the incident occurred three weeks later, the insured parties would have been left without the protection designated for them by the Bunkers Convention.

The IWG suggest that the Executive Council authorizes it to approach national MLAs with an additional short questionnaire on practices and

procedures in their jurisdiction. The answers might either prove the necessity to investigate the matter further or identify systems which already work efficiently and which then could be recommended also to other states.

The IWG is aware, however, that it may be difficult to recommend more than alerting states that they should not only file a notice of termination received from an insurer and remain inactive otherwise. The difficulty is that there is no central body which keeps records for everyone and to whom states could apply if they are in need of information or to whom they could turn to inform that a certificate has been withdrawn but physically is still onboard of a vessel. The IWG has considered the very well working PSC/MoU systems, but at least now they do not yet deal with these issues, so that the PSC/MoU frameworks would have to be amended. Such a step, thus would go beyond guidelines and, therefore, be beyond the current mandate of this IWG.

In conclusion

- the IWG recommends a guideline that national governments, in order to secure that insurance cover provided is in line with minimum requirements under conventions, should request from insurance providers in suitable form a confirmation that the cover they provide is at least for the minimum requirements established in the conventions.
- the IWG recommends to suggest to IMO that IMO's recommendations under the Bunkers Convention in respect of financial security are extended also to other conventions with similar requirements.
- the IWG does not recommend to deal further with the subject of harmonization of time limits for direct actions against insurers.
- the IWG seeks the approval of the Executive Council to approach national MLAs with a further questionnaire on national practices and procedures in case of termination of insurance cover. The IWG recommends to the Executive Council to consider further whether amendments to the current PSC/MoU systems are possible and suitable and should be recommended to the appropriate bodies.

REPORT OF THE IWG ON OFFSHORE ACTIVITIES

Patrick Griggs*

In July 2013 a Questionnaire was sent to all NMLAs designed to ascertain which states were parties to international, regional, bi-lateral agreements or had national legislation regarding liability and compensation for pollution caused by the exploration for and exploitation of offshore oil and gas. As a matter of courtesy a draft of the Questionnaire was sent to the Indonesian Government (which was initially responsible for raising this issue at IMO) for comments and approval. No response was received.

17 NMLAs have responded to date and, in addition, the IWG has received a copy of a current bi-lateral agreement between the USA and Mexico regarding the exploitation of hydrocarbon reserves in the Gulf of Mexico and of the Norwegian Petroleum Act. The latter will be a useful guide should it be decided that the way forward is to encourage the adoption of standard comprehensive national laws relating to liability and compensation.

The most significant development has been the publication in February of an IDDRI Study entitled "Seeing beyond the horizon of deepwater oil and gas: strengthening the international regulation of offshore exploration and exploitation. This document contains a comprehensive review of existing international, multilateral and bilateral agreements on the regulation of offshore activities and, on the face of it, achieves all that the CMI set out to do by sending out its circular. This study will be considered by the IWG at its meeting in Hamburg and a report will then be presented at the Assembly.

The topic of transboundary pollution appears under Any other Business in the Agenda for the IMO Legal Committee's 101st Meeting which is due to take place in the week beginning April 28th. Two papers have been submitted. LEG101/11 is a note from the Secretariat and contains a list of international and regional instruments relating to transboundary pollution. This list has been developed from information submitted by IMO member states. The second paper (LEG 101/1) is submitted by Indonesia and confirms its on-going determination to develop guidance or model agreements on transboundary

* Chairman IWG on Offshore Activities.

pollution. The Indonesian Ministry of Transport is creating a web-based discussion forum so that states can exchange ideas on this topic. This website should be up and running by the end of the year. It is significant that nobody now seems to be talking about an international convention on pollution from offshore activities.

There is an on-going EU funded study on civil liability and security for offshore oil and gas activities. The contract for this study has been awarded to BIO by Deloitte (Centre for Innovation and Excellence in Sustainability Services at Deloitte) in Paris.

REPORT OF THE INTERNATIONAL WORKING GROUP ON POLAR SHIPPING ISSUES

Aldo Chircop*

1. The IWG comprises:
   Nigel FRAWLEY, Chair
   Frida ARMAS PFIRTER
   David BAKER
   Aldo CHIRCOP, Acting Chair
   Peter CULLEN
   Tore HENRIKSEN
   Kiran KHOSLA
   Bert RAY
   Nicolò REGGIO
   Henrik RINGBOM
   Lars ROSENBERG OVERBY
   Donald ROTHWELL
   Alexander SKARIDOV

2. Since CMI Dublin, the work of the IWG has largely been conducted via e-mail. On 15 June 2014 a number of IWG Members were able to meet for a pre-conference working session convened at the Hotel Atlantic Kempinski in Hamburg. In attendance at the meeting were Aldo Chircop (Acting Chair), Kiran Khosla, Nicolò Reggio, Lars Rosenberg Overby, Peter Cullen, Howard M. McCormack (observer), Jaime Casado Ruiz (observer), and Phillip A. Buhler (observer). Further IWG work discussions during the conference on 16-17 June included David Baker, Tore Henriksen and Alexander Skaridov.

3. In Hamburg the IWG reviewed the progress of work, made adjustments to the work plan originally reported to the Assembly in Dublin, and identified the next tasks (see attachment).

4. The IWG recommends that it be authorized to pursue work on the basis of the updated work plan and to perform the identified tasks.

Respectfully submitted

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* Professor, Acting Chair.

ATTACHMENT
IWG (ARCTIC & ANTARCTIC)
WORK PLAN & STATE OF WORK (15 June 2014)

1. Inventory of international organizations` initiatives

Task:

Develop an inventory of what the International Maritime Organization (IMO), International Chamber of Shipping (ICS) and Baltic and International Maritime Council (BIMCO) are currently doing or not doing with respect to the international maritime conventions, regulations, codes, guidelines, codes and other maritime legislative initiatives for the polar regions.

Work to date:

The CMI is generally liaising more closely with the IMO,ICS and other United Nations bodies (Nigel Frawley). It was agreed that work on the inventory should continue and that it be expanded to include particular regional organizations such as the Arctic Council and European Union. Aldo Chircop agreed to prepare a first draft summary of IMO work concerning polar shipping regulation which will be circulated to IWG members for further inputs. It was agreed that the inventory should be reviewed and updated periodically.

Next step:

(a) A draft inventory of polar regulation initiatives should be prepared for further inputs by IWG members.

2. Review of all private international maritime law conventions

Task:

Systematic review to consider applicability and non-applicability to the polar marine environments.

Work to date:

Convention for the Unification of certain Rules with respect to Assistance and Salvage at Sea, 1910 and Protocol, 1967

International Salvage Convention, 1989

Unesco Convention on the Underwater Cultural Heritage, 2001

Nigel Frawley reviewed the Convention on Assistance and Salvage at Sea, 1910 and Protocol, 1967 and International Salvage Convention, 1989 and concluded that they apply to the Arctic Ocean beyond national jurisdiction and in Arctic waters within national jurisdiction. He also reviewed the Unesco Underwater Cultural Heritage Convention, 2001 and concluded that it applies to the Arctic Ocean beyond national jurisdiction. The conclusion is that these

three Conventions do not need specific amendments specifically dealing with any of the waters in the Arctic polar region.

As to the applicability of these three Conventions in the Southern Ocean, the three Conventions on their face appear to apply to those waters. However, the Antarctic Treaty System gives rise to particular considerations. As Professor Don Rothwell pointed out at p. 17/18 of his October 18, 2012 paper presented at the CMI Conference in Beijing:

> " .....While the Southern Ocean is not sui generis and remains subject to the same laws of the sea and maritime law that apply elsewhere, there are a range of unique issues that arise in the Southern Ocean. The first is the absence of recognised coastal states with capacity to exercise both proscriptive and enforcement jurisdiction off the Antarctic coast. The second, arising from the first, is the predominant reliance upon flag state jurisdiction. The third is the particular issues arising from undertaking maritime regulation and enforcement in one of the world's most remote oceans and associated maritime safety and security issues. ....."

As a result, no recommendation for amendments that might improve the applicability of those three Conventions in those waters is advanced.

International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading, 1924 (Hague Rules)

Protocol to Amend the International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading, 1968 (Hague/Visby Rules)

United Nations Convention on the Carriage of Goods by Sea, 1978 (Hamburg Rules)

United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea, 2008 (Rotterdam Rules)

The concept of seaworthiness in these conventions was discussed with reference to the higher standards expected in polar shipping emerging in recent and current IMO regulation (e.g., Intact Stability Code, 2008 amendment; Draft Polar Code, 2014; amendments to the International Convention for the Safety of Life at Sea, 1974; International Convention for the Prevention of Pollution from Ships, 1973/78; International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978). The IWG agreed that a working paper on the demands of seaworthiness for carriage and other maritime contracts in a polar navigation context should be studied to better understand the higher demands of seaworthiness in polar environments (i.e., "polarworthiness"). Aldo Chircop and Peter Cullen agreed to commence work on the working paper.

International Convention for the Unification of Certain Rules Relating to Maritime Liens and Mortgages, 1967

International Convention on Maritime Liens and Mortgages, 1993

The IWG considered these conventions and concluded that no further consideration in a polar shipping context is needed at this time.

Convention on Limitation of Liability for Maritime Claims, 1976 and 1996 Protocol

International Convention Relating to the Limitation of the Liability of Owners of Sea-Going Ships, 1957 and 1979 Protocol

The IWG decided that the consideration of these two instruments is better placed with other liability conventions.

The IWG decided that other conventions listed on the 2 April 2013 list prepared by Nigel Frawley should be considered after preliminary reviews are completed by the IWG Members tasked with those reviews.

Next steps:

(a) A working paper on "polarworthiness" should be prepared for future discussion.
(b) Reviews of the remaining conventions should be continued and concluded.

3. Pollution liability regime for polar regions

Tasks:

Consider the pollution liability regime specifically for polar regions and produce a working paper in which a study is made regarding how the existing pollution liability regimes actually apply (or do not) apply to the polar regions (International Convention on Civil Liability for Oil Pollution Damage, 1969 and Protocols; International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971 and Protocols; International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001; International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996 and 2010 Protocol, etc.).

Work to date:

The IWG discussed in detail preliminary work to be presented at the conference by Lars Rosenberg Overby. The IWG agreed that a number of important issues were raised that merited more in-depth study, in particular the issues that can be expected to arise with regard to claims for preventative measures and pollution damage in a polar context, the likely large expense for logistics, limited capability to deal with oil spills, limited options for disposal of recovered oil, etc. , all raising question as to what criteria would be employed to determine the reasonableness of measures within the CLC and IOPC Funds framework. It was agreed that these issues should be explored further in a working paper. Lars Rosenberg Overby agreed to lead the preparation of the working paper with assistance from other IWG members.

Next steps:

(a) Preparation of a draft working paper on the civil liability regime for oil pollution in a polar context.

4. *Focus on selected international public maritime law conventions*

Task:

Continue studies of certain identified public law conventions.

Work to date:

International Convention on Load Lines, 1966 (LLC)

A scoping study of the LLC has been prepared and presented in Hamburg by a subgroup composed of Aldo Chircop, Bert Ray, Nicolò Reggio and David Snider led by Aldo Chircop. The study identified a number of important gaps and issues that require further technical and legal study. It was agreed that the LLC merited further study in view of advancing an appropriate recommendation to the Assembly.

Convention on the International Regulations for Preventing Collisions at Sea, 1972 (COLREGS)

The IWG discussed various issues concerning the application of the collision avoidance regulations in a polar navigation context, in particular in the Arctic. The IWG observed possible gaps (e.g., convoys) and some uncertainty as to how particular rules apply in polar environments (e.g., action to avoid collision). It was agreed that a sub-group be established to consider the convention in greater depth. Peter Cullen agreed to lead the sub-group with inputs from Lars Rosenberg Overby, Aldo Chircop, Alexander Skaridov (to be invited) and David Snider (to be invited).

International Convention on Safety of Life at Sea, 1974 (re routeing measures)

The IWG considered a proposal by Kiran Khosla to study SOLAS routeing measures in an Arctic context. It was agreed that the proposal should be looked into and that the Acting Chair will consult the Chair and members on the matter.

Other conventions (e.g.: International Convention for the Prevention of Pollution from Ships, 1973/78; International Convention for the Control and Management of Ships' Ballast Water and Sediments, 2004) should continue to be monitored by the IWG.

Next steps:

(a) Work on the LLC should continue and the draft scoping paper finalized.

(b) Work on a COLREGS study should be started by the identified subgroup.

5. Other

IWG members made the following presentations in CMI Hamburg 2014:
- UNCLOS in the Arctic (Aldo Chircop)
- Civil Liability in Polar Marine Environments (Lars Rosenberg Overby)
- Load Lines when Navigating in Polar Waters (Aldo Chircop, Bert Ray, Nicolò Reggio, David (Duke) Snider)
- The IMO Polar Code (Tore Henriksen)
- Northern Sea Route (Alexander Skaridov)

PIRACY UPDATE

Andrew Taylor

"The single biggest reason for the drop in worldwide piracy is the decrease in Somali piracy off the coast of East Africa," according to Pottengal Mukundan, Director of IMB. Somali pirates have been deterred by a combination of factors, including the key role of international navies, the hardening of vessels, the use of private armed security teams, and the stabilising influence of Somalia's central government.

What is the current situation?

Common consensus seems to be that piracy is declining, however whilst trends are changing piracy continues to be a pressing problem. To demonstrate the changes, some statistics:

– According to the International Maritime Bureau (IMB) quarterly report, as of 31 March 2014 Somali pirates are currently holding one vessel for ransom with three crew members onboard as hostage. In addition, 49 crew members are still held on land and four are missing.
– The overall cost of Somali piracy is down by almost 50%. The total cost for 2013 was $3 billion – 3.2 billion; down from $5.7 billion-6.1 billion in 2012.[1]
– A total of 264 incidents of piracy and armed robbery against ships were reported to the International Maritime Bureau's Piracy Reporting Centre in 2013. This is an 11% decrease from the 2012 figures of 297 and a 41% decrease from 2011 (445 incidents) when Somali piracy was at its peak.
– In Somalia, 15 incidents were reported to the IMB in 2013, including two vessels which were hijacked, both of which were released within a day as a result of naval actions. A further eight vessels were fired upon. These figures are the lowest since 2006, down from 75 in 2012, and 237 in 2011.
– West African piracy made up 19% of attacks worldwide in 2013. Nigerian pirates and armed robbers accounted for 31 of the region's 51 attacks,

[1] Oceans Beyond Piracy – The State of Maritime Piracy 2013.

taking 29 people hostage and kidnapping 36, more than in any year since 2008.

– IMB reports a high number of 'low-level opportunistic thefts", accounting for more than 50% of all vessels boarded in 2013. These attacks were particularly common in Indonesia, India and Bangladesh.

Recent developments

GUARDCON has been in existence since 2012 and has become the industry standard contract for the employment of private maritime security companies (PMSCs). It was designed with East Africa in mind, as a means of placing armed guards on board merchant vessels in transit in the high seas.

Unlike the Somalian pirate attacks in the Indian Ocean on vessels in transit on the high seas, the attacks in areas such as the Gulf of Guinea often take place on vessels entering or leaving ports, or at anchor within the territorial waters of a littoral state.

National law in the affected countries dictates that foreign security guards are not permitted to carry firearms on board merchant vessels within their territorial waters. Shipowners who want armed security personnel to protect their ships in these areas must rely on local security or law enforcement forces.

BIMCO's Special Circular No. 1-20 February 2014 sets out recommended amendments to GUARDCON for use off West Africa, developed by BIMCO with input from International Group clubs. Whist BIMCO has stated it has no intention of producing an amended version of GUARDCON for use off West Africa, the International Group clubs have produced an amended version – "GUARDCON West Africa" which incorporates recommended amendments.

What next?

West Africa and Nigeria in particular, face some significant and seemingly intractable problems: corruption, collusion, ethnic tensions, poverty and inequitable distribution of proceeds of oil wealth means the black market for illicit oil is deeply entrenched. Significant governmental and structural changes will be needed to address these issues: changes which are frankly unlikely to account in the short to medium term. In order to make a difference, efforts must be designed to alleviate or manage the consequences of the problem.

The Nigerian Navy is enthusiastically working to reduce the problem, but with limited success to date. There has been suggestions that regional bodies such as ECOWAS should develop a common maritime security and interdiction operation. The use of armed guards are likely to become more common, particularly following the introduction of GUARDCON West Africa. Additional 'piracy hardening' may also become a requirement in the future.

Conclusion

The prevailing risks of piracy attacks are not to be underestimated in light of the seemingly positive figures referred to above. As highlighted by the International Maritime Bureau (IMB), "there can be no room for complacence, as it will take only one successful Somali hijacking for the business model to return."[2]

[2] ICC International Maritime Bureau Piracy and Armed Robbery Against Ship Report for the period of 1 January - 31 March 2014.

REPORT OF THE INTERNATIONAL WORKING GROUP ON THE ROTTERDAM RULES

Tomotaka Fujita*

Introduction

On December 11, 2008, during its 63rd session, the UN General Assembly

On December 11, 2008, during its 63rd session, the UN General Assembly adopted the United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea (Rotterdam Rules). Taking into account the practical and historical importance of the new regime for the international carriage of goods, the Executive Council decided that the CMI would continue to monitor the adoption and implementation of the Rotterdam Rules, and it established the International Working Group (IWG) on the Rotterdam Rules for this purpose. The current members of the IWG are Tomotaka Fujita (Chairman), Stuart Beare, Philippe Delebecque, Vincent M. DeOrchis, José Tomas Guzman, Hannu Honka, Kofi Mbiah, Michael Sturley, José Vincente Guzman, and Gertjan Van der Ziel.

The Current Status of the Rotterdam Rules

Twenty-five States have signed, and three have ratified, the Rotterdam Rules. Signatories as of May 2014 are as follows: Armenia (29 Sep. 2009), Cameroon (29 Sep. 2009), Congo (23 Sep. 2009, ratified Jan.28, 2014), Democratic Republic of the Congo (23 Sep. 2010), Denmark (23 Sep. 2009), France (23 Sep. 2009), Gabon (23 Sep. 2009), Ghana (23 Sep. 2009), Greece (23 Sep. 2009), Guinea (23 Sep. 2009), Guinea-Bissau (24 Sep. 2013), Luxembourg (31 Aug. 2010), Madagascar (25 Sep. 2009), Mali (26 Oct. 2009), the Netherlands (23 Sep. 2009), Niger (22 Oct. 2009), Nigeria (23 Sep. 2009), Norway (23 Sep. 2009), Poland (23 Sep. 2009), Senegal (23 Sep. 2009), Spain (23 Sep. 2009, ratified 19 Jan.2011), Sweden (20 Jul. 2011), Switzerland (23 Sep. 2009), Togo (23 Sep. 2009, ratified 17 Jul. 2012),and United States of America (23 Sep. 2009).

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* Chairman of the IWG on Rotterdam Rules

Although States have been slow in their ratification, there have been several developments related to the Rules.

United States

It was reported that the United States has completed its "inter-agency review."This is one of the important steps for the ratification by the United States, and it will have a significant impact on the world's major trading countries.

Europe

Some European countries, including the Netherlands, Norway, Denmark, and Poland, are preparing for the ratification process, although their ratification might depend greatly on the U.S. ratification.

Africa

La Communauté Économique et Monétaire d'Afrique centrale (CEMAC) adopted the revised "Code Communautaire de la Marine Marchande" on July 22, 2012, which incorporated most of the provisions of the Rotterdam Rules. The Rotterdam Rules worked as a kind of model law before they entered into force.

The Work of UNCITRAL Working Group IV (E-Commerce)

UNCITRAL Working Group IV commenced a study on "electronic transferable records" in October 2011. The Working Group discussed possible draft provisions on electronic transferable records in the form of a model law at its recent meeting, in May 2014. It is very important to make sure that such provisions do not create any inconsistency with e-commerce provisions contained in the Rotterdam Rules. Although the current draft does not seem to have any inconsistencies with the Rotterdam Rules, the IWG continues to keep its eyes on the progress of UNCITRAL Working Group IV.

June 17, 2014

REPORT TO EXCO ON YOUNG CMI

Taco van der Valk*

The last activities relating to Young CMI took place at the Dublin Symposium. The activities were organized by the Dublin Symposium organizers (Edmund Sweetman in particular) with the help of Yiannis Timagenis.

On Tuesday 1 October (14.30-16.30) a special session for young lawyers was held, chaired by Yiannis Timagenis and with the following (young) speakers:

1) Miso Mudric (CMI Prize winner at Ravenna Summer School) on Salvor's Liability for Professional Negligence.
2) Denise Micallef (CMI Prize winner at IMLI Malta) on Limitation of Liability of Classification Societies.

Young Lawyer Speakers:

3) Darren Lehane on the Maritime Labour Convention 2006 and its implications for modern shipping.
4) David Kavanagh on Costa Concordia and breaking limitation.
5) Javier Zabala on *in rem* liability in Spanish Law, followed by Edmund Sweetman exposing the comparative provisions relating to *in rem* liability in Irish law.

As the meeting coincided with the CMI Assembly meeting, I unfortunately was unable to attend, but all the reactions I have seen and heard were very positive.

Later that day there was a special social event for young lawyers: the Pre-Farewell Party drinks at The 'Sheds', in the Bar Council building (Distillery Building) on Church Street.

Apart from these official parts of the programme the Irish hosts gave the young lawyers every other possible opportunity to study Irish bar interiors (the Café en Seine e.g.).

The Standing Committee CMI Young Members (Young CMI) is very grateful to the Dublin Symposium organizers for all the work they put in.

The next Young CMI activity will take place at the Hamburg Conference

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* President NVZV (Dutch MLA)

on Tuesday 17 June (14:00-15:30). The programme is not quite finalized, but the topic will focus on the degree of fault in maritime law (intent, wilful misconduct, recklessness with knowledge that (the) damage would probably result). The idea is to have a few introductory speakers and an open discussion with all present.

I am also happy to report that prior to the CMI conference the Young Maritime Lawyers Conference of the Belgian, British, Dutch, French and German MLA's will also take place in Hamburg (hosted by the German MLA this year obviously). Attendees of the CMI conference falling in the Young CMI age group will have access to the YMLC by arrangement.

I hope this suffices for the ExCo meeting.

REPORT OF THE AD HOC COMMITTEE ON THE ROLE OF THE CMI

Elizabeth L. Burrell*

Introduction

The Ad Hoc Committee is presently composed of the following individuals:

Diego Esteban Chami Argentina
The Honorable Johanne Gauthier Canada
Iannis Markianos-Daniolos Greece
Stephen Knudtzon Norway
John Markianos-Daniolos Greece
Karel Stes Belgium
Yingying Zou China

At the meeting in Beijing in October 2012, President Gombrii scheduled a session during which the NMLAs could express their views on all aspects of the future of the CMI. In preparation for the discussion, President Gombrii circulated a paper describing efforts to perpetuate the CMI's performance of its vital role in harmonizing maritime law in a world vastly different from that in which the CMI was born. These efforts included a session at the CMI's Centenary Conference in 1997 devoted to the CMI's future and the appointment in 2007 of a Steering Committee to gather responses from NMLAs about their views on the role of the CMI and its governance and activities. The discussion in Beijing was expressly intended to provide "an opportunity for NMLAs to comment on any matters relating to the workings of CMI and its relationship with NMLAs."

After the Beijing meeting, President Hetherington drafted a paper summarizing that discussion and appointed this Ad Hoc Committee to examine the current workings and activities of the CMI and to make recommendations to maintain the strength of the CMI.

The WG has met by teleconference on seven occasions. Among the items we are considering are:

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* Chair

- How the CMI might further its primary goal of promoting uniformity of maritime law internationally in today's legal environment.
- The role of the CMI vis-à-vis promoting new conventions and "soft" law, as well as encouraging the ratification of conventions.
- How the CMI can better communicate the work it is doing and has already done to both its members and the world in general.
- How to accommodate the differences among and find common benefits for NMLAs that are each unique in their structure, operating methods, and styles and that operate in unique legal environments.
- How to strengthen the bond between the CMI and the NMLAs.
- How to harness CMI resources to benefit all the interests related to the shipping industry.
- How to determine the work and projects that will be undertaken.
- How to enhance the relationships between the CMI and other international organizations.
- How to make best use of the body of expertise found among the participants.
- How to encourage the participation of young lawyers.
- The number, length, and character of meetings.
- How to foster general participation in an increasingly cost- and time-conscious era in legal practice.
- How to make the CMI a rich and continuing source of networking.
- How the CMI can support its activities, whatever they may be, going forward.

As is evident from the number and character of the issues to be addressed – and of course, there are others as well – the Ad Hoc Committee is still in the throes of its deliberations and is currently examining ways to collect input from CMI members. Therefore, at this stage, the Ad Hoc Committee is not yet in a position to make any substantive recommendations.

Respectfully submitted this 5th day of June 2014.

PART III *

Status of ratifications to Maritime Conventions

Etat des ratifications aux conventions de Droit Maritime

* *Although Comité Maritime International has made all efforts to produce accurate and correct informations as at the date of 30 June 2014 regarding the status of ratifications of Maritime Conventions, readers should address to the Official Depositaries of the Conventions to verify all information contained there.*

ETAT DES RATIFICATIONS ET ADHESIONS AUX CONVENTIONS INTERNATIONALES DE DROIT MARITIME DE BRUXELLES

(Information communiquée par le Ministère des Affaires Etrangères, du Commerce Extérieur et de la Coopération au Développement de Belgique, dépositaire des Conventions).

Notes de l'éditeur

(1) - Les dates mentionnées sont les dates du dépôt des instruments. L'indication (r) signifie ratification, (a) adhésion.

(2) - Les Etats dont le nom est suivi par un astérisque ont fait des réserves. Un résumé du texte de ces réserves est publié après la liste des ratifications de chaque Convention.

(3) - Les dates mentionnées pour la dénonciation sont les dates à lesquelles la dénonciation prend effet.

STATUS OF THE RATIFICATIONS OF AND ACCESSIONS TO THE BRUSSELS INTERNATIONAL MARITIME LAW CONVENTIONS

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

Editor's notes:

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

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

(3) - The dates mentioned in respect of the denunciation are the dates when the denunciation takes effect.

Convention internationale pour l'unification de certaines règles en matière d'Abordage et protocole de signature

Bruxelles, le 23 septembre 1910
Entrée en vigueur: 1er mars 1913

International convention for the unification of certain rules of law relating to Collision between vessels and protocol of signature

Brussels, 23rd September, 1910
Entered into force: 1 March 1913

(Translation)

Angola	**(a)**	20.VII.1914
Antigua and Barbuda	**(a)**	1.II.1913
Argentina	**(a)**	28.II.1922
Australia	**(a)**	9.IX.1930
Norfolk Island	**(a)**	1.II.1913
Austria	**(r)**	1.II.1913
Bahamas	**(a)**	3.II.1913
Belize	**(a)**	3.II.1913
Barbados	**(a)**	1.II.1913
Belgium	**(r)**	1.II.1913
Brazil	**(r)**	31.XII.1913
Canada	**(a)**	25.IX.1914
Cape Verde	**(a)**	20.VII.1914
China		
Hong Kong[(1)]	**(a)**	1.II.1913
Macao[(2)]	**(r)**	25.XII.1913
Cyprus	**(a)**	1.II.1913
Croatia	**(a)**	8.X.1991
Denmark	**(r)**	18.VI.1913
Dominican Republic	**(a)**	1.II.1913
Egypt	**(a)**	29.XI.1943
Estonia	**(a)**	15.V.1929
Fiji	**(a)**	1.II.1913
Finland	**(a)**	17.VII.1923

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

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

Abordage 1910		*Collision 1910*
France	**(r)**	1.II.1913
Gambia	**(a)**	1.II.1913
Germany	**(r)**	1.II.1913
Ghana	**(a)**	1.II.1913
Goa	**(a)**	20.VII.1914
Greece	**(r)**	29.IX.1913
Grenada	**(a)**	1.II.1913
Guinea-Bissau	**(a)**	20.VII.1914
Guyana	**(a)**	1.II.1913
Haiti	**(a)**	18.VIII.1951
Hungary	**(r)**	1.II.1913
India	**(a)**	1.II.1913
Iran	**(a)**	26.IV.1966
Ireland	**(r)**	1.II.1913
Italy	**(r)**	2.VI.1913
Jamaica	**(a)**	1.II.1913
Japan	**(r)**	12.I.1914
Kenya	**(a)**	1.II.1913
Kiribati	**(a)**	1.II.1913
Latvia	**(a)**	2.VIII.1932
Luxembourg	**(a)**	22.IV.1991
Libyan Arab Jamahiriya	**(a)**	9.XI.1934
Macao	**(a)**	20.VII.1914
Madagascar	**(r)**	1.II.1913
Malaysia	**(a)**	1.II.1913
Malta	**(a)**	1.II.1913
Mauritius	**(a)**	1.II.1913
Mexico	**(r)**	1.II.1913
Mozambique	**(a)**	20.VII.1914
Netherlands	**(r)**	1.II.1913
Newfoundland	**(a)**	11.III.1914
New Zealand	**(a)**	l9.V.1913
Nicaragua	**(r)**	18.VII.1913
Nigeria	**(a)**	1.II.1913
Norway	**(r)**	12.XI.1913
Papua New Guinea	**(a)**	1.II.1913
Paraguay	**(a)**	22.XI.1967
Poland	**(a)**	2.VI.1922
Portugal	**(r)**	25.XII.1913
Romania	**(r)**	1.II.1913
Russian Federation[3]	**(r)**	10.VII.1936
Saint Kitts and Nevis	**(a)**	1.II.1913

[3] Pursuant to a notification of the Ministry of foreign affairs of the Russian Federation dated 13th January 1992, the Russian Federation is now a party to all treaties to which the U.S.S.R. was a party. Russia had ratified the convention on the 1st February 1913.

Saint Lucia	**(a)**	3.III.1913
Saint Vincent and the Grenadines	**(a)**	1.II.1913
Solomon Islands	**(a)**	1.II.1913
Sao Tome and Principe	**(a)**	20.VII.1914
Seychelles	**(a)**	1.II.1913
Sierra Leone	**(a)**	1.II.1913
Singapore	**(a)**	1.II.1913
Slovenia	**(a)**	16.XI.1993
Somalia	**(a)**	1.II.1913
Spain	**(a)**	17.XI.1923
Sri-Lanka	**(a)**	1.II.1913
Sweden	**(r)**	12.XI.1913
(denunciation 19 December 1995)		
Switzerland	**(a)**	28.V.1954
Timor	**(a)**	20.VII.1914
Tonga	**(a)**	13.VI .1978
Trinidad and Tobago	**(a)**	1.II.1913
Turkey	**(a)**	4.VII.1913
Tuvalu	**(a)**	1.II.1913
United Kingdom	**(r)**	1.II.1913
Jersey, Guernsey, Isle of Man, Anguilla, Bermuda, Gibraltar, Falkland Islands and Dependencies, Cayman Islands, British Virgin Islands, Montserrat, Caicos & Turks Islands. Saint Helena, Wei-Hai-Wei	**(a)**	1.II.1913
Uruguay	**(a)**	21.VII.1915
Zaire	**(a)**	17.VII.1967

Convention internationale pour l'unification de certaines règles en matière

d'Assistance et de sauvetage maritimes

et protocole de signature

Bruxelles, le 23 septembre 1910
Entrée en vigueur: 1 mars 1913

International convention for the unification of certain rules of law relating to

Assistance and salvage at sea

and protocol of signature

Brussels, 23rd September, 1910
Entered into force: l March 1913

(Translation)

Algeria	**(a)**	13.IV.1964
Angola	**(a)**	20.VII.1914
Antigua and Barbuda	**(a)**	1.II.1913

Assistance et sauvetage 1910 *Assistance and salvage 1910*

Argentina	**(a)**	28.II.1922
Australia	**(a)**	9.IX.1930
Norfolk Island	**(a)**	1.II.1913
Austria	**(r)**	1.II.1913
Bahamas	**(a)**	1.II.1913
Barbados	**(a)**	1.II.1913
Belgium	**(r)**	1.II.1913
Belize	**(a)**	1.II.1913
Brazil	**(r)**	31.XII.1913
Canada	**(a)**	25.IX.1914
(denunciation 22.XI.1994)		
Cape Verde	**(a)**	20.VII.1914
China		
Hong Kong[1]	**(a)**	1.II.1913
Macao[2]	**(r)**	25.VII.1913
Cyprus	**(a)**	1.II.1913
Croatia	**(a)**	8.X.1991
(denunciation 16.III.2000)		
Denmark	**(r)**	18.VI.1913
Dominican Republic	**(a)**	23.VII.1958
Egypt	**(a)**	19.XI.1943
Fiji	**(a)**	1.II.1913
Finland	**(a)**	17.VII.1923
France	**(r)**	1.II.1913
Gambia	**(a)**	1.II.1913
Germany	**(r)**	1.II.1913
Ghana	**(a)**	1.II.1913
Goa	**(a)**	20.VII.1914
Greece	**(r)**	15.X.1913
Grenada	**(a)**	1.II 1913
Guinea-Bissau	**(a)**	20.VII.1914
Guyana	**(a)**	1.II.1913

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

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

Haiti	**(a)**	18.VIII.1951
Hungary	**(r)**	1.II.1913
India	**(a)**	1.II.1913
Iran	**(a)**	26.IV.1966
(denunciation 11.VII.2000)		
Ireland	**(r)**	1.II.1913
Italy	**(r)**	2.VI.1913
Jamaica	**(a)**	1.II.1913
Japan	**(r)**	12.I.1914
Kenya	**(a)**	1.II.1913
Kiribati	**(a)**	1.II.1913
Latvia	**(a)**	2.VIII.1932
Luxembourg	**(a)**	22.IV.1991
Malaysia	**(a)**	1.II.1913
Madagascar	**(r)**	1.II.1913
Mauritius	**(a)**	1.II.1913
Mexico	**(r)**	1.II.1913
Mozambique	**(a)**	20.VII.1914
Netherlands	**(r)**	1.II.1913
Newfoundland	**(a)**	12.XI.1913
New Zealand	**(a)**	19.V.1913
Nigeria	**(a)**	1.II.1913
Norway	**(r)**	12.XI.1913
(denunciation 9.XII.1996)		
Oman	**(a)**	21.VIII.1975
Papua - New Guinea	**(a)**	1.II.1913
Paraguay	**(a)**	22.XI.1967
Poland	**(a)**	15.X.1921
Portugal	**(r)**	25.VII.1913
Romania	**(r)**	1.II.1913
Russian Federation	**(a)**	10.VII.1936
Saint Kitts and Nevis	**(a)**	1.II.1913
Saint Lucia	**(a)**	3.III.1913
Saint Vincent and the Grenadines	**(a)**	1.II.1913
Solomon Islands	**(a)**	1.II.1913
Sao Tomé and Principe	**(a)**	20.VII.1914
Seychelles	**(a)**	1.II.1913
Sierra Leone	**(a)**	1.II.1913
Singapore	**(a)**	1.II.1913
Slovenia	**(a)**	13.X.1993
Somalia	**(a)**	1.II.1913
Spain	**(a)**	17.XI.1923
(denunciation 19.I.2006)		
Sri Lanka	**(a)**	1.II.1913
Sweden	**(r)**	12.XI.1913
Switzerland	**(a)**	28.V.1954
Syrian Arab Republic	**(a)**	1.VIII.1974

Timor	**(a)**	20.VII.1914
Tonga	**(a)**	13.VI.1978
Trinidad and Tobago	**(a)**	1.II.1913
Turkey	**(a)**	4.VII.1955
Tuvalu	**(a)**	1.II.1913
United Kingdom [3]	**(r)**	1.II.1913
Anguilla, Bermuda, Gibraltar, Falkland Islands and Dependencies, British Virgin Islands, Montserrat, Turks & Caicos Islands, Saint Helena	**(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

[3] Including Jersey, Guernsey and Isle of Man.

Convention internationale pour l'unification de certaines règles concernant la

Limitation de la responsabilité des propriètaires de navires de mer

et protocole de signature

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

International convention for the unification of certain rules relating to the

Limitation of the liability of owners of sea-going vessels

and protocol of signature

Brussels, 25th August 1924
Entered into force: 2 June 1931

Belgium	**(r)**	2.VI.1930
Brazil	**(r)**	28.IV.1931
Denmark	**(r)**	2.VI.1930
(denunciation - 30. VI. 1983)		
Dominican Republic	**(a)**	23.VII.1958
Finland	**(a)**	12.VII.1934
(denunciation - 30.VI.1983)		
France	**(r)**	23.VIII.1935
(denunciation - 26.X.1976)		
Hungary	**(r)**	2.VI.1930
Madagascar	**(r)**	12.VIII.1935
Monaco	**(r)**	15.V.1931
(denunciation - 24.I.1977)		
Norway	**(r)**	10.X.1933
(denunciation - 30.VI.1963)		
Poland	**(r)**	26.X.1936
Portugal	**(r)**	2.VI.1930
Spain	**(r)**	2.VI.1930
(denunciation - 4.I.2006)		
Sweden	**(r)**	1.VII.1938
(denunciation - 30.VI.1963)		
Turkey	**(a)**	4.VII.1955

Convention internationale pour l'unification de certaines règles en matière de

Connaissement

et protocole de signature

"Règles de La Haye 1924"

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

International convention for the unification of certain rules of law relating to

Bills of lading

and protocol of signature

"Hague Rules 1924"

Brussels, 25th August 1924
Entered into force: 2 June 1931

(Translation)

Algeria	**(a)**	13.IV.1964
Angola	**(a)**	2.II.1952
Antigua and Barbuda	**(a)**	2.XII.1930
Argentina	**(a)**	19.IV.1961
Australia*	**(a)**	4.VII.1955
(denunciation - 16.VII.1993)		
Norfolk	**(a)**	4. VII.1955
Bahamas	**(a)**	2.XII.1930
Barbados	**(a)**	2.XII.1930
Belgium	**(r)**	2.VI.1930
Belize	**(a)**	2.XI.1930
Bolivia	**(a)**	28.V.1982
Cameroon	**(a)**	2.XII.1930
Cape Verde	**(a)**	2.II.1952
China		
Hong Kong[(1)]	**(a)**	2.XII.1930
Macao[(2)]	**(r)**	2.II.1952
Cyprus	**(a)**	2.XII.1930
Croatia	**(r)**	8.X.1991
Cuba*	**(a)**	25.VII.1977

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

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

Denmark*	**(a)**	I.VII.1938
(denunciation – 1.III.1984)		
Dominican Republic	**(a)**	2.XII.1930
Ecuador	**(a)**	23.III.1977
Egypt	**(a)**	29.XI.1943
(denunciation - 1.XI.1997)		
Fiji	**(a)**	2.XII.1930
Finland	**(a)**	1.VII.1939
(denunciation – 1.III.1984)		
France*	**(r)**	4.I.1937
Gambia	**(a)**	2.XII.1930
Germany	**(r)**	1.VII.1939
Ghana	**(a)**	2.XII.1930
Goa	**(a)**	2.II.1952
Greece	**(a)**	23.III.1993
Grenada	**(a)**	2.XII.1930
Guyana	**(a)**	2.XII.1930
Guinea-Bissau	**(a)**	2.II.1952
Hungary	**(r)**	2.VI.1930
Iran	**(a)**	26.IV.1966
Ireland*	**(a)**	30.I.1962
Israel	**(a)**	5.IX.1959
Italy	**(r)**	7.X.1938
(denunciation – 22.XI.1984)		
Ivory Coast*	**(a)**	15.XII.1961
Jamaica	**(a)**	2.XII.1930
Japan*	**(r)**	1.VII.1957
(denunciation – 1. VI.1992)		
Kenya	**(a)**	2.XII.1930
Kiribati	**(a)**	2.XII.1930
Kuwait*	**(a)**	25.VII.1969
Lebanon	**(a)**	19.VII.1975
(denunciation - 1.XI.1997)		
Malaysia	**(a)**	2.XII.1930
Madagascar	**(a)**	13.VII.1965
Mauritius	**(a)**	24.VIII.1970
Monaco	**(a)**	15.V.1931
Mozambique	**(a)**	2.II.1952
Nauru*	**(a)**	4.VII.1955
Netherlands*	**(a)**	18.VIII.1956
(denunciation – 26.IV.1982)		
Nigeria	**(a)**	2.XII.1930
Norway	**(a)**	1.VII.1938
(denunciation – 1.III.1984)		
Papua New Guinea*	**(a)**	4.VII.1955
Paraguay	**(a)**	22.XI.1967
Peru	**(a)**	29.X.1964

Règles de La Haye		*Hague Rules*
Poland	**(r)**	4.VIII.1937
Portugal	**(a)**	24.XII.1931
Romania	**(r)**	4.VIII.1937
(denunciation – 18.III.2002)		
Sao Tomé and Principe	**(a)**	2.II.1952
Sarawak	**(a)**	3.XI.1931
Senegal	**(a)**	14.II.1978
Seychelles	**(a)**	2.XII.1930
Sierra-Leone	**(a)**	2.XII.1930
Singapore	**(a)**	2.XII.1930
Slovenia	**(a)**	25.VI.1991
Solomon Islands	**(a)**	2.XII.1930
Somalia	**(a)**	2.XII.1930
Spain	**(r)**	2.VI.1930
Sri-Lanka	**(a)**	2.XII.1930
St. Kitts and Nevis	**(a)**	2.XII.1930
St. Lucia	**(a)**	2.XII.1930
St. Vincent and the Grenadines	**(a)**	2.XII.1930
Sweden	**(a)**	1.VII.1938
(denunciation – 1.III.1984)		
Switzerland*	**(a)**	28.V.1954
Syrian Arab Republic	**(a)**	1.VIII.1974
Tanzania (United Republic of)	**(a)**	3.XII.1962
Timor	**(a)**	2.II.1952
Tonga	**(a)**	2.XII.1930
Trinidad and Tobago	**(a)**	2.XII.1930
Turkey	**(a)**	4.VII.1955
Tuvalu	**(a)**	2.XII.1930
United Kingdom of Great Britain and Northern Ireland (including Jersey and Isle of Man)*	**(r)**	2.VI.1930
(denunciation – 13.VI.1977)		
Gibraltar	**(a)**	2.XII.1930
(denunciation – 22.IX.1977)		
Bermuda, Falkland Islands and dependencies, Turks & Caicos Islands, Cayman Islands, British Virgin Islands, Montserrat, British Antarctic Territories.		
(denunciation 20.X.1983)		
Anguilla	**(a)**	2.XII.1930
Ascension, Saint Helène and Dependencies	**(a)**	3.XI.1931
United States of America*	**(r)**	29.VI.1937
Zaire	**(a)**	17.VII.1967

Reservations

Australia
a) The Commonwealth of Australia reserves the right to exclude from the operation of legislation passed to give effect to the Convention the carriage of goods by sea which is not carriage in the course of trade or commerce with other countries or among the States of Australia.
b) The Commonwealth of Australia reserves the right to apply Article 6 of the Convention in so far as the national coasting trade is concerned to all classes of goods without taking account of the restriction set out in the last paragraph of that Article.

Cuba
Le Gouvernement de Cuba se réserve le droit de ne pas appliquer les termes de la Convention au transport de marchandises en navigation de cabotage national.

Denmark
...Cette adhésion est donnée sous la réserve que les autres Etats contractants ne soulèvent aucune objection à ce que l'application des dispositions de la Convention soit limitée de la manière suivante en ce qui concerne le Danemark:
1) La Loi sur la navigation danoise en date du 7 mai 1937 continuera à permettre que dans le cabotage national les connaissements et documents similaires soient émis conformément aux prescriptions de cette loi, sans que les dispositions de la Convention leur soient appliquées aux rapports du transporteur et du porteur du document déterminés par ces titres.
2) Sera considéré comme équivalent au cabotage national sous les rapports mentionnés au paragraphe 1) - au cas où une disposition serait édictée en ce sens en vertu de l'article 122, dernier alinéa, de la loi danoise sur la navigation - le transport maritime entre le Danemark et les autres Etats nordiques, dont les lois sur la navigation contiennent des dispositions analogues.
3) Les dispositions des Conventions internationales concernant le transport des voyageurs et des bagages et concernant le transport des marchandises par chemins de fer, signées à Rome, le 23 novembre 1933, ne seront pas affectées par cette Convention."

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

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

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

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

Japan
Statement at the time of signature, 25.8.1925.
Au moment de procéder à la signature de la Convention Internationale pour l'unification de certaines règles en matière de connaissement, le soussigné, Plénipotentiaire du Japon, fait les réserves suivantes:
a) A l'article 4.
Le Japon se réserve jusqu'à nouvel ordre l'acceptation des dispositions du a) à l'alinéa 2 de l'article 4.
b) Le Japon est d'avis que la Convention dans sa totalité ne s'applique pas au cabotage national; par conséquent, il n'y aurait pas lieu d'en faire l'objet de dispositions au Protocole. Toutefois, s'il n'en pas ainsi, le Japon se réserve le droit de régler librement le cabotage national par sa propre législation.
Statement at the time of ratification
...Le Gouvernement du Japon déclare
1) qu'il se réserve l'application du premier paragraphe de l'article 9 de la Convention; 2) qu'il maintient la réserve b) formulée dans la Note annexée à la lettre de l'Ambassadeur du Japon à Monsieur le Ministre des Affaires étrangères de Belgique, du 25 août 1925, concernant le droit de régler librement le cabotage national par sa propre législation; et 3) qu'il retire la réserve a) de ladite Note, concernant les dispositions du a) à l'alinéa 2 de l'article 4 de la Convention.

Kuwait
Le montant maximum en cas de responsabilité pour perte ou dommage causé aux marchandises ou les concernant, dont question à l'article 4, paragraphe 5, est augmenté jusque £ 250 au lieu de £ 100.
The above reservation has been rejected by France and Norway. The rejection of Norway has been withdrawn on 12 April 1974. By note of 30.3.1971, received by the Belgian Government on 30.4.1971 the Government of Kuwait stated that the amount of £ 250 must be replaced by Kuwait Dinars 250.

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

Netherlands
...Désirant user de la faculté d'adhésion réservée aux Etats non-signataires par l'article 12 de la Convention internationale pour l'unification de certaines règles en matière de connaissement, avec Protocole de signature, conclue à Bruxelles, le 25 août 1924, nous avons résolu d'adhérer par les présentes, pour le Royaume en Europe, à ladite Convention, Protocole de signature, d'une manière définitive et promettons de

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

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

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

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

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

United States of America
...*And whereas*, the Senate of the United States of America by their resolution of April 1 (legislative day March 13), 1935 (two-thirds of the Senators present concurring therein), did advise and consent to the ratification of the said convention and protocol of signature thereto, 'with the understanding, to be made a part of such ratification, that, not withstanding the provisions of Article 4, Section 5, and the first paragraph of Article 9 of the convention, neither the carrier nor the ship shall in any event be or become liable within the jurisdiction of the United States of America for any loss or damage to or in connection with goods in an amount exceeding 500.00 dollars, lawful money of the United States of America, per package or unit unless the nature and value of such goods have been declared by the shipper before shipment and inserted in the bill of lading.
And whereas, the Senate of the United States of America by their resolution of May 6, 1937 (two-thirds of the Senators present concurring therein), did add to and make a part of their aforesaid resolution of April 1, 1935, the following understanding: That should any conflict arise between the provisions of the Convention and the provisions of the Act of April 16, 1936, known as the 'Carriage of Goods by Sea Act', the provisions of said Act shall prevail:
Now therefore, be it known that I, Franklin D. Roosevelt, President of the United States of America, having seen and considered the said convention and protocol of signature, do hereby, in pursuance of the aforesaid advice and consent of the Senate, ratify and confirm the same and every article and clause thereof, subject to the two understandings hereinabove recited and made part of this ratification.

Protocole portant modification de la Convention Internationale pour l'unification de certaines règles en matière de connaissement, signée a Bruxelles le 25 août 1924

Règles de Visby

Bruxelles, 23 février 1968
Entrée en vigueur: 23 juin 1977

Protocol to amend the International Convention for the unification of certain rules of law relating to bills of lading, signed at Brussells on 25 August 1924

Visby Rules

Brussels, 23rd February 1968
Entered into force: 23 June, 1977

Belgium	**(r)**	6.IX.1978
China		
Hong Kong(1)	**(r)**	1.XI.1980
Croatia	**(a)**	28.X.1998
Denmark	**(r)**	20.XI.1975

(1) With letter dated 4 June 1997 the Embassy of the People's Republic of China in the Kingdom of Belgium informed the Minister of Foreign Affairs of Belgium that the Visby Protocol will continue to apply to the Hong Kong Special Administrative Region with effect from 1 July 1997. In its letter the Embassy of the People's Republic of China stated that the responsibility for the international rights and obligations arising from the application of the above Convention will be assumed by the Government of the People's Republic of China. Reservations have been made by the Government of the People's Republic of China with respect to art. 3 of the Protocol.

Ecuador	**(a)**	23.III.1977
Egypt*	**(r)**	31.I.1983
Finland	**(r)**	1.XII.1984
France	**(r)**	10.VII.1977
Georgia	**(a)**	20.II.1996
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 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.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.

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)**	30.VII.1992
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
France (Overseas Territories)		
Archipel des îles Marquises, Archipel des Tuamotu et des Gambier,		

(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.

Iles Australes, Iles sous le Vent, Iles Saint-Pierre et Miquelon, Iles Wallis et Futuna, Nouvelle-Calédonie et dépendances, Tahiti et dépendances, Terres australes et antarctiques françaises	**(a)**	23.IV.1958
Overseas Territories	**(a)**	23.IV.1958
Gabon	**(a)**	23.IV.1958
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
Mali	**(a)**	23.IV.1958
Morocco	**(a)**	11.VII.1990
Mauritania	**(a)**	23.IV.1958
Mauritius*	**(a)**	29.III.1963
Namibia	**(a)**	14.III.2002
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 *(denunciation – 28.III.2011)*	**(r)**	8.XII.1953
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
Ukraine	**(a)**	16.XI.2011
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
Isle of Man	**(a)**	14.IV.1993
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
Syrian Arab Republic	**(a)**	15.IV.2003
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

International Convention for the unification of certain rules relating to

Carriage of passengers' luggage by sea

Bruxelles, 27 mai 1967
Pas en vigueur

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

International Convention relating to the registration of rights in respect of

Vessels under construction

Bruxelles, 27 mai 1967
Pas encore en vigueur

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.VIII.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
Vanuatu		26.X.1999

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
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	

CLC 1969

	Date of deposit of instrument	Date of entry into force or succession	Effective date of denunciation
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	19.VII.2011
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	4.V.2013
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	
Montenegro (succession) [6, 7]	–	6.VI.2006	23.II.2008
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
Qatar (accession)	2.VI.1988	31.VIII.1988	20.XI.2002
Republic of Korea (accession)	18.XII.1978	18.III.1979	15.V.1998

	Date of deposit of instrument	Date of entry into force or succession	Effective date of denunciation
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 (succession) [6, 7]	–	3.VI.2006	25.V.2012
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
Turkmenistan (accession)	21.IX.2009	20.XII.2009	
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	31.VII.2009

Number of Contracting States: 36

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.

[6] As from 4 February 2003, the name of the State of the Federal Republic of Yugoslavia was changed to Serbia and Montenegro. The date of succession by Serbia and Montenegro to the Convention is the date on which the Federal Republic of Yugoslavia assumed responsibility for its international relations.

[7] Following the dissolution of the State Union of Serbia and Montenegro on 3 June 2006, all Treaty actions undertaken by Serbia and Montenegro continue to be in force with respect to Republic of Serbia. The Republic of Montenegro has informed that it wishes to succeed to this Convention with effect from the same date, i.e. 3 June 2006.

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

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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."

provisions of article XI, paragraph 2 of the Convention, as they contradict the principle 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

	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 (accession) [1, 2]	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	20.XI.2002
Republic of Korea (accession)	8.XII.1992	8.III.1993	
Russian Federation (accession) [1, 4]	2.XII.1988	2.III.1989	
Saudi Arabia (accession) [3]	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: 53

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[1] With a notification under article V(9)(c) of the Convention, as amended by the Protocol.

[2] Applies to the Hong Kong Special Administrative Region with effect from 1.VII.1997. Ceased to apply to the Hong Kong Special Administrative Region with effect from 22.VIII.2003.

[3] With a declaration.

[4] As from 26.XII.1991 the membership of the USSR in the Protocol is continued by the Russian Federation.

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
Ireland	15.V.1997	15.V.2008
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
Benin (accession)	5.II.2010	5.II.2011
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
Côte d'Ivoire (accession)	8.VII.2013	8.VII.2014
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
Mauritania (accession)	4.V.2012	4.V.2013
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
Mongolia (accession)	8.VIII.2008	8.VIII.2009
Montenegro (accession)	29.XI.2011	29.XI.2012
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
Nicaragua (accession)	4.IV.2014	4.IV.2015
Nigeria (accession)	24.V.2002	24.V.2003

	Date of deposit of instrument	Date of entry into force
Niue (accession)	27.VI.2012	27.VI.2013
Norway (ratification)	3.IV.1995	30.V.1996
Oman (accession)	8.VII.1994	30.V.1996
Pakistan (accession)	2.III.2005	2.III.2006
Palau (accession)	29.IX.2011	29.IX.2012
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
Senegal (accession)	2.VIII.2011	2.VIII.2012
Serbia (accession)	25.V.2011	25.V.2012
Seychelles (accession)	23.VII.1999	23.VII.2000
Sierra Leone (accession)	4.VI.2001	4.VI.2002
Singapore (accession)	18.IX.1997	18.IX.1998
Slovakia (accession)	8.VII.2013	8.VII.2014
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
Togo (accession)	23.IV.2012	23.IV.2013
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
Turkmenistan (accession)	21.IX.2009	21.IX.2010
Tuvalu (accession)	30.VI.2004	30.VI.2005
Ukraine (accession)	29.XI.2007	29.XI.2008
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: 133

[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
Algeria (accession)	21.XI.2011	19.II.2012
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
Congo (accession)	19.V.2014	17.VIII.2014
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
Estonia (accession)	16.V.2008	14.VIII.2008
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

	Date of signature or deposit of instrument	Date of entry into force or succession
Iceland (ratification)	17.VII.1980	15.X.1980
India (accession)	16.VI.2000	14.IX.2000
Ireland (ratification)	21.VIII.1980	19.XI.1980
Iran (Islamic Republic of) (accession)	25.VII.1997	23.X.1997
Italy (ratification)	27.II.1979	28.V.1979
Jamaica (accession)	13.III.1991	11.VI.1991
Japan (acceptance)	6.IV.1971	6.V.1975
Kuwait (accession)	2.IV.1981	1.VII.1981
Latvia (accession)	9.VIII.2001	7.IX.2001
Lebanon (accession)	5.VI.1975	3.IX.1975
Liberia (accession)	25.IX.1972	6.V.1975
Marshall Islands (accession)	16.X.1995	14.I.1996
Mauritania (accession)	24.XI.1997	22.II.1998
Mauritius (accession)	17.XII.2002	17.III.2003
Mexico (accession)	8.IV.1976	7.VII.1976
Monaco (ratification)	24.II.1975	6.V.1975
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

	Date of signature or deposit of of instrument	Date of entry into force or succession
United Republic of Tanzania (accession)	16.V.2006	14.VIII.2006
Trinidad and Tobago (accession)	6.III.2000	4.VI.2000
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: 88

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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
Algeria (accession)	21.XI.2011	19.II.2012
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) [2, 3]	23.II.1990	24.V.1990
Congo (accession)	19.V.2014	17.VIII.2014
Croatia (succession)	–	8.X.1991
Denmark (signature)	9.V.1983	7.VIII.1983
Egypt (accession)	3.II.1989	4.V.1989
Estonia (accession)	16.V.2008	14.VIII.2008
Finland (ratification)	4.VIII.1986	2.XI.1986
France (accession) [1]	31.XII.1985	31.III.1986
Georgia (accession)	25.VIII.1995	23.XI.1995
Germany (ratification) [1]	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
New Zealand (ratification)	4.IV.2014	3.VII.2014
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) [4]	30.XII.1982	30.III.1983
Serbia (succession) [5, 6]	–	3.VI.2006
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: 56

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[1] With a declaration or reservation.
[2] Applies to the Hong Kong Special Administrative Region with effect from 1 July 1997.
[3] Applies to the Macao Special Administrative Region with effect from 24 June 2005.
[4] As from 26 December 1991 the membership of the USSR in the Protocol is continued by the Russian Federation.
[5] As from 4 February 2003, the name of the State of the Federal Republic of Yugoslavia was changed to Serbia and Montenegro. The date of succession by Serbia and Montenegro to the Protocol is the date on which the Federal Republic of Yugoslavia assumed responsibility for its international relations.
[6] Following the dissolution of the State Union of Serbia and Montenegro on 3 June 2006, all Treaty actions undertaken by Serbia and Montenegro continue to be in force with respect to Republic of Serbia. The Republic of Montenegro has informed that it wishes to succeed to this Protocol with effect from the same date, i.e. 3 June 2006.

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
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	25.I.2006
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
Gabon (accession)	21.I.1982	21.IV.1982	31.V.2003
Gambia (accession)	1.XI.1991	30.I.1992	
Germany (ratification)[1]	30.XII.1976	16.X.1978	15.V.1998

	Date of deposit of instrument	Date of entry into force or succession	Effective date of denunciation
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	24.V.2003
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	24.IV.2009
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: 14

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: 36

[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
Benin (accession)	5.II.2010	5.II.2011
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
Cook Islands (accession)	12.III.2007	12.III.2008
Côte d'Ivoire (accession)	8.VII.2013	8.VII.2014
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
Hungary (accession)	30.III.2007	30.III.2008
Iceland (accession)	13.XI.1998	13.XI.1999
India (accession)	21.VI.2000	21.VI.2001
Iran (accession)	5.XI.2008	5.XI.2009
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
Kiribati (accession)	5.II.2007	5.II.2008
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
Mauritania (accession)	4.V.2012	4.V.2013
Mauritius (accession)	6.XII.1999	6.XII.2000
Mexico (accession)	13.V.1994	30.V.1996
Monaco (ratification)	8.XI.1996	8.XI.1997
Montenegro (accession)	29.XI.2011	29.XI.2012
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
Nicaragua (accession)	4.IV.2014	4.IV.2015
Nigeria (accession)	24.V.2002	24.V.2003
Niue (accession)	27.VI.2012	27.VI.2013
Norway (ratification)	3.IV.1995	30.V.1996
Oman (accession)	8.VII.1994	30.V.1996
Palau (accession)	29.IX.2011	29.IX.2012

	Date of deposit of instrument	Date of entry into force
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
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
Senegal (accession)	2.VIII.2011	2.VIII.2012
Serbia (accession)	25.V.2011	25.V.2012
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
Slovakia (accession)	8.VII.2013	8.VII.2014
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
Syria (accession)	24.IV.2009	24.IV.2010
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 114

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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
Australia (accession)	13.VII.2009	30.X.2009
Barbados (accession)	6.XII.2005	6.III.2006
Belgium (accession)	4.XI.2005	4.II..2006
Canada (accession)	2.X.2009	2.I.2010
Congo (accession)	19.V.2014	19.VIII.2014
Croatia (accession)	17.II.2006	17.V.2006
Denmark (signature) [1]	24.II.2004	3.III.2005
Estonia (accession)	14.X.2008	14.I.2009
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
Korea (Republic of) (accession)	6.V.2010	6.VIII.2010
Latvia (accession)	18.IV.2006	18.VII.2006
Lithuania (accession)	22.XI.2005	22.II.2006
Montenegro (accession)	29.XI.2011	29.XI.2012
Morocco (accession)	4.XI.2009	4.II.2010
Netherlands (accession)	16.VI.2005	16.IX.2005
Norway (accession)	31.III.2004	3.III.2005
Poland (accession)	9.XII.2008	9.III.2009
Portugal (accession)	15.II.2005	5.V.2005
Slovakia (accession)	8.VII.2013	8.X.2013
Slovenia (accession)	3.III.2006	3.VI.2006
Spain (ratification)	3.XII.2004	3.III.2005
Sweden (accession)	5.V.2005	5.VIII.2005
Turkey (accession)	5.III.2013	5.VI.2013
United Kingdom (accession) [3]	8.VI.2006	8.IX.2006

Number of Contracting States: 31

[1] Extended to Greenland (3 March 2005) and Faroe Islands (19 June 2006).
[2] With a declaration, reservation or statement.
[3] Extended to the Isle of Man with effect from 15 September 2008

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."
This reservation was withdrawn at the time of deposit of the instrument of ratification of the Convention.

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(1) Shall not apply to the Faroe Islands.

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
(denunciation – 16.III.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
(denunciation – 23.IV.2013)		
Belize (accession)	22.VIII.2011	20.XI.2011
(denunciation – 27.III.2014)		
China (accession) [5, 6]	1.VI.1994	30.VIII.1994
Congo (accession)	19.V.2014	17.VIII.2014
Croatia (accession)	12.I.1998	12.IV.1998
(denunciation – 25.IX.2013)		
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
(denunciation – 6.XII.2013)		
Guyana (accession)	10.XII.1997	10.III.1998
Ireland (accession)	24.II.1998	25.V.1998
(denunciation – 7.VIII.2014)		

	Date of deposit of instrument	Date of entry into force
Jordan (accession)	3.X.1995	1.I.1996
Latvia (accession)	6.XII.2001	6.III.2002
(denunciation – 15.II.2005)		
Liberia (accession)	17.II.1981	28.IV.1987
Libya (accession)	8.XII.2012	6.II.2012
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
Serbia (accession)	25.V.2011	23.VIII.2011
(denunciation – 25.V.2011)		
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
(denunciation – 21.I.2014)		
Vanuatu (accession)	13.I.1989	13.IV.1989
Yemen (accession)	6.III.1979	28.IV.1987

Number of Contracting States: 28 [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
(denunciation – 16.III.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
(denunciation – 23.IV.2013)		
China[5,6] **(accession)**	1.VI.1994	30.VIII.1994
Croatia (accession)	12.I.1998	12.IV.1998
(denunciation – 25.IX.2013)		
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
(denunciation – 6.XII.2013)		
Ireland (accession)	24.II.1998	25.V.1998
(denunciation – 7.XI.2014)		
Latvia (accession)	6.XII.2001	6.III.2002
(denunciation – 15.II.2005)		
Liberia (accession)	28.IV.1987	30.IV.1989
Libya (accession)	8.XI.2012	6.XI.2013
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
(denunciation – 21.I.2014)		
Vanuatu (accession)	13.I.1989	30.IV.1989
Yemen (accession)	28.IV.1987	30.IV.1989

Number of Contracting States: 20

[1] With a reservation.

[2] As from 26.XII.1991 the membership of the USSR in the Protocol is continued by the Russian Federation.

[3] With a notification under article II(3).

[4] The United Kingdom declared ratification to be effective also in respect of:
Bailiwick of Jersey
Bailiwick of Guernsey
Isle of Man
Bermuda
British Virgin Islands
Cayman Islands
Falkland Islands*
Gibraltar
Hong Kong**
Montserrat
Pitcairn
Saint Helena and Dependencies

[5] Applies to the Hong Kong Special Administrative Region with effect from 1.VII.1997.

[6] Applies to Macau Special Administrative Region with effect from 24 June 2005.

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* With a reservation made by the Argentine Republic and a communication received from the United Kingdom.

** Ceased to apply to Hong Kong with effect from 1.VII.1997.

Declarations, Reservations and Statements

Argentina [(1)]

The instrument of accession of the Argentine Republic contained the following reservation (in the Spanish language):

[Translation]

"The Argentine Republic rejects the extension of the application of the Athens Convention relating to Carriage of Passengers and their Luggage by Sea, 1974, adopted in Athens, Greece, on 13 December 1974, and of the Protocol to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974, approved in London on 19 December 1976, to the Malvinas Islands as notified by the United Kingdom of Great Britain and Northern Ireland to the Secretary-General of the International Maritime Organization (IMO) in ratifying the said instrument on 31 January 1980 under the incorrect designation of "Falkland Islands", and reaffirms its sovereign rights over the said Islands which form an integral part of its national territory".

[(1)] The depositary received the following communication dated 4 August 1987 from the United Kingdom Foreign and Commonwealth Office:

"The Government of the United Kingdom of Great Britain and Northern Ireland cannot accept the reservation made by the Argentine Republic as regards the Falkland Islands.

The Government of the United Kingdom of Great Britain and Northern Ireland have no doubt as to the United Kingdom sovereignty over the Falkland Islands and, accordingly, their right to extend the application of the Convention to the Falkland Islands".

Protocol of 1990 to amend the 1974 Athens Convention relating to the Carriage of passengers and their luggage by sea (PAL PROT 1990)

Done at London, 29 March 1990
Not yet in force

Protocole de 1990 modifiant La Convention d'Athènes de 1974 relative au Transport par mer de passagers et de leurs bagages (PAL PROT 1990)

Fait à Londres, le 29 mars 1990
Pas encore en vigueur

	Date of deposit of instrument
Albania (accession) *(denunciation –16.III.2005)*	16.III.2005
Croatia (accession) *(denunciation – 25.IX.2013)*	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: 4

Protocol of 2002 to the Athens Convention relating to the carriage of passengers and their luggage by sea, 1974 (PAL PROT 2002)

Done at London, 1 November 2002
Not yet in force

Protocole de 2002 à la Convention d'Athènes relative au Transport par mer de passagers et de leurs bagages, 1974 (PAL PROT 2002)

Fait à Londres, le 1 Novembre 2002
Pas encore en vigueur

	Date of deposit of instrument	Date of entry into force
Albania (accession)	16.III.2005	23.IV.2014
Belgium (accession)[1]	23.IV.2013	23.IV.2014
Belize (accession)	22.VIII.2011	23.IV.2014
Bulgaria (accession)[1]	10.XII.2013	23.IV.2014
Croatia (accession)[1]	25.IX.2013	23.IV.2014
Denmark (accession)[1]	23.V.2012	23.IV.2014
European Union(accession)[1,2]	15.XII.2011	23.IV.2014
Greece (accession)[1]	6.XII.2013	23.IV.2014
Ireland (accession)	8.VIII.2014	8.XI.2014
Latvia (accession)[1]	17.II.2005	23.IV.2014

	Date of deposit of instrument	Date of entry into force
Malta (accession)[1]	7.VIII.2013	23.IV.2014
Netherlands (accession)[1]	26.IX.2012	23.IV.2014
Norway (ratification)[1]	26.XI.2013	23.IV.2014
Palau (accession)	29.IX.2011	23.IV.2014
Panama (accession)[1]	23.I.2014	23.IV.2014
Saint Kitts and Nevis (accession)	30.VIII.2005	23.IV.2014
Serbia (accession)[1]	25.V.2011	23.IV.2014
Syrian Arab Republic (accession)[1]	10.III.2005	23.IV.2014
United Kingdom (ratification)[1,3]	21.I.2014	23.IV.2014

Number of Contracting States: 19

[1] With a declaration

[2] Article 19(3) of the Protocol provides that: "Where the number of States Parties is relevant in this Protocol, including but not limited to Articles 20 and 23 of this Protocol, the Regional Economic Integration Organization shall not count as a State Party in addition to its Member States which are States Parties." Accordingly, the number of Contracting States remains unaltered with this accession.

[3] The depositary received a communication, dated 8 May 2014, from the Foreign and Commonwealth Office in London, informing that the protocol was extended to Gibraltar on 8 May 2014.

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
(denunciation – 21.V.2013)		
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
(denunciation – 9.X.2009)		
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

	Date of deposit of instrument	Date of entry into force
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
(denunciation – 25.III.2004)		
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
(denunciation – 15.IX.2000)		
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
(denunciation – 18.X.2000)		
Greece (accession)	3.VII.1991	1.XI.1991
Guyana (accession)	10.XII.1997	1.IV.1998
Hungary (accession)	4.VII.2008	1.XI.2008
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
(denunciation – 29.VII.2005)		
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
Mongolia (accession)	28.IX.2011	1.I.2012
Netherlands (accession) [1, 2]	15.V.1990	1.IX.1990
(denunciation – 23.XII.2010)		
New Zealand (accession) [5]	14.II.1994	1.VI.1994
Nigeria (accession)	24.II.2004	1.VI.2004
Niue (accession)	27.VI.2012	1.X.2012
Norway (ratification) [4]	30.III.1984	1.XII.1986
(denunciation – 31.X.2005)		
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
(denunciation – 24.X.2006)		
St. Lucia (accession)	20.V.2004	1.IX.2004
Syrian Arab Republic (accession)	21.IX.2005	1.I.2006

	Date of deposit of instrument	Date of entry into force
Sweden (ratification)[4]	30.III.1984	1.XII.1986
(denunciation – 22.VII.2004)		
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
Tuvalu (accession)	12.I.2009	1.IV.2009
United Arab Emirates (accession)	19.XI.1997	1.III.1998
United Kingdom (ratification) [1, 7, 8]	31.I.1980	1.XII.1986
(denunciation – 17.VII.1998)		
Vanuatu (accession)	14.IX.1992	1.I.1993
Yemen (accession)	6.III.1979	1.XII.1986

Number of Contracting States: 54
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
Antigua and Barbuda (accession)	12.X.2009	10.I.2010
Australia (accession)	8.X.2002	13.V.2004

	Date of deposit of instrument	Date of entry into force
Belgium (accession)	9.X.2009	7.I.2010
Bulgaria (accession)	4.VIII.2005	2.X.2005
Canada (ratification)	9.V.2008	7.VIII.2008
Congo (accession)	19.V.2014	17.VIII.2014
Cook Islands	12.III.2007	12.VI.2007
Croatia (accession)[1]	15.V.2006	13.VIII.2006
Cyprus (accession)	23.XII.2005	23.III.2006
Denmark (ratification)	12.IV.2002	13.V.2004
Estonia (accession)[1]	16.III.2011	14.VI.2011
Finland (acceptance)	15.IX.2000	13.V.2004
France	24.IV.2007	23.VIII.2007
Germany (ratification)	3.IX.2001	13.V.2004
Greece (accession)	6.VII.2009	4.X.2009
Hungary (accession)	4.VII.2008	2.X.2008
Iceland (accession)	17.XI.2008	15.II.2009
India (accession)	23.III.2011	21.VI.2011
Ireland (accession)	25.I.2012	24.IV.2012
Jamaica (accession)	19.VIII.2005	17.XII.2005
Japan (accession)	3.V.2006	1.VIII.2006
Latvia	18.IV.2007	17.VII.2007
Liberia (accession)	18.IX.2008	17.XII.2008
Lithuania (accession) [1]	14.IX.2007	13.XII.2007
Luxembourg (accession)	21.XI.2005	19.I.2006
Malaysia (accession) [1]	12.XI.2008	10.II.2009
Malta (accession) [1]	13.II.2004	13.V.2004
Marshall Island (accession)	30.I.2006	30.IV.2006
Mongolia (accession)	28.IX.2011	27.XII.2011
Netherlands (acceptance) [1]	23.XII.201	23.III.2011
New Zealand (accession)	4.IV.2014	3.VII.2014
Niue (accession)	27.VI.2012	25.IX.2012
Norway (ratification)[1]	17.X.2000	13.V.2004
Palau (accession)	28.IX.2011	28.XII.2011
Poland (accession)[1]	17.XI.2011	15.II.2012
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
Serbia (accession)	19.III.2013	17.VI.2013
Sierra Leone (accession)	1.XI.2001	13.V.2004
Spain (accession) [1]	10.I.2005	10.IV.2005
St. Lucia (accession)	20.V.2004	18.VIII.2004
Sweden (accession)	22.VII.2004	20.X.2004
Syrian Arab Republic (accession)	2.IX.2005	1.XII.2005
Tonga (accession)	18.IX.2003	13.V.2004
Turkey (accession) [1]	19.VII.2010	17.X.2010
Tuvalu (accession)	12.I.2009	12.IV.2009
United Kingdom (ratification) [1]	11.VI.1999	13.V.2004

Number of Contracting States: 49

[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
Algeria (accession)	26.III.2012	26.III.2013
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
Brazil (accession)	29.VII.2009	29.VII.2010
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 (approval) [1]	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
Jamaica (accession)	28.XI.2013	28.XI.2014
Jordan (accession)	3.X.1995	3.X.1996
Kenya (accession)	21.VII.1999	21.VII.2000
Kiribati (accession)	5.II.2007	5.II.2008
Latvia (accession)	17.III.1999	17.III.2000
Liberia (accession)	18.IX.2008	18.IX.2009
Lithuania (accession)[1]	15.XI.1999	15.XI.2000
Marshall Islands (accession)	16.X.1995	16.X.1996
Mauritius (accession)	17.XII.2002	17.XII.2003
Montenegro (accession)	19.IV.2012	19.IV.2013
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

	Date of deposit of instrument	Date of entry into force
Nigeria (ratification)	11.X.1990	14.VII.1996
Niue (accession)	27.VI.2012	27.VI.2013
Norway (ratification)[1]	3.XII.1996	3.XII.1997
Oman (accession)	14.X.1991	14.VII.1996
Palau (accession)	29.IX.2011	29.IX.2012
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
Spain (ratification) [1]	27.I.2005	27.I.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
Turkey (accession)	27.VI.2014	27.VI.2015
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
Yemen (accession)	23.IX.2008	23.IX.2009

Number of Contracting States: 65

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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. This instrument of accession does not in any way whatsoever mean the recognition of Israel; and

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[(1)] The depositary received the following communication dated 27 February 1992 from the Embassy of Israel:

"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.

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".

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

(OPRC 1990)

Done at London: 30 November 1990
Entered into force 13 May 1995.

Status as 30 June 2006

Convention Internationale de

1990 sur la Preparation, la lutte et la cooperation en matière de pollution par les hydrocarbures

(OPRC 1990)

Signée a Londres le 30 novembre 1990
Entrée en vigueur: 13 Mai 1995.

	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
Benin (accession)	5.II.2010	5.V.2010
Brazil (ratification)	21.VII.1998	21.X.1998
Bulgaria (accession)	5.IV.2001	5.VII.2001
Cameroon (accession)	18.IX.2009	18.XII.2009
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
Colombia (accession) [1]	11.VI.2008	11.IX.2008
Comoros (accession)	5.I.2000	5.IV.2000
Congo (accession)	7.IX.2004	7.XII.2004
Côte d'Ivoire (accession)	8.VII.2013	8.X.2013
Croatia (accession)	12.I.1998	12.IV.1998
Cuba (accession)	10.IV.2008	10.VII.2008
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
Estonia (accession)	16.V.2008	16.VIII.2008
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
Ghana (accession)	02.VI.2010	02.IX.2010
Greece (ratification)	7.III.1995	7.VI.1995
Guinea (accession)	2.X.2002	2.I.2003

	Date of deposit of instrument	Date of entry into force
Guyana (accession)	10.XII.1997	10.III.1998
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) [2, 3]	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
Oman (accession)	26.VI.2008	26.IX.2008
Pakistan (accession)	21.VII.1993	13.V.1995
Palau (accession)	29.IX.2011	29.XII.2011
Peru (accession)	24.IV.2002	24.VII.2002
Philippines (accession)	6.II.2014	6.V.2014
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
Russian Federation (accession)	18.IX.2009	18.XII.2009
Samoa (accession)	18.V.2004	18.VIII.2004
Saudi Arabia (accession)	30.VII.2009	30.XII.2009
Senegal (ratification)	24.III.1994	13.V.1995
Seychelles (accession)	26.VI.1992	13.V.1995
Sierra Leone (accession)	10.III.2008	10.VI.2008
Singapore (accession)	10.III.1999	10.VI.1999
Slovenia (accession)	31.V.2001	31.VIII.2001

	Date of deposit of instrument	Date of entry into force
South Africa (accession)	4.VII.2008	4.X.2008
St. Kitts and Nevis (accession)	7.X.2004	7.I.2004
St. Lucia (accession)	20.V.2004	20.VIII.2004
Spain (ratification)	12.I.1994	13.V.1995
Sweden (ratification)	30.III.1992	13.V.1995
Switzerland (accession)	4.VII.1996	4.X.1996
Syrian Arab Republic (accession)	14.III.2003	14.VI.2003
Thailand (accession)	20.IV.2000	20.VII.2000
Togo (accession)	23.IV.2012	23.VII.2012
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
Yemen (accession)	10.V.2013	10.VIII.2013

Number of Contracting States: 107

[1] With a reservation.
[2] Applies to Aruba with effect from 13 October 2006.
[3] Applies to the Netherlands Antilles with effect from 18 October 2007.

Protocol on preparedness, response and co-operation to pollution incidents by hazardous and noxious substances, 2000
(OPRC-HNS 2000)

Done at London, 15 March 2000
Entered into force: 14 June 2007

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)

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.VI.2007
Chile (accession)	16.X.2006	14.VI.2007
China (accession) *	19.XI.2009	19.II.2010
Colombia (accession)	11.VI.2008	11.IX.2008

	Date of deposit of instrument	Date of entry into force
Côte d'Ivoire (accession)	8.VII.2013	8.X.2013
Denmark (ratification)	30.IX.2008	30.XII.2008
Ecuador (accession)	29.I.2002	14.VI.2007
Egypt (accession)	26.V.2004	14.VI.2007
Estonia (ratification)	16.V.2008	16.VIII.2008
France (accession)	24.IV.2007	24.VII.2007
Germany (ratification)	2.VI.2009	2.IX.2009
Greece (ratification)	28.V.2003	14.VI.2007
Iran (Islamic Republic of) (accession)	19.IV.2011	19.VII.2011
Japan (accession)	9.III.2007	14.VI.2007
Korea, Republic of (accession)	11.I.2008	11.IV.2008
Liberia (accession)	18.IX.2008	18.XII.2008
Malaysia (accession)	28.XI.2013	28.II.2014
Malta (accession)	21.I.2003	14.VI.2007
Mauritius (accession)	17.VII.2013	17.X.2013
Netherlands (accession)	22.X.2002	14.VI.2007
Norway (accession)	16.II.2012	16.IV.2012
Palau (accession)	29.IX.2011	29.XII.2011
Poland (accession)	12.VI.2003	14.VI.2007
Portugal (accession)	14.VI.2006	14.VI.2007
Singapore (accession)	16.X.2003	14.VI.2007
Slovenia (accession)	5.IV.2006	14.VI.2007
Spain (accession)	27.I.2005	14.VI.2007
Sweden (accession)	23.XII.2002	14.VI.2007
Syria (accession)	10.II.2005	14.VI.2007
Turkey (accession)	3.IX.2013	3.XII.2013
Uruguay (accession)	31.VII.2003	14.VI.2007
Vanuatu (accession)	15.III.2004	14.VI.2007
Yemen (accession)	10.V.2013	10.VIII.2013

Number of Contracting States: 33

* Extended to Macao Special Administrative Region

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
Ethiopia (accession)	14.VII.2009
Hungary (accession)	4.VII.2008
Liberia (accession)	18.IX.2008
Lythuania (accession)[1]	14.IX.2007
Morocco (accession)	19.III.2003
Russian Federation (accession)[1]	20.III.2000
Samoa (accession)	18.V.2004
Sierra Leone (accession)	21.XI.2007
St. Kitts and Nevis (accession)	7.X.2004
Slovenia (accession)	21.VII.2004
Syrian Arab Republic (accession)	27.VI.2008
Tonga (accession)	18.IX.2003

Number of Contracting States: 14.

[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
Entered into force: 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
Entrée en vigueur: 21 Novembre 2008

	Date of deposit of instrument	Date of entry into force
Albania (accession)	30.IV.2010	30.VII.2010
Antigua and Barbuda (accession)	19.XII.2008	19.III.2009
Australia (ratification)	16.III.2009	16.VI.2009
Austria (accession)	30.I.2013	30.IV.2013

	Date of deposit of instrument	Date of entry into force
Azerbaijan (accession)	22.VI.2010	22.IX.2010
Bahamas (accession)[1]	30.I.2008	21.XI.2008
Barbados (accession)	15.X.2009	15.I.2010
Belgium (accession)[1]	11.VIII.2009	11.XI.2009
Belize (accession)	22.VIII.2011	22.XI.2011
Bulgaria (accession)[1]	6.VII.2007	21.XI.2008
Canada (accession)	2.X.2009	2.I.2010
China (accession) [1]	9.XII.2008	9.III.2009
Congo (accession)	19.V.2019	19.VIII.2014
Cook Islands (accession)	21.VIII.2008	21.XI.2008
Côte d'Ivoire (accession)	8.VII.2013	8.X.2013
Croatia (accession)[1]	15.XII.2006	21.XI.2008
Cyprus (accession)[1]	10.I.2005	21.XI.2008
Czech Republic (accession)	20.XII.2012	20.III.2013
Denmark (ratification)	23.VII.2008	21.XI.2008
Egypt (accession)[1]	15.II.2010	15.V.2010
Estonia (accession)[1]	5.XII.2006	21.XI.2008
Ethiopia (accession)	17.II.2009	17.IV.2009
Finland (acceptance)[1]	18.XI.2008	18.II.2009
France (accession)1	19.XII.2010	19.I.2011
Germany(ratification)[1]	24.IV.2007	21.XI.2008
Greece (accession)	22.XII.2005	21.XI.2008
Hungary (accession)	30.I.2008	21.XI.2008
Indonesia (accession)	11.IX.2014	11.XII.2014
Iran (Islamic Republic of) (accession)	21.XI.2011	21.II.2012
Ireland (accession)[1]	23.XII.2008	23.III.2009
Italy (ratification)	18.XI.2010	18.II.2011
Jamaica (accession)	2.IV.2003	21.XI.2008
Jordan (accession)	24.III.2010	24.VI.2010
Kiribati (accession)	29.VII.2009	29.XII.2009
Korea Democratic People's Republic (accession)	17.VII.2009	17.XII.2009
Latvia (accession)	19.IV.2005	21.XI. 2008
Liberia (accession)	21.VIII.2008	21.XI.2008
Lithuania (accession)	14.IX.2007	21.XI.2008
Luxembourg (accession)[1]	21.XI.2005	21.XI.2008
Malaysia (accession)	12.XI.2008	12.II.2009
Malta (accession)1	12.XI.2008	12.II.2009
Marshall Islands (accession)	9.IV.2008	21.XI.2008
Mauritius (accession)	17.VII.2013	17.XII.2013
Mongolia (accession)	28.IX.2011	28.XII.2011
Montenegro (accession)	29.XI.2011	29.II.2012
Morocco (ratification)	14.IV.2010	14.VII.2010
Netherlands (accession)	23.XII.2010	23.III.2011
New Zealand (accession)[1]	4.IV.2014	4.VII.2014
Nicaragua (accession)	3.IV.2014	3.VII.2014
Nigeria (accession)	1.XII.2010	1.I.2011
Niue (accession)	18.IV.2012	18.VIII.2012
Norway (ratification)[1]	25.III.2008	21.XI.2008
Palau (accession)	28.IX.2011	28.XII.2011
Panama (accession)	17.II.2009	17.IV.2009

	Date of deposit of instrument	Date of entry into force
Poland (accession)[1]	15.XII.2006	21.XI.2008
Republic of Korea (accession)	28.VIII.2009	28.XI.2009
Romania (accession)	15.VI.2009	15.IX.2009
Russian Federation (accession)	24.II.2009	24.IV.2009
Saint Kitts and Nevis (accession)	21.XII.2009	21.I.2010
Saint Vincent and the Grenadines (accession)	26.XI.2008	26.II.2009
Samoa (accession)	18.IV.2004	21.XI.2008
Serbia (accession)	8.VII.2010	8.XII.2010
Sierra Leone (accession)	21.XI.2007	21.XI.2008
Singapore (accession)[1]	31.III.2006	21.XI.2008
Slovakia (accession)[1]	1.IV.2013	1.VIII.2013
Slovenia (accession)	20.IV.2004	21.XI.2008
Spain (ratification)[1]	10.XII.2003	21.XI.2008
Sweden (ratification)[1]	3.VI.2013	3.IX.2013
Switzerland (accession)	24.IX.2013	24.XII.2013
Syrian Arab Republic (accession)[1]	24.IV.2009	24.VII.2009
Togo (accession)	23.IV.2012	23.VII.2012
Tonga (accession)	18.IX.2003	21.XI.2008
Tunisia (accession)[1]	5.IX.2011	5.XII.2011
Turkey (accession)	12.IX.2013	12.XII.2013
Tuvalu (accession)	12.I.2009	12.IV.2009
United Kingdom (ratification)[1]	29.VI.2006	21.XI.2008
Vanuatu (accession)	20.VIII.2008	21.XI.2008
Vietnam (accession)	18.VI.2010	18.IX.2010

Number of Contracting States: 78.

[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
Andorra, Principality of (accession) [1]	17.VII.2006	15.X.2006

	Date of deposit of instrument	Date of entry into force
Antigua and Barbuda (accession)	12.X.2009	10.I.2010
Argentina (ratification)	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
Benin (accession)	31.VIII.2006	29.XI.2006
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
Cambodia (accession)	18.VIII.2006	16.XI.2006
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
Comoros (accession)	6.III.2008	4.VI.2008
Cook Islands (accession)	12.III.2007	10.VI.2007
Costa Rica (ratification)	25.III.2003	23.VI.2003
Côte d'Ivoire (accession)	23.III.2012	21.VI.2012
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
Dominican Republic (accession)	3.VII.2008	1.X.2008
Ecuador (accession)	10.III.2003	8.VI.2003
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
Ethiopia (accession)	29.VII.2013	27.X.2013
Finland (ratification)	12.XI.1998	10.II.1999
Fiji (accession)	21.V.2008	19.VIII.2008
France (approval) [1]	2.XII.1991	1.III.1992
Gambia (accession)	1.XI.1991	1.III.1992

	Date of deposit of instrument	Date of entry into force
Georgia (accession)	11.VIII.2006	9.XI.2006
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
Guatemala (accession)	26.VIII.2009	24.XI.2009
Guinea (accession)	1.II.2005	2.V.2005
Guinea Bissau (accession)	14.X.2008	12.I.2009
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
Iran (Islamic Republic of)(accession) [1]	30.X.2009	28.I.2010
Ireland (accession)	10.IX.2004	9.XII.2004
Israel (ratification) [1]	6.I.2009	6.IV.2009
Iraq (accession)	21.III.2014	19.VI.2014
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
Lao People's Democratic Republic	20.III.2012	18.VI.2012
Lebanon (accession)	16.XII.1994	16.III.1995
Lesotho (accession)	7.XI.2011	5.II.2012
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
Luxembourg (accession)	5.I.2011	5.IV.2011
Macedonia (former Yugoslav Republic of)	7.VIII.2007	2.X.2007
Madagascar (accession)	15.IX.2006	14.XII.2006
Malawi (accession)	10.I.2014	10.IV.2014
Maldives (accession)	25.II.2014	26.V.2014
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

	Date of deposit of instrument	Date of entry into force
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
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
Niger (accession)	30.VIII.2006	28.XI.2006
Nigeria (ratification)	24.II.2004	24.V.2004
Niue (accession)	22.VI.2009	20.IX.2009
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 (accession) [8]	–	3.VI.2006
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

	Date of deposit of instrument	Date of entry into force
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
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

Contracting States: 164.

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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.

[8] Following the dissolution of the State Union of Serbia and Montenegro on 3 June 2006, all Treaty actions undertaken by Serbia and Montenegro continue to be in force with respect to Republic of Serbia. The Republic of Montenegro has informed that it wishes to succeed to this Convention with effect from the same date, i.e. 3 June 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
Andorra, Principality of (accession)	17.VII.2006	15.X.2006
Antigua and Barbuda (accession)	12.X.2009	10.I.2010
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
Benin (accession)	31.VIII.2006	29.XI.2006
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
Cambodia (accession)	18.VIII.2006	16.XI.2006
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
Comoros (accession)	6.III.2008	4.VI.2008
Cook Islands (accession)	12.III.2007	10.VI.2007
Costa Rica (ratification)	25.III.2003	23.VI.2003
Côte d'Ivoire (accession)	23.III.2012	21.VI.2012
Croatia (accession)	18.VIII.2005	16.XI.2005
Cuba (accession) [2]	20.XI.2001	18.II.2002

	Date of deposit of instrument	Date of entry into force
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
Dominica (accession)	12.X.2004	10.I.2005
Dominican Republic (accession)	12.VIII.2009	10.XI.2009
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
Fiji (accession)	21.V.2008	19.VIII.2008
Finland (accession)	28.IV.2000	27.VII.2000
France (approval) [2]	2.XII.1991	1.III.1992
Georgia (accession)	11.VIII.2006	9.XI.2006
Germany (accession) [3]	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
Guatemala (accession)	26.VIII.2009	24.XI.2009
Guinea (accession)	1.II.2005	2.V.2005
Guinea Bissau (accession)	14.X.2008	12.I.2009
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
Iran (Islamic Republic of) (accession) [1]	30.X.2009	28.I.2010
Ireland (accession)	10.IX.2004	9.XII.2004
Israel (ratification) [1]	6.I.2009	6.IV.2009
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
Lao People's Democratic Republic	20.III.2012	18.VI.2012
Latvia (accession)	4.XII.2002	4.III.2003
Lebanon (accession)	16.XII.1994	16.III.1995
Lesotho (accession)	25.VI.2013	23.IX.2013
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
Macedonia (former Yugoslav Republic of)	7.VIII.2007	5.XI.2007

	Date of deposit of instrument	Date of entry into force
Madagascar (accession)	15.IX.2006	14.XII.2006
Malawi (accession)	10.I.2014	10.IV.2014
Maldives (accession)	25.II.2014	26.V.2014
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
Montenegro (succession) [7]	---	3.VI.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
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
Niger (accession)	30.VIII.2006	28.XI.2006
Niue (accession)	22.VI.2009	20.IX.2009
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 (succession) [7]	---	3.VI.2006
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

	Date of deposit of instrument	Date of entry into force
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
Tuvalu (accession)	2.XII.2005	2.III.2006
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
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: 151

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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.

[7] Following the dissolution of the State Union of Serbia and Montenegro on 3 June 2006, all Treaty actions undertaken by Serbia and Montenegro continue to be in force with respect to Republic of Serbia. The Republic of Montenegro has informed that it wishes to succeed to this Protocol with effect from the same date, i.e. 3 June 2006.

Protocol of 2005 to the
Convention for the suppression of unlawful acts against the safety of maritime navigation

(SUA PROT 2005)

Done at London, 14 October 2005
Entry into force: 28 July 2010

Protocole de 2005 à la
Convention pour la répression d'actes illicites contre la sécurité de la navigation maritime

(SUA PROT 2005)

Signée a Londres le 10 Octobre 1988
Entrée en vigueur: 28 Juillet 2010

	Date of deposit of instrument	Date of entry into force
Algeria (accession)	25.I.2011	25.IV.2011
Austria (ratification)	18.VI.2010	16.IX.2010
Bulgaria (ratification)	7.X.2010	5.I.2011
Côte d'Ivoire (accession)	23.III.2012	21.VI.2012
Cuba (accession)	10.IV.2014	9.VII.2014
Dominican Republic (accession)	9.III.2010	28.VII.2010
Djibouti (accession)	23.IV.2014	22.VII.2014
Estonia (ratification)	16.V.2008	28.VII.2010
Fiji (accession)	21.V.2008	28.VII.2010
Greece (ratification)	11.IX.2013	10.XII.2013
Jamaica (accession)	28.XI.2013	26.II.2014
Latvia (accession)	16XI.2009	28.VII.2010
Liechtenstein (accession)	28.VIII.2009	28.VII.2010
Marshall Islands (accession)	9.V.2008	28.VII.2010
Mauritania (accession)	21.VIII.2013	19.XI.2013
Netherlands (acceptance)[1]	1.III.2011	30.V.2011
Nauru (accession)	29.IV.2010	28.VII.2010
Norway (ratification)	30.IX.2013	29.XII.2013
Palau (accession)	29.IX.2011	28.XII.2011
Panama (accession)	24.II.2011	25.V.2011
Qatar (accession)	10.I.2013	10.IV.2014
Saint Lucia (accession)	8.XI.2012	6.II.2013
Saint Vincent and the Grenadines (accession)	5.VII.2010	3.X.2010
Saudi Arabia (accession)	31.VII.2013	29.X.2013
Spain (ratification)	16.IV.2008	28.VII.2010
Sweden (ratification)	22.IX.2014	21.XII.2014
Switzerland (accession)	15.X.2008	28.VII.2010
Vanuatu (accession)	20.VIII.2008	28.VII.2010

Number of Contracting States: 28

[1] Acceptance for the European part of the Netherlands and Caribbean part of the Netherlands (the latter comprising Bonaire, Saint Eustatius and Saba) only.

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
Burundi	**(a)**	2.XI.2005
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
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
Liberia	**(a)**	16.IX.2005
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
Montenegro	**(d)**	23.X.2006
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
Senegal	**(r)**	20.V.1977
Serbia	**(d)**	12.III.2001
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
Kazakhstan	**(a)**	18.VI.2008
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.

Burundi	**(a)**	4.IX.1998
Chile	**(r)**	7.IV.1982
Georgia	**(a)**	21.III.1996
Lebanon	**(a)**	1.VI.2001
Liberia	**(a)**	16.IX.2005
Malawi	**(a)**	2.II.1984
Mexico	**(r)**	11.II.1982
Morocco	**(r)**	21.I.1993
Rwanda	**(a)**	15.IX.1987
Senegal	**(r)**	25.X.1984
Zambia	**(a)**	7.X.1991

Convention des Nations Unies sur le

Transport multimodal international de marchandises

Genève 24 mai 1980
Pas encore en vigueur.

United Nations Convention on the Law of the Sea (UNCLOS 1982)

Montego Bay 10 December 1982
Entered into force:
16 November 1994

Albania	23.VI.2003
Algeria	11.VI.1996
Angola	5.XII.1990
Antigua and Barbuda	2.II.1989
Argentina	1.XII.1995
Armenia	9.XII.2002
Australia	5.X.1994
Austria	14.VII.1995
Bahamas	29.VII.1983
Bahrain	30.V.1985
Bangladesh	27.VII.2001
Barbados	12.X.1993
Belarus	30.VIII.2006
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

Convention des Nations Unies sur les Droit de la Mer

Montego Bay 10 decembre 1982
Entrée en vigueur:
16 Novembre 1994

Bulgaria	15.V.1996
Burkina Faso	25.I.2005
Cameroon	19.XI.1985
Canada	7.XI.2003
Cape Verde	10.VIII.1987
Chad	14.VIII.2009
Chile	25.VIII.1997
China	7.VI.1996
Comoros	21.VI.1994
Congo	9.VII.2008
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
Ecuador	24.IX.2012
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
Lesotho	31.V.2007
Liberia	25.IX.2008
Lituania	12.XI.2003
Luxembourg	5.X.2000
Madagascar	22.VIII.2001
Malawi	28.IX.2010
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
Moldova, Republic of	6.II.2007
Monaco	20.III.1996
Mongolia	13.VIII.1996
Montenegro	23.X.2006
Morocco	31.V.2007
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
Niger	7.VIII.2013
Nigeria	14.VIII.1986
Niue	11.X.2006
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	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
Swaziland	24.IX.2012
Sweden	25.VI.1996
Switzerland	1.V.2009
Tanzania, United Republic of	30.IX.1985
Thailand	15.V.2011
The Former Yugoslav Republic of Macedonia	19.VIII.1994
Timor	8.I.2013
Togo	16.IV.1985
Tonga	2.VIII.1995
Trinidad and Tobago	25.IV.1986
Tunisia	24.IV.1985
Tuvalu	9.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.

Albania	**(a)**	4.X.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
Morocco	**(a)**	19.IX.2012
Oman	**(a)**	18.X.1990
Syrian Arab Republic	**(a)**	29.IX.2004

Convention des Nations Unies sur les Conditions d'
Immatriculation des navires

Genève, 7 février 1986
Pas encore entrée en vigueur.

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

Albania	**(a)**	9.VIII.2010
Benin	**(a)**	3.III.2010
Ecuador	**(a)**	16.III.2004
Estonia	**(a)**	7.II.2003
Lithuania	**(a)**	8.II.2008
Monaco	**(a)**	28.III.1995
Nigeria	**(a)**	5.III.2004
Peru	**(a)**	23.III.2007
Russian Federation	**(a)**	4.III.1999
Saint Kitts and Nevis	**(a)**	15.VI.2010
Saint Vincent and the Grenadines	**(a)**	11.III.1997
Serbia	**(a)**	23.XII.2011
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

Will enter into force on
14 September 2011

Convention Internationale de
1999 sur la saisie conservatoire des navires

Entrera en vigueur
le 14 Septembre 2011

Albania	**(a)**	14.III.2011
Algeria	**(a)**	7.V.2004
Benin	**(a)**	3.III.2010
Bulgaria	**(r)**	21.II.2001
Ecuador	**(r)**	15.X.2010
Estonia	**(a)**	11.V.2001
Latvia	**(a)**	7.XII.2001
Liberia	**(a)**	16.IX.2005
Spain [1]	**(a)**	7.VI.2002
Syrian Arab Republic [2]	**(a)**	16.X.2002

[1] At the time of its accession, the Kingdom of Spain, in accordance with article 10, paragraph 1 (b), reserves the right to exclude the application of this Convention in the case of ships not flying the flag of a State party.

[2] The accession of the Syrian Arab Republic to this Convention shall not in any way be construed to mean recognition of Israel and shall not lead to entry with it into any of the transactions regulated by the provisions of the Convention.

STATUS OF THE RATIFICATIONS OF UNESCO CONVENTIONS

UNESCO Convention on the
Protection of the Underwater Cultural Heritage

Done at Paris 2 November 2001*

	Date of deposit of instrument
Albania (ratification)	19.III.2009
Antigua and Barbuda (ratification)	25.IV.2013
Argentina (ratification)	12.VII.2010
Barbados (acceptance)	2.X.2008
Belgium (ratification)	5.VIII.2013
Benin (ratification)	4.VIII.2011
Bosnia and Herzegovina (ratification)	22.IV.2009

	Date of deposit of instrument
Bulgaria (ratification)	06.X.2003
Cambodia (ratification)	24.XI.2007
Congo, Democratic Republic of (ratification)	28.IX.2010
Croatia (ratification)	01.XII.2004
Cuba (ratification)	26.V.2008
Ecuador (ratification)	01.XII.2006
France (ratification)	7.II.2013
Gabon (acceptance)	1.II.2010
Grenada (ratification)	15.I.2009
Haiti (ratification)	9.XI.2009
Honduras (ratification)	23.VII.2010
Iran (Islamic Republic of) (ratification)	16.VI.2009
Italy (ratification)	8.I.2010
Jamaica (ratification)	9.VIII.2011
Jordan (ratification)	2.XII.2009
Lebanon (acceptance)	08.I.2007
Libyan Arab Jamahiriya (ratification)	23.VI.2005
Lithuania (ratification)	12.VI.2006
Mexico (ratification)	05.VIII.2006
Montenegro (ratification)	18.VII.2008
Morocco (ratification)	20.VI.2011
Namibia (ratification)	9.III.2011
Nigeria (ratification)	21.X.2005
Palestine (ratification)	8.XII.2011
Panama (ratification)	20.V.2003
Paraguay (ratification)	07.IX.2006
Portugal (ratification)	21.IX.2006
Romania (acceptance)	31.VII.2007
Saint Kitts and Nevis (ratification)	3.XII.2009
Saint Lucia (ratification)	01.II.2007
Saint Vincent and the Grenadines (ratification)	8.XI.2010
Slovakia (ratification)	11.III.2009
Slovenia (ratification)	18.IX.2008
Spain (ratification)	06.VI.2005
Togo (ratification)	7.VI.2013
Trinidad and Tobago (ratification)	27.VII.2010
Tunisia (ratification)	15.I.2009
Ukraine (ratification)	27.XII.2006

* In accordance with its Article 27, this Convention shall enter into force on 2 January 2009 for those States that have deposited their respective instruments of ratification, acceptance, approval or accession on or before 2 October 2008. It shall enter into force for any other State three months after the deposit by that State of its instrument of ratification, acceptance, approval or accession.

STATUS OF THE RATIFICATIONS OF AND ACCESSIONS TO UNIDROIT CONVENTIONS IN THE FIELD OF PRIVATE MARITIME LAW

ETAT DES RATIFICATIONS ET 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

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
Ukraine	**(a)**	5.XII.2006
Uzbekistan, Republic of	**(a)**	6.VII.2000

Convention de Unidroit sur
le Creditbail international 1988

Signée à Ottawa 28 mai 1988
Entré en vigueur:
1 Mai 1995

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.

XXXIX – ATHENS 2008
President: Jean-Serge Rohart
Subjects:
Places of Refuge – Procedural Rules Relating to Limitation of Liability in Maritime Law – UNCITRAL Draft Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea – Non-technical Measures to Promote Quality Shipping – Implementation and Interpretation of International Conventions – Judicial Sale of Ships – Charterer's Right to Limit Liability – Charterer's Right to Limit Liability – Wreck Removal Convention 2007 – Draft Convention on Recycling of Ships

XL – BEIJING 2012
President: Karl-Johan Gombrii
Subjects:
Judicial Sales of Ships – Salvage Convention 1989 – Rotterdam Rules – York Antwerp Rules 2004 – Offshore Activity – Fair Treatment of Seafarers – Piracy – Maritime Issues for Judges – Marine Insurance – The Western and Eastern Cultural Influences on Maritime Arbitration and its Recent Developments in Asia – Arctic/Antarctic Issues – Cross Border Insolvencies – The Shipbuilding Industry in Asia: Problems and Challenges – Future of the CMI in the Decades to come. – Young Members Session: Arrest of Ships and Judicial Sales of Vessels – Offshore Activities, New Regulations and Contracts – Enforcement on Shipping Companies by Creditors.

XLI – HAMBURG 2014
President: Stuart Hetherington
Subjects:
Judicial Sales of Ships – York Antwerp Rules 2004 – Ships in hot water:
Ship Financing and Restructuring;
Cross Border Insolvencies; Liability of classification societies;
Wrongful arrest of ships; Piracy – Ships in cold water: Arctic Issues – Maritime Miscellany: Ships Emissions;
Wreck Removal Convention;
Young CMI Panel; MLC 2006 Issues and Implementation.

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