Maritime Law

(march 2010)

International Maritime law

International maritime law : is the system of law regulating the relations between sovereign states and their rights and duties with respect to each other. It derives mainly from customary law and treaties.
Customary law: derives from practice followed continuously in a particular location, or by particular states, such that the practice becomes accepted as part of law in that location or of those states. It is ascertained from the customary practice of states together with evidence that states regard these practices as a legal obligation. It is regarded as the foundation stone of International law.
Treaties: A treaty is a written international agreement between two states(a bilateral treaty) or between a number of states(multi national treaty), which is binding in law. Treaties are usually made under the auspices of the UNO or its agencies such as IMO or ILO.
Treaties are binding only on those states which are parties to the treaty(called convention countries); A treaty normally enters in to force in accordance with criteria incorporated into the treaty itself. E.g. 1 year after a stipulated number of states have acceded to it.
Treaty making bodies
UN Conferences on the Law of Sea (UNCLOS)
International Maritime Organisation (IMO)
International Labour Organisation(ILO)
World Health Organisation(WHO)
International Telecommunication Union(ITU)
Comite' Maritime International(CMI)
UNCLOS : Three UNCLOS have been convened. UNCLOS I Geneva 1958; UNCLOS II Geneva 1960; UNCLOS III Geneva 1974. UNCLOS III produced an important convention document, generally known as UNCLOS. It contains 446 articles and came in to force on 16 November 1994. Though it was signed in 1982 by as many as 130 states, USA and other super maritime powers did not sign it due to certain clauses in sea bed mining and transfer of technology in UNCLOS . In 1994 a new interpretation has been given to these clauses and these, though not to be called amendments, are to the satisfaction of these states. Many of these super powers have already acceded to UNCLOS. USA too may accede to it in due course.
CMI; Comite' Maritime International has been involved in initiation and drafting of International Maritime Law since the last 100 years. CMI which is a body of learned and experienced people, has no formal, international, legal standing. They have been involved in drafting of following important conventions:
Collision 1910
Salvage 1910&1989
Limitation of Liability for Maritime Claims 1924, 1968, 1979
Bill of Lading 1924, 1968, 1979
Arrest 1952
Carriage of Passangers1961
Civil Liability Convention on Oil Pollution 1969
Fund Convention1971
York Antwerp Rules
Though in the recent years the role of CMI as initiators of international Conventions, has changed due to creation of UN agencies such as IMO, UNCITRAL(United Nations Commission on International Trade Law), CMI still retain an important advisory role, both to UN agencies and to their respective Governments. CMI has now been asked to review Hague, Hague-Visby and Hamburg Rules.

IMO

Purpose: to facilitate inter-governmental co-operation on state regulation and practices relating to maritime technical matters; and to encourage and facilitate the adoption of the highest practicable standards of maritime safety, efficiency of navigation and prevention and control of pollution from ships.

Organs:

Assembly- highest governing body. It consists of all Member States and meets once in 2 years in regular sessions and in extraordinary sessions if necessary. It elects IMO's Council.

Council- 40 member states elected by Assembly. It is the executive organ of the IMO.

Secretariat- secretary general and nearly 300 personal, based at head quarters in London.

Instruments

Conventions

protocols

Amendments

Recommendations, Codes, Guide lines

Resolutions

Conventions : Are chief instruments of IMO, being binding legal instruments. A member State which ratifies or accedes to a convention is obliged to put it into effect by making its requirements part of its national law. Ratification involves a dual obligation for a member State; it is both a formal commitment to apply the provisions of the convention, and an indication of willingness to accept a measure of international supervision.

Protocols : are important treaty instruments when major amendments/revision are required to be made to a convention. All members to the original Convention are invited to deliberate on the proposed major amendments. For instance 1992 protocol to 1961 CLC and Fund Conventions. A protocol can also be convened for adopting major amendments to a Convention, which, although already adopted, has not yet entered in to force. For example, the protocol of 1978 relating to Marpol 1973. Similarly Solas 1974 also has a protocol of 1978. The combined instrument are called Marpol 73/78; Solas 74/78. Contracting States may a party to the original Convention, but may not opt to sign the Protocol.

Amendments : Amendments to a convention, Protocols or their Annexes are made after discussion, agreement and adoption by the IMO Assembly. They are made by adoption of a Resolution document, such as MEPC. 51(32)- Amendment to the annex of the Protocol of 1978 relating to the International Convention for the Prevention of Pollution by Ships, 1973(Discharge criteria of annex I of MARPOL, 73/78. Amendments in early conventions came in to force only after a percentage of Contracting States, usually two thirds, had accepted them. This took several years. Newer Conventions incorporate "tacit acceptance" procedure. Under this, an amendment enters in to force at a particular time unless, before that date, objections are received from a specified number of Parties.

Entry into force of IMO conventions and Protocols and Amendments:

adopting a convention

This is the part of the process with which IMO as an Organization is most closely involved. IMO has six main bodies concerned with the adoption or implementation of conventions. The Assembly and Council are the main organs, and the committees involved are the Maritime Safety Committee, Marine Environment Protection Committee, Legal Committee and the Facilitation Committee.

Developments in shipping and other related industries are discussed by Member States in these bodies, and the need for a new convention or amendments to existing conventions can be raised in any of them.
Normally the suggestion is first made in one of the committees, since these meet more frequently than the main organs. If agreement is reached in the committee, the proposal goes to the Council and, as necessary, to the Assembly. If the Assembly or the Council, as the case may be, gives the authorization to proceed with the work, the committee concerned considers the matter in greater detail and ultimately draws up a draft instrument. In some cases the subject may be referred to a specialized sub-committee for detailed consideration.
Work in the committees and sub-committees is undertaken by the representatives of Member States of the Organization. The views and advice of intergovernmental and international non-governmental organizations which have a working relationship with IMO are also welcomed in these bodies. Many of these organizations have direct experience in the various matters under consideration, and are therefore able to assist the work of IMO in practical ways.
The draft convention which is agreed upon is reported to the Council and Assembly with a recommendation that a conference be convened to consider the draft for formal adoption. Invitations to attend such a conference are sent to all Member States of IMO and also to all States which are members of the United Nations or any of its specialized agencies. These conferences are therefore truly global conferences open to all Governments who would normally participate in a United Nations conference. All Governments participate on an equal footing. In addition, organizations of the United Nations and organizations in official relationship with IMO are invited to send observers to the conference to give the benefit of their expert advice to the representatives of Governments.
Before the conference opens, the draft convention is circulated to the invited Governments and organizations for their comments. The draft convention, together with the comments thereon from Governments and interested organizations is then closely examined by the conference and necessary changes are made in order to produce a draft acceptable to all or the majority of the Governments present. The convention thus agreed upon is then adopted by the conference and deposited with the Secretary-General who sends copies to Governments. The convention is opened for signature by States, usually for a period of 12 months. Signatories may ratify or accept the convention while non-signatories may accede.
The drafting and adoption of a convention in IMO can take several years to complete although in some cases, where a quick response is required to deal with an emergency situation, Governments have been willing to accelerate this process considerably.

<u>Entry into force</u>

The adoption of a convention marks the conclusion of only the first stage of a long process. Before the convention comes into force - that is, before it becomes binding upon Governments which have ratified it - it has to be accepted formally by individual Governments.
Each convention includes appropriate provisions stipulating conditions which have to be met Before it enters into force. These conditions vary but generally speaking, the more important and more complex the document, and the more stringent are the conditions for its entry into force. For example, the International Convention for the Safety of Life at Sea, 1974, provided that entry into force requires acceptance by 25 States whose merchant fleets comprise not less than 50 per cent of the world's gross tonnage; for the International Convention on Tonnage Measurement of Ships,

1969, the requirement was acceptance by 25 States whose combined merchant fleets represent not less than 65 per cent of world tonnage. When the appropriate conditions have been fulfilled, the convention enters into force for the States which have accepted - generally after a period of grace intended to enable all the States to take the necessary measures for implementation.
In the case of some conventions which affect a few States or deal with less complex matters, the entry into force requirements may not be so stringent. For example, the Convention Relating to Civil Liability in the Field of Maritime Carriage of Nuclear Material, 1971, came into force 90 days after being accepted by five States; the Special Trade Passenger Ships Agreement, 1971, came into force six months after three States (including two with ships or nationals involved in special trades) had accepted it.
For the important technical conventions, it is necessary that they be accepted and applied by a large section of the shipping community. It is therefore essential that these should, upon entry into force, be applicable to as many of the maritime states as possible. Otherwise they would tend to confuse, rather than clarify, shipping practice since their provisions would not apply to a significant proportion of the ship they were intended to deal with.
Accepting a convention does not merely involve the deposit of a formal instrument. Government's acceptance of a convention necessarily places on it the obligation to take the measures required by the convention. Often national law has to be enacted or changed to enforce the provisions of the convention; in some case, special facilities may have to be provided; an inspectorate may have to be appointed or trained to carry out functions under the convention; and adequate notice must be given to shipowners, shipbuilders and other interested parties so they make take account of the provisions of the convention in their future acts and plans.
At present IMO conventions enter into force within an average of five years after adoption. The majority of these instruments are now in force or are on the verge of fulfilling requirements for entry into force.

<u>Signature, ratification, acceptance, approval and accession</u>
The terms signature, ratification, acceptance, approval and accession refer to some of the methods by which a State can express its consent to be bound by a treaty.
<u>Signature</u>
Consent may be expressed by signature where:
the treaty provides that signature shall have that effect; it is otherwise established that the negotiating States have agreed that signature should
have that effect; the intention of the State to give that effect to signature appears from the full powers of its representatives or was expressed during the negotiations (Vienna Convention on the Law of Treaties, 1969, Article 12.1).
A State may also sign a treaty "subject to ratification, acceptance or approval". In such a situation, signature does not signify the consent of a State to be bound by the treaty, although it does oblige the State to refrain from acts which would defeat the object and purpose of the treat until such time as it has made its intention clear not to become a party to the treaty (Vienna Convention on the Law of Treaties, Article 18(a))
Signature subject to ratification, acceptance or approval
Most multilateral treaties contain a clause providing that a State may express its consent to be bound by the instrument by signature subject to ratification.In such a situation, signature alone will not suffice to bind the State, but must be followed up by the deposit of an instrument of ratification with the depositary of the treaty.

This option of expressing consent to be bound by signature subject to ratification, acceptance or approval originated in an era when international communications were not instantaneous, as they are today. It was a means of ensuring that a State representative did not exceed their powers or instructions with regard to the making of a particular treaty. The words acceptance and approval basically mean the same as ratification, but they are less formal and non-technical and might be preferred by some
States which might have constitutional difficulties with the term ratification. Many States nowadays choose this option, especially in relation to multinational treaties, as it provides them with an opportunity to ensure that any necessary legislation is enacted and other constitutional requirements fulfilled before entering into treaty commitments.
The terms for consent to be expressed by signature subject to acceptance or approval are very similar to ratification in their effect. This is borne out by Article 14.2 of the Vienna Convention on the Law of Treaties which provides that "the consent of a State to be bound by a treaty is expressed by acceptance or approval under conditions similar to those which apply to ratification."

<u>Accession</u>

Most multinational treaties are open for signature for a specified period of time. Accession is the method used by a State to become a party to a treaty which it did not sign whilst the treaty was open for signature.
Technically, accession requires the State in question to deposit an instrument of accession with the depositary. Article 15 of the Vienna Convention on the Law of Treaties provides that consent by accession is possible where the treaty so provides, or where it is otherwise established that the negotiating States were agreed or subsequently agreed that consent by accession could occur.

<u>Amendment</u>

Technology and techniques in the shipping industry change very rapidly these days. As a result, not only are new conventions required but existing ones need to be kept up to date. For example, theInternational Convention for the Safety of Life at Sea (SOLAS), 1960 was amended six times after it entered into force in 1965 - in 1966, 1967, 1968, 1969, 1971 and 1973. In 1974 a completely new convention was adopted incorporating all these amendments (and other minor changes) and has itself been modified on numerous occasions.
In early conventions, amendments came into force only after a percentage of Contracting States, usually two thirds, had accepted them. This normally meant that more acceptances were required to amend a convention than were originally required to bring it into force in the first place, especially where the number of States which are Parties to a convention is very large.
This percentage requirement in practice led to long delays in bringing amendments into force. To remedy the situation a new amendment procedure was devised in IMO. This procedure has been used in the case of conventions such as the Convention on the International Regulations for Preventing Collisions at Sea, 1972, the International Convention for the Prevention of Pollution from Ships, 1973 and SOLAS 1974, all of which incorporate a procedure involving the "tacit acceptance" of amendments by States.
Instead of requiring that an amendment shall enter into force after being accepted by, for example, two thirds of the Parties, the "tacit acceptance" procedure provides that an amendment shall enter into force at a particular time unless before that date, objections to the amendment are received from a specified number of Parties.
In the case of the 1974 SOLAS Convention, an amendment to most of the Annexes (which constitute the technical parts of the Convention) is 'deemed to have been

accepted at the end of two years from the date on which it is communicated to Contracting Governments...' unless the amendment is objected to by more than one third of Contracting Governments, or Contracting Governments owning not less than 50 per cent of the world's gross merchant tonnage. This period may be varied by the Maritime Safety Committee with a minimum limit of one year.

As was expected the "tacit acceptance" procedure has greatly speeded up the amendment process. The 1981 amendments to SOLAS 1974, for example, entered into force on 1 September 1984. Compared to this, none of the amendments adopted to the 1960 SOLAS Convention between 1966 and 1973 received sufficient acceptances to satisfy the requirements for entry into force.

Enforcement

The enforcement of IMO conventions depends upon the Governments of Member Parties Contracting Governments enforce the provisions of IMO conventions as far as their own ships are concerned and also set the penalties for infringements, where these are applicable. They may also have certain limited powers in respect of the ships of other Governments. In some conventions, certificates are required to be carried on board ship to show that they hav been inspected and have met the required standards. These certificates are normally accepted as proof by authorities from other States that the vessel concerned has reached the required standard, but in some cases further action can be taken.

The 1974 SOLAS Convention, for example, states that "the officer carrying out the control shall take such steps as will ensure that the ship shall not sail until it can proceed to sea without danger to the passengers or the crew". This can be done if "there are clear grounds for believing that the condition of the ship and its equipment does not correspond substantially with the particulars of that certificate". An inspection of this nature would, of course, take place within the jurisdiction of the port State.

But when an offence occurs in international waters the responsibility for imposing a penalty rests with the flag State. Should an offence occur within the jurisdiction of another State, however, that State can either cause proceedings to be taken in accordance with its own law or give details of the offence to the flag State so that the latter can take appropriate action.

Under the terms of the 1969 Convention Relating to Intervention on the High Seas, Contracting States are empowered to act against ships of other countries which have been involved in an accident or have been damaged on the high seas if there is a grave risk of oil pollution occurring as a result.

The way in which these powers may be used are very carefully defined, and in most conventions the flag State is primarily responsible for enforcing conventions as far as its own ships and their personnel are concerned.

The Organization itself has no powers to enforce conventions.

However, IMO has been given the authority to vet the training, examination and certification procedures of Contracting Parties to the International Convention on Standards of Training, Certification and Watch keeping for Seafarers (STCW), 1978. This was one of the most important changes made in the 1995 amendments to the Convention which entered into force on 1 February 1997. Governments will have to provide relevant information to IMO's Maritime Safety Committee which will judge whether or not the country concerned meets the requirements of the Convention.

IMO conventions

The majority of conventions adopted under the auspices of IMO or for which the Organization is otherwise responsible fall into three main categories.The first group is concerned with maritime safety; the second with the prevention of marine

pollution; and the third with liability and compensation, especially in relation to damage caused by pollution. Outside these major groupings are a number of other conventions dealing with facilitation, tonnage measurement, unlawful acts against shipping and salvage.

Each convention and Protocol includes provisions stipulating conditions to be met before it comes into force. The more important the convention is, the more stringent the condition for entry into force. For example TONNAGE 1969 required ratification by 25 States with a combined merchant fleet totalling at least 65% of world gross tonnage. Where as International Convention for Safe Containers only required ratification by 10 States. Conventions and Protocols are binding only on those States which had ratified them.

Ratification: ratification is the process in which the Flag State which had signed the convention gets the acceptance of its people(Parliament for India and UK; Senate for USA; Duma for USSR; Diet for Japan etc) and after that gets the assent of the highest executive of its State(President for India). Now the instrument of ratification is submitted to the Secretary General of UNO.

By ratification the Flag State implies following:

The Flag State will incorporate the contents of the Convention in its National Legislation.

The Flag State is accepting International supervision/inspection of its vessels with respect to this Convention.

Recommendations, Codes and Guidelines : They are technical in nature. Each of these instruments are agreed by adoption of a Resolution. They are not formal treaty documents like Conventions and Protocols. They provide specific guidelines and are not legally binding. They provide guidance to framing national regulations. Most governments apply the provisions of recommendations in their national legislation.

Resolutions: are the final documents resulting from the agreement by the IMO Assembly or a main Committee(MEPC or MSC)

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SHIPS FLAG

Types

National flags(closed register flags)

Flags of convenience(FOC) also called open register flags and free flags

Second register flags (which includes offshore register flags and international register flags)

Bareboat charter flags or dual register flags

National flags : flown on traditional ' closed register UK Register; Indian Register where there is a genuine link between the flag State and the owner or operator as required by UNCLOS

Flag of Convenience(FOC): are deemed by ITF to exist where beneficial ownership and control of vessel is found to be elsewhere than the country of the flag the vessel is flying.

These are designated by ITF fair practices Committee. The criteria for entry in the list are the' Rochdale Criteria', which were laid down by British Committee of enquiry in 1970.

The criteria include:

Whether the country allows non-citizens to own and control vessels

Whether access to and transfer from registry is easy

Whether taxes on shipping income are low or non-existent

Whether country of registration does not need the shipping tonnage for its own purposes but is keen to earn the tonnage fees

Whether manning by non-nationals is freely permitted
Whether the countries lack the power or willingness to impose national or international regulations on the ship owners flying its flag.
Second register flags:
Alternatively termed 'off-shore' or international ship register flags. They are in some cases established under a separate legislation as a second register in the ' parent' state e.g. NIS established in Norway to run alongside the Norwegian first register. In some cases established in an off-shore territory with legal links to the State e.g. Kerguelen (linked to France); Isle of Man (linked to U.K)
These are different from FOC in that while manning, taxation and other laws may be relaxed under the second register, ship owners must still have a genuine link with the flag state and are subjected to supervision and jurisdiction of the Flag State. The ships have their status determined by ITF.
Bareboat Charter or dual register flags: Some countries have relaxed their registration laws to allow for the bareboat chartering of ships into and out of the national flags. In UK the bareboat registry is allowed only for five years. These ships which are allowed to fly the flag of these countries are to abide by the laws of these countries as regard to name approval, carving and marking etc and are to abide by the national legislation of these countries whose flag they are flying.
Classes of Law concerning Shipmasters
1. Common Law: 1. Ancient customs 2. Judge made law 3. Not recorded instruments i.e act of Parliament 4. Can be found in Legal textbooks.
2. Statute Law: Act of Parliament- made by the people of the country
3. Civil Law: 1. Concerned with rights and duties of individuals and companies towards each other.
Includes 'Law of contract ' Law of Tort', 'Law of Probability' '
Boundary Law
No penalties in Civil Law. Losing party ordered to perform; to contract; pay damages

4 Criminal Law 1. Offences - wrong doings against State
2. Law laid down in statues or Regulations
3. Punishable
5 Admiralty Law:
1. Civil Law dealing with collisions, Damage to Cargo salvage, liens, arrest of ships
2. Tried by admiralty courts Madras Bombay and Calcutta High Courts in India

Registration of Indian ships- MS ACT

Procedure for registration

Ports of registry –
(1) The ports at which registration of ships shall be made shall be the ports of Bombay, Calcutta and Madras

Registrar of Indian ships---- At each of the ports of Bombay, Calcutta and Madras, the Principal Officer of the Mercantile Marine Department, and at any other port such authority as the Central Government may, by notification in the Official Gazette, appoint, shall be the registrar of Indian ships at that port.

Register book– Every register shall keep a book to be called the register book and entries in that book shall be made in accordance with the following provisions:--

(a) the property in a ship shall be divided into ten shares:

(b) not more than ten individuals shall be entitled to be registered at the same time as owners of any one ship

(c) a company 1[or a co-operative society] may be registered as owner by its name.

Survey and measurement of ships before registry–

(1) The owner of every Indian ship in respect of which an application for registry is made shall cause such ship to be surveyed and the tonnage of the ship ascertained

(2) The surveyor shall grant a certificate specifying the ship's tonnage and build and such other particulars descriptive of the identity of the ship and the certificate of the surveyor shall be delivered to the registrar before registry.

Marking of ship-

(1) The owner of an Indian ship who applies for registry under this Act shall, before registry, cause her to be marked permanently and conspicuously in the prescribed manner (as per the carving note) and to the satisfaction of the registrar and any ship not so marked may be detained by the registrar.

(2) the owner and the master of an Indian ship shall take all reasonable steps to ensure that the ship remains marked, and the said owner or master shall not cause or permit any alterations of such marks to be made except to evade capture by the enemy or by a foreign ship of war.

Declaration of ownership on registry– A person shall not be registered as the owner of an Indian ship or of a share therein until he makes a signed declaration of ownership to the ship as described in the certificate of the surveyor and containing the following particulars:--

(a) a statement whether he is or is not a citizen of Indi

(b) a statement of the time when and the place where the ship was built or if the ship is built outside India and the time and place of building is not known, a statement to that effect; and in addition, in the case of a ship previously registered outside India a statement of the name by which she was so registered;

(c) the name of her master;

(d) the number of shares in the ship in respect of which he or the company claims to hold

(e) a declaration that the particulars stated are true to the best of his knowledge and belief.

. Evidence on first registry--- On the first registry of an Indian ship, the following evidence shall be produced in addition to the declaration of ownership:--

(a) in the case of a ship built in India, a builder's certificate, that is to say, a certificate signed by the builder of the ship and containing a true account of the proper denomination and the tonnage of the ship as estimated by him and the time when and the place where she was built, and the name of the person, if any, on whose account the ship was built; and if there has been any sale, the instrument of sale under which the ship or the share therein has become vested in the applicant for registry;

(b) in the case of a ship built outside India, the same evidence as in the case of a ship built in India unless the declarant who makes the declaration of ownership declares that the time and place of her building are not known to him, or that the builder's certificate cannot be procured, in which case there shall be required only the instrument of sale under which the ship or a share therein has become vested in the applicant for registry.

Entry of particulars in register book– As soon as the requirements of this Act preliminary to registry have been complied with, the registrar shall enter in the register book the following particulars in respect of the ship:--

(a) the name of the ship and the name of the port to which she belongs;

(b) the details contained in the surveyor's certificate;

(c) the particulars respecting her origin stated in the declaration of ownership; and

(d) the name and description of her registered owner or owner's, and if there are more owners than one, the number of shares owned by each of them.

Documents to be retained by registrar--- On the registry of the ship, the registrar shall retain in his custody the following documents---
(a) the surveyor's certificate

(b) the builder's certificate

(c) any instrument of sale by which the ship was previously sold ;

(d) all declaration of ownership.

Certificate of registry

Grant of certificate of registry– On completion of the registry of an Indian ship, the registrar shall grant a certificate of registry containing the particulars respecting her as entered in the register book with the name of her master.

Custody and use of certificate– (1) The certificate of registry shall be used only for the lawful navigation of the ship, and shall not be subject to detention by reason of any title, lien, charge or interest whatever, had or claimed by any owner, mortgagee or other person to, on or in the ship.

(2) No person, whether interested in the ship or not, who has in his possession or under his control the certificate of registry of a ship, shall refuse or omit without reasonable

cause to deliver such certificate on demand to the person entitled to the custody thereof for the purposes of the lawful navigation of the ship or to any registrar, customs collector or other person entitled by law to require such delivery.

(3) Any person refusing or omitting to deliver the certificate as required by sub-section (2) may, by order, be summoned by [any Judicial Magistrate of the first class or any Metropolitan Magistrate, as the case may be,] to appear before him and to be examined touching such refusal;

. Power to grant new certificate when original certificate is defaced, lost,

(1) In the event of the certificate of registry of an Indian ship being defaced or mutilated, the registrar of her port of registry may, on the delivery to him of that certificate, grant a new certificate in lieu of her original certificate.

(2) In the event of the certificate of registry of an Indian ship being mislaid, lost or destroyed or of the person entitled thereto being unable to obtain it from the custody of any other person, the registrar of her port or registry shall grant a new certificate in lieu of her original certificate.

(3) If the port at which the ship is at the time of the event referred to in sub-section (2) or first arrives after the event is outside India, then the master of the ship or some other person having knowledge of the facts of the case shall make a declaration stating such facts and the names and descriptions of the registered owners of such ship to the best of the declarant's knowledge and belief to the nearest available Indian consular officer who may thereupon grant a provisional certificate containing a statement of the circumstances under which it is granted.

(4) The provisional certificate shall, within ten days after the first subsequent arrival of the ship at her port of discharge in India, be delivered by the master to the registrar of her port of registry and the registrar shall thereupon grant a new certificate of registry.

(5) If the certificate of registry stated to have been mislaid, lost or destroyed shall at any time afterwards be found, or if the person entitled to the certificate of registry obtains it any time afterwards, the said certificate shall forthwith be delivered to the registrar of her port of registry to be cancelled.

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United Nations Conference on Law Of Sea

UNCLOS III 1982

Came in to force- 16 nov 1994

zones

internal waters

From shore to base line which is the low water line-or outer most harbour construction or straight base lines connecting outer most islands in the case of archipelagos .
If vessel enters voluntarily------with in jurisdiction of coastal state.
Foreign flag vessels have right of innocent passage in internal waters only when:
1. Base lines, which have been redrawn, now enclose waters previously seaward of base line and were
territorial sea
Force majeure- distress
War ships immune if entered with consent

Merchant vessels in internal waters-----port state has civil as well as criminal jurisdiction
Port state may however have tendency not to exercise jurisdiction unless :
offence affects peace
custom, immigration offence
port state citizen involved
breach of pollution, navigation, pilotage rules
master of vessel requests.

territorial sea

Maximum 12 miles from base lines
foreign flag vessels have right of innocent passage
Passage means:
navigating/traversing with out entering internal waters
proceeding to and from internal waters
should be continuous and expeditious
anchoring and stopping which are incidental to navigation or rendered necessary due to force majeure/distress
impeding innocent passage
The coastal State can impede the innocent passage of vessel in territorial sea if it considers that the passage of the vessel is not innocent.
Suspending of innocent passage
The coastal State has also the right to temporarily suspend innocent passage of vessels in its territorial sea; for example security , firing/submarine exercises

Activities which are not considered innocent:

threat -use of force against coastal state- weapons exercise- intelligence gathering propaganda
operation of air craft
breach of custom, immigration, fiscal sanitary laws
fishing
scientific research- surveying
interference with communication net work
not complying with coastal state laws/ regulations on nav aids- maritime traffic- protection of marine environment- fisheries - protection of sub marine cables and pipe lines

nuclear powered vessels or vessels carrying nuclear substances must have adequate safe guards and carry certificates to that effect.
submarines will have to navigate on surface and show their flags.
Coastal state can exercise criminal jurisdiction over flag state vessels in territorial sea when:
consequences of crime extend to coastal state
disturbs peace and good order
to suppress illicit traffic of narcotic drugs
master of vessel requests.
Can exercise civil jurisdiction over flag state vessels only when:
In their internal waters or when passing through territorial sea after leaving internal waters.

International straits

Over 100 straits including Dover strait become territorial sea as a consequence of extending the limit of territorial sea to 12 miles.
In these straits foreign flag vessels have the " right of transit passage".
Transit passage means the exercise of freedom of navigation solely for the purpose of expeditious transit of the strait between one part high sea or EEZ to another part of high sea/EEZ.
During transit passage vessels must:
proceed with out delay
refrain from use of force or threat against coastal state
comply with regulations on pollution, navigation, collision, etc.

The difference between innocent passage and transit passage is
that transit passage
Shall not be impeded
shall not be suspended

Note: if there is a strait between the main land and its island and also there is also a high sea/EEZ route seaward of that island , then vessels passing through that strait will be under innocent passage regime and not transit passage.

Archipelagic waters

Archipelagos which are mid ocean group of islands such as Figi can enclose their waters by drawing a base line around these islands. The waters so enclosed are called Archipelagic waters. This concept is applicable only to such group of islands where the land to enclosed water ratio is as stipulated in UNCLOS. Figi is an Archipelagic State. From the base lines around these archipelagos, territorial sea, contiguous and exclusive economic zones will be measured and these States will exercise their jurisdiction in these zones as applicable to these zones. The area enclosed by the straight base lines drawn around their outer islands, is called Archipelagic waters.
In these Archipelagic waters the Archipelagic State exercises its Sovereignty :
It can designate axial lines Sea lanes through which other State vessels must navigate
can suspend innocent passage in these waters temporarily in specified areas
Flag State vessels have the right of innocent passage in these waters subject to their navigating with in the sea lanes designated by the Archipelagic State. They are

however allowed to deviate up to a maximum of 25 miles from the axial lines sea lanes. However they shall not approach any land closer than 10% of the distance between the axial line of the designated sea lane and the land. For instance if the distance of land from the axial line of the sea lane is 18 miles, then the vessels shall not approach the land closer than 1.8 miles.
Vessels must comply with the laws and regulations of the Archipelagic State and conduct themselves, as they would while transiting an international strait.
Until the Archipelagic State formally designate these sea lanes and are published on the charts, vessels can continue to plan their passages through the Archipelagic waters as required for their passage.

Contiguous zone

Can extend a further 12 miles beyond the territorial sea
Coastal State can detain foreign flag vessels in these zones for violation of their regulations on
a. custom b. sanitary c. fiscal d. immigration

Exclusive economic zone : EEZ

Max limit 200 miles from base line
Coastal state has exclusive right to exploit living and non-living resources in its EEZ.
Can enact regulations on pollution and environment protection in its EEZ
Has the exclusive right to construct artificial islands in its EEZ.
Exclusive right to fish.
Conduct scientific research in its EEZ.
Exclusive economic zones however can not generate from an uninhabited island.
These islands can only generate territorial sea and contiguous zones
Flag state vessels have the following rights and obligations in EEZ of other states:
Freedom of navigation as in High seas.
Lay submarine cable/ pipe line
Observe pollution control regulations of the coastal state
Fishing gear if carried must be in stowed /secured condition
Respect and comply with the 500 meters security zones of the off shore installations/ artificial islands of the coastal state.

continental shelf

This is geologically defined and can extend well beyond 200 Miles. A maximum of 350 miles is specified in UNCLOS
This zone is a resource zone and not a security zone and does not form territory of the coastal state.
The resources covered are 'mineral and other non-living resources of the sea bed and subsoil together with living organisms'.
The coastal state has the exclusive rights to construct artificial islands, installations and structures for the purpose of exploiting the resources.
Safety zones of 500 Metres may be established around these installations

High seas

All parts of sea which are not included in EEZ, Territorial sea, Archipelagic waters are High seas. All flag state vessels have the freedom of

Navigation
Fishing
Scientific research
Laying of sub marine cables and pipe lines
building artificial islands.

Jurisdiction in High Seas
The flag state alone exercises its jurisdiction over its vessels in the High Seas.
Right of visit by Warships
Warships have the right of visit over merchant vessels in the high seas, if they have reason to believe the merchant vessel:
Engaged in piracy
Slave trade
Unauthorised broadcasting
Does not have a flag state
Refuses to show their flag
Carrying narcotics
has caused pollution in the high seas and such pollution is likely to spread to coastal waters and cause damage to its environment, the coastal State affected (under the intervention convention) can (after due consultation with the Flag State of the vessel) take measures to prevent such an event.
In case of collision in High seas, disciplinary proceeding can be initiated only by:
The flag State
2. The State of the person involved
No arrest or detention even as a matter of investigation by any other state other than the Flag State.
Competency certificate can be withdrawn/endorsed only by the State which issued it.
While in the High seas vessels are duty bound to render assistance to vessels and persons in distress.

Piracy

Definition of Piracy as per UNCLOS Law of the Sea Convention
Any illegal act of violence or detention or any act of depredation committed for private ends by the crew or passengers of a private ship or aircraft and directed:
on the high seas, against another ship or aircraft or against persons or property on board such ship or aircraft against a ship , aircraft , persons or property it in a place outside the jurisdiction of any state.
Any act of voluntary participation in the operation of the ship or of an aircraft with the knowledge of facts of making it a pirate ship or aircraft
any act of inciting or of intentionally facilitating an act described in the above paragraphs.
Definition of a pirate ship or aircraft
A ship or aircraft is considered a pirate ship or aircraft if it is intended by the persons in its dominant control , to be used for the purpose of committing piracy.

"Armed Robbery"in the territorial seas

IMO's MSC has clarified that acts of piracy in the territorial seas of coastal States are named "Armed Robbery" to distinguish it from piracy which are acts committed in the High Seas. It is defined as follows:
"Armed robbery against ships" means any unlawful act of violence or detention or any
act of depredation, or threat thereof, other than an act of "piracy", directed against a ship or against persons or property on board such a ship, within a State's jurisdiction over such offences.
Legislation : As per IMO ' circular on Piracy,
States are recommended to take such measures as may be necessary to establish their jurisdiction over the offences of piracy and armed robbery against ships, including adjustment of their legislation, if necessary, to enable those States to apprehend and prosecute persons committing such offences.
Hot Pursuit
Coastal States have the right to hot pursuit a merchant vessel ,when:
She violates the law pertaining to the zone of the coastal state
The pursuit must begin when the vessel is in that zone
It can continue into the High seas but stops when she enters the zone of another State or her own States' zone
Hot pursuit must be done only by war ship or aircraft
Hot pursuit must be continuous

Duties of flag states

Maintain a register of ships.
Effectively exercise jurisdiction over its vessels to ensure:

Safety at sea with respect to construction, equipment and sea worthiness.
Manning and compliance of STCW and ILO conventions
Pollution prevention
Surveyed regularly by qualified surveyors
Master and crew are qualified and conversant with international regulations on pollution, safety at sea , collision Regulations
Vessels carry certificates with respect to the above viz safety, pollution, sea worthiness etc.
Conduct proper enquiry on every marine casualty or incident of navigation at sea, causing loss of life or serious damage to installations or vessels or marine environment of other nations .
Must promptly inform concerned State and competent international organisations result of such enquiry.
Penalties for the above offences must be adequate in severity to discourage such offences/violations

unclos provisions on ships' flag and nationality

All States have the right to have ships flying their flags whether land locked or not
Must fix strict conditions for grant of nationality to ships
Ships have the nationality of the State whose flag they are flying
There must be a genuine link between the State and the Ship

Must sail under one flag only except in exceptional cases under international treaties
Ships may not change flags while at sea or in a port of call unless there is a real transfer of ownership
A ship, which sails under the flags of two or more States, using them according to convenience may not claim any of the nationalities of their flags and may be regarded as a ship with out nationality.
.
x----------x----------x----------x----------x----------

Maritime Contractual Relationships

Contract: is contract may be defined as an agreement between two or more persons which may be legally enforced if the law is properly invoked.
A voidable contract is one which is capable of affirmation or Repudiation. For example the charter party giving the option of cancelling the charter in the event of the ship not arriving at the loading port or delivery port by stipulated date.
A void contract is one that is destitute of legal effect for example a Contract which is impossible of performance.
An illegal contract is one which contravenes the law, whether common law of statute law. Whilst it is true that any iilegal contract is void, it does not follow that a void contract is necessarily illegal
An unenforceable contract is one that is not capable of proof, or one which is In defiance or neglect of revenue laws or has not been properly stamped, or one in respect of which legal remedy has been barred by lapse of time.
Essentials of a valid contract
Offer and acceptance: there must be a distinctive indication by the parties to one another of their intention. It is important to determine from the party the offer emanates. The shopkeeper exhibiting goods for sale in his window, even earmarked to become price, is not making an offer, but is merely making any invitation to offer.
Genuineness of the consent expressed in the offer and acceptance
Consideration: consideration is necessary to the validity of every contract . Consideration means valuable consideration, and this must consist of something capable of being estimated in money. And consideration can be some right, interest, profit, or benefit such as freight accruing to one party.
Capacity of the parties to contact. Certain parties are by law incapable of binding themselves by a promise or contract. Examples include enemy aliens, convicts, infants, lunatics and drunken persons.
legality of the object. It may be declared by a statue Law that a contract is illegal or void. For example contract being one of gaming nature is illegal. Certain contracts are illegal in a common law ; for example agreement to commit an indictable offence or a civil wrong, or contrary to public policy.
Possibility of performance at the time when the contract is entered into. if a contract is impossible of performance on that date when it is entered into, it is void, but the impossibility must be complete, not merely in relation to the party liable to perform the act or fulfil the promise..
The terms of the contract must be clear and unambiguous.
Contractual Terms
1. Conditions are root of contract - Breaking the conditions make it-Void .

Warrantees are less essential to the fulfilling of the purpose of the contract than a condition. Breaching a warrantee does not make the contract void, but the aggrieved party is entitled to damages.

Conditions and warranties

Condition: those terms of a contract which are so fundamental that they may be said to go to the root of the whole contract or referred to as conditions, whilst those that are merely collateral to the agreement are referred to as warranties. Therefore, a breach of the condition will rise to an action for damages and also discharge the injured party from further performance. Breach of a warranty, on the other hand, gives the injured party a remedy in damages but does not discharge from further performance.

Both conditions and warranties are only parts of a contract and is often found it difficult to determine whether a particular item is a condition are warranty. The finding will depend on the intention of the parties deduced from the terms of the contract and the subject matter to which it relates.

Conditions may be preceded, concurrent, or subsequent .

Condition precedent

A condition precedent is one which has to be fulfilled before the main purpose of the contract is performed. To take a common example, under the provisions of a voyage charter party, it is a condition precedent to the charterers obligation to load that the ship shall be arrived, and ready and reported on or before the cancelling date. If this is not complied with the charterer may exercise his option to cancel the contract.

Condition concurrent

A condition concurrent is one to be performed at the same time as the main agreement. For instance, in the case of a cash sale payment must be made concurrently with the delivery of the goods to the purchaser.

Condition subsequent

A condition subsequent is a condition the non- observance of which would entitle the other party to avoided transactions that are ready completed. The excepted risks of a charter party serve as an illustration . The occurrence of an excepted risk releases the ship owner from the strict performance of the contract. Unjustifiable deviation by the carrier's vessel is an example of a breach of a condition subsequent, in a voyage charter party or a bill of lading.

Discharging of contracts

1.Discharge by agreement by the parties can take place by waiver . Agreement by the parties that they shall no longer be bound by the contract

a)by substituted agreement e.g; with the consent of the charterer the owner substitute a vessel for the originally contracted vessel.

b)By condition subsequent i.e a provision in the contract that the fulfilment of a condition or occurrence of an event, shall discharge the parties from further liabilities e.g outbreak of war or requisition of vessel by govt.

2. Discharge by actual performance:- carry out obligation by both parties

3. Discharge by frustration:- no fault of either party and not contemplated by them. The situation prevents contract from being

**performed- For instance war breaks out in the area of loading after the charter party was
concluded.**

4. Discharge by breach/ repudiatory breach
Repudiation of a contract means termination of the contract because of the conduct of one of the parties to the contract. The conduct must be of a sufficiently serious nature to entitle the other innocent party to treat the contract as terminated. For instance the vessel is extremely slow in loading the cargo or the chatterer is bringing forth the cargo at an extremely slow rate

5.Anticipatory breach (v/l is still in dry dock and can not arrive port specified in c/p in time)

6. Actual breach (arriving later than cancelling date) -
Non performance(not arriving at all ; unable to load—cranes/derriks can not be used)
Defective performance- (speed of v/l not as per c/p)
Untruth of terms(v/l gearless where as per c/p must have cranes)
Remedies for breach of contract
Where there is a total breach of contract, or a partial breach and the injured party is discharged from further performance, the following remedies are available:
consider the contract discharged by breach, refuse to do any act under the contract and bring an action for damages;
continue to act upon the contract and bring an action for damages
where he has already performed part of the contract himself, sue the other party on a quantum meruit
apply to the court, where such a remedy is appropriate, for a decree of specific performance,

damages:
damages are compensation for the loss which the parties might have reasonably incurred due to failure of the party to perform as per contract. Damages may liquidated or unliquidated. Liquidated means a sum agreed by the parties to the contract as an assessment of the loss or damage consequent upon breach. For example demurrage is a liquidated damage

law governing a contract

1 . Must be subject to jurisdiction of some nation or set of rules- stated in "Jurisdiction Clauses"
2 . Agreement is usually made for "Arbitration" In Arbitration Clauses
Arbitration
**Arbitration consists of the reference of a dispute to one or more independent persons for settlement, instead of to a court. Usually States have an Arbitration council and list of
arbitrators who are well trained and experienced in all commercial matters. Also States have their own**

Law of Arbitration.

Advantages of arbitration :
Avoidance of publicity: arbitration proceedings are not open to press or public and is conducted privately and parties are not under obligation to publish information relating to the case .
Informality of procedure: it is less formal than the fixed procedure of courts
Saving of expense: the expenses of legal action are heavy such as court fees , counsel fees etc; remuneration of arbitrators are generally low.
Avoidance of delays: compared to court proceedings the arbitration is fast and in commercial disputes involving huge sums of money, delay is unacceptable.
Arbitrators special knowledge: unlike the judges of the court the arbitrators special knowledge in commercial matters make them understand the finer points of the case faster and the proceedings made easier.
Disadvantages of arbitration
an arbitrator appointed by one party from the panel of arbitrators may be biased in favour of that party. If each side appoints its own arbitrator and there is a possibility that each of them act as the advocate of the party who appointed him.
In case there are two arbitrators, in case of disagreement between them the matter shall be decided by the "umpire". Unless he has sat with the arbitrators through out the arbitration proceedings and made his own notes, he has to rehear the matter and examine the parties, witnesses, himself
As arbitration is conducted close doors, the case is not published and as a consequence "the doctrine of precedents" will not apply in these cases.

Judicial review

An appeal to the High court can be made on any question of law arising out of an "award" and the High court may confirm, vary or set aside the award or remit the award to the reconsideration of the arbitrator or umpire together with the court's opinion on the question of law.

ADR (Alternate Dispute Resolving)

"Mediation" is another method by which commercial disputes could be resolved. Even the English courts have recently in certain case advised the parties to resolve their disputes by 'mediation". This method is becoming more popular among shipping companies as it obviates the enormous legal costs.
BIMCO have produced a new dispute resolution clause by adding a mediation provision to its existing standard law and arbitration clause. This recognises the increasing use of mediation in maritime disputes.
Mediation is an informal, co-operative, problem solving process in which an impartial trusted person chosen by the parties assists them to find constructive solutions to their problems. It is a co-operative and problem solving process to resolve differences even before they concretise into disputes.
Use of mediation has now been accepted by article 30 of Indian Arbitration and conciliation Act 1996. It has also been incorporated in sec 89 of the code of Civil Procedure and amendment Act 1999, which received president's assent on Dec 30 1999.
Agency
An agent is defined as a person having expressed or implied authority to represent or to act on behalf of another person, called the principal, with object of bringing the principal into legal relations with third parties

Agency, which is the relationship between the principal and his agent is generally through a contract entered into by them.

Creation of Agency

There is no rule that there should be an express appointment of an agent should be in a particular form. Agency can be created as per the contract between the principal and the concerned agent. It can be expressed or even implied in certain circumstances. One who is legally barred from or incapable of entering in to a contract can not contract through an Agent

The law governing agency

The damages resulting from the contract of Agency stems from the contract and as such are regulated by the law of contracts. Liability of a third party will be governed by the law of torts. In Europe " Commercial Agents Directive 1986" lays down the laws governing the Agencies. However individual States make their own interpretations of these Directives.

FONASBA (Federation of National Association of Ship Brokers and Agents) is an internationally recognised association which has laid down the norms and standards expected of Ship Brokers and Ship agents. They also have formulated agreements such as "Standard Liner Agency Agreement" and the "General Agency Agreement." These forms are approved by BIMCO.

Various types of agents
An insurance broker, a mercantile agent, a banker, general agent, special agent, a universal agent(who has unrestricted authority; very rare!)

UNCTAD-Guide lines on Law of Agency

(United Nations Conference on Trade and Development)

Introduction

The following Minimum Standards were prepared by the UNCTAD secretariat in close consultation with the organizations involved in shipping agency matters, in response to a request from the UNCTAD Ad hoc Intergovernmental Group to Consider Means of Combating all Aspects of Maritime Fraud, including Piracy. The Committee on Shipping at its thirteenth session in March 1988, having endorsed these Minimum Standards, recommended their use as appropriate. They are non-mandatory in nature and are to serve as guidelines for national authorities and professional associations in establishing their own standards.

Article 1 - Objectives

(a) To uphold a high standard of business ethics and professional conduct among shipping agents;
(b) To promote a high level of professional education and experience, essential to provide efficient services;
(c) To encourage operation of financially sound and stable shipping agents;
(d) To contribute to combating maritime fraud by ensuring improved services by better qualified shipping agents;

(c) To provide guidelines for national authorities/professional associations in establishing and maintaining a sound shipping agency system.

Article 2 - Definitions

For the purpose of these Minimum Standards:
"Shipping agent" means any person (natural or legal) engaged on behalf of the owner, charterer or operator of a ship, or of the owner of cargo, in providing shipping services including:
(i) Negotiating and accomplishing the sale or purchase of a ship;
(ii) Negotiating and supervising the charter of a ship;
(iii) Collection of freight and/or charter hire where appropriate and all related financial matters;
(iv) Arrangements for Customs and cargo documentation and forwarding of cargo;
(v) Arrangements for procuring, processing the documentation and performing all activities required related to dispatch of cargo;
(vi) Organizing arrival or departure arrangements for the ship;
(vii) Arranging for the supply of services to a ship while in port.

"National authority" means the body constituted under national law to implement the legislation governing the licensing/registration of shipping agents.
"Professional association" means an organization constituted for the purposes of:

(i) Providing a central organization for those engaged in the profession of shipping agents;
(ii) Establishing and upholding standards of conduct and practice for the profession;
(iii) Exercising supervision over the members and securing for them such professional standards as may assist them in the discharge of their duties.
"Professional examination" means an examination carried out on subjects specifically related to the profession in order to ensure adequate knowledge and expertise.

Article 3 - Professional qualifications
To be considered professionally qualified, the shipping agent must:

(a) Have obtained the necessary experience in the profession by working for at least three years in a responsible capacity with a qualified shipping agent;
(b) Be of good standing and be able to demonstrate his good reputation and competence. For example by positive vetting and signified approval of at least two agents of good repute who are also in his business and his geographical area of activity; and
(c) Have passed such professional examination(s) as required by the relevant national authorities/professional associations. The scope and details of such examination(s) shall be determined by the said authorities/professional associations;

In the case of a corporate entity, employ such persons professionally qualified as above to ensure the proper performance of the entity's functions as an agent.

Article 4 - Financial qualifications

To be considered financially sound a corporate entity and where relevant the shipping agent individually must:

(i) Have financial resources adequate to its business evidenced by references from banks, financial institutes, auditors and reputable credit reference companies, to the satisfaction of the national authorities/professional associations; and
(ii) Have adequate liability insurance through an internationally recognized insurance company or mutual club to cover all professional liabilities.
Measures must be taken to ensure that the above financial standards continue to be met. This could be achieved through annual scrutiny of shipping agents by the national authorities/professional associations.

Article 5 - Code of professional conduct

The shipping agent shall:
(i) Discharge his duties to his principal(s) with honesty, integrity and impartiality;
(ii) Apply a standard of competence in order to perform in a conscientious, diligent and efficient manner all services undertaken as shipping agent;
(iii) Observe all national laws and other regulations relevant to the duties he undertakes;
(iv) Exercise due diligence to guard against fraudulent practices;
(v) Exercise due care when handling monies on behalf of his principal(s).

Article 6 - Enforcement

National authorities/professional associations, as the case may be, should ensure that these rules are complied with. In proved cases of non- compliance they shall determine the appropriate disciplinary measures applicable. These may include:
(i) Warnings;
(ii) A requirement for undertakings as to the shipping agent's future conduct;
(iii) Temporary suspension of membership from the relevant professional association;
(iv) Temporary suspension of authorization to operate as shipping agent, if/where granted by the relevant national authority;
(v) Expulsion of membership from the relevant professional association,
(vi) Cancellation of authorization to operate as shipping agent, if/where granted by the relevant national authority.
Article 7 - Compliance
Shipping agents already operating who do not meet the foregoing standards should be given reasonable time to conform with the requirements.

<u>.Agent of necessity</u>

In certain circumstances a person may become the agent of another with out appointment, either expressed or implied. Such an agency is known as “agent of necessity”.
The master of a vessel who is only a bailey of the cargo can arrange salvage of the cargo; the master can also arrange salvage of vessel on behalf of the owner; he can even pledge the vessel and or cargo under certain circumstances!

Bottomry or Respondentia

In times of necessity, as may be in a port of refuge, when pre-arranged advance from owners or local agents are not forth coming, so as to pay the "necessaries" towards repair charges and other disbursements, master has to exhaust all resources available at his disposal to prosecute the voyage with reasonable dispatch. He can try to approach the Lloyds agent as the best way of obtaining loan from the bank at attractive rate of interest. If that also fails , he is left with no option but to resort to "bottomry" and give a bottomry bond(extremely rare nowadays!). Bottomry is pledging the ship in case of dire necessity. Pledging of cargo in a situation where in the vessel is 'constructive total loss' and to raise money for discharging and transhipping the cargo the master as an agent of necessity may execute a "respondentia bond"(very rare nowadays) .It may be interesting to compare bottomry with mortgage.

Only owner can mortgage a ship. Only master can borrow under bottomry bond. Owner can mortgage the ship even if he is having funds. Master can give bottomry bond only when there is necessity and he has exhausted all possible sources to raise funds to prosecute the voyage.

Money raised on mortgage can be used for any purpose. Money obtained on bottomry can only be spent for expenses relating to prosecution of voyage.

If mortgaged ship is lost mortgagee has a claim on insurance indemnity. If the bottomry ship is lost , the bottomry bond becomes void! No wonder owner, given a choice may prefer the master to give bottomry bond rather than himself mortgaging the ship!

If mortgager fails to repay interest or loan, the property passes to the mortgagee. If the loan is not paid with interest the bottomry bond-holder can exercise his maritime lien and have the ship arrested, but the property does not pass to the bond holder. United Nations Convention on Contracts for the International Sale of Goods

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The **United Nations Convention on Contracts for the International Sale of Goods** (abbrev. **CISG**)[1]

This is a treaty offering a uniform international sales law that, as of August 2010, has been ratified by 76 countries that account for a significant proportion of world trade, making it one of the most successful international uniform laws. Turkey is the most recent state to have ratified the Convention.

The CISG allows exporters to avoid choice of law issues as the CISG offers 'accepted substantive rules on which contracting parties, courts, and arbitrators may rely'.[2]

The CISG was developed by the United Nations Commission on International Trade Law (UNCITRAL) and was signed in Vienna in 1980. The CISG is sometimes referred to as the **Vienna Convention** (but is not to be confused with other treaties signed in Vienna). It came into force as a multilateral treaty on 1 January 1988, after being ratified by eleven countries.[3] CISG has been regarded as a success for UNCITRAL as the Convention has since been accepted by States from 'every geographical region, every stage of economic development and every major legal, social and economic system'.[4] Countries that have ratified the CISG are referred to within the treaty as 'Contracting States'. Unless excluded by the express terms of a contract, the CISG is deemed to be incorporated into (and supplant) any otherwise applicable domestic law(s) with respect to a transaction in goods between parties from different Contracting States. Of the uniform law conventions, the CISG has been described as having 'the greatest influence on the law of worldwide trans-border commerce'.[5]

The CISG has been described as a great legislative achievement[6] and the 'most successful international document so far' in unified international sales law[7] , in part due to its flexibility in allowing Contracting States the option of taking exception to some specified articles. This flexibility was instrumental in convincing states with disparate legal traditions to subscribe to an otherwise uniform code. A number of countries that have signed the CISG have made declarations and reservations as to the Treaty's scope,[8] though the vast majority - 55 out of the current 76 Contracting States - has chosen to accede to the Convention without any reservations.

The CISG is the basis of the annual Willem C Vis International Commercial Arbitration Moot held in Vienna in the week before Easter (and now also in Hong Kong). Teams from Law Schools around the World take part. The Moot is organised by Pace university, who keep a definitive source of information on the CISG.

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  - 4.2 Part II - Formation of the Contract (Articles 14–24)
  - 4.3 Part III - Sale of Goods (Articles 25–88)
  - 4.4 Part IV - Final Provisions (Articles 89-101)
- 5 Commentary upon the Convention
- 6 Future directions
- 7 Differences with country legislation relating to the sale of goods
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[edit] Countries that have ratified the CISG

As of 1 August 2010[9]

- Albania
- Argentina
- Armenia
- Australia
- Austria
- Belarus
- Belgium
- Bosnia and Herzegovina
- Bulgaria
- Burundi
- Canada
- Chile
- China (People's Republic of)
- Colombia
- Croatia
- Cuba
- Cyprus

- Czech Republic
- Denmark
- Dominican Republic
- Ecuador
- Egypt
- El Salvador
- Estonia
- Finland
- France
- Gabon
- Georgia
- Germany
- Greece
- Guinea

- Honduras
- Hungary
- Iceland
- Iraq

- Israel
- Italy
- Japan
- Kyrgystan

- Latvia
- Lebanon
- Lesotho
- Liberia
- Lithuania
- Luxembourg
- Mauritania
- Mexico
- Moldova
- Mongolia
- Montenegro
- Netherlands
- New Zealand
- Norway
- Paraguay
- Peru
- Poland
- Romania
- Republic of Korea
- Russian Federation
- Saint Vincent and the Grenadines
- Serbia
- Singapore
- Slovakia
- Slovenia
- Spain
- Sweden

- **Switzerland**
- **Syrian Arab Republic**
- **Macedonia (The former Yugoslav Republic of)**

- **Turkey**
- **Uganda**
- **Ukraine**
- **United States of America**
- **Uruguay**
- **Uzbekistan**
- **Venezuela**

- **Zambia**

[edit] Reservations

A few countries have declared important reservations. For example, in the Nordic countries, Part II is not generally applied, unless the contract expressly specifies this (reservation authorized by Article 92 CISG). Instead, local law is applied, resulting in some slight differences. For example, a Finnish seller must give a "reasonable amount of time" for a foreign buyer to consider an offer; CISG allows the seller to retract the offer before the buyer has accepted the offer. However, the Nordic Countries are currently (2008) considering to withdraw their Article 92 CISG reservation.

In any case, Nordic countries (i.e. members of the Nordic Council) do not apply CISG in trade between each other, but local law. This is due to a reservation in accordance with Article 94 CISG.

[edit] Major absentees

Brazil, India, South Africa and the United Kingdom[10] are the only major trading countries that have not yet ratified the CISG.

The absence of the United Kingdom, a leading jurisdiction for the choice of law in international commercial contracts, has been attributed to the government not viewing the ratification as a legislative priority, a lack of interest from business in supporting the ratification, opposition from a number of large and influential organisations, a lack of public service resources, and a danger that London would lose its edge in international arbitration and litigation.[11]

Japan deposited its instrument of accession with the depositary of the CISG on 1st July 2008. The Convention thus entered into force for Japan on 1st August 2009.

[edit] Language, Structure and Content of the CISG

The CISG is written using 'plain language that refers to things and events for which there are words of common content'.[12] This was a conscious intent to allow national legal systems to be transcended through the use of a common legal *lingua franca*[13] and avoids the 'words associated with specific domestic legal nuances'.[14] Further, it facilitated the translation into six languages[15] so all texts are equally authentic.[16]

The CISG is divided into four parts:-

[edit] Part I - Sphere of Application and General Provisions (Articles 1-13)

The CISG applies to contracts of sale of goods between parties whose places of business are in different States when these States are Contracting States (Article 1(1) (a)). Given the significant number of Contracting States, this is the usual path to the CISG's applicability.

The CISG also applies if the parties are situated in different countries (which need not be Contracting States) and the conflict of law rules lead to the application of the law of a Contracting State.[17] For example, a contract between a Japanese trader and a Brazilian trader may contain a clause that arbitration will be in Sydney under Australian law[18] with the consequence that the CISG would apply. It should be noted that a number of States have declared they will not be bound by this condition.[19]

The CISG is intended to apply to commercial goods and products only. With some limited exceptions, the CISG does not apply to domestic goods, nor does it apply to auctions, ships, aircraft[20] or intangibles[21] and services.[22] The position of computer software is 'controversial'[23] and will depend upon various conditions and situations.[24]

Importantly, parties to a contract may exclude or vary the application of the CISG.[25]

Interpretation of the CISG is to take account of the 'international character' of the Convention, the need for uniform application and the need for good faith in international trade. Disputes over interpretation of the CISG are to be resolved by applying the 'general principles' of the CISG or where there are no such principles but the matters are governed by the CISG (a gap *praeter legem*) by applying the rules of private international law.[26]

A key point of controversy had to do with whether or not a contract requires a written memorial to be binding. The CISG allows for a sale to be oral or unsigned[27] but in some countries, contracts are not valid unless written. In many nations, however, oral contracts are accepted and those States had no objection to signing, so States with a strict written requirement exercised their ability to exclude those articles relating to oral contracts, enabling them to sign as well.[28]

[edit] Part II - Formation of the Contract (Articles 14–24)

An offer to contract must be addressed to a person, be sufficiently definite – that is, describe the goods, quantity and price – and indicate an intention for the offeror to be bound on acceptance.[29] Note that the CISG does not appear to recognise common law unilateral contracts[30] but, subject to clear indication by the offeror, treats any proposal not addressed to a specific person as only an invitation to make an offer.[31] Further, where there is no explicit price or procedure to implicitly determine price then the parties are assumed to have agreed upon a price based upon that 'generally charged at the time of the conclusion of the contract for such goods sold under comparable circumstances'.[32]

Generally, an offer may be revoked provided the withdrawal reaches the offeree before or at the same time as the offer or before the offeree has sent an acceptance.[33] Some offers may not be revoked, for example when the offeree reasonably relied upon the offer as being irrevocable.[34] The CISG requires a positive act to indicate acceptance; silence or inactivity are not an acceptance.[35]

The CISG attempts to resolve the common situation where an offeree's reply to an offer accepts the original offer but attempts to change the conditions. The CISG says that any change to the original conditions is a rejection of the offer – it is a counter-offer – unless the modified terms do not materially alter the terms of the offer. Changes to price, payment, quality, quantity, delivery, liability of the parties and arbitration conditions may all materially alter the terms of the offer.[36]

[edit] Part III - Sale of Goods (Articles 25–88)

Articles 25 – 88; sale of goods, obligations of the seller, obligations of the buyer, passing of risk, obligations common to both buyer and seller.

The CISG defines the duty of the seller, 'stating the obvious'[37], as the seller must deliver the goods, hand over any documents relating to them and transfer the property in the goods, as required by the contract.[38] Similarly, the duty of the buyer is to take all steps 'which could reasonably be expected'[39] to take delivery of the goods, and to pay for them.[40]

Generally, the goods must be of the quality, quantity and description required by the contract, be suitably packaged and fit for purpose.[41] The seller is obliged to deliver goods that are not subject to claims from a third party for infringement of industrial or intellectual property rights in the State where the goods are to be sold.[42] The buyer is obliged to promptly examine the goods and, subject to some qualifications, must advise the seller of any lack of conformity within 'a reasonable time' and no later than within two years of receipt.[43]

The CISG describes when the risk passes from the seller to the buyer[44] but it has been observed that in practice most contracts define the 'seller's delivery obligations quite precisely by adopting an established shipment term'[45] such as FOB and CIF.[46]

Remedies of the buyer and seller depend upon the character of a breach of the contract. If the breach is fundamental then the other party is substantially deprived of what it expected to receive under the contract. Provided that an objective test shows that the breach could not have been foreseen[47], then the contract may be avoided[48] and the aggrieved party may claim damages.[49] Where part performance of a contract has occurred then the performing party may recover any payment made or good supplied[50]; this contrasts with the common law where there is generally no right to recover a good supplied unless title has been retained or damages are inadequate, only a right to claim the value of the good.[51]

If the breach is not fundamental then the contract is not avoided and remedies may be sought including claiming damages, specific performance and adjustment of price.[52] Damages that may be awarded conform to the common law rules in *Hadley v Blaxendale*[53] but it has been argued the test of foreseeability is substantially broader[54] and consequently more generous to the aggrieved party.

The CISG excuses a party from liability to a claim of damages where a failure to perform is attributable to an impediment beyond the party's, or a third party sub-contractor's, control that could not have been reasonably expected.[55] Such an extraneous event might elsewhere be referred to as force majeure, and frustration of the contract.

Where a seller has to refund the price paid then the seller must also pay interest to the buyer from the date of payment.[56] It has been said the interest rate is based on rates current in the seller's State '[s]ince the obligation to pay interest partakes of the seller's obligation to make restitution and not of the buyer's right to claim damages'[57], although this has been debated.[58] In a mirror of the seller's obligations, where a buyer has to return goods the buyer is accountable for any benefits received.[59]

[edit] Part IV - Final Provisions (Articles 89-101)

Articles 89 – 101; final provisions including how and when the Convention comes into force, permitted reservations and declarations, and the application of the Convention to international sales where both States concerned have the same or similar law on the subject.

The Part IV Articles, along with the Preamble, are sometime characterized as being addressed 'primarily to States'[60], not to business people attempting to use the Convention for international trade. They may, however, have

a significant impact upon the CISG's practical applicability,[61] thus requiring careful scrutiny when determining each particular case.

[edit] Commentary upon the Convention

Although the Convention has been accepted by a large number of States, it has been the subject of some criticism. For example, the drafting nations have been accused of being incapable of agreement on a code that 'concisely and clearly states universal principles of sales law' and through the Convention's invitation to interpret taking regard of the Convention's 'international character'[62] gives judges the opportunity to develop 'diverse meaning'.[63] Put more bluntly, the CISG has been described as 'a variety of vague standards and compromises that appear inconsistent with commercial interests'.[64]

A contrary view is that the CISG is 'written in plain business language' which allows judges the opportunity to make the Convention workable in a range of sales situations.[65] It has been said 'the drafting style is lucid and the wording simple and uncluttered by complicated subordinating clauses', and the 'general sense' can be grasped on the first reading without the need to be a sales expert.[66]

Uniform application of the CISG is problematic because of the reluctance of courts to use 'solutions adopted on the same point by courts in other countries'[67], resulting in inconsistent decisions.[68] For example, in a case involving the export to Germany by a Swiss company of New Zealand mussels with a level of cadmium in excess of German standards, the German Supreme Court found that it is *not* the duty of the seller to ensure that goods meet German public health regulations.[69] This contrasted with a later decision in which an Italian cheese exporter failed to meet French packaging regulations and the French court decided it is the duty of the seller to ensure compliance with French regulations.[70]

These two cases were held by one commentator to be an example of contradictory jurisprudence.[71] While another commentator saw the cases as not contradictory as the German case could be distinguished on a number of points.[72] It is noticeable that the French court chose not to consider the German court's decision in its published decision. In any event, it would seem that if there is room for contrary decisions on the obligation for a seller to conform to the regulations in force in the buyer's State and the exceptions to that obligation then the Convention should be clarified to increase certainty, particularly if the reluctance to use foreign precedent continues.

CISG advocates are also concerned that the natural inclination of judges is to interpret the CISG using the methods familiar to them from their own State[73] rather than attempting to apply the general principles of the Convention or the rules of private international law.[74] This is despite the comment from one highly respected academic that 'it should be a rare, or non-existent, case where there are no relevant general principles to which a court might have recourse' under the CISG.[75] This concern has been supported by research of the CISG Advisory Council which has said, in the context of the interpretation of Articles 38 and 39[76], there is a tendency for courts to interpret the articles in the light of their own State's law and some States have 'struggled to apply [the articles] appropriately'.[77] In one of a number of criticisms[78] of Canadian court decisions to use local legislation to interpret the CISG one commentator said the CISG was designed to 'replace existing domestic laws and case law' and attempts to resolve gaps should not be by 'reference to relevant provisions of [local] sales law'.[79]

Critics of the multiple language versions of the CISG claim it is inevitable the versions will not be totally consistent because of translation errors and the untranslatability of 'subtle nuances' of language.[80] This argument, although with some validity, would not seem peculiar to the CISG but common to any and all treaties that exist in multiple languages. The *reductio ad absurdum* would seem to be that all international treaties should exist in only a single language, something which is clearly neither practical nor desirable.

Other criticisms of the Convention are that it is incomplete, there is no mechanism for updating the provisions and no international panel to resolve interpretation issues. For example, the CISG does not govern the validity of the contract, nor does it consider electronic contracts.[81]

Despite the critics, a supporter has said '[t]he fact that the costly ignorance of the early days, when many lawyers ignored the CISG entirely, has been replaced by too much enthusiasm that leads to … oversimplification, cannot be blamed on the CISG'.[82]

[edit] Future directions

Greater acceptance of the CISG will come from three directions. Firstly, it is likely that within the global legal profession, as the numbers of new lawyers educated in the CISG increases, the existing Contracting States will embrace the CISG, appropriately interpret the articles and demonstrate a greater willingness to accept precedents from other Contracting States.

Secondly, business people will increasingly pressure both lawyers and governments to make sales of goods disputes less expensive and reduce the risk of being forced to use a legal system that may be completely alien to their own. Both of these objectives can be achieved through use of the CISG.[83]

Finally, UNCITRAL will need to develop a mechanism to further develop the Convention and to resolve conflicting interpretation issues.[84] This will make it more attractive to both business people and potential Contracting States.

[edit] Differences with country legislation relating to the sale of goods

Depending on the country, the CISG can represent a small or significant departure from local legislation relating to the sale of goods, and in this can provide important benefits to companies from one contracting state that import goods into other states that have ratified the CISG.

Many countries that have signed the CISG have made declarations and reservations as to the Treaty's scope.[1]

[edit] Differences with legislation in the United States of America

In the USA, 49 of 50 states[85] have adopted common legislation referred to in the U.S. as the Uniform Commercial Code ("UCC"). The UCC is similar to the CISG in most ways as a means for promoting contracts for the sales of goods. The UCC departs from the CISG in some areas, such as the following areas that tend to reflect more general aspects of the U.S. legal system:

> **Terms of Acceptance - Under the CISG, acceptance occurs when it is received by the offeror, a rule similar to many civil law jurisdictions which contemplate for service to be effective upon receipt; by contrast the U.S. legal system often applies the so-called "mailbox" rule by which, acceptance, like service, can occur at the time the offeree transmits it to the offeror.**
> **"Battle of Forms" - Under the CISG, a reply to an offer that purports to be an acceptance, but has additions, limitations, or other modifications is generally considered by the CISG to be a rejection and counteroffer. The UCC, on the other hand, tries to avoid the "battle of forms" that can result from such a rule, and allows an expression of acceptance to be operative, unless the acceptance states that it is conditioned on the offeror consenting to the additional or different terms contained in the acceptance.**
> **Writing Requirement - Unless otherwise specified by a ratifying state, the CISG does not require that a sales contract be reduced to a writing. Under the UCC's statute of frauds, oral contracts selling goods for a price of $500.00 or more are generally not enforceable.**

Nevertheless, because the U.S. has ratified the CISG, it has the force of federal law and supersedes UCC-based state law under the Supremacy Clause. Among the U.S. reservations to the CISG is the provision that the CISG will apply only as to contracts with parties located in other CISG Contracting States, a reservation permitted by the CISG in Article 95. Therefore, in *international* contracts for the sale of goods between a U.S. entity and an entity of a Contracting State the CISG will apply unless the contract's choice of law clause specifically provides for non-

CISG terms, or for the application of the law of a non-Contracting State. Conversely, in "international" contracts for the sale of goods between a U.S. entity and an entity of a non-Contracting State, to be adjudicated by a U.S. court, the CISG will not apply and the contract will be governed by the domestic law applicable according to private international law rules.

[edit] See also

- International trade

[edit] Notes

1. ^ United Nations Convention on Contracts for the International Sale of Goods, Vienna, 11 April 1980, S.Treaty Document Number 98-9 (1984), UN Document Number A/CONF 97/19, 1489 UNTS 3. The full text of the CISG is available in pdf format at http://www.uncitral.org/uncitral/en/uncitral_texts/sale_goods/1980CISG.html at 22 December 2007.
2. ^ United States Department of Commerce, 'The U.N. Convention on Contracts for the International Sale of Goods' http://www.osec.doc.gov/ogc/occic/cisg.htm at 22 December 2007.
3. ^ Argentina, China, Egypt, France, Hungary, Italy, Lesotho, Syria, United States of America, Yugoslavia and Zambia.
4. ^ John Felemegas, 'The United Nations Convention on Contracts for the International Sale of Goods: Article 7 and Uniform Interpretation (2000)' *Pace Review of the Convention on Contracts for the International Sale of Goods (CISG)* 115.
5. ^ Peter Schlechtriem, 'Requirements of Application and Sphere of Applicability of the CISG' (2005) 36 *Victoria University of Wellington Law Review* 781.
6. ^ Joseph Lookofsky, 'Loose Ends and Contorts in International Sales: Problems in the Harmonization of Private Law Rules' (1991) 39 *American Journal of Comparative Law* 403.
7. ^ Bruno Zeller, *CISG and the Unification of International Trade Law* (1st ed, 2007) 94.
8. ^ See list of signatories and their associated declarations and reservations at http://www.uncitral.org/uncitral/en/uncitral_texts/sale_goods/1980CISG_status.html at 22 December 2007.
9. ^ The status of signatories is listed at http://www.uncitral.org/uncitral/en/uncitral_texts/sale_goods/1980CISG_status.html at 1 January 2010 and is updated whenever the UNCITRAL Secretariat is informed of changes in status of the Convention.
10. ^ Lord Sainsbury, the Under Secretary of State for the Department of Trade and Industry in the House of Lords on 7 February 2005 said 'the United Kingdom intends to ratify the convention, subject to the availability of parliamentary time'.
11. ^ Sally Moss, 'Why the United Kingdom Has Not Ratified the CISG' (2005) 1 *Journal of Law and Commerce* 483.
12. ^ John Honnold, *Uniform Law for International Sales under the 1980 United Nations Convention* (3rd ed. 1999) 88.
13. ^ Jan Hellner, 'The UN Convention on International Sales of Goods - An Outsider's View' in Erik Jayme (ed) *Ius Inter Nationes: Festschrift fur Stefan Riesenfeld* (1983) 72, 76.
14. ^ John Felemegas, 'The United Nations Convention on Contracts for the International Sale of Goods: Article 7 and Uniform Interpretation (2000)' *Pace Review of the Convention on Contracts for the International Sale of Goods (CISG)* 115.
15. ^ Arabic, Chinese, English, French, Russian and Spanish.
16. ^ Article 101.
17. ^ Article 1 (b).
18. ^ More correctly, the law of New South Wales as mandated in Sale of Goods (Vienna Convention) Act 1986 (NSW).

19. ^ Specifically, China, Germany, Czech Republic, Saint Vincent and the Grenadines, Singapore, Slovakia and United States of America. See http://www.uncitral.org/uncitral/en/uncitral_texts/sale_goods/1980CISG_status.html at 22 December 2007.
20. ^ Article 2.
21. ^ From Article 2 (d) and (f), intangibles such as stocks, shares, investment securities, negotiable instruments or money, and electricity.
22. ^ Article 3.
23. ^ Peter Schlechtriem, 'Requirements of Application and Sphere of Applicability of the CISG' (2005) 36 *Victoria University of Wellington Law Review* 781.
24. ^ Frank Diedrich, 'Maintaining Uniformity in International Uniform Law Via Autonomous Interpretation: Software Contracts and the CISG' (1996) 8 *Pace International Law Review* 303, 321, 322.
25. ^ Articles 6, 12.
26. ^ Article 7.
27. ^ Article 11.
28. ^ Specifically, Argentina, Belarus, Chile, China, Hungary, Latvia, Lithuania, Paraguay, Russian Federation and Ukraine are not bound by Article 11.
29. ^ Article 14.
30. ^ See, for example, *Carlill v. Carbolic Smoke Ball Company* (1892) 2 QB 484.
31. ^ Article 14 (2).
32. ^ Article 55.
33. ^ Articles 15, 16 (1).
34. ^ Article 16 (2).
35. ^ Article 18.
36. ^ Article 19.
37. ^ Jacob Ziegel and Claude Samson 'Report to the Uniform Law Conference of Canada on Convention on Contracts for the International Sale of Goods' (1981) Toronto 168-305.
38. ^ Article 30.
39. ^ Article 60.
40. ^ Article 53.
41. ^ Article 35.
42. ^ Articles 41, 42.
43. ^ Articles 38, 39, 40.
44. ^ Articles 66, 67, 68, 69, 70.
45. ^ Jacob Ziegel and Claude Samson 'Report to the Uniform Law Conference of Canada on Convention on Contracts for the International Sale of Goods' (1981) Toronto 168-305.
46. ^ See International Commercial Terms (Incoterms) in External Links.
47. ^ Article 25.
48. ^ Article 49, 64.
49. ^ Articles 74, 75, 76, 77.
50. ^ Article 81.
51. ^ Cf *Doulton Potteries v Bronotte* (1971) 1 NSWLR 591 for example of damages as inadequate.
52. ^ Articles 45, 46, 47, 48, 50, 51, 52, 61, 62, 63, 65, 74, 75, 76, 77.
53. ^ *Hadley v Blaxendale* (1854) 9 Exch 341.
54. ^ Jacob Ziegel and Claude Samson 'Report to the Uniform Law Conference of Canada on Convention on Contracts for the International Sale of Goods' (1981) Toronto 168-305.
55. ^ Article 79.
56. ^ Article 84 (1).
57. ^ Commentary on the Draft Convention on Contracts for the International Sale of Goods, Prepared by the Secretariat, UN Doc. A/CONF.97/5 (1979).

58. ^ Peter Schlechtriem, *Uniform Sales Law - The UN-Convention on Contracts for the International Sale of Goods* (1st ed, 1986) 99.
59. ^ Article 84 (2).
60. ^ Peter Winship, 'Commentary on Professor Kastely's *Rhetorical Analysis*' (1988) 8 *Northwestern Journal of Law & Business* 623, 628.
61. ^ Ulrich G. Schroeter, 'Backbone or Backyard of the Convention? The CISG's Final Provisions', in: C.B. Andersen & U.G. Schroeter (eds.), *Sharing International Commercial Law across National Boundaries: Festschrift for Albert H. Kritzer on the Occasion of his Eightieth Birthday,* London: Wildy, Simmonds & Hill (2008), 425 at 426.
62. ^ Article 7 (1).
63. ^ Arthur Rosett, 'CSIG laid Bare: A Lucid Guide to a Muddy Code' (1988) 21 *Cornell International Law Journal* 575.
64. ^ Clayton Gillette and Robert Scott, 'The Political Economy of International Sales Law' (2005) 25 *International Review of Law and Economics* 446.
65. ^ Nicholas Whittington, 'Comment on Professor Schwenzer's Paper' (2005) 36 *Victoria University of Wellington Law Review* 809.
66. ^ Jacob Ziegel, 'The Future of the International Sales Convention from a Common Law Perspective' (2000) 6 *New Zealand Business Law Quarterly* 336, 338.
67. ^ Michael Joachim Bonell and Fabio Liguori, 'The U.N. Convention on the International Sale of Goods: A Critical Analysis of Current International Case Law' (1997) 2 *Revue de Droit Uniforme* 385.
68. ^ Article 7 (2).
69. ^ Bundesgerichtshof VIII ZR 159/94. English language abstract available at http://www.uncitral.org/clout/showDocument.do?documentUid=1326 at 22 December 2007.). Full translation available at http://www.cisg.law.pace.edu/cases/950308g3.html#ta at 22 December 2007.
70. ^ *Caiato Roger v La Société française de factoring* international factor France (SA) (1995) 93/4126. English language abstract available at http://www.uncitral.org/clout/showDocument.do?documentUid=1425 at 22 December 2007. . Full translation available at http://www.cisg.law.pace.edu/cases/950913f1.html at 22 December 2007.
71. ^ Nicholas Whittington, 'Comment on Professor Schwenzer's Paper' (2005) 36 *Victoria University of Wellington Law Review* 809.
72. ^ Andrea Charters, 'Fitting the Situation: The CISG and the Regulated Market' (2005) 4 *Washington University Global Studies Law Review* 1, 38.
73. ^ Nicholas Whittington, 'Comment on Professor Schwenzer's Paper' (2005) 36 Victoria University of Wellington Law Review 809.
74. ^ Article 7 (2).
75. ^ John Felemegas, 'The United Nations Convention on Contracts for the International Sale of Goods: Article 7 and Uniform Interpretation (2000)' *Pace Review of the Convention on Contracts for the International Sale of Goods (CISG)* 115, 276.
76. ^ Articles 38 and 39 discuss the notice to be given by the buyer to the seller of non-conforming goods.
77. ^ CISG-AC Opinion No 2, Examination of the Goods and Notice of Non-Conformity - Articles 38 and 39, 7 June 2004. Rapporteur: Professor Eric Bergsten, Emeritus, Pace University New York 6, 7.
78. ^ See also for example, Antonin Pribetic, 'The (CISG) Road Less Travelled: GreCon Dimter Inc. v. J.R. Normand Inc.' (2006) 44 (1) *Canadian Business Law Journal* 92.
79. ^ Peter Mazzacano, 'Canadian Jurisprudence and the Uniform Application of the UN Convention on Contracts for the International Sale of Goods' (2006) 18 (1) *Pace International Law Review* 46.
80. ^ Arthur Rossett, 'Critical Reflections on the United Nations Convention on Contracts for the International Sale of Goods' (1984) 45 *Ohio State Law Journal* 265, 301.
81. ^ Jacob Ziegel, 'The Future of the International Sales Convention from a Common Law Perspective' (2000) 6 *New Zealand Business Law Quarterly* 336, 345.
82. ^ Franco Ferrari, 'What Sources of Law for Contracts for the International Sale of Goods? Why One Has to Look Beyond the CISG' (2005) 25 *International Review of Law and Economics* 314, 341.

83. ^ Peter Schlechtriem, 'Requirements of Application and Sphere of Applicability of the CISG' (2005) 36 *Victoria University of Wellington Law Review* 781.
84. ^ See John Felemegas, 'The United Nations Convention on Contracts for the International Sale of Goods: Article 7 and Uniform Interpretation (2000)' *Pace Review of the Convention on Contracts for the International Sale of Goods (CISG)* Chapter 3 for a discussion on how this could be achieved.

^ The exception is Louis

Contract between cargo seller and buyer

1. Sale of Goods: There are three essential elements of the sale of goods contract
a) Time of passing of ownership
b) Time when payments become due
c) Time risk pass from seller to buyer
2. International Trade Terms (INCOTERMS)
Sale of Good contract between the seller and buyer have been grouped under various terms and conditions and are identifiable by INCOTERMS as follows: EXW, FCA, FOB, C I F, DDP Etc.(ex works; free carrier; free on board; cost insurance freight; delivered duty paid)
5. "FOB"- Free On Board(name of port loading example FOB London)

1.Based On port of loading. Seller delivers the cargo as soon as it crosses the ships rail.
2. Must load on V/L named by buyer in time.
3. Seller clears the goods for export, bears all costs and risks until goods pass ships rail.
4. Seller must notify buyer when loaded
5. Buyer charters ship/ reserve space. notify
6. Buyer bears all Costs including Insurance, Freight
7. For usually bulk sale Contract
8. Buyer is free to resell

C I F--- Cost, Insurance and Freight (discharge port. For example CIF Chennai)
1. Based on discharge port
2. Seller pays all costs marine Insurance, freight …B/L---"Freight Pre-Paid". Seller pay only minimum insurance. Buyer to contract for additional insurance if required to cover additional risks
3. Seller provides clean, negotiable B/L
4. Buyer must accept documents and pay agreed price.(if documentary credit system is stipulated in c/p}
5 Buyer : bears all risk during voyage.
6. Buyer: receives documents and payment Is to be made. He cannot demand receipt of Goods if Documentary credit system is agreed to
7. Advantage of buyer - seller wholly responsible for Shipment, disadvantage of buyer- C I F Costs more than FO B
Note: FOB and CIF are applicable only for sea/inland water ways tranportation

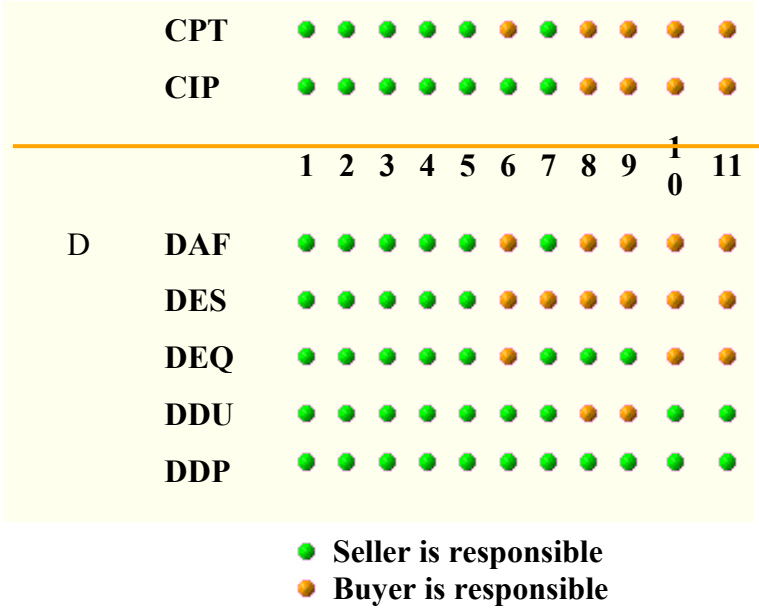
GROUP	TERM	Stands for	Mode of Transportation			
			Land	Ocean	Air	Multimodal
E	EXW	Ex Works				
			Land	Ocean	Air	Multimodal
F	FCA	Free Carrier	●		●	●
	FAS	Free Alongside Ship		●		
	FOB	Free On Board		●		
			Land	Ocean	Air	Multimodal
C	CFR	Cost and Freight		●		
	CIF	Cost, Insurance and Freight		●		
	CPT	Carriage Paid To	●		●	●
	CIP	Carriage and Insurance Paid To	●		●	●
			Land	Ocean	Air	Multimodal
D	DAF	Delivered At Frontier	●			●
	DES	Delivered Ex Ship		●		
	DEQ	Delivered Ex Quay		●		
	DDU	Delivered Duty Unpaid	●	●	●	●
	DDP	Delivered Duty Paid	●	●	●	●

LEGEND:

- Seller **is responsible**
- Buyer **is responsible**

1 **Inland freight in Seller's country;**
Delivery to the carrier or frontier
2 **Customs clearance in Seller's country**
3 **Payment of customs charges and taxes in Seller's country**
4 **Loading to the main carrier or means of conveyance**
5 **Main carriage/freight**
6 **Cargo (marine) insurance**
7 **Unloading from the main carrier or means of conveyance**
8 **Customs clearance in Buyer's country**
9 **Payment of customs duties and taxes in Buyer's country**
10 **Inland freight in Buyer's country**
11 **Other costs and risks in Buyer's country**

GROUP	TERM	Trade Contract Responsibility										
		1	2	3	4	5	6	7	8	9	10	11
E	EXW	●	●	●	●	●	●	●	●	●	●	●
		1	2	3	4	5	6	7	8	9	10	11
F	FCA	●	●	●	●	●	●	●	●	●	●	●
	FAS	●	●	●	●	●	●	●	●	●	●	●
	FOB	●	●	●	●	●	●	●	●	●	●	●
		1	2	3	4	5	6	7	8	9	10	11
C	CFR	●	●	●	●	●	●	●	●	●	●	●
	CIF	●	●	●	●	●	●	●	●	●	●	●



Documentary credit system

a). Enable sellers obtain early payment soon after shipment
b). Relies heavily on documents
c). Buyer is able to sell the cargo even during transit of the cargo to port of destination.
d). Buyer gets the title of the cargo as soon as he receives the Bill of Lading.
e). Procedure

S= UK seller; B= indian buyer

1. "S" AND "B" Conclude a Contract Specifying payment By "documentary credit system"

2. 'Buyer Instructs his bank called Issuing Bank In India to open a credit In favour of Seller

3. Buyer's bank verify his credit worthiness and Issues a Letter of Credit . LOC contains terms of credit (i.e- requirement reg. document such as clean B/L, insurance, time of loading etc..)

4. Buyer's bank sends LO C To "Sellers bank called " confirming bank" In U.K

5. Sellers bank In U.K checks L O C, sends It to seller

6. Seller ships goods , assembles documents required by L O C Viz. Invoice, Insurance, certificate, full set of 'Clean on board B/L presents all documents to U.K. bank for payment.

7. 'Seller's Bank verifies document as per L O C, pays him and sends documents to issuing bank(buyer's bank In India)

8. Issuing bank checks documents against L O C, releases documents to Buyer against Payment .
9. 'Buyer's bank(issuing bank) now reimburses' Seller's bank(confirming bank) In UK.
10. The buyer is now having the document of title to the cargo and can resell the cargo to another.

Freight

charter party freight- ordinary freight.

Must be paid under common law on delivery of cargo in accordance with ' freight clause'.C/P term; particularly in advance on loading. depend on in taken cargo weight, out turn weight, volume, cargo value or some other stipulation.

Not payable unless the entire cargo reaches agreed destination, even if not due to carrier's fault. i.e. if voyage. abandoned after G. A . Act, owners usually insures against possible loss of freight , so that freight insurers become party to Common Adventure in G. A . Act.

Not payable when owners breached contract. But when cargo is delivered damaged full freight is payable. Cargo owners present separate claim for damage.

If payable in advance is collected by Port Agent at Load Port before issue of "Freight Paid B/L"
If payable on discharge collected by agent on presentation of "Original B/L by receiver.
Not payable on delivery if cargo has lost its "Specie" ie, changed its physical Nature.

Lump sum freight

1. **Fixed sum payable irrespective of cargo carried. Owners generally guarantee cargo capacity for charterer's use.**
2. **Useful in mixed cargo where cargo of varying densities carried .**
3. **Common in tanker trades than in dry cargo trades.**

Bill of Lading freight

Freight calculated as per B/L on shipped or in taken weight
used where in taken and out turn differ viz.
Oil evaporates during voyage.
Sedimentation
logs loaded dry, absorbs moisture during voyage.
ice on timber melts
grabs can not discharge all cargo

commonly stipulated in tanker trade

Advance or pre-paid freight

May be total or an agreed proportion of freight payable in advance at load port.
Balance at disport
Deemed earned when cargo is loaded
not refundable if vessel or cargo is lost
commonly used when transferable B/L is issued. A freight pre-paid B/L as in the case of
CIF contracts usual in liner trades
not common in tanker trades C/P as tanker charterers are in stronger position than dry cargo charterers. Also, tanker owners will have problems in storing large quantities of oil when exercising their 'lien' on unpaid freight.

Pro-rata Freight

is payable in common law where only part of voyage is completed. E.g. war, accident and cargo discharged at intermediate port and also due to onset of ice
is not freight in normal sense. It is compensation for carrying goods at least part way to destination

Ad valerom freight

payable at a rate stated as percentage of value of shipment. Usually high valued cargo e g. bullion on a Ad valerom freight B/L, value of cargo is recorded and owner waives his right to limit his liability to the goods, in return for higher Ad valorem freight..
P&T Clubs don't normally cover owners for liability for high valued Goods. Owners make other Insurance arrangements.

Back freight
Freight paid by Shipper for return Carriage of Goods not delivered or accepted by their receiver.
Normally not mentioned in C/P
If Non-Delivery or non-acceptance due V/L fault (e.g. over carrying)
No Back-Freight is payable.

Dead freight
1. Not genuine freight
Is Owner's compensation for lost freight payable by charter.
On a quantity of cargo short -shipped i.e. a quantity which they agreed, but failed to load.

Charters---(general)

A Contract For 'Hire of Vessel' for carriage of qty of Cargo in a named V/L between named ports

Charter Party

1.Document having written terms stipulating rights, Responsibilities and liabilities of owners/ charterers
2.The charter party will have standard clauses, rider clauses and side clauses addendum. It may be in a boxed lay out or in an archaic form
3.Voyage charter:- Named V/L, stated qty of cargo between named ports
4. Time charter:- Hire named V/L-specified speed and fuel consumption-daily hire-for specified period- delivered at named location/event – specified time
5. Bareboat charter- Vessel is delivered to the bareboat charterer with out master and crew. Charterer employs master and crew and operates vessel and commercially employs her on hire basis with an option to buy at later date
6. special purpose charter Slot Hire- Container slots- Heavy lift Etc.

Voyage charter

Owners contract with charterers, in return for an agreed amount of freight by charterers, to present named vessel at named place by stipulated date, to load agreed cargo, with in an agreed time, carry the cargo to another named place and discharge the cargo.
in short charterers hire the cargo capacity of the V/L and not the vessel itself.
owners appoint master and crew; pay all running expenditure and voyage costs; bunkers, etc unless otherwise specified in the contract.
Charterers bring cargo forward and pay all loading and discharging costs, in case it is free in and out(FIO). If owners pay cargo handling costs terms are liner or gross terms.
Essentially, voyage charter is a contract of safe custody of cargo i.e owners agree to keep and care for the cargo, carry the cargo to destination and discharge it in the same quantity as when loaded.

Protective clauses in C/P

clause paramount:

Inserted in C/P under which B/L is required to be issued. The contract of carriage H/VR or Hamburg Rule is inserted under this clause
has effect of incorporating into contract of carriage one of the three international conventions setting out minimum terms and conditions within which the carrier must contract (Hague , Hague/visby, Hamburg.
Most maritime countries have incorporated one or other of these in to their national law, and these rules of relevant convention are automatically applied to contracts made in that country.
When sea carriage is between countries where none of these apply, still parties to contract agree to be bound by (voluntarily) one of these Rules to obviate disputes. In this case the contract should have a clause paramount.

War risk clause in a voyage charter party

Sets out rights of owners in war zones. The actual outbreak of war or a substantial increase of war risks after the fixing of the voyage charter can affect the performance in various ways. If the vessel's flag State is involved performance could prove impossible. This would arise if the charterers become enemies, thus making

performance illegal. Frustration of the contract might occur if ports which are essential to its performance became blocked. There is further risk of requisition for hire by the flag State, or just possibly by another State .
All the above clauses deal with situations where war risks are likely to affect the performance of the contract.
The war risks clause attempts to protect every one concerned with navigation and management . It also seeks to cover any acts which can reasonably be considered to expose ship and crew to danger.
Also all the above factors will have to be addressed according to whether or not the ship has commenced loading. If have not commenced loading the owners have a limited right of cancellation after giving the charterer 48 hours notice to revise their orders so as to avoid war risks.
Once the loading of the vessel has commenced , this cancelling right is replaced by a right to call for revised orders. If the revised orders are not given with in 48 hours the owners have wide liberties, of course subject to their acting reasonably.
In short in the war risks clause owners are compensated for anything they reasonably do. In other words the risk falls on the charterer. The same is true in relation to any war risks zone which the vessel would normally transit on the loaded voyage. It almost boils to stating that anything done because of war risk will not constitute a deviation.
War risk clauses in a time charter party
The problems of war affect period charter differently from voyage charters. In period chartering there are often general restrictions of trade caused by the war. And also upheavals in freight rates and frequently a steep increase in expenses. The time charterer should not bind the ship to perform voyage involving was risks. (some usa oil companies require the vessel to accept orders to war risk ports on the basis that insurance cover is available" through a government programme") . Any ordinary time charter is made on the basis that the vessel shall tarde within essentially peaceful ares of the world, and not enter any war zone unless the charter party was made specifically for such purpose.
Some older form of time charter parties excluded the possibility of off-hire when time was lost owing to war risks, even if lost by war damage, including time taken for repairs. Current time charter parties are making no specific reference to this off-hire during war risks. AS a result of this , repair time will be off hire, but owner will usually have a right of recovery under the indemnity principle. Loss of time because of war risks (like awaiting orders) will be on hire.

War Insurance: If the vessel becomes exposed to war risks, this clause entitles the owner to insure the ship against war risks, for the charterer's account. In this clause value to be insured, period of insurance and reimbursement of the premium by the charterer are considered while negotiating this clause. The general law and other charter terms(such as safe ports) implies that payment of the premium by the charterer will not relieve of his responsibility/liability for damage by hostile action.
War cancellation clause: If the Vessel's flag State or of the charterer's State becomes involved directly in war, will automatically terminate the charter on the grounds of illegality(trading with the enemy). Apart from this principle, the charter will continue to be performable unless a cancelling clause can be invoked. Usually this clause provide for automatic option of cancellation to both the parties in case of war breaks out between any two of a list of countries. Some times this clause is made operable even if one of the listed countries gets involved in a war. As a variation at times this clause provides that if war breaks out involving any one of the listed countries so as

to make the continued service under the charter difficult for one party, the charter may be suspended or terminated.

P&I bunker deviation clause

a standard protecting clause by the P&I clubs
allows vessel to deviate off contract route to take advantage of " cheap bunkers" available at ports near oil producing centres
allows vessel to take full round trip bunkers.
advantage to owners saving another bunker call. Advantage to charters who may have freight charges on homeward voyage reduced as a result of owners saving.

New Jason clause

Required to protect owners against US Law suits
Under US Law owners cannot claim General Average contribution from cargo owners, where there has been faulty navigation/ management of ship. Owners therefore were inserting clauses requiring cargo owners to contribute to GA even when there has been faulty navigation.
US Harter Act 1983 however made it illegal to make any such clauses in the contract., which exonerate the ship from faulty navigation and mismanagement of ship.
Even then a clause had always been inserted in the contract to protect the owners in case of faulty navigation etc. and their right to claim contribution from cargo owners for GA contribution
Validity of this clause was tested in 1904 in an US court case concerning SS Jason.
In 1911 after a lengthy litigation, the validity of this clause was upheld.
It has since been extended to include salvage also and is now inserted as" New Jason Clause"

Both to blame collision clause

Under Hague or Hague/visby Rules" collision" as a peril of the sea, is an excepted peril. Therefore collision allows carrier to avoid cargo loss claims.
As a result the cargo owner has to make good his loss by claiming from his insurance policy.
Under US Law and countries not ratified collision convention 1910, when cargo was damaged by collision, cargo owner may claim full amount of loss from owners of non-carrying ship and thereby circumvent H/V Rules.
The non-carrying ship may then claim and recover from owners of carrying ship proportion of claim equal to the proportion of blame attached to the ship for collision.
in short the in collision cases where US Law is applied defence of ' excepted peril' due to collision is lost.
In both to blame collision clauses carrier is able to preserve the collision defence. Under this clause, cargo owner indemnifies the carrier against any liability to non-carrying ship in the event of collision.
US Court has ruled in one of the cases that such clause is not valid. However , vessels continue to insert this clause in the hope that in future they may get a favourable ruling.
This clause is introduced in the time charter party making it mandatory for the charterer to include this clause in all bills of lading .

Ice clauses

This clause is introduced when there is possibility of V/L being sent to ice-bound areas to protect owner's interest.
The ' ice clause' must contain the following:
are owners obliged to let vessel break ice or follow an ice breaker.
What possibilities have the owners to refuse a certain port or leave a port when there is risk of freezing.
Are owners entitled to full or only reduced freight when vessel leaves with part cargo
Who shall decide what to do with cargo when it is impossible to reach original disport?
who shall pay for delay as a result of ice?
Who shall pay for extra insurance on vessel and damage caused to ship by ice?

The safe port clause in a charter party

An important provision in all C/P
Safe port requirements. Safe access to port (ice etc temporary obstructions).
Neap tide cannot make the port unsafe.
v/L can safely lie afloat in all conditions of tide unless it is customary and safe to load/ discharge aground
Safe landing of goods and proper Warf's
Politically safe, free from war/ embargo
must be able to leave after discharge without lowering /cutting masts
8 If the vessel has to lighten as a requirement to enter the port, then that port is unsafe, even if it is customary for all vessels to lighten to enter that port unless the charter party specifically allow the vessel to lighten

Safe ports

A safe port is defined in the classic case of ' The eastern city' . In this particular case the judge defined the safe port as :
" a port will not be safe unless, in the relevant period of time, the particular ship can reach it, use it and return from it with out, in the absence of some abnormal occurrence, being exposed to danger which can not be avoided by good navigation or seamanship"

A port can be considered unsafe for three broad general reasons:

a)physical feature(e.g. an under water obstruction to navigation; insufficient manoeuvring room)
b)political happening(e.g. a riot causing the throwing of bombs)

c) the system of the port itself, as contrasted to negligent acts or omissions of individuals with in the port administration(e.g. no system exists in port for giving weather forecast/ warnings to vessels in port).

Safe berth

Must be safe in same respects as for safe ports.

Master's duty to ensure berth is safe and to refuse to go to an unsafe berth even if ordered to go
damage to ship/ quay at an unsafe berth is usually ship owner's responsibility/liability

warranty of seaworthiness

Unless the contract of carriage has an express provision regarding sea worthiness, absolute obligation(common law), known as seaworthiness, is implied in the contract
usually in the C/P, the absolute warranty is moderated to an undertaking that carrier will only exercise "due diligence" to make the vessel seaworthy before sailing.

Due diligence may then mean following:
make a reasonable and careful inspection of the vessel.
perform maintenance in accordance with custom of trade.
these must be done before commencement of the voyage.
Exercising 'due diligence to ensure seaworthiness would entail for instance checking whether hatch covers are fully water tight, and other hull openings are closed before sailing

Unseaworthy ships-defintion as per Part IX-section 334 –MS Act 1958

A ship is unseaworthy if following are not fit in every respect for the intended voyage:
The material she is made of
The construction
Qualification of the master
The weight description and stowage of cargo&ballast
Number, description qualification of crew and officers
The condition of her hull and equipment,boilers and machinery

Offence under MS ACT
Any person who sends or attempts to send unseaworthy ship to sea from India port and Any master of Indian ship who knowingly takes unseawothy ship to sea such that the life of any person on board is likely to be endangered is guilty of an offence under this Act unless he proves that
He had exercised due diligence in making her seaworthy or
That under the circumstances, it was reasonable and justifiable to send her to sea/take to sea in such an unseaworthy state
Prosecution under this section only with the consent of central Govt.

Some chartering abreviations

AA	**Always Afloat**
BB	**Below Bridge**
CD	**Customary Despatch**
COMBO	**Combination Port**
DWAT	**Dead Weight ALL Told**
DWAC	**Dead Weight Carrying Capacity**
FEAST	**Far East**
FOQ	**Free On Quay**
FWAD	**Fresh Water Arrival Draft**

NAABSA	**Not Always Afloat But Safe Aground**
WCCON	**Whether Custom Cleared Or Not**
WP	**Weather Permitting**
WW	**Weather Working**
WW Ready	**Where and When Ready**

Preliminary voyage to load port

When a voyage C/P is signed , the V/L is usually stated to be at certain place or Position Or at Sea.
If the C/P usually specifies an ETA or a LAYCAN range, the V/L is obliged to proceed from that place on the date on which it would be necessary to sail in order to reach the Load Port on or about ETA
When C/P requires V/L to proceed with all convenient speed she must do so with at reasonable Speed.
Provided Owners dispatch the V/L on this "Preliminary voyage " at appropriate time, they will be protected by the Exceptions Clause in the C/P in the event V/L is unable to reach the Load Port by cancelling date, due to an "Excepted Peril" such as bad weather
If V/L does not depart at appropriate time, owners will be liable for late arrival, even though the delay is due to an "Excepted Peril" .i.e. one named in Exception Clause.
If Owners use time in hand before stipulated time for Intermediate Charter &V/L is late as a result, no protection from Exceptions Clause.

lay days canceling date

lay days

1.range or spread of days between which owners may present V/L for loading. Cancelling dates

2.The day beyond which if V/l has not been presented for loading, Chatterer might reject her.
3. These will be found in Cancelling Clause. If V/L arrives before First day of the Laycan period, Charterer need not accept her until Lay days start.
4 .If V/L arrives after last day of the Laycan period, charter can reject her.
LAYCAN 10/20 May. 10 May first day 20 May cancelling date.
Charterer can not be made to declare whether he intend to cancel or not before V/L arrives at Load Port.
Even after the Cancelling date has passed Charterer cannot be compelled to declare whether or not V/L will be accepted. They often stay silent hoping to make a new contract with Owners.

Cancelling clause/cancellation clause

To protect their interest, owners may introduce this clause in the charter party where in the charterer is obligated to declare 48 hours prior to arrival of the vessel if he is going to cancel the charter. By this clause, the vessel need not steam all the way to the load port to learn that she is not accepted.

Description of vessel

1. **Must have DWCC (dead weight carrying capacity)**
   Or DWAT(dead weight all told) as required by the charterer.
2. **Must be of reqd. dimension Panamax. Suezmax etc**
3. **Must have number of holds \ hatches of reqd. sizes**
4. **May be reqd to be in a certain class.**
5. **Must in common law Sea worthy**
   As this is an implied Common law obligation, does not have to be stated in writing.
6. **Some C/Ps however contain express warranty of sea worthiness.**

Notice of readiness

1. **Vessel must be a) "arrived ship" b) ready in all respects to load/discharge**
   Must be given within "LAYCAN" period.
2. **Must be given as per Lay time Or Notice Clause In C/P**
3. **Usually tendered during office-hours Monday - Saturday.**
   In writing i.e printed form /letter / Fax/ Cable/ Telex.
   Addressed to charterer/ their agent.
4. **Sent in duplicate with request to return second copy with time & Date of acceptance.**
   If NOR not acknowledged on first day , daily attempts to be made to have It accepted.

Laytime

Time Allowed for Charterers for cargo operations.
Is defined as "The period of time agreed between the parties during which The Owner will keep the ship available for Loading /Discharging without additional payment .
May be separate for load & discharge ports or reversible or average. Laytime is of three types,

(a) definite: If so stated a Definite Period , 6 Days --------48hours - etc-
.

(b) calculable: Cargo weighing 20,000 tons to be loaded at the rate of 10,000 per day=
Lay time 2 Days

(c} indefinite: C/P may state Customary Despatch" Or as fast as V/L can receive. "

5. **Lay time cannot start to count against Charterer unless following three conditions are fulfilled.**
   a). V/L has become an arrived Ship'
   b) Is ready in all respects to Load/ Discharge
   c) NOR is served on Charterers or received by Charterers / Agents.
6. **Lay time runs until completion Loading / Discharging. Some C/P provide that Lay time runs until Charterers preparation of documents /Testing of Samples**

Voyage C/P Lay time Interpretation Rules 1993 for explanation of usual Laytime terms

Arrived ship

Depends whether C/P is 'Port C/P' or ' berth C/P'?

If Port is defined as place of loading without stipulating a particular berth the C/P is a "port C/P". In this case V/L becomes the "arrived" When:
1, V/L has entered the Port Limits
2. Is fully at Charterers disposal
3. Is fully ready to load in a place where ships waiting for berths wait.
In a Port C/P, all delays in berthing will be on Charterers account. This is more favourable to owners. If a particular berth is defined as the loading place, C/P is a berth C/P.
In this case she becomes "arrived ship" only when she Berths.
To protect themselves owners will often insert a "Waiting Berth Clause"
Or Insert the words "Whether in Berth Or Not " or some protecting phrase in the Lay time Clause to make it clear that lay time can count once V/IL is at customary waiting place.
W.I.P.O.N ----------whether in port or not
W.I.B.O.N ----------whether in berth or not
W.C.C.O.N ----------whether custom cleared or not
W.I.F. P.O. N -------- --whether in free pratique or not

In all respects ready to load
. –
1 V/L Sea worthy
2 V/L Fully at Charterer's disposal
3 Derricks, cranes ready for operation
4. Hold/ tanks cleaned, prepared, surveyed.
5. Free pratique, custom clearance granted
6. At Common Law, the duty to provide sea worthy ship is absolute.
However most C/P forms have reduced the absolute obligation to a duty of exercising "due diligence" i.e doing every thing which a prudent ship owner can reasonably do, to make the V/L seaworthy without actually guaranteeing her sea worthiness.

tanker slops

Most C/P provide that " slops will be dealt with as Charterers direct. Charterer has two Options.:
a) To load on top if slop compatible with the Cargo. Charterer will pay freight on slop; but will be entitled to demand discharge of slop with the Cargo; essentially they buy slop at the cost of freight.
b) Keep slop segregated on board or discharge to shore. If kept on board charterer pay freight on them plus dead freight incurred as a result of a full cargo no longer being carried to disport.
c) If C/P gives Charterer option of dealing slop & V/L arrives with more slop than can be carried (or segregated) along with full cargo: breach of contract.

Chaterers rejecting v/l repeatedly on grounds of unclean holds

C/P have Clauses dealing with cleaning holds before loading.
Some C/P give Master authority to decide when V/L is sufficiently clean.
Some C/P require V/L to clean to the satisfaction of "charterer's inspector" which may lead to Charterer repeatedly rejecting Vessel. Charterers must be able to show that such rejections are reasonable.
Unless C/P provides otherwise, Master has final authority/ responsibility to decide, when holds are clean for loading. If personally satisfied, holds are clean for intended cargo , Master should Act reasonably
Bear in mind he is acting on behalf of Charterer & Owner.
Politely but firmly point out to the Surveyor that responsibility of deciding is Master's. Point out cost of any further cleaning is Charterer's account Note Protest.
If ordered to leave berth before acceptance, do not agree to do so unless instructed by owners unless there is clause in C/P giving Charterer right to order off V/L from berth, in which case order should come from charterer to Master thru Owners.

<u>Charterer can not provide cargo on arrival</u>

1. **Tender NOR on arrival as per C/P**
2. **Inform owners**
3. **As charterer not in breach of contract until 'laytime' has expired sit out laytime if still no cargo when laytime expires Note Protest stating owners obligation under C/P has been met.**
4. **Await instructions**

<u>charterer can not provide cargo as stipulated</u>

1. **Check C/P MOLCO or MOLOO and what percentage.**
2. **If what is loaded is less than C/P agreed margin, charterer is in breach of contract and liable for 'Dead Freight".**
3. **Owners will be entitled to take reasonable steps to find other cargo to fill unfilled cargo space**
4. **Note protest - contact owners**
5. **send a letter of protest to charterer**

<u>loading completed on expiry of laytime</u>

1. **There is a breach of contract and charterer is liable for damages.**
2. **Liquidated damage termed "demurrage" normally become payable by charterer for each day or part there of , if stipulated.**
3. **Demurrage clause may state number of days and rate payable.**
4. **Demurrage is paid per running day i.e with out excluding Sundays, holidays bad weather.**
5. **<u>"once on demurrage always on Demurrage"</u>**
   There may be a maximum number of days allowed on demurrage, which if exceeded will allow ship owner to claim for " actual Losses", caused by delay i.e. damages for detention which owner can claim when an extend delay on one charter may prevent him from taking up second charter, which he would have otherwise fixed.

<u>loading completed before expiry of laytime</u>

A reward termed despatch' is payable to Charterers. Amount stated in Despatch clause of C/P.
Usually despatch rate is 50% of the demurrage.
Laytime exceptions are not taken into account if 'ALL TIME SAVED' merits Despatch
If 'working time saved', Exceptions are taken into account.

<u>on the loaded chartered voyage</u>

Must normally proceed to destination with 'due despatch' some times utmost despatch" (maximum speed if the maximum speed is specified in C/P
"always with out deviation" from the Chartered voyage.
If V/L deviates in any respect by discharging at a port other than originally agreed , unless with Charterer's consent , there is serious breach of Contract and Owners will not be able to rely on any of the 'exceptions' of the contract , Owners will be reduced to the status of 'common carrier"
Will Have no protection against liability for loss of or damage to goods other than common law exceptions.
Owner will have to prove Loss / Damage would have occurred even if the contract had not been breached. This applies even if the Loss/ damage occurred before/ during/ after deviation .

<u>at discharge port</u>

Out turn problems

1 Discrepancies between loaded (B/L) & discharged Quantity.
Owners are obliged to deliver cargo same quantity & condition when loaded. So, have a prima facie case to answer if there is any damage /Loss during voyage.
2. Owners must show that they are exempt from liability under any of the exceptions in the contract of carriage.
3, If they can not prove, they will be liable for loss/damage
4. If they can prove exemption from liability then cost of loss/damage will lie with the party bearing the risk in the cargo, Subject to partial recovery from the seller, cargo insurer.
Owners will require full documentary evidence from ship.

<u>owners lien on cargo</u>

1 In common law, owners may exercise a <u>Possessory Lien</u> on any part of the Cargo in respect of which Freight is owing at destination or on which money has been spent in protecting the Cargo.(As In G.A. Act)
'Common Law ' lien is allowed on unpaid freight , but not on "dead freight" or "demurrage". However owners often insist on insertion in contract of carriage a clause giving them contractual lien on the Cargo for "dead freight" and "demurrage" and damages for detention. A Lien for any thing other than freight must be expressed clearly in the contract Terms.

Owner's Lien is exercised by the master as an Agent of the ship Owner; it is not Master's Lien.
Once the delivery of the goods is made , lien is lost. For this reason most dry cargo C/P forms require freight paid on or at some time before delivery.
5, To exercise Lien, owners retain actual or constructive possession of the Goods on which freight is Due.
The Cargo on which Lien is exercised should therefore be discharged into a warehouse under the exclusive control of owner's agent. Agent should be instructed to release Goods after surrender of Original B/L and Payment of Freight.
If freight is not paid, local laws may allow Goods to be sold to pay freight & Storage, Customs. "London Clause" which gives master right to discharge such cargo immediately on arrival without giving notice to the receiver.

Liens

1 Right to retain possession of Property for performance of an obligation or to secure satisfaction of a Claim .
May be general—Property held as security against all outstanding debt.
May be particular-----Claims of possessor in respect of property held .
lien arises and not dependent on contract.
lien may be lost when the said lien property is delivered to another party.
If a Purchaser of property is given notice of a lien, it binds him.
Two classs of lien of concern to Ship Master.

1) Possessory lien
2) Maritime lien

Possessory lien

1 A carrier by sea in Common Law has Possessory Lien on three cases
1. To recover unpaid freight (not dead freight, demurrage or damage for detention)
2. To recover expenses incurred in protecting cargo. (Master acts as Agent of necessity for the benefit of cargo owner)
3. (A General Average Bond Or Guarantee if given, cargo is released G.A Contribution due.
Possession of Goods may be actual i. e goods on board or constructive i.e. in a ware house under carrier's control.
Common Law right to exercise possessory lien exists Independently of contract. It is an implied lien.
4 A contractual Lien is one incorporated by a term into a Contract.

5 C/P has a lien clause

Maritime lien

1. It Is a claim on a ship, her cargo or both as well as on the freight she will earn in respect of service done to or injury caused by them (i.e. Ship or her cargo)
2 A Maritime Lien is enforceable by proceeding "in rem"i.e against

Property involved (which is termed 'res'. Not against any person who has the possession or ownership.

3 Can be enforced by arrest & sale of property .

4 The lien travels with the ship or cargo whenever its possession changes. It attaches to the property like a leach!

5 It is good even against a bonafide purchaser without Notice.

6 It is not dependent on possession.

Maritime liens are of two classes: a)contractual liens b) damage liens

Contractual leans are those in respect of payment due under a contract. Examples are bottomry, respondentia, salvage, seaman's wages, master's wages, master's claim for wrongful dismissal, and master's claim for disbursement.

There is no lien for either for pilotage or towage unless the service merged with salvage service. Nor is there a lien on a ship for port dues.

Damage liens arise principally from collision damage and the damage must be done by the ship and not individually caused by the crew of a ship.(for e.g crew of ship cut cables of another ship will not give rise to a lien on his ship)

Although the damage must be caused by the ship, the lien does not arise unless there is also proof of a wrongful act or neglect of the owner or his servants.

Time bar the lien must be exercised with in two years of the date of the damage suffered unless the court extends the time period.

Examples of Maritime lien

contractual

1. **Lien on a Salver on a ship / or cargo.**
2. **Lien of Seamen on a Ship for wages.**
3. **Lien Of Master on a Ship for wages & Disbursements.**
4. **Lien of a Ship repairer in respect of work done on a ship.**

damage lien

Lien on a ship at fault in collision in which property has been damaged

Ranking of liens

Contractual liens:

salvage comes first because the successful salvage service has preserved the vessel which is now providing the fund. If there are several salvage liens at the same time, the latest ranks first and the earliest ranks ranks last.

seaman's wages

wages of master and his other claims

bottomry

Damage liens

Damage liens, even though they arise on different occasions, they are all treated as being of equal rank, and if the assets are insufficient to satisfy all claims in full the court will distribute them on a rateable manner.

Ranking between contractual and damage liens

No fixed rule exists to decide between the two if both claim arises. However, the court may be influenced by the following principles:

liens arising out of tort (with innocent third party) should rank prior to those which previously arose from contract. Master and crew, volunteer salvors and bottomry bond holders are all persons who have concerned themselves of their own free will, and their claims should be postponed to that of the owner of ship damaged in a collision which occurred after the contractual lean accrued.

If the collision damage occurs first , subsequent liens should take precedence on the ground that the subsequent contractual services for reward have preserved the fund for the benefit of the collision creditors
if there is also Mortgage claim along with maritime lien , then maritime lien takes priority as mortgage is a voluntary commercial transaction

Maritime lien and bills of sale

Since a maritime lien travels with the vessel, it is important that the bill of sale should indicate whether the ship is free from such an encumbrance. If a ship with encumbrance is sold, the new owner will have to settle the outstanding claim or risk seizure of the vessel which may be resold by order of court.

cessar and lien clause

1. In cases where the Charterers are merely Agents for loading another party's cargo & themselves , they are anxious to ensure that their liability for the cargo ends once it is loaded. This is usually expressed in a cessar clause stating
" charterer's liability ceases as the freight, demurrage and dead freight has been paid"
2 Ship owners will not like to find themselves without a remedy for breach of contract or damage done to their vessel after Charterer's liability has ceased. So owners would want legal remedy against somebody else, Normally the receiver of Goods.
3 Therefore if a" Cessar Clause" is incorporated, a Lien Clause will also be included in C/P.
4 This Lien Clause gives owners the right to detain possession of goods at discharge port ,until outstanding debts are paid.

5 The relief given to the Charterer from their obligations only operates to the extent that outstanding sums can be recovered at discharge Port
6 The ship owner must proceed against receiver first; But charterer will still be liable for sums, which cannot be recovered from receivers.

Time charter

Charterer agree to hire a named vessel of specified technical characteristics for a specified period of time, for charterer's purposes subject to agreed conditions. The hire may be for one voyage" trip charter". Or anything up to several years "period charter"

Owners responsible for vessel's running expenses. i.e. manning repairs, stores, crews wages , hull and machinery insurance. They operate the vessel technically, but not commercially.

Charters responsible for the commercial employment of the vessel, bunker fuel purchase, insurance, port/canal dues, pilotage , towage , all loading/stowing/trimming/discharging expenses.
log books and stationary provided by charter so that they can monitor the vessel's performance.

charter can fly their own house flag and can paint their own colours on the funnel.

Vessel

1. Time charter party normally include general particulars about the vessel including classification, dimensions, tonnage, capacity, cubics, etc.

2. Speed and fuel consumption : This clause is vitally important for determining Whether the vessel is performing as per the charter party. The most common wording of this clause is "The vessel is capable of steaming, fully laden under goodweather conditions about ……knots. On a consumption of about ……tons of fuel ." In the absence of definite weather condition being stipulated courts have ruled this good weather to mean for a panamax vessel of 60,000 dwt tons, a wind force of 4 or less regardless of the direction of wind to the vessel's course

Restricted visibility itself does not prevent the weather from being" good", unless the ship actually reduces speed as per regulations. For calculation of speed allowances also to be made for current in assessing vessel's ability. General interpretation of "about" by courts is 0.5 knots.

It is well established that the words " vessel capable of steaming….." are intended to describe vessel's capability and it is not an undertaking of the owner. It is clear that on the date od delivery the vessel's capability must be tested. If it can be shown that on the date of delivery she was capable of the speed and consumption or at least after she has loaded fully, the owner has a good defence. Also are the factors such as the bunkers supplied by the charterer is substandard and this must have resulted in loss of speed. Also if there is loss of speed and at the same time bunker consumed is less than charter party terms, owners claim compensation from loss of hire if claimed due to loss of speed.

Disputes regarding this clause is very frequent. As it is difficult for the charterer to claim based on speed warranty, he is likely to proceed on the ground that defect existed at the time of delivery or after the time of delivery and the owner failed to take reasonable steps to repair it. Another possibility is that he can charge that the vessel failed to proceed with dispatch.

The calculations to assess speed loss is usually done from the actual time taken from the log book and calculate duration at warranted speed for the duration and the difference is determined as loss of time.

Some charterers introduce additional wordings to make a stronger case. For instance " through out the period of charter the average speed will not be less than…knotsloaded and ….knots in ballast and average consumption etc" The important difference is that it is not just initial capability of the vessel but continuity through out the period of charter. This will impose a greater and stringent duty on the owner.

The declared constant weight which is a fixed tonnage allowing for water, store, provision, spares etc is important.

Duty to maintain In case of dispute on the speed and consumption clause, the owners usual argument is that the speed and consumption stated in the charter party is applicable only at the time of delivery and due to subsequent wear and tear of machinery , the speed and consumption could not be maintained and as such not liable for under performance of vessel. In view of this the charterer's are introducing a clause " duty to maintain" under which the master and crew are to maintain the vessel in her original capability as stated in the charter party.

Employment of the vessel under time charter

Usually agreed that charterer may employ vessel only in ';lawful trades', carrying 'lawful merchandise', using only 'safe ports or berths' and sometimes' 'safe anchorages' where vessel will ' lie always safely afloat'.

Always safely afloat: this clause relieves the ship of any obligation to wait until the tide is suitable for her to proceed to her appointed berth. The place named must be suitable in any tide(neap tide), and if it is not suitable at the time she arrives she is entitled to load or discharge at the nearest safe place. This clause is to avoid delay to a vessel which arrives at neap tide and as the neap range is insufficient she may have to wait for nearly a week to get sufficient range

With respect to some ports where the nature of the bottom is suitable there may be a special agreement that she may lie aground at low water.(NAABSA- not always afloat but safe aground)

There may restrictions on vessel not to call certain ports in certain countries viz Israel, Cuba etc
There may also be restrictions on carrying certain cargoes which may be 'excluded categories, e.g. bulk asphalt, logs, live animals, explosives etc.

Delivery
may be 'spot'(immediate) or between 'laydays'. If not presented on the last layday, the charter has the option of cancelling the charter.
owners must deliver vessel to charters at the agreed place in 'a fit condition for the voyage contemplated'.
Delivery may be at a named geographic location' passing cape horn'; or at a stated event' on drop of pilot off madras'
charterer may conduct a 'condition survey' if the vessel is old. In addition there will be a 'delivery survey' or 'on hire survey'. The surveyor will note any existing damage in holds/tanks. The survey is usually by a joint survey paid 50/50 by owners and charterers. Time spent on hire survey is usually on 'owner's account'.
A' delivery certificate is issued to confirm the date and time of handing over and the quantity bunkers on board (rob); the certificate is attached to the condition survey report and is vital to calculate hire payments.

during hire period

hire is usually payable in advance every 15 days or 30 days. It can also be on a sum per Summer dead weight tonne per calendar month. 8$ per summer dead weight per calendar month.
C/P usually provide a "suspension of hire" clause. Time spent for machinery break-downs, repairs, dry dock, crew strike, etc.

Tanker Charter party

Vetting clauses" requiring vessel owners to obtain oil company approval of the vessel are a common feature of many tanker charter parties. Some vetting clauses require the vessel owner to insure that the vessel "is kept in a standard acceptable to all major oil companies … for the duration of this charter", while others provide that

the owner "warrant[s] that the vessel will be in all respects able to pass safely vetting inspections conducted by" major oil companies. Such clauses are often less than a model of clarity as to the time when owners must comply with this vaguely defined obligation, and frequently do not address how charterers' loss is to be measured in cases of owners' breach.

This has led to a number of disputes.
In the past, New York arbitrators construing clauses which required the vessel owner to
maintain the vessel "in a standard acceptable" to the oil majors "for the duration of this charter" have held that the clause requires the owner to have actual approval from all oil companies named in the charter on delivery and throughout the charter

liability as "carrier"

Although time charterers are "disponent owners", the contract of carriage as evidenced by a B/L, if issued to a shipper, is between the 'real owner and the shipper'. Therefore if the master fails to deliver the cargo, the shipper can sue the owner when he produces the original B/L even if the charterer has not paid the hire charges, owners have to deliver the cargo as, owners have no lien on the cargo for unpaid hire charges !
If a B/L is issued master must ensure that the B/L in its 'incoporation clause' ,the terms of the charter party which are germane to the contract of carriage is incorporated. In which case the charterer becomes the 'carrier'. Alternately the B/L must be issued in Charterer's own house B/L forms.

Identity of the carrier in a time charter party

(1) if the bill of lading is signed by the master personally or it is signed on his behalf by the charterer or his agent, then the contract of carriage evidenced by and eventually contained in the bill of lading would be likely to be considered one with the registered ship owner. If the ship happens to be on the demise charter than with the demise charterer

(2) in those rare circumstances where the time charterer signed the bill of leading in his own name and his intention appears to have been that he was signing on his own behalf with no indication that he was signing for the master or as agent for the owner ,then he, charterer will be considered the carrier .

(3) a clue as to the carrier's identity may be found in the charter party itself by way of some provision pointing to the true and intended identity of the carrier provided that such a provision is incorporated into the bill of leading itself thus giving the shipper or a third party the holder of the bill of lading a constructive notice of that information.

Cargo claims during a time charter

(Interclub agreement/produce formula)

An agreement has been drawn up by the P&I clubs to provide a mechanical formula for dividing responsibility as between the owner and the time charterer for cargo

claims brought in by the third parties while on a time charter. In the NYPE charter party printed form which are generally used the cargo responsibility clause is to be referred to fix the responsibility. This clause reads as follows:
"
…..and charterer to load, to stow and trim the cargo at their expense under the supervision of the captain"

The wording gave rise to practical doubts as to where the ultimate responsibility actually should be when the charterers were under the obligation to load/stow and discharge and yet the master who is owners agent was under a duty to supervise. Was this to be active a passive supervision? Could he be positively at fault are the only negatively? Was his active intervention the sole and the only cause of the damage to the cargo? Such issues used to give rise to disputes and the need to hire lawyers.
Thus the P&I inter club agreement was introduced to eliminate disputes of this nature or at least to keep them to minimum.
The gist of the Inter Club Agreement
a)claims arising out of unseaworthiness , navigation etc 100%owners
b)claims arising out of loading, stowage, lashing,handling 100%Charterer
c) If the word "and responsibility" is added to clause 8 50% 50%
d) claims for shortage, over carriage 50% 50%
e) all other claims whatsoever including delay 50% 50%
f) if there is irrefutable evidence to prove neglect of one party100% party

Cargo space- "Full reach and burden"

The whole' reach and burden' of vessel should be available to the charterer. The 'reach' includes the lawful deck capacity reserving space for crew accommodation is to be at the charter's disposal. The word burden means the deadweight capacity of the vessel pertaining to the load line zone.

Over time
Charterer to refund the owners the overtime paid to officers and crew. The vessel is to work day and night.

lien

For all claims under charter, owners have a lien on all cargoes and sub-freights belonging to time-charterers and on any B/L freight. Charterer has lien on vessel for all moneys paid and not earned.
salvage

All salvage for equal benefit of owners and charterers after deducting master's and crew's proportions and all legal expenses and hire paid for time lost during salvage, damage repairs and fuel consumed.

Off hire clause

This clause can be divided in to two clauses ie period off-hire and net loss of time provisions.

However these two are usually combined in to one . For instance " the vessel will be off-hire on each and every occasion that there is a loss of time , whether by of an interruption in the vessel's service or from reduction in the vessel's performance 1) due to deficiency of personnel, stores , break down of machinery, repairs, or any other similar cause preventing the efficient working of the vessel's service continues to or cumulates to more than 3 hours
2)refusal to sail, neglect of duty of master officers
for the purpose of obtaining medical aid. Treatment
3)loss of time due to non performance of charter party speed
deviation contrary to charterer's instruction

(In short if the vessel is not fully available to the charterer then she will be off hire. Immobilising engine during port stay or repairing cargo gear during sea passage will not of course amount to off-hire)

sublet
Usually charterers have the option of subletting the vessel, but the original charterer 1remain responsible for the due performance of the charter.
Redelivery
Redelivery is similar to delivery and a survey is conducted to determine the damages if any caused to the vessel's holds structure etc and the bunkers 'ROB' is determined. A redelivery certificate is issued.

illegitimate last voyage
illegitimate last voyage is one which at the time its commencement the charterer could reasonably expect that the redelivery could be made within the charter period, marginal tolerance if existing included. Under the scenario the owner was bound to follow the charterers direction, performed the voyage and hire be payable at the charter party rate upto the redelivery even if that eventually fell beyond the original charter period
Conversely, a last voyage is classified as illegitimate if at the time of its commencement it could not reasonably had been expected that the ship could be, redelivered within the charter period (including marginal allowance, if relevant). The master/his owner's could refuse to perform the voyage and ask for alternative orders. If, despite that illegitimacy, the master performed the voyage, the remuneration for the period between the latest contractual date for redelivery and the time/date of actual redelivery is to be calculated at the market mate.
However the parties may agree to include clause called 'completion of last voyage clause', which applies whether the last voyage is legitimate or illegitimate

Trip charter

Trip charter is also a hybrid form of a time charter as the charter is on daily hire basis during the period of the voyage. However , it has the ingredients of a voyage charter as this charter specifies the ports, geographical route and cargo. The trip charter usually specifies the estimate of the charter regarding the duration of the voyage viz " about 50/60 days with out guarantee". This estimate of the charterer must be based on good faith and information available at that time. Very often in a trip charter the dispute is regarding the duration of the voyage.

Consequtive voyages

Consecutive voyage charters are a special type of voyage charter where the vessel is contracted for several voyages which follow consecutively upon each other. Sometimes the charter-party states that the ship will make a certain number of voyages and some times that she may make as many voyages as she may perform during a certain period of time.
The individual voyages are performed on voyage terms and conditions with freight paid per voyage, lay time calculations in load and disports.
Basically the problems arising under consecutive voyages are those of voyage charters but because of the time factor involved causes certain problems associated with rate of freight and demurrage varying with market and the charterer abusing the vessel. For instance when the freight rate is high and the demurrage rate is low, the charterer may be tempted to keep the vessel idle on demurrage rather than sending her on a new voyage and pay higher freight

Bare boat charter:

Demise charter party is when the charterer literally takes over the ship and has possession of it together with the right of management and control. The Bareboat charterer will have the commercial as well as technical control of the vessel. Further more the bareboat charter usually covers usually a long period of time and is often hinged to a purchase option at the end of the charter.
One of the main features of such a charter party is that the charterer has the right to engage and pay the master and crew so that they are his, the charterer's, employees for the period of the charter. The master and crew remain in the employment of the bareboat charterer and are at all times his servants in law. It is this fact together with the legal principle that the employer is accountable in law for the consequences of the act, neglects and defaults of the servants which puts the range of liabilities which a demise charterer is exposed, is roughly on par with the owners range of liabilities. The charterer will also be responsible for victualling and supplying the ship. Thus, the ship owner fades into the background and merely collects his hire payments for the period of the charter. It is for these reasons that a demise or a bareboat charterer is virtually on par with owner of a ship in regard to the scope and range of his exposure to liabilities and thus a demise charterer would more advantageously obtain his liability of P& I insurance in the shipowners P&I association despite the fact that he is only a charterer and not the actual owner.
By reason of the fact that the charterer is the employer of master and crew, the demise charterer is the principal party in the contract employer of the of carriage contained in the bills of lading covering cargo carried on the chartered ship. In practical terms a demise charter is used as a matter of financing the acquisition of newly constructed ships. The party providing the finance whether it be a bank or financial institution takes on the role of ship owner (in name only) and the charterer by demise operates the vessel and trades it for his own account in the normal way.

8. Contract of afreightment "COA"

1. Contract to satisfy long term need for transport.
2. An agreement between Charterer and a ship owner, Disponent Ship Owner or Carrier for carriage of stated (often large) qty of named Cargo between \ specified places, over a specified period(very long period) of time.

3. V/L types, size stipulated by charterer
4. V/L nominated by Owners; may be charted.
total period during which cargo to be transported are clearly defined –
shipment dates- may be approximate ; a stated minimum quantity must be loaded every voyage with moloo or molco(more or less owners option/charterer's option)
May be based on a standard C/P as main COA document with rider clauses

Bill of Lading

The bill of lading has its origin in the trade and carriage of goods by sea hundreds of years ago. It has since developed into a very important legal document, evidencing the carrier's receipt of goods, the terms of the contract of carriage and the right to possession of the goods.

Functions of the bill of lading and waybill

Document of title

Title in the context of bills of lading means right to possession of the goods from the carrier. It does not mean right to ownership – the sales contract usually determines this. If the right to possession of goods from the carrier is determined by the possession of a document, such as a bill of lading, then that document is a document of title. Therefore, the person presenting an original bill of lading is entitled to delivery of the goods at the place of destination.
Waybills however, and some straight (non-order or nominate) bills of lading are not document of title in the sense described above. These documents show only the name of the shipper and consignee, unlike for example an order bill of lading, which have the words "to order (or assigns)" inserted instead of or against a named consignee. Since the straight bill of lading and waybills only envisage delivery to a named consignee, presentation of the document is not necessary for the delivery. However, if the straight bill of lading expressly states that delivery shall only be made against presentation of an original bill of lading, then this should be complied with. In these circumstances the straight bill of lading will be a document of title in the sense described above. Most waybills on the other hand expressly state that presentation is not required for delivery. Proper delivery of goods is extremely important.

Negotiability

Closely connected with the function of document of title is negotiability. If the bill of lading is negotiable it can be transferred from a person with title to a person with out title, for example from a consignee named in the bill of lading to a consignee not

named in the bill of lading. This in turn allows the goods to be traded whilst in transit.
The most common negotiable bill of lading are the order bills of lading and have the words "order (or assigns) inserted instead of or against a named consignee, respectively allowing the shipper or named consignee to transfer the bill of lading to another person. To transfer the bill of lading in this case the shipper or consignee endorses the bill of lading and then hands the bill of lading on to the shipper or consignee signing his name on the bill of lading (an endorsement in blank), allowing transfer to any person to whom the bill of lading is handed. If the name of the person to whom the bill of lading is to be transferred is written in the bill of lading, in addition to the signature, the bill of lading can only be passed to the named endorsee (an endorsement in full). To allow the endorsee to transfer the bill of lading further, the words "to order (or assigns)" would have to be added against the named endorsee.
What are commonly known, as bearer bills of lading are also negotiable documents. However, unlike order bills of lading, they can be transferred without endorsement. The bearer bill of lading can simply be transferred by hand from one person to another. A bearer bill of lading is either blank or the word bearer is inserted instead of a named consignee. An order bill of lading may also become a bearer bill of lading if the person named in the order bill of lading endorses it in blank.
Negotiable bill of lading means that the goods can be traded several times during the voyage. This is why delivery should only be made against presentation of an original bill of lading. This however can cause a problem if the bill of lading cannot be presented, because for example it has been lost or delayed. Waybills and straight bills of lading can be used to avoid this problem, but only if they do not expressly require delivery against presentation. However, they cannot be negotiated because they show the names of a shipper and consignee. This of of-course is not a problem if the cargo is being traded between one buyer and one seller. Non-negotiable bills of lading are usually stamped or marked as such.

Evidence of the contract of carriage

The bill of lading also acts as evidence of the contract of carriage between the carrier and the shipper. This is a function of bill of lading whether negotiable or not, as well as waybills.
The carrier may be the owner, charterer or the freight forwarder and is the party who enters into contract of carriage of goods with the shipper. Normally, the master will be deemed to be in the employment of the ship owner and the master's signature will more often than not constitute a contract with the ship owner. Regardless of who the carrier is, the master should assume that he would be signing bills of lading or authorizing another to sign on his behalf.

Evidence of receipt of goods loaded

The function of receipt applies to all bills of lading whether negotiable or not, and to waybills. The bill of lading will normally be evidence of when the goods were received and their status on receipt in terms of marks (to identify goods), apparent order and condition and number, quantity or weight.

B/L as a receipt for freight

If the B/L is marked 'freight paid' or 'freight prepaid', then once it is signed it becomes 'prima facie' a receipt for the freight. If the freight has not been paid and if the B/L is endorsed to a third party, the carrier will lose his right to recover the freight i.e the statement in the B/L becomes ' a conclusive evidence' that the freight has been paid.

Types of B/L

A received for shipment bill of lading may be issued to the shipper by the carrier or his agents for goods left with the carrier or agent at the load port prior to the arrival of the vessel. A received for shipment bill of lading may be on a specific form, but standard bill of lading forms are often used in either case, the received for shipment bill of lading would have the name of the carrying vessel and date of shipment inserted (the words "on board" and initials of master or his agent may also be added), to make it a
shipped bill of lading (evidencing, amongst other things, shipment of the goods on a named carrying vessel and on a specified date of shipment), or would be surrendered to and replaced by the carrier with a shipped bill of lading.
Since a received for shipment bill of lading does not evidence shipment of goods by the carrier, it has a limited function as a document of title, and in any event will only so function, if it has been issued by or for (with the necessary authority) the carrier. Accordingly, in the event that the carrier is requested to deliver the goods, at the place of destination, against presentation of an original received for shipment bill of lading, delivery should only be made after confirmation by the owners and consultation P&I club.
Also it should be checked prior to issuing a shipped Bill of Lading as to whether a received for shipment B/L has been issued. If so the same should be surrendered by the shipper prior to issuing shipped B/L. Is possible that the shipper might have obtained loan from a bank pledging the received B/L! The local P&I club correspond will advise the usual practice in the port regarding this.

Direct B/L : issued when goods are for carriage from one port to another and transhipment is not contemplated, though there may be a clause giving the carrier the liberty to tranship.(in which case the goods will lie at shippers risk while in the transhipment port). This type of B/L has printed clauses on the reverse and is used in Liner Services.
Combined Transport B/L covers carriage from door to door by several modes of transport, which is common in many liner services, e.g. those of P& O containers. The Combined Transport Operator(CTO) takes responsibility for the goods throughout the entire journey and issues the CT B/L at its start.
Through B/L is issued when the carriage involves both sea and other transport modes, but different carriers will be involved at each stage e.g. railway , a shipping company, a road transport company etc. The B/L is issued by the sea carrier but he states on it that he is responsible only for the goods only during its sea passage.
..
An Order B/L : instead of naming the consignee on its face, has the words 'to order' instead, allowing the shipper to make the goods, deliverable to a party whose identity may not be known when the B/L is made out. This effectively makes the shipper the consignee also. Delivery must be made in compliance with his instructions, which may be given in three different ways.:

By specific endorsement on the back of the B/L e.g " deliver to ABC of Madras Ltd", with stamp and signature of the shipper.
by attaching authorised delivery instructions on the shippers stationary.
by means of a blank ' endorsement' on the B/L and passing it to the consignee i.e with the stamp and signature of the shipper, but with no names inserted. A blank endorsement B/L is therefore ' a bearer document' and the carrier must deliver the goods to whoever presents it , unless he has reason to suspect 'fraud' . Though it is a very dangerous document, it is widely used as the banks require these type of B/L to advance credits/money.

Open B/L

B/L states that the goods can be delivered to bearer. Anybody who presents the B/L can be given delivery of cargo. This B/L is known as Open B/L or5 bearer B/L

Straight B/L

B/L states that the goods are to be delivered to a named consignee.

Negotiable B/L

B/L states that goods are to be delivered to a named consignee or order. This makes the document negotiable, which means it can be endorsed to someone else if they buy the cargo. Endorsing means adding a clause to the document and signing it. If the original consignee signs the back, with no other remarks (this means endorsing in blank), the document becomes an open B/L.
If the consignee's endorsement states that it should be delivered to XYZ, the B/L becomes a straight B/L.
If the endorsement states ' deliver to XYZ or order' it then XYZ can further endorse it to someone else if they resell the cargo.

Contents of B/L

a reference no.
name and address of shipper or his agent
name and address of consignee or to 'order of''
ports of loading and discharge.
name of carrying vessel.
any leading marks for identification of the goods (as stated by the shipper)
number and kind of packages or pieces(as stated by the shipper)
description of goods as stated by the shipper.
gross weight or measurement (as stated by the shipper)
the order and condition of the goods if not 'in apparent good order and condition'
the place where freight is payable.
the number of original B/Ls forming the set.
the place of issue.
the date of receipt for shipment or (on a shipped B/L the actual date of shipping)
a signature of the master/ his agent or the carrier's signature.
the conditions of carriage(i. e. the numbered clauses) or a statement indicating where these may be found such as charter party.
other stamped clauses or hand written clauses e.g. " Freight Prepaid'. These clause override any printed clauses.

Preparing for signing bills of lading

The master or his authorized representative must consider the following before signing the bills of lading.
Obligations with regard to issuing and signing bills of lading
The master should be familiar with the provisions of the Hague/Hague-Visby rules regarding the obligations for the issuing and signing of bills of lading demanded by the shipper and giving his remarks on the apparent order and condition of the cargo. These obligations will apply to most bills of lading, but where the Hamburg rules apply there may be additional obligations of which the master should be aware. If in doubt as to which rules apply or if no bill of lading is demanded, the master should seek the advice of the company or P&I club. For the master, one of the most important aspects of fulfilling these obligations is the inspection of the cargo.
Inspecting the cargo before and/or at the time of loading

The provisions of the Hague/Hague-Visby rules place obligations on the master to: inspect the cargo's apparent order and condition to enable the master to ensure that the bill of lading is accurate in its description of these items Inspect the cargo's marks (to identify the goods), and number, quantity or weight as the case may be, to enable the master to ensure that the bill of lading is accurate in its description of these items unless there are no reasonable means of inspecting the cargo.
Consequences of not inspecting the cargo
If the cargo inspection obligations are not fulfilled, the master is unable to verify the accuracy of the description of the cargo in the bill of lading before signing. It may be impossible to rectify any omission and faced with possible long delays. Though, there will be considerable commercial pressure on the master to sign the bills of lading as presented by the shipper, inspection and clausing as required must be done. If the shipper prior to loading the cargo advises that he will accept only clean Bill of Lading then, only clean cargo is to loaded ie cargo watch keeping should be beefed up!
Knowledge of the cargo, the loading and inspection practices
Knowledge of the cargo, e.g. common sensitivities and customary packing, as well as the loading and inspection practices peculiar to the place of loading will assist in the proper planning and performance of inspections. Special arrangements may need to be made for certain cargoes and/or in certain places. Knowledge of how the cargo has been affected prior to loading, in relation to its common sensitivities etc., should also assist the master in terms of what he should particularly be aware of, during his inspection of the cargo. The master is therefore advised to:
Investigate whether there has been any previously reported problems with regard to inspection practices and the cargo to be loaded at the place concerned.
The master should make an effort to enquire at the load port about the cargo, e.g., where it comes from, how old it is, how it has been stored ashore and how it is to be transported to ship. It is advisable to keep a written note of such enquiries and information obtained.

Who should/can inspect the cargo?

It is preferable that the master or one of his senior deck officers performs the cargo inspection, but this is not always practical or indeed realistic. The person performing the inspection should however have reasonable and suitable knowledge and experience and be briefed by the master. Surveyors may be appointed to perform the

inspection, but the master should be aware that the surveyor may not be representing the company, so there may be certain risks involved in relying on such surveyors. To fully comply with the obligation to inspect the cargo, the master should perform his own inspection or have a surveyor perform one on the company's behalf. The P&I club recommends that, for steel cargoes, surveyors be appointed to perform the cargo inspection and furthermore, to assist the master in clausing the bills of lading.

When to inspect the cargo?

Whilst the type cargo generally determines when a cargo can be inspected, it is important to be aware that the bill of lading in most cases evidence the condition of the cargo at the time of shipment. If the vessel's loading gear is being used, the relevant time is usually when the goods are hooked onto the tackle. If the shore loading gear is being used the relevant time is when the goods cross over the vessel's rail. For liquid or gas cargoes, the relevant time would usually be when the cargo passes through the vessel's manifold. Certain cargoes may change physical condition and appearance over a relatively short period of time. Such cargoes should therefore be inspected as near to the time of shipment as practicable. For example, steel cargoes inspected in a warehouse subsequently be damaged by stevedores whilst bringing the cargo to the ship's side. In such cases it is advisable to perform a second inspection of the cargo at the time of shipment. Depending on the circumstances, it may be possible to restrict the second inspection to recording handling damages only as this is likely to be the only change to the cargo since the first inspection. Also it must be borne in mind that handling damage after hooking on will be on carrier's liability.

If the cargo is inspected prior to shipment and damage/loss occurs after the relevant time of shipment, e.g., by stevedore handling, such damage/loss will be the liability of the carrier as per Hague Rules and so recording in the bill of Lading such damages will amount to admitting liability!

<u>What should be inspected?</u>

The apparent order and condition of the goods

<u>Order</u> basically means general type. The inspection should determine and record the general type of cargo, e.g. soybean, and the general type of packing, e.g. polythene bags or jute bags.

<u>Condition</u> primarily describes how the cargo and/or any packing looks, smells and feels. The inspection should determine and record whether there is any apparent damage, defect or abnormality with the cargo and/or packing compared with how the cargo and/or packing is normally expected to look, smell and feel when in good condition.

Condition also describes the sufficiency and/or adequacy of the packing for the intended carriage and the ability of perishable goods to withstand such carriage. The inspection should determine and record any observations in these regards.

<u>Apparent</u> means what is recognizable to a proper and responsible ship's officer with reasonable knowledge and experience and not what might be recognizable to an expert.

Apparent also means what is apparent by reasonable inspection. Clearly this will vary depending on the circumstances. Generally however, whilst a master is usually expected to identify apparent damage etc., by sight and/or smell, he is not expected to identify hidden damages etc. Accordingly, the master is not expected to remove packing or have the cargo analyzed or tested.

If the cargo has been loaded from open storage and/or from ground which might damage (e.g. by wetting) the lower part of the cargo not visible from inspection this should also be recorded. Similarly if the cargo is loaded from barges or other means whilst not alongside a berth, this should be recorded.

Order and condition does not mean or include quality. The master is not expected to verify statements as to quality in the bill of lading.

With regard to bulk cargoes, it is not generally sufficient to only inspect the cargo at completion of loading. It should, if reasonable and safe to do so, be inspected at regular intervals during loading in order to obtain a picture of the entire cargo's apparent order and condition. Regular inspection is also important in terms of discovering any problems, e.g., contamination, so that such problems can be rectified as soon as practicable to minimize further contamination.

Containers will be regarded as packing if provided by the shippers, but, if provided by the company they may be considered as extension of the ship's cargo spaces. Container seals should be inspected to check that they are intact and the seal number recorded. If the seal is broken, the container should be opened if practicable and the outward appearance of contents inspected. The container should then be re-sealed and then the new seal number noted.

Any damage, defect, abnormality or inadequacy should be accurately recorded in sufficient detail, identifying the location of the inspection and any relevant cargo marks.

Samples of the inspected cargo should be obtained and retained in accordance with industry guidelines when common practice is to do so.

<u>Marks for the purpose of identifying goods</u>
The marks on the cargo should be inspected for the purpose of identification and they should be clear and remain legible for the full duration of carriage.

If the marks cannot be determined during the inspection, then the facts and the reasons should be recorded.

<u>Number, quantity or weight</u>

if either the number, quantity or weight cannot be determined by reasonable inspection
, then the reasons should be recorded
If the number, quantity or weight can be determined, the calculations should be clearly
recorded. record should also be maintained of any facts that may affect the accuracy of measurement, like e.g., a swell affecting the accuracy of a draft survey.

<u>Recording inspection results in mate's receipt</u>

A report of the cargo inspection may be contained in a report, tally sheet or other document. These reports form the basis of what should be inserted in the mate's receipt and should be kept in a safe place as they are evidence in their own rights as

to the status of the goods upon receipt on board the vessel. The mate's receipt is referred to when checking the accuracy of the description of the cargo in the bills of lading, before they are signed. Most B/L presented to the master or his authorized agent contains the description of goods by the shipper. If this information is incorrect then the master should clause the B/L before signing the same.
Shipper's description of goods inserted in the mate's receipt.
It is common for the shipper's description of goods to be inserted in the mate's receipt, as well as bill of lading. It is therefore important to clause the mate's receipt before signing, if the description is incorrect. The mate's receipt is also evidence in its own right of when and how the goods were received.
Mate's receipt issued to the shippers
In the normal course of events, the mates receipt is issued to the shippers to prepare the B/L. it is returned to the ship in exchange for a signed B/L. Therefore, the ship should retain a copy of any mate's receipt issued to the shipper so the master can be confident that he is using a correct mate's receipt for checking the B/L before signature.

Mates Receipt and tallies
It is a receipt and signed by ship's chief officer, for goods received on board.
the details and condition of goods is recorded in this receipt and the B/L based on this .
should be made out for a smaller figure of goods as per ships tally, in case there is a dispute. Like' 'x' more drums in dispute; if onboard to be delivered' 'x' being the difference between the tallies.
normally be in the ship owner's form and made out in triplicate; one copy for to the person delivering the goods; the second to the agent and the third to be retained on board.
is not a document of title to the goods shipped on board as it does not contain a contract of carriage.
does not pass any title by endorsement or transfer
has been replaced in UK and other ports by " Standard Shipping Note(SSN)
For dangerous goods the mate receipt in these countries are replaced by a " Dangerous Goods Note ' (DGN)

Importance of bill of lading

The accuracy of the description of the goods in the bill of lading and the information contained in the bills of lading is very important to the company.
Consequences of inaccuracies

If the description of goods is inaccurate or incorrect there are serious consequences for the master and the company:

1. Exposure to claims

They are exposed to claims, which they are unlikely to be able to defend. For example, if the bill of lading indicates that the goods were loaded in good order and condition, but the consignee receives them at the discharge port in a damaged condition, the consignee will be entitled to make a claim for the damage against the bill of lading carrier. Even if the company is not the carrier, their liability may still be involved, particularly if the master has signed the bill of lading. Similarly if the bill of

lading indicates that the goods were loaded in a quantity of for example, 100 pallets, but the consignee receives only 90 pallets at the discharge port, the consignee will be entitled to make a claim against the bill of lading carrier for the shortage. Even if, in the above examples, the goods had actually been loaded in the same damaged condition as they were discharged, or if short loaded, the consignee will be entitled to make a claim. In many jurisdictions the carrier will find it difficult to defend the claim as in most cases, the carrier will not be able to contend that the goods were not loaded as described in the bill of lading. This will invariably be the case if the claim is brought under a negotiable bill of lading transferred to a third party. The innocent transferee is reliant on the description of the goods when loaded in the bill of lading and is entitled to regard the description as conclusive evidence of their condition. Conclusive evidence means that it cannot be disputed even if there is evidence to the contrary.

2. Loss of right to limit liability

The company may loose its right to limit liability for a claim for cargo damage/shortage.

3. Loss of P&I cover

P&I cover may not be available as the club's rules exclude cover for claims in certain circumstances where the description of goods in the bill of lading is incorrect.

4. Loss of right of indemnity from the charterer

The charter party may state that the master is to sign bills of lading as presented or even that he is to sign a clean bill of lading, i.e., without clausing, It is important to know that this stipulation in the charter party is meant to apply under circumstances where master wants to clause the B/L for demurrage. So as to avoid clausing the B/L for the demurrage, this clause has been introduced. In any case this is the interpretation of the courts on this clause. Therefore this clause does not prevent the master from clausing the B/L for damaged or dirty cargo

However, there will probably be no recourse against the charterer for liability arising from signing bills of lading, which inaccurately describes the cargo even though liability may stem from complying with such charter party provisions. The master is under no obligation to sign bills of lading that inaccurately describe the cargo and he does so at his own peril.

5. Criminal prosecution

There is possibility that the company and/or the master will be prosecuted for fraud.

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Date to be inserted in the bill of lading

The bill of lading will be the evidence of the cargo at the time of loading. The date inserted in the bill of lading will therefore be considered to be the date of shipment and this may have important implications. For example the value of the cargo in the sales contract will usually be based on the market value of the cargo on the date shown in the bill of lading.

Where received for shipment bills of lading are issued, these will usually either be returned to the carrier and replaced by shipped bills of lading or be made shipped bills of lading by inserting the name of the carrying ship and the date of shipment.

Consequences of inaccuracy in the date of shipping

It is very important that the bill of lading is signed and dated accurately to record the actual date on which the cargo was fully loaded.

If the bill of lading is ante-/post-dated there are serious consequences for the company. They are exposed to claims from cargo interests and P&I cover may not be

available for such claims as the clubs rules exclude cover for claims in certain circumstances where the bill of lading is ante/post dated.

Letters of indemnity

Charterers and/or shippers may try to persuade the master to accept a letter of indemnity or similar undertaking in return for issuing anti/post dated bills of lading. Such requests should be resisted due to the risks involved in accepting such letters or undertakings.
Why the need to incorporate the charter-party
The bill of lading, evidencing the terms of the contract of carriage, frequently ends up in the possession of somebody who is not the charterer. To ensure that the company is not exposed to risks in excess of its charter-party obligations, and that the contract terms are uniform, the terms of the applicable charter-party should be incorporated in the bill of lading using appropriate wordings on the face of the bill of lading.
General wordings, such as other conditions as per charter party or charter party terms and conditions incorporated herein are often insufficient to ensure proper incorporation. It is therefore recommended that the following or similar wording is used: all terms, clauses, conditions and warranties including the arbitration, choice of law, time bar and the time limitation clauses of the charter party dated… are hereby incorporated into this bill of lading. It is very important that the correct charter-party date is inserted into this wording and confirmation of date should be obtained from the company.
P&I cover may not be available as the club's rules exclude cover for claims in certain circumstances where proper delivery has not been made.
letters of indemnity
The charterer and/or the shipper may try to persuade the master to accept a letter of indemnity or similar undertaking in return for delivering the cargo without production of an original bill of lading. Such requests should be resisted due to the risk involved in accepting such letters or undertakings.
P& I clubs usually advise that in genuine cases where the original B/L can not be produced, a letter of indemnity backed by a first class bank may be accepted and cargo delivered. However it must be checked with the owners whether the letter of indemnity has been received and the the exact quantity of cargo for which letter of indemnity has been given. There has been cases of fraud where the letter of indemnity has been given for part cargo and the owner has confirmed receipt of the LOI and advised the ship to deliver cargo as per B/L. It was later found that the quantity as per LOI and B/L were different!!

Authorization for signing the bill of lading

If the master is authorizing a third party, like the agent, for signing the B/L on his behalf, it is essential that the master give full and proper instructions to such authorized person. Such instructions are normally contained in a letter of authorization, issued in advance. The authorisation should:

- ✓ **Ensure that the description of the cargo in the mate's receipt is accurate.**
- ✓ **Ensure that the mate's receipt contains the same applicable details, information or remarks as the bill of lading should contain or the letter of authorization states that the such details, information or remarks are to be inserted in the bill of lading**

- ✓ Ensure that the authorisation is only for the concerned parcel of cargo loaded in that port at that date.
- ✓ Ensure that the authorisation is not transferable to any one else
- ✓ Ensure that if the B/L is to be signed 'freight prepaid' then freight is actually paid..
- ✓ Issue a letter of protest and inform the company immediately if the charterer/agents refuse to sign the bill of lading in accordance with the mate's receipt or accept the terms of the letter of authorization.

Clausing bill of lading.

It is important to ensure, when signing the bill of lading, that the description of the goods, i.e. marks, apparent order and condition and number, quantity or weight, is accurate in the bill of lading. Most bills of lading presented to the master or his authorized agent for signature contain the shipper's description; hence it is common for inaccuracies to occur. If the B/L is not accurate it should not be signed, a replacement asked for and then the inaccurate copy destroyed. Due to non-availability of time a replacement B/L is not usually provided and hence the B/L will have to be claused. Clausing bill of lading involves writing a remark, which represents the master's factual findings based on his best assessment of the description of the goods.

Clausing in general

Clausing such as "shippers load and count and particulars furnished by shipper" is not likely to afford the carrier any protection from inaccurate description of the cargo. The following should be taken into account

1) Clausing must be in conformity with the mate's receipt.
2) Some jurisdictions do not recognize printed, standard form qualifications, the most common of which being " condition, weight, measure, marks, numbers, quality, content, and value un-known. It is therefore advisable to always clause a bill of lading in the master's own handwriting or in typed text. If the printed standard form does not include the above words the B/L should be claused according to what is unknown.
3) The master should be aware of the other cargo specifications stated in the B/L, e.g. moisture content and temperature. If he has been unable to verify such specifications, he should clause the B/L accordingly. With regard to requested carriage temperature/conditions, the master should ensure that references to these in the bill of lading do not go beyond the ship's capabilities
4) The master should act reasonably when deciding to clause the B/L and do so within reasonable time. He cannot insist on clausing the B/L with a less accurate description than the shipper's or wait for completion of loading before issuing a bill for part (parcel)of the cargo already loaded.
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5) Clausing should be made on the face of the B/L. if it can only be made on the reverse, the face of the B/L should contain an appropriate reference, e.g. "see reverse of this B/L for master's clausing.
6) Statement in the B/L which conflict with the printed standard form qualifications and/or master's clausing, should be deleted as it may not be clear to the B/L holder whether clausing overrides and a court may deem the clausing null and void. It is widely accepted that the handwritten clausing overrides the typed ones, which in turn overrides the printed words.

7) If there is insufficient space for clausing then an attachment can be used to the bill. In this case care should be taken that, the attached sheet is in the same form as the B/L and the sheets should numbered in such a way as to indicate that there is an attachment. The attachment should be signed, dated and stamped as the B/L

<u>Checks to be made before signing the B/L:</u>

- ✓ **B/L on the form prescribed by the charterparty or in the ordinary form for the trade.**
- ✓ **All the contractual terms required by the charterparty, appear in the B/L**
- ✓ **B/L is claused as per mate's receipt giving apparent order and condition of cargo**
- ✓ **Correct name of carrying vessel**
- ✓ **Correct description of voyage. I.e., the place of loading and the place of discharge**
- ✓ **Place of discharge is safely reachable by the vessel and within any charterparty geographical limits**
- ✓ **Correct place and date of shipment**
- ✓ **Accurate description of goods as shipped**
- ✓ **Correct name of the shipper. The consignee may or may not be named or the words to order or bearer may appear. This is usually of no concern to 0master when signing.**
- ✓ **Charterparty incorporation clause inserted, as applicable.**
- ✓ **Claused shipped on deck, if cargo so carried.**
- ✓ **Protective clauses inserted as required by the company, e.g. "shipper's load, stow and count" (for containers), retla rust clause (for steel shipments), "carried on deck at shipper's risk without responsibility for loss or damage howsoever caused"**
- ✓ **Carriage terms inserted as required by the company, e.g. "free in, free out", "liner in, liner out" etc. such terms set out the carrier's period of responsibility for caring for the cargo and who is responsible for paying for the load and discharge operations. The terms may be abbreviated, as FIO, LIO etc.**
- ✓ **The number of originals B/L stated to exist is correct. The master should only sign the correct number of originals and should also ensure that each is identical and marked or stamped original.**
- ✓ **B/L copies should be marked/stamped non-negotiable copy.**
- ✓ **If a cargo value is stated in the B/L(advelorem B/L), master should inform the company immediately as extra insurance might be necessary and/or additional freight may be due. P&I cover generally excludes B/L with a stated cargo value.**
- ✓ **Any carriage instructions, e.g. Carriage temperature, inserted in the B/L should be checked against other documents in the master's possession. If unclear, then master should verify with shipper/company.**
- ✓ **For shipments to USA, the B/L should carry the so-called SCAC code, which are unique to the carrier and the B/L.**
- ✓ **If in doubt about any freight statement in the B/L such as '<u>freight prepaid</u>', clarification should be sought from the company.**
- ✓ **The master should sign in the space designated for the signature and if no such space is designated then at the bottom of the face of the B/L.**
- ✓ **<u>Retla clause:</u> Some shipping companies may instruct the master to incorporate the "Retla Clause" in the B/L. This must be done with due care as the P&I clubs do not recommend this clause. Following is the P&I recommendation regarding this clause:**

***<u>RETLA</u>* <u>Clauses - The Effect on Club Cover</u>**

Masters may on occasions be requested to use RETLA clauses in Bills of lading, particularly when carrying cargoes of steel or timber.
A typical *RETLA* clause reads as follows:
"The term "apparent good order and condition" when used in this bill of lading with reference to iron, steel or metal products does not mean that the goods, when received, were free of visible rust or moisture. If the shipper so requests a substitute bill of lading will be issued omitting the above definition and setting forth any notations as to rust or moisture which may appear on the mate's or tally clerk's receipts".
The intended effect of this and similar clauses is to satisfy the carrier that clean bills of lading may be safely issued, even though the mate's receipts are claused, because responsibility for any claims for pre-shipment damage can still be denied.
The clause has been upheld in the U.S. Ninth Circuit (California, Washington and Oregon) and there has also been a positive decision in the Southern District Court of New York. The U.S. Courts which have upheld the *RETLA* clause have done so based upon the following factors:
1.The *RETLA* clause was printed on the face of the bill of lading and was not confined to the fine print on the back;
2.The *RETLA* clause contained a provision that the shipper could request a substitute bill of lading which was claused to reflect the condition of the cargo noted in the Mate's receipts.
However, there remains a risk in using such clauses as, whilst some courts in the United States may have upheld the clause, other U.S. courts and courts in other jurisdictions have not. The only safe means of avoiding claims arising from pre-shipment damage is to ensure that the bill of lading is claused to reflect the apparent order and condition of the goods at the time of loading. Failure to properly describe the condition of the cargo leaves the carrier open to allegations of being a party to misrepresentation, particularly from third party purchasers of the cargo who have only contracted to do so based upon the bill of lading and who have not been shown any pre-shipment survey by the sellers.
Vessels which are unable to defend a cargo claim arising from the issuance of a clean bill of lading under such circumstances, and have relied upon a RETLA clause in place of a proper description of the condition of the cargo, will have prejudiced their cover with the Club in accordance with proviso c.iv to Rule 2 (17). Such claims may only be payable if the Directors decide to exercise their discretion favourably.
RETLA clauses do not carry a recommendation from the P&I Clubs

<u>Bills of Lading ----India</u>

The Major Ports Act governs Major Indian Ports, and the cargoes shipped through them are received by the Port as bailee of the cargo.
The Port will therefore not allow the master or owner to clause either the mate's receipts or B/L for these cargoes. However, if the shipper agrees to clausing, the port will concur. P&I correspondents usually advise the master, when they have been appointed to protect the

Member's interests, to ensure that only sound cargo is loaded if clausing is not allowed.
The situation with Minor Ports is different, depending upon the port and the State Government. In a recent case, the Minor port authorities, under pressure from the shipper, instructed the master to only issue a clean B/L. The P&I appointed surveyor protested to the port and the matter was resolved. There was however a substantial delay since the surveyor wasn't appointed until after the cargo was loaded.
It is advisable to exercise caution while loading in Indian ports and, if the master believes that a problem as outlined above may arise, to seek the advice of the local P&I Correspondent prior to commencement of cargo loading operations, to save time and reduce the likelihood of a claim. The Correspondent will recommend a reliable surveyor for the owner to appoint.

Delivery of Goods

The master is duty bound to deliver the goods to the First person presenting a signed B/L together with proof of identity and proof that freight is paid.
Once the goods are released to a receiver, the carrier lien for the freight is lost.
if the B/L has been transferred by the original consignee, the endorsement on it should be checked

Accomplishing the B/L

Cargo must be delivered to bona-fide holder of B/L. If B/L is open, then cargo can be delivered to anybody who presents it, provided that the master has not been informed of any theft or fraud.
If the B/L is straight, the master should check that the person claiming delivery is the same as named in the B/L.
If the B/l is negotiable, it is very important that the master checks whether the B/L is properly endorsed, and that the person claiming delivery is entitled to the goods. Once the master has done this, the master will endorse the B/L as Accomplished, and date and sign the B/L with this remark. At this time all the other original B/Ls become null and void. Once the B/L is accomplished, all other original B/ls where ever they are become invalid. On accomplishing the B/L the Agent/master issues the B/L holder a delivery note which the holder will present to take delivery of the cargo.

various other b/l issues

Delivery of goods covered by bill of lading and waybill

Bills of lading are generally prepared in sets of 3 originals, which after signature are returned to the shipper or his agents. The ship should retain a non-negotiable copy to confirm that the bill of lading presented in the exchange for delivery of cargo is the same, endorsements aside, in all respects as that issued.
Delivery under bills of lading which function as document of title
Document of title includes order and bearer bills of lading as well as straight bills of lading expressly stating that delivery shall only be made against presentation of an original bill of lading. The statement one original bill of lading must be surrendered

duly endorsed in exchange for the goods or delivery order appears in a number of bills of lading forms and is an example of such an expression.
The master is entitled and obliged to deliver the cargo at the destination to the first person presenting such an original bill of lading, unless the carrier, the master or the ship's agent is put on notice of some defect or dispute as to title of the person presenting the bill of lading. When the company has agreed to discharge the goods at a destination other than that stated in the bill of lading, or where there has been a serious dispute with the shipper over the clausing of the bill of lading, or in other unusual or suspicious circumstances, the master should exercise caution and ask the company to make appropriate investigations to confirm the position before delivery. Extra care is needed with the order bill of lading because the bill of lading may have been transferred to/by a number of persons. Such transfers will be evident from the endorsements of which there may be several on the face and reverse of the bill of lading. The master should ensure that delivery is made to the last valid endorsee presenting an original bill of lading. As for bearer bill of lading, delivery should be made to the person presenting the original bill of lading.
Fraudulent bills of lading may exist, and it is therefore important that the master thoroughly checks that the original bill of lading presented is genuine and that any endorsements appear genuine. If delivery is made against fraudulent bill of lading it will be difficult for the company to avoid liability. Furthermore, for those straight bills of lading which require presentation and for order bills of lading, the master should be fully satisfied that the person named as being entitled to delivery is the person presenting the bill of lading.

Delivery under bills of lading not functioning as documents of title
Under a waybill the obligation is to deliver the goods either to the named consignee or to the shipper's nominated recipient of the goods, providing that person is the named consignee or the nominated recipient. Presentation of the original waybill is not necessary. This being the case, the shipper is in control of the right to possession of the goods at all times, and he may direct the carrier to deliver the cargo to a person other than the consignee or even demand that the goods be delivered to the shipper/his representative. The carrier should comply with such a direction (which should be obtained in writing before delivery) even without presentation of an original waybill.
Delivery against straight bills of lading is same as the waybills. The master should however be aware that the laws of some countries might permit straight bills of lading to be negotiated by endorsement. Therefore, if an endorsed straight bill of lading is presented for delivery, the master should ask the company to make appropriate investigations to confirm the position before delivery.
Consequences of mis-delivery or delivery without production of an original bill of lading. The consequences of the above are serious:

Exposure to claims
The carrier is likely to be held fully liable for wrongful delivery of the cargo with the consequence of compensating the rightful cargo owner for the full value of the cargo – this could amount to a substantial sum.

Early departure Procedure (EDP)/ signing blank bill of lading

Predominantly in the tanker trade, a shipper, loading terminal or charterer may request the ship to follow EDP. Amongst other things, EDP usually involves the master issuing a signed but otherwise blank B/L form. Alternately the B/L may be

completed except for the quantity or weight. Clearly this procedure exposes the company to significant liabilities. Accordingly, if the master is requested to follow the EDP and/or sign a blank bill of lading he should refuse and contact the company immediately.
Under the EDP, the owners agent gets master's signature on the B/L with out cargo quantity, and after vessel sails he advises the master the shore figure. The master checks the ship's figure and if it is in variance, he advises the owner's agent accordingly. The agent informs the shipper. If the shipper refuses to accept with ships figure on the B/L , a letter of protest is made and signed by the agent on behalf of the owner and stapled with the B/L.

Cargo intended to be shipped on deck

If it is intended to ship the cargo on deck, the master should be fully satisfied either that it is a custom of the trade, e.g. containers on a purpose built container ship or lumber on a purpose built log carrier, or it is a statutory obligation, e.g. dangerous cargo, or has been agreed with the shipper. If the cargo is shipped on deck in any other circumstances, the carrier may be in breach of the contract of carriage and may consequently loose the right to rely on certain contractual exceptions, e.g. for loss or damage to the goods. The carrier may also loose the right to liability for claims in respect of such loss or damage and P&I cover. Clauses, which seek to relieve the carrier from all liability for deck carriage, will normally not protect the carrier from unauthorized deck carriage. Whilst the B/L may provide that the carrier has a liberty or right to carry cargo on deck, courts will normally restrict the carrier's right to rely on such provisions.
As per Hague Rules if the cargo is carried on deck and so stated in the B/L , then the carrier is not liable for its loss. In Hamburg Rules this has been made more stringent in that it is not enough just to state in the B/L that cargo is carried on deck, the master should write on the B/L the shipper has agreed for carrying the cargo on deck and the letter no to be stated.

Delivery of cargo against a B/L retained on board

It has been known for a shipper to pressurize the master to retain on board one original B/L out of set (usually 3) issued with the instruction to hand it to the intended receiver to avoid the possibility of there being no original B/L for presentation at the discharge port.
Master should refuse to retain any original B/L if it is 'to order' or 'open B/L' as , the consignee is not known, delivery will not be possible. If the B/L is a straight B/L then it can be accepted and a copy of the receipt of the B/L to be retained on board.
The intended receiver presents the original B/L back to the master and claims delivery of goods. If the receiver seeks delivery against the original B/L retained on board, there is risk involved in this practice. The master knows or should know that through ordinary commercial channels, competing claims for the cargo can arise under the original B/L not retained on board and he will be deemed to have acted in bad faith by delivering the cargo against the original B/L retained on board. If a competing claim does arise, the
Carrier may be held fully liable for the wrongful delivery of the cargo and for compensating the rightful
cargo owner for full value of the cargo. P&I cover may be lost as the club rules exclude cover for claims in certain circumstance where the proper delivery has not been made.

P&I Clubs recommend to clause B/L on such occasions as follows:
"one original B/L retained on board against which delivery of cargo may be properly made on instructions received from shipper/charterer

Co-mingling or blending cargo on board

Co-mingling or blending cargo is mostly associated with oil cargoes in bulk. Cargo interests may wish to co-mingle or blend cargoes loaded on different dates and/or at different places and/or with different specifications. Should this be requested, the master to refuse to perform such requests until he receives instructions from the company. The co-mingling or blending may affect the specification of the cargo already loaded or the one that is to be loaded.

Split bills of lading / Switch Bills of Lading

Split bills of lading or Switch Bills of Lading as they are called at times, are bills issued for part of a cargo originally shipped under a single set of bills of lading. They are most common in the bulk trades, e.g. cargo interests may wish to split a cargo covered by a single B/L under which delivery can only be made only to one party, between say 3 receivers. Here care should be taken that the original single B/L is surrendered and new ones issued with the same details as the first one. The quantity entitled to each party should be noted and the delivery made accordingly.
There is usually no objection to this practice; however, the switch bills of lading may contain misrepresentations, for example, over the true port of loading. If a receiver suffers loss because of this, then the carrier and his agent may be at risk.

B/L covering a bulk cargo with more than one discharge port

Such a bill should be avoided. Complications can arise later at the 2nd disport, as the B/L presented over there may be for the full cargo where as part of it has already been discharged at the first disport. When such requests arise, the company should be consulted prior completion of the first discharge.

Delivery to a destination not named in the B/L

If in this circumstance, the B/L cannot be surrendered and a replacement obtained, then the company should make arrangements to protect it-self against the consequences that can arise by complying with such requests. If the cargo is discharged at a different place from the destination on the B/L, it can be considered as a deviation, which is a breach of contract of carriage and has serious consequences.
Letters of indemnity
Letters of indemnity issued to master/company either for issuing a clean B/L or for delivering a B/L, which is ante-/post date, is unenforceable in most jurisdictions. Such letters of indemnity are not legally binding and hence offer no protection for the company if the shipper goes back on his promise.
Letters of indemnity in exchange of delivering cargo without the production of the original B/L or for delivering cargo at a destination different from that stated in the B/L may be legally enforceable. These letters must be correctly worded and counter signed by a first class bank. Letters of indemnity are nevertheless a commercial reality. It should be noted that, depending on the terms of an applicable charter-

party, there might be an obligation on the company to accept a letter of indemnity in certain circumstances.
Whenever a master is offered a letter of indemnity he should:-Refuse, despite threats to delay the vessel or other forms of pressure.-Immediately inform the company and obtain the instructions.
If two parties present two original B/Ls ?
Consult the ship owner's P&I club correspondent the B/Ls may be left with the court of law to settle the dispute._in the meantime, land the goods into a warehouse/tank etc where they should be held until the dispute has been settled and the freight and charges have been paid.
If the goods are unclaimed at the disport?
The master is not obliged to discharge goods until one original B/L is presented, but neither is he obliged to retain unclaimed goods on board.
At common law, if goods are not claimed with in a reasonable time, the master may land them and warehouse them. the master has duty to do this rather than detain the ship in port beyond her laytime and make the charterer liable for demurrage. The warehouseman then becomes a common agent of both the carrier and the consignee and should be instructed to release goods only on payment of all outstanding charges including warehouse charges payable by the receiver
if the goods remain unclaimed, they may usually be sold by the carrier after a reasonable time depending on local law.
Carriers usually insert a clause known as London clause in their B/L giving them a right to land goods on arrival; this overrides the common law position
If a receiver demands goods without producing B/L?
the receiver may claim that B/L has been lost, stolen or delayed. If so, there is a serious risk of fraud. A recent research has indicated that the largest single cause of claim against both liner and ship agents is delivery of cargo with out Bills of Lading.
If the master negligently delivers the goods to the wrong party without first requiring original B/l, the carrier will be held wholly liable for the consequences and will receive no backing from the P&I club or sympathy from the courts!!
wrongful delivery may even result in the arrest of the vessel and sale of ship to recover the cargo's value for the rightful owner.
it is likely that the B/L has been merely delayed, the goods may be delivered- with the ship owner's and P & I club''s agreement- after the receiver sign a letter of indemnity(LOI) backed by a first class Bank's guarantee. The LOI must be signed by the consignee and the representative of a first class bank which can meet any claim.
This method of delivery is acceptable to P&I clubs.
It is important that the LOI must be in the standard form of the P&I club where the relevant terms are printed. The following points should be observed when accepting a letter of indemnity for delivering cargo with out B/L.
must be endorsed by a first class bank
express written authority must be obtained by the agents from their principals as to the form, nature and backing of the indemnity
goods referred to in the indemnity must correspond to the delivery order.
LOI must be original. Fax or photo copy should not be accepted
Is the indemnity addressed both to the agent and the principal?
Does it contain adequate financial and time limits?
Has the cargo owner authorised release in writing?
When asked to issue clean B/L for cargo when not justified:
To be refused even when letter of indemnity is offered. P.& I club also will not cover any loss or consequence. When defective/damage cargo is offered, rejects the cargo/accept cargo on condition that B/L will be classed accordingly.

If charterers bill of lading is to be used:
Check if "clause paramount brings into force Hague Visby Rules. If not immediately contact P&I club correspondent.
When charter party states master to sign clean BL as presented by charterers.
Clean bill of lading in a charter party terms as per courts, means that bill of lading not to be claused with respect to non-payment of demmurage at load port, but it does not prevent master from clausing the bill of lading for condition of cargo.
When ships figure differs from the bill of lading figure:
1. If there is a column for ships figure in bill of lading enter ships figure
2. If there is no column for ships figure, endorse bill of lading "vessels measurements are stated below and this bill of lading only acknowledges the shipment of the weight and quantity given in the vessels measurements on completion of loading"
3. if shipper refuses to accept such endorsement issue a letter of protest stating discrepancy and copy of protest stapled to bill of lading
Blank B/L. or partially completed B/L.
Never to be signed
If B/L must be reissued /amended
1. It should never be done.
If found necessary P. &I correspondent to be contacted. He is likely to advise as follows:
a) To receive all regional B/L. issued
b) To sign new set with the clause " this is is a replacement of B/L. issued at ----on------- canceling the same etc.
If cargo delivery requested against presentation of original B/L. carried onboard
1. Master issued receipt to shipper and obtains signature on receipt
2. "to order B/ L" and . not named destination B/L. not to be accepted
3. should not discharge against B/L. carried onboard, if discharge port is different from B/L
4. on arrival at the disport master to handover bill of lading to party named on confirming identity
5. The B/L should be claused stating that proper delivery will be made against B/L retained on board as instructed by shipper/charterer
If consignee refuses to take delivery.
He must be persuaded take delivery and then make a claim if the cargo is damaged .
Seaway Bills
in container trades and many liner trades cargoes move quickly and the B/Ls lag behind the cargo. With non-availability of the original B/L on arrival of the ship at disport, the consignee face avoidable legal problems and the vessel too is faced with the financial risks involved in delivering the cargo on LOI. Under these circumstances the Sea waybills are widely being used
when the shipper is sure that the goods are not going to be sold whilst in transit and a document of title is not required, they can use the sea waybill which does not confer the title of the goods to the holder.
in cases when shipper and buyer are well trading partners , the use of waybills is appropriate and convenient and is in fact encouraged by BIMCO.
the main difference between a waybill and a B/L is that W/B is a non-negotiable document. This fact is clearly stated in every waybill' this is not a B/L and a B/L will not be issued'.
when the vessel arrives the cargo can be delivered at the disport without even waiting for the W/B to arrive, only the identity of the receiver is checked.

the carrier must exercise caution in making delivery; however in case of wrong delivery, no responsibility is accepted by the carrier.
Like B/L , W/B is also not a contract of carriage but is good evidence of the existence of the contract
the contract terms are usually printed on the W/B and may be subject to the Hague or Hague/visby in which case it will contain a Clause Paramount.
because it is a non-negotiable document it is less likely to be used for fraudulent purposes than a B/L.

Contracts of carriage

There are two types of carriage documents in common use- the charter party and the Bills of Lading. The following are the main differences between the two carriage documents which are of concern to the master:
1. Charter parties are typically used when a shipper wishes to make use of an entire vessel, where as B/Ls are used when the shipper only wishes to book spaces on a vessel.
2 Charter party, involves the hire of the entire vessel and as such will contain some clauses which relate directly to carriage of goods as well as many clauses relating to management of vessel- bunkering, crew employment etc.

Charter party can only perform one of the three functions of a B/L- namely a record of a contract of carriage.
Charter party do not and can not perform the crucial role of the B/L as document, binding the carrier, under the signature of the master, to statements he makes about the quantity and the condition of the goods.
Charter party can not also perform the most important role of B/Lviz of conferring the title of the goods to the holder of the B/L.
For these reasons , it is common for both the charter party and the B/L to exist together and also the reason why there are clauses in both the documents relating to the other.

Hague Visby Rules

Background of the Hague Rules

Rights of consignees

Rapid expansion of trade in 19th century led to a division of merchant men as ship owners and traders specialising in their own activities.. This led to an increase in national and international laws. One major strand of international law governing the carriage of goods was generated because of the principle of English law Privity of Contract under which only those who are parties to a contract can sue under that contract.

Under CIF contracts it is the seller who concludes the contract of carriage. Under privity of English law it meant that the buyer (consignee) would be left without a remedy against the carrier (ship owner) even though he has sustained a loss, as he was not a party to the contract of carriage.

This led to the Bills of Lading Act(UK) 1855. This was central to maritime

commercial practice for nearly 140 years until 1992 Act replaced it.
The 1855 Act(U.K); 1856 Act (INDIA) on B/L :

The above Acts provides the following:
a) established the legal link between carrier and receiver.
b) vested with the consignee or every endorsee of a B/L, the same rights and the liabilities of the original shipper of the cargo. As such he has the right to sue the carrier, as though he himse had entered in to a contract of carriage with the carrier.
c) The right of stoppage in transit and claims for freight are however unaffected by this Act

B/L in the hands of the holder to become conclusive evidence of shipment unless Master can prove fraud.
[1]However the increasing sophistication and complexities of trade found the 1855(UK) Act lacking in many ways
Under the 1855 Act , there was a problem with the title to sue where the original endorsee came to hold the B/l after the goods were delivered by the carrier to a wrong party.; the courts have held that once the goods are delivered the contract of carriage is discharged, despite the incomplete delivery, where upon the B/L ceased to be effective as a transferable document.

However the the problem of the receiver continued inspite of the 1855 Act which transferred the rights and liabilities of the shipper to the receiver. Because, though the receiver has the right to sue the carrier in case the cargo is lost/damaged, the contract of carriage is still being made by the shipper and carrier. Employing a team of lawyers, they contracted themselves out of all liabilities! Though the receiver can proceed against the carrier for damaged/lost cargo, the court has to go by the contract made by the shipper and carrier who had cleverly avoided any liability!
In view of the above the cargo owners had to convene a conference in The Hague where Convention on unification of Rules on bill of Lading(Hague Rules) was adopted

Hague Visby Rules

on 25th of August 1924, the International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading was signed at Brussels. As this was a consequence to a meeting of International Law Association held in The Hague, these Rules concerning the monetary limits of liability were amended by a protocol, on 23 Feb 1968 at Brussels and these were known as Visby amendments. Materially there is no difference between Visby and Hague rules. The monetary limits of liability, were again amended by another protocol in 1977, changing it to SDR.
International conventions applicable to contracts of carriage
Three sets of rules are in use on the shipping industry which contain 'minimum' terms and conditions.
These rules are:
the Hague Rules, which have been adopted by many Commonwealth countries;
the Hague Visby Rules, adopted by the UK and 17 other countries; and
the Hamburg Rules, adopted by very few countries (and not favoured by ship owners since they are less to their advantage than the other rules).

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The master can determine which set of rules applies to the contract of carriage by reading the Clause Paramount in the B/Ls used by the company, or in the B/Ls issued, or in the C/P under B/Ls are issued.
These rules set out following:
the carrier's obligations:
the carrier's exceptions from liability:
the extent of the carrier's liability to the shipper:
the shipper's responsibilities: and
the amounts recoverable from the carrier in case of loss of or damage to the goods while in the carrier's care.

Hague-Visby Rules(HVRs)
apply to all goods shipped under B/L terms except fpr
live animals; and
cargo which is stated by the contract of carriage as being, and is actually, carried on deck. apply to every B/L relating to the carriage of goods between ports in two different states if the B/L is issued in a contracting state or ; or
the carriage in from a port in a contracting state; or
the contract contained in or evidenced by the B/L provides that the HVRs or the legislation of any state giving effect to them (e.g the U K's Carriage of Goods by Sea Act 1971) are to govern the contract. Many states have legislation incorporating the H V R s into national law. Where no such national law applies. the HVR s may still apply to the carriage by agreement of the contracting parties.(see Clause Paramount in B/L W/B or C/P)

<u>Carrier's obligations under the HVRs</u>

There are 3 basic obligations:
to <u>exercise due diligence</u> to ensure the vessel's seaworthiness:
to look after the cargo; and
to issue a B/L.

Obligation under the HVRs in respect of seaworthiness
The carrier must, before and at the beginning of the voyage (i.e. up to the moment of sailing) <u>exercise due diligence</u> to :
make the ship seaworthy;
properly man, equip and supply the ship; and
make the holds, refrigerating and cool chambers, and all other parts of the ship in which goods are carried, fit and sage for their reception, carriage and preservation.
Exercising due diligence means taking all reasonable precautions to see that the vessel if fit for the voyage contemplated. The carrier is not obliged to given an absolute guarantee of seaworthiness. The carrier may delegate his duty to exercise of due diligence (e.g. to surveyors or repairers) but he will be responsible if they fail to exercise due diligence in carrying out their work.
Seaworthy in this context means that the hull must be in sound condition. The vessel must be mechanically sound, equipped with charts, etc., and crewed by a properly trained crew. The holds must be fit and safe for the reception, carriage and preservation of the cargo and, in particular, the hatch that the neglect to protect a water pipe in a hold from frost which could have been expected at the time of year showed lack of due diligence to make the vessel seaworthy.

The vessel need only be seaworthy at the commencement of the voyage, which usually means when she leaves the berth, whether under her own motive power or with the aid of tugs.
If a cargo owner can show that his loss was caused by a failure of the carrier to exercise due diligence to make the vessel seaworthy, the carrier will not be able to rely on any other clauses in the Rules which reduce his liability (i.e. the exceptions to liability).
"due deligence"
The owner must exercise due diligence before and at the beginning of the voyage the make the vessel seaworthy, lest he will not be able to take protection under the exceptions listed under the H/V rules. Naturally the cargo owners will go out of the way to prove that the owner did not execise due diligence to make the vessel seaworthy at the beginning of the voyage and break his defence thereby making him liable to pay for the damages caused to his cargo. It is of interest to know what the courts had ruled in this regard.
'due diligence' is not merely a praiseworthy or sincere though unsuccessful attempt, but an intelligent and efficient attempt as shall make it seaworthy as far as diligence can serve"
" due diligence is genuine, competent and reasonable effort of the carrier to fulfil the prerequisites of the rules.
Obligation under the HVRs towards the cargo
The carrier must 'properly and carefully load, handle, slow, carry, keep, care for and discharge any goods carried'. Unlike seaworthiness, this duty extends throughout the voyage and implies greater care than 'due diligence'. The courts do not expect perfection from the carrier, but it has been held that stowage was improper where.
contamination of other goods occurred;
there was inadequate or no ventilation;
dry cargo was damaged by liquid goods; and
vehicles were secured only by their own brakes.
The carrier must have a sound system for looking after the cargo when slowed. He has a duty to use all reasonable means to ascertain the nature and characteristics of the cargo and to care for a accordingly, though the shipper should give special instructions where special care is required. (Where water in tractor radiators froze, it was held that the carrier should have been told of the risks)
Obligation under HVRs to issue a B/L
On receiving goods into his charge, the carrier, the master or the carrier's agent, if the shipper demand, must issue a B/L to the shipper showing, amongst other things:
all leading marks for identification of the goods, as stated by the shipper before loading (in his shipping note or boat note), provided these available on the goods or their coverings.
either the number of packages or pieces, or the quality or weight as stated by the shipper (in his shipping note or boat note); and
the apparent order and condition of the goods.
***The carrier master or agent need not insert any inaccurate statements on the B/L or give any details which he cannot reasonably check. (Hence the practice for statements such as 'said to weigh…' to be made.).**
Any B/L thus issued will be prima facie evidence of receipt of the goods by the carrier as described, but proof to the contrary will not be admissible if the B/L is transferred to a third acting in good faith.
Any B/L issued after loading must be a 'shipped' B/L if the shipper demands, provided he surrenders any previously issued document of title (e.g. a 'received' B/L issued when the goods arrived at a warehouse or depot before shipment).

Carrier's rights and immunities under the HVRs
*
the carrier's exceptions to liability;
the carrier's right to deviate; and
the carrier's rights in respect of dangerous goods.

Carrier's exceptions to liability under the HVRs

17 exceptions to liability are granted to the carrier (compared with 6 under English common law).
If the HVRs apply the carrier or ship will not be responsible for loss or damage arising from:
act, neglect or default of the master, mariner, pilot, or the carrier in the navigation or management of the ship:
fire, unless caused by actual fault or privity of the carrier;
perils, dangers and accidents of the sea or other navigable waters;
act of God;
act of war;
act of public enemies;
arrest or restraint of princes, rulers or people, or seizure under legal process;
quarantine regulations;
act or omission of the shipper or owner of the goods, his agent or representatives;
strikes, lockouts, stoppage or restraint of labour;
riots and civil commotion;
saving or attempting to safe life or property at sea;
wastage in bulk or weight or any other loss or damage arising from inherent defect, quality or vice of the goods;
insufficiency of packing;
insufficiency or inadequacy of marks;
latent defects not discoverable by due diligence;
any other cause arising without the actual fault or privity of the carrier, or without the fault or neglect of the agents or servants of the carrier (but the burden of proof will be on the carrier to show that his fault or privity or the fault or neglect of his agents or servants did not contribute to the loss or damage)

'Peril of the seas'
This term is so widely discussed and the meaning disputed that it is worth knowing as to how the courts view this term as often claims are made under this clause. An American Judge Hough defined meaning of 'peril of the seas' as follows:
"something so catastrophic as to triumph over safeguards by which skilful and vigilant seaman usually bring ship and cargo to port in safety"
British judge "learned Hand" commenting on the American judge's definition of the 'peril of the sea' said :
"it meant nothing more than that the weather encountered must be too much for a well found vessel to with stand"
Combining these two and putting together from various English court rulings the peril of the seas can be defined as follows:

" any damage to goods carried, caused by sea water, storms, collision, stranding, or other perils peculiar to sea or to ship at sea which can not be foreseen and guarded against by ship owner, or his servants as necessary or probable incidents of the adventure."

deviation under the HVRs

Any deviation in saving or attempting to save life or property at sea, or any reasonable deviation, will not be an infringement or breach of the HVRs or of the contract of carriage, and the carrier will therefore not be liable for any resulting loss or damage.

Dangerous goods under the HVRs

Goods of an inflammable, explosive or dangerous nature, if not properly marked, or if shipped without the knowledge or consent of the carrier, may be landed, destroyed, jettisoned or rendered innocuous at any time before discharge. Such goods, even when shipped with the carrier's knowledge and constant, may be dealt with in this way without liability to the carrier, should they become dangerous

General Average under the HVRs

Nothing in the HVRs shall be held to prevent the insertion in a B/L of any lawful provision regarding General Average.

The differences between Hague and Visby Rules

The Visby Rule allows the Contracting states to apply the Rules not only to out ward B/L issued in the Contracting State, but also to inward B/ls issued in another State, though this has not been made compulsory
As regarding the liability of the Carrier the Visby amendment stipulates that "Unless the nature and value of such goods have been declared by the shipper before shipment and inserted in the B/L, neither the Carrier nor the ship in any event become liable for any loss or damage to or in connection with the goods in an amount exceeding the equivalent of Frs 10,000 per package or unit or Fr 30 per Kilo of gross weight of the goods lost or damaged, which ever is higher.
Regarding time limitation of one year which was given in Hague Rules for the purpose of filing suit, a provision has been made in Visby amendments to include not only suits for loss or damage to cargo; but also to suits for wrong delivery! Visby amendments also provide for extension of this time of one year time initially stipulated in Hague Rules. As per Hague Rules the Carrier is discharged from any suit whatsoever on completion of one year after delivery of cargo. Now Visby provides for another Carrier to file a suit against the original Carrier even after one year, in case that carrier had to pay/settle the claim of the receive for loss or damage to cargo in pursuance of his right of indemnity against this carrier.

1977 SDR Protocol

The monetary limits of liability of Visby Rules was again amended by this Protocol. As per this Protocol, the limits are 666.67 SDR(Special Drawing Rights) per package or unit or 2 SDR per Kilogram weight of the goods lost or damaged, which ever is higher.

Hamburg Rules

(united nations convention on the carriage of goods by sea, 1978-)

Article 1

Definitions

In this Convention:

1. "Carrier" means any person by whom or in whose name a contract of carriage of goods by sea has been concluded with a shipper.

2. "Actual carrier" means any person to whom the performance of the carriage of the goods, or of part of the carriage, has been entrusted by the carrier, and includes any other person to whom such performance has been entrusted.

.Article 2

Scope of application

1. The provisions of this Convention are applicable to all contracts of carriage by sea between two different States, if:

the bill of lading or other document evidencing the contract of carriage by sea is issued in a Contracting State,

2. The provisions of this Convention are applicable without regard to the nationality of the ship, the carrier, the actual carrier, the shipper, the consignee or any other interested person.

Article 4

Period of responsibility

1. The responsibility of the carrier for the goods under this Convention covers the period during which the carrier is in charge of the goods at the port of loading, during the carriage and at the port of discharge.

2. For the purpose of paragraph 1 of this article, the carrier is deemed to be in charge of the goods

(*a*) from the time he has taken over the goods from:

(i) the shipper, or a person acting on his behalf; or

(ii) an authority or other third party to whom, pursuant to law or regulations applicable at the port of loading, the goods must be handed over for shipment;

(*b*) until the time he has delivered the goods:

(i) by handing over the goods to the consignee;

.Article 5

Basis of liability

1. The carrier is liable for loss resulting from loss of or damage to the goods, as well as from delay in delivery, if the occurrence which caused the loss, damage or delay took place while the goods were in his charge as defined in article 4, unless the carrier proves that he, his servants or agents took all measures that could reasonably be required to avoid the occurrence and its consequences.

2. Delay in delivery occurs when the goods have not been delivered at the port of discharge provided for in the contract of carriage by sea within the time expressly agreed upon or, in the absence of such agreement, within the time which it would be reasonable to require of a diligent carrier, having regard to the circumstances of the case.

3. The person entitled to make a claim for the loss of goods may treat the goods as lost if they have not been delivered as required by article 4 within 60 consecutive days following the expiry of the time for delivery according to paragraph 2 of this article.

4. (*a*) The carrier is liable

(i) for loss of or damage to the goods or delay in delivery caused by fire, if the claimant proves that the fire arose from fault or neglect on the part of the carrier, his servants or agents;

(ii) for such loss, damage or delay in delivery which is proved by the claimant to have resulted from the fault or neglect of the carrier, his servants or agents, in taking all measures that could reasonably be required to put out the fire and avoid or mitigate its consequences.

(*b*) In case of fire on board the ship affecting the goods, if the claimant or the carrier so desires, a survey in accordance with shipping practices must be held into the cause and circumstances of the fire, and a copy of the surveyor's report shall be made available on demand to the carrier and the claimant.

5. With respect to live animals, the carrier is not liable for loss, damage or delay in delivery resulting from any special risks inherent in that kind of carriage. If the carrier proves that he has complied with any special instructions given to him by the shipper respecting the animals and that, in the circumstances of the case, the loss, damage or delay in delivery could be attributed to such risks, it is presumed that the loss, damage or delay in delivery was so caused, unless there is proof that all or a part of the loss, damage or delay in delivery resulted from fault or neglect on the part of the carrier, his servants or agents.

6. The carrier is not liable, except in general average, where loss, damage or delay in delivery resulted from measures to save life or from reasonable measures to save property at sea.

7. Where fault or neglect on the part of the carrier, his servants or agents combines with another cause to produce loss, damage or delay in delivery the carrier is liable only to the extent that the loss, damage or delay in delivery is attributable to such fault or neglect, provided that the carrier proves the amount of the loss, damage or delay in delivery not attributable thereto.

Article 6

Limits of liability

1. (*a*) The liability of the carrier for loss resulting from loss of or damage to goods according to the provisions of article 5 is limited to an amount equivalent to 835 units of account per package or other shipping unit or 2.5 units of account per kilogramme of gross weight of the goods lost or damaged, whichever is the higher.

(*b*) The liability of the carrier for delay in delivery according to the provisions of article 5 is limited to an amount equivalent to two and a half times the freight payable for the goods delayed, but not exceeding the total freight payable under the contract of carriage of goods by sea.

Article 9

Deck cargo

1. The carrier is entitled to carry the goods on deck only if such carriage is in accordance with an agreement with the shipper or with the usage of the particular trade or is required by statutory rules or regulations.

2. If the carrier and the shipper have agreed that the goods shall or may be carried on deck, the carrier must insert in the bill of lading or other document evidencing the contract of carriage by sea a statement to that effect. In the absence of such a statement the carrier has the burden of proving that an agreement for carriage on deck has been entered into; however, the carrier is not entitled to invoke such an agreement against a third party, including a consignee, who has acquired the bill of lading in good faith.

4. Carriage of goods on deck contrary to express agreement for carriage under deck is deemed to be an act or omission of the carrier within the meaning of article 8.

Article 10

Liability of the carrier and actual carrier

1. Where the performance of the carriage or part thereof has been entrusted to an actual carrier, whether or not in pursuance of a liberty under the contract of carriage by sea to do so, the carrier nevertheless remains responsible for the entire carriage according to the provisions of this Convention. The carrier is responsible, in relation to the carriage performed by the actual carrier, for the acts and omissions of the

actual carrier and of his servants and agents acting within the scope of their employment.

2. All the provisions of this Convention governing the responsibility of the carrier also apply to the responsibility of the actual carrier for the carriage performed by him. The provisions of paragraphs 2 and 3 of article 7 and of paragraph 2 of article 8 apply if an action is brought against a servant or agent of the actual carrier.

Article 11

Through carriage

1.. The burden of proving that any loss, damage or delay in delivery has been caused by such an occurrence rests upon the carrier.

2. The actual carrier is responsible in accordance with the provisions of paragraph 2 of article 10 for loss, damage or delay in delivery caused by an occurrence which takes place while the goods are in his charge.

transport documents

Article 14

Issue of bill of lading

1. When the carrier or the actual carrier takes the goods in his charge, the carrier must, on demand of the shipper, issue to the shipper a bill of lading.

2. The bill of lading may be signed by a person having authority from the carrier. A bill of lading signed by the master of the ship carrying the goods is deemed to have been signed on behalf of the carrier.

3. The signature on the bill of lading may be in handwriting, printed in facsimile, perforated, stamped, in symbols, or made by an other mechanical or electronic means, if not inconsistent with the law of the country where the bill of lading is issued.

Article 15

Contents of bill of lading

1. The bill of lading must include, *inter alia*, the following particulars:

(*a*) the general nature of the goods, the leading marks necessary for identification of the goods, an express statement, if applicable, as to the dangerous character of the goods, the number of packages or pieces, and the weight of the goods or their quantity otherwise expressed, all such particulars as furnished by the shipper;

(*b*) the apparent condition of the goods;

(*c*) the name and principal place of business of the carrier;

(*d*) the name of the shipper;

(*e*) the consignee if named by the shipper;

(*f*) the port of loading under the contract of carriage by sea and the date on which the goods were taken over by the carrier at the port of loading;

(*g*) the port of discharge under the contract of carriage by sea;

(*h*) the number of originals of the bill of lading, if more than one;

(*i*) the place of issuance of the bill of lading;

(*j*) the signature of the carrier or a person acting on his behalf;

(*k*) the freight to the extent payable by the consignee or other indication that freight is payable by him;

(*l*) the statement referred to in paragraph 3 of article 23;

(*m*) the statement, if applicable, that the goods shall or may be carried on deck;

(*n*) the date or the period of delivery of the goods at the port of discharge if expressly agreed upon between the parties; and

(*o*) any increased limit or limits of liability where agreed in accordance with paragraph 4 of article 6.

2. After the goods have been loaded on board, if the shipper so demands, the carrier must issue to the shipper a "shipped" bill of lading which, in addition to the particulars required under paragraph 1 of this article, must state that the goods are on board a named ship or ships, and the date or dates of loading. If the carrier has previously issued to the shipper a bill of lading or other document of title with respect to any of such goods, on request of the carrier, the shipper must surrender such document in exchange for a "shipped" bill of lading. The carrier may amend any previously issued document in order to meet the shipper's demand for a "shipped" bill of lading if, as amended, such document includes all the information required to be contained in a "shipped" bill of lading.

3. The absence in the bill of lading of one or more particulars referred to in this article does not affect the legal character of the document as a bill of lading provided that it nevertheless meets the requirements set out in paragraph 7 of article 1.

Article 16

Bills of lading: reservations and evidentiary effect

1. If the bill of lading contains particulars concerning the general nature, leading marks, number of packages or pieces, weight or quantity of the goods which the carrier or other person issuing the bill of lading on his behalf knows or has reasonable grounds to suspect do not accurately represent the goods actually taken over or, where a "shipped" bill of lading is issued, loaded, or if he had no reasonable

means of checking such particulars, the carrier or such other person must insert in the bill of lading a reservation specifying these inaccuracies, grounds of suspicion or the absence of reasonable means of checking.

2. If the carrier or other person issuing the bill of lading on his behalf fails to note on the bill of lading the apparent condition of the goods, he is deemed to have noted on the bill of lading that the goods were in apparent good condition.

3. Except for particulars in respect of which and to the extent to which a reservation permitted under paragraph 1 of this article has been entered:

(*a*) the bill of lading is *prima facie* evidence of the taking over or, where a "shipped" bill of lading is issued, loading, by the carrier of the goods as described in the bill of lading; and

(*b*) proof to the contrary by the carrier is not admissible if the bill of lading has been transferred to a third party, including a consignee, who in good faith has acted in reliance on the description of the goods therein.

4. A bill of lading which does not, as provided in paragraph 1, subparagraph (*k*) of article 15, set forth the freight or otherwise indicate that freight is payable by the consignee or does not set forth demurrage incurred at the port of loading payable by the consignee, is *prima facie* evidence that no freight or such demurrage is payable by him. However, proof to the contrary by the carrier is not admissible when the bill of lading has been transferred to a third party, including a consignee, who in good faith has acted in reliance on the absence in the bill of lading of any such indication.

Article 17

Guarantees by the shipper

1. The shipper is deemed to have guaranteed to the carrier the accuracy of particulars relating to the general nature of the goods, their marks, number, weight and quantity as furnished by him for insertion in the bill of lading. The shipper must indemnify the carrier against the loss resulting from inaccuracies in such particulars. The shipper remains liable even if the bill of lading has been transferred by him. The right of the carrier to such indemnity in no way limits his liability under the contract of carriage by sea to any person other than the shipper.

2. Any letter of guarantee or agreement by which the shipper undertakes to indemnify the carrier against loss resulting from the issuance of the bill of lading by the carrier, or by a person acting on his behalf, without entering a reservation relating to particulars furnished by the shipper for insertion in the bill of lading, or to the apparent condition of the goods, is void and of no effect as against any third party, including a consignee, to whom the bill of lading has been transferred.

3. In the case of intended fraud referred to in paragraph 3 of this article the carrier is liable, without the benefit of the limitation of liability provided for in this Convention, for the loss incurred by a third party, including a consignee, because he has acted in reliance on the description of the goods in the bill of lading.

Article 18

Documents other than bills of lading

Where a carrier issues a document other than a bill of lading to evidence the receipt of the goods to be carried, such a document is *prima facie* evidence of the conclusion of the contract of carriage by sea and the taking over by the carrier of the goods as therein described.

claims and actions

Article 19

Notice of loss, damage or delay

1. Unless notice of loss or damage, specifying the general nature of such loss or damage, is given in writing by the consignee to the carrier not later than the working day after the day when the goods were handed over to the consignee, such handing over is *prima facie* evidence of the delivery by the carrier of the goods as described in the document of transport or, if no such document has been issued, in good condition.

2. Where the loss or damage is not apparent, the provisions of paragraph 1 of this article apply correspondingly if notice in writing is not given within 15 consecutive days after the day when the goods were handed over to the consignee.

3. If the state of the goods at the time they were handed over to the consignee has been the subject of a joint survey or inspection by the parties, notice in writing need not be given of loss or damage ascertained during such survey or inspection.

4. In the case of any actual or apprehended loss or damage the carrier and the consignee must give all reasonable facilities to each other for inspecting and tallying the goods.

5. No compensation shall be payable for loss resulting from delay in delivery unless a notice has been given in writing to the carrier within 60 consecutive days after the day when the goods were handed over to the consignee.

6. If the goods have been delivered by an actual carrier, any notice given under this article to him shall have the same effect as if it had been given to the carrier, and any notice given to the carrier shall have effect as if given to such actual carrier.

7. Unless notice of loss or damage, specifying the general nature of the loss or damage, is given in writing by the carrier or actual carrier to the shipper not later than 90 consecutive days after the occurrence of such loss or damage or after the delivery of the goods ;the failure to give such notice is *prima facie* evidence that the carrier or the actual carrier has sustained no loss or damage due to the fault or neglect of the shipper, his servants or agents.

8. For the purpose of this article, notice given to a person acting on the carrier's or the actual carrier's behalf, including the master or the officer in charge of the ship, or to a person acting on the shipper's behalf is deemed to have been given to the carrier, to the actual carrier or to the shipper, respectively.

Article 20

Limitation of actions

Any action relating to carriage of goods under this Convention is time-barred if judicial or arbitral proceedings have not been instituted within a period of two years.

common understanding adopted
by the united nations conference on the carriage of goods by sea

It is the common understanding that the liability of the carrier under this Convention is based on the principle of presumed fault or neglect. This means that, as a rule, the burden of proof rests on the carrier but, with respect to certain cases, the provisions of the Convention modify this rule.

United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea

UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW

United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea

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Resolution adopted by the General Assembly
63/122. United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea
The General Assembly,
Recalling **its resolution 2205 (XXI) of 17 December 1966, by which it established the United Nations Commission on International Trade Law with a**
mandate to further the progressive harmonization and unification of the law of
international trade and in that respect to bear in mind the interests of all peoples,
in particular those of developing countries, in the extensive development of
international trade,
Concerned **that the current legal regime governing the international carriage**
of goods by sea lacks uniformity and fails to adequately take into account
modern transport practices, including containerization, door-to-door transport

contracts and the use of electronic transport documents,
Noting **that the development of international trade on the basis of equality**
and mutual benefit is an important element in promoting friendly relations
among States,
Convinced **that the adoption of uniform rules to modernize and harmonize**
the rules that govern the international carriage of goods involving a sea leg
would enhance legal certainty, improve efficiency and commercial predictability
in the international carriage of goods and reduce legal obstacles to the flow
of international trade among all States,
Believing **that the adoption of uniform rules to govern international contracts**
of carriage wholly or partly by sea will promote legal certainty, improve
the efficiency of international carriage of goods and facilitate new access
opportunities for previously remote parties and markets, thus playing a fundamental
role in promoting trade and economic development, both domestically and internationally,
Noting **that shippers and carriers do not have the benefit of a binding and**
balanced universal regime to support the operation of contracts of carriage
involving various modes of transport,
2
Recalling **that, at its thirty-fourth and thirty-fifth sessions, in 2001 and 2002, the Commission decided to prepare an international legislative instrument**
governing door-to-door transport operations that involve a sea leg,1
Recognizing **that all States and interested international organizations were**
invited to participate in the preparation of the draft Convention on Contracts for
the International Carriage of Goods Wholly or Partly by Sea and in the fortyfirst
session of the Commission, either as members or as observers, with a full
opportunity to speak and make proposals,
Noting with satisfaction **that the text of the draft Convention was circulated**
for comment to all States Members of the United Nations and intergovernmental
organizations invited to attend the meetings of the Commission as observers, and that the comments received were before the Commission at its

forty-first session,2
Taking note with satisfaction **of the decision of the Commission at its forty-first session to submit the draft Convention to the General Assembly for**
its consideration,3
Taking note **of the draft Convention approved by the Commission,4**
Expressing its **appreciation to the Government of the Netherlands for its**
offer to host a signing ceremony for the Convention in Rotterdam,
1. *Commends* **the United Nations Commission on International Trade Law for preparing the draft Convention on Contracts for the International**
Carriage of Goods Wholly or Partly by Sea;
2. *Adopts* **the United Nations Convention on Contracts for the International**
Carriage of Goods Wholly or Partly by Sea, contained in the annex to the
present resolution;
1 *Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 17* **and corrigendum**
(A/56/17 and Corr.3), paras. 319–345; and ibid., *Fifty-seventh Session, Supplement No. 17* **(A/57/17), paras.**
210–224.
2 A/CN.9/658 and Add.1–14 and Add.14/Corr.1.
3 *Official Records of the General Assembly, Sixty-third Session, Supplement No. 17* **and corrigendum**
(A/63/17 and Corr.1), para. 298.
4 Ibid., annex I.
3
3. *Authorizes* **a ceremony for the opening for signature to be held on 23**
September 2009 in Rotterdam, the Netherlands, and recommends that the rules
embodied in the Convention be known as the “Rotterdam Rules”;
4. *Calls upon* **all Governments to consider becoming party to the Convention.**
67th plenary meeting
11 December 2008
4
UNITED NATIONS CONVENTION ON CONTRACTS
FOR THE INTERNATIONAL CARRIAGE OF GOODS
WHOLLY OR PARTLY BY SEA
The States Parties to this Convention,
Reaffirming **their belief that international trade on the basis of equality and**
mutual benefit is an important element in promoting friendly relations among
States,
Convinced **that the progressive harmonization and unification of international**

trade law, in reducing or removing legal obstacles to the flow of international trade, significantly contributes to universal economic cooperation among all States on a basis of equality, equity and common interest, and to the well-being of all peoples,

Recognizing **the significant contribution of the International Convention for the Unification of Certain Rules of Law relating to Bills of Lading, signed in Brussels on 25 August 1924, and its Protocols, and of the United Nations Convention on the Carriage of Goods by Sea, signed in Hamburg on 31 March 1978, to the harmonization of the law governing the carriage of goods by sea,**

Mindful **of the technological and commercial developments that have taken place since the adoption of those conventions and of the need to consolidate and modernize them,**

Noting **that shippers and carriers do not have the benefit of a binding universal regime to support the operation of contracts of maritime carriage involving other modes of transport,**

Believing **that the adoption of uniform rules to govern international contracts of carriage wholly or partly by sea will promote legal certainty, improve the efficiency of international carriage of goods and facilitate new access opportunities for previously remote parties and markets, thus playing a fundamental role in promoting trade and economic development, both domestically and internationally,**

Have agreed as follows:

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Chapter 1
General provisions

Article 1
Definitions

For the purposes of this Convention:

1. “Contract of carriage” means a contract in which a carrier, against the payment of freight, undertakes to carry goods from one place to another. The contract shall provide for carriage by sea and may provide for carriage by other modes of transport in addition to the sea carriage.

2. “Volume contract” means a contract of carriage that provides for the carriage of a specified quantity of goods in a series of shipments during an agreed

period of time. The specification of the quantity may include a minimum, a maximum or a certain range.

3. “Liner transportation” means a transportation service that is offered to the public through publication or similar means and includes transportation by ships operating on a regular schedule between specified ports in accordance with publicly available timetables of sailing dates.

4. “Non-liner transportation” means any transportation that is not liner transportation.

5. “Carrier” means a person that enters into a contract of carriage with a shipper.

6. (*a*) “Performing party” means a person other than the carrier that performs or undertakes to perform any of the carrier’s obligations under a contract of carriage with respect to the receipt, loading, handling, stowage, carriage, care, unloading or delivery of the goods, to the extent that such person acts, either directly or indirectly, at the carrier’s request or under the carrier’s supervision or control.

(*b*) “Performing party” does not include any person that is retained, directly or indirectly, by a shipper, by a documentary shipper, by the controlling party or by the consignee instead of by the carrier.

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7. “Maritime performing party” means a performing party to the extent that it performs or undertakes to perform any of the carrier’s obligations during the period between the arrival of the goods at the port of loading of a ship and their departure from the port of discharge of a ship. An inland carrier is a maritime performing party only if it performs or undertakes to perform its services exclusively within a port area.

8. “Shipper” means a person that enters into a contract of carriage with a carrier.

9. “Documentary shipper” means a person, other than the shipper, that accepts to be named as “shipper” in the transport document or electronic

transport record.
10. “Holder” means:
(*a*) A person that is in possession of a negotiable transport document; and (i) if the document is an order document, is identified in it as the shipper or
the consignee, or is the person to which the document is duly endorsed; or (ii)
if the document is a blank endorsed order document or bearer document, is the
bearer thereof; or
(*b*) The person to which a negotiable electronic transport record has been issued or transferred in accordance with the procedures referred to in
article 9, paragraph 1.
11. “Consignee” means a person entitled to delivery of the goods under a
contract of carriage or a transport document or electronic transport record.
12. “Right of control” of the goods means the right under the contract of carriage
to give the carrier instructions in respect of the goods in accordance with
chapter 10.
13. “Controlling party” means the person that pursuant to article 51 is entitled
to exercise the right of control.
14. “Transport document” means a document issued under a contract of
carriage by the carrier that:
(*a*) Evidences the carrier’s or a performing party’s receipt of goods under a contract of carriage; and
(*b*) Evidences or contains a contract of carriage.
15. “Negotiable transport document” means a transport document that indicates,
by wording such as “to order” or “negotiable” or other appropriate
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wording recognized as having the same effect by the law applicable to the document,
that the goods have been consigned to the order of the shipper, to the order of the consignee, or to bearer, and is not explicitly stated as being “nonnegotiable”
or “not negotiable”.
16. “Non-negotiable transport document” means a transport document that is
not a negotiable transport document.
17. “Electronic communication” means information generated, sent, received
or stored by electronic, optical, digital or similar means with the result that
the information communicated is accessible so as to be usable for subsequent

reference.
18. “Electronic transport record” means information in one or more messages issued by electronic communication under a contract of carriage by a carrier, including information logically associated with the electronic transport record by attachments or otherwise linked to the electronic transport record contemporaneously with or subsequent to its issue by the carrier, so as to become part of the electronic transport record, that:
(*a*) Evidences the carrier’s or a performing party’s receipt of goods under a contract of carriage; and
(*b*) Evidences or contains a contract of carriage.
19. “Negotiable electronic transport record” means an electronic transport record:
(*a*) That indicates, by wording such as “to order”, or “negotiable”, or other appropriate wording recognized as having the same effect by the law applicable to the record, that the goods have been consigned to the order of the shipper or to the order of the consignee, and is not explicitly stated as being “non-negotiable” or “not negotiable”; and
(*b*) The use of which meets the requirements of article 9, paragraph 1.
20. “Non-negotiable electronic transport record” means an electronic transport record that is not a negotiable electronic transport record.
21. The “issuance” of a negotiable electronic transport record means the issuance of the record in accordance with procedures that ensure that the record is subject to exclusive control from its creation until it ceases to have any effect or validity.
22. The “transfer” of a negotiable electronic transport record means the transfer of exclusive control over the record.
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23. “Contract particulars” means any information relating to the contract of carriage or to the goods (including terms, notations, signatures and endorsements) that is in a transport document or an electronic transport record.
24. “Goods” means the wares, merchandise, and articles of every kind whatsoever that a carrier undertakes to carry under a contract of carriage and includes the packing and any equipment and container not supplied by or on behalf of

the carrier.
25. “Ship” means any vessel used to carry goods by sea.
26. “Container” means any type of container, transportable tank or flat, swapbody,
or any similar unit load used to consolidate goods, and any equipment ancillary to such unit load.
27. “Vehicle” means a road or railroad cargo vehicle.
28. “Freight” means the remuneration payable to the carrier for the carriage
of goods under a contract of carriage.
29. “Domicile” means (*a*) a place where a company or other legal person
or association of natural or legal persons has its (i) statutory seat or place of
incorporation or central registered office, whichever is applicable, (ii) central
administration or (iii) principal place of business, and (*b*) the habitual residence
of a natural person.
30. “Competent court” means a court in a Contracting State that, according to
the rules on the internal allocation of jurisdiction among the courts of that State,
may exercise jurisdiction over the dispute.

Article 2

Interpretation of this Convention

In the interpretation of this Convention, regard is to be had to its international
character and to the need to promote uniformity in its application and the
observance of good faith in international trade.

Article 3

Form requirements

The notices, confirmation, consent, agreement, declaration and other communications
referred to in articles 19, paragraph 2; 23, paragraphs 1 to 4; 36, subparagraphs 1 (*b*), (*c*) and (*d*); 40, subparagraph 4 (*b*); 44; 48, paragraph 3;
51, subparagraph 1 (*b*); 59, paragraph 1; 63; 66; 67, paragraph 2; 75, paragraph
4; and 80, paragraphs 2 and 5, shall be in writing. Electronic communications
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may be used for these purposes, provided that the use of such means is with the
consent of the person by which it is communicated and of the person to which
it is communicated.

Article 4

Applicability of defences and limits of liability

1. Any provision of this Convention that may provide a defence for, or limit the liability of, the carrier applies in any judicial or arbitral proceeding, whether founded in contract, in tort, or otherwise, that is instituted in respect of loss of, damage to, or delay in delivery of goods covered by a contract of carriage or for the breach of any other obligation under this Convention against:
(*a*) The carrier or a maritime performing party;
(*b*) The master, crew or any other person that performs services on board the ship; or
(*c*) Employees of the carrier or a maritime performing party.
2. Any provision of this Convention that may provide a defence for the shipper or the documentary shipper applies in any judicial or arbitral proceeding, whether founded in contract, in tort, or otherwise, that is instituted against the shipper, the documentary shipper, or their subcontractors, agents or employees.
Chapter 2
Scope of application
Article 5
General scope of application
1. Subject to article 6, this Convention applies to contracts of carriage in which the place of receipt and the place of delivery are in different States, and the port of loading of a sea carriage and the port of discharge of the same sea carriage are in different States, if, according to the contract of carriage, any one of the following places is located in a Contracting State:
(*a*) The place of receipt;
(*b*) The port of loading;
(*c*) The place of delivery; or
(*d*) The port of discharge.
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2. This Convention applies without regard to the nationality of the vessel, the carrier, the performing parties, the shipper, the consignee, or any other interested parties.
Article 6
Specific exclusions
1. This Convention does not apply to the following contracts in liner transportation:
(*a*) Charter parties; and
(*b*) Other contracts for the use of a ship or of any space thereon.

2. This Convention does not apply to contracts of carriage in non-liner transportation except when:

(*a*) There is no charter party or other contract between the parties for the use of a ship or of any space thereon; and

(*b*) A transport document or an electronic transport record is issued.

Article 7

Application to certain parties

Notwithstanding article 6, this Convention applies as between the carrier and the consignee, controlling party or holder that is not an original party to the charter party or other contract of carriage excluded from the application of this Convention. However, this Convention does not apply as between the original parties to a contract of carriage excluded pursuant to article 6.

Chapter 3

Electronic transport records

Article 8

Use and effect of electronic transport records

Subject to the requirements set out in this Convention:

(*a*) Anything that is to be in or on a transport document under this Convention may be recorded in an electronic transport record, provided the issuance and subsequent use of an electronic transport record is with the consent of the carrier and the shipper; and

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(*b*) The issuance, exclusive control, or transfer of an electronic transport record has the same effect as the issuance, possession, or transfer of a transport document.

Article 9

Procedures for use of negotiable electronic transport records

1. The use of a negotiable electronic transport record shall be subject to procedures that provide for:

(*a*) The method for the issuance and the transfer of that record to an intended holder;

(*b*) An assurance that the negotiable electronic transport record retains its integrity;

(*c*) The manner in which the holder is able to demonstrate that it is the holder; and

(*d*) The manner of providing confirmation that delivery to the holder has been effected, or that, pursuant to articles 10, paragraph 2, or 47, subparagraphs

1 (*a*) (ii) and (*c*), the electronic transport record has ceased to have any effect or validity.

2. The procedures in paragraph 1 of this article shall be referred to in the contract particulars and be readily ascertainable.

Article 10

Replacement of negotiable transport document or negotiable electronic transport record

1. If a negotiable transport document has been issued and the carrier and the holder agree to replace that document by a negotiable electronic transport record:

(*a*) The holder shall surrender the negotiable transport document, or all of them if more than one has been issued, to the carrier;

(*b*) The carrier shall issue to the holder a negotiable electronic transport record that includes a statement that it replaces the negotiable transport document; and

(*c*) The negotiable transport document ceases thereafter to have any effect or validity.

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2. If a negotiable electronic transport record has been issued and the carrier and the holder agree to replace that electronic transport record by a negotiable transport document:

(*a*) The carrier shall issue to the holder, in place of the electronic transport record, a negotiable transport document that includes a statement that it replaces the negotiable electronic transport record; and

(*b*) The electronic transport record ceases thereafter to have any effect or validity.

Chapter 4

Obligations of the carrier

Article 11

Carriage and delivery of the goods

The carrier shall, subject to this Convention and in accordance with the terms of the contract of carriage, carry the goods to the place of destination and deliver them to the consignee.

Article 12

Period of responsibility of the carrier

1. The period of responsibility of the carrier for the goods under this Convention begins when the carrier or a performing party receives the goods

for carriage and ends when the goods are delivered.
2. (*a*) If the law or regulations of the place of receipt require the goods to
be handed over to an authority or other third party from which the carrier may
collect them, the period of responsibility of the carrier begins when the carrier
collects the goods from the authority or other third party.
(*b*) If the law or regulations of the place of delivery require the carrier to hand over the goods to an authority or other third party from which the consignee
may collect them, the period of responsibility of the carrier ends when the carrier hands the goods over to the authority or other third party.
3. For the purpose of determining the carrier's period of responsibility, the
parties may agree on the time and location of receipt and delivery of the goods,
but a provision in a contract of carriage is void to the extent that it provides
that:
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(*a*) The time of receipt of the goods is subsequent to the beginning of their initial loading under the contract of carriage; or
(*b*) The time of delivery of the goods is prior to the completion of their final unloading under the contract of carriage.
Article 13
Specific obligations
1. The carrier shall during the period of its responsibility as defined in article
12, and subject to article 26, properly and carefully receive, load, handle, stow,
carry, keep, care for, unload and deliver the goods.
2. Notwithstanding paragraph 1 of this article, and without prejudice to the
other provisions in chapter 4 and to chapters 5 to 7, the carrier and the shipper
may agree that the loading, handling, stowing or unloading of the goods is to be
performed by the shipper, the documentary shipper or the consignee. Such an
agreement shall be referred to in the contract particulars.
Article 14
Specific obligations applicable to the voyage by sea
The carrier is bound before, at the beginning of, and during the voyage by
sea to exercise due diligence to:
(*a*) Make and keep the ship seaworthy;
(*b*) Properly crew, equip and supply the ship and keep the ship so crewed,
equipped and supplied throughout the voyage; and
(*c*) Make and keep the holds and all other parts of the ship in which the

goods are carried, and any containers supplied by the carrier in or upon which the goods are carried, fit and safe for their reception, carriage and preservation.

Article 15

Goods that may become a danger

Notwithstanding articles 11 and 13, the carrier or a performing party may decline to receive or to load, and may take such other measures as are reasonable, including unloading, destroying, or rendering goods harmless, if the goods are, or reasonably appear likely to become during the carrier's period of responsibility, an actual danger to persons, property or the environment.

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Article 16

Sacrifice of the goods during the voyage by sea

Notwithstanding articles 11, 13, and 14, the carrier or a performing party may sacrifice goods at sea when the sacrifice is reasonably made for the common safety or for the purpose of preserving from peril human life or other property involved in the common adventure.

Chapter 5

Liability of the carrier for loss, damage or delay

Article 17

Basis of liability

1. The carrier is liable for loss of or damage to the goods, as well as for delay in delivery, if the claimant proves that the loss, damage, or delay, or the event or circumstance that caused or contributed to it took place during the period of the carrier's responsibility as defined in chapter 4.

2. The carrier is relieved of all or part of its liability pursuant to paragraph 1 of this article if it proves that the cause or one of the causes of the loss, damage, or delay is not attributable to its fault or to the fault of any person referred to in article 18.

3. The carrier is also relieved of all or part of its liability pursuant to paragraph 1 of this article if, alternatively to proving the absence of fault as provided in paragraph 2 of this article, it proves that one or more of the following events or circumstances caused or contributed to the loss, damage, or delay:

(*a*) Act of God;

(*b*) Perils, dangers, and accidents of the sea or other navigable waters;
(*c*) War, hostilities, armed conflict, piracy, terrorism, riots, and civil commotions;
(*d*) Quarantine restrictions; interference by or impediments created by governments, public authorities, rulers, or people including detention, arrest, or
seizure not attributable to the carrier or any person referred to in article 18;
(*e*) Strikes, lockouts, stoppages, or restraints of labour;
(*f*) Fire on the ship;
(*g*) Latent defects not discoverable by due diligence;
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(*h*) Act or omission of the shipper, the documentary shipper, the controlling
party, or any other person for whose acts the shipper or the documentary
shipper is liable pursuant to article 33 or 34;
(*i*) Loading, handling, stowing, or unloading of the goods performed pursuant to an agreement in accordance with article 13, paragraph 2, unless the
carrier or a performing party performs such activity on behalf of the shipper, the
documentary shipper or the consignee;
(*j*) Wastage in bulk or weight or any other loss or damage arising from inherent defect, quality, or vice of the goods;
(*k*) Insufficiency or defective condition of packing or marking not performed by or on behalf of the carrier;
(*l*) Saving or attempting to save life at sea;
(*m*) Reasonable measures to save or attempt to save property at sea;
(*n*) Reasonable measures to avoid or attempt to avoid damage to the environment; or
(*o*) Acts of the carrier in pursuance of the powers conferred by articles 15
and 16.
4. Notwithstanding paragraph 3 of this article, the carrier is liable for all or
part of the loss, damage, or delay:
(*a*) If the claimant proves that the fault of the carrier or of a person referred to in article 18 caused or contributed to the event or circumstance on
which the carrier relies; or
(*b*) If the claimant proves that an event or circumstance not listed in paragraph
3 of this article contributed to the loss, damage, or delay, and the carrier
cannot prove that this event or circumstance is not attributable to its fault or to
the fault of any person referred to in article 18.
5. The carrier is also liable, notwithstanding paragraph 3 of this article, for all
or part of the loss, damage, or delay if:

(*a*) The claimant proves that the loss, damage, or delay was or was probably caused by or contributed to by (i) the unseaworthiness of the ship; (ii) the improper crewing, equipping, and supplying of the ship; or (iii) the fact that the holds or other parts of the ship in which the goods are carried, or any containers supplied by the carrier in or upon which the goods are carried, were not fit and safe for reception, carriage, and preservation of the goods; and

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(*b*) The carrier is unable to prove either that: (i) none of the events or circumstances referred to in subparagraph 5 (*a*) of this article caused the loss, damage, or delay; or (ii) it complied with its obligation to exercise due diligence pursuant to article 14.

6. When the carrier is relieved of part of its liability pursuant to this article, the carrier is liable only for that part of the loss, damage or delay that is attributable to the event or circumstance for which it is liable pursuant to this article.

Article 18

Liability of the carrier for other persons

The carrier is liable for the breach of its obligations under this Convention caused by the acts or omissions of:

(*a*) Any performing party;

(*b*) The master or crew of the ship;

(*c*) Employees of the carrier or a performing party; or

(*d*) Any other person that performs or undertakes to perform any of the carrier's obligations under the contract of carriage, to the extent that the person acts, either directly or indirectly, at the carrier's request or under the carrier's supervision or control.

Article 19

Liability of maritime performing parties

1. A maritime performing party is subject to the obligations and liabilities imposed on the carrier under this Convention and is entitled to the carrier's defences and limits of liability as provided for in this Convention if:

(*a*) The maritime performing party received the goods for carriage in a Contracting State, or delivered them in a Contracting State, or performed its activities with respect to the goods in a port in a Contracting State; and

**(*b*) The occurrence that caused the loss, damage or delay took place: (i)
during the period between the arrival of the goods at the port of loading of the
ship and their departure from the port of discharge from the ship; (ii) while the
maritime performing party had custody of the goods; or (iii) at any other time
to the extent that it was participating in the performance of any of the activities
contemplated by the contract of carriage.**
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**2. If the carrier agrees to assume obligations other than those imposed on
the carrier under this Convention, or agrees that the limits of its liability are
higher than the limits specified under this Convention, a maritime performing
party is not bound by this agreement unless it expressly agrees to accept such
obligations or such higher limits.**
**3. A maritime performing party is liable for the breach of its obligations under
this Convention caused by the acts or omissions of any person to which it has
entrusted the performance of any of the carrier's obligations under the contract
of carriage under the conditions set out in paragraph 1 of this article.**
**4. Nothing in this Convention imposes liability on the master or crew of the
ship or on an employee of the carrier or of a maritime performing party.**
Article 20
Joint and several liability
**1. If the carrier and one or more maritime performing parties are liable for the
loss of, damage to, or delay in delivery of the goods, their liability is joint and
several but only up to the limits provided for under this Convention.**
**2. Without prejudice to article 61, the aggregate liability of all such persons
shall not exceed the overall limits of liability under this Convention.**
Article 21
Delay
**Delay in delivery occurs when the goods are not delivered at the place of
destination provided for in the contract of carriage within the time agreed.**
Article 22
Calculation of compensation

1. Subject to article 59, the compensation payable by the carrier for loss of or damage to the goods is calculated by reference to the value of such goods at the place and time of delivery established in accordance with article 43.

2. The value of the goods is fixed according to the commodity exchange price or, if there is no such price, according to their market price or, if there is no commodity exchange price or market price, by reference to the normal value of the goods of the same kind and quality at the place of delivery.

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3. In case of loss of or damage to the goods, the carrier is not liable for payment of any compensation beyond what is provided for in paragraphs 1 and 2 of this article except when the carrier and the shipper have agreed to calculate compensation in a different manner within the limits of chapter 16.

Article 23

Notice in case of loss, damage or delay

1. The carrier is presumed, in absence of proof to the contrary, to have delivered the goods according to their description in the contract particulars unless notice of loss of or damage to the goods, indicating the general nature of such loss or damage, was given to the carrier or the performing party that delivered the goods before or at the time of the delivery, or, if the loss or damage is not apparent, within seven working days at the place of delivery after the delivery of the goods.

2. Failure to provide the notice referred to in this article to the carrier or the performing party shall not affect the right to claim compensation for loss of or damage to the goods under this Convention, nor shall it affect the allocation of the burden of proof set out in article 17.

3. The notice referred to in this article is not required in respect of loss or damage that is ascertained in a joint inspection of the goods by the person to which they have been delivered and the carrier or the maritime performing party against which liability is being asserted.

4. No compensation in respect of delay is payable unless notice of loss due to

**delay was given to the carrier within twenty-one consecutive days of delivery
of the goods.**
**5. When the notice referred to in this article is given to the performing party
that delivered the goods, it has the same effect as if that notice was given to the
carrier, and notice given to the carrier has the same effect as a notice given to a
maritime performing party.**
**6. In the case of any actual or apprehended loss or damage, the parties to the
dispute shall give all reasonable facilities to each other for inspecting and tallying
the goods and shall provide access to records and documents relevant to the
carriage of the goods.**
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Chapter 6
Additional provisions relating to particular stages of carriage
Article 24
Deviation
**When pursuant to applicable law a deviation constitutes a breach of the
carrier's obligations, such deviation of itself shall not deprive the carrier or
a maritime performing party of any defence or limitation of this Convention,
except to the extent provided in article 61.**
Article 25
Deck cargo on ships
1. Goods may be carried on the deck of a ship only if:
(*a*) Such carriage is required by law;
**(*b*) They are carried in or on containers or vehicles that are fit for deck carriage, and the decks are specially fitted to carry such containers or vehicles;
or**
**(*c*) The carriage on deck is in accordance with the contract of carriage, or
the customs, usages or practices of the trade in question.**
**2. The provisions of this Convention relating to the liability of the carrier
apply to the loss of, damage to or delay in the delivery of goods carried on deck
pursuant to paragraph 1 of this article, but the carrier is not liable for loss of
or damage to such goods, or delay in their delivery, caused by the special risks
involved in their carriage on deck when the goods are carried in accordance
with subparagraphs 1 (*a*) or (*c*) of this article.**

3. If the goods have been carried on deck in cases other than those permitted pursuant to paragraph 1 of this article, the carrier is liable for loss of or damage to the goods or delay in their delivery that is exclusively caused by their carriage on deck, and is not entitled to the defences provided for in article 17.

4. The carrier is not entitled to invoke subparagraph 1 (*c*) of this article against a third party that has acquired a negotiable transport document or a negotiable electronic transport record in good faith, unless the contract particulars state that the goods may be carried on deck.

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5. If the carrier and shipper expressly agreed that the goods would be carried under deck, the carrier is not entitled to the benefit of the limitation of liability for any loss of, damage to or delay in the delivery of the goods to the extent that such loss, damage, or delay resulted from their carriage on deck.

Article 26

Carriage preceding or subsequent to sea carriage

When loss of or damage to goods, or an event or circumstance causing a delay in their delivery, occurs during the carrier's period of responsibility but solely before their loading onto the ship or solely after their discharge from the ship, the provisions of this Convention do not prevail over those provisions of another international instrument that, at the time of such loss, damage or event or circumstance causing delay:

(*a*) Pursuant to the provisions of such international instrument would have applied to all or any of the carrier's activities if the shipper had made a separate and direct contract with the carrier in respect of the particular stage of carriage where the loss of, or damage to goods, or an event or circumstance causing delay in their delivery occurred;

(*b*) Specifically provide for the carrier's liability, limitation of liability, or time for suit; and

(*c*) Cannot be departed from by contract either at all or to the detriment of the shipper under that instrument.

Chapter 7

Obligations of the shipper to the carrier

Article 27

Delivery for carriage

1. Unless otherwise agreed in the contract of carriage, the shipper shall deliver the goods ready for carriage. In any event, the shipper shall deliver the goods in such condition that they will withstand the intended carriage, including their loading, handling, stowing, lashing and securing, and unloading, and that they will not cause harm to persons or property.

2. The shipper shall properly and carefully perform any obligation assumed under an agreement made pursuant to article 13, paragraph 2.

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3. When a container is packed or a vehicle is loaded by the shipper, the shipper shall properly and carefully stow, lash and secure the contents in or on the container or vehicle, and in such a way that they will not cause harm to persons or property.

Article 28

Cooperation of the shipper and the carrier in providing information and instructions

The carrier and the shipper shall respond to requests from each other to provide information and instructions required for the proper handling and carriage of the goods if the information is in the requested party's possession or the instructions are within the requested party's reasonable ability to provide and they are not otherwise reasonably available to the requesting party.

Article 29

Shipper's obligation to provide information, instructions and documents

1. The shipper shall provide to the carrier in a timely manner such information, instructions and documents relating to the goods that are not otherwise reasonably available to the carrier, and that are reasonably necessary:

(*a*) For the proper handling and carriage of the goods, including precautions to be taken by the carrier or a performing party; and

(*b*) For the carrier to comply with law, regulations or other requirements of public authorities in connection with the intended carriage, provided that the carrier notifies the shipper in a timely manner of the information, instructions

and documents it requires.
2. Nothing in this article affects any specific obligation to provide certain information, instructions and documents related to the goods pursuant to law, regulations or other requirements of public authorities in connection with the intended carriage.

Article 30
Basis of shipper's liability to the carrier

1. The shipper is liable for loss or damage sustained by the carrier if the carrier proves that such loss or damage was caused by a breach of the shipper's obligations under this Convention.
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2. Except in respect of loss or damage caused by a breach by the shipper of its obligations pursuant to articles 31, paragraph 2, and 32, the shipper is relieved of all or part of its liability if the cause or one of the causes of the loss or damage is not attributable to its fault or to the fault of any person referred to in article 34.
3. When the shipper is relieved of part of its liability pursuant to this article, the shipper is liable only for that part of the loss or damage that is attributable to its fault or to the fault of any person referred to in article 34.

Article 31
Information for compilation of contract particulars

1. The shipper shall provide to the carrier, in a timely manner, accurate information required for the compilation of the contract particulars and the issuance of the transport documents or electronic transport records, including the particulars referred to in article 36, paragraph 1; the name of the party to be identified as the shipper in the contract particulars; the name of the consignee, if any; and the name of the person to whose order the transport document or electronic transport record is to be issued, if any.
2. The shipper is deemed to have guaranteed the accuracy at the time of receipt by the carrier of the information that is provided according to paragraph 1 of this article. The shipper shall indemnify the carrier against loss or damage

resulting from the inaccuracy of such information.

Article 32

Special rules on dangerous goods

When goods by their nature or character are, or reasonably appear likely to become, a danger to persons, property or the environment:

(*a*) The shipper shall inform the carrier of the dangerous nature or character of the goods in a timely manner before they are delivered to the carrier or a performing party. If the shipper fails to do so and the carrier or performing party does not otherwise have knowledge of their dangerous nature or character, the shipper is liable to the carrier for loss or damage resulting from such failure to inform; and

(*b*) The shipper shall mark or label dangerous goods in accordance with any law, regulations or other requirements of public authorities that apply during any stage of the intended carriage of the goods. If the shipper fails to do so, it is liable to the carrier for loss or damage resulting from such failure.

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Article 33

Assumption of shipper's rights and obligations by the documentary shipper

1. A documentary shipper is subject to the obligations and liabilities imposed on the shipper pursuant to this chapter and pursuant to article 55, and is entitled to the shipper's rights and defences provided by this chapter and by chapter 13.

2. Paragraph 1 of this article does not affect the obligations, liabilities, rights or defences of the shipper.

Article 34

Liability of the shipper for other persons

The shipper is liable for the breach of its obligations under this Convention caused by the acts or omissions of any person, including employees, agents and subcontractors, to which it has entrusted the performance of any of its obligations, but the shipper is not liable for acts or omissions of the carrier or a performing party acting on behalf of the carrier, to which the shipper has entrusted the performance of its obligations.

Chapter 8

Transport documents and electronic transport records

Article 35
Issuance of the transport document or the electronic transport record
Unless the shipper and the carrier have agreed not to use a transport document or an electronic transport record, or it is the custom, usage or practice of the trade not to use one, upon delivery of the goods for carriage to the carrier or performing party, the shipper or, if the shipper consents, the documentary shipper, is entitled to obtain from the carrier, at the shipper's option:
(*a*) A non-negotiable transport document or, subject to article 8, subparagraph (*a*), a non-negotiable electronic transport record; or
(*b*) An appropriate negotiable transport document or, subject to article 8, subparagraph (*a*), a negotiable electronic transport record, unless the shipper and the carrier have agreed not to use a negotiable transport document or negotiable electronic transport record, or it is the custom, usage or practice of the trade not to use one.
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Article 36
Contract particulars
1. The contract particulars in the transport document or electronic transport record referred to in article 35 shall include the following information, as furnished by the shipper:
(*a*) A description of the goods as appropriate for the transport;
(*b*) The leading marks necessary for identification of the goods;
(*c*) The number of packages or pieces, or the quantity of goods; and
(*d*) The weight of the goods, if furnished by the shipper.
2. The contract particulars in the transport document or electronic transport record referred to in article 35 shall also include:
(*a*) A statement of the apparent order and condition of the goods at the time the carrier or a performing party receives them for carriage;
(*b*) The name and address of the carrier;
(*c*) The date on which the carrier or a performing party received the goods, or on which the goods were loaded on board the ship, or on which the transport document or electronic transport record was issued; and
(*d*) If the transport document is negotiable, the number of originals of the negotiable transport document, when more than one original is issued.
3. The contract particulars in the transport document or electronic transport record referred to in article 35 shall further include:

(*a*) The name and address of the consignee, if named by the shipper;
(*b*) The name of a ship, if specified in the contract of carriage;
(*c*) The place of receipt and, if known to the carrier, the place of delivery;
and
(*d*) The port of loading and the port of discharge, if specified in the contract of carriage.
4. For the purposes of this article, the phrase "apparent order and condition of
the goods" in subparagraph 2 (*a*) of this article refers to the order and condition
of the goods based on:
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(*a*) A reasonable external inspection of the goods as packaged at the time
the shipper delivers them to the carrier or a performing party; and
(*b*) Any additional inspection that the carrier or a performing party actually
performs before issuing the transport document or electronic transport record.
Article 37
Identity of the carrier
1. If a carrier is identified by name in the contract particulars, any other information
in the transport document or electronic transport record relating to the identity of the carrier shall have no effect to the extent that it is inconsistent with
that identification.
2. If no person is identified in the contract particulars as the carrier as required
pursuant to article 36, subparagraph 2 (*b*), but the contract particulars indicate
that the goods have been loaded on board a named ship, the registered owner of
that ship is presumed to be the carrier, unless it proves that the ship was under
a bareboat charter at the time of the carriage and it identifies this bareboat charterer
and indicates its address, in which case this bareboat charterer is presumed
to be the carrier. Alternatively, the registered owner may rebut the presumption
of being the carrier by identifying the carrier and indicating its address. The
bareboat charterer may rebut any presumption of being the carrier in the same
manner.
3. Nothing in this article prevents the claimant from proving that any
person other than a person identified in the contract particulars or pursuant to

paragraph 2 of this article is the carrier.

Article 38

Signature

1. A transport document shall be signed by the carrier or a person acting on its behalf.

2. An electronic transport record shall include the electronic signature of the carrier or a person acting on its behalf. Such electronic signature shall identify the signatory in relation to the electronic transport record and indicate the carrier's authorization of the electronic transport record.

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Article 39

Deficiencies in the contract particulars

1. The absence or inaccuracy of one or more of the contract particulars referred to in article 36, paragraphs 1, 2 or 3, does not of itself affect the legal character or validity of the transport document or of the electronic transport record.

2. If the contract particulars include the date but fail to indicate its significance, the date is deemed to be:

(*a*) The date on which all of the goods indicated in the transport document or electronic transport record were loaded on board the ship, if the contract particulars indicate that the goods have been loaded on board a ship; or

(*b*) The date on which the carrier or a performing party received the goods, if the contract particulars do not indicate that the goods have been loaded on board a ship.

3. If the contract particulars fail to state the apparent order and condition of the goods at the time the carrier or a performing party receives them, the contract particulars are deemed to have stated that the goods were in apparent good order and condition at the time the carrier or a performing party received them.

Article 40

Qualifying the information relating to the goods in the contract particulars

1. The carrier shall qualify the information referred to in article 36, paragraph 1,

to indicate that the carrier does not assume responsibility for the accuracy of the information furnished by the shipper if:

(*a*) The carrier has actual knowledge that any material statement in the transport document or electronic transport record is false or misleading; or

(*b*) The carrier has reasonable grounds to believe that a material statement in the transport document or electronic transport record is false or misleading.

2. Without prejudice to paragraph 1 of this article, the carrier may qualify the information referred to in article 36, paragraph 1, in the circumstances and in the manner set out in paragraphs 3 and 4 of this article to indicate that the carrier does not assume responsibility for the accuracy of the information furnished by the shipper.

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3. When the goods are not delivered for carriage to the carrier or a performing party in a closed container or vehicle, or when they are delivered in a closed container or vehicle and the carrier or a performing party actually inspects them, the carrier may qualify the information referred to in article 36, paragraph 1, if:

(*a*) The carrier had no physically practicable or commercially reasonable means of checking the information furnished by the shipper, in which case it may indicate which information it was unable to check; or

(*b*) The carrier has reasonable grounds to believe the information furnished by the shipper to be inaccurate, in which case it may include a clause providing what it reasonably considers accurate information.

4. When the goods are delivered for carriage to the carrier or a performing party in a closed container or vehicle, the carrier may qualify the information referred to in:

(*a*) Article 36, subparagraphs 1 (*a*), (*b*), or (*c*), if:

(i) The goods inside the container or vehicle have not actually been inspected by the carrier or a performing party; and

(ii) Neither the carrier nor a performing party otherwise has actual knowledge of its contents before issuing the transport document or the electronic transport record; and

(*b*) Article 36, subparagraph 1 (*d*), if:
(i) Neither the carrier nor a performing party weighed the container or vehicle, and the shipper and the carrier had not agreed prior to the shipment
that the container or vehicle would be weighed and the weight would be
included in the contract particulars; or
(ii) There was no physically practicable or commercially reasonable means of checking the weight of the container or vehicle.

Article 41

Evidentiary effect of the contract particulars

Except to the extent that the contract particulars have been qualified in the
circumstances and in the manner set out in article 40:
(*a*) A transport document or an electronic transport record is prima facie evidence of the carrier's receipt of the goods as stated in the contract
particulars;
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(*b*) Proof to the contrary by the carrier in respect of any contract particulars
shall not be admissible, when such contract particulars are included in:
(i) A negotiable transport document or a negotiable electronic transport
record that is transferred to a third party acting in good faith; or
(ii) A non-negotiable transport document that indicates that it must be surrendered in order to obtain delivery of the goods and is transferred to
the consignee acting in good faith;
(*c*) Proof to the contrary by the carrier shall not be admissible against a consignee that in good faith has acted in reliance on any of the following
contract particulars included in a non-negotiable transport document or a non
negotiable electronic transport record:
(i) The contract particulars referred to in article 36, paragraph 1, when such contract particulars are furnished by the carrier;
(ii) The number, type and identifying numbers of the containers, but not
the identifying numbers of the container seals; and
(iii) The contract particulars referred to in article 36, paragraph 2.

Article 42

"Freight prepaid"

If the contract particulars contain the statement "freight prepaid" or a statement
of a similar nature, the carrier cannot assert against the holder or the consignee
the fact that the freight has not been paid. This article does not apply if
the holder or the consignee is also the shipper.

Chapter 9

Delivery of the goods

Article 43

Obligation to accept delivery

When the goods have arrived at their destination, the consignee that demands delivery of the goods under the contract of carriage shall accept delivery of the goods at the time or within the time period and at the location agreed in the contract of carriage or, failing such agreement, at the time and location at which, having regard to the terms of the contract, the customs, usages or practices of the trade and the circumstances of the carriage, delivery could reasonably be expected.

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Article 44

Obligation to acknowledge receipt

On request of the carrier or the performing party that delivers the goods, the consignee shall acknowledge receipt of the goods from the carrier or the performing party in the manner that is customary at the place of delivery. The carrier may refuse delivery if the consignee refuses to acknowledge such receipt.

Article 45

Delivery when no negotiable transport document or negotiable electronic transport record is issued

When neither a negotiable transport document nor a negotiable electronic transport record has been issued:

(*a*) The carrier shall deliver the goods to the consignee at the time and location referred to in article 43. The carrier may refuse delivery if the person claiming to be the consignee does not properly identify itself as the consignee on the request of the carrier;

(*b*) If the name and address of the consignee are not referred to in the contract particulars, the controlling party shall prior to or upon the arrival of the goods at the place of destination advise the carrier of such name and address;

(*c*) Without prejudice to article 48, paragraph 1, if the goods are not deliverable because (i) the consignee, after having received a notice of arrival, does not, at the time or within the time period referred to in article 43, claim delivery of the goods from the carrier after their arrival at the place of destination, (ii) the

carrier refuses delivery because the person claiming to be the consignee does not properly identify itself as the consignee, or (iii) the carrier is, after reasonable effort, unable to locate the consignee in order to request delivery instructions, the carrier may so advise the controlling party and request instructions in respect of the delivery of the goods. If, after reasonable effort, the carrier is unable to locate the controlling party, the carrier may so advise the shipper and request instructions in respect of the delivery of the goods. If, after reasonable effort, the carrier is unable to locate the shipper, the carrier may so advise the documentary shipper and request instructions in respect of the delivery of the goods;

(*d*) The carrier that delivers the goods upon instruction of the controlling party, the shipper or the documentary shipper pursuant to subparagraph (*c*) of this article is discharged from its obligations to deliver the goods under the contract of carriage.

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Article 46

Delivery when a non-negotiable transport document that requires surrender is issued

When a non-negotiable transport document has been issued that indicates that it shall be surrendered in order to obtain delivery of the goods:

(*a*) The carrier shall deliver the goods at the time and location referred to in article 43 to the consignee upon the consignee properly identifying itself on the request of the carrier and surrender of the non-negotiable document. The carrier may refuse delivery if the person claiming to be the consignee fails to properly identify itself on the request of the carrier, and shall refuse delivery if the non-negotiable document is not surrendered. If more than one original of the non-negotiable document has been issued, the surrender of one original will suffice and the other originals cease to have any effect or validity;

(*b*) Without prejudice to article 48, paragraph 1, if the goods are not deliverable because (i) the consignee, after having received a notice of arrival, does

not, at the time or within the time period referred to in article 43, claim delivery of the goods from the carrier after their arrival at the place of destination, (ii) the carrier refuses delivery because the person claiming to be the consignee does not properly identify itself as the consignee or does not surrender the document, or (iii) the carrier is, after reasonable effort, unable to locate the consignee in order to request delivery instructions, the carrier may so advise the shipper and request instructions in respect of the delivery of the goods. If, after reasonable effort, the carrier is unable to locate the shipper, the carrier may so advise the documentary shipper and request instructions in respect of the delivery of the goods;

(*c*) The carrier that delivers the goods upon instruction of the shipper or the documentary shipper pursuant to subparagraph (*b*) of this article is discharged from its obligation to deliver the goods under the contract of carriage, irrespective of whether the non-negotiable transport document has been surrendered to it.

Article 47

Delivery when a negotiable transport document or negotiable electronic transport record is issued

1. When a negotiable transport document or a negotiable electronic transport record has been issued:

(*a*) The holder of the negotiable transport document or negotiable electronic transport record is entitled to claim delivery of the goods from the carrier after they have arrived at the place of destination, in which event the carrier shall deliver the goods at the time and location referred to in article 43 to the holder:

(i) Upon surrender of the negotiable transport document and, if the holder is one of the persons referred to in article 1, subparagraph 10 (*a*) (i), upon the holder properly identifying itself; or

(ii) Upon demonstration by the holder, in accordance with the procedures referred to in article 9, paragraph 1, that it is the holder of the negotiable electronic transport record;

(*b*) The carrier shall refuse delivery if the requirements of subparagraph (*a*) (i) or (*a*) (ii) of this paragraph are not met;

(*c*) If more than one original of the negotiable transport document has been issued, and the number of originals is stated in that document, the surrender of one original will suffice and the other originals cease to have any effect or validity. When a negotiable electronic transport record has been used, such electronic transport record ceases to have any effect or validity upon delivery to the holder in accordance with the procedures required by article 9, paragraph 1.

2. Without prejudice to article 48, paragraph 1, if the negotiable transport document or the negotiable electronic transport record expressly states that the goods may be delivered without the surrender of the transport document or the electronic transport record, the following rules apply:

(*a*) If the goods are not deliverable because (i) the holder, after having received a notice of arrival, does not, at the time or within the time period referred to in article 43, claim delivery of the goods from the carrier after their arrival at the place of destination, (ii) the carrier refuses delivery because the person claiming to be a holder does not properly identify itself as one of the persons referred to in article 1, subparagraph 10 (*a*) (i), or (iii) the carrier is, after reasonable effort, unable to locate the holder in order to request delivery instructions, the carrier may so advise the shipper and request instructions in respect of the delivery of the goods. If, after reasonable effort, the carrier is unable to locate the shipper, the carrier may so advise the documentary shipper and request instructions in respect of the delivery of the goods;

(*b*) The carrier that delivers the goods upon instruction of the shipper or the documentary shipper in accordance with subparagraph 2 (*a*) of this article is discharged from its obligation to deliver the goods under the contract of carriage to the holder, irrespective of whether the negotiable transport document

has been surrendered to it, or the person claiming delivery under a negotiable
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electronic transport record has demonstrated, in accordance with the procedures
referred to in article 9, paragraph 1, that it is the holder;
(*c*) The person giving instructions under subparagraph 2 (*a*) of this article
shall indemnify the carrier against loss arising from its being held liable to
the holder under subparagraph 2 (*e*) of this article. The carrier may refuse to
follow those instructions if the person fails to provide adequate security as the
carrier may reasonably request;
(*d*) A person that becomes a holder of the negotiable transport document
or the negotiable electronic transport record after the carrier has delivered the
goods pursuant to subparagraph 2 (*b*) of this article, but pursuant to contractual
or other arrangements made before such delivery acquires rights against the
carrier under the contract of carriage, other than the right to claim delivery of
the goods;
(*e*) Notwithstanding subparagraphs 2 (*b*) and 2 (*d*) of this article, a holder
that becomes a holder after such delivery, and that did not have and could not
reasonably have had knowledge of such delivery at the time it became a holder,
acquires the rights incorporated in the negotiable transport document or negotiable
electronic transport record. When the contract particulars state the expected
time of arrival of the goods, or indicate how to obtain information as to whether
the goods have been delivered, it is presumed that the holder at the time that it
became a holder had or could reasonably have had knowledge of the delivery of
the goods.

Article 48

Goods remaining undelivered

1. For the purposes of this article, goods shall be deemed to have remained
undelivered only if, after their arrival at the place of destination:
(*a*) The consignee does not accept delivery of the goods pursuant to this
chapter at the time and location referred to in article 43;

(*b*) The controlling party, the holder, the shipper or the documentary shipper cannot be found or does not give the carrier adequate instructions
pursuant to articles 45, 46 and 47;
(*c*) The carrier is entitled or required to refuse delivery pursuant to articles 44, 45, 46 and 47;
(*d*) The carrier is not allowed to deliver the goods to the consignee pursuant to the law or regulations of the place at which delivery is requested; or
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(*e*) The goods are otherwise undeliverable by the carrier.
2. Without prejudice to any other rights that the carrier may have against the
shipper, controlling party or consignee, if the goods have remained undelivered,
the carrier may, at the risk and expense of the person entitled to the goods, take
such action in respect of the goods as circumstances may reasonably require,
including:
(*a*) To store the goods at any suitable place;
(*b*) To unpack the goods if they are packed in containers or vehicles, or to act otherwise in respect of the goods, including by moving them; and
(*c*) To cause the goods to be sold or destroyed in accordance with the practices or pursuant to the law or regulations of the place where the goods are
located at the time.
3. The carrier may exercise the rights under paragraph 2 of this article only
after it has given reasonable notice of the intended action under paragraph 2
of this article to the person stated in the contract particulars as the person, if
any, to be notified of the arrival of the goods at the place of destination, and to
one of the following persons in the order indicated, if known to the carrier: the
consignee, the controlling party or the shipper.
4. If the goods are sold pursuant to subparagraph 2 (*c*) of this article, the carrier
shall hold the proceeds of the sale for the benefit of the person entitled to
the goods, subject to the deduction of any costs incurred by the carrier and any
other amounts that are due to the carrier in connection with the carriage of those
goods.
5. The carrier shall not be liable for loss of or damage to goods that occurs

during the time that they remain undelivered pursuant to this article unless the claimant proves that such loss or damage resulted from the failure by the carrier to take steps that would have been reasonable in the circumstances to preserve the goods and that the carrier knew or ought to have known that the loss or damage to the goods would result from its failure to take such steps.

Article 49

Retention of goods

Nothing in this Convention affects a right of the carrier or a performing party that may exist pursuant to the contract of carriage or the applicable law to retain the goods to secure the payment of sums due.

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Chapter 10

Rights of the controlling party

Article 50

Exercise and extent of right of control

1. The right of control may be exercised only by the controlling party and is limited to:

(*a*) The right to give or modify instructions in respect of the goods that do not constitute a variation of the contract of carriage;

(*b*) The right to obtain delivery of the goods at a scheduled port of call or, in respect of inland carriage, any place en route; and

(*c*) The right to replace the consignee by any other person including the controlling party.

2. The right of control exists during the entire period of responsibility of the carrier, as provided in article 12, and ceases when that period expires.

Article 51

Identity of the controlling party and transfer of the right of control

1. Except in the cases referred to in paragraphs 2, 3 and 4 of this article:

(*a*) The shipper is the controlling party unless the shipper, when the contract of carriage is concluded, designates the consignee, the documentary shipper or another person as the controlling party;

(*b*) The controlling party is entitled to transfer the right of control to another person. The transfer becomes effective with respect to the carrier upon its notification of the transfer by the transferor, and the transferee becomes the controlling party; and

(*c*) The controlling party shall properly identify itself when it exercises the right of control.

2. When a non-negotiable transport document has been issued that indicates that it shall be surrendered in order to obtain delivery of the goods:
(*a*) The shipper is the controlling party and may transfer the right of control to the consignee named in the transport document by transferring the
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document to that person without endorsement. If more than one original of the document was issued, all originals shall be transferred in order to effect a transfer of the right of control; and
(*b*) In order to exercise its right of control, the controlling party shall produce the document and properly identify itself. If more than one original of the document was issued, all originals shall be produced, failing which the right of control cannot be exercised.
3. When a negotiable transport document is issued:
(*a*) The holder or, if more than one original of the negotiable transport document is issued, the holder of all originals is the controlling party;
(*b*) The holder may transfer the right of control by transferring the negotiable transport document to another person in accordance with article 57. If more than one original of that document was issued, all originals shall be transferred to that person in order to effect a transfer of the right of control; and
(*c*) In order to exercise the right of control, the holder shall produce the negotiable transport document to the carrier, and if the holder is one of the persons referred to in article 1, subparagraph 10 (*a*) (i), the holder shall properly identify itself. If more than one original of the document was issued, all originals shall be produced, failing which the right of control cannot be exercised.
4. When a negotiable electronic transport record is issued:
(*a*) The holder is the controlling party;
(*b*) The holder may transfer the right of control to another person by transferring the negotiable electronic transport record in accordance with the procedures referred to in article 9, paragraph 1; and
(*c*) In order to exercise the right of control, the holder shall demonstrate, in accordance with the procedures referred to in article 9, paragraph 1, that it is the holder.

Article 52
Carrier's execution of instructions

1. Subject to paragraphs 2 and 3 of this article, the carrier shall execute the instructions referred to in article 50 if:

(*a*) The person giving such instructions is entitled to exercise the right of control;

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(*b*) The instructions can reasonably be executed according to their terms at the moment that they reach the carrier; and

(*c*) The instructions will not interfere with the normal operations of the carrier, including its delivery practices.

2. In any event, the controlling party shall reimburse the carrier for any reasonable additional expense that the carrier may incur and shall indemnify the carrier against loss or damage that the carrier may suffer as a result of diligently executing any instruction pursuant to this article, including compensation that the carrier may become liable to pay for loss of or damage to other goods being carried.

3. The carrier is entitled to obtain security from the controlling party for the amount of additional expense, loss or damage that the carrier reasonably expects will arise in connection with the execution of an instruction pursuant to this article. The carrier may refuse to carry out the instructions if no such security is provided.

4. The carrier's liability for loss of or damage to the goods or for delay in delivery resulting from its failure to comply with the instructions of the controlling party in breach of its obligation pursuant to paragraph 1 of this article shall be subject to articles 17 to 23, and the amount of the compensation payable by the carrier shall be subject to articles 59 to 61.

Article 53

Deemed delivery

Goods that are delivered pursuant to an instruction in accordance with article 52, paragraph 1, are deemed to be delivered at the place of destination, and the provisions of chapter 9 relating to such delivery apply to such goods.

Article 54

Variations to the contract of carriage

1. The controlling party is the only person that may agree with the carrier to variations to the contract of carriage other than those referred to in article 50, subparagraphs 1 (*b*) and (*c*).

2. Variations to the contract of carriage, including those referred to in article 50, subparagraphs 1 (*b*) and (*c*), shall be stated in a negotiable transport document or in a non-negotiable transport document that requires surrender,

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or incorporated in a negotiable electronic transport record, or, upon the request of the controlling party, shall be stated in a non-negotiable transport document or incorporated in a non-negotiable electronic transport record. If so stated or incorporated, such variations shall be signed in accordance with article 38.

Article 55

Providing additional information, instructions or documents to carrier

1. The controlling party, on request of the carrier or a performing party, shall provide in a timely manner information, instructions or documents relating to the goods not yet provided by the shipper and not otherwise reasonably available to the carrier that the carrier may reasonably need to perform its obligations under the contract of carriage.

2. If the carrier, after reasonable effort, is unable to locate the controlling party or the controlling party is unable to provide adequate information, instructions or documents to the carrier, the shipper shall provide them. If the carrier, after reasonable effort, is unable to locate the shipper, the documentary shipper shall provide such information, instructions or documents.

Article 56

Variation by agreement

The parties to the contract of carriage may vary the effect of articles 50, subparagraphs 1 (*b*) and (*c*), 50, paragraph 2, and 52. The parties may also restrict or exclude the transferability of the right of control referred to in article 51, subparagraph 1 (*b*).

Chapter 11

Transfer of rights

Article 57
When a negotiable transport document or negotiable electronic transport record is issued

1. When a negotiable transport document is issued, the holder may transfer the rights incorporated in the document by transferring it to another person:

(*a*) Duly endorsed either to such other person or in blank, if an order document; or

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(*b*) Without endorsement, if: (i) a bearer document or a blank endorsed document; or (ii) a document made out to the order of a named person and the transfer is between the first holder and the named person.

2. When a negotiable electronic transport record is issued, its holder may transfer the rights incorporated in it, whether it be made out to order or to the order of a named person, by transferring the electronic transport record in accordance with the procedures referred to in article 9, paragraph 1.

Article 58
Liability of holder

1. Without prejudice to article 55, a holder that is not the shipper and that does not exercise any right under the contract of carriage does not assume any liability under the contract of carriage solely by reason of being a holder.

2. A holder that is not the shipper and that exercises any right under the contract of carriage assumes any liabilities imposed on it under the contract of carriage to the extent that such liabilities are incorporated in or ascertainable from the negotiable transport document or the negotiable electronic transport record.

3. For the purposes of paragraphs 1 and 2 of this article, a holder that is not the shipper does not exercise any right under the contract of carriage solely because:

(*a*) It agrees with the carrier, pursuant to article 10, to replace a negotiable transport document by a negotiable electronic transport record or to replace a negotiable electronic transport record by a negotiable transport document; or

(*b*) It transfers its rights pursuant to article 57.

Chapter 12
Limits of liability

Article 59
Limits of liability

1. Subject to articles 60 and 61, paragraph 1, the carrier's liability for breaches of its obligations under this Convention is limited to 875 units of account per package or other shipping unit, or 3 units of account per kilogram of the gross weight of the goods that are the subject of the claim or dispute, whichever

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amount is the higher, except when the value of the goods has been declared by the shipper and included in the contract particulars, or when a higher amount than the amount of limitation of liability set out in this article has been agreed upon between the carrier and the shipper.

2. When goods are carried in or on a container, pallet or similar article of transport used to consolidate goods, or in or on a vehicle, the packages or shipping units enumerated in the contract particulars as packed in or on such article of transport or vehicle are deemed packages or shipping units. If not so enumerated, the goods in or on such article of transport or vehicle are deemed one shipping unit.

3. The unit of account referred to in this article is the Special Drawing Right as defined by the International Monetary Fund. The amounts referred to in this article are to be converted into the national currency of a State according to the value of such currency at the date of judgement or award or the date agreed upon by the parties. The value of a national currency, in terms of the Special Drawing Right, of a Contracting State that is a member of the International Monetary Fund is to be calculated in accordance with the method of valuation applied by the International Monetary Fund in effect at the date in question for its operations and transactions. The value of a national currency, in terms of the Special Drawing Right, of a Contracting State that is not a member of the International Monetary Fund is to be calculated in a manner to be determined by that State.

Article 60
Limits of liability for loss caused by delay
Subject to article 61, paragraph 2, compensation for loss of or damage to the goods due to delay shall be calculated in accordance with article 22 and liability for economic loss due to delay is limited to an amount equivalent to two and one-half times the freight payable on the goods delayed. The total amount payable pursuant to this article and article 59, paragraph 1, may not exceed the limit that would be established pursuant to article 59, paragraph 1, in respect of the total loss of the goods concerned.
Article 61
Loss of the benefit of limitation of liability
1. Neither the carrier nor any of the persons referred to in article 18 is entitled to the benefit of the limitation of liability as provided in article 59, or as provided in the contract of carriage, if the claimant proves that the loss resulting
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from the breach of the carrier's obligation under this Convention was attributable to a personal act or omission of the person claiming a right to limit done with the intent to cause such loss or recklessly and with knowledge that such loss would probably result.
2. Neither the carrier nor any of the persons mentioned in article 18 is entitled to the benefit of the limitation of liability as provided in article 60 if the claimant proves that the delay in delivery resulted from a personal act or omission of the person claiming a right to limit done with the intent to cause the loss due to delay or recklessly and with knowledge that such loss would probably result.
Chapter 13
Time for suit
Article 62
Period of time for suit
1. No judicial or arbitral proceedings in respect of claims or disputes arising from a breach of an obligation under this Convention may be instituted after the expiration of a period of two years.

2. The period referred to in paragraph 1 of this article commences on the day on which the carrier has delivered the goods or, in cases in which no goods have been delivered or only part of the goods have been delivered, on the last day on which the goods should have been delivered. The day on which the period commences is not included in the period.

3. Notwithstanding the expiration of the period set out in paragraph 1 of this article, one party may rely on its claim as a defence or for the purpose of set-off against a claim asserted by the other party.

Article 63

Extension of time for suit

The period provided in article 62 shall not be subject to suspension or interruption, but the person against which a claim is made may at any time during the running of the period extend that period by a declaration to the claimant.

This period may be further extended by another declaration or declarations.

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Article 64

Action for indemnity

An action for indemnity by a person held liable may be instituted after the expiration of the period provided in article 62 if the indemnity action is instituted within the later of:

(*a*) The time allowed by the applicable law in the jurisdiction where proceedings are instituted; or

(*b*) Ninety days commencing from the day when the person instituting the action for indemnity has either settled the claim or been served with process in the action against itself, whichever is earlier.

Article 65

Actions against the person identified as the carrier

An action against the bareboat charterer or the person identified as the carrier pursuant to article 37, paragraph 2, may be instituted after the expiration of the period provided in article 62 if the action is instituted within the later of:

(*a*) The time allowed by the applicable law in the jurisdiction where proceedings are instituted; or

(*b*) Ninety days commencing from the day when the carrier has been identified, or the registered owner or bareboat charterer has rebutted the presumption that it is the carrier, pursuant to article 37, paragraph 2.

Chapter 14

Jurisdiction
Article 66
Actions against the carrier
Unless the contract of carriage contains an exclusive choice of court agreement
that complies with article 67 or 72, the plaintiff has the right to institute
judicial proceedings under this Convention against the carrier:
(*a*) In a competent court within the jurisdiction of which is situated one of the following places:
(i) The domicile of the carrier;
(ii) The place of receipt agreed in the contract of carriage;
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(iii) The place of delivery agreed in the contract of carriage; or
(iv) The port where the goods are initially loaded on a ship or the port where the goods are finally discharged from a ship; or
(*b*) In a competent court or courts designated by an agreement between
the shipper and the carrier for the purpose of deciding claims against the carrier
that may arise under this Convention.
Article 67
Choice of court agreements
1. The jurisdiction of a court chosen in accordance with article 66, subparagraph
(*b*), is exclusive for disputes between the parties to the contract only if the
parties so agree and the agreement conferring jurisdiction:
(*a*) Is contained in a volume contract that clearly states the names and addresses of the parties and either (i) is individually negotiated or (ii) contains
a prominent statement that there is an exclusive choice of court agreement and
specifies the sections of the volume contract containing that agreement; and
(*b*) Clearly designates the courts of one Contracting State or one or more
specific courts of one Contracting State.
2. A person that is not a party to the volume contract is bound by an exclusive
choice of court agreement concluded in accordance with paragraph 1 of this
article only if:
(*a*) The court is in one of the places designated in article 66, subparagraph
(*a*);
(*b*) That agreement is contained in the transport document or electronic
transport record;
(*c*) That person is given timely and adequate notice of the court where

the action shall be brought and that the jurisdiction of that court is exclusive;
and
(*d*) The law of the court seized recognizes that that person may be bound
by the exclusive choice of court agreement.

Article 68

Actions against the maritime performing party

The plaintiff has the right to institute judicial proceedings under this Convention against the maritime performing party in a competent court within
the jurisdiction of which is situated one of the following places:
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(*a*) The domicile of the maritime performing party; or
(*b*) The port where the goods are received by the maritime performing party, the port where the goods are delivered by the maritime performing party
or the port in which the maritime performing party performs its activities with
respect to the goods.

Article 69

No additional bases of jurisdiction

Subject to articles 71 and 72, no judicial proceedings under this Convention
against the carrier or a maritime performing party may be instituted in a
court not designated pursuant to article 66 or 68.

Article 70

Arrest and provisional or protective measures

Nothing in this Convention affects jurisdiction with regard to provisional
or protective measures, including arrest. A court in a State in which a provisional
or protective measure was taken does not have jurisdiction to determine
the case upon its merits unless:
(*a*) The requirements of this chapter are fulfilled; or
(*b*) An international convention that applies in that State so provides.

Article 71

Consolidation and removal of actions

1. Except when there is an exclusive choice of court agreement that is binding
pursuant to article 67 or 72, if a single action is brought against both the carrier
and the maritime performing party arising out of a single occurrence, the
action may be instituted only in a court designated pursuant to both article 66
and article 68. If there is no such court, such action may be instituted in a court

designated pursuant to article 68, subparagraph (*b*), if there is such a court.

2. Except when there is an exclusive choice of court agreement that is binding pursuant to article 67 or 72, a carrier or a maritime performing party that institutes an action seeking a declaration of non-liability or any other action that would deprive a person of its right to select the forum pursuant to article 66 or 68 shall, at the request of the defendant, withdraw that action once the defendant has chosen a court designated pursuant to article 66 or 68, whichever is applicable, where the action may be recommenced.

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Article 72

Agreement after a dispute has arisen and jurisdiction when the defendant has entered an appearance

1. After a dispute has arisen, the parties to the dispute may agree to resolve it in any competent court.

2. A competent court before which a defendant appears, without contesting jurisdiction in accordance with the rules of that court, has jurisdiction.

Article 73

Recognition and enforcement

1. A decision made in one Contracting State by a court having jurisdiction under this Convention shall be recognized and enforced in another Contracting State in accordance with the law of such latter Contracting State when both States have made a declaration in accordance with article 74.

2. A court may refuse recognition and enforcement based on the grounds for the refusal of recognition and enforcement available pursuant to its law.

3. This chapter shall not affect the application of the rules of a regional economic integration organization that is a party to this Convention, as concerns the recognition or enforcement of judgements as between member States of the regional economic integration organization, whether adopted before or after this Convention.

Article 74

Application of chapter 14

The provisions of this chapter shall bind only Contracting States that declare in accordance with article 91 that they will be bound by them.

Chapter 15

Arbitration

Article 75

Arbitration agreements

1. Subject to this chapter, parties may agree that any dispute that may arise relating to the carriage of goods under this Convention shall be referred to arbitration.

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2. The arbitration proceedings shall, at the option of the person asserting a claim against the carrier, take place at:

(*a*) Any place designated for that purpose in the arbitration agreement;

or

(*b*) Any other place situated in a State where any of the following places is located:

(i) The domicile of the carrier;

(ii) The place of receipt agreed in the contract of carriage;

(iii) The place of delivery agreed in the contract of carriage; or

(iv) The port where the goods are initially loaded on a ship or the port where the goods are finally discharged from a ship.

3. The designation of the place of arbitration in the agreement is binding for disputes between the parties to the agreement if the agreement is contained in a volume contract that clearly states the names and addresses of the parties and either:

(*a*) Is individually negotiated; or

(*b*) Contains a prominent statement that there is an arbitration agreement and specifies the sections of the volume contract containing the arbitration agreement.

4. When an arbitration agreement has been concluded in accordance with paragraph 3 of this article, a person that is not a party to the volume contract is bound by the designation of the place of arbitration in that agreement only if:

(*a*) The place of arbitration designated in the agreement is situated in one of the places referred to in subparagraph 2 (*b*) of this article;

(*b*) The agreement is contained in the transport document or electronic transport record;

(*c*) The person to be bound is given timely and adequate notice of the place of arbitration; and

(*d*) Applicable law permits that person to be bound by the arbitration agreement.

5. The provisions of paragraphs 1, 2, 3 and 4 of this article are deemed to be part of every arbitration clause or agreement, and any term of such clause or agreement to the extent that it is inconsistent therewith is void.

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Article 76

Arbitration agreement in non-liner transportation

1. Nothing in this Convention affects the enforceability of an arbitration agreement in a contract of carriage in non-liner transportation to which this Convention or the provisions of this Convention apply by reason of:

(*a*) The application of article 7; or

(*b*) The parties' voluntary incorporation of this Convention in a contract of carriage that would not otherwise be subject to this Convention.

2. Notwithstanding paragraph 1 of this article, an arbitration agreement in a transport document or electronic transport record to which this Convention applies by reason of the application of article 7 is subject to this chapter unless such a transport document or electronic transport record:

(*a*) Identifies the parties to and the date of the charter party or other contract excluded from the application of this Convention by reason of the application of article 6; and

(*b*) Incorporates by specific reference the clause in the charter party or other contract that contains the terms of the arbitration agreement.

Article 77

Agreement to arbitrate after a dispute has arisen

Notwithstanding the provisions of this chapter and chapter 14, after a dispute has arisen the parties to the dispute may agree to resolve it by arbitration in any place.

Article 78

Application of chapter 15

The provisions of this chapter shall bind only Contracting States that declare in accordance with article 91 that they will be bound by them.

Chapter 16

Validity of contractual terms

Article 79

General provisions

1. Unless otherwise provided in this Convention, any term in a contract of carriage is void to the extent that it:

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(*a*) Directly or indirectly excludes or limits the obligations of the carrier or a maritime performing party under this Convention;

(*b*) Directly or indirectly excludes or limits the liability of the carrier or a maritime performing party for breach of an obligation under this Convention;
or
(*c*) Assigns a benefit of insurance of the goods in favour of the carrier or
a person referred to in article 18.
2. Unless otherwise provided in this Convention, any term in a contract of
carriage is void to the extent that it:
(*a*) Directly or indirectly excludes, limits or increases the obligations under this Convention of the shipper, consignee, controlling party, holder or
documentary shipper; or
(*b*) Directly or indirectly excludes, limits or increases the liability of the shipper, consignee, controlling party, holder or documentary shipper for breach
of any of its obligations under this Convention.
Article 80
Special rules for volume contracts
1. Notwithstanding article 79, as between the carrier and the shipper, a volume
contract to which this Convention applies may provide for greater or lesser
rights, obligations and liabilities than those imposed by this Convention.
2. A derogation pursuant to paragraph 1 of this article is binding only when:
(*a*) The volume contract contains a prominent statement that it derogates
from this Convention;
(*b*) The volume contract is (i) individually negotiated or (ii) prominently specifies the sections of the volume contract containing the derogations;
(*c*) The shipper is given an opportunity and notice of the opportunity to conclude a contract of carriage on terms and conditions that comply with this
Convention without any derogation under this article; and
(*d*) The derogation is neither (i) incorporated by reference from another
document nor (ii) included in a contract of adhesion that is not subject to
negotiation.
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3. A carrier's public schedule of prices and services, transport document,
electronic transport record or similar document is not a volume contract pursuant
to paragraph 1 of this article, but a volume contract may incorporate such
documents by reference as terms of the contract.

4. Paragraph 1 of this article does not apply to rights and obligations provided in articles 14, subparagraphs (*a*) and (*b*), 29 and 32 or to liability arising from the breach thereof, nor does it apply to any liability arising from an act or omission referred to in article 61.

5. The terms of the volume contract that derogate from this Convention, if the volume contract satisfies the requirements of paragraph 2 of this article, apply between the carrier and any person other than the shipper provided that:

(*a*) Such person received information that prominently states that the volume contract derogates from this Convention and gave its express consent to be bound by such derogations; and

(*b*) Such consent is not solely set forth in a carrier's public schedule of prices and services, transport document or electronic transport record.

6. The party claiming the benefit of the derogation bears the burden of proof that the conditions for derogation have been fulfilled.

Article 81

Special rules for live animals and certain other goods

Notwithstanding article 79 and without prejudice to article 80, the contract of carriage may exclude or limit the obligations or the liability of both the carrier and a maritime performing party if:

(*a*) The goods are live animals, but any such exclusion or limitation will not be effective if the claimant proves that the loss of or damage to the goods, or delay in delivery, resulted from an act or omission of the carrier or of a person referred to in article 18, done with the intent to cause such loss of or damage to the goods or such loss due to delay or done recklessly and with knowledge that such loss or damage or such loss due to delay would probably result; or

(*b*) The character or condition of the goods or the circumstances and terms and conditions under which the carriage is to be performed are such as reasonably to justify a special agreement, provided that such contract of carriage is not related to ordinary commercial shipments made in the ordinary course of trade and that no negotiable transport document or negotiable electronic transport record is issued for the carriage of the goods.

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Chapter 17

Matters not governed by this Convention

Article 82

International conventions governing the carriage of goods by other modes of transport

Nothing in this Convention affects the application of any of the following international conventions in force at the time this Convention enters into force, including any future amendment to such conventions, that regulate the liability of the carrier for loss of or damage to the goods:

(*a*) Any convention governing the carriage of goods by air to the extent that such convention according to its provisions applies to any part of the contract of carriage;

(*b*) Any convention governing the carriage of goods by road to the extent that such convention according to its provisions applies to the carriage of goods that remain loaded on a road cargo vehicle carried on board a ship;

(*c*) Any convention governing the carriage of goods by rail to the extent that such convention according to its provisions applies to carriage of goods by sea as a supplement to the carriage by rail; or

(*d*) Any convention governing the carriage of goods by inland waterways to the extent that such convention according to its provisions applies to a carriage of goods without trans-shipment both by inland waterways and sea.

Article 83

Global limitation of liability

Nothing in this Convention affects the application of any international convention or national law regulating the global limitation of liability of vessel owners.

Article 84

General average

Nothing in this Convention affects the application of terms in the contract of carriage or provisions of national law regarding the adjustment of general average.

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Article 85

Passengers and luggage

This Convention does not apply to a contract of carriage for passengers and their luggage.

Article 86

Damage caused by nuclear incident

No liability arises under this Convention for damage caused by a nuclear incident if the operator of a nuclear installation is liable for such damage:

(*a*) Under the Paris Convention on Third Party Liability in the Field of Nuclear Energy of 29 July 1960 as amended by the Additional Protocol of 28 January 1964 and by the Protocols of 16 November 1982 and 12 February 2004, the Vienna Convention on Civil Liability for Nuclear Damage of 21 May 1963 as amended by the Joint Protocol Relating to the Application of the Vienna Convention and the Paris Convention of 21 September 1988 and as amended by the Protocol to Amend the 1963 Vienna Convention on Civil Liability for Nuclear Damage of 12 September 1997, or the Convention on Supplementary Compensation for Nuclear Damage of 12 September 1997, including any amendment to these conventions and any future convention in respect of the liability of the operator of a nuclear installation for damage caused by a nuclear incident; or

(*b*) Under national law applicable to the liability for such damage, provided that such law is in all respects as favourable to persons that may suffer damage as either the Paris or Vienna Conventions or the Convention on Supplementary Compensation for Nuclear Damage.

Chapter 18

Final clauses

Article 87

Depositary

The Secretary-General of the United Nations is hereby designated as the depositary of this Convention.

Article 88

Signature, ratification, acceptance, approval or accession

1. This Convention is open for signature by all States at Rotterdam, the Netherlands, on 23 September 2009, and thereafter at the Headquarters of the United Nations in New York.

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2. This Convention is subject to ratification, acceptance or approval by the signatory States.

3. This Convention is open for accession by all States that are not signatory States as from the date it is open for signature.

4. Instruments of ratification, acceptance, approval and accession are to be deposited with the Secretary-General of the United Nations.

Article 89

Denunciation of other conventions

1. A State that ratifies, accepts, approves or accedes to this Convention and is a party to the International Convention for the Unification of certain Rules of Law relating to Bills of Lading signed at Brussels on 25 August 1924, to the Protocol to amend the International Convention for the Unification of certain Rules of Law relating to Bills of Lading, signed at Brussels on 23 February 1968, or to the Protocol to amend the International Convention for the Unification of certain Rules of Law relating to Bills of Lading as Modified by the Amending Protocol of 23 February 1968, signed at Brussels on 21 December 1979, shall at the same time denounce that Convention and the protocol or protocols thereto to which it is a party by notifying the Government of Belgium to that effect, with a declaration that the denunciation is to take effect as from the date when this Convention enters into force in respect of that State.

2. A State that ratifies, accepts, approves or accedes to this Convention and is a party to the United Nations Convention on the Carriage of Goods by Sea concluded at Hamburg on 31 March 1978 shall at the same time denounce that Convention by notifying the Secretary-General of the United Nations to that effect, with a declaration that the denunciation is to take effect as from the date when this Convention enters into force in respect of that State.

3. For the purposes of this article, ratifications, acceptances, approvals and accessions in respect of this Convention by States parties to the instruments listed in paragraphs 1 and 2 of this article that are notified to the depositary after this Convention has entered into force are not effective until such denunciations as may be required on the part of those States in respect of these instruments have become effective. The depositary of this Convention shall consult with

the Government of Belgium, as the depositary of the instruments referred to in paragraph 1 of this article, so as to ensure necessary coordination in this respect.

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Article 90

Reservations

No reservation is permitted to this Convention.

Article 91

Procedure and effect of declarations

1. The declarations permitted by articles 74 and 78 may be made at any time. The initial declarations permitted by article 92, paragraph 1, and article 93, paragraph 2, shall be made at the time of signature, ratification, acceptance, approval or accession. No other declaration is permitted under this Convention.

2. Declarations made at the time of signature are subject to confirmation upon ratification, acceptance or approval.

3. Declarations and their confirmations are to be in writing and to be formally notified to the depositary.

4. A declaration takes effect simultaneously with the entry into force of this Convention in respect of the State concerned. However, a declaration of which the depositary receives formal notification after such entry into force takes effect on the first day of the month following the expiration of six months after the date of its receipt by the depositary.

5. Any State that makes a declaration under this Convention may withdraw it at any time by a formal notification in writing addressed to the depositary. The withdrawal of a declaration, or its modification where permitted by this Convention, takes effect on the first day of the month following the expiration of six months after the date of the receipt of the notification by the depositary.

Article 92

Effect in domestic territorial units

1. If a Contracting State has two or more territorial units in which different systems of law are applicable in relation to the matters dealt with in this Convention, it may, at the time of signature, ratification, acceptance, approval

or accession, declare that this Convention is to extend to all its territorial units or only to one or more of them, and may amend its declaration by submitting another declaration at any time.

2. These declarations are to be notified to the depositary and are to state expressly the territorial units to which the Convention extends.

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3. When a Contracting State has declared pursuant to this article that this Convention extends to one or more but not all of its territorial units, a place located in a territorial unit to which this Convention does not extend is not considered to be in a Contracting State for the purposes of this Convention.

4. If a Contracting State makes no declaration pursuant to paragraph 1 of this article, the Convention is to extend to all territorial units of that State.

Article 93

Participation by regional economic integration organizations

1. A regional economic integration organization that is constituted by sovereign States and has competence over certain matters governed by this Convention may similarly sign, ratify, accept, approve or accede to this Convention. The regional economic integration organization shall in that case have the rights and obligations of a Contracting State, to the extent that that organization has competence over matters governed by this Convention. When the number of Contracting States is relevant in this Convention, the regional economic integration organization does not count as a Contracting State in addition to its member States which are Contracting States.

2. The regional economic integration organization shall, at the time of signature, ratification, acceptance, approval or accession, make a declaration to the depositary specifying the matters governed by this Convention in respect of which competence has been transferred to that organization by its member States. The regional economic integration organization shall promptly notify the depositary of any changes to the distribution of competence, including new transfers of competence, specified in the declaration pursuant to this paragraph.

3. Any reference to a “Contracting State” or “Contracting States” in this Convention applies equally to a regional economic integration organization when the context so requires.

Article 94

Entry into force

1. This Convention enters into force on the first day of the month following the expiration of one year after the date of deposit of the twentieth instrument of ratification, acceptance, approval or accession.

2. For each State that becomes a Contracting State to this Convention after the date of the deposit of the twentieth instrument of ratification, acceptance,

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approval or accession, this Convention enters into force on the first day of the month following the expiration of one year after the deposit of the appropriate instrument on behalf of that State.

3. Each Contracting State shall apply this Convention to contracts of carriage concluded on or after the date of the entry into force of this Convention in respect of that State.

Article 95

Revision and amendment

1. At the request of not less than one third of the Contracting States to this Convention, the Secretary-General of the United Nations shall convene a conference of the Contracting States for revising or amending it.

2. Any instrument of ratification, acceptance, approval or accession deposited after the entry into force of an amendment to this Convention is deemed to apply to the Convention as amended.

Article 96

Denunciation of this Convention

1. A Contracting State may denounce this Convention at any time by means of a notification in writing addressed to the depositary.

2. The denunciation takes effect on the first day of the month following the expiration of one year after the notification is received by the depositary. If a longer period is specified in the notification, the denunciation takes effect upon the expiration of such longer period after the notification is received by the

depositary.
DONE at New York, this eleventh day of December two thousand and eight, in
a single original, of which the Arabic, Chinese, English, French, Russian and
Spanish texts are equally authentic.
IN WITNESS WHEREOF the undersigned plenipotentiaries, being duly authorized by their respective Governments, have signed this Convention.

0985608

Maritime Frauds

With the advancement of international trade, and the competition among the owners of vessels to get charter, they had to rely heavily on brokers and may have to fix charters as advised by them. Also there are unscrupulous vessel owners or ghost ships which sail away with cargo, change name and sell the cargo elsewhere.

For instance if a vessel is fixed on a time charter (whose antecedents are questionable), the owner may find himself in an unenviable position. After bidding a high daily hire rate the charterer charters the vessel and pays the owner 15 days advance hire as per charter party. He then employs her on a voyage charter and loads full cargo, collects advance freight on a cif contract. The master has to issue a clean B/l with freight prepaid as cargo is clean and freight is pre-paid. Now the time charterer who has collected all the freight in advance simply disappears! The owner is now left with no option but to provide fuel and necessities to vessel, sail her to disport and deliver the cargo, without a penny of freight!

ICC International Maritime Bureau (IMB)

The first ICC anti-crime bureau, the International Maritime Bureau, was founded in 1981. It quickly received the support of the International Maritime Organization in a

resolution urging governments and law enforcement agencies to cooperate with the new body. More recently, it was granted observer status with Interpol.
IMB's task is to prevent fraud in international trade and maritime transport, reduce the risk of piracy and assist law enforcement in protecting crews. It tracks cargoes and shipments and verifies their arrival at scheduled ports.
Much of IMB's work concerns prevention in the form of timely advice on how to reduce corporate vulnerability to fraud and malpractice. In the event of frauds and piratical attacks it carries out investigations with a view to bringing perpetrators to justice and recovering losses. Other specific tasks are to:
authenticate suspect bills of lading and other documents
disseminate information on maritime crime that has been collected from commercial, government and international sources
offer due diligence advice
propose ways for victims of fraudulent transactions to extricate themselves and minimize the damage
provide legal advice and support in litigation
raise awareness of the dangers of maritime crime and provide training in counter-measures
Today, governments of the world's leading trading nations support the bureau's work. IMB's multidisciplinary staff and contacts worldwide gather information and respond swiftly in cases of maritime fraud or when ships are attacked on the high seas. IMB today covers all types of fraud and malpractice in trading and transport.
A fortnightly confidential bulletin lists frauds, commercial failures and non-payment of debts. This is supplemented by a credit report service on companies engaged in shipping and trading. Additionally, the bureau runs a ship monitoring and supercargo service. Another programme checks the credentials of shipowners and prospective charterers before a vessel is fixed.
IMB verifies documents presented under documentary credits and investigates insurance losses. The most recent innovation is an inexpensive satellite tracking system, known as SHIPLOC. This system allows shipping companies, armed only with a personal computer with Internet access, to monitor the exact location of their vessels. SHIPLOC now has its own website at www.shiploc.com
In 1992, reacting to an alarming growth in piracy on the world's oceans, IMB created the Piracy Reporting Centre at it's Far East Regional Office in Kuala Lumpur.

Marine Insurance

Cover and Buyers
A ship owner or Manager may buy insurance cover against:
Actual Total Loss, CTL of his ship's hull, machinery and equipment(H&M Cover)
Accidental(particular average) damage to his hull, machinery etc
Liability to owners of other vessels or their cargoes
Liability for General Average
Liability to a third party
Liability for oil pollution
loss of earnings from strikes, war risks, freight
loss of charter hire

A seller or buyer of goods to be shipped may buy insurance cover against:

loss of or damage to his goods
loss of earnings from strike
liability for GA
liability for salvage

A Voyage or Time Charterer may buy insurance cover against : loss or damage to the vessel; loss or damage to the cargo (if also the cargo owner):
oil pollution
loss of or damage to third party property ;
death or personal injury ;
fines;
damage to fixed property (e. g. quay or cranes);
wreck liabilities;
Charterer' proportion of general average or salvage charges ;
liability arising from breach of or deviation from Bs/L;
loss of freight at risk ;
physical loss of charterer's bunker fuel.

<u>london marine insurance market</u>

is the largest insurance market in the world covering marine risks.
Lloyd's(the Lloyd's market):and companies represented at the Institute of London Underwriters(the Companies market);
P&I clubs (which are dealt with separately).
lloyds
is also known as Lloyd's of London .
is not a company , but a society of individuals with uniform practices and procedures , regulated by strict rules
had a market capacity of nearly £ 10,000 million in 1996
Names are wealthy individuals who provide the capital for Lloyds . "Working names ' are employed by underwriting agencies and brokers
Syndicates are groups of names who band themselves into joint ventures , dissolved at the end of each year
Under writers or underwriting members area few hundred individuals who asses risks involved in insuring and charge premiums accordingly
Brokers are the intermediaries between the general public and the Lloyd's market . They give advice to their principals(the assureds)on premiums and policy types .
they bring to underwrite insurance ' slips' with the details of the risk to be covered, attempting to buy insurance from them

<u>Institute of London Underwriters(I LU</u>)

is an association of underwriting companies (as opposed to individuals)which have uniform practices and policy forms is known as the 'Companies market.
It has much the same practice as Lloyds
And uses the same standard 'Institute' clauses as the Lloyd's market .
Insurance related bodies

<u>Brokers</u>
are intermediaries who can give advice on policy types, likely premiums etc. are governed in the standards of professional practice by legislation.

Can be sued if they negligently fail to carry out their client's instructions , but must be insured against professional liability

Lloyd's Agents

are established in numerous ports world-wide , in some case as Lloyd's Sub Agents; exists basically to protect the interest s of Lloyd's underwriters and act in their interests; collect and transmit information of likely interest to the Lloyd's market and insurers world wide ;
may also be agents for the ILU and other insurers ;have duties including :
rendering assistance to masters in case of wreck or damage to ship or cargo, and difficulties arising in connection with payment of port disbursements;
appointing surveyors to survey damage to vessel cargoes on behalf of under writers;
issuing certificates of sea damage (which should be signed by the appointed surveyor as 'Surveyor to Lloyd' Agent ')

ILU Agents

operate much the same way as Lloyd's Agents but on behalf of ILU member insurers .
are often agents for other insurers , such as Lloyd's

The Salvage Association

is an association of shipping surveyors.
Investigating shipping casualties in which under writers have an interest , on receipt of instructions from under writers .
once instructed usually investigates the circumstances of a casualty . determines the extent of any damage and provides the owners and underwriters with information and recommendations for the protection and preservation of interests of all parties .
conducts pre risk and condition surveys (basically pre voyage inspections to ensure that all proper arrangements have been made to minimise risk of accident on a voyage) and issue warranty certificates stating for e.g. warranted approval of tug, tow , towage and stowage arrangements by S.A and all recommendations complied with.(This warranty will make insurance easier to obtain from underwriters)
is renowned for its integrity and impartiality

Average adjusters

adjust General Average
adjust claims on policies of insurance on any interests directly or indirectly exposed to marine perils .prepare statements of claim against third parties
may be appointed by any member of the maritime or marine insurance communities having an interest in the matter concerned.
Are usually appointed by the ship owners when GA is declared .may asist in the collection of General Average, salvage or other security
Insurance law and principles

There is no legal obligation to insure ships, goods are freight under English Law. Australia and some other countries are however considering making insurance compulsory for shipping in their in their waters.
IMO has adopted a resolution strongly recommending member States to take liability insurance ie with a P&I Club to cater for meeting liabilities arising out of environmental pollution.
Most of the countries including developed countries adopt their own Insurance Act based on the Marine Insurance Act Of UK, some them following it verbatim.
In any case the principles adopted all over the world are generally the same, though there may be differences in the modalities or procedure.
A marine insurance contract is concluded when the assureds proposal is accepted by under writers, whether or not the contract document is issued at that time.
A marine adventure exists when a ship, cargo or other moveable are exposed to maritime perils.
Principles of Marine Insurance

Following are four major principles of marine insurance:
indemnity
insurable interest
utmost good faith
and a doctrine of proximate cause

Indemnity

a contract of marine insurance whereby the insurer undertakes to indemnify the assured, in the manner to the extent thereby agreed, against marine losses, i.e. the losses incident to a marine adventure'
To indemnify is to make good a loss suffered, not by replacement of the subject matter lost, but by a financial payment, i.e. to compensate.
Ships and cargoes normally have a value put on them at the commencement of the risk and insurers use this value to determine the measure of indemnity they will give the assured. Thus in marine insurance the value of the subject -matter insured may be different from its actual value at the time of its loss, depending on how the market has gone since the policy was effected. But whether or not the assured has gained or lost by fluctuation in the market value, will not affect what the insurer pays on the claim.
Where there is total loss the measure of indemnity = 100% of the insured value where 50% of the subject matter insured is destroyed, the measure of indemnity = 50% of the insured value.
Contribution is another sub-principle of indemnity whereby the assured cannot claim more than once on the same risk.
If the assured has two policies covering the same risk with two insurers(Double insurance), each makes pro-rata contribution to ant settlement. Double insurance is not the same as spreading the risk between several insurers by re-insurance.
Subrogation is another sub principle whereby he assured cannot recoup his loss from another party after the insurer has settled his claim .E.g. where the insurer has paid a goods owner's claim , the good owner cannot afterwards claim from the carrier . Instead the insurer who paid the claim subrogates or take over the assureds rights in respect of any claim against a 3rd party . An insurer paying a claim for goods lost or damaged on board may then claim against the carrier in his

own name and can retain any sum recovered up to the amount claimed. Any excess being repaid to the assured.

Insurable interest

Before any one may legally enter into a marine insurance contract he must have, or expect to acquire , an insurable interest in the property at risk, i.e. he must stand to lose somehow by the loss of or damage to the subject matter insured , or incur a liability in respect of it or suffer, if it does not arrive on time or gain by its preservation.
Essential features of insurable interest include:
the subject matter insured must be a physical object exposed to peril; and
any assured must have some legal relationship to the subject matter , and must stand to benefit by its preservation or lose by its loss or damage.
Where the assured in a marine insurance contract has no insurable interest or no expectation of acquiring one , he policy is deemed to be 'gaming or wagering contract' Every such contract is illegal and void. If a party with no insurable interest took out insurance on a ship or cargo , they could in effect be bettering on the non arrival of that vessel or cargo , which would probably lead to an increase in maritime fraud and piracy.
The insurable interest of an assured is limited to the amount which he actually stands to lose.
Simplest form of insurable interest is ownership of the subject matter insured. FOB and CIF(etc.) contracts of sale define of passing of risk (and insurable interest) from seller to buyer.
A carrier has an insurable interest in goods because of his liability to the goods owner.
A shipper has an insurable interest in respect of any freight prepaid but not earned.(e.g. if the vessel does not complete the voyage)
The insurers of a subject-matter has an insurable interest in the risk he has written, allowing him to reinsure and spread the risk.
Other cases in which certain persons have an insurable interest :
The master or any member of the crew of a ship has an insurable interest in respect of his wages.
A lender of money on a ship has an insurable interest in respect of his loan.
Insurable interest can be of three types:
1.Defeasable interest- In this type the interest can be annulled . For instance if a vessel is towing a derelict, the chances are that the derelict may sink en route and as the interest may be called defeasable.
2. Contingent interest- In this type many are interested in one operation. For instance, in laying an under water oil pipe line, the engineers, cargo owners, other contractors etc may be interested in successful completion of the oil pipe line and as such this type is called contingent interest.
3. Partial interest: when a vessel is owned by many share holders it gives for partial interest of the share holders in the vessel

Utmost good faith
'
A contract of marine insurance is a contract based upon the utmost good faith and if the utmost good faith be not observed by either party , the contract may be avoided by the other party '.

The assured must disclose to the insurer , before the contract is concluded, every material circumstance which is known to the assured. Every circumstance which would influence the insurer's judgement in fixing the premium or determining whether or not he would accept the risk, would be 'material '. E.g. it would be dishonest for a ship owner not to disclose that his 20-year old vessel had just failed her 5th special survey and had been rejected by a disreputable classification society .
If the assured fails to make such disclosure , the insurer ' avoid the contract'.
The assured is deemed to know every circumstance which ,in the ordinary course of his business, ought to be known by him (e.g. that a log carrier is more likely than most bulk carriers to get damaged by cargo),and some circumstances need not be disclosed ,e.g. those that would diminish the risk.
Also the assured must exercise utmost good faith while making claims, as fraudulent claims will amount to breaking this principle

Doctrine of proximate cause

Subject to the provisions of_MIA1906 and unless the policy otherwise provides , an insurer is liable for any loss proximately caused by a peril insured against , but, subject to the same conditions , he is not liable for any loss not proximately caused by a peril insured against.
Where there is a chain of events leading to a loss, the proximate cause is the most dominant and effective cause , not the nearest cause in time . For example if a ship is scuttled , the proximate cause is the act of scuttling , although the nearest cause in time is sea-water entering the ship. An assured who scuttled his ship might claim that a 'peril of the seas' was the cause of his loss, but the insurer would not be liable as scuttling is wilful misconduct of the assured .
If the ship has a cover against the risk of fire and does not have cover for war risk and goes to war zone gets hit by missile and is damaged due to fire caused by missile, then the insurer is not liable as the proximate cause for the damage is not fire but missile attack for which the ship has no cover.
Marine policies
A marine insurance policy covers the subject matter insured against loss or damage during a definite period which may be stated:
as a period of time (in a time policy); or
as the duration of a journey from one lace to another(in a voyage policy)
Hull and machinery(H&M)policies are usually time policies , the maximum period of insurance usually being 12 months , although the MIA does not restrict the period. Cover usually attaches and expires at noon or midnight GMT.
Consignments of goods may be insured on voyage policies 'at and from' one place to another or simply ' from' a place to another. The former type gives cover whilst awaiting shipment. Most goods shipped are usually insured on a ware-house to ware-house basis rather than for the sea voyage only . Some cargoes (e.g. FOB shipments)may be covered from the time of loading only.

Time policies are not normally used for goods insurance.
Where a ship is the subject matter insured of a voyage policy , it is unnecessary for the vessel to actually be at the place named in the policy at the time that the insurance contract is made , but there is an implied condition in the contract that

the adventure will commence within a reasonable time . If it does not, the insurer can avoid the contract .
The risk does not attach if:
the ship sails from a different place from that named in the policy .
the ship proceeds to a destination other than that named in the policy .
Insurers bind the policy holder to what the policy says , unless amended terms are agreed .

A valued policy

It is a time or voyage policy that specifies the agreed value of the subject matter insured , which is the usual practice . The insured value is the amount stated in the policy as the calculated value of the subject matter insured , whereas the sum insured is the portion of the insured value actually covered by the insurance .
Where the property is insured for its full value , the agreed value and the insured value will be the same. This is usually the case with cargo, so the policy might read '#20,000 on merchandise so valued '.
It is not necessary to insure property for its full value , and some assured, in return for a lower premium , prefer to carry part of the risk themselves (thus becoming their own insurers for part of the insured value).
A H&M policy might state the insured value as '#4000,000on Hull &Machinery valued at #5000,000'.

An unvalued policy

It does not specify the value of the subject matter insured Subject to a limit of the sum assured , it leaves the insurable value to be subsequently ascertained if and when a claim arises.

insurer's liabilities and exclusions

Unless the policy otherwise provides , the insurer is liable for any loss proximately caused by a peril insured against , but ,subject to the same conditions , he is not liable for any loss not proximately caused by a peril insured against.
The insurer is not liable for any loss attributable to the wilful misconduct of an assured , but unless the policy otherwise provides , he is liable for any loss proximately caused by a peril insured against , even though the loss would not have occurred without the misconduct or negligence of the master or crew . Thus, if a ship runs aground through its master's or crew's negligence , the under writer will be liable .
Unless the policy otherwise provides, an insurer of a ship or goods is not liable for any loss proximately caused by delay ,although the delay may be caused by a peril insured against , such as bad weather.
Unless the policy otherwise provides, an insurer is not liable for:
ordinary wear and tear;
ordinary leakage and breakage ;
inherent vice or nature of the subject matter insured;
any loss proximately caused by rats or vermin ;or
any injury to machinery not proximately caused by marine peril.

warranties in marine insurance policies

A warranty is an express or implied contractual undertaking by an assured , contained in a marine insurance policy .
A warranty is defined in the M I A1966 as a promissory warranty , that is to say ,a warranty by which the assured undertakes that some particular thing shall or shall not be done , or that some condition shall be fulfilled , or whereby he affirms or negatives the existence of a particular state of facts.
A warranty must be literally complied with , whether material to the risk or not. E.g. if an owner breaches his warranty that his vessel will only trade 'world wide within Institute Warranty Limits', the fact that she does not suffer any loss or damage in an area outside I W Ls does not matter: there is a breach of warranty .
An express warranty must be written into the policy or contained in some document
(e.g. Institute Warranties) incorporated by reference into the policy.
Implied warranties are not written in the policy but are implied by law to exist in the contract. They must be strictly complied with in the same way as express warranties .
An express warranty does not override an implied warranty unless the two conflict.

Major Implied warranties
There are two major implied warranties in marine insurance policies, covering sea worthiness and legality.
Seaworthiness in voyage policies
Under the M IA, the ship must, at the commencement of the voyage , be seaworthy for the purpose of the particular voyage insured .
'Sea worthiness' has approximately the same meaning in insurance law as in carriage of goods law .Thus a ship is deemed to be seaworthy when,' reasonably fit in all respects to encounter the ordinary perils of the seas of the adventure insured'.
Where the policy attaches in port , there is also an implied warranty that the ship insured will, at the commencement of the risk , be reasonably fit to encounter the 'ordinary perils of the port'.
Where the policy relates to a voyage performed in separate stages , there is an implied warranty that at the commencement of each stage, the ship will be seaworthy for the purposes of that stage .
In a voyage policy on goods or other moveable, there is an implied warranty that at the commencement of the voyage , the ship will be seaworthy and reasonably fit to carry the goods etc to the destination stated in the policy.
Ina policy on goods or other moveables , there is no implied warranty that they are sea worthy.
Seaworthiness in time policies

No implied warranty exists in a time policy that a ship will be sea worthy at any particular stage of the adventure , but where with the assured's privity (i.e. his knowledge and consent)
a ship is sent to sea unseaworthy, the insurer is not liable for any loss attributed to the unseaworthiness. This means that cover may be lost if the ship is sent to sea in an unseaworthy condition with the knowledge of the owners' senior management .'Knowledge'' would include both express, clear knowledge (e.g. after defects have been reported in writing by a master or a surveyor) and the deliberate

'turning of a blind eye'. Cover would only be lost , however, where the known unseaworthiness had caused the loss.

Legality

There is an implied warranty that the adventure is lawful and that , so far as the assured can control it the adventure will be carried out in a lawful manner. If the adventure is illegal at the time the insurance is effected , the policy is void. Thus the drug running or gun-running trips , or voyages to countries or ports subject to a Government embargo, would be deemed unlawful.
Breach of warranty
If a warranty is breached , then subject to any express provision in the policy ,the insurer is discharged from liability from the date of the breach, but without affecting any liability incurred by him before that date.
If a loss occurs after a warranty has been breached, the assured can not use the defence that the breach was remedied and the warranty complied with once again before the loss occurred. Thus, if a ship is whose policy states 'world wide trading within lWLs' ventures outside I W Ls , then re-enters
I W Ls and goes around , the insurer is not liable for any damage claim, etc.
If the assured breaches a warranty , the insurer cannot avoid the whole contract-only the part from the date of the breach i. e. the insurer will be liable for losses occurring before the date of the breach .
Any breach of warranty may be waived by the insurer . Non-compliance with a warranty will be excused:
when circumstances leading the insurer to insist on the insertion of the warranty change or cease to exist(e.g. when a war zone ceases to operate);or
when continued compliance with a warranty would be illegal under a new law.
A ship owner intending to breach I W Ls may notify his insurer of his intention, agree to any amended conditions imposed and pay any additional premium required .

conditions in marine insurance voyage policies

deviation

There is an implied condition in all marine policies in respect of deviation in every voyage .When a ship , without lawful excuse , deviates from the stated or customary voyage , the insurer is discharged from liability from the time (and not the date)of the deviation. The fact that the ship may have regained the proper route before a loss occurs is immaterial the insurer has no further liability from the moment of the deviation.
Deviation occurs -
when the course of the voyage is specifically stated by the policy and is departed from; or when the course of the voyage is not specifically stated the policy , but the usual and customary route is departed from .
Where several ports of discharge are specified by the policy , the ship may proceed to all or any of them , but in the absence of any usage or sufficient cause to the contrary , she must proceed to them in the order stated on the policy; otherwise, there is deviation.

Where the policy is to unnamed 'ports of discharge 'within a given area, the ship must., in the absence of any usage or sufficient cause to the contrary , call in their geographical order; if not there is deviation

<u>The effect of deviating</u> is that any loss arising during or after the deviation will be borne by the ship owner. Losses up to the time of the deviation will be borne by the insurer, if covered by the policy.

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<u>Deviation is excused</u>-

where authorised by any special term in the policy;
where caused by circumstances beyond the control of the master or employer(e.g. force majeure);
where reasonably necessary so as to comply with an excess or implied warranty;
where reasonably necessary for the safety of the ship or the subject matter insured;
for the purpose of saving human life or aiding a ship in distress where human life may be in danger;
where reasonably necessary for the purpose of obtaining medical or surgical aid for any person on board; or
where caused by the barratry of the master or crew , if barratry is an insured peril.
When the cause excusing the deviation ceases to operate , the ship must resume her course and prosecute the voyage with reasonable despatch.

<u>Delay</u>

In all voyage policies, there is an implied condition that the voyage must commence within a reasonable time of acceptance of the insurance and must be prosecuted with reasonable despatch throughout.
If, without lawful excuse, the voyage is delayed the insurer is discharged from liability from the time when the delay became unreasonable.(E.g. a delay of 10 days waiting for cargo at an intermediate port has been held to be unreasonable)
Delay in prosecuting the voyage stated in the policy is excused in any of the above listed circumstances as for deviation. Likewise, the voyage must be resumed with reasonable dispatch once the delay has ceased to operate .

<u>Change of voyage</u>

There is an implied condition that where , after commencement of the risk, the ship's departure or destination port (or both) are voluntarily changed from that stated in the policy , there is a 'change of voyage ' and unless the policy otherwise provides , the insurer is discharged from liability from the time of the change. It is immaterial that the ship may not have left the course of the voyage contemplated by the policy when the loss occurs .

<u>Obtaining marine Insurance Cover</u>

<u>hull and machinery (h & m) cover</u>

In the London marine insurance market , hull and machinery (H & M)cover is usually obtained by ship owners and managers from :underwriters at Lloyd's ;and/or underwriters at the Institute of London Underwriters(I L U).
The broking procedure is similar in both Lloyd's and Companies markets .
H& M cover is generally arranged for owners or managers by brokers who act as agents of assureds. Only Lloyd's Brokers may approach underwriters at Lloyd's; no non broker may approach an underwriter personally to obtain insurance.

On instructions from the assured, the broker prepares a slip for presentation of the subject matter details to underwriters. The slip is equivalent to a motor insurance proposal form . the broker supplements the basic facts on the slip with all material information about the risk as supplied by assured(under the principle of utmost good faith).
The broker contracts with one or more underwriters to pay an agreed premium for a policy covering loss or damage, etc.
Unless the insured value of the vessel is small, the broker takes the slip first to an influential 'lead' underwriter, then to a succession of others , until the risk is 100%covered.Some under writers may not be interested in covering any part of the risk , while those who are interested will usually 'write a line' only on a small percentage of the insured value of the ship. Each under writer indicates acceptance of his share of the risk by writing his signature or initials against the line on the slip bearing the percentage he accepts on behalf of his syndicate or company.
When the slip is complete, i.e the risk is 100% covered , the broker prepares details of the cover on a cover note and sends this to the assured for approval.
If the assured approves of the terms , a formal policy was drawn up. Some time will elapse before the policy can be signed and the contract legally made. In England contract law , presentation of the slip by the broker constitutes an offer, and the writing of each line constitutes acceptance. The contract is concluded when the underwriter writes his initials or signature on the slip.
The M IA1906 requites the contract to be embodied in a policy , so the contract is not legally enforceable until the policy is drawn up. However, under the code of ethics of the London market , once an underwriter has initialled or signed a slip he is honour-bound to pay any claim on it.
New Marine insurance policy Form
Contains Policy No, date, name of assured, vessel, voyage/period of insurance, subject matter of insurance, agreed value, amount insured , premium, clauses etc
It contains special conditions endorsements and warranties. It contains a statement that attached clauses and endorsements form part of policy. For
H & M policy, there are 27 numbered institute clauses.
Institute time clauses
Institute time clauses which were in force in 1983 have now been changed and modified. The major changes in the new hull Clauses are:
classification and seaworthiness;
wider duties of 'due diligence' in the perils Clauses and
an express duty to report claims promptly.

Clause 1- Navigation
Provide that
the vessel is covered at all times
may sail or navigate with or without pilots
may go on trial trips
may assist or tow vessels in distress
not to be towed except as customary (harbour towage)
may not under take previously arranged towage or salvage services
may not engage in lighterage operations for cargo handling operations(unless notice is given and amended terms agreed)
value of vessel on a scraping voyage is to be her scrap value

clause 2- continuation

if a vessel is at sea, or in distress, or at a port of refuge at the time of expiry of the insurance, if due notice is given, she will be held covered at pro-rata basis premium as far as her port of destination(this avoids the problem of expiry of time policy when it expires at sea)

Clause 3- Breach of warranty
formerly known as held covered as ' held covered' clause. In the event of breach of warranty, as long as the insurers are given immediate notice of the breach and the policy is amended and any additional premium is paid, the vessel is held covered.

Clause 4- Classification
is an entirely new clause which provides that ;
it is the duty of the assured, owners and managers to ensure that
the vessel is classed with an approved classification society and that her class with that society is maintained.
Any recommendations, requirements imposed by the classification relating to sea worthiness or maintenance are complied with by the dates set by the society
in event of any breach of the above duties, unless the underwriters agree otherwise, they will be discharged from their liabilities from the date of such breach;
in the event the breach takes place when the vessel is at sea, then from the time she reaches her first port, the liability ceases.

Clause 5 -Termination
the insurance will automatically end :
on change of classification society
on any change, suspension, discontinuance, withdrawal or expiry of class
on any of classification society's survey becoming overdue unless there has been an extension agreed by the society
on change of owner
on change of flag
on transfer to new management
on bareboat charter
on requisition by government for use

Clause 6—perils (also known as Inchmaree Clause)
insurance covers loss or damage that had been caused by :
perils of the seas, rivers, or other navigable waters
fire , explosion
jettison
piracy
contact with land conveyance, dock, or harbour installation
earth quake, volcanic eruption or lightening
accidents in loading, discharging or shifting cargo or fuel

Insurance also covers loss or damage caused by following subject to the condition that these were not caused for want of 'due diligence' by the assured, owners, managers or superintendents or their port captains:
bursting of boilers, breakage of shafts, or any latent defects in hull or machinery
negligence of master, officers, crew or pilots
negligence of repairers or charterers
barratry of master, officers or crew or pilots
contact with aircraft, helicopters or similar objects falling from them

Clause 8- 3/4th Collision liability. (Formerly known as "running down clause")
where the payment by the assured is a result of a collision liability with the other vessel
insurers will pay for three quarters of any:
loss of or damage to other vessel
delay to or loss of use of other vessel
general average of other vessel
salvage or salvage under contract of other vessel
if both vessels are to blame in the collision, then the liabilities will be calculated as per the principle of cross liabilities, unless the liabilities are limited by law
the 1/4th of liability not covered by the underwriters under the policy is usually insured under the ship owner's P&I Club policy.
3/4th of legal costs incurred by the assured in contesting liability
The total liability of the insurer under this clause is limited to 3/4th of the insured value of the insured vessel
Exclusions
The following are excluded from the 3/4th liability cover
removal or disposal of wreck/cargo
the cargo or other property of insured vessel
loss of life/personal injury
pollution or contamination of any real or personal property

Clause 9--Sister Ship

Allows vessels owned wholly or partly by the same owners to be treated in the event of collision or salvage as if they were owned by different companies

Clause 11- Duty of the Assured (formerly known as 'sue and labour')
assured has duty to take all reasonable steps to avert or minimise any loss for which a claim would be payable under the policy. In return, most costs in taking such steps are recoverable from the underwriters , These charges are called "particular charges"
Sue and Labour charges are not be confused with General Average expenditure. They are incurred for the benefit of only a single interest (e.g. the vessel, or the cargo), where as general average expenditure is incurred for the common benefit of the ship, cargo and freight.
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Clause 12- Deductibles

no claims arising from an insured peril are payable unless the aggregate of all such claims exceeds an agreed amount, i.e. the deductible.
A deductible is a platform or value, which must be reached before any will be met by the insurer and a compulsory ''excess'' which is deducted from every claim passing this platform. In return for agreeing to paying the first part, his premium is reduced.
This deductible will not be applied to total or constructive total loss.
This deductible is applied to each and every claim arising out of each incident . However if the vessel undergoes damages due to heavy weather experienced between passage between two ports, though the damages might have been caused due to this peril at different times during the voyage, the total damages can be claimed under one deductible.

Clause 13 Notice of claim and tenders

In the event of an accident involving loss or damage where a claim could result, notice must be given to underwriters promptly after b the date on which the assured , owners or managers should have become aware of the incident prior to the survey.
This notice is required by the underwriters to arrange for a survey, decide on the port where to repair and also to obtain tenders for such repairs.
If the notice is not given underwriters may create difficulties in agreeing the cause of damage or repair costs which are essential before a claim could be settled.
Failure to give notice may result in a penalty of 15% from the ascertained claim.
Owners may find it difficult to comply with this clause as at times damages to hull are detected only at the dry dock.
Clauses 24, 25 , 26, 27—Exclusions
war
strikes
malicious acts ;and
radio active contamination.
The clauses are preceded by a paramount clause stating that they will override any other inconsistent clause in the contract
Institute warranties
Under the Institute Warranties , the vessel is not warranted to go to certain areas of:
Atlantic Coast of North America
Great Lakes or St Lawrence Seaway West of Montreal
Greenland Waters
Pacific Coast of North America
Baltic Sea or adjacent waters
Bering sea , East Asian Waters , any port in Siberia
Kerguelen and /or Corset Islands
Warranted not to sail with Indian Coal as cargo :
between 1st march and 30th June , both dates inclusive ;
between 1st July and 30th September, both dates inclusive, except to ports in Asia ,not West of Aden or beyond Singapore

Cargo Insurance

Cargo insurance can be arranged in the UK by brokers in the Lloyds market or the ILU companies market ,or directly from some insurance companies .
There is no standard cargo policy in the UK and most policies are tailored for the individual risk . However , most policies incorporate the Institute Cargo Clauses(A B or C) 1982

Institute cargo clauses(A)

1. Risk clause
all risks of loss/damage covered except exclusions
2. General Average clause
loss/damage due to GA as well as Salvage charges covered
3. "Both to blame collision" clauses
any liability that may arise from the carrier, in respect of this clause in the contract of affreightment

.will be indemnified. Insurer also agrees to defend the cargo owner against any claim from the carrier.

Exclusions

General exclusions
Wilful misconduct of the assured
Ordinary leakage. Loss of weight/volume or wear and tear
Insufficiency of packing
Inherent vice of cargo
Loss/damage due to delay, though delay may have been caused by peril insured against
Loss/damage due to insolvency of carriers
Loss/damage due to nuclear atomic fusion

War exclusion
Not covered if loss/damage to
Civil war/hostile act by belligerent power
Capture or arrest (except piracy)
Derelict mines torpedoes

Unseaworthiness and unfitness exclusion clause
If the Assured or their servants are privy to unseaworthiness/unfitness of vessel/container
Insurer not liable

Strikes exclusion
Loss/damage due to strike/lock out/civil commotion/terrorist act not covered
Duration

Transit clause
Insurance commences from the time cargo leaves warehouse/storage place and continues during transit and terminates on the following occasions:
on delivery to consignee's warehouse whether prior to or at the destination .
or
60 days after completion of discharge overside at the final port of discharge whichever occurs earlier

if on completion of discharge at the final port of destination the goods are to be forwarded to another destination different from the original destination , the insurance terminates when such transportation commences.
Insurance however will be in force during delay caused beyond the control of the Assured, during deviation, forced discharge, and during any variation of the adventure by the ship owner

Termination of contract of carriage clause
If owing to circumstances beyond the control of the Assured , the contract of carriage is terminated before delivery of goods, then this insurance also will terminate unless notice is given when additional premium will be charged and insurance will continue until it is delivered to the consignee.

Change of voyage

Held covered if additional premium paid and any new condition imposed on receipt of notice from the Assured.
Duty of the Assured clause
To take such measures as to minimise/avoid damage /loss of cargo.
To ensure all rights against carriers/bailees or third parties are preserved and exercised.
The underwriters will reimburse any expenditure reasonably incurred for such measures taken.

institute cargo clause(B)

Risk clause
1. fire or explosion
2. grounding/stranding
3. over turning/derailment
4. collision with vessel/craft or any object
5. discharge at port of distress
6. Earth quake/volcanic eruption
7. GA sacrifice
8. washing overboard/jettison
9. entry of sea water
10.Total loss of any cargo during loading/discharging

GA clause, Both to Blame Collision" clause, Exclusions, Duration (transit, termination, and change of voyage clauses)& duty of the Assured
Same as for Institute clause A

institute cargo clause C

Risks clause
Same as institute cargo B clause except:
1. Damage/loss due to entry of water not covered
2. Total loss during loading/discharging not covered
Exclusion, duration, duty of Assured etc are all same as for Institute cargo clause A

Summary
Institute Cargo Clauses A , B and C
Institute cargo Clauses C give cover only against major casualties ; fire, explosion, vessel or craft stranded, grounded ,sunk capsized , overturning or derailment of land conveyances , collision ,or contract, discharge at a port of distress, General Average sacrifice and jettison.
Malicious damage is excluded but can be covered by the Malicious Damage Clause for an extra premium .Theft is not covered .
Institute Cargo Clauses B extend the 'C' cover to include earth quake , volcanic eruption, lightning, washing overboard, entry of sea , lake or river into the vessel craft, hold, conveyance , lift van or place of storage , total loss of packages lost overboard or dropped overboard during loading or unloading. There is Deliberate Damage Exclusion, requiring the addition of the Malicious Damage Clause. Theft is not covered.
Institute Cargo Clauses A give cover "Against All Risks of loss or damage to the subject matter insured ', making the policy almost ' fully comprehensive '. However

ordinary leakage, ordinary loss in weight or volume , ordinary wear and tear , inherent vice , and delay are excluded .

Open covers

An open cover is a commonly used form of long term cargo insurance contract covering all goods shipments forwarded by an assured during the duration of the open cover.
The assured will usually be an exporter or importer .
The assured is honour-bound to declare and insure all his shipments during the term of the open cover.(i.e. he cannot choose to insure some and not others) and the insurer is honour-bound to insure all the assureds shipments , whether a loss occurs before a declaration is made or not . There is no aggregate limit to the value of all shipments made ,but there is a set limit on the amount at risk in any one vessel and often on the amount at risk in any one location.
The insurer allows the merchant to issue himself with a certificate of insurance 'off the open cover ' for each consignment shipped, as formal policy documents for each shipment
would take time to draw up.
The advantage to the insurer of an open cover is that he gets steady business, while for the merchant it means speed and simplicity in the arrangement of insurance cover.
An open policy is a formal policy issued to give legality to a long term marine insurance contract such as a cargo open cover . Without a formal policy document the contract may not be recognised by a court of law .To satisfy the requirements of marine insurance law , therefore , an open policy will be issued in which a nominal premium is specified by way of consideration.
The certificate of insurance given under the open cover is recognised by the Banks and as such the insurance obligation in CIF contract is satisfied . Assignment to the consignee can be made by endorsing the insurance certificate.
Floating policies
A floating policy operates rather like an open cover, but has a fixed aggregate limit which is gradually reduced as each shipment is made .It has largely fallen into disuse with the growth in popularity of open covers.

LOSSES

Categories of Loss
A marine loss may be either :
a total loss or
a partial loss(termed average).

A total loss may be either :
An Actual Total loss (A T L);or
A Constructive Total Loss(CTL).

A partial loss (termed average) may be either:
Particular Average (PA) i.e. an accidental partial loss; or
General Average (GA) i. e. an intentional partial loss,
These losses are individually dealt with below .

Actual Total Loss(ATL)

may occur in 4 ways :

1) where the property insured is actually destroyed , e.g. where a ship is wrecked , or where goods are crushed in the collapse of a stow of cargo ;
2) where goods change their character to such a degree that they can be said to be no longer a thing of the kind that was insured ., e.g. where dates become "mush' or cement powder solidifies ;
3) where the assured is irretrievably deprived of his property , e. g. where a ship is sunk in very deep water ;or
4) where the property is posted 'missing' at Lloyd's e.g. where a ship has not reported for several weeks.

Constructive Total Loss(CTL)

is defined in the Marine Insurance Act 1906 as " a loss where the subject matter insured is reasonably abandoned on account of :
its actual total loss appearing to be unavoidable ; or
because it could not be preserved from actual total loss without an expenditure which would exceed its value when the expenditure had been incurred .'
Examples of CTLs are :
where an assured is deprived of possession of his ship or goods by a peril insured against and it is unlikely than he can recover them , e.g. where a ship which has stranded due to a 'peril of the seas 'is in danger of breaking up.(The ship owner will not want to wait until she has actually broken up before claiming for a total loss, so he claims a CTL on the grounds that an ATL appears to be unavoidable)or
the cost of recovering the ship or goods would exceed their value when recovered, e.g. where an owner who has War Risks cover is deprived of his ship by its entrapment by war-wrecked vessels . As time passes , it may become unlikely that the assured can recover the vessel and she is there fore declared a CTL ,.The cost of recovering her (towage etc.) after several years of idleness would exceed her market value after recovery.(The same applies to goods in a similar situation.)
in the case of damage to a ship , where she is so damaged by a peril insured against that the cost of repairing the damage would exceed the value of the ship when repaired ,e.g where a ship receives so much grounding damage that her repair costs will exceed her repaired market value, or in the case of damage to goods , where the cost of repairing the damage and forwarding the goods to their destination would exceed their value on arrival.

notice of abandonment

An owner of a damaged and salvaged ship will not usually spend more on repairs than the value of the ship after repair.(The ship may qualify as a CTL)
The owner is not obliged to claim a CTL; he may choose to claim a 100%partial loss , make repairs and retain the ship .
If he wishes to claim a CTL, the owner must abandon the property to the insurer by issuing a notice of abandonment. The purpose of this notice of abandonment is to give an opportunity to the insurer to consider taking over the vessel and also gave him a chance to verify as to whether there is any fraud. As such giving the notice of abandonment east mandatory if the assured intends claiming constructive total loss.

After a valid abandonment, the insurer is entitled to take over the interest of the assured in whatever remains of the insured property ,including all proprietary rights in it,, e. g:
the right to any freight in the course of being earned when casualty occurred;
the right to take over the ship ;
the right to dispose of the ship as he thinks fit and retain all the proceeds (even if more than the claim paid).
When a ship is badly damaged and the owner fears a CTL the owner gives n0otice of abandonment to the underwriter.
Tenders are taken from salvers and repairers . It is ascertained whether expenditure will exceed the repaired value .
Items taken into account in the calculation include estimated repair costs; the cost of future salvage operations ; any General Average contributions to which the ship would be liable if she were repaired .If the estimated total outlays exceed estimated repaired value , a CTL is shown and the underwriter will be liable for a total loss.
The insurer pays the claim and takes over proprietary rights in the vessel if she is eventually recovered.
Usually the underwriter on receiving the notice of abandonment, decline to accept it; but however assure that they will put back the assured in his original position. They actually mean to pay him the full assured amount as a total loss, but would not like to take over the damaged/wrecked vessel, as then it become their responsibility to move it away from the port etc. Usually, it is the P& I who does this.

Waiver clause

This clause in introduced in the contract of marine insurance to prevent unnecessary legal battle that usually follows a Notice of abandonment. As the Insurer is initially reluctant to accept the Notice in case of wreck removal liability, he will usually be silent, but may visit the vessel. As per this clause, his visit should not be construed to mean that he has taken over the vessel. Also when the Insurer sees master or crew on board he should not construe that the vessel has not been abandoned
Particular average
A Particular Average (PA) loss is a partial loss , proximately caused by a peril insured against and which is not a general average loss.
The insured perils in a hull and machinery (H&M) policy are listed in the clauses attached to the policy .In a H&M policy effected at Lloyds or the ILU' companies' market, the perils are listed in Clause 6 of the Institute Time Clauses -Hulls (1.11.95).
Thus, structural damage proximately by collision, grounding, heavy weather etc. ('perils of the seas') would normally be classed as PA loss.

P&I Club

are correctly called Protection and Indemnity Associations.
Include, in the International Group of P&I clubs(the association of leading clubs which have broadly similar rules):
With the exception of Gard and Skuld, which are Norwegian , and the American, Japanese and Swedish Clubs , all the above clubs are British in origin
Functions of P&I clubs
Generally insure ship owners and operators against third party liabilities not covered by Hull & Machinery policies obtained in the Lloyd's or Companies markets. A club will usually only accept risks on chartered -in tonnage where the

member also has owned vessels entered with the club .A charterer's club exists to offer similar cover for charterers .
offer insure entire company fleets but tend to prefer owners with similar types and standards of fleet.
May subject owners' vessels to inspection both before entry into the club and during membership .
strive to keep the 'calls' on their members ' at a minimum ,e.g. through loss prevention methods such as information bulletins aimed at owners and ships' officers .
disseminate information (in circulars , bulletins , booklets etc.)aimed at keeping members' premium down ,e.g. new legislation on pollution , advice about avoidance of bad commercial practices etc
Produce lists of correspondents and reliable lawyers and surveyors .
produce standard forms of letters of indemnity and protest.
May post bond against members' ships when under arrest .
issue handbooks containing club rules and lists of correspondents , which are very useful to a master seeking advice and assistance when in any kind of trouble ,e.g. after a pollution incident , a casualty, medevac, arrest , when under pressure to sign' clean' B/L etc.

Club Control and Management

P&I clubs-
operate on a non- profit making basis.
members' ships entered in some clubs maybe subjected to random ship inspections concentrating on the management of the vessel. If failed , a more intensive condition survey by independent surveyors may be called by the club managers. An owner who fails to keep his vessel in the condition required by the club's rules may be expel ed from the club.
Issue each member's vessel with a Certificate of Entry , which should be kept by the master.

Calls

Each P& I club sets a premium rating for an individual owner reflecting :
the risks against which he requires cover;
his fleet's gross tonnage;
his fleet's exposure to risks ;and
other factors including the likelihood of large claims in the coming year.
Advance calls are levied on members at the start of the P&I year(Feb20th to Feb. 20th). Later in the year , if claims have been heavier than expected ., the managers will ask members for supplementary call to 'balance the books'.
Clubs aim to be accurate in their predictions of future claims so as not to burden owners with supplementary calls .
Refunds are made when income (calls +investments) exceeds out goings (claims +expense).

The protection and indemnity club structure

The P&I club is made up of: the mutual association; the managers and the network of independent club correspondent's.
The mutual association: modern protection and indemnity clubs are generally incorporated (as opposed to being partnerships) and, while the principle of mutuality remains, members contract with the corporation rather than with one another as is the case in partnerships. The constitutional affairs of the association are governed by articles are bylaws while the scope of cover and other practical obligations of the club and its members are set out in the rules. All members are entitled to attend

general meetings , where election of the committeemen and amendments to the P& I club rules are made.
Members of the club are not shareholders, subscribe no capital and receive no dividend. Their overriding obligation is mutual responsibility to contribute to the damages, which may be suffered by the association through its obligation to insure any of its members.
The 15 leading P& I clubs make up the international group, most of whom participate in an agreement to pool individual risks between 5 million $ and 30 million $. There is also a further pooling of risks to the extent that individual claims exceed the limits of the group general excess loss insurance contract.
The committeemen (nowadays referred to as the directors of the club) are elected by the general meeting.
Cover available
Clubs based in the UK typically offer cover against :'
¼ collision liability (although 4/4 cover available in Scandinavian clubs);
collision liabilities including excess liabilities ;
cargo loss , shortage and damage ;
injury , illness and death of crew , passengers and stevedores ;
repatriation of crew , and substitute expenses;
pollution by oil or other substances ;property damage etc.
give cover normally lasting a maximum of twelve months , with renewal traditionally commencing annually at Noon G M T on February 20th(when historically , the Baltic trade used to recommence each year and require insurance cover).
A certificate of entry issued by the club relates to the vessel or vessels named in it and entered for insurance in the club
Limits and restrictions on cover
The clubs currently impose a limit on cover for all claims in respect of oil pollution for each entered ship , any one accident or occurrence , of US$500m.
Liabilities arising from carriage under B/Ls are only covered if the B/L is subject to the Hague or Hague-Visby Rules.
Clubs will not normally cover:
ad valorem Bs//L;
deviation;
delivery of cargo at a port other than port specified in the contract of carriage ;
failure to arrive or late arrival at the port of loading ;
delivery of cargo without B/L;
ante-dated or post dated B/L;
clean B/L in respect of damaged cargo;
deck cargo carried on terms of an under deck B/L;
arrest or detention of an entered ship.
The only fines on entered ship that will normally be covered are:
custom fines;
immigration fines ;
fines for failure to have proper documentation on board;
fines for breach of any regulation relating to the construction , adoption, alteration or fitment of an entered ship;
fines incurred as a result of the conduct of the crew or other servant or agent of the member;
fines imposed for failure to maintain safe working conditions.
Proactive role of P&I Clubs
As well as reactive role of providing insurance cover, the P&I clubs are also playing a much more proactive role in improving safety and performance within the shipping

industry. Loss prevention forms a large part of this activity. The Club does the following in its proactive role:
Advise on documentation such as bills of leading a charter party's
2. Claim analysis to identify cause and possible returns the prevention
3. .Proactive claims handling
4. Raising the of awareness of both seafarers and host of others to the risks and potential risks including information on the causes of planes.
5. Controlling the quality of entered tonnage
6. inspections and condition surveys which are conducted for the p&I club by independent surveyors. The club as a means of encouragement analyses various aspects of the vessels inspected and give grading to vessels bringing out their good and to be improved aspects of management.

7. The club has an extensive network of correspondents who are people with merit in related legal or commercial skills located in ports throughout the world. This correspondents are experts on local maritime trade and have a good understanding of how the club works. The role of these correspondents are also loss prevention. Early involvement of experts assistance is frequently the master's wisest course of action.
8. The Club publishes regular "Loss prevention Bulletins" giving the guide lines for loading and discharging of various types of cargoes.
Also the club publishes magazines such as " carefully to carry" bringing out essential points of care to be taken for certain cargoes.

Obligations of the members of the club:

1. Payment of calls-Clubs will not reimburse claims it calls are outstanding, (although some clubs have the power to set of f unpaid calls against claims_ reimbursement.)
2.Classification and statutory requirements. Obligations in relation to class are strict and the effect of breach of obligations is that the member loses his entitlement to recovery from the club for claims arising during the period of the breach.
Every ship elected must be classed with an approved classification society throughout its period of entry, except those few vessels, which are entered on terms that there are not, classed at all.
3.Prompt reports or sent to the classification society of any incident on condition affecting the ship in respect of which the society might make recommendations. This obligation is not limited to matters within the members personal knowledge; a failure by Maine supt or Engine Supt. to report a damage could result in a breach of this rule.
4.Recommendations and requirements of the classification society: periodic surveys are required by all classed vessels and often this will give rise to recommendations for repairs to be completed within a certain period : if the survey on compliance with these recommendations becomes overdue then members may be in breach of this cover .
Member agrees to authorise the classification society to disclose to the managers records relating to the maintenance of class of the entered ship, and authorises the managers to inspect such information.
Members are not permitted to avoid or delay compliance with obligations imposed by the classification society for changing to another society. The member is therefore

obligated to advise club managers of any change of classification society and the outstanding obligations at the date of change.
5.Many Clubs made a condition of cover that the vessel complied with certain statutory requirements of the flag state, typically those relating to the construction, modification, condition, statement, equipment and manning of insured vessel.
Condition surveys- Clubs may well suspend and may cancel all of vessels cover if a club condition survey finds serious defects. Leaking hatch covers is a prime example of a condition which may prompt a club to suspend the cover till the defect is rectified.
inability to impose warranty of seaworthiness throughout the voyage is recognised by the Club. In specialised trades such as refrigerated cargoes, as liability insurers, the club frequently paid cargo claims to which seaworthiness is a contributory factor. However, the claim caused by unseaworthiness existing when the voyage begins and within the knowledge of the ship owner, would be excluded from the cover under the club rules.
6.Trading limits :It is very rare that, a trading limit is imposed by any Club; but if these are imposed within the certificate of entry, written permission will be required if there is going to be a breach .
7.Non admission of liability-: this is naturally important condition for the master to understand and remember that it is important that members of the crew do not make statements which would be construed as admitting liability. It is a must , that the masters make the crew understand these and did not let strangers walk unattended around the vessel.
8.Notification-the Member is under strict obligation to notify the club managers of every casualty, event which will give rise to a liability claim. If the owner fails to notify, the managers may reject the claim as time barred.
-Although offered terms by the P&I is liability insurance, the cover provided is indemnity insurance and as such Club indemnity is for the amount of any claim for which member has naturally become liable and has actually paid- The club reimburses the amount actually paid . This can give rise to important cash flow considerations.
9.Obligation to sue and labour- this obligation may be specifically defined but the member is always required to act as a prudent and uninsured mariner would. The master should be aware of his duties under this relevant rule and should note that cost and expenses are only recovered if they are extraordinarily incurred on after the occurrence and incurred solely for the purpose of avoiding and minimising liability,. Full record of the masters actions and his reasons for taking those actions and all of those cost involved must be recorded.

P& I CLAIMS
Clubs meet most of their claims from their advance and supplementary calls on members . Exceptionally heavy claims are met by drawing funds from a variety of sources
US$5 m each accident , each vessel: club retention
US$30m:International Group Pool retention
US$1,500m: pooled amongst Group clubs .
International Group clubs currently meet only the first $1000 million of any oil pollution claim . Other claims currently have no upper limit , although there is much discussion amongst Group members about a change in the limitation policy , some clubs advocating limitation of liability and others preferring the present unlimited liability

The International Group of P&I Clubs

The International Group of P&I Clubs exists to arrange collective insurance and reinsurance for P&I Clubs, to represent the views of ship owners and charterers who belong to those Clubs on matters of concern to the shipping industry and to provide a forum for the exchange of information.
Each of the nineteen constituent P&I Clubs is an independent, non-profit making mutual insurance association (or "Club"), providing cover for its ship owner and charterer members against liabilities of their respective businesses. Each Club is controlled by its members through a Board of Directors (or Committee) elected from the membership; the Board (or Committee)retains responsibility for strategic and policy issues but delegates to full-time managers the day-to-day running of the Club. Together the Clubs insure over 90% of the world's blue-water tonnage.
The Insurance Pool
Although the Clubs compete with each other for business, they have found it beneficial to pool their larger risks under the auspices of the International Group. This pooling is regulated by a contractual agreement which defines the risks that are to be pooled and exactly how these are to be shared between the participating Clubs. The Pool provides a mechanism for sharing all claims in excess of US$5 million up to a limit of about US$4.25 billion. For a layer of claims between US$30 million and US$2.030 billion the Group Clubs purchase reinsurance from the commercial market (see below). The Pooling system provides participating Clubs with reinsurance protection at cost, to much higher levels than would normally be available in the commercial reinsurance market.
Reinsurance of the Pool
The International Group arranges a market reinsurance contract to help the Pool deal with claims which exceed $30 million. This is the largest single contract in the world's marine insurance market.
It currently extends for claims against shipowners to a little over $2.030 billion per claim save that in respect of oil pollution the maximum is $1bn ($1000m), which is the limit on the oil pollution cover given by the Clubs;
there are lower limits for claims against charterers. By bringing together in this way the risks of the great majority of the world's tonnage, the International Group is able to obtain for the pooling Clubs the maximum reinsurance capacity on the best terms available worldwide.
Because International Group Clubs share their claims through the Pooling system, they have a common interest in loss prevention and control, and in the maintenance of quality standards throughout the membership.
The Representative Function
The International Group provides an effective voice for the ship owner and charterer members of the individual Clubs, particularly on new Conventions and legislation affecting shipowners' and charterers' liabilities and the insurance thereof. It carries out this function in relation to inter-governmental bodies such as IMO and UNCTAD as well as to national governments.
Exchange of Information
The International Group provides a useful forum for sharing information on matters of concern to Clubs and their members. These include general issues such as oil pollution and personal injury as well as current problems in particular ports or in relation to the carriage of particular cargoes.
Operation and Control
Strategic and policy issues of concern to the International Group are determined by each Club individually. It is for the Board of Directors (or Committee) of each Club to

decide upon the extent to which it desires to delegate authority to its managers to deal on its behalf with particular matters.
Routine business is usually dealt with by correspondence between the managers of the International Group Clubs or their representatives, who also meet in committee to analyse and clarify more complex issues, with a view to formulating recommendations for the individual
Clubs co-ordination
The monitoring of the pooling contract involves the managers of the International Group Clubs or their representatives working together to examine any proposed alterations or extensions to the cover being provided by each Club in order to assess the continuing compatibility of the risks that are to be pooled. Similarly, they review the accounting policies of each participating Club with a view to enabling the other Clubs to monitor its financial strength. They also operate the contractual machinery for sharing the claims in the Pool with the aim of producing an equitable financial result as between the participating Clubs. Finally, they co-ordinate the detail of the Pool's reinsurances; the contract itself is placed annually by brokers acting on behalf of all the participating Clubs.

The International Group Clubs
.
American Steamship Owners Mutual Protection and Indemnity Association, Inc.
Assuranceforeningen Gard (Gjensidig)
Assuranceforeningen Skuld (Gjensidig)
The Britannia Steam Ship Insurance Association Ltd.
The Japan Ship Owners' Mutual Protection and Indemnity Association
The London Steam-Ship Owners' Mutual Insurance Association Ltd.
The North of England Protecting and Indemnity Association Ltd.
The Shipowners' Mutual Protection and Indemnity Association (Luxembourg)
The Standard Steamship Owners' Protection and Indemnity Association Ltd.
The Standard Steamship Owners' Protection and Indemnity Association (Bermuda) Ltd.
The Standard Steamship Owners Protection and Indemnity Association (London) Ltd.
The Steamship Mutual Underwriting Association Ltd.
The Steamship Mutual Underwriting Association (Bermuda) Ltd.
The Steamship Mutual Underwriting Association (Europe) Ltd.
Sveriges Angfartygs Assurance Forening (The Swedish Club)
The United Kingdom Mutual Steam Ship Assurance Association (Bermuda) Ltd.
The West of England Ship Owners' Mutual Insurance Association (Luxembourg)

General Average

General average is an unwritten international maritime law , which is universally recognised and applied. It has been practised since time immemorial and was part of the Rhodian law . It is founded on the principle that ship and goods are parties to the same venture and share exposure to the same perils , which may require sacrifice on the part of one, or the incurring of extra ordinary expense ,for the benefit of the whole venture.
A general average may be either a sacrifice or an expenditure , but in order to qualify as such it must satisfy ALL of the following criteria. It must be:

**extra ordinary in nature(normal expenditure or damage is excluded);
voluntarily;(not inevitable)
deliberately(accidental damage is excluded);
and reasonably incurred;(jettison enough- no more than necessary)
in time of general peril (the whole venture i.e ship and cargo must be threatened);
for the common safety (expense or save only part of the venture is excluded);
of a maritime nature(general average is peculiar to maritime ventures);
the danger must be real (imagined danger does not qualify);
and imminent (expense for seeing and avoiding danger do not qualify (i,e. deviation to avoid a storm as this is part of the carrier's normal expense/ responsibility);
and must succeed in saving some part of the venture(otherwise nothing is left to contribute!).
Each of these requirements is essential and, if one is missing. The sacrifice or expense involved is not allowable in General Average
Parties to the common adventure
are usually:
the ship owner
the cargo owners (however many they may be)
the owners of the bunker fuel(who maybe time charterers)
the recipient of the freight (ship owners or time charterers).
Where cargo is owned by more than one party , each owner is treated as a separate interest and bears his own share of any GA loss, no matter how small.
Where the vessel is time-chartered , the charterer's interest is determined by the value of his bunkers remaining on board at the termination of the voyage, plus any freight at risk.(Where the time charterers own the cargo there may not be any freight at risk.)**

<u>Essential elements of a GA act</u>

**The sacrifice or expenditure must be extra ordinary
The sacrifice or expenditure must be reasonable
The act must be intentional or voluntary and not inevitable
There must be a peril
The action taken must be for the common safety and not merely for the safety of part of property involved.**

<u>Extra ordinary sacrifice or expenditure</u>

Ordinary losses and expenses incurred by a ship owner in running his ship and carrying cargoes are not allowed in GA. E.g. damage done when overworking a ship's engines while afloat , trying to prevent grounding, is considered 'ordinary ', whereas damage done to engines worked when aground, in attempting to re- float , would qualify in GA, since this is an "extra ordinary' act.

<u>Reasonable sacrifice or expenditure</u>

**The sacrifice or expenditure must be reasonable. Jettisoning enough-but no more- of a deck cargo of timber to re-float a grounded ship would be' reasonable '.Jettisoning the entire deck cargo would not be reasonable.
Intentional or voluntary act
Beaching a leaking ship (i. e. voluntary stranding) to prevent her foundering will generally be allowed as GA , as this is intentional and voluntary .Costs of repairs to the damage causing the leak , if caused by an insured peril, would qualify in PA not GA. Re-floating an accidentally grounded ship could be a GA act , since the act of re-floating is intentional .**

<u>Peril</u>

The peril must be real and substantial, but need not be imminent.
The distinction between action taken for the common safety in time of peril, and a measure which ,however reasonable , is purely precautionary , is a very fine one .
A ship drifting without engine power in mid ocean would entirely be' in peril ' under the York-Antwerp Rules (which govern the assessment of most general average cases),even though the weather might be calm at the time and here was no immediate threat .Sooner or later, ship and cargo would come to grief one way or another, so the cost of a tow to safety would therefore qualify in GA.
Where the master of a perfectly sound ship prudently decides to run for shelter from an approaching storm , there is no GA act since the measure is purely a precaution of a prudent seaman .
Action for the common safety
If refrigerating machinery of a reefer vessel breaks down during a loaded voyage through tropical waters , making it imperative to put into ports of repairs , the threat of loss is limited to the cargo and perhaps the freight ,As far as the ship itself is concerned the voyage could quite safely continue , so deviation to a repair port in this case would not be a GA act.
Deviation to a port of refuge is only allowed in GA where to do otherwise would imperil the ship, cargo and freight .

YORK-_ANTWERP RULES 1994

Are a set of internationally-recognised rules drawn up by a number of_maritime countries to enable the assessment of each party's GA contribution.
Are(unlike Hague-Visby Rules) not incorporated into national law but are voluntarily and mutually accepted by shippers, ship-owners and insurers .
are generally incorporated into the contract of carriage by means of a General Average Clause. If the parties have not agreed to apply the YARs , common law -usually that of the country where the voyage is terminated following the GA act- may be applied to the GA adjustment. There is a risk in such cases of wide variations from one country to another in the method of adjustment of GA.

Consist of 7 lettered rules (A to G)stating the general principles of GA, plus 22 numbered rules (I to XXII)dealing with specific matters .

Rulr paramount ***GA sacrifice and expenditure must be reasonable***

Rule A - GA is defined as follows :

"There is a GA act when and only when ,any extra ordinary sacrifice or expenditure is intentionally are reasonably made or incurred for the common safety for the purpose of preserving from peril the property involved in a common maritime adventure"

Rule B
Tug and tow on a commercial contract are in a common maritime adventure and are allowed to declare a GA; but those on a salvage contract are not.
Rule C
Originally losses, damages or expenses due to direct consequence of GA are allowed as GA.In 1994 revision, the following are not allowed in GA:
pollution, environmental damages

loss of market, demurrage, loss/damage due to delay.

Rule D

The essence of the rule is what matters in GA act is the consequence and not the cause.

Rule E

Onus of proof claiming GA is on the party. In 1994 revision, parties claiming GA should give notice with in 12 months of termination of GA. If not GA adjuster will be at liberty to estimate expenses.

Rule F &G

Expenses incurred in place of another expenditure which would have been deemed as GA expenditure, will be considered as GA expenditure.

In 1994 , it is further elaborated to include forwarding of cargo from port of refuge to destination, as GA expenditure. Also rights and liabilities will remain as if the adventure continues to port of destination.

York-Antwerp Numbered rules 1994.

Rule 1- jettison of cargo.

No jettison of cargo unless it is carried as per custom of trade.

Rule2- Loss or damage by sacrifices for common safety.

A small technical change is made in this rule in 1994. The 1994 Rule replaces words in the earlier Rule "cargo and ship" by "loss or damage to the property involved in common maritime adventure" to forestall any pollution liability.

Rule 3. Extinguishing fire on shipboard

Damage done to the ship or cargo by water during GA is allowable in GA. However no compensation for damage caused due to smoke or heat however caused.

In 1994 Rules " heat however caused " is replaced by " by heat of the fire". This is to include in GA any damage to caused due to "ambient heat by which a reefer cargo mauy be damaged in case reefer is shut off in order to extinguish the fire.

Rule 4- Cutting away wreck

Damage sustained by cutting away wreck or parts of ship which had been previously carried away or lost by accident, shall not be made good as GA.

Rule 5 Voluntary stranding

When vessel intentionally run on shore for common safety whether or not she might have been driven on shore, the consequent loss or damage to the property involved in common maritime adventure shall be made good in GA. Introduction of "property involved" in 1994 rule is to forestall any pollution liability.

Rule 6 Salvage remuneration

Salvage expenditure to preserve from peril whether under contract or otherwise will be allowed as GA expenditure.

In 1994 Rule following added in view of 1989 Salvage Convention.

1..GA salvage remuneration shall include remuneration for "skill and efforts of the salvers in preventing or minimising damage to the environment as per the 1989 Salvage Convention .

2."Special compensation" payable to salvers under 1989 Salvage Convention, ship owner is not allowable under GA

Rule 7 Damage to machinery and boilers

If damage to machinery and boiler is sustained while floating a grounded vessel, it will be allowed under GA. Not allowed if damage is sustained while preventing grounding!

Rule 8 expenses lightening a ship when ashore and consequent damage

Expenses for lightening by way of discharge of cargo, stores, fuel and reshipping cost including any damage to the property involved in the common maritime adventure shall be admitted as GA.

Rule 9 Cargo ships fuel and stores used for fuel

If the above are used as fuel in the time of peril, the cost will be admitted as GA. But when such allowance is made, GA shall be credited with estimated cost of fuel which would have otherwise have been consumed in prosecuting the voyage.

In 1994 the earlier 1974 stipulation that "when and only when ample supply of fuel had been provided" has been removed in 1994. It is because in GA what matters is the consequence and not the cause.

Rule 10 Expenses at the port of Refuge

There is no change from the 1974 Rule. Following admissible as GA:

port of refuge arrival departure expenses (for departure expense v/l must sail only with full or part of original cargo. No new cargo to be transported).

If port of refuge not able to repair v/l and v/l removed to another port. Then port dues etc of the second port also will be admitted as GA.

Cost of handling, discharging, reloading ware housing etc will be admissible as GA provided it was necessary for the common safety.

If vessel condemned or does not proceed on original voyage, storage expenses allowable only up to date of such abandonment of voyage/condemnation.

Rule 11 Wages and maintenance of crew and other expenses in a port of refuge.

wages of master+crew+fuel+stores allowable under GA

if vessel has to go to another port from port of refuge for repairs then, this provision again applies

If voyage is abandoned/condemned, then the wages etc stop on such date.

In 1994 following additions were made:

Cost of measures taken to prevent minimise pollution when incurred for the common safety is allowable under GA.

2. when there is already escape of oil cost of minimising pollution not allowable under GA.

Rule 12 Damage to cargo in discharging etc

Damage to cargo during discharge for common safety, allowable under GA.

Rule 13 " deductions for cost of repairs"

deductions for repairing old parts with new , if v/l is more than 15 years old,1/3rd cost of part.

no deductions for provisions, stores, anchor and cables

dry dock cost of shifting no deductions

bottom cleaning not allowable under GA, unless bottom has been painted with in 12 months of GA act.

Rule 14 Temporary repairs.

All temporary repairs of damages due to GA act allowable in GA

temporary repairs of accidental repairs "accidental damage" will also be admissible if such repairs are necessary to complete the adventure.

Rule 15 Loss of freight.

loss of freight from damage/loss of cargo will be made good as GA.

deductions however will be made from such freight, any expenditure which the vessel owner would have incurred if cargo were actually carried and discharged.

(time charter hire loss will not be made good)

Rule 16 amount to be made good for cargo lost /damaged by GA sacrifice
CIF value at port of discharge port. This rule has an inherent problem when cargo under multi modal transportation is lost in GA, as it is difficult to ascertain value at the time of discharge from the commercial invoice. An attempt was made to change this to CIF at the time of delivery. But it did not materialise.
Rule 17 Contributory value
Cargo: CIF value at the time of discharge ascertained from commercial invoice
Ship : sound market value plus amount made good by GA by way of repairs
Change in 1994
Passenger luggage, crew effects, accompanied cars not to contribute.
(what will a passenger car ferry do when there is a GA situation??)
Rule 18 Damage to ship
When repaired or replaced by GA actual cost which is reasonable after deducting as per Rule 13 (new for old deductions) will be made good
when not repaired or replaced reasonable depreciation from such loss or damage but not exceeding estimated cost of repairs will be made good.
when v/l is ATL or CTL estimated sound value of V/L minus cost of accidental damage(not GA) minus scrap value of ship in damaged condition
Rule 19 undeclared and under valued cargo
Undeclared cargo : No GA if lost/damaged; but must contribute if saved
Under valued cargo: will be made good at declared value; but will contribute at real CIF value to be estimated by average adjuster.
Rule 20 Provision of funds
2% commission on GA disbursements
Rule 21 Interest on losses made good in GA
7% interest per annum on expenditure, sacrifices, until 3 months after GA adjustment
Rule 22 Treatment of cash deposits
Cash deposits collected from cargo, for GA Salvage shall be deposited in joint account, along with interest accrued, with out delay.

Examples of GA acts allowed under York-Antwerp Rules:

taking a tow to a port of refuge after a major machinery failure; jettisoning or discharging cargo to aid refloating after stranding; extinguishing a fire;
wetting previously undamaged cargo while extinguishing a fire.(Damage caused by the fire would be PA, while damage by water would be GA)
beaching a ship(voluntary standing to avoid foundering;
putting into a port of refuge during a loaded voyage due to fire , shifting of cargo , collision, grounding, leakage ,etc; and
putting into a port of refuge to effect essential hull or machinery repairs.
Examples of GA sacrifices allowed under York-Antwerp Rules :
damaging engine, propeller or hull in refloating operations;
jettison of cargo from under deck ;
jettison f cargo carried on deck by a recognised custom of trade ; and
slipping an anchor and cable to avoid a collision .
Examples of GA expenditure allowed under York-Antwerp Rules
cost of hiring a tug to refloat a stranded ship with cargo onboard;
cost of discharging cargo in order to refloat a stranded ship or to carry out repairs at a port of refuge;
salvage costs;
agency fees at a port of refuge;

surveyor's fees ;
warehousing charges ;
port charges ;
master's and crew's wages while a ship is being repaired; and
average adjuster's fee

Action at port of Refuge

1.prior to or immediately on deviation advise owners who may arrange tow, appoint agents at port of refuge.
2.Also intimate hull and machinery insurance, P& I clubs. Owners may give in sections regarding general average.
3. Make log entries regarding action taken deviation etc
4.keep accurate record of Bunker consumptions, crew wages from the time of general average incident.
5. ETA to port of refuge.
6. Request agent to notify port authorities giving details of damage.
7. enter vessel in custom house "on average"
8 .Lodge the protest on arrival with a class to extend the same. Make the protest simple as details can be given while extending the protest
9. If discharge of cargo necessary, Hatch survey is necessary. Employ P&I recommended surveyors.
10. GA contributions from cargo and fleet payable only at bill of lading port of destination. Therefore all expenses in port or fast paid by owners. An accurate record of expenses and events must be kept.
11. cargo does not reach port of bill of lading destination no contribution from cargo /freight .owner takes insurance against loss of general average expenses in case cargo does not reach destination.
Demand by cargo owners to deliver cargo to be accepted only if they are willing to pay the freight & an average bond, and give non- separation agreement. Also they are to provide valuation form with commercial invoices.
12.If due to delay in repair of vessel cargo is to be transshipped, owner's advise must be taken,
13.if master has spent on incurred expenditure towards a particular cargo, not as a common good, but only for that cargo, special charges for that cargo should be specified and noted in the average bond prior to giving delivery.
14.Carry out repairs under classification surveyor or Salvage Association surveyors.
15. On completion of repair, if under class surveyors guidance the vessel will be issued an interim certificate of class. Any other surveyor will issue a certificate of seaworthiness.
16.Extend protest including expenditure and details of damage. Attach survey report to the extended protest
17.Send all documents to owners including photographs and video footage.

Action at Port of Destination

Termination of the adventure and declaration of GA
An adventure is said to be terminated on completion of discharge at the port of destination after a GA act.
If the voyage is abandoned at an intermediate port (perhaps the port of refuge), then the adventure terminates at that port

A declaration of GA must be formally made in compliance with local law and customs before delivery of cargo at the termination of the voyage. The declaration is usually made by the ship owner or the master, but in some countries any one of the interested parties may do this to initiate an adjustment .The owner or the agent should be able to advise on this .
Following the declaration, the assessment of the GA may begin. This is termed the adjustment of the GA , and is made by an average adjuster

Contributions to GA

All the property at risk in the common adventure at the time of the time of the incident giving rise to the GA act and saved by that act must contribute to the GA according to its value to its owner (its sound market value) at the termination of adventure (i.e. the end of the voyage , at the final destination).
There must be equality of contribution between the owner of property sacrificed and the owner of property saved , so that no interest profits by his sacrifice.

Possessory lien on cargo for GA contributions

A ship owner has a common law lien on cargo in his possession for its contributions to a GA, this being a condition of delivery of the cargo . Possession of the cargo is the ship owner's only guarantee that the cargo owners will pay the required contributions without costly court actions to enforce this .
In practice, GA contributions take months or even years to be assessed , so it is not normal for the ship owner to exercise his lien on cargo for the full contribution. Instead, he exercises the lien on some form of security pending the final judgement .
It becomes the duty of the master (or the ship agent's on behalf of the master) to obtain an acceptable security for the cargo's GA contribution before delivering the cargo to receivers
GA security may be given in the form of :
cash (which is unlikely to be forthcoming);
a GA bond (i.e. a signed promise by the receivers to pay their GA charges when known;
a GA deposit (paid by cargo receivers);or
a GA guarantee(a promise from cargo under writers to pay the required contribution without the collection of a deposit).

Salvage claim

GA acts often give rise a salvage claim.
Although under the laws of many nations , salvage charges are quite separate from GA charges , salvage claims are usually treated as GA expenditure and are therefore paid by the insurers.
Rule VI of the York-Antwerp Rules provides that any salvage charges will be treated as GA

Basis of GA adjustments

Calculation of_contributory values and assessment of GA losses , especially on vessels such as 4,000 TEU container ships , is a complex task for an average adjuster. All the property
at risk in the common adventure at the time of the occurrence giving rise to the GA act and saved by that act contributes to the GA according to sound value at destination. Cargo discharged prior to the occurrence or
loaded after it does not contribute. Therefore, if fire broke out during loading , it would be necessary to have accurate particulars of all cargo on board at the time of the outbreak.

The value of the ship after the GA act , and the CIF value of sound , undamaged cargo remaining after the GA act are calculated for GA purposes.

CLAIMS

Hull claims

Following any case of hull damage , e.g. due to collision or grounding , the ship owner/ manager's insurance department will normally immediately inform the H&M insurer via the broker.
If abroad ,Lloyd's agents will normally be notified. This was an express requirement under the Notice of Claim and Tenders Clause in the 1983 edition of The Institute Time Clauses Hulls. This clause is not found in the 1995 revision.
In the event of a claim on a Lloyd's policy , the client must contact the broker concerned to initiate the claims process. The broker then informs the leading underwriter at Lloyd's (who originally set the terms and conditions of the risk) and Lloyd's Claims Office , which acts on behalf of "following' Lloyd's underwriter s.
Once the validity of the claim has been checked and payment agreed , Lloyd's central accounting system will ensure that the claim is paid directly to the broker's account.

Documents and information required from the ship
In addition to copies of the relevant insurance policies(which will be supplied by owners), the documents and information listed below may be required to accompany a claim lodged by owners against underwriters .

General documents and information required
Include:
deck and engine room_log books_covering the causality and the repair period;
Master's and/or chief engineer's detailed report (as appropriate);
relevant letters of protest ;
protests and extended protests ;
underwriter's surveyor's report ;
class surveyor's report ;
owner's superintendent's report ;
receipted accounts for repairs and/or any spare parts supplied by owners, in connection with repairs , endorsed by underwriter's surveyor as being fair and reasonable;
accounts covering any dry docking and general expenses relating to the repairs , endorsed as above;
accounts of all incidental disbursements at the port of repair , e.g. for port charges , watch men, communications expenses , agency fees etc.;
details of fuel and engine room stores consumed during the repair period , together with the cost of replacement ;
accounts for owner's repairs effected concurrently with damage repairs ;
copies of faxes and telexes sent and details of long-distance calls made in connection with the casualty , together with their costs ;
any accounts rendered by surveyors etc. with dates of payment where made.
Information required after a collision
includes :
details of steps taken to establish liability for the collision and the eventual settlement made between the two parties ; if a recovery has been attempted

against t the colliding vessel , a detailed copy of the claim put forward and all the items allowed from the claim by the owners of the colliding vessel together with accounts covering legal costs ;
a detailed copy of any claim received from the other vessel , together with details of which items included in the claim have been agreed ;
details of efforts to limit liability .
Cargo claims
When cargo loss or damage is discovered (usually at the discharge port or destination), a delivery note or consignment note will be claused with a note of the loss or damage .The cargo owner will immediately inform his insurer.
After the claim is quantified and documented, the under writer settles the claim through the Lloyd's agent .
The under writer then decides (under the doctrine of subrogation) whether or not claim is worth pursuing against the carrier. If he decides to pursue the claim , he immediately makes a written claim on carrier.(Failure to claim may prejudice his right of recovery)The claim (including the surveyor's fee) is settled by the carrier in the currency stated in the policy the certificate of insurance. The carrier , if a P& I club member , claims on his club policy.

FAL Convention

(Convention on Facilitation of International Maritime Traffic)

The purpose of this Convention is to facilitate maritime traffic by simplifying and reducing to a minimum the formalities, documentary requirements and procedures on the arrival, stay and departure of cargo, ships and crew engaged in international voyages thereby preventing unnecessary delays to ships and to persons and property on board.
The convention lays down Standards to be adopted by the contracting States and also urges States to follow the Recommended Practices given in the Convention.
"Standards" are the necessary and practical measures to be uniformly adopted by the contracting States in order to facilitate international Maritime Traffic.
" Recommended Practices" are those measures application of which are Desirable in order to facilitate international Maritime Traffic and contracting States must as far as possible bring their formalities into accord with the "Recommended Practices".

Any Contracting State which finds it impractical to comply with any "Standard" must inform the Secretary General notifying him the differences between own practice and the Standard stipulated in the Convention.
Section 1
gives definitions of maritime terms such as cargo, cruise ship, crew effects etc.
Defines what is Standard and Recommended Practices.
Recommends Contracting Governments to encourage exchange data electronically.
Section 2
Standard . Arrival Documents shall not be more than following:
General Declaration-- 5 copies
Cargo Declaration-----4 'copies
Ship stores Declaration—4 copies
Crew effects Declaration –2 copies
Crew List----------4 copies
Passenger List----------4 copies

Maritime Declaration of Health—1 copy
Departure documents shall not be more than following:
As for arrival except crew effect and health declaration
For Landing Sick Crew
Standard 1. Master must give as much notice as possible giving details of sickness . authorities shall by radio info⌈ m master documentation and procedures.
Priority berthing if sickness or sea condition demands
Normally should not require more than Health declaration and if need be only General Declaration

Section 3 Arrival and Departure of persons.

Standard: Valid passport shall be the basic document for information regarding the individual on arrival or departure
Recommended Practice: States should as far as possible accept official documents of identity in lieu of passport .
2 . Standard : when a seafarer enter or leave a country by any means of transportation, for the purpose of joining a ship, authorities shall accept valid seafarer's identity document in lieu of his Passport.
Section 4. Arrival, stay and departure of Cargo
This section contains provisions concerning the formalities required from ship owner, agent or the master of the ship. There is a general stipulation that ports must make arrangements whereby cargo ships and their cargo can be entered and cleared as fast as possible to facilitate satisfactory traffic flow.
Section 5. Public health and quarantine etc.
1. Recommended Practice: Ports should whenever possible and practicable should grant pratique by radio to ship.
Standard: ships should inform promptly any illness on board to authorities.
Standard: ship which is not infected with quarantinable disease shall not on account of other epidemic disease, be prevented from discharging or loading of cargo.
Section 6. Miscellaneous Provisions:
Standard : Port authorities should adopt all measures to provide normal services to vessels ,in order to avoid delays.
Standard : port authorities shall facilitate the arrival and departure of ships engaged in disaster relief work , combating and preventing pollution or other emergency operations.

Appendix 1; IMO FAL Forms: Following standard forms are available for sale at IMO:

1. **IMO General Declaration**
2. **.IMO Cargo Declaration**
3. **IMO Ship stores Declaration**
4. **IMO Crew effects Declaration**
5. **IMO Crew List**
6. **IMO Passenger List**

Appendix 2: Simpler shipping Marks

The purpose of shipping marks is to identify cargo and help in moving it rapidly, smoothly and safely without delays or confusion to its final destination and to enable the checking of cargo against documents. However, marks have become so lengthy and detailed that the side of packages have become documents. The result is

unnecessary costs, mistakes, confusion and shipment delays, and the purpose of shipping marks is compromised.
Also shipping marks differ widely between countries and between modes of transport. It is therefore imperative that simple and consistent standards for shipping marks should be established. Some of the benefits of such standards are :
Reduced cost
Quicker checking
Increased safety
trouble free delivery of cargo.

Standardised shipping marks

It is made up of the following four elements in the sequence indicated and should be shown both on packages and documents

!) initials or abbreviated name	**ABC**
Reference No	**1234**
Destination	**Bombay**
Package Number	**1/25**

information marks

The information marks are not necessary for delivery to destination. These are mainly for the carrier. These are not part of shipping marks and are not shown in documents. These are Gross wt and country of origin. These should be marked below the standard shipping mark, but separated from it. Example: 625 KG
Made in UK
UNIC (Unique identification Code Methodology)
This could further simplify shipping marks while enhancing the possibilities of using Automated Data Processing systems.(ADP).
Example : 16/128735258/B1928
Helsinki 1/25
If a comprehensive ADP system existed for control of goods movement, it would be possible to replace the standard shipping mark with UNIC. Example:
16/128735258/B12928
1/25
Documentation of Dangerous goods shipments

When dangerous goods are shipped, similar documents to those required for other categories of goods have to be prepared. In addition information relating to the hazard of the goods have to be given. The class and division of goods , UN No, Labels must be marked on the package. The shipper in addition also has to give a certificate or declaration that the shipment offered can be accepted for shipment and that it is properly packed, marked and labeled.
Each ship carrying dangerous goods must have a special list of manifest setting forth the stowage location in accordance with SOLAS and MARPOL.
IMO's Dangerous goods Declaration form is available for sale at IMO.
Appendix 4 : this gives the format for immigration authorities to forward fake passport cases to relevant authorities.

certificates and documents required to be carried on board ships

(Note: All certificates to be carried on board must be originals)

1 All ships Reference Certificate of Registry	FAL Convention
International Tonnage Certificate (1969) Tonnage An International Tonnage Certificate (1969) shall be issued to every ship, the gross and net tonnage of which have been determined in accordance with the Convention.	Convention, article 7
International Load Line Certificate An International Load Line Certificate shall be issued under the provisions of the International Convention on Load Lines, 1966, to every ship which has been surveyed and marked in accordance with the Convention or the Convention as modified by the 1988 LL Protocol, as appropriate.	LL Convention, article 16; 1988 LL Protocol, article 18
An International Load Line Exemption Certificate shall be, issued to any ship to which an exemption has been granted under and in accordance with article 6 of the Load Line Convention or the Convention as modified by the 1988 LL Protocol, as appropriate.	LL Convention article 6; 1988 LL Protocol, article 18
Intact stability booklet Every passenger ship regardless of size and every cargo ship of 24 metres and over shall be inclined on completion and the elements of their stability determined. The master shall be supplied with a Stability Booklet containing such information as is necessary to enable him, by rapid and simple procedures, to obtain accurate guidance as to the ship under varying conditions of loading. For bulk carriers, the information required in a bulk carrier booklet may be contained in the stability booklet.	SOLAS 1974, regulations II-1/22 and II-1/258; 1988 LL Protocol, regulation 10
Damage control booklets On passenger and cargo ships, there shall be permanently exhibited plans showing clearly for each deck and hold the boundaries of the watertight compartments, the openings therein with the means of closure and position of any controls thereof, and the arrangements for the correction of any list due to flooding. Booklets containing the aforementioned information shall be made available to the officers of the ship.	SOLAS 1974, regulations II-1/23, 23-1, 25-8

Minimum safe manning document
SOLAS 1974

Every ship to which chapter I of the Convention applies shall (1989 amendments), be provided with an appropriate safe manning document or regulation V/13(b) equivalent issued by the Administration as evidence of the minimum safe manning.

Certificates for masters, officers or ratings STCW 1978 (1995

Certificates for masters, officers or ratings shall be issued to amendments), those candidates who, to the satisfaction of the Administration, article VI, meet the requirements for service, age, medical fitness, regulation I/2, training, qualifications and examinations in accordance with STCW Code, the provisions of the STCW Code annexed to the section A-I/2 Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978. Formats of certificates are given in section A-I/2 of the STCW Code. Certificates must be kept available in their original form on board the ships on which the holder is serving.

International Oil Pollution Prevention Certificate
MARPOL 73/78,

International Oil Pollution Prevention Certificate shall be Annex I, issued after survey in accordance with regulation 4 of regulation 5Annex I of MARPOL 73/78, to any oil tanker of 150 gross tonnage and above and any other ship of 400 gross tonnage and above which are engaged in voyages to ports or offshore terminals under the jurisdiction of other Parties to MARPOL 73/78. The certificate is supplemented with a Record of Construction and Equipment for Ships other than Oil Tankers (Form A) Record of Construction and Equipment for Oil Tankers (Form B), as appropriate.

Oil Record Book
MARPOL 73/78,

Every oil tanker of 150 gross tonnage and above and every Annex I, ship of 400 gross tonnage and above other than an oil tanker regulation 20 shall be provided with an Oil Record Book, Part I (Machinery space operations). Every oil tanker of 150 gross tonnage and above shall also be provided with an Oil Record Book, Part II (Cargo/ballast operations).

Shipboard Oil Pollution Emergency Plan
MARPOL 73/78,

Every oil tanker of 150 gross tonnage and above and every Annex I,
ship other than an oil tanker of 400 gross tonnage and above regulation 26
shall carry on board a Shipboard Oil Pollution Emergency Plan approved by the Administration.
Garbage Management Plan
MARPOL 73/78,

Every ship of 400 gross tonnage and above and every ship Annex V,
which is certified to carry 15 persons or more shall carry regulation 9
a garbage management plan which the crew shall follow.
0
Garbage Record Book
MARPOL 73/78,

Every ship of 400 gross tonnage and above and every Annex V,
ship which is certified to carry 15 persons or more engaged regulation 9
in voyages to ports or offshore terminals under the jurisdiction of other Parties to the Convention and every fixed and floating platform engaged in exploration and exploitation of the sea-bed shall be provided with a Garbage Record Book.
Cargo Securing Manual
SOLAS 1974,

Cargo units, including containers, shall be loaded, stowed and regulations VI/5,
secured throughout the voyage in accordance with the Cargo VII/6;
Securing Manual approved by the Administration. The Cargo MSC/Circ.745
Securing Manual is required on all types of ships engaged in the carriage of all cargoes other than liquid bulk
cargoes, which shall be drawn up to a standard at least equivalent to the guidelines developed by the Organization.
Document of Compliance
SOLAS 1974,
A document of compliance shall be issued to every company regulation IX/4;
which complies with the requirements of the ISM Code.
A,copy of the document shall be kept on board. ISM Code

Safety Management Certificate
SOLAS 1974
regulation IX/4;
A Safety Management Certificate shall be issued to every ship

by the Administration or an organization recognized by the ISM Code
Administration. The Administration or an organization paragraph 13
R00ecognized by it shall, before issuing the Safety Management Certificate, verify that the company and its shipboard management operate in accordance with the approved safety management system.
In addition to the certificates listed in section 1 above, passenger ships shall carry:
Passenger Ship Safety Certificate 1 SOLAS 1974,

A certificate called a Passenger Ship Safety Certificate shall be regulation I/12,
issued after inspection and survey to a passenger ship which as amended by the
complies with the requirements of chapters II-1, II-2, III and GMDSS
IV and any other relevant requirements of SOLAS 1974. amendments

A Record of Equipment for the Passenger Ships Safety Certificate 1988 SOLAS
(Form P) shall be permanently attached. Protocol;
Exemption Certificate 2 SOLAS 1974, When an exemption is granted regulation I/12
to a ship under and in accordance regulation I/12;
with the provisions of SOLAS 1974, a certificate called an 1988 SOLAS
Exemption Certificate shall be issued in addition to the Protocol,
certificates listed above. regulation I/12

Special trade passenger ships STP
A form of safety certificate for special trade passenger ships, Agreement, STP Agreement
issued under the provisions of the Special Trade Passenger regulation 6
Ships Agreement, 1971.
Special Trade Passenger Ships Space Certificate issued under STP 73,
the provisions of the Protocol on Space Requirements for rule 5
Special Trade Passenger Ships, 1973.

Search and rescue co-operation plan SOLAS 1974,

Passenger ships to which chapter I of the Convention applies, (1995 Conference

trading on fixed routes, shall have on board a plan for amendments),
co-operation with appropriate search and rescue services in regulation V/15©
event of an emergency.
List of operational limitations
Passenger ships to which chapter I of the Convention applies SOLAS 1974,
shall keep on board a list of all limitations on the operation of (1995 Conference
the ship, including exemptions from any of the SOLAS amendments),
regulations, restrictions in operating areas, weather restrictions, regulation V/23
sea state restrictions, restrictions in permissible loads, trim,
speed and any other limitations, whether imposed by the
Administration or established during the design or the building
stages.
Decision support system for masters SOLAS 1974,

In all passenger ships, a decision support system for emergency regulation I/12
,
be issued after survey to cargo ship of 300 gross tonnage and as amended by
over, fitted with a radio installation, including those used in the GMDSS
life-saving appliances which complies with the requirements of amendments;
chapters III and IV and any other relevant requirements of 1988 SOLAS
SOLAS 1974. A Record of Equipment for the Cargo Ship Protocol,
Safety Radio Certificate (Form R) shall be permanently attached. regulation

I/12

Cargo Ship Safety Certificate
A certificate called a Cargo Ship Safety Certificate may be issued 1988 SOLAS
after survey to a cargo ship which complies with the relevant Protocol,
requirements of chapters II-1, II-2, III, IV and V and other
relevant requirements of SOLAS 1974 as modified by the
1988 SOLAS Protocol, as an alternative to the above cargo ship
safety certificates.
Exemption Certificate SOLAS 1974
When an exemption is granted to a ship under and in accordance
regulation I/12;
with the provisions of SOLAS 1974, a certificate called an 1988 SOLAS
Exemption Certificate shall be issued in addition to the Protocol,
certificates listed above. regulation
I/12
Document of compliance with the special requirements SOLAS 1974,
for ships carrying dangerous goods a appropriate document regulation II-2/54.3
as evidence of compliance with the
construction and equipment requirements of that regulation.

Dangerous goods manifest or stowage plan

SOLAS 1974, regulation VII/5(5); MARPOL 73/78 Annex III,

Each ship carrying dangerous goods shall have a special list manifest setting forth, in accordance with the classification set out in regulation VII/2, the dangerous goods on board and the location thereof. A detailed stowage plan which identifies by class and sets out the location of all dangerous goods on board, may be used in place of such a special list or manifest. A copy of one of these documents shall be made available before departure to the person or organization designated by the port State authority.

Document of authorization for the carriage of grain

SOLAS 1974 regulation VI/9; International Code for the Safe Carriage of Grain in Bulk grain Code in Bulk, section 3

A document of authorization shall be issued for every ship loaded in accordance with the regulations of the International either by the Administration or an organization recognized by it or by a Contracting Government on behalf of the Administration. The document shall accompany or be incorporated into the grain loading manual provided to enable the master to meet the stability requirements of the Code.

Certificate of insurance or other financial security in respect of civil liability for oil pollution damage

CLC 69, article VII

A certificate attesting that insurance or other financial security is in force shall be issued to each ship carrying more than 2,000 tons of oil in bulk as cargo. It shall be issued or certified by the appropriate authority of the State of the ship's registry after determining that the requirements of article VII, paragraph 1, of the CLC Convention have been complied with.

Enhanced survey report file

MARPOL 73/78, Annex I, regulation 13G; SOLAS 1974, regulation XI/2

Bulk carriers and oil tankers shall have a survey report file and supporting documents complying with paragraphs 6.2 and 6.3 of annex A and annex B of resolution A.744(18) – Guidelines on the enhanced programme of inspections during surveys of bulk carriers and oil tankers.

Record of oil discharge monitoring and control system for the last ballast voyage Annex I,

MARPOL 73/78,

Subject to provisions of paragraphs (4), (5), (6) and (7) of regulation 15(3)(a) regulation 15 of Annex I of MARPOL 73/78, every oil tanker of 150 gross tonnage and above shall be fitted with an oil discharge monitoring and control system approved by the Administration. The system shall be fitted with a recording device to provide a continuous record of the discharge in litres per nautical mile and total quantity discharged, or the oil content and rate of discharge. This record shall be identifiable as to time and date and shall be kept for at least three years.

Bulk Carrier Booklet

SOLAS 1974 (1996 amendment regulation VI/7;

To enable the master to prevent excessive stress in the ship's structure, the ship loading and unloading of solid bulk cargoes shall be provided with a booklet referred to in SOLAS the Code of Practice regulation VI/7.2. As an alternative to a separate booklet, for the Safe Loading the required information may be contained in the intact and Unloading of stability booklet. Bulk Carriers (BLU Code)

In addition to the certificates listed in sections 1 and 3 above, where appropriate, any ship carrying noxious liquid chemical substances in bulk shall carry:

International Pollution Prevention Certificate for the Carriage of Noxious Liquid Substances in Bulk (NLS certificate) regulations

MARPOL 73/78, Annex II, 12 and 12a

An international pollution prevention certificate for the carriage of noxious liquid substances in bulk (NLS certificate) shall be issued, after survey in accordance with the provisions of regulation 10 of Annex II of MARPOL 73/78, to any ship carrying noxious liquid substances in bulk and which is engaged in voyages to ports or terminals under the jurisdiction of other Parties to MARPOL 73/78. In respect of chemical tankers, the Certificate of Fitness for the Carriage of Dangerous Chemicals in Bulk and the International Certificate of Fitness for the Carriage of Dangerous Chemicals in Bulk, issued under the provisions of the Bulk Chemical Code and International Bulk Chemical Code, respectively, shall have the same force and receive the same recognition as the NLS certificate.

Cargo record book

MARPOL 73/78,

Every ship to which Annex II of MARPOL 73/78 applies, shall be provided with a Cargo Record Book, whether as part of the ship's official log book or otherwise, in the form specified in appendix IV to the Annex. Annex II, regulation 9

Procedures and Arrangements Manual (P & A Manual)

Every ship certified to carry noxious liquid substances in bulk shall have on board a Procedures and Arrangements Manual approved by the Administration. Resolution MEPC.18(22), chapter 2; MARPOL 73/78, Annex II, regulations 5 5a and 8

Shipboard Marine Pollution Emergency Plan

Every ship of 150 gross tonnage and above certified to carry noxious liquid substances in bulk shall carry on board a shipboard marine pollution emergency plan for noxious liquid substances approved by the Administration. This requirement shall apply to all such ships not later than 1 January 2003. MARPOL 73/78, Annex II, regulation 16

In addition to the certificates listed in sections 1 and 3 above, where applicable, any chemical tanker shall carry:

Certificate of Fitness for the Carriage of Dangerous Chemicals in Bulk

A certificate called a Certificate of Fitness for the Carriage of Dangerous Chemicals in Bulk, the model form of which is set out in the appendix to the Bulk Chemical Code, should be issued after an initial or periodical survey to a chemical tanker engaged in international voyages which complies with the relevant requirements of the Code. BCH Code, section 1.6; BCH Code as modified by resolution MSC.18(58)

Note:The Code is mandatory under Annex II of MARPOL 73/78 for chemical tankers constructed before 1 July 1986.

or

International Certificate of Fitness for the Carriage of IBC Code, section 1.6

Dangerous Chemicals in Bulk section 1.5;

A certificate called an International Certificate of Fitness for the Carriage of Dangerous Chemicals in Bulk, the model form of which is set out in the appendix to the International Bulk Chemical Code, should be issued after an initial or periodical survey to a chemical tanker engaged in international voyages which complies with the relevant requirements of the Code. section 1.5
Note: The Code is mandatory under both chapter VII of SOLAS 1974 and Annex II of MARPOL 73/78 for chemical tankers constructed on or after 1 July 1986.
In addition to the certificates listed in sections 1 and 3 above, where applicable, any gas carrier shall carry:
Certificate of Fitness for the Carriage of Liquefied Gases in Bulk section 1.6
A certificate called a Certificate of Fitness for the Carriage of Liquefied Gases in Bulk, the model form of which is set out in the appendix to the Gas Carrier Code, should be issued after an initial or periodical survey to a gas carrier which complies with the relevant requirements of the Code.
Or
International Certificate of Fitness for the Carriage of Liquefied Gases in Bulk section 1.5;

A certificate called an International Certificate of Fitness for the Carriage of Liquefied Gases in Bulk, the model form of which is set out in the appendix to the International Gas Carrier Code, should be issued after an initial or periodical survey to a gas carrier which complies with the relevant requirements of the Code

. section 1.5
Note: The Code is mandatory under chapter VII of SOLAS 1974 for gas carriers constructed on or after 1 July 1986.
In addition to the certificates listed in sections 1 and 3 above, where applicable, any high-speed craft shall carry:
High-Speed Craft Safety Certificate

GC Code, as modified by resolutions MSC.16(58) MEPC.40(29),

IBC Code as modified by resolution MSC.17(58),

IGC Code as modified by resolution

A certificate called a High Speed Craft Safety Certificate SOLAS 1974,
be issued after completion of an initial or renewal survey to regulation X/3;
a craft which complies with the requirements of the High Speed HSC Code
Certificate (HSC) Code in its entirety. paragraph 1.8

Permit to Operate High-Speed Craft HSC Code,

A certificate called a Permit to Operate High Speed Craft
paragraph 1.9
should be issued to a craft which complies with the
requirements set out in paragraphs 1.2.2 to 1.2.7 and
1.8 of the HSC Code.

In addition to the certificates listed in sections 1 and 3 above,
where applicable, any ship carrying INF cargo shall carry:
International Certificate of Fitness for the Carriage
of INF Cargo SOLAS 1974

A ship carrying INF cargo shall comply with the requirements of the (1999
International Code for the Safe Carriage of Packaged Irradiated
amendments),
Nuclear Fuel, Plutonium and High-Level Radioactive Wastes on regulation 16;
Board Ships (INF Code) in addition to any other applicable INF Code (resolution
requirements of the SOLAS regulations and shall be surveyed and
MSC.88(71)),
be provided with the International Certificate of Fitness for the paragraph 1.3
Carriage of INF Cargo.

Other certificates and documents which are not mandatory
Special purpose ships
Special Purpose Ships Safety Certificate A.534(13)
as
In addition to SOLAS certificates as specified in paragraph 7 amended by
of the Preamble of the Code of Safety for Special Purpose
MSC/Circ.739,
Ships, a Special Purpose Ship Safety Certificate should be issued SOLAS 1974
after survey in accordance with the provisions of paragraph 1.6 of the regulation I/12;
Code for Special Purpose Ships. The duration and validity of the 1988
SOLAS

certificate should be governed by the respective provisions for cargo ships in SOLAS 1974. If a certificate is issued for a special purpose ship of less than 500 gross tonnage, this certificate should indicate to what extent relaxations in accordance with 1.2 were accepted.

Protocol, regulation I/12

Offshore support vessels

Certificate of Fitness for Offshore Support Vessels

When carrying such cargoes, offshore support vessels should carry a Certificate of Fitness under the "Guidelines for the Transport and Handling of Limited Amounts of Hazardous and Noxious Liquid Substances in Bulk on Offshore Support Vessels".

A.673(16); MARPOL 73/78, Annex II Regulation 13(4),

If an offshore support vessel carries only noxious liquid substances, a suitably endorsed International Pollution Prevention Certificate for the Carriage of Noxious Liquid Substances in Bulk may be issued instead of the above Certificate of Fitness.

Diving systems

Diving System Safety Certificate

A.536(13), section 1.6

A certificate should be issued either by the Administration or any person or organization duly authorized by it after survey or inspection to a diving system which complies with the requirements of the Code of Safety for Diving Systems. In every case, the Administration should assume full responsibility for the certificate.

Dynamically supported craft

Dynamically Supported Craft Construction and Equipment Certificate

A.373(X), section 1.6

To be issued after survey carried out in accordance with paragraph 1.5.1(a) of the Code of Safety for Dynamically Supported Craft.

Mobile offshore drilling units

Mobile Offshore Drilling Unit Safety Certificate

To be issued after survey carried out in accordance with the provisions of the Code for the Construction and Equipment of Mobile Offshore Drilling Units, 1979, or, for units constructed on or after 1 May 1991, the Code for the Construction and Equipment of Mobile Offshore Drilling Units, 1989.

A.414(XI) section 1.6; A.649(16) section 1.6;

A.649(16) as modified By resolution AS

MSC.38(63), section 1.6

Noise levels
Noise Survey Report A.468(XII),

A noise survey report should be made for each ship in accordance with the Code on Noise Levels on Board Ships section 4.3

Voyage Estimates

All commercial enterprise is managed through some form of financial control and the financial viability of every venture must be estimated before venturing in to one. A prudent finance manager plans his expected financial progress through the coming year with an "annual budget". He also makes " project budjets" for a specific voyage charter called "voyage estimte".
Purpose: When a vessel becomes " open"(i.e., become available for charter, a range of different options are available. Keeping in mind the short term, medium term or long term objective, the geographical location of the vessel vis a vis Lay Can period, these options are reduced to a few. The fundamental objective is always to " present, load, sail,, discharge and become open again".. The voyage estimate removes the variable costs between the possible voyages, viz., port charges, bunker cost/consumption and other expenditure such as hold cleaning and produces a net revenue earned from each contemplated voyage. Thus the voyage estimate reduces the available options into simple, comparable figures enabling him to quickly decide the most profitable voyage.
Another major advantage of preparing a voyage estimate is to find the difference between the estimate and the "actual". This is called " VARIANCE". The variance enables the finance manager to pin point the cause of any variance from the planned estimate. Once analysed , variances help him to take effective and timely action to reduce the impact of negative influences or enhance the benefit of positive factors.
" Daily Running Cost" (DRC) : Prior to preparing any voyage estimate the vessel's running cost must be known / determined, as this figure is required to work out the daily surplus and the eventual contribution of the voyage.
Running Costs/ Operating Costs: These are calculated for the following items for a vessel for a period of one year and the daily running cost is obtained from there in:
crew Costs: wages, leave, study leave, travel, hotel, sickness etc
Repair and Maintenance: repairs on hull, machinery, equipment
Stores and spaCres: all consumable stores including Lubricating oil (charterer usually does not provide Luboils)

Victualling and stores:
Insurance: Premiums for all the usual insurances, both Hull and Machinery and P&I. Specific insurances pertaining to the voyage to be provided by the charterer.
Franchise/uncovered average: a provision made towards "deductibles" which may become deductible from the claims ,in case of accidents.
Dry-docking: the cost of dry-docking is spread over the period of dry-docking interval
Classification: cost of surveys including safety surveys
Modification: from time to time, alterations, improvements or modifications may be made to the vessel in connection with statutory or international regulations
Overheads and administration: these are non-vessel specific costs such as super's travel expenses, communications, entertainment etc. Administration costs may include rent of building, managerial salaries etc.
Depreciation: vessel's depreciation element also is sometimes included in the operating/ running costs.
The total expenditure on the heads for a period of say ,an year is taken and the "daily running cost(DRC) is determined, by dividing the total by 365.
Time Charter Equivalent (T C E)
The combination of net revenue and voyage time gives a figure called " Time Charter Equivalent" generally expressed in US $ per day which is the universal unit of comparison and is truly representative as it takes into account the ballast voyage to the load port from the position of the vessel at the time of fixture.
In a voyage estimate the following trading expenses are taken in to account:
port charges, bunker costs, canal dues, pilots tugs , any freight tax, hold cleaning etc are calculated. For this vessel's data viz; her bunker consumption for the trading days including ballast voyage, average speed are taken in to consideration.
Distances to load port on ballast voyage, and to the disport are determined. The total cost for the voyage including any tax payable is calculated.
From the cargo available and lifting capacity and the freight rate, the gross freight is determined. Subtracting the commission, the net freight is calculated.
From the net freight /revenue found, the total costs are subtracted to find, the voyage surplus.
Dividing the voyage surplus by the number of trading days, TCE is found.
Deducting the DRC from TCE gives the Daily surplus. Multiplying the daily surplus by the trading days including of course the ballast passage, gives the Gross contribution of the voyage.

Salvage

The principles and the rules of salvage bear, for obvious reasons, striking similarity to those applying to general average. Perhaps the shortest, most a direct and simplistic definition of salvage is "the voluntary saving of maritime property from danger at sea"
Salvage has therefore for important elements:

voluntary
recognised maritime property
danger
successful

Voluntary: the requirement that the service must be given voluntarily does not preclude the salver the one who performed the service, for making the service the subject of an agreement and this in practice is often done in Lloyd's standard form salvage agreement.
No right to salvage accrues to crew and as such and claiming as individual salvers unless their contract of employment has been actually or contractually terminated before the salvage services commenced, since it is implied in the terms and conditions of their contract of service that they shall use their best endeavours and that they strive to the best of their ability to save and preserve the ship in time of peril.
Termination of their employment contract could be brought about by authorised abandonment of the ship under the masters authority; the masters discharge of crewmen concerned; capture of the vessel hostile encounter.
Regarding abandonment, there must, at the time of the order to abandon, be no hope or intention of returning to the stricken vessel. There is no suggestion that a mere temporary abandonment, as frequently takes place subsequent for example due collision or as a result of sudden fear of panic and before the situation is fully evaluated, would operate to dissolve the crew's contract of employment.
Maritime property: the subject of salvage can be vessel, hull apparel, cargo, or freight so foreign as it may be called property, freight at risk, bunkers. Saving of other types of property such as a boy adrift from its moorings or goods in a house of fire does not give rise to any right to salvage reward although it is not easy to categorically define what pieces of property may be subjective maritime salvage, it is unlikely that such non-moving and non-navigable things such as a drilling rig would qualify.
Real danger: the requirement that the subject of salvage must be in danger means real, but not necessarily immediate, danger, provided that it is not so remote as to be a mere possibility. It is that task of the person claiming salvage to show that at that time when the performance of the service commenced such real danger existed. It is up to the court or arbitrator hearing the case to determine for itself or himself, whether the property was really in danger, taking into consideration all the facts and circumstances. What is nominally in dispute is not the existence of the danger but the degree of danger which does exist. A frightened, timid and perhaps incompetent ships master, although suffering from illusion that there was real danger when in fact there was not could, by his very attitude, constitute the existence of danger himself under some circumstances. Naturally every situation has to be treated on its own merits and the test must necessarily be both subjective and objective. One reasonably effective test, would the master of a vessel in distress, assuming to be a reasonable man, would have said 'yes' or 'no' to the offer of assistance? For instance, a ship at sea having lost her propeller is in real danger though not in imminent danger, even though the weather may be fine.

Successful: The success need not, however, be total. Partial success, however small, that is to say provided there is some measure of preservation to the owners, is sufficient. The requirement that the service must be successful can be summed up in this often used expression" no cure-no pay"

That the ultimate outcome must be successful in some degree be fully what can be pleat is based on the simple idea that reward is paid out of the fund preserved as a result of the property having been saved.
Lloyds form of salvage agreement (LOF 80)
Lloyds open form was widely published in 1908 and the LOF 80 was the eighth edition. LOF is an established form of agreement which both the rescued and the rescuer agreed to this arrangement reserving their right to remuneration determined by an arbitration award or by agreement. The signing of the LOF it does not anyway changes the nature of the rescue. The signing of this form does not constitute the passing of consideration and does not therefore affect the voluntary nature of the operation. The basic principle behind the LOF is no cure no pay.
The LOF 1980 broke new ground by departing from the no cure no pay no principle to the limited extent when salvage services were rendered to tankers carrying cargoes of oil. The introduction of the" safety net" in LOF 80 was to i encourage salvers to take on casualties which caused or threatened oil pollution. In limited circumstances, the salvers can claim from the shipowners the reasonably incurred expenses plus any increment of not more than 15 percent of those expenses

Under the safety net provision in the LOF 80:
1. the property being salved is a tanker laden or partly laden with the cargo of potentially polluted oil.
2 the salver and his servants are not negligent .
3. The expenses together with increment otherwise recoverable under the salvage agreement must be greater than any amount recoverable and the salvage agreement. The safety net award is made against the owners of the tanker alone.

The international convention of salvage 1989

Following the Amoco Cadiz oil pollution incident, international convention on salvage was convened and adopted in 1989. The Salient features of important articles are as follows:
Article 1
Definitions:
Salvage operation: any act or activity undertaken to assist a vessel or other property in danger in navigable waters or any other waters whatsoever.
Property: a property not permanently and intentionally attached to the shore line and including freight at risk.
Article 6 and 7:
Whilst the parties can contract out of the convention, a salvage contract may be nullified all modified if it has been entered into under the undue influence or if the terms are inequitable or if the payment under the contract is in excessive degree too low or too small, for the services actually rendered.
Masters has authority to conclude salvaged agreement on behalf of the owners of the property onboard the vessel.
Article 8
The duties of the salver are stipulated:
exercising of due care to prevent or minimise damage to the environment
cooperation between the owner of the properties saved the and the salver
salver to seek assistance from other salver is when circumstances reasonably require this and to accept intervention in certain circumstances.
Article 10. master's duty to go for assistance of vessel in distress and save lives. Salving vessel is voluntary, but saving life is mandatory unless own vessel herself

will be in distress. Any liability arising out of master not answering call of distress will not be applicable to the owner of the vessel.

Article 11

Obliges a contracting State party to take into account the need for cooperation between salvers, other interested parties and public authorities to ensure a successful salvage operation. This seems to be aiming at some problems experienced to by salvers in persuading harbour authorities to allow entry of the stricken vessel into port for redelivery purposes.

Article 12

This article underlies no cure no pay. It provides that salvage operations which have had a useful result give right to a reward. Useful result is not defined in this article.

Article 13

This provides for criteria for fixing award

that the payment of reward should be in proportion to the Salved values.

Measure of success

Nature and degree of danger

Skill and efforts of the salvor

Time used and expenses and losses incurred by the salvor

The risk of liability and other risks run by the salvor

Promptness of the services rendered

Availability and use of other vessels and equipment

State of readiness and efficiency of his equipment

Skill and efforts of the salvors in minimising or preventing pollution or damage to environment.

Article 14

And a special incentive to the salvers to protect the environment is provided by this article. This provides for extra compensation in the case of the salvage operation which protects the environment. The salver is entitled to special compensation where he has carried out salvage operations on a vessel which by itself or its cargo threatened damage to the environment and has failed to earn a reward, which is at least equal to the special compensation assessable in accordance with this article. Such special compensation is obtainable from the owner of the vessel equivalent to his expenses. It is not necessary for the salver to achieve any success in preventing at minimising damage to environment. If success is achieved, a greater amount of special compensation is payable.

The expenses recoverable by the standard are defined as out of pocket expenses reasonably incurred by the salvers in the salvage operation

If the salver actually prevents or minimises pollution, the salver will able to claim enhanced compensation and the amount of award may be increased by the arbitrator to a maximum of 30% and even 100% when the arbitrator thinks it is fair and just to do so.

Article 16

Saving of life is dealt with in this article. No one is obliged to pay salvage for the saving of life.. It is the duty of any seafarer to save lives at sea and no compensation is payable. Life salvage does not arise as the salved life's value can not be ascertained! Only value for consequence of death can be ascertained. AS salvage is payable only out of salved property no salvage can be awarded.; but the convention respects a national law which may contain contrary provisions.

Article 19

The salver will not be entitled to salvage award where the ship owner or master expressed or reasonably have refused the salvage assistance.

Article 20
The salver has a maritime Lien under any international convention on national law. When the security including interest has been rendered are provided, the salver man not exercise his maritime Lien.
Article 21
Salved property may not, without the salvers consent, be removed from its place of safety to which it is initially brought, without satisfactory security having first has been furnished by its owner.

LOF 90
This form reflects the 1989 convention. This form was replaced by LOF 95 which is almost the same LOF 90 with the addition of including some articles of the 1989 Convention in the form.
LOF 95
Salient points and Advantages
Salver agrees to salve and take to place of safety
Place of safety is where repair facilities are available, cargo can be warehoused, and vessel can move on her own power.
Master not to leave salver until reaching place of safety
Provisions for special compensation as per article 14 of the 1989 convention has been made.
Salvage security has been made.
Agreement by radio possible
No dispute as it is on no cure no pay basis and award to be fixed by arbitration
Salver gets interim award
Dispute arbitration in London
Under writer's liability not to be more than total loss value of property.
Excessive claim by salver avoided
Removes ambiguity regarding master's authority to bind cargo owner.

SCOPIC - Special Compensation P &I club Clause

Although both LOF 90 and 95 included the provisions of Article 14 of the Salvage Convention, numerous problems erupted. The most significant are as follows:
owners and P&I Club had little or no control over involvement in the salvage operations
salvers could not get special compensation for minimising pollution out side coastal waters as per UK House of Lords decision "fair rates" were determined on cost rate basis for minim ising pollution and did not include any element of profit and assessment became extremely complicated
Arbitrations became extremely lengthy and very costly as it became necessary for all parties to use environmental experts/auditors to determine whether the casualty posed any threat to the environment and accountants to establish a " fair rate" for equipment and personnel used.
The salvers could not always obtain security for special compensation claims.

As a result of the above all sides of the industry co-operated to find a solution. The result is the formation of SCOPIC (Special Compensation P &I clause) in August 1999.

Basic elements of SCOPIC

SCOPIC is purely voluntary addition to LOF
Once it is incorporated it effectively replaces Article 14 on special compensation.
Even when included in the LOF, Scopic will operate only when it is invoked by the salver after giving notice to the owner.
Scopic can be invoked only by the salver and not by the owner,
Salver can invoke the scopic any time, whether there is any threat to environment or not whether in coastal waters or not.
Application of predetermined rates for equipment and personnel used, containing a profit element
Salver does not have establish a threat to environment nor is he required to establish any fair rate to equipment etc.
In short Scopic provides Clubs and owners important5 ability to cost the operations on a day to day basis; it provides the salver the confidence that he will get satisfactory remuneration.

LOF 2000

LLOYD'S

LLOYD'S STANDARD FORM OF SALVAGE AGREEMENT

(APPROVED AND PUBLISHED BY THE COUNCIL OF LLOYD'S)

NO CURE - NO PAY

1. Name of the salvage Contractors: (referred to in this agreement as "the Contractors")	2. Property to be salved. The vessel: her cargo freight bunkers stores and any other property thereon but excluding the personal effects or baggage of passengers master or crew (referred to in this agreement as "the property")
3. Agreed place of safety:	4. Agreed currency of any arbitral award and security (if other than United States dollars)
5. Date of this agreement:	6. Place of agreement:
7. Is the Scopic Clause incorporated into this agreement? State alternative : Yes/No	
8. Person signing for and on behalf of the Contractors Signature:	9. Captain or other person signing for and on behalf of the property Signature:

A. Contractors' basic obligation: The Contractors identified in Box 1 hereby agree to use their best endeavours to salve the property specified in Box 2 and to take the property to the place stated in Box 3 or to such other place as may hereafter be agreed. If no place is inserted in Box 3 and in the absence of any subsequent agreement as to the place where the property is to be taken the Contractors shall take the property to a place of safety.

B. Environmental protection: While performing the salvage services the Contractors shall also use their best endeavours to prevent or minimise damage to the environment.

(continued on the reverse side)

C. **Scopic Clause:** Unless the word "No" in Box 7 has been deleted this agreement shall be deemed to have been made on the basis that the Scopic Clause is not incorporated and forms no part of this agreement. If the word "No" is deleted in Box 7 this shall not of itself be construed as a notice invoking the Scopic Clause within the meaning of sub-clause 2 thereof.

D. **Effect of other remedies:** Subject to the provisions of the International Convention on Salvage 1989 as incorporated into English law ("the Convention") relating to special compensation and to the Scopic Clause if incorporated the Contractors' services shall be rendered and accepted as salvage services upon the principle of "no cure - no pay" and any salvage remuneration to which the Contractors become entitled shall not be diminished by reason of the exception to the principle of "no cure - no pay" in the form of special compensation or remuneration payable to the Contractors under a Scopic Clause.

E. **Prior services:** Any salvage services rendered by the Contractors to the property before and up to the date of this agreement shall be deemed to be covered by this agreement.

F. **Duties of property owners:** Each of the owners of the property shall cooperate fully with the Contractors. In particular:

(i) the Contractors may make reasonable use of the vessel's machinery gear and equipment free of expense provided that the Contractors shall not unnecessarily damage abandon or sacrifice any property on board;

(ii) the Contractors shall be entitled to all such information as they may reasonably require relating to the vessel or the remainder of the property provided such information is relevant to the performance of the services and is capable of being provided without undue difficulty or delay;

(iii) the owners of the property shall co-operate fully with the Contractors in obtaining entry to the place of safety stated in Box 3 or agreed or determined in accordance with Clause A.

G. **Rights of termination:** When there is no longer any reasonable prospect of a useful result leading to a salvage reward in accordance with Convention Articles 12 and/or 13 either the owners of the vessel or the Contractors shall be entitled to terminate the services hereunder by giving reasonable prior written notice to the other.

H. **Deemed performance:** The Contractors' services shall be deemed to have been performed when the property is in a safe condition in the place of safety stated in Box 3 or agreed or determined in accordance with Clause A. For the purpose of this provision the property shall be regarded as being in safe condition notwithstanding that the property (or part thereof) is damaged or in need of maintenance if (i) the Contractors are not obliged to remain in attendance to satisfy the requirements of any port or habour authority, governmental agency or similar authority and (ii) the continuation of skilled salvage services from the Contractors or other salvors is no longer necessary to avoid the property becoming lost or significantly further damaged or delayed.

I. **Arbitration and the LSSA Clauses:** The Contractors' remuneration and/or special compensation shall be determined by arbitration in London in the manner prescribed by Lloyd's Standard Salvage and Arbitration Clauses ("the LSSA Clauses") and Lloyd's Procedural Rules. The provisions of the LSSA Clauses and Lloyd's Procedural Rules are deemed to be incorporated in this agreement and form an integral part hereof. Any other difference arising out of this agreement or the operations hereunder shall be referred to arbitration in the same way.

J. **Governing law:** This agreement and any arbitration hereunder shall be governed by English law.

K. **Scope of authority:** The Master or other person signing this agreement on behalf of the property identified in Box 2 enters into this agreement as agent for the respective owners thereof and binds each (but not the one for the other or himself personally) to the due performance thereof.

L. **Inducements prohibited:** No person signing this agreement or any party on whose behalf it is signed shall at any time or in any manner whatsoever offer provide make give or promise to provide or demand or take any form of inducement for entering into this agreement.

IMPORTANT NOTICES :

1. **Salvage security.** As soon as possible the owners of the vessel should notify the owners of other property on board that this agreement has been made. If the Contractors are successful the owners of such property should note that it will become necessary to provide the Contractors with salvage security promptly in accordance with Clause 4 of the LSSA Clauses referred to in Clause I. The provision of General Average security does not relieve the salved interests of their separate obligation to provide salvage security to the Contractors.

2. **Incorporated provisons.** Copies of the Scopic Clause; the LSSA Clauses and Lloyd's Procedural Rules may be obtained from (i) the Contractors or (ii) the Salvage Arbitration Branch at Lloyd's, One Lime Street, London EC3M 7HA.

Tel.No. + 44(0)20 7327 5408

Fax No. +44(0)20 7327 6827

E-mail: lloyds-salvage@lloyds.com.

www.lloyds.com

LLOYD'S

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LOF 2000

Form has been made simple and all legal matters have been removed and consists of only two pages where as the LOF 95 has six comprehensive pages.
Duty to cooperate by salver and owner extended. Salver to effort to minimise pollution and owner to provide all assistance to salver such as giving bunker details, cargo plan, bay plan and IMDG cargo listing etc
Salver can also terminate salvage services, just as owner can terminate salver's services
Crew baggage and passenger baggage is excluded from salvable property .
It will be deemed performance by salver if on reaching port, his services are not required by the port or his skilled services are no longer required.
SCOPIC (Special Compensation P &I Club)clause is added to the form as an optional clause. If master agrees salver will directly advise P& I club who will depute their representative to the spot. He will provide letter of under taking (up to about 3 million $) for release of vessel with out paying security for Special Compensation.
Scopic 2000
With the introduction of LOF 2000 , a revised scopic 2000 was introduced. This amended version came in to force in sept. 2000. The salient features of scopic 2000 are as follows:
Incorporation: scopic clause is supplementary to LOF 2000 and once it is incorporated then, a claim under article 14 of the Convention will no longer be available. The only exception to this is if the security is not provided with in the specified period then salver can revert to article 14.
Invoking the Scopic: In order to invoke scopic clause salver must provide written notice. Scopic remuneration runs only from this time. There need not be a threat to environment and consequently salver must make a conscious decision to invoke the Scopic
Security: As soon as scopic is invoked the owner must by way of bank security/P&I club letter for a sum of US 3 Million dollars with in two working days.
Withdrawl : salver can with draw from scopic only after giving notice before security is provided.
Tariff rates: these are set out in an appendix to Scopic and consists of agreed daily rates for tugs, personnel and equipment. In order to build an element of profit, a standard 25% is automatically added to the tariff.
Termination: salver is allowed to terminate his services to both LOF and Scopic if the cost of the anticipated services is likely to exceed the total of the value of the property and the sums salver is likely to be entitled. In practice this will happen when owner declares a Constructive Total Loss(CTL)

Owners may also terminate their obligation to pay under Scopic provisions provided they have given five clear days notice .
However neither party can terminate the if salver is required to remain on site by local authorities
Duties of the salver: These remain the same as under LOF

General Average : **GA will not contribute towards Scopic as it is owners/P&I Club liability**
SCR (Special Casualty Representative- formerly called Shipowners Casualty Representative)
Once the Salver invokes Scopic, A SCR must be appointed. From the approved list of SCR. The selection is made out of the list by three representatives one each from ISU International Salvage Union), International group of P&I Club and International Chamber of Shipping and IUMI(International Union of Marine Insurers)
SCR duties and powers
***To use his best endeavours to assist in salvage of V/L and in doing so prevent/minimise pollution.**
to report and observe and consult and submit final salvage report.
To endorse and circulate daily salvage reports of the salvage master to interested parties.
To have daily meetings with salvage master
Keep a good and accurate record of equipment and material used for salvage as well as for minimising polluion.)

Points to be borne in mind while accepting salvage services
Safety of personnel
proximity to shoal or dangers
weather, sea conditions
current and tide
nature of sea bed
potential for safe anchoring
availability of assistance
damage already sustained
threat of pollution
man power / material position
possibility of owners arranging contractual towage or salvage services.
availability of time versus proximity of danger

Points to be borne in mind prior to offering salvage services
Does the vessel 's C/P allow to provide salvage/towage services?
Are sufficient materials, bunkers, water and provisions available on board?
Does own vessel have sufficient power to the vessel?
Have owners/charterers been advised?
can vessel complete charter?
Can she make Laycan?
Can cargo on board withstand the delay?
Is the vessel to be towed/salved worth the effort ?(as the salvage award will be based on the salved value of the vessel)
Has LOF been agreed/signed?
Has port of destination been agreed and acceptable?
It is the duty of any vessel to save lives and as such are there anybody onboard needing evacuation?
In case it is possible to tow the vessel, which is the nearest port of refuge? Will the present programme of own vessel and ROB bunkers permit then operation?
When does towage become salvage?

A criterion for whether a towing vessel has become a salving vessel is " have there been supervening circumstances which would justifying her in abandoning her contract?"—not the tow, but abandoning the contract to tow.
It must be ascertained as to whether the services that were to be rendered eventually by the tug such as to have been beyond the reasonable contemplation of the parties when they originally negotiated the towage contract.
It is beyond doubt that towage and salvage services cannot be performed concurrently. One must finish before the other starts.
Definite guidelines have been established in the courts(1928 The Homewood case) to determine where the towage stops and salvage starts. For the tug owner to consider rightly that he had taken on the role of salvor it is essential that:
a)the services he performed were of such an extraordinary nature that they could not have been with in the reasonable contemplation of the parties to the original towage contract
b)the services in fact performed and the risks in fact would not have been reasonably remunerated if the contractual remuneration only was paid.
In short , mere difficulty in the performance of the towage does not automatically 'convert' the towage into salvage. The burden of proof is heavy and lies upon the tug owner claiming the salvage reward. He must show that the nature of the service changed from towage to salvage through no fault or want of skill on his part and simply and solely by accident or fortuitous circumstances over which he had no control.

Port of Refuge

Port of refuge is any port made for when the master considers it unsafe for the vessel to continue her voyage.
Justifiable deviation:
A deviation to port of refuge will be regarded as justifiable with respect to hull and machinery, cargo and freight insurance policies. If the reason for deviating to port of refuge is considered invalid, the deviation could be considered unjustifiable and the consequences could be very severe for the ship owner. If during the unjustifiable deviation the vessel sustains damage due to accident the owner will be liable for all consequences.
Valid reasons for deviating to port of refuge usually include:
weather, collision or grounding damage affecting seaworthiness of ship
fire
dangerous shift of cargo
serious machinery break down
any other accident causing some serious threat to vessel or cargo
shortage of bunkers may qualify if it can be proved that the vessel left port with adequate bunkers for the foreseeable voyage and ran short as a consequence of exceptionally severe weather, contamination etc.
General average aspects of deviation
a ports or a place where the vessel temporarily seeks a shelter from our adverse weather is not to port of refuge, since running for shelter is ordinary practice and not extraordinary in the context of rule A of York Antwerp rules 1994.
The port of refuge may be any intermediate port or even the original loading port if returned to for some reason related to vessel safety
A port is not a port of refuge(for General Average purpose) unless it is entered for the benefit of all parties to the adventure.

Port of refuge procedure (already discussed under General Average)

IMO's Guidelines on "Places of Refuge"

"Places of refuge" - addressing the problem of providing places of refuge to vessels in distress

.The issue of "places of refuge" is one aspect of contingency planning in the consideration of which the rights and interests of coastal States as well as the need to render assistance to vessels that are damaged or disabled or otherwise in distress at sea ought to be taken into account.

In November 2003, the IMO Asembly adopted two resolutions addressing the issue of places of refuge for ships in distress - an important step in assisting those involved in incidents that may lead to the need for a place of refuge to make the right decisions at the right time.

Resolution A.949(23) *Guidelines on places of refuge for ships in need of assistance* are intended for use when a ship is in need of assistance but the safety of life is not involved. Where the safety of life is involved, the provisions of the SAR Convention should continue to be followed.

The guidelines recognize that, when a ship has suffered an incident, the best way of preventing damage or pollution from its progressive deterioration is to transfer its cargo and bunkers, and to repair the casualty. Such an operation is best carried out in a place of refuge. However, to bring such a ship into a place of refuge near a coast may endanger the coastal State, both economically and from the environmental point of view, and local authorities and populations may strongly object to the operation.

Therefore, granting access to a place of refuge could involve a political decision which can only be taken on a case-by-case basis. In so doing, consideration would need to be given to balancing the interests of the affected ship with those of the environment.

A second resolution, A.950(23) *Maritime Assistance Services (MAS)*, recommends that all coastal States should establish a maritime assistance service (MAS). The principal purposes would be to receive the various reports, consultations and notifications required in a number of IMO instruments; monitoring a ship's situation if such a report indicates that an incident may give rise to a situation whereby the ship may be in need of assistance; serving as the point of contact if the ship's situation is not a distress situation but nevertheless requires exchanges of information between the ship and the coastal State, and for serving as the point of contact between those involved in a marine salvage operation undertaken by private facilities if the coastal State considers that it should monitor all phases of the operation.

The need to review the issues surrounding the need for places of refuge was included in a list of measures aimed at enhancing safety and minimizing the risk of

oil pollution, drawn up in December 2000 in response to the Erika incident of December 1999.

Further urgency to the work came in the aftermath of the incident involving the fully laden tanker Castor which, in December 2000, developed a structural problem in the Mediterranean Sea. In early 2001, IMO Secretary-General Mr. William O'Neil suggested that the time had come for the Organization to undertake, as a matter of priority, a global consideration of the problem of places of refuge for disabled vessels and adopt any measures required to ensure that, in the interests of safety of life at sea and environmental protection, coastal States reviewed their contingency arrangements so that such ships are provided with assistance and facilities as might be required in the circumstances.

The November 2002 sinking of the Prestige further highlighted the issue.

Background on places of refuge

The notion of providing refuge for ships in distress was raised at IMO during the late 1980s, when the Legal Committee was considering the draft provisions of the International Convention on Salvage (eventually adopted in 1989). At the time, it was suggested that there should be an obligation on States to admit vessels in distress into their ports. Although this was endorsed by some delegations, others expressed doubt on the desirability of including such a "public law" rule in a private law convention. It was also pointed out that the interests of coastal States would need to be duly taken into account in any such provision. Doubt was also expressed whether such a provision would in fact affect the decisions of the authorities of coastal States in specific cases.

As a result, Article 11 of the Salvage Convention , as eventually adopted, reads: "A State Party shall, whenever regulating or deciding upon matters relating to salvage operations such as admittance to ports of vessels in distress or the provisions of facilities to salvors, take into account the need for co-operation between salvors, other interested parties and public authorities in order to ensure the efficient and successful performance of salvage operations for the purpose of saving life or property in danger as well as preventing damage to the environment in general."

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Subsequently, in late December 2000-early January 2001, the Castor incident unfolded, resulting in the damaged tanker being towed around the Mediterranean Sea for over a month before a place could be found where a successful lightering operation could be carried out.

The issue was discussed at some considerable depth by the MSC in May 2001, when the Committee's attention was drawn to the fact that, although the term "ports of refuge" had been widely used in shipping practice, it did not appear in any of the relevant conventions (eg UNCLOS, SOLAS, Salvage, OPRC, etc.).

Use of the word "port" might be too narrow and restrictive vis-à-vis the envisaged scope of the geographical area which might, in case of an emergency, be able to

provide facilities and services (including putting in place contingency arrangements) to ships in distress, in particular laden tankers; hence the proposal by the IMO Secretariat to use the wider term "places of refuge". Another term used was "safe haven"; however, since both words denote almost the same thing, the one renders the other redundant and superfluous. The Committee eventually decided to use the term "places of refuge" in its further work

Ships with structural damage and a dirty or volatile cargo in their tanks are not among the most welcomed visitors in the coastal waters of any State and there is little point in attempting to apportion blame on those who have made decisions to keep stricken ships away from their coastlines. Nonetheless, in some cases, a refusal could result in compounding the problem, which may ultimately result in endangering life, the ship and the environment.

During the debate on places of refuge, the legal issues surrounding this concept were analysed and the question was asked whether a coastal State is under an obligation, or at least is not precluded, under international law, from providing a place (where a ship can be taken when it is disabled, damaged or otherwise in distress and is posing a serious risk of pollution), in order to remove the ship from the threat of danger and undertake repairs or otherwise deal with the situation.

International law recognizes the right of States to regulate entry into their ports (UNCLOS, Article 2, refers to the sovereignty of a coastal State over its land territory, internal waters, archipelagic waters and the territorial sea).

The right of a foreign ship to stop and anchor in cases of force majeure or distress is explicitly referred to by UNCLOS in the case of navigation in the territorial sea (Article 18(2)), straits used for international navigation (Article 39.1(c)) and in archipelagic waters (Article 54).

The right of a foreign ship to enter a port or internal waters of another State in situations of force majeure or distress is not regulated by UNCLOS, although this constitutes an internationally accepted practice, at least in order to preserve human life. This, however, does not preclude the adoption of rules or guidelines complementing the provisions of UNCLOS.

Meanwhile, the right of a coastal State to take action to protect its coastline from marine pollution is well established in international law. Relevant provisions include: UNCLOS, Articles 194, 195, 198, 199, 211, 221, 225; Salvage Convention, Article 9; and Facilitation Convention, Article V(2).

Under longstanding maritime tradition and the practice of good seamanship, the master of a ship faced with a serious emergency is expected to seek shelter to avoid disaster. *To some extent the practice is codified in the revised Chapter V of SOLAS, which requires that the owner, the charterer or 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 judgement, is necessary for safe navigation and protection of the marine environment.*

Similarly, SOLAS Article IV provides that ships which are not subject to the provisions of the Convention at the time of their departure on any voyage, shall not become

subject to the provisions of the Convention on account of any deviation from their intended voyage due to stress of weather or any other case of force majeure.

The duty to render assistance to vessels and persons in distress at sea is a well-established principle of international maritime law (Article 98 of UNCLOS) and SOLAS regulation V/7 requires Governments to ensure that any necessary arrangements are made for distress communication and co-ordination in their area of responsibility and for the rescue of persons in distress at sea round their coasts. These arrangements shall include the establishment, operation and maintenance of such search and rescue facilities as are deemed practicable and necessary, having regard to the density of the seagoing traffic and the navigational dangers and shall, so far as possible, provide adequate means of locating and rescuing such persons.

By focussing more on human life and safety rather than on what is to be done with the ship in cases of force majeure or distress, these provisions do not of themselves give a right of entry to a place of refuge, nor do they explicitly refer to the question of a coastal State's obligation to establish places of refuge. On the other hand, neither do they preclude such a principle.

Given this background, it has proved possible for IMO to develop the Guidelines on places of refuge for ships in need of assistance mentioned earlier on in a manner which retains a proper and equitable balance between the rights and interests of coastal States and the need to render assistance to ships which are damaged or disabled or otherwise in distress at sea.

It would be highly desirable if, taking the IMO Guidelines into account, *coastal States designated places of refuge for use when confronted with situations involving ships (laden tankers, in particular) in need of assistance off their coasts and, accordingly, drew up relevant emergency plans*, instead of being unprepared to face such situations and, because of that, risking the wrong decision being made by improvising or, in the heat of the moment, acting under pressure from groups representing various interests

A "note of protest" is a Solemn declaration made on oath by the master of circumstances beyond his control which may give on may have given rise to loss or damage to his ship or its cargo or have caused to take action such as leaving an unsafe port which may render his owners liable to legal action by another party.
Such declaration must be made before a lottery public, magistrate, consular officer, or other authority.
Usually statements under oath will be taken from the master and other members of the crew and these statements will have be supported by appropriate logbook entries. At the time of noting protest, the master should reserve the right to extend it at a time and place convenient.
Occasions to note protest
After every case of general average
After wind and or sea conditions have been encountered which might have damage cargo.
Of the wind and or sea conditions have been encountered which caused the failure to make the cancelling date.
After cargo is shipped in a condition likely to deteriorate during the forthcoming voyage.
After the ship has been damaged from any costs.

After serious breach of the charter party by the charterer on his agent (undue delay, refusal to load, cargo not of a sort)
Refusal to pay damage, refusal to accept bills of leading after signing because of clausing by the master, sending vessel to unsafe Port Etc.
The after the consignee fails to discharge or take delivery of the cargo on fails to pay freight.

<u>When to make protest</u>

Protest should be noted as soon as possible after arrival and always In within 24 hours of arrival.
If in connection with cargo, it should be noted before breaking bulk
If cargo for more than one discharge port is involved, the agent should be asked if it to be necessary to note protest at each port in the rotation.
Procedure for making protest
The master accompanied by one or more witnesses from the crew who have the knowledge of the fact should be taken to notary public office. The official logbook, deck log and all other relevant information regarding the case must also be taken. Log entries will be attached to the protest and at least three certified copies of the protest should be obtained.

<u>Extending protest</u>

As it is impossible to ascertain the full extent of a loss or of damage and the time of noting protest, an extended protest should be made when the relevant facts have come to light, which may be for example when the survey reported has been received.
The extended protest document will always be required by an average adjuster when preparing a general statement.
Extension of protesting need not be made in the same place as the original protest was made, but must be in strict conformity with local law ,regarding time limits and that content. The extension expands the bare facts of the original protest, and all relevant document should be taken to the notaries office. The extension is entered and witnessed and signed and sealed in the same manner as the initial protest .

<u>An example of a note of protest</u>

PROTEST

On this day, the tenth of April, two thousand and one, before me,……
……notary public duly admitted and is sworn, personally appeared……
Capt……, master of motor vessel……belonging to the port of
.
……..official number……..of berthen ……tons gross, or there about, with sailed from New york on or about fifteenth day of March.2001 with the cargo of …… and therewith to Bombay, and arrived in In this port of Bombay on the ninth of April 2001.
It is declared that this vessel at various times on passage met very rough seas and heavy swell, shipped spray and water, pitched and rolled and encountered heavy rain.
And fearing the damage and loss May have been sustained by the said cargo during the said the voyage, he does it enters a note of HIS PROTEST
Against all losses, damage etc .reserving his right to extend the same at time and place convenient.
Signed before me ……
Notary public

At 1000hrs IST on 1st April 2005

…….

Master m.v……..

LIMITATION OF LIABILITIES

A vessel on a marine adventure attracts liability from various parties with whom she has entered into a contract such as a tug and tow operation and also the from innocent third parties such as in a collision. Liability arising from the third parties can be called the open liabilities which are different from closed liabilities which had been liquidated in the contract between the parties such as contracts on carriage of cargo. "Strict Liability" of the owner is on occasions when 'mens era(guilty mind) need not be proved; for instance Oil Pollution liability. In Hague Visby Rules the liability of the carrier is limited and specified.
Claims brought in by the third parties who have suffered a loss or damage as a result of negligent navigation or operation of the vessel will fall under the open liability category. As a matter of justice the compensation that must be paid to the injured party should be adequate to compensate for the damages suffered by the innocent third party. However ,a ship owner of a small vessel may become liable to huge sums if his vessel damages bigger vessels. So as to encourage and promote shipping it has become necessary to limit the liability of the the ship owner to enable him to venture into Maritime adventure. In the words of Lord Denning 'it is not a matter of justice……..but it has its justification in convenience to limit the liability of the ship owner'
The basic principle of limitation of liabilities is that, if a vessel has caused a loss or injury, then a total sum for which the ship owner is liable can be calculated. The sum, and no more, whether adequate or in no way of recompense, is divided amongst all who have suffered the loss or injury. This enables the owner to secure his insurance at a manageable rate, since the underwriter can calculate the upper limit of his risk, thus demonstrating Lord Denning's 'justification inconvenience.'
There are two ways in which the total sum available for compensation can be calculated in case of open liabilities with innocent third parties. The first is based on the residual value of the vessel, but this has a major flaw, since it favours the owners and operator of old and poorly maintained (low value) tonnage and, furthermore if the vessel sinks after the collision, there is no value left. For example the Titanic whose pre-accidental value was $1500000 which reduced to post -accident value of $90,000 (made up of lifeboats which were floating after the sinking of the vessel)
The second system is based on tonnage of the vessel. There had been three international conventions, in 1924, 1957 and 1976, dealing with the tonnage limitation. The convention relating to limitation of liability of owners of seagoing ships 1957 and the 1976 convention on the limitation of liability is based on the gross tonnage of the vessel.

Salient features of the Convention on Limitation of liability for Maritime claims 1976

Persons who are entitled to limit liability

1.'ship owner' (shall mean owner, charterer, manager, or operator of a sea going ship).
2. salver
3. any person for whose action the ship owner or salver is responsible
4. insurer of liability claims (P&I Clubs) to the same extent the assured himself .
Claims which are subject to limitation
1. claims in respect of loss of life, injury to personnel, loss or damage to property such as harbour works, nav. aids, etc in direct connection with operation of ship or salvage operations.
2. claims in respect of loss resulting from delay in carriage of cargo/passengers.
3. claims in respect of raising removal or destruction or rendering harmless of a ship sunk, wrecked, stranded including anything that is on board that ship.
4. claims in respect of removal or rendering harmless of the cargo of the ship
claims not subjected to limitation

1 salvage claims or contribution to GA. The direct claims for GA can not be subjected to limitation. However if the cargo owner who has contributed for GA , but claims back from ship owner what they have paid on the basis that the vessel was found to be unseaworthy, that claim is subjected to limitation at the ship owners end.
2. oil pollution damage
3. claims against ship owner for nuclear damage
Conduct barring limitation
A person liable to limit his liability if it is proved that the loss or damage resulted from his personnel act or omission , committed with intent to cause such a loss or acted recklessly with the knowledge that such a loss or damage would occur.
Counter claims
Where a person entitled to limitation of liability has a claim against the claimant arising out of the same occurrence, their respective claims shall be set off against each other and the limitation will apply only to the balance if any ie calculated on single liability basis. For example in case of collision between two vessels, depending on the proportion of blame attached to each vessel, the liability will be calculated for each vessel with respect to damages caused and it will first be set off and the remainder only will be subjected to limitation.
Single liability: First setting of the liability one against the other and payment of the remaining balance is called single liability . For instance vessel A is liable to pay vessel B 100000 US$ and Vessel B owes vessel A 20000 US$, then Vessel A will have to pay Vessel B 80000 US$. This 80000 US$ will be subject to limitation by vessel A. If limitation is 70000 US $ as per her Gross tonnage, then she will pay vessel B only 70000 US $.

Cross liability If it is done by cross liability, each vessel's liability will be first subjected limitation and balance calculated after applying limitation. In the above example, if Vessel A's limitation as per Gross tonnage is 70000US $ and vessel B's limitation as per her Gross tonnage is 10000 US $. ,then as per cross liability, vessel A will have to pay vessel B only 60000 US $

General limits .
A) Loss of life/injury
ships of 500 GRT or less----333 000 SDR
501-3000 GRT…… above+ 500 SDR for each ton over 501

3001- 30000 GRT…….. above+ 333 SDR for each ton above 3000
30001-70000…….above+ 250 SDR for each ton above 30000
70000 and above…….above+ 167 SDR for each ton above 70000
In respect of other claims
Half of the amount stipulated for loss of life/injury
If the limitation amount calculated as above for a vessel based on her GRT for loss/injury of life is insufficient to settle claims, then the remaining balance for loss of life claim will rank rateably with other claims and shall be payable from the fund calculated for other claims.
National Laws: This convention is with out prejudice to any National Laws which may provide that the claims for damage to harbour works etc will have priority over claims other than loss of life.
Salver's limitation : If a Salver is not operating from a ship, then his limitation will be calculated according to a GRT of 1,500 .
Passenger claims: limitation is 46,666 SDR multiplied by number of passengers the vessel is certified to carry as per her certificate , but not exceeding 25 million SDR. Passenger will include those under a contract of passenger carriage or those accompanying vehicles or live animals.
Aggregation of claims: the limits of liability of this convention will be for the aggregate of all claims arising out of each distinct occasion.
Constitution of Limitation Fund : Any person who is alleged to be liable may constitute a limitation Fund calculated on the basis of this convention with the court or with any State party where legal proceedings are instituted. The Fund may be cash deposit or guarantee acceptable to the State Party
Limitation of liability with out constitution of limitation Fund: person who are allowed to limit their liability can invoke limitation with out constitution of limitation Fund. The procedure for invoking shall be decided by the National law of The State Party. Invoking limitation at an early stage does not constitute an admission of liability. However logic alone decrees that liability must at some stage be admitted since the pronouncement of judgement will eventually that the liability be limited and not the likelihood of liability.
Distribution of the Fund : Fund constituted will be distributed among the claimants in proportion of their established claim in the court.
Bar to other actions : once the Limitation Fund is constituted then, the vessel if arrested shall be released by order of the court.

Governing Law subject to the provisions of this convention, the procedure, rules regarding constitution and distribution of the limitation Fund shall be as per the National Laws of the State Party.

Protocol 1996 to the liability 1976 convention
IMO has adopted a protocol substantially increasing the limitation . This convention has not yet come in to force as on November 2001. It will come into force after 10 States have accepted the protocol.
Limitation as per the protocol
For loss of life/injury: vessels up to 2000 GRT …….2 million SDR
Liability increases with tonnage to max 70000 GRT...2 million SDR+400SDR/ton
For other claims : vessels up to 2000 GRT ……1 million SDR
Liability increases with tonnage to max 70000 GRT…1million SDR+200 SDR/ton

The Athens Convention
REVISION UPDATE
By way of an introduction a Conference, convened in Athens in 1974, adopted the Athens Convention
relating to the Carriage of Passengers and their Luggage by Sea, 1974. The Convention was designed to consolidate and harmonise two earlier Brussels' Conventions dealing with passengers and luggage and adopted in 1961 and 1967 respectively. The Convention establishes a regime of liability for damage suffered by passengers carried on a seagoing ship.
It declares a carrier liable for damage or loss suffered by a passenger if the incident causing the damage occurred in the course of the carriage and was due to the fault or neglect of the carrier. However, unless the carrier acted with intent to cause such damage, or recklessly and with knowledge that such
damage would probably result, he can limit his liability. As far as loss of, or damage to luggage is concerned, the carrier's limit of liability varies, depending on whether the loss or damage occurred in respect of cabin luggage, of a vehicle and/or luggage carried in or on it, or in respect of other luggage.
Internationally, the Athens Convention has still not achieved widespread acceptance. To date, only twenty six states are party to the Convention, including only six European states (Belgium, Greece, Luxembourg, Spain, Republic of Ireland and the UK) although many other states have adopted provisions into their law.
Notable among the states who do not recognise the Athens Convention within their national law are the Scandinavian countries, the United States and Japan.
In recent times there have been a number of initiatives within IMO to introduce a new Protocol to the Athens Convention which deals with the liability of carriers for death and injury claims to passengers. The Athens Convention initiatives are the latest advanced by a number of states in recent years in their efforts to introduce compulsory insurance in respect of ship owners' liabilities. The motives for these initiatives have varied from a desire to secure claimants' rights to the belief that the introduction of compulsory insurance would have the effect of raising ships' standards generally. Initially, the Legal Committee of IMO sought to introduce compulsory insurance for all ships, but this approach foundered when it became apparent that the goal was impossible without the framework of a general convention governing all ship owners' liabilities.
It is against this background that the revision of the Athens Convention must be seen. The limit of liability for individual claims in the original 1974 Athens Convention (SDR46,666) is regarded by many states as too low; the limit was therefore increased by the 1990 Protocol to the Athens Convention to SDR 175,000. However, this Protocol is not yet in force. Even a per capita limit of SDR 175,000 on any individual passenger claim might be considered unreasonably low by some governments in the context of current awards for serious personal injury. Within the IMO Legal Committee suggestions of SDR 175,000, SDR 300,000 and even SDR 1,000,000 have been made. However, the Legal Committee is not seeking only to increase the per capita limits under the Athens Convention. Owners of passenger ships would be required to provide evidence of financial security up to their limit of liability.
Therefore, if as seems likely, compulsory liability insurance is required, this will have a bearing on the level of cover which the Clubs can provide: both Clubs and reinsuring underwriters may have to take a different view on the policy with regard to reserves when taking into account claims which arise by way of anticipatory guarantee.

The most recent meeting of the Inter-sessional Working Group was held in March with the object of agreeing a final text of the Protocol at the October session of the Legal Committee for submission to a Diplomatic Conference, possibly in 2003. It seems likely that if the Legal Committee does not succeed in producing a final text that is acceptable to states, attempts will be made to produce regional solutions. Because of the obvious importance of any changes to the Athens Convention, any further developments will be reported in future editions of Loss Prevention News.

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Shipboard Marine Pollution emergency Plans

Marpol 73/78 Regulation 26 of Annexure I ,requires that oil tankers 15o ton or more other ship of 400 tons are more must carry a SOPEP approved by the Administration. Convention on Oil Pollution Preparedness, Response and Co-operation 1990 also requires the same. Marpol annexure II Regulation 16 also requires for same type of ships to carry Shipboard marine pollution emergency plans for noxious liquid substances. Since the contents of both these plans are similar vessels can combine both and prepare a plan and name it " Shipboard marine Pollution emergency Plan. MEPC has developed a guidance for preparation of this plan. The vessel must carry a certificate to this effect as per Regulation 5 of MARPOL and is subject to inspection by Port State inspection.
All SOPEP should contain the following introduction:
1. The plan is as per MARPOL
2. The purpose of the plan is to guide Master regading steps to taken
3. The plan contains contains all information and operational instructions including appendices of names and contact telephone and other details
4. Then plan is approved by the administration and no changes will be made with out their approval.
5. Changes to non-mandatory section will not be required to be approved by administration.
Index of sections
Section 1. preamble
Section 2. Reporting requirements
Section 3. Steps to control discharge
Section 4. National and Local Co-ordination
Section 5. Additional information(Non-mandatory)
Appendices to attached to plan
Brief notes on preparation of the above sections
<u>Section 1. preamble</u>
Should contain explanation of purpose and use of plan and how it relates to shore-based plan. Plan should be ship specific and its purpose is to set in motion actions to stop/minimise discharge. It should also include guidance in case of catastrophic discharge. Considering the pressures confronted in an emergency situation, mistakes could be made in the heat of the moment and as a consequence personnel may be exposed to increasing hazard and greater environmental damage. Therefore the plan must be:
realistic, practical and easy to use
understood by ship and shore personnel

evaluated and reviewed and updated regularly.
in the working language of master and crew.

Section 2. Reporting requirements(mandatory)
When to report:
Actual discharge: discharge of oil above permitted level for whatever reason including safety of ship/personnel
Probable discharge: As a general guideline master should report in cases of collision, grounding, fire, explosion, structural failure, flooding, failure of steering, cargo shifting etc.
Information required:
IMO's guideline for ship reporting systems as per A.851(20) are sufficient for the initial information required.
Whom to contact:
Coastal state contact: include as appendix list of agencies or officials of administration for receiving and processing the information. In case of delays in contacting these officials master should be guided to contact nearest coastal radio station or Rescue Co-ordinating centre(RCC).
Port Contacts: For ships in port notification of local agencies will speed response. Plan should appendix giving a list of these agencies for regularly visiting ports
ship interest contacts: parties with interest in ship to be listed in the form of a contact list. It should be borne in mind that ships crew are busy in saving life and controlling pollution. Plan should specify as to who should inform interests such as cargo interest, insurer and salvage services etc.
Section 3. Steps to control discharge
Plan should provide master with guidance for action as well as identification of crew for taking such action for following:
Operational spills: plan for safe removal of onboard spills on deck either by on board resources or hiring a clean up company
pipe leakage:
Tank overflow: lowering of cargo/bunkers; transfer excess to shore.
Hull leakage: reduce head of oil in concerned or internal transfer taking into considerat6ion any stress for the hull and her stability.
spills from casualties: In case of collision, grounding, fire hazardous vapour release, etc plan should in a separate section make check lists tailored for the specific ship and specific product.
In addition the plan should identify personnel for specific task.
Priority action:
Also the plan should provide specific guidance for the master regarding priority action while responding to casualty. Master's priority will be to ensure the safety of personnel, ship and to take action to prevent escalation of the incident. For instance for preventing fire, exposure to toxic vapours, and explosion , master should give consideration for altering course so that the ship is upwind of the spilled cargo, shutting down of non-essential air intakes. If vessel is aground, all possible source of ignition to be eliminated.
Prior to taking remedial action visual inspection to be done; tanks to be sounded. Indiscriminate opening of ullage plugs especially when vessel is aground to be avoided as loss of buoyancy could result.
When bottom damage is sustained , hydrostatic balance will be achieved fairly rapidly and as such time available for preventive action will be limited.
When significant side damage in way of oil tanks, cargo will be released rapidly until hydrostatic balance is achieved and the rate of release will then reduce and be

governed by the rate at which oil is replaced by water flowing under the oil. When the damage is limited to one or two compartments, consideration may be given to transferring oil internally from damaged to intact tanks. Internal, transfer to be undertaken only with a full appreciation of the likely impact on the longitudinal strength and stability.

4. In case of lightening to another ship, guidance for ship to ship transfer should be provided. As lightening operations in coastal waters is subject to jurisdiction of coastal State , the plan should address this aspect for the need to co-ordinate such operations with the coastal State.

Section 4. National and Local co-ordination.

Quick and efficient co-ordination between the ship and coastal State is vital for mitigating effects of pollution incident. The plan should advise master to contact coastal State for authorisation prior to undertaking mitigating actions.

Some coastal States have agencies to take charge of response immediately and subsequently bill the owner. In some coastal States, the responsibility for initiating response is placed on the ship owner. The plan should details and guidance to the master regarding this.

Section 5. Additional Information (non-mandatory)

In addition to the requirement of Regulation 26 of Annexure I of MARPOL, the plan may include topics regarding ship borne response equipment, record keeping, reference material, drawings etc. Inventory of response equipment, directions for use of these ; crew training etc may also be provided.

Provision for plan review, event review and plan testing may also be provided under this non-mandatory section.

A decision process should be outlined in this section for aiding the master in determining when salvage assistance should be obtained.

Appendices

The following appendices should be attached to the plan, as a minimum

list of coastal State contacts
list of port contacts
list of ship interest contacts
ships plans and drawings

Additionally following can also be included
summary flow chart
information relevant to roles and responsibilities of national and coastal authorities
other reference material

Convention on the preservation of marine pollution By dumping of waste and other matter 1972

London Dumping Convention

Introduction-background

Dumping at sea of waste generated on land and loaded on board specialized dumping vessels had been carried out for several years by industrialized countries before international rules to prevent marine pollution from this practice entered into force in 1974: the Oslo Convention for the North-East Atlantic and in 1975 the London Convention 1972 for marine waters worldwide other than the internal waters of States. At present, there are 78 Parties to the London Convention.

These were followed by several, similar, regional agreements. Unregulated dumping has largely been halted since then. Most of these conventions share a so-called 'black- and grey-list' approach. The black-list contains substances, the dumping of which is prohibited. The grey-list contains substances the dumping of which is only permitted under strict control and provided certain conditions are met.
In early 1991, incineration at sea operations came to a halt, ahead of the agreed global deadline of 31 December 1992. In 1991, Parties also agreed to apply the so-called "precautionary approach in environmental protection" within the framework of the London Convention (resolution LDC.44(14)). In 1990, Parties to the London Convention 1972 agreed to phase-out sea disposal of industrial waste effective by 1 January 1996 (Resolution LDC.43(13)).
In 1992, Agenda 21 encouraged Parties to complete this new orientation. In 1993, Parties started a detailed review of the London Convention, leading to the adoption of a few crucial amendments to Annexes I and II to the London Convention as a first step. These amendments consolidated in a legally binding manner the prohibition to dump all radioactive wastes or other radioactive matter and of industrial wastes, the latter as per 1 January 1996 as well as the prohibition of incineration at sea of industrial wastes and of sewage sludge. In 1996, this review was completed with the adoption of the 1996 Protocol to the London Convention 1972, which, when entered into force, replaces the London Convention. Implementation of the London Convention 1972 and of the 1996 Protocol thereto is very much connected with finding solutions for land-based sources of marine pollution and proper waste management in general. Nowadays, when a regulatory authority is confronted with a waste problem, seeking an overall net-benefit involving all environmental compartments is preferred over a sectoral approach. With regard to an industrial activity, the industry concerned will benefit from this approach in many cases through reduced use of raw materials leading to lower costs, or even through the marketing of the technologies or processes it developed to solve an environmental problem
<u>Article1 &2</u>
All parties to the convention pledge to effectively control pollution
And prevent pollution by dumping
<u>Article 3</u>
Definitions
Dumping: any deliberate disposal of wastes at sea. Also any deliberate disposal of vessels aircraft structures at sea
Dumping does not include: disposal at sea of wastes or other matter which are incidental or derived from normal operations of vessel
Sea: all marine waters except internal waters
<u>Article 4</u>
States shall prohibit dumping of wastes as below
matter listed in Annex I prohibited
dumping of matter listed in annex ii requires special permit
dumping of all other matter requires general permit
Before any permit issued States to carefully consider factors as per annex III including dumping sites
<u>Article 5</u>
Article not to apply when dumping necessary due to stress of weather, saving life or real threat to ship
State may issue special permit as an exception to Article 4 in emergencies posing unacceptable risks to human health when no other feasible solution available. In this case party must consult other parties and IMO

Article 6
State to designate authority to :
issue special permit / general for dumping matter as per annex II
keep records
monitor condition of seas
consider factor listed in annex III prior to issue permit
States must inform IMO all issue of permits and progress of monitoring
Article 7
States to implement measures as per convention making it applicable to all ships aircraft and off shore installations
Party shall measures to prevent and punish conduct in contravention of this convention
Parties agree to co-operate development of these procedures and its implementation especially in the high seas including procedures for reporting of vessels contravening the provisions of this convention
War ships and govt vessels are excepted from this convention
Article8
Parties with common interest to achieve regional agreements consistent with this convention
Article 9
Parties to collaborate with IMO and other States to
train personnel
supply equipment for research and monitoring

Article 10
Parties undertake to develop procedures for settlement of disputes regarding dumping and assessment of liability
Article 11 & Article 12
Contracting Parties pledge themselves to protect marine environment against pollution caused by
hydrocarbon including oil
Noxious hazardous material
Wastes generated in the course of operation of vessel
Radio active pollutants
Agents of chemical or biological warfare
Wastes directly coming from exploration/exploitation of sea bed
Annex I
Mercury, cadmium, persistant plastics,
Crude oil and its wastes ,Radio active material
Annexure II
Arsenic, lead, zinc cyanides pesticides
Containers or other bulky wastes liable to sink to sea bottom becoming an obstacle to fishing or navigation
Annex III
Criteria for issuing permit
Characteristics of the matter
Total amount
form solid liquid etc
properties
toxicity

Characteristic of dumping site

location in relation to other areas
Rate of disposal
method of packing
bottom characteristics of the sea
General considerations and conditions
possible effects on amenities
effects on marine life
effects on other uses of sea/fishing navigation etc
availability of other site

1996 Protocol to 1972 Dumping Convention

Replaces original convention when it comes in to force. The only major difference is that in this protocol except list of items listed in new annex I nothing else to be dumped. To dump matter listed in annex I permit is required. Secondly incinerating at sea is prohibited.
Annexure I to Protocol

wastes or other matter that may be considered for dumping
1 The following wastes or other matter are those that only may be considered for dumping being mindful of the Objectives and General Obligations of this Protocol set out in articles 2 and 3 and a permit for these to be issued after considering factors listed in the Convention

(1) dredged material;
(2) sewage sludge;
(3) fish waste, or material resulting from industrial fish processing operations;
(4) vessels and platforms or other man-made structures at sea;
(5) inert, inorganic geological material;
(6) organic material of natural origin; and
(7) bulky items primarily comprising iron, steel, concrete and similarly unharmful materials for which the concern is physical impact, and limited to those circumstances where such wastes are generated at locations, such as small islands with isolated communities, having no practicable access to disposal options other than dumping.

2 The wastes or other matter listed under item 4 and 7 may be considered for dumping, provided that material capable of creating floating debris or otherwise contributing to pollution of the marine environment has been removed to the maximum extent and provided that the material dumped poses no serious obstacle to fishing or navigation.

3 Notwithstanding the above, materials listed in paragraphs 1.1 to 1.7 containing levels of radioactivity greater than de minimis (exempt) concentrations as defined by the IAEA and adopted by Contracting Parties, shall not be considered eligible for dumping; provided further that within 25 years of 20 February 1994, and at each 25 year interval thereafter, Contracting Parties shall complete a scientific study relating to all radioactive wastes and other radioactive matter other than high level wastes or matter, taking into account such other factors as Contracting Parties consider appropriate and shall review the prohibition on dumping of such substances in accordance with the procedures set forth in article 22.

Intl. Convention on Oil pollution Preparedness, Response and Co-operation

1990 (OPRC)

Article 1 – General Provisions

Parties undertake individually or jointly undertake to take all appropriate measures to prepare for and respond to an oil pollution incident

Article2- definitions

Oil: petroleum in any form including crude oil, fuel oil, oil sludge and refined products

Article 3 Oil Pollution Emergency Plans

All Parties to ensure their vessels off shore installations have an oil pollution emergency plan and these plans are subject to port state control inspections

Article 4 oil pollution reporting procedures

masters to report discharge or probable discharge to nearest to coast stations
off shore units to the coastal State in whose jurisdiction they are located.
Masters, air craft and inspection vessels to report with out delay if they observe any incident involving discharge, to the competent national authority in the nearest coastal state

Article 5 Action on an oil pollution incident report

assess event to determine if it is an oil pollution incident
assess nature and extent and consequences of the oil pollution incident
inform all concerned States affected along with following:
details of its assessment and action if any take further info as required

when the severity of incident demands IMO to be informed
Parties to use" oil pollution Reporting system developed by organization
Contained in " manual of oil pollution, section II- contingency planning appendix 2" prepared by MEPC

Article 6 National and regional systems for the preparedness and Response

a)Each party to designate authority with responsibility for oprc
b) national operational contact point for receipt of reports
c) authority to act on these reports
d) to have a national contingency plan for oprc

In addition the parties shall establish
minimum level of response equipment
programme of exercises
detailed plans and communication for the response
mechanism to co-ordinate the response

All State Parties to inform IMO of details of these authorities, response equipment and their contingency plan.

Article 7 International co-operation in pollution response

All parties shall cooperate to provide services technical support for the OPRC if another State so requests
All parties to facilitate arrival and departure of ships/ material and aircraft from its territory

Article 8 Research and development

Parties agree to exchange results of research and development programme
And to hold regular symposium on this subject

Article 9 Technical co-operation
Parties agree to support other States when they request to
to train personnel
to make available technology and equipment
other measures for oprc
joint research
transfer of technology

Article 10 promotion of bilateral cooperation
Endeavour achieve bilateral cooperation in this regard
Article 11 Relation to other conventions
This convention will not alter any rights of States under any other convention
Article 12 institutional arrangements
Parties to plan to do following:
Information services to receive and collate information received
Education and training
Technical services and assistance
Annex
Reimbursement of cost of assistance
Parties to bear respective costs of respective actions to deal with pollution
If action is taken at the request of another party, the requesting party to pay.
Parties to keep in mind CLC and Fund Conventions.
Main points of the OPRC
oil pollution emergency plan
oil pollution reporting procedures
action on receiving an oil pollution report
National and regional system for preparedness and response
International co-operation in pollution response
Research and development
Technical co-operation
Promotion of bilateral and multilateral co-operation in preparedness and response

The international oil pollution compensation fund 1992 and CLC 1992

CLC- civil Liability Convention & Fund Convention
Introduction

Compensation for pollution damage caused by spills from oil tankers is governed by an international regime elaborated under the auspices of the International Maritime Organization (IMO). The framework for the regime was originally the 1969 International Convention on Civil Liability for Oil Pollution Damage (1969 Civil Liability Convention) and the 1971 International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (1971 Fund Convention).
This 'old' regime was amended in 1992 by two Protocols, and the amended Conventions are known as the 1992 Civil Liability Convention and the 1992 Fund Convention. The 1992 Conventions entered into force on 30 May 1996. Due to a number of recent denunciations of the 1971 Fund Convention, this Convention ceased to be in force on 24 May 2002. A large number of States have also denounced the 1969 Civil Liability Convention. Therefore this note deals primarily with the 'new regime', ie the 1992 Civil Liability Convention and the 1992 Fund Convention.
The 1992 Civil Liability Convention governs the liability of ship owners for oil pollution damage.
The Convention lays down the principle of strict liability for ship owners and creates a system of compulsory liability insurance. The ship owner is normally entitled to limit his liability to an amount which is linked to the tonnage of his ship.
The 1992 Fund Convention, which is supplementary to the 1992 Civil Liability Convention, establishes a regime for compensating victims when the compensation under the applicable Civil Liability Convention is inadequate.
The International Oil Pollution Compensation Fund 1992, generally referred to as the IOPC Fund 1992 or the 1992 Fund, was set up under the 1992 Fund Convention. The 1992 Fund is a worldwide intergovernmental organisation established for the purpose of administering the regime of compensation created by the 1992 Fund Convention. By becoming Party to the 1992 Fund Convention, a State becomes a Member of the 1992 Fund. The Organisation has its headquarters in London.
As at 1 March 2003, 92 States had ratified the 1992 Civil Liability Convention, and 85 States had ratified the 1992 Fund Convention.

1992 Civil Liability Convention

Scope of application

The 1992 Civil Liability Convention applies to oil pollution damage resulting from spills of persistent oil from laden tankers.
The 1992 Civil Liability Convention covers pollution damage suffered in the territory, territorial sea or exclusive economic zone (EEZ) or equivalent area of a State Party to the Convention. The flag State of the tanker and the nationality of the shipowner are irrelevant for determining the scope of application.
'Pollution damage' is defined as loss or damage caused by contamination. In the case of environmental damage (other than loss of profit from impairment of the environment) compensation is restricted to costs actually incurred or to be incurred for reasonable measures to reinstate the contaminated environment.
The notion of pollution damage includes measures, wherever taken, to prevent or minimise pollution damage in the territory, territorial sea or EEZ or equivalent area of a State Party to the Convention ('preventive measures').

Expenses incurred for preventive measures are recoverable even when no spill of oil occurs, provided that there was a grave and imminent threat of pollution damage.
The 1992 Civil Liability Convention covers spills of cargo and/or bunker oil from laden, and in some cases unladen sea-going vessels constructed or adapted to carry oil in bulk as cargo (but not to dry cargo ships).
Damage caused by non-persistent oil, such as gasoline, light diesel oil, kerosene etc, is not covered by the 1992 Civil Liability Convention.
Strict liability
The owner of a tanker has strict liability (ie he is liable also in the absence of fault) for pollution damage caused by oil spilled from his tanker as a result of an incident. He is exempt from liability under the 1992 Civil Liability Convention only if he proves that:

(a) the damage resulted from an act of war or
(b) a grave natural disaster, or
(c) the damage was wholly caused by sabotage by a third party, or
(d) the damage was wholly caused by the negligence of public authorities in maintaining lights or other navigational aids.

Limitation of liability
The shipowner is normally entitled to limit his liability under the 1992 Civil Liability Convention. The limits are:
(a) for a ship not exceeding 5 000 units of gross tonnage, 3 million Special Drawing Rights (SDR)
(US$4 million);
(b) for a ship with a tonnage between 5 000 and 140 000 units of tonnage, 3 million SDR (US$4 million) plus 420 SDR (US$581) for each additional unit of tonnage; and
(c) for a ship of 140 000 units of tonnage or over, 59.7 million SDR (US$83 million)<1>.
These limits have increased by some 50.37% on 1 November 2003.

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

Channeling of liability

Claims for pollution damage under the 1992 Civil Liability Convention can be made only against the registered owner of the tanker concerned. This does not preclude victims from claiming compensation outside this Convention from persons other than the owner. However, the Convention prohibits claims against the servants or agents of the owner, members of the crew, the pilot, the charterer (including bareboat charterer), manager or operator of the ship, or any person carrying out salvage operations or preventive measures. The owner is entitled to take recourse action against third parties in accordance with national law.
The unit of account in the 1992 Conventions is the Special Drawing Right (SDR) as defined by the International Monetary Fund. In this document, the SDR has been converted into US dollars at the rate of exchange applicable on 7 March 2003, ie 1 SDR = US$1.383960.
Compulsory insurance
The owner of a tanker carrying more than 2 000 tonnes of persistent oil as cargo is obliged to maintain insurance to cover his liability under the 1992 Civil Liability Convention. Tankers must carry a certificate on board attesting the insurance

coverage. When entering or leaving a port or terminal installation of a State Party to the 1992 Civil
Liability Convention, such a certificate is required also for ships flying the flag of a State which is not Party to the 1992 Civil Liability Convention.
Claims for pollution damage under the 1992 Civil Liability Convention may be brought directly against the insurer or other person providing financial security for the owner's liability for pollution damage.
Competence of courts
Actions for compensation under the 1992 Civil Liability Convention against the shipowner or his insurer may only be brought before the Courts of the State Party to that Convention in whose territory, territorial sea or EEZ or equivalent area the damage occurred.

1992 Fund Convention

Supplementary compensation

The 1992 Fund pays compensation to those suffering oil pollution damage in a State Party to the 1992 Fund Convention who do not obtain full compensation under the 1992 Civil Liability Convention for one of the following reasons:
(a) the shipowner is exempt from liability under the 1992 Civil Liability Convention because he can invoke one of the exemptions under that Convention; or
(b) the shipowner is financially incapable of meeting his obligations under the 1992 Civil Liability Convention in full and his insurance is insufficient to satisfy the claims for compensation for pollution damage; or
(c) the damage exceeds the shipowner's liability under the 1992 Civil Liability Convention.
In order to become Parties to the 1992 Fund Convention, States must also become Parties to the 1992 Civil Liability Convention.
The 1992 Fund does not pay compensation if:
(a) the damage occurred in a State which was not a Member of the 1992 Fund; or
(b) the pollution damage resulted from an act of war or was caused by a spill from a warship; or
(C) the claimant cannot prove that the damage resulted from an incident involving one or more ships as defined (ie a sea-going vessel or seaborne craft of any type whatsoever constructed or adapted for the carriage of oil in bulk as cargo).
Limit of compensation
The maximum amount payable by the 1992 Fund in respect of an incident is 135 million SDR (US$187 million), including the sum actually paid by the ship owner (or his insurer) under the 1992 Civil Liability Convention. A maximum of 200 million SDR will be payable in case of exceptional circumstances provided at least 3 States have cargo imports of more than 600 million tone of contributing oil.
The limit of 135/200 million SDR has been increased by 50.37% to 203/300 million SDR (US$ 281 million) on 1 November 2003.
Competence of courts
Actions for compensation under the 1992 Fund Convention against the 1992 Fund may only be brought before the Courts of the State Party to that Convention in whose territory, territorial sea or EEZ or equivalent area the damage occurred.
Experience in past incidents has shown that most claims are settled out of court.

Organisation of the 1992 Fund

The 1992 Fund has an Assembly, which is composed of representatives of all Member States. The Assembly is the supreme organ governing the 1992 Fund, and it holds regular sessions once a year. The Assembly elects an Executive Committee comprising 15 Member States. The main function of this Committee is to approve settlements of claims.

The 1992 Fund shares a Secretariat with the 1971 Fund (see section 4.2 below). The joint Secretariat is headed by a Director, and has at present 30 staff members.

Financing of the 1992 Fund

The 1992 Fund is financed by contributions levied on any person who has received in one calendar year more than 150 000 tonnes of crude oil and heavy fuel oil (contributing oil) in a State Party to the 1992 Fund Convention.

Basis of Contributions

The levy of contributions is based on reports of oil receipts in respect of individual contributors. Member States are required to communicate every year to the 1992 Fund the name and address of any person in that State who is liable to contribute, as well as the quantity of contributing oil received by any such person. This applies whether the receiver of oil is a Government authority, a State-owned company or a private company. Except in the case of associated persons (subsidiaries and commonly controlled entities), only persons having received more than 150 000 tonnes of contributing oil in the relevant year should be reported.

Oil is counted for contribution purposes each time it is received at a port or terminal installation in a Member State after carriage by sea. The term received refers to receipt into tankage or storage immediately after carriage by sea. The place of loading is irrelevant in this context; the oil may be imported from abroad, carried from another port in the same State or transported by ship from an off-shore production rig. Also oil received for transshipment 7to another port or received for further transport by pipeline is considered received for contribution purposes.

Payment of Contributions

Annual contributions are levied by the 1992 Fund to meet the anticipated payments of compensation and administrative expenses during the coming year. Each contributor pays a specified amount per tonne of contributing oil received. The amount levied is decided each year by the Assembly.

The Director issues an invoice to each contributor, following the decision taken by the Assembly to levy annual contributions. A system of deferred invoicing exists whereby the Assembly fixes the total amount to be levied in contributions for a given calendar year, but decides that only a specific lower total amount should be invoiced for payment by 1 March in the following year, the remaining amount, or a part thereof, to be invoiced later in the year if it should prove to be necessary.

The contributions are payable by the individual contributors directly to the 1992 Fund. A State is not responsible for the payment of contributions levied on contributors in that State, unless it has voluntarily accepted such responsibility.

No State will be liable be pay more than 27% of the total compensation. If the imports of a State are such that its cargo interest contribution exceeds and works out to more than 27% of the total compensation, then the excess will be distributed to other States

Level of Contributions

Payments made by the 1992 Fund in respect of claims for compensation for oil pollution damage may vary considerably from year to year, resulting in fluctuating levels of contributions.

The 'old' regime: the 1969 Civil Liability Convention and the 1971 Fund Convention

The 1969 Civil Liability Convention entered into force in 1975. As at 1 March 2003, 48 States were Parties to the Convention (as listed in the Annex).
The main features of the Convention are the same as those of the 1992 Civil Liability Convention, except on the following points.

1.Unlike the 1992 Civil Liability Convention, the 1969 Convention is limited to pollution damage suffered in the territory (including the territorial sea) of a State Party to the Convention.

2.Furthermore, it applies only to damage caused or measures taken after an incident has occurred in which oil has escaped or been discharged. The Convention therefore does not apply to threat removal measures, ie preventive measures which are so successful that there is no actual spill of oil from the tanker involved.
3.The 1969 Civil Liability Convention applies only to ships which are actually carrying oil in bulk as cargo, ie laden tankers. Spills of bunkers from tankers during ballast voyages are therefore not covered by the 1969 Convention, nor are spills of bunker oil from ships other than tankers.
4.Under the 1969 Civil Liability Convention, the limit of the shipowner's liability is much lower than under the 1992 Civil Liability Convention, ie 133 SDR (US$184) per ton of the ship's tonnage or 14 million SDR (US $19 million), whichever is the lower. The ship owner may be deprived of the right to limit his liability if a claimant proves that the incident occurred as a result of the personal fault (the "actual fault or privity") of the owner.
5.Claims for pollution damage under the 1969 Civil Liability Convention can be made only against the registered owner of the tanker concerned. This does not preclude victims from claiming compensation outside this Convention from persons other than the owner. However, the Convention prohibits claims against the servants or agents of the owner. The owner is entitled to take recourse action against third parties in accordance with national law.

The advantages for a State being Party to the 1992 Civil Liability Convention and the 1992 Fund Convention can be summarised as follows:

If a pollution incident occurs involving a tanker, compensation is available to governments or other authorities which have incurred costs for clean-up operations or preventive measures and to private bodies or individuals who have suffered damage as a result of the pollution. For example, fishermen whose nets have become polluted are entitled to compensation, and compensation for loss of income is payable to fishermen and to hoteliers at seaside resorts. This is independent of the flag of the tanker, the ownership of the oil or the place where the incident occurred, provided that the damage is suffered within a State Party.
As mentioned above, the 1969 Civil Liability Convention and the 1971 Fund Convention have been denounced by a number of States, and the 1971 Fund Convention ceased to be in force on 24 May 2002.

Moreover, the 1992 Civil Liability Convention and the 1992 Fund Convention provide a wider scope of application on several points and much higher limits of compensation than the Conventions in their original versions. For these reasons, it is recommended that States which have not already done so should accede to the

1992 Protocols to the Civil Liability Convention and the Fund Convention (and not to the 1969 and 1971 Conventions) and thereby become Parties to the Conventions as amended by the Protocols (the 1992 Conventions). The Protocols would enter into force for the State in question 12 months after the deposit of its instrument(s) of accession.
States which are already Parties to the 1969 Civil Liability Convention are advised to denounce that Convention at the same time as they deposit their instruments in respect of the 1992 Protocols, so that the denunciation of that Convention would take effect on the same day as the 1992 Protocols enter into force for that State.

Three tier compensation in the form of Optional Fund

Updated 17 June 2003

Supplementary Fund

Additional compensation is likely to be available in future for victims of oil pollution from oil tanker accidents, following the adoption of a Protocol establishing an International Oil Pollution Compensation Supplementary Fund. The Protocol was adopted by a Diplomatic Conference held at the Headquarters of the International Maritime Organization (IMO) in London in May 2003.
The aim of the Supplementary Fund is to supplement the compensation available under the 1992 Civil Liability and Fund Conventions with an additional third tier of compensation. Membership of the Supplementary Fund is optional and any State which is a Member of the 1992 Fund may join the Supplementary Fund.
The total amount of compensation payable for any one incident will be 750 million Special Drawing Rights (SDR) (just over US$1 000 million), including the amount payable under the existing Civil Liability and Fund Conventions.
The Protocol will enter into force three months after it has been ratified by at least eight States which have received a combined total of 450 million tons of contributing oil in a calendar year. The Supplementary Fund will only pay compensation for pollution damage in States which are Members of the Supplementary Fund for incidents which occur after the Protocol has entered into force

Intl. Convention on Intervention on the High seas 1969 & Protocol 1973

The Torrey Canyon disaster of 1967 revealed certain doubts with regard to the powers of States, under public International law, in respect of incidents on the high seas. In particular, questions were raised as to the extent to which a coastal State could take measures tom protect its territory from pollution where a casualty threatened that State with oil pollution, especially ship owners, cargo owners and even flag States.
The general consensus was that there was a need for a new regime and a conference was convened to consider such a regime and it resulted in this Convention

Article 1
Parties to Convention can exercise its right to take measures necessary to prevent, mitigate or eliminate grave and imminent danger to their coast lines from pollution/threat of pollution by oil following any marine casualty such as collision, grounding or other incident of navigation. War ships and govt. ships excepted.

Article 2 & 3

Prior to taking measure coastal State shall
a) consult other States affected and also Flag State of V/L
b) Notify measures to persons who are interested or who will be affected by these measures
c) IMO has list of independent experts. Coastal State to consult them
d) In extreme emergency Coastal State can immediately take measures with out consultation
e) Take action to save assist persons in distress & if necessary repatriate etc.
f) Inform IMO measures taken.
Artcle 4.
IMO to maintain list of independent experts nominated by Coastal states
Article5
Coastal sate must take measures proportionate to actual/threat of pollution
Must consider:
a)extent of damage to environment if measures are not taken;
b) effectiveness of measures
c) Extent of damage that may be caused by such measures
Article 6
Coastal State must pay compensation for damage caused to vessels if the measures exceed reasonableness.
Article 8.
If there is any unsolved dispute regarding compensation if it arises due to the measures taken, Conciliation or arbitration can be done as per the procedure given in the Annex to this Convention.
Annex
If Coastal requests a conciliation commission shall be appointed. IMO to have a list of experts. From this list 3 members will be nominated . One by coastal state, one by parties affected. These two will nominate the third who will preside over the commission.
Conciliation commission will give recommendation. If coastal State/parties do not accept this with in 90 days, it will termed unsuccessful. Now the parties can resort to arbitration tribunal.
For the Arbitration tribunal, three members to be nominated same way as for conciliation.
The award of the Tribunal is final and with out appeal and parties to comply with it immediately
The 1993 protocol to the Convention

The Convention is made to apply for pollution/threat of pollution to substances other than oil. The list such substances are given in the annex to the Convention. These are substances , which are liable to create hazards to human health, to harm living resources and marine life, to damage amenities or interfere with other legitimate uses of the sea.

The list has been prepared by MEPC. The protocol specifies that the coastal State taking action or intervening shall be required to prove the necessity of the same or else pay compensation for damage caused by such measures which were not required or were excessive.

The International Ship and Port Facility Security Code

In essence, the Code takes the approach that ensuring the security of ships and port facilities is basically a risk management activity and that to determine what security measures are appropriate, an assessment of the risks must be made in each particular case.
The purpose of the Code is to provide a standardized, consistent framework for evaluating risk, enabling governments to offset changes in threat with changes in vulnerability for ships and port facilities.
To begin the process, each Contracting Government will conduct port facility security assessments. Security assessments will have three essential components. First, they must identify and evaluate important assets and infrastructures that are critical to the port facility as well as those areas or structures that, if damaged, could cause significant loss of life or damage to the port facility's economy or environment. Then, the assessment must identify the actual threats to those critical assets and infrastructure in order to prioritise security measures. Finally, the assessment must address vulnerability of the port facility by identifying its weaknesses in physical security, structural integrity, protection systems, procedural policies, communications systems, transportation infrastructure, utilities, and other areas within a port facility that may be a likely target. Once this assessment has been completed, Contracting Government can accurately evaluate risk.
This risk management concept will be embodied in the Code through a number of minimum functional security requirements for ships and port facilities.
For ships, these requirements will include:
ship security plans
ship security officers
·company security officers
·certain onboard equipment
For port facilities, the requirements will include:
· port facility security plans
· port facility security officers
· certain security equipment
In addition the requirements for ships and for port facilities include:
· monitoring and controlling access
· monitoring the activities of people and cargo
· ensuring security communications are readily available

Because each ship (or class of ship) and each port facility present different risks, the method in which they will meet the specific requirements of this Code will be determined and eventually be approved by the Administration or Contracting Government, as the case may be.
In order to communicate the threat at a port facility or for a ship, the Contracting Government will set the appropriate security level. Security levels 1, 2, and 3 correspond to normal, medium, and high threat situations, respectively. The security level creates a link between the ship and the port facility, since it triggers the implementation of appropriate security measures for the ship and for the port facility.

The preamble to the Code states that, as threat increases, the only logical counteraction is to reduce vulnerability. The Code provides several ways to reduce vulnerabilities. Ships will be subject to a system of survey, verification, certification, and control to ensure that their security measures are implemented. This system will be based on a considerably expanded control system as stipulated in the 1974 Convention for Safety of Life at Sea (SOLAS). Port facilities will also be required to report certain security related information to the Contracting Government concerned, which in turn will submit a list of approved port facility security plans, including location and contact details to IMO.

The Company and the Ship

Under the terms of the Code, shipping companies will be required to designate a Company Security Officer for the Company and a Ship Security Officer for each of its ships. The Company Security Officer's responsibilities include ensuring that a Ship Security Assessment is properly carried out, that Ship Security Plans are prepared and submitted for approval by (or on behalf of) the Administration and thereafter is placed on board each ship.

The Ship Security Plan should indicate the operational and physical security measures the ship itself should take to ensure it always operates at security level 1. The plan should also indicate the additional, or intensified, security measures the ship itself can take to move to and operate at security level 2 when instructed to do so. Furthermore, the plan should indicate the possible preparatory actions the ship could take to allow prompt response to instructions that may be issued to the ship at security level 3.

Ships will have to carry an International Ship Security Certificate indicating that they comply with the requirements of SOLAS chapter XI-2 and part A of the ISPS Code. When a ship is at a port or is proceeding to a port of Contracting Government, the Contracting Government has the right, under the provisions of regulation XI-2/9, to exercise various control and compliance measures with respect to that ship. The ship is subject to port State control inspections but such inspections will not normally extend to examination of the Ship Security Plan itself except in specific circumstances.

The ship may, also, be subject to additional control measures if the Contracting Government exercising the control and compliance measures has reason to believe that the security of the ship has, or the port facilities it has served have, been compromised.

The Port Facility

Each Contracting Government has to ensure completion of a Port Facility Security Assessment for each port facility within its territory that serves ships engaged on international voyages. The Port Facility Security Assessment is fundamentally a risk analysis of all aspects of a port facility's operation in order to determine which parts of it are more susceptible, and/or more likely, to be the subject of attack. Security risk is seen a function of the threat of an attack coupled with the vulnerability of the target and the consequences of an attack.

On completion of the analysis, it will be possible to produce an overall assessment of the level of risk. The Port Facility Security Assessment will help determine which port facilities are required to appoint a Port Facility Security Officer and prepare a Port Facility Security Plan. This plan should indicate the operational and physical security measures the port facility should take to ensure that it always operates at security level 1. The plan should also indicate the additional, or intensified, security measures the port facility can take to move to and operate at security level 2 when instructed to do so. It should also indicate the possible preparatory actions the port

facility could take to allow prompt response to the instructions that may be issued at security level 3.

Ships using port facilities may be subject to port State control inspections and additional control measures. The relevant authorities may request the provision of information regarding the ship, its cargo, passengers and ship's personnel prior to the ship's entry into port. There may be circumstances in which entry into port could be denied.

Responsibilities of Contracting Governments

Contracting Governments have various responsibilities, including setting the applicable security level, approving the Ship Security Plan and relevant amendments to a previously approved plan, verifying the compliance of ships with the provisions of SOLAS chapter XI-2 and part A of the ISPS Code and issuing the International Ship Security Certificate, determining which port facilities located within their territory are required to designate a Port Facility Security Officer, ensuring completion and approval of the Port Facility Security Assessment and the Port Facility Security Plan and any subsequent amendments; and exercising control and compliance measures. It is also responsible for communicating information to the International Maritime Organization and to the shipping and port industries.

Contracting Governments can designate, or establish, Designated Authorities within Government to undertake their security duties and allow Recognised Security Organisations to carry out certain work with respect to port facilities, but the final decision on the acceptance and approval of this work should be given by the Contracting Government or the Designated Authority.

Amendments to SOLAS

The Conference adopted a series of Amendments to the 1974 SOLAS Convention, aimed at enhancing maritime security on board ships and at ship/port interface areas. Among other things, these amendments create a new SOLAS chapter dealing specifically with maritime security, which in turn contains the mandatory requirement for ships to comply with the ISPS Code.

Modifications to Chapter V (Safety of Navigation) contain a new timetable for the fitting of Automatic Information Systems (AIS). Ships, other than passenger ships and tankers, of 300 gross tonnage and upwards but less than 50,000 gross tonnage, will be required to fit AIS not later than the first safety equipment survey after 1 July 2004 or by 31 December 2004, whichever occurs earlier. Ships fitted with AIS shall maintain AIS in operation at all times except where international agreements, rules or standards provide for the protection of navigational information."

The existing SOLAS Chapter XI (Special measures to enhance maritime safety) has been re-numbered as Chapter XI-1. Regulation XI-1/3 is modified to require ships' identification numbers to be permanently marked in a visible place either on the ship's hull or superstructure. Passenger ships should carry the marking on a horizontal surface visible from the air. Ships should also be marked with their ID numbers internally.

And a new regulation XI-1/5 requires ships to be issued with a Continuous Synopsis Record (CSR) which is intended to provide an on-board record of the history of the ship. The CSR shall be issued by the Administration and shall contain information such as the name of the ship and of the State whose flag the ship is entitled to fly, the date on which the ship was registered with that State, the ship's identification number, the port at which the ship is registered and the name of the registered owner(s) and their registered address. Any changes shall be recorded in the CSR so as to provide updated and current information together with the history of the changes.

New Chapter XI-2 (Special measures to enhance maritime security)
A brand-new Chapter XI-2 (Special measures to enhance maritime security) is added after the renumbered Chapter XI-1.
This chapter applies to passenger ships and cargo ships of 500 gross tonnage and upwards, including high speed craft, mobile offshore drilling units and port facilities serving such ships engaged on international voyages.
Regulation XI-2/3 of the new chapter enshrines the International Ship and Port Facilities Security Code (ISPS Code). Part A of this Code will become mandatory and part B contains guidance as to how best to comply with the mandatory requirements. The regulation requires Administrations to set security levels and ensure the provision of security level information to ships entitled to fly their flag. Prior to entering a port, or whilst in a port, within the territory of a Contracting Government, a ship shall comply with the requirements for the security level set by that Contracting Government, if that security level is higher than the security level set by the Administration for that ship.
Regulation XI-2/4 confirms the role of the Master in exercising his professional judgement over decisions necessary to maintain the security of the ship. It says he shall not be constrained by the Company, the charterer or any other person in this respect.
Regulation XI-2/5 requires all ships to be provided with a ship security alert system, according to a strict timetable that will see most vessels fitted by 2004 and the remainder by 2006. When activated the ship security alert system shall initiate and transmit a ship-to-shore security alert to a competent authority designated by the Administration, identifying the ship, its location and indicating that the security of the ship is under threat or it has been compromised. The system will not raise any alarm on-board the ship. The ship security alert system shall be capable of being activated from the navigation bridge and in at least one other location.
Regulation XI-2/6 covers requirements for port facilities, providing among other things for Contracting Governments to ensure that port facility security assessments are carried out and that port facility security plans are developed, implemented and reviewed in accordance with the ISPS Code.
Other regulations in this chapter cover the provision of information to IMO, the control of ships in port, (including measures such as the delay, detention, restriction of operations including movement within the port, or expulsion of a ship from port), and the specific responsibility of Companies.
Resolutions adopted by the conference
The conference adopted 11 resolutions, the main points of which are outlined below. The full text of each is available on request.
Conference resolution 1 (Adoption of amendments to the annex to the international convention for the safety of life at sea, 1974, as amended), determines that the amendments shall be deemed to have been accepted on 1 January 2004 (unless, prior to that date, more than one third of the Contracting Governments to the Convention or Contracting Governments the combined merchant fleets of which constitute not less than 50% of the gross tonnage of the world's merchant fleet, have notified their objections to the amendments) and that the amendments would then enter into force on 1 July 2004.
Conference resolution 2 (Adoption of the International Ship and Port Facility Security (ISPS) Code) adopts the International Ship and Port Facility Security (ISPS) Code, and invites Contracting Governments to the Convention to note that the ISPS Code will take effect on 1 July 2004 upon entry into force of the new chapter XI-2 of the Convention;

X----------x----------x----------x----------x----------x--------

Note: Where the Articles of a Convention or Sections of MS Act is given in the above notes, it should be noted that only the gist of relevant articles or sections as relevant are given and not the full text, for reasons of brevity, mainly to enable the candidates to grasp the essentials of that particular subject. Candidates should as far as possible endeavour to go through the full text of MS Act and the concerned Conventions.

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