

INTRODUCTION TO SHIPPING LAW

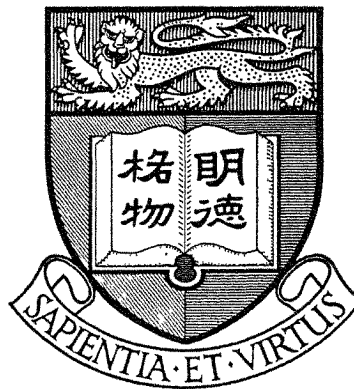
**UNIVERSITY OF HONG KONG, FACULTY OF LAW
AND
THE HONG KONG MARITIME LAW ASSOCIATION**

**15 OCTOBER 2001 (MONDAY)
HOTEL FURAMA, 3RD FLOOR, CORAL ROOM**

SUBJECT : SHIP REGISTRATION AND CLASSIFICATION

**Captain Ajay Hazari
Director, Operations & Risk Management
Anglo-Eastern Ship Management Ltd.**

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CPD SESSIONS: SHIPPING LAW – AN OVERVIEW

15 OCTOBER 2001 (MONDAY)
HOTEL FURAMA, 3rd FLOOR, CORAL ROOM

MORNING SESSION (9:30 am– 12:45 pm)
3 CPD Points

(A) **Shipping Law and the Shipowner**

- Introduction to different types of ships: general cargo, container, tanker, etc.
- Overview of ship building contracts; ship sale and purchase contracts; ship mortgages.
- Registration and regulations; certification and classification
- Overview of demise, time and voyage charterparties; different types of insurance (H & M, Protection & Indemnity, FD & D)

(B) **Shipping Law and the Cargo Owner**

- Introduction to F.O.B. and C.I.F. contracts.
- Current issues in trade financing and letters of credit.
- Booking orders, bills of lading and delivery agents.

Moderator: Mr. Felix Chan, Assistant Professor of Hong Kong University

Speakers: Captain Hazari and Mr. K S Tam of Anglo Eastern Shipping
✓ Mr. Alastair MacAulay, Partner of Johnson Stokes and Master
✓ Mr. Andrew Williams, The China Navigation Company Limited
✓ Mr. Fung King Tak, Partner of Koo and Partners w.e.f. 15.10.01
✓ Mr. John Kerr, Barrister-at-law

AFTERNOON SESSION (1:45 pm–5:00 pm)

3 CPD Points

(C) Problems for Cargo

- Overview of cargo claims handling, loss and damage, cargo surveys.
- The Hague, Hague-Visby and Hamburg Rules
- Charterparty claims.

(D) Problems for Ship

- Casualties: total loss, collision, salvage and general average.
- Pollution claims.
- Limitation of liability.

Moderator: Ms. Mary Thomson, Partner of Koo and Partners

*Speakers: ✓ Mr. John Wilson of Andrew Moore & Associates Ltd
✓ Mr. Martin Heath, Partner of Clyde & Co.
✓ Mr. Harry Hirst, Senior Assistant Solicitor of Ince & Co.
✓ Mr. John Martin, Divisional Director of Richards Hogg Lindley
✓ Mr. Li Lianjun, PRC Legal Consultant of Sinclair Roche & Temperley
✓ Mr. Andrew Cutler, Partner of Holman Fenwick & Willan*

REGISTRATION AND CLASSIFICATION

REGISTRATION

The Ship has to be Registered. As a ship will spend most of its life in international waters, trading between a large selection of countries, it cannot be said to automatically "belong" to a particular country in the same way as a factory or other similar static plant. But a ship cannot be stateless. It has to "belong" to one particular country to be subject to that country's laws which should incorporate the various International Conventions for Ships and, in time of difficulty, to be able to claim the protection of that country. Within that country the vessel will be registered at a particular port; the Port of Registry being an important item of information in a ship's details.

The United Nations Convention on the Law of the Sea requires every ship to sail under one flag and also confers a right to every State, whether littoral or land-locked, to have ships flying its flag.

If a State exercises this right, it must also assume the obligation to ensure that the ships are subject to its effective jurisdiction and control. This means that the State may offer a conducive environment for ship operators, for instance, in the following areas :

- fiscal regimes (e.g., tax exemption, foreign exchange controls, fees)
- legal regimes (limitation of liability, mortgage laws, litigation laws)
- ownership requirements
- bilateral or multilateral agreements which accord special rights to its ships (e.g., cargo sharing, taxation, right of entry)
- manning requirements (nationality, recognition of certificates, manning scale, wage scales)

More onerously, it also means that the State must ensure that :

- the ship is subject to its exclusive jurisdiction on the high seas
- it has jurisdiction under its internal law over each ship and its master, officers and crew in respect of administrative, technical and social matters concerning the ship.

It is therefore in pursuance of this obligation that a flag State has laws and regulations covering :

- standards of construction, equipment and survey of its ships
- the manning of ships, labour conditions and the training of crews
- safe navigation of ships
- reduction and control of marine pollution
- investigation of casualties involving its ships

However, the provisions under UNCLOS are of a general nature. UNCLOS also provides that there must be a genuine link between the ship the flag State but is silent on what constitutes the link. The United Nations Convention on the Conditions for the Registration of Ships was intended to fill the vacuum left by UNCLOS. It is intended to lay down the obligations that a flag State has to assume in relation to the registration of ships in that State. Its main provisions are as follows :

- A. It applies only to self-propelled sea-going ships of 500 GRT and above which are used in international seaborne trade for the transport of goods or passengers.
- B. The flag State must have an adequate and competent maritime administration and shall implement applicable international rules and standards (e.g., those of the International Maritime Organisation and the International Labour Organisation).

C. Owners or operators are adequately identifiable for the purpose of ensuring their full accountability.

D. A State of registration has an option to comply with either the provisions on Ownership or manning (or with both) viz:

OWNERSHIP - a flag State must provide in its law and regulations appropriate provisions for participation by that State or its nationals as owners of ships flying its flag or in the ownership of such ships and for the level of such participation.

MANNING - a State of registration shall observe the principle that a satisfactory part of the complement consisting of officers and crew of ships flying its flag be nationals or persons domiciled or lawfully in permanent residence in that State, either on a ship, company or fleet basis.

E. A State of registration must ensure that the shipowning company or its subsidiary company or its principal place of business is established within its territory. Otherwise there must be a representative or management person who shall be a national of that State.

F. A State may register vessels chartered-in by a charterer in that State in conformity with the Convention.

TYPE OF SHIP REGISTRIES

There are, broadly speaking, four types of registries, viz:

- A. The traditional or "closed" registries – these generally have more stringent criteria for ownership, i.e., only citizens and companies incorporated in the country can qualify. Degree of "closedness" varies because foreigners can still get in by way of companies unless there are stringent criteria also for company ownership. Examples of such registries are most of the European countries, except the "international" registries. The original registries still belong to the traditional category.
- B. The "open" registries – established as a service to the international shipping community. The most notable examples are Liberia and Panama.
- C. The "off-shore" or "international" registries – these registries are set up by the traditional registries to stem the exodus of ships from their original registries. These are designed to lower the operating costs of owners and some are also designed to attract foreigners. Examples are the Norwegian, Danish and German international registers.
- D. The "dual" or "bareboat" registries – these registries allow bareboat chartered ships to be registered. Examples of countries which allow dual registration are Germany, Australia, Liberia, Myanmar and the Philippines.

CHOOSING A FLAG

In the past the choice of the country of Registration was easy. The owners Registered and crewed their ships in the country where they lived and conducted their business. This state of affairs lasted until the 1940s when the American Owners found that the high cost of running ships under the American flag, crew wage levels being particularly high, made it impossible for them to compete, in the international shipping market. They therefore searched for a country which: -

1. Would permit a company owned and controlled by non-nationals to operate ships under its flag (most countries insist that the owning company is Registered, owned and controlled by its own nationals only).
2. Would permit the beneficial Owners to reside and operate elsewhere and to maintain all accounting/banking operations and keep all profits in a different country.
3. Would permit the employment of crew of any nationality and at any wage scale the Owners wished (most countries insist that a significant number of the crew are its own nationals, employed at nationally agreed wage scales).
4. Would demand minimal taxation.

They found the countries they were looking for in Panama and Liberia which had already established "open registers". With ships Registered under either of these flags (known as either "Flags of convenience" or "free flags") the American Owners were able to compete on the international tramp, both dry and tanker, markets and in the non-protected liner runs.

In the same way, traditional European and Japanese tramp Owners found it increasingly difficult to participate in an increasingly competitive shipping market. Whereas it is probably true that a Shipowner would, all things being equal, prefer to Register his ship under the flag of his own country and crew it with his own fellow nationals, increasing labour costs have all but priced the traditional Shipowners out of the market. These have been taken over by the Panamanian and Liberian flags and by emerging nations with their lower labour costs. (It should be borne in mind that the other elements which make up the total of the daily running costs of a vessel will be practically the same for a well run vessel, regardless of flag, the world over). The principal elements of the higher labour costs faced by the traditional owners are: -

1. Higher domestic wage levels.
2. Comprehensive and expensive Social Security payments demands by the national governments in respect of the personnel employed.

Nevertheless, there are ways in which certain national governments do assist their national fleet: -

1. Purchasing loans at a low rate of interest.
2. Assistance with Social Security payments for the crews.
3. Preference for the national fleet for Government cargoes and for cargoes controlled by the major industrial concerns in the country, together with an active policing of the 40/40/20 Unctad Rule in the liner trades.
4. Exclusive employment of national flags in certain protected trades (such as coasting).
5. Advantageous taxation schemes so that profits gained from shipowning activities bear little or no tax.

If a Shipowner/Shipmanager does operate in a country which: -

1. actively encourages Shipowning by its nationals;
2. has a domestic wage range which enables crews to be employed at competitive salary levels;
3. has a pool of experienced seamen;

it will be attractive to Register the vessel under that flag. A good example of such a country is India. Greece encourages its notorious entrepreneurial shipowners by permitting them to Register the Shipowning companies abroad (e.g., Panama or Liberia) whilst the ships themselves are Registered in Greece – thus combining the best of both worlds.

Failing any active encouragement from its Government the "traditional" Shipowner has no alternative but to Register his ship abroad. The choice of Register will be influenced by: -

1. Cost – Registration fee and annual tonnage tax.
2. Acceptability – not every flag is welcomed in every country.

In this the Shipowner has two choices. He can either use an “off-shore” Register or a “flag of convenience”/ “free flag”.

“Off-shore” Registers are Registers established with favourable taxation regimes and flexible employment regulations but with close links with a particular established maritime country from which they draw the majority of their tonnage. They also demand some commercial presence from the Shipowner in the territory. Examples of these “off-shore” Registers are: -

Great Britain	Isle of Man and Bermuda
Norway	Norwegian International Register
Netherlands	Netherlands Antilles

“Flags of convenience” Registers have already been described. They have no connection with established Maritime Nations and only demand the most cursory presence from Shipowners on their territory. They have no connection with any one particular country; drawing their custom from anywhere and everywhere. The most famous examples of these “flags of convenience” are Liberia and Panama, and there are an increasing number of other states which offer similar facilities.

In selecting which flag the vessel will fly the Shipowner/Shipmanager will consider if there are any commercial or political reasons why a particular flagged vessel should be used in a particular trade, or if there are any reasons, political or commercial, why a particular flagged vessel should not be used. (For example, a certain flagged vessel would be refused entry into countries for political reasons, or close scrutiny of crew employment conditions on Liberian and Panamanian flagged vessels in Australia/New Zealand/Scandinavia).

Having selected the country whose flag his vessel will fly and established, if necessary, the shipowning company, the Owner will apply to have the vessel Registered in that country. This entails the authorities, or more usually an authorised Classification Society acting on behalf of the authorities of that country, inspecting the vessel –

1. To ensure that the vessel complies with both national and international Rules and Regulations.
2. To measure the vessel to ascertain its dimensions and gross and nett tonnages.

On receipt of all relevant information, and a fee, the authorities will issue:

1. Certificate of Registry, confirming that the vessel is Registered in that country. It will also give the vessel's official number and radio call sign.
2. International Tonnage Certificate, giving the gross and net tonnage.
3. License to operate the vessel's radio station.

The ship is now registered.

CLASSIFICATION

The first thing which must be said is that whilst a ship must be Registered it does not in reality have to be classed. However, bearing in mind the very nature of classification – an independent check on the condition of the vessel – it is difficult to see how an unclassified ship could obtain:

1. Insurance
2. Employment

considering the fact that Shippers and Charterers together with Underwriters and P&I Clubs all insist that the vessel is classed.

This "independent check" is carried out by Classification Societies. These Societies are autonomous bodies which all run under the direction of representatives of:

- Shipowners
- Ship Underwriters
- Shipbuilders
- Professional Institutes concerned with the design, construction and running and repairs of ships such as:
 - Naval Architects
 - Marine Engineers
 - Metallurgists

The Principal Classification Societies are:-

- | | | |
|-------------------------------|------|-------------------------|
| • Lloyds Registers | L.R. | Great Britain |
| • Norske Veritas | N.V. | Norway |
| • Bureau Veritas | B.V. | France |
| • Germanischer Lloyd | G.L. | German Federal Republic |
| • American Bureau of Shipping | A.B. | U.S.A. |
| • Nippon Kaiji Kyokai | N.K. | Japan |

They draw up detailed specifications of all material used in the construction of ships and rules concerning not only the construction of all equipment on board but also the ships itself. In order to assist them in enforcing their rules and regulations they maintain a network of exclusive and part-time surveyors throughout the world.

In order for a vessel to obtain a classification from a Society the following will have to happen:-

1. The plans are scrutinised and if found satisfactory approved by the Society.

2. The building of the vessel will be supervised by a surveyor from the Society who will maintain a programme of constant spot checks and examinations to ensure that the rules of the Society are being met. He will also ensure that all material used is of a quality approved by the Society.
3. The final sea trials of the new building will be attended by the surveyor. Provided everything is satisfactory the vessel will then be formally entered as "Classed" with the Society.

In order to maintain class the vessel will then have to enter a programme of surveys. This programme will ensure that everything on board the vessel which is material to the safety of the vessel is surveyed in rotation according to a pre-determined timetable.

These surveys are scheduled so that every item will have been inspected at the end of a period of 4 years. Once this "cycle" has been completed satisfactorily the vessel will have completed its first "special survey" whereupon the entire "cycle" of surveys begins all over again. Inserted into this programme is a requirement that the vessel is dry docked during the survey cycle. Societies do give themselves the power to grant extensions in a survey cycle in cases where the progress of survey items and the condition of the vessel warrant it.

It is also a requirement of Classification Societies that in the event of any accident happening to the ship or its equipment then a Class Surveyor be called in to examine the damage; to advise if the repair has to be done immediately, or whether it can be postponed and if so for how long. If a postponement is granted, full details are entered in the vessel's records as a "condition" or a "recommendation". The eventual repair will have to be done under the supervision of the Class Surveyor.

A ship built under the rules of a particular Society need not remain with that Society for its life. There is nothing to stop an Owner from transferring from one society to another, subject to certain rules that have been established between the various classification societies.

The classification societies keep full survey records of all ships which they classify. These records will list all the surveys passed with the date during the current cycle, together with all surveys yet to be passed with the dates when they fall due. The records will also list all repairs done under class requirements and all current "condition" or "recommendations" for future repairs.

These records are of great importance to a potential buyer of any second-hand ship and are usually inspected at an early stage in negotiations.

CERTIFICATION

In order to trade and, more importantly, to get Customs' clearance, the vessel will have to maintain a complete set of Certificates. These Certificates are:-

- **Certificate of Registry**

Issued by the Government of the country whose flag the vessel flies. It is valid until the vessel is sold and states:-

1. Name of the vessel, its official number, call sign and principal dimensions.
2. Name of Owners.

- **Radio Station License**

Issued by the flag state registry and renewed annually.

- **International Tonnage Certificate**

Issued by the Government of the country whose flag the vessel flies, usually from measurements made by an authorized Classification Society. It is valid until the vessel is sold states:-

1. Vessel's Gross Tonnage
2. Vessel's Nett Tonnage

- Load Line Certificates

Valid for four years, subject to an annual inspection, giving details of the vessel's free board measurements.

- Safety Construction Certificate

Valid for four years, subject to an annual inspection, confirming the good condition of the vessel's hull.

- Safety Equipment Certificate

Valid for two years, subject to an annual inspection, confirming that the vessel's life saving equipment such as:-

1. Lifeboats and life rafts
2. Pyrotechnics
3. Firefighting Equipment
4. Emergency radios

is in good working order and meets international regulations.

The surveyor will also want to examine the vessel's charts and nautical publications such as Pilot Books, Lists of Lights and Nautical Almanacs.

- Safety Radio Certificate

Valid for one year, confirming that the vessel's radio and radar equipment is in good working order and meets international regulations.

- International Oil Pollution Prevention Certificate (IOPP)

Valid for four years confirming that the vessel is equipped with machinery to remove oil from ballast and/or bilge water being pumped overboard.

The last five certificates are usually issued on behalf of the Government whose flag the vessel flies by an authorized Classification Society. The surveys needed to issue or renew these certificates are totally independent of the class surveys. In addition to these certificates, the vessel should have on board, and available for inspection:-

- Certificate of Class

Issued by the Classification Society confirming that the vessel is classed by them. If the vessel is equipped for the carriage of refrigerated cargo, the Refrigeration Installation is certificated separately.

- Safe Manning Certificate

Issued by the Government who flag the vessel stating the minimum number, and appropriate ranks of that number, of crew the vessel can sail with.

- Cargo Gear Book

This book gives details of the quadrennial cargo gear survey and the annual survey of inspection.

- Grain & Stability Books

These books give details of the vessel's stability calculations and bulk grain loading stability calculations authenticated by the Government of the country whose flag the vessel flies.

- De-Ratisation Certificates

Issued by Port Heath Authority confirming that the vessel is free from all traces of rats and valid for 6 months.

PORT STATE CONTROL

These random spot inspection of ships are carried out by the relevant national authorities of the ports concerned and are inspections which are completely independent of Classification and Certification surveys. The inspectors have power to board the vessel and inspect all Certificates and to examine all items covered by the Certificates. For example, they can insist that the lifeboats are manned and lowered, they can check machinery and all lifesaving equipment. If they find any discrepancies or faults in anything they inspect, they have the power to put a stop order on the vessel, even though the deficient items might be covered by a valid Certificates, this order prevents the vessel from sailing until the deficiency has been rectified. Likewise, they also have the power to inspect the crew list and compare it with the safe manning Certificate to ensure that the correct number of crew with the relevant qualifications are on board.

Although almost all maritime nations are signatories to the IMO convention on Port State Control, the degree of application varies considerably. Hong Kong, for example, carries out an appreciable number of inspections, some randomly selected and others because they suspect infringements. Singapore, on the other hand, tend only to inspect ships about which complaints have been made. The UK takes the convention seriously but bemoans the cut-backs in public spending which severely limit the number of surveyors available to carry out the inspections. Other countries approach the convention in a variety of ways but one has to say that no country is acting as stringently as the drafters of the convention envisaged; in some cases one wonders why certain countries ever bothered to sign the convention in the first place.

NATIONAL INSPECTIONS

The authorities of the vessel's flag state will reserve the right to board a vessel flying its flag and hold a full inspection along the lines of the Port State Control survey. The more careful Register will maintain an active world wide network of surveyors to ensure moderately frequent inspections of the vessels which fly their flag.

CONDITION SURVEYS

P&I Club conduct their own independent condition surveys of vessels over 10 years old entered with them. They have no power to stop the vessel, but should they note any deficiencies they will limit the vessel's P&I Cover until the deficiency is corrected. For example, if they note that the vessel's hatches are not very watertight they will limit the cover for cargo claims until the hatches are repaired. In extreme cases they may suspend cover entirely and/or terminate the entry of the vessel with the Club.

CONCLUSION

Safety and efficiency must be at the top of a professional shipowner's list of priorities. The condition of a ship will, to a large extent reflect the manager's attitude to these important factors. A shipmanager should treat all surveys and inspections as an opportunity of showing how careful and attentive he is to the needs of running a safe ship and not as a game of wits to see how much he can hide from a surveyor and get away with. Likewise, a professional shipmanager should lose no opportunity to motivate the crews in the constant battle to maintain the very highest degree of safety.

Biography – Captain Ajay Hazari
Director, Operations & Risk Management
Anglo-Eastern Ship Management Ltd.

Master Marine, served 17 years at sea, 9 years in command.

Joined Anglo-Eastern in 1989, responsible for fleet personnel and training. Served on ISMA's Manpower & Training Committee until 1993 and on the Hong Kong Ship Owners Association's Manning Sub-committee until 2001.

In 1993, took over Anglo-Eastern's fleet operations, encompassing responsibility for all insurance matters relating to the Company's managed fleet of ships and the Company's liability risk management. Served on Intertanko's Insurance Committee in 1997.

- Member of the Nautical Institute
- Member of Institute of Chartered Shipbrokers
- Associate of the Chartered Institute of Arbitrators
- Member of the Hong Kong Maritime Arbitration Group

SHIPS

A ship is a marine floating structure with a means of self propulsion.

Mechanical propulsion has replaced oars and wind, while steel has replaced wood as the material of constructing ships.

Due to trade and commerce, there is always a need to move cargo and commodities between countries and between continents. This can involve vast distances and potential hazards.

When it comes to moving large volumes of cargo, efficiently, economically and safely, the dominant mode of transport is still by ships, either by coastal vessels or by deep sea ocean going vessels.

CARGO

Cargo comes down to 2 categories (a) raw materials (b) finished products

The ship has a value

The cargo has a value.

Therefore engaging the right ship to carry a certain cargo one must take into consideration:

- Nature of Cargo
- cargo operation methods
- cargo security
- ship characteristics
- ship performances

These criteria will become apparent when I discuss each ship type with respect to their designed function and the intended cargo.

SHIPPING SERVICES:

Tramp = non regular schedule, non designated routes

Liner = regular schedule, designated routes

SHIP TYPES

For most of us living in HK, we are fortunate to see many types of ships in the harbour and anchorage almost everyday of the week, from our desks in our tower office blocks or even from our bedroom windows.

Given the diverse type of ships around, today we will only focus on the most common types employed in trade and commerce.

SHIP TYPES

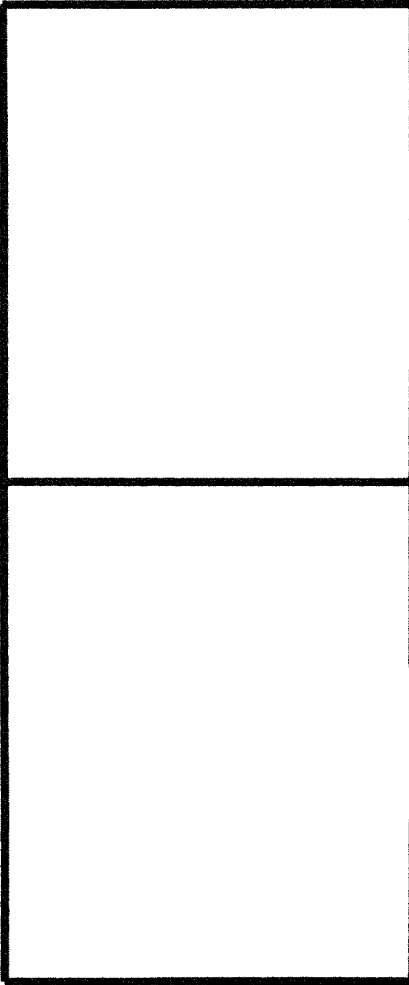
DRY CARGO

LIQUID CARGO

PASSENGER

OTHERS

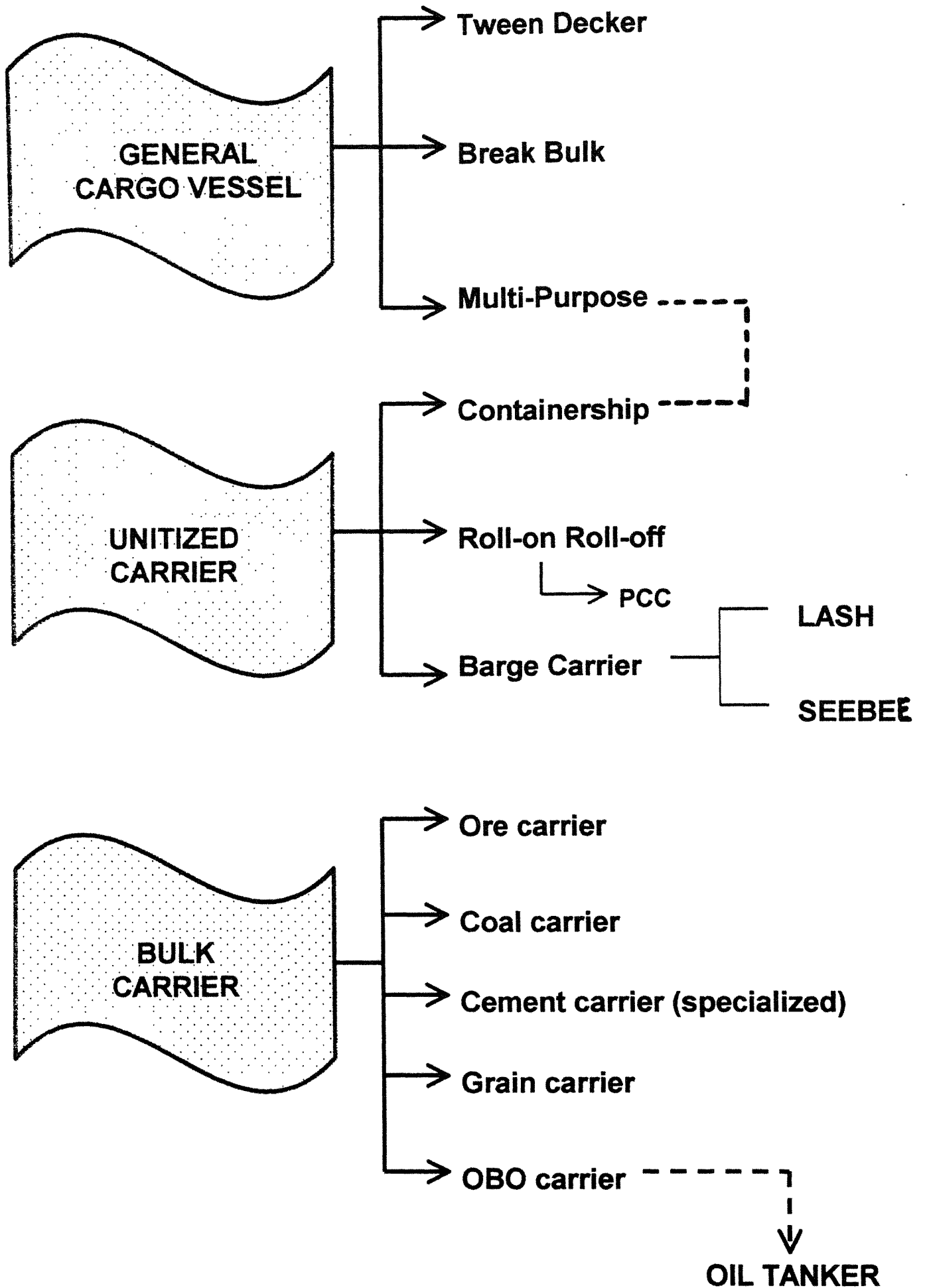
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SHIPS**

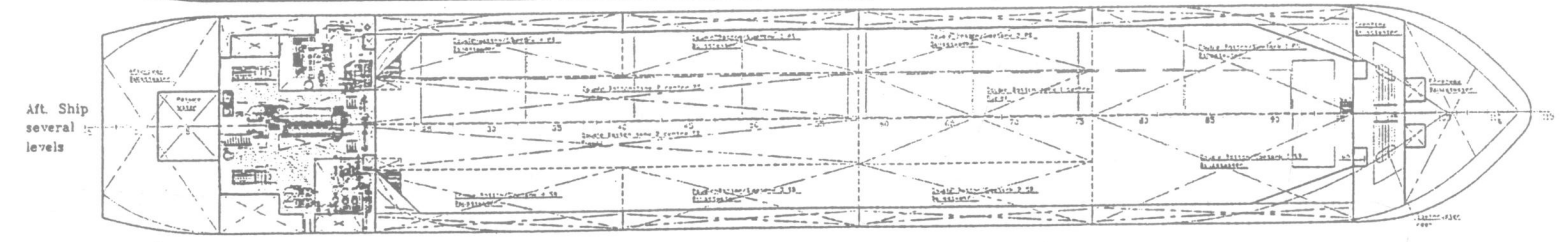
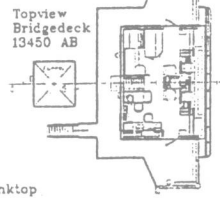
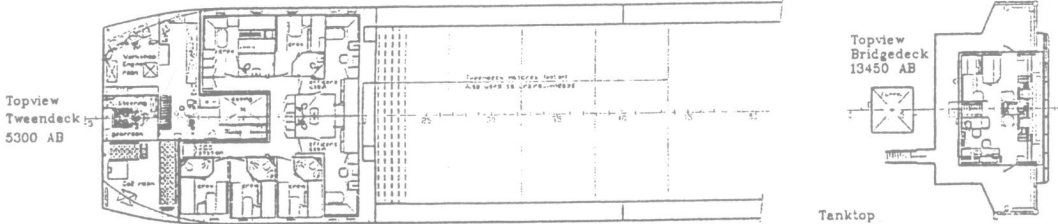
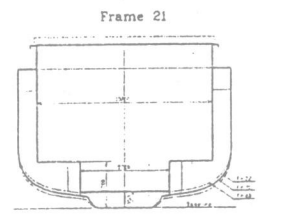
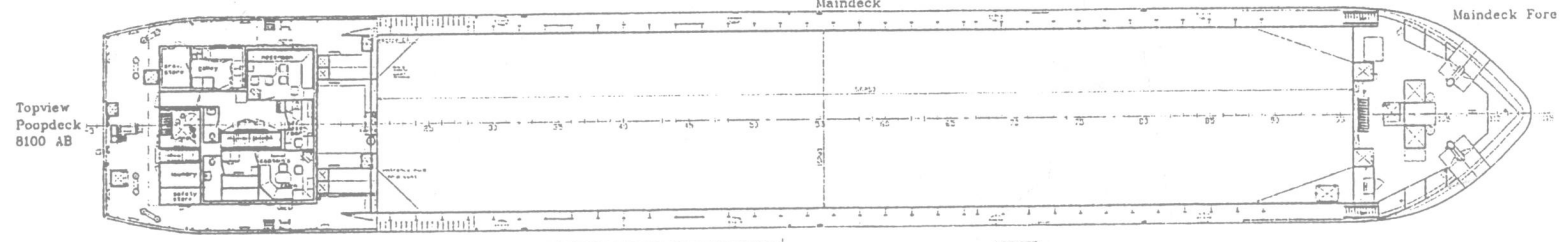
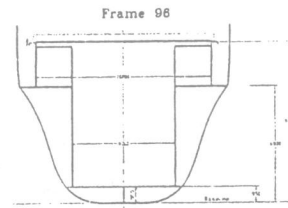
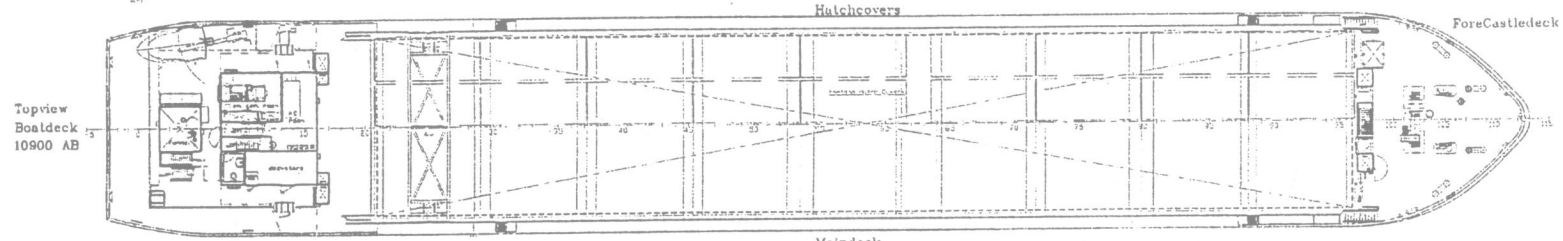
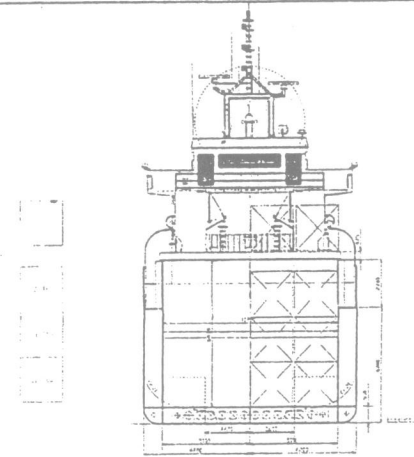
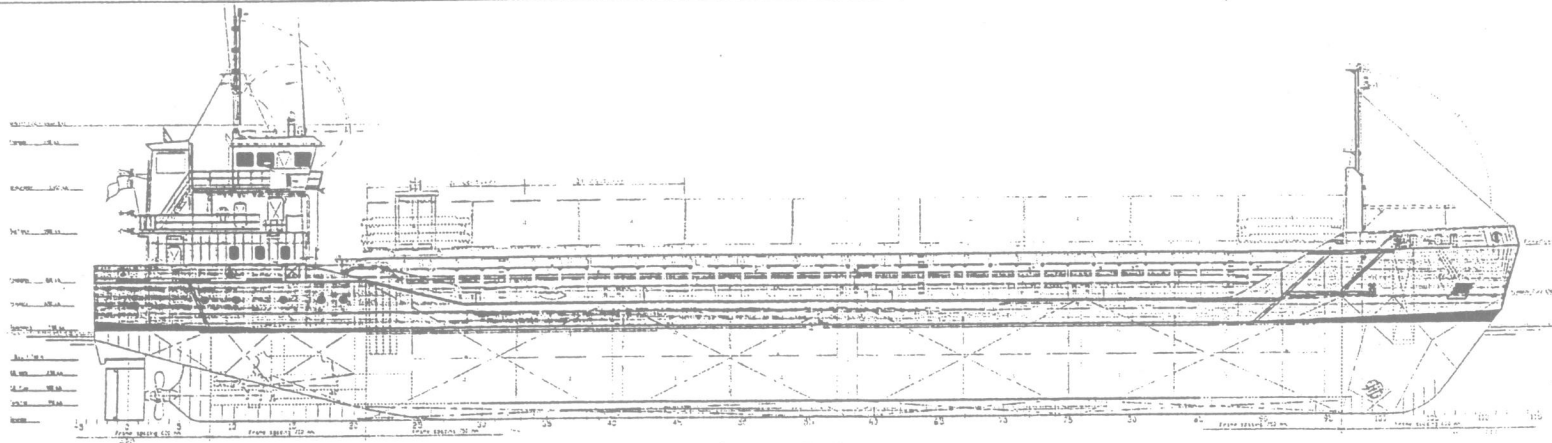


**GENERAL
CARGO VESSEL**

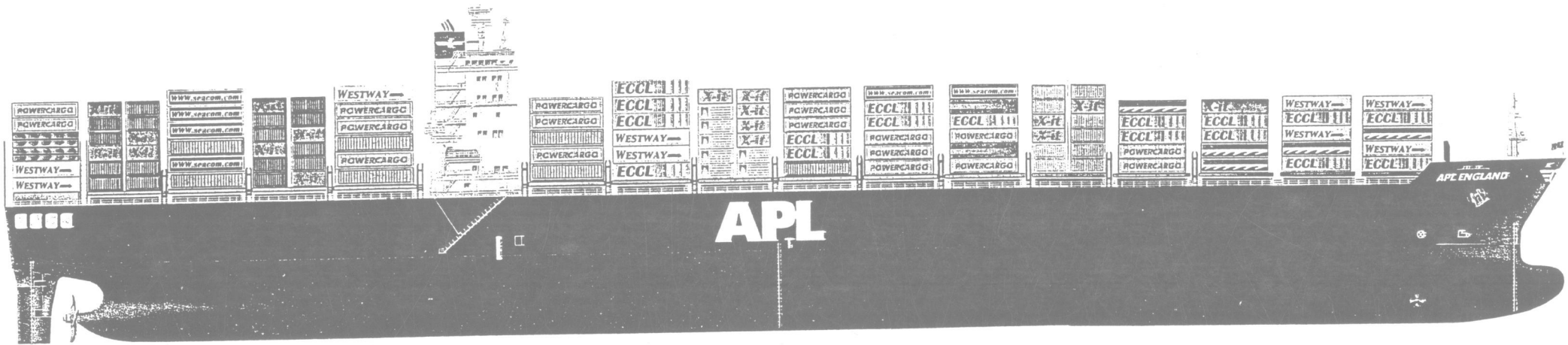
**UNITIZED
CARRIER**

**BULK
CARRIER**

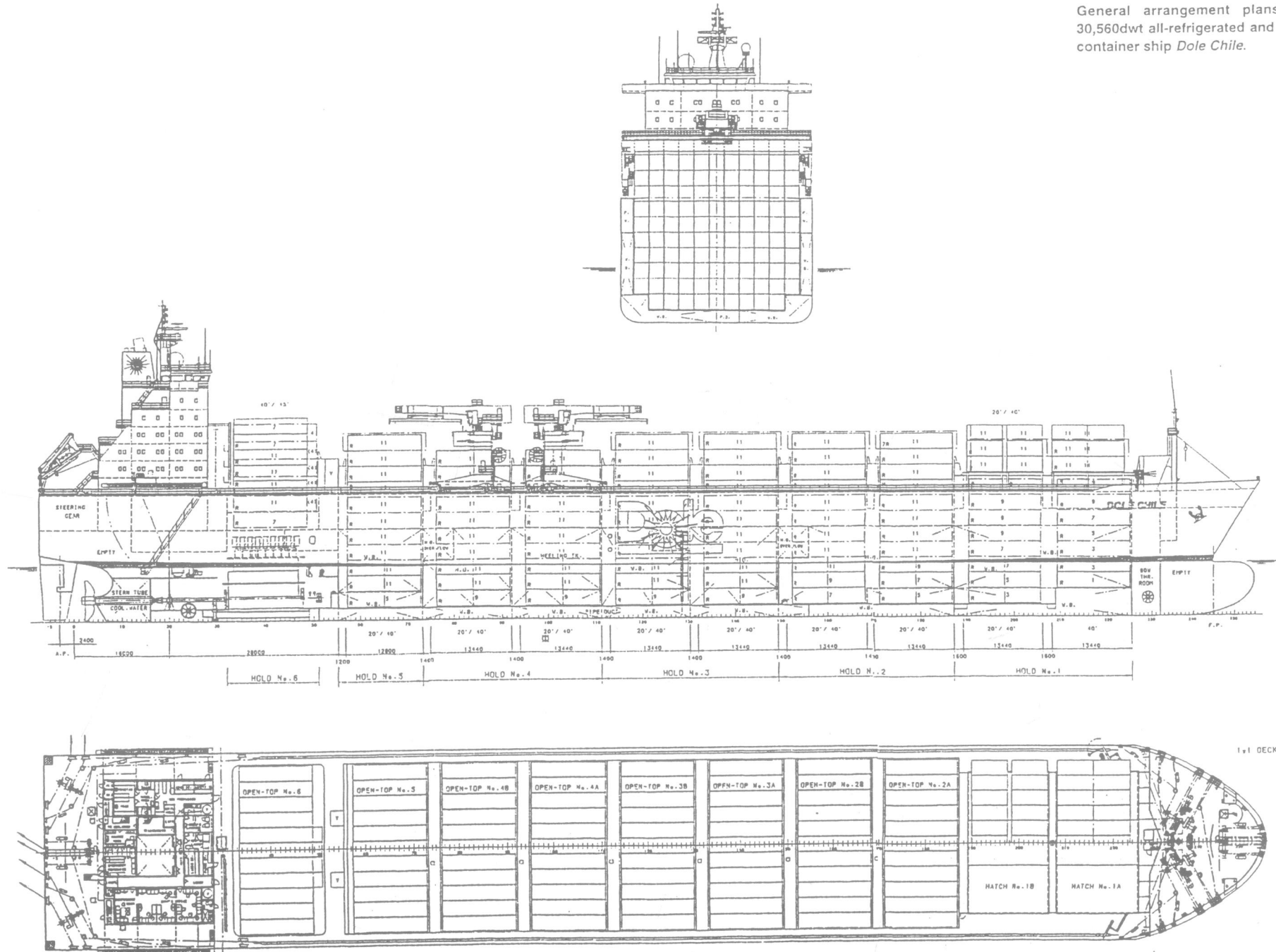


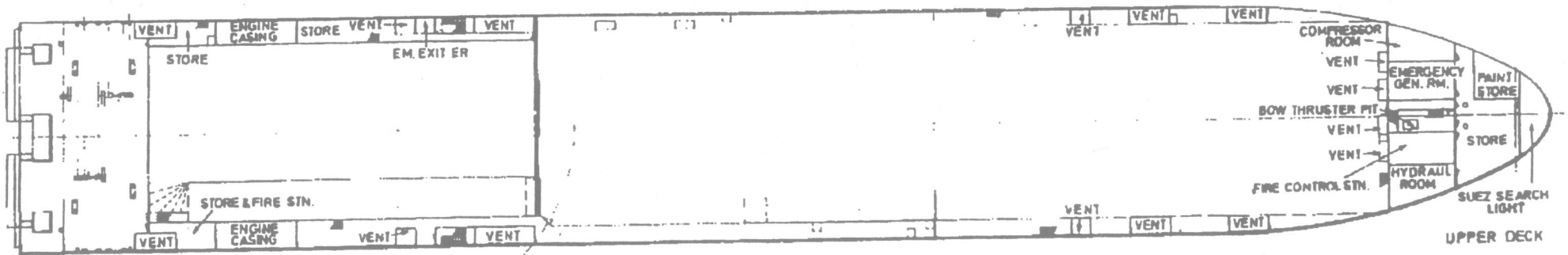
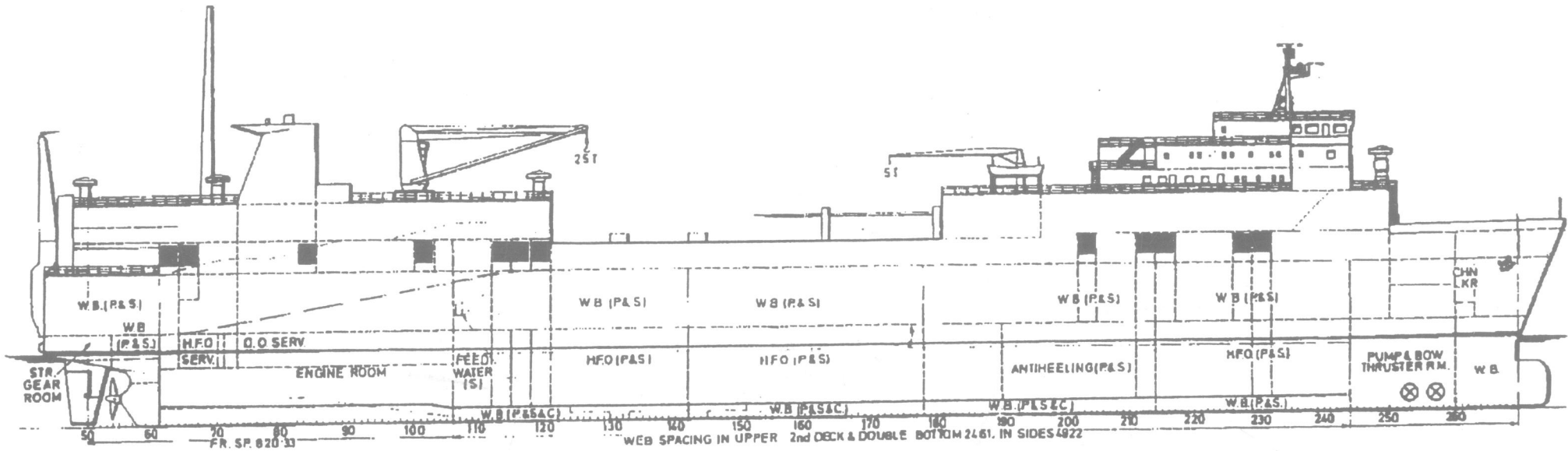


Aft Ship several levels

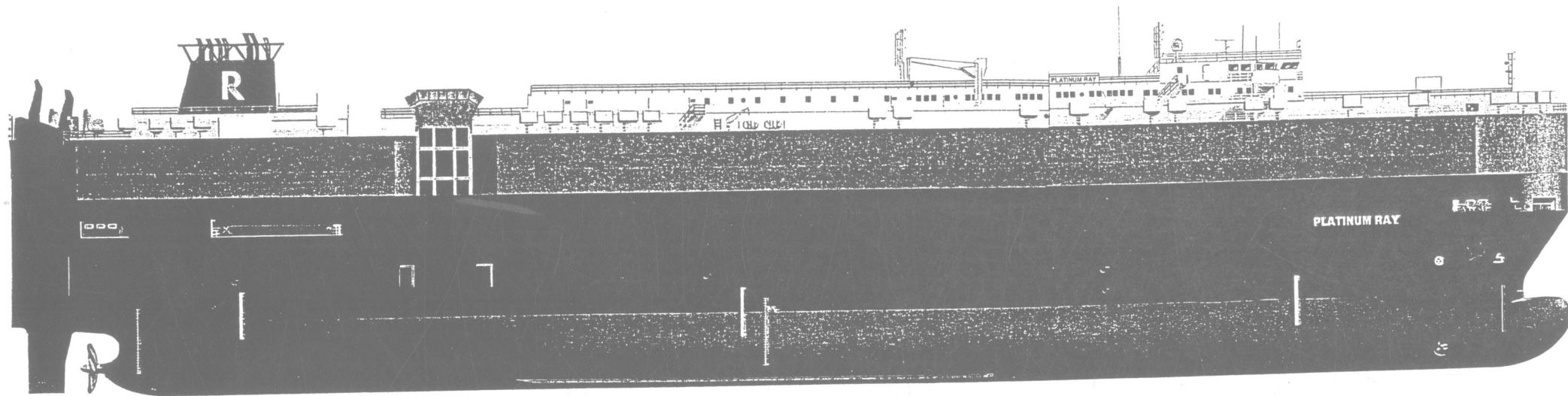


General arrangement plans of the new 30,560dwt all-refrigerated and hatchcoverless container ship *Dole Chile*.





roll-on roll-off ship



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PLATINUM RAY

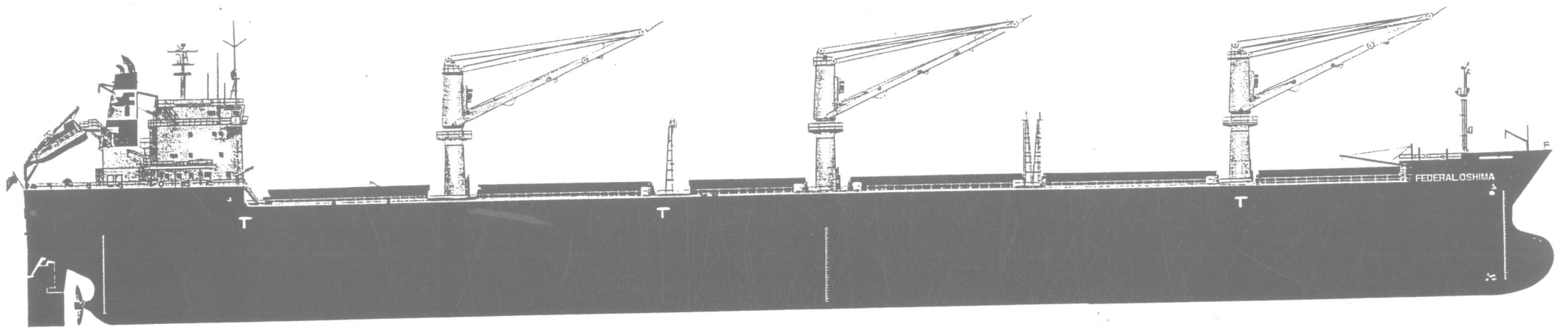
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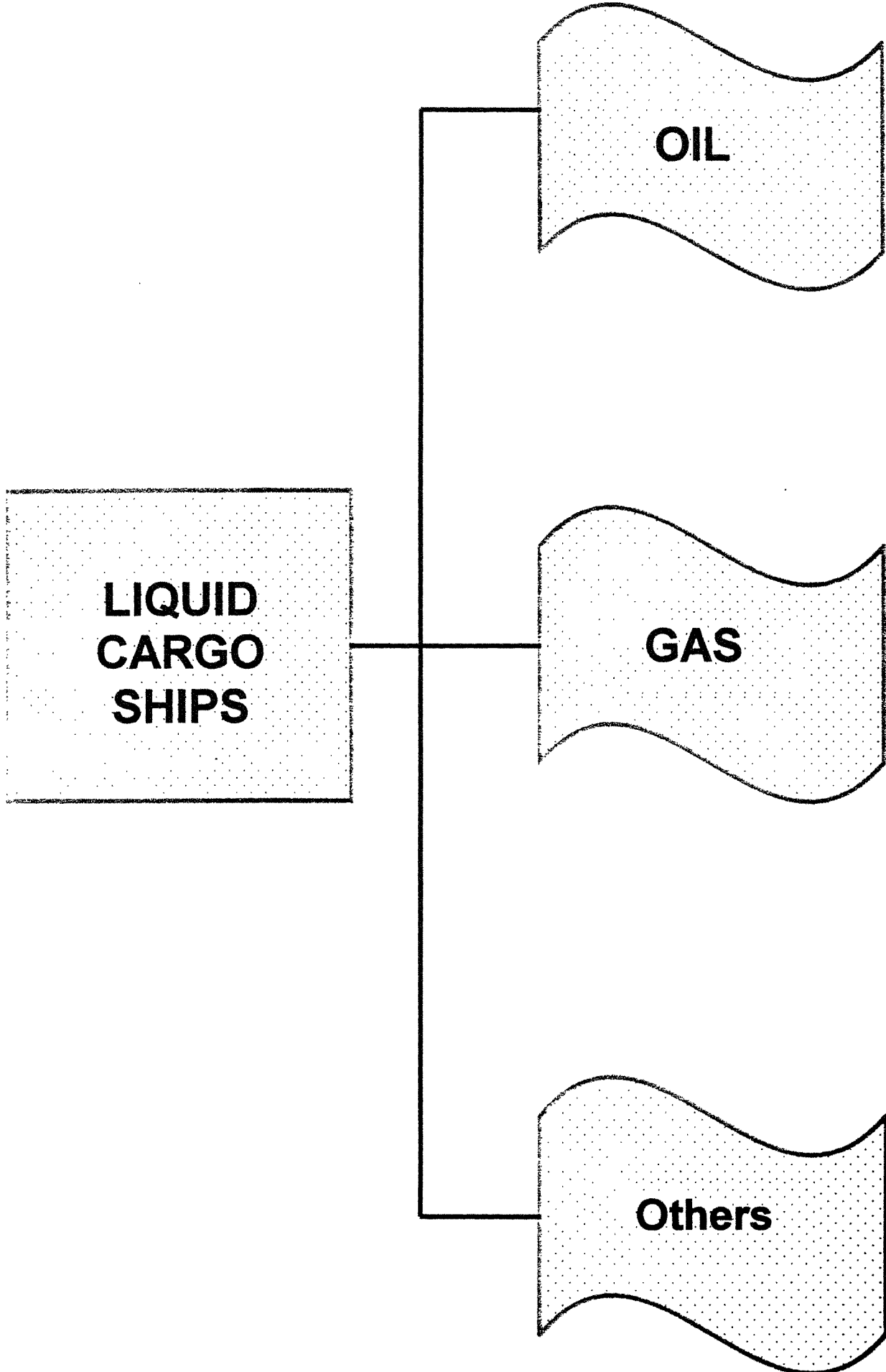


**LIQUID
CARGO
SHIPS**

OIL

GAS

Others



OBO



.....

Crude oil tanker

OIL

Product tanker

FPSO (specialized)

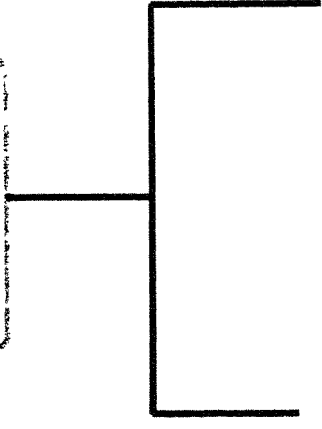
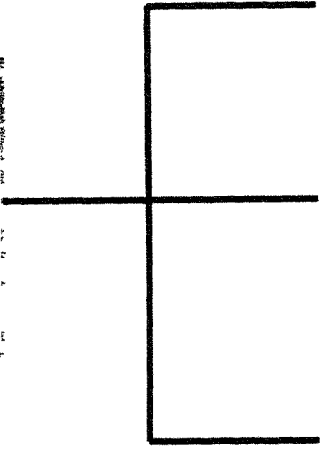
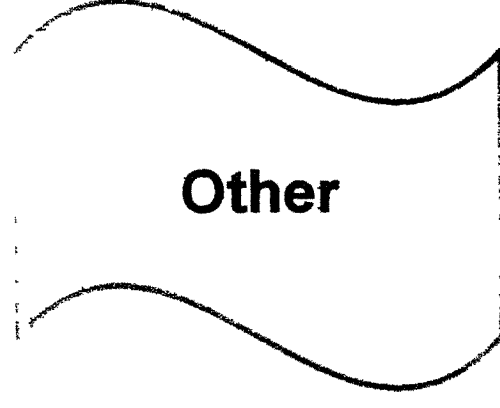
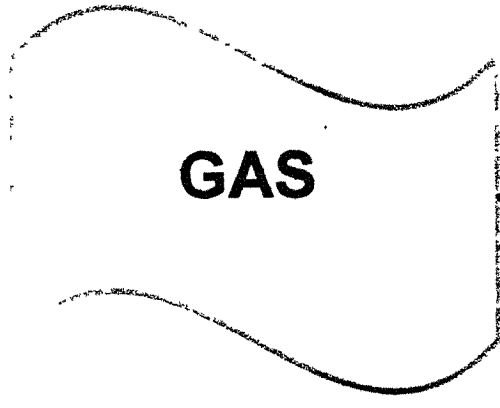
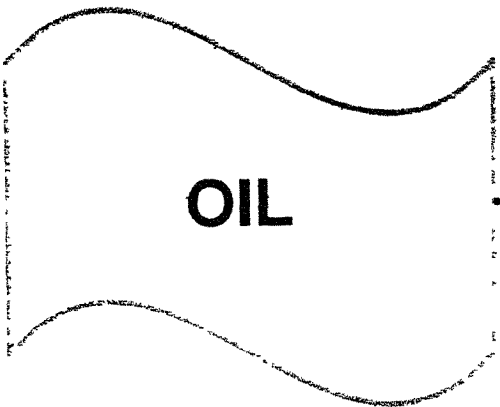
GAS

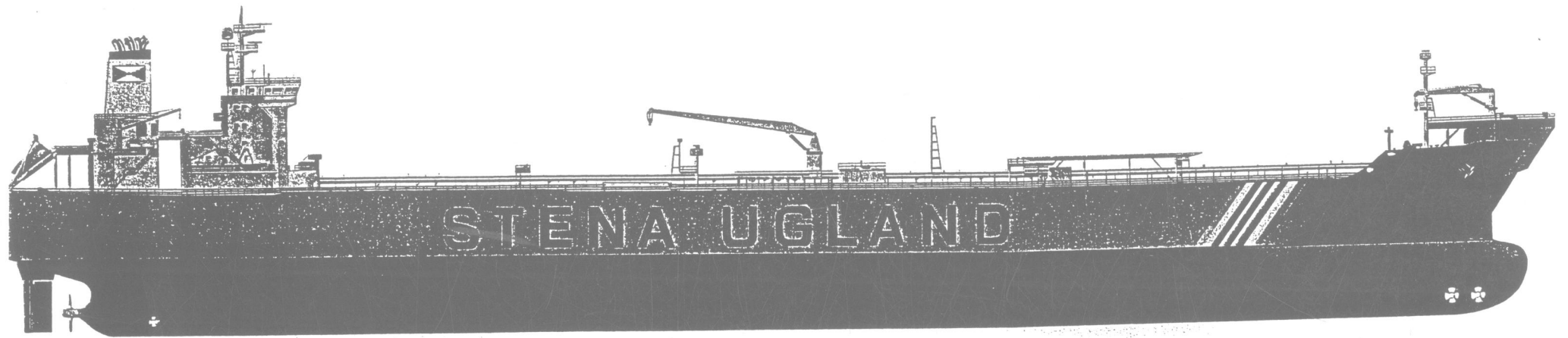
LPG carrier

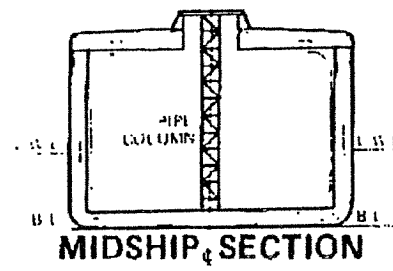
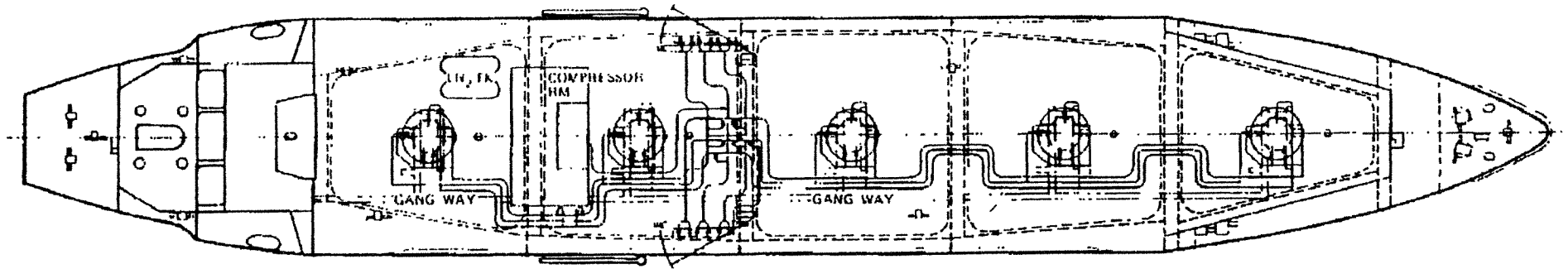
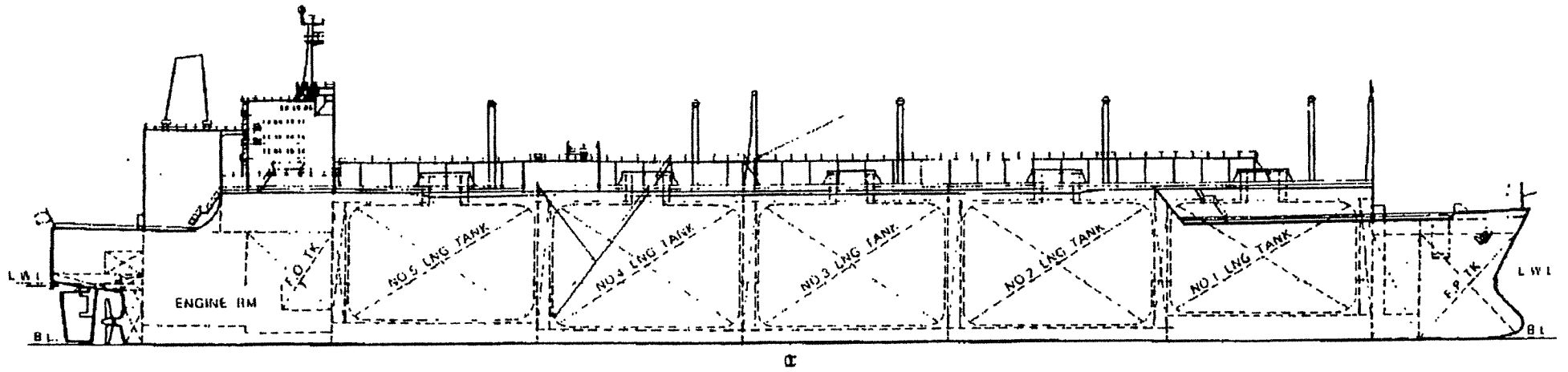
LNG carrier

Other

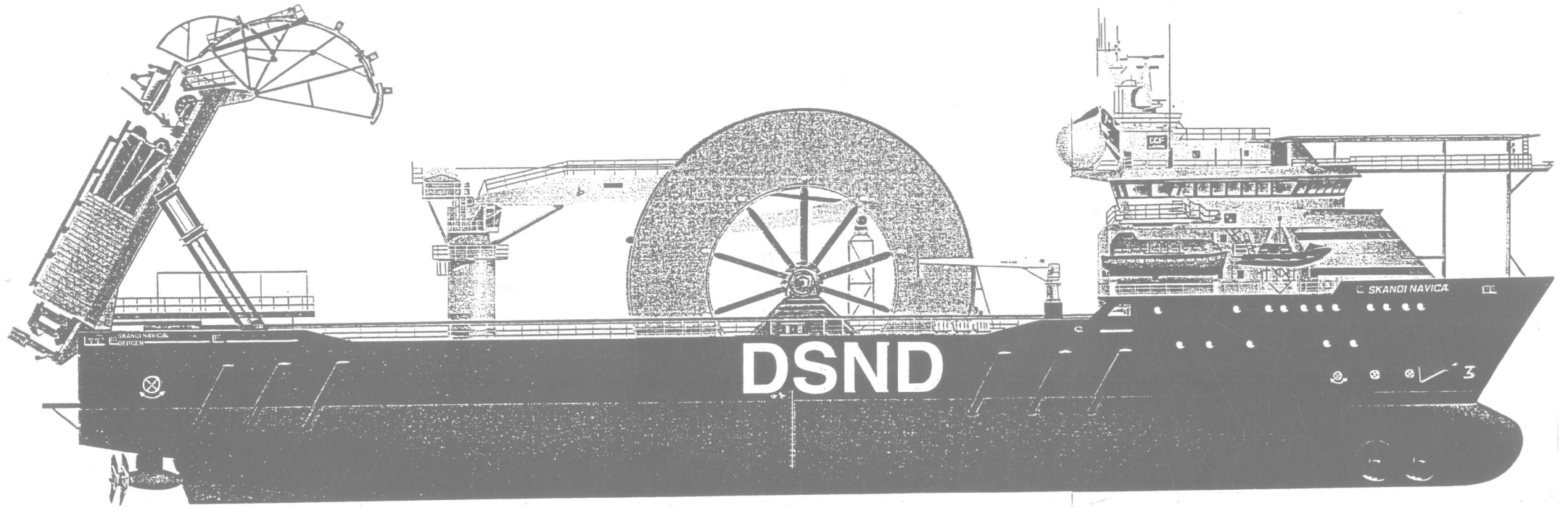
Chemical tanker







Liquefied gas tanker

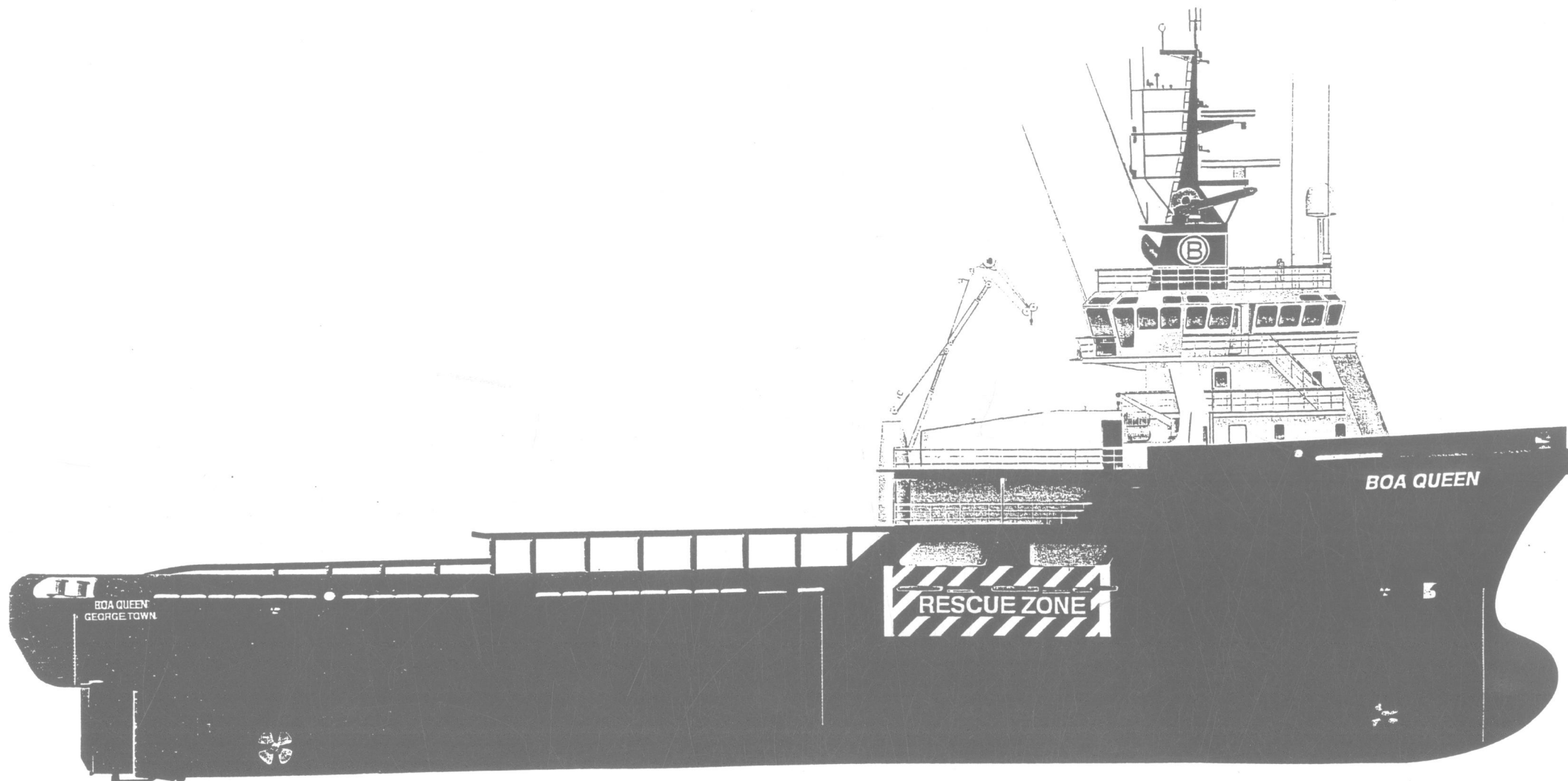


DSND

SKANDI NAVICA

SKANDI NAVICA
LIDERGEN

3

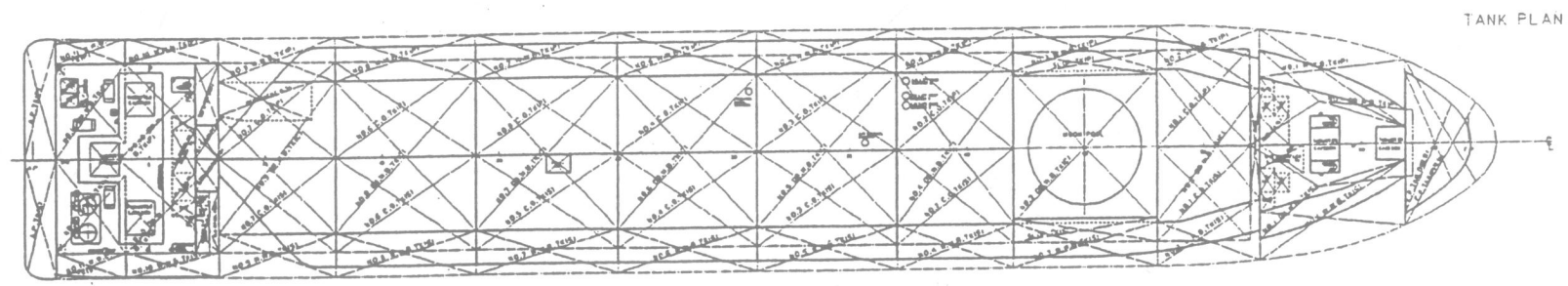
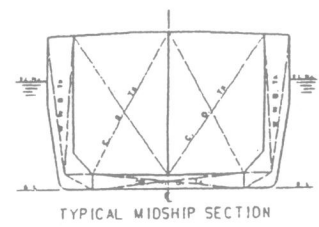
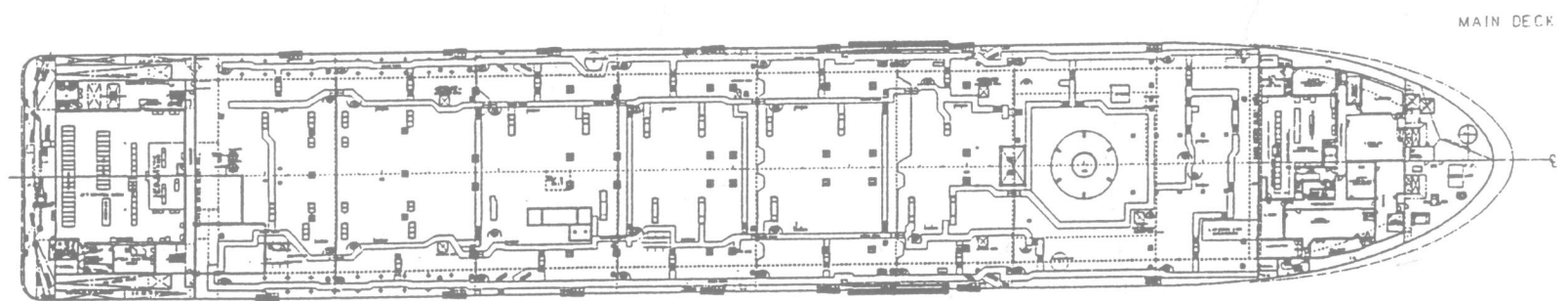
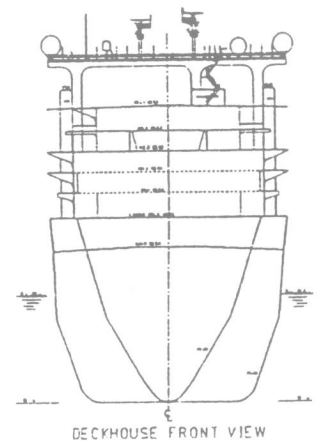
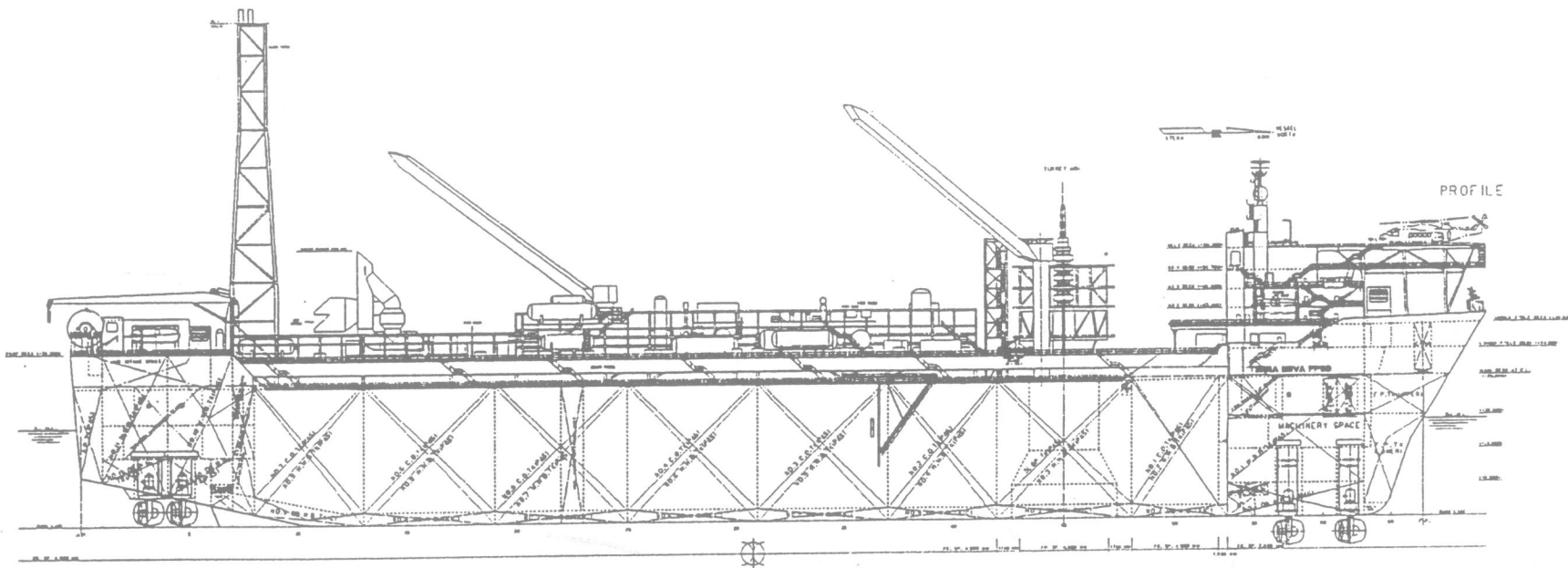


BOA QUEEN
GEORGE TOWN

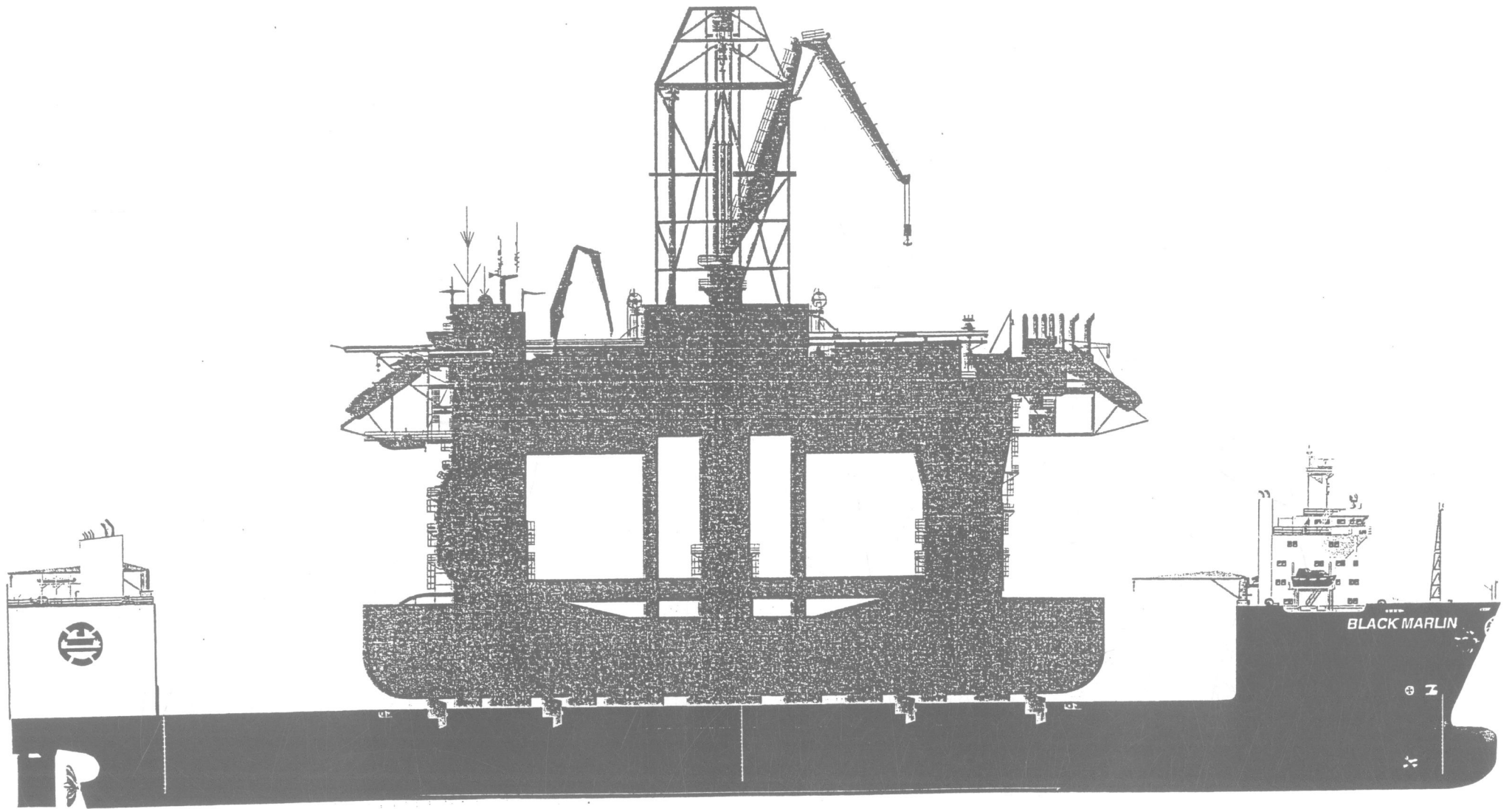
RESCUE ZONE

BOA QUEEN

B



General arrangement plans of the 134,000dwt FPSO unit being built by Daewoo for the Terra Nova Alliance, to operate on the Canadian Grand Banks. It was designed by Halliburton Brown & Root.





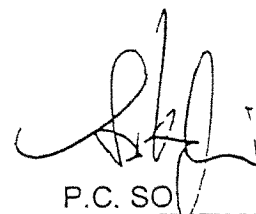
CERTIFICATE OF REGISTRY

註冊證明書

PARTICULARS OF SHIP 船舶資料

Name of Ship 船名	IDEEFIKS	IMO No. 國際海事組織編號	9252046
Port of Registry 註冊港	HONG KONG 香港	Call Sign 呼號	VRXF3
Official No. 註冊編號	HK-0734	Date of Registry 註冊日期	15-JUN-2001
Type of Ship 船舶類型	BULK CARRIER	Material of Hull 船體材料	STEEL
Date Keel Laid 龍骨安放日期	18 OCTOBER 2000		
Name and Address of Builder 造船廠名稱、地址	IMABARI SHIPBUILDING CO., LTD. 4-52, 1-CHOME, KOURA-CHO, IMABARI CITY, EHIME PREF, JAPAN.		
Length 長度	161.210 metres	Breadth 寬度	27.200 metres
Moulded Depth 型深	13.600 metres		
Gross Tonnage 總噸位	16,963 tons	Net Tonnage 淨噸位	10,498 tons
Main Engine Type 主機種類	DIESEL	Engine Make and Model 主機名稱、型號	MAKITA B&W 6S42MC(MARK VI)
No. of Sets of Engine 主機台數	1	Total Engine Power 主機總功率	5847 KW
How Propelled 推進裝置	MOTOR DRIVEN SINGLE SCREW	No. of Shafts 軸數	1

This Certificate was issued on 15th June, 2001 under the provisions of the Merchant Shipping (Registration) Ordinance.
本證明書在 2001 年 6 月 15 日按商船(註冊)條例簽發。



P.C. SO

Registrar of Ships 船舶註冊官

PARTICULARS OF OWNER(S) / REPRESENTATIVE PERSON 船東 / 代表人資料

Total Interest in the Ship 船舶權益總額 : 100 Shares

Name of Representative Person and Address
代表人姓名 / 名稱及地址

ANGLO-EASTERN SHIP MANAGEMENT LIMITED
23RD FLOOR,
248 QUEEN'S ROAD EAST, WANCHAI,
HONG KONG.

Name, Address, and Description of Owners
船東姓名 / 名稱、地址等資料

No. of Shares Held 權益份額數目

KLEIMAR N.V. 23RD FLOOR, 248 QUEEN'S ROAD EAST, WANCHAI, HONG KONG.	100.00
--	--------

Place of Incorporation/Registration 公司成立/註冊地點 : HONG KONG

CARGO SHIP SAFETY CONSTRUCTION CERTIFICATE

Issued under the provisions of the
INTERNATIONAL CONVENTION FOR THE SAFETY OF LIFE AT SEA, 1974, as amended, and as modified by
the Protocol of 1978 relating thereto

under the authority of the Government of the

HONG KONG SPECIAL ADMINISTRATIVE REGION OF THE PEOPLE'S REPUBLIC OF CHINA

by Germanischer Lloyd

Name of Ship	Distinctive Number or Letters	Port of Registry	Gross Tonnage	IMO Number
SELANDIA	VRVK3	Hong Kong	9602	9122461

Deadweight of ship * metric tons

TYPE OF SHIP** :

Oil-tanker / Chemical-tanker / Gas-carrier /
 Cargo ship other than any of the above

Date on which keel was laid or ship was at a similar stage of construction or, where applicable, date on which work for a conversion or an alteration or modification of a major character was commenced 6th January, 1997 .

THIS IS TO CERTIFY:

- 1 That the ship has been surveyed in accordance with the requirements of regulation I/10 of the Convention.
- 2 That the survey showed that the condition of the structure, machinery and equipment as defined in the above regulation was satisfactory and the ship complied with the relevant requirements of chapters II-1 and II-2 of the Convention (other than those relating to fire safety systems and appliances and fire control plans).
- 3 That in implementing regulation I/6(b) the Government has instituted mandatory annual surveys.
- 4 That an Exemption Certificate has not been issued.

This certificate is valid until 30th April, 2002 .

Issued at Hamburg, the 31st day of July, 1997 .



Germanischer Lloyd *KL*

Schreiter
Schreiter

Höppner
Höppner

* For oil tankers, chemical tankers and gas carriers only.
** Delete as appropriate

MANDATORY ANNUAL SURVEYS

Due date : 30th April
Range: 1st February to 31st July each year

This is to certify that the ship has been surveyed in accordance with regulation I/6(b) of the Convention, as modified by the 1978 Protocol and the relevant recommendations of the Organization.¹

1st mandatory annual survey

Place RITENDAM Date 22-03-'98



N.M. Appel
Surveyor to Germanischer Lloyd

2nd mandatory annual survey ²

Place _____ Date 14.03.99



(M.Y. HAFIZ)
Surveyor to Germanischer Lloyd

3rd mandatory annual survey ²

Place DUBAI, U.A.E. Date 2nd May 2000



(A. O. SAUDATI)
Surveyor to Germanischer Lloyd

4th mandatory annual survey

Place Jebel Ali, UAE. Date 23.04.2001



SEIF
Surveyor to Germanischer Lloyd

INTERMEDIATE SURVEY FOR TANKERS OF 10 YEARS OF AGE AND OVER

This is to certify that, at an intermediate survey required by regulation I/10 of the Convention, as modified by the 1978 Protocol, this ship was found to comply with the relevant provisions of the Convention.¹

Due date:

Range:

Place

Date

NOT APPLICABLE

Surveyor to Germanischer Lloyd

¹ Reference is made to Guidelines on surveys required by the 1978 SOLAS Protocol, the International Bulk Chemical Code and the International Gas Carrier Code adopted by the Organisation by resolution A. 560(14).

² An intermediate survey may take the place of a mandatory annual survey.

INTERNATIONAL LOAD LINE CERTIFICATE

Issued under the provisions of the
INTERNATIONAL CONVENTION ON LOAD LINE, 1966,
as modified by the Protocol of 1988 relating thereto
under the authority of the Government of
HONG KONG SPECIAL
ADMINISTRATIVE REGION OF THE
PEOPLE'S REPUBLIC OF CHINA

by GERMANISCHER LLOYD

Name of Ship	Distinctive Number or Letters	Port of Registry	Length (L) as defined in article 2 (8) (in metres)	IMO Number
<i>X-PRESS KAILASH</i>	<i>HK-0345</i>	<i>Hong Kong</i>	<i>140.720</i>	<i>9122461</i>

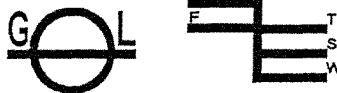
Freeboard assigned as*: { <i>A new ship</i> { <i>An existing ship</i>	Type of ship*: { Type "A" { Type "B" { <i>Type "B" with reduced freeboard</i> { <i>Type "B" with increased freeboard</i>
--	--

	Freeboard from deck line	Load Line	
Tropical	2305 mm (T)		170 mm above (S)
Summer	2475 mm (S)	Upper edge of line through center of ring	
Winter	2645 mm (W)		170 mm below (S)
Winter North Atlantic	— mm (WNA)		— mm below (S)

Note: Freeboards and load lines which are not applicable need not be entered on the certificate.

Allowance for fresh water for all freeboards other than timber 170 mm.

The upper edge of the deck line from which these freeboards are measured is ~~100~~ mm *below the top of the freeboard deck at side.*



THIS IS TO CERTIFY

1. That the ship has been surveyed in accordance with the requirements of article 14 of the Convention.
2. That the survey showed that the freeboards have been assigned and load lines shown above have been marked in accordance with the Convention.

This certificate is valid until *30th April, 2002* subject to the annual surveys in accordance with article 14(1) (c) of the Convention.

Issued at *Hamburg* the *6th* day of *September, 2001.*



Germanischer Lloyd *ka*

Signature
Schreiber

Signature
Oßwald

Notes:

1. When a ship departs from a port situated on a river or inland waters, deeper loading shall be permitted corresponding to the weight of fuel and all other materials required for consumption between the point of departure and the sea.
2. When a ship is in fresh water of unit density the appropriate load line may be submerged by the amount of the fresh water allowance shown above. Where the density is other than unity, an allowance shall be made proportional to the difference between 1.025 and the actual density.

* Delete as appropriate

Endorsement for annual surveys

Due date (anniversary date):

Range:

THIS IS TO CERTIFY that at an annual survey required by article 4(1) (c) of the Convention, the ship was found to comply with the relevant requirements of the Convention.

Annual survey

Signed:

Surveyor to Germanischer Lloyd

Place:

Date:

Annual survey

Signed:

Surveyor to Germanischer Lloyd

Place:

Date:

Annual survey

Signed:

Surveyor to Germanischer Lloyd

Place:

Date:

Annual survey

confirmed: Hamburg, 6th September, 2001

Signed:

O.M. Ellian

Surveyor to Germanischer Lloyd

Place:

Jebel Ali

Date:

23rd April, 2001



1.1

Annual survey in accordance with article 19(8)(c)

THIS IS TO CERTIFY that, at a survey in accordance with article 19(8)(c) of the Convention, the ship was found to comply with the relevant requirements of the Convention.

Signed:

Surveyor to Germanischer Lloyd

Place:

Date:

**Endorsement to extend the certificate if valid for less than 5 years
where article 19(3) applies**

The ship complies with the relevant requirements of the Convention, and this certificate shall, in accordance with article 19(3) of the Convention, be accepted as valid until _____

Signed: _____
Surveyor to Germanischer Lloyd

Place: _____

Date: _____

**Endorsement where the renewal survey has been completed
and article 19(4) applies**

The ship complies with the relevant requirements of the Convention, and this certificate shall, in accordance with article 19(4) of the Convention, be accepted as valid until _____

Signed: _____
Surveyor to Germanischer Lloyd

Place: _____

Date: _____

**Endorsement to extend the validity of the certificate until reaching the port of survey or
for a period of grace where article 19(5) or 19(6) applies**

This certificate shall, in accordance with article 19(5)/19(6)* of the Convention, be accepted as valid until _____

Signed: _____
Surveyor to Germanischer Lloyd

Place: _____

Date: _____

* Delete as appropriate

**Endorsement for advancement of anniversary date
where article 19(8) applies**

In accordance with article 19(8) of the Convention, the new anniversary date is _____

Signed: _____
Surveyor to Germanischer Lloyd

Place: _____

Date: _____

In accordance with article 19(8) of the Convention, the new anniversary date is _____

Signed: _____
Surveyor to Germanischer Lloyd

Place: _____

Date: _____



SUR 53C
(1983)

INTERNATIONAL TONNAGE CERTIFICATE (1969)

Issued under the provisions of the
INTERNATIONAL CONVENTION ON TONNAGE MEASUREMENT OF SHIPS (1969)
under the authority of the Government of Hong Kong

Name of Ship	Official Number	Port of Registry	Date*
<i>SELANDIA</i>	<i>IMO-NO. 9122461</i>	<i>Hong Kong</i>	<i>1996</i>

* Date on which keel was laid or the ship was at a similar stage of construction, (Article 2(6)) ~~or date on which the ship underwent alterations or modifications of a major character, (Article 3(2)(b)), as appropriate.~~

MAIN DIMENSIONS

Length (Article 2(8))	Breadth (Regulation 2(3))	Moulded Depth amidships to Upper Deck (Regulation 2(2))
<i>140.72 m</i>	<i>22.30 m</i>	<i>11.10 m</i>

THE TONNAGES OF THE SHIP ARE:

GROSS TONNAGE *9602*

NET TONNAGE *4898*

THIS IS TO CERTIFY

that the tonnages of this ship have been determined in accordance with the provisions of the International Convention on Tonnage Measurement of Ships 1969.

Issued at *Hamburg*
(place of issue of certificate)

..... *20th March* 19 *97*
(date of issue)

The undersigned declares that he is duly authorised by the said Government to issue this certificate.

(Signed)
An authorised officer of the Marine Department
(*Brintrup Krüger*)

063

SPACES INCLUDED IN TONNAGE

GROSS TONNAGE			NET TONNAGE		
Name of space	Location (Frames)	Length (m)	Name of space	Location (Frames)	Length (m)
Underdeck, Volume + Poop + Forecastle	—	—	Cargo Hold 1	135 - 168	25.74
D.H. 2nd Tier	-2 - 23	16.62	Cargo Hold 2	96 - 131	27.30
D.H. 3rd Tier	4 - 23	13.02	Cargo Hold 3	61 - 96	27.30
D.H. 4th Tier	4 - 23	13.02	Cargo Hold 4	41 - 57	12.48
D.H. 5th - 6th Tier	12.5 - 23	7.82			
D.h. 7th Tier	14 - 22	6.24			
D.H. 8th Tier	14 - 22	6.24			
D.H. 9th Tier	14 - 16	1.57			
Funnel	4.68 - 12	4.69			
Vent.	58	0.80			
Vent.	60	1.70			
Vent.	96 - 98	1.60			
Vent.	133 - 135	1.60			
Crane 1	133	∅ 2.15			
Crane 2	59	∅ 2.15			
Box Girder	on Deck	0.72			
Box Girder	on Deck	0.72			
Cargo Hatch 1	152 - 168	12.48			
Hatch Cover 1	on Hatch	12.80			
Cargo Hatch 2 - 7	on Deck	12.48			
Hatch Cover	on Hatch	12.80			
Excluded spaces (Regulation 2(5)) An asterisk (*) should be added to those spaces listed above which comprise both enclosed and excluded spaces.			Number of passengers (Regulation 4(1)) Number of passengers in cabins with not more than 8 berths ---		
			Number of other passengers ---		
			Moulded draught (Regulation 4(2)) 8.26 m		
			Date and place of original measurement 20th March, 1997; Hamburg		
Date and place of last previous remeasurement					

Remarks:

CARGO SHIP SAFETY EQUIPMENT CERTIFICATE

This Certificate shall be supplemented by a Record of Equipment
(Form E) No. 090795/092/ 1/02/RE

Issued under the provisions of the
INTERNATIONAL CONVENTION FOR THE SAFETY OF LIFE AT SEA, 1974,
as modified by the Protocol of 1988 relating thereto
under the authority of the Government of

**HONG KONG SPECIAL
ADMINISTRATIVE REGION OF THE
PEOPLE'S REPUBLIC OF CHINA**

by GERMANISCHER LLOYD

Name of Ship	Distinctive Number or Letters	Port of Registry	Gross Tonnage	IMO Number
<i>X-PRESS KAILASH</i>	<i>HK-0345</i>	<i>Hong Kong</i>	<i>9602</i>	<i>9122461</i>

Deadweight of ship: * metric tons

Length of ship (regulation III/3.10): *140.72* m

Type of Ship** : *Oil-tanker / Chemical-tanker / Gas-carrier /
Cargo ship other than any of the above*

Date on which keel was laid or ship was at a similar stage of construction or, where applicable, date on which work for a conversion or an alteration or modification of a major character was commenced: *6th January, 1997.*

THIS IS TO CERTIFY:

- 1 That the ship has been surveyed in accordance with the requirements of regulation I/8 of the Convention.
- 2 That the survey showed that:
 - 2.1 the ship complied with the requirements of the Convention as regards fire safety systems and appliances and fire control plans;
 - 2.2 the life-saving appliances and the equipment of the lifeboats, liferafts and rescue boats were provided in accordance with the requirements of the Convention;
 - 2.3 the ship was provided with a line-throwing appliance and radio installations used in life-saving appliances in accordance with the requirements of the Convention;
 - 2.4 the ship complied with the requirements of the Convention as regards shipborne navigational equipment, means of embarkation for pilots and nautical publications;
 - 2.5 the ship was provided with the lights, shapes, means of making sound signals and distress signals in accordance with the requirements of the Convention and the International Regulations for Preventing Collisions at Sea in force;
 - 2.6 in all other respects the ship complied with the relevant requirements of the Convention.
- 3 That the ship operates in accordance with regulation III/26.1.1.1 within the limits of the trade area: *not applicable*
- 4 That an Exemption Certificate *has been issued*.

This certificate is valid until *30th April, 2002* subject to the annual and periodical surveys in accordance with regulations I/8 of the Convention.

Issued at *Hamburg* the *2nd* day of *April, 2001*



Germanischer Lloyd *LR*

Höppner

Ullrich

* For oil tankers, chemical tankers and gas carriers only.
** Delete as appropriate

ENDORSEMENT FOR ANNUAL AND INTERMEDIATE SURVEYS

THIS IS TO CERTIFY that, at a survey required by regulation I/8 of the Convention, the ship was found to comply with the relevant requirements of the Convention.

Due date (anniversary date):
Range:

Annual survey Signed: _____
Surveyor to Germanischer Lloyd

Place: _____

Date: _____

Annual*/ Periodical ** survey Signed: _____
Surveyor to Germanischer Lloyd

Place: _____

Date: _____

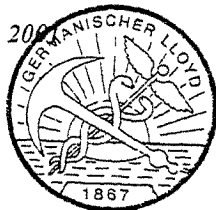
Annual*/ Periodical ** survey Signed: _____
Surveyor to Germanischer Lloyd

Place: _____

Date: _____

Annual survey Signed: _____
Sawant A.O.
Surveyor to Germanischer Lloyd

confirmed: Hamburg, 2nd April, 2001



Place: _____
Jebel Ali

Date: _____
18th February, 2001

046A

Annual/Periodical survey in accordance with regulation I/14 (h)(iii)

THIS IS TO CERTIFY that, at a annual/periodical survey in accordance with regulation I/14(h)(iii) of the Convention, the ship was found to comply with the relevant requirements of the Convention.

Signed: _____
Surveyor to Germanischer Lloyd

Place: _____

Date: _____

** Delete as appropriate

**Endorsement to extend the certificate if valid for less than 5 years
where regulation I/14(c) applies**

The ship complies with the relevant requirements of the Convention, and this certificate shall, in accordance with regulation I/14(c) of the Convention, be accepted as valid until _____

Signed: _____
Surveyor to Germanischer Lloyd

Place: _____

Date: _____

**Endorsement where the renewal survey has been completed
and regulation I/14(d) applies**

The ship complies with the relevant requirements of the Convention, and this certificate shall, in accordance with regulation I/14(d) of the Convention, be accepted as valid until _____

Signed: _____
Surveyor to Germanischer Lloyd

Place: _____

Date: _____

**Endorsement to extend the validity of the certificate until reaching the port of survey
or for a period of grace where regulation I/14(e) or I/14(f) applies**

This certificate shall, in accordance with regulation I/14(e) / I/14(f)* of the Convention, be accepted as valid until _____

Signed: _____
Surveyor to Germanischer Lloyd

Place: _____

Date: _____

* Delete as appropriate

**Endorsement for advancement of anniversary date
where regulation I/14(h) applies**

In accordance with regulation I/14(h) of the Convention, the new anniversary date is _____

Signed: _____
Surveyor to Germanischer Lloyd

Place: _____

Date: _____

In accordance with regulation I/14(h) of the Convention, the new anniversary date is _____

Signed: _____
Surveyor to Germanischer Lloyd

Place: _____

Date: _____

RECORD OF EQUIPMENT FOR THE CARGO SHIP SAFETY EQUIPMENT CERTIFICATE (FORM E)

This Record shall be permanently attached to the Cargo Ship Safety Equipment Certificate

RECORD OF EQUIPMENT FOR COMPLIANCE WITH THE INTERNATIONAL CONVENTION FOR THE SAFETY OF LIFE AT SEA, 1974, AS MODIFIED BY THE PROTOCOL OF 1988 RELATING THERETO

1 PARTICULARS OF SHIP

Name of ship:

X-PRESS KAILASH

Distinctive number or letters:

HK-0345

2 DETAILS OF LIFE-SAVING APPLIANCES

1	Total number of persons for which life-saving appliances are provided	25	
		Port side	Starboard side
2	Total number of lifeboats	—	1
2.1	Total number of persons accommodated by them	—	25
2.2	Number of self-righting partially enclosed lifeboats (regulation III/43)	—	—
2.3	Number of totally enclosed lifeboats (regulation III/44)	—	—
2.4	Number of lifeboats with a self-contained air support system (regulation III/45)	—	—
2.5	Number of fire-protected lifeboats (regulation III/46)	—	—
2.6	Other lifeboats		
2.6.1	Number	—	—
2.6.2	Type	—	—
2.7	Number of freefall lifeboats		
2.7.1	Totally enclosed (regulation III/44)		1
2.7.2	Self-contained (regulation III/45)		—
2.7.3	Fire-protected (regulation III/46)		—
3	Number of motor lifeboats (included in the total lifeboats shown above)		1
3.1	Number of lifeboats fitted with searchlights		1
4	Number of rescue boats		1
4.1	Number of boats which are included in the total lifeboats shown above		—
5.	Liferafts		
5.1	Those for which approved launching appliances are required		
5.1.1	Number of liferafts		1
5.1.2	Number of persons accommodated by them		25
5.2	Those for which approved launching appliances are not required		
5.2.1	Number of liferafts		1
5.2.2	Number of persons accommodated by them		25
5.3	Number of liferafts required by regulation III/26.1.4		1

2 **DETAILS OF LIFE-SAVING APPLIANCES (CONTINUED)**

6	Number of lifebuoys	10
7	Number of lifejackets	32
8	Immersion suits	
8.1	Total number	3
8.2	Number of suits complying with the requirements for lifejackets	---
9	Number of thermal protective aids*	---
10	Radio installations used in life-saving appliances	
10.1	Number of radar transponders	2
10.2	Number of two-way VHF radiotelephone apparatus	3

THIS IS TO CERTIFY that this Record is correct in all respects.

Issued at *Hamburg* the *2nd* day of *April, 2001*



Germanischer Lloyd CR_e

Mmm
Höppner

Ullrich
Ullrich

* Excluding those required by regulations III/38.5.1.24, III/41.8.31 and III/47 2.2.13.



Germanischer Lloyd

Form No **LA 2**
Form Nr
Page 1 of 1
Seite von

Note:
This Certificate is based on the standard international form as recommended by the International Labour Office in accordance with ILO Convention No.152

Hinweis:
Diese Bescheinigung basiert auf der vom Internationalen Arbeitsamt gemäß ILO Konvention Nr.152 empfohlenen internationalen Standardform.

Certificate No. 20310 BOM
Bescheinigung Nr.
Name of ship X-PRESS KAILASH
Schiffsname
Code Letters: VRVK3
Unterscheidungssignal
GL-Register-No.: 90795
GL-Register-Nr.

Certificate of test and thorough examination of Lifting Appliances

Bescheinigung über die Prüfung und eingehende Untersuchung von Hebezeugen

(1) Situation and description of lifting appliances (with distinguishing numbers or marks, if any) which have been tested and thoroughly examined <i>Anordnung und Beschreibung der Hebezeuge (mit Kennzeichnung, wenn vorhanden), die geprüft und eingehend untersucht wurden</i>	(2) Date of Test <i>Prüfungsdatum</i>	(3) Angle to the horizontal or radius at which test load applied <i>Neigungswinkel zur Horizontalen oder Ausladung bei der Belastungsprüfung</i>	(4) Test load (tonnes) <i>Prüflast (Tonnen)</i>	(5) Safe working load (SWL) at angle or radius shown in column 3 (tonnes) <i>Nutzlast bei dem Neigungswinkel oder der Ausladung nach Spalte (3) (Tonnen)</i>
CRANE NO. 1 AND 2	2001.08 24	26.4 m	45 t	40 t

Position of Lifting Appliances and special conditions for the use see Rigging Plans.

Lage der Hebezeuge, Einzelheiten und besondere Bedingungen für die Benutzung siehe Takelblätter.

approved by Germanischer Lloyd with Journal No. 5880/96

genehmigt vom Germanischen Lloyd unter Tgb.-Nr.

on the 1996.01.23

am

These Riggings Plans are attached to the register book (Form No. LA 1).

Diese Takelblätter sind dem Prüfbuch (Form Nr. LA 1) beizufügen.

Name and address of the firm or competent person who witnessed testing and carried out thorough examination:

Name und Anschrift der Firma oder fachkundigen Person, die bei der Prüfung anwesend war und die eingehende Untersuchung durchgeführt hat:

Surveyor to Germanischer Lloyd, Vorsetzen 32, 20459 Hamburg

For ships subject to supervision by See-BG this certificate is issued on behalf of See-BG according to UVV See, para 231.

Für Schiffe, die der Aufsicht der See-BG unterliegen, wird diese Bescheinigung im Auftrag der See-BG gemäß UVV See §231 ausgestellt.

I certify that the lifting appliances shown in column (1) were tested and thoroughly examined and no defects or permanent deformations were found; and that the safe working loads are as shown.

Ich bescheinige, daß die in Spalte (1) genannten Hebezeuge geprüft und eingehend untersucht wurden, daß keine Mängel oder bleibenden Verformungen festgestellt wurden und daß die Nutzlasten den genannten Werten entsprechen.

Date 2001.08.24

Datum

Place MUMBAI

Ort



Signature
Unterschrift

M. A. B. FERNANDES

456
(For instructions see reverse side resp. attached sheet)
(Anweisungen siehe Rückseite bzw. beigelegtes Blatt)



DUBAI MUNICIPALITY

SERIAL NO: 02626

HEALTH DEPARTMENT
PEST CONTROL SECTION

DERATTING CERTIFICATE - CERTIFICATE DE DERATISATION
DERATTING EXEMPTION CERTIFICATE - CERTIFICATE D'EXEMPTION DE LA DERATISATION

ISSUED IN ACCORDANCE WITH ARTICLES 53 OF THE INTERNATIONAL HEALTH REGULATIONS
(Not to be taken away by port authorities)

DELIVRE CONFORMEMENT A L'ARTICLE 53 DU REGLEMENT SANITAIRE INTERNATIONAL
(Ce certificat ne doit pas etre retire par les autorites portuaires)

THIS CERTIFICATE RECORDS THE PRESENT CERTIFICAT ATTESTE

THE INSPECTION AND DERATTING L'INSPECTION ET LA DERATISATION

THE INSPECTION AND EXEMPTION L'INSPECTION ET L'EXEMPTION

AT THE PORT OF AU PORT DE RASHID

OF THE SHIP DU NAVIRE X-PRESS / CAILASH

OF U.A.E.

ON (DATE) LA (DATE) 25th JULY 2001

SEA GOING VESSEL - NET TONNAGE 4898.00

NAVIRE DE HAUTE MER - TONNAGE NET

AT THE TIME OF INSPECTION THE HOLD WERE EMPTY FULL PARTIALLY FULL

CONTAINER CARGO

COMPARTMENTS (IN CASE ANY OF THE COMPARTMENTS ENUMERATED DO NOT EXIST ON THE SHIP THIS FACT MUST BE MENTIONED)	RAT INDICATION TRACES DE RATS		RAT HARBOURAGE REFUGES SUPPLIES A RATS		DERATTING BY FUMIGATION DE-RATISATION PAR FUMIGATION		DERATTING BY CATCHING TRAPPING OR POISONING DERATISATION PAR CAPTURE OU POISON		MANDATORY OBLIGATOIRE
	4	5	DISCOVERED	TREATED	SPACE (CUBIC FEET) ESPACE (PRECS CUBES)	QUANTITY USED QUANTITES EMPLOYEES	RATS FOUND DEAD RATS TROUVES MORTS	TRAPS SET OR POISON PUT OUT PIEGES OU POISON MIS	
HOLDS CALES	1	NONE							
	2	II							
	3	II							
	4	II							
	5	NOT PRESENT							
	7	NOT PRESENT							
SHelter DECK SPACE - PONT ABRI		NO SPACE							
BUNKER SPACE		OIL TANKS							
ENGINE ROOM AND SHAFT ALLEY - CHAUFFERIE ET TUNNEL		NONE							
FOREPEAK AND STORE ROOM - PEAK AVANT ET MAGASIN		N							
AFTERPEAK AND STORE ROOM - PEAK ARRIERE ET MAGASIN		O							
LIFEBOATS - CANOTS DE SAUVETAGE		N							
CHARTS AND WIRELESS ROOMS - CHAMBRES DES CARTES T.S		E							
GALLEY - CUISINES		NONE							
PANTRY - CABBUSES		II							
PREVISIONS STORE ROOM - SCUTE A VIVRES		NONE							
QUARTERS (OFFICERS) - CHAMBRES (OFFICERS)		NO SPACE							
QUARTERS (CREW AND STEERING) - POSTES (EQUIPAGE ET EMIGRANTS)		NONE							
QUARTERS (CABIN PASSENGERS) - CABINES (PASSENGERS)		NOT PRESENT							
TOTAL									

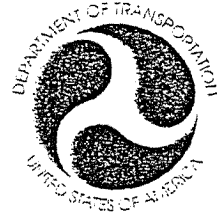
WHITE : SHIP MASTER
YELLOW : PORT FUL
PINK : PEST CONTROL CENTRE

RECOMMENDATIONS

HEALTH INSPECTOR SIGNATURE & SEAL
DUBAI MUNICIPALITY

Pest Control Section

Department of Transportation
United States Coast Guard
National Pollution Funds Center
Arlington VA 22203-1804



No. 850248 - 10

VESSEL CERTIFICATE OF FINANCIAL RESPONSIBILITY
(WATER POLLUTION)

Vessel Operator

ANGLO-EASTERN SHIP MANAGEMENT LTD

has established evidence of financial responsibility, in accordance with 33 CFR 138, to meet liability under section 1002 of the Oil Pollution Act of 1990, and under section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act, which may result from the operation of the vessel named below:

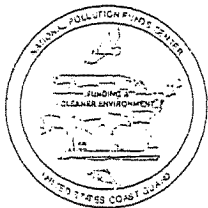
Name of Vessel

TMM SINALOA

Effective Date: 28MAR2001

Expiration Date: 28MAR2004

The use of this certificate is subject to the provisions of Part 138 of Title 33 of the Code of Federal Regulations, as it is or may be amended, and the conditions on the reverse side of this certificate. This certificate is invalid if there are any erasures or alterations hereon (except permitted by 33 CFR 138), and is void if the operator named hereon is not the party responsible for operating the vessel.



Edward C. Armstrong

Chief, Vessel Certification
National Pollution Funds Center
By Direction



Minimum Safe Manning Certificate 最低安全人手編配證明書

Issued under the provisions of the Merchant Shipping (Safety) (Minimum Safe Manning Certificate) Regulation, under the authority of the Government of the Hong Kong Special Administrative Region of the People's Republic of China, by the Marine Department

經中華人民共和國香港特別行政區政府授權，由海事處根據商船(安全)(最低安全人手編配證明書)規例簽發

Name of Ship 船名	Port of Registry 船籍港	Distinctive Number or Letters 船舶編號或呼號	IMO Number 國際海事組織編號
IDEEFIKS	HONG KONG	HK-0734	9252046

THIS IS TO CERTIFY that the ship will be considered to be safely manned in accordance with the principles and guidelines set out in IMO Resolution A.890(21), provided that when going to sea the ship has not less than the numbers and grades of personnel shown in the following table:

茲證明本證明書所述的船舶已經根據國際海事組織大會決議 A.890(21)號的指引和原則，配備安全所需的船員，該船航行時必須配備不低於下表所列的數目和級別的船員：

OFFICERS 高級船員		
GRADE 級別		NUMBER 人數
DECK 甲板高級船員 Class 1 一級 (Master Mariner 船長)		1
DECK 甲板高級船員 Class 2 二級		1
DECK 甲板高級船員 Class 3 三級		2
ENGINEER 輪機師 Class 1 一級		1
ENGINEER 輪機師 Class 2 二級		1
ENGINEER 輪機師 Class 3 三級		2

RATINGS 普通船員	
GRADE 級別	NUMBER 人數
SEAMAN I	4
SEAMAN II	2
SEAMAN III	1
MOTORMAN II	2
MOTORMAN III	1

PROVIDED THAT 並須符合下列各項：

- I. This certificate is valid only in relation to the particulars of the ship shown in the application form completed by ANGLO-EASTERN SHIP MANAGEMENT LTD. dated 8 JUNE 2001, and the nature of the services stated in that application.
本證明書只對由.....於.....(日期)所填寫的申請書內的船舶資料及業務性質有效。
- II. Nothing in this certificate invalidates any provision of the Merchant Shipping (Seafarers)(Certification of Officers) Regulation, as regards the carriage of certificated officers, and in particular:
本證明書不會令商船(海員)(高級船員資格證明)規例有關配備持適任證書高級船員的條文失效，特別是有關下列條文：
Regulation 3(2) which provides that the Director of Marine may permit exemptions from all or any provisions of this regulation;
根據第3(2)條規例海事處處長可豁免該規則的任何規定；
Regulation 14 which provides that by reason of illness, absence or other unforeseeable happening, a ship may proceed to sea manned by 1 less than the required number of deck and/or engineer officers provided:
根據第14條規例，因患病、缺勤或不可預見情況的理由和符合以下各項條件，該船可以在缺少一名甲板高級船員及/或輪機師的情況下出海航行：
(a) all reasonable steps are taken to man the ship as required by Merchant Shipping (Seafarers)(Certification of Officers) Regulation;
該船已經採取一切合理步驟以符合商船(海員)(高級船員資格證明)規例的規定；
(b) the Director is notified of the facts before the ship proceeds and notification is entered in the ship's official log book;
該船出海前已經將該等事實通知海事處處長；並將通知記入該船的正式航海日誌內；
(c) the Master of the ship is satisfied that it is safe to proceed and enters a certificate to that effect in the ship's official log book; and
該船的船長信納出海是安全的，並在該船的正式航海日誌內記入此項陳述；以及
(d) the ship does not continue to be so undermanned for a period exceeding 28 days.
該船的人手不足情況沒有持續超過28日。
- III. Conditions ~~have~~ have not been imposed as per attached Annex*
本證書的簽發有/沒有附帶條件 見附頁*

Issued at 簽發地點HONG KONG.....

Issued on 簽發日期12 JUNE 2001.....

(K.M. VARCHESE)

Signature of authorized official
認可官員簽字

Explanatory Note 註釋

The category of ratings engaged on the vessel, the Standards of Training, Certification and Watchkeeping (STCW) Certificates they hold and their experience
 在船上工作的普通船員的級別與他們所持有的培訓公約證書與工作經驗

Ratings forming part of a navigational watch or an engine room watch must hold Navigational or Engine Room Watch Rating Certificates as appropriate, in addition to the sea service requirements listed below

除下列所需服務要求外，負責值班職責的普通船員應持有導航值班或機房值班普通船員證書。

[There is no statutory requirement for ratings to hold Watch Rating Certificates if they are not engaged on watchkeeping duties]
 [法例並沒有規定不執行值班職責的普通船員須持有值班證書]

Seaman III* 三級船員*	-	(a) 6 months deck sea service; QR 在甲板部服務滿6個月；或 (b) 2 months deck sea service – E.D.H. Certificate. 在甲板部服務滿2個月及持有全能精練甲板證書
Seaman II 二級船員	-	(a) 24 months deck sea service; QR 在甲板部服務滿24個月；或 (b) 12 months deck sea service – E.D.H. Certificate 在甲板部服務滿12個月及持有全能精練甲板證書
Seaman I 一級船員	-	(a) 42 months deck sea service; QR 在甲板部服務滿42個月；或 (b) 36 months deck sea service + A.B. Certificate 在甲板部服務滿36個月及持有高級水手證書
Motorman III** 三級機工**	-	6 months E.R. sea service. 在機房的海上服務滿6個月
Motorman II 二級機工	-	12 months E.R. sea service. 在機房的海上服務滿12個月
Motorman I 一級機工	-	24 months E.R. sea service. 在機房的海上服務滿24個月
G.P. III 三級全能船員	-	(a) 6 months sea service in a G.P. capacity; QR 全能船員服務滿6個月；或 (b) a combination of 6 months sea service in Deck and E.R. capacities. 合併甲板部和機房部服務滿6個月
G.P. II 二級全能船員	-	(a) 18 months sea service in a G.P. capacity; QR 全能船員服務滿18個月；或 (b) a combination of 18 months sea service in Deck and E.R. capacities. 合併甲板部和機房部服務滿18個月
G.P. I 一級全能船員	-	(a) 42 months sea service in a G.P. capacity; QR 全能船員服務滿42個月；或 (b) a combination of 42 months sea service in Deck and E.R. capacities. 合併甲板部和機房部服務滿42個月

* For - MOD vessels with Conventional manning a Seaman III may be substituted by an experienced deck cadet (minimum of 6 months sea service) who has received training with regard to mooring operations and the dangers related thereto.

在 - MOD 船隻由傳統制人手配備時，船上一名三級船員可由一名有經驗的甲板學生所替代（至少有六個月海上服務經驗），該學生需具備有關船纜系靠操作的訓練及了解其中的危險。

** For N/UMS vessels with Conventional manning a Motorman III may be substituted by an experienced engineer cadet (minimum of 6 months sea service).

** 在N/UMS 船隻由傳統制人手配備時，船上一名三級機工可由一名有經驗的輪機學生所替代（至少有六個月海上服務經驗）。

Officers and ratings assigned specific duties and responsibilities related to cargo or cargo equipment on tankers shall have completed an approved shore-based fire-fighting course in addition to the training required by regulation VI/1 of the STCW Convention 1978, as amended, and shall have completed:

在油輪上被指派特定任務及負責有關所載油類或其設備的高級及普通船員，除具有已修改之船員值班公約1978，第VI/1條規例外，應完成一認可之岸上防火課程。除此以外仍需完成以下要求：

1. at least three months of approved seagoing service on tankers in order to acquire adequate knowledge of safe operational practices; or
 為達致足夠安全操作實習的知識，至少有三個月在油輪上認可的海上服務，或
2. an approved tanker familiarization course covering at least the syllabus given for that course in the appropriate part of section A-V/1 of the STCW Code.
 一認可的油輪熟習課程，課程需至少包括船員值班規則第A-V/1段內有關的內容。

Abbreviations

E.R	-	Engine Room
G.P	-	General Purpose
A.B	-	Able Bodied Seaman
E.D.H	-	Efficient Deck Hand
N/UMS	-	Non/Unmanned Machinery Space
MOD	-	Mooring Lines on Drums

INTERNATIONAL OIL POLLUTION PREVENTION CERTIFICATE

Issued under the provisions of the
International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978
relating thereto (hereinafter referred to as "the Convention")

under the authority of the Government of the

HONG KONG SPECIAL ADMINISTRATIVE REGION OF THE PEOPLE'S REPUBLIC OF CHINA

by Germanischer Lloyd

Name of Ship	Distinctive Number or Letters	Port of Registry	Gross Tonnage	IMO Number
<i>X-PRESS KATLASH</i>				
<i>EX- SELANDIA</i>	VRVK3	Hong Kong	9602	9122461

TYPE OF SHIP: ~~Oil tanker*~~

~~Ship other than an oil tanker with cargo tanks coming under Regulation 2 (2) of Annex I of the Convention*~~

Ship other than any of the above *

THIS IS TO CERTIFY:

- I. That the ship has been surveyed in accordance with Regulation 4 of Annex I of the Convention; and
- II That the survey shows that the structure, equipment, systems, fittings, arrangement and material of the ship and the condition thereof are in all respects satisfactory and that the ship complies with the applicable requirements of Annex I of the Convention.

This certificate is valid until **30th April, 2002**, subject to surveys in accordance with Regulation 4 of Annex I of the Convention.

Issued at **Hamburg**, the **30th** day of **July, 1998**.



Germanischer Lloyd

Schreiter
Schreiter

Höppner
Höppner

Note: This Certificate shall be supplemented by a Record of Construction and Equipment.

ENDORSEMENT FOR ANNUAL AND INTERMEDIATE SURVEYS

THIS IS TO CERTIFY

that at a survey required by Regulation 4 of Annex I of the Convention the ship was found to comply with the relevant provisions of the Convention

Due Date for Intermediate Survey if only one intermediate survey is held during the period of validity of this certificate
Range:

31st October, 1999
1st May, 1999 to 30th April, 2000

Due Date for Mandatory Annual Surveys
Range:

30th April
1st February to 31st July each year

Annual survey

confirmed: Hamburg, 30th July 1998



Signed:

Schutjes A.

Surveyor to Germanischer Lloyd

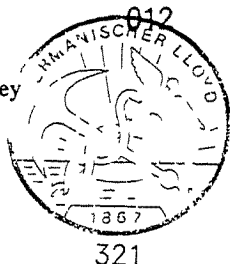
Place:

Rotterdam

Date:

22nd March, 1998

Annual*/Intermediate* survey



Signed:

M.Y. HAFIZ

Surveyor to Germanischer Lloyd

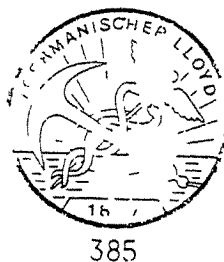
Place:

JEBEL ALI UAE

Date:

14.03.97

Annual*/Intermediate* survey



Signed:

A. O. SAWANT (A. O. SAWANT)

Surveyor to Germanischer Lloyd

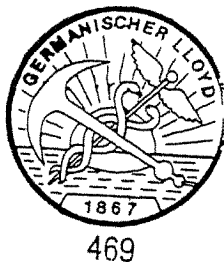
Place:

DUBAI - UAE

Date:

2nd May 2000

Annual survey:



Signed:

A. SEIF. (A. SEIF.)

Surveyor to Germanischer Lloyd

Place:

JEBEL ALI, U.A.E

Date:

23.04.2001

Germanischer Lloyd

Certificate of Class

090795 -1
GL-Register-No.
GL-Register-Nr

Hull
Schiff

This is to certify that the motor vessel
Hiermit wird bescheinigt, daß das Motorschiff
EX - SELANDIA *T-PRESS ICALASH*

IMO-No. 9122461
IMO-Nr.

Port of Registry HONG KONG
Heimathafen

Flag HONG KONG
Flagge

Call Sign VRVK3
U-Signal

Owner KILDARE ENTERPRISES LTD.
Reeder

Shipyard STOCZNIA SZCZECINSKA S.A.
Schiffswerft

Place of Build SZCZECIN
Bauort

Launching 2.1997
Stapellauf

Completion .. 4.1997
Fertigstellung

has been surveyed at SZCZECIN in 1997 by our Surveyor
besichtigt worden ist in .. 1997 durch unseren Besichtigter

in accordance with this Society's Rules.
nach den Vorschriften dieser Gesellschaft.

SAMPLE

Tonnage particulars acc. to Convention 69 acc. to International Tonnage Certificate (1969) Vermessungsdaten des Schiffes nach Konvention 69 laut Internationaler Schiffsmeßbrief (1969)					
Gross Tonnage Bruttoreaumzahl	9602	Length Länge	140,72 m	Summer Freeboard Sommerfreibord	2,875 m
Tonnage net Nettoreumzahl	4898	Breadth Breite	22,30 m	with a mit einem	
		Moulded Depth Seitenhöhe	11,10 m	Moulded Draught Tiefgang ohne Kiel	8,255 m

On the basis of the Report submitted the vessel has been assigned the Class
Aufgrund des über den Befund erstatteten Berichtes ist dem Schiff die Klasse

with the Character of Class
mit dem Klassenzeichen

100A5 E
Container Ship
G
Solas II-2, Reg. 54

and the Period of Class running from April 1997
und dem Klassenlauf vom gerechnet erteilt worden.

This certificate is valid until 30th April 2002
Dieses Zertifikat ist gültig bis

provided that prescribed surveys are effected by their due dates.
vorausgesetzt die vorgeschriebenen Besichtigungen sind bis zu ihrem Fälligkeitsdatum durchgeführt worden

Hamburg, 21st July 1997

Germanischer Lloyd

M. V. Arndt

Müller

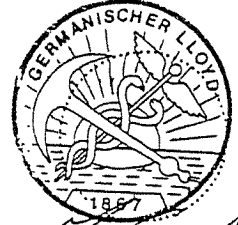
Arndt

This Certificate of Class is valid only in connection with 1-page ANNEX and all endorsements made by Surveyors to Germanischer Lloyd on appended sheets in respect of this vessel's hull.
Dieses Klassenzertifikat ist nur gültig in Verbindung mit 1-seitigem Anhang und allen für diesen Schiffskörper von Besichtigern des Germanischen Lloyd auf Beiblättern gemachten Eintragungen.

Rules for Classification and Construction, Chapter I-Ship Technology, Part 0-Classification and Surveys, as may from time to time be in force are applicable.
Es gelten die Klassifikations- und Bauvorschriften, Kapitel I-Schiffstechnik, Teil 0-Klassifikation und Besichtigungen in ihrer jeweils gültigen Fassung

Certificate entries relating to the Survey

See Report No. S107 Entry: ANNUAL CLASS SURVEY (HULL)
CARRIED OUT. REPORT S-07 REFERS.
CLASS CONFIRMED



Place JEBEL ALGUA-E Date 23.04.2001 Surveyor MSEIF

See Report No. Entry:

Place Date Surveyor

See Report No. Entry:

Place Date Surveyor

See Report No. Entry:

Place Date Surveyor

See Report No. Entry:

Place Date Surveyor

See Report No. Entry:

Place Date Surveyor



090795 -1
GL-Register-No.
GL-Register-Nr

Machinery
Maschinenanlage

This is to certify that the machinery of the motor vessel
Hiermit wird bescheinigt, daß die Maschinenanlage des Motorschiffes

M.V. X-PRESS KATLASH

EX- SELANDIA

IMO-No. 9122461
IMO-Nr

Port of Registry HONG KONG
Heimathafen

Flag HONG KONG
Flagge

Call Sign VRVK3
U-Signal

Owner KILDARE ENTERPRISES LTD.
Reeder

Shipyard STOCZNIA SZCZECINSKA S.A.
Schiffswerft

Place of Build SZCZECIN
Bauort

Completion .. 4.1997
Fertigstellung

has been surveyed at SZCZECIN
besichtigt worden ist in

in 4.1997
im

by our Surveyor
durch unseren Besichtigter

in accordance with this Society's Rules.
nach den Vorschriften dieser Gesellschaft

On the basis of the Report submitted the machinery has been assigned the Class
Aufgrund des über den Befund erstatteten Berichtes ist der Maschinenanlage die Klasse

with the Character of Class MC E AUT
mit dem Klassenzeichen

and the Period of Class running from April 1997
und dem Klassenlauf vom gerechnet erteilt worden

This certificate is valid until 30th April 2002
Dieses Zertifikat ist gültig bis

provided that prescribed surveys are effected by their due dates.
vorausgesetzt die vorgeschriebenen Besichtigungen sind bis zu ihrem Fälligkeitsdatum durchgeführt worden

Hamburg, 21st July 1997

Germanischer Lloyd

Fischer

M. V. Arndt
Arndt

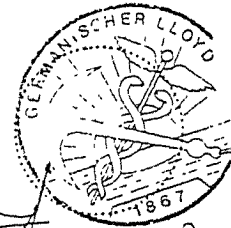
This Certificate of Class is valid only in connection with 1-page ANNEX and all endorsements made by Surveyors to Germanischer Lloyd on Appended Sheets in respect of this vessel's machinery
Dieses Klassenzertifikat ist nur gültig in Verbindung mit 1-seitigem Anhang und allen für diese Maschinenanlage von Besichtigern des Germanischen Lloyd auf Beiblättern gemachten Eintragungen

Rules for Classification and Construction, Chapter I-Ship Technology, Part 0-Classification and Surveys, as may from time to time be in force are applicable
Es gelten die Klassifikations- und Bauvorschriften Kapitel I-Schiffstechnik, Teil 0-Klassifikation und Besichtigungen in ihrer jeweils gültigen Fassung

Certificate entries relating to the Survey

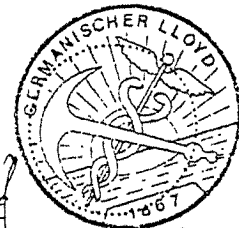
See Report No. M118 Entry: Continuous Machinery Survey
carried out. Class confirmed.

Place BOMBAY Date 21.06.00 Surveyor [Signature]
(B.B. KURREJA)



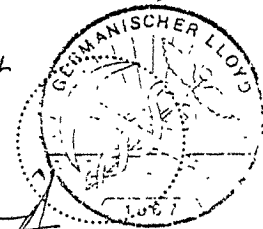
See Report No. M119 Entry: Continuous Machinery Survey
carried out. Class confirmed.

Place BOMBAY Date 05.07.00 Surveyor [Signature]
(B.B. KURREJA)



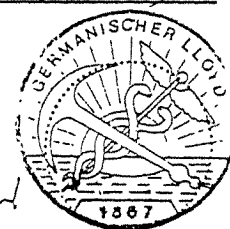
See Report No. M120 Entry: Continuous Machinery Survey
carried out. Class confirmed.

Place BOMBAY Date 11.09.00 Surveyor [Signature]
(B.B. KURREJA)



See Report No. M121 Entry: C.S.M. advanced Class
Confirmed. Report M21 refers.

Place Jebel Ali U.A.E. Date 2001.02.18 Surveyor [Signature]
(A.D. FULFANT)



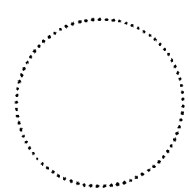
See Report No. M122 Entry: Annual Class Survey, Oil Fired
Boiler Ext. Survey, Exh. Gas Heated Boiler Ext. Survey
and CMS were carried out.
Class Confirmed.

Place Jebel Ali U.A.E. Date 2001.04.23 Surveyor [Signature]
(H. SEIF)



See Report No. Entry:

Place Date Surveyor



Germanischer Lloyd

Form No. LA 1
Form Nr.

Note:

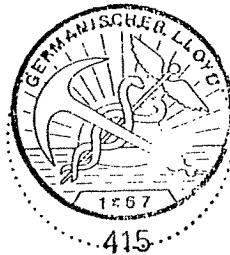
This Register is based on the standard international form as recommended by the International Labour Office in Geneva in accordance with ILO Convention No. 152.

For ships subject to supervision by **See-Berufsgenossenschaft** this Register is issued on their behalf according to para 231 UVV See.

Hinweis:

Dieses Prüfbuch basiert auf der vom Internationalen Arbeitsamt in Genf gemäß ILO-Konvention Nr. 152 empfohlenen internationalen Standardform.

Für Schiffe, die der Aufsicht der **See-Berufsgenossenschaft** unterliegen, wird dieses Prüfbuch in deren Auftrag gemäß § 231 UVV See ausgestellt.



M.V. X-PRESS KAILASH

Name of Ship
Schiffsname

ex- SELANDIA *Vic's name altered 2*

Code Letters
Unterscheidungssignal

VRVK 3 *Edwin 10/10/97*

Official Number
Nr. des Schiffsregisters

Port of Registry
Heimathafen

HONGKONG
KILDARE ENTERPRISES Ltd.

Owner
Reeder

~~ANGLO-CASTER~~

GL-Register No.
GL-Register Nr.

90795

Date of Issue
Ausstellungsdatum

18.04.97

Stamp and Signature
Stempel und Unterschrift

Jürgen Booy

Register No.
Prüfbuch Nr.

- 1 -

REGISTER OF SHIP'S LIFTING APPLIANCES AND CARGO HANDLING GEAR
PRÜFBUCH FÜR UMSCHLAGGERÄTE

Auszug aus dem ILO-Übereinkommen 152, Artikel 23, Absatz 2

Eine gründliche Untersuchung besteht aus einer eingehenden Sichtprüfung, nötigen falls ergänzt durch andere geeignete Mittel oder Maßnahmen, um zu einer zuverlässigen Beurteilung der Sicherheit zu gelangen

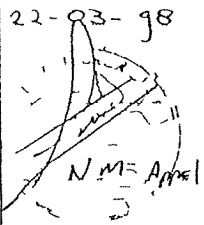

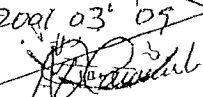

Wenn notwendig sind Teile der Hebezeuge auszubauen

Excerpt from the ILO Convention 152, article 23, paragraph 2:

A thorough examination means a detailed visual examination, supplemented if necessary by other suitable means or measures in order to arrive at a reliable conclusion of safety

If necessary parts of the lifting appliances must be dismantled

Annual thorough examinations and those without load tests
Jährliche eingehende Untersuchungen und solche ohne Belastungsprüfungen




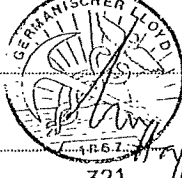
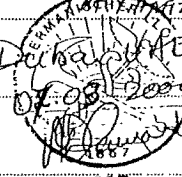
(6)				(7)	
I certify that on the date to which I have appended my signature, the Lifting Appliances shown in column (1) were thoroughly examined and no defects affecting their safe working condition were found other than those shown in column (7)				Remarks (to be dated and signed)	
Ich bescheinige daß die in Spalte (1) genannten Hebezeuge am Tag meiner Unterschrift eingehend untersucht wurden und, daß abgesehen von den Bemerkungen in Spalte (7), keine Mängel festgestellt wurden die den sicheren Betrieb beeinträchtigen				Bemerkungen (mit Datum und Unterschrift)	
Examination performed (see Note 2) Art der Untersuchung (siehe Hinweis 2)	Date stamp and signature Datum Stempel und Unterschrift	Examination performed (see Note 2) Art der Untersuchung (siehe Hinweis 2)	Date stamp and signature Datum Stempel und Unterschrift	Examination performed (see Note 2) Art der Untersuchung (siehe Hinweis 2)	Date stamp and signature Datum Stempel und Unterschrift
ANNUAL SURVEY	KOTTICRAM 22-03-98  N.M. Appel  MY MAF 2 321 vBEL ALI CAG 14 03 79	 JEBEL ALI UAE 2001 03 09  DEUTSCHER VERBAND DER HEBEGERÄTEHERSTELLER (DVH) 1967 MAB 456 2001-08-24 MUMBAI 	 Annual Survey  		

Teil 2 Jährliche eingehende Untersuchungen von austauschbaren Einzelteilen und Lastaufnahmemitteln

Wenn alle austauschbaren Einzelteile und Lastaufnahmemittel am selben Tag eingehend untersucht werden, genügt die Eintragung „Alle austauschbaren Einzelteile und Lastaufnahmemittel“ in Spalte (1). Anderenfalls sind die an dem genannten Tage eingehend untersuchten Teile eindeutig aufzuführen.

Part 2 Annual thorough examinations of Interchangeable Components and Loose Gear

If all the Interchangeable Components and Loose Gear are thoroughly examined on the same date it will be sufficient to enter in column (1) "All Interchangeable Components and Loose Gear". If not, the parts which have been thoroughly examined must be clearly indicated.

(1) Description of Interchangeable Components and Loose Gear thoroughly examined. Beschreibung der austauschbaren Einzelteile und Lastaufnahmemittel die eingehend untersucht wurden.	(2) Certificate Nos. Bescheinigungs-Nummern Form: LA 3	(3) I certify that on the date to which I have appended my signature, the Interchangeable Components and Loose Gear shown in column (1) were thoroughly examined and no defects affecting their safe working condition were found other than those shown in column (4). Ich bescheinige, daß die in Spalte (1) angegebenen austauschbaren Einzelteile und Lastaufnahmemittel am Tag meiner Unterschrift eingehend untersucht wurden und, daß abgesehen von den Bemerkungen in Spalte (4), keine Mängel festgestellt wurden, die den sicheren Betrieb beeinträchtigen. Date, stamp and signature Datum, Stempel und Unterschrift			(4) Remarks (to be dated and signed) Bemerkungen (mit Datum und Unterschrift)
All Interchangeable Components and Loose Gear	14777 R		Rotterdam 22-03-98	Zettel A4 VBE 14-03-99	
CRANE No. 1 & 2	4	 M.A.B. 29-01-98 MUMBAI		 321  385	



DUBAI MUNICIPALITY
HEALTH DEPARTMENT
PEST CONTROL SECTION

SERIAL NO: **02526**

DERATting CERTIFICATE - CERTIFICATE DE DERATISATION
DERATting EXEMPTION CERTIFICATE - CERTIFICATE D'EXEMPTION DE LA DERATISATION

ISSUED IN ACCORDANCE WITH ARTICLES 53 OF THE INTERNATIONAL HEALTH REGULATIONS / DELIVRE CONFORMEMENT A L'ARTICLE 53 DU REGLEMENT SANITAIRE INTERNATIONAL
 (Not to be taken away by port authorities) / (Ce certificat ne doit pas être retiré par les autorités portuaires)

THIS CERTIFICATE RECORDS THE PRESENT CERTIFICATE ATTESTS	<input type="checkbox"/> THE INSPECTION AND DERATING	2 AT THE PORT OF AU PORT DE	OF THE SHIP DU NAVIRE
	<input type="checkbox"/> THE INSPECTION AND EXEMPTION	RASHID	X - PRESS / CAILAS
		OF DE U.A.E.	ON (DATE) LA (DATE) 25th July 2001
3 <input checked="" type="checkbox"/> SEA GOING VESSEL - NET TONNAGE 4898.00	<input checked="" type="checkbox"/> AT THE TIME OF INSPECTION THE	CONTAINER CARGO	
NAVIRE DE HAUTE MER - TONNAGE NET	HOLD WERE EMPTY <input type="checkbox"/> FULL <input type="checkbox"/> PARTIALLY FULL <input checked="" type="checkbox"/>		

COMPARTMENTS (IN CASE ANY OF THE COMPARTMENTS ENUMERATED DO NOT EXIST ON THE SHIP THIS FACT MUST BE MENTIONED)	RAT INDICATION		RAT HARBOURAGE		DERATING BY FUMIGATION		DERATING BY CATCHING		MANDATORY OBLIGATOIRE
	TRACES DE RATS	REFUGES SUPPRIMÉS A RATS	SPACE (CUBIC FEET) / ESPACE (PIEDS CUBES)	QUANTITY USED / QUANTITES EMPLOYEES	RATS FOUND DEAD / RATS TROUVES MORTS	TRAPS SET OR POISON PUT OUT / PIÈGES OU POISON MIS	RATS CAUGHT OR KILLED / RATS PRIS OU TUÉS		
HOLDS CALES	1 NONE	2 II						<input type="checkbox"/> MANDATORY OBLIGATOIRE <input type="checkbox"/> ROUTINE SYSTEMATIQUE <input type="checkbox"/> REQUEST SUR DEMANDE <input checked="" type="checkbox"/> DETAILS DONNEES PREVIOUS CARGO CARRELAGION PREC EDENTE DUNNAGE OR OTHER PROTECTION TO RATS: HOW TREATED PRIOR TO FUMIGATION / ARRIMAGE OU AUTRE PROTECTION CONTRE LES RATS: D'EN A-T-ON FAIT AVANT LA FUMIGATION? TIME AND DATE OF ARRIVAL AT VESSEL / HEURE ET DATE D'ARRIVEE AU NAVIRE TIME AND DATE OF CLOSING VESSEL UNDER FUMIGATION / HEURE ET DATE DE PERMUTURE DU NAVIRE LORS DE LA FUMIGATION TIME AND DATE OF OPENING VESSEL / HEURE ET DATE DE RECLUVERTE DU NAVIRE TIME AND DATE VESSEL DECLARED FREE OF GAS / HEURE ET DATE AUXQUELLES LE NAVIRE EST DECLARE LIBRE DE TOUT GAZ	
	3 II								
	4 II								
	5 } NOT PRESENT								
	6 } NOT PRESENT								
	7 } NOT PRESENT								
SHelter Deck Space - Pont Aéri	NO SPACE								
BUNKER SPACE	OIL TANKS								
ENGINE ROOM AND SHAFT ALLEY - CHAUFFERIES ET TUNNEL	NO SPACE								
FOREPEAK AND STORE ROOM - PEAK AVANT ET MAGASIN	N								
AFTERPEAK AND STORE ROOM - PEAK ARRIERE ET MAGASIN	O								
LIFEBOATS - CANOTS DE SALVETAGE	N								
CHARTS AND WIRELESS ROOMS - CHAMBRES DES CARTES T.S.	E								
GALLEY - CUISINES	NO SPACE								
PANTRY - CABBUSES	II								
PROVISIONS STORE ROOM - SOUTE A VIVRES	NO SPACE								
12									
QUARTERS (OFFICERS) - CHAMBRES (OFFICERS)	NO SPACE								
QUARTERS (CREW AND STEERAGE) - POSTES (EQUIPAGE ET EMIGRANTS)	NO SPACE								
QUARTERS (CABIN PASSENGERS) - CABINES (PASSENGERS)	NOT PRESENT								
TOTAL									

WHITE : SHIP MASTER
 YELLOW : PORT FILE
 PINK : PEST CONTROL CENTRE

16 RECOMMENDATIONS RECOMMANDATIONS

HEALTH INSPECTOR SIGNATURE & SEAL
 DUBAI MUNICIPALITY
 PEST CONTROL SECTION

Shipping Law: An Overview

**Mr Alastair MacAulay
Johnson Stokes and Master**

Introduction to Shipping Law

By Alastair MacAulay
15th October 2001



- Shipbuilding Contract/ Shipsales Contract;
- Refund Guarantee;
- Specification.

Shipbuilding Contract/ Shipsales Contract

- Brief description and Performance Criteria
- Price and Payment terms
- Supervision
- Insurance and force majeure
- Delay and Default
- Delivery and Documentation
- Warranty of Quality
- Disputes and Governing Law

Refund Guarantee

- Amount
- Interest
- Expiry date

Specification

- Technical design
- Construction programme
- Materials and supplies
- Detailed plans

- Recap
- Memorandum of Agreement (MOA)
- Delivery documents
- Registration
- Classification
- Radio licence
- Insurance

- Loan Agreement
- Pre-delivery security
 - Contract Assignment
 - Refund Guarantee Assignment

- Post-delivery security
 - Mortgage
 - Assignment of Earnings
 - Assignment of Insurances and Requisition Compensation

- General Security
 - Guarantees/comfort letters
 - Shares charge
 - Charter Assignment
 - Charge over account

- Payment and Release of Loan Funds
 - Deposit in escrow
 - Payment letter of undertaking

- Recap
- Memorandum of Agreement (MOA)
- Deposit on joint account
- Delivery documents
- Release of mortgage
- Completion

- Agreed number of Bill of Sale in <NewFlag> form [, duly notarised and legalised by <NewFlag> consul or apostilled];
- Protocol of Delivery and Acceptance;
- Commercial Invoice;
- [Shareholders and] Board Resolutions, [duly notarised and legalised by [] consul or apostilled];

- Incumbency Certificate annexing certified true copy of the Seller's [Articles of Incorporation and By-laws (if any)] [Memorandum and Articles of Association] and list of directors and officers of the Seller;
- Powers of Attorneys to effect documentary closing [and physical delivery] [duly notarised and legalised by <NewFlag> consul or apostilled];

- Letters of Confirmation that the Vessel (i) is not blacklisted by Arab Boycott league or any other organisation or country, (ii) has not touched bottom, (iii) is not carrier of [Gypsy moth], (iv) has not traded to Russian Pacific Ports;
- Invoices for bunkers and luboils;

- A certificate of deletion, or equivalent, from the last registry or from each of the last registries [duly legalised by <NewFlag> consul or apostilled], whichever is applicable or Letter of Undertaking to complete deletion within 30 days together with:-
 - A letter or a telefax thereof or a telex from the ship's last registry to the <Flag> Registry that it has consented to the closure of registry of the ship and that steps are being taken to effect the closure; or
 - A true copy of the application made by the Seller to the registry where the ship was last registered to close the registration of the ship;

- The following certificates :-
 - [Recent] Certificate of Good Standing [dated not more than [] days prior to delivery];
 - Certificate of Ownership and [Free from Encumbrances] [Encumbrance showing only mortgage in favour of Mortgagee] dated not more than [] days prior to delivery;
 - Tax Cleared Certificate;
 - Permission for Sale to the Buyer and transfer to <NewFlag> flag;

- [Discharge of Mortgage together with application for preliminary registration thereof, fees for preliminary registration and Seller's Mortgage's letter of undertaking to complete permanent registration within 21 days;]
- Class Maintained Certificate confirming the Vessel's class maintained free from recommendations and average damage affecting class dated not more than [] days prior to delivery;

- Trading Certificates, clear, valid and unextended for a minimum of [] months after delivery;
- Copy of the Vessel's IOPP Certificate;
- Tonnage Certificate;
- Copy Certificate of Registry;
- Most recent class quarterly print-out plus Class Certificate showing continuous service cycles of hull and machinery up to date with no outstanding or extensions at time of delivery;

- Letter of Undertaking to physically deliver the Vessel [/Protocol of Physical Delivery]
- [Confirmation from Bareboat Charterer that Bareboat Charterparty has been or will be terminated and that it has no claims against the Vessel.]

Shipping Law: An Overview

**Mr Andrew Williams
The China Navigation Company Limited**

University of Hong Kong, Faculty of Law
And
The Hong Kong Maritime Law Association
Shipping Law: An Overview
15 October 2001
Andrew Williams, The China Navigation Company Limited

I am going to talk to you this morning about the different types of charter parties used in shipping, the way these differ from each other, and what they are used for.

I am also going to talk to you about the different types of marine insurance that a ship owner will normally buy, how he buys them and what risks they cover.

CHARTER PARTIES

There are three main types of charter party:-

- 1) Bareboat or demise Charter
- 2) Voyage Charter
- 3) Time Charter

Charter Parties are documents that encapsulate an agreement between the charterer, who wants to hire a vessel (usually to carry cargo), and the ship owner, who is prepared to hire his vessel out on certain terms.

1) BAREBOAT or DEMISE CHARTER

In the case of a Demise charter, the owner of the vessel effectively gives up total control of his vessel to the Charterer. Usually Demise charters are for a period of years, rather than months.

Because the owner is giving up the whole operation of his vessel to the Charterer, Demise Charters are also referred to as "Bareboat" charters.

During a Bareboat Charter, the Charterer effectively steps into the shoes of the ship owner, and becomes responsible for:-

- 1) Manning the vessel
- 2) Maintenance of the vessel
- 3) Certification of the Vessel (i.e. with National Authorities)
- 4) Insurance of the Vessel

The Charterer decides where the vessel will trade, what cargo she will carry, and also takes responsibility for the condition of that cargo (i.e. Charterer has no claim against Owner if the cargo becomes damaged).

A Bareboat charter may take the form of a lease-purchase agreement, meaning the Charterer pays hire for the vessel for a number of years, and at the end of the Charter period, he becomes the legal owner of the Vessel.

Bareboat charters can be used by major energy producers, such as Natural Gas producers, who provide upfront capital to build a ship or series of ships, but do not want the burden or responsibility of running them.

In such as case, they may do a multi-vessel deal with a Bareboat Charterer, under which the energy producer provides the capital to build the vessels, which are then operated by the Charterer under a lease/purchase Bareboat Charter. This arrangement is mutually beneficial - the energy producer will have a constant supply of tonnage built to its specifications and operated by someone it trusts, whereas the charterer has a steady income stream for a number of years, and ends up owning the vessels.

2) TIME CHARTER

This is a very common form of charter.

Under a Time Charter, the Owner lets his ship, and a Charter hires the ship for a period of time such as 12, 6 or 3 months.

The Charterer is in effect renting the commercial capabilities of a ship - usually its cargo carrying ability. The Charterer can order the vessel to carry pre-agreed cargoes, within agreed operating limits.

The Owner retains full operational control of the vessel, being responsible for supplying the crew, maintenance, insurance and Certification of the Vessel. The Charter pays the Owner a monthly charter hire, usually paid on a 14 day basis in advance.

The Charterer pays for the fuel for the vessel, all port charges, and the costs of loading and unloading the cargo. If a charterer provides poor quality fuel to the vessel and damages the engine as a result, then the charterer is liable to indemnify the owner for the damage.

Responsibility for cargo claims is usually determined by a clause in the Charter Party. A normal division of responsibility for cargo claims would be that owners pay for any claim due to unseaworthiness, such as sea water leaking through the ship's hatches, whereas Charterers pay for claims caused by the stevedores who load and unload the vessel. Claims for shortage of cargo are normally shared 50/50 between owners and charterers, unless there is clear evidence that the servants of one party or the other were responsible for the shortage.

As with any contract, clear and concise terms should be used. Things to clarify in the charter party are:-

Period of hire

Trading limits

Place of delivery/redelivery - be precise

Time of delivery/redelivery

Description of vessel, speed, bunker

Quality of bunkers

Cargo liability - NYPE InterClub Agreement

Bills of lading - charterers responsibility

Non-Payment of Hire

War & Ice clauses

Redelivery in like good order, hold cleaning

3) *VOYAGE CHARTERS*

Under a Voyage Charter, a Charterer pays an agreed lump-sum freight to hire the space of a Vessel for one voyage.

The charter should contain precise wording to record who pays for waiting time at the load and discharge ports. The C/P will include a set number of Laydays, meaning the number of days that the charterer predicts will be required for loading and discharging the cargo. These laydays will be factored into the agreed freight rate.

If the charterers manage to load or discharge the ship faster than stated in the C/P, the owner pays charterers "despatch" money. Similarly, if the cargo operations take longer than predicted, then the charterer has to pay what is known as "demurrage" for the extra time taken.

Under a voyage charter, cargo claims due to unseaworthiness are normally for owner's account, and charterers pay all other cargo claims. To give you an everyday example of the difference between a Voyage and a

Time Charter:-

If you rent a Sampan to take you from one end of Aberdeen harbour to the other, and pay a fixed sum (or freight) for a one-way trip between two fixed points, then what sort of charter is this? - Voyage.

On the other hand, if you hire a junk for the summer, then this is equivalent to a time charter. You are entitled to use the capacity of the junk and instruct the Master to proceed to different places, within a pre-agreed range. You will pay a monthly hire for the junk, but the owner remains responsible for manning, insuring and certifying it.

INSURANCE

Hull & Machinery

This protects owners for damage to the ship's hull, and also its machinery such as the main engine and generators. The insurance is commonly placed at Lloyds of London (but not exclusively). A shipowner will normally use an insurance broker to canvass the insurance market and secure the best terms of premium and deductibles.

Protection & Indemnity

This covers a shipowner for the third party liabilities he might incur as a result of operating his vessels.

It includes cargo claims (because the shipowner is not the owner of the cargo), the crew onboard the vessel, damage to third party property including piers, wharfs etc, collision with other vessels and oil pollution.

There are 14 Protection & Indemnity Clubs in what is called The International Group, who between them insure over 90% of the vessels in the world. The Clubs are mutual meaning each shipowner is a member of the Club, and is liable to pay supplementary premiums if the Club has a bad year.

The 14 International Group Clubs then mutually insure each other, so if one Club has a major claim, then all the other Clubs will contribute to share the "pain" throughout the International Group. This system of insurance has worked extremely well for over 130 years

and is without doubt the best method of providing shipowners with the maximum amount of cover at the best possible cost.

The current level of cover provided by the International Group Clubs is in the region of US\$4.25 Billion.

Freight, Demurrage & Defence

This is the most important type of insurance so far as lawyers are concerned! That is because it indemnifies a shipowner for the legal costs of disputes that he might be involved in as a result of the trading of his vessels.

It is important to note that FD&D does not reimburse the amount in dispute, only the legal fees incurred in connection with a dispute. The most common disputes are with charterers over matters such as demurrage (waiting time), and also with shipyards during or after construction of a vessel.

Other disputes covered by FD&D would be with bunker suppliers, repairers of the vessel, stevedores, insurers, salvage companies, disputes with passengers or crew.

Loss of Hire

This covers an owner for the loss of his hire income due to an accident to the ship such as a grounding or a machinery breakdown. There is normally a deductible of 14 days which is for owner's account, then Loss of Hire underwriters start to reimburse a fixed and agreed sum per day, up to a maximum of 90 or sometimes 180 days.

This type of cover is expensive but it protects a shipowner's cash flow. In certain circumstances, bankers who lend money to an owner to build a ship will insist that the owner buys Loss of hire cover to ensure that the bank's loan repayments are protected.

War Risks

The hot topic at the moment! War Risks covers owners for loss of or damage to the vessel arising from war or warlike acts, and also piracy and terrorism, as well as for detention of a vessel due to war or warlike acts.

So if a vessel gets stuck in Iraq because the Iraqi Government decides to prevent ships from sailing, then after an agreed period of time, war risk insurers will deem the vessel to be totally lost to the owner, and will pay out the full insured sum of the vessel.

War risks insurance also covers P&I risks arising from war. So if oil pollution from a vessel is caused by a warlike act, then the War insurers will pay out.

War risk insurance is charged at an agreed base level on every vessel worldwide. In times of conflict such as now, war risk insurers have the right to cancel cover on 7 days notice, and then offer to reinstate it against the payment of an additional premium.

Shipping Law – An Overview

**Mr Fung King Tak
Koo and Partners**



Legal Experience

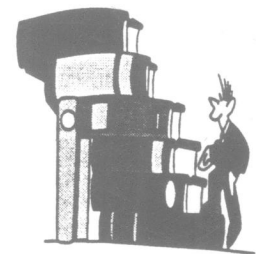
Mr. Fung King Tak is a partner at the Banking Practice Group of Koo and Partners. His practice specialises at banking and structured trade products.

He is admitted in Hong Kong, England and Wales. He obtained a Master of Laws Degree, Post Graduate Certificate in Laws and Bachelor of Social Sciences Degree from the University of Hong Kong.



He has been appointed as an Expert Witness to give Expert Opinion Reports on trade and banking matters in Hong Kong courts. He has presented a number of legal seminars for the Continuing Professional Development Program of the Law Society of Hong Kong. Since 1998, over 400 lawyers have attended Mr. Fung's highly interactive workshops with excellent feedback.

Mr. Fung has written a number of workbooks on Incoterms 2000, International Trade Finance, Bank Guarantees and International Standby Practices 1998, Bank Security Documents, Law Relating to Banking Operations, Cheques & Remittance and International Sale Contract. These workbooks address issues from legal, banking and commercial point of view with the support of real banking, fraudulent and leading court cases.



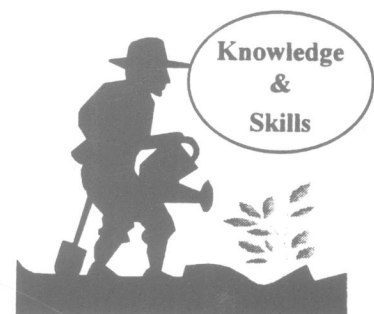
The workshops that Mr Fung has conducted for the International Chamber of Commerce ("ICC") include "Incoterms 2000", "Case Studies on Int'l Trade Finance - UCP 500", Bank Guarantees & Standby L/C's - ISP98", "ICC Model International Sale Contract" & "Certified Documentary Credit Specialists Exam Revision Courses."

Banking Experience



Mr. Fung was formerly Vice President at Bank of America (the "Bank"). He spent 8 years in the Corporate Banking Department as a Credit and Marketing Officer in charge of trade finance and commercial banking business development and credit approval. He spent 5 years in the Asia Operations Centre of the Bank as Head of Trade Finance, Remittance, Finance and Accounting Departments.

Mr. Fung is currently a member of the Executive, Banking and Arbitration Committee of ICC-Hong Kong and China Business Council. He has also been invited to conduct a number of legal, banking and presentation workshops for the HK Trade Development Council, HK Institute of Bankers, HK Institute of Company Secretaries, Dun & Bradstreet, Quality Education Fund and various financial institutions and multinational corporations in Hong Kong, the PRC and overseas. Over 2,900 bankers and 1,400 business executives have participated in Mr. Fung's practical, educational and also entertaining workshops since 1998.



Incoterms 2000

The “E”-term is the term in which the seller’s obligation is at its minimum: the seller has to do no more than place the goods at the disposal of the buyer at the agreed place.

Group E		
Departure	EXW	Ex Works (... named place)

The “F”-terms require the seller to deliver the goods for carriage as instructed by the buyer.

Group F	FCA	Free Carrier (... named place)
Main carriage unpaid	FAS	Free Alongside Ship (... named port of shipment)
	FOB	Free On Board (... named port of shipment)

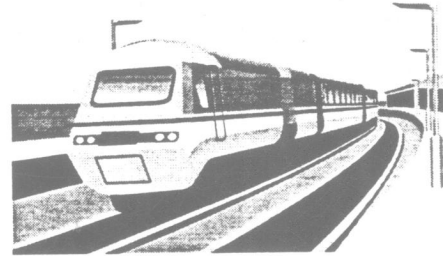
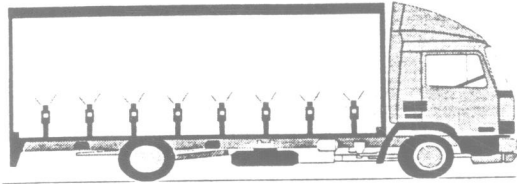
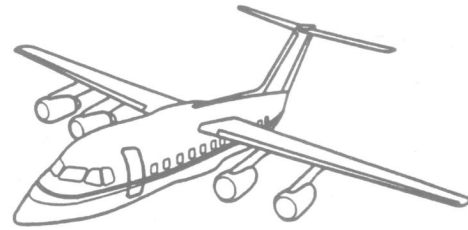
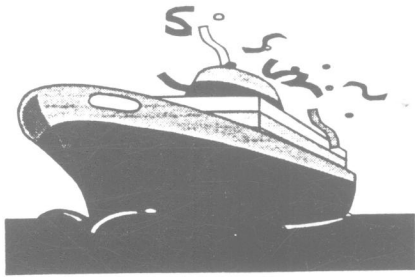
The “C”-terms require the seller to contract for carriage on usual terms at his own expense.

Group C	CFR	Cost and Freight (... named port of destination)
Main carriage paid	CIF	Cost, Insurance and Freight (... named port of destination)
	CPT	Carriage Paid To (... named place of destination)
	CIP	Carriage and Insurance Paid To (... named place of destination)

The “D”-terms require the seller to make the goods available upon arrival at the agreed destination.

Group D	DES	Delivered Ex Ship (... named port of destination)
Arrival	DEQ	Delivered Ex Quay (... named port of destination)
	DAF	Delivered At Frontier (... named place)
	DDU	Delivered Duty Unpaid (... named place of destination)
	DDP	Delivered Duty Paid (... named place of destination)

MODES OF TRANSPORT

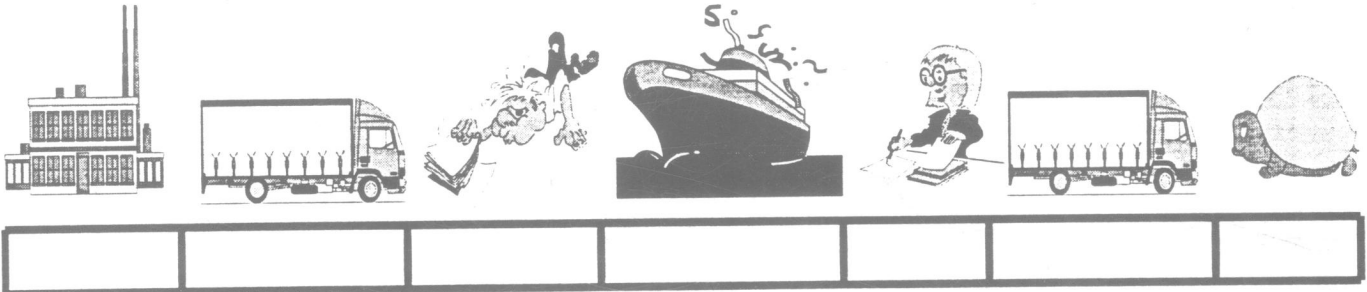


Q1. Maritime and inland waterway transport only

The magic word is named _____ of shipment or destination

Q2. Any mode of transport

The magic word is named _____ or named of destination



Q3. Please fill in the following steps into the boxes above:

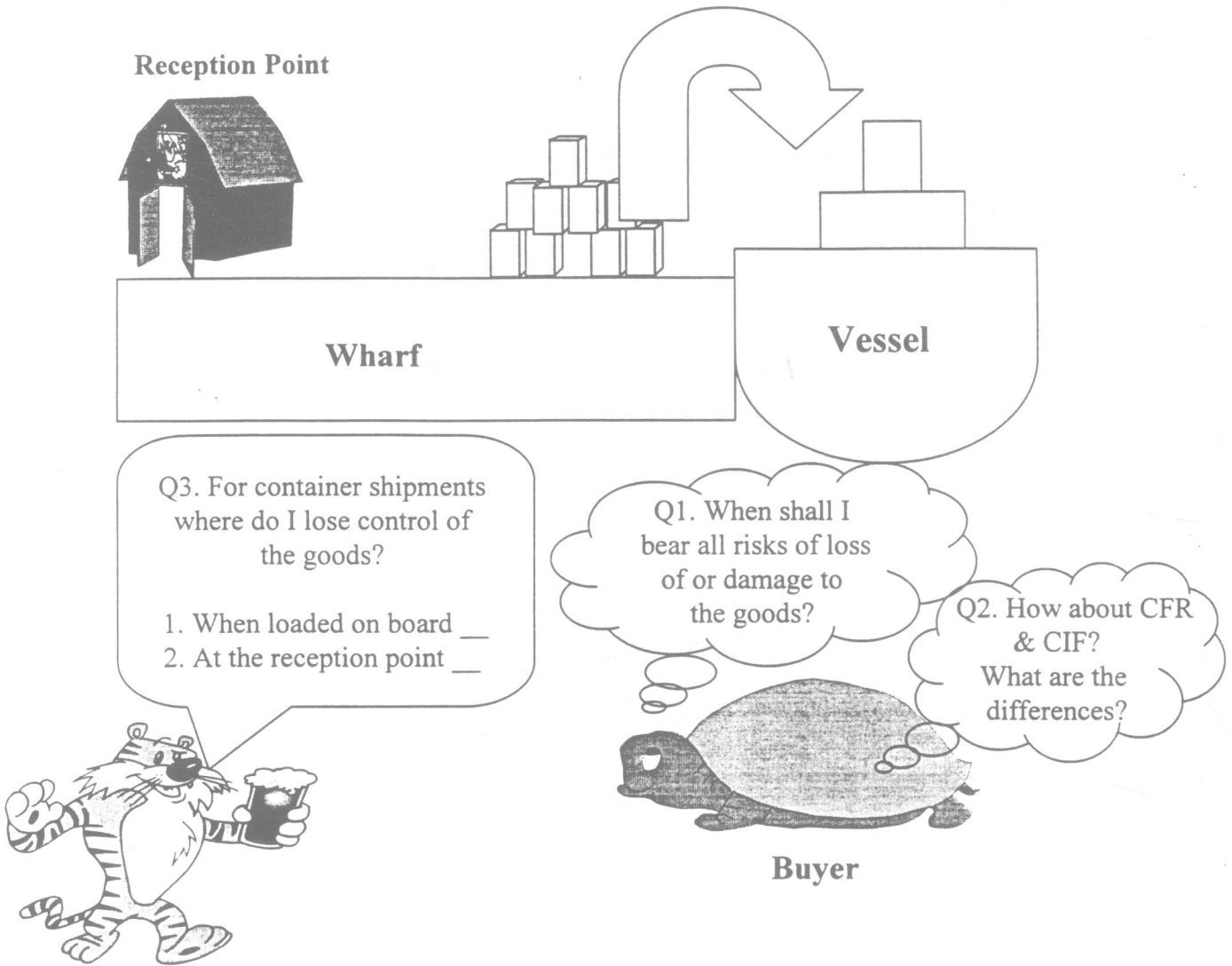
1. Ex Works
2. Main Carriage
3. On-carriage
4. Export Clearance
5. Pre-carriage
6. Import Clearance
7. Receipt of goods by buyer

Q4. Please insert the Incoterms applicable to the following modes of transport (See pages 126-127)

	Water Transport Only		Any Mode of Transport
Group E			EXW
Group F	FAS FOB		FCA
F signifies seller must hand over the goods to a nominated carrier _____ of risk & expense to the buyer.			
Group C	CFR CIF		CPT CIP
C signifies seller must bear certain _____ even after the critical point for the division of the risk of loss or damage to the goods has been reached.			
Group D	DES DEQ		DAF DDU DDP
D signifies goods must arrive at a stated _____.			3

FOB CFR CIF

Free On Board (...named port of shipment)

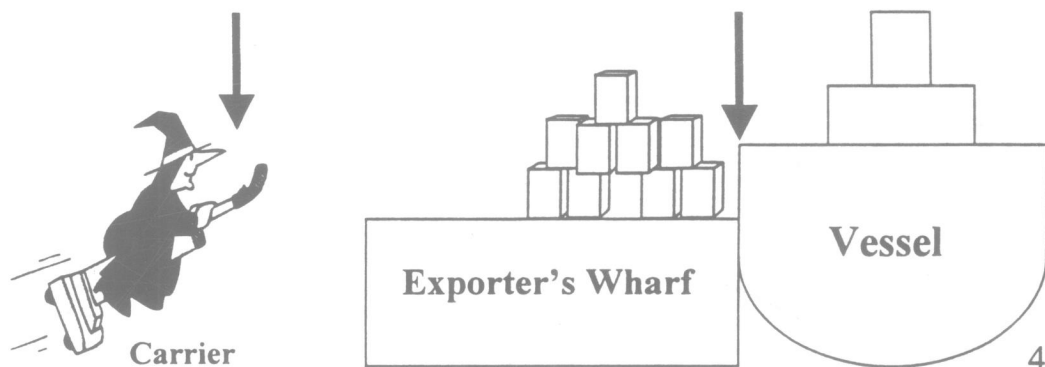


Seller

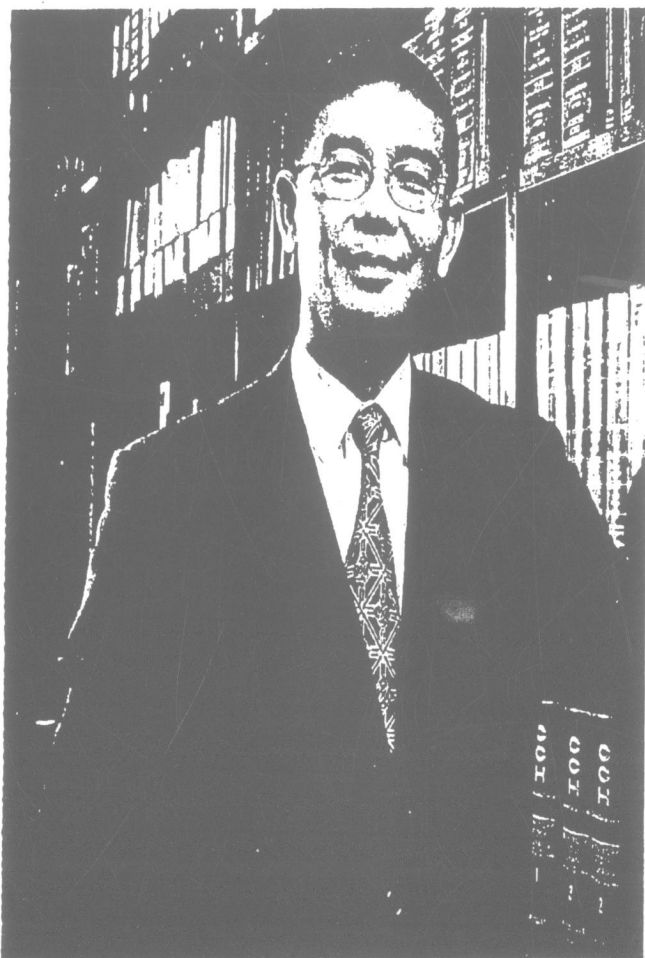
Risks Transfer Points

Please state the risks transfer points of the following Incoterms in the diagram:

- FOB, CFR, CIF
- FCA, CPT, CIP



歡迎讀者提供本版意見，請電 2565 4288 或傳真 2811 1926



布朗伍德法律事務所律師馮敬德表示，廠商宜採國際商會認可的報價單位，以避免雙方的權責糾紛。(譚德潤攝)

貨物交承運人即完成責任 海陸空適用 廠商採 F C A 報價 可免招損

布朗伍德法律事務所律師馮敬德表示，到目前為止，香港的出入口業，超過九成仍然錯誤使用 FOB 為報價單位，出現香港廠家需要承擔額外風險的情況。其實國際商會早於一九九〇年推出貨交承運人（即 F C A），並於同年重新修訂船上交貨（即 F O B）的定義。

FOB 僅船運適用

根據目前國際商會出版的《Incoterms 2000》，FOB 的定義是貨物被吊上船後，廠家才完成其責任。由於涉及貨物運上貨船的時間問題，FOB 只適用於船運。

而 FCA，則被定義為貨物交付給貨物承運人，廠家的責任即告完畢，所以 FCA 適用範圍包括海、陸、空，任何一種運輸方式。

馮敬德指出，香港廠家一般錯誤使用 FOB，以為將貨物交付到貨櫃碼頭的時候，本身的責任已經完成，所以都沒有替貨物購買保險。

不過，實際情況是買家的保險要到貨物被吊上船才生效，所以貨物在貨櫃碼頭的風險仍然由廠家承擔。

倘若貨物在貨櫃碼頭發生任何意外，廠家便需要負上責任。

免碼頭發生意外 遭索償

馮敬德舉例，外國貨櫃碼頭曾經發生大火，令全部貨物「葬身火海」，但由於當地廠家在報價時，錯誤填上 FOB，責任不在買家，所以買家的保險公司拒絕賠償。

他續稱，當廠家所運送的貨物，在貨櫃場發生洩漏事件（如油品）時，買家僱用的保險公司，絕對有權拒絕為廠家繳付貨櫃碼頭公司所追討清理的費用。有關風險亦包括，運輸工人在搬運時，損壞貨物的賠償問題。

而另一個最常見的情況，是一些買家，利用 FOB 只可以以海運為運輸方法的規定，指摘一些利用空運和陸運送貨的廠家違反買賣合約，並要求終止有關合約。

馮敬德指出，這個情況最常見是當貨品的市場價格下跌，買家不再希望以較早時承諾的價格，去購買有關產品的時候出現。

一般來說，買家旨在希望向廠家「壓價」，而馮敬德指出，廠家的解決辦法，除了再和買家討價還價，就是在當地尋求其他買家，否則廠家不但要承擔當地的貨倉租金，亦要將整批貨品運回香港。

不過，亦有一個案例，法庭判定買家要繼續執行雙方的買賣合約。原因是買家在過去，和廠家有多次貿易的紀錄，既然以前買家接受廠家的有關錯誤，那麼就再沒有理由終止合約了。

免遭「壓價」 突撤合約

馮敬德提醒廠家，要避免以上的權責問題，只需要在報價時，採用國際商會認可的適當報價單位，便可以完全避免。

根據國際商會香港辦事處透露，兩本由商會出版有關 Incoterms 2000 條例及解釋的書籍，一共售出了超過二千本，顯示香港貿易界對外國買家報價的方式及規則，十分關注和重視。

讀者如有需要可以聯絡國際商會香港辦事處，電話號碼：二九七二〇〇〇六，與陳小姐接洽。

■本報記者 王永森

Bills of Lading & Letters of Credit

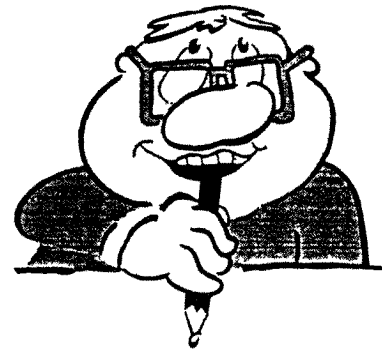
Q1 How does Art. 23 of UCP 500 serve to achieve the purposes stated at the left hand side below:

Show the identity of the party responsible for the voyage	•	•	By including the port of loading in the on-board notation if the place of receipt is different from the port of loading
Ensure goods are loaded on board	•	•	Referring to the on-board notation or the issuing date of the B/L if the loading on board wording is pre-printed
Confirm the shipment date	•	•	By showing an on-board notation indicating the date that the goods have been loaded on board unless such wording is pre-printed on the B/L
Identify the vessel that goods are loaded on board	•	•	By indicating the name of the carrier , which is identified as the “carrier”, on the face of the B/L i.e. not at the back
Identify the port that goods are loaded on the designated vessel	•	•	By including the name of the vessel that the goods have been loaded in the on-board notation if the B/L contains “ intended vessel ” or similar qualification

Q2 Is the following authentication of a B/L acceptable?

Overseas Containers Limited
 (The shipping company's name is shown at the top right hand corner)

For the carrier:
 Mr. ABC's signature
 As agent(s) only



Yes _____ No _____

Q3. An L/C calls for a ocean bill of lading with shipment from Shanghai to Chittagong, Bangladesh. Transhipment allowed. Is the following B/L acceptable under Art. 23(b)(ii)?

Pre-Carriage by Vessel AAA	Place of Receipt (blank)
Ocean Vessel Vessel BBB	Port of Loading Shanghai
Port of Discharge Chittagong, Bangladesh	

On Board Notation shows:
Shipped on board 28-3-1999

POSITION PAPER No 4

Issued by the International Chamber of Commerce ("ICC") in 1994

Article 23 Marine/Ocean bill of lading - the Uniform Customs and Practice for Documentary Credits ICC Publication No. 500 ("**UCP 500**")

Article 24 Non-negotiable sea waybill

In view of the controversy surrounding some individual interpretations of sub-paragraph (a)(i) of these Articles, the Banking Commission wishes to clarify the position by setting out requirements as under:

1. The name of the carrier must appear as such on the front of the document.

The expression 'the front of the document' means the side showing the details of the goods, vessel and voyage, and the expression 'the back of the document' means the side showing the details of the contract of carriage.

NOTE - Sub-paragraph (a)(v) of these UCP Articles states that banks will not examine the contents of the terms and conditions of carriage.

Banks will therefore reject documents which fail to comply with the requirement set out in '1' above, i.e. which fail to indicate the name of the carrier on the front of the document, even though the identify of the carrier may be indicated on the back of the document.

2. Where the document is signed by the carrier, it is not necessary for the word 'carrier' to appear again in the signature box when it has already been used on the front of the document to identify the party acting as carrier.

3. Where the document is signed by an agent for (or 'on behalf of') the carrier, the agent must be named and must indicate the principal for (or'on behalf of') whom he is signing, in one of the following ways:

(a) when the word 'carrier' has not been used on the front of the document to identify the party acting as carrier, e.g.

ABC Co. Ltd.
as agent for (or 'on behalf of')
XYZ Shipping, carrier

(signature)

(b) when the word 'carrier' has been used on the front of the document to identify the party acting as carrier, either, e.g.

ABC Co. Ltd.
as agent for (or 'on behalf of')
XYZ Shipping, carrier

(signature)

or

ABC Co. Ltd.
as agent for (or 'on behalf of')
XYZ Shipping

(signature)

or

ABC Co. Ltd.
as agent for (or 'on behalf of')
the above named carrier

(signature)

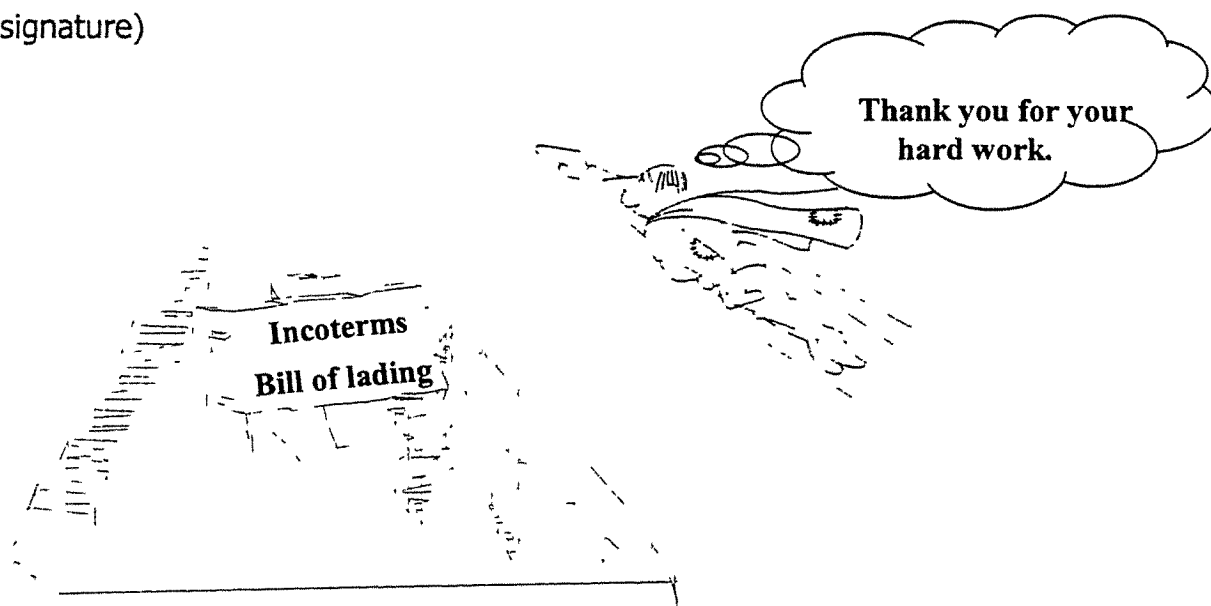
or

ABC Co. Ltd.
as agent for (or 'on behalf of') the carrier
(signature)

4. It is not necessary for the name of the Master to be quoted when the document is signed by the Master. When the document is signed by an agent for (or 'on behalf of') the Master, the agent must be named and must quote the name of the Master for (or 'on behalf of') whom he is signing, e.g.

ABC Co. Ltd.
as agent for (or 'on behalf of') John Doe, Master,

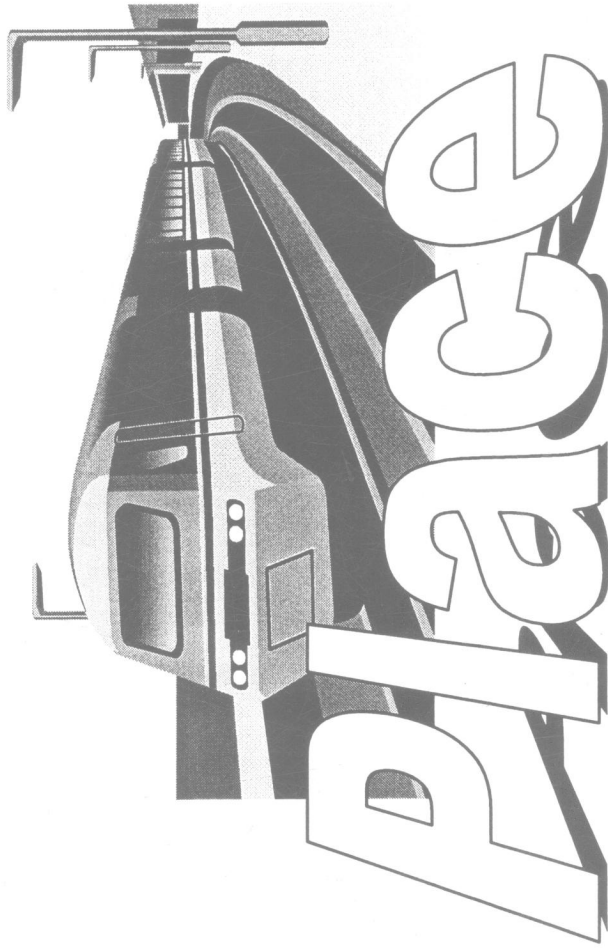
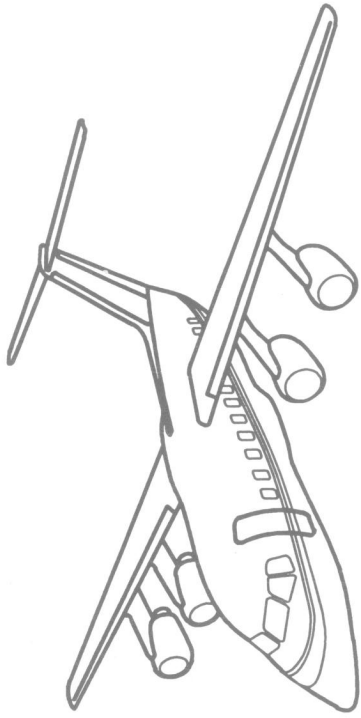
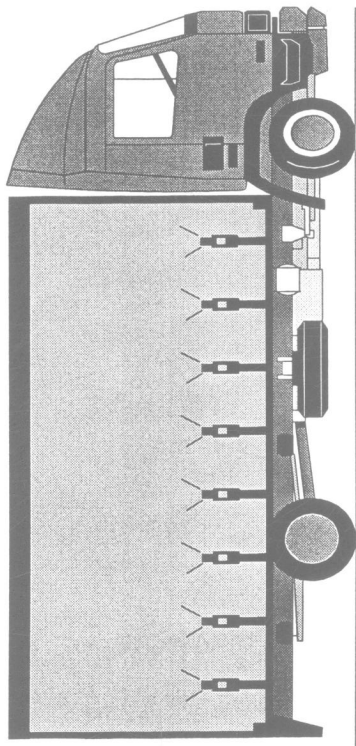
(signature)



In case you have any question, please feel free to call me at 9269 5955.

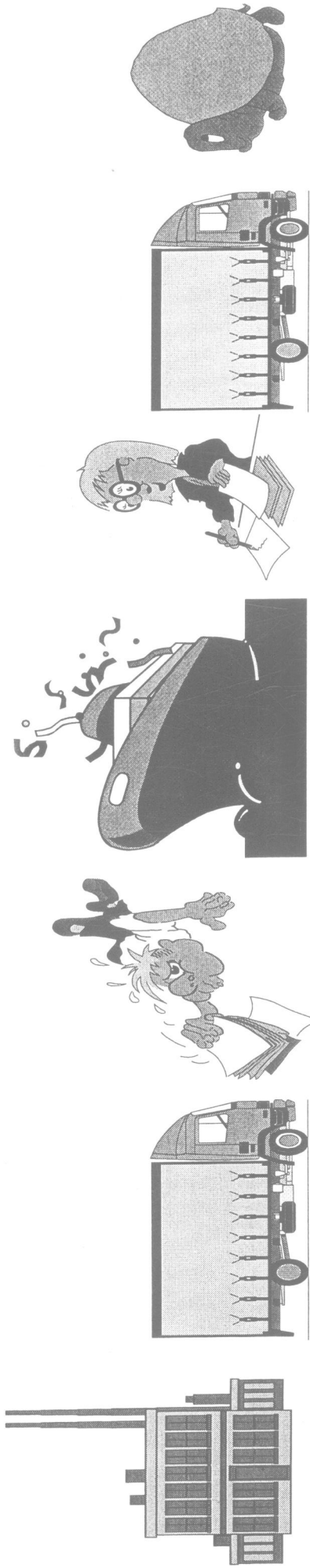
MODES OF TRANSPORT

P126

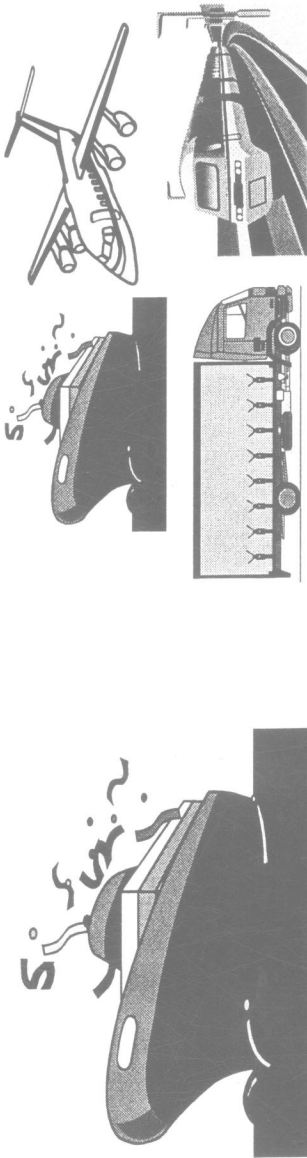


**Magic Word for waterway:
Named ? of shipment or
named ? destination**

**Magic Word for any mode:
Named ? or named ? destination**



1	5	4	2	6	3	7
---	---	---	---	---	---	---



Shipment

Arrival

EXW

FCA

FAS FOB

Free

CPT CIP

CFR CIF

Costs

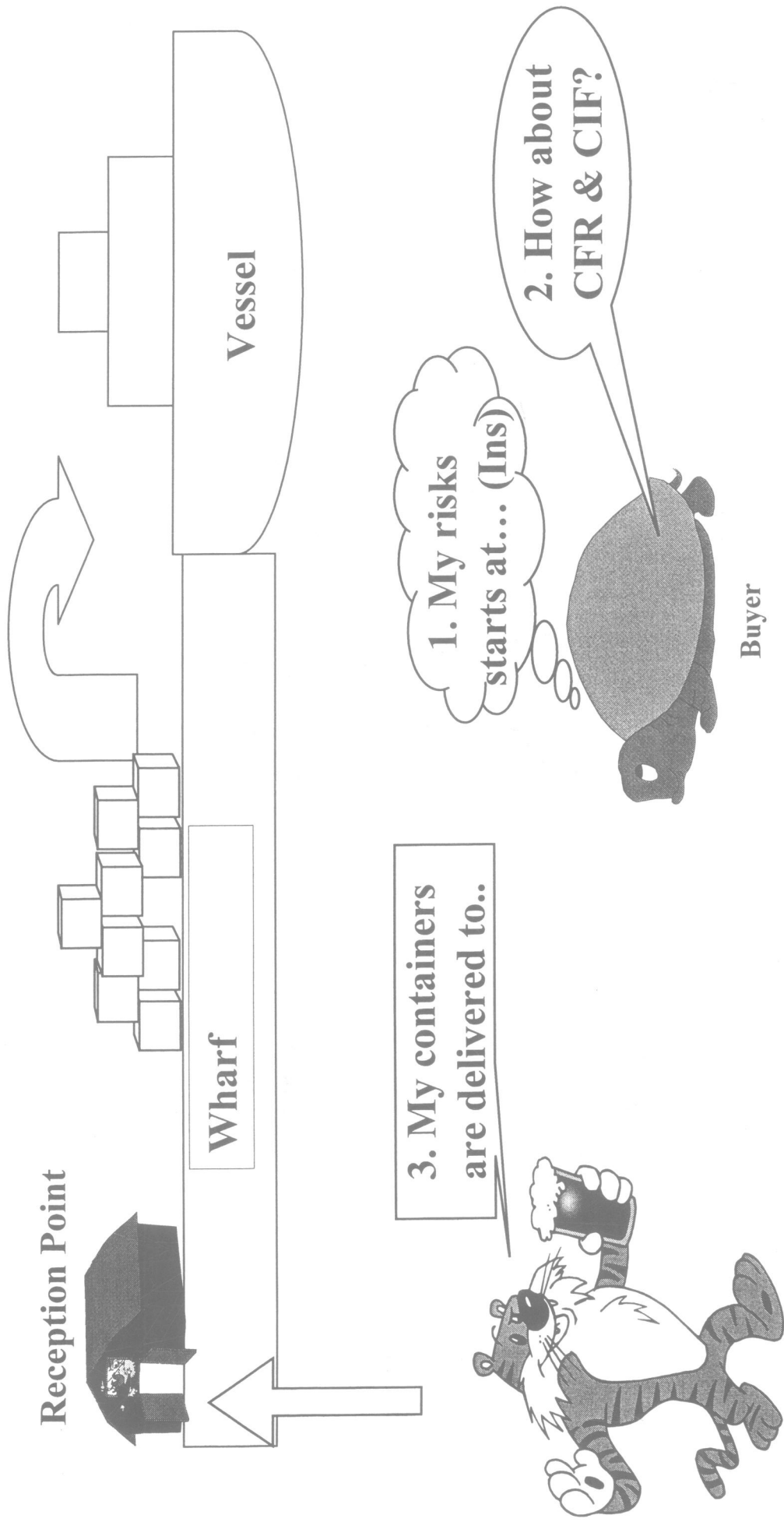
DAF DDU DDP

DES DEQ

Dest.

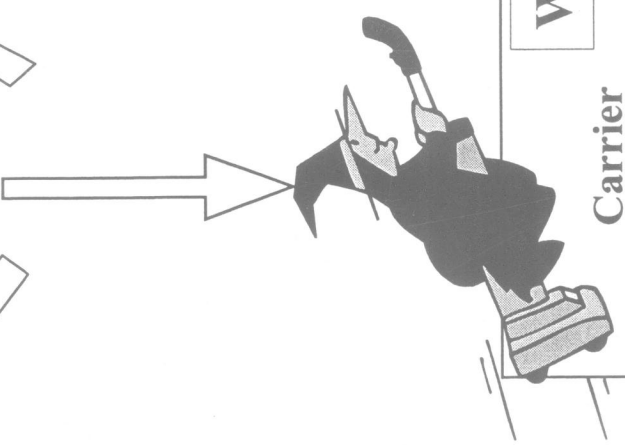
FOB

Free On Board (...named port of shipment)



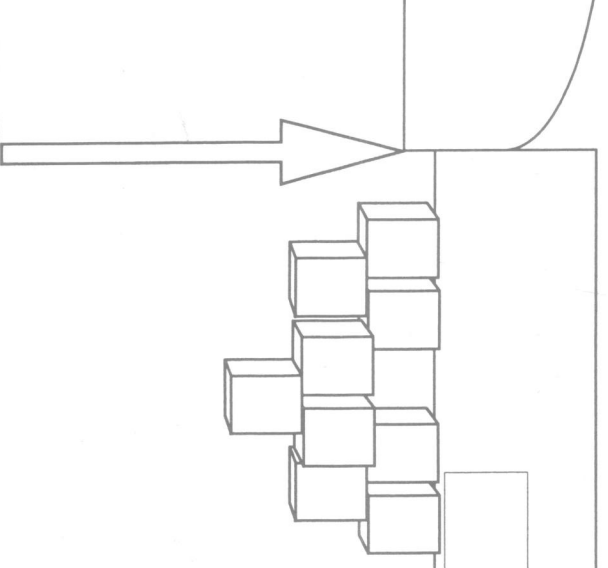
Risks Transfer Points

CIP
CPT
EXW



Carrier

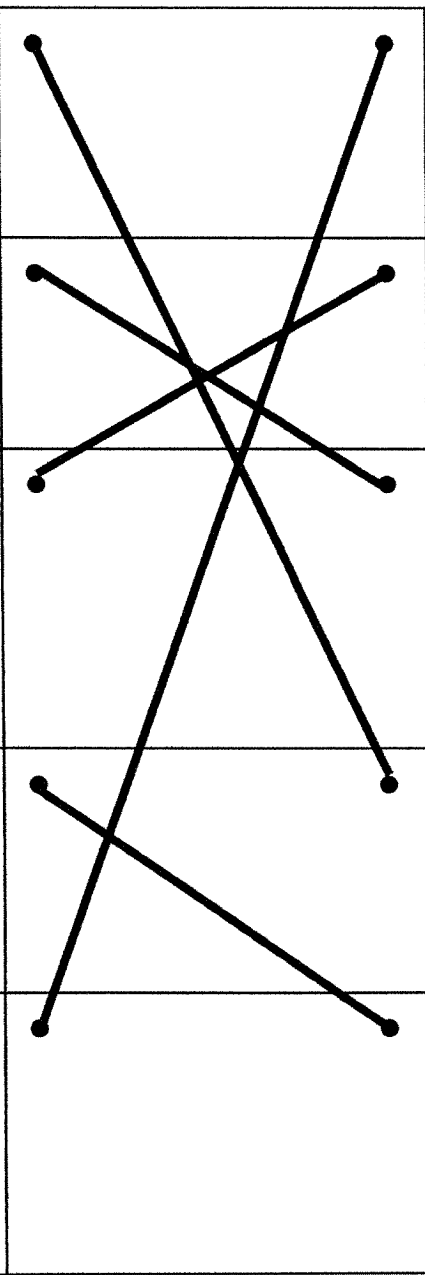
CFR
FOB



Wharf

Vessel

Q1 How does Art. 23 serve to achieve the purposes stated at the left hand side below:

Show the identity of the party responsible for the voyage		By including the port of loading in the on-board notation if the place of receipt is different from the port of loading
Ensure goods are loaded on board		Referring to the on-board notation or the issuing date of the B/L if the loading on board wording is pre-printed
Confirm the shipment date		By showing an on-board notation indicating the date that the goods have been loaded on board unless such wording is pre-printed on the B/L
Identify the vessel that goods are loaded on board		By indicating the name of the carrier , which is identified as the “carrier”, on the face of the B/L i.e. not at the back
Identify the port that goods are loaded on the designated vessel		By including the name of the vessel that the goods have been loaded in the on-board notation if the B/L contains “ intended vessel ” or similar qualification

Overseas Containers Ltd.

**Identification
of carrier is
required;
Named agent too!**

**for the carrier
Mr. ABC's
signature
As agent(s) only**

**Pre-carriage by
Vessel AAA**

Place of Receipt

**Ocean Vessel
Vessel BBB**

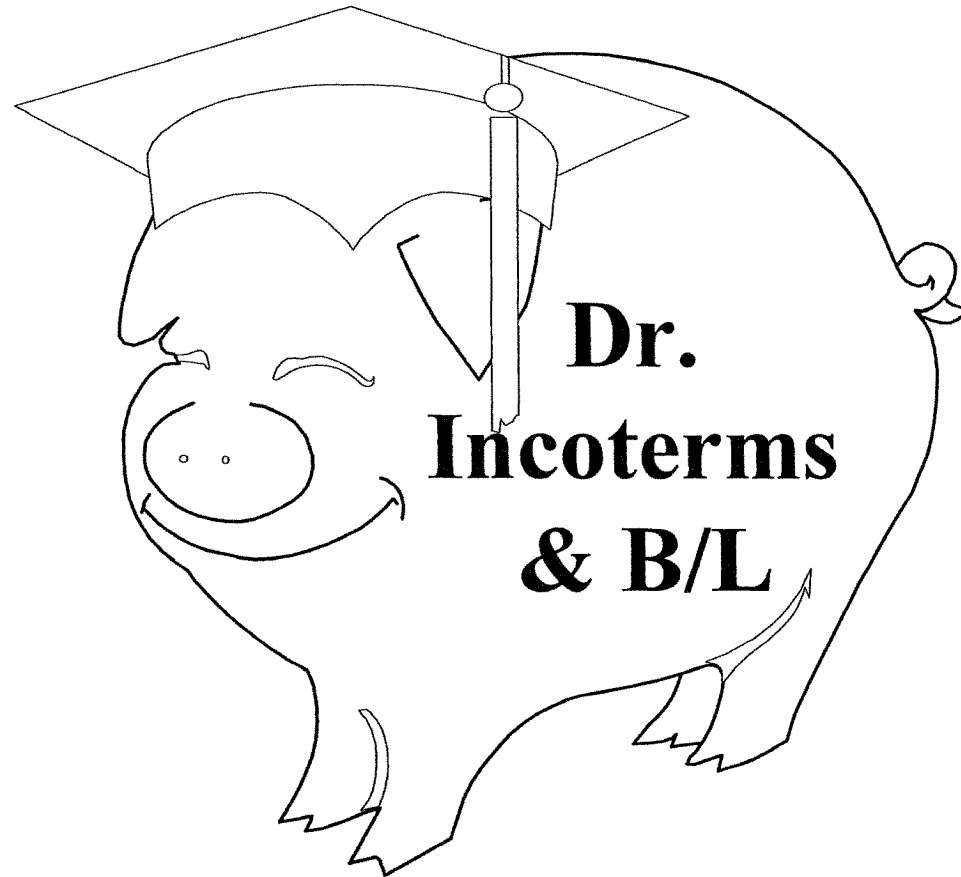
**Port of Loading
Shanghai**

**Port of Discharge
Chittagong, Bangladesh**

On Board Notation

Shipped on board 28-3-1999

How is your performance today?



See You Again!

Shipping Law – An Overview

**Mr John Kerr
Barrister-at-law**

BOOKING ORDERS, BILLS OF LADING AND DELIVERY ORDERS

1. This aspect of the Seminar deals with the actual business of shipping cargo and the documentation needed in order to ship cargo. There are three main ways in order to ship cargo.
 - (i) Using freight forwarders.
 - (ii) Using shipping companies who operate on a liner basis.
 - (iii) Chartering vessels yourself, either on a voyage charter or a time charter.

Freight Forwarders

2. Freight forwarders are increasingly commonly used in Hong Kong and provide a full service. Freight forwarders can arrange numerous services but their convenience obviously comes at a cost.
3. In order that the freight forwarder can understand your shipping needs, normally initial contact is by telephone and thereafter the freight forwarder will send you a booking order. In that booking order you will have to provide information as to what you wish the freight forwarder to do with your cargo. Obviously you will have to provide the date of availability of your cargo and in turn you will be quoted a rate which may not be an inclusive for shipment to the destination port.

4. You will have to specify what services you want.
- (i) Do you wish to stuff your cargo into containers yourself? Or do you wish them to arrange this service?
 - (ii) Equally do you have your own containers? Or do you require the hire of containers?
 - (iii) Do you wish to transport your cargo to the container terminal yourself? Or do you wish the freight forwarders to arrange transportation on your behalf?
 - (iv) Is your cargo sufficient to fill a container or for reasons of economy, should your cargo be consolidated with another cargo and then shipped in one container?
 - (v) Do you insist upon straight delivery i.e. delivery at the discharge port after a direct shipment.
 - (vi) Alternatively is your cargo to be a trans-shipped i.e. unloaded in another port and loaded onto another vessel before arriving at the destination port?
 - (vii) Is your cargo to be transported on a multi modal basis, i.e. will it be transported not just by sea by also by rail and/or road?
 - (viii) On what basis is your cargo to be collected at the delivery port? Do you wish the freight forwarders to store it?

5. The delivery order is designed to provide the freight forwarder with these basic practical details.
6. Depending on what freight forwarder you use, you will either be given a form or more commonly a blank delivery order for you to fill in. Once that has been filled in and the freight forwarder has calculated his charges, a delivery order will be issued to you showing the amount you are to be charged for the shipment.
7. Upon the presentation of the cargo the delivery order is presented and at that point you should receive a Bill of Lading. The Bill of Lading is a freight forwarders bill and will thereafter govern the terms of the contract.

Shipping companies operating on a liner basis

8. A common alternative to a freight forwarder and perhaps a more traditional alternative is a shipping company operating on a liner basis, such as Maersk, NYK, Neptune Orient Lines, OOCL and Evergreen. They operate scheduled voyages which are advertised and their agents provide similar services to that of a freight forwarder, although in general the smaller the cargo the less commercially viable it would be to use a liner company direct. For instance the liner company may not be prepared to consolidate cargo or arrange for delivery on a multi modal basis.

Shipping on a Chartering Basis

9. This topic has been dealt with above, but generally shipping on a chartering basis is only for the shipper who has large bulk cargo making it viable to charter a vessel for a voyage or a period of time. Essentially this is a more

sophisticated operation; by and large the charterer will either have to arrange for the loading and unloading of his cargo himself or engage the services of another shipping company to perform those tasks.

10. However, for today's purposes I am concerned mostly with freight forwarders and liner companies, as this comprises of the bulk of cargo shipped from and to Hong Kong.

Freight Forwarders v. Liner Companies

11. The main difference between freight forwarders is they are more convenient but cost more. Liner companies operate their own vessels, whereas freight forwarders engage liner companies or other companies to carry cargo on their behalf. Both the freight forwarder and the liner company will issue Bills of Lading and as far as the shipper is concerned, the operative document, is the document he receives from either the liner company or the freight forwarder. Notwithstanding this, there are often many other different Bills of Lading.

What is a Bill of Lading?

12. A Bill of Lading performs 3 basic functions.
- (i) It evidences receipt of the goods. The Bill of Lading is usually issued around the time the goods are received and thus shipper has a document which fixes his contractual partner as the bailee of the cargo.
 - (ii) The terms of the Bill of Lading will normally evidence the terms of the contract of carriage. Note only evidence but good evidence. In many cases the contract of carriage as printed on the Bills of Lading will be subject to statutory enactments, such as the Hague Rules, the Hague

Visby Rules and/or the Hamburg Rules. These are applicable during the sea voyage and various other conventions can be applicable at other times e.g. the CMR during land carriage. These mandatory conventions will override the terms of the Bill of Lading.

(iii) A Bill of Lading is a document of title, when the Bill of Lading is endorsed in blank. The effect of this is that the ship owner cannot release the cargo or should not release the cargo without production of an original Bill of Lading, when the cargo arrives at its destination port. Thus the custody of the Bill of Lading is crucial for international carriage.

13. The above are three basic characteristics of Bills of Lading (which are normally issued in a set of three).
14. Regardless of whether the Bill of Lading is a freight forwarders bill, or a liner bill or any other form of Bill of Lading, the whole purpose of the issuance of the Bill is to ensure that the cargo goes to the correct person. By virtue of the fact that normally endorsed Bills are issued, the only way this is achieved is by the surrender of an original Bill at the destination port.
15. There are however numerous types of Bills of Lading, some of which will not be the operative document as far as the shipper is concerned.

Freight Forwarders Bills

(i) Freight forwarders Bills are almost always the operative document as far as the shipper and consignee are concerned. They have the advantage that they will normally cover the whole period of carriage,

which may often include a land carriage or a period of storage at the destination port by the freight forwarders agent in the foreign port. Almost certainly the freight forwarder will have no pecuniary interest in the vessel which carries the cargo and will issue his house bill to the shipper which provides a shipper with significantly less security than for instance say a liner bill.

The reason for this is that the Bill of Lading issued by the freight forwarder is only as good as the company which purports to issue the Bill of Lading. For instance it used to be a common practice in Hong Kong for freight forwarders to have a Panamian company whose sole purpose was simply to issue Bills of Lading on behalf of its freight forwarding parent. If something went wrong with the cargo, effectively these documents were worthless as the shipper was left with the difficulty of having to sue a Panamian company with assets. For this reason for many years, bankers have refused to accept certain freight forwarders bills because of the lack of security.

FIATA Bills of Lading

- (ii) FIATA Bills of Lading are issued in a form approved by the Freight Forwarders' Association. The advantage of these Bills of Lading is that they are issued by the actual freight forwarder which may well be a significant transport organisation. Generally banks will accept FIATA Bills of Lading because they provide the shipper and/or financier with a degree of security.

Liner Bills of Lading

- (iii) These are generally issued by the company that actually carries the cargo and provide significantly more security to the shipper than either Freight Forwarders Bills or FIATA Bills of Lading. The reason for this is simply that normally a liner company will be a substantial company. Either it will own ships or have a sufficient interest in ships through bare boat chartering or other chartering arrangements that it will be possible to secure any claim made under the Bill of Lading by arresting the vessel. For this reason, these Bills are readily accepted by the banks.

Multi Modal Bills of Lading

- (iv) Multi Modal Bills, are Bills of Lading which envisage more than one form of transport. They will provide for a land carriage of some description or some other form of carriage either to the load port or from the destination port in addition to the sea carriage. These are invariably issued by freight forwarders rather than liner companies, as liner companies are reluctant to be responsible for the shipment of the goods once they are outside the liner companies' control.

Ocean Bills of Lading

- (v) Ocean Bills of Lading, can be Bills of Lading issued by liner companies to the shipper, but more commonly are Bills of Lading issued by liner companies to freight forwarders and govern the contractual relationship between them. These Bills of Lading will have a named consignee, normally the freight forwarders agent at the discharge port. If a shipper uses freight forwarder, he will not see this Bill of Lading. This may be because the freight forwarder will have negotiated a

special rate with the liner company and his profit is the difference between what he pays the liner company to what he charges the customer. Ocean Bills will detail the period of responsibility of the ocean carrier and will only be in contractual effect during the period of the ocean carriers' responsibility.

Feeder Bills of Lading

- (vi) If the shipment is to be a trans-shipment, often the first leg of the carriage will not be by the ocean carrier who may well have issued a Bill of Lading for the whole of the carriage. A common example of this is a shipment from the Pearl River to say Europe. The cargo will not be loaded on board the ocean going vessel until it reaches Hong Kong and a separate set of Bills of Lading i.e. feeder Bills will govern the carriage of the cargo from the Pearl River to Hong Kong.

Switch Bills of Lading

- (vii) These Bills of Lading are effectively a sham and unfortunately are in common use. They are mostly commonly used to facilitate the release the cargo before the real Bills of Lading are available. Unfortunately they are also an excellent vehicle for fraud.

The reason why they are used is that often a cargo will arrive at its destination port before the original Bills of Lading or real Bills of Lading are available. Rather than pay storage charges some shipping companies can be persuaded to issue a switch set of Bills of Lading enabling the consignee to take early delivery of the cargo. Usually this is done on the consignee signing an indemnity in favour of the

shipping company. In some cases this is endorsed or effectively guaranteed by the consignee's bank.

The shipping company's difficulty arises if for some reason the consignee fails to obtain the original Bills of Lading. This may be because the consignee is no longer in a position to pay for the cargo through the banking system or had never intended to pay for the cargo.

Whatever the reason, if the shipping company has released goods without production of original Bill in reliance of a switch Bill it becomes liable for a further misdelivery of the cargo. This means that the shipping company is responsible to whoever holds the Bills of Lading for the value of the cargo.

Misdelivery is perhaps one of the most common claims a ship owner faces and any lawyer advising a shipping company should always be at pains to ensure that his client is protected fully if for some reason the client is prepared for whatever commercial reason to release the cargo without production of original Bills.

Straight Bills of Lading

- (viii) Straight Bills are where the consignee is named. These are relatively unusual as normally the Bill of Lading as a document of title can only be endorsed if the consignee is left blank or "to order". Nevertheless, a lawyer when dealing with a straight Bill should not assume that cargo can be delivered to the named consignee without production of the original Bill. The traditional view as set out in *Scrutton on Charter*

Parties, is that notwithstanding the issuance of a straight Bill, the ship owner must still demand delivery up of an original Bill of Lading. That view is however open to doubt given a recent of the Hong Kong Courts in "*The Bridg*" which followed the American position, namely that a straight Bill of Lading is not a document of title and shipping company can deliver to the consignee without production of the Bills of Lading. However, given the uncertain state of Hong Kong law on this point, it would seem prudent to advise a ship owner to insist upon production of even a straight Bill.

Bailment

16. Notwithstanding the Bill of Lading, a shipper may well have rights in bailment against other parties which had physical possession of the goods, when goods were damaged and/or lost. For instance, if a shipper has freight forwarders Bills but the goods are lost during the period they were in the custody of the liner company, the shipper can sue in contract under his Bill of Lading and also in bailment against the liner company. The terms of that bailment will often be governed by the terms of the liner company's Bill of Lading under the doctrine of bailment on terms. The position is identical if goods are lost or damaged whilst in the hands of a ship owner who is performing a feeder service and has issued a feeder Bill. Likewise, if goods are lost during a land carriage, it will be open to sue the land carrier but due to the fact that the land carrier will often be situated in a far away country, this may prove to be impractical.

Delivery Orders

17. After the cargo arrives at the discharge port, the person entitled to the cargo

should by then be in possession of the original Bill of Lading endorsed in his favour. In the case of a freight forwarders Bill, he will present this Bill of Lading to the freight forwarders' agent, who in turn will issue him with a delivery order either issued by himself or issued by the vessel's carrier. This will detail where the cargo can be collected and this becomes the operative document for collection of the cargo. Obviously if liner Bills have been issued, the Bills of Lading are presented directly to the shipping company who will issue a delivery order, which again becomes a document which entitles the consignee to take delivery of his cargo.

18. Normally most cargo will have a free storage period of 48 hours and thereafter storage will start to run and obviously it is in the consignee's interest to take delivery of the cargo before he has to start paying storage charges. Usually storage charges are far higher at the terminal where the cargo is discharged because for commercial reasons terminal operators do not have the space to store large amounts of cargo for an extended time.

John D. Kerr

Barrister-at-Law

Shipping Law: An Overview

**Mr John Wilson
Andrew Moore & Associates Limited**

UNIVERSITY OF HONG KONG, FACULTY OF LAW

AND

THE HONG KONG MARITIME LAW ASSOCIATION

CPD SESSIONS : SHIPPING LAW - AN OVERVIEW

15TH OCTOBER 2001

FURAMA HOTEL, HONG KONG

PROBLEMS FOR CARGO

OVERVIEW OF CARGO CLAIMS HANDLING,
LOSS AND DAMAGE, CARGO SURVEYS

BY JOHN B. WILSON
OF
ANDREW MOORE & ASSOCIATES LTD.

**ANALYSIS OF P&I CLAIMS SHOWS THAT
40% INVOLVE CARGO LOSS OR DAMAGE**

**THIS IS TWICE THE AMOUNT ATTRIBUTED TO THE
NEXT HIGHEST CATEGORY - PERSONAL INJURY**

CARGO CLAIMS HANDLING

**REQUIRED ELEMENTS TO ENSURE
A CORRECT RESPONSE AND SATISFACTORY
RESOLUTION OF A CARGO CLAIM**

**CARGO OWNERS, THEIR UNDERWRITERS AND LAWYERS
MUST ESTABLISH THE FOLLOWING**

- **CORRECTLY IDENTIFY THE ALLEGED PROBLEM WITH THE CARGO**
 - **GATHER AVAILABLE INFORMATION RELATING TO SHIPMENT**
 - **INSTRUCT A SUITABLY QUALIFIED AND COMPETENT SURVEYOR**
 - **ESTABLISH CAUSATION AND QUANTUM**
 - **TAKE STEPS TO MITIGATE THE LOSS**
 - **GATHER EVIDENCE TO ASSIST IN RECOVERY OF LOSS**
 - **PREPARE EVIDENCE FOR POSSIBLE LEGAL PROCEEDINGS**
-

THE SURVEYOR - A CRUCIAL ELEMENT IN CARGO CLAIMS HANDLING

WHAT TASKS A COMPETENT SURVEYOR SHOULD PERFORM

- **INSPECT CARGO**
 - **QUANTIFY CARGO**
 - **SAMPLE AND ANALYZE CARGO**
 - **INSPECT VESSEL**
 - **INSPECT SHORE FACILITY**
 - **GATHER INFORMATION AND DOCUMENTATION**
 - **PRESERVE EVIDENCE**
-

HAVING COMPLETED HIS INITIAL SURVEY AND INVESTIGATION THE SURVEYOR SHOULD THEN BE ABLE TO

- **ADVISE PRINCIPALS ON STEPS TO MITIGATE THE LOSS**
 - **ASSIST IN THE RECOVERY PROCESS AGAINST OTHER PARTIES**
 - **GIVE LOSS PREVENTION ADVICE TO PREVENT SIMILAR OCCURRENCI**
 - **BE AVAILABLE TO ACT AS A WITNESS OF FACT**
 - **ALTERNATIVELY, ACT AS AN EXPERT WITNESS IN POSSIBLE FUTURE
LEGAL PROCEEDINGS**
-

WHAT IS A COMPETENT SURVEYOR ?

SOMEONE WITH THE RELEVANT EXPERIENCE WHO IS ABLE TO

- **SATISFACTORILY FULFILL ALL THE DUTIES REQUIRED OF HIM**
 - **PROVIDE CLEAR AND FACTUAL REPORTS TO PRINCIPALS**
 - **AT ALL TIMES ACT WITH INTEGRITY AND IN ACCORDANCE
WITH PROFESSIONAL ETHICS**
-

CARGO LOSS AND DAMAGE

**ANALYSIS OF CARGO CLAIMS BETWEEN 1987~1997 BY A MAJOR P&I CLUB
FOUND TYPES OF 'DAMAGE' TO CARGO BY NUMBER OF CLAIMS TO BE:**

PHYSICAL	23%
WET	22%
CONTAMINATION	17%
SHORTAGE	8%
LOST OVERBOARD	3%
INFESTATION	2%
LOSS BY SINKING	2%
THEFT	2%
OTHER	21%

TYPES OF CARGO INVOLVED BY NUMBER OF CLAIMS

DRY BULK	13%
CONTAINERIZED	12%
STEEL PRODUCTS	11%
BAGGED BULK	10%
REEFER	8%
GENERAL	6%
OIL PRODUCTS	5%
CRUDE OIL	4%
OTHER	31%

CARGO SURVEYS

TYPICAL CLAIMS REQUIRING A CARGO SURVEY INCLUDE ISSUES OF:

CARGO LOSS

e.g. Shortage of bulk commodity

CARGO QUALITY

e.g. Contamination of a liquid cargo

CARGO DAMAGE

e.g. Physical and wet damage to steel products

COMBINATION OF LOSS, QUALITY AND DAMAGE

e.g. Containerized reefer cargo

INVESTIGATION

ELEMENTS COMMON TO ALL TYPES OF CARGO SURVEY

SOURCES OF INFORMATION:

- **PRINCIPALS**
 - **SHIP PERSONNEL**
 - **SHORE PERSONNEL (including agent, port authorities, receivers, customs, local contacts)**
-

EXAMPLES OF INFORMATION REQUIRED:

- **MARKET KNOWLEDGE**
 - **WAS VESSEL CARGO AND SEAWORTHY AT COMMENCEMENT OF VOYAGE**
 - **WHEN WAS LOSS OR DAMAGE DISCOVERED - BY WHOM**
 - **ACTIONS UPON DISCOVERY – DID THEY HELP**
 - **WHO WAS NOTIFIED - WHEN AND HOW, ANY PROTESTS MADE**
 - **CAUSATIVE EVENTS PRIOR TO DISCOVERY-INVOLVING SHIP AND/OR SHORE EQUIPMENT AND/OR PERSONNEL**
 - **COMPETENCE/EXPERIENCE OF PERSONNEL ON SHIP AND SHORE, FAMILIARITY WITH TYPE OF CARGO**
-

CONSIDERATIONS IN A CARGO LOSS CLAIM INVOLVING SHORTAGE OF A BULK COMMODITY

- **DOCUMENTATION**
 - **METHOD OF QUANTIFICATION**
 - **LOADPORT PROCEDURES**
 - **PROCEDURES ONBOARD VESSEL**
 - **VOYAGE**
 - **CARGO INSPECTION/QUANTIFICATION**
-

CONSIDERATIONS IN A CARGO QUALITY CLAIM INVOLVING A CONTAMINATION OF A LIQUID CARGO

- **SPECIFICATION**
 - **CARRIAGE INSTRUCTIONS**
 - **VESSEL SUITABILITY**
 - **TANK CLEANLINESS**
 - **SAMPLING OF CARGO**
 - **VOYAGE**
 - **VESSEL INSPECTION**
-

**CONSIDERATIONS IN A CARGO DAMAGE CLAIM
INVOLVING DAMAGE TO STEEL PRODUCTS**

- **PRE-LOADING SURVEY**
 - **HOSE TEST OF HATCHCOVERS**
 - **ORIGIN OF CARGO**
 - **STORAGE OF CARGO IN PORT**
 - **WEATHER IN PORT**
 - **HOLD PREPARATION**
 - **LOADING OPERATIONS**
 - **STOWAGE AND SECURING**
 - **VOYAGE**
 - **VESSEL INSPECTION**
 - **CARGO INSPECTION**
-

**CONSIDERATIONS IN A CARGO LOSS OR DAMAGE
CLAIM INVOLVING CONTAINERS**

**PROBLEM - NOT ACTUALLY SIGHTING CONTENTS OF CONTAINER UPON
LOADING, ACTUAL WEIGHT AND CONTENTS UNKNOWN**

- **CONTAINERS LOST OVERBOARD OR COLLAPSED**
 - **NON DELIVERY DUE TO FALSE DECLARATION OF CONTENTS**
 - **DAMAGE TO CONTAINERS AND THEIR CONTENTS**
 - **DEGRADATION OF QUALITY OF REFRIGERATED
CONTAINERIZED CARGOES**
-

CLAIM MITIGATION AND RECOVERY

**PROMPT ACTIONS CAN LIMIT A LOSS OR
DAMAGE TO A CARGO, SIGNIFICANTLY
REDUCE ANY CLAIM, AND INCREASE ANY
SUBSEQUENT RECOVERY**

PRACTICAL STEPS TO MITIGATE LOSS MAY INCLUDE:

SEPARATION OF DAMAGED AND SOUND CARGO

REMOVING SOURCE OF DAMAGE e.g. pump out water, extinguish fire.

**DID ANY STEPS TAKEN BY SHIP OR SHORE PRIOR
TO SURVEYORS ARRIVAL, RESULT IN A REDUCTON
OR INCREASE IN CARGO LOSS/DAMAGE/QUALITY**

JOINT 'WITHOUT PREJUDICE' SURVEYS

- **ENDEAVOUR TO ARRANGE PROMPTLY**
 - **ALL PARTIES PRESENT SO A DECISION CAN BE MADE**
 - **TAKING OF JOINT SAMPLES**
 - **SEEK TO AGREE ON**
 - **SAMPLING AND ANALYSIS METHODS**
 - **ALLOWANCE FOR DEPRECIATION DUE TO DAMAGE**
 - **ALLOWANCE FOR SHORTAGE**
 - **TREATMENT OR DISPOSAL OF CARGO**
-

TREATMENT OF CARGO

- **NEED TO ASSESS VIABILITY OF RE-PROCESSING**
 - **ARE SUITABLE FACILITIES AVAILABLE**
 - **COSTS OF RE-PROCESSING COMPARED WITH DOWN GRADING**
 - **CAN ALTERNATIVE BUYER BE FOUND IF RECEIVER REJECTS RE-PROCESSING OR DOWN GRADING OPTIONS**
-

DISPOSAL OF CARGO

- **KNOWLEDGE OF LIKELIHOOD OF DISPOSAL, CARRIED OUT IN ACCORDANCE WITH LOCAL AND OR INTERNATIONAL STATUTES**
 - **KNOWLEDGE OF LIKELY PRICE ACHIEVABLE**
 - **MAKE CONTACT WITH SALVAGE BUYERS, AUCTIONEERS**
 - **ORGANISE DIRECT SALE OR AUCTION**
-

GENERAL AVERAGE

**CARGO DAMAGE OR LOSS OF CARGO MAY BE
THE SUBJECT OF A G.A. CLAIM**

**THE SURVEYOR'S ACTIONS AND FINDINGS
CAN HELP DETERMINE IF A CLAIM IS VALID
AND IF IT IS PARTICULAR AVERAGE
OR GENERAL AVERAGE**

A COMPETENT SURVEYOR

AN ESSENTIAL FACTOR IN CARGO CLAIMS HANDLING

Shipping Law – An Overview

**Mr Martin Heath
Clyde & Co.**

HKU, FACULTY OF LAW / HKMLA

SHIPPING LAW – AN OVERVIEW – 15 OCTOBER 2001

SESSION (C) Problems for Cargo

2:15 – 2.45 pm. The Hague, Hague-Visby and Hamburg Rules.
(Claims for cargo loss or damage or misdelivery)

Presenter: Martin Heath, Partner, Clyde & Co

COURSE OUTLINE

1. Working out what claim against whom and where.
 - First steps: identifying the contract(s) of carriage under which cargo claim might be made, by whom (the claimant) against whom (the contracting carrier); NVOCC Bills of Lading – any claim against a sub-contractor actual carrier?
 - Second steps: identifying jurisdiction and applicable law for the claim by reference to contract of carriage and/or domicile of defendant carrier and/or in rem jurisdiction according to ship/sistership movements.
 - Third steps: what is/are the option(s)? Will judgment or arbitration award be effectively enforceable or can it be secured? What is the financial limit of liability? What is the time limit? Which Rules will apply?
 - Last but not least, will be carrier be liable according to the applicable Rules or other contractual terms.

2. When do which Rules apply?
 - Clause Paramount?; Rules compulsory by operation of law?
 - Hague Rules, Articles I, II & X; Clause Paramount; List of Parties; Domestic Legislation.
 - Hague-Visby Rules, CAP 462; Articles I, II & X; Parties to Convention Order; Domestic Legislation.
 - Hamburg Rules, Articles I & II. Rarely applied contractually.

3. The basic liability framework under the Hague/Hague-Visby Rules:-
 - Article III Rule 1/Article IV Rule 1
Article III Rule 2/Article IV Rule 2
 - Compare and construct the Rules in:-
Article III Rule 4 – Bill of Lading evidence of quantity and condition of goods
Article III Rule 6 (the one year time limit)
Article IV Rule 5 (Package/Weight Limitation). See also Hague Rules Article IX.
Hague-Visby Rules Article IV bis; Hague Rules/Himalaya Clauses/Sub-bailment on terms.

4. The Hamburg Rules liability framework (some particular differences)
 - Article 4. Period of Responsibility extended beyond loading to and beyond discharge from vessel. Not always significantly different in practice in view of usual terms of container operator, and combined transport Bills of Lading.
 - Article 5. Basis of Liability. Radically different.
Rule 1 – Very unrestricted liability Carrier liable unless carrier proves he, his servants or agents took all measures that could reasonably be required.
Rule 4 – Only Hague/Hague-Visby Article IV Rule 2 exception surviving in limited form is the fire defence. In practical terms, the most dramatic difference is the absence of the negligent navigation defence.
 - Article 6 – Package/weight limitations a little higher.
 - Articles 7, 8 and 10 – Wider effect in relation to application of Hamburg Rules than Hague-Visby Article IV bis in relation to Hague-Visby Rules as it brings the actual carrier (sub-contractor) into the same liability framework. Aggregation.
 - Article 20 – Two year time limit. Position almost the same as Hague-Visby (90 days instead of 3 months) for indemnity claims.
 - Articles 21/22 – Prescribed choices of jurisdiction and/or arbitration.

MATERIALS ATTACHED

1. The Brussels Convention (Hague Rules) and List of Parties to Convention.
2. Cap 462 Carriage of Goods by Sea Ordinance (Hague-Visby Rules) and Carriage of Goods by Sea (Parties to Convention Order 1985).
3. The Hamburg Rules 1978 and List of Parties to the Convention.

ARTICLE I

1588 In this convention the following words are employed, with the meanings set out below:

- (a) "Carrier" includes the owner or the charterer who enters into a contract of carriage with a shipper.
- (b) "Contract of Carriage" applies only to contracts of carriage covered by a bill of lading or any similar document of title, in so far as such document relates to the carriage of goods by sea, including any bill of lading or any similar document as aforesaid issued under or pursuant to a charterparty from the moment at which such a bill of lading or similar document of title regulates the relations between a carrier and a holder of the same.
- (c) "Goods" includes goods, wares, merchandise, and articles of every kind whatsoever except live animals and cargo which by

the contract of carriage is stated as being carried on deck and is so carried.

- (d) "Ship" means any vessel used for the carriage of goods by sea.
- (e) "Carriage of goods" covers the period from the time when the goods are loaded on to the time they are discharged from the ship.

ARTICLE 2

- 1589 Subject to the provisions of Article 6, under every contract of carriage of goods by sea the carrier, in relation to the loading, handling, stowage, carriage, custody, care and discharge of such goods, shall be subject to the responsibilities and liabilities, and entitled to the rights and immunities hereinafter set forth.

ARTICLE 3

- 1590 1. The carrier shall be bound before and at the beginning of the voyage to exercise due diligence to—
- (a) Make the ship seaworthy.
 - (b) Properly man, equip and supply the ship.
 - (c) Make the holds, refrigerating and cool chambers, and all other parts of the ship in which goods are carried, fit and safe for their reception, carriage and preservation.
2. Subject to the provisions of Article 4, the carrier shall properly and carefully load, handle, stow, carry, keep, care for, and discharge the goods carried.
3. After receiving the goods into his charge the carrier or the master or agent of the carrier shall, on demand of the shipper, issue to the shipper a bill of lading showing among other things—
- (a) The leading marks necessary for identification of the goods as the same are furnished in writing by the shipper before the loading of such goods starts, provided such marks are stamped or otherwise shown clearly upon the goods if uncovered, or on the cases or coverings in which such goods are contained, in such a manner as should ordinarily remain legible until the end of the voyage.
 - (b) Either the number of packages or pieces, or the quantity, or weight, as the case may be, as furnished in writing by the shipper.
 - (c) The apparent order and condition of the goods.

Provided that no carrier, master or agent of the carrier shall be bound to state or show in the bill of lading any marks, number, quantity, or weight which he has reasonable ground for suspecting not accurately to represent the goods actually received, or which he has had no reasonable means of checking.

1591 4. Such a bill of lading shall be prima facie evidence of the receipt by the carrier of the goods as therein described in accordance with paragraph 3 (a), (b) and (c).

5. The shipper shall be deemed to have guaranteed to the carrier the accuracy at the time of shipment of the marks, number, quantity and weight, as furnished by him, and the shipper shall indemnify the carrier against all loss, damages and expenses arising or resulting from inaccuracies in such particulars. The right of the carrier to such indemnity shall in no way limit his responsibility and liability under the contract of carriage to any person other than the shipper.

6. Unless notice of loss or damage and the general nature of such loss or damage be given in writing to the carrier or his agent at the port of discharge before or at the time of the removal of the goods into the custody of the person entitled to delivery thereof under the contract of carriage, or, if the loss or damage be not apparent, within three days, such removal shall be prima facie evidence of the delivery by the carrier of the goods as described in the bill of lading.

The notice in writing need not be given if the state of the goods has, at the time of their receipt, been the subject of joint survey or inspection.

In any event the carrier and the ship shall be discharged from all liability in respect of loss or damage unless suit is brought within one year after delivery of the goods or the date when the goods should have been delivered.

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

1592 7. After the goods are loaded the bill of lading to be issued by the carrier, master, or agent of the carrier, to the shipper shall, if the shipper so demands, be a "shipped" bill of lading, provided that if the shipper shall have previously taken up any document of title to such goods, he shall surrender the same as against the issue of the "shipped" bill of lading, but at the option of the carrier such document of title may be noted at the port of shipment by the carrier,

master, or agent with the name or names of the ship or ships upon which the goods have been shipped and the date or dates of shipment, and when so noted, *if it shows the particulars mentioned in paragraph 3 of Article 3,*¹⁰ shall for the purpose of this article be deemed to constitute a "shipped" bill of lading.

8. Any clause, covenant, or agreement in a contract of carriage relieving the carrier or the ship from liability for loss or damage to, or in connection with, goods arising from negligence, fault, or failure in the duties and obligations provided in this article or lessening such liability otherwise than as provided in this convention, shall be null and void and of no effect. A benefit of insurance *in favour of the carrier*¹⁰ or similar clause shall be deemed to be a clause relieving the carrier from liability.

ARTICLE 4

1593 1. Neither the carrier nor the ship shall be liable for loss or damage arising or resulting from unseaworthiness unless caused by want of due diligence on the part of the carrier to make the ship seaworthy, and to secure that the ship is properly manned, equipped and supplied, and to make the holds, refrigerating and cool chambers and all other parts of the ship in which goods are carried fit and safe for their reception, carriage and preservation in accordance with the provisions of paragraph 1 of Article 3. Whenever loss or damage has resulted from unseaworthiness the burden of proving the exercise of due diligence shall be on the carrier or other person claiming exemption under this article.

2. Neither the carrier nor the ship shall be responsible for loss or damage arising or resulting from—

- (a) Act, neglect, or default of the master, mariner, pilot, or the servants of the carrier in the navigation or in the management of the ship.
- (b) Fire, unless caused by the actual fault or privity of the carrier.
- (c) Perils, dangers and accidents of the sea or other navigable waters.
- (d) Act of God.
- (e) Act of war.
- (f) Act of public enemies.
- (g) Arrest or restraint of princes, rulers or people, or seizure under legal process.

¹⁰ No words corresponding to those in italics appear in the draft of 1923.

- (h) Quarantine restrictions
- (i) Act or omission of the shipper or owner of the goods, his agent or representative.
- (j) Strikes or lockouts or stoppage or restraint of labour from whatever cause, whether partial or general.
- (k) Riots and civil commotions.
- (l) Saving or attempting to save life or property at sea.
- (m) Wastage in bulk or weight or any other loss or damage arising from inherent defect, quality or vice of the goods.
- (n) Insufficiency of packing.
- (o) Insufficiency or inadequacy of marks.
- (p) Latent defects not discoverable by due diligence.
- (q) 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 shall be on the person claiming the benefit of this exception to show that neither the actual fault or privity of the carrier nor the fault or neglect of the agents or servants of the carrier contributed to the loss or damage.

1594 3. The shipper shall not be responsible for loss or damage sustained by the carrier or the ship arising or resulting from any cause without the act, fault or neglect of the shipper, his agents or his servants.

4. Any deviation in saving or attempting to save life or property at sea or any reasonable deviation shall not be deemed to be an infringement or breach of this convention or of the contract of carriage, and the carrier shall not be liable for any loss or damage resulting therefrom.

5. Neither the carrier nor the ship shall in any event be or become liable for any loss or damage to or in connection with goods in an amount exceeding £100 per package or unit, or the equivalent of that sum in other currency unless the nature and value of such goods have been declared by the shipper before shipment and inserted in the bill of lading.

This declaration if embodied in the bill of lading shall be prima facie evidence, but shall not be binding or conclusive on the carrier

By agreement between the carrier, master or agent of the carrier and the shipper another maximum amount than that mentioned in

this paragraph may be fixed, provided that such maximum shall not be less than the figure above named.¹¹

Neither the carrier nor the ship shall be responsible in any event for loss or damage to, or in connection with, goods if the nature or value thereof has been knowingly misstated by the shipper in the bill of lading.

6. Goods of an inflammable, explosive or dangerous nature to the shipment whereof the carrier, master or agent of the carrier has not consented with knowledge of their nature and character, may at any time before discharge be landed at any place, or destroyed or rendered innocuous by the carrier without compensation¹² and the shipper of such goods shall be liable for all damages and expenses directly or indirectly arising out of or resulting from such shipment. If any such goods shipped with such knowledge and consent shall become a danger to the ship or cargo, they may in like manner be landed at any place, or destroyed or rendered innocuous by the carrier without liability on the part of the carrier except to general average, if any.

ARTICLE 5

1595 A carrier shall be at liberty to surrender in whole or in part all or any of his rights and immunities or to increase any of his responsibilities and obligations under this convention, provided such surrender or increase shall be embodied in the bill of lading issued to the shipper. The provisions of this convention shall not be applicable to charterparties, but if bills of lading are issued in the case of a ship under a charterparty they shall comply with the terms of this convention. Nothing in these rules shall be held to prevent the insertion in a bill of lading of any lawful provision regarding general average.

ARTICLE 6

1596 Notwithstanding the provisions of the preceding articles, a carrier, master or agent of the carrier and a shipper shall in regard to any particular goods be at liberty to enter into any agreement in any terms as to the responsibility and liability of the carrier for such goods, and as to the rights and immunities of the carrier in respect of such goods, or his obligation as to seaworthiness, so far as this stipulation is not contrary to public policy, or the care or diligence of his servants

¹¹ There follows in the draft of 1923 a provision by which (as translated into English):
"The rate of exchange shall be taken as at the day of arrival of the ship at the port of discharge of the goods in question."

¹² Here is inserted in the draft of 1923 "for the shipper" ("pour le chargeur").

or agents in regard to the loading, handling, stowage, carriage, custody, care and discharge of the goods carried by sea, provided that in this case no bill of lading has been or shall be issued and that the terms agreed shall be embodied in a receipt which shall be a non-negotiable document and shall be marked as such.

Any agreement so entered into shall have full legal effect.

Provided that this article shall not apply to ordinary commercial shipments made in the ordinary course of trade, but only to other shipments where the character or condition of the property to be carried or the circumstances, terms and conditions under which the carriage is to be performed are such as reasonably to justify a special agreement.

ARTICLE 7

1597 Nothing herein contained shall prevent a carrier or a shipper from entering into any agreement, stipulation, condition, reservation or exemption as to the responsibility and liability of the carrier or the ship for the loss or damage to, or in connection with, the custody and care and handling of goods prior to the loading on, and subsequent to, the discharge from the ship on which the goods are carried by sea

ARTICLE 8

The provisions of this convention shall not affect the rights and obligations of the carrier under any statute for the time being in force relating to the limitation of the liability of owners of seagoing vessels.

ARTICLE 9 ¹²

The monetary units mentioned in this convention are to be taken to be gold value.

Those contracting States in which the pound sterling is not a monetary unit reserve to themselves the right of translating the sums indicated in this convention in terms of pound sterling into terms of their own monetary system in round figures.

The national laws may reserve to the debtor the right of discharging his debt in national currency according to the rate of exchange prevailing on the day of the arrival of the ship at the port of discharge of the goods concerned.

¹² Article 9 is omitted from the draft of 1923

ARTICLE 10¹⁴

1598 The provisions of this convention shall apply to all bills of lading issued in any of the contracting States

*Règles de La Haye**Hague Rules*

Convention internationale pour
l'unification de certaines
règles en matière de
Connaissance
et protocole de signature
"Règles de La Haye 1924"

Bruxelles, le 25 août 1924
Entrée en vigueur: 2 juin 1931

International convention for
the unification of certain
rules of law relating to
Bills of lading
and protocol of signature
"Hague Rules 1924"

Brussels, 25 August 1924
Entered into force: 2 June 1931

(Translation)

Algeria	(a)	13 IV.1964
Angola	(a)	2.II.1952
Antigua and Barbuda	(a)	2.XII.1930
Argentina	(a)	19.IV.1961
Australia*	(a)	4.VII.1955
Norfolk	(a)	4.VII.1955
Bahamas	(a)	2.XII.1930
Barbados	(a)	2.XII.1930
Belgium	(r)	2.VI.1930
Belize	(a)	2.XI.1930
Bolivia	(a)	28.V.1982
Cameroon	(a)	2.XII.1930
Cape Verde	(a)	2.II.1952
China		
Hong Kong ⁽¹⁾	(a)	2.XII.1930
Macao ⁽²⁾	(r)	2.II.1952
Cyprus	(a)	2.XII.1930
Croatia	(r)	8.X.1991
Cuba*	(a)	25.VII.1977

⁽¹⁾ With letter dated 4 June 1997 the Embassy of the People's Republic of China in the Kingdom of Belgium informed the Minister of Foreign Affairs of Belgium that the Convention will continue to apply to the Hong Kong Special Administrative Region with effect from 1 July 1997. In its letter the Embassy of the People's Republic of China stated that the responsibility for the international rights and obligations arising from the application of the above Convention will be assumed by the Government of the People's Republic of China.

⁽²⁾ With letter dated 15 October 1999 the Embassy of the People's Republic of China in the Kingdom of Belgium informed the Minister of Foreign Affairs of Belgium that the Convention will continue to apply to the Macao Special Administrative Region with effect from 20 December 1999. In its letter the Embassy of the People's Republic of China stated that the responsibility for the international rights and obligations arising from the application of the above Convention will be assumed by the Government of the People's Republic of China.

<i>Règles de La Haye</i>		<i>Hague Rules</i>
Denmark*	(a)	1.VII.1938
<i>(denunciation – 1.III.1984)</i>		
Dominican Republic	(a)	2.XII.1930
Ecuador	(a)	23.III.1977
Egypt* (3)	(a)	29.XI.1943
Fiji	(a)	2.XII.1930
Finland	(a)	1.VII.1939
<i>(denunciation – 1.III.1984)</i>		
France*	(r)	4.I.1937
Gambia	(a)	2.XII.1930
Germany	(r)	1.VII.1939
Ghana	(a)	2.XII.1930
Goa	(a)	2.II.1952
Greece	(a)	23.III.1991
Grenada	(a)	2.XII.1930
Guyana	(a)	2.XII.1930
Guinea-Bissau	(a)	2.II.1952
Hungary	(r)	2.VI.1930
Iran	(a)	26.IV.1966
Ireland*	(a)	30.I.1962
Israel	(a)	5.IX.1959
Italy	(r)	7.X.1938
<i>(denunciation – 22.XI.1984)</i>		
Ivory Coast*	(a)	15.XII.1961
Jamaica	(a)	2.XII.1930
Japan*	(r)	1.VII.1957
<i>(denunciation – 1.VI.1992)</i>		
Kenya	(a)	2.XII.1930
Kiribati	(a)	2.XII.1930
Kuwait*	(a)	25.VII.1969
Lebanon	(a)	19.VII.1975
Malaysia	(a)	2.XII.1930
Madagascar	(a)	13.VII.1965
Mauritius	(a)	24.VIII.1970
Monaco	(a)	15.V.1931
Mozambique	(a)	2.II.1952
Nauru*	(a)	4.VII.1955
Netherlands*	(a)	18.VIII.1956
<i>(denunciation – 26.IV.1982)</i>		
Nigeria	(a)	2.XII.1930
Norway	(a)	1.VII.1938
<i>(denunciation – 1.III.1984)</i>		

(3) On 17 February 1993 Egypt notified to the Government of Belgium that it had become a party to the U.N. Convention on the Carriage of Goods by Sea, 1978 (Hamburg Rules) but that it deferred the denunciation of the 1924 Brussels Convention, as amended for a period of five years. If, as provided in Article 31 paragraph 4 of the Hamburg Rules the five years period has commenced to run on the date of entry into force of the Hamburg Rules (1 November 1992), the denunciation made on 1 November 1997 has taken effect on 1 November 1998.

*Règles de La Haye**Hague Rules*

Papua New Guinea*	(a)	4.VII.1955
Paraguay	(a)	22.XI.1967
Peru	(a)	29.X.1964
Poland	(r)	4.VIII.1937
Portugal	(a)	24.XII.1931
Romania	(r)	4.VIII.1937
Sao Tomé and Príncipe	(a)	2.II.1952
Sarawak	(a)	3.XI.1931
Senggal	(a)	14.II.1978
Seychelles	(a)	2.XII.1930
Sierra-Leone	(a)	2.XII.1930
Singapore	(a)	2.XII.1930
Slovenia	(a)	25.VI.1991
Solomon Islands	(a)	2.XII.1930
Somalia	(a)	2.XII.1930
Spain	(r)	2.VI.1930
Sri-Lanka	(a)	2.XII.1930
St. Kitts and Nevis	(a)	2.XII.1930
St. Lucia	(a)	2.XII.1930
St. Vincent and the Grenadines	(a)	2.XII.1930
Sweden	(a)	1.VII.1938
<i>(denunciation - 1.III.1984)</i>		
Switzerland*	(a)	28.V.1954
Syrian Arab Republic	(a)	1.VIII.1974
Tanzania (United Republic of)	(a)	3.XII.1962
Timor	(a)	2.II.1952
Tonga	(a)	2.XII.1930
Trinidad and Tobago	(a)	2.XII.1930
Turkey	(a)	4.VII.1955
Tuvalu	(a)	2.XII.1930
United Kingdom of Great Britain and Northern Ireland (including Jersey and Isle of Man)*	(r)	2.VI.1930
<i>(denunciation - 13.VI.1977)</i>		
Gibraltar	(a)	2.XII.1930
<i>(denunciation - 22.IX.1977)</i>		
Bermuda, Falkland Islands and dependencies, Turks & Caicos Islands, Cayman Islands, British Virgin Islands, Montserrat, British Antarctic Territories.		
<i>(denunciation 20.X.1983)</i>		
Anguilla	(a)	2.XII.1930
Ascension, Saint Helène and Dependencies	(a)	3.XI.1931
United States of America*	(r)	29.VI.1937
Zaire	(a)	17.VII.1967

CHAPTER 462

第 462 章

CARRIAGE OF GOODS BY SEA

海上貨物運輸條例

An Ordinance to regulate liability in respect of the carriage of goods by sea.

本條例旨在對有關海上貨物運輸的法律責任，作出規管。

[16 December 1994]

[1994年12月16日]

1. Short title

This Ordinance may be cited as the Carriage of Goods by Sea Ordinance.

1. 簡稱

本條例可引稱為《海上貨物運輸條例》。

2. Interpretation

(1) In this Ordinance, unless the context otherwise requires—

"Monetary Authority" (金融管理專員) has the meaning assigned to it by section 2 of the Exchange Fund Ordinance (Cap. 66);

"the Rules" (《規則》) means the International Convention for the Unification of certain Rules of Law relating to Bills of Lading signed at Brussels on 25 August 1924, which was established in a single original in the French language, as amended by the Protocol signed at Brussels on 23 February 1968 and by the Protocol signed at Brussels on 21 December 1979, both of which were established in a single original in the English and French languages;

"ship" (船舶) means any vessel used for carriage of goods by sea, other than a vessel which is regularly used in trading, or going, within the river trade limits and to which Part IV of the Shipping and Port Control Ordinance (Cap. 313) applies.

(2) References in this Ordinance to Articles are references to Articles of the Rules.

2. 釋義

(1) 在本條例中，除文意另有所指外——

"金融管理專員" (Monetary Authority) 具有《外匯基金條例》(第 66 章) 第 2 條給予該詞的涵義；

"《規則》" (the Rules) 指在 1924 年 8 月 25 日在布魯塞爾簽署的《統一若干有關提單的法律規則國際公約》，該公約具正本一份，用法文寫成，並經由 1968 年 2 月 23 日在布魯塞爾簽署的議定書及 1979 年 12 月 21 日在布魯塞爾簽署的議定書修訂，而兩份議定書均具正本一份，用英文及法文寫成；

"船舶" (ship) 指任何供海上貨物運輸用途的船隻，但經常在內河航限內用於作業或航行的，而《船舶及港口管理條例》(第 313 章) 第 IV 部所適用的船隻則除外。

(2) 在本條例的英文文本中，凡提述 "Articles"，即為提述《規則》的條文。

3. Application of Hague Rules as amended

(1) Subject to subsection (3) the Rules as set out in the Schedule shall have the force of law.

(2) The Rules shall also apply to the carriage of goods by sea in ships where the port of shipment is in Hong Kong, whether or not the carriage is between ports in 2 different States within the meaning of Article X.

(3) Nothing in this section shall be taken as applying anything in the Rules to any contract for the carriage of goods by sea, unless the contract expressly or by implication provides for the issue of a bill of lading or any similar document of title.

(4) The Rules shall also apply to—

(a) any bill of lading if the contract contained in or evidenced by it expressly provides that the Rules shall govern the contract; and

(b) any receipt which is a non-negotiable document marked as such if the contract contained in or evidenced by it is a contract for the carriage of goods by sea which expressly provides that the Rules are to govern the contract as if the receipt were a bill of lading,

but where paragraph (b) applies, the Rules shall be construed and have effect—

(i) as if the following were omitted—

(A) "However, proof to the contrary shall not be admissible when the bill of lading has been transferred to a third party acting in good faith." from paragraph 4 of Article III; and

(B) paragraph 7 of Article III; and

(ii) subject to any other necessary modification.

(5) (a) If and in so far as the contract contained in or evidenced by a bill of lading or receipt referred to in paragraph (a) or (b) of subsection (4) applies to deck cargo or live animals, the Rules as applied by that subsection shall be construed and have effect as if all the words following "whatsoever" were omitted from Article I(c).

(b) In this subsection "deck cargo" (艙面貨物) means cargo which by the contract of carriage is stated as being carried on deck and is so carried.

4. Certification of contracting States, etc.

(1) The Governor may by order certify that for the purposes of the Rules—

(a) a State specified in the order is a contracting State, or is a contracting State in respect of any place or territory so specified; or

(b) any place or territory specified in the order forms part of a State so specified (whether a contracting State or not).

(2) For the purposes of the Rules an order under this section shall be conclusive evidence of the matters so certified.

3. 經修訂的《海牙規則》的適用範圍

(1) 除第(3)款另有規定外，附表所列的《規則》具有法律效力。

(2) 《規則》適用於用船舶進行而且付運港是在香港境內的海上貨物運輸，不論運輸是否《規則》第X條所指的在2個不同國家境內的港口之間進行的。

(3) 本條的條文不得視為使《規則》的任何規定適用於海上貨物運輸合約，除非該合約對發出提單或發出任何類似的所有權文件有明訂或隱含的規定。

(4) 如——

(a) 任何提單所載有或所證明的合約明訂規定該合約須受《規則》所管限，則《規則》亦適用於該提單；及

(b) 任何註明為不可轉讓文件的收據所載有或所證明的海上貨物運輸合約明訂規定該合約受《規則》所管限，猶如該收據即提單一樣的，則《規則》亦適用於該收據，

但倘屬(b)段所適用的情況，則《規則》須按下列條件予以解釋及具有效力——

(i) 猶如下列條文已被略去一樣——

(A) 《規則》第III條第4款中的“然而，當該提單已被轉讓給本著真誠行事的第三者時，則不得接納相反證明。”；及

(B) 《規則》第III條第7款；及

(ii) 經過任何其他需要的變通。

(5) (a) 如第(4)款(a)或(b)段所提述的提單或收據所載有或所證明的合約適用於艙面貨物或活的動物，則在其適用的範圍內，藉該款適用的《規則》須予以解釋及具有效力，猶如《規則》第I(c)條中在“各種物品”之後所有的文字已被略去一樣。

(b) 在本款中，“艙面貨物”(deck cargo)指運輸合約述明是在艙面上運載並且是如此運載的貨物。

4. 有關締約國家的證明等

(1) 總督可作出命令，為《規則》的施行而證明——

(a) 該命令所指明的國家是締約國家，或該指明的國家代該命令所指明的任何地方或領域作為締約國家；或

(b) 該命令所指明的任何地方或領域是該命令所指明的國家(不論是否締約國家)的一部分。

(2) 為《規則》的施行，根據本條作出的命令須為它所證明的事項的確證。

5. Absolute warranty of seaworthiness not to be implied in contracts to which the Rules apply

There shall not be implied in any contract for the carriage of goods by sea to which the Rules apply any absolute undertaking by the carrier of the goods to provide a seaworthy ship.

6. Application of Articles IV and X

(1) The date referred to in paragraph 5(d) of Article IV is hereby determined to be the date of the relevant judgment of the court of first instance or, in case there is an appeal, the date on which the appeal is determined.

(2) Article X shall have effect as if references therein to a contracting State included a reference to a State that is a contracting State in respect of the Rules without the amendments made by the Protocol signed at Brussels on 21 December 1979, and section 4 shall be construed and have effect accordingly.

7. Conversion of special drawing rights

(1) For the purposes of Article IV the Monetary Authority may specify in Hong Kong dollar the respective amounts which are to be taken as equivalent for a particular day to the sums expressed in special drawing rights in that Article.

(2) A certificate given by or on behalf of the Monetary Authority in pursuance of subsection (1) shall for the purposes of that subsection be conclusive evidence of the matters stated in the certificate, and a document purporting to be such a certificate shall in any proceedings be received in evidence and, unless the contrary is proved, be deemed to be such a certificate.

(3) The Monetary Authority may charge a reasonable fee for any certificate given in pursuance of subsection (2), and every such fee shall be paid into the general revenue.

8. Repeals and savings

(1) The following are repealed—

- (a) the Carriage of Goods by Sea (Hong Kong) Order 1980 (App. III, p. BS1);
- (b) the Carriage of Goods by Sea (Hong Kong) (Amendment) Order 1980 (L.N. 285 of 1981); and
- (c) the Carriage of Goods by Sea (Hong Kong) Order 1982 (App. III, p. AR1).

5. 《規則》所適用的合約不得隱含對船舶適航狀態的絕對擔保

《規則》所適用的任何海上貨物運輸合約，均不得隱含貨物承運人對提供適航船舶所作的任何絕對保證。

6. 《規則》第 IV 及 X 條的適用範圍

(1) 現將《規則》第 IV 條第 5(d) 款所提述的日期定為原訟法院所作出的有關判決的日期，如屬上訴案件，則為對該宗上訴案件作出裁定的日期。

(2) 《規則》第 X 條具有效力的情況，猶如其中提述締約國家之處，包括提述未經 1979 年 12 月 21 日在布魯塞爾簽署的議定書所修訂的《規則》的締約國家一樣，而第 4 條亦須據此解釋及具有效力。

7. 特別提款權的折算

(1) 為施行《規則》第 IV 條，金融管理專員可指明某些港幣數額在某日為分別相等於該條中以特別提款權表示的金額。

(2) 就第 (1) 款而言，由金融管理專員或其代表依據該款發出的證明書，即為該證明書內所述事項的確證，而看來是該證明書的文件，須在任何訴訟中被接受為證據，而除非相反證明成立，否則該文件須當作是該證明書。

(3) 金融管理專員可就任何依據第 (2) 款發出的證明書收取合理費用，而該等費用須匯入政府一般收入。

8. 廢除及保留條文

(1) 現廢除——

- (a) 《Carriage of Goods by Sea (Hong Kong) Order 1980》(附錄 III BS1 頁)；
- (b) 《Carriage of Goods by Sea (Hong Kong) (Amendment) Order 1980》(1981 年第 285 號法律公告)；及
- (c) 《Carriage of Goods by Sea (Hong Kong) Order 1982》(附錄 III AR1 頁)。

(2) Notwithstanding subsection (1)—

- (a) the Carriage of Goods by Sea (Parties to Convention) Order 1985 (Cap. 462 sub. leg.) shall continue in force, shall be regarded as having been made under section 4(1) and shall be taken to include such adaptations and modifications (if any) as are necessary or expedient to enable this paragraph to have full effect;
- (b) the specifications made by the Governor under section 1(5) of the Schedule to the Carriage of Goods by Sea (Hong Kong) Order 1980 (App. III, p. BSI) shall continue in force and such specifications shall be taken to include such adaptations and modifications (if any) as are necessary or expedient to enable this paragraph to have full effect.

(3) Section 23 of the Interpretation and General Clauses Ordinance (Cap. 1) applies to the repeal of the Orders mentioned in subsection (1) as it applies to the repeal (in whole or in part) of an Ordinance.

SCHEDULE

[1. 3]

THE RULES
(THE HAGUE RULES AS AMENDED BY THE BRUSSELS
PROTOCOLS 1968 AND 1979)

ARTICLE I

In these Rules the following words are employed, with the meanings set out below—

- (a) "Carrier" (承運人) includes the owner or the charterer who enters into a contract of carriage with a shipper.
- (b) "Contract of carriage" (運輸合約) applies only to contracts of carriage covered by a bill of lading or any similar document of title, in so far as such document relates to the carriage of goods by sea, including any bill of lading or any similar document as aforesaid issued under or pursuant to a charter party from the moment at which such bill of lading or similar document of title regulates the relations between a carrier and a holder of the same.
- (c) "Goods" (貨物) includes goods, wares, merchandise, and articles of every kind whatsoever except live animals and cargo which by the contract of carriage is stated as being carried on deck and is so carried.
- (d) "Carriage of goods" (貨物運輸) covers the period from the time when the goods are loaded on to the time they are discharged from the ship.

ARTICLE II

Subject to the provisions of Article VI, under every contract of carriage of goods by sea, the carrier, in relation to the loading, handling, stowage, carriage, custody, care and discharge of such goods, shall be subject to the responsibilities and liabilities, and entitled to the rights and immunities hereinafter set forth.

(2) 儘管有第(1)款的規定——

- (a) 《Carriage of Goods by Sea (Parties to Convention) Order 1985》(第 462 章, 附屬法例)繼續生效, 並須視為根據第 4(1)條作出, 亦須視為包括為使本段能具有全面效力而需要或適宜作出的改編及變通(如有的話);
- (b) 總督根據《Carriage of Goods by Sea (Hong Kong) Order 1980》(附錄 III BSI 頁)的附表第 1(5)條所作的指明繼續生效, 並須視為包括為使本段能具有全面效力而需要或適宜作出的改編及變通(如有的話)。

(3) 《釋義及通則條例》(第 1 章)第 23 條適用於第(1)款所達命令的廢除, 一如其適用於任何條例的(全部或部分)廢除。

附表

〔第 3 條〕

《規則》
(經 1968 及 1979 年布魯塞爾議定書修訂的
《海牙規則》)

第 I 條

在本規則中, 下列文字使用時具有以下所列的涵義——

- (a) "承運人"(Carrier)包括與付運人訂立運輸合約的船東或承運人。
- (b) "運輸合約"(Contract of carriage)只適用於涉及海上貨物運輸的提單或任何類似的擁有權文件所涵蓋的運輸合約, 包括根據或依據租船合約所發出的任何上述提單或類似的擁有權文件所涵蓋的運輸合約, 並自該提單或類似的擁有權文件規管承運人與其持有人的關係之時起對該等運輸合約適用。
- (c) "貨物"(Goods)包括貨物、貨品、商品及各種物品, 但活的動物及運輸合約述明是在艙面上運輸並且是如此運輸的貨物則除外。
- (d) "貨物運輸"(Carriage of goods)涵蓋自貨物裝上船舶起至貨物從船舶卸下的期間。

第 II 條

除第 VI 條條文另有規定外, 根據每份海上貨物運輸合約, 承運人就有關貨物的裝載、處理、積載、運輸、保管、照料及卸載, 須承擔下文所列的責任及法律責任, 並享有下文所列的權利及豁免權。

ARTICLE III

1. The carrier shall be bound before and at the beginning of the voyage to exercise due diligence to—

- (a) Make the ship seaworthy.
- (b) Properly man, equip and supply the ship.
- (c) Make the holds, refrigerating and cool chambers, and all other parts of the ship in which goods are carried, fit and safe for their reception, carriage and preservation.

2. Subject to the provisions of Article IV, the carrier shall properly and carefully load, handle, stow, carry, keep, care for, and discharge the goods carried.

3. After receiving the goods into his charge the carrier or the master or agent of the carrier shall, on demand of the shipper, issue to the shipper a bill of lading showing among other things—

- (a) The leading marks necessary for identification of the goods as the same are furnished in writing by the shipper before the loading of such goods starts, provided such marks are stamped or otherwise shown clearly upon the goods if uncovered, or on the cases or coverings in which such goods are contained, in such a manner as should ordinarily remain legible until the end of the voyage.
- (b) Either the number of packages or pieces, or the quantity, or weight, as the case may be, as furnished in writing by the shipper.
- (c) The apparent order and condition of the goods.

Provided that no carrier, master or agent of the carrier shall be bound to state or show in the bill of lading any marks, number, quantity, or weight which he has reasonable ground for suspecting not accurately to represent the goods actually received, or which he has had no reasonable means of checking.

4. Such a bill of lading shall be prima facie evidence of the receipt by the carrier of the goods as therein described in accordance with paragraph 3(a), (b) and (c). However, proof to the contrary shall not be admissible when the bill of lading has been transferred to a third party acting in good faith.

5. The shipper shall be deemed to have guaranteed to the carrier the accuracy at the time of shipment of the marks, number, quantity and weight, as furnished by him, and the shipper shall indemnify the carrier against all loss, damages and expenses arising or resulting from inaccuracies in such particulars. The right of the carrier to such indemnity shall in no way limit his responsibility and liability under the contract of carriage to any person other than the shipper.

6. Unless notice of loss or damage and the general nature of such loss or damage be given in writing to the carrier or his agent at the port of discharge before or at the time of the removal of the goods into the custody of the person entitled to delivery thereof under the contract of carriage, or, if the loss or damage be not apparent, within three days, such removal shall be prima facie evidence of the delivery by the carrier of the goods as described in the bill of lading.

The notice in writing need not be given if the state of the goods has, at the time of their receipt, been the subject of joint survey or inspection.

Subject to paragraph 6bis the carrier and the ship shall in any event be discharged from all liability whatsoever in respect of the goods, unless suit is brought within one year of their delivery or of the date when they should have been delivered. This period may, however, be extended if the parties so agree after the cause of action has arisen.

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

6bis. An action for indemnity against a third person may be brought even after the expiration of the year provided for in the preceding paragraph if brought within the time allowed by the law of the Court seized of the case. However, the time allowed shall be not less than three months, commencing from the day when the person bringing such action for indemnity has settled the claim or has been served with process in the action against himself.

第 III 條

1 承運人必須在開航前及在開航時盡應盡的努力——

- (a) 使船舶處於適航狀態。
- (b) 為船舶妥善配備人手、裝備及供應。
- (c) 使運載貨物的貨艙、冷藏艙、冷氣艙及船舶的其他部分適合並能安全收受、運載及保存貨物。

2 除第 IV 條條文另有規定外，承運人須妥善地及謹慎地裝載、處理、積載、運輸、保管、照料及卸載所運貨物。

3 承運人、船長或承運人的代理人在收到交由其掌管之貨物後，在付運人要求下，須向該付運人發出提單，而該提單所載明的事項中須包括下列各項——

- (a) 付運人在貨物開始裝上船舶前以書面提供的為識別該貨物所需的主要標記，(但該標記須在無遮蓋的貨物上或包裝裝載該貨物的裝貨箱或覆蓋物上清楚印上或以其他方式顯示，並須能在通常情況下保持可閱的狀況，直至航程結束為止。
- (b) 付運人以書面提供的貨物包數或件數，或數量或重量(視屬何情況而定)。
- (c) 貨物的表面狀況。

但如承運人、船長或承運人的代理人有合理理由懷疑任何標記、數目、數量或重量並不準確說明實際接收的貨物，或他並無合理方法核檢該等標記、數目、數量或重量，則他不受須在提單內說明或顯示該等標記、數目、數量或重量的規定的約束。

4 上述提單為證明承運人已接收該提單內按照第 3(a)、(b) 及 (c) 款所描述的貨物的表面證據。然而，當該提單已被轉讓給本著真誠行事的第三者時，則不得接納相反證明。

5 付運人須被當作為已向承運人保證由他提供的標記、數目、數量及重量在貨物付運時是準確的，付運人並須就因該等資料不準確所引起或導致的所有損失、損害賠償及費用向承運人作出彌償。承運人有權獲得此等彌償，並不限制其根據運輸合約對付運人以外的任何人所承擔的責任及法律責任。

6 除非在將貨物移交予根據運輸合約有權收貨的人保管時或之前，已在卸貨前向承運人或其代理人發出有關滅失或損壞及該等滅失或損壞的一般性質的書面通知，或如滅失或損壞並不明顯的，則除非在上述移交的三日內提交上述書面通知，否則上述移交即為證明承運人已將提單所描述的貨物交付的表面證據。

貨物被接收時已經過共同檢查或檢驗的，則無需發出書面通知。

除第 6bis 款另有規定外，除非在交付貨物或本應交付貨物日期的一年內提出訴訟，否則承運人及船舶無論在任何情況下均獲解除就該貨物所須承擔的法律責任。然而，在訴訟因由產生後，各方可約定將該期限延展。

倘貨物有任何實際或意恐出現的滅失或損壞，承運人及接收人須互相向對方提供一切合理方便，以檢驗及點算貨物。

6bis. 即使在前款所規定的一年期限屆滿後，向第三者索取彌償的訴訟，仍可在審理有關案件的法院所准許的時間內提起。然而，所准許的時間，須自提起該索取彌償的訴訟的人就有關申索達成和解或在對他提起的訴訟中獲送達法律程序文件之日起計，不得少於三個月。

7. After the goods are loaded the bill of lading to be issued by the carrier, master, or agent of the carrier, to the shipper shall, if the shipper so demands, be a "shipped" bill of lading, provided that if the shipper shall have previously taken up any document of title to such goods, he shall surrender the same as against the issue of the "shipped" bill of lading, but at the option of the carrier such document of title may be noted at the port of shipment by the carrier, master, or agent with the name or names of the ship or ships upon which the goods have been shipped and the date or dates of shipment, and when so noted, if it shows the particulars mentioned in paragraph 3, shall for the purpose of this article be deemed to constitute a "shipped" bill of lading.

8. Any clause, covenant, or agreement in a contract of carriage relieving the carrier or the ship from liability for loss or damage to, or in connection with, goods arising from negligence, fault, or failure in the duties and obligations provided in this article or lessening such liability otherwise than as provided in these Rules, shall be null and void and of no effect. A benefit of insurance in favour of the carrier, or similar clause shall be deemed to be a clause relieving the carrier from liability.

ARTICLE IV

1. Neither the carrier nor the ship shall be liable for loss or damage arising or resulting from unseaworthiness unless caused by want of due diligence on the part of the carrier to make the ship seaworthy, and to secure that the ship is properly manned, equipped and supplied, and to make the holds, refrigerating and cool chambers and all other parts of the ship in which goods are carried fit and safe for their reception, carriage and preservation in accordance with the provisions of paragraph 1 of Article III. Whenever loss or damage has resulted from unseaworthiness the burden of proving the exercise of due diligence shall be on the carrier or other person claiming exemption under this article.

2. Neither the carrier nor the ship shall be responsible for loss or damage arising or resulting from—

- (a) Act, neglect, or default of the master, mariner, pilot, or the servants of the carrier in the navigation or in the management of the ship
- (b) Fire, unless caused by the actual fault or privity of the carrier.
- (c) Perils, dangers and accidents of the sea or other navigable waters.
- (d) Act of God.
- (e) Act of war.
- (f) Act of public enemies.
- (g) Arrest or restraint of princes, rulers or people, or seizure under legal process.
- (h) Quarantine restrictions.
- (i) Act or omission of the shipper or owner of the goods, his agent or representative.
- (j) Strikes or lockouts or stoppage or restraint of labour from whatever cause, whether partial or general
- (k) Riots and civil commotions.
- (l) Saving or attempting to save life or property at sea.
- (m) Wastage in bulk or weight or any other loss or damage arising from inherent defect, quality or vice of the goods.
- (n) Insufficiency of packing.
- (o) Insufficiency or inadequacy of marks
- (p) Latent defects not discoverable by due diligence.
- (q) 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 shall be on the person claiming the benefit of this exception to show that neither the actual fault or privity of the carrier nor the fault or neglect of the agents or servants of the carrier contributed to the loss or damage

7. 在貨物裝船後，如付運人提出要求，由承運人、船長或承運人的代理人向付運人發出的提單須為“已裝船”提單，但倘若付運人先前已就該貨物取得任何所有權文件，則他須交出該文件以換取“已裝船”提單的發出，但在承運人的選擇下，該所有權文件可在付運港由該承運人、船長或代理人在其上註明裝運該貨物的船舶名稱及付運日期，而如該文件顯示第3款所述的資料並經如此註明後，則就本條而言該文件須當作構成一併“已裝船”提單。

8. 運輸合約內的任何條款，如並非按本規則的規定免除承運人或船舶對由於在履行本條規定的責任及義務時的疏忽、過失，或沒有履行本條規定的責任及義務，以致貨物滅失或損壞所須承擔的法律責任，或造成與該等貨物有關的滅失或損壞而須承擔的法律責任的，或並非按本規則的規定減輕該等法律責任的，均屬無效及不具任何作用，使承運人受惠的保險利益或類似的條款，須當作是免除承運人的法律責任的條款。

第IV條

1. 承運人及船舶均無須對因船舶不適航而引起或導致的滅失、損失、損壞或損害承擔法律責任，除非因承運人沒有按照第111條第1款的條文，盡應盡的努力使該船舶處於適航狀態，及確保該船舶妥善配備人手、裝備及供應，以及使船舶上運載貨物的貨艙、冷藏艙、冷氣艙及船舶的其他部分適合並能安全收受、運載及保存貨物，則屬例外。在任何因船舶不適航而導致滅失、損失、損壞或損害的情況下，須由承運人或其他根據本條要求豁免責任的人負舉證責任，證明已盡應盡的努力。

2. 承運人及船舶均無須對下列事項所引起或導致的滅失、損失、損壞或損害負責——

- (a) 船長、船員、領航員，或承運人的僱工在船舶航行或管理方面的作為、疏忽或錯誤。
- (b) 火警，但因承運人的實際過失所引起或由他參與造成的除外。
- (c) 海上或其他可航水域內的災患、危險及意外事故。
- (d) 天災。
- (e) 戰爭。
- (f) 公敵行為。
- (g) 君主、統治者或人民所作的拘禁或限制，或根據法律程序所作的扣押。
- (h) 檢疫限制。
- (i) 付運人或貨物所有人，其代理人或代表的作為或不作為。
- (j) 為任何因因而罷工、關閉工作場地、停工或限制工作，不論屬局部或全面的。
- (k) 暴動及內亂。
- (l) 在海上拯救或企圖拯救人命或財產。
- (m) 因貨物固有的缺陷、品質或缺點所引起在數量或重量上的耗損或任何其他滅失或損壞。
- (n) 包裝不足。
- (o) 標記不足或不妥。
- (p) 盡應盡的努力亦不能發現的潛在缺陷。
- (q) 任何並非因承運人的實際過失所引起或由他參與造成的其他因由，或並非因承運人的代理人或僱工的過失或疏忽所引起或其他因由，但須由該名要求獲得本例外規定所賦予的利益的人負舉證責任，證明有關損失或損害既非由於有因承運人的實際過失所引起或由他參與造成的因素而造成，亦非由於有承運人的代理人或僱工的過失或疏忽的因素而造成。

3. The shipper shall not be responsible for loss or damage by the carrier or the ship arising or resulting from any cause without the act, fault or neglect of the shipper, his agents or his servants.

4. Any deviation in saving or attempting to save life or property at sea or any reasonable deviation shall not be deemed to be an infringement or breach of these Rules or of the contract of carriage, and the carrier shall not be liable for any loss or damage resulting therefrom.

5. (a) Unless the nature and value of such goods have been declared by the shipper before shipment and inserted in the bill of lading, neither the carrier nor the ship shall in any event be or become liable for any loss or damage to or in connection with the goods in an amount exceeding 666.67 units of account per package or unit or 2 units of account per kilogram of gross weight of the goods lost or damaged, whichever is the higher.
- (b) The total amount recoverable shall be calculated by reference to the value of such goods at the place and time at which the goods are discharged from the ship in accordance with the contract or should have been so discharged. The value of the goods shall be fixed according to the commodity exchange price, or, if there be no such price, according to the current market price, or, if there be no commodity exchange price or current market price, by reference to the normal value of goods of the same kind and quality.
- (c) Where a container, pallet or similar article of transport is used to consolidate goods, the number of packages or units enumerated in the bill of lading as packed in such article of transport shall be deemed the number of packages or units for the purpose of this paragraph as far as these packages or units are concerned. Except as aforesaid such article of transport shall be considered the package or unit.
- (d) The unit of account mentioned in this article is the special drawing right as defined by the International Monetary Fund. The amounts mentioned in subparagraph (a) of this paragraph shall be converted into national currency on the basis of the value of that currency on a date to be determined by the law of the Court seized of the case.
- (e) Neither the carrier nor the ship shall be entitled to the benefit of the limitation of liability provided for in this paragraph if it is proved that the damage resulted from an act or omission of the carrier done with intent to cause damage, or recklessly and with knowledge that damage would probably result.
- (f) The declaration mentioned in subparagraph (a) of this paragraph, if embodied in the bill of lading, shall be prima facie evidence, but shall not be binding or conclusive on the carrier.
- (g) By agreement between the carrier, master or agent of the carrier and the shipper other maximum amounts than those mentioned in subparagraph (a) of this paragraph may be fixed, provided that no maximum amount so fixed shall be less than the appropriate maximum mentioned in that subparagraph.
- (h) Neither the carrier nor the ship shall be responsible in any event for loss or damage to, or in connection with, goods if the nature or value thereof has been knowingly mis-stated by the shipper in the bill of lading.

6. Goods of an inflammable, explosive or dangerous nature to the shipment whereof the carrier, master or agent of the carrier has not consented with knowledge of their nature and character, may at any time before discharge be landed at any place, or destroyed or rendered innocuous by the carrier without compensation and the shipper of such goods shall be liable for all damages and expenses directly or indirectly arising out of or resulting from such shipment. If any such goods shipped with such knowledge and consent shall become a danger to the ship or cargo, they may in like manner be landed at any place, or destroyed or rendered innocuous by the carrier without liability on the part of the carrier except to general average, if any.

ARTICLE IV BIS

1. The defences and limits of liability provided for in these Rules shall apply in any action against the carrier in respect of loss or damage to goods covered by a contract of carriage whether the action be founded in contract or in tort.

3. 如承運人或船舶所蒙受的損失或損害，並非由於有付運人、其代理人或其傭工的作為、過失或疏忽的因素的任何原因所引起或導致的，付運人無須對該損失或損害負責。

4. 在海上為拯救或企圖拯救人命或財產而作的繞航或任何合理繞航，不得當作違犯或違反本規則或運輸合約，而承運人對任何因此而導致的滅失、損失、損壞或損害均無須負責。

5. (a) 承運人及船舶對貨物的或與貨物有關的滅失或損壞所負責任的限額，按照該等滅失或損壞貨物包數或其他貨運單位數計算，每包或每個貨運單位為 666.67 計算單位，或者按照該等滅失或損壞貨物的毛重計算，每公斤為 2 計算單位，以二者中較高者為準，而在任何情況下承運人及船舶均無須對超過上述限額的滅失或損壞負責，但付運人在貨物付運前已申報其性質和價值並在提單上載明的則除外。
- (b) 可予追討的總數額，須參照該等貨物按照合約從船舶卸下或本應從船舶卸下時在該卸貨地方的價值計算。貨物的價值，須按照商品交易所價格定出，如無商品交易所價格，則須按照當時市價定出，如無商品交易所價格又無當時市價，則須參照同一類別及品質的貨物的正常價值定出。
- (c) 凡貨物用貨櫃箱、貨籃或類似的裝運器具裝載的，則提單上載明裝在該裝運器具中的貨物包數或其他貨運單位數，須為本款中有關貨物包裝或貨運單位的目的，當作是該等貨物包數或貨運單位數。除上述者外，板裝運器具須視為一個貨物包裝或一個貨運單位。
- (d) 本條所述的計算單位指國際貨幣基金組織所界定的特別提款權。本款 (a) 段所述的款額，須以該貨幣於審理有關案件的法院決定的日期的幣值為折算基準，折算為該國家貨幣。
- (e) 如經證明有關損壞或損害是由於承運人故意作出的作為或不作為造成的，或由於承運人明知頗有可能造成損壞或損害而罔顧後果地作出的作為或不作為造成的，承運人及船舶均不得享有本款規定的限制法律責任的利息。
- (f) 本款 (a) 段所述的申報事項，如已載入提單內的，須為表面證據，但對承運人而言並無約束力而亦非確證。
- (g) 承運人、船長或承運人的代理人與付運人可藉協議定出本款 (a) 段所述最高限額以外的其他最高限額，但該另定的最高限額不得少於該段所述的適當的最高限額。
- (h) 如付運人明知而在提單內載明該等貨物的性質或價值，承運人及船舶在任何情況下均無須對貨物的或與貨物有關的滅失或損壞負責。

6. 凡有關的貨物屬易燃、爆炸性或危險性質的，而承運人、船長或承運人的代理人並非在知悉該等貨物的性質及特性的情況下同意將該貨物付運，則承運人可在卸貨前的任何時間，將貨物在任何地方上岸、銷毀或使之不能為害，而無須給予補償，但該等貨物的付運人則須對直接或間接因該次付運所引起或導致的所有損害賠償及支出負責。倘任何該等貨物是在承運人、船長或承運人的代理人知悉該等貨物的性質和特性下及其同意下付運的，則當該等貨物對船舶或其他貨物構成危險時，承運人亦可以相同方式將該等貨物在任何地方上岸、銷毀或使之不能為害，而無須承擔法律責任，但有關共同海損的法律責任(如有的話)則除外。

第 IV BIS 條

1. 本規則所規定的免責辯護及法律責任限制，均適用於就運輸合約所涵蓋的貨物滅失或損壞而對承運人提起的任何訴訟，不論該訴訟是根據合約的或根據法例提起的。

2. If such an action is brought against a servant or agent of the carrier (such servant or agent not being an independent contractor), such servant or agent shall be entitled to avail himself of the defences and limits of liability which the carrier is entitled to invoke under these Rules.

3. The aggregate of the amounts recoverable from the carrier, and such servants and agents, shall in no case exceed the limit provided for in these Rules.

4. Nevertheless, a servant or agent of the carrier shall not be entitled to avail himself of the provisions of this article, if it is proved that the damage resulted from an act or omission of the servant or agent done with intent to cause damage or recklessly and with knowledge that damage would probably result.

ARTICLE V

A carrier shall be at liberty to surrender in whole or in part all or any of his rights and immunities or to increase any of his responsibilities and obligations under these Rules, provided such surrender or increase shall be embodied in the bill of lading issued to the shipper. The provisions of these Rules shall not be applicable to charter parties, but if bills of lading are issued in the case of a ship under a charter party they shall comply with the terms of these Rules. Nothing in these Rules shall be held to prevent the insertion in a bill of lading of any lawful provision regarding general average.

ARTICLE VI

Notwithstanding the provisions of the preceding articles, a carrier, master or agent of the carrier and a shipper shall in regard to any particular goods be at liberty to enter into any agreement in any terms as to the responsibility and liability of the carrier for such goods, and as to the rights and immunities of the carrier in respect of such goods, or his obligation as to seaworthiness, so far as this stipulation is not contrary to public policy, or the care or diligence of his servants or agents in regard to the loading, handling, stowage, carriage, custody, care and discharge of the goods carried by sea, provided that in this case no bill of lading has been or shall be issued and that the terms agreed shall be embodied in a receipt which shall be a non-negotiable document and shall be marked as such.

Any agreement so entered into shall have full legal effect.

Provided that this article shall not apply to ordinary commercial shipments made in the ordinary course of trade, but only to other shipments where the character or condition of the property to be carried or the circumstances, terms and conditions under which the carriage is to be performed are such as reasonably to justify a special agreement.

ARTICLE VII

Nothing herein contained shall prevent a carrier or a shipper from entering into any agreement, stipulation, condition, reservation or exemption as to the responsibility and liability of the carrier or the ship for the loss or damage to, or in connection with, the custody and care and handling of goods prior to the loading on, and subsequent to the discharge from, the ship on which the goods are carried by sea.

ARTICLE VIII

The provisions of these Rules shall not affect the rights and obligations of the carrier under any statute for the time being in force relating to the limitation of the liability of owners of sea-going vessels.

ARTICLE IX

These Rules shall not affect the provisions of any international Convention or national law governing liability for nuclear damage.

2. 倘上述訴訟是對承運人的僱工或代理人(而該僱工或代理人並非獨立承辦商)提起的, 該僱工或代理人即有權利用承運人根據本規則有權援引的免責辯護及法律責任限制。

3. 可向承運人及有關僱工及代理人追討的合計總額, 在任何情況下均不得超過本規則所規定的限額。

4. 然而, 如經證明有關的損壞或損害是由於承運人的僱工或代理人故意或明知頗有可能造成損壞或損害而罔顧後果地作出的作為或不作為造成的, 則該僱工或代理人無權援引本條的條文。

第 V 條

承運人可自由放棄其在本規則下的權利及豁免權的全部或任何部分, 或增加其在本規則下的任何責任及義務, 但該項放棄或增加須載入向付運人發出的提單內。本規則的條文不適用於租船合約, 但如發出的提單是關於租船合約下的船舶的, 則該等提單須符合本規則的條款。本規則不得阻止在提單內加入有關共同海損的任何合法條文。

第 VI 條

儘管有以上各條的條文, 承運人、船長或承運人的代理人與付運人, 可就某貨物自由訂立協議, 指定關於承運人就該貨物所承擔的責任及法律責任的條款, 以及關於承運人就該貨物所享有的權利及豁免權的條款, 或關於承運人就船舶適航狀態方面所承擔的義務的條款(但該項指定條款須不違反公共政策), 或關於承運人的僱工或代理人須謹慎地、努力地裝載、處理、積載、運輸、保管、照料及卸載經海上運輸的貨物的規定的條款, 而且在該情況下須未曾發出任何提單或不得發出任何提單, 而所約定的條款須載入一份屬不可轉讓文件的收據內, 該收據並須註明為不可轉讓文件。

任何如此訂立的協議, 均具有全面的法律效力。

但本條並不適用於在通常行業運作中進行的一般商業付運, 而只適用於其他因所運輸的財產的特性及狀況, 或執行運輸的情況、條款及條件而理應就其訂立特別協議的付運。

第 VII 條

本規則所載的條文, 並不阻止承運人或付運人就承運人或船舶因在將貨物裝上該海上運輸貨物船舶前或將貨物從該船舶卸後對該等貨物所造成的滅失或損壞或與該等貨物的保管、照料及處理有關的滅失或損壞而須承擔的責任及法律責任, 訂立任何協議、指定條款、條件、保留或豁免條款。

第 VIII 條

本規則的條文, 並不影響承運人根據其時有效的任何關於限制可在海域航行船隻的船東的法律責任的法規而享有的權利及承擔的義務。

第 IX 條

本規則並不影響任何有關限制核子損害所承擔的法律責任的國際公約條文或國家法律條文。

ARTICLE X

The provisions of these Rules shall apply to every bill of lading relating to the carriage of goods between ports in two different States if—

- (a) the bill of lading is issued in a contracting State, or
- (b) the carriage is from a port in a contracting State, or
- (c) the contract contained in or evidenced by the bill of lading provides that these Rules or legislation of any State giving effect to them are to govern the contract,

whatever may be the nationality of the ship, the carrier, the shipper, the consignee, or any other interested person.

第X條

本規則的條文，對關於在位於兩個不同國家境內的港口之間運輸貨物的提單適用，但須符合下述情況——

- (a) 該提單是在締約國家內發出的，或
- (b) 有關運輸是從締約國家境內的港口出發的，或
- (c) 該提單所載有或所證明的合約規定該合約受本規則或受使本規則生效的任何國家法例所管限的，

而不論該船舶、承運人、付運人、收貨人或任何其他有利害關係的人屬何國籍。

[Subsidiary]

[附屬法例]

CARRIAGE OF GOODS BY SEA (PARTIES TO CONVENTION) ORDER 1985

1985 年海上貨物運輸(公約締約方)令

(Cap. 462, sections 4(1) and 8(2))*

(第 462 章第 4(1) 及 8(2) 條)*

[10 April 1985]

[1985 年 4 月 10 日]

1. This Order may be cited as the Carriage of Goods by Sea (Parties to Convention) Order 1985 (*Words omitted as spent*).

1. 本命令可引稱為《1985 年海上貨物運輸(公約締約方)令》(有關文字因已失時效而略去)。

2. It is hereby certified that the contracting States to the International Convention for the Unification of Certain Rules of Law relating to Bills of Lading signed at Brussels on 25th August 1924(a), as amended by the Protocol signed at Brussels on 23rd February 1968(b), and the territories in respect of which they are respectively contracting States are as listed in the Schedule to this Order.

2. 現證明屬 1924 年 8 月 25 日在布魯塞爾簽署的《統一若干有關提單的法律規則國際公約》* (a) (經由 1968 年 2 月 23 日在布魯塞爾簽署的議定書 (b) 修訂者) 的各個締約國家，和該等各別作為締約國家所涉的領域，均列於本命令的附表內。

3. (*Omitted as spent*)

3. (*已失時效而略去*)

Contracting States	SCHEDULE Territories in respect of which they are respectively parties	[para. 2] Dates on which the Convention as amended came into force
The United Kingdom of Great Britain and Northern Ireland	Great Britain and Northern Ireland	23rd June 1977
	The Isle of Man	23rd June 1977
	Bermuda	1st February 1981
	British Antarctic Territory	20th January 1984
	British Virgin Islands	20th January 1984
	Cayman Islands	20th January 1984
	Falkland Islands	20th January 1984
	Falkland Islands Dependencies	20th January 1984
	Gibraltar	22nd December 1977
	Hong Kong	1st February 1981
Montserrat	20th January 1984	

締約國家	附表 各別作為締約方所涉的領域	[第 2 條] 經修訂的公約的生效日期	
大不列顛及北愛爾蘭聯合王國	大不列顛及北愛爾蘭	1977 年 6 月 23 日	
	萌島	1977 年 6 月 23 日	
	百慕達	1981 年 2 月 1 日	
	英屬前極領域	1984 年 1 月 20 日	
	英屬維爾京群島	1984 年 1 月 20 日	
	開曼群島	1984 年 1 月 20 日	
	福克蘭群島	1984 年 1 月 20 日	
	福克蘭群島屬地	1984 年 1 月 20 日	

* This Order was made under section 2 of the Carriage of Goods by Sea Act 1971 (1971 c.19 U.K.). See sections 4(1) and 8(2)(a) of the Carriage of Goods by Sea Ordinance, enacted in 1994 (Cap. 462).
(a) Cmd. 3806 (b) Cmd. 6944.

* 本命令根據《1971 年海上貨物運輸法令》† (1971 c. 19 U.K.) 第 2 條訂立，參閱 1994 年修訂的《海上貨物運輸條例》(第 462 章) 第 4(1) 及 8(2)(a) 條。
(a) Cmd. 3806 (b) Cmd. 6944.
† “《統一若干有關提單的法律規則國際公約》” 乃 “International Convention for the Unification of Certain Rules of Law relating to Bills of Lading” 之譯名。
‡ “《1971 年海上貨物運輸法令》” 乃 “Carriage of Goods by Sea Act 1971” 之譯名。

[Subsidiary]		
Contracting States	Territories in respect of which they are respectively parties	Dates on which the Convention as amended came into force
	Truks and Caicos Islands	20th January 1984
The Kingdom of Belgium	Belgium	6th December 1978
The Kingdom of Denmark	Denmark	23rd June 1977
The Republic of Ecuador	Ecuador	23rd June 1977
The Arab Republic of Egypt	Egypt	30th April 1983
The Republic of Finland	Finland	1st March 1985
The French Republic	France	23rd June 1977
The German Democratic Republic	German Democratic Republic	14th May 1979
The Lebanon Republic	Lebanon	23rd June 1977
The Kingdom of the Netherlands	The Kingdom of the Netherlands in Europe	26th July 1982
The Kingdom of Norway	Norway	23rd June 1977
The Polish People's Republic	Poland	12th May 1980
The Republic of Singapore	Singapore	23rd June 1977
Spain	Spain	14th February 1984
The Democratic Socialist Republic of Sri Lanka	Sri Lanka	21st January 1982
The Kingdom of Sweden	Sweden	23rd June 1977
The Swiss Confederation	Switzerland	23rd June 1977
The Syrian Arab Republic	Syria	23rd June 1977
The Kingdom of Tonga	Tonga	13th September 1978

[附屬法例]		
締約國家	各別作為締約方所涉的領域	經修訂的公約的生效日期
	直布羅陀	1977年12月22日
	香港	1981年2月1日
	蒙特塞拉特島	1984年1月20日
	特魯克群島及凱科斯群島	1984年1月20日
比利時王國	比利時	1978年12月6日
丹麥王國	丹麥	1977年6月23日
厄瓜多爾共和國	厄瓜多爾	1977年6月23日
阿拉伯埃及共和國	埃及	1983年4月30日
芬蘭共和國	芬蘭	1985年3月1日
法蘭西共和國	法國	1977年6月23日
德意志民主共和國	德意志民主共和國	1979年5月14日
黎巴嫩共和國	黎巴嫩	1977年6月23日
荷蘭王國	位於歐洲的荷屬王國	1982年7月26日
挪威王國	挪威	1977年6月23日
波蘭人民共和國	波蘭	1980年5月12日
新加坡共和國	新加坡	1977年6月23日
西班牙	西班牙	1984年2月14日
斯里蘭卡民主社會主義共和國	斯里蘭卡	1982年1月21日
瑞典王國	瑞典	1977年6月23日
瑞士聯邦	瑞士	1977年6月23日
阿拉伯敘利亞共和國	敘利亞	1977年6月23日
湯加王國	湯加	1978年9月13日

HAVING ~~RECOGNIZED~~ the ~~desirability~~ of determining by agreement certain rules ~~relating~~ to the carriage of goods by sea,

HAVE ~~DECIDED~~ to conclude a ~~Convention~~ for this purpose and have ~~thereto~~ agreed as follows:

PART I. GENERAL PROVISIONS

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.

3. "Shipper" means any person by whom or in whose name or on whose behalf a contract of carriage of goods by sea has been concluded with a carrier, or any person by whom or in whose name or on whose behalf the goods are actually delivered to the carrier in relation to the contract of carriage by sea.

4. "Consignee" means the person entitled to take delivery of the goods.

5. "Goods" includes live animals; where the goods are consolidated in a container, pallet or similar article of transport or where they are packed, "goods" includes such article of transport or packaging if supplied by the shipper.

6. "Contract of carriage by sea" means any contract whereby the carrier undertakes against payment of freight to carry goods by sea from one port to another; however, a contract which involves carriage by sea and also carriage by some other means is deemed to be a contract of carriage by sea for the purposes of this Convention only in so far as it relates to the carriage by sea.

7. "Bill of lading" means a document which evidences a contract of carriage by sea and the taking over or loading of the goods by the carrier, and by which the carrier undertakes to deliver the goods against surrender of the document. A provision in the document that the goods are to be delivered to the order of a named person, or to order, or to bearer, constitutes such an undertaking.

8. "Writing" includes, *inter alia*, telegram and telex.

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:

- (a) the port of loading as provided for in the contract of carriage by sea is located in a Contracting State, or
- (b) the port of discharge as provided for in the contract of carriage by sea is located in a Contracting State, or
- (c) one of the optional ports of discharge provided for in the contract of carriage by sea is the actual port of discharge and such port is located in a Contracting State, or
- (d) the bill of lading or other document evidencing the contract of carriage by sea is issued in a Contracting State, or
- (e) the bill of lading or other document evidencing the contract of carriage by sea provides that the provisions of this Convention or the legislation of any State giving effect to them are to govern the contract.

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.

3. The provisions of this Convention are not applicable to charter-parties. However, where a bill of lading is issued pursuant to a charter-party, the provisions of the Convention apply to such a bill of lading if it governs the relation between the carrier and the holder of the bill of lading, not being the charterer.

4. If a contract provides for future carriage of goods in a series of shipments during an agreed period, the provisions of this Convention apply to each shipment. However, where a shipment is made under a charter-party, the provisions of para. 3 of this Article apply.

Article 3. Interpretation of the Convention

In the interpretation and application of the provisions of this Convention regard shall be had to its international character and to the need to promote uniformity.

PART II. LIABILITY OF THE CARRIER

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 para. 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; or
- (ii) in cases where the consignee does not receive the goods from the carrier, by placing them at the disposal of the consignee in accordance with the contract or with the law or with the usage of the particular trade, applicable at the port of discharge; or
- (iii) by handing over the goods to an authority or other third party to whom, pursuant to law or regulations applicable at the port of discharge, the goods must be handed over.

3. In paras. 1 and 2 of this Article, reference to the carrier or to the consignee means, in addition to the carrier or the consignee, the servants or agents, respectively of the carrier or 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 art. 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 art. 4 within 60 consecutive days following the expiry of the time for delivery according to para. 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 art. 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 art. 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.
- (c) In no case shall the aggregate liability of the carrier, under both subparas. (a) and (b) of this paragraph, exceed the limitation which would be established under subpara. (a) of this paragraph for total loss of the goods with respect to which such liability was incurred.

2. For the purpose of calculating which amount is the higher in accordance with para. 1 (a) of this Article, the following rules apply:

- (a) Where a container, pallet or similar article of transport is used to consolidate goods, the package or other shipping units enumerated in the bill of lading, if issued, or otherwise in any other document evidencing the contract of carriage by sea, as packed in such article of transport are deemed packages or shipping units. Except as aforesaid the goods in such article of transport are deemed one shipping unit.
- (b) In cases where the article of transport itself has been lost or damaged, that article of transport, if not owned or otherwise supplied by the carrier, is considered one separate shipping unit.

3. Unit of account means the unit of account mentioned in art. 26.

4. By agreement between the carrier and the shipper, limits of liability exceeding those provided for in para. 1 may be fixed.

Article 7. Application to non-contractual claims

1. The defences and limits of liability provided for in this Convention apply in any action against the carrier in respect of loss or damage to the goods covered by the contract of carriage by sea, as well as of delay in delivery whether the action is founded in contract, in tort or otherwise.

2. If such an action is brought against a servant or agent of the carrier, such servant or agent, if he proves that he acted within the scope of his employment, is entitled to avail himself of the defences and limits of liability which the carrier is entitled to invoke under this Convention.

3. Except as provided in art. 8, the aggregate of the amounts recoverable from the carrier and from any persons referred to in para 2 of this Article shall not exceed the limits of liability provided for in this Convention.

Article 8. Loss of right to limit responsibility

1. The carrier is not entitled to the benefit of the limitation of liability provided for in art. 6 if it is proved that the loss, damage or delay in delivery resulted from an act or omission of the carrier done with the intent to cause such loss, damage or delay, or recklessly and with knowledge that such loss, damage or delay would probably result.

2. Notwithstanding the provisions of para. 2 of art. 7, a servant or agent of the carrier is not entitled to the benefit of the limitation of liability provided for in art. 6 if it is proved that the loss, damage or delay in delivery resulted from an act or omission of such servant or agent, done with the intent to cause such loss, damage or delay, or recklessly and with knowledge that such loss, damage or delay would probably result.

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.

3. Where the goods have been carried on deck contrary to the provisions of para. 1 of this Article or where the carrier may not under para. 2 of this Article invoke an agreement for carriage on deck, the carrier, notwithstanding the provisions of para. 1 of art. 5, is liable for loss of or damage to the goods, as well as for delay in delivery, resulting solely from the carriage on deck, and the extent of his liability is to be determined in accordance with the provisions of art. 6 or art. 8 of this Convention, as the case may be.

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 art. 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 paras. 2 and 3 of art. 7 and of para. 2 of art. 8 apply if an action is brought against a servant or agent of the actual carrier.

3. Any special agreement under which the carrier assumes obligations not imposed by this Convention or waives rights conferred by this Convention affects the actual carrier only if agreed to by him expressly and in writing. Whether or not the actual carrier has so agreed, the carrier nevertheless remains bound by the obligations or waivers resulting from such special agreement.

4. Where and to the extent that both the carrier and the actual carrier are liable, their liability is joint and several.

5. The aggregate of the amounts recoverable from the carrier, the actual carrier and their servants and agents shall not exceed the limits of liability provided for in this Convention.

6. Nothing in this Article shall prejudice any right of recourse as between the carrier and the actual carrier.

Article 11. Through carriage

1. Notwithstanding the provisions of para. 1 of art. 10, where a contract of carriage by sea provides explicitly that a specified part of the carriage covered by the said contract is to be performed by a named person other than the carrier, the contract may also provide that the carrier is not liable for loss, damage or delay in delivery caused by an occurrence which takes place while the goods are in the charge of the actual carrier during such part of the carriage. Nevertheless, any

stipulation limiting or excluding such liability is without effect if no judicial proceedings can be instituted against the actual carrier in a court competent under paras. 1 or 2 of art. 21. 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 para. 2 of art. 10 for loss, damage or delay in delivery caused by an occurrence which takes place while the goods are in his charge.

PART III. LIABILITY OF THE SHIPPER

Article 12. General rule

The shipper is not liable for loss sustained by the carrier or the actual carrier, or for damage sustained by the ship, unless such loss or damage was caused by the fault or neglect of the shipper, his servants or agents. Nor is any servant or agent of the shipper liable for such loss or damage unless the loss or damage was caused by fault or neglect on his part.

Article 13. Special rules on dangerous goods

1. The shipper must mark or label in a suitable manner dangerous goods as dangerous.

2. Where the shipper hands over dangerous goods to the carrier or an actual carrier, as the case may be, the shipper must inform him of the dangerous character of the goods and, if necessary, of the precautions to be taken. If the shipper fails to do so and such carrier or actual carrier does not otherwise have knowledge of their dangerous character:

- (a) the shipper is liable to the carrier and any actual carrier for the loss resulting from the shipment of such goods, and
- (b) the goods may at any time be unloaded, destroyed or rendered innocuous, as the circumstances may require, without payment of compensation.

3. The provisions of para. 2 of this Article may not be invoked by any person if during the carriage he has taken the goods in his charge with knowledge of their dangerous character.

4. If, in cases where the provisions of para. 2, subpara. (b), of this Article do not apply or may not be invoked, dangerous goods become an actual danger to life or property, they may be unloaded, destroyed or rendered innocuous, as the circumstances may require,

without payment of compensation except where there is an obligation to contribute in general average or where the carrier is liable in accordance with the provisions of art. 5.

PART IV. 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 any 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 para 3 of art. 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 para. 4 of art. 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 para. 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 para. 7 of art. 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 para. 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 para. 1, sub-para. (k) of art. 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. Such letter of guarantee or agreement is valid as against the shipper unless the carrier or the person acting on his behalf, by omitting the reservation referred to in para. 2 of this Article, intends to defraud a third party, including a consignee, who acts in reliance on the description

of the goods in the bill of lading. In the latter case, if the reservation omitted relates to particulars furnished by the shipper for insertion in the bill of lading, the carrier has no right of indemnity from the shipper pursuant to para. 1 of this Article.

4. In the case of intended fraud referred to in para. 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.

PART V. 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 para. 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 in accordance with para. 2 of art. 4, whichever is later, 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

1. 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.

2. The limitation period commences on the day on which the carrier has delivered the goods or part thereof or, in cases where no goods have been delivered, on the last day on which the goods should have been delivered.

3. The day on which the limitation period commences is not included in the period.

4. The person against whom a claim is made may at any time during the running of the limitation period extend that period by a declaration in writing to the claimant. This period may be further extended by another declaration or declarations.

5. An action for indemnity by a person held liable may be instituted even after the expiration of the limitation period provided for in the preceding paragraphs if instituted within the time allowed by the law of the State where proceedings are instituted. However, the time allowed shall not be less than 90 days commencing from the day when the person instituting such action for indemnity has settled the claim or has been served with process in the action against himself.

Article 21. Jurisdiction

1. In judicial proceedings relating to carriage of goods under this Convention the plaintiff, at his option, may institute an action in a court which, according to the law of the State where the court is situated, is competent and within the jurisdiction of which is situated one of the following places:

- (a) the principal place of business or, in the absence thereof, the habitual residence of the defendant; or
- (b) the place where the contract was made provided that the defendant has there a place of business, branch or agency through which the contract was made; or
- (c) the port of loading or the port of discharge; or
- (d) any additional place designated for that purpose in the contract of carriage by sea.

2. (a) Notwithstanding the preceding provisions of this Article, an action may be instituted in the courts of any port or place in a Contracting State at which the carrying vessel or any other vessel of the same ownership may have been arrested in accordance with applicable rules of the law of that State and of international law. However, in such a case, at the petition of the defendant, the claimant must remove the action, at his choice, to one of the jurisdictions referred to in para. 1 of this Article for the determination of the claim, but before such removal the defendant must furnish security sufficient to ensure payment of any judgment that may subsequently be awarded to the claimant in the action.

(b) All questions relating to the sufficiency or otherwise of the security shall be determined by the court of the port or place of the arrest.

3. No judicial proceedings relating to carriage of goods under this Convention may be instituted in a place not specified in paras. 1 or 2 of this Article. The provisions of this paragraph do not constitute an obstacle to the jurisdiction of the Contracting States for provisional or protective measures.

4. (a) Where an action has been instituted in a court competent under paras. 1 or 2 of this Article or where judgment has been delivered by such a court, no new action may be started between the same parties on the same grounds unless the judgment of the court before which the first

action was instituted is not enforceable in the country in which the new proceedings are instituted;

- (b) for the purpose of this Article the institution of measures with a view to obtaining enforcement of a judgment is not to be considered as the starting of a new action;
- (c) for the purpose of this Article, the removal of an action to a different court within the same country, or to a court in another country, in accordance with para. 2(a) of this Article, is not to be considered as the starting of a new action.

5. Notwithstanding the provisions of the preceding paragraphs, an agreement made by the parties, after a claim under the contract of carriage by sea has arisen, which designates the place where the claimant may institute an action, is effective.

Article 22. Arbitration

1. Subject to the provisions of this Article, parties may provide by agreement evidenced in writing that any dispute that may arise relating to carriage of goods under this Convention shall be referred to arbitration.

2. Where a charter-party contains a provision that disputes arising thereunder shall be referred to arbitration and a bill of lading issued pursuant to the charter-party does not contain a special annotation providing that such provision shall be binding upon the holder of the bill of lading, the carrier may not invoke such provision as against a holder having acquired the bill of lading in good faith.

3. The arbitration proceedings shall, at the option of the claimant, be instituted at one of the following places:

- (a) a place in a State within whose territory is situated:
 - (i) the principal place of business of the defendant or, in the absence thereof, the habitual residence of the defendant; or
 - (ii) the place where the contract was made, provided that the defendant has there a place of business, branch or agency through which the contract was made; or
 - (iii) the port of loading or the port of discharge; or
- (b) any place designated for that purpose in the arbitration clause or agreement.

4. The arbitrator or arbitration tribunal shall apply the rules of this Convention.

5. The provisions of paras. 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 which is inconsistent therewith is null and void.

6. Nothing in this Article affects the validity of an agreement relating to arbitration made by the parties after the claim under the contract of carriage by sea has arisen.

PART VI. SUPPLEMENTARY PROVISIONS

Article 23. Contractual stipulations

1. Any stipulation in a contract of carriage by sea, in a bill of lading, or in any other document evidencing the contract of carriage by sea is null and void to the extent that it derogates, directly or indirectly, from the provisions of this Convention. The nullity of such a stipulation does not affect the validity of the other provisions of the contract or document of which it forms a part. A clause assigning benefit of insurance of the goods in favour of the carrier, or any similar clause, is null and void.

2. Notwithstanding the provisions of para. 1 of this Article, a carrier may increase his responsibilities and obligations under this Convention.

3. Where a bill of lading or any other document evidencing the contract of carriage by sea is issued, it must contain a statement that the carriage is subject to the provisions of this Convention which nullify any stipulation derogating therefrom to the detriment of the shipper or the consignee.

4. Where the claimant in respect of the goods has incurred loss as¹ a result of a stipulation which is null and void by virtue of the present Article, or as a result of the omission of the statement referred to in para. 3 of this Article, the carrier must pay compensation to the extent required in order to give the claimant compensation in accordance with the provisions of this Convention for any loss of or damage to the goods as well as for delay in delivery. The carrier must, in addition, pay compensation for costs incurred by the claimant for the purpose of exercising his right, provided that costs incurred in the action where the foregoing provision is invoked are to be determined in accordance with the law of the State where proceedings are instituted.

Article 24. General average

1. Nothing in this Convention shall prevent the application of provisions in the contract of carriage by sea or national law regarding the adjustment of general average.

2. With the exception of art. 20, the provisions of this Convention relating to the liability of the carrier for loss of or damage to the goods also determine whether the consignee may refuse contribution in general average and the liability of the carrier to indemnify the consignee in respect of any such contribution made or any salvage paid.

Article 25. Other conventions

1. This Convention does not modify the rights or duties of the carrier, the actual carrier and their servants and agents, provided for in international conventions or national law relating to the limitation of liability of owners of seagoing ships.

2. The provisions of arts. 21 and 22 of this Convention do not prevent the application of the mandatory provisions of any other multilateral convention already in force at the date of this Convention relating to matters dealt with in the said Articles, provided that the dispute arises exclusively between parties having their principal place of business in States members of such other convention. However, this paragraph does not affect the application of para. 4 of art. 22 of this Convention.

3. No liability shall arise under the provisions of this Convention for damage caused by a nuclear incident if the operator of a nuclear installation is liable for such damage:

(a) under either the Paris Convention of July 29, 1960, on Third Party Liability in the Field of Nuclear Energy as amended by the Additional Protocol of Jan. 28, 1964, or the Vienna Convention of May 21, 1963, on Civil Liability for Nuclear Damage, or

(b) by virtue of national law governing the liability for such damage, provided that such law is in all respects as favourable to persons who may suffer damage as either the Paris or Vienna Conventions.

4. No liability shall arise under the provisions of this Convention for any loss of or damage to or delay in delivery of luggage for which the carrier is responsible under any international convention or national law relating to the carriage of passengers and their luggage by sea.

5. Nothing contained in this Convention prevents a Contracting State from applying any other international convention which is already in force at the date of this Convention and which applies mandatorily to contracts of carriage of goods primarily by a mode of transport other than transport by sea. This provision also applies to any subsequent revision or amendment of such international convention.

Article 26. Unit of account

1. The unit of account referred to in art. 6 of this Convention is the Special Drawing Right as defined by the International Monetary Fund. The amounts mentioned in art. 6 are to be converted into the national currency of a State according to the value of such currency at the date of judgment 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 which 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 which is not a member of the International Monetary Fund is to be calculated in a manner determined by that State.

2. Nevertheless, those States which are not members of the International Monetary Fund and whose law does not permit the application of the provisions of para. 1 of this Article may, at the time of signature, or at the time of ratification, acceptance, approval or accession or at any time thereafter, declare that the limits of liability provided for in this Convention to be applied in their territories shall be fixed as:

12,500 monetary units per package or other shipping unit or 37.5 monetary units per kilogramme of gross weight of the goods.

3. The monetary unit referred to in para. 2 of this Article corresponds to sixty-five and a half milligrammes of gold of millesimal fineness nine hundred. The conversion of the amounts referred to in para. 2 into the national currency is to be made according to the law of the State concerned.

4. The calculation mentioned in the last sentence of para. 1 and the conversion mentioned in para. 3 of this Article is to be made in such a manner as to express in the national currency of the Contracting State as far as possible the same real value for the amounts in art. 6 as is expressed there in units of account. Contracting States must communicate to the depositary the manner of calculation pursuant to para. 1 of this Article, or the result of the conversion mentioned in para. 3 of this Article, as the case may be, at the time of signature or when depositing their instruments of ratification, acceptance, approval or accession, or when availing themselves of the option provided for in para. 2 of this Article and whenever there is a change in the manner of such calculation or in the result of such conversion.

*Hamburg Rules 1978**Regles de Hambourg 1978*

**United Nations Convention
on the
Carriage of goods by sea**

**Hamburg, 31 March 1978
"HAMBURG RULES"**

**Entry into force:
1 November 1992**

**Convention des Nations Unies
sur le
Transport de marchandises
par mer**

**Hambourg 31 mars 1978
"REGLES DE HAMBOURG"**

**Entrée en vigueur
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Austria	(r)	29.VII.1993
Barbados	(a)	2.II.1981
Botswana	(a)	16.II.1988
Burkina Faso	(a)	14.VIII.1989
Burundi	(a)	4.IX.1998
Cameroon	(a)	21.IX.1993
Chile	(r)	9.VII.1982
Czech Republic ⁽¹⁾	(r)	23.VI.1995
Egypt	(r)	23.IV.1979
Gambia	(r)	7.II.1996
Georgia	(a)	21.III.1996
Guinea	(r)	23.I.1991
Hungary	(r)	5.VII.1984
Kenya	(a)	31.VII.1989
Lebanon	(a)	4.IV.1983
Lesotho	(a)	26.X.1989
Malawi	(r)	18.III.1991
Morocco	(a)	12.VI.1981
Nigeria	(a)	7.XI.1988
Romania	(a)	7.I.1982
Senegal	(r)	17.III.1986
Sierra Leone	(r)	7.X.1988
Tanzania, United Republic of	(a)	24.VII.1979
Tunisia	(a)	15.IX.1980
Uganda	(a)	6.VII.1979
Zambia	(a)	7.X.1991

⁽¹⁾ The Convention was signed on 6 march 1979 by the former Czechoslovakia. Respectively on 28 May 1993 and on 2 Jun 1993 the Slovak Republic and the Czech Republic deposited instruments of succession. The Czech Republic then deposited instrument of ratification on 23 Jun 1995



UNIVERSITY OF HONG KONG, FACULTY OF LAW

AND

THE HONG KONG MARITIME LAW ASSOCIATION

CPD SESSIONS : OVERVIEW TO SHIPPING LAW

PROBLEMS FOR CARGO : CHARTERPARTIES

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1. INTRODUCTION

When a shipowner operates a carrying service to anyone who wishes to ship cargo (for example, a container on a container vessel) then the resulting contract of carriage will be evidenced by a bill of lading. You have already seen how a bill of lading operates as evidence of a contract of carriage between a shipowner and the lawful holder of the bill of lading. The rights and issues arising from bills of lading have already been dealt with extensively by previous speakers. However, there is an alternative form of arrangement for the carriage of goods by sea. This is the charterparty. The purpose of this paper is to discuss the issues and problems faced by cargo interests arising out of this arrangement.

Generally, but not always, where a shipowner agrees to make available the entire carrying capacity of his vessel for either a particular voyage or a specified period of time, the contractual arrangements will normally be written down in the form of a charterparty. There are two basic types of charterparty : voyage and time charterparties. The type of most interest to Cargo is the voyage charterparty (that is, a charter to carry a specific cargo on a specific voyage). For example, where goods are sold CIF, the seller will charter a specific vessel to carry the goods to destination. The contract (or charterparty as it is known) will last only for that voyage (until discharge). Voyage charters are common in shipping dry bulk goods such as grain, coal, iron ore, timber, steel products and the like.

There are two hybrid types of voyage charterparty which are useful to know about.

(a) CVCs

Sometimes, vessels are chartered for a specific period of time to complete a series of voyages between designated ports during that period. There will be a single charterparty governing these voyages. This is called a consecutive voyage charterparty (usually referred to as a CVC). For an example of a CVC in operation, see the case *Suisse Atlantique v. Rotterdamsche Kolen Centrale* [1967] 1 AC 361.

(b) COAs

Alternatively, some cargoes are shipped pursuant to long term freighting contracts. Here, the shipowner undertakes to transport specified quantities of bulk products between designated ports in a given time. These contracts are known in the industry as contracts of affreightment (or COA). The use of this terminology is confusing because the term "contract of affreightment" is also an umbrella term used for describing any contractual arrangement whereby a shipowner undertakes to carry goods by sea. Often the actual vessels used under a COA are normally chartered under individual voyage charterparty. Trades typically employing COAs include shipment of coal, grain and LNG products.

Time charterparties

For completeness, the other main form of charterparty is the time charterparty which, as the name suggests, involves the shipowner agreeing to place his vessel at the disposal of the charterer for a specified period of time. Sometimes, the time period may be limited to a single trip involving hire of the vessel for a specific cargo voyage. In this case, the shipowner will be paid hire for the entire time spent on the voyage until the cargo has been discharged at its destination.

However, such charters do not normally result in problems for cargo interests since they are not normally parties to the time charter arrangements. There will usually be a sub-charter in the form of a voyage charter beneath that to which cargo interests are a party. There are various types of time charterparty but it is not necessary to deal with these here.

2. PROBLEMS FOR CARGO - GENERAL OVERVIEW

Having briefly set out the types of charterparty, the next stage is to consider generally what problems cargo interests may encounter when engaged in a charterparty.

A charterer will want to secure a vessel with the correct cargo capacity which is able to meet the requirements of the sale contract. He needs to ensure there is enough cargo to comply with what the shipowner expects to carry. The costs of carrying the cargo under a voyage charterparty is known as "freight". It is calculated according to the quantity of cargo shipped or discharged. Shortloading will result in a loss of freight by the shipowner and a claim against the charterer

(deadfreight). Freight is usually calculated as a lump sum and normally includes the costs of loading and discharging the cargo. The freight covers the costs of the voyage and an allowance for loading and unloading the cargo expressed as "lay days". This is time, available free of charge to the charterer, who is regarded as having paid for them in the freight. If these lay days are exceeded, then the charterer will face claims to pay compensation to the shipowner either in the form of agreed damages (known as demurrage) or unliquidated damages (known as damages for detention). Demurrage disputes are a common source of litigation between shipowners and charterers. Problems may arise during the loading and unloading operations due to damage caused by stevedores. Cargo interests may also face disputes where the nominated vessel is late arriving at the load port or deviates from the most direct or economical route during the voyage.

3. FREIGHT/DEADFREIGHT

The money paid by the voyage charterer for carrying the cargo to destination under the voyage charterparty is known as "freight". This is calculated according to the amount of cargo upon shipment or discharge. Freight is usually paid in advance upon signing of the bill of lading or upon delivery. If the latter, then usually the shipowner will have a lien on the cargo until the freight is paid. Freight may include costs of loading and discharging the cargo.

The amount of freight payable depends either on the intake quantity or on the delivered quantity of cargo. Alternatively freight may simply be stated as an overall fixed sum : "lumpsum freight". If lumpsum freight is earned and payable

on delivery and the goods are not delivered, freight is not payable because the condition precedent for payment has not been fulfilled (*Merchant Shipping Co v. Armitage* (1873) LR 9 QB 99). Cargo will still have to pay the entire lumpsum freight if part of the cargo is lost (at least when the loss results from an excepted peril : *The Owners of the Norway v. Ashburner (The Norway) (No 2)* (1865) 3 Moo P.C. (N.S.) 245).

The charterparty will normally specify the type and amount of cargo and the date at which it will be at the load port ready for loading. The charterparty will specify the type and amount of cargo to be loaded (for example, 10,000 tons of wheat). Sometimes, it may specify an alternative cargo or simply an obligation to provide "any lawful cargo". An attempt to load a different type of cargo from the one stated in the charterparty is a serious breach of contract which will entitle the shipowner to repudiate the charterparty. Of course, the shipowner can waive the breach and if he chooses to do so, there is an implied obligation on the charterer to pay freight appropriate to the type of cargo actually carried (*Steven v. Bromley* [1919] 2 KB 722).

More often than not, the voyage charterer/cargo interests will have a shipment quantity and date in mind for a particular parcel of cargo and will be looking for a ship to carry that cargo on a particular date specified in the sale contract. The charterparty will specify an amount of cargo to be loaded. In the case of the Gencon charterparty, the obligation is on the charterer "to load a full and complete cargo" (Clause 1). This means a cargo which, when properly stowed,

occupies the full volume of the ship's cargo spaces or utilizes her full dead weight capacity. The carrying capacity of the vessel will be stated in the charterparty. Where there is a discrepancy between the capacity stated in the charterparty and the actual capacity of the ship then the charterer must load cargo up to the actual figure (*Heathfield SS Co v. Rodenacher* (1896) 2 Com. Cas. 55). Inevitably, it is extremely difficult to provide an exact amount of cargo and charterparties normally include some tolerance in the amount of cargo to be loaded. This can be expressed as a maximum/minimum figure or a tolerance by either side of a precise figure (usually expressed as X% more or less). Alternatively, the amount is qualified by a word such as "about" or "thereabouts". Such words are generally interpreted as permitting an allowance of 3-5% either way (*Louis Dreyfus v. Parnaso Cia Naviera S.A. (The Dominator)* [1960] 2 QB 49).

Where the charterer loads less than the contracted cargo quantity this results in a loss of freight to the shipowner. The shipowner will be entitled to damages for the shortfall in freight. The term used is "deadfreight". Clearly it is in Cargo's interest to ensure that the cargo complies with the charterparty and that the correct amount is loaded on board the ship.

The basis for the calculation of deadfreight may be expressly stipulated in the charterparty. This may not limit an owner's claim for damages, and the shipowner may also be able to claim for delays (demurrage) arising from a failure to load a complete cargo (*The Altus* [1985] 1 Lloyd's Rep 423). If no rate is stipulated then

the rate is calculated on the freight equivalent to the amount of unutilized cargo space less any expenses usually incurred by the shipowner in carrying the cargo.

4. **LOADING/STEVEDORE DAMAGE**

The shipowner is not concerned with how the cargo gets to the load port. Suffice it to say, the onus is on charterers/cargo interests to have the cargo available at their nominated port at the required time. This is an absolute duty unless the charterparty is frustrated or subject to any exceptions in the charterparty. This is stating the obvious but, there are times when circumstances intervene. For example, loading of coal at Richard's Bay Coal Terminal in South Africa is frequently delayed due to the interruption of rail transport to the terminal. It is no excuse that the delay in the arrival of the cargo is not due to any fault on the part of the charterers. The leading case which sets out these legal principles is, among others, the *Aello* [1961] AC 135 where even though the charterers did everything that was reasonable to do to secure the cargo the Court held that this was not a good enough reason for throwing the consequences of their failure on the shipowners.

Of course, it is open to the parties to incorporate exceptions into the charterparty which cover delays in loading. However, it is often the case that such clauses only apply to the actual process of loading the cargo when ready at the load port and not to delays in providing the cargo. For example, *Ardan SS Co v. Weir* [1905] AC 501 and *Grant v. Coverdale* [1884] 9 App. Cas. 470 (In *Grant* delays in loading caused by the canals leading to the load port being frozen). The latter

case is a good example of how a contractual exception on delay refers only to the loading operations themselves and not to delays in transporting goods to a loading place.

At common law, liability for loading and discharging was determined by the custom of the port. In the absence of such custom then the charterer had the obligation of delivering the cargo to the ship's rail whereupon the shipowner was obliged to receive it, take it into the holds and stow it. At the discharge port the reverse occurred such that the owner had the responsibility of lifting the cargo to the ship's rail whereupon the charterer was obliged to receive them.

This analysis of the incidence and transfer of obligations between shipowner and charterer is more applicable to loading in the nineteenth century as opposed to the twenty first. The courts have recognised this as such (*Pyrene v. Scandia* [1954] 2 QB 402). Although the rule continues to operate, it is usually modified by express terms in the charterparty.

In clause 5 of the Gencon 1994 charterparty, the charterer is obliged to bring the cargo "into the holds, loaded, stowed and/or trimmed, tallied, lashed and/or secured and taken from the holds and discharged by the Charterers free of any risk, liability and expense whatsoever to the Owners".

Similarly, Clause 5(c) of the Gencon charterparty makes charterers responsible for damage to the ship caused by stevedores.

5. LAYTIME AND DEMURRAGE

The freight paid by the charterer to the shipowner covers the voyage as well as the time taken for loading and discharge. This allowance is known as "laytime". If loading and/or discharging exceeds the amount of laytime in the charter then the charterer pays compensation for the additional time used either as demurrage or damages for detention.

Given that the time allotted to loading and discharging is a term of the contract, failure to complete either operation within the time allocated will be a breach of that contract. Demurrage is therefore essentially agreed damages for detention beyond the agreed number of lay days and mitigates the damage caused by charterers' breach. Demurrage compensates Owners for the loss of freight arising under future employment which might be affected by the delay or the reduction in the number of voyages possible under a CVC (see the *Suisse Atlantique* case). The rate is usually fixed in the charterparty in line with freight rate current at the time of the charterparty. On the other hand, this concept protects the charterer because it prevents the shipowner from repudiating the charter for exceeding the lay days. This protection will operate unless the failure to load is deemed to be a repudiation of the contract by reason of the delay being so substantial that it frustrates the object of the contract (see *Inverkip SS Co v. Bungy* [1917] 2 KB 193).

The incidence of laytime and demurrage is a balancing act between ship and cargo interests. The shipowner wants a quick turnaround and Cargo wants the maximum possible time in which to load and discharge cargo in order to cover any unforeseen delays in operation. To certain extent, the terms will reflect the strength of the bargaining positions of the respective parties.

6. CALCULATION OF LAYTIME

Laytime is normally calculated in one of two ways : either by time or on the rate of loading.

(a) Running Time

Days or running days are consecutive periods of 24 hours without interruptions. The Gencon charterparty uses "running hours" as the unit of measurement. However, charterparties usually provide exceptions to running time, for example, Sundays and holidays or weather permitting. The lay days may be defined as "working days", that is when work is customarily done at a particular place or "weather working days" which exclude time lost when cargo work is delayed or prevented by bad weather. Where a day is only partially interrupted then the deduction only applies to the actual time lost (*Alvion SS Co v. Galban Lobo Trading Co* [1955] 1 QB 430). There are numerous ways of calculating broken days and, it is not time to discuss these in detail here.

(b) Loading Rate

The alternative is to apply a loading rate formula, for example, 70,000 tons per weather working day. This formula may be further qualified by saying per hatch or workable hatch. This adds another layer of complexity to the laytime calculation.

Commencement of Laytime

Laytime commences when the ship tenders formal notice of readiness to load or discharge. Under the Gencon charterparty, laytime does not commence immediately upon an NOR being tendered but at a certain time thereafter.

Inevitably, there are disputes as to the commencement of laytime and interruption to the running of laytime. Generally, where laytime has been agreed, it will only be suspended where it is expressly covered by exceptions within the charterparty or if the interruption arises due to the fault of the shipowner. Examples of the latter include removing the vessel from the berth without due cause (the *Fontevivo* [1975] 1 Lloyds Law Rep 339) or removing the vessel for bunkering (in *Re Ropner Shipping Co* [1927] 1 KB 79). Many charterparties include printed exceptions for common causes of delay such as congestion (see *Re Amstelmolen* [1951] 2 Lloyd's Rep 1), strikes and bad weather (for example, Clause 1B of the BPVOY4 charterparty).

Laytime is complete when the vessel is loaded with cargo on board and stowed (*Argonaut Navigation Co v. Ministry of Food* [1949] 1 KB 572) or upon the completion of discharge.

Demurrage

Liability for demurrage accrues immediately and runs continuously through Sundays, holidays and other periods normally excluded from laytime (for example, bad weather working days). The general rule is "once on demurrage always on demurrage". The rationale for this rule is that if credit were given in the demurrage calculation to period which act as interruptions to laytime, charterers would be profiting by their own breach. This is unfair to the shipowner. This view has been endorsed by the House of Lords, notably in *Compania Naviera Aeolus v. Union of India* [1964] AC 868. Of course, the rule can be expressed excluded or modified within the terms of the charterparty. Moreover, whether delay is due to the fault of the shipowner or due to his fault or result of an action taken for his own purposes then demurrage may be run.

A shipowner cannot withdraw his vessel where the payment of demurrage has been agreed unless the delay is sufficient to frustrate the object of the charterparty. If there is no stipulation as to the maximum time a vessel can remain on demurrage then demurrage will accrue continuously until completion of the functions that would have stopped laytime running.

7. **DAMAGES FOR DETENTION**

When there is no provision in the charterparty for the payment of demurrage, a charterer will be liable for damages for detention for all the time he detains the vessel after the expiration of the lay days (or, when no lay days are specified, upon the expiration of what the Court considers to be a reasonable time for the loading or discharging of the vessel).

In this situation, whereas demurrage accrues at an agreed rate and covers all losses which result from the delay in loading or discharging the vessel, damages for detention are "at large" and subject to the normal rules on assessment of damages.

The shipowner can withdraw the vessel once a reasonable period of time has elapsed. Moreover, a shipowner is not obliged to remain in port to complete loading and to restrict his claim simply for damages for detention. As part of the cargo has been loaded, he may sell and claim compensation in the form of deadfreight or, if the charterer has failed to ship any cargo, he may rescind the charter and sue for damages. Of course, if the delay occurs at the discharge port, then a shipowner will have little option but to allow discharge to be completed and to claim damages for detention.

8. DISPATCH

While at common law, the charterer is not entitled to any discount or reward if he completed loading or discharging in a shorter period of time than stipulated in the laytime provisions of the charterparty, it is usually highly beneficial to the shipowner to have his vessel free as quickly as possible. Therefore, the parties often insert a dispatch money clause into the charterparty. This clause entitles the charterer to payment at an agreed rate (usually fixed at half the demurrage rate) for the time saved. There is some argument as to whether or not dispatch is payable only for laytime saved or whether, like demurrage, all the time saved to the ship should be taken into account. There are however some conflicting decisions in the cases on this point and much depends on the construction of the particular clause. For example, Centrocon, Clause 16 provides that dispatch money is payable for "all time saved" (*Mawson SS Co v. Beyer* [1914] 1 KB 304). While Polcoalvoy, Clause 24(b) provides a payment only for "laytime saved" (*Thomasson SS Co v. Peabody* [1959] 2 Lloyd's Rep 296).

There are various combinations in which dispatch money may be earned. For example, demurrage or dispatch money may be calculated separately at the port of loading and discharge. This can result in the charterer being paid dispatch money at the load port only to pay demurrage at the discharge port. This is of little benefit to the charterer since demurrage is double the value of dispatch! Therefore, most charterers prefer to set out time saved at one port against time lost at the other. This result can be achieved either by providing that laytime is

"reversible" or that the time for loading and discharge shall be "average" - see Re Charterparty Laytime Definitions approved by BIMCO and the General Council of British Shipping in 1980. Where laytime is reversible, the charterer is entitled to add together the time used at each port and deduct these periods from the overall laytime until the latter is exhausted. Where laytime is average, the amount of laytime is that each port is calculated separately after which the time saved at one port is set off against the excess time used at the other.

9. **PROBLEMS FOR SHIPOWNERS**

While there are many potential problems for cargo interests, you should not be under the impression that shipowners have a free hand in relation to cargo interests under charterparties. One of the biggest obligations for a shipowner is to ensure that his ship arrives at the load port at the time specified in the contract. Many arguments arise concerning the commencement of a voyage charterparty and laytime under it.

Three requirements need to be satisfied before laytime can commence:-

- (a) The charter vessel must have become an "arrived ship" at the agreed destination;
- (b) Notice of readiness to load must have been given; and
- (c) The vessel must in fact be ready to load.

Normally when a vessel is chartered it is not at the port of loading for the cargo in question and it is very likely to still be trading under a prior charter. At the very

least, the charterer needs to know the approximate arrival time of the vessel at the loading port so that he can make the necessary arrangements to have the cargo available and ready for loading. This is of considerable importance given that the charterer will face (potentially high) storage costs if the cargo arrives at the load port too early or demurrage if the cargo arrives too late. Unsurprisingly shipowners are reluctant to commit themselves to a precise arrival date given that any breach of such a term may entitle the charterers to rescind the contract if the breach is sufficient to frustrate the purpose of the charter (*Behn v. Burness* (1863) 3D & S 751).

This particular problem is circumvented by inserting a clause into the charterparty requiring the shipowner to indicate the date at which the vessel is expected to be ready to load and to couple it with a further clause entitling the charterer to cancel the charter should the vessel not have arrived by a specified later date. Charterers prefer to set these dates as close together as possible to avoid unnecessary storage costs. A shipowner's notification as to the date of expected readiness to load does not in itself amount to a breach of contract entitling the charterer to damages but the shipowner must honestly and reasonably believe that "at the time of the contract that the date [of expected readiness to load] named is a date when the vessel will be ready to load" (*The Mihalis Angelos* [1971] 1 QB 164). If a shipowner gives a notice that the vessel cannot reach the loading port by the date given, or there are no reasonable grounds for such a belief, then the shipowner will be in breach of a condition which will entitle the charterer to repudiate the contract (*The Mihalis Angelos*). Such a canceling clause is also


valuable to the charterer since it indicates the time beyond which he is no longer obliged to wait for the arrival of the charter vessel. Once this stage has been reached, the charterer can safely repudiate the charter and make alternative provisions for the carriage of his cargo.

A charterer is not allowed to repudiate the charter before the canceling date even though it is physically impossible for the charter vessel to arrive at the loading port by that date (*The Mihalis Angelos*). Although this sounds harsh, the canceling clause does provide a charterer with an option to rescind the contract which is not bound to exercise until the vessel reaches the load port and notice of readiness to load is given. It may be in its interest to delay any decision on exercising the option until the last possible moment. If freight rates are rising then there will be little incentive for the charterer to cancel whereas if they are falling, it may give him an opportunity to re-negotiate the freight terms.

Moreover, in cases where the vessel would inevitably have missed the canceling date, if the charterer does repudiate the contract (and would have done so in any event once the canceling date had passed) then the owners will only be entitled to nominal damages (*The Mihalis Angelos*).

Finally, it should be noted that the right cancel on the specified date is an absolute right and can be exercised irrespective of whether the late arrival was due to the shipowner's fault or whether the cause of the delay was covered by an exception (*Smith v. Dart* (1884) 14 QBD 105).

- END -

1. Shipbroker	RECOMMENDED THE BALTIC AND INTERNATIONAL MARITIME COUNCIL UNIFORM GENERAL CHARTER (AS REVISED 1922, 1976 and 1994) (To be used for trades for which no specially approved form is in force) CODE NAME: "GENCON" 
3. Owners/Place of business (Cl. 1)	2. Place and date
5. Vessel's name (Cl. 1)	4. Charterers/Place of business (Cl. 1)
7. DWT all told on summer load line in metric tons (abt.) (Cl. 1)	6. GT/NT (Cl. 1)
9. Expected ready to load (abt.) (Cl. 1)	8. Present position (Cl. 1)
10. Loading port or place (Cl. 1)	11. Discharging port or place (Cl. 1)
12. Cargo (also state quantity and margin in Owners' option, if agreed; if full and complete cargo not agreed state "part cargo" (Cl. 1))	
13. Freight rate (also state whether freight prepaid or payable on delivery) (Cl. 4)	14. Freight payment (state currency and method of payment; also beneficiary and bank account) (Cl. 4)
15. State if vessel's cargo handling gear shall not be used (Cl. 5)	16. Laytime (if separate laytime for load. and disch. is agreed, fill in a) and b). If total laytime for load. and disch., fill in c) only) (Cl. 6)
17. Shippers/Place of business (Cl. 6)	(a) Laytime for loading
18. Agents (loading) (Cl. 6)	(b) Laytime for discharging
19. Agents (discharging) (Cl. 6)	(c) Total laytime for loading and discharging
20. Demurrage rate and manner payable (loading and discharging) (Cl. 7)	21. Cancelling date (Cl. 9)
23. Freight Tax (state if for the Owners' account (Cl. 13 (c)))	22. General Average to be adjusted at (Cl. 12)
25. Law and Arbitration (state 19 (a), 19 (b) or 19 (c) of Cl. 19; if 19 (c) agreed also state Place of Arbitration) (if not filled in 19 (a) shall apply) (Cl. 19)	24. Brokerage commission and to whom payable (Cl. 15)
(a) State maximum amount for small claims/shortened arbitration (Cl. 19)	26. Additional clauses covering special provisions, if agreed

It is mutually agreed that this Contract shall be performed subject to the conditions contained in this Charter Party which shall include Part I as well as Part II. In the event of a conflict of conditions, the provisions of Part I shall prevail over those of Part II to the extent of such conflict.

Signature (Owners)	Signature (Charterers)
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PART II

"Gencon" Charter (As Revised 1922, 1976 and 1994)

1.	It is agreed between the party mentioned in Box 3 as the Owners of the Vessel named in Box 5, of the GT/NT indicated in Box 6 and carrying about the number of metric tons of deadweight capacity all told on summer loadline stated in Box 7, now in position as stated in Box 8 and expected ready to load under this Charter Party about the date indicated in Box 9, and the party mentioned as the Charterers in Box 4 that:	1	readiness at loading port to be given to the Shippers named in Box 17 or if not named, to the Charterers or their agents named in Box 18. Notice of readiness at the discharging port to be given to the Receivers or, if not known, to the Charterers or their agents named in Box 19.	105
	The said Vessel shall, as soon as her prior commitments have been completed, proceed to the loading port(s) or place(s) stated in Box 10 or so near thereto as she may safely get and lie always afloat, and there load a full and complete cargo (if shipment of deck cargo agreed same to be at the Charterers' risk and responsibility) as stated in Box 12, which the Charterers bind themselves to ship, and being so loaded the Vessel shall proceed to the discharging port(s) or place(s) stated in Box 11 as ordered on signing Bills of Lading, or so near thereto as she may safely get and lie always afloat, and there deliver the cargo.	2	If the loading/discharging berth is not available on the Vessel's arrival at or off the port of loading/discharging, the Vessel shall be entitled to give notice of readiness within ordinary office hours on arrival there, whether in free pratique or not, whether customs cleared or not. Laytime or time on demurrage shall then count as if she were in berth and in all respects ready for loading/discharging provided that the Master warrants that she is in fact ready in all respects. Time used in moving from the place of waiting to the loading/discharging berth shall not count as laytime.	106
		3	If, after inspection, the Vessel is found not to be ready in all respects to load/discharging time lost after the discovery thereof until the Vessel is again ready to load/discharging shall not count as laytime.	107
		4	Time used before commencement of laytime shall count.	108
		5	* Indicate alternative (a) or (b) as agreed, in Box 16.	109
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2.	Owners' Responsibility Clause	15		119
	The Owners are to be responsible for loss of or damage to the goods or for delay in delivery of the goods only in case the loss, damage or delay has been caused by personal want of due diligence on the part of the Owners or their Manager to make the Vessel in all respects seaworthy and to secure that she is properly manned, equipped and supplied, or by the personal act or default of the Owners or their Manager.	16		120
	And the Owners are not responsible for loss, damage or delay arising from any other cause whatsoever, even from the neglect or default of the Master or crew or some other person employed by the Owners on board or ashore for whose acts they would, but for this Clause, be responsible, or from unseaworthiness of the Vessel on loading or commencement of the voyage or at any time whatsoever.	17		121
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3.	Deviation Clause	28		132
	The Vessel has liberty to call at any port or ports in any order, for any purpose, to sail without pilots, to tow and/or assist Vessels in all situations, and also to deviate for the purpose of saving life and/or property.	29		133
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4.	Payment of Freight	32		137
	(a) The freight at the rate stated in Box 13 shall be paid in cash calculated on the intaken quantity of cargo.	33		138
	(b) <i>Prepaid</i> . If according to Box 13 freight is to be paid on shipment, it shall be deemed earned and non-returnable, Vessel and/or cargo lost or not lost.	34		139
	Neither the Owners nor their agents shall be required to sign or endorse bills of lading showing freight prepaid unless the freight due to the Owners has actually been paid.	35		140
	(c) <i>On delivery</i> . If according to Box 13 freight, or part thereof, is payable at destination it shall not be deemed earned until the cargo is thus delivered. Notwithstanding the provisions under (a), if freight or part thereof is payable on delivery of the cargo the Charterers shall have the option of paying the freight on delivered weight/quantity provided such option is declared before breaking bulk and the weight/quantity can be ascertained by official weighing machine, joint draft survey or tally.	36		141
	Cash for Vessel's ordinary disbursements at the port of loading to be advanced by the Charterers, if required, at highest current rate of exchange, subject to two (2) per cent to cover insurance and other expenses.	37		142
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5.	Loading/Discharging	50		155
	(a) <i>Costs/Risks</i>	51		156
	The cargo shall be brought into the holds, loaded, stowed and/or trimmed, tallied, lashed and/or secured and taken from the holds and discharged by the Charterers, free of any risk, liability and expense whatsoever to the Owners. The Charterers shall provide and lay all dunnage material as required for the proper stowage and protection of the cargo on board, the Owners allowing the use of all dunnage available on board. The Charterers shall be responsible for and pay the cost of removing their dunnage after discharge of the cargo under this Charter Party and time to count until dunnage has been removed.	52		157
	(b) <i>Cargo Handling Gear</i>	53		158
	Unless the Vessel is gearless or unless it has been agreed between the parties that the Vessel's gear shall not be used and stated as such in Box 15, the Owners shall throughout the duration of loading/discharging give free use of the Vessel's cargo handling gear and of sufficient motive power to operate all such cargo handling gear. All such equipment to be in good working order. Unless caused by negligence of the stevedores, time lost by breakdown of the Vessel's cargo handling gear or motive power - pro rata the total number of cranes/winchmen required at that time for the loading/discharging of cargo under this Charter Party - shall not count as laytime or time on demurrage.	54		159
	On request the Owners shall provide free of charge cranesmen/winchmen from the crew to operate the Vessel's cargo handling gear, unless local regulations prohibit this, in which latter event shore labourers shall be for the account of the Charterers. Cranesmen/winchmen shall be under the Charterers' risk and responsibility and as stevedores to be deemed as their servants but shall always work under the supervision of the Master.	55		160
	(c) <i>Stevedore Damage</i>	56		161
	The Charterers shall be responsible for damage (beyond ordinary wear and tear) to any part of the Vessel caused by Stevedores. Such damage shall be notified as soon as reasonably possible by the Master to the Charterers or their agents and to their Stevedores, failing which the Charterers shall not be held responsible. The Master shall endeavour to obtain the Stevedores' written acknowledgement of liability.	57		162
	The Charterers are obliged to repair any stevedore damage prior to completion of the voyage, but must repair stevedore damage affecting the Vessel's seaworthiness or class before the Vessel sails from the port where such damage was caused or found. All additional expenses incurred shall be for the account of the Charterers and any time lost shall be for the account of and shall be paid to the Owners by the Charterers at the demurrage rate.	58		163
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PART II
"Gencon" Charter (As Revised 1922, 1976 and 1994)

14. Agency	207	(5) The Vessel shall have liberty:-	314
In every case the Owners shall appoint their own Agent both at the port of loading and the port of discharge.	208 209	(a) to comply with all orders, directions, recommendations or advice as to departure, arrival, routes, sailing in convoy, ports of call, stoppages, destinations, discharge of cargo, delivery or in any way whatsoever which are given by the Government of the Nation under whose flag the Vessel sails, or other Government to whose laws the Owners are subject, or any other Government which so requires, or any body or group acting with the power to compel compliance with their orders or directions;	315 316 317 318 319 320 321
15. Brokerage	210	(b) to comply with the orders, directions or recommendations of any war risks underwriters who have the authority to give the same under the terms of the war risks insurance;	322 323 324
A brokerage commission at the rate stated in Box 24 on the freight, dead-freight and demurrage earned is due to the party mentioned in Box 24.	211 212	(c) to comply with the terms of any resolution of the Security Council of the United Nations, any directives of the European Community, the effective orders of any other Supranational body which has the right to issue and give the same, and with national laws aimed at enforcing the same to which the Owners are subject, and to obey the orders and directions of those who are charged with their enforcement;	325 326 327 328 329 330
In case of non-execution 1/3 of the brokerage on the estimated amount of freight to be paid by the party responsible for such non-execution to the Brokers as indemnity for the latter's expenses and work. In case of more voyages the amount of indemnity to be agreed.	213 214 215 216	(d) to discharge at any other port any cargo or part thereof which may render the Vessel liable to confiscation as a contraband carrier;	331 332
16. General Strike Clause	217	(e) to call at any other port to change the crew or any part thereof or other persons on board the Vessel when there is reason to believe that they may be subject to internment, imprisonment or other sanctions;	333 334 335
(a) If there is a strike or lock-out affecting or preventing the actual loading of the cargo, or any part of it, when the Vessel is ready to proceed from her last port at any time during the voyage to the port or ports of loading or after her arrival there, the Master or the Owners may ask the Charterers to declare, that they agree to reckon the laydays as if there were no strike or lock-out. Unless the Charterers have given such declaration in writing (by telegram, if necessary) within 24 hours, the Owners shall have the option of cancelling this Charter Party. If part cargo has already been loaded, the Owners must proceed with same, (freight payable on loaded quantity only) having liberty to complete with other cargo on the way for their own account.	218 219 220 221 222 223 224 225 226 227	(f) where cargo has not been loaded or has been discharged by the Owners under any provisions of this Clause, to load other cargo for the Owners' own benefit and carry it to any other port or ports whatsoever, whether backwards or forwards or in a contrary direction to the ordinary or customary route.	336 337 338 339 340
(b) If there is a strike or lock-out affecting or preventing the actual discharging of the cargo on or after the Vessel's arrival at or off port of discharge and same has not been settled within 48 hours, the Charterers shall have the option of keeping the Vessel waiting until such strike or lock-out is at an end against paying half demurrage after expiration of the time provided for discharging until the strike or lock-out terminates and thereafter full demurrage shall be payable until the completion of discharging, or of ordering the Vessel to a safe port where she can safely discharge without risk of being detained by strike or lock-out. Such orders to be given within 48 hours after the Master or the Owners have given notice to the Charterers of the strike or lock-out affecting the discharge. On delivery of the cargo at such port, all conditions of this Charter Party and of the Bill of Lading shall apply and the Vessel shall receive the same freight as if she had discharged at the original port of destination, except that if the distance to the substituted port exceeds 100 nautical miles, the freight on the cargo delivered at the substituted port to be increased in proportion.	228 229 230 231 232 233 234 235 236 237 238 239 240 241 242 243	(6) If in compliance with any of the provisions of sub-clauses (2) to (5) of this Clause anything is done or not done, such shall not be deemed to be a deviation, but shall be considered as due fulfilment of the Contract of Carriage.	341 342 343 344
(c) Except for the obligations described above, neither the Charterers nor the Owners shall be responsible for the consequences of any strikes or lock-outs preventing or affecting the actual loading or discharging of the cargo.	244 245 246	18. General Ice Clause	345
17. War Risks ("Voywar 1993")	247	Port of loading	346
(1) For the purpose of this Clause, the words:	248	(a) In the event of the loading port being inaccessible by reason of ice when the Vessel is ready to proceed from her last port or at any time during the voyage or on the Vessel's arrival or in case frost sets in after the Vessel's arrival, the Master for fear of being frozen in is at liberty to leave without cargo, and this Charter Party shall be null and void.	347 348 349 350 351
(a) The "Owners" shall include the shipowners, bareboat charterers, disponent owners, managers or other operators who are charged with the management of the Vessel, and the Master; and	249 250 251	(b) If during loading the Master, for fear of the Vessel being frozen in, deems it advisable to leave, he has liberty to do so with what cargo he has on board and to proceed to any other port or ports with option of completing cargo for the Owners' benefit for any port or ports including port of discharge. Any part cargo thus loaded under this Charter Party to be forwarded to destination at the Vessel's expense but against payment of freight, provided that no extra expenses be thereby caused to the Charterers, freight being paid on quantity delivered (in proportion if lumpsum), all other conditions as per this Charter Party.	352 353 354 355 356 357 358 359 360
(b) "War Risks" shall include any war (whether actual or threatened), act of war, civil war, hostilities, revolution, rebellion, civil commotion, warlike operations, the laying of mines (whether actual or reported), acts of piracy, acts of terrorists, acts of hostility or malicious damage, blockades (whether imposed against all Vessels or imposed selectively against Vessels of certain flags or ownership, or against certain cargoes or crews or otherwise howsoever), by any person, body, terrorist or political group, or the Government of any state whatsoever, which, in the reasonable judgement of the Master and/or the Owners, may be dangerous or are likely to be or to become dangerous to the Vessel, her cargo, crew or other persons on board the Vessel.	252 253 254 255 256 257 258 259 260 261 262	(c) In case of more than one loading port, and if one or more of the ports are closed by ice, the Master or the Owners to be at liberty either to load the part cargo at the open port and fill up elsewhere for their own account as under section (b) or to declare the Charter Party null and void unless the Charterers agree to load full cargo at the open port.	361 362 363 364 365
(2) If at any time before the Vessel commences loading, it appears that, in the reasonable judgement of the Master and/or the Owners, performance of the Contract of Carriage, or any part of it, may expose, or is likely to expose, the Vessel, her cargo, crew or other persons on board the Vessel to War Risks, the Owners may give notice to the Charterers cancelling this Contract of Carriage, or may refuse to perform such part of it as may expose, or may be likely to expose, the Vessel, her cargo, crew or other persons on board the Vessel to War Risks; provided always that if this Contract of Carriage provides that loading or discharging is to take place within a range of ports, and at the port or ports nominated by the Charterers the Vessel, her cargo, crew, or other persons onboard the Vessel may be exposed, or may be likely to be exposed, to War Risks, the Owners shall first require the Charterers to nominate any other safe port which lies within the range for loading or discharging, and may only cancel this Contract of Carriage if the Charterers shall not have nominated such safe port or ports within 48 hours of receipt of notice of such requirement.	263 264 265 266 267 268 269 270 271 272 273 274 275 276 277 278	Port of discharge	366
(3) The Owners shall not be required to continue to load cargo for any voyage, or to sign Bills of Lading for any port or place, or to proceed or continue on any voyage, or on any part thereof, or to proceed through any canal or waterway, or to proceed to or remain at any port or place whatsoever, where it appears, either after the loading of the cargo commences, or at any stage of the voyage thereafter before the discharge of the cargo is completed, that, in the reasonable judgement of the Master and/or the Owners, the Vessel, her cargo (or any part thereof), crew or other persons on board the Vessel (or any one or more of them) may be, or are likely to be, exposed to War Risks. If it should so appear, the Owners may by notice request the Charterers to nominate a safe port for the discharge of the cargo or any part thereof, and if within 48 hours of the receipt of such notice, the Charterers shall not have nominated such a port, the Owners may discharge the cargo at any safe port of their choice (including the port of loading) in complete fulfilment of the Contract of Carriage. The Owners shall be entitled to recover from the Charterers the extra expenses of such discharge and, if the discharge takes place at any port other than the loading port, to receive the full freight as though the cargo had been carried to the discharging port and if the extra distance exceeds 100 miles, to additional freight which shall be the same percentage of the freight contracted for as the percentage which the extra distance represents to the distance of the normal and customary route, the Owners having a lien on the cargo for such expenses and freight.	279 280 281 282 283 284 285 286 287 288 289 290 291 292 293 294 295 296 297 298 299 300 301	(a) Should ice prevent the Vessel from reaching port of discharge the Charterers shall have the option of keeping the Vessel waiting until the re-opening of navigation and paying demurrage or of ordering the Vessel to a safe and immediately accessible port where she can safely discharge without risk of detention by ice. Such orders to be given within 48 hours after the Master or the Owners have given notice to the Charterers of the impossibility of reaching port of destination.	367 368 369 370 371 372 373
(4) If at any stage of the voyage after the loading of the cargo commences, it appears that, in the reasonable judgement of the Master and/or the Owners, the Vessel, her cargo, crew or other persons on board the Vessel may be, or are likely to be, exposed to War Risks on any part of the route (including any canal or waterway) which is normally and customarily used in a voyage of the nature contracted for, and there is another longer route to the discharging port, the Owners shall give notice to the Charterers that this route will be taken. In this event the Owners shall be entitled, if the total extra distance exceeds 100 miles, to additional freight which shall be the same percentage of the freight contracted for as the percentage which the extra distance represents to the distance of the normal and customary route.	302 303 304 305 306 307 308 309 310 311 312 313	(b) If during discharging the Master for fear of the Vessel being frozen in deems it advisable to leave, he has liberty to do so with what cargo he has on board and to proceed to the nearest accessible port where she can safely discharge.	374 375 376
		(c) On delivery of the cargo at such port, all conditions of the Bill of Lading shall apply and the Vessel shall receive the same freight as if she had discharged at the original port of destination, except that if the distance of the substituted port exceeds 100 nautical miles, the freight on the cargo delivered at the substituted port to be increased in proportion.	377 378 379 380 381
		19. Law and Arbitration	382
		(a) This Charter Party shall be governed by and construed in accordance with English law and any dispute arising out of this Charter Party shall be referred to arbitration in London in accordance with the Arbitration Acts 1950 and 1979 or any statutory modification or re-enactment thereof for the time being in force. Unless the parties agree upon a sole arbitrator, one arbitrator shall be appointed by each party and the arbitrators so appointed shall appoint a third arbitrator, the decision of the three-man tribunal thus constituted or any two of them, shall be final. On the receipt by one party of the nomination in writing of the other party's arbitrator, that party shall appoint their arbitrator within fourteen days, failing which the decision of the single arbitrator appointed shall be final.	383 384 385 386 387 388 389 390 391 392 393
		For disputes where the total amount claimed by either party does not exceed the amount stated in Box 25** the arbitration shall be conducted in accordance with the Small Claims Procedure of the London Maritime Arbitrators Association.	394 395 396 397
		(b) This Charter Party shall be governed by and construed in accordance with Title 9 of the United States Code and the Maritime Law of the United States and should any dispute arise out of this Charter Party, the matter in dispute shall be referred to three persons at New York, one to be appointed by each of the parties hereto, and the third by the two so chosen; their decision or that of any two of them shall be final, and for purpose of enforcing any award, this agreement may be made a rule of the Court. The proceedings shall be conducted in accordance with the rules of the Society of Maritime Arbitrators, Inc..	398 399 400 401 402 403 404 405 406
		For disputes where the total amount claimed by either party does not exceed the amount stated in Box 25** the arbitration shall be conducted in accordance with the Shortened Arbitration Procedure of the Society of Maritime Arbitrators, Inc..	407 408 409 410
		(c) Any dispute arising out of this Charter Party shall be referred to arbitration at the place indicated in Box 25, subject to the procedures applicable there. The laws of the place indicated in Box 25 shall govern this Charter Party.	411 412 413
		(d) If Box 25 in Part I is not filled in, sub-clause (a) of this Clause shall apply.	414
		(a), (b) and (c) are alternatives; indicate alternative agreed in Box 25.	415
		** Where no figure is supplied in Box 25 in Part I, this provision only shall be void but the other provisions of this Clause shall have full force and remain in effect.	416 417

Shipping Law – An Overview

**Mr Harry Hirst
Ince & Co.**



HKU, FACULTY OF LAW / HKMLA

SHIPPING LAW - AN OVERVIEW - 15 OCTOBER 2001

SESSION (C) Problems for Cargo

2:45 - 3:15 p.m. Problems for Cargo : Charterparties

Presenter: Harry Hirst, Senior Assistant, Ince & Co

COURSE OUTLINE

1. Introduction
 - Cargo interests as charterers
 - Different types of voyage charterparty
 - Comparison with time charterparties

2. Problems for Cargo - General Overview
 - A basic summary of the issues which arise and problems faced by cargo owner/interest in his position as a charterer
 - Freight/deadfreight
 - Definition
 - Lawful cargo
 - Short loading and its consequences
 - Calculation of deadfreight

3. Loading
 - Charterers' duties

4. Laytime and demurrage
 - Rationale and definition
 - Demurrage as contractual damages
 - Balancing of interest between ship and cargo
 - Calculation of laytime - by number of days or loading
 - Disputes as to the commencement of laytime and interruption to the running of laytime
 - End of laytime
 - Liability for demurrage

5. Detention
 - Definition and discussion

6. Dispatch
 - Definition and discussion

7. Problems for Shipowners
 - The owners' obligation to provide a ship at the load port at the proper time
 - Laycan and its implications
 - Repudiation of the charter.

MATERIALS ATTACHED

Gencon charterparty 1994

Shipping Law – An Overview

**Mr John Martin
Richards Hogg Lindley**

Shipping Casualties

John Martin
Richards Hogg Lindley

HKMLA - Introduction to Shipping Law

Hong Kong, Monday, 15th October 2001

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1

Ships - What can go wrong?

- Total Loss - Where salvage or repair is not possible
 - ◆ Actual total loss, i.e. sunk or irretrievably lost
 - ◆ Constructive total loss, i.e. damaged beyond repair but retains some value
- Partial Loss - Where the ship is damaged but can be repaired
 - ◆ Salvage - Where the ship is saved
 - ◆ General Average - Intentional loss



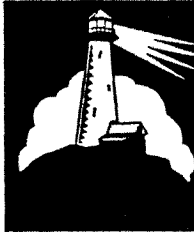
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2

What causes these problems on ships? (I)

Shipping risks are known as "PERILS". All these risks can cause total or partial loss.



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- Perils of the seas, rivers, lakes or other navigable waters, including:
 - ★ Collision
 - ★ Heavy weather
 - ★ Contact with ice
 - ★ Grounding or stranding
- Fire, explosion

Richards Hogg Lindley

3

What causes these problems on ships? (II)

- Jettison - Throwing something overboard
- Piracy - Still a threat today
- Contact with aircraft or similar objects, or objects falling therefrom, land conveyance, dock or harbour equipment or installation



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What causes these problems on ships? (III)



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- Earthquake, volcanic eruption or lightning
- Accidents in loading, discharging or shifting cargo or fuel
- Bursting of boilers, breakage of shafts or any latent defect in the machinery or hull

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5

What causes these problems on ships? (IV)



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- Negligence of master, officers, crew or pilots (A simple definition of negligence could be an omission to do something that a person ought to do or the commission of the something that they ought not to do.)
- Negligence of other parties, i.e. repairers or charterers
- “Any accident” is often covered by insurance policies

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6

Other causes which can lead to loss of or damage to ships:



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- Wear and tear
- Errors in design
- Willful misconduct
- Delay
(These tend not to be covered by insurance.)
- War, strikes and malicious acts are usually insured separately

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7

Insurance Claims broken down:



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- Machinery failures - 33%
- Grounding/Strandings - 20%
- Collision - 15%
- Fire/Explosion - 13%
- Hull cracks/Structural failure - 7%
- Sunk - 6%
- Contact with ice/submerged objects - 4%
- Others - 2%

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8

Brief definition of General Average



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- Common maritime adventure
- Peril affecting whole adventure
- Voluntary or intentional loss
- Extraordinary measures
- Reasonable in circumstances

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9

G.A. - Examples



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- | | |
|---------------------------|-------------------------|
| ■ <u>General Average:</u> | ■ <u>Not G.A.</u> |
| ■ Jettison | ■ Washed overboard |
| ■ Extinguishing water | ■ Fire |
| ■ Beaching | ■ Grounding |
| ■ Engines used to refloat | ■ Engines whilst afloat |
| ■ Salvage | ■ Ordinary towage |
| ■ Voluntary | ■ Accidental |

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10

Shipping Law: An Overview

**Mr Li Lianjun
Sinclair Roche & Temperly**

Faculty Law
University of Hong Kong
And
The Hong Kong Maritime Law Association
Overview to Shipping Law
15 October 2001

**INTRODUCTION TO POLLUTION LIABILITIES,
INTERNATIONAL CONVENTIONS**

Lianjun Li
Sinclair Roche & Temperley

1

I. Introduction

- **TORREY CANYON INCIDENT** in 1967
- **POLLUTION**
 - Persistent Oil
 - Noxious and hazardous substances
- **WHO PAYS**
- **HOW OIL SPILLS CAN BE AVOIDED**

- International Conventions

2

II. The Statutory Codes - CLC and FUND

The original framework

- 1 1969 International Convention on Civil Liability for Oil Pollution Damage (1969 Civil Liability Convention) ("CLC"), and
- 1 1971 International Convention on the Establishment of an International Fund for compensation for Oil Pollution (1971 Fund Convention) ("Fund")

The amended regime

- the 1992 Civil Liability Convention and
- the 1992 Fund Convention

3

The CLCs govern

- The liability of shipowners for oil pollution damage from laden tankers only

4

The Main Features of CLCs

- | the principle of strict liability for shipowners
- | a system of compulsory liability insurance
- | the shipowner is usually entitled to limit his liability to an amount linked to the tonnage of his ship

The Fund

- The Fund Conventions supplement the CLCs
- The main features
 - | a regime for compensating victims of pollution where compensation under the relevant CLC is inadequate,
 - | to establish an intergovernmental organization to administer the compensation regimes created by the respective Fund Conventions, the International Oil Pollution Compensation Funds 1971 and 1992 (IOPC Funds)

5

CLC 1969

- CLC 1969 only applies
 - a cargo of *persistent oil*¹ or bunkers (but only when the tanker is laden in the case of bunkers)
- *Strictly liability system unless*
 - If the pollution arose as an act of war
 - If it arose as a result of a serious natural disaster
 - If it was wholly caused by a failure of the relevant authorities to maintain navigational aids
 - If it was caused by the acts or omissions of the person claiming compensation or the acts or omissions of a third party and was intended to cause such damage i.e. sabotage
- Limitation of Liability –
 - GRT/Maximum US\$18 million
 - Conduct barring limitation
- P&I Insurance Certificate

6

FUND

- the International Convention on the Establishment of a Fund for Compensation for Oil Damage 1971
- the International Oil Pollution Compensation Fund
 - Supplement to CLC
 - up to US\$78 million if claims exceed the CLC limit for the particular vessel and spill concerned.
 - Only those states who are party to CLC can become members of Fund.
 - It is funded by contributions levied on any company/person who has received crude oil or heavy fuel oil in a quantity exceeding 150,000 tonnes per year.
- Conduct barring Fund Application:
 - Actual fault or privity by the shipowner in causing the pollution incident and there is no

7

1992 Protocols

Comparison with CLC 1969

- (1) Treble the limits of compensation available.
 - About US\$177 million, including the amount paid by the shipowner under the CLC.
 - (2) Covering unladen tankers and combination carriers (i.e. OBO) actually carrying oil in bulk as cargo or during a subsequent voyage if there are residues of oil cargo aboard.
 - (3) The geographical scope EEZ or equivalent area of a Contracting State (usually 200 miles from shore).
 - (4) "Pollution Damage" - cost of "preventive measures"
 - (5) Conduct barring limitation: reckless and knew that such damage would probably result.
 - (6) They channel the liability.
 - Under the 1969 CLC claims against the servants or agents of the shipowner were prevented.
 - The 1992 protocol extends this to prevent claims against the pilot, charterer (including bareboat charterer), manager or operator of the ship or any person carrying out salvage or preventive measures.
- Contracting states to 1969 CLC and 1992 Protocols:
 - 28 States the old Fund;
 - 68 States the 1992 protocols as at 1 September, 2001, including all EC states and Hong Kong. The United States is a notable exception but we shall deal with this below.
 - Termination of the 1971 Fund Convention

8

The American experience

- OPA 90
- COFR

9

Liability for Pollution caused by cargoes of hazardous and noxious substances

- IMO Convention for Civil Liability for Pollution caused by Hazardous and Noxious Cargoes 1996 (the HNS Convention)
- IMO Protocol on Preparedness, Response and Co-operation to pollution Incidents by Hazardous and Noxious Substances 2000 (HNS Protocol)

10

Other considerations

- **Technical Changes to Tanker Design**
- **Management**
- **Emergency plan.**
 - A procedure for the master (or other person having charge of the vessel) to report oil pollution;
 - A list of authorities or persons nationally and locally to be contacted in the event of an oil pollution incident;
 - A detailed description of action to be taken by persons on board the vessel to reduce or control the discharge of oil following an incident; and
 - A procedure and point of contact aboard the ship for coordinating ship action with national and local authorities to combat oil pollution.

Shipping Law – An Overview

**Mr Andrew Cutler
Holman Fenwick & Willan**

**LIMITATION OF LIABILITY
HKMLA SEMINAR ON 15TH OCTOBER, 2001**

**PAPER BY ANDREW CUTLER, PARTNER
HOLMAN FENWICK & WILLAN**

Limitation of Liability

Introduction:

- Public policy considerations
- Different from exceptions to liability
- Governing law and jurisdiction
- Control of Exemption Clauses Ordinance

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Limitation of Liability

Usual means of limitation:

- Time
- Weight/package
- Tonnage
- Value of the vessel

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Limitation of Liability

Time:

- Cargo claims
- Collision and salvage
- Death/personal injury claims
- Contract/tort/bailment claims

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Limitation of Liability

Package/weight:

Hague Rules - Article IV, rule 5

- “Package or unit” - meaning? Look to B/L.
- GBP100 or GBP100 gold value - “ROSA S”.
- Note: right to limit “*in any event*”.

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Limitation of Liability

Hague-Visby

- Cargo Interests have the choice of the higher of the following two:
 - 2 SDRs per kg; or
 - 666.67 SDRs per “package”
- SDR = basket of currencies

Hamburg Rules

Similar to Hague -Visby Rules, but limits are higher i.e.:

- 2.5 SDRs per kg; or
- 835 SDRs per “package”

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Limitation of Liability

Tonnage:

- With reference to the ship
- Two Conventions:
 - 1957 Convention; and
 - 1976 Convention
- Constituting the fund, distribution, bar to other actions
- Persons entitled to limit
- Two tier approach – death/personal injury and property claims
- Claims exempt from limitation

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Limitation of Liability

1957 Convention: (Applied in Singapore)

- Entitled to limit unless actual fault or privity of the owner
- Lower fund but easier to break limitation

1976 Convention: (Applied in Hong Kong)

- Entitled to limit unless personal act or omission with intent or reckless and knew damage would probably result
- Higher fund and harder to break limitation

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Limitation of Liability

Value of vessel:

Remember possibility of:

- Action against Owners'/Charterers' other assets - classic is sister ships
- Potential personal liability of individuals e.g. crew/master
- Action direct against insurers

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Limitation of Liability

Loss of right to limit:

- Hague Rules - Article IV, rule 5 - "in any event"
- 1957 Limitation Convention – actual fault or privity of the Owner
- Hague-Visby Rules - Article IV, rule 5(e)) Right to limit barred
) if intent or
) recklessness with
) knowledge would
) cause loss – has to
) be that of carrier
- Hamburg Rules - Article 8(1)) personal
- 1976 Limitation Convention - Article 4)

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HKMLA SEMINAR ON 15TH OCTOBER, 2001
AT THE FURAMA HOTEL

ANDREW CUTLER, PARTNER
HOLMAN FENWICK & WILLAN

LIMITATION OF LIABILITY

1. **Introduction:**

- (a) Public policy considerations.
- (b) Different from exceptions to liability per Article IV, rule 2 Hague/Hague-Visby Rules.
- (c) Always have in mind Article III, rule 8 and a carrier attempting to derogate from its duties and obligations. But cross refer to Article I(e) and the period of application per the Rules i.e. "tackle to tackle" - what is the position if Rules incorporated by contract?
- (d) Governing law and jurisdiction is highly relevant.
- (e) Bear in mind exemption/exclusion clauses in contracts and/or application of Control of Exemption Clauses Ordinance (UCTA in England & Wales). Doctrine of contra proferentum.

2. **Usual means of limitation:**

- (a) Time;
- (b) Weight/package;
- (c) Tonnage; and
- (d) Value of the vessel.

3. **Time:**

i.e. for commencing proceedings/arbitration.

(i) **Cargo claims**

- One year for Hague Rules.
- One year plus Art 6 bis for Hague-Visby Rules. (Applied in Hong Kong open ended, case law indicates time extension until end of usual 6 year period.)

- Two years for Hamburg Rules (with similar provision to Art 6 bis).

(ii) Collision and salvage

Two years for collision cases.

(iii) Death/personal injury claims

3 years.

(iv) Contract/tort/bailment claims

6 years - subject to Hague/Hague-Visby Rules.

4. Package/weight:

- (i) This is calculated with reference to the nature of the cargo.

(ii) Hague Rules - Article IV, rule 5

- “Package or unit” - meaning? Look to B/L.
- GBP100 or GBP100 gold value - “ROSA S”.
- Note: right to limit “*in any event*”.

(iii) Hague-Visby - Article IV, rule 5 (Applied in Hong Kong)

- Cargo Interests have the choice of the higher of the following two:
2 SDRs per kg; or
666.67 SDRs per “package”.
- SDR is calculated with reference to a basket of currencies - current value is approximately US\$1.3 but check, say, Lloyd’s List.
- Right to limit event if breached other Rules - but see 3. below.

(iv) Hamburg Rules - Article 6(1)

- Similar to Hague -Visby Rules, but limits are higher i.e.:
2.5 SDRs per kg; or
835 SDRs per “package”.
- Note, also expressly provides for limitation re “delay” claims” (Article 7(1)).

5. **Tonnage:** 1957 and 1976 Conventions

- (i) This is calculated with reference to the ship.
- (ii) Two Conventions:
1957 Convention; and
1976 Convention.
- (iii) General operation - constituting the fund, distribution, bar to other actions.
- (iv) Persons entitled to limit - Owners, Charterers, Mangers, Operators, Salvors and the parties for whose acts they are liable (vicarious liability of employees) and their insurers.
- (v) Two tier approach i.e. (1) General property/damage claims (lower fund) and (2) personal injury/death (higher fund).
- (vi) Claims subject to limitation - generally all property/damage claims and personal injury/death.
- (vii) Claims exempt from limitation - key exclusions are salvage and pollution claims. Hong Kong excludes wreck removal.
- (viii) 1957 Convention: (Applied in Singapore)
 - Entitled to limit unless actual fault or privity of the owner.
 - Lower fund but easier to break limitation.
 - Note: the 1957 Convention is slightly different i.e. “crew or servants” rather than parties for whose acts they are liable” - 1957 is therefore narrower.
- (ix) 1976 Convention: (Applied in Hong Kong)
 - Entitled to limit unless personal act or omission with intent or reckless and knew damage would probably result.
 - Higher fund and harder to break limitation.
- (x) Many countries are not signatories to the either Convention. Noticeable examples:
 - PRC: Adopts 1976 Convention into domestic legislation; and

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- USA: Calculates limitation with reference to the value of the voyage i.e. value of the vessel (hull, bunkers etc) together with freight.

6. **Value of vessel:**

Speaks for itself! But always remember:

- (i) Action against Owners'/Charterers' other assets - classic is sister ships.
- (ii) Potential personal liability of individuals e.g. crew/master.
- (iii) Action direct against insurers - again, classic is an action against the P&I Club as co-defendant.

7. **Loss of right to limit:**

- (a) Hague Rules - Article IV, rule 5 - "in any event".
- (b) 1957 Limitation Convention – actual fault or privity of the Owner.
- (c) Hague-Visby Rules - Article IV, rule 5(e)) Right to limit barred
- (d) Hamburg Rules - Article 8(1)) if intent or
- (e) 1976 Limitation Convention - Article 4) recklessness proved
- (e) 1976 Limitation Convention - Article 4) on the part of the
- (e) 1976 Limitation Convention - Article 4) carrier - personal.

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Shipping Law: An Overview

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INTRODUCTION TO POLLUTION LIABILITIES,
INTERNATIONAL CONVENTIONS

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Introduction

The impetus to international conventions relating to pollution came primarily from the “TORREY CANYON” incident in 1967. Since then the world has seen the advent of tankers capable of carrying up to half a million tonnes of oil and has witnessed a significant number of major pollution incidents. Despite the fact that oil pollution claims account for less than 15% of all marine liability claims, they can be among the most dramatic, at least from a publicity view point. TV images of blackened beaches and oiled sea birds and mammals ensure that the question of who pays for the consequences of an oil spill is often at the forefront of the minds of those who deal with shipping on a day to day basis. It is therefore worthwhile knowing at least in outline what international conventions exist and whether and how they apply to the facts of a particular case. It is also useful to know who actually pays, since it is pointless setting up sophisticated liability regimes unless there are available funds.

To deal with the problems caused by pollution the international shipping community has set up a number of conventions to decide who should pay for oil spills and how such payments are to be financed. We shall be looking at the two main agreements. Note that these apply only to the spill of persistent oil from a laden tanker. We shall then visit briefly, the question of pollution caused by noxious and hazardous substances other than oil. We shall conclude by briefly considering some technical and managerial improvements in tanker operations and design, the purpose of which is to reduce the frequency of oil spills and the severity of those that do occur, since although my paper concerns, in essence the question of when there has been a spill who should pay for it, it ought not to avoid altogether the question of how spills can be avoided in the first place.

The “Statutory Codes” - CLC and FUND

Compensation for pollution damage caused by spills from oil tankers is governed by an international treaty regime established under the auspices of the International Maritime Organisation (IMO). The starting point will normally be the CLC and Fund Conventions.

The original framework was:

- 1969 International Convention on Civil Liability for Oil Pollution Damage (1969 Civil Liability Convention) (“CLC”); and
- 1971 International Convention on the Establishment of an International Fund for compensation for Oil Pollution (1971 Fund Convention) (“Fund”).

The 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 Civil Liability Conventions govern the liability of shipowners for oil pollution damage from laden tankers only. The main features are:-

- the principle of strict liability for shipowners
- a system of compulsory liability insurance

- the shipowner is usually entitled to limit his liability to an amount linked to the tonnage of his ship

The Fund Conventions supplement the CLCs. The main features are:-

- a regime for compensating victims of pollution where compensation under the relevant CLC is inadequate;
- to establish an intergovernmental organization to administer the compensation regimes created by the respective Fund Conventions, the International Oil Pollution Compensation Funds 1971 and 1992 (IOPC Funds).

CLC 1969

If a cargo of "*persistent oil*"¹ or bunkers (but only when the tanker is laden in the case of bunkers) escapes from an oil tanker and causes pollution in the territory or territorial waters of a country which is a signatory to the 1969 CLC, the tanker owner will in most cases be strictly liable for the pollution damage and for measures undertaken to minimise or prevent oil pollution damage. The term "*strictly liable*" means that it does not matter whether the owner was actually at fault. There are a limited number of situations where an owner will not be strictly liable and therefore must be proved to have been at fault if he is to be made liable:-

- If the pollution arose as an act of war.
- If it arose as a result of a serious natural disaster.
- If it was wholly caused by a failure of the relevant authorities to maintain navigational aids.
- If it was caused by the acts or omissions of the person claiming compensation or the acts or omissions of a third party and was intended to cause such damage i.e. sabotage.

Under CLC the flag or nationality of the vessel or the ownership of the cargo or bunkers aboard is irrelevant - provided that the pollution occurred in a contracting state, CLC applies.

Under CLC the owner is liable for pollution clean up costs and damage claims up to a maximum of about US\$18 million, depending upon the grt of the vessel concerned. However, if it is shown that the pollution arose because of the fault or privity of the owner, manager or operator, he will not be able to limit his liability - for example where the owner fails to maintain the vessel or its equipment or to provide adequately trained crew and it is this act or omission which leads to the pollution damage. In other words the vessel was unseaworthy and the loss or damage was a result of the unseaworthiness.

¹Damage covered by non-persistent oil such as gasoline, light diesel oil, or kerosene are not covered by the Conventions.

Liabilities under CLC are covered by the owners' P&I insurance, thus protecting the party suffering from loss caused by the pollution against shipowners or operators who have no assets. The vessel must have aboard, a certificate issued by its flag state confirming that the CLC insurance is in place and, obviously, the failure of such a vessel to carry such certificate will seriously restrict its ability to trade. These provisions apply to any vessel carrying more than 2,000 tonnes of oil in bulk registered in a country which is a party to CLC.

FUND

The maximum CLC figure of US\$18 million mentioned above (i.e. the shipowners' limit of liability) will, in most circumstances, be sufficient to meet pollution damage claim and clean up costs. Clearly, however, it will be insufficient in the more serious cases. There is therefore a supplement to CLC, the "*Fund*" (the International Convention on the Establishment of a Fund for Compensation for Oil Damage 1971). The Fund is administered by the International Oil Pollution Compensation Fund based at IMO headquarters in London and provides cover up to US\$78 million if claims exceed the CLC limit for the particular vessel and spill concerned. Only those states who are party to CLC can become members of Fund. It is funded by contributions levied on any company/person who has received crude oil or heavy fuel oil in a quantity exceeding 150,000 tonnes per year.

The total cover provided of up to US\$78 million includes the amount payable by the shipowner under CLC and therefore Fund will indemnify the shipowner (or his insurers) for part of his liability (on a sliding scale and depending upon tonnage) provided that there was no actual fault or privity by the shipowner in causing the pollution incident and there is no evidence that there was fault or privity of the owner in any failure to comply with SOLAS, MARPOL, the Load Line Convention 1969 or the Convention for Regulations for Preventing Collisions at Sea.

1992 Protocols

CLC/Fund were amended by 1992 protocols. The effect of these protocols is broadly as follows:-

- (1) They potentially treble the limits of compensation available. The maximum recoverable under the 1992 CLC is approximately US\$78 million (59.7 million SDR for a ship of 140,000 units of tonnage or over). The maximum amount payable by the 1992 Fund in respect of an incident is about US\$177 million, including the amount paid by the shipowner under the CLC.
- (2) They extend liability under the earlier Conventions (i.e. CLC 1969 and Fund 1971) to unladen tankers and also to combination carriers (i.e. OBO) actually carrying oil in bulk as cargo or during a subsequent voyage if there are residues of oil cargo aboard.
- (3) The geographical scope is wider, with cover extended to pollution damage caused in the exclusive zone (EEZ) or equivalent area of a Contracting State (usually 200 miles from shore).
- (4) "Pollution Damage" includes the cost of "preventive measures", ie measures to prevent or minimise pollution damage, even if no spill actually occurs, provided that there was a grave and imminent threat of pollution. By contrast, the original Conventions only apply to measures taken after oil has escaped.

- (5) They change the test for whether an owner can limit his liability. Whereas under 1969 CLC those claiming against the owner had to show that he was guilty of fault or privity in order to prevent him from limiting his liability, under the 1992 protocols they would have to show that the owner was reckless and knew that such damage would probably result. This is a more difficult test for claimants to overcome and is consistent with the trend in other areas of shipping limitation law which effectively increase compensation available but make it much more difficult to break limitation.
- (6) They channel the liability. Under the 1969 CLC claims against the servants or agents of the shipowner were prevented. The 1992 protocol extends this to prevent claims against the pilot, charterer (including bareboat charterer), manager or operator of the ship or any person carrying out salvage or preventive measures.

There are therefore two categories of countries - those operating on the 1992 protocols and those still on the 1969/1971 conventions. The amount that an owner has to pay will depend on exactly where he spills oil. The new regimes are gaining ascendancy. 28 States still adhere to the old Fund as opposed to 68 States which are contracting parties to the 1992 protocols as at 1 September, 2001, including all EC states and Hong Kong. The United States is a notable exception but we shall deal with this below.

Termination of the 1971 Fund Convention

In 2000, a Protocol to the 1971 Fund Convention was adopted, under which the Convention would cease to be in force either when the number of Member States fell below 25 or one year after the total quantity of contributing oil received in the remaining Member States had fallen below 100 million tonnes, whichever was the earlier. The first of these conditions will now be met when the denunciation of the Convention by the United Arab Emirates takes effect on 24 May 2002. The Convention will therefore cease to be in force on 24 May 2002 and will not apply to incidents occurring after that date.

NB: It is possible to enact national laws incorporating the conventions, but also extending them. As an example, I would mention the Merchant Shipping (Salvage and Pollution) Act 1994 which enacted the 1992 protocols into English law, but which extends strict liability to the owner of any type of vessel causing pollution damage within the UK jurisdiction by discharge of persistent oil. Therefore oil pollution caused by an escape of bunkers from any type of ship (whether seagoing or not) will result in the owner being strictly liable.

The American experience

The US is a notable exception to CLC/Fund, although perhaps not a surprising one given that country's lack of enthusiasm for signing up to any convention which might result in an American claimant recovering less than he feels he is entitled to because a shipowner is able to limit his liability. So how does the US impose liability on shipowners and who pays for it?

You will all have heard of the US Oil Pollution Act 1990 (OPA '90) which, from the end of 1994, required vessels trading to the US to carry certificates of financial responsibilities (COFR). The provisions relating to tankers and dry cargo vessels are slightly different, but for present purposes can be considered the same. COFRs will only be issued (by the US Coastguard) to owners who can demonstrate that sufficient monies are immediately available up to the statutory limits of liability under OPA '90 (and an earlier act, the US Comprehensive Environmental Response Compensation Liability Act 1980) for the clean up costs and damage

and arising from the discharge or threat of discharge of oil or hazardous materials in US waters. In order to prove immediate access to the necessary monies, owners have to provide evidence of acceptable insurance or a financial guarantee. If they cannot do so, they do not get a COFR and cannot trade to the States. Under the previous COFR regime, such evidence was generally provided by the P&I Clubs who would guarantee their members' oil pollution liabilities.

However, owners' liabilities dramatically increased under OPA '90 and this, combined with what was an obvious attempt by the US to establish a direct right of action against the P&I Clubs without the Clubs being able to rely on any policy defences has resulted in the international group of Clubs deciding not to guarantee their members' liability as they had done in the past. By "*direct action*" and "*policy defences*", I mean that Congress was attempting to make the P&I Clubs, as insurers, directly liable for the members' liabilities even in circumstances where the Club would not be liable under its rules because, for instance, the ship was unseaworthy or the member had not paid his premium. This had potentially disastrous financial consequences for the Clubs, since the limits of liability under OPA '90 are high and more seriously, it would appear to be rather easy in practice to break those limits, thus exposing the Clubs to unlimited liability. In practice, therefore, the potentially massive claims of American claimants would be borne by the rest of the world.

In practice, this refusal by Clubs to guarantee their members' liabilities has made little difference to the way P&I Clubs deal with pollution claims in the States or anywhere else. The Clubs continue (in normal circumstances) to pay oil spill claims. The COFR regime does not increase at all the amount of insurance available to cover oil spills. It imposes a further burden upon shipowners who wish to trade to the United States. A shipowner who wishes to trade to the States has to obtain a COFR through one of the new mutual insurance Clubs set up specifically for the purpose. These companies do not, however, in the first instance, have to pay pollution claims in the States - these are still borne by the P&I Clubs who, through the international group of Clubs, provide pollution cover up to USD500 million with a market facility available for a further USD200 million. The new companies will only be called upon to pay if the shipowners' P&I Club refuses to pay a pollution claim in the US.

Liability for Pollution caused by cargoes of hazardous and noxious substances

Up to now, my paper has addressed itself to pollution caused by oil (whether cargo or bunkers). Other hazardous and noxious cargo can, by its very nature, pose serious environmental risks and result in potentially massive claims. In 1996, the IMO adopted a convention for Civil Liability for Pollution caused by Hazardous and Noxious Cargoes (the HNS Convention) which is on lines similar to CLC. It is not yet in force. It will impose strict liability for pollution damage (with similar defences as under CLC such as act or war, failure by a government to maintain navigational aids etc) and will permit limitation of liability for owners. It will create a two tier system with shipowners being primarily liable and receivers/importers contributing to the second tier compensation fund.

The HNS Convention defines its scope of application by reference to existing lists of substances. These include oils; other liquid substances defined as noxious or dangerous; liquefied gases; liquid substances with a flashpoint not exceeding 60°C; dangerous, hazardous and harmful materials and substances carried in packaged form; and solid bulk materials defined as possessing chemical hazards, **materials and articles in packaged form covered by the International Maritime Dangerous Goods (IMDG) Code.**

In order to ensure that ship owners engaged in the transport of HNS are able to meet their liabilities, the Convention makes insurance compulsory for them. A certificate of insurance must be carried on board and a copy kept by the authorities who keep record of the ship's registry.

It has generally been agreed that it would not be possible to provide sufficient cover by the shipowner liability alone for the damage that could be caused in connection with the carriage of HNS cargo. This liability, which creates a first tier of the Convention, is therefore supplemented by a second tier, the HNS Fund, financed by cargo interests.

Contributions to the second tier will be levied on persons in the Contracting Parties who receive a certain minimum quantity of HNS cargo during a calendar year. The tier will consist of one general account and three separate accounts for oil, liquefied natural gas (LNG) and liquefied petroleum gas (LPG). The system with separate accounts has been seen as a way to avoid cross-subsidisation between different HNS substances.

The Convention will enter into force once a minimum number of paying States have accepted the Convention, four of which have not less than 2 million units of gross tonnage.

Further, on 15 March 2000, the IMO adopted a further protocol, **Protocol on Preparedness, Response and Co-operation to pollution Incidents by Hazardous and Noxious Substances, 2000 (HNS Protocol)** which, when it is in force, will:

- Apply to all ships except military and certain offshore vessels
- Require ships to carry a shipboard pollution emergency plan to deal specifically with hazardous and noxious substances
- Foster co-operation among nations in dealing with pollution incidents of all kinds
- Establish liability and compensation regimes for hazardous and noxious substance incidents.

Other considerations

My paper has been very much concerned with the financial implications of who should pay following an oil spill. It may, however, be appropriate to conclude by mentioning some of the technical/managerial innovations of recent years which are intended to make pollution incidents less likely and/or less severe and/or to make the shipowners' response to such incidents more effective.

Technical Changes to Tanker Design

In 1993 the International Maritime Organisation (IMO) introduced a number of amendments to MARPOL 1973/1978 requiring all new tankers ordered after 6 July 1993 where the keel was laid after 6 January 1994 with the vessel delivered after 6 July 1996 to be fitted with double hulls or a mid-deck design or another approved design. Moreover, from 6 July 1995, existing tankers of 20,000 dwt and over or any tanker more than 25 years old and not constructed to the design requirements set out to the protocols to MARPOL '78 must be fitted with double sides and a double bottom. In respect of tankers that were constructed in accordance with the protocol to MARPOL '78, the requirement for a retrospective fitting of double sides and double bottoms will not apply until the tanker reaches 30 years of age.

Under MARPOL '78, new crude oil tankers of 20,000 dwt and above and new product tankers of 30,000 dwt and above are to be fitted with segregated ballast tanks. This also applies to existing crude and product tankers of 40,000 dwt and above. Vessels either not constructed or not modified to comply with these requirements will find their trading restricted.

In the USA, OPA '90 introduced mandatory requirements for all tankers trading into US ports or offshore facilities to be of a double hull design. All newly-constructed vessels of over 500 grt are to be equipped with a double hull unless the building contract was placed before 30 June 1990 and the vessel was delivered before 1 January 1994. Existing vessels will be required to have a double hull fitted after a certain date and there are a number of different dates for the retrospective fitting of double hulls on existing vessels, depending upon the vessel's size and date of delivery. A tanker not complying with the double hull requirements by the relevant dates will be prohibited from trading to US waters.

Management

On the managerial side, the IMO has adopted a Safety Management Code for Shipping Companies which became mandatory in 1998. Thus it should be possible (at least in part) to identify well managed shipping companies by assessing such mandatory requirements against this Safety Management Code, although I would suggest that the mere fact that a shipowner complies on paper with the code does not necessarily mean that his ships are well managed. It will merely be one factor to take into account.

Similarly, the International Standards Organisation (ISO) can be approached by shipping companies seeking a certificate of compliance with ISO 9002, which sets out the ISO's criteria for good ship management. The certification of shipping companies for the purposes of ISO 9002 is carried out by some of the classification societies.

Finally, I would mention the provisions of regulation 26 of annex 1 to MARPOL 73/78, which relates to shipboard emergency oil pollution plans. From 5 April 1995, all ships over 400 grt and all oil tankers over 150 grt built before 4 April 1993 were required to carry an approved shipboard oil pollution emergency plan.

The emergency plan must be in accordance with the guidelines for shipboard oil pollution emergency plans adopted by the IMO Marine Environment Protection Committee on 6 March 1993. The minimum requirements are:-

- (7) A procedure for the master (or other person having charge of the vessel) to report oil pollution;
- (8) A list of authorities or persons nationally and locally to be contacted in the event of an oil pollution incident;
- (9) A detailed description of action to be taken by persons on board the vessel to reduce or control the discharge of oil following an incident; and
- (10) A procedure and point of contact aboard the ship for coordinating ship action with national and local authorities to combat oil pollution.

This applies to all vessels flagged in countries which are signatories to MARPOL 73/78 - a very large proportion of the world fleet.

Ports and countries want to encourage trade and consumers need oil and other potentially dangerous products. At the same time all parties expect the ship which carry these goods to be operated, manned and maintained to acceptable standards. When things go wrong, the industry (at least in the first instance) pays, or at least the polluter pays. In this lecture I have endeavoured to outline the mechanism by which such payments are presently made and indicated possible future mechanisms.

Paul Apostolis
October 2001

How it works in practice: The Erika

What happened?

On 12 December 1999 the Erika broke in two off the coast of Brittany, France, whilst carrying approximately 30 000 tonnes of heavy fuel oil. Some 19 800 tonnes were spilled. The sunken bow section contained 6 400 tonnes of cargo and the stern a further 4 700 tonnes.

Operations to pump the remaining oil to the surface were carried out during the period June - September 2000.

Clean-up operations took place along some 400 kilometers of polluted coastline and continue in certain areas. Over 200 000 tonnes of oily waste have been collected from the shoreline.

Who will pay?

Compensation is payable to any individual, business, or public body who has suffered pollution damage as a result of the Erika incident under the 1992 Civil Liability Convention and the 1992 Fund Convention as enacted into French law.

Approximately US\$11 million (FFr84 million) compensation is available from the shipowner's liability insurer, the Steamship Mutual P&I Club. Additional compensation of up to approximately US\$145 million (FFr1,128 million) is available from the International Oil Pollution Compensation Fund 1992 (1992 Fund), i.e. a total of US\$156 million (FFr1,212 million) is available.

As at 20 June 2001, 4 960 claims for compensation had been submitted for a total of FFr765 million. These are in the course of being assessed. So far, payments have been made in respect of 2 038 claims for a total of FFr82 million.

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