

TITLE V

MARITIME COLLISIONS, ASSISTANCE AND SALVAGE

Chapter 1. Collisions

Art. 229. *Rules Applicable to Collisions.*

Where a collision occurs between ships, the compensation due for damages caused to the ships, or to any property or persons on board thereof, shall be settled in accordance with the following provisions.

Art. 230. *Accidental Collision.*

If the collision has been occasioned by a fortuitous accident or if it cannot be shown that any of the parties is to blame, the damage shall rest where it falls.

Art. 231. *Collision fault of one ship.*

When any damage to ships, goods or persons has been caused by a collision between ships, and one party alone is to blame, he shall be liable for any loss or damage caused thereby.

Art. 232. *Collision fault of two or more ships.*

- (1) When two or more ships are to blame, each party shall be liable for a portion of the damage in proportion to the faults committed on either side. If the circumstances afford no basis for an apportionment in any definite proportion, the damage shall be shared equally.
- (2) The damages caused, either to the ships or to their cargoes or to the effects or other property of the crews, passengers or other persons on board, are borne by the ships in fault in the above proportions, and even to third parties a ship is not liable for more than such proportion of such damages.
- (3) In respect of damages caused by death or personal injuries, the ships at fault are jointly and severally liable to third parties, without prejudice to the right of the ship which has paid a larger part than that which, in accordance with the provisions of sub-article (1), she shall bear to obtain a contribution from the other ship or ships at fault.

Art. 233. *Collision caused by the fault of a Pilot.*

Articles 230 to 232 shall apply where collision is caused by the fault of a pilot, even where pilotage is compulsory.

Art. 234. *Extent to which damages are made good.*

Articles 230 - 233 shall apply to making good damages which a ship has caused to another ship, or to goods and persons on board either ship, either by the execution or non-execution of a manœuvre or by the non-observance of the prescribed regulations concerning prevention of collisions at sea, even where no collision has taken place.

Art. 235. *Duties of the Masters.*

- (1) After a collision, the master of each of the ships in collision shall, so far as he can do so without serious danger to his ship, her crew and passengers, render assistance to the other ship, her crew and her passengers.
- (2) He shall as far as possible make known to the other ship the name of his ship, the port to which she belongs and the port from which she comes and to which she is bound.

Art. 236. *Procedure.*

- (1) The right to sue for the recovery of damages resulting from a collision shall not depend upon the fulfilment of any formality.
- (2) There are no legal presumptions of fault in regard to liability for collision.

Art. 237. *Courts having Jurisdiction.*

The following Courts shall have jurisdiction to try an action for damages arising out of a collision:

- (a) the court of the place of collision where the collision has occurred within the limits of a port or in territorial waters; or
- (b) the court where the defendant has his domicile; or
- (c) the court of the place of registry of the ship of the shipowner against whom the action is introduced; or
- (d) the court of the place where the ship has been arrested, even after release has been ordered upon bail or other security.

Art. 238. *Limitation.*

- (1) Actions for damage to property or persons arising out of one of the acts referred to in Articles 230 to 234 shall be barred after two years from the date of the occurrence:
Provided that a claim under Art. 232 (3) shall be barred after one year from the date of payment.
- (2) The periods specified in sub-article (1) shall not run where arrest of the defendant vessel in the territorial waters of the State in which the claimant has his domicile or principal place of business has not been possible.

Chapter 2. Assistance and salvage at sea

Art. 239. *Rules applicable to assistance and salvage.*

Assistance and salvage are subject to the provisions of this Chapter.

Art. 240. *Remuneration.*

Every act of assistance or salvage which has been successful shall give a right to equitable remuneration which shall not exceed the value of the property salvaged.

Art. 241. *No remuneration for forced salvage.*

No one shall be entitled to any salvage reward who forces his salvage services upon the ship against the express and proper refusal of the person in command.

Art. 242. *Assistance of Ships by Shipowners.*

Salvage remuneration shall be due although the salving ship belongs to the same owner as the salvaged ship.

Art. 243. *Exceptional Assistance in Towage and Piloting.*

If anyone has undertaken by contract to assist the ship by piloting, towing or the like, and the ship comes in distress, he shall not be entitled to any salvage reward unless the assistance thus rendered cannot be held to be covered by the contract.

Art. 244. *Saving of Life.*

- (1) No remuneration shall be due from the persons whose lives are saved.
- (2) Salvors of human life who have taken part in the services rendered on the occasion of the same dangers are entitled to a fair share of the remuneration awarded to the salvors of the ship, her cargo and accessories.

Art. 245. *Determination of the amount of remuneration.*

- (1) The amount of remuneration shall be fixed by agreement between the parties, and, failing agreement, by the court.
- (2) The proportion in which the remuneration is to be distributed among the salvors, or among the owners, the master and the crew of each salving ship shall be determined in the same manner.
- (3) Where the salving ship is a foreign ship, the apportionment among the owner, master and persons in the service of the ship shall be determined in accordance with the national law of the ship.

Art. 246. *Cancellation or Alteration of the Salvage Agreement by the Court.*

- (1) Any agreement as to assistance or salvage entered into at the moment and under the influence of danger may, at the request of either party, be cancelled or varied by the court for good reason.

- (2) Where it is shown that the consent of one of the parties has been obtained by fraud or concealment, or where the remuneration is disproportionate to the services rendered, the agreement may be cancelled or varied by the court at the request of the party affected.

Art. 247. How remuneration determined.

- (1) The remuneration shall be fixed by the court having regard to the following considerations:
- (a) the measure of success which the salvage operations have had;
 - (b) the competence and skill shown by the salvage services, the time used and the exertions made in them;
 - (c) the danger to which the salvaged ship, her passengers, crew or goods have been exposed;
 - (d) the danger to which the salvors or their property have been exposed;
 - (e) the risk run by the salvors of any liability in damages to third parties or of any other loss;
 - (f) the loss of life, personal injury or the damage to property suffered by the salvors, the expenses they have incurred and the losses sustained, further the value of the appliances used in the salvage operations;
 - (g) the fact that the ship used by the salvors has been specially fitted for salvage operations;
 - (h) the value of the property salvaged.
- (2) The Court may reduce or refuse to grant remuneration, where it appears that the salvors have by their fault rendered the salvage or assistance necessary, or have been guilty of theft, receiving stolen goods, or other acts of fraud.
- (3) The considerations set out in sub-article (1) shall be taken into consideration when determining an apportionment under Art. 245 (2).

Art. 248. Assistance compulsory in respect of persons found at sea in danger of being lost.

- (1) The master shall, so far as he can do so without serious danger to his ship, her crew and passengers, render assistance to any person found at sea in danger of being lost.
- (2) No duties or liabilities are imposed on, or incurred by, the owner of the ship under this Article.

Art. 249. Claims for payment of assistance or salvaga remuneration.

- (1) Claims of the payment of assistance or salvage remuneration shall be barred after two years from the day on which assistance or salvage has been completed: Provided that this period shall not run where arrest of the assisted or salvaged ship within the territorial waters of the State where the claimant is domiciled or has his principal place of business, has not been possible.
- (2) The claim shall give rise to a lien on the ship and freight in accordance with Art. 15 (3). It shall in addition give rise to a lien on the salvaged goods.

Art. 250. Application to Government Ships of Rules Regarding Assistance.

The rules laid down in this Chapter shall apply to Government ships. In the case of assistance lent or salvage made by Government ships, the Imperial Government shall have the same rights as a private managing owner.

TITLE VI

PARTICIPATION IN GENERAL AVERAGE

Art. 251. General Average Act.

There is a general average act when and only when, any extraordinary sacrifice or expenditure is intentionally and reasonably made or incurred for the common safety for the purpose of preserving from peril the property involved in a common maritime adventure.

Art. 252. Sacrifice and Expenses How Borne.

General average sacrifices and expenses shall be borne by the different contributing interests on the basis hereinafter provided.

Art. 253. Only Losses, etc. direct consequence of Act allowed.

Only such losses, damages or expenses which are the direct consequence of the general average act shall be allowed as general average.

Art. 254. Loss or Damage not Allowed.

Loss or damage sustained by the ship or cargo through delay, whether on the voyage or subsequently, such as demurrage, and any indirect loss whatsoever, such as loss of market, shall not be admitted as general average.

Art. 255. Result of Fault of One Party.

Rights to contributions in general average shall not be affected, though the event which gave rise to the sacrifice or expenditure may have been due

to the fault of one of the parties to the adventure; but this shall not prejudice any remedies which may be open against that party for such fault.

Art. 256. Onus of Proof.

The onus of proof is upon the party claiming in general average to show that the loss or expense claimed is properly allowable as general average.

Art. 257. Extra Expenses.

Any extra expense incurred in place of another expense which would have been allowable as general average shall be deemed to be general average and so allowed without regard to the saving, if any, to other interests, but only up to the amount of the general average expense avoided.

Art. 258. Adjustment of Loss and Contribution.

1) General average shall be adjusted as regards both loss and contribution upon the basis of values at the time and place when and where the adventure ends.

2) This Article shall not affect the determination of the place at which the average statement is to be made up.

Art. 259. Jettison of Cargo.

No jettison of cargo shall be made good as general average, unless such cargo is carried in accordance with the recognised custom of the trade.

Art. 260. Damage by Jettison and Sacrifice for the Common Safety.

Damage done to a ship and cargo, or either of them, by or in consequence of a sacrifice made for the common safety, and by water which goes down a ship's hatches opened or other opening made for the purpose of making a jettison for the common safety, shall be made good as general average.

Art. 261. Extinguishing Fire on Shipboard.

Damage done to a ship and cargo, or either of them, by water or otherwise, including damage by beaching or scuttling a burning ship, in extinguishing a fire on board the ship, shall be made good as general average; except that no compensation shall be made for damage to such portions of the ship and bulk cargo, or to such separate packages of cargo, as have been on fire.

Art. 262. Cutting Away Wreck.

Loss or damage caused by cutting away the wreck or remains of spars, or of other things which have previously been carried away by sea-peril, shall not be made good as general average.

Art. 263. Voluntary Stranding.

When a ship is intentionally run on shore, and the circumstances are such that if that course were not adopted she would inevitably drive on shore or on rocks, no loss or damage caused to the ship, cargo and freight or any of them by such intentional running on shore shall be made good as general average, but loss or damage incurred in refloating such a ship shall be allowed as general average.

In all other cases where a ship is intentionally run on shore for the common safety, the consequent loss or damage shall be allowed as general average.

Art. 264. Carrying Press of Sail — Damage to or Loss of Sails.

Damage to or loss of sails and spars, or either of them, caused by forcing a ship off the ground or by driving her higher up the ground for the common safety, shall be made good as general average; but where a ship is afloat, no loss or damage caused to the ship, cargo and freight, or any of them, by carrying a press of sail, shall be made good as general average.

Art. 265. Damage to Machinery and Boilers.

Damage caused to machinery and boilers of a ship which is ashore and in a position of peril, in endeavouring to refloat, shall be allowed in general average when shown to have arisen from an actual intention to float the ship for the common safety at the risk of such damage, but where a ship is afloat no loss or damage caused by working the machinery and boilers, including loss or damage due to compounding of engines or such measures, shall in any circumstances be made good as general average.

Art. 266. Lightning a Ship when Ashore, and Consequent Damage.

When a ship is ashore and cargo and ship's fuel and stores or any of them are discharged as a general average act the extra cost of lightening, lighter hire and re-shipping (if incurred), and the loss or damage sustained thereby, shall be admitted as general average.

Art. 267. Ship's Materials and Stores Burnt for Fuel.

Ship's materials and stores, or any of them necessarily burnt for fuel for the common safety at a time of peril, shall be admitted as general average, when and only when an ample supply of fuel has been provided, but the estimated quantity of fuel that would have been consumed, calculated at the price current at the ship's last port of departure at the date of her leaving, shall be credited to the general average.

Art. 268. Expenses at Port of Refuge, etc.

(1) When a ship shall have entered a port or place of refuge, or shall have

returned to her port or place of loading in consequence of accident, sacrifice or other extraordinary circumstances, which render that necessary for the common safety, the expenses of entering such port or place shall be admitted as general average; and when she shall have sailed thence with her original cargo, or part of it, the corresponding expenses of leaving such port or place consequent upon such entry or return shall likewise be admitted as general average.

- (2) When a ship is at any port or place of refuge and is necessarily removed to another port or place because repairs cannot be carried out in the first port or place, the provisions of this Article shall be applied to the second port or place as if it were a port or place of refuge. The provisions of Art. 269 shall be applied to the prolongation of the voyage occasioned by such removal.
- (3) The cost of handling on board or discharging cargo, fuel or stores, whether at a port or place of loading, call or refuge, shall be admitted as general average when the handling or discharge was necessary for the common safety or to enable damage to the ship caused by sacrifice or accident to be repaired, or the repairs were necessary for the safe prosecution of the voyage.
- (4) Whenever the cost of handling or discharging cargo, fuel or stores is admissible as general average, the cost of reloading and stowing such cargo, fuel or stores on board the ship, together with all storage charges (including fire insurance, if incurred), on such cargo, fuel or stores, shall likewise be so admitted. But when the ship is condemned or does not proceed on her original voyage, no storage expenses incurred after the date of the ship's condemnation or of the abandonment of the voyage shall be admitted as general average. In the event of the condemnation of the ship or the abandonment of the voyage before completion of discharge of cargo, storage expenses as above shall be admitted as general average up to date of completion of discharge.
- (5) If a ship under average be in a port or place at which it is practicable to repair her, so as to enable her to carry on the whole cargo, and if, in order to save expenses, either she is towed then to some other port or place of repair or to her destination, or the cargo or a portion of it is transhipped by another ship, or otherwise forwarded, then the extra cost of such towage, transhipment and forwarding, or any of them up to the amount of the extra expense saved shall be payable by the several parties to the adventure in proportion to the extraordinary expense saved.

Art. 269. *Wages and Maintenance of Crew and other Expenses bearing up for and in a Port of Refuge, etc.*

- (1) Wages and maintenance of master, officers and crew reasonably incurred and fuel and stores consumed during the prolongation of the voyage occasioned by a ship entering a port or place of refuge or returning to her port or place of loading shall be admitted as general average when the expenses of entering such port or place are allowable in general average in accordance with Art. 268 (1).
- (2) When a ship shall have entered or been detained in any port or place in consequence of accident, sacrifice or other extraordinary circumstances which render that necessary for the common safety, or to enable damage to the ship caused by sacrifice or accident to be repaired, if the repairs were necessary for the safe prosecution of the voyage, the wages and maintenance of the master, officers and crew reasonably incurred during the extra period of detention in such port or place until the ship shall or should have been made ready to proceed upon her voyage shall be admitted to general average. When the ship is condemned or does not proceed on her original voyage, the extra period of detention shall be deemed not to extend beyond the date of the ship's condemnation or the abandonment of the voyage or, if discharge of cargo is not then completed, beyond the date of completion of discharge.

Fuel and stores consumed during the extra period of detention shall be admitted as general average, except such fuel and stores as are consumed in effecting repairs not allowable in general average.

Port charges incurred during the extra period of detention shall likewise be admitted as general average except such charges as are incurred solely by reason of repairs not allowable in general average.

- (3) For the purpose of this and the other articles wages shall include all payments made to or for the benefit of the master, officers and crew, whether such payments be imposed by law upon the shipowners or be made under the terms or articles of employment.
- (4) When overtime is paid to the master, officers or crew for maintenance of the ship or repairs, the cost of which is not allowable in general average, such overtime shall be allowed in general average only up to the saving in expense which would have been incurred and admitted as general average, had such overtime not been incurred.

Art. 270. *Damage to Cargo in Discharging, etc.*

Damage to or loss of cargo, fuel or stores caused in the act of handling, discharging, storing, reloading and stowing shall be made good as general

average, when and only when the cost of those measures respectively is admitted as general average.

Art. 271. Deductions from Cost of Repairs.

In adjusting claims for general average, repairs to be allowed in general average shall be subject to deductions in respect of "new for old" according to the following rules, where old material or parts are replaced by new.

The deductions shall be regulated by the age of the ship from date of original register to the date of accident, except for provisions and stores, insulation, life and similar boats, gyro compass equipment, wireless, direction finding, echo sounding and similar apparatus, machinery and boilers for which the deductions shall be regulated by the age of the particular parts to which they apply.

No deduction shall be made in respect of provisions, stores and gear which have not been in use.

The deductions shall be made from the cost of new material or parts including labour and establishment charges, but excluding cost of opening up.

Drydock and slipway dues and costs of shifting the ship shall be allowed in full.

No cleaning and painting of bottom shall be allowed, if the bottom has not been painted within six months previous to the date of the accident.

A — Up to 1 year old.

All repairs shall be allowed in full, except scaling and cleaning and painting or coating of bottom, from which one-third is to be deducted;

B — Between 1 and 3 years old.

Deduction off scaling, cleaning and painting bottom as above under Clause A.

One-third shall be deducted off sails, rigging, ropes, sheets and hawsers (other than wire and chain), awnings, covers, provisions and stores and painting.

One-sixth shall be deducted off woodwork of hull, including hold ceiling, wooden masts, spars and boats, furniture, upholstery, crockery, metal and glass-ware, wire, rigging, wire ropes and wire hawsers, gyro compass equipment, wireless, direction finding, echo sounding and similar apparatus, chain cables and connections, winches and cranes and connections and electrical machinery and connections other than electrical propelling machinery other repairs to be allowed in full.

Metal sheathing for wooden or composite ships shall be dealt with by allowing in full the cost of a weight of metal sheathing stripped off,

minus the proceeds of the old metal. Nails, felt and labour metalling are subject to a deduction of one-third.

C — Between 3 and 6 years.

Deductions as above under Clause B, except that one-third be deducted off woodwork of hull including hold ceiling, wooden masts, spars and boats, furniture, upholstery, and one-sixth be deducted off iron-work of masts and spars and all machinery (inclusive of boilers and their mountings).

D — Between 6 and 10 years.

Deductions as above under Clause C, except that one-third be deducted off all rigging, ropes, sheets, and hawsers, iron-work of masts and spars, gyro compass equipment, wireless, direction finding, echo sounding and similar apparatus, insulation, auxiliary machinery, steering gear, winches, cranes and connections and all other machinery (inclusive of boilers and their mountings).

E — Between 10 and 15 years.

One-third to be deducted off all renewals, except iron-work of hull and cementing and chain cables, from which one-sixth to be deducted, and anchors, which are allowed in full.

F — Over 15 years.

One-third to be deducted off all renewals, except chain cables, from which one-sixth to be deducted, and anchors, which are allowed in full.

Art. 272. *Temporary Repairs.*

- (1) Where temporary repairs are effected to a ship at a port of loading, call or refuge, for the common safety, or of damage caused by general average sacrifice, the cost of such repairs shall be admitted as general average.
- (2) Where temporary repairs of accidental damage are effected merely to enable the adventure to be completed, the cost of such repairs shall be admitted as general average without regard to the saving, if any, to other interests, but only up to the saving in expense which would have been incurred and allowed in general average if such repairs had not been effected there.
- (3) No deductions "new for old" shall be made from the cost of temporary repairs allowable as general average.

Art. 273. *Loss of Freight.*

Loss of freight arising from damage to or loss of cargo shall be made good as general average, either when caused by a general average act, or when

the damage to or loss of cargo is so made good. Deduction shall be made from the amount of gross freight lost of the charges which the owner thereof would have incurred to earn such freight, but has, in consequence of the sacrifice, not incurred.

Art. 274. Amount to be made good for cargo lost or damaged by sacrifice.

- (1) The amount to be made good as general average for damage to or loss of goods sacrificed shall be the loss which the owner of the goods has sustained thereby, based on the market values at the last day of discharge of the vessel or at the termination of the adventure where this ends at a place other than the original destination.
- (2) Where goods so damaged are sold and the amount of the damage has not been otherwise agreed, the loss to be made good in general average shall be the difference between the net proceeds of sale and the net sound value at the last day of discharge of the vessel or at the termination of the adventure where this ends at a place other than the original destination.

Art. 275. Contributory Values.

- (1) The contribution to a general average shall be made upon the actual net values of the property at the termination of the adventure, to which values shall be added the amount made good as general average for property sacrificed, if not already included, deduction being made from the shipowner's freight and passage money at risk, of such charges and crew's wages as would not have been incurred in earning the freight, had the ship and cargo been totally lost at the date of the general average act, and have not been allowed as general average; deduction being also made from the value of the property of all charges incurred in respect thereof subsequently to the general average act, except such charges as are allowed in general average.
- (2) Passengers' luggage and personal effects not shipped under bill of lading shall not contribute in general average.
- (3) The amount to be allowed as general average for damage or loss to the ship, her machinery and/or gear when repaired or replaced shall be the actual reasonable cost of repairing or replacing such damage or loss, subject to deduction in accordance with Art. 271. When not repaired, reasonable depreciation shall be allowed, not exceeding the estimated cost of repairs.

Art. 276. Damage to Ship.

Where there is an actual or constructive total loss of the ship the amount to be allowed as general average for damage or loss to the ship caused by a general average act shall be the estimated sound value of the ship after deducting therefrom the estimated cost of repairing damage which is not general average and the proceeds of sale, if any.

Art. 277. Undeclared or Wrongfully Declared Cargo.

- (1) Damage or loss caused to goods loaded without the knowledge of the shipowner or his agent or to goods wilfully misdescribed at time of shipment shall not be allowed as general average, but such goods shall remain liable to contribute, if saved.
- (2) Damage or loss caused to goods which have been wrongfully declared on shipment at a value which is lower than their real value shall be contributed for at the declared value, but such goods shall contribute upon their actual value.

Art. 278. Provision of Funds.

- (1) A commission of 2 per cent on general average disbursements, other than the wages and maintenance of master, officers and crew and fuel and stores not replaced during the voyage, shall be allowed in general average, but when the funds are not provided by any of the contributing interests, the necessary cost of obtaining the funds required by means of a bottomry bond or otherwise, or the loss sustained by owners of goods sold for the purpose, shall be allowed in general average.
- (2) The cost of insuring money advanced to pay for general average disbursements shall also be allowed in general average.

Art. 279. Interest on Losses made good in General Average.

Interest shall be allowed on expenditure, sacrifices and allowances charged to general average at the rate of 5 per cent. per annum, until the date of the general average statement, due allowance being made for any interim reimbursement from the contributory interests or from the general average deposit fund.

Art. 280. Treatment of Cash Deposits.

- (1) Where cash deposits have been collected in respect of cargo's liability for general average, salvage or special charges, such deposits shall be paid without any delay into a special account in the joint names of a representative nominated on behalf of the depositors in a bank to be approved by both.

- (2) The sum so deposited, together with accrued interest, if any, shall be held as security for payment to the parties entitled thereto of the general average, salvage or special charges payable by cargo in respect to which the deposits have been collected. Payments on account or refunds of deposits may be made if certified to in writing by the average adjuster. Such deposits and payments or refunds shall be without prejudice to the ultimate liability of the parties.

Art. 281. General Average borne in Due Course.

General average loss shall be shared rateably by the ship, freight, passage money, cargo and all property, as specified in Art. 275, directly at risk at the time of the general average act.

Art. 282. Inadmissibility of a Demand for Contribution.

A demand for contribution in general average shall be inadmissible where the damage has not been the subject of a reservation in writing made by the master or against him within three days from the delivery of the goods, holidays not included.

Art. 283. Lien in respect of Claims in General Average.

- (1) Claims in general average shall be secured by lien on the property salvaged up to the amount of the contribution due in respect of such item.
- (2) Liens in respect of ships shall be subject to the rules set forth in this Code.
- (3) The property to which the lien attaches may be detained by the carrier at the port of arrival, unless the carrier is given such sufficient and proper security as will ensure eventual payment of the contribution. The Court may order the attachment of the property including the sale thereof, up to the amount of the provisional contribution determined in accordance with the procedure laid down in the Code of Civil Procedure.
- (4) Where there are several claims in general average they shall rank in the inverse order of the dates on which they came into being.

Art. 284. General Average Statement.

The general average statement shall be drawn up for each interest, both in respect of the estimation of losses admitted in general average and in respect of the contribution, on the basis of the valuation at the time the voyage ended and, unless otherwise stipulated, at the place determined for the conclusion of the voyage and with effect from arrival in such place.

Art. 285. *Average Adjusters.*

- (1) The general average statement shall be drawn up by one or several average adjusters. Failing agreement between the parties, the adjusters shall be appointed by the Court having jurisdiction. The adjusters may appoint experts to assist them.
- (2) Failing agreement between all the parties, the general average statement shall be submitted to the Court for ratification by any party, the other parties being served.

Art. 286. *Costs and Honoraria.*

Costs and honoraria incurred in the average statement shall be borne by the contributory values, as a prior charge.

Art. 287. *Limitation of Proceedings for Claiming Contribution.*

- (1) Claims for contribution shall be barred after two years from the arrival of the ship at her destination or from the day when she was to arrive.
- (2) The period of limitation shall be suspended by the appointment of one or several average adjusters under Art. 285. A further period of two years shall run from the date on which the adjusters have declared that they are unable to fulfil their task.

TITLE VII.

INSURANCE

Chapter. 1. Contract of Insurance

Art. 288. *Extent of Application of Rules.*

Any policy of insurance having as its principal object to guarantee a maritime risk, including collateral risks, shall be subject to the provisions of this Title.

Art. 289. *Form of the Policy.*

- (1) The policy of insurance shall be in writing.
- (2) Additions to, and modifications of, the original policy of insurance shall also be in writing.

Art. 290. *Cover-notes.*

A cover-note shall bind the parties.

Art. 291. *Particulars in the Policy of Insurance.*

- (1) The policy of insurance shall specify:
 - a) the place where the insurance is entered into;

- b) the date and time of conclusion of the policy;
 - c) the names and domiciles of the parties, showing where appropriate that the assured is acting on behalf of a third person;
 - d) the subject matter insured and the risk insured against;
 - e) the voyage or period of time or both, as the case may be, covered by the insurance;
 - f) the sum or sums insured;
 - g) the amount of premium;
 - h) the clause to order or to bearer, where agreed on.
- (2) The policy of insurance shall be signed by the underwriter or his representative. The parties shall be entitled, at their own expense, to a true copy of the policy.

Art. 292. *Subject matter which may be insured.*

- (1) Anything which can be valued in money's worth and which is exposed to maritime risk for lawful purpose may be insured.
- (2) No person may claim under the policy unless he has suffered damage as a result of the casualty.

Art. 293. *Reinsurance.*

An underwriter may reinsure the risks which he has agreed to cover.

Art. 294. *Insurance of a Ship under Construction.*

A ship under construction may be the subject of marine insurance as soon as she is laid down.

Art. 295. *Commencement of Risk for the Ship.*

- (1) With regard to the ship, the risks of the voyage shall run from the time when the shipment of cargo commences until the termination of unloading. Provided that the duration of risk may not exceed a period of fifteen days after arrival at the destination, nor go beyond the time when goods are shipped at the destination for further voyage.
- (2) Where the ship is in ballast, the risks of the voyage shall run from the time when she has cast off or shipped anchor, and shall terminate when she anchors or moors at the place of destination.

Art. 296. *Ship under Voyage.*

- (1) In the case of insurance of a ship taken out for a limited period where the ship is under voyage at the date fixed for the commencement or termination of the risks, the risks shall run as from the end of the voyage or shall be extended until the end of the voyage.

- (2) In the first case the premium shall be refunded in proportion to the period not having run. In the second case the premium shall be collected in proportion to the additional duration of the risks.

Art. 297. *Determination of the Value of Goods.*

- (1) Where the value of goods is not fixed by the contract, it shall be determined on the basis of the purchase price or on the basis of the price current at the date and place of loading and on the basis of charges paid and costs incurred up to the time of loading, freight pro rata, the cost of the insurance and, where appropriate, the anticipated profits.
- (2) The value shall be the value at the destination on the date of arrival, or where the goods do not arrive, on the date when they should have arrived, when such value is greater than that indicated above.

Art. 298. *Commencement of Risk in respect of Goods.*

In respect of goods, the risk shall run from the date when they are delivered to the carrier at the place of departure for the voyage insured. The risk shall terminate at the time when the goods are delivered to the consignee at the last place of arrival: Provided that delivery is effected within thirty days of unloading.

Art. 299. *Cancellation of the Contract.*

- (1) The underwriter may terminate policies in force in the event of the bankruptcy of the assured.
- (2) The underwriter has the same right, where a premium due is not paid
- (3) and where he has served notice on the assured to pay the said premium
- (4) within a period of twenty-four hours.
Cancellation and the notice to pay may be by registered letter or cable. Cancellation shall result in the refund of the premium in proportion to the risks which have not run, without prejudice to other claims.
- (5) Cancellation shall be of no effect as regards third parties in good faith under a transfer prior to any casualty and to notice of cancellation, provided that such third parties have paid the premium where it has not been paid by the assured.
- (6) In the event of the bankruptcy of the underwriter, the assured has the same rights.

Art. 300. *Non-disclosure and Misrepresentation.*

- 1) Any concealment or misrepresentation on the part of the assured, by which the risk insured has been underestimated, shall result in the cancellation of the policy, even in the absence of fraud.
- 2) The policy shall be cancelled notwithstanding that the concealment or

misrepresentation does not relate to the damage to or loss of the thing insured.

- (3) The underwriter shall be entitled to the whole of the premium in the event of fraud, and to half the premium in the absence thereof.

Art. 301. Increase of Risk.

- (1) Any increase of the risk in course of insurance shall result in the cancellation of the policy, where such increase was not notified to the underwriter at the time it became known to the assured.
- (2) Where the underwriter is notified of an increase of the risk, due to the acts of the assured, he may either cancel the policy and claim for the premium or require an increase in the premium. If the increase is otherwise caused, the policy shall remain in force, subject to an increase in the premium.

Art. 302. Cancellation by the Assured.

The assured may cancel the insurance policy for so long as the risk has not started to run. Where the assured cannot show force majeure, he shall pay, to the underwriter, as compensation, one half of the premium fixed in the policy.

Chapter 2. Rights and Obligations of the Assured

And the Underwriter

Art. 303. Damage and Loss at the Risk of the Underwriter.

Damage to, and loss of, the things insured resulting from storm, shipwreck, stranding, collision, jettison, fire, explosion and in general arising out of all perils of the sea and force majeure, are at the risk of the underwriter.

Art. 304. Things insured against General Average.

The underwriter shall be responsible for the contribution of the things insured in general average, unless the general average contribution arises out of a risk excluded from insurance.

Art. 305. Policy Shall remain in Force in the event of Obligatory Deviation.

- (1) The risks insured shall be covered in the event of an obligatory deviation, or change of voyage or of ship, as well as in the event of the fault of the master or the crew.
- (2) Where the hull of the ship is insured, the underwriter shall not be liable for the consequences of faults of the master by way of fraud or wilful

misrepresentation, where the master was chosen by the shipowner.

Art. 306. Cases Considered as Obligatory Deviation.

Deviations or changes which are decided on by the master without consulting the shipowner or the assured and deviations or changes having as their object to render assistance or salvage services to a ship or vessel in danger or to persons and things on board such ship or vessel, shall be considered as obligatory deviations, or changes in voyage or of ship.

Art. 307. Shortening of Voyage.

- (1) Where the voyage is shortened there is no change in voyage, provided that the new port of departure or of arrival be a port of call referred to in the policy.
- (2) In the event of a voluntary change in voyage or a deviation, the underwriter shall be liable in respect of casualties proved to have occurred in the course of the agreed route.

Art. 308. Other Deviation or Changes of Ship.

Any other deviation or change of voyage or ship shall discharge the underwriter, the premium vesting as soon as the risk begins to run.

Art. 309. Underwriter not Liable for the results of Faults of the Assured.

- (1) Save as is otherwise provided in Art. 305 the underwriter shall not be liable for the acts or faults of the assured, or of the servants and agents of, or persons claiming through, the assured.
- (2) Any agreement to the contrary may not set up a guarantee against fraud or wilful misrepresentation.

Art. 310. Inherent Vice of the Thing Insured.

- (1) Damage and loss resulting from the nature or inherent vice of the thing insured, including wastage and loss in transit shall not be borne by the underwriter, unless such loss or damage results from a latent defect in the ship which a prudent shipowner could not have foreseen.
- (2) Where the hull of the ship is insured, the absence of certificates of inspection shall give rise to a presumption of the existence of a latent defect in the ship.
- (3) Insufficiency in the conditioning of the goods shall be considered to be an inherent vice.

Art. 311. Damage to other goods caused by the Property Insured.

Unless otherwise agreed, the underwriter shall not be liable for damage to goods and to persons caused by the property insured.

Art. 312. Exclusion of War Risks.

- (1) Risks arising out of civil or foreign war shall not be borne by the underwriter.
- (2) If otherwise agreed, the underwriter shall be liable for all damage and loss caused to the property insured by hostilities, reprisals, capture, arrest, detension, embargo and molestations by any government or authority whatsoever, by explosion of engines of war and, in general, by all fortune of war as well as by piracy.

Art. 313. Contract Concluded for an Amount exceeding the value of the Things Insured.

- (1) A contract of insurance concluded for an amount exceeding the value of the things may be cancelled on the demand of the underwriter where it is proved that there has been fraud or wilful misrepresentation, and the premium shall not be refunded.
- (2) Where there has been neither fraud nor wilful misrepresentation the contract is valid up to the amount of the value of the things insured and the underwriter has a right to half the premium for the amount of the excess valuation.

Art. 314. Full Value Not Insured.

Where the full value is not insured, the assured shall remain his own insurer in respect of the difference and shall bear loss and damage rateably.

Art. 315. Same Risk Covered by Several Underwriters.

Where the same risk is covered by several underwriters, each such underwriter shall only be liable in proportion to the amount for which he has given cover, without being jointly and severally liable with the other underwriters.

Art. 316. Exercise by the Assured of His Rights against the Several Underwriters.

- (1) Where, in the absence of wilful misrepresentation on the part of the assured, the same risk is the subject of several insurances, and provided that the total amount so insured does not exceed the value of the thing insured, the assured may exercise his rights against the several underwriters, in whatever order he selects, in proportion the capital value insured by each and within the limits of the damage incurred.

- (2) The assured shall declare to the underwriter the several policies which have been contracted.
- (3) Where there is wilful misrepresentation on the part of the assured, each contract may be cancelled at the demand of the underwriter.
- (4) In no case shall an underwriter who has acted in good faith refund the premium.

Art. 317. Contract Concluded After the Loss or Arrival of the Thing Insured.

- (1) A contract of insurance concluded after the loss or arrival of the things insured shall be of no effect if the news of the loss or arrival was available either at the place where the assured was present before taking out the insurance, or at the place where the contract was signed but before the underwriter had affixed his signature.
- (2) Where the subject matter is insured "lost or not lost," the contract may not be cancelled unless it is proved that the assured was personally aware of the loss, or the underwriter of the arrival.
- (3) A party shown to have acted in bad faith shall pay to the other party twice the amount of the agreed premium as compensation.
- (4) The insurance shall be of no effect where the assured, being aware of the loss after having requested the insurance, has failed to give the necessary instructions within as short a time as possible for the cancellation of his request prior to signature.

Art. 318. Casualties occurring before Signature of the Contract.

The underwriter shall not be liable for casualties occurring before signature of the contract unless the assured did not have presumptive or material knowledge thereof.

Art. 319. Premium not to be Refunded After Risks Begin to Run.

No refund shall be made by the underwriter after the risks begin to run.

Art. 320. Notice to be given to Underwriter.

In the case of occurrences likely to give rise to claims against the underwriter, the assured shall give notice to the underwriter within three working days of his becoming aware of such occurrences.

Art. 321. Conservatory Measures Taken by the Assured.

The assured shall, without prejudice to his right to abandonment, take all measures of preservation, arrange for or proceed to the salvage of the property insured and reserve all rights there may be against third parties.

The underwriter may himself take such measures, which shall not be deemed an acknowledgment of liability or an act of ownership.

Art. 322. Liability of the Assured for failure to fulfil his Obligations.

The assured shall be liable where he fails to comply with the provisions of Articles 320 and 321.

Art. 323. Subrogation.

An underwriter who has paid losses or damage shall be subrogated to the rights and actions of the assured against third parties liable or concerned in general average.

Art. 324. Floating Policies.

- (1) In the case of insurance upon goods subscribed by "floating" policies or "as interest may arise," the assured shall declare in interest, and the underwriter shall accept, during the period that the policy is in force and so far as they are applicable, all goods consigned on behalf of the assured or on behalf of third parties who have required the insurance of the goods, provided that such parties have an interest in the consignment.
- (2) Consignments made on behalf of the assured are covered from the time that the risk insured begins to run, even in respect to casualties of which the assured is aware before the declaration of interest, provided that such declaration was made within eight days from receipt by him of the notices concerning the consignment. This period shall not exceed three days for voyages between Ethiopian ports.
- (3) Where the declaration is made after the expiry of this period and in all cases where the consignment is made on behalf of a third person, the insurance shall take effect only from the date of the declaration, subject to the provisions of Arts. 317 and 318 which are applicable both to the assured and to the third party.

Art. 325. Failure to Make the Declaration of Interest.

- (1) Where the assured has failed to make the declaration of interest within the period provided in Art. 324, he shall pay to the underwriter, in addition to the premium, compensation equivalent thereto for the consignment not declared.
- (2) Where the extent of the failure to make the declaration or the repetition thereof shows that such failure was intentional, the policy shall be cancelled at the request of the underwriter. The underwriter may also,

by way of additional compensation, claim back payments made in respect of casualties relating to consignments made after the first failure to declare.

Art. 326. *Collision or the Rendering of Assistance or Salvage Services Between or by or to Ships belonging to the same Owner.*

- (1) In the event of collision or the rendering of assistance or salvage services between or by or to the insured ship and another ship belonging to the assured, the relations between the parties shall be the same as if the two ships belonged to different shipowners.
- (2) The same shall apply where the damage results from the execution or non-execution of a manoeuvre or by the non-observance of the regulations, even if no collision has taken place, as also in the case of a collision between the ship and a fixed or moving object belonging to the assured.
- (3) The same shall also apply where the goods are the property of the shipowner who carries them or who is the owner of the ship which has collided with, or rendered assistance to, the ship carrying the goods.

Chapter 3. Settlement of damage

Section 1. General Provisions

Art. 327. *Extent of the Liability of the Underwriter to pay Compensation.*

The underwriter shall in no case be liable to pay compensation exceeding the amount insured. He shall not be liable to repair or replace the property insured.

Art. 328. *Proof to be Furnished by the Assured.*

- (1) The assured shall prove that the risk has run and prove loss or damage, or the existence of circumstances giving rise to abandonment.
- (2) Loss and damage or the circumstances giving rise to a right of abandonment shall, in the absence of proof to the contrary, be presumed to have arisen during the period of insurance and within its territorial scope.
- (3) In order to discharge himself the underwriter shall prove that the loss or damage or circumstances do not fall within the risks covered.
- (4) Where the insurance covers certain defined risks, the assured shall prove that the casualty resulted from such a risk.

Art. 329. *Period of Time for Payment of Compensation.*

- (1) Insurance compensation is payable thirty days following the production to the underwriter of the claim together with documentary evidence, and where appropriate, the act of abandonment. No proceedings may be brought against the underwriter during this period.

- (2) Where no agreement has been reached during this period, the documents shall be restored by the underwriter.

Section 2. Settlement in Average

Art. 330. *Cases where there is Settlement in Average.*

- (1) All damage and loss which is not the subject of an abandonment shall be settled in average.
- (2) For so long as abandonment is not accepted or adjudged proper the assured has the choice between abandonment and a settlement in average.
- (3) The right of abandonment does not create a right to a settlement in average. Settlement in average is only permitted where it is in conformity with the nature of the casualty and the actual stipulations in the contract.

Art. 331. *Limitation of the Liability of the Underwriter to Damage Directly affecting the thing insured.*

The underwriter shall only be liable for damage or loss directly affecting the thing insured. He shall not be liable for personal loss such as laying off, delay, difference in quotations, or an obstacle to the commercial transaction of the assured.

Art. 332. *Deduction new for old.*

The cost of repairs to the ship or its accessories shall be subject to deduction "new for old."

Art. 333. *Exclusion of Wages and Profits of the Crew.*

The underwriter shall not be liable for wages, profits and other remuneration of the crew, as well as their upkeep, nor for the costs of repatriation and all other expenses concerning the crew.

Art. 334. *Means of Settling Damage to Goods.*

Where goods are damaged the difference between the value of the damaged goods and their value immediately before damage shall be ascertained. The amount to be paid shall be their insurance value less the difference so ascertained.

Art. 335. *Contribution in General Average borne by the Underwriter.*

Contributions in general average shall be borne by the underwriter in proportion to the value which he has insured, subject to deduction of particular average which may have been borne by him, provided that the total amount shall not exceed the sums paid by the assured.

Section 3. Abandonment

Art. 336. *Limits of Abandonment.*

Unless otherwise agreed, the thing insured shall not be abandoned except in the cases set forth in the following articles.

Art. 337. *Cases where there is abandonment of the ship.*

Abandonment of the ship shall occur :

- (1) where the ship is a total loss;
- (2) where the ship cannot in any event be repaired;
- (3) where the ship cannot be repaired in the absence of repair facilities and she cannot be moved elsewhere for repair;
- (4) where the total cost of repairing the damage to the ship would amount to not less than three quarters of her value. In calculating the damage account shall be taken of the difference "new for old" and the value of the old materials. Expenses not directly related to the repair of the damage reported shall not be included.

Art. 338. *Abandonment of Goods.*

- (1) Abandonment of goods shall occur :
 - (a) where the goods are lost or totally destroyed;
 - (b) where, in the event that the ship is unseaworthy, the forwarding of the goods by some means has not been undertaken within a period of four months. This period shall run from the notification of the unseaworthiness by the assured to the underwriter; where the unseaworthiness has occurred at a place with which communications have been interrupted, the period of time shall be suspended during such interruption;
 - (c) where, during a voyage, the goods have been ordered to be sold as a result of material damage;
 - (d) where, apart from any expenses, the loss or material depreciation of the goods amounts to not less than three quarters of their value, the calculation being made in the manner provided in Art. 334.
- (2) In the cases provided in sub-articles (a), (b) and (d) and where the insurance is limited to loss and damage resulting from specific causes, abandonment is only possible where the casualty results from such a cause.

Art. 339. *Abandonment of Freight.*

In the case provided in Art. 338 (1) (b), the shipowner may give notice

of abandonment of freight not due pro rata, provided that he shows due diligence in forwarding the goods.

Art. 340. Abandonment in the absence of news.

- (1) Abandonment of the ship, goods and freight shall occur where there is no news of the ship within four months from the date of receipt of the last news.
- (2) In the event of interruption of communications, the period shall be suspended during such interruption.
- (3) The assured shall show that the ship was at sea at the time of the last news and that she has not arrived at the place where she was due to touch.
- (4) The ship shall be deemed to be lost on the date to which the last news refers.
- (5) The court may, taking into account the circumstances and the probabilities, attribute the loss to the perils of the sea or to fortune of war, or distribute the charges between these two risks in the proportion determined by the court.

Art. 341. Abandonment in the case of insurance of war risks.

- (1) Where war risks have been insured, abandonment of the ship or goods shall occur where the property insured has been captured, arrested or detained by the order of a power, or has been captured by pirates, and has not been restored to the assured within four months.
- (2) This period of time shall run from the notification of the occurrence by the assured to the underwriter.
- (3) Freight insured against war risks may be abandoned where it has not been possible to collect it within four months as a result of one of the occurrences set forth in this Article and which has affected the goods.

Art. 342. Cases where abandonment is not admissible.

In the cases provided in Articles 333 (1) (b), 339, 340 and 341, the forwarding of the cargo, the receipt of news of the ship, or the restoration to the assured of property captured, arrested or detained, even after the expiry of the periods of time fixed for the said articles, shall not justify abandonment, where such acts take place before the expiry of the period fixed in Art. 339. Abandonment shall be admissible where these acts take place after the expiry of that period.

Art. 343. *Non-admission by the Underwriter of Expiry.*

Where an underwriter alleges that the period provided in Articles 338 (1) (b), 339, 340 or 341 had not expired at the time of notice of abandonment, he shall lodge his objection within six months from the notice.

Art. 344. *Special Insurance of Freight.*

In the cases provided in Articles 338 (1) (b), 340 and 341 and where the freight at risk in respect of the goods has been the subject of a special insurance, the assured who has paid such freight may claim compensation therefor at the expiry of the periods fixed in the said Articles, subject to the provisions of Articles 342 and 343.

Art. 345. *Nature of Abandonment.*

Abandonment may not be partial or conditional.

Art. 346. *Duty of the Assured to declare all Insurances taken Out.*

- (1) In giving notice of abandonment, the assured shall declare all insurances that he has taken out.
- (2) An assured who has made an incorrect declaration in bad faith, shall not have the benefit of the insurance.

Art. 347. *Effect of Abandonment.*

- (1) An abandonment which is accepted or adjudged proper shall transfer to the underwriter the property in the things insured. The underwriter shall be required to pay the amount insured.
- (2) As between underwriter and assured, abandonment dates from the day of the occurrence which gave rise to abandonment.

Chapter 4. Limitation

Art. 348. *Limitation of Actions arising out of an Insurance Contract.*

All actions arising out of an insurance policy shall be barred after two years.

Art. 349. *Action for payment of premium.*

For actions for payment of the premium, the period of limitation shall run from the date of the acceptance of the policy of insurance.

Art. 350. *Action in Abandonment.*

The period of limitation of actions in abandonment shall run :

- (1) In the cases provided in Articles 338 (1) (b), 339, 340 and 341 from the

expiry of the periods of time set forth therein, subject to deduction of time having run between the date when the assured became aware of the unseaworthiness, capture, arrest or detention and the date of notification thereof to the underwriter;

(2) In the case provided in Art. 338 (1) (c) from the date of sale.

Art. 351. Action in Average.

The period of limitation of actions in average shall run :

(1) Where such action is based on an action brought by another person for a cause such as assistance, contribution in average, extraordinary expenses, contractual or tortious liability, from the date when such person has brought the action or from the date when he has been compensated by the assured;

(2) In the case provided in Art. 344, as specified in Art. 350 (1).

Art. 352. Date from which period runs with respect to the ship and freight at risk for the ship.

With respect to the ship and to freight at risk for the ship, the period of limitation of actions in abandonment and actions in average shall run, unless otherwise expressly provided, from the date of the occurrence giving rise to abandonment or to an action in average.

Art. 353. Date from which period runs with respect to goods and freight at risk for the goods.

With respect to goods and to freight at risk for the goods being the subject of a special insurance, the period of limitation of actions in abandonment and actions in average shall run, unless otherwise expressly provided, from the arrival of the ship at her destination or from the date when she should have arrived or, where the occurrence giving rise to abandonment or to an action in average is subsequent thereto, from the date of such occurrence.

Art. 354. Limitation of Actions for repayment of sums paid by mistake.

As regards actions for repayment of any sums paid by mistake, the period of limitation of two years shall run from the date of the payment.

Art. 355. Limitation runs against persons legally incapable.

In all cases under this Chapter, limitation shall run against minors, persons under judicial disability or otherwise legally incapable.

Art. 356. Suspension of Limitation.

In addition to the ordinary causes of suspension, the period of limitation shall be suspended by the delivery of the documents establishing a claim under Art. 329. The period shall begin to run again upon the expiry of the period of thirty days provided in the said Article or from the date of return of the documents by the underwriter, where such date of return is later.