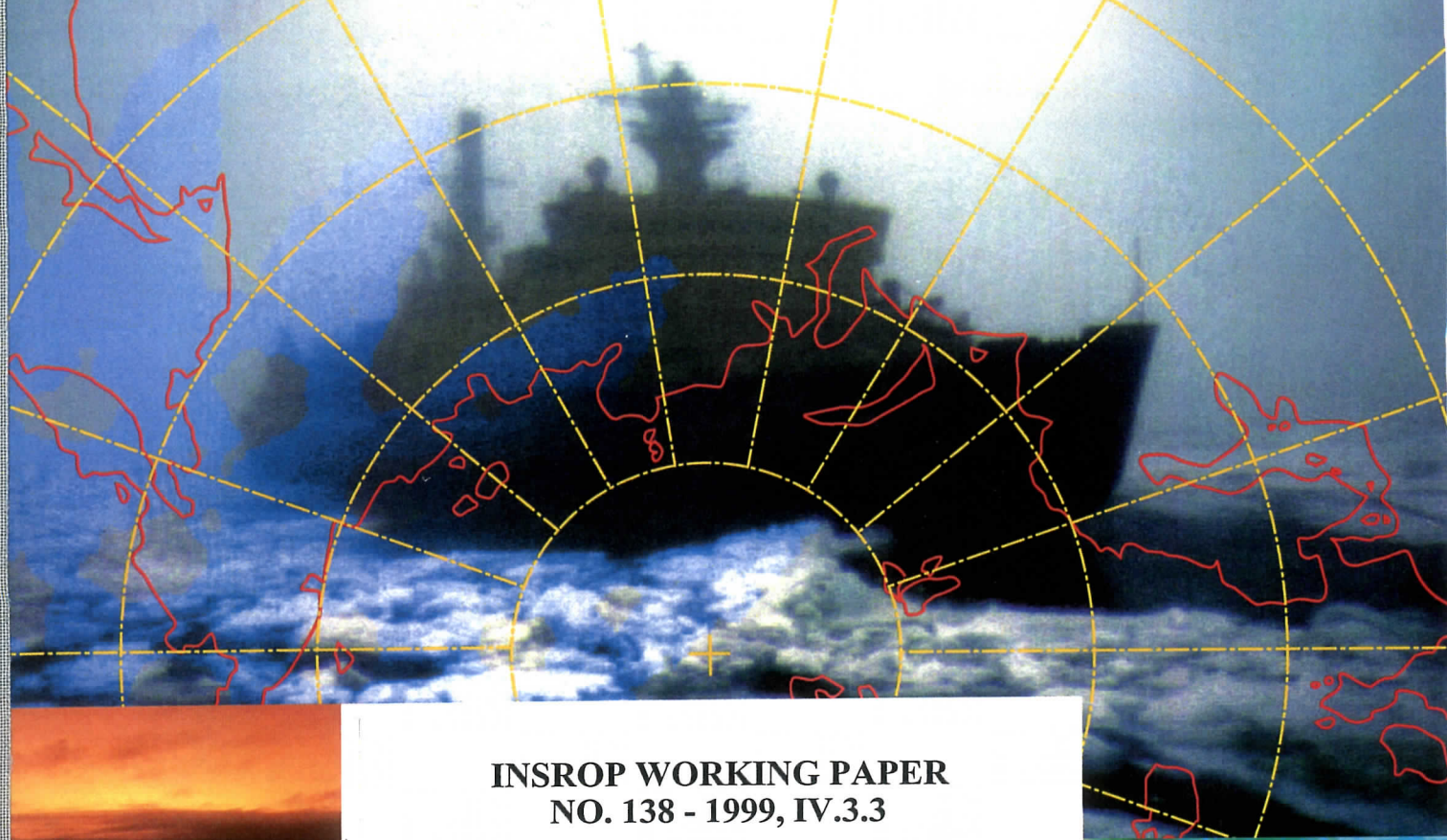

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Organisational Forms of Shipowner Liability Insurance for The Northern Sea Route with Specific Reference to the Perspective of P&I Clubs in Russia

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FOREWORD - INSROP WORKING PAPER

INSROP is a five-year multidisciplinary and multilateral research programme, the main phase of which commenced in June 1993. The three principal cooperating partners are **Central Marine Research & Design Institute (CNIIMF)**, St. Petersburg, Russia; **Ship and Ocean Foundation (SOF)**, Tokyo, Japan; and **Fridtjof Nansen Institute (FNI)**, Lysaker, Norway. The INSROP Secretariat is shared between CNIIMF and FNI and is located at FNI.

INSROP is split into four main projects: 1) Natural Conditions and Ice Navigation; 2) Environmental Factors; 3) Trade and Commercial Shipping Aspects of the NSR; and 4) Political, Legal and Strategic Factors. The aim of INSROP is to build up a knowledge base adequate to provide a foundation for long-term planning and decision-making by state agencies as well as private companies etc., for purposes of promoting rational decisionmaking concerning the use of the Northern Sea Route for transit and regional development.

INSROP is a direct result of the normalization of the international situation and the Murmansk initiatives of the former Soviet Union in 1987, when the readiness of the USSR to open the NSR for international shipping was officially declared. The Murmansk Initiatives enabled the continuation, expansion and intensification of traditional collaboration between the states in the Arctic, including safety and efficiency of shipping. Russia, being the successor state to the USSR, supports the Murmansk Initiatives. The initiatives stimulated contact and cooperation between CNIIMF and FNI in 1988 and resulted in a pilot study of the NSR in 1991. In 1992 SOF entered INSROP as a third partner on an equal basis with CNIIMF and FNI.

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Organisational Forms of Shipowner's Liability Insurance for Northern Sea Route with Special Reference to Perspective of P&I Clubs in Russia

1. Summary

The paper deals with organisational forms of insurance coverage for shipowner's liability when using Northern Sea Route.

Russian civil and maritime law permit to arrange such a coverage within organisational forms which are well-known in the international marine insurance market, such as P&I clubs, and to borrow experience already gained by them.

Upon the basis of relevant norms of Russian civil and maritime law and with due consideration of practice of western P&I clubs the author describes possible organisational structure of Russian P&I clubs, indicates the financial basis of their activities, i.e. different kinds of contributions, with specific reference to factors influencing their rates, and the scope of risks covered.

The author also notes the sphere of possible cooperation between Russian P&I clubs and the International Groups of P&I clubs, especially concerning reinsurance protection.

2. Introduction

As it has already been explained in INSROP working papers published earlier, shipowners when using Northern Sea Route do need insurance coverage for their liability (including, but not limited to, that for contamination of the environment with oil or other dangerous substances). It is also well-known that in the international insurance market such insurance coverage is usually provided by Protection and Indemnity P&I associations or clubs[1] which are mutual insurance organisations.

A possibility to form mutual insurance organisations is expressly mentioned in Article 968 of the Civil Code of the Russian Federation stipulating that citizens and legal entities may insure their property and other proprietary interests on mutual basis, by accumulation of necessary means in mutual insurance societies (Section 1).

There is a reservation in the Civil Code that peculiarities of legal status of mutual insurance societies shall be regulated by a special law on mutual insurance (Article 968, Section 2, paragraph 2).

Such a law is not adopted yet. Meanwhile even now it is possible to some extent to discover (and describe) basic features of such societies. Moreover, it makes sense to come up with some proposals regarding structure, lines of activities and financial basis of such societies with due consideration of experience gained by foreign P & I clubs.

3. Legal Status of Shipowners' Mutual Insurance Organisations in Russia (general overview)

According to the RF Civil Code mutual insurance societies shall be non-commercial organisations (Article 968, Section 2, paragraph 1). Given that, we may assess the legal regime of such societies in the light of existing norms related to non-commercial organisations. These norms are concentrated in the Civil Code itself as well as in the Federal Law "On Non-commercial Organisations" of 12th January 1996.

It is worthwhile to recollect that norms of the Civil Code have a prevailing legal force over civil law norms contained in other federal statutes (Article 3, Section 2, paragraph 2 of the Civil Code)[2].

In practical terms it means that civil law norms contained in the Federal Law of 12 January 1996 should not contradict (or be in any other way inconsistent with) relevant norms of the Civil Code.

The Civil Code first of all specifies main features of non-commercial organisations. They should not have deriving of profit as the fundamental purpose of their activities[3], nor should

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[1] See: INSROP Working Paper No. 72.- 1996, IV.3.3. Freezing Damage to Northern Sea Route Cargo: Liability and Insurance Considerations, by Aref Fakhry, p. 35-44; INSROP Working Paper No. 98-1998, IV.3.3. Marine Insurance for the Northern Sea Route, by Valery A. Musin, p. 27-39.

[2] There are some exceptions which are, however, not the case.

[3] It does not mean that non-commercial organisations are absolutely prohibited to be involved in any business activity. They may perform such activity to the extent it helps to achieve their chartered purposes (Article 50, Section 3, paragraph 2 of the Civil Code).

they distribute their profit among their participants (Article 50, Section 1 of the Civil Code. See also Article 2, Section 1 of the Federal Law of 12th January 1996).

Generally speaking, non-commercial organisations may be or may not be based upon membership. Both variants are permitted by the RF Civil Code and the Federal Law of 12th January 1996.

Concerning mutual insurance societies, it definitely appears from the text of the RF Civil Code that they consist of members. Indeed, Section 3 of Article 968 expressly stipulates that such societies provide insurance for property and proprietary interests of their members.

The question arises, who may be members of mutual insurance societies of shipowners. To answer this question we need first of all to ascertain the meaning of the notion "shipowners" in terms of Russian maritime law.

According to Article 10 of the Merchant Shipping Code 1968 "a shipowner in the context of the present Code means a person using a ship in its name regardless of the fact whether it is a proprietor of the ship or uses her on other legal ground".

Similar provision is contained in Article 8 of the draft Merchant Shipping Code of the Russian Federation.

As it appears from the quoted rule, the key feature of any shipowner is his right to use a ship in his own name.

We can indicate 3 groups of persons (both private individuals and legal entities) who should be deemed shipowners in terms of Russian maritime law:

1) ***A proprietor of the ship***, i.e. a person whom the title to the ship belongs to. Such a person is certainly in a position to use his ship in his name.

2) ***A bare-boat charterer.*** He also enjoys a right in his own name "to conclude contracts of transportation or other contracts with third persons" (Article 647, Section 2 of the RF Civil Code).

3) ***A time-charterer.*** Despite the fact that a crew of a time-chartered ship is employed by the proprietor of the ship rather than by a time-charterer, the latter is entitled to exploit the ship in his name (Article 638, Section 2 of the RF Civil Code). The Merchant Shipping Code (MSC) expressly stipulates that when a time-chartered ship is used for carriage of goods, it is the time-charterer who is liable for obligations arising out of bills of lading signed by a shipmaster (Article 183) which means that the shipmaster shall sign bills of lading on behalf of the time-charterer.

The draft Merchant Shipping Code of the Russian Federation is of the same approach and also stipulates that in such a situation the time-charterer is entitled in its name to conclude contracts of carriage of goods, to sign charter-parties, to issue bills of lading, sea way-bills and other carriage documents and is liable before cargo-owners according to rules regulating liability of a carrier of goods (see Article 206).

Speaking in other words, a time-charterer, being a lessee of the ship, may use her for agreed purposes, inter alia, for carriage of goods, in which case the time-charterer shall be deemed a carrier.

Since, however, a time-chartered ship is manned with a crew recruited by her proprietor, the latter retains control over the ship, albeit only in a sphere of her technical maintenance. As regards commercial use of the ship, she is under the time-charterer's control.

That is why a shipmaster (as well as other crew members) of a time-chartered ship is in two-fold subordination. On one hand, he reports to the proprietor of the ship (in "technical" aspects); on the other hand, he reports to the time-charterer (in commercial aspects).[4]

This two-fold position of a master (and crew) of a time-chartered ship is specifically mentioned in the MSC. According to Article 183 (paragraph 2) "a shipmaster shall be bound by instructions of a [time] charterer relating to exploitation of the ship, except instructions concerning navigation, internal order at the ship and complement of the crew".

This idea is even more definitely reflected in the draft Merchant Shipping Code of the Russian Federation. Its Article 206 reads:

"1. Shipmaster and other crew members shall be bound by instructions of the shipowners relating to management of the ship, including navigation, internal order at the ship and complement of the crew.

2. Shipmaster and other crew members shall be bound by instructions of the [time] charterer concerning commercial exploitation of the ship" (my emphasis - V.M.).

The quoted legend is quite in line with the general provision of Article 635 (Section 2, paragraph 2) of the RF Civil Code according to which if a transport vehicle is rented with a crew, then "crew members are lessor's employees. They shall be bound by instructions of the lessor related to management and technical exploitation, and by instructions of the lessee concerning commercial exploitation of the transport vehicle".

Ergo: when a time-chartered ship is used by the time-charterer for carriage of goods, as it was mentioned above, the time-charterer acts as a carrier; the proprietor of the ship has no contractual relationship with cargo-owners.

Meanwhile the goods carried aboard a ship are entrusted to the custody of crew members who are employees of the proprietor of the ship, rather than those of her time-charterer, and they keep reporting to the proprietor of the ship concerning management of the ship and her technical maintenance.

A question arises, who shall be liable for loss of or damage to the goods carried aboard a time-chartered ship, which loss or damage arose in course of management of the ship.

Let us suppose that due to some latent defect of the ship's engine it stopped working, then the ship lost controllability and stranded; because of ingress of water the goods were damaged.

Who is liable for this damage?

A time-charterer as a carrier is certainly under the contractual obligation to take care of safety of the goods. We should, however, bear in mind that the carrier's liability for loss of or damage to the goods is based upon his fault (Article 160 of the MSC 1968, see also Article

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[4] See: Commentary to the Merchant Shipping Code of the USSR. Edited by A.L. Makovsky. Moscow, 1973, p. 231-232.

166, Section 1 of the draft RF MSC). It means that if a carrier proves the absence of his fault, he shall be exempted from liability for loss of or damage to the goods.

In the situation described above the time-charterer can easily prove his faultless behaviour since damage to the goods resulted from some technical factor of ship's maintenance which he was not in charge for. Therefore liability for damage in question should not be imposed upon the time-charterer as a carrier.

Technical maintenance of a time-chartered ship is within the responsibility of her proprietor. Since there is no contractual obligation between the proprietor of the ship and cargoowners, the proprietor's liability may only exist in frames of tortious obligation.

That is why Article 648 of the RF Civil Code expressly stipulates that if a transport vehicle is rented with a crew, then "liability for losses caused to third persons by the transport vehicle, its mechanisms, appliances, equipment shall be borne by the lessor in accordance with rules of Chapter 59 of the present Code" (which Chapter regulates obligations in tort).

Generally speaking, tortious liability is based upon fault of a wrongdoer (Article 1064, Section 2 of the RF Civil Code). Meanwhile, as it is expressly stipulated in the same Article and Section, law may provide reimbursement of losses even if the wrongdoer is not at fault, which effectively means strict liability.

Strict liability shall be, inter alia, imposed upon a legal entity (or private individual) who owns (or operates in its name) so-called "source of increased danger", i.e. transport vehicles, mechanisms, high-voltage electricity, nuclear energy, explosive substances etc.

Strict liability means that such a person will only be exempted from civil liability if loss of or damage to a property resulted from force majeure or willful misconduct of the victim (Article 1079 of the RF Civil Code).

In the situation described above damage to the goods resulted from latent defect of the ship's engine, so the proprietor of the ship could not discover it with all his due diligence; hence he was not at fault.

Since, however, a ship is a kind of a source of increased danger in terms of Russian civil law and the proprietor performs technical maintenance of the ship in his own name, he should be liable for damage to the goods in tort.

At the end of the day both the proprietor of a time-chartered ship and her time-charterer may be interested in obtaining insurance coverage of their civil liability in connection with use of the ship: the time-charterer – concerning his eventual contractual liability as a carrier of the goods, and the proprietor of the ship - regarding his eventual tortious liability as an owner (and operator) of a source of increased danger.

There is, however, one more kind of charterers of ships, i.e. ***voyage charterers.*** A question arises whether they may also be deemed shipowners. When answering this question we need to bear in mind that both the RF Civil Code (Article 787) and the Merchant Shipping Code (Articles 118, 120 (1), 122; see also: Articles 115, Section 2 (1), 120 of the draft RF MSC) consider a contract of voyage charter as some kind of a contract of carriage.

It should be noted that in terms of Russian law a voyage charterer is not a carrier. A charterer is a carrier's counterpart, who enters into a contract of carriage so as to obtain the

carrier's services. A voyage charterer may be a shipper of the goods sold upon CIF or CFR terms or a consignee, when goods have been sold upon FAS or FOB terms.

Meanwhile only a carrier may exploit a vessel in his own name upon a contract of voyage charter. Since a voyage charterer is not a carrier, he does not have such a right. That is why a voyage charterer cannot be deemed a shipowner in terms of Russian civil and maritime law.

Therefore a voyage charterer (contrary to bare-boat or time-charterer) cannot be a member of shipowners' mutual insurance society[5].

Having said that, we shall now proceed with the problem of organisational forms of shipowners' mutual insurance societies in Russia. Organisational forms of non-commercial organisations are described in the RF Civil Code and in the Federal Law of 12th January 1996.

The most appropriate variant for mutual insurance societies (including those for shipowners) is apparently non-commercial partnership as non-commercial organisation based upon membership (Article 8 of the Federal Law of 12th January 1996).

4. Financial Basis of Shipowners' Mutual Insurance Organisations in Russia

A key point is certainly a material basis of non-commercial partnerships. It is formed out of contributions of partners. The Federal law of 12th January 1996 stipulates that a property given to the partnership by its members shall be deemed the partnership's ownership.

As for partners' contributions, the Federal law only mentions that such contributions may be made upon a regular or lump-sum basis (Article 26, Section 1, paragraph 2). There are no further details on that point. We can accordingly try to replenish this gap with due consideration of international experience gained by P&I clubs.

As for the amount of a participant's (member's) contribution, the order of its calculation and the procedure of its payment, one should bear in mind a fundamental distinction between contractual insurance with insurance companies, on one hand, and mutual insurance via P&I clubs, on the other.

Insurance companies are profit-making organisations. Therefore aggregate amount of insurance premiums upon insurance contracts entered into by an insurance company should not only recover the amounts paid by the insurance company to the assureds as reimbursement of losses sustained by them, but also provide some surplus for the insurer as his profit.

Contrary to that, a P&I club as a non-profitable organisation is designated to repay losses incurred by its members rather than to derive a profit. "Mutual insurance is "insurance at cost" and the premium payable should be sufficient only to cover claims retained by the Association, the Associations insurance cost, and administration expenses"[6].

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[5] It does not mean that voyage charterers cannot join (or form) mutual insurance societies at all. It just means that voyage charterers are not subject to perils which are threatening shipowners. Moreover, there may well be (and in reality rather often is) a conflict of interests between a carrier, on one hand, and a voyage charterer (i.e. a shipper or a consignee of goods), on the other, because if, in the charterer's view, loss of or damage to the goods resulted from the carrier's fault, then the charterer may sue the carrier. Accordingly, shipowners and voyage charterers need to obtain insurance coverage of their interests with different organisations.

[6] Simon Poland and Tony Rooth. Gard Handbook on P & I Insurance. London, 1996, p. 142.

It is practically impossible to foresee (and calculate) beforehand the exact figure of losses to be compensated by a mutual insurance society (including P&I clubs) within a certain (more or less long) term. That is why usually members' contributions consist of advanced and supplementary calls.

One (or more) supplementary call(s) may be needed in case the actual figure abovementioned exceeds the anticipated amount of losses.

If, on the other hand, the actual amount of losses does not reach the anticipated one, then a relevant part of the premium paid by members by calls, may be returned to them or (if they so wish) set off against future calls[7].

A number of factors should be taken into consideration when determining the amount of advanced call regarding each ship to be provided with insurance coverage by a P&I club[8], such as, inter alia:

1) the tonnage of a vessel;

2) her age;

3) the flag she flies;

4) the anticipated area of navigation (if it is an Arctic area - availability of ice-breakar's services);

5) the character of goods to be carried by the ship;

6) construction details (e.g. whether the ship has double bottom, ice class etc.);

7) whether the ship has been classed by well-known classification organisation;

8) her shipowner;

9) whether the ship is operated by her owner or a time - or bare-boat charterer;

10) in the latter situation - terms and conditions of the time (or bare-boat) charter contract;

11) whether the ship is engaged in liner services or in tramp navigation and, accordingly, terms and conditions of liner services or, respectively, those of the voyage charter;

12) the terms and conditions of employment contracts with crew members, especially as concerns social security, liability of an employer for personal injury sustained by an employee as well as for life insurance;

13) the scope of perils to be insured against;

14) the amount of the deductible;

15) the limit of liability of the P&I club (for a voyage or otherwise);

16) the member's loss record for the previous insurance term[9].

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[7] P & I Clubs also admit a possibility to provide insurance coverage for a fixed premium in which case no supplementary calls may be required. Still the most typical situation is a premium consisting of several calls rather than a fixed one.

[8] In case a number of ships belonging to the same owner (or operator, such as a time - or bare-boat charterer) is entered into the same P & I Club, then all such vessels may be considered as "fleet entry", which circumstance may to some extent influence the amount of advanced (and other) call(s) for each particular vessel due to the fact that "risk sharing should be improved by the entry of more than one ship" (ibid, p.146).

[9] This document is very significant because it contains information on claims submitted against the member (both on paid and estimated ones) as well as correlation between claims and premiums contributed by the member.

Advanced call should not necessarily be paid in a lump-sum; it may be contributed in several (usually 3) installments.

As for supplementary call(s), it is calculated in proportion to advanced call and is to be paid within terms specified by the P&I club.

In case some huge losses occur to be recovered by a P&I club, if such losses cannot be reimbursed with the aggregate amount of premium consisting of advanced and supplementary calls, a club may require one (or more) catastrophe call(s) to be contributed within specified terms.

P&I club may also establish (and maintain) some reserve funds so as to meet extraordinary losses. The sources for formation of such reserves are twofold. First of all, P&I club may allocate to reserves some part of premium (advanced and supplementary calls) received from members. Besides, a club may invest its monetary means, and given that such investments should be made very carefully (usually upon the advice of professional investment managers), they may result in substantial investment income.

Such income cannot, however, be distributed among club members and should only be used for recovery of losses. In practical terms reserve funds will reduce the amount of advanced and catastrophe calls.

Ergo: the main sources of P&I club's monetary means are:

1) advanced calls;
2) supplementary calls;
3) catastrophe calls;
4) investment profits.

It should be noted that such a financial scheme does not in any way contradict relevant Russian laws. The Federal Law "On non-commercial organisations" of 12th January 1996 (and, as it was already mentioned, in terms of Russian law a P&I club is just such a kind of organisation) expressly specifies the following sources of formation of property of non-commercial organisations:

a) regular and single allocations made by founders (members);
b) voluntary contribution and donations;
c) income derived from sale of goods, works, services;
d) dividends (interest) upon securities and (bank) deposits;
e) profits gained from property of the organisation;
f) other allocations not prohibited by law (see: Article 26, Section 1) .

There is no doubt that among the abovementioned sources of monetary means, the P&I clubs' sources fall within items (a) and (d).

Usually P & I clubs present a loss record to a member some months prior to expire of the insurance coverage term so as to discuss it before renewal of insurance (Ibid, p.143).
In case of "fleet entry" a composite loss record for all relevant vessels should be prepared by the P & I club and submitted to the member.

Therefore a business practice of foreign P&I clubs may well be used by Russian shipowners' mutual insurance societies.

5. Term of Insurance Coverage

Terms of insurance coverage provided by P&I clubs depend upon agreement between the club and its members, although the most typical period is the so-called policy year commencing at noon GMT on the 20th February and expiring at CMT on the 20th February next year.

It is certainly possible for Russian mutual insurance organisations of shipowners to offer insurance coverage within a one year term. We shall, however, bear in mind some specific points resulting from Russian legislation currently in force.

According to the Federal Law "On Book keeping" of 21st November 1996 "A reporting year for all organisations shall be the calendar year - from 1st January until 31st December" (Article 14, Section 1). This norm is mandatory. In view of that a policy year in Russian P&I clubs will apparently coinside with a calendar year.

Of course, a policy year is not the only possible variant of insurance coverage term available in shipowners' mutual insurance organisations in Russia. The parties (i.e. the club and its member) may well agree some other term, such as one or more months or one or several voyages of the entered ship.

A question arises, what should be the procedure of obtaining of insurance coverage in Russian shipowners' mutual insurance societies.

As it appears from the experience of western P&I clubs, entry of each ship is usually accompanied by a separate contract[10].

The legal situation in Russia is as follows.

Insurance contract should be concluded in writing, otherwise it is null and void (Article 940, Section 1 of the RF Civil Code).

Written format of an insurance contract may be manifested either in a single document signed by the insurer and the assured or in an insurance policy (certificate, or other similar document) signed by the insurer and issued by him to the assured further to written (or even oral) application of the latter (Article 940, Section 2 of the RF Civil Code).

There is no doubt that in practical terms, regarding insurance coverage related to a sea- (or river-) going ship, Russian insurers require written application. We may well anticipate that Russian mutual insurance organisations of shipowners will take the same approach.

There is a reservation in the RF Civil Code stipulating that mutual insurance societies may provide insurance coverage for their members directly upon interreletionship between the society and its members unless society's constituent documents require insurance contracts to be entered into between the society and its members (Article 968, Section 3).

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10 See: Simon Poland and Tony Rooth, ibid, p.114.

Given the fact that a ship is a very complex object (and there is a lot of different insurable interests related to her), it makes sense to assume that Russian P&I clubs (likewise western ones) will prefer to enter into separate contracts concerning each entered ship.

There is a well known rule due to which an assured when applying for insurance coverage should disclose to an insurer any and all circumstances relevant to taking a decision by the insurer whether (and on what conditions) to enter into a contract.

Western P&I clubs strictly follow this rule[11]. Similar provisions are contained in Russian insurance law as well (see Article 944, Section 1 of the RF Civil Code). A question arises what are the legal consequences of failure of the assured to disclose such an information to the insurer.

According to Section 3 of Article 944 of the RF Civil Code "if after conclusion of the insurance contract it is established that the assured deliberately gave false information to the insurer upon the circumstances mentioned in Section 1 of the present Article, the insurer is entitled to require to declare the contract null and void and to apply consequences specified by Section 2 of Article 179 of the present Code".

Article 179 of the RF Civil Code deals with transactions concluded, inter alia, under influence of fraud (which is apparently the case).

Upon Section 2 of Article 179 the insurer has the right to require back the amount of losses paid to the assured; as for the premium received by the insurer, it is due to the budget of the Russian Federation.

Now we should ascertain whether these legal consequences shall apply to contracts of marine insurance. The matter is, (as it was mentioned earlier[12]) according to Article 970 of the RF Civil Code rules contained in the Chapter 48 ("Insurance") of the Code shall apply to some specific branches of insurance (including marine insurance) "unless laws on those kinds of insurance provide otherwise".

Chapter XII ("Contract of marine insurance") of the USSR Merchant Shipping Code 1968 (which is currently effective in the territory of the Russian Federation) is silent on that point. So for the time being the rules of Section 2 of Article 179 of the RF Civil Code shall apply to marine insurance contracts as well.

Meanwhile a draft Merchant Shipping Code of the Russian Federation takes an approach which is to some extent different from that of the Civil Code.

Relevant norm of the draft MSC (Article 250, Section 2) reads:

"In case of non-disclosure by an assured of circumstances which are of substantial significance for assessment of extent of the peril, or in case of giving incorrect information, an insurer is entitled to refuse to perform the contract of marine insurance. Insurance premium is due to the insurer unless the assured proves that non-disclosure of the information or submission of incorrect information is not due to his fault".

If we compare the abovementioned norms of the RF Civil Code with those of the draft MSC, the conclusion will be as follows.

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[11] See: Simon Poland & Tony Rooth, ibid., p. 118-125.

[12] See: V. Musin, Marine Insurance for the Northern Sea Route, p.8-9.

In both situations the insurer is entitled to require the assured to return back the amount of losses received by the assured from the insurer. To that extent the norms of the RF Civil Code are similar to relevant norms of the draft MSC. The difference between them relates to the insurance premium.

In terms of the RF Civil Code the premium (received by the insurer or due to him) should be allocated to the federal budget.

Meanwhile in terms of the draft MSC the premium remains with the marine insurer.

Given the abovementioned correlation between general norms of insurance contained in the RF Civil Code and the norms related to marine insurance, we should apparently take the view that from the date of inception of the RF Merchant Shipping Code (provided the quoted rule will not be altered) norms contained in Section 2 of Article 179 of the RF Civil Code will cease to apply to marine insurance contracts.

There is, however, a substantial reservation contained both in the RF Civil Code (Article 944, Section 3, paragraph 2) and in the draft MSC (Article 250, Section 3). According to this reservation an insurance (including marine insurance) shall remain valid and binding for the insurer if circumstances (which are of importance for the insurer's decision to assume a risk and which have not been disclosed by the assured) ceased to exist.

Let us suppose that an owner of a ship when applying for insurance coverage of his liability for carriage of meat products, refrained from disclosing the fact that the ship's refrigerating equipment needed repair. If after inception of insurance but prior to loading of meat products aboard the ship her refrigerating equipment was repaired and put in good condition, then the insurance will remain valid.

It is well-established practice both in Russia and abroad for an assured to fill in an application form offered by the insurer. It should also be borne in mind that an insured is under the obligation to disclose any substantial circumstance regardless of the fact whether a relevant question was contained in the application form or not.

If, e.g., a shipowner who seeks insurance coverage of his liability for carriage of some goods between well-known ports has the intention to deviate from a usual route, he should inform the insurer of such a plan even if the insurer did not specifically ask him about deviation.

It makes sense to note some specific norms of Russian insurance (including marine insurance) law related to the situation when an insurer does put some questions in the application form; an assured refrains from answering some of them; the insurer nevertheless enters into a contract.

In such a case the insurer has no right later on to refuse to perform the contract just upon the pretext that he did not received the information which he had requested for (see: Article 944, Section 2 of the RF Civil Code, Article 250, Section 4 of the draft RF Merchant Shipping Code).

The background of this approach is apparently the fact that if the insurer considered it possible to conclude a contract despite the absence of answers to some questions expressly put by him to the assured, therefore the insurer assumed a risk of the absence of relevant

information and in such a way he waived his right to refer to such non-disclosure at some later stage.

One cannot also exclude a situation when some circumstance (which might substantially influence the insurer's decision to enter into a contract) became known to the assured after inception of the insurance contract, although it had actually existed prior to conclusion of the contract.

In terms of Western insurance law the assured should inform the insurer upon such a circumstance without undue delay, otherwise the insurer (i.e. the P & I club) is free from liability[13]. Russian insurance law is of the same approach since the principle of the utmost good faith is the corner stone of Russian insurance law as well.

It may happen (and it does from time to time in practice) that some circumstance having a substantial influence to the extent of risk, occurs after inception of the insurance contract. In such a case Russian law on marine insurance obligates the assured promptly to inform the insurer on that circumstance as soon as the assured becomes aware of it (Article 217, paragraph 7 of the MSC 1968). If the circumstance increases the risk, then the insurer is entitled to review the terms and conditions of the insurance contract or to require additional premium. In case the assured does not agree to that, the insurance contract shall be deemed terminated from the moment when the circumstance occurred (paragraph 2 of the same Article).

The draft MSC takes similar approach, but implements some additional provisions related to failure of the assured to inform the insurer on increase of risk.

According to these provisions in case the assured fails to inform the insurer on such a circumstance the assurer will be free from liability from the moment when that event occurred. It is further stipulated that "the insurance premium shall remain with the insurer in full unless the assured or his beneficiary proves that failure to perform the abovementioned obligation did not result from his fault" (Article 271, Section 3, paragraph 2 of the draft MSC).

The background of these norms is the idea somehow to balance the interests of the insurer and the assured in the situation when the latter fails to provide the former with complete information on increase of risk within the term of insurance.

Since such complete information is the basis for terms and conditions of the insurance contract, in case the assured fails to perform this obligation it is only fair to exempt the insurer from liability.

It should, however, be borne in mind that the failure abovementioned may either result from the assured's fault or take place due to circumstances beyond his control, when, e.g., the assured was not (and could not be) aware of the increase of risk until the losses occurred. These two situations are certainly different.

In the first situation the failure is due to willful misconduct (or at least negligence) of the assured, so he does not deserve any protection. That is why in such a case the insurer who is free from liability, is also entitled to retain the premium.

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[13] See: Simon Poland and Tony Rooth , ibid, p. 122-123.

As for the second situation where the assured is not at fault, he does deserve some protection of his interests.

It is accordingly quite fair to exempt the insurer from liability but at the same time to obligate him to return the premium back to the assured.

Such a norm economically encourages the assured to perform his information duty.

So far we have dealt with circumstances increasing the risk. It is, however, also possible for a situation to arise where the risk will be substantially decreased. Russian civil law has no rules related to that point.

Meanwhile Western P&I club know so-called laid-up returns, i.e. if an entered ship has been laid up in a safe port for some comparatively long period (such as, for instance, 30 consecutive days and longer), then some part of an advanced call (or of a fixed premium), pro rata for the period of the lay up, shall be returned to the member[14].

There is nothing inconsistent with Russian insurance law in such practice, so Russian P & I clubs may well follow the same line.

6. Risks Covered

It is well-known that P&I insurance "has developed over the last 150 years in response to the need amongst shipowners for insurance cover for risks not recoverable under standard hull and machinery policies"[15]. That is why in order to obtain more or less complete insurance protection for his interests, a Western shipowner usually approaches both insurance companies (or e.g. Lloyd's underwriters) for hull (and machinery) insurance and P&I clubs for other risks, such as those related to the shipowners' contractual and tortious liability.

Meanwhile Russian mutual insurance societies are expressly authorized to cover "property and other proprietary interests" of private individuals and legal entities (Article 968, Section 1 of the RF Civil Code).

It is certainly different (if at all possible) right now exactly to foresee whether Russian P&I clubs will follow Western commercial practice and will only take risks not recoverable under hull policies or they will combine hull and liability insurance.

There is, however, no doubt, that such a combination is apparently permissible by Russian law. We may also suggest that practice of future Russian P&I clubs may vary from club to club, so that some of them will provide traditional P&I coverage, meanwhile others will offer combined insurance coverage.

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14 See: Simon Poland and Tony Rooth, ibid, p. 175-177.

15 Ibid, p.20 .

As for the scope of P&I cover, Russian P&I clubs may take after Western clubs and offer protection against a lot of diversified risks related to:

1) liabilities in respect of crew members, passengers[16] and other persons carried on board (e.g. pilots etc) or not carried on board (such as stevedores, longshoremen etc.);
2) liability for damage to or loss of goods carried aboard an entered ship;
3) pollution liability;
4) liability for damage to port constructions etc.;
5) fines;
6) legal expenses etc.

There is no doubt that one of the most important risks to be covered for ships using the Northern Sea Route is civil liability for oil pollution. We have already dealt with this matter in the previous report[17], so there is no need to repeat it here.

It makes sense just to note that Russian P&I clubs when insuring such a risk may use experience of Western clubs and, inter alia, introduce some limitation for reimbursement of relevant losses.

E.g. in GARD P&I club "the limit of insurance for any and all claims in respect of oil pollution is USD 500 million each incident or occurrence[18] each owner's entry"[19].

It is now difficult to say what figure such limit will amount to in Russian P&I clubs; moreover, different clubs may establish different caps. Anyhow, some limit or other will apparently be introduced.

As for insurance protection for the carrier's liability for damage to or loss of goods, in many countries such liability is based upon the International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading, Brussels, 1924, as amended by the Brussels Protocol, 1968 (The Hague - Visby Rules).

Neither the USSR, nor the Russian Federation, are participants to this Convention. It is, however, necessary to note, that both relevant norms of the USSR Merchant Shipping Code 1968 and those of the draft Merchant Shipping Code of the Russian Federation are very similar to the rules of the Hague-Visby Rules.

For instance, likewise the Hague-Visby Rules, Russian maritime law expressly stipulates that carrier's liability for loss of or damage to goods is based upon his fault, and the list of situations when a carrier shall be exempted from liability (see: Articles 160-161 of the USSR

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16 Liability insurance in relation to passengers becomes very important given, inter alia, cruise passenger voyages of our nuclear ice-breakers to the Northern Pole.

17 See: V. Musin. Marine Insurance for the Northern Sea Route, p. 27-35.

18 Incident means any occurence or series of occurences having the same origin which causes pollution damage, i.e. loss damage caused outside the ship carrying oil by contamination resulting from the escape or discharge of oil from the ship, wherever such escape or discharge may occur, and includes the costs of preventive measures and further loss or damage caused by preventive measures (see: International Convention on Civil Liability for Oil Pollution Damage, Done at Brussels, November 29, 1969, Article 1, Sections 6 and 8). As it has already been mentioned in the pervious report, the Russian Federation as a successor of the USSR is a participant to this Convention (see: Ibid., p.7).

19 Simon Poland and Tony Rooth. Ibid., p.622.

Merchant Shipping Code; see also: Articles 166-167 of the draft Merchant Shipping Code of the Russian Federation) is effectively the same as that contained in Article 4 of the Hague-Visby Rules.

The difference relates, inter alia, to the limit of the carrier's liability for unsafety of goods.

According to the Hague-Visby Rules, unless the nature and value of goods have been declared by the shipper before shipment and inserted in the bill of lading, the limit of the carrier's liability for loss of or damage to the goods is an amount not exceeding the equivalent of 10000 francs per package or unit or 30 francs per kilo of gross weight of the goods lost or damaged, whichever is higher (see: Article 5 (a) of the Rules).

USSR Merchant Shipping Code declares such a limit at the amount of 250 Roubles per package or unit (Article 165, paragraph 1).

Meanwhile: 1) Paragraph 2 of Article 165 reads: "agreement to decrease this amount is null and void". Speaking in other words, an agreement to increase this amount is permissible.

2) Norms of the whole Chapter VIII of the MSC (contract of "Carriage of Goods by Sea") are optional as concerns relationship between Russian and foreign persons (see: Article 119). It means that Russian and foreign parties to the contract of carriage of goods by sea may agree (which they do in practice very often) to subject their relationship to Hague - Visby Rules rather than to the norms of the MSC and in such a way to replace the limit of carrier's liability established in Article 165 of the MSC with the one specified in Article 5 (a) of the Hague - Visby Rules.

According to the draft Merchant Shipping Code of the Russian Federation the limit of the carrier's liability shall be 666,67 of calculating units (one such unit is effectively equal to 1 US Dollar) per package or unit of the goods or 2 calculating units per kilo of gross weight of the goods lost or damaged, whichever is higher (Article 170, Section 1).

We can see that this legend is much closer to the relevant provision of the Hague - Visby Rules. Moreover, Section 5 of Article 170 expressly authorises the parties to the contract to increase the abovementioned limit.

Also, given that norms of Charter VIII of the draft RF MSC ("Contract of Carriage of Goods by Sea") are optional even regardless of involvement of a foreign person in such a contract (Article 116), there is no doubt that the new Code will create a legal basis for application of well-known norms of international maritime law to relationship of the parties to a contract of carriage of goods by see to /from Russia.

According to recent information, the Russian Parliament has approved the Federal law on adhesion of the Russian Federation to the Protocol on amendment of the Hague - Visby Rules[20]. The things left are now to have this Federal law signed by the President of the Russian Federation and then officially published. Thus, in a near future the Hague - Visby Rules will become integral part of Russian maritime law.

The problem of limitation of the shipowner's liability also arises in a number of other situations, such as, e.g., in case of liability for damage to port constructions etc.

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[20] See: Russian Newspaper, 1999, 6th January, p. 22.

The latest international convention regulating this matter is the International Convention on Limitation of Liability for Maritime Claims, London, 1976.

Russia is not a participant to this Convention. Meanwhile there is a clear trend in Russian maritime law to increase the limit of the shipowner's liability for such claims.

If according to the USSR Merchant Shipping Code the shipowner's liability limit for claims abovementioned is the amount resulting from multiplication of twenty Roubles upon the number of gross register tons of a ship (Article 276), then according to the draft merchant Shipping Code of the Russian Federation such a limit is 1 million of calculating units -

for a ship with gross capacity not more than 2000 tons;

for a ship with gross capacity in between 2001 - 30000 tons it is necessary to add 400 units per each subsequent ton;

for a ship with gross capacity in between 30001-70000 tons - 300 units;

for a ship with gross capacity over 70000 tons - 200 units (Article 359, Section 1 (2) of the draft RF MSC).

Moreover, it is necessary to note that at the end of December 1998 the Russian Parliament have approved the Federal Law on adhesion of the Russian Federation to the Protocol 1996 on amendment of the Convention on Limitation of Liability for Maritime Claims 1976[21]. It means that soon this Convention (likewise the Hague - Visby Rules) will become integral part of Russian maritime law.

7. Organisational Structure of Shipowners' Mutual Insurance Organisations in Russia

As it was already mentioned above, in terms of Russian law, mutual insurance societies (including shipowners' P&I clubs) are kinds of non-commercial partnerships. We should accordingly note requirements to their structure contained in the Federal Law "On non-commercial organisations" and then consider, to what extent relevant experience of Western P&I clubs may be used in Russia.

According to the Law the supreme body of a non- commercial partnership is the general meeting of members (Article 29, Section 1, paragraph 3).

Its competence embraces the following issues:

1) introduction of amendments into the charter;

2) indication of main lines of activities of the partnership;

3) formation of management bodies of the partnership and premature termination of their powers;

4) approval of annual report and annual book keeping balance sheet;

5) approval of a partnership's budget and introduction of amendments into it;

6) establishment of branch and representative of the partnership;

7) participation in other organisations;

8) reorganisation and liquidation of the partnership (Article 29, Section 3).

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[21] See: Economy and Life, 1999, ¹ 1, p. 8.

The general meeting of members is authorised to take decisions (i.e. has quorum) provided more than half of members are in attendance (Article 29, Section 4).

Decisions shall be taken by simple (or - if the partnership's charter so stipulates - by qualified) majority of those present.

Items mentioned in points 1-3 and 8 above are within the exclusive competence of the general meeting which means that they cannot be delegated to any other partnership's body.

As for items specified in points 4-7, they may be delegated to collective management bodies, such as the management board.

Besides a management board a non-commercial partnership may also have a sole executive officer, such as a manager or director.

The competence of a management board and that of a director shall be determined by the general meeting with due consideration of abovementioned provisions of the law.

In western P&I clubs their organisational structure is rather diversified so that there are a number of different committees, within the same P&I club, especially in a big one. It is certainly dependent to a very substantial extent upon the number of members in the club.

Anyhow, the supreme body of P&I club is a general meeting of participants and its competence usually includes such items as, inter alia, approval of annual income and expenditure account and balance sheet; introduction of amendments into the Statutes of the club; formation of committee(s).

In between general meeting of participants a club's activities is supervised by the Committee (or the Board of Directors) whose main task is to control that the club is acting in accordance with relevant provisions of law and decisions of the general meeting.

The Committee may also approve (and amend) the Rules of the club, take a decision upon members and amounts of contributions and catastrophe calls, decide to close policy years etc.[22]

Day-to-day management of a club's activities is entrusted to professional managers. In Scandinavian clubs a management team headed by a Managing Director are full-time employees of the club. Meanwhile English clubs often prefer to use services of independent management companies upon contractual basis[23].

It is, however, unlikely for Russian (future) P & I clubs from the very beginning to embrace a big number of members. We may well suggest that at this angle our P&I clubs will be of different "sizes", including small ones, in which case it will be quite sufficient to have a general meeting of members, a management board (committee) and a director.

It will apparently be within the competence of a committee to take decisions upon amounts of advanced, supplementary and catastrophe calls as well as upon limits of P&I liabilities.

As for reimbursement of losses, the decision making power may be distributed between the director (up to a certain amount) and the committee (in excess of such a cap).

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22 See: Symon Poland and Tony Rooth, Ibid., p.p. 53-64.

23 See: Ibid, p. 27

We should rather refrain from going into further details until a law on mutual insurance will be adopted, since that law may introduce some new indications related to distribution of competence among general meeting of members and other management bodies.

It is also worthwhile to mention that principal Western P&I clubs are united in the International Group of P&I clubs which Group now embraces about 90 per cent of the world ocean-going fleet. The Group's secretariat has its seat in London, and the Group has observer status at IMO.

The main purpose of the International Group is to provide reinsurance for risks covered by Group members. Terms and conditions of such reinsurance are set out in the Pooling agreement[24].

Reinsurance possibilities made available by the Pooling agreement are of a special importance for future Russian P&I clubs who will certainly need reinsurance protection.

Reinsurance is expressly mentioned in Article 967 of the RF Civil Code as one of fields of insurance business. Moreover, the Law on Organisation of Insurance Business in the Russian Federation permits Russian insurers to obtain reinsurance coverage both within Russia and abroad (See: Article 4, paragraph 5).

As it also appears from the text of this norm, Russian legal entities are permitted to join foreign mutual insurance organisations.

In practical terms it means that:

1) Russian shipping companies may enter their ships into foreign P&I clubs;

2) Russian P&I clubs may seek for reinsurance coverage of risks borne by them, with International Group upon terms and conditions as set out in the Pooling Agreement;

3) Russian P&I clubs may form a Group (or Association) of their own since the Federal Law "On non-commercial organisations" allows such organisations to create unions or associations for protection of their interests (Article 11, Section 1);

4) Such an Association (when established) may enter into agreement with an International Group concerning reinsurance arrangements.

8. Conclusion

A general overview of legal status of shipowners' mutual insurance organisations in the light of Russian civil and maritime law currently in force (and also with due consideration to the draft Merchant Shipping Code of the Russian Federation which will hopefully be adopted fairly soon) leads us to a conclusion that shipowners' P&I clubs do have legal basis for their arrival and operation in Russia.

Rich experience gained by western P&I clubs during their long term development may be very helpful for Russian clubs given the fact that Russian insurance law is quite compatible with well-know principles and practice of the international insurance market.

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[24] See: Ibid., pp 30-33

9. References

1. Simon Poland and Tony Rooth. Gard Handbook on P & I Insurance, London, 1996.

2. INSROP Working Paper No. 72-1996, IV.3.3. Freezing Damage to Northern Sea Route Cargo: liability and Insurance considerations, by Aref Fakhry.

3. INSROP Working Paper No. 98-1998, IV .3.3. Marine Insurance for the Northern Sea Route, by Valery A. Musin.

4. Civil Code of the Russian Federation. Part One, Effective from 1st January 1995.

5. Civil Code of the Russian Federation. Part Two, effective from 1st March 1996.

6. Merchant Shipping Code of the USSR 1968.

7. Draft Merchant Shipping Code of the Russian Federation.

8. Federal Law of the Russian Federation "On non-commercial organisations" of 12th January 1996.

9. Federal Law of the Russian Federation "On Book keeping" of 21st November 1996.

10. Commentary to the Merchant Shipping Code of the USSR. Edited by A.L. Makovsky. Moscow, 1973.

11. Law "On Organisation of Insurance Business in the Russian Federation" of 27th November 1992, as amended by the Federation Law of 31st December 1997.

12. Russian Newspaper, 1999, 6th January.

13. Economy and Life, 1999, No. 1.

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The INSROP Secretariat
The Fridtjof Nansen Institute
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N-1324 LYSAKER

Attn: Anne Berteig

Your Ref:
Our Ref: KE-hmp
Date: 7 December 1998

Dear Mrs Berteig,

Re: INSROP-report IV.3.3

Thank you for your letter dated 18 November 1998.

I have now had a chance to review Valery A. Musin's report regarding shipowners liability insurance for the Northern Sea Route with specific reference to the perspective of P&I Clubs in Russia. My comments are as follows:

The report deals with various aspects of Russian maritime and marine insurance law which I am not able to comment on. However, the maritime law in general is to a large extent based on international conventions such as for example the Hague or the Hague Visby Rules with regard to cargo liability, the 1976 Limitation Convention regarding global limitation, the Civil Liability Convention (CLC) regarding oil pollution from tankers etc. In as much as the report deals with marine liability insurance, I think it would be interesting to know whether these international recognised liability regimes are ratified by Russia and incorporated into Russian law.

On the bottom of page 5 and on the top of page 6 Mr Musin deals with the timecharterer's liability. I have noted that under Russian law a master will be deemed to sign the bill of lading on behalf of the timecharterer. Under English law, a master will be deemed to be the servant of the owner (or bareboat/demise charterer). The master's signature on the bill of lading will commit the owner as opposed to the charterer save insofar as it is expressly stated in the bill of lading that the charterer shall be deemed to be the carrier. I think this difference between Russian and English law should be explained. (See Wilford, Timecharters, fourth edition, page 333.)

Finally, I would like to suggest that the report contains a section describing how the P&I clubs constituting the International Group of P&I Clubs (which as a matter of fact covers about 85 to 90 percent of the world's merchant fleet) are structured and operate. These Clubs will be deemed to be models for any other Clubs, I would believe.

The P&I Clubs constituting the International Group are mutual clubs. The majority of them operate or are managed out of London whilst there are three Scandinavian Clubs (Gard, Skuld and Swedish Club), one in Japan and one in the United States. The Clubs are incorporated, so that they have a separate legal status from their shipowner members. Only owners, charterers and operators of ships can become members of a P&I Club.

As a corporation a P&I Club has constitutional documents such as by-laws or statutes governing, inter alia, the authority of the General Meeting, the Committee or the Executive Committee (or Board of Directors). The ultimate control of a Club rests in the shipowner members, who will be able to exercise their control by means of a vote taken at a General Meeting of the Club and through the Committee and/or the Executive Committee (Board of Directors) consisting of shipowners elected by the membership at the General Meeting. The Committee (Board of Directors) consisting of shipowners elected by the General Meeting will make decision on all area of importance for the operation of the Club such as for example; determining the Rules (i.e. the terms of the contract of insurance/scope of cover); determining the general principle for the administration of the Club's fund; determining any general variation in the premium rating; levying of contribution and release contribution; and closing of policy years etc.

The day to day management of the Club, i.e. handling of claims, entering into contract of insurance and management of the funds etc. is delegated to professional managers who work full time at the business of the Club. In the case of the Scandinavian Clubs, the managers, comprising the Managing Director and his staff, are full-time employees of the Club. In contrast, the management of some of the English Clubs is carried out by independent management companies under contract to the Clubs concerned.

The Rules of the Club contain the terms and conditions of the contract of insurance between the Club and the individual member (shipowner). P&I insurance is a so-called "named risk" insurance. Only the type of liabilities and losses expressly mentioned in the Rules are covered. See Gard's Rules for Ships, Part II, chapter 1. Only a risk which is regarded as a risk commonly born by shipowners will be accepted as a "mutual risk" and covered by the Club under its standard terms of entry. It is for this reason that cover for certain specialist operations has been excluded and that, for example, an additional voyage premium is levied to cover the oil pollution risk of trading to the United States.

The principal purpose of the International Group of P&I Clubs is to arrange for the sharing amongst the Group Clubs of risks born by each of them. The terms of this claims sharing are set out in the Pooling Agreement. The Pooling Agreement is therefore an extension of the mutual system with the pooling of claims on an "at cost" basis. In the current policy year the Pooling Agreement covers liabilities in the layer between USD 5 million and USD 30 million of each claim.

The Pooling Agreement constitutes also the legal framework for the Group Clubs collective purchase of market reinsurance. In the 1998 policy year the Group Clubs have bought market reinsurance covering USD 2,000 million in excess of USD 30 million (i.e. the top of the Pool layer) for owner's entries.

If a claim should exceed the limit of the market reinsurance contract, the claim will be classified as a Catastrophe Claim which triggers the operation of some special provisions both in the Club Rules and the Pooling Agreement. The individual shipowner's liability to contribute by way of payment of so-called Catastrophe Contribution is limited by reference to the individual ship's limitation fund for property damage claims under the 1976 Limitation Convention. See Appendix VI to the Gard Rules for Ships. There is no limit on the shipowner member's liability for ordinary Contributions. Thus, it is important to distinct between ordinary Contributions and Catastrophe Contributions. See Rule 1 in the Gard Rules for Ships.

The claims sharing arrangement and collective purchase of market reinsurance require discipline among the members of the International Group. The International Group Agreement 1985 (an any replacement of it) ensures that the required discipline exists.

Please let us know if you have any other comments.

Yours faithfully,
ASSURANCEFORENINGEN GARD
-gjensidig-

Kjetil Eivindstad
Asst. Director

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Author's Answers

10th January 1999

TO: Mr. Claes Lykke Ragner,
INSROP Secretariat,
Fridtjof Nansen Institute

Dear Mr. Ragner,

Thank you very much indeed for your fax of 15th December 1998 along with the review of my INSROP report which review was kindly prepared by Mr. Kjetil Eivindstad of ASSURANCEFORENINGEN GARD.
I take this opportunity to request you to extend my deep grantitute to Mr. Eivindstad for his comments.
All his suggestions have now been realized.

1. Whether Russia is the party to such International Conventions as CLC, Hague Visby Rules and 1976 Limitation Convention.

a) CLC. It is mentioned at page 23 (footnote 18), that Russia as a successor of the USSR is a participant to this Convention.

b) Hague-Visby Rules. It is mentioned at pages 23 - 25 that Russia is not for the time being the participant to this Convention; nevertheless both relevant norms of the USSR Merchant Shipping Code 1968 (which is now effective in Russia) and those of the draft Merchant Shipping Code of the Russian Federation are very similar to Hague-Visby Rules.

Moreover, according to recent information the Russian Parliament have approved the Federal Law on adhesion of the Russian Federation to the Protocol on amendment of Hague - Visby Rules (see: Russian Newspaper, 1999, 6th January, p.22). The things left are now to have this Federal law signed by the President of the Russian Federation and then officially published. Thus in a near future Hague - Visby Rules will become integral part of Russian maritime law.

c) 1976 Limitation Convention. It is mentioned at pages 25 - 26 that Russia is not right now the participant to this Convention but there is a clear trend in Russian maritime law to increase the limit of shipowner's liability.

It is also necessary to note that at the end of December 1998 the Russian Parliament have approved the Federal Law on adhesion of the Russian Federation to the Protocol 1996 on amendment of 1976 Limitation Convention (see: Economy and Life, 1999, No. 1, p. 8). It means that soon this convention (likewise Hague - Visby Rules) will become integral part of Russian maritime law.

2. The legal position of a shipowner of a time-chartered ship. The approach of Russian civil and maritime law concerning this issue is explained in some details at pages 6 - 10.

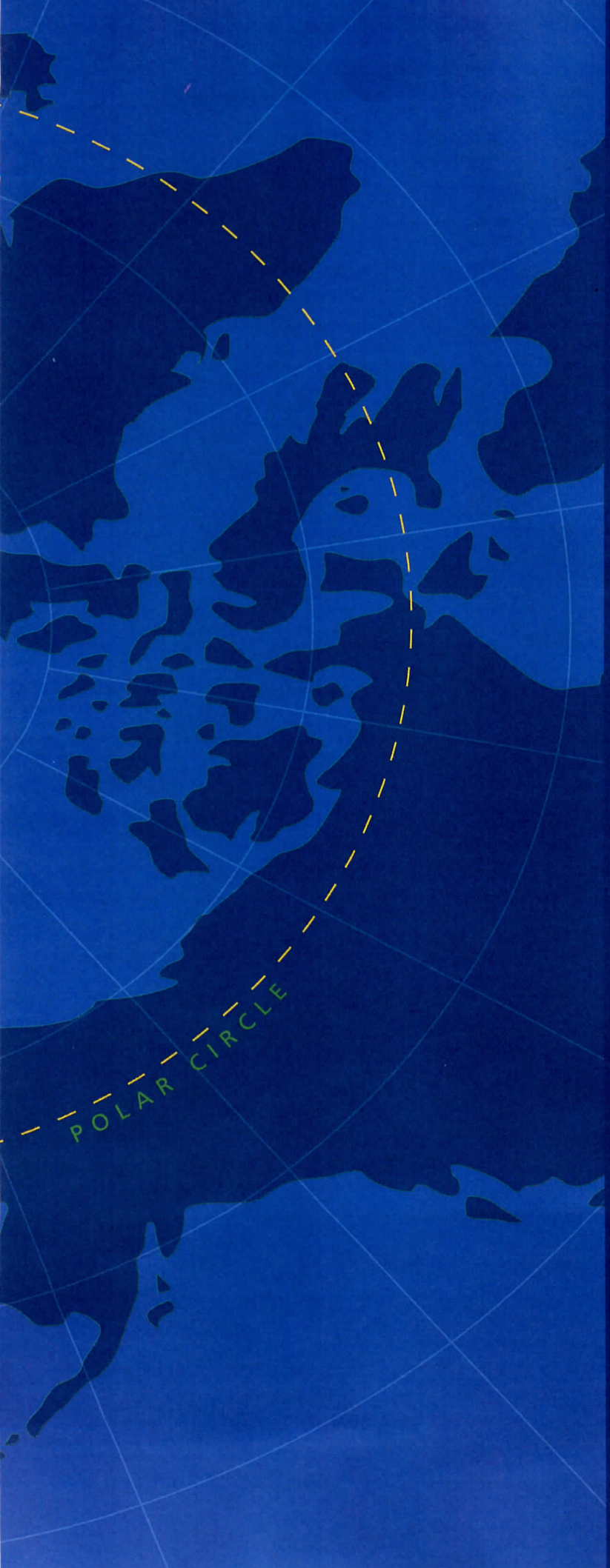
3. Management bodies of Western P&I clubs. They are briefly outlined at pages 27 - 28.

4. International Group of P & I clubs. It is briefly mentioned at pages 28 - 29. It is also indicated there that a cooperation between the International Group and Russian P & I clubs (or their Association) is quite possible as concerns reinsurance arrangements.

Best regards,

Yours sincerely,

Valery Musin



The three main cooperating institutions of INSROP

Ship & Ocean Foundation (SOF), Tokyo, Japan.

SOF was established in 1975 as a non-profit organization to advance modernization and rationalization of Japan's shipbuilding and related industries, and to give assistance to non-profit organizations associated with these industries. SOF is provided with operation funds by the Nippon Foundation, the world's largest foundation operated with revenue from motorboat racing. An integral part of SOF, the Tsukuba Institute, carries out experimental research into ocean environment protection and ocean development.

Central Marine Research & Design Institute (CNIIMF), St. Petersburg, Russia.

CNIIMF was founded in 1929. The institute's research focus is applied and technological with four main goals: the improvment of merchant fleet efficiency; shipping safety; technical development of the merchant fleet; and design support for future fleet development. CNIIMF was a Russian state institution up to 1993, when it was converted into a stock-holding company.

The Fridtjof Nansen Institute (FNI), Lysaker, Norway.

FNI was founded in 1958 and is based at Polhøgda, the home of Fridtjof Nansen, famous Norwegian polar explorer, scientist, humanist and statesman. The institute spesializes in applied social science research, with special focus on international resource and environmental management. In addition to INSROP, the research is organized in six integrated programmes. Typical of FNI research is a multi-disciplinary approach, entailing extensive cooperation with other research institutions both at home and abroad. The INSROP Secretariat is located at FNI.