APROPOS THE 1968 SOVIET MARITIME CODE

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On September 17, 1968, the Presidium of the Supreme Soviet of the USSR confirmed a new Merchant Shipping Code, which entered into force October 1, 1968.[1] It superseded a Code that, with minor amendments, had served Soviet maritime interests for nearly forty years.[2]

Soviet jurists had been debating reform of the 1929 Code for a decade. It would appear the adoption of the 1968 Merchant Shipping Code is part of a broad codification reform, underway in the USSR since 1958, that has seen the enactment of new criminal, civil, family, procedure, air, rail, and land codes as well. Moreover, the USSR has become a ranking maritime power. In less than twenty years, tonnage of the Soviet merchant marine has increased by 3.5 times and its average age has

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1. For a complete translation of the 1968 Code with an introduction comparing the new law to prior Soviet legislation and to Western maritime legislation and practice, see W. BUTLER & J. QUIGLEY, ED. & TRANSL., THE 1968 MERCHANT SHIPPING CODE OF THE USSR (1969). The official text appeared in Vedomosti verkhovnogo soveta SSSR [Gazette of the Supreme Soviet of the USSR] (1968), No. 39, item 351 [hereinafter cited as Vedomosti SSSR]. The Edict of September 17, 1968, was formally confirmed by the full Supreme Soviet in a law of December 13, 1968. Vedomosti SSSR (1968), No. 51, item 488.

2. Sobranie zakonov i rasporiazhenii SSSR [Collected Laws and Decrees of the USSR] (1929), No. 41, item 366 [hereinafter cited as SZ SSSR], as amended in SZ SSSR (1930), No. 58, item 615; (1931), No. 8, item 87; (1933) No. 53, item 310; (1934), No. 24, item 184; (1935), No. 1, item 6. The most recent Soviet edition of the 1929 Code is Kodeks torgovogo moreplavaniia soiuza SSR [Merchant Shipping Code of the USSR] (1958). It was translated into German in 1930 by H. FREUND, DAS SEESCHIFFAHRTSRECHT DER SOWJETUNION (1930). An English translation emphasizing continental terminology was prepared by two distinguished Dutch scholars, Z. SZIRMAI & J. KOREVAAR, THE MERCHANT SHIPPING CODE OF THE SOVIET UNION (1960). A French translation with cross reference to other continental codes was edited by R. RODIERE, CODE DE NAVIGATION MARCHANDE MARITIME DE l'U.R.S.S. du 14 juin 1929 avec les modifications intervenues jusqu'au 1 avril 1953 (1966). The origins and drafting history of the 1929 Code are comprehensively treated in Dobrin, *Apropos the Soviet Maritime Code*, 49 LAW QUARTERLY REVIEW 249-67 (1933); *The Soviet Maritime Code, 1929*, 16 J. COMP. LEG. 252-68 (1934).

declined from 22 to 14 years.[3] The Soviet Union has joined the Baltic and International Maritime Conference (Copenhagen), the Australia-Europe Conference, the Trans-Atlantic Passenger Conference, the Atlantic Passenger Steamship Conference, and other shipping conferences and pooling arrangements regulating chartering, cargo, and passenger services. These few examples of Soviet maritime growth suffice to demonstrate that, so far as foreigners are concerned, the Code governing such activity is of the utmost importance.

The major significance of the 1968 Code is that it represents a law drafted to meet the needs of a new age. The 1929 Code was written at a time when a considerable number of merchant vessels remained in private hands and economic planning was rudimentary at best. In this regard, the 1929 Code is on a par with the 1922 Russian Civil Code, written for a day when private enterprise still flourished. Just as the 1922 Civil Code had to be replaced in the early sixties by a new code meeting modern needs, so the 1929 Merchant Shipping Code stood in need of substantial revision. Elimination of the provisions on ship mortgages, replacement of a virtual *lex fori* conflicts rule for maritime contracts with *lex loci contractus*, introduction of a new chapter on planning of shipments, an increase in carrier liability for damage to cargo (in connection with the current economic reform), all these revisions and others were required by conditions substantially different from those prevailing in the late 1920's.

Furthermore, the 1968 Code permitted Soviet jurists to "clean up" the old Code, to clarify points which had given rise to difficulty of interpretation, and to take into account the nearly forty years of practice of the Maritime Arbitration Commission, which acts as chief interpreter of Soviet maritime law and which had developed a substantial, but in the West largely unknown, body of case law around the 1929 Code. Moreover, the 1929 Merchant Shipping Code, like other Soviet codes of that era, was written in haste and failed to meet high standards of legal draftsmanship. The 1968 Code, ten years in process, represents a significant technical advance over its predecessor. The 1968 Merchant Shipping Code is a comprehensive, but not

3. United States Department of Commerce, Maritime Administration, The Soviet Merchant Marine 9-10 (1967).

exhaustive, statement of administrative and civil law rules regulating maritime commerce. In both form and substance, the 1968 Code closely parallels (and its 1929 predecessor was modeled on) continental codifications in Germany, France, Italy, and elsewhere.

Given the tremendous growth of the Soviet merchant fleet during the past decade and planned growth for the 1970's, the Merchant Shipping Code is already a document of fundamental importance for anyone involved in maritime transport and will become even more significant in the years to come.

No translation of this new Code has yet been made. If experience with similar Soviet legislation is any indication, the 1968 Code is likely to remain in force for decades to come with only minor amendments.

The Code will be interpreted by the Maritime Arbitration Commission in Moscow, which in time will build up a body of case law around it. The authors in a forthcoming translation will include as an appendix the Statute and Procedural Rules of the Commission. They will include a copy of the Soviet state insurance agency's standard policy which prescribes the terms for marine insurance.

This introduction provides essential background information about the Code and the reasons for its adoption, in addition to salient features of the Code of special interest to foreigners. The Code consists of 309 articles classified into nineteen chapters. This discussion follows the ordering of the Code itself.

I. General provisions (Art. 1-18). The Code regulates relations arising out of merchant shipping, which includes the use of vessels not only for the carriage of cargo, passengers, baggage, and mail but also for fishing, sealing, whaling, mining, towage, icebreaker operations, salvage, and any other economic, scientific or cultural purposes. Cabotage, or coasting trade, is reserved to Soviet flag vessels (this conforms to prior Tsarist and Soviet practice). The USSR distinguishes for various administrative and economic reasons between cabotage on one and the same sea (*petit cabotage*) and on different seas (*grand cabotage*). However, the Black Sea basin, the Arctic basin, and the coastal seas off the Soviet far eastern shores are regarded as a single sea for cabotage purposes. Foreign flag vessels are admitted to carriage

and towage operations between Soviet and foreign ports on condition of reciprocity.

The Ministry of the Maritime Fleet of the USSR has authority over the operation of the merchant marine and is empowered to promulgate and enforce rules regulating merchant shipping, although other ministries affected by such rules have a right to be consulted at the drafting stage. Actual operative management over ocean-going merchant vessels resides in "steamship authorities" subordinate to the Ministry. Vessels engaged in fishing, oil tankers, etc., are managed by their respective ministries. Supervision over the construction of all ocean-going ships is the responsibility of the Registry of the USSR.

The definition of "vessel" in the Code is a comprehensive one. A vessel is a "self-propelled or nonself-propelled floating structure" used for any of the purposes associated with merchant shipping, discussed above, as well as for performing public services (quarantine, customs, etc.), for sport, and for other purposes. Unless expressly provided therein, naval flag vessels are not regulated by the Code.

Conflicts rules applicable to maritime contracts have been fundamentally reformed by the 1968 Code. In contrast to the 1929 Code, the new Code provides a single conflicts norm for all six types of maritime contracts: carriage of goods, voyage charter, time-charter (the Code does not refer to demise charters), carriage of passengers, towage, and marine insurance. The 1968 Code also sets guidelines for choice of law, and radically changes Soviet practice by establishing a rule of *lex loci contractus* for all maritime contracts in place of the former rule, which amounted in effect to *lex fori*.[4] As elsewhere, the place of conclusion of the contract is to be determined by Soviet law, and the rule is applied only to determine the rights and duties of the parties after the contract has been concluded. The rule does not resolve questions relating to the authorization of individuals to sign a contract or to the degree of formality required of the contract. On these latter points, reference must be made to special legislation.

4. *See* Quigley, *Soviet Conflicts Rules: Merchant Shipping Code of 1968* 63 AM. J. INT'L L. 529 (1969).

The norm *lex loci contractus* is dispositive. Parties may choose a law to regulate their contractual rights and duties so long as the law selected is not in derogation of Soviet public order or in derogation of imperative provisions of the Code.[5] Similarly, in a financial dispute relating to merchant shipping and involving a foreign national or organization, the parties may agree to transfer the dispute to foreign arbitration. In the event of a conflict between the 1968 Code and an international treaty to which the USSR is party, the international treaty prevails. Otherwise, legal relations arising in merchant shipping but not regulated by the Code are governed by relevant civil, administrative, or other legislation of the USSR and union republics.

II. *Vessels (Arts. 19-38).* Vessels exceeding ten gross registered tons may be owned only by the state or by collective farms and other cooperative or social organizations. Soviet-owned vessels may not be alienated to foreigners, attached, or subjected to execution without the express permission of the Council of Ministers of the USSR.

The principle of immunity of all state-owned vessels, including those engaged in commercial activity, has met with widespread opposition in Western courts and in international conventions. The Soviet position was generally accepted at the turn of the century, when it was agreed that government vessels enjoy immunity in foreign courts irrespective of their designation. As governments in certain countries began to operate merchant shipping, many courts and publicists considered it unfair that ownership per se should be the criterion for exemption from attachment and execution. Consequently, many courts have adopted a "functional immunity" concept which denies immunity to government-owned vessels operated for commercial purposes.

Several major international conventions have incorporated the same principle. The 1958 Geneva Conventions on the Territorial Sea and Contiguous Zone[6] and on the High Seas[7]

5. Among the more important of such mandatory provisions in the 1968 Code are Article 129, which requires the carrier to make his vessel seaworthy before commencement of the voyage, and Article 160, which holds the carrier liable for loss or damage to cargo unless he proves absence of fault. Provisions on payment of freight charges, which were mandatory under the 1929 Code (Article 112) are dispositive under the 1968 Code (Article 154).

6. U.N. Doc. A/CONF. 13/L.53.

7. 450 U.N.T.S. 82.

subject government-owned merchant vessels to attachment and execution. The Soviet Union ratified both conventions, making appropriate reservations to express its rejection of such restrictions on immunity.[8]

III. *Crew (Arts. 39-59).* Unless an exception is made by the Council of Ministers of the USSR, only Soviet nationals may be crew members on a Soviet merchant vessel.[9] In line with this exclusionary policy (which probably is dictated in part by reasons of national security), documents certifying the attainment of various professional ranks or skills in the merchant marine may also be issued solely to Soviet nationals.

The Code empowers the master of a Soviet vessel to perform the usual acts relating to civil status and the investigation of crime committed on board the ship, i.e., witnessing wills, recording births or deaths, conducting inquiries into criminal offenses, and detaining suspects until the next call at a Soviet port. However, a captain is not authorized to perform marriages, and if he does so, the marriage is not recognized under Soviet law. This policy has caused embarrassment more than once.

IV. *Seaports (Arts. 60-78).* Despite the broad economic and administrative functions carried out by ports which affect Soviet organizations and foreign shipowners, the 1929 Code did not include a chapter on the sea port. This omission gave rise to misunderstandings and disputes, the more so since each sea port was regulated by numerous, often contradictory, normative acts.

The 1968 Code endows the sea port (excluding military ports) with its own legal personality. It is an independent economic unit responsible for its own financial obligations, but the port bears no liability for the obligations of other state organizations or of the state itself.

A Soviet sea port assumes responsibility for a wide variety of operations. Among these are the loading, unloading, and

8. For the reservation to Article 20 of the Geneva Convention on the Territorial Sea and the Contiguous Zone, see W. BUTLER, THE LAW OF SOVIET TERRITORIAL WATERS 140 (1967), and Vedomosti SSSR (1964), No. 43, item 472. For the reservation to Article 9 of the Convention on the High Seas, see Vedomosti SSSR (1962), No. 46, item 467; 450 U.N.T.S. 82, 159.

9. On the development of Soviet nationality law, see G. GINSBURGS, SOVIET CITIZENSHIP LAW (1968).

servicing of vessels calling at the port, the provision of forwarding and warehousing premises for cargo, and the servicing of passengers on ocean-going ships. The port also is charged with ensuring safe navigation and public order. In this connection, port officials supervise the observance of relevant international agreements and laws relating to merchant shipping, enter vessels in the State Ship Register or ship directory, verify ship's documents, issue seaman passports, investigate shipwrecks, issue permits to raise sunken property, and so forth.

Not all Soviet sea ports are open to foreign vessels. In 1966 forty open ports and roadsteads were listed in the Soviet version of Notices to Mariners.[10]

V. *Pilots (Arts. 79-96).* Pilots are organized as a state service. Where they operate out of a port, the pilot service is subordinate to the port master. The Ministry of the Maritime Fleet of the USSR and other departments or agencies concerned establish areas where pilotage is compulsory (even for warships) or optional.

In conformity with port control over the pilot service, the port is financially liable for any accidents caused through the fault of a pilot in execution of his official duties. Such liability is limited to the amounts available in the accident fund of the port concerned, which fund is created from 10% deductions from the amounts of pilotage fees received in the calendar year preceding the accident. The individual pilot, of course, is a salaried employee of the port, and revenues derived from pilotage operations are applied to the general port income, apart from the accident fund.

VI. *Sunken property (Arts. 97-105).* The 1968 Code regulates the raising and removal of property which has sunk "within the limits of the territorial or internal sea waters of the USSR."[11] This formulation is an extension of Soviet jurisdiction over sunken property, for the 1929 Code applied merely to property within the limits of port waters.

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10. The 1966 list is translated in W. BUTLER, *supra* note 8, at 137.

11. The breadth of Soviet territorial waters is set by statute at 12 nautical miles. Internal sea waters of the USSR include the waters of Soviet ports, the waters of bays, inlets, coves, etc. whose aperture does not exceed 24 nautical miles, and the waters of bays, inlets, coves, and estuaries, seas, and straits "historically belonging to the USSR."

These definitions appear in the 1960 USSR Statute on the Protection of the State Boundary, translated in W. BUTLER, *supra* note 8, at 111. Minor exceptions to the 12-mile

Sea ports administer raising operations under the 1968 Code, taking this function away from the border guard. Moreover, in contrast to the system under the 1929 Code, non-Soviet agencies may not be engaged by the owner to raise property, although the port still retains discretion to conduct the operation itself. Military property, from whatever source, is to be raised by the Ministry of Defense of the USSR.

VII. *Planning and organization of carriage of goods (Arts. 106-117).* The provisions of this chapter apply solely to relations between Soviet organizations, and never to foreign nationals or companies. The object of the chapter is to provide a general framework to which individual decrees regulating damages, freight, laytime, demurrage, bonuses for loading a vessel ahead of schedule, and delivery deadlines must conform.

Carriage of goods is carried out on the basis of state plans approved by the appropriate maritime and planning authorities. Failure to fulfill the requirements of the plans (late delivery, inability to provide space on a vessel, etc.) may result in financial liability for the party responsible. The precise rules for allocating liability are too specialized to merit detailed discussion here, but the reason foreigners are not affected by the chapter provisions is that foreign shipments on a Soviet vessel or Soviet shipments on a foreign vessel are considered to be outside the plan. A special organization called Sovfrakht, within the Ministry of the Maritime Fleet, has a "monopoly" on foreign tonnage and arranges for the chartering of foreign or Soviet vessels.[12] Liability for financial loss arising from relations between Sovfrakht and foreigners would be allocated according to the terms of the charter contract.

VIII. *Carriage of goods (Arts. 118-166).* One of the distinctive features of the Soviet law of carriage of goods by sea is that the Code regulates not only the ordinary contract of carriage but voyage charter contracts as well. The shipper is thus afforded protection absent from most Western shipping laws. Bills of lading are of the standard variety.

The carrier is required to use due care to make the vessel seaworthy before commencement of the voyage, and if

rule have been established in the Gulf of Finland and the straits between the Japanese Island of Hokkaido and the Soviet Kurile Islands. *See id.*, at 31.

12. *See* A. KEILIN, SOVETSKOE MORSKOE PRAVO [Soviet Maritime Law] 42 (1954).

unseaworthiness results in damage the burden of proof lies on him to show that he did use due care. Laytime, demurrage, and dispatch money may all be regulated by agreement of the parties, but in the absence of such agreement port customs apply.

The heart of the chapter is its provisions on carrier liability for damage or loss of cargo, which are similar to Western law, even though the Soviet Union is not a party to the 1924 Brussels Convention on bills of lading.[13] If the shipper or consignee proves that damage or loss occurred, the burden of proof then rests on the carrier to show that he was not at fault. The carrier is not liable (in foreign shipments only) for damage or loss which resulted from mistakes in navigation or management of the vessel.

The value of goods lost or damaged is determined by prices at the port of destination at the time the vessel arrived or was supposed to arrive there. If the shipper did not declare the value of the cargo, the carrier's liability (in foreign shipments only) is limited to 250 rubles for each package or customary freight unit. At the current official rate of exchange, 250 rubles is the equivalent of $277.50.

IX. *Carriage of passengers (Arts. 167-177).* After defining a contract for carriage of a passenger by sea, the Code goes on to define the period of carriage to include the time the passenger is on board the vessel, embarkation and debarkation, and the time during which the passenger is taken to or from the vessel in a lighter, if this is done at the carrier's expense.

The carrier is forbidden to force upon the passenger any contractual stipulations which limit the passenger's rights over those granted him by the Code. As with carriage of goods, the carrier is obliged to make the vessel seaworthy before commencement of the voyage.

The passenger may bring along children free of charge or at a reduced fare, may bring hand luggage free of charge up to a certain limit, and may convey baggage at established rates. The specific rates and limits are not set forth in the Code but are left to rules issued by the Ministry of the Maritime Fleet of the USSR.

13. 120 L.N.T.S. 155.

If the passenger repudiates the contract for certain reasons specified in the Code, he is entitled to a refund of the entire fare. In other cases of repudiation he is entitled to refund of only so much of the fare as permitted by rules of the Ministry of the Maritime Fleet.

Carrier liability for injury to the passenger is determined by the general civil legislation of the USSR, which holds the carrier liable unless he proves lack of fault. Similarly, the carrier is liable for damage or loss of baggage unless he proves absence of fault. In the case of hand luggage, however, the passenger carries the burden of proving the carrier's negligence. For damage or loss of baggage whose value has been declared, the carrier is liable up to the declared value or the actual value, whichever is lower. With respect to baggage of undeclared value and with respect to hand luggage, the carrier is liable only up to the amounts provided for in a schedule issued by the Ministry of the Maritime Fleet.

X. *Time-charters (Arts. 178-186).* Time-charters are regulated separately from contracts for carriage of goods and voyage charters since time-charters are often used for purposes other than carriage of goods. A time-charter contract must be in writing but may include stipulations differing from the Code rules. The charterer may make a sub-charter agreement with a third party, though he does not thereby avoid liability under his original agreement with the owner. The rules of Chapter X apply to sub-charters as well as to ordinary time-charters.

The owner must give the vessel over to the charterer in a condition for the purposes specified in the contract, properly outfitted, and with a crew. While the Code does not regulate demise or "bareboat" charters (where the charterer provides a master and crew), it does not prevent the parties from concluding such an agreement. The charterer is liable on obligations arising out of bills of lading signed by the master. The master is subject to the charterer's commands with respect to the use to which the vessel is put but not with respect to navigation or matters relating to the crew. The charterer is not liable for damage to the vessel caused through the fault of the crew.

The charterer is also exempt from liability for payment of rent for any periods during which the vessel is unseaworthy, and

if the vessel sinks the obligation to pay rent terminates. If the vessel performs any salvage operations, the salvage award is split evenly between the owner and charterer after deduction of the crew's share of the award.

XI. *Towage (Arts. 187-193).* This chapter regulates all towage and tug operations in and around ports but does not apply to towage of timber in rafts, which is considered carriage of goods, governed by Chapter VIII. A towage contract may be concluded orally; however, an agreement placing the obligation to direct towage operations on the master of the towing vessel must be in writing. The rules of Chapter XI apply only insofar as the parties do not expressly provide to the contrary.

Each party must make his vessel seaworthy before the towage commences, but the owner of the towing vessel is not liable for the unseaworthiness of his vessel if he proves that he could not have discovered the vessel's defects using due care. Nothing is said in the Code about the liability for such latent defects of the owner of the vessel being towed. Contrary to the usual rule of Soviet civil law requiring the party which causes injury to prove lack of fault, the owner of a towing vessel operating in ice conditions is liable for damage to the vessel being towed or property on board only if the fault of the towing vessel is proved by the other party.

When the master of the towing vessel operates the vessel being towed, the owner of the towing vessel is liable for damage to the vessel being towed or property on board unless he proves absence of fault. Similarly, when the master of the vessel being towed operates the towing vessel, the owner of the vessel being towed is liable for damage to the towing vessel or property on board unless he proves absence of fault.

XII. *Marine insurance (Arts. 194-231).* The insuring of a vessel or cargo in the Soviet Union is handled by the Foreign Insurance Administration of the USSR (Ingosstrakh), which is part of the Ministry of Finances of the USSR. Ingosstrakh carries out its operations directly and through its brokers abroad, and in the USSR it will represent the interests of foreign shipowners and insurers in judicial and arbitration proceedings.

Any financial interest related to merchant shipping may be covered by a marine insurance policy, including a vessel, cargo,

freight, fare for passage, anticipated profit, and so forth. Unless expressly provided to the contrary, the rules of the chapter on marine insurance are dispositive and may be modified by agreement of the parties.[14] In fact, there are no significant departures, so far as the 1968 Code is concerned, from Western insurance practice. However, the dispositive Code provisions on marine insurance may not be used to harm the interests of the state insurance monopoly.[15]

XIII. *General average (Arts. 232-251).* General average is defined as losses arising from extraordinary expenses or sacrifices intentionally and reasonably incurred to save the vessel, freight, or cargo from a common peril. The vessel, freight, and cargo all contribute to general average losses, and freight is taken to mean not only the money paid for carriage of cargo but fares paid for carriage of passengers and baggage as well.

The provisions defining the losses considered to be general average apply only if the parties do not agree to the contrary. Soviet shippers and carriers often stipulate application of the York-Antwerp Rules, to which the provisions of this chapter are in fact quite similar.

Average statements are drawn up not by insurance agents, as in Great Britain and the United States, but by average adjusters located in Soviet ports who are members of an adjusters' service which operates under the All-Union Chamber of Commerce in Moscow. The adjusters thus enjoy a quasi-official status. All evidence which the adjuster takes into account must be open for inspection by interested parties. The adjuster collects a fee for drawing up the statement, and this fee is paid by the interested parties in proportion to their participation in the general average. Interested parties may protest an average statement in the Moscow City Court.

If there are any gaps in the general average rules provided for by Chapter XIII, the adjuster is to apply international merchant shipping customs.

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14. A standard Soviet cargo insurance policy is reproduced as an appendix in W. BUTLER & J. Quigley, *supra* note 1.

15. Marine insurance is also subject to the provisions of the USSR Fundamental Principles of Civil Legislation and to the union republican civil codes. Pursuant to Article 80 of the Fundamental Principles, marine insurance is regarded as voluntary insurance and must be based upon the conclusion of a contract. *See* Y. SDOBNIKOV, SOVIET CIVIL LEGISLATION AND PROCEDURE 95-96 (1962).

XIV. *Collision of vessels (Arts. 252-259).* The rules relating to compensation of losses resulting from a collision of vessels apply to a collision occurring between two ocean-going vessels or between an ocean-going vessel and a vessel used strictly for internal navigation. They are modeled on the 1910 Brussels Convention for the Purpose of Establishing Uniformity in Certain Rules Regarding Collisions of Vessels.[16] The USSR officially recognized the Convention on February 2, 1926,[17] and adopted enabling legislation on December 16, 1926.[18]

The 1968 Code does contain a major innovation with regard to the 1910 Convention by broadening the category of vessels affected by the Convention. Article 11 of the Convention excluded warships and state-owned ships employed exclusively in public service (icebreakers, customs and quarantine vessels). The new Code, as we have seen, expressly governs fishing and public service vessels as well as merchant ships. However, the rules relating to compensation for collision losses apply to such vessels only when the dispute is considered in the USSR.

XV. *Salvage (Arts. 260-272).* The Code provisions respecting award for salvage at sea incorporate the 1910 Brussels Convention Concerning the Establishment of Uniformity in Certain Rules Relating to Assistance at Sea and Salvage[19] but go beyond the Convention by making these articles of the Code applicable to Soviet naval vessels as well as to nonmilitary vessels. This Convention also was recognized by the Soviet Government on February 2, 1926.[20]

XVI. *Limitation of shipowner liability (Arts. 273-279).* In addition to the limitation on liability for damage to a cargo unit (Chapter VIII), the Code provides a general limitation on shipowner liability applicable to all kinds of claims, except for certain claims specified in this chapter. A shipowner is liable without limitation where the claim relates to injury to an individual (whether seaman or otherwise) or to wage or social insurance claims. There is also no limit where the shipowner himself served as a master of the vessel or where the claim arose out of an agreement made by the master with another in order to

16. 4 AM. J. INT'L L. SUPP. 121 (1910).
17. SZ SSSR (1926), II, No. 31, item 188.
18. SZ SSSR (1927), No. 6, item 62.
19. 4 AM. J. INT'L L SUPP. 126 (1910).
20. SZ SSSR (1926), II, No. 31, item 188.

protect the vessel or continue the voyage if such agreement was made necessary by improper outfitting of the vessel.

With respect to other listed claims, however, shipowner liability is limited: damage caused by the negligence of the master or crew; payment of salvage awards; contributions to general average; claims arising out of certain actions taken by the master to protect the vessel or continue the voyage. In these situations the shipowner liability is limited to the value of the vessel (which may be zero), plus general average payments due the vessel, the value of outstanding tort claims, and payment for carriage of cargo, passengers, and baggage. In the case of damage caused by the negligence of the master or crew, there is an additional limitation on liability, calculated by multiplying the number of the vessel's registered tons by twenty rubles ($22.20 at current official rate). A shipowner may not, by agreement with a shipper, reduce the limits of shipowner liability established by Chapter XVI.

XVII. *Privileged demands (Arts. 280-285).* This chapter establishes priorities in claims against a shipowner to be used where there is an insufficient amount to satisfy all claims, either because of the shipowner's bankruptcy or as a result of application of the rules on limitation of shipowner liability.

The rules are similar to corresponding provisions in other Continental codifications of maritime law with one major exception. In most Continental maritime codes special preference is afforded to mortgage claims in order to make it easier for mortgagees to recoup amounts loaned and thereby to make mortgages on vessels easier to obtain. Since Soviet vessels are never mortgaged, the Code gives no special protection to a mortgagee's interest. His claim is not included in the Code's list of seven categories of claims afforded priority over others. Instead, the Soviet Code gives top priority to the claims of the working class—the seamen—whether their claims relate to wages or to injury suffered on board.

Then follow the other six categories of claims, which are satisfied in that order: (2) claims for port fees; (3) claims for salvage awards and for general average payments; (4) claims for collision damage; (5) claims arising out of certain actions taken by the master to protect the vessel or continue the voyage; (6) claims

for damage or loss of cargo or baggage; (7) claims for payment of freight.

XVIII. *Sea protests (Arts. 286-292).* A sea protest is an official document drawn up by the master of a vessel when an event has occurred during a voyage which may give rise to a claim against the shipowner. The master files the protest in order to help defend the shipowner against such claims. The protest is normally filed with a state notary upon arrival in port and is usually based primarily on entries in the ship's logs. After inspecting the protest and questioning the master and other persons familiar with the occurrence, the notary draws up a document setting forth the data he has uncovered.

The legal significance of such a protest is that in any subsequent judicial or arbitration proceeding against the shipowner the protest will be taken as prima facie evidence of all facts alleged therein. Since the obligation to prove lack of fault usually lies on the shipowner, the filing of a sea protest has the effect of shifting the burden of proof to the claimant.

The protest must describe not only the event that took place but also the measures taken by the master to avert injury to the vessel's cargo. The protest must be filed within twenty-four hours after the vessel's arrival in port, and within seven days the master must present the ship's log to the notary for inspection.

XIX. *Claims and suits (Arts. 293-309).* An important feature of this chapter is the requirement that before suit may be brought in court or before arbitration the claimant must make a formal request to the debtor for payment of the sum he alleges to be due. The purpose of this requirement is to encourage the parties to settle their dispute short of final adjudication. This requirement does not apply, however, if one of the parties is a foreigner.

There are three different limitations periods, depending upon the nature of the claim. A one-year limitations period applies to the following five categories of claims: (1) those arising out of a contract for carriage of goods in foreign commerce; (2) those arising out of a contract for carriage of passengers or baggage in foreign commerce; (3) those arising out of a time-charter contract; (4) those arising out of a towage contract or out of certain agreements made by the master during the voyage; and

(5) claims for contribution by one shipowner to another, where both were at fault in causing damage which has been compensated by one of them.

A two-year limitations period applies to claims arising out of a contract of marine insurance. For all claims in these two categories, the chapter specifies the time when the period begins to run.

For all claims not falling within the first two categories, the limitations rules of Soviet civil law apply. These provisions establish as a general rule a limitations period of three years. For suits between Soviet state organizations, however, the period is one year, and for certain claims six months.

CONCLUSION

The new Code leaves the foreigner much more comfortable with Soviet maritime law than he was with the old Code. In a number of respects the 1968 Code has brought Soviet legislation into still closer conformity with the law and practice of noncommunist states while preserving certain socialist features. With the 1929 Code one never knew whether, due to changed circumstances, a provision might have been modified by administrative regulation or by a ruling of the Maritime Arbitration Commission or simply have ceased to be applied. The adoption of a new Code gives greater assurance that the law as written corresponds to the law as applied in practice.