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WORLD MARITIME UNIVERSITY.

MALMOE-SWEDEN.

A MARITIME CODE FOR NICARAGUA.

by

Jorge Morales Espinoza.

A paper submitted to the World Maritime University as part of the requirements of the course on General Maritime Administration.

The content of this Paper reflect my own personal views and are not necessarily endorsed by the World Maritime University or the Intenational Maritime Organization.

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TO MY PARENTS, MY WIFE AND MY CHILDRENS.

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## CHAPTER I

# CASE FOR THE UPDATING OF THE MARITIME LEGISLATION IN NICARAGUA.

### 1.1 General Background.

National laws and regulations regarding maritime affairs for Nicaragua up to 1979, when the Revolutionary Government came into power, had their derivations from Spanish legislations. The main regulations were embodied in Nicaragua's Commercial Code which in its book III deals with maritime commerce and some aspects relating to the ship. This code entered into force in 1917.

Book III of Nicaragua's Commercial Code is divided into seven titles which are subdivided into several chapters:

Title I deals with some aspects relating to the acquisition and transmission of the property of the ship.

Title II. " The persons who, participate in the Maritime Commerce ". This title, which is subdivided into four chapters deals with :a) some responsibilities of the shipowner and of the shipoperator incurred by the master in the normal operation of the ship; b) faculties and duties of the master or skipper of the ship; c) faculties and duties of officers and crew of the ship; and d) regulations relating to the purser of the ship.

Title III. " Special contracts in maritime commerce ". This title deals with the main aspects relating to the charter-party and marine insurance.

Title IV. " Risk, accidents and damages in maritime commerce ". This title is subdivided into four chapters

dealing with averages, emergency calls, collisions, and shipwrecks.

Title V deals with general average, particular average and adjustments. This title contains general regulations applicable to all kind of averages and special dispositions regarding adjustments of general average and of particular average.

Title VI. "Hypothec". This title contains dispositions regarding the tonnage of the ship over which it is possible to create a hypothec, registration of the hypothec, and the manner of transferring the hypothec to third parties. In this title it is expressed that the naval hypothec is regulated by the dispositions of the Civil Code relating to the common hypothec.

Title VII. "Maritime Liens". This title deals with maritime liens over the cargo, the freight, and the ship.

It should be noted that Book III of Nicaragua's Commercial Code is outdated because its dispositions have not been updated according to the evolution of international regulations. Therefore it is necessary to develop a new maritime law according to the evolution of international standards viz. conventions, codes, etc.

It is well known that the purposes of maritime law are:

1) to provide the legal framework for maritime transport, i.e. the carrying out of a State's foreign trade. As regards this purpose it is necessary to regulate the relationship of all parties involved in maritime transport. In this sense it is necessary to adopt laws on the carriage of goods and passengers by sea, collisions, general average, contracts with agents,

stevedores and freight forwarders, arrest of vessels, liability and limitation of liability, mortgages and liens.

The purpose of regulation of maritime transport can only be achieved with efficient and therefore safe ships, manned with qualified and competent crews. For obtaining this purpose it is necessary to create rules pertaining to the construction and safety of ships, the manning of ships, the labour and working conditions and the safety of navigation.

2) to implement the basic objectives of a State as port State and coastal State. These objectives are to ensure the safety of ships calling on a State's ports or navigating along its coasts, to prevent accidents involving those ships and to prevent pollution from those ships. They give rise to the need for maritime legislation on safety, manning of ships, the prevention of collisions, salvage and pollution.

3) to serve general economic objectives of a State. These may relate to the need of expanding the merchant fleet of a State whether in the carriage of national ocean trade or in cross-trading. For this objective it is necessary to create rules regulating the sea transport.

Another objective may be the encouragement of the employment of nationals on board foreign ships. In this case it is necessary to develop the appropriate rules relating to the national labour, training and certification for seafarers.

Another economic objective may be to attract foreign investment by allowing nationals from other



nations to register on ships under the national flag, or to allow nationals to register ships chartered from abroad. Therefore, it is necessary to create rules regulating the registration of ships.

The subjects enumerated, like the necessity for achieving the purposes of maritime legislation, have been covered in international conventions and other international legal instruments. Under the auspices of the International Maritime Organization (IMO) many important technical shipping conventions have been concluded. The International Labour Organization (ILO) has sponsored the adoption of numerous conventions relating to working and living conditions, social security and other standards for seafarers.

Similarly, The United Nations Conference on Trade and development (UNCTAD) has been an important source of international regulations in the economic field.

In respect of private law matters, most if not all conventions have been prepared by the Comité Maritime International (CMI).

Finally the United Nations has over the last three decades sponsored three Law of the Sea Conferences. The first conference adopted the fourth Geneva Law of the Sea Convention of 1958 and protocol. The third Conference on the Law of the Sea resulted in the adoption of the 1982 Law of the Sea Convention.

Nicaragua's maritime laws until now are not in accordance with the maritime conventions developed by the international organizations above mentioned. Therefore it

is necessary to draft new maritime laws according to Nicaragua's maritime policy and taking into account international conventions and some examples from maritime legislation in other countries.

## 1.2. Actual situation of the Maritime Legislation

Before 1979 the main maritime regulations were embodied in Book III of Nicaragua's Commercial Code which is still in force but some of its regulations have been abolished by some laws promulgated after the creation of the Directorate General of Water Transport.

It should be noted that before 1979 there was no proper institution in charge of the legislative aspects in shipping and ports. Therefore, there was legislative inactivity in the maritime field which resulted in the existence of an outdated maritime legislation.

With the creation of the Directorate General of Water Transport in 1980, several laws and rules relating to the maritime field have been formulated as follows:

- 1) Law on Registration of Ships, November 1980, and its subsidiary rules of January 1983.
- 2) The Protection Law of the Merchant Marine, September 1982, and its subsidiary rules of February 1984.
- 3) The Pilotage Service Law, January 1985.

In addition The Directorate of Water Transport has been studying the main conventions of IMO, ILO, and UNCTAD for the purpose of ratifying or acceding to them.

The autor would like to point out that the situation of the maritime legislation already described was valid until February 1988.

The Law on Registration of Ships creates an administrative registration to enable the vessels to fly the Nicaraguan flag. This kind of register is under the Directorate of Water Transport; this law does not regulate the ownership register which is still regulated by Nicaragua's Commercial Code and it is managed by the Public Property Registry. This law is applicable to all ships of 1 gross tonnage and more; the nationality is subordinated to the vessel being wholly or at least 60 % owned by Nicaraguan residents in Nicaragua or corporations incorporated under national law. In this last case it is also required that the principal place of business of the corporation be located in Nicaragua.

Pursuant to this law at least 75% of the crew and at least 50 % of officers must be Nicaraguan. This law considers as nationals the State owned ships and ships which have been confiscated, abandoned or captured according to the respective national law.

The Protection Law of the Merchant Marine was designed to regulate the sea transport market of Nicaragua and to promote the development of the national merchant fleet.

The main principles of this law are:

- a) The national coastal trade ( cabotage) is reserved to national ships.
- b) The trade licensing of national shipowners and ship agents is granted by the Directorate of Water Transport

if certain requirements are met. For instance, it is required that the corporation must be constituted according to the national laws, with nationals owning at least 60% of the share capital and the principal place of business must be in the country.

c) The foreign trade of Nicaragua is reserved ( cargo reservation) in the following proportion: in case of general cargo 40% is reserved to national shipowners, 40% to the national shipowners of the country with whom Nicaragua is trading and the remaining 20% to third flags.

d) Chartered tonnage may be used to meet carrying obligations. The total chartered tonnage must not exceed 50% of their own tonnage.

e) With previous authorization of the Directorate of Water Transport, the national shipowners can concert joint ventures with foreign shipowners to carry their percentages of cargo reserved.

1.3. The role of the IMO and ILO in the formulation of the International Maritime Regulations.

1.3.1. The establishment of IMO.

Under the auspices of the United Nations Economic and Social Council (ECOSOC) a conference was held in Geneva on 6 March 1948. At the end of this conference a convention on the establishment of the Inter-Governmental Maritime Consultative Organization (IMCO) was adopted as the first intergovernmental body dedicated solely to maritime affairs. The conference decided that the convention could only enter into force when twenty-one States, including seven having at least one million gross tons of shipping each, had become parties to the convention. On 17 March 1958, the convention entered into force

and the first IMCO Assembly met in London in January 1959.

An amendment to the IMCO Convention agreed in 1975 entered into force in May 1982 changing the name of the IMCO to the present IMO.

Pursuant to article 1 of the 1948 Convention the purposes of IMO are:

- a) to provide machinery for cooperation among Governments in the field of governmental regulation and practices relating to technical matters of all kinds affecting shipping engaged in international trade; to encourage and facilitate the general adoption of the highest practicable standards in matters concerning maritime safety, efficiency of navigation and the prevention and control of marine pollution from ships; and to deal with legal matters related to the purposes set out in this article;
- b) to encourage the removal of discriminatory action and unnecessary restrictions by Governments affecting shipping engaged in international trade so as to promote the availability of shipping services to the commerce of the world without discrimination; assistance and encouragement given by a Government for the development of its national shipping and for the purposes of security does not in itself constitute discrimination, provided that such assistance and encouragement is not based on measures designed to restrict the freedom of shipping of all flags to take part in international trade;
- c) to provide for the consideration by the Organization of matters concerning unfair restrictive practices by shipping concerns in accordance with part II;
- d) to provide for the consideration by the Organization of any matters concerning shipping that may be referred to

it by any organ or specialized agency of the United Nations;

e) to provide for the exchange of information among Governments on matters under consideration by the Organization.(1).

The Governing body of the IMO is the Assembly, which meets once every two years and consists of all Member States of IMO and the Associate Member. In the period between the sessions of the Assembly a council, consisting of 32 Member Governments elected by the Assembly, acts as the governing body of the IMO.

The technical work of IMO is carried out by a number of committees and sub-committees which are open to participation by all Member Governments on an equal basis.

The most senior of the committee is the Maritime Safety Committee which has ten sub-committees, namely the sub-committees on Safety of Navigation; Radiocommunications; Life-Saving Appliances; Standards of Training and Watchkeeping; Carriage of Dangerous Goods; Ship Design and Equipment; Fire Protection; Stability and Load Lines and Fishing Vessels Safety; Containers and Cargoes; and Bulk Chemicals. This last sub-committee is also a sub-committee of the Marine Environment Protection Committee (MEPC) which deals with the Organization's activities in the prevention and control of pollution of the marine environment from ships.

The Legal Committee established in 1967 after the Torrey Canyon disaster, deals with legal matters within the scope of the Organization.

The technical Co-operation Committee is responsible for co-ordinating the work of the Organization in respect of technical assistance to developing countries.

The Facilitation Committee, a subsidiary body of the Council, administers the Convention on Facilitation of International Traffic, 1965.

### 1.3.2. The Contribution of IMO in the Technical Field.

Since its establishment the IMO has dedicated its efforts in the development of international maritime standards in the formulation of Maritime Safety Legislation and Marine Environment Protection Legislation.

In the field of maritime safety it is impossible to say with any certainty what impact IMO measures have had on shipping safety. Shipping itself has changed so much since the 1950s that no valid comparison is possible. Regarding maritime safety, the work developed by IMO covers aspects such as, construction and equipment of ships, safety of navigation, cargo handling, crew training, and facilities ashore and at sea.

In the field of the prevention and control of marine pollution the work of IMO covers aspects relating to: control of operational discharge, prevention of accidents, minimization of spills, combating pollution, and liability and compensation.

#### Maritime Safety Legislation.

The SOLAS Convention in its successive forms is generally regarded as the most important of all inter-

national treaties concerning the safety of merchant ships.

The first version was adopted in 1914, the second in 1929 and the third in 1948.

The 1960 SOLAS Convention was the first major task for IMO after its creation. The convention covers a wide range of measures designed to improve the safety of shipping, including subdivision and stability; machinery and electrical installations; fire protection detection, and extinction; life saving appliances; radiotelegraphy and radiotelephony; safety of navigation; carriage of grain; carriage of dangerous goods, and nuclear ships.

In response to new developments, the 1960 SOLAS Convention has been amended several times. However, because of the rather difficult requirements for bringing amendments into force, none of these amendments have entered into force internationally.

To remedy this situation and effect the needed improvements more speedily, a completely new convention was adopted in 1974: The International Convention for the Safety of Life at Sea, 1974 which incorporated the amendments adopted to the 1960 SOLAS Convention as well as introduced other necessary improvements, including an improved amendment procedure through which amendments adopted by the Maritime Safety Committee enter into force on a predetermined date, unless objected by one-third of the contracting States or by contracting States owning fifty per cent of the world's tonnage of merchant shipping. The 1974 SOLAS Convention entered into force on 25 May 1980.



In 1978 The IMO adopted a protocol on Tanker Safety and Pollution Prevention (TSPP) in order to strengthen the requirements of the 1974 SOLAS Convention.

In November 1981 the first of a series of important amendments to the SOLAS 1974 Convention was adopted and entered into force in September 1984. A second set of amendments was adopted in June 1983 and entered into force on 1 June 1986.

In 1966, an IMO conference adopted the International Convention on Load Lines which sets limitations on the draught to which a ship may be loaded, an important consideration in its safety. This convention entered into force on 21 July 1968.

In 1969 the International Convention on Tonnage Measurement of Ships, which was designed to establish a uniform system for tonnage measurement was adopted. This convention entered into force in July 1982.

Other conventions on maritime safety have been adopted by IMO. In 1972 two conventions were adopted: the Convention on the International Regulations for Preventing Collisions at Sea, which concerns traffic separation schemes; and the Convention for Safe Containers, which provides uniform international regulations for maintaining a high level of safety in the carriage of containers by providing generally acceptable test procedures and related strength requirements. Both conventions entered into force in 1974.

The 1976 International Convention on the International Maritime Satellite Organization (INMARSAT) con-

cerns the use of space satellites for improved communication, enabling distress messages to be conveyed much more effectively than by conventional radio. This convention entered into force in July 1979 and resulted in the establishment of the INMARSAT Organization which is based in London.

The International Convention on Maritime Search and Rescue, 1974, was the first convention with the purpose of setting up standards for maritime search and rescue services, their organization and the cooperation among States, especially on a regional basis. This convention entered into force on 22 June 1985.

Due to the fact that at least eighty-five per cent of all maritime accidents are caused by human error, the IMO in collaboration with ILO formulated in 1978 the Convention on Standards of Training, Certification and Watchkeeping for crews. This convention specifies that every officer of sea-going vessels of almost any size and power shall hold appropriate certificate of competency. It also lays down provisions regarding dispensations, equivalents, and control. This Convention entered into force in April 1984.

In 1977 an IMO Conference adopted the Torremolinos International Convention for the Safety of Fishing Vessels, which is applicable to new fishing vessels of 24 metres in length and over and is expected to be of great benefit to the safety of fishing vessels and their crews. This Convention has not yet entered into force.

Marine Environment Protection Legislation.

The major conventions developed by IMO in this area are:

1)International Convention Relating to Intervention on the High Seas in cases of Oil Pollution Casualties, 1969.

2)International Convention on Civil Liability for Oil Pollution Damage, 1969.(CLC).

3)International Fund for Compensation for Oil Pollution Damage, 1971.

4)International Convention for the Prevention of Pollution from Ships, 1973 (as amended in 1978).-MARPOL 73/78.

The 1954 Oil Pollution Convention for which IMO became depositary in 1959, was the first major attempt by the maritime nations to curb the impact of oil pollution. Since then the problem has become much more serious. The amount of oil carried at sea, the world tanker fleet, and the size of the tankers have grown enormously.

Following a conference convened by IMO, the 1954 convention was amended in 1962, but it was the wreck of the oil tanker Torrey Canyon in March 1967 which dramatically alerted the world to the great dangers which the transport of oil posed to the marine environment.

After the Torrey Canyon disaster, the IMO has devoted increasing attention to the problem of marine pollution.

In 1969 two conventions were adopted: the International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties which estab-

lished the right of coastal States to intervene in incidents on the high seas which are likely to result in oil pollution; and the International Convention on Civil Liability for Oil Pollution Damage which deals with the civil liability of the ship or cargo owner for damage suffered as a result of an oil pollution casualty. This convention is intended to ensure that adequate compensation is available to victims of pollution, and places the obligation for paying such compensation on the shipowner. Both conventions entered into force in 1975.

The Fund Convention sets up a body - the IOPC Fund - with headquarters in London, whose function is to provide additional compensation to victims where an accident results in pollution damage which exceeds the compensation available under the Civil Liability Convention. The Fund is made up of contributions from oil importers. The convention entered into force in 1978.

The limits of liability in the 1969 CLC and 1971 Fund Convention were increased in protocols to amend them which were adopted in 1984.

MARPOL 73/78 provides perhaps the most important comprehensive treaty regime ever developed in the struggle against pollution. The convention deals not only with pollution by oil, but also with other sources of pollution, including chemicals and other harmful substances, garbage, and sewage.

The provisions of the MARPOL 73/ 78 are aimed at the prevention of pollution of the sea by:

- a) oil discharged from ships;
- b) noxious substances in packages or containers;

- c) bulk liquid or dry noxious substances other than oil;
- d) shipboard sewage; and
- e) ship-generated garbage.

MARPOL 73/78 greatly reduces the amount of oil which can be discharged into the sea by ships, and bans such discharges completely in certain areas prescribed in the convention.

Pursuant to the convention the contracting States must provide adequate facilities for the reception of residues and oily mixtures at oil loading terminals, repair ports, etc.,.

In 1978 an IMO Conference adopted a protocol to the 1973 MARPOL Convention, which introduced a number of changes to the 1973 Convention. Segregated ballast tanks (SBT) are required on all new tankers of 20,000 dwt and above (in the 1973 Convention SBTs were only required on new tankers of 70,000 dwt and above). The protocol also requires that SBTs be protectively located -that is they must be positioned in such a way that they will help protect the cargo tanks in the event of a collision or grounding.

Another important innovation concerning crude oil washing (COW), which is a process through which tanks are washed not with water but with crude oil. COW is accepted as an alternative to SBTs on existing tankers and is an additional requirement on new tankers.

For existing crude oil tankers a third alternative is permissible for a period of two to four years after entry into force of MARPOL 73/78. This is called dedica-

ted clean ballast tanks (CBT) which is a system whereby certain tanks are dedicated solely to the carriage of ballast water.

The TSPP Conference also decided to merge the 1973 MARPOL Convention into its protocol with the result that the two become one instrument for ratification purposes. That is, States which ratify the 1978 protocol must also give effect to the provisions of the 1973 MARPOL Convention. MARPOL 73/78 entered into force in October 1983.

### 1.3.3. The establishment of ILO.

The International Labour Organization (ILO) was created by the Treaty of Versailles in 1919 to advance the cause of social justice and to contribute to the establishment of universal and lasting peace by promoting the social and economic well-being of the world's people through decent living standards, satisfactory conditions of work and pay, and adequate employment opportunities. In 1946 the ILO became the first specialized UN agency.

The main activities of the International Labour Organization are:

- a) the formulation of international policies and programmes to help improve working and living conditions, enhance employment opportunities, and promote basic human rights;
- b) the creation of international labour standards to serve as targets for achievement for national authorities in putting these policies into action;
- c) a programme of international technical co-operation to help governments in making these policies effective in

practice;

d) training, education, research and publishing activities to help advance all these efforts. (2)

One of ILO's oldest and most important functions is the adoption by the tripartite International Labour Conference ( in which workers' and employers' representatives have an equal voice with those of governments in the formulation of its policies) of conventions and recommendations which set international labour standards.

#### 1.3.4. Development of International Minimum Labour Standards.

Between 1920 and 1981 a total of 32 conventions and 25 recommendations concerning seafarers were adopted, and this demonstrates the important part of ILO activities devoted to seafarers' questions.

#### ILO Conventions:

- No. 7. Minimum Age (Sea), 1920.
- 8. Unemployment Indemnity (Shipwreck), 1920.
- 9. Placing of Seamen, 1920.
- 15. Minimum Age (Trimmmers and Stokers), 1921.
- 16. Medical Examination of Young Persons (Sea), 1921.
- 22. Seamen's Articles of Agreement, 1926.
- 23. Repatriation of Seamen, 1926.
- 53. Officers' Competency Certificates, 1936.
- 54. Holidays with Pay.
- 55. Shipowners' Liability (Sick and Injured Seamen), 1936.
- 56. Sickness Insurance (Sea), 1936.
- 57. Hours of work and Manning (Sea), 1936.

- 58. Minimum Age (Sea) (revised), 1936.
- 68. Food and Catering (Ship's Crews), 1946.
- 69. Certification of ship's Cooks, 1946.
- 70. Social Security (Seafarers), 1946.
- 71. Seafarers' Pensions, 1946.
- 72. Paid Vacations (Seafarers), 1946.
- 73. Medical Examinations (Seafarers), 1946.
- 74. Certification of Able Seamen, 1946.
- 75. Accommodation of Crews, 1946.
- 76. Wages, Hours of Work and Manning (Sea), 1946.
- 91. Paid Vacations (Seafarers) (revised), 1949.
- 92. Accommodation of Crews (revised), 1949.
- 93. Wages, Hours of work and Manning (Sea),  
(revised), 1949.
- 108. Seafarers' Identity Documents, 1958.
- 109. Wages, Hours of Work and Manning (Sea) (revised),  
1958.
- 133. Crew Accommodation on Board Ship ( Supplementary  
Provisions), 1970.
- 134. Prevention of Occupational Accidents to Seafa-  
rers, 1970.
- 145. Continuity of Employment of Seafarers, 1976.
- 146. Annual Leave with Pay for Seafarers, 1976.
- 147. Minimum Standards in Merchant Ships, 1976.

ILO Recommendations:

- No. 9. National Seamen's Codes, 1920.
- 10. Unemployment Insurance (Seamen), 1920.
- 26. Migration (Protection of Females at Sea), 1926.
- 27. Repatriation (Ships Masters and Apprentices),  
1936.
- 28. Labour Inspection (Seamen), 1926.
- 48. Seamen's Welfare in Ports, 1936.



49. Hours of Work and Manning (Sea), 1936.
75. Seafarers' Social Security (Agreements), 1946.
76. Seafarers (Medical Care for Dependents), 1946.
77. Vocational Training (Seafarers), 1946.
78. Bedding, Mess utensils and Miscellaneous Provisions (Ships' Crews), 1946.
105. Ships' Medicine Chests, 1958.
106. Medical Advice at Sea, 1958.
107. Seafarers' Engagement (Foreign Vessels), 1958.
108. Social Conditions and Safety (Seafarers), 1958.
109. Wages, Hours of Work and Manning (Sea), 1958.
137. Vocational Training of Seafarers, 1970.
138. Seafarers' Welfare at Sea and in Port, 1970.
139. Employment Problems Arising from Technical Developments on Board Ship, 1970.
140. Air Conditioning of Crew Accommodation and certain other Spaces on Board Ship, 1970.
141. Control of Harmful Noise in Crew Accommodation and Working Spaces on Board Ship, 1970.
142. Prevention of Occupational Accidents to Seafarers, 1970.
153. The Protection of Young Seafarers, 1976.
154. Continuity of Employment of Seafarers, 1976.
155. Improvement of Standards in Merchant Ships, 1976.

The Conventions and Recommendations above mentioned constitute what is known as the "International Seafarers' Code" covering a set of minimum standards on all aspects of the condition of work of merchant seafarers. Standards concern minimum age for entry to employment, compulsory medical examination prior to employment aboard ship and periodical thereafter; articles of agreement which must contain certain details and to be signed under certain conditions; repatriation, holidays with pay,

social security, wages, hours of work and manning, crew accommodation, identity documents, occupational safety and health, welfare at sea and in port, continuity of employment, vocational training and certificates of competency.

With respect to the implementation of conventions "it should be noted that each member State is required by the ILO Constitution:(a)to submit within a time limit which will be in no case later than 18 months all Conventions and Recommendations adopted by the Conference to the competent national authorities for a decision as to the action to be taken on them; and (b)to report at regular intervals to the ILO on action taken to implement ratified Conventions. Member States may also be required by the Governing Body of the ILO to report on unratified Conventions or Recommendations, showing the extent to which effect has been given, or is proposed to be given, to the provisions of such instruments".(3)

#### 1.4. What IMO and ILO Conventions is Nicaragua a Party?

The need for updating the Maritime Legislation.

As the autor has already expressed, one of the main problems as regards matter relating to the Maritime Administration in Nicaragua is its non-involvement in the evolution of International Standards and the consequential problem of having to deal with them in isolation.

At the time of writing this thesis the only IMO Convention which Nicaragua has ratified is the International Convention for the Safety of Life at Sea, 1960. It should be noted that the provisions contained in SOLAS

1974, SOLAS protocol 1978 and in the 1981 and 1983 amendments, should abrogate and supersede the 1960 SOLAS Convention.

Regarding to ILO Conventions, Nicaragua has ratified the following Maritime Labour Conventions:

- Convention No 7. Minimum Age (Sea) Convention, 1920.
- Convention No 8. Unemployment Indemnity (Shipwreck) Convention, 1920.
- Convention No 9. Placing of Seamen Convention, 1920.
- Convention No 15. Minimum Age (Trimmers and Stokers)- Convention, 1921.
- Convention No 16. Medical Examination of Young Persons (Sea) Convention, 1921.
- Convention No 22. Seamen's Articles of Agreement Convention, 1926.
- Convention No 23. Repatriation of Seamen Convention, 1926.
- Convention No 146. Seafarers' Annual Leave with Pay Convention, 1976.

Nicaragua as a member of the world's International community engaged in international trade and using shipping as a servant of trade, must ratified the relevant conventions developed by IMO and ILO taking into account its own reality according to the national maritime policy.

The national umbrella Maritime Legislation of Nicaragua is at present out-dated. Therefore, one of the most important tasks of the Directorate of Water Transport is to up-date the national Maritime Legislation which can be developed through the adoption of the main international conventions and by the adoption and imple-

mentation of a Maritime Code which defines the primary functions of the Maritime Administration and is framed to control maritime activities.

"While up-to-date Merchant Shipping Legislation is a condition precedent to maritime development and the effective enforcement of appropriate maritime safety standards in a developing country, such legislation is outdated in many developing countries. Therefore, this deficiency needs to be rectified as a matter of urgency".(4)

"The primary objectives of the Merchant Shipping Act of a developing Country needs to be:(a)developmental, (b)regulatory, and (c)conformity with relevant International Law Conventions".(5)

The main objectives of this thesis is to draft a Maritime Code which includes the main rules governing the Public International Maritime Law developed under the auspice of international organizations.

It should be noted that also the rules governing the commercial aspects of maritime transport in Nicaragua need to be updated as a matter of urgency.

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Reference Notes:

1. Convention for the establishment of the Inter-Governmental Maritime Consultative Organization, 1948.
- 2.and 3. Maritime Labour Conventions and Recommendations, ILO.
4. and 5. Establishment/Administration of Maritime Affairs in Developing Countries Volume I by Pro

## CHAPTER II

# PROPOSED MARITIME CODE FOR NICARAGUA.

### Part I. PRELIMINARY PROVISIONS.

#### 1. Short Title.

This Act may be cited as the Merchant Shipping Act

#### 2. Objects.

The purposes of this Act are:

- (a) to encourage and regulate the orderly development of merchant shipping in Nicaragua and to provide for the qualifying of persons employed in service at sea in Nicaraguan ships;
- (b) to regulate the terms and condition of service of persons employed in Nicaraguan Ships;
- (c) to provide for safety of passengers, crews, ships and cargo; and
- (d) generally to replace the shipping laws applicable to Nicaraguan ships contained in different legal instruments.

#### 3. Application of the Act.

- (1) Unless otherwise expressly provided, the provisions of this Act which apply to ships which are registered in Nicaragua or which in terms of this Act are required to be so registered shall

so apply wherever the ship may be.

- (2) Unless otherwise expressly provided, the provisions of this Act which apply to ships other than those referred to in sub-section (1) shall so apply only while any such ship is within Nicaragua including the territorial waters thereof.

4. Exempt Ships.

- 1) Unless otherwise expressly provided, this Act does not apply to:
- (a) ships belonging to the Government of Nicaragua and engaged only on governmental non-commercial service; and
  - (b) ships employed in the defense of Nicaragua or its territorial waters.
- 2) The home-trade ships may be exempted of the application of this Act in such manner and to such extent as the Minister may by order prescribe.

5. Definitions.

To the effect of this Act,

- (a) "Minister" means the Minister responsible for shipping;
- (b) "Director" means the Director of the Directorate of Water Transport;
- (c) "Master" includes every person having command or charge of a ship other than a pilot;
- (d) "Apprentice" means a person duly indentured as an apprentice to the sea;

- (e) "Nicaraguan Ship" means a vessel for the time being registered under part I of this Act;
- (f) "Certificate of Competency" means a certificate issued to a person under part II that shows his competency as a master or seaman and includes a licence issued under section --- of this Act;
- (g) "Certificate of Registry" means in relation to a Nicaraguan ship, the certificate granted under section 18 of this Act;
- (h) "Consular Officer" means a person in another country appointed to be or to perform the functions of a consular officer for Nicaragua and includes, in respect of any other country or place therein where no such consular officer has been appointed, a consul general, consul or vice consul of any country with whom Nicaragua have made a special arrangement to act on his behalf;
- (i) "Crew Agreement" means an agreement between the master of a ship and the ship's crew entered into pursuant to section --- ;
- (j) "Foreign Ship" means a vessel other than a Nicaraguan ship;
- (k) "Fishing Boat" means a vessel used or intended to be used in capturing fish for gain;
- (l) "Ship or Vessel" means every floating construction destined to navigate in water;
- (m) "Home-trade ship" means a vessel authorised only to ply within home trade limits;
- (n) "Foreign-going ship" means a vessel which is neither a home trade ship, a coastal trade ship nor an inland waters ship; and engaged in the foreign trade has a corresponding meaning;
- (o) "Inspector" means any inspector appointed for the purposes of section ---;

- (p) "Passenger" means any person carried on a ship other than:
- i) the master, a member of the crew, an apprentice or other persons employed or engaged in any capacity on board the vessel on its business;
  - ii) a child under one year of age; and
  - iii) a person on board the ship either in pursuance of an obligation imposed upon the master to carry shipwrecked, distressed or other persons, or by reason of any circumstance that neither the master nor the owner, nor the charterer, if any, could have prevented or forestalled;
- (q) "Passenger ship" means a vessel carrying or constructed for carrying more than twelve persons;
- (r) "Proper Officer" in relation to any function or activity means an officer appointed to perform and engaged in the performance of that function or activity;
- (s) "Registrar" means the registrar of ships under this act;
- (t) "Seaman" means any person employed or engaged in any capacity on board a vessel except:
- i) the master;
  - ii) a pilot;
  - iii) an apprentice unless otherwise expressly provided; and
  - iv) a person temporarily employed on the vessel while in port.
- (u) "International voyage" means a voyage from a port in one country to a port in another country;
- (v) "Pilot" means any person not belonging to the ship's crew who has the conduct thereof;



- (x) "Port of registry" means the port at which the ship is for the time being registered;
- (y) "Officer" means the master, mate, engineer or radio officer of a ship;
- (z) "Wages" includes any emoluments.

## PART II. THE SHIP.

### Registration of Nicaraguan Ship.

#### 6. Qualification for ownership.

- 1) For the purposes of this Act, a ship shall be a Nicaraguan ship when it is owned by:
  - a) A Nicaraguan subject resident in Nicaragua;
  - b) A company established under, and subject to, the law of Nicaragua and satisfying the following requirements:
    - i) its head office and the seat of its board of directors are situated in Nicaragua;
    - ii) at least 60% of the share capital of the company is owned of Nicaraguan Subjects resident in Nicaragua;
    - iii) not less than 75% of the total number of directors of the company including its chairman are Nicaraguan subjects residents in Nicaragua, having lived there for the preceding two years;
  - c) The Nicaraguan Government;
  - d) An institution or a fund administered by the Nicaraguan Government; e) A Nicaraguan municipality.

- 2) If a ship is owned by a foreign subject permanently resident in Nicaragua, the Ministry may in exceptional circumstances recognize the ship as a Nicaraguan ship.
7. Obligation to register Nicaraguan Ship.
- 1) Every Nicaraguan ship of 15 metres or more maximum length shall be registered under this Act;
  - 2) No ship required to be registered shall be recognised as a Nicaraguan ship unless she has been registered under this Act;
  - 3) Any ship which immediately before the commencement of this Act, is registered at a port in Nicaragua in accordance with any enactment repealed by this Act, shall be deemed to have been registered under this Act and shall be recognised as a Nicaraguan ship;
  - 4) A ship required by this Act to be registered may be detained until the master of the ship, if so, required, produces a certificate of registry in respect of the ship.

Procedure for Registration.

8. Ports of Registry.

- 1) The ports at which registration of ships shall be made shall be the ports of Corinto, Sandino, San Juan del Sur, Granada, San Carlos, El Bluff, Cabezas, Rama, and such other ports in Nicaragua as the Ministry may declare to be ports of

registry under this Act.

- 2) The port at which a Nicaraguan ship is registered for the time being under this Act shall be deemed to be her port of registry and the port to which she belongs.

9. Central Register of Ships and appoitment of Registrars

- 1) The National Central Register of Ships shall be kept by the Directorate of Water Transport and shall include all ships for which registration is compulsory;

- 2) The Central Register of Ships shall contain information regarding names of ships, their distinguishing letters, gross and net tonnages, ownership and nationality of the owners. Where a ship is owned by a joint owned shipping firm or other company, the Central Register of Ships shall contain information as to who is managing owner. The registrars of ships shall give notice without delay to the Directorate of Water Transport of every registration relevant to the Central Registry of Ships.

- 3) At each of the ports of Nicaragua named in section 8, the principal officer of the Directorate of Water Transport, shall be the registrar of Nicaraguan ships at that port.

10. Register Book.

Every registrar shall keep a Book to be called the register Book and entries in that Book shall be made in accordance with the following provisions:

- a) the property in each ship is divided into seventy shares;
- b) subject to the provisions of this Act with respect to joint owners or owners by transmission, not more than seventy persons may be registered at the same time as owners of a Nicaraguan ship. This rule does not affect the beneficial interest of any number of persons represented by or claiming under or through any registered owner or joint owner;
- c) no person may be registered as the owner of a fractional part of a share in a ship; but any number of persons not exceeding five may be registered as joint owners of a ship or of any share or shares therein;
- d) Joint owners constitute one only owner as regards the persons entitled to be registered and shall not be entitled to dispose in severalty of any interest in a ship or any share therein in respect of which they are registered;
- e) a corporation may be registered by its corporate name as owner of a Nicaraguan ship or of any shares in a Nicaraguan ship;
- f) any person may, upon payment of the prescribed fee, have access to the register Book at any port of registry at any reasonable time during the hours of official attendance of the registrar.

#### 11. Application for registration.

- 1) Entry into the register of ships shall take place

upon application from the owner of the ship to the registrar in the region within which the owner has chosen the ship's home port.

2)The application shall be made, in the case of individuals, by the person requiring to be registered as owner, or by some one or more of the persons so requiring if more than one, or by his or their agent. In the case of a company requiring to be so registered, the application shall be made by its agent. The authority of the agent shall be testified by writing if appointed by an individual, under the hand of the person appointing him and, if appointed by a corporation, under its common seal.

3)The registrar may require proof of ownership to his satisfaction before proceeding with the registry of a ship.

## 12. Survey and measurements of ships.

1)Whenever application for a ship to be registered is made under the previous section, the owner or other applicant shall cause the ship to be surveyed by a surveyor and the tonnage of the ship to be ascertained in the prescribed manner.

2)The surveyor shall grant a certificate specifying the ship's tonnage and build and such other particulars descriptive of the identity of the ship as the Director may require and the certificate of the surveyor shall be delivered to the registrar before the ship is registered.

13. Marking of Ships.

1) Every ship in respect of which an application for registration under section 11 is made shall, before registry, be marked permanently and conspicuously in the prescribed manner by the Director and to the satisfaction of the registrar and any ship not so marked may be detained by the registrar.

2) Subject to any other provision contained in this Act and to the provisions of any rules made thereunder, the owner and the master of a Nicaraguan ship shall take all reasonable steps to ensure that the ship remains marked as required by this section, and the said owner or master shall not cause or permit any alterations of such marks to be made except in the event of any of the particulars thereby denoted being altered in the manner provided in this Act or except to evade capture by the enemy or by a foreign ship of war in the exercise of some belligerent right.

14. Declaration of Ownership.

1) A person shall not be entitled to be registered as owner of a Nicaraguan ship, or of a share therein, until he, or in the case of a corporation, the person authorized by this Act to make declaration on behalf of the corporation, has made and signed a declaration of ownership referring to the ship as described in the surveyor's tonnage certificate, and containing the following particulars:

- a) the full name and address of the declarant;
- b) a statement whether the ownership is or is not a citizen of Nicaragua; or in the case of a corporation satisfies the requirements specified in clause (b) of section 6;
- c) a statement of the time when, and the place where, the ship was built, or, if the ship was built outside Nicaragua and the time and place of building are unknown, a statement to that effect; and, in addition, in the case of a ship previously registered outside Nicaragua, a statement of the name by which she was so registered;
- d) the name of the master of the ship;
- e) the number of shares in the ship for which he or the corporation, as the case may be, is entitled to be registered as owner;
- f) a declaration that the particulars stated are true to the best of knowledge and belief of the declarant.

2) The declaration of ownership shall be made in a form approved for the purpose by the Director.

15. Other evidence required.

In addition to the declaration of ownership the following evidence must be produced to the registrar on the first registration of a ship as a Nicaraguan ship, namely:

- a) in the case of a ship built in Nicaragua a certificate signed by the builder of the ship and containing a true account of the proper denomination and of the tonnage of the ship as

estimated by him, and of the time when, and the place where, she was built, and of the name of the person, if any, on whose account the ship was built, and, if there has been any sale, the bill of sale under which the ship, or a share therein, has become vested in the applicant for registry;

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

c) in the case of a ship that has been condemned by any competent court, an official copy of the condemnation;

16. Particulars for register.

1) When the requirements of this Part that are preliminary to registration have been complied with, the registrar shall enter in the register book the following particulars of the ship:

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

b) the details comprised in the surveyor's tonnage certificate;

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

d) its official number;

e) the name, address and occupation of her registered



owner or owners, and, if there are more owners than one, the number of shares owned by each of them.

- 2) In the event of any change in the particulars above referred, the owner of the ship shall give notice thereof to the registrar. Such notice shall also be given in the event that a ship is lost or scrapped.
- 3) Notice hereunder shall be given as soon as possible and not later than 30 days from such change or from the occurrence of such event. The registrar may extend the time limit. In the event of a sale, notice shall be given by the buyer, unless the sale results in the ship no longer being regarded as a Nicaraguan ship, in which event notice shall be given by the seller.

17. Documents kept by the registrar.

On the registry of a ship, the registrar shall retain in his possession the following documents:

- a) the surveyor's certificate;
- b) the builder's certificate, if any;
- c) any bill of sale of the ship previously made;
- d) all declarations of ownership;
- e) the copy of the condemnation, if any.

Certificate of Registry.

18. Certificate of registry.

On completion of the registration of a ship and upon payment of the fees prescribed, the registrar shall grant a certificate of registry in such form as may

be approved by the Director.

19. Fees.

There is payable in respect of every vessel registered as a Nicaraguan ship a registration fee in such amount as may be prescribed.

20. Use of certificate.

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

2) No person, whether interested in the ship or not, who has in his possession or under his control the certificate of registry of a ship, shall refuse or omit without reasonable cause to deliver such certificate on demand to the person entitled to the custody thereof for the purposes of the lawful navigation of the ship or to any registrar, customs collector or other person entitled by law to require such delivery.

3) Every person who commits a breach of subsection (2) shall be guilty of an offence and on conviction shall be liable to a fine not exceeding.....

4) If the owner or master of a ship uses or attempts to use for her navigation a certificate of

registry not legally granted in respect of the ship, he shall be guilty of an offence and on conviction shall be liable to a fine not exceeding..... and the ship shall be liable to forfeiture.

21. Power to grant new certificate.

In the event of the certificate of registry of a Nicaraguan ship being defaced or mutilated, the registrar of her port of registry may, on the delivery to him of that certificate, grant a new certificate in lieu thereof.

22 Lost or mislaid certificate..

1) When a certificate of registry of a ship registered in Nicaragua is lost, mislaid or destroyed, the registrar at her port of registry shall grant a new certificate in lieu of her original certificate.

2) If the event referred to in subsection (1) occurs while the ship is at port out of Nicaragua, or if, after the occurrence of that event, the ship first arrives at a port out of Nicaragua, the master of the ship, or some other person having knowledge of the facts of the case, shall make a declaration stating such facts and the names and descriptions of the registered owners of the ship to the nearest available Nicaraguan consular officer who may thereupon grant a provisional certificate containing a statement of the circumstances under which is granted.

2) For the purpose of an endorsement under subsection (1), the master of the ship shall deliver the certificate of registry to the registrar, forthwith after the change if the change occurs when the ship is at her port of registry, and if it occurs during her absence from that port and the endorsement under this section is not made before her return, then, upon her first return to that port.

3) The registrar of any port, not being the ship's port of registry, who is required to make an endorsement under this section may, for that purpose, require the master of the ship to deliver to him the ship's certificate of registry so that the ship need not thereby be detained and the master shall deliver the same accordingly.

25. Delivery of certificate of ships lost or ceasing to be a Nicaraguan ship.

1) In the event of a registered ship being either actually or constructively lost, taken by the enemy, burnt or broken up or ceasing for any reason to be a Nicaraguan ship, every owner of the ship or any share therein shall immediately on obtaining knowledge of the event, if no notice thereof has not already been given, give notice thereof to the registrar at her port of registry, who shall make an entry thereof in the register book and its registry in that book shall be considered as closed except so far as relates to any unsatisfied mortgages entered therein.

2) Unless the ship's certificate of registry is mis-

laid, lost or destroyed, the master of the ship shall, immediately if the event occurs in any Nicaraguan port or within ten days after his arrival in port if it occurs elsewhere, deliver the certificate to the registrar at the port at which the event occurs or at which he first arrives thereafter, or, if there is no registrar at that port, to the registrar at the ship's port of registry. Provided that, if the event occurs at any port out of Nicaragua, or if after the event, the master first arrives at any such port, he shall deliver the ship's certificate of registry to the consular officer at that port.

- 3) If any such owner or master fails, without reasonable cause, to comply with the obligation prescribed in subsection (1) and (2), he shall be guilty of an offence and on conviction shall be liable to a fine not exceeding.....

25. Provisional certificate.

- 1) If, at a port in a foreign country, a ship becomes the property of persons qualified to own a registered Nicaraguan ship, the Nicaraguan consular officer there may grant to her master on his application a provisional certificate for the ship and shall forward a copy of the provisional certificate at the first convenient opportunity to the Director.
- 2) A provisional certificate must be in a form approved by the Director and stating:
  - a) the name of the ship;

- b) the time and place of her purchase and the names of the purchasers;
- c) the name of the master; and
- d) the best particulars respecting the tonnage, build and description of the ship that can be obtained.

- 3) A provisional certificate shall be deemed to be a certificate of registry for the ship for the period of six months from its date or until the arrival of the ship at a port in Nicaragua where there is a registrar whichever first happens, and on either of those events happening shall cease to have effect.

26. Temporary passes instead of certificate of registry.

- 1) When it appears to the Director that because of special circumstances it is desirable that permission be granted to any ship to pass without being previously registered from Nicaragua to a port in another country, he may direct a registrar to grant a pass in respect of that ship specifying the voyage which the ship is thereby authorized to make and specifying also the time for which, and any limits within which, the pass remains valid; and a registrar, when so directed, shall grant the pass accordingly.
- 2) A temporary pass issued under this section shall be in a form approved by the Director; and that pass shall for the time and within the limits therein mentioned, have the same effect as certificate of registry.

Transfer and transmission.

27. Prior approval of the Directorate of Water Transport.

1) No person shall transfer or acquire any Nicaraguan ship or any share or interest therein without the previous approval of the Directorate of Water Transport and any transaction effected in contravention of this provision shall be void and unenforceable.

2) The Directorate of Water Transport may, if it considers it necessary for the purpose of conserving the tonnage of Nicaraguan Shipping, refuse to give its approval to any such transfer or acquisition.

28. Voluntary transfer of ships or share.

1) A registered ship or any shares therein may only be transferred by a bill of sale to a person qualified to own a registered Nicaraguan ship.

2) The Bill of sale must set out the description of the ship as is contained in the surveyor's certificate or some other descriptions sufficient to identify the ship to the satisfaction of the registrar and must be executed by the transferor in presence of, and attested by at least two witnesses.

29. Transmission otherwise than by voluntary transfer.

- 1) When the property in a ship registered in Nicaragua, or any share therein, is transmitted to another person qualified to own the ship on the death or bankruptcy of any registered owner, or by any lawful means other than by voluntary transfer by the registered owner,
  - a) that person shall make a declaration of transmission containing the same description of the ship as is specified in a certificate of registration and stating the manner in which and the person to whom the property has been transmitted;
  - b) a declaration of transmission shall be made before notary in the presence of, and attested by two witnesses and shall be regarded for all purposes as an instrument of transfer of the ship and be registered as required.
  
- 2) When on the death or bankruptcy of the owner of a Nicaraguan ship, or on the distribution of his assets, the ownership of the ship is transferred to a person who is not qualified to own the ship, that person shall, within six months of the transmission of the ownership of the ship to him, sell the ship and if he fails to do so the ownership of the ship shall vest in the Curator of the vacant Estates. In this case the Curator shall sell the ship and pay over to the person in whom the ownership of the ship was originally transmitted, the price obtained on the sale after deduction of the expenses incurred on the sale.

30. Transfer by Court.



When a court under competent jurisdiction orders the sale of a registered ship or any share therein, whether under section 29 or otherwise, the order must contain a declaration vesting in some person named therein the right to transfer that ship or share; and the person so named shall thereupon be entitled to transfer the ship or share in the same manner and to the same extent as if he were the registered owner thereof; and every registrar shall obey the requisition of the person so named as if that person were the registered owner.

31. Registration of Transfer.

1) Every instrument for the transfer of a Nicaraguan ship or of a share therein, when duly executed, shall be produced to the registrar of her port of registry, and the registrar shall thereupon enter in the register book the name of the transferee as owner of the ship or share, and shall endorse on the instrument the fact of that entry having been made with the date and time of entry. In the case of a bill of sale it is necessary to produce to the registrar the document signifying the Director's consent to the transaction in accordance with section 27.

32. Prohibiting Transfer.

1) On the application of any interested person, a court of competent jurisdiction if it thinks fit may, without prejudice to any of its powers and notwithstanding the consent of the Director to the transfer of a ship or any share therein

registered in Nicaragua, by order prohibit for a special time any dealing with a ship or share therein on such terms and conditions as it thinks just, or may act as the justice of the case requires. The court may likewise discharge any order, and in making any order under this subsection, may award or refuse to award costs.

- 2) On being served with an order made under this section, a registrar shall without being made a party to the proceeding, obey the order.

#### Mortgages

### 33. Mortgage of ship or share.

- 1) The owner of a registered ship or of shares therein, can make a security for a loan or other valuable consideration, and the instrument creating the security (in this Act called mortgage) should be in writing and before Notary. In the case of co-ownership they can create a mortgage on the whole ship, provided this is decided by the owners of the seventy-five percent of the shares.
- 2) For the purpose of registration of a mortgage, an application must be made by the owner or by the holder of the mortgage to the registrar of the ship's port of registry. In addition to the application, a certified copy of the instrument whereby the mortgage is created must be produced to the registrar who shall record it in the register book.

3) Regarding to the registration of a mortgage the minimum information to be record in the register book is the following:

- a) name of the vessel and other description sufficient to identify the ship;
- b) name and adress of the owner;
- c) name and adress of the mortgagee;
- d) date of execution of the mortgage ;and
- e) maximum amount secured.

4) Mortgages shall be recorded by the registrar in the order in time they are produced to him for that purpose, and the registrar shall, by memorandum under his hand, notify on each mortgage that it has been recorded by him stating the date and time of that record.

#### 34. Discharge of mortgage.

If a mortgage is discharged, the registrar shall, on the production of the mortgage deed with a receipt for the mortgage money endorsed thereon, duly signed and attested, make an entry in the register book to the effect that the mortgage has been discharged; and on that entry being made the estate, if any which passed to the mortgage shall vest in the person in whom, having regard to intervening acts or circumstances, if any, it would have vested, if the nortgage had not been made.

#### 35. Priority of mortgages.

If there are more mortgages than one registered in respect of the same ship or share, the mortgages

shall, notwithstanding any express, implied or constructive notice, be entitled in priority one over the other, according to the date and time at which each mortgage is recorded in the register book and not according to the date of each mortgage itself.

36. Status of mortgages.

Except as far as is necessary to make a mortgaged ship or mortgaged share available as a security for the mortgage debt, the mortgagee shall not, by reason of his mortgage, be deemed to be the owner of the ship or share, nor shall the mortgagor be deemed to have ceased to be owner thereof.

37. Rights of mortgagee.

1) A registered mortgagee of a ship or share shall be entitled to recover the amount due under the mortgage in the competent court, and when passing a decree or thereafter the competent court may direct that the mortgaged ship or share be sold in execution of the decree.

2) Subject to the provision of subsection (1), no such mortgagee shall merely by virtue of the mortgage be entitled to sell or otherwise dispose of the mortgaged ship or share.

38. Mortgage and bankruptcy.

A registered mortgage of a ship or share is not affected by any act of bankruptcy committed by the

mortgagor after the date of the record of the mortgage in the register, notwithstanding that the mortgagor at the beginning of his bankruptcy had the ship or share in his possession, order or disposition or was reputed owner thereof; and the mortgagee is preferred to any right, claim or interest therein of the other creditors of the bankruptcy or any trustee or assignee on their behalf.

39. Transfer of mortgage.

- 1) A registered mortgage of a ship or share may be transferred to any person; and the instrument effecting the transfer shall be in writing and before Notary.
- 2) On the production of an instrument effecting a transfer of mortgage the registrar shall record it by entering in the register book the name of the transferee as mortgagee of the ship or share and shall endorse and sign on the mortgage, and on the instrument effecting the transfer thereof, a note that the transfer has been recorded by him, stating the date and time of that record.
- 3) The person to whom any such mortgage has been transferred shall enjoy the same right of preference as was enjoyed by the transferor.

40. Transmission of interest in mortgage by death, bankruptcy, etc.

- 1) If the interest of a mortgage in a ship or share therein is transmitted on death or bankruptcy of

the mortgagee, or by other lawful means, other than by a transfer under this part, the transmission shall be authenticated by a declaration of the person to whom the interest is transmitted containing a statement of the manner in which and the person to whom the property has been transmitted, and shall be accompanied by the like evidence as is required by this Part in the case of a corresponding transmission of the ownership of a ship or share.

- 2) The registrar on the receipt of the declaration, and the production of the evidence as aforesaid, shall enter the name of the person entitled under the transmission, in the register book as the mortgagee of the ship or share in respect of which the transmission has occurred.

Name of Ship :

41. Ships name.

- 1) A registrar may refuse the registration of a ship by a name proposed for the registration if the name is already the name of a Nicaraguan ship or a name so similar as to be calculated to deceive.
- 2) A Nicaraguan ship shall not be described by any name other than by which the ship is for the time being registered.

42. Change of name.

- 1) A change may not be made in the name of a

Nicaraguan ship without the previous written consent of the Director.

- 2) The Director may not grant permission to change the name of a Nicaraguan ship unless he is satisfied that all registered mortgagees thereof have been notified of the proposed change of name.
- 3) Application for a change of name must be in writing and if the Director is of the opinion that the application is reasonable he may entertain it subject to a notice thereof being published in the Gazette.
- 4) When permission is granted by the Director to change a ship's name, the name shall forthwith be changed in the register, in the ship's certificate of registry and on the bow and stern of the ship.

#### 43. Offence.

- 1) A person is guilty of an offence who contravenes or permits any other person under his control to contravene section 41 or 42 of this Act.
- 2) The Director may suspend the certificate of registry of a ship until any contravention of section 41 or 42 is remedied.

#### Registration of Alterations and Registration Anew.

#### 44. Alterations in ships.

- 1) When a Nicaraguan ship is so altered as not to correspond with the particulars relating to her tonnage or description in the register book, then, if the alteration is made at any port having a registrar, that registrar, or if it is made elsewhere, the registrar of the first port having a registrar at which the ship arrives after the alteration, shall, on application being made to him stating the particulars of the alteration, either cause the alteration to be registered or direct that the ship be registered anew.
- 2) The alteration must be notified to a registrar within thirty days after the completion of the alteration or after the arrival of the ship at a national port.
- 3) Where there is a failure to comply with the requirement of subsection (2), the Director may suspend the certificate of registry of the ship in respect of which the failure occurs.

45. Registration of alterations.

- 1) For the purpose of registry of an alteration in a ship the ship's certificate of registry must be produced to the registrar and the registrar shall in his discretion, either retain the certificate of registry and grant a new certificate of registry containing a description of the ship as altered or endorse and sign on the existing certificate a memorandum of the alteration.



- 2) Where any registrar, not being the registrar at the ship's port of registry, grants a new certificate or endorses an existing certificate under this section, he shall forthwith send a report of the particulars of the case to the registrar at the ship's port of registry, containing a statement to that contained in the certificate or endorsement, and accompanied, where a new certificate has been granted, by the former certificate of registry.
- 3) The particulars of the alteration so made, and the fact of the new certificate having been granted or the endorsement having been made, shall be entered in his register book by the registrar at the ship's port of registry.

46. Provisional certificate and endorsement.

- 1) Where any registrar, not being the registrar at the ship's port of registry, on an application as to an alteration in a ship directs the ship to be registered anew, he shall either grant a provisional certificate, describing the ship as altered, or provisionally endorse the particulars of the alteration on the existing certificate.
- 2) The registrar granting a provisional certificate or provisionally endorsing a certificate under this section shall add to the certificate or endorsement a statement that the same is made provisionally, and shall send a report of the particulars of the case to the registrar of the ship's port of registry, containing a similar sta-

tement as the certificate or endorsement.

- 3) The master of every ship in respect of which a provisional certificate is granted or a certificate is endorsed under this section shall, within ten days of the ship's first arrival thereafter at a port in Nicaragua, deliver that certificate to the registrar at that port, or, if there is no registrar at that port, to the registrar at the ship's port of registry.

47. Registration anew on change of ownership.

- 1) Where the ownership of a Nicaraguan ship is changed, the registrar of the port at which the ship is registered may, on the application of the owner of the ship, register the ship anew, even though registration is not required under this Act.
- 2) In the case above mentioned the registrar shall proceed as in the case of first registry, and on delivery to him of the existing certificate of registry and on the other requisites to registry, being duly complied with, shall make such registry anew, and grant a certificate thereof.
- 3) When a ship is registered anew, the former registration of the ship is closed except so far as that registration relates to any unsatisfied mortgage entered thereon, but the names of all persons appearing by the former registration to be interested as owners or mortgagees in the ship registered anew must be entered on the new

registration and the registration anew does not in any way adversely affect the rights of any of those persons.

48. Wrecked ship.

Where the registration of a Nicaraguan ship is closed because the ship has been wrecked or abandoned, or for any reason other than capture by the enemy, the ship shall not be re-registered until she has at the expense of the applicant for the registry been surveyed by a surveyor and certified by him to be seaworthy.

National Character and Flag.

49. Nationality and flag.

- 1) A customs officer shall not grant a clearance for any ship until the master of the ship has declared to him the name of the country to which he claims that the ship belongs; and that officer shall thereupon inscribe that name on the clearance.
- 2) If a ship attempts to proceed to sea without the clearance, the ship may be detained by the customs officer until the declaration is made.

50. National colours.

- 1) The flag of Nicaragua constitutes the national colours of a Nicaraguan ship.
- 2) A Nicaraguan ship must hoist the national colours

on entering or leaving any port and on signal being made to the ship by any vessel of the Nicaraguan navy.

Miscellaneous.

51. Notice of Trust.

- 1) No notice of any express, implied or constructive trust may be entered in a register nor may a registrar receive any such notice.
- 2) Subject to any rights and powers appearing by the register book to be vested in any other person, - the registered owner of a ship or share therein has power to dispose absolutely of the ship or share in the manner provided by this Act and to give effectual receipts for any money paid or advanced by way of consideration.

52. Liability of owners.

Where any person is beneficially interested otherwise than by way of mortgage in any ship or share in a ship registered in the name of some other person as owner, the person so interested shall, as well as the registered owner, be subject to all the pecuniary penalties imposed by this Act on the owners of ships or shares therein, so nevertheless that proceedings for the enforcement of any such penalties may be taken against both or either of the said parties with or without joining the other of them.

53. Evidence of Register Book.

- 1) On application to the registrar and on payment of the prescribed fee, a person may, at any time during office hour, inspect any register book, and may obtain a certified copy of any entry in the register book.
- 2) The following documents shall be admissible in evidence in any court in the manner provided by this Act, namely:
  - a) any register book on its production from the registrar having custody thereof;
  - b) a certificate of registry purporting to be signed by a registrar;
  - c) an endorsement on a certificate of registry purporting to be signed by a registrar;
  - d) a declaration made under this Part in respect of a Nicaraguan ship.
- 3) A certified copy of an entry in a register book shall be admissible in evidence in any court and have the same effect to all interests as the original entry in the register book of which it is a copy.

54. Fees.

The Minister of Finance may, by regulation, prescribe the fees to be charged under this Act for registration, for certificates of registry, endorsements thereon and for the change of name, transfer, transmission, mortgage, survey, inspection of register and for the other functions performed under this Act.

## PART III. THE CREW.

### Certificate of Officers, Masters, Mates and Engineers.

#### Certificates of Competency.

#### 55. Certificates of competency.

- 1) The following classes of ships shall, when going to sea, be provided with officers duly certificated in accordance with this Act, namely:
  - a) a Nicaraguan foreign-going ship;
  - b) a Nicaraguan ship carrying passengers;
  - c) a Nicaraguan home trade ship of not less than 200 gross register tons and not carrying passengers;
  
- 2) Certificated officers shall be provided for ships in accordance with the following scale:
  - a) in every case, with a duly certificated master;
  - b) if the ship is over 100 gross register tons but not over 200 gross register tons or more, with at least one officer in addition to the master and holding a certificate not lower than that of second mate in case of a foreign-going ship and of mate in the case of a home-trade passenger ship;
  - c) if the ship is over 200 gross register tons but not over 1600 gross register tons and is

engaged on voyages where the distance between the ports visited:

- i) does not exceed 500 nautical miles, at least one officer besides the master and holding a certificate not lower than second mate; or
  - ii) exceeds 500 nautical miles, at least two officers besides the master, one holding a certificate not lower than second mate and the other holding a certificate not lower than third mate;
- d) if the ship is over 1600 gross register tons and is engaged on voyages where the distance between the ports visited:
- i) does not exceed 500 nautical miles, at least two officers besides the master, one holding a certificate not lower than first mate and the other holding a certificate not lower than second mate; or
  - ii) exceeds 500 nautical miles, at least three officers besides the master, and holding a first mate, a second mate and a third mate certificate respectively;
- e) every foreign-going Nicaraguan ship when going to sea from any port or place in Nicaragua shall be provided with engineers duly certificated under this Act according to the following scale:
- i) if the ship is of one hundred nominal horse power or more, with at least two engineers one of whom shall be a first class engineer designated as the chief engineer and the other a first class or second class engineer designated as the second engineer;
  - ii) if the ship is of less than one hundred

nominal horse power,with at least one first class or second class engineer designated as the chief engineer.

f)every home-trade Nicaraguan ship when going to sea from any port or place in Nicaragua and every ship carrying passengers between ports or places in Nicaragua shall be provided with engineers duly or engine drivers duly certificated according to the following scale:

i)if the ship is of fifty nominal horse power or more,with at least one first class or second class engineer designated as the chief engineer;

ii)if the ship is of less than fifty nominal horse power,with at least one first class or second class engineer designated as the chief engineer,or with at least one engine driver of a sea-going ship.

g)every fishing vessel when going to sea from any port or place in Nicaragua shall be provided:

i)if the vessel exceeds twenty-five gross register tons but does not exceed fifty gross register tons,with a certificated skipper;

ii)if the vessel exceeds fifty gross register tons,with a certificated skipper and a certificated second hand;

iii)if the vessel is of fifty nominal horse power or more,with at least one engineer duly certificated,being an engineer of a fishing vessel,who shall be designated as the chief engineer;

iv)if the vessel is of less than fifty nominal horse power,with at least one engineer duly certificated,being an engineer of a fishing



vessel, who shall be designated as the chief engineer or with at least one engine driver of a fishing vessel duly certificated.

- 3) An officer is not duly certificated within the meaning of this Part at least he holds a certificate of a grade appropriate to his station in the ship or a higher grade granted in accordance with this Act.

#### 56. Grades of certificates

- 1) Certificates of competency may be granted in accordance with this Act in each of the following grades:
  - a) master of a foreign-going ship;
  - b) first mate of a foreign-going ship;
  - c) second mate of a foreign-going ship;
  - d) third mate of a foreign-going ship;
  - e) master of a home-trade ship;
  - f) mate of a home-trade ship;
  - g) first class engineer;
  - h) second class engineer;
  - i) engine driver of a sea going ship;
  - j) skipper of a fishing vessel;
  - k) second hand of a fishing vessel;
  - l) engineer of a fishing vessel;
  - m) engine driver of a fishing vessel;
- 2) A certificate of competency for a foreign-going ship is of a higher grade than the corresponding certificate for a home-trade ship, and entitles the holder to go to sea in the corresponding grade in such last mentioned ship; but no certificate

for a home-trade ship shall entitle the holder to go to sea as master or mate of a foreign-going ship.

57. Examinations for competency.

- 1) The Director shall appoint persons for the purpose of examining the qualifications of persons desirous of obtaining certificates of competency.
- 2) The Director shall grant the appropriate certificate of competency to every applicant who is duly reported by the examiners to have passed his examination and to have given satisfactory evidence of his experience, ability and good conduct on board ship.

58. Form of certificates.

Every certificate of competency granted under this Act shall be in the form prescribed by the Director and shall be made in duplicate, and one copy shall be delivered to the person entitled to the certificate, and the other shall be kept and recorded in the prescribed manner.

59. Record of certificate of competency.

A record of certificates of competency and of the suspending, cancelling, altering or otherwise affecting those certificates shall be kept by the Director.

60. Loss of certificate.

If a person holding a certificate granted in accordance with this Act proves to the satisfaction of the Director that he has, without fault on his part, lost or been deprived of such certificate, the Director shall, upon payment of the prescribed fee, cause a copy of the certificate to which, by the record kept under this Act, he appears to be entitled, and such copy shall have all the effect of the original.

61. Duty to inform.

- 1) The master of every Nicaraguan ship upon signing the agreement with his crew, shall forthwith inform the Director in writing of the name, grade and number of the certificate of competency and licence of each officer (including the master himself) employed on the ship.
- 2) When a certificated officer ceases to be employed on a Nicaraguan ship, or a new certificated officer becomes employed on the ship, the name, grade and number of the certificate and licence of that officer shall forthwith be despatched in writing to the Director by the master of the ship.

62. Production of certificates.

Any person serving or engaged to serve in any Nicaraguan ship who holds any certificate of competency, shall on demand, produce the certificate to any inspector or proper officer and, if that

officer is not himself the master, to the master of the ship.

63. Power to cancel or suspend certificates.

- 1) If it appears to the Director that the holder of a certificate of competency issued according with this Act has obtained it on false or erroneous information, he may cancel or suspend such certificate.
- 2) The Director may also suspend or cancel a certificate of competency if its holder is convicted by any court in Nicaragua of an offence relating to or connected with shipping matters.
- 3) The Director may, in his discretion, at any time direct the re-issue or return of any certificate of competency cancelled or suspended under this section or may direct the grant of a certificate of competency of the same or a lower grade.

64. Recognition of certificates granted by other Governments.

If according to the laws in force in any country other than Nicaragua are granted certificates of competency or service similar to those referred to in this Act, and the Director is satisfied :

- a) that the conditions under which any such certificates are granted in that country require standards of competency or service not lower than those required for the grant under this Act of corresponding certificates; and

b) that certificates granted under this Act are accepted in that country in lieu of the corresponding certificates granted under the laws of that country;  
the Director may declare that any certificate of competency or service granted under the laws in force in that country be recognised as equivalent to the corresponding certificate of competency or service granted under this Act.

Seamen and Apprentices.

Apprenticeship to the sea service.

65. Signature of contracts.

- 1) All contracts of apprenticeship to the sea service intended to be performed on Nicaraguan ship must be in writing and signed by the apprentice or on his behalf by his guardian, if the apprentice is a minor and the master or owner of the ship requiring the apprentice.
- 2) Every such contract shall be executed in triplicate and in the presence of a registrar, who shall attest the signature if he has, before the contract is signed, satisfied himself:
  - a) that the intended apprentice :
    - i) understand the contents and provisions of the contract;
    - ii) freely consent to be bound thereby;
    - iii) has attained the age of fifteen years; and
    - iv) is in possession of a certificate to the effect

that he is physically fit for sea service.  
b)if the intended apprentice is a minor,that his guardian's consent has been obtained to his being contracted.

66. Manner in which apprenticeship contract is to be recorded.

- 1) The Director shall keep a copy of every contract of apprenticeship in his office,which shall,upon payment of the prescribed fee,be made available for inspection by the public.
- 2) The master or owner of the ship to whom an apprentice to the sea service is bound shall send the contract in triplicate within ten days of the execution thereof,to the registrar,who shall record one copy, another shall transmit to the Director and endorse on the other the fact that it has been recorded and redeliver it to the master or owner.
- 3) The master or owner shall notify any assignment or cancellation of the contract and the death or desertion of the apprentice to the registrar,within thirty days of the occurrence,if it occurs within Nicaragua,or, as soon as circumstances permit,if it occurs elsewhere. The registrar shall forthwith inform in writing to the Director of those acts.

Seamen's employment offices.

67. Seamen's employment offices.

- 1) The seamen's employment offices are directed by the Directorate of Water Transport which will determine the places where there will be such offices.
- 2) It shall be the business of the seamen's employment offices :
  - a) to regulate and control:
    - i) the supply of such categories of seamen and for such class of ships as may be prescribed;
    - ii) the recruitment of persons for employment as seamen and the retirement of seamen from such employment;
    - iii) the promotion of seamen or changes of their categories.
  - b) to maintain registers of seamen;
  - c) to perform such other duties relating to seamen and merchant ships as are, from time to time, committed to them by or under this Act.
- 3) Where there is a seamen's employment office, no person shall receive or accept to be entered on board any ship any seaman; unless such seaman has been supplied by such seamen's employment office.

68. Supply or engagement of seamen in contravention of Act prohibited.

- 1) A person shall not engage or supply a seaman to be entered on board any ship in Nicaragua unless that person is the owner, master or mate of the ship, or is the agent of the owner or is the chief

of a seamen's employment office.

2) A person shall not employ for the purpose of engaging or supplying a seaman to be entered on board any ship in Nicaragua any person unless that person is the owner, master or mate of the ship or is the agent of the owner or is the chief of a seamen's employment office.

3) A person shall not receive or accept to be entered on board any ship any seaman, if that person knows that the seaman has been engaged or supplied in contravention of this section.

69. Receipt of remuneration from seamen prohibited.

No person shall demand or receive, either directly or indirectly, from any seaman, or from any person seeking employment as a seaman, any remuneration whatever for providing him with employment, other than the fees authorised by this Act.

#### Engagement of Seamen.

70. Engagement of seamen.

No person shall engage any seaman to work in any capacity on board any ship, unless the seaman is in possession of a certificate granted by the Ministry of Health to the effect that he is physically fit to be employed in that capacity.

71. Prohibition of engagement of unauthorised seamen.



No person shall engage any seaman in any ship, except in a home-trade ship of less than two hundred gross register tons, from any port in Nicaragua unless the seaman is in possession of a certificate of discharge issued under this Part.

72. Crew agreement .

The master of every Nicaraguan ship, except a home-trade ship of less than two hundred gross register tons, shall enter into an agreement in accordance with this Act with every seaman whom he engages and carries to sea as one of his crew from any port in Nicaragua.

73. Contents of agreement.

- 1) A crew agreement must be in the form prescribed by the Directorate of Water Transport and dated at the time of the first signature thereof and must be signed by the master before a seaman signs it.
- 2) The crew agreement shall contain information about:
  - a) the place at which it is made;
  - b) the employee's full name, his birth place, year and date of birth, place of residence and nationality;
  - c) the employer's full name and address;
  - d) the name of the vessel if the employee is to serve on one vessel;
  - e) the position to be taken up by the employee

- in service. Any later alteration as regards position shall be entered in the crew agreement;
- f) either the nature and as far as practicable, the duration of the intended voyage or engagement, and the places or parts of the world, if any, to which the voyage or engagement is not to extend;
  - g) the number and description of the crew;
  - h) if possible, the place and date at which each seaman is to be on board or to begin work;
  - i) any collective wages agreement to be used in the relationship. If no such collective wages agreement exists, the agreed wages per month and overtime payment shall be stated;
  - j) the day from which the wages shall be payable;
  - k) place and date of the entering into the agreement;
  - l) the scale of the provisions that are to be furnished to seamen;
  - m) a scale of warm clothing and a scale of additional provisions to be issued to each seaman during periods of employment in specified cold regions;
  - n) any regulations as to conduct on board, fines, short allowance of provisions or other lawful punishment for misconduct that have been approved by the Director as regulations proper to be adopted and that the parties agree to adopt
  - o) payment of compensation for personal injury or death caused by accident arising out of and in the course of employment.

3) The crew agreement shall be written in two copies so that the parties of the agreement have one copy each of the crew agreement.

4) A crew agreement made under this section is terminated by:

- a) a mutual consent of the parties thereto;
- b) the death of the seaman; or
- c) the loss or total unseaworthiness of the ship.

74. Agreement for foreign-going ship.

The following provisions shall have effect with respect to every crew agreement made in the case of a Nicaraguan foreign-going ship:

- 1) The agreement shall be signed by each seaman.
- 2) The master shall give reasonable facilities to the seaman and his adviser, if any, to examine the agreement and shall cause the agreement to be read over and explained to each seaman, in a language understood by him or shall otherwise ascertain that each seaman understands the same before he signs it, and the master must attest each signature.
- 3) The agreement shall be signed in triplicate, and one part shall be forwarded to the owner, another shall be transmitted to the nearest seamen's employment office of the place where the engagement took place, and the other shall be retained by the master and shall contain a special place or form for the descriptions and signatures of substitu-

tes or persons engaged subsequently to the first departure of the ship.

- 4) When a substitute is engaged in the place of a seaman who has duly signed the agreement and whose services are, within twenty-four hours of the ship's putting to sea, lost by death, desertion or other unforeseen cause, the master must, before the ship puts to sea, if practicable, and if not as soon as possible after the ship puts to sea, cause the agreement to be read over and explained to the substitute, and the substitute must thereupon sign the same in the presence of a witness, who shall attest the signature.
- 5) An agreement may be made for a voyage of the ship or, if the voyages of the ship average less than six months in duration, may be made to extend over two or more voyages, and agreements so made is in this Act referred to as a running agreement.
- 6) A running agreement does not extend beyond the twelve months' period of time next following the date of the marking or the first arrival of the ship at her port of destination after the termination of that period.
- 7) On every return to a port in Nicaragua before the final termination of a running agreement, the master shall make on the agreement an endorsement as to the engagement or discharge of seamen, either that no engagements or discharges have been made or are intended to be made before the ship leaves port, or that all those made have been made

as required by law.

- 8) The master shall deliver the running agreement so endorsed to the chief of the nearest seamen's employment office of the place where the engagement took place. If the provisions of this Act relating to agreements have been complied with, the chief of the seamen's employment office shall sign the endorsement and return the agreement to the master.

75 . Changes in crew to be Reported.

The master of every foreign-going Nicaraguan ship and of every home-trade Nicaraguan ship of two hundred gross register tons or more, shall, before leaving the port where the engagement took place, sign and send to the nearest seamen's employment office a full and accurate statement in the prescribed form, of every change which has taken place in his crew.

76. Employment of young persons.

- 1) Children under fifteen years of age shall not be employed or work in any capacity on board any ship except:
  - a) in a school ship or training ship; or
  - b) in a ship in which all persons employed are members of one family; or
  - c) in a home-trade ship of less than two hundred gross register tons; or
  - d) where such children is to be employed on nominal wages and will be in the charge of his father or other adult nearmale relative.

- 2) No individual under the age of eighteen years of age may be employed or work in the engine room of any ship unless he is an apprentice working under supervision.

77. Medical examination.

- 1) No person under eighteen years of age shall be engaged or carried to sea to work in any capacity on board any ship, other than ships on which only members for the same family are employed, unless there has been delivered to the master a medical certificate attesting the fitness of such person for such work, signed by a doctor working under the services of the Ministry of Health.
- 2) In urgent cases, the chief of a seamen's employment office may allow a young person under eighteen years of age to embark without having the medical certificate provided for in subsection (1), always provided that such an examination shall be done at the first port at which the ship calls.
- 3) A medical certificate to the effects of this section shall remain in force for one year only from the date on which it is granted.

Discharge of seamen.

78. Discharge of seamen.

When a seaman serving on board any foreign-going ship or in a home-trade Nicaraguan ship of two hun-

dred gross register tons or more is, on the termination of his engagement, discharged in Nicaragua he shall be discharged in the manner provided by this Act.

79. Certificate of discharge.

- 1) The master shall sign and give to a seaman discharged from his ship, either on his discharge or on payment of his wages, a certificate of his discharge in a form approved by the Director, specifying the period of his service and the time and place of his discharge.
- 2) The master shall also, upon the discharge of every certificated officer, whose certificate of competency has been delivered to and retained by him, return the certificate to the officer.

80. Certificate as to work of seamen.

- 1) When a seaman is discharged from a Nicaraguan ship, the master thereof shall produce to the chief of the nearest seamen's employment office where the discharge took place a report in the form prescribed by the Director stating:
  - a) the conduct, character and the quality of the work of the seaman; or
  - b) Whether the seaman has fulfilled his obligation under the agreement with the crew; or
  - c) That the declines to express an opinion on those particulars.
- 2) The chief of the seamen's employment office to

whom a discharge report has been produced shall, if the seaman so desires, give to him or endorse on his certificate of discharge a copy of such report.

- 3) If the master states that he declines to express an opinion on the particulars mentioned in clauses (a) and (b) of subsection (1), he shall enter his reasons for so declining in the official log book.

81. Wages and property of (such) seaman.

- 1) If a seaman or apprentice is left behind, the master shall enter in the official log book a statement of the amount due to the seaman or apprentice in respect of wages at the time when he was left behind and of all property left on board by him, and shall take such property into his charge.
- 2) Within seventy-two hours after the arrival of the ship at the port in Nicaragua at which the voyage terminates, the master shall deliver to the chief of the nearest seamen's employment office:
  - a) a statement expressing the amount due to the seaman or apprentice in respect of wages, and of all property left on board by him; and
  - b) a statement, with full particulars, of any expenses that may have been caused to the master or owner of the ship by the absence of the seaman or apprentice, where the absence is due to a contravention by the seaman or apprentice of section 116 of this Act.



3) The master shall at the time when delivers the statements prescribed in subsection (2) to the chief of the seamen's employment office also deliver to him the amount due to the seaman or apprentice in respect of wages and the property that was left on board by him, and the chief of the seamen's employment office shall give to the master a receipt therefore in the form prescribed by the Director.

82. Repatriation of seamen.

1) When a seaman or apprentice is landed without his consent at a port outside Nicaragua during the term of his engagement or on its expiration, the master or owner of the ship shall, make adequate provision for the maintenance of the seaman or apprentice according to his rank or rating, and for the return of that seaman or apprentice to his own country.

2) If the master or owner fails without reasonable cause to comply with subsection (1), the expenses of maintenance and of the return to the own country, if defrayed by the seaman or apprentice, be recoverable as wages due to him.

3) The expenses of repatriation shall include the transportation charges, the accommodation and the food of the seaman or apprentice during the journey.

83. Discharge of seamen on change of ownership.

- 1) If a Nicaraguan ship is transferred while she is at or on a voyage to any port outside Nicaragua every seaman or apprentice belonging to that ship shall be discharged at that port; unless he consents in writing in the presence of the Nicaraguan consular officer to complete the voyage in the ship if continued.
- 2) If a seaman or apprentice is discharged from a Nicaraguan ship in terms of subsection (1), the provisions of section 82 shall be applied.
- 3) Every seaman or apprentice discharged in terms of subsection (1) shall, if the voyage for which he was engaged is not continued, be entitled to the wages to which he would have been entitled if his service had been wrongfully terminated by the owner before the expiration of the period for which the seaman was engaged or the apprentice was bound.

Payment of wages.

84. Account of wages.

- 1) The master of a Nicaraguan ship shall, before paying off or discharging a seaman, deliver at the time and in the manner provided in this Act, a full and true account of the seaman's wages and of all deductions to be made therefrom for any reasons whatever.
- 2) The account shall be delivered to the seaman not

less than twenty-four hours before the discharge or payment off.

85. Deductions from wages of seamen.

- 1) No deduction from the wages of a seaman may be made unless the deduction is included in the account delivered in pursuance of section 84, except in respect of a matter happening after the delivery of the account.
- 2) The master shall during the voyage enter the various matters in respect of which the deductions are made, with the amount of the respective deductions as they occur, in a book to be kept for that purpose, and shall, if required, produce the book at the time of the payment of wages and also upon the hearing before any competent authority of any complaint or question relating to that payment.

86. Time of payment of wages.

- 1) The master, owner or his agent of a Nicaraguan ship shall pay to each seaman belonging to that ship the wages of the seaman within three days after the arrival of the ship at the port where the crew is to be discharged or upon the seaman's discharge, whichever first happens.
- 2) If a master, owner or his agent fails without reasonable cause to comply with the provision of subsection (1), he shall pay to the seaman an additional sum not exceeding the amount of two days' pay for each of the days commencing from

the day of discharge during which payment is delayed, but the sum so payable shall not exceed ten days' double pay. The chief of the nearest seamen's employment office where the discharge took place will decide on this matter.

87. Settlement of wages.

- 1) Where a seaman is discharged and the settlement of his wages completed, he shall sign a release, in an approved form by the Director, of all claims in respect of the past voyage or engagement, and the release shall also be signed by the master, owner or his agent and attested by the chief of the nearest seamen's employment office.
- 2) The release shall be retained by the chief of the seamen's employment office and shall operate as a mutual discharge and settlement of all claims between the parties thereto in respect of the past voyage or engagement but shall not debar a claim to compensation for personal injury caused by accident arising out of and in the course of employment.
- 3) The chief of the seamen's employment office shall, if required, certify a copy of the release and give it to any party thereto. This copy shall have all the effect of the original of which it purports to be a copy.

88. Production of ship's paper.

In any proceedings under this Act before the chief

of a seamen's employment office relating to wages, claims or discharge of a seaman, the chief of the seamen's employment office may require the owner, master or agent or any mate or other member of the crew to produce any log books, papers or other documents in his possession or power relating to the matter in question in the proceedings, and may require the attendance of and examine any of those persons who are then at or near the place on the matter.

Advance an allotment of wages.

89. Allotment notes.

1) A seaman may require that a stipulation be inserted in the crew agreement for the allotment of any part of the amount of the monthly wages payable to him in favour of any such member of his family or any such relative or for any such purpose approved by the chief of the nearest seamen's employment office.

2) An allotment note shall be in the prescribed form by the Director being signed by the owner, master or agent of the ship and by the seaman and shall be inserted in the crew agreement.

90. Commencement and payment of sums allotted.

1) A payment under an allotment note shall begin at the expire of one month from the date of the agreement, and shall be made at the expiration of every subsequent month after the first month, and

shall be made only in respect of the wages earned before the date of payment.

- 2) The person in whose favour an allotment note is made may, unless the seaman is shown in the manner prescribed in this Act to have forfeited or ceased to be entitled to the wages out of which the allotment is to be paid, recover the sums allotted as they are made payable with costs from the owner of the ship with respect to which the engagement was made or from any agent of the owner who has authorised the allotment, in the same court and manner in which wages of seamen are recoverable under this Act.
- 3) In any proceedings under subsection (2), it is sufficient for the claimant to prove that:
  - a) he is the person mentioned in the allotment note; and
  - b) the note was given by the owner or by the master or some authorised agent.
- 4) In any proceedings under subsection (2), the seaman is presumed to be duly earning his wages unless the contrary is shown to the satisfaction of the court:
  - a) by the official statement of the change in the crew caused by his absence, which must be made and signed by the master.
  - b) by a certified copy of some entry in the official log book to the same effect; or
  - c) by such other evidence as the court in its absolute discretion considers sufficient to show satisfactorily that the seaman has ceased

to be entitled to the wages out of which the allotment is to be paid.

91. Facilities for remitting wages.

Where the balance of wages due to a seaman is more than ( one hundred and fifty dollars) and the seaman expresses to the master of the ship, his desire to have facilities afforded to him for remitting all or any part of the balance to an account in a bank or to a near relative, the master shall provide the seaman with all reasonable facilities for so doing, so far as regards so much of the balance as in excess of ( one hundred and fifty dollars ).

Rights of seamen in respect of wages.

92. Right to wages.

- 1) The right of a seaman to wages and provisions begins from the day stipulated in the employment agreement, but at the latest from the day the seaman enters into service on board. If in order to get to the ship, he has to make a journey from the place where he entered into the agreement, the wage shall run from the day he starts the journey.
- 2) The wages run up to and include the day on which the employment relationship terminates unless otherwise stipulated in the collective wages agreement.

93. Wages and salvage.

- 1) A seaman cannot by any agreement :
  - a) forfeit his lien on a ship;
  - b) be deprived of any remedy for the recovery of his wages to which, in the absence of the agreement, he would be entitled;
  - c) abandon his right to wages in case of the loss of the ship; or
  - d) abandon any right that he may have or obtain in the nature of salvage.
  
- 2) Any stipulation in any agreement contrary to the subsection (1) or any other provisions of this Act is void.

94. Wages not depend on freight.

- 1) The right to wages does not depend on the earning of freight, and every seaman and apprentice who would be entitled to demand and recover any wages if the ship in which he has served had earned freight, shall, subject to all other rules of law and conditions applicable to the case, be entitled to demand and recover the same notwithstanding that freight has not been earned, but in case of wreck or loss of the ship, proof that the seaman has not exerted himself to the utmost to save the ship, cargo and stores shall bar his claim to wages.
  
- 2) Where a seaman or apprentice who would, but for death, be entitled by virtue of this section to demand and recover any wages, dies before the wages are paid, they shall be paid and applied in



the same way as the wages of a seaman who dies during a voyage.

95. Wages when service ends.

- 1) Where the service of a seaman terminates before the date contemplated in the agreement by reason of his being left on shore at a place outside Nicaragua under a certificate of his unfitness or inability to proceed on the voyage, the seaman is entitled to wages for time served up to the time of that termination but not for any further period.
- 2) Where the service of a seaman terminates before the date contemplated in the agreement by reason of the wreck, loss or abandonment of the ship, the seaman shall be entitled to receive wages in respect of each day on which he is in fact unemployed during a period of one month from the date of termination of the service at the rate to which he was entitled at that date, except so far as he obtains other suitable employment.

96. Wages not to accrue.

- 1) A seaman or apprentice shall not be entitled to wages for any period during which he is absent without leave from his ship or from his duty; or for any period during which he unlawfully refuses or neglects to work when required, whether before or after the time fixed by the agreement for him to begin work; or for any period during which he is lawfully imprisoned for any offence committed

by him, unless the court hearing the case otherwise directs.

- 2) A seaman or apprentice shall not be entitled to wages for any period during which he has not performed his duty, unless he proves that he was incapable of doing so by reason of illness, hurt or injury and that the illness, hurt or injury had not been caused by his own wilful act or default.
- 3) Any compensation payable under this section may be recovered as wages.

97. Protection of wages.

- 1) The following provisions apply to wages due or accruing to a seaman :
  - a) wages are not subject to attachment by any court;
  - b) an assignment or sale of wages made before they are due or accruing shall not bind the person making it.
  - c) a power of attorney or authority for the receipt of wages shall not be irrevocable;
  - d) a payment of wages to a seaman is valid in law notwithstanding that the wages have been sold, assigned, attached or encumbered.
- 2) The provisions prescribed in subsection (1) do not affect the provisions of this Act in respect to allotment notes.

98. Leave with pay.

- 1) Every person shall be entitled after twelve months of continuous service on a Nicaraguan ship is entitled to an annual leave of thirty calendar days with pay; and if the length of continuous service is less than twelve months, the annual leave with pay shall be pro-rated to his length of service during that year.
- 2) The following shall not be included in the annual leave with pay prescribed in subsection (1):
  - a) public and customary holidays recognised as such in Nicaragua whether or not they fall during the annual leave with pay;
  - b) periods of incapacity for work resulting from illness, injury or maternity;
  - c) temporary shore leave granted to a seaman while on articles;
  - d) compensatory leave of any kind.

Mode of recovering wages.

99. Suit for wages.

A seaman or apprentice, or a person duly authorised on his behalf, may, as soon as any wages due to him become payable, sue for them in a competent court in Nicaragua having jurisdiction in the place at which his service has terminated or at which he has been discharged, or at which any master or owner or other person upon whom the claim is made is or resides, and the court shall try the case in a summary way and the order made by the court in the matter shall be

final.

100. Restrictions on suits for wages.

A court does not have jurisdiction to hear or determine any action, suit or proceeding instituted by or on behalf of any seaman for the recovery of wages, except where:

- a) the owner of the ship has been declared insolvent;
- b) the ship is under arrest or sold by the authority of any court;
- c) a magistrate refers a claim to the court.

101. Master's remedy for wages.

- 1) The master of a Nicaraguan ship has the same rights, liens and remedies for the recovery of his wages as a seaman has under this Act.
- 2) The master of a Nicaraguan ship and every person lawfully acting as master of a ship by reason of the decease or incapacity from illness of the master of the ship shall have the same rights, liens and remedies for the recovery of disbursements or liabilities properly made or incurred by him on account of the ship as a master has for the recovery of his wages.

Power of courts to rescind contracts.

102. Power to rescind contracts.

Where proceedings are instituted in a court in relation to a dispute between an owner or master or

agent of a ship and a seaman or apprentice, arising out of or incidental to their relation as such, or is instituted for the purpose of this section, the court may, if having regard to all the circumstances it thinks it just to do so, rescind any contract between the owner or master or agent and the seaman or apprentice, upon such terms as the court think just.

Property of deceased seaman and apprentice.

103. Property of deceased seaman.

- 1) If any seaman or apprentice on board any ship dies during a voyage, the master of the ship shall report the death to the chief of the seamen's employment office of the port of engagement of the seaman or apprentice and shall take charge of any money or effects belonging to the seaman or apprentice which are on board the ship.
- 2) The master shall enter in the official log-book:
  - a) a statement of the amount of money and a description of the effects;
  - b) a statement of the wages due to the deceased, the amount of deductions, if any, to be made from the wages and the balance of the wages due.
- 3) The entry shall be signed by the master and attested by an officer or some other member of the crew.
- 4) The money, effects and balance of wages are in this Act referred to as the property of the seaman or apprentice.

104. Delivery of the property.

- 1) Subject to subsection (2), the property of the deceased seaman or apprentice shall be delivered by the master of the ship to the legal personal representative of the deceased; or if there is no legal personal representative of the deceased, the master shall dispose of the property:
  - a) in accordance with the law for determining the distribution or succession of personal property of deceased persons of the place in which the deceased was last residents; or
  - b) in accordance with the order of a court having jurisdiction to determine the distribution of the property of the deceased.
- 2) The master may deduct from the property of a deceased seaman or apprentice any expenses properly incurred in complying with subsection (1).

Provisions, health and accommodation.

105. Provisions and water.

- 1) Every ships on which seamen have been engaged shall have on board sufficient provisions and water of good quality and fit for the use of the crew on the scale specified in the crew agreement.
- 2) where three or more of the crew of a Nicaraguan ship consider that the provisions or water provided for the use of the crew are at any time of

bad quality or deficient quality, they may complain thereof to the chief of any seamen's employment office, a consular officer or an inspector who may either examine the provisions or water complained of or cause them to be examined.

- 3) Where the person making an examination under this section finds that the provisions or water are of bad quality or deficient in quantity, he shall signify that in writing to the master of the ship; and if the master does not thereupon provide proper provisions or water, the person making the inspection may detain the ship until the defects are remedied to his satisfaction.
- 4) The person making the inspection shall enter a statement of the result of the inspection in the official log-book and send and report thereof to the Director; and that report is admissible in evidence in the manner provided by this Act.
- 5) If the person making the inspection certifies in his statement that the complaint was false, each of the complaints is liable to forfeit to the owner out of his wages a sum not exceeding one week's wages.

#### 106. Allowance for short and bad provisions.

If during the voyage of a Nicaraguan ship the allowance of the provisions provided for a seaman is less than prescribed by his agreement or any of those provisions are of bad quality, the seaman shall receive by way of compensation according to the time

of its continuance, sums in accordance with such scale as may be prescribed, to be paid to him in addition to, and to be recoverable as, wages.

107. Weights and measures.

The master of a Nicaraguan ship shall keep on board proper weights and measures for determining the quantities of the several provisions and articles served out and shall allow the weights and measures to be used in the presence of a witness at the time of serving out the provisions and articles whenever any dispute arises about the quantities.

108. Medical examination and cooking.

The Minister may make regulations regarding to:

- a) medical examination of all persons seeking employment in any capacity on board ships and the issue of the respective medical certificate.
- b) the examination and issuing of certificates to persons qualifying to be employed as ship's cooks.

109. Crew accommodation.

The Minister may make regulations regarding to the crew accommodation to be provided in Nicaraguan ships and the provisions of the penalties for any contravention thereof.

110. Scales of medical stores.

The Minister may make regulations requiring the owner of a Nicaraguan ship to supply such medicines,



medical stores and appliances, as may be specified in the regulations; and the regulations may make different provisions for different descriptions of ships or different circumstances.

111. Expenses of medical treatment.

1) If the master of, or a seaman or apprentice belonging to, a Nicaraguan ship receives any surgical or medical treatment, or such dental or optical treatment, including the repair or replacement of any appliance, as can not be postponed without impairing the efficiency of the master, or seaman, or apprentice, the reasonable expenses thereof shall be borne by the persons who are employing him.

2) If the master, seaman, or apprentice dies and is buried or cremated outside his country or residence, the expense of his burial or cremation shall also be borne by the persons who are employing him.

Provisions for protection of seamen and respect of other matters.

112. Facilities for making complaints.

If a seaman or apprentice states to the master that he wishes to make a complaint to a magistrate or other proper officer against the master or any other member of the crew, the master shall:

a) if the ship is then at a place where there is a magistrate or other proper officer, as soon after

such statement as the service of the ship will permit, and

b) if the ship is not then at such place, as soon after the first arrival at such place as the service of the ship will permit, allow the complainant to go ashore, so that he can make his complaint.

The master of a ship who fails, without reasonable cause, to comply with this section, is guilty of an offence and liable to a fine of .....

113. Assignment and sale of salvage invalid.

Subject to this Act, an assignment or sale of any salvage payable to a seaman or apprentice that is made before the salvage accrues does not bind the person making the assignment or sale, and a power of attorney or authority for the receipt of any such salvage may be revoked regardless of its terms.

114. Seaman's debts.

A debt incurred by any seaman after he has engaged to serve is not recoverable until the service agreed for is concluded.

Provisions as to discipline.

115. Misconduct endangering life or ship.

No master, seaman or apprentice belonging to a Nicaraguan ship wherever it may be, or to any other ship, while in Nicaraguan waters, shall knowingly:

a)do any act tending to cause the immediate loss, destruction or serious damage of the ship,or tending immediately to endanger the life of,or to cause injury to any person belonging to or on board the ship;or

b)refuse or omit to do any lawful act proper and requisite to be done by him for preserving the ship from immediate loss,destruction or serious damage,or for preserving any person belonging to or on board the ship from danger to life or from injury.

116. Desertion and absence without leave.

1) No seaman lawfully engaged and no apprentice shall desert his ship or neglect or refuse without reasonable cause, to join the ship or to proceed to sea in his ship or be absent without leave at any time within seventy-two hours of the ship's sailing from a port either at the commencement or during the progress of a voyage, or be absent at any time without leave and without sufficient reason from his ship or from his duty.

2) For the purposes of subsection (1) the unseaworthiness of the ship on which the seaman or apprentice is engaged or to which he belongs, shall be deemed to be a reasonable cause. In this case the seaman or apprentice has, before failing or refusing to join his ship or to proceed to sea in his ship or before absenting himself or being absent from the ship, to complain to the master, surveyor, seamen's employment officer, or Nicaraguan consular officer at any port that the ship is unseaworthy.

117. Power to suspend deserter's certificate of discharge.

Where it is shown to the satisfaction of the Director that a seaman has deserted his ship or has absented himself without leave and without sufficient reason from his ship or from his duty, the Director may direct that the seaman's certificate of discharge or continuous certificate of discharge shall be withheld for such period as may be specified in the direction.

118. General offences against discipline.

- 1) If a seaman lawfully engaged on a Nicaraguan ship commits any of the following acts he shall be guilty of an offence and liable to be punished as follows:
  - a) if he quits the ship without leave after her arrival at a port and before she is placed in security, he shall be liable to forfeit out of his wages a sum not exceeding one week's pay;
  - b) if he is guilty of wilful disobedience to any lawful command, he shall be liable to imprisonment for one month, and also at the discretion of the court to forfeit out of his wages a sum not exceeding two days' pay;
  - c) if he is guilty of continued wilful disobedience to any lawful command, or continued wilful neglect of duty he shall be liable to imprisonment for two months and also at the discretion of the court to forfeit out for every twenty-four hours continued disobedience or neglect either a sum not exceeding two days' pay or any

- expenses properly incurred in hiring a substitute;
- d) if he assaults the master or any other officer of the ship, he shall be liable to imprisonment according with the Penal Code vident in Nicaragua;
  - e) if he combines with any of the crew to disobey lawful commands or to neglect duty or to impede the navigation of the ship or the progress of the voyage, he shall be liable to imprisonment for six months;
  - f) if he wilfully damages his ship, or dishonestly misappropriates or converts to his own use, or commits criminal breach of trust in respect of, or wilfully damages, any of her stores or cargo, he shall be liable to imprisonment for one year and also to the discretion of the court to forfeiture out of his wages a sum equal to the loss thereby sustained;
  - g) if he commits an act of smuggling any goods whereby loss or damage is occasioned to the master or owner of the ship, he shall be liable to pay to that master or owner a sum sufficient to reimburse the loss or damage and the whole or a part of his wages may be retained in satisfaction on account of that liability without prejudice to any other remedy.

119. Entry of offences in official log-book.

If any offence within the meaning of this Act is committed, or if an act of misconduct for which the offender's agreement imposes a fine and it is intended to enforce the fine:

- a) an entry of the offence or act shall be made in the official log-book and signed by the master and also by an officer or one of the crew; and
- b) the offender, if still in the ship, shall, before the next subsequent arrival of the ship at any port, or, if she is at the time in port before her departure therefrom, be furnished with a copy of the entry and have the same read over distinctly and audibly to him and may thereupon make such reply thereto as he thinks fit. A statement of all these circumstances shall be entered and signed in manner prescribed in subsection (a); and
- c) in any subsequent legal proceedings, the entries made under this section, shall, if practicable, be produced or proved and if they are not the court hearing the case may in its discretion refuse to receive evidence on the offence or act of misconduct.

120. Proof of desertion in proceedings for forfeiture of wages.

- 1) In every proceedings for forfeiture of wages against a seaman or apprentice for desertion from a Nicaraguan ship, it shall be sufficient for the person attempting to enforce the forfeiture to show that:
  - a) the seaman or apprentice was duly engaged or belonged to the ship; and
  - b) the seaman or apprentice left the ship before the completion of the voyage or engagement; and
  - c) an entry of the desertion of the seaman or apprentice was duly made in the official log-book.

2) If all the circumstances prescribed in subsection (1) are proved, the desertion shall be deemed to be proved, unless the seaman or apprentice can produce a proper certificate of discharge or can otherwise show to the satisfaction of the court that he had sufficient reasons for leaving his ship.

121. Application of forfeiture.

Where any wages or property are forfeited under this Part for desertion from a ship, the effects may be sold, and the wages or effects (or the money arising from sale of the effects) shall be applied towards reimbursing the expenses caused by the desertion to the master or owner of the ship, and any balance remaining shall be delivered to the offender.

122. Question of forfeiture decided in suit for wages.

Any question concerning the forfeiture of or deductions from the wages of a seaman or apprentice may be determined in any proceeding lawfully instituted with respect to those wages, notwithstanding that the seaman or apprentice has not been prosecuted for the offence which gives rise to the question.

123. Deduction of fine from wages.

Every fine imposed on a seaman for any act of misconduct for which his agreement imposes the fine shall be deducted as follows:

a) on the offender being discharged, and the offense

and the entry in the official log-book required by this Act to be made in respect thereof being proved to the satisfaction of the seamen's employment officer or consular officer before whom the offender is discharged, the master or owner shall deduct the fine from the wages of the offender and pay the same over to the offender before such seamen's employment officer or consular officer.

b) an act of misconduct for which any such fine has been inflicted and paid shall not be otherwise punishable under the provisions of this Act.

124. Persuading seaman to desert, and harbouring deserter.

1) If a person by any means whatever persuades or attempt to persuade a seaman or apprentice to neglect or refuse to join or proceed to sea in his ship, or to desert from his ship, or otherwise to absent himself from his duty, he shall be guilty of an offence, and liable to a fine of .....

2) If a person harbours a seaman or apprentice who has wilfully neglected or refused to join or has deserted from his ship, knowing or having reason to believe the seaman or apprentice to have so done, he shall be guilty of an offence, and liable to a fine of

125. Penalty on stowaways.

1) If a person secretes himself and goes to sea without the consent of either the owner, agent or master, or of a mate, or of the person in charge of the ship or of any other person entitled to give



that consent, he shall be guilty of an offence and liable to a fine of.....or to imprisonment for three months or to both such fine and imprisonment.

- 2) Every person who goes to sea in a ship without a consent mentioned in subsection (1) shall, so long as he remains in the ship, be deemed to belong to the ship, and be subject to the same laws and regulations for preserving discipline, and to the same fines and punishments for offences constituting or tending to a breach of discipline, as if he were a member of the crew and had signed the crew agreement.

Official log-book.

126. Keeping of official log-book.

- 1) An official log-book in the prescribed form by the Director must be kept in every Nicaraguan ship except a home-trade ship of less than two hundred gross register tons.
- 2) At the discretion of the master or owner, the official log-book, can be kept distinct from or united with the ordinary ship's log, but in all cases the spaces in the official log-book must be duly filled up.
- 3) Every entry required to be made in the official log-book shall be made as soon as possible after the occurrence to which it relates, and, if it is not made on the same day as the occurrence, it must

be made and dated so as to show the date of the occurrence and of the entry respecting it and if it is made in respect of an occurrence happening before the arrival of the ship at her final port of discharge, shall not be made more than twenty-four hours after that arrival.

- 4) Every entry in the official log-book must be signed by the master and by an officer or some other member of the crew and if it is an entry of illness, injury or death, shall be signed also by the medical officer on board, if any.
- 5) Every entry made in an official log-book in the manner provided in this Act shall be admissible in evidence.

127. Entries to be made in official log-book.

The master of a ship for which an official log-book is required shall enter or cause to be entered in the official log-book the following matters:

- a) every conviction by a court of a member of his crew and the punishment inflicted;
- b) every offence committed by a member of his crew for which it is intended to prosecute or to make a forfeiture or to impose a fine, together with the statement concerning the furnishing of a copy and reading over of that entry and concerning the reply, if any, made to the charge, as required by this Act;
- c) every offence for which punishment is inflicted on board, and the punishment inflicted;
- d) a report of the conduct, character and the quality

- of work of each member of his crew, or a statement that the master declines to give an opinion of these particulars;
- e) every case of illness, hurt or injury happening to a member of the crew, with the nature thereof and the medical treatment given, if any;
  - f) every case of death happening on board his ship and the cause thereof;
  - g) every birth happening on board his ship, with the sex of the infant, the names of the parents and such other particulars as may be prescribed;
  - h) every marriage taking place on board his ship with the names and ages of the parties;
  - i) the name of every seaman or apprentice who ceases to be a member of the crew otherwise than by death, with the place, time, manner and cause thereof;
  - j) the wages due to any seaman who dies during the voyage, and the gross amount of all deductions to be made from those wages;
  - k) the money or other property taken over of any seaman or apprentice who dies during the voyage, with a statement of each article sold and the sum received for it.
  - l) every collision with any other ship and the circumstances in which it occurred;
  - m) any other matter which is to be or may be prescribed for entry in the official log book.

**128. Delivery of official log-book.**

The master of every ship for which an official log-book is required under this Act shall within seventy-two hours after the ship's arrival at her

final port of destination in Nicaragua or upon the discharge of the crew, whichever first happens, deliver deliver the official log-book of the voyage to the registrar who must to sent it as soon as possible to the Director.

## **PART IV SAFETY.**

### **129. Definitions.**

In this Act:

a) "load line certificate" means:

i) in relation to a Nicaraguan ship an international load line certificate or a local load line certificate issued, in either case, under section 142 and 143; or

ii) in the case of a foreign ship, a certificate having the like effect as an international load line certificate issued by a foreign country to which the Load Line Conventions applies;

b) "Load Line Convention" means the International Convention on Load Lines of 1966, and any amendments or replacement thereto in effect in respect of Nicaragua;

c) "load line ship" has the meaning given that phrase by section.....;

d) "Safety Convention" means the International Convention for the Safety of Life at Sea, 1974, and any amendment thereto in effect in respect of Nicaragua;

e) "Safety Convention Certificate" means a certificate that is required to be issued to a Safety Convention ship that complies with the relevant pro-

visions of the Safety Convention and includes:

- i) a safety certificate;
  - ii) a safety construction certificate;
  - iii) a safety equipment certificate;
  - iv) a safety radiotelegraphy certificate;
  - v) a safety radiotelephony certificate;
  - vi) any similar certificate that is limited, modified or restricted by an exemption certificate.
- f) "Safety Convention ship" means a ship registered in a country to which the Safety Convention applies and "Safety Convention passenger motor ship" means a passenger motor ship registered in such a country.

130. Appointment of surveyors.

- 1) The Director may appoint nautical surveyors who must be persons duly qualified to inspect:
  - a) the boilers and machinery of motor ships;
  - b) the equipment of ships;
  - c) the hulls and superstructures of ships;
  - d) the life-saving, fire fighting and other safety equipment of ships;
  - e) the radiotelegraphy and radiotelephony installations of ships;
  - f) the stowage and manner of loading of ship's cargoes and the stowage of dangerous goods in ships.
  
- 2) One person may be appointed as a nautical inspector in several capacities.

131. Power of surveyors.

- 1) For the purposes of a survey, a surveyor may, at all reasonable times, go on board any ship in Nicaragua, or any Nicaraguan ship wherever it may be, and inspect it or any part thereof, and the machinery, equipment, articles on board or any certificate provided that he does not unnecessarily hinder the loading or unloading of the ship, or unnecessarily detain or delay her for proceeding on any voyage.
  
- 2) The owner, agent, master and every officer of the ship shall afford to the surveyor all reasonable facilities for a survey, and all such information respecting the ship and her machinery and equipment, or any part thereof, respectively, as the surveyor reasonably requires.
  
- 3) When a surveyor considers that the condition of the ship or its equipment does not correspond substantially with the particulars of the certificate or is such that the ship is not fit to proceed to sea without danger to the ship, or person on board or when a surveyor finds that any provisions of this Act have not been complied with in respect of the ship and considers that the ship should not go to sea for that reason, such surveyor may, in the case of a foreign ship, cause it to be detained or, in the case of a Nicaraguan ship, suspended the certificate of registry of the ship, until he is satisfied that the ship can properly go to sea.

132. Records of inspection.

- 1) A surveyor shall keep a record of the inspections he makes and the certificates he issues in such form and with such particulars respecting them as the Director may require.
- 2) A surveyor shall furnish copies of his records and certificates and such other information pertaining to the duties of his office as the Director may require.

Inspection/survey for safety.

133. Survey of passenger ships.

Every Nicaraguan passenger ship shall be subjected to the following surveys:

- a) a survey before the ship is put in service;
- b) periodic surveys at intervals of not more than twelve months;
- c) additional surveys, as occasion arises.

134. Initial survey of passenger ship.

- 1) The survey made before a passenger ship is put into service shall include a complete inspection of its structure, machinery and equipment.
- 2) The survey shall be such as to ensure that the arrangements, material and scantlings of the hull, boilers and other pressure vessels, the main and auxiliary machinery, electrical installations, radio installations, radio installations in motor life boats, portable radio apparatus for survival craft, life-saving appliances, fire

detecting and extinguishing appliances, pilot ladders, and other equipment fully comply with the requirements of the Safety Convention.

- 3) The survey shall also be such as to ensure that the workmanship of all parts of the hull and machinery and equipment is satisfactory and that the ship is provided with such light and sound signals and distress signals as are required by the Safety Convention and the collision regulations.

135. Periodical surveys of passenger ships.

- 1) The periodic surveys shall include an inspection of the structure, boilers and other pressure vessels, machinery and equipment.
- 2) The survey shall be such as to ensure that the hull, the boilers and other pressure vessels, the main and auxiliary machinery, electrical installation, radio installation, radio installation in motor life boats, portable radio apparatus for survival craft, life-saving appliances, pilot ladders, and other equipment are in a satisfactory condition and fit for the service for which they are intended and that they comply with the requirements of the Safety Convention.
- 3) The light and sound signals and the distress signals carried by the ship shall also be subjected to the survey.

136. Additional surveys of passenger ships.



- 1) A survey either general or partial, according to the circumstances, shall be made every time an accident occurs on or to the ship, or a defect is discovered that affects the safety of the ship or the efficiency or completeness of its life-saving appliances or other equipment or whenever important repairs or renewals are made.
- 2) The survey must be so made as to ensure that the necessary repairs or renewals have been effectively made, that the material and workmanship of such repairs or renewals are in all respects with the provisions of the Safety Convention and of the collision regulations and any regulations made under this Act.

137. Nicaraguan cargo ship survey.

- 1) The hull, machinery and equipment (other than items in respect of which Cargo Ship Safety Equipment Certificates, Cargo Ship Safety Radiotelegraphy Certificates or Cargo Ship Safety Radiotelephony Certificates are issued) of a Nicaraguan cargo ship must be surveyed on completion of the ship and thereafter at intervals of not more than four years in order to ensure that their condition is in all respects satisfactory.
- 2) The survey must be so made as to ensure that the arrangements, material and scantlings of the structure, boilers and other pressure vessels, main and auxiliary machinery, electrical installations and other equipment are in all respects satisfactory for the service for which the ship

is intended.

138. Life-saving appliances and fire fighting appliances of cargo ships.

- 1) The life-saving appliances and fire fighting appliances of Nicaraguan cargo ships shall be subject to survey before the ship is put into service and thereafter at intervals of not more than two years.
- 2) The fire control plans in new Nicaraguan ships and the pilot ladders, light and sound signals and distress signals in new and existing Nicaraguan cargo ships shall be included in the surveys for the purpose of ensuring that they comply fully with the requirements of the Safety Convention and, where applicable, the collision regulations.

139. Radio installations.

The radio installations of Nicaraguan cargo ships and any radio-telegraph installations in a motor life-boat or portable radio apparatus for survival craft must be surveyed before the ship may be put into service and thereafter at intervals of not more than one year.

140. Exemption in respect of pleasure yachts.

Pleasure yachts are exempt from the inspection prescribed in section 133 to 139 (both inclusive), but the Minister may make regulations providing for the compliance by such vessels.

141. Surveyor's report for Director.

- 1) A surveyor, if satisfied on inspection that he can with propriety do so, shall forward a report to the Director which shall contain a statement showing, in respect of the ship inspected:
  - a) that the hull and machinery are sufficient for the service intended and in good condition;
  - b) that the hull and machinery are constructed, arranged and fitted in accordance with any regulations made under this Act;
  - c) that the equipment that is required under any regulations is on board and in good condition;
  - d) that the master, mates and engineers are persons duly certificated as required under this Act and that the crew is sufficient and efficient;
  - e) the class of voyage on which the ship is fit to ply and the time, if less than one year, for which the hull, equipment and machinery will be sufficient;
  - f) if the ship is a passenger ship, the number of passengers that may be carried thereby; and
  - g) the steam pressure that may be carried on the boilers.

Issue of certificates.

142. Certificates to passenger and cargo ships.

- 1) If the Director on receipt of the report of inspection provided under section 141 is satisfied that all relevant provisions of this Act have been complied with, he shall be issued the appro-

priate Safety Convention certificate or certificates in respect of:

- a) passenger ships engaged on international voyage;
- b) cargo ships of not less than five hundred gross register tons engaged on international voyage.

143. Local safety certificate.

The Minister may make regulations prescribing safety requirements and providing for the issue of local safety certificates in respect of:

- a) ships to which the Safety Convention does not apply; and
- b) for matters for which the Safety Convention does not expressly provide in respect of any ship or class of ship to which that Convention applies.

144. Certificates by other Governments.

- 1) The Director may request the government of a country to which the Safety Convention applies to issue in respect of a Nicaraguan ship any certificate provided for by the Safety Convention.
- 2) A certificate issued in accordance with subsection (1) and containing a statement that it has been so issued has effect for the purposes of this Act as if it had been issued hereunder.

145. Certificates to non Nicaraguan ships.

The Director, at the request of the government of a country to which the Safety Convention applies, may

issue any certificate prescribed in that Convention provided that he is satisfied in the same manner as in the case of a Nicaraguan ship that the certificate can be issued. The certificate must contain a statement that it has been so issued.

Proceeding to sea.

146. Production of certificates.

The master of every Safety Convention ship, not being a Nicaraguan ship, shall produce to the appropriate authorities from whom a clearance for the ship is demanded in respect of an international voyage from a port in Nicaragua, a valid Safety Convention certificate or the corresponding exemption certificate; and a clearance shall not be granted, and the ship may be detained until those certificates are so produced.

147. Nicaraguan ship and certificates.

A Nicaraguan Safety Convention ship or a Nicaraguan ship that is required to possess a local safety certificate can not proceed to sea on an international voyage without produce to the appropriate authorities from whom a clearance is demanded a valid Safety Convention certificate or local safety certificate.

148. International voyage outside convention.

- 1) A passenger ship or a cargo ship exceeding five hundred gross register tons that is registered in

a country to which the Safety Convention does not apply, shall not proceed to sea on an international voyage from Nicaragua until the ship has complied with such provisions of this Act respecting safety as apply to Nicaraguan ships.

- 2) Notwithstanding the provisions of subsection (1), the Director may authorise the clearance of any ship to which subsection (1) applies if he is satisfied that:
  - a) no passengers are carried;
  - b) the amount of cargo carried is not more than allows the ship to make a voyage in safety; and
  - c) the hull, machinery and equipment of the ship including the radio installation are in good condition and sufficient for the voyage contemplated.

#### Prevention of collisions.

#### 149. Power to make regulations for preventing collisions.

The Minister may make regulations, in this Act referred to as "collisions regulations",

- a) for the prevention of collision at sea;
  - b) respecting the lights to be carried and exhibited;
  - c) respect the other signals to be carried and used;
- and
- d) respecting the steering and sailing rules to be observed by ships.

#### 150. Assistance in case of collision.

- 1) After a collision between vessels, it is the duty

of the master or person in charge of each ship, if so far as he can do so without danger to his own vessel, crew and passengers if any:

a) to render assistance to the other vessel, her crew and her passenger;

b) to give to the master or person in charge of the other ship the name of his own ship and the port to which she belongs, and also the names of the ports from which she comes and to which she is bound;

2) A master or person in charge of a ship who fails without reasonable cause to comply with this section is guilty of an offence and liable to a fine of .....

#### 151. Reporting of accidents.

When a Nicaraguan ship has sustained or caused any accident occasioning loss of life or any serious injury to any person or has received any material damage affecting her seaworthiness or her efficiency either in her hull or in any part of her machinery, the owner or master shall, as soon as possible after the happening of the accident or damage, transmit to the Director a writing report of the accident or damage and of its probable occasion, stating the name of the ship, her official number, if any, the port to which she belongs and the place where she is.

#### Load lines and Loading.

#### 152. Definitions.

For the purpose of this Act:

- a) "Load Line Convention" means the International Convention on Load Lines, 1966 together with any amendment thereof to which Nicaragua have ratified;
- b) "contracting country" means a foreign country to which the Load Line Convention applies;
- c) load line ships are all ships other than:
  - i) existing ships of less than one hundred fifty gross register tons;
  - ii) new ships of less than twenty five metres in length;
  - iii) ships of war or coast guard ships;
  - iv) fishing vessels;
  - v) pleasure yachts not engaged in trade.
- d) "load line ship" means:
  - i) an international load line ship that carry cargo or passengers on international voyages; and
  - ii) a local load line ship, that is to say, a ship other than international load line ship.
- e) "Load Line Convention ship" means a ship that belongs to a contracting country;
- f) "new ship" means a ship whose keel is laid or is at an equivalent stage of construction, on or after the day this Act comes into effect; and
- g) "existing ship" means a ship that is not a new ship.

**153. Powers to make regulations.**

The Minister may by regulations, in this Act called the "load line regulations" make rules, as appear to him to be necessary for the purpose of given effect



to the Load Line Convention and such rules may prescribe load line requirements and provide for the issue of local Load Line Certificates in respects of ships to which the Load Line Convention does not apply.

154. Compliance with regulations.

- 1) Subject to any exemption conferred by or under this Act, no Nicaraguan load line ship shall proceed to sea unless:
  - a) the ship has been surveyed by a surveyor in accordance with the load line regulations;
  - b) the ship complies with the conditions of assignment contained in the load line regulations;
  - c) the ship is marked on each side with:
    - i) a deck mark, that is to say, a mark indicating the position of the uppermost complete deck as defined by the load line regulations; and
    - ii) load lines, that is to say, lines indicating the several maximum depths to which the ship can be safely loaded in various circumstances prescribed by the load line regulations;
  - d) the deck mark and the load line are of the description required by the load line regulations, the deck mark is in the position required by those regulations, and the load lines are of the number required by such of those regulations as are applicable to the ship; and
  - e) the load lines are in the position required by such of the load line regulations as are applicable to the ship;

- 2) If any ship proceeds or attempts to proceed to sea in contravention of this section, the master, the owner or charterer, and the agent of the ship if he is privy to the contravention, are each guilty of an offence and liable to a fine of....

155. submersion of load lines.

- 1) A Nicaraguan load line ship shall not be so loaded as to submerge the appropriate load line on each side of the ship in sea water when the ship has no list.
- 2) If the ship is loaded in contravention of subsection (1), the master, the owner or charterer, and the agent of the ship if he is privy to the contravention, are each guilty of an offence and liable to a fine of.....
- 3) A registrar or an inspector may suspend the certificate of registry of a ship loaded in contravention of this section until the ship ceases to be so loaded.

156. Alteration or defacement of marks.

If:

- a) the owner or master of a Nicaraguan load line ship which has been marked in accordance with the requirements of this Part, fails without reasonable cause to keep the ship so marked; or
- b) any person conceals, removes, alters or defaces or obliterates or suffers any person under his control to conceal, remove, alter or obliterate any

mark placed on any ship in accordance with the requirements of this Part, except with the authority of a person entitled under the load line regulations to authorise the alteration of the mark; he shall be guilty of an offence and liable to a fine of.....

157. Load line certificates.

- 1) Where a Nicaraguan load line ship has been surveyed and marked in accordance with the load line regulations, the Director on the application of the owner of the ship, shall issue the appropriate certificate.
- 2) For the purposes of this section the appropriate certificate is a certificate to be known as:
  - a) an "International Load Line Certificate(1966)" in the case of an international load line ship;
  - b) a "local load line certificate" in the case of a local load line ship.
- 3) The Director may request the government of a contracting country to issue a load line certificate to a Nicaraguan load line ship; and a certificate so issued and containing a statement that it was so issued has, for all purposes, the same effect as if it had been issued under subsection (1).

158. Duration, renewal and cancellation of load line certificate.

- 1) Every load line certificate shall, unless it is renewed in accordance with the provisions of subsection (2), expire at the end of such period, not exceeding five years from the date of its issue, as specified therein.
- 2) After a survey that is not less thorough than the survey required by the load line regulations before the issue of the certificate, a load line certificate may be renewed from time to time by the Director or by any person authorised by him to issue a load line certificate for such period not exceeding five years on any occasion as the Director or other authorised person renewing the certificate thinks fit.
- 3) The owner of every ship in respect of which a load line certificate is in force shall cause the ship to be surveyed in the manner prescribed by the load line regulations once at least in each year after the issue of the certificate for the purpose of ascertaining whether the certificate should remain in force, having regard to subsection (2) and if the ship is not so surveyed, the Director shall cancel the certificate; but the Director may, if he thinks fit in any particular case, extend the said period of one year.

159. Ships not to proceed to sea without load line certificate.

- 1) Subject to any exemption conferred by or under this Act, no Nicaraguan load line ship shall proceed or attempt to proceed to sea unless there is

in force in respect of such ship a load line certificate.

- 2) The master of every Nicaraguan load line ship shall produce to the appropriate authorities from whom a clearance of the ship is demanded the load line certificate required by this Act to be in force when the ship proceeds to sea; and a clearance shall not be granted and the ship shall be detained until that certificate is so produced.

160. Publication and posting of load line certificate, entry into log-book of particulars of load lines.

- 1) when a load line certificate has been issued in respect of a Nicaraguan load line ship:
  - a) the owner or master of the ship shall, forthwith on the receipt of the certificate, cause it to be framed and posted up in some conspicuous place on board the ship, and to be kept so framed and posted up and legible so long as the certificate remains in force and the ship is in use; and
  - b) the master of the ship, before making any other entry in any official log-book, shall enter therein the particulars as to the position of the deck mark and load lines specified in the certificate.
- 2) Before any Nicaraguan load line ship leaves any dock, wharf, port, harbour or other place for the purpose of proceeding to sea, the master thereof shall:
  - a) enter into the official log-book the draught of

water and freeboard relating to the depth to which the ship is for the time being loaded, as the load line regulations require to be entered; and

b) cause a notice in such form and containing such particulars as the load line regulations require, to be posted up in a conspicuous place on board the ship and to be kept so posted up and legible until the ship arrives at some other dock, wharf, port, harbour or place.

3) The master or owner who fails to comply with the provisions of this section is guilty of an offence and liable to a fine of.....

#### 161. Certificate of foreign ships.

The Director may, at the request of the government of a country party of the Load Line Convention, issue a load line certificate in respect of an international load line ship of that country, if he is satisfied, in like manner as in the case of a Nicaraguan ship, that the certificate can properly be issued and where a certificate is so issued, it shall contain a statement that it has been so issued.

#### 162. Validity of certificates of foreign ships.

1) For the purpose of determining the validity in Nicaragua of certificates purporting to have been issued in accordance with the Load Line Convention in respect of foreign Load Line Convention ships, the Minister may make regulations as are

necessary for giving effect to Article 17 of the Load Line Convention.

- 2) For the purposes of the provisions of this Part relating to foreign Load line Convention ships a "valid load line certificate" means a certificate complying with such of those regulations made under subsection (1) as are applicable in the circumstances.

163. Inspection of foreign ships.

- 1) A surveyor may go on board any foreign Load Line ship that is in any port in Nicaragua for the purpose of requiring the production of any load line certificate for the time being in force in respect of the ship.
- 2) When a valid load line certificate is produced to the surveyor, the surveyor's powers of inspecting the ship with respect to load lines shall be limited to ensuring:
  - a) that the ship is not loaded beyond the limits allowed by the certificate;
  - b) that the position of the load lines on the ship corresponds with the position specified in the certificate;
  - c) that no material alterations have taken place in the hull or superstructure of the ship that affect the position of the load lines; and
  - d) that the fittings and appliances for the protection of openings, the guard rails, the freeing ports and the means of access to the crew's quarters have been maintained on the

ship in as effective a condition as they were when the certificate was issued.

- 3) When it is found on any inspection that the ship does not comply with subsections (a) and (b) the ship may be detained until the matter has been rectified to the satisfaction of the surveyor.
- 4) Where a valid load line certificate is not produced to the surveyor, he may for the purpose of seeing that this Part has been complied with, inspect the ship as if the ship were a Nicaraguan ship.
- 5) For the purposes of this section, a ship is loaded beyond the limit allowed by the certificate if she is so loaded as to submerge the appropriate load line on each side of the ship in salt water when the ship has no list; that is to say, the load line appearing by the certificate to indicate the maximum depth to which the ship is for the time being entitled to be loaded under the Load Line Convention.

164. Production of certificate to customs.

The master of every foreign load line convention ship shall produce a valid load line certificate to the appropriate authorities from whom a clearance for the ship from a port in Nicaragua is demanded and a clearance shall not be granted and the ship may be detained until the certificate required by this section is required.



Dangerous Goods.

165. Regulations as to dangerous goods.

The Minister may make regulations for determining which goods, articles or materials to be carried on board a ship are dangerous goods in accordance with the provisions of Chapter VII of the International Convention for the Safety of Life at Sea, 1974 relating to the carriage of dangerous goods and to any amendment thereto ratified by Nicaragua; the said regulations shall also comply with the International Maritime Dangerous Goods (IMDG) Codes.

166. Carriage of dangerous goods.

- 1) No person shall send or attempt to send by or carry or attempt to carry in any Nicaraguan ship, except in accordance with any regulations made pursuant to section 165, any dangerous goods but this subsection shall not apply to ship's distress signals or to the carriage of military stores for the public service under conditions authorised by the Director.
  
- 2) No person shall send or attempt to send by or, if he is not the master or owner of the ship, carry or attempt to carry in any Nicaraguan ship any dangerous goods without first distinctly marking their nature on the outside of the package containing the goods, and without first giving written notice to the master or owner of the ship of the nature of the goods and of the name and address of the sender thereof at or before the time of sen-

ding the same to shipped or taking the same on board the ship.

- 3) The provisions of this section and any regulations made under section 165, shall apply to all foreign ships while loading at any place in Nicaragua as they apply to Nicaraguan ships.
- 4) The master or owner of any ship may refuse to take on board any package or parcel which he suspects to contain any dangerous goods, and may require it to be opened to ascertain the fact.
- 5) Any person who contravenes the provisions of this section or of any regulations made under section 165 shall be guilty of an offence and is liable to a fine of.....and the ship shall be, for the purposes of this Act, unsafe by reason of improper loading.

#### 167. Disposing of dangerous goods.

When any dangerous goods, or any goods that, in the opinion of the master or owner of the ship, are dangerous goods, have been sent on board any ship without the marking or the notice described in section 163 (2), the master or owner of the ship may cause the goods, together with any package or container thereof, to be thrown overboard; and neither the master nor the owner of the ship is liable, civilly or criminally, in any court in respect thereof.

168. Forfeiture of dangerous goods.

- 1) If any dangerous goods have been sent, or attempt to be sent or carried on board any ship in circumstances that would be an offence under this section, any court having jurisdiction may declare the goods, and any packaging or container thereof, to be forfeited and thereafter they shall be disposed of as the court directs.
- 2) The court may exercise the powers conferred by subsection (1) notwithstanding:
  - a) that the owner of the goods concerned has not committed any offence in respect of the goods, or is not before the court, or has had no notice of the proceedings, and
  - b) that there is no evidence to show to whom the goods belong;but the court may, in its discretion, require such notice as it may direct to be given to the owner or shipper of the goods before they are forfeited.

Unseaworthy Ships.

169. Sending unseaworthy ships.

- 1) Any person who sends or attempt to send, or is party to sending a Nicaraguan ship to sea in such an unseaworthy state that the life of any person is likely to be endangered thereby, is guilty of an offence, unless he proves either:
  - a) that he used all reasonable means to ensure that the ship was sent to sea in a seaworthy state,

or

b) that sending the ship to sea in such an unseaworthy state was, under reasonable and justifiable circumstances.

- 2) The master of a Nicaraguan ship who knowingly takes the ship in such an unseaworthy state that the life of any person is likely endangered thereby is guilty of an offence, unless he proves that taking the ship to sea in such an unseaworthy state was, under reasonable and justifiable circumstances.

170. Duty to ensure seaworthiness.

- 1) Notwithstanding any agreement to the contrary, it is an implied term of every contract of service, express or implied, between the owner of a ship and the master or any seaman thereof, and of every instrument of apprenticeship whereby any person is bound to serve as an apprentice on board any ship that:

a) the owner of the ship,

b) the master, and

c) every agent charged with the loading of the ship or with the preparing of the ship for sea, or the sending of the ship to sea,

are bound to use all reasonable means to ensure the seaworthiness of the ship for the voyage at the time when the voyage commences and to keep the ship in a seaworthy condition for the voyage during the voyage.

- 2) Nothing in this section makes the owner of a ship

liable by reason of the ship being sent to sea in an unseaworthy state when, owing to special circumstances, the sending of the ship to sea in that state was reasonable and justifiable.

171. Detention of unseaworthy ships.

- 1) When a registrar or an inspector has reason to believe that any Nicaraguan ship, or foreign ship in Nicaragua, is an unsafe ship he may suspend the certificate of registry of the Nicaraguan ship; or detain the foreign ship, until he is satisfied that the ship is fit to proceed to sea.
- 2) When the registrar or inspector detains a ship pursuant to subsection (1), whether by suspension of her certificate of registry or otherwise, he may adopt any measures or means he thinks suitable or necessary to prevent the ship from sailing while it is an unsafe ship.
- 3) Where a foreign ship has been detained under this section, a consular officer of the country to which the ship belongs shall be informed forthwith.
- 4) Where a ship has been dealt with under this section, the ship may be inspected or surveyed by a registrar or inspector to investigate any defects believed to exist.
- 5) The owner or master of a ship or a consular officer referred to in subsection (3) may require that any person of his choice accompany any person

making an inspection or survey under this section.

- 6) The registrar or inspector acting under this section, shall as soon as practicable after action is completed therein, forward a full report thereof to the Director together with copies of any reports made upon inspection or survey.
- 7) In this section, "unsafe ship" means a ship:
  - a) that is presumed to be an unsafe ship for the purposes of this section by any provision of this Part, and
  - b) any ship that is, by reason of the defective condition of her hull, equipment or machinery, or by reason of undermanning, overloading or improper loading, unfit to proceed to sea without serious danger to human life, having regard to the nature of the service for which the ship is intended.

## **PART V. WRECKS AND SALVAGE.**

### **172. Definition.**

For the purposes of this Act "wreck" includes:

- a) flotsam, jetsam, lagan and derelict found in or on the shores of the sea or of any tidal water;
- b) the whole or any portion of a vessel that is lost, abandoned, stranded or in distress;
- c) any part of the cargo, stores or equipment of a vessel mentioned in paragraph (b); and
- d) any part of the personal property on board a vessel

mentioned in paragraph (b) when it was lost, stranded, abandoned or in distress.

173. Appoitment of principal receiver of wreck and receivers.

- 1) The Director shall be the principal receiver of wreck for Nicaragua and shall have all the powers of a receiver of wreck throughout Nicaragua.
- 2) The principal receiver of wreck shall exercise general direction and supervision over all matters relating to receivers, wreck and salvage.
- 3) The Minister may appoint any person to be a receiver of wreck in any specified area and to perform the duties of a receiver under this Part.

174. Fees and expenses of receivers.

- 1) There shall be paid to every receiver the expenses properly incurred by him in the performance of his duties, and also such fees as may be prescribed by the Minister by regulations.
- 2) A receiver shall, in addition to all other rights and remedies for the recovery of the expenses and fees referred to in subsection (1), have the same rights and remedies in respect thereof as a salvor has in respect of salvage due to him and may, if the property in respect of which any such expenses and fees are due is not under arrest in any court, seize or detain the property until his expenses and fees are paid, or until security is given the-

refer to his satisfaction.

175. Duties of receiver.

- 1) Where any vessel is wrecked, stranded or in distress at any place on or near the coasts of Nicaragua the receiver for the area in which that place is situated shall, upon being made acquainted with the circumstances, forthwith proceed there and upon his arrival shall take the command of all persons present, and shall assign such duties and give such directions to each person as he thinks fit for the preservation of the vessel and of the lives of the shipwrecked persons and of the cargo and apparel of the vessel.
- 2) Notwithstanding subsection (1), a receiver shall not interfere between the master and the crew of the ship with reference to the management of the ship, unless he is requested to do so by the master.
- 3) Any person who wilfully disobeys the directions of the receiver commits an offence and is liable to a fine of.....

176 Powers of receiver.

- 1) A receiver may, with a view to the preservation of shipwrecked persons or of a vessel, cargo or wreck:
  - a) require such persons as he thinks necessary to assist him;
  - b) require the master or other persons having the



charge of any vessel near at hand to give such aid with his men or vessel as is in his power; and

c) require the use of any machinery, vehicle or equipment that is obtainable.

2) A receiver may cause to be arrested and kept in custody until he can be conveniently taken before a court to be dealt in accordance with the law, any person who plunders, creates disorder or obstruct the preservation of a vessel wrecked, stranded or in distress on or near the coasts of Nicaragua and may use reasonable force for the suppression of such plundering, disorder or obstruction and may require all persons in the vicinity to assist him.

3) Every person who wilfully impedes or obstructs a receiver or any person acting under his order in the execution of his duty under this section shall be guilty of an offence and is liable to imprisonment for six months.

#### 177. Passage over adjoining lands.

1) When a vessel is stranded, wrecked or in distress, any person may, for the purpose of rendering assistance to the vessel or of saving the lives of shipwrecked persons or of saving the cargo or apparel of the vessel,

a) pass and repass, with or without vehicles and equipment, over any adjoining lands without being subject to interruption by the owner or occupier unless there is some public road equally conve-

nient, and

b) deposit on those lands any cargo or other things recovered from the vessel;

but that person may not do any more damage to the adjoining lands than is reasonably necessary for the purpose of rendering that assistance.

2) Any damage sustained by the owner or occupier in consequence of the exercise of the rights conferred by subsection (1) is a charge on the vessel, cargo or articles in respect of, or by which, the damage is occasioned; and the amount payable in respect of the damage shall, in case of dispute, be determined, and in default of payment, recoverable in the same manner as the amount of salvage is determined or recoverable under this Part.

3) The owner or occupier of any property who hinders or obstructs any person exercising the rights conferred by subsection (1) is guilty of an offence and liable to a fine of.....

#### 178. Obstruction of receiver.

Every person who without reasonable cause fails to comply with any lawful requirement or order of a receiver, or wilfully impedes or obstructs a receiver or any person acting under his orders in the execution of his duty, shall be guilty of an offence and is liable to a fine of..... or to imprisonment for six months or to both.

179. Duties of persons finding wreck.

- 1) When any person finds or takes possession of any wreck within Nicaragua or brings within Nicaragua any wreck found outside Nicaragua he shall:
  - a) if he is the owner thereof, give notice to the receiver of the area stating that he has found or taken possession of the same, and describing the marks by which the same may be recognised; or
  - b) if he is not the owner thereof, as soon as possible deliver the wreck to the receiver of the area.
- 2) The Minister may dispense with a delivery required under subsection (1) in the case of any wreck upon such condition as the Minister thinks fit.
- 3) A person who fails without reasonable cause to comply with subsection (1) is guilty of an offence and liable to a fine not exceeding double the value of the wreck and is also liable to forfeit any claim or right to salvage with respect to the wreck.

180. Concealment of wreck.

Where a receiver suspects or receives information that any wreck is secreted or in possession of a person other than its owner, or that any wreck is being otherwise improperly dealt with, he may apply to a magistrate for a search warrant and the magistrate may grant such a warrant and the receiver, by virtue of the warrant, may enter any house or other place

wherever situated and also any vessel and search for, seize and detain any such wreck there found.

181. Notice of wreck.

Where a receiver takes possession of any wreck and does not know who owns it, he shall within seventy-two hours:

- a) cause to be posted in the customs house nearest to the place where the wreck was found or was seized by, or delivered to him, a description of the wreck and of any marks by which it can be distinguished; and
- b) send a copy of such description to the Director.

182. Owner's right to wreck.

- 1) If the owner of any wreck in the possession of a receiver or the agent of the owner, establishes his claim to the wreck to the satisfaction of the receiver within six months from the date the wreck came into the possession of the receiver, the owner is, upon paying the customs duty, if any, and the salvage fees and expenses due, entitled to have the wreck or the proceeds of sale of the wreck delivered up to him or his agent.
- 2) When any wreck in the possession of a receiver is belong to an owner in a foreign country, the consular officer of that foreign country in Nicaragua in absence of the owner or his agent, shall be deemed to be the agent of the owner so far as relates to the custody and disposal of the wreck.

183. Power to sell wreck.

- 1) A receiver may sell any wreck in his custody, if:
  - a) in his opinion, the wreck is under the value of.....;
  - b) in his opinion it is to advantage of all parties to sell the wreck;
  - c) the wreck consists of goods of a dangerous or perishable nature that it cannot with advantage be kept;
  - d) in his opinion it is not of sufficient value to pay for warehousing; or
  - e) it has not been removed within a specified time.
- 2) The proceeds of any sale made under subsection (1) shall, after defraying the expenses thereof, be held by the receiver for the same purposes and subject to the same claims, rights and liabilities as if the wreck had remained unsold.

184. Unclaimed wreck.

The State is entitled to all unclaimed wreck found within any part of Nicaragua or found or taken possession of outside Nicaragua and brought within Nicaragua except in any place where the State has granted to any person the right to any such wreck.

185. Sale of unclaimed wreck.

If no owner establishes a claim to any wreck in the possession of a receiver within six months after it came into the receiver's possession, the receiver may sell the wreck and pay the proceeds of sale to the

State after:

- a) deducting therefrom the expenses of the sale, any customs duty payable and any other expenses incurred by him; and
- b) paying thereout to the salvors such amount of salvage as the Director may determine.

186. Discharge of receiver.

Upon delivery of the wreck or payment of the proceeds of sale of the wreck by a receiver pursuant to this Part, the receiver is discharged from all liability thereof, but such delivery does not affect any question which may be raised by third parties concerning the right or title to the wreck or concerning to the soil or the place on which the wreck was found.

187. Removal of wreck in port.

- 1) When any vessel is sunk, stranded or abandoned in any port, harbour or tidal water in Nicaragua, or in or near any approach to any such port, harbour or tidal water in such manner as in the opinion of the port authority to be, or to be likely to become an obstruction or danger to navigation, that port authority may:
  - a) take possession of and raise, remove or destroy the whole or any part of the vessel;
  - b) light or buoy any such vessel or part thereof until it is raised, removed or destroyed; and
  - c) subject to the provisions of subsection (2) and (3), sell in such manner as the port authority thinks fit, any vessel or part thereof so raised

or removed, and also any other property recovered in the exercise of its powers under this section and out of the proceeds of the sale, reimburse itself for the expenses incurred by it in relation thereto under this section and shall hold the surplus, if any, of the said proceeds on deposit for payment to the persons thereafter establishing a right thereto and the deposit shall be paid into an account owned of the State.

- 2) A sale shall not, except in the case of property which is of a perishable nature or which would deteriorate in value by delay, be made until at least seven days' notice of the intended sale has been given in the Gazette.
- 3) At any time before any property is sold under this section, the owner thereof shall be entitled to have the same delivered to him on payment to the receiver of the fair market value thereof, to be ascertained by agreement between the port authority and the owner, or failing such agreement, by some person to be named for the purpose by the Director and the sums paid to the receiver as the value of any property under this subsection shall, for the purposes of this section, be deemed to be the proceeds of sale of that property.
- 4) If the proceeds of sale of any such property as is mentioned in this section are not sufficient to cover all the expenses incurred by the port authority under subsection (1) of this section or

if there are no such proceeds at all, the port authority should be entitled to claim from the owner of the wreck payment of the difference as a debt due to the port authority.

188. Removal of wreck.

Where a vessel is sunk, stranded or abandoned on the coast or on or near any rock, shoal or bank in Nicaragua or any adjacent seas and, in the opinion of the Director, it is likely to become an obstruction or a danger to navigation, the Director has the same powers in relation to the vessel as are by this Part conferred upon the port authority.

Salvage.

189. Reasonable Salvage.

1) Where:

a) services are rendered wholly or in part within the waters of Nicaragua saving life from any aircraft or vessel or elsewhere in saving life from any Nicaraguan vessel, or

b) within the territorial waters of Nicaragua any aircraft or vessel is wrecked, abandoned, stranded or in distress and services are rendered by any person in assisting such vessel or saving the wreck, there shall be payable to the salvor by the owner of such aircraft, vessel or wreck a reasonable amount of salvage, including expenses properly incurred, to be determined in cases of dispute, in the manner prescribed in this Part.



2) Salvage payable in respect of the preservation of life shall be payable in priority to all other claims for salvage.

190. Disputes re: salvage.

A dispute as to the amount of salvage, whether of life or property shall be heard and determined by and before a competent magistrate having regard the amount claimed.

191. Amount of salvage.

A competent magistrate must determine the amount of salvage according to the circumstances of each case, on the basis of the following considerations:

a) the measure of success obtained, the efforts and deserts of the salvors, the danger run by the salvaged vessel, by her passengers, crew and cargo, by the salvors, and by the salvaging vessel; the time expended, the expenses incurred and losses suffered, and the risks of liability and other risks run by the salvor, and also the value of the property exposed to such risk, due regard being had to the special appropriation (if any) of the salvors vessel for salvage purposes;

b) the value of the property salvaged.

192. Valuation of property.

Where any dispute as to salvage arises, the competent magistrate shall, on the application of either party, appoint a valuer to value that property and shall give copies of the valuation to both parties.

193. Detention of salvaged property.

Where salvage is due to any person under this Act, the competent magistrate shall detain the salvaged property until:

- a) the salvage fees and costs due thereon are ascertained and paid, or
- b) security is given to his satisfaction for the salvage, fees and costs.

194. Disposal of detained property.

1) A competent magistrate may sell any detained property if the persons liable to pay the salvage in respect of which the property is detained are aware of the detention in the following cases:

- a) where the amount is not disputed and payment of the amount due is not made within twenty days after the amount is due;
- b) where the amount is disputed, but no appeal lies from the decision of the competent magistrate and payment is not made within twenty days after such decision; or
- c) where the amount is disputed and an appeal lies from the decision of the first court (competent magistrate) to some other court and within sixty days of the decision of the first court, neither payment of the sum is made nor proceedings are commenced for the purpose of the appeal.

2) The proceeds of sale of detained property shall, after payment of the expenses of the sale, be applied by the competent magistrate in payment of

the expenses, fees and salvage, and, so far as not required for that purpose, shall be paid to the owners of the property, or any other persons entitled to receive the same.

195. Rescission of salvage agreement.

Every agreement as to salvage entered into urgently and under the influence of danger may at the request of either party thereto, be annulled or modified by the competent magistrate, if the competent magistrate considers that the conditions of such agreement are not reasonable.

196. Limitation of time.

An action in respect of salvage services may not be brought after the end of two years from the date when the salvage services were rendered.

**PART VI . . SHIPPING CASUALTIES,  
INQUIRIES AND INVESTIGATIONS.**

197. Investigations of shipping casualties.

1) Where any of the following casualties occur, that is to say:

a) the loss or presumed loss, stranding, grounding, abandonment of, or damage to a ship;

b) a loss of life caused by fire on board, or by any accident to, a ship or ship's boat, or by any

accident occurring on board a ship or ship's boat; or

c) any damage caused by a ship ;

and, at the time it occurs, the ship was a Nicaraguan ship or the ship or ship's boat was in Nicaraguan Waters, the Director may cause a preliminary inquiry into the casualty to be held by a person appointed for the purpose by the Director.

2) Whether or not a preliminary inquiry into the casualty has been held under subsection (1), the Director may cause a formal investigation, to be held by a wreck commissioner.

#### 198. Preliminary Inquiry.

1) For the purpose of a preliminary inquiry under section 197, the person holding the inquiry has all the powers of a surveyor under this Act.

2) Upon the conclusion of a preliminary inquiry, the person holding it shall send to the Director a report containing a full statement of the case and of that person's opinion thereon, accompanied by such report of, or extracts from, the evidence, and such observations, as he thinks fit.

#### 199. Formal Investigation.

1) The Director may appoint:

a) a person appearing to him to be suitably qualified, by the holding of, or by having held, judicial office, or by experience as a legal practi-

tioner;or

b)a senior public officer,

to be a wreck commissioner to hold one or more formal investigations.

- 2) The wreck commissioner holding a formal investigation shall conduct it with the assistance of one or more assessors with nautical, engineering or other special skills or knowledge.
- 3) Notwithstanding paragraph (a) of subsection (1) if any question concerning the cancellation or suspension of an officer's certificate is likely to arise there must be at least two assessors with experience in the merchant service available to assist the wreck commissioner.
- 4) At the conclusion of a formal investigation the wreck commissioner shall send to the Director a full report on the investigation, together with the evidence taken.

#### 200. Effect on certificates or licences.

- 1) When, as a result of a formal investigation, the wreck commissioner:
  - a) is satisfied that any master, mate or engineer:
    - i) is unfit to discharge his duties whether by reason of incompetence or misconduct or for any other reason;
    - ii) has been seriously negligent in the discharge of his duties; or
    - iii) has failed to give any assistance or informa-

tion required by section 150;and

- b)in case coming under subparagraph (i) or (ii),  
is further satisfied that that circumstance  
caused or contributed to the casualty,

the wreck commissioner may cancel or suspend any certificate or licence issued to the officer concerned or censure him.

- 2) If a certificate or licence is cancelled or suspended pursuant to subsection (1),the officer concerned shall forthwith deliver such certificate or licence to the wreck commissioner or to the Director.

- 3) notwithstanding subsection (1):

- a) a wreck commissioner may not cancel or suspend a certificate or licence unless at least one half of the number of assessors concur;and
- b)each assessor who does not concur must state in writing his dissent and his reasons therefor.

#### 201. Inquiry into fitness or conduct.

- 1) If it appears to the Director that any master, mate or engineer who holds a certificate or licence:
  - a)is unfit to discharge his duties,whether by reason of incompetence or misconduct or for any other reason;
  - b)has been seriously negligent in the discharge of his duties;or
  - c)has failed to give any assistance or information required by section 150,

the Director may cause an inquiry to be held by any person qualified under section 199 to be appointed as a wreck commissioner and, if the Director does so, he may, if he thinks fit, suspend the certificate or licence pending the outcome of the inquiry and require the officer concerned to deliver it to the Director.

2) Section 199 applies to an enquiry under this section as if the inquiry were a formal investigation and as if the person holding the inquiry were a wreck commissioner.

3) A person holding an inquiry under this section may, if satisfied of any of the matters mentioned in paragraphs a) to c) of subsection (1), censure the officer or, if at least one-half of the number of assessors concur therein, cancel or suspend any certificate or licence issued to the officer.

4) when a certificate or licence is suspended under this section, the officer concerned shall, unless he has delivered it to the Director in pursuance of subsection (1), deliver it forthwith to the person holding the inquiry or to the Director.

## 202. Re-hearing and appeal.

1) Where an inquiry or formal investigation has been held under this Part, the Director may, in his discretion, order the whole or any part of the case to be re-heard.

- 2) It is the duty of the Director to order a case or part thereof to be re-heard:
  - a) if new and important evidence that could not be produced at the inquiry or investigation has been discovered; or
  - b) it appears to the Director that there are other grounds for suspecting that a miscarriage of justice might have occurred.
  
- 3) A re-hearing under this section may be held by the person or wreck commissioner who held the first inquiry or formal investigation, or by another person qualified to hold the inquiry or investigation, as the Director may direct.
  
- 4) The provisions of this Part that applied to the original inquiry or formal investigation shall apply to the re-hearing.
  
- 5) Where, as a result of a formal investigation or an inquiry under section 199, the certificate or licence of any person has been cancelled or suspended, then, if no order is made under subsection (1) or (2), a person described in paragraph (a) or (b) or any other person who, having an interest in the investigation or inquiry, has appeared at the hearing thereof and is affected by the decision, may appeal to the Minister.

#### 203. Delivery of certificates, etc.

- 1) A person who fails to deliver a certificate or licence as required by or under section 199 or 200 is guilty of an offence and liable to a fine



of .....

- 2) Where a certificate or licence is delivered to any person other than the Director in pursuance of section 200 or 201 that person shall, as soon as possible, forward it to the Director for retention.

#### 204. Power of Director.

Where a certificate or licence has been suspended or cancelled under section 200 or 201, the Director may, if he is of the opinion that the justice of the case so requires:

- a) re-issue the certificate or licence or, as the case may be, reduce the period of suspension and return the certificate or licence, or
- b) grant a new certificate or licence of the same or a lower grade in place of that cancelled or suspended.

## PART VII . LIMITATION AND DIVISION OF LIABILITY.

### Limitation of Liability.

#### 205. Definitions:

- 1) For the purpose of this Part:
  - a) "ship" includes every description of lighter, barge or like vessel, however propelled, and any structure launched and intended for use in navigation as a ship or as a part of a ship;

- b) "unit of account" means the Special Drawing Right as defined by the International Monetary fund;
- c) "personal claims" means claims resulting from loss of life and personal injury; and
- d) "property claims" means all claims other than personal claims.

206. Tonnage rules.

For the purpose of this Part the ship's tonnage shall be the gross tonnage calculated in accordance with the tonnage measurement rules contained in Annex I of the International Convention on Tonnage Measurement of Ships, 1969.

207. Foreign ship's measurement.

- 1) Where a foreign ship has not been and cannot be, measured according to this Act, the Director shall, on receiving from or by the direction of a court hearing a case in which the tonnage of the ship is in question, such evidence concerning the dimensions of the ship as it is practicable to furnish, give a certificate under his hand stating what would in his opinion have been the tonnage of the ship if she had been so measured.
- 2) The tonnage stated pursuant to subsection (1) is presumed for the purposes of this Part to be the tonnage of the ship.

208. Liability of owners limited.

- 1) The owners of a Nicaraguan or foreign ship shall not be liable for damages beyond the amounts specified in subsection (2) if any of the following events occur without the actual fault or privity of the owner, namely:
  - a) when any loss of life or personal injury is caused to any person being carried in the ship;
  - b) when any loss or damage is caused to any property on board the ship;
  - c) when any loss of life or personal injury is caused to any person not carried in the ship or when any loss or damage is caused to any property, other than property described in paragraph (b), or any rights are infringed, through:
    - i) the act or omission of any person, whether on board the ship or not, in the navigation or management of the ship, in the loading, carriage or discharge of its cargo or in the embarkation, carriage or disembarkation of its passengers; or
    - ii) any other act or omission of any person on board the ship.
  
- 2) The amounts to which the owner of a ship may limit his liability according to this section, except the case prescribed in subsection (3) shall be:
  - a) in respect of personal claims:
    - i) 333,000 Units of Account for a ship with a tonnage not exceeding 500 tons;
    - ii) for a ship with a tonnage in excess of 500 tons, the following amount in addition to that mentioned in (i):  
for each ton from 501 to 3,000 tons, 500 Units

of Account;

for each ton from 3001 to 30,000 tons, 333 Units of Account;

for each ton from 30,001 to 70,000 tons, 250 Units of Account; and

for each ton in excess of 70,000 tons, 167 Units of Account;

b) in respect of property claims:

i) 167,000 Units of Account for a ship with a tonnage not exceeding 500 tons;

ii) for a ship with a tonnage in excess of 500 tons the following amount in addition to that mentioned in (i):

for each ton from 501 to 30,000 tons, 167 Units of Account;

for each ton from 30,001 to 70,000 tons, 125 Units of Account; and

for each ton in excess of 70,000 tons, 83 Units of Account.

3) In respect of personal claims of passengers of a ship, the limit of liability of the owner shall be an amount of 46,666 Units of Account multiplied by the number of passengers which the ship is authorised to carry according to the ship's certificate, but not exceeding 25 million Units of Account.

4) For the purposes of subsection (1) when any obligation or liability arises:

a) in connection with the raising, removal or destruction of any ship that is sunk, stranded or abandoned, or of anything on board such a ship;  
or

b) in respect of any damage caused to harbour works, basins or navigable water ways,

the liability shall be treated as damages to the property.

- 5) This section shall not apply to limit the liability of a owner of a ship in respect of any loss of life or personal injury caused to or any loss of or damage to property or any infringement of any right of a person who is employed on board or in connection with a ship under a contract of service if that contract is governed by the law of any country other than Nicaragua and that law does not set any limit to that liability or sets a limit exceeding that set by this section.

209. Power to consolidate claims.

- 1) Where any liability is alleged to have been incurred by the owner of a ship in respect of any occurrence for which his liability is limited by section 208 and several claims are made or apprehended in respect of that liability, the competent court may on the application of that owner, determine the amount of his liability and distribute that amount rateably among the several claimants.
- 2) The competent court may, as it thinks just:
- a) stay any proceedings pending in any other court in relation to the same matter, and
  - b) proceed in such manner and subject to such rules of court:
    - i) as to making persons interested parties to

the proceedings;

ii) as to the exclusion of any claimants who do not apply to be joined in the proceedings within a certain time;

iii) as to requiring security from the owner; and

iv) as to the payment of any costs.

#### 210. Extention of limitation of liability.

1) The persons whose liability in connection with a ship is limited by section 208 include :

a) any charterer and any person interested in, or in possession of, the ship, and

b) in particular any manager or operator of the ship.

2) In relation to a claim arising from the act or omission of any person in his capacity as master or member of the crew or, otherwise than a master or crew member, in the course of his employment as a servant of the owners or of any person mentioned in subsection (1):

a) the persons whose liability is limited by section 208 also include the master, member of the crew or servant, and, in a case where the master or member of the crew is the servant of a person whose liability would not be limited apart from this paragraph, the person whose servant he is; and

b) the liability of the master, member of the crew or servant himself is limited to the like extent notwithstanding his actual fault or privity in that capacity.

211. Limitation of liability of ports authorities and owners of docks.

- 1) Where, without the actual fault or privity of the owners of any dock or any harbour or port authority, any loss or damage is caused to any ship or to any goods, merchandise or other things whatever on board any ships, the owners are not liable to damages beyond an aggregate amount not exceeding an amount equivalent to the amount prescribed in paragraph (b) of subsection (2) of section 208 for each tonne of the tonnage of the largest registered Nicaraguan ship.
- 2) In this section, "owner of any dock" includes any person or authority having control and management of any dock and ship using the same.

212. Release of ship with security.

- 1) Where:
  - a) a ship or other property is arrested in connection with a claim that appears to the competent court to be founded on a liability to which a limit is set by section 208; or
  - b) security is given to prevent or obtain release from such an arrest,the competent court may order the release of the ship, property or security, if the conditions specified in subsection (3) are satisfied.
- 2) Where the release is ordered under subsection (1) the person on whose application the release is ordered is to be deemed to have submitted to the

jurisdiction of the competent court to adjudicate on the claim.

- 3) The conditions referred to in subsection (1) are:
- a) that a guarantee has first been given; that is to say, security that in the opinion of the competent court is satisfactory, whether in Nicaragua or elsewhere, in respect of the liability or any other liability incurred on the same occasion, and the competent court is satisfied that, if the claim is established, the amount for which the guarantee was given, or such part thereof as corresponds to the claim, would be actually available to the claimant; and
  - b) that either the guarantee is for the amount of the claim not being less than the limit, or further security is given that together with the guarantee is for an amount that is not less than that limit.

#### Division of Liability.

#### 213. Rules as to division of liability.

- 1) Where by the fault of two or more ships damage or loss is caused to one or more of those ships, to their cargoes or freight, or to any property on board, the liability to make good the damage or loss shall be in proportion to the degree in which each ship was in fault.
- 2) Where having regard to all the circumstances of the case it is not possible to establish diffe-



rent degrees of fault, the liability shall be apportioned equally.

- 3) Nothing in this section operates so as to render any ship liable for any loss or damage to which her fault has not contributed.
- 4) Nothing in this section shall affect the liability of any person under contract of carriage or any contract, or shall be construed as imposing any liability upon any person from which he is exempted by any contract or by any provision of law or as affecting the right of any person to limit his liability in the manner provided by law.
- 5) In this section the expression "freight" includes passage money and hire, and reference to damage or loss caused by the fault of a ship shall be construed as including references to any salvage or other expenses consequent upon that fault recoverable at law by way of damages.

#### 214. Joint and several liability.

- 1) Where loss of life or personal injuries are suffered by any person on board a ship owing to the fault of that ship and of any other ship or ships, the liability of the owner of the ships shall be joint and several.
- 2) Nothing in this section shall be construed as depriving any person of any right of defence on which independently of this section he might have

relied in any action brought against him by the person injured or any person or persons entitled to sue in respect of such loss of life or shall affect the right of any person to limit his liability in cases to which this action relates in the manner provided by law.

215. Right of contribution.

- 1) Where loss of life or personal injuries are suffered by any person on board a ship owing to the fault of that ship and any other ship or ships, and a proportion of the damage is recovered against the owners of one of the ships that exceeds the proportion in which she was at fault, they may recover by way of contribution the amount of the excess from the owners of the other ship or ships to the extent to which these ships were in fault; but no amount shall be so recovered that could not by reason of any statutory or contractual limitation of or exemption from liability or could not for any other reason have been recovered in the first instance as damages by the persons entitled to sue therefor.
- 2) In addition to any other remedy provided by law, the persons entitled to any such contribution as aforesaid shall have, for the purpose of recovering the same subject to the provisions of this Act, the same rights and powers as the persons entitled to sue for damages in the first instance.

216. Extended meaning of owners.

The provisions of sections 213 to 215 (inclusive) shall apply to any persons other than the owners responsible for the fault of the ship as though the expression "owners" included such persons and as though such expression included all persons responsible for the navigation and management of the ship pursuant to a charter or demise.

**PART VIII. PREVENTION OF POLLUTION  
OF THE SEA BY OIL.**

General provisions.

217. Application.

Unless otherwise provided this Part shall apply to all Nicaraguan ships and also to foreign ships in Nicaraguan territorial waters.

218. Exemptions.

This Part shall not apply to:

- a) a ship belonging to or operated by a state and being engaged in public non-commercial service, shall as far as seems reasonable and practicable, comply with the provisions of this Part when this does not hinder or impede the operation or operation ability of the ship;

- b) naval vessels, and other ships while being used as naval auxiliaries;
- c) a discharge which is essential to the safety of the ship, the health of those on board or in order to save a life;
- d) a discharge resulting from damage to a ship or equipment, if all reasonable precautions have been taken both prior to and after the occurrence for preventing or minimizing the discharge.

219. Definitions.

In this Part, unless the context otherwise requires:

- a) "Convention" means the International Convention for the Prevention of Pollution from Ships, 1973, as amended by the protocol of 1978;
- b) "discharge" means any release or discharge howsoever caused being part of the operation of the ship. The term includes any escape, disposal, spilling, leaking, pumping, emitting or emptying;
- c) "mile" means a nautical mile of 1,852 metres;
- d) "oil" means petroleum in any form including crude oil, fuel oil, sludge, oil refuse and refined products (other than petrochemicals) and includes the substances listed in appendix I of annex I of the Convention;
- e) "oily mixture" means a mixture with any oil content;
- f) "oil reception facilities" in relation to a port, means facilities for enabling vessels using the port to discharge or deposit oil residues;
- g) "new ship" means a ship which falls into any one of the following categories:
  - i) for which the building contract is placed after

- 31 December 1975; or
- ii) in the absence of a building contract, the keel of which is laid or which is at a similar stage of construction after 30 June 1976; or
  - iii) the delivery of which is after 31 December 1979;
- or
- d) which has undergone a major conversion:
- i) for which the contract is placed after 31 December 1975; or
  - ii) in the absence of a contract, the construction work of which is begun after 30 June 1976; or
  - iii) which is completed after 31 December 1979.
- h) "existing ship" means a ship which is not a new ship;
- I) "ship" means any vessel of any type whatsoever, including floating craft, whether self-propelled or towed by another vessel;
- j) "tanker" means a ship in which the greater part of the cargo space is constructed or adopted for the carriage of liquid cargoes in bulk and which is not for the time being, carrying a cargo other than oil in that part of its cargo space.

220. Prohibition as to discharge.

- 1) Unless otherwise provided, any discharge into a watercourse or into the sea of oil or oily mixtures from ships to which this Part applies shall be prohibited except when all the following conditions are satisfied:
- a) for a tanker, except as provided by subsection (b) of this section:
    - i) the tanker is more than 50 nautical miles from the nearest land;

- ii)the tanker is proceeding in route;
  - iii)the instantaneous rate of discharge of oil content does not exceed 60 litres per nautical mile;
  - iv)the total quantity of oil discharged into the sea does not exceed for existing tankers 1/15,000 of the total quantity of the particular cargo of which the residue formed a part, and for new tankers 1/30,000 of the total quantity of the particular cargo of which the residue formed a part; and
  - v)the tanker has in operation an oil discharge monitoring and control system and a slop tank arrangement.
- b)for a ship of 400 tons gross tonnage and above other than a tanker and from machinery space bilges excluding cargo pump room bilges of an oil tanker unless with oil cargo residues:
- i)the ship is more than 12 nautical miles from the nearest land;
  - ii)the ship is proceeding in route;
  - iii)the oil content of the effluent is less than 100 parts per million;
  - iv)the ship has in operation an oil discharge monitoring and control system, oily-water separating equipment, oil filtering system or other installation.
- 2) In the case of a ship of less than 400 tons gross tonnage other than a tanker, shall be as far as practicable and reasonable with installations to ensure the storage of oil residues on board and their discharge to reception facilities or in compliance with the requirements of subsection

(1.b) of this section.

- 3) The provisions of subsection (1) of this section shall not apply to the discharge of clean or segregated ballast or unprocessed oily mixtures which without dilution have an oil content not exceeding 15 parts per million and which do not originate from cargo pump room bilges and are not mixed with oil cargo residues. The provisions of subsection (1.b) of this section shall not apply to the discharge of the processed oily mixture, provided that all of the following conditions are satisfied:
  - a) the oily mixture does not originate from cargo pump-room bilges;
  - b) the oily mixture is not mixed with oil cargo residues;
  - c) the oil content of the effluent without dilution does not exceed 15 parts per million; and
  - d) the ship has in operation oil filtering equipment.
- 4) The oil residues which cannot be discharged in compliance with subsections (1), (2), and (3) of this section, shall be retained on board or discharged to reception facilities.
- 5) No discharge into the sea shall contain chemicals or other substances in quantities or concentrations which are hazardous to the marine environment or chemicals or other substances introduced for the purpose of circumventing the conditions of discharge specified in this section.

222. Report by master of ship.

- 1) If any oil or mixture containing oil:
  - a) is discharged from a vessel into the waters of a harbour in Nicaragua; or
  - b) is found to be escaping or to have escaped from a vessel into any such waters; or
  - c) is found to be escaping or to have escaped into any such waters from a place on land;the owner or master of the vessel, or the occupier of the place on land as the case may be, shall forthwith report the occurrence to the harbour master, or if the harbour has no harbour master, to the harbour authority.
  
- 2) A report made under subsection (1) of this section by the owner or master of a vessel shall state whether the occurrence falls within paragraph (a) or paragraph (b) of that subsection.
  
- 3) If a person fails to make a report as required by this section, he shall be guilty to an offence and liable to a fine of .....

223. Oil record book.

- 1) Every oil tanker of 150 tons gross tonnage and every ship of 400 tons gross tonnage and above other than oil tanker shall keep an oil record book.
  
- 2) The form and manner in which the oil record book shall be maintained, the nature of the entries to be made therein, the time and circumstances in



which such entries shall be made, the custody and disposal thereof and all other matters relating thereto shall be such as may be prescribed by the Director having regard to the provisions of the Convention.

224. Inspection and control of ships to which the Convention applies.

A surveyor or any person appointed in this behalf may, at any reasonable time, go on board a ship to which any of the provisions of this Part apply for the purpose of:

- a) ensuring that the prohibitions, restrictions and obligations imposed by or under this Part are complied with;
- b) satisfying himself about the adequacy of the measures taken to prevent the escape of oil or oily mixture from the ship;
- c) ascertaining the circumstances relating to an alleged discharge of oil or oily mixture from the ship in contravention of the provisions of this Part;
- d) inspecting the oil record book; and
- e) satisfying himself that the ship has a valid International Oil Pollution Prevention Certificate.

225. Power of surveyor.

The surveyor or any such person may, if necessary, make without unduly delaying the ship, a true copy of any entry in the oil record book of the ship and may require the master of the ship to certify the copy

to be a true copy and such copy shall be admissible as evidence of the facts stated therein.

226. Information regarding contravention of the provisions of the Convention.

1) If, on report from a surveyor or other person authorised to inspect a vessel under section 224, the Government of Nicaragua is satisfied that any provision of the Convention has been contravened anywhere by a foreign ship being a ship to which the provisions of the Convention apply, it shall transmit particulars of the alleged contravention to the Government of the country to which the ship belongs.

2) On receipt of information from the Government of any country which has ratified the Convention that a Nicaraguan ship has contravened any provision of the Convention, the Government of Nicaragua shall investigate the matter and if satisfied that any provision of this Part or any rule made thereunder has been contravened, take appropriate action against the owner or master and intimate such Government of the action so taken.

227. Oil reception facilities at ports in Nicaragua.

1) Notwithstanding anything contained in any other law for the time being in force, in respect of every port in Nicaragua the powers of the port authority shall include the power to provide oil reception facilities.

- 2) A port authority providing oil reception facilities or a person providing such facilities by arrangement with the port authority, may make charges for the use of the facilities at such rates and may impose such conditions in respect of the use thereof as may be approved by the Directorate of Water Transport.
  
- 3) Where the Directorate of Water Transport is satisfied that there are no oil reception facilities at any port in Nicaragua or that the facilities available at such port are not adequate for enabling ships calling at such port to comply with the requirements of the Convention, the Directorate of Water Transport may, after consultation with the port authority in charge of such port, direct by order in writing such authority to provide or arrange for the provision of such oil reception facilities as may be specified in the order.

Civil liability for oil pollution damage.

228. Definitions.

- 1) For the purpose of this Act:
  - a) "damage" includes loss;
  - b) "owner", in relation to a registered ship, means the person registered as its owner, except that in relation to a ship owned by a State which is operated by a person registered as the ship's operator, it means the person registered as its operator;
  - c) "the court" means a competent judge according

with the Civil Law.

- 2) In relation to any damage or cost resulting from the discharge or escape of any oil carried in a ship references in this Act to the owner of the ship are references to the owner at the time of the occurrence or first of the occurrences resulting in the discharge or escape.
- 3) References in this Act to the area of any country include the territorial sea of that country.

229. Liability for oil pollution.

- 1) Where, as a result of any occurrence taking place while a ship is carrying a cargo of persistent oil in bulk, any persistent oil carried by the ship (whether as part of the cargo or otherwise) is discharged or escapes from the ship, the owner of the ship is liable for:
  - a) any damage caused in the area of Nicaragua by contamination resulting from the discharge or escape; and
  - b) the cost of any measure reasonably taken after the discharge or escape for the purpose of preventing or reducing any such damage in the area of Nicaragua; and
  - c) any damage caused in the area of Nicaragua by any measure so taken.
- 2) Where a person incurs a liability under subsection (1) of this section he shall also be liable for any damage or cost for which he would be liable under that subsection if the references

therein to the area of Nicaragua included the area of any other Convention country.

3) Where persistent oil is discharged or escapes from two or more ships and a liability is incurred under this section by the owner of each of them; but the damage or cost for which each of the owners would be liable cannot reasonably be separated from that for which the other or others would be liable; each of the owners shall be liable, jointly with the other or others, for the whole of the damage or cost for which the owners together would be liable under this section.

4) For the purposes of this Act, where more than one discharge or escape results from the same occurrence or from a series of occurrences having the same origin, they shall be treated as one; but any measure taken after the first of them shall be deemed to have been taken after the discharge or escape.

#### 230. Exceptions from liability.

The owner of a ship from which persistent oil has been discharged or has escaped shall not incur any liability under section 229 if he proves that the discharge or escape:

- a) resulted from an act of war, hostilities, civil war, insurrection or an exceptional, inevitable and irresistible natural phenomenon; or
- b) was due wholly to anything done or left undone by another person, not being a servant or agent of the owner, with intent to do damage; or

c) was due wholly to the negligence or wrongful act of a government or other authority in exercising its function of maintaining lights or other navigational aids for the maintenance of which it was responsible.

#### 231. Limitation of liability.

- 1) The owner of a ship may limit his liability in respect of any one incident to an aggregate amount of 133 Units of Account for each ton of the ship's tonnage. However, this aggregate amount shall not in any event exceed 14 million Units of Account.
- 2) The owner is not entitled to limit his liability according to subsection (1), if the incident occurred as a result of his actual fault or privity.
- 3) For the purposes of this section the Unit of Account is the Special Drawing Right as defined by the International Monetary Fund.
- 4) For the purpose of this section the ship's tonnage shall be the net tonnage of the ship with the addition of the amount deducted from the gross tonnage on account of engine room space for the purpose of ascertaining the net tonnage. In the case of a ship which cannot be measured in accordance with the normal rules of tonnage measurement, the ship's tonnage shall be deemed to be 40 per cent of the weight in tons (of 2,240 lbs.) of oil which the ship is capable of carrying.

232. Limitation actions.

- 1) Where the owner of a ship has or is alleged to have incurred a liability under this part he may apply to the competent court for the limitation of that liability to an amount determined in accordance with section 231 of this Act.
- 2) If on such application the court finds that the applicant has incurred such a liability and is entitled to limit it, the court shall, after determining the limit of the liability and directing payment into court of the amount of that limit:
  - a) determine the amounts that would, apart from the limit, be due in respect of the liability to the several persons making claims in the proceedings; and
  - b) direct the distribution of the amount paid into court among those persons in proportion to their claims, subject to the following provisions of this section.
- 3) All claims shall be made within the time as the court may direct or such further time as the court may allow.
- 4) Where any sum has been paid in or towards satisfaction of any claim in respect of the damage or cost to which the liability extends by the owner, the insurer or by other person; the person who paid the sum shall, to the extent of that sum, be in the same position with respect to any distribution made in proceedings under this section as the person to whom it was paid would have been.

5) Where the person who incurred the liability has voluntarily made any reasonable sacrifice or taken any other reasonable measures to prevent or minimize pollution damage to which the liability extends or might have extended he shall be in the same position with respect to any distribution made in proceedings under this section as if he had a claim in respect of the liability equal to the cost of the sacrifice or other measures.

233. Cases excluded.

No action to enforce a claim in respect of a liability incurred under this Part shall be entertained by any court in Nicaragua unless the action is commenced not later than three years after the claim arose nor later than six years after the occurrence or first of the occurrences resulting in the discharge or escape by reason of which the liability was incurred.

234. Compulsory insurance against liability for pollution.

1) Every ship carrying more than 2,000 tons of oil in as cargo shall not enter or leave a Nicaraguan port or arrive at or leave a terminal in the territorial sea of Nicaragua, nor if the ship is registered in Nicaragua, a port in any other country or a terminal in the territorial sea of any country, unless there is in force in respect of the ship a certificate complying with subsection (2) of this section and showing that there



is in force a contract of insurance or other security satisfying the sums fixed by applying the limits of liability prescribed in section 231 of this Act.

- 2) A certificate attesting that insurance or other financial security is in force shall be issued:
  - a) in the case of a Nicaraguan ship by the Directorate of Water Transport;
  - b) in the case of a foreign ship by the appropriate authority of the State of the ship's registry.
- 3) The certificate prescribed in subsection (2) must be carried on board the ship and shall, on demand, be produced by the master to any officer of customs or of the Directorate of Water Transport.
- 4) If a ship enters or leaves, or attempts to enter or leave, a port or a terminal in contravention of subsection (1) of this section, the master or owner shall be guilty of an offence and liable to a fine not exceeding.....
- 5) If a ship attempts to leave a port in Nicaragua in contravention of this section the ship may be detained.

**235. Issue of certificate.**

- 1) If the Director is satisfied, on an application for such certificate mentioned in section 234 of this Part in respect of a Nicaraguan ship, that

there is in force in respect of the ship, throughout the period for which the certificate is to be issued, a contract of insurance or other security satisfying the requirements of section 234 of this Part, the Director shall issue such certificate to the owner.

- 2) The Director may refuse to issue the certificate if he has doubt whether the person providing the insurance or other security will be able to meet his obligation thereunder, or whether the insurance or other security will cover the liability of the owner prescribed in this Part.
- 3) The Ministry of Finance may make regulations prescribing the fee to be paid on an application for a certificate to be issued under this section.

236. Rights of third parties against insurers.

- 1) Any claim for compensation for pollution damage can be brought directly against the insurer or other person who had provided financial security for the liability of the owner of the ship for oil pollution damage.
- 2) In the case prescribed in subsection (1) of this section the defendant may to prove that the discharge or escape resulting in pollution damage was due to the wilfull misconduct of the owner himself.
- 3) The defendant may also, whether or not the dis-

charge or escape occurred without the actual fault or privity of the owner of the ship, limit his liability such as is prescribed in subsection (1) of the section 231 of this Part.

- 4) The defendant has the right to require the owner of the ship to be joined in the proceedings.

#### 237. Exceptions.

The provisions of this Part dont apply to warship or other ships owned or operated by the Government of any State for the time being used for other than commercial purposes.

### **PART IX . JURISDICTION .**

#### 238. Jurisdiction.

- 1) For the purpose of conferring jurisdiction under this Act, every offence shall be deemed to have been committed and every cause of complaint to have arisen, either in the place in which the same actually was committed or arose, or in any place in which the offender or person complained against may be.
- 2) Where, in any proceedings under this Act, a question arises whether any ship or person is or is not governed by the provisions of this Act or some part thereof, the ship or person shall be deemed to be governed by those provisions, unless the contrary is proved.

239 Jurisdiction as to offences on board ships.

Where any person on board any Nicaraguan ship does any act or makes any omission which would be an offence if done or made in Nicaragua, that person shall regardless of the position of the ship at the time of the act or omission, be guilty of that offence and may be tried by any court having jurisdiction in Nicaragua.

240. Jurisdiction in collision and other causes.

- 1) No court in Nicaragua shall entertain an action to enforce a claim to which this section applies unless:
  - a) the defendant has his habitual residence or a place of business in Nicaragua; or
  - b) the cause of action arose within the waters of Nicaragua or within the limits of a harbour or port of Nicaragua; or
  - c) an action arising out of the same incident or series of incidents is proceeding in the court, or has been heard and determined in the court.
  
- 2) No court in Nicaragua shall entertain an action to enforce a claim to which this section applies until any proceedings previously brought by the plaintiff in any court outside Nicaragua against the same defendant in respect of the same incidents have been discontinued or otherwise come to an end.
  
- 3) The provisions of subsection (1) and (2) shall

apply to counter-claims, not being counter-claims in proceedings arising out of the same incident or series of incidents, but as if the references to the plaintiff and the defendant were respectively references to the plaintiff on the counter-claim and the defendant to the counter-claim.

- 4) The provisions of subsection (1), (2) and (3) shall not apply to any action or counter-claim if the defendant thereto submits or has agreed to submit to the jurisdiction of the court.
- 5) The claims to which this section applies are claims for damage, loss of life or personal injury arising out of a collision between ships, or out of the carrying out of or omission to carry out a manoeuvre in the case of one or more of two or more ships or out of non-compliance, on the part of one or more of two ships, with the collision rules.

#### 241. Jurisdiction as to unsatisfied mortgages.

Where the registration of a ship is considered to be closed on account of a transfer to persons not qualified to own a Nicaraguan ship, any unsatisfied mortgage may, if the ship comes within the jurisdiction of any court in Nicaragua which has such jurisdiction to enforce the mortgage, or would have had such jurisdiction if the transfer had not been made, be enforced by that court notwithstanding the transfer, without prejudice, in cases where the ship has been sold under a judgement of a court, to the effect of that judgement.

## PART X . . FINAL PROVISIONS.

### 242. General power to make rules or regulations.

The Minister may make regulations for all or any part of the following purposes:

- a) the enforcement of any international convention relating to the subject matter of this Act and generally relating to all maritime matters;
- b) the carriage of passengers and cargo;
- c) the qualification of officers and seamen and certificates of competency;
- d) the manning and survey of fishing vessel;
- e) the regulation of national and foreign pleasure yachts;
- f) the safety of navigation, load lines and the appointment, duties and powers of surveyors of ships for the purpose of this Act;
- g) coastal trade ship;
- h) lighthouses, buoys and beacons;
- i) prescribing sanctions, and penalties for the enforcement of this Act;
- j) prescribing anything that under this Act is to be prescribed;
- k) generally for carrying out this Act.

### 243. Delegation of powers.

- 1) The Minister may, by writing under his hand notified in the Gazette, delegate to the Director or any other officer or officers of the Ministry to which he is in charge, any of his powers or duties

under this Act and any power or duty lawfully exercised or performed by the officer to whom it has been delegated under this subsection, shall be deemed to have been exercised as fully and effectively as if it had been exercised by the Minister.

2) Nothing in this section shall be construed as authorising the delegation of any power to make any order, rule or regulation for the purpose of this Act.

244. Exemption of Government ships from the application of this Act.

Except as otherwise specially provided in this Act or in any regulations made thereunder, nothing in this Act shall apply:

- a) to ships belonging to the Government engaged in non-commercial service; and
- b) to ships or aircraft of the defence force of Nicaragua.

245. Power of Minister to exempt ships from the provisions of this Act.

Subject to the provisions of any convention to which Nicaragua is a party the Minister may, in his discretion, and upon such conditions as he may think fit to impose, exempt any foreign-going or home-trade ship or class of such ships, or any person or class of persons from all or any of the provisions of this Act.

246. Commencement.

This Act will be into force 30 days after its publication in the Gazette.



## CHAPTER III

### WHAT IS NECESSARY TO IMPLEMENT A MARITIME CODE IN NICARAGUA ? .

Pursuant to the " Political Constitution of Nicaragua" 1986, the Maritime Code must be approved by the National Assembly which exercises the legislative power. The draft of the maritime code can be proposed to the National Assembly by its members or by the president of the republic.

Once the maritime code has been approved, it is necessary to prepare the various rules / regulations (subsidiary legislation) that need to be approved and promulgated according to the maritime code (primary legislation).

The Maritime Code not complemented and integrated by subsidiary legislation, except for those provisions which do not require subsidiary for their operation can not mean, in practice, more than simple guidelines for the maritime administration. In this respect there should be little doubt that many provisions of the Maritime Code can not operate until subsidiary legislation is issued and implemented.(1)

Another important step which must be taken before the implementation of the Maritime Code and its subsidiary legislation is the preparation of appropriate documentation (certificates, forms, etc.) which needs to be available to all concerned at the same time as the Maritime Code and its subsidiary legislation enter into force.

It is necessary to note that for the purposes of implementing the Maritime Code and its corresponding subsidiary legislation, it is of vital importance to have a proper maritime administration infrastructure, manned by duly competent officials of the appropriate categories.

Such officials need to be capable of assuming the multiple roles assigned to them by the Maritime Code and its subsidiary legislation.

The overall infrastructure of a maritime administration would depend on the nature and extent of the duties and responsibilities involved, which in turn would depend on the current stage of maritime development in the country and its plans for future maritime development. However, it is very important to ensure that the infrastructure is capable of carrying out efficiently the essential functions assigned to the Maritime Administration.

In Nicaragua, the essential functions relating to the maritime field, are assigned to the Directorate of Water Transport under the Ministry of Construction and Transport.

Due to the lack of qualified personnel, most of the essential functions of the Directorate of Water Transport have not been developed in a proper manner. Most of the functions, especially those pertaining to registration of ships, maritime safety, maritime personnel, maritime casualty investigations, and protection of the marine environment until now have not been carried out properly.

Due to the shortage of qualified personnel, it is of

vital importance for the Directorate of Water Transport to elaborate a training plan to utilize human resources appropriately to maximum national advantage in the maritime field.

In the short and medium term it is necessary to train officers to be able to undertake the great number of tasks that the Directorate of Water Transport has to carry out, especially the functions relating to the maritime safety and prevention of marine pollution.

It is suggested that the Directorate of Water Transport assume the lead role and primary responsibility regarding maritime training. In assuming such role, the Directorate of Water Transport shall have to act in concert with the shipping industry/companies, seafarer's unions and appropriate educational institutions.

Since the availability of adequate funds for the development of maritime training facilities will be the major problem to be faced by the government, it is suggested to undertake tasks towards the establishment of maritime training facilities which train personnel from the different countries of Central-America. This regional cooperation would not only enable pooling of resources, but also permit sharing of costs, with consequential reduction in expenditure for each government involved. This suggestion would also facilitate the obtention of contributions (experts, equipment, funds, etc.) from donor institutions or governments.

At the beginning of the implementation of the Maritime Code and during the period during which the appropriate officers will acquire the required expertise, it is sug-

gested that the Directorate of Water Transport delegates its responsibilities regarding surveys/inspections of Nicaraguan ships to classification societies of international repute.

As the autor expressed in Chapter I, Nicaragua even though a member of the International Maritime Organization (IMO) has not ratified the International Maritime Conventions which have been developed by IMO. This actual legal situation leaves merchant shipping activities within Nicaraguan waters not properly covered by an adequate maritime legislation. For this reason at the same time of elaborating the Maritime Code and of training appropriatr officers, it is suggested that Nicaragua ratify the main International Maritime Conventions in order to have an effective maritime legislation necessary for the effective control of the shipping activities.

In order to have safe ships and to prevent marine pollution from ships, Nicaragua in the short term must ratify and implement in a proper manner as a matter of urgency the following IMO's Conventions :

- 1) International Convention for the Safety of Life at Sea, 1974.
- 2) Protocol of 1978 relating to the International Convention for the Safety of Life at Sea, 1974.
- 3) International Convention for the Prevention of Pollution from ships, 1973, as amended by the protocol of 1978 relating thereto.
- 4) Convention on the International Regulations for Preventing Collisions at Sea, 1972.
- 5) International Convention on Load Lines, 1966.
- 6) International Convention relating to Intervention on

the High Seas in cases of Oil Pollution Casualties, 1969.

- 7) Protocol relating to Intervention on the High Seas in cases of Pollution by substances other than Oil, 1973.
- 8) International Convention on Tonnage Measurement of Ships, 1969.
- 9) Torremolinos International Convention for the Safety of Fishing Vessels, 1977. (this Convention has not yet entered into force).

At the present date, if an incidence of oil spill occurs in the waters of Nicaragua damaging its living resources or causing any other damage, from the legal point of view Nicaragua is not able to claim any compensation due to the fact that neither its national regulations cover that important aspect nor Nicaragua is party of the following Conventions: a) International Convention on Civil Liability for Oil Pollution damage, 1969; and b) International on the Establishment of an International Fund for compensation for Oil Pollution Damage, 1971.

It is therefore essential that Nicaragua in the short term ratify the two Conventions above mentioned.

In the medium term, the Directorate of Water Transport in coordination with other competent institutions, must analyse and decide whether or not to submit the ratification of the following conventions:

- 1) Convention on Facilitation of International Maritime Traffic, 1965.
- 2) International Convention for Safe Containers, 1972.
- 3) Convention and operating Agreement on the Internatio-

nal Maritime Satellite Organization (INMARSAT) 1976.

- 4) Convention on the Prevention of Marine Pollution by Dumping of Wastes and other Matter, 1972.
- 5) International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978.
- 6) International Convention on Maritime Search and Rescue, 1979.

International conventions on maritime law not only cover aspects on safety and marine pollution. On the commercial side of the maritime transport some international conventions have been developed to regulate the relationship between the carrier and the shipper, and some other aspects regulating the responsibilities of the parties engaged in the carriage of goods by sea.

It is suggested that Nicaragua in the short term ratify the following conventions:

- 1) Convention on Limitation of Liability for Maritime Claims, 1976. This convention entered into force on 1 December 1986.
- 2) Convention for the Unification of Certain Rules of Law Relating to Assistance and Salvage at Sea, Brussels, 23 September 1910. This convention entered into force on 1 March 1913.
- 3) Protocol to amend the International Convention for the Unification of Certain Rules of Law Relating to Assistance and Salvage at Sea, Brussels, 27 May 1967. This convention entered into force on 15 August 1977.
- 4) International Convention for the Unification of Certain Rules of Law relating to Bills of Lading, Brussels 25 August 1924 and its two protocols of 23 February 1968 and 21 December 1979. This convention and its two protocols are in force.

- 5) International Convention for the Unification of Certain Rules of Law Relating to Maritime Liens and Mortgages, Brussels, 10 April 1926. This convention entered into force on 2 June 1931.
- 6) International Convention for the Unification of Certain Rules of Law Relating to Arrest of Sea-going ships, Brussels, 10 May 1952. This convention entered into force on 24 February 1956.

Nicaragua is party to the International Convention for the Unification of Certain Rules of Law Relating to Collision between Vessels, Brussels, 23 September 1910. However it is not party neither to the International Convention for the Unification of Certain Rules of Law Relating to Civil Jurisdiction in Matters of Collision, 1952 nor to the International Convention for the Unification of Certain Rules of Law Relating to Penal Jurisdiction in Matters of Collision or Other Incidents of Navigation, 1952. It is suggested to ratify them.

Another important task to be developed by the Directorate of Water Transport in coordination with the Ministry of Foreign Affairs is the delimitation of the maritime boundary of Nicaragua.

By the Law on Continental Platform and Adjacent Sea, 19 December 1979, Nicaragua like most Latin American nations promulgated a 200 nautical mile territorial waters limit. The proclamation of the 200 nautical mile of territorial sea was not accompanied by any new regulation to cover the different aspects of living resources, non living resources and marine traffic in the waters of Nicaragua.

In this important matter, the United Nations have developed some international conventions in order to harmonize the different interests of developed countries against the interests of developing countries. The last convention is the third U.N. Conference on the Law of the Sea, 1982 which is not yet in force.

Brief Outline of the Third U.N. Conference on the Law of the Sea, 1982.

The Convention consists of a preamble, 320 articles, 9 annexes and related decisions and resolutions. The preamble sets out the objects and purposes of the convention. Articles 1-132 (parts I-X) deal with the definition of terms, and the main regulations concerning the territorial sea, the contiguous zone, straits, archipelagic states, the exclusive economic zone, the continental shelf, the high seas, islands, enclosed and semi-enclosed seas, landlocked states, and related matters.

Articles 133-191 (part XI) deal with the regime and international machinery for the exploration and exploitation of the resources of the international seabed area.

Articles 192-278 (parts XII-XIV) deal with the protection and preservation of the marine environment, marine scientific research, and development and transfer of marine technology.

Articles 279-299 (part XV) deal with the settlement of disputes.

Articles 300-304 (part XVI) deal with general provi-



sions, such as those regarding good faith and abuse of rights, peaceful uses of the seas, disclosure of information, archaeological and historical objects found at sea, and responsibility and liability for damage.

Articles 305-320 (part XVII) deal with the final provisions, such as signature, ratification, accession, entry into force, reservations and exceptions, declarations, and amendments.

Annex I to the convention gives a list of the highly migratory species.

Annex II deals with the commission on the limits of the continental shelf in accordance with the provisions of article 76 of the convention.

Annex III deals with the basic conditions of prospecting, exploration and exploitation.

Annex IV deals with the Statute of the Enterprise.

Annex V contains provisions on conciliation.

Annex VI deals with the Statute of the International Tribunal for the Law of the Sea.

Annex VII contains provisions on arbitration.

Annex VIII contains provisions on special arbitration.

Annex IX deals with the participation by international organizations.

Resolution I provides for the establishment of a preparatory commission to undertake the preparatory work.

Resolution II establishes an interim regime for the exploration of the resources of the international seabed area by pioneer investors, pending the entry into force of the convention.

Resolution III provides that the rights and interests under the convention should be implemented for the benefit of the people of a non-self governing territory, pending its attainment of full independence or other self-governing status.

Resolution IV allows national liberation movements to sign the final Act as observers and thereby be entitled to participate in the work of the Preparatory Commission as observers.

#### Maritime boundary prescribed in the Convention

The Convention establishes the following limits:

- a) A 12 nautical mile territorial sea. Within its territorial sea, a coastal State has sovereignty. The limit of the territorial sea is measured from the baselines determined in accordance with the convention.
- b) A 24 nautical mile contiguous zone. Within its contiguous zone, a coastal State has Functional Jurisdiction relating to its customs, fiscal, immigration or sanitary laws. The contiguous zone is measured from the baselines from which the breadth of the territorial sea is measured.
- c) A 200 nautical mile exclusive economic zone. Within its exclusive economic zone, a coastal State has sovereign

rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, including the production of energy from the water, currents and winds; and jurisdiction regarding the establishment and use of artificial islands, installations and structures, marine scientific research and the protection and preservation of the marine environment. The exclusive economic zone is measured from the baselines from which the breadth of the territorial sea is measured.

#### Navigation and Law of the Sea.

Ships of all states, whether coastal or land-locked, enjoy the right of innocent passage through the territorial sea. According with the convention, passage is innocent so long as it is not prejudicial to the peace, good order or security of the coastal state.

Within the territorial sea, submarine and other underwater vehicles are required to navigate on the surface showing their flag.

As a consequence of the extension of the breadth of the territorial sea, a number of straits which are used for international navigation come under the sovereignty of one or more States. In this case and to guarantee the navigation through these straits, the convention provides that all ships enjoy the right of transit passage in straits used for international navigation. The transit passage may not be suspended.

According to article 21 of the convention, the coastal state may adopt laws and regulations relating to innocent

passage through its territorial sea, including the safety of navigation, maritime traffic, protection of navigational aids and facilities and other facilities or installations.

Article 22 of the convention prescribes the power of the coastal state to establish sea lanes and traffic separation schemes, "in particular, tankers, nuclear-powered ships and ships carrying nuclear or other inherently dangerous or noxious substances or materials may be required to confine their passage to such sea lanes".

According to article 52 of the convention ships of all states enjoy the right of innocent passage through archipelagic waters.

#### UNLOS and Prevention of Pollution.

The Law of the Sea Convention 1982, provides a general legal framework within which to address operational pollution but leaves the specifics to "generally accepted international rules and standards for the prevention, reduction and control of pollution from vessels". This refers especially to the discharge standards and the construction and equipment requirements of MARPOL".(2)

Article 218 of the convention allows a state where a ship is in port to investigate and proceed against that ship for discharge violations which have occurred outside the territorial sea or the exclusive economic zone of any state, on request by the coastal states who suffered the damage or by the flag State.

Article 198 of the convention prescribes that a state

must notify other states if pollution from a maritime casualty is likely to affect them. Similarly, the ship's masters should be obliged to notify if they are involved in or become aware of such pollution.

Article 199 of the convention provides that there should be co-operation between states in eliminating the effects of pollution and preventing or minimizing the damage. States shall jointly develop and promote contingency plans for responding to pollution incidents.

It is suggested to analyse the Law of the Sea Convention 1982 and to decide whether or not ratify it according to the economic interests of Nicaragua.

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Reference Notes:

1. Establishment/Administration of Maritime Affairs in Developing Countries Volume I by Professor P.S. Vanchiswar, 1984, revised in 1987.
2. United Nations Conference on the Law of the Sea, 1982.

## CHAPTER IV. CONCLUSION AND RECOMMENDATIONS.

Before 1979, there was not an appropriate maritime administration in Nicaragua. Different Institutions were in charge of various functions and there was no satisfactory communication between them. The legal framework was based on old Spanish legislation.

With the triumph of the Revolution in 1979 there was a special interest for creating a specialised institution, which could look after all matters relating to the maritime field. Therefore and in March 1980, the Directorate of Water Transport was created which has developed some laws and subsidiary regulations that have abolished some maritime institutions contained in Book III of Nicaragua's Commercial Code based on old Spanish legislation.

Nowadays, the main maritime institutions contained in Book III of Nicaragua's Commercial Code are still in force; due to this fact and the fact that Nicaragua until February 1988 only had ratified the SOLAS 60, the author can say that Nicaragua's maritime legislation is outdated.

Due to economical problems the country has suffered from, the Directorate of Water Transport has not been able to retain certain qualified personnel and this has resulted in a serious obstacle for the Directorate of Water Transport in developing the main activities regarding maritime field.

Another important obstacle which the Directorate of Water Transport faces is its non-participation in the main events of IMO, UNCTAD and other specialised agencies of the United Nations in charge of maritime matters which would allow the Directorate of Water Transport to participate directly in the development of the main international regulations.

Another basic problem as regards matters pertaining to the maritime administration is the acute shortage of marine officers with the needed qualifications and experience, and the lack of training facilities for marine officers and seamen.

In short there is an incipient maritime administration with functions not well defined, facing the problems already mentioned which must be solved as soon as possible due to the important impact that the maritime transport has over the foreign trade of the country.

In order to solve the problems actually faced by the maritime administration the following is recommended:

1. It is necessary as a matter of urgency to draft and to put into force a Maritime Code which contains public regulations relating to maritime transport. This code must establish the functions of the maritime administration.
2. Maritime transport due to its international characteristic is regulated by international conventions, so it is very important that Nicaragua ratifies the international convention the author

recommended in chapter III of this thesis.

3. In order to develop a proper maritime infrastructure it is necessary that the highest authorities give the necessary importance that shipping, ports and other complementary activities of maritime transport deserve.
4. The Ministry in charge of maritime activities must as soon as possible draft a maritime policy and submit it to the consideration at the top-most level of the government after obtaining the concurrence or dissent in writing from all the ministries concerned. In the formulation of the maritime policy, competent officials from the different institutions in charge of shipping, ports and other complementary activities must assist the Ministry in charge of maritime activities.
5. It is vital for the development of the Directorate of Water Transport to participate in the meetings of IMO. Nowadays, the main meetings of IMO are attended by personnel of the Nicaragua's Embassy in London. However, due to the multiply activities that the personnel of the Embassy must attend, they are not able to follow in a proper manner the technical matters developed by IMO. Due to the serious economical problems the country is facing, it is not possible to attend the meetings of IMO with the necessary personnel, but the author considers that at this stage it is necessary to delegate that responsibility to a qualified officer of the Directorate of Water Transport. It is recommended that the officer be a graduate from World Maritime University because of the general



knowledge acquired in that university regarding the maritime field.

6. To elaborate a training plan for the main officers of the Maritime Administration and to implement a plan of economical incentive for those officers in order to maintain them in their respective responsibilities. Regarding the economical problem the country is suffering from, it is recommended to give major importance to train the personnel in charge of maritime safety activities.
7. To develop appropriate maritime training facilities for marine officers and seamen in order to man Nicaraguan ships by competent officers. Due to the extremely high costs for the establishment and maintenance of maritime training facilities, it is recommended to try to obtain financial support for that purpose through international organizations like IMO. It is also recommended to take actions in order to establish a regional marine academy for all Central-America. This activity might be coordinated by the Centroamerican Commission of Maritime Transport.

The last recommendation but not the least important is that the author would like to draft a private maritime code and to submit the ratification of the main international conventions which regulate the commercial activities embodied in maritime transport.

## Selected Bibliography.

### Nicaraguan Law.

1. Book III of Nicaragua's Commercial Code.
2. Law on Registration of Ships, November 1980, and its subsidiary rules of January 1983.
3. The Protection Law of the Merchant Marine, September 1982, and its subsidiary rules of February 1984.
4. The Pilotage Service Law, January 1985.

### International Maritime Conventions.

1. Convention on Limitation of Liability for Maritime Claims, 1976.
2. Convention for the Establishment of the Inter-Governmental Maritime Consultative Organization, 1948.
3. International Convention for the Safety of Life at Sea, 1974 and its Protocol of 1978.
4. International Convention for the Prevention of Pollution from ships, 1973 and its Protocol of 1978.
5. International Convention on Load Lines, 1966.
6. International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978.

7. United Nations Conference on the Law of the Sea, 1982.

Laws from different countries.

1. Harmonization of Shipping Legislation in the Caribbean Community.
2. Maritime Law of India.
3. Nigeria Shipping Law.
4. Regulations of 19 June 1987 concerning the Registration of ships in the Norwegian International Register of ships (NIS).
5. The Shipping Act of Barbados.
6. The Norwegian Ship Control Legislation, 1987.
7. The Seamen's Act of Norway, 1975 and its amendments of 31 May 1985.

Lecture handouts/Books.

1. Establishment/Administration of Maritime Affairs in Developing Countries Volume I by Professor P.S. Vanchiswar, 1984, revised in 1987.
2. Maritime Labour Conventions and Recommendations, ILO.
3. Guide-Lines for Maritime Legislation, United Nations.