

UNIT FIFTEEN

SEA PROTEST

In any of the circumstances enumerated below it is advisable for the master to note a protest.

1. Whenever during the voyage the ship has encountered conditions of wind and sea which may result in damage to cargo.
2. When from any cause the ship is damaged, or there is reason to fear that damage may be sustained.
3. When through stress of weather it has not been practicable to adopt normal precautions in the matter of ventilation of perishable cargo.
4. When cargo is shipped in such condition that it is likely to suffer deterioration during the voyage. In this case, however, the protest will not be effective unless the bills of lading were endorsed to show the condition of the cargo at the time of shipment.
5. When any serious breach of C/P terms is committed by the charterer or his agent, such as refusal to load, unduly delaying loading, loading improper cargo, refusal to pay demurrage, refusal to accept B's/L in the form signed by the master, etc.
6. When consignees fail to discharge cargo or take delivery thereof, and pay freight in accordance with C/P or B/L terms.
7. In all cases of general average.

Protest should be noted as soon as possible, certainly within 24 hours of arrival in port and in the case of cargo protests before breaking bulk.

A **"note of protest"** is simply a declaration by the master of circumstances beyond his control which may give, or may have given, rise to loss or damage. Such declaration must be made before a notary public, magistrate, a consular officer, or other authority. Usually, statements under oath will be taken from the master and other members of the crew and these statements will have to be supported by appropriate log book entries. At the time of noting protest the master should reserve the right to extend it.

Protests are admissible in evidence before legal tribunals and, in many cases, are essential to the establishment of a claim.

- (a) In many countries, particularly on the Continent protests are received in evidence as a matter of course.
- (b) In the United Kingdom, however, they are not accepted as evidence in favour of the party making the protest unless both parties consent. The chief use of a protest in the United Kingdom is to support a claim by a cargo owner against his underwriters. There is no legal necessity for a protest in the United Kingdom and legal rights are in no way affected if a protest has not been noted.

On the Continent the position is different; there the noting of a protest is a condition precedent to certain legal remedies. For example, consignees cannot make a claim for cargo damage unless they protest within 24 hours of taking delivery of the goods and follow this up by a court summons within one month. The master, if he delivers the cargo and accepts the freight, will be barred from claiming the cargo's contribution in general average unless he notes protest within 24 hours and notifies the consignee that he has done so.

It is not essential that a protest should be made on a special form but it is advisable and

Here are some more examples of sea protests and extracts from logbooks:

(1)

NOTE OF PROTEST (UK)	
Be it hereby made known:	
<p>That on this the <u>15th</u> day of <u>February</u> in the year of Our Lord, <u>Two Thousand and Four</u> and personally appeared and presented himself in the office of Attorneys and Notaries before me, <u>John Mills</u>, Notary Public, by the authority of Government, duly admitted and sworn, <u>Henry J. Smith</u>, Master or Commander of the <u>MV Greenhouse</u> which sailed on a voyage from <u>Neaples</u> on the <u>23rd</u> day <u>January</u> 20__ laden with a <u>full and complete cargo of furniture in containers</u> calling at <u>Algeciras and Port of New York</u> and arrived at this Port on <u>15th</u> day of <u>February 2004</u> now lying within the harbour. And the said Appearer did hereby declare to note his protest against all perils, dangers, casualties and occurrences of all nature or kind whatsoever and all loss or damage thereby occasioned, reserving to himself the right to extend the protest in times and places convenient, and causing this minute of all singular the premises to be entered in this register.</p>	
_____ Agents.	(Sgd) _____ Master. QUAD ATTESTOR
	_____ Notary Public

(2)

Notary Office:
Genoa, Italy

I _____, Master of the M/V _____ under the flag of the Republic of Croatia, owned by _____, Croatia, Gross Tonnage _____, Net. Tonnage _____, sailed from Rijeka, Croatia on _____, to Genoa, Italy, via Venice, Italy with a full load of bulk wheat of _____ Tonnes.

During the voyage the vessel met with stormy weather and heavy seas, the ship suffered rolling and pitching, heavily shipping water fore and aft and spraying overall.

*All precautions were taken to save the cargo and the ship but nevertheless, **fearing damage to the cargo during the bad weather, I state the present sea protest,** reserving the right to extend the same at the time and place convenient.*

Witnesses:

1. _____, Second Mate
2. _____, Chief Engineer, *Master*
3. _____

The Notary Office

(3)

Note of Protest

To

I,, signed below, in command of M/V under flag, of gross and net tons, owned by, loaded with tons of general/bulk/liquid cargo, sailed from to, arriving in on 19..., bring this protest against unlawful stopping and detention of my vessel by the Authorities/Navy.

On the date after passing at hrs local time on position **I have been summoned by a patrol/war ship** carrying the colours of to reduce speed and prepare for search. Upon examination of the ship's papers and cargo manifest the ship was released on at hrs free to proceed to her destination. The above said been duly noted in the ship's official log, pp.

As this is considered as an act of hostility and violation of the international law upon the high seas, **I herewith lodge this protest** and repudiate the responsibility for the possible consequences which may arise therefrom.

Master

(4)

Extract from logbook: heavy weather damage.

4 December, 19__ , 0800. On voyage from Yokohama to San Francisco with full cargo of uncrated motorcars (480). Course 068 true, speed 22.0 knots, wind S 7, sea 5, bar. 996 mb., overcast with squalls.

0830. received facsimile weather chart which indicated that a depression near Japan was quickly growing in intensity and moving eastwards at a speed of over 40 knots. Expected to overtake the ship early in the afternoon. All lashings on cargo were checked and in some cases doubled.

1000. Wind S9, sea 7, bar. 990 mb. falling rapidly, squalls. Hove to on a southerly course, speed about 3 knots. Rechecked cargo lashings.

1010 to 1535. Hove to in position: 38° 18' N; 155° 50' E. Wind of hurricane force, S 10 to 11, in the squalls up to 12 and over. Very heavy sea and fierce squalls. The ship is riding fairly easily, but rolls violently at times.

1445. Passage of cold front. Sudden shift of wind from S 12 to W 12. Bar. 972 mb. Heavy continuous rain. Ship buried in foam and spray.

1500. Wind W 10, mountainous cross sea, bar. 986 mb. rising rapidly. Wind beginning to moderate.

1535. Wind W 8, sea 7, bar. 990 mb., cloudy. Weather conditions improving. Resumed voyage on course 090 true, speed 12 knots.

Inspected all holds and found that a lorry lashed in No. 2 upper tween decks portside had come partly adrift and had damaged three motorcars marked Honda 850.

1800. Wind W 7, sea 6, bar. 1000 mb. Weather conditions sufficiently good to increase to full speed, 22.0 knots, course 080 true.

The turnaround this time was fairly quick and the ship is expected ready to leave for Buenaventura tonight.

Master

QUESTIONS

1. What is the most frequent reason for entering a sea protest?
2. When will the condition of the cargo shipped be acceptable as a reason for entering a sea protest?
3. What are the other reasons for filing a protest?
4. Within what time should a protest be noted?
5. What is the purpose of the sea protest?
6. Where is the note of protest lodged?
7. Where is the protest used as evidence?
8. Is the sea protest accepted as evidence in the UK?
9. What is the use of the marine protest in other European countries and Croatia?
10. When will the consignee be able to claim for cargo damage?
11. What must the sea Protest be supported by?

EXERCISES

I COMPREHENSION AND VOCABULARY

1. Fill in the appropriate form of the verb in brackets: (LODGE, EXTEND, RELIEVE, ENTER, RAISE, ACCOMPANY)

1. A sea protest must _____ within 24 hours of the ship's arrival
2. Sea protests _____ in cases of collision, fire on board, unfavourable weather, engine breakdown, generator failure, etc.
3. A protest can _____ later on if necessary.
4. Sea protests are among the most important documents produced when claims _____ against the Insurers.
5. Protests serve to _____ the Shipowner from liability for alleged damage or loss to the ship or cargo.
6. A sea protest must _____ by copies of the deck log book and of the engine-room log.

2. Fill in the blank spaces with the words in brackets (deck log): (DROPPED, HEAVE, PROCEEDING, APPARENTLY, SIGNALS, PRESCRIBED, PASSED, CAUSING, LODGING, HEARD, COMING)

- 10.00 Poor visibility. _____ at half speed on variable course.
- 12.00 Foggy weather and restricted visibility. _____ anchors in position 40°03' N; 31° 00' E waiting for improvement of visibility. Strengthened, uninterrupted watch and sounding blasts on ship's whistle.
- 12.30 Fog signals are _____ from a vessel underway _____ from port side forward. To attract her attention we gave fog _____ consisting of short blasts and flare-up lights as _____ by the Rules of the Road.
- 13.15 Heard a sound of heavy stroke coming from port side forward. The incoming vessel _____ by our portside, struck the portside quarter, then bruised heavily the port shell plating, _____ heavy damages.
- 13.40 It was proved that the colliding vessel was the m/v "SOLAS".

- 14.10 _____ up both stbd. and port anchors. Engines stand by.
 14.15 Slow ahead. Proceed to Barcelona for _____ protest and repairs.
 14.20 Full speed ahead toward Barcelona.

3. Supply the missing words (engine log): (ENGINE, STRUKE, BILGES, SPEED, ANCHORS, DAMAGE)

- 10.00 Half _____ ahead.
 11.00 Slow ahead
 11.15 Stop
 12.05 Dropped both
 13.15 Heard strong sound of heavy _____ on the portside forward
 13.30 No _____ to engine. We fear damage to shafting line
 13.50 Sounding and checking engine _____ found dry.
 14.00 Stand by engine; heave up both
 14.15 Slow ahead
 14.20 Full speed ahead.

II GRAMMAR

1. Verb + Noun (object) Collocations. Study each sentence in the text where the noun "protest" appears, then find and underline all the verbs that take this noun as object (or subject of a passive sentence); e.g.: "note a protest".

2. IT + BE + ADJECTIVE + to-INFINITIVE. Compare the following pairs of sentences:
that-CLAUSE

1. (a) It is advisable for the master to note a protest.
 (b) It is advisable that the master notes a protest.
2. (a) It has not been practicable to adopt normal precautions in the matter of ventilation
 (b) It has not been practicable that normal precautions in the matter of ventilation be adopted.
3. (a) It is not essential to make a protest on a special form.
 (b) It is not essential that a protest is/be made on a special form.

Replace the TO-INFINITIVE constructions with THAT-CLAUSES as in the above examples:

1. It is necessary to note a protest immediately.
2. It is important to support the notes of protest by extracts from the logbook.
3. It is advisable to insist on the presence of the agent when noting a protest.
4. It is necessary to consult the logbook and other ship's documents.
5. It is advisable to note a protest in the first port of call.
6. It is most convenient to enter the ship outwards as soon as the Jerque Note has been issued.
7. It is important for the protest to be signed by witnesses.

3. Translate the above sentences (II 2) into our language. Note that IT is not translated by its

equivalent T0, e.g.:

1. Nužno/potrebno je
2. Preporuča se/preporučljivo je

III TRANSLATION

1. (Extracts from a deck log)

10. Svibnja

- 04.20 NE vjetar jačine, nalazimo se bočno od rta Elli. Prošli smo Dardanelski prolaz. Prolazimo tjesnacem Tenedos.
- 04.30 NE vjetar jačine 5, nalazimo se bočno od otoka Tenedos.
- 04.40 Kurs 212°, teret redovno ventiliran
- 08.20 Pretežni tank ispražnjen, kotlovi napunjeni vodom iz tankova u strojarnici
- 10.15 Upravitelj stroja izvještava da napojna pumpa (feed pump) kotla ne radi normalno i da je isključena. Treba je pregledati (overhaul).
- 12.10 NE vjetar jačine 5, kurs 212°. Pređena udaljenost 180 milja, vrijeme 22 sata, brzina 8 čvorova. Nebo oblačno, more umjereno do uzburkano (rough). Teret redovno ventiliran. Izmjerene kaljuže (sound).
- 13.20 NE vjetar jačine 7/8, kurs 212°. More jako valovito. Brod se valja i posrće. Valovi udaraju (hit) o palubu i povremeno (at intervals) prelamaju preko grotala (break). Zbog lošeg vremena teret se ne ventilira redovno.
- 14.00 NE vjetar jačine 8/9, kurs 212°. Veoma visoki valovi. Zbog nevremena teret se ne ventilira redovno. More je možda ušlo (find way into) u skladišta i smočilo (wet) teret. Ovo navodim radi zaštite interesa broda i tereta.

11. Svibnja

- 07.00 NE vjetar jačine 6/7, kurs 260°. Nalazimo se u blizini luke Pirej. Udaljenost 4 milje. "Pozor u stroju".
- 09.00 Oborili sidro kod Pireja.
- 09.15 Dobili "slobodan saobraćaj". Obavljamo (comply with) lučke i carinske formalnosti.
- 12.30 Prosljedili za luku Pirej.
- 13.40 Vezani u bazenu za generalni teret. Zatražili snabdijevanje vodom i gorivom.
- 14.30 Započele trgovačke operacije.

2. Da bi se prijavila pomorska nezgoda potrebno je potkrijepiti (support) prijavu izvacima iz dnevnika.
3. Bitno je da se protest prijavi u roku od 24 sata po dolasku broda u luku.
4. Nemoguće je da brodar uvijek zna točno vrijeme krcanja broda.
5. Korisno je znati postupak (procedure) za prijavu pomorske nezgode.
6. Važno je znati gdje se može prijaviti pomorska nezgoda.

IV GUIDED WRITING

1. Make an outline (headings and sub-headings) of the text on the Note of Sea Protest. The

outline should help you as a reminder in presenting the text both orally and in writing. Use PowerPoint or transparencies (slides).

Suggestions:

1. _____
2. _____
2.1 _____
2.2 _____
2.2 (a) _____
2.2 (b) _____
2.3 _____
3. _____
4. _____
5. _____

2. Make up a sea protest on the basis of the following headlines (add other information if necessary):

- your vessel name "ŠKOLJ"
- cargo carried: refrigerated container cargo
- voyage: Rijeka to Boston
- cause of protest: breakdown of main generator - no power for 10 hours
- damage feared: possible deterioration of frozen and chilled cargo due to power failure in supplying reefer containers