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 usual in practice.

A typical protest form reads as follows:

**NOTE OF PROTEST (US)**

On this ____ day of _____ in the year One Thousand Nine Hundred and ______ personally appeared and presented himself before me Consul/Notary Public ________, _______ Master of the _______ called the ________ of ___________ Official Number ________ and Tons Register, which sailed from _________ on or about the _____ day of ______ with a cargo of ______ bound for _______ and arrived at on the ____ day of ____ and fearing loss of damage ______ owing to _____ he hereby notes his protest against all losses, damages & etc., reserving right to extend the same at time and place convenient.

Signed before me ____________ (signed)
Consul Master

Notary Public at ____________ (signed)

this _____ day of ______ Two Thousand.....

I certify the foregoing to be a true and correct copy of the original Note of Protest, entered in the Acts of this Consulate and copied therefrom.

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

(1)

**NOTE OF PROTEST (UK)**

Be it hereby made known:

That on this the ____ day of ____ in the year of Our Lord, Two Thousand and ____ and personally appeared and presented himself in the office of Attorneys and Notaries before me, [John Mills], Notary Public, by the authority of Government, duly admitted and sworn, [Henry J. Smith], Master or Commander of the [MV Greenhouse] which sailed on a voyage from ______ on the ____ 23rd ____ day January _______ 20____ laden with a ______ full and complete cargo of ______________________ calling at Algeciras and ______ Port of New York _______ and arrived at this Port on 15th ______ day of __ February 2004 now lying within the harbour. And the said Appraiser 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.

(Sgd) ________________

Agents.  Master.

QUAD ATTESTOR

Notary Public
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
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.
(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.


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
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.

2. Fill in the blank spaces with the words in brackets (deck log): (DROPPED, HEAVE, PROCEEDING, APPARENTLY, SIGNALS, PRESCRIBED, PASSED, CAUSING, LODGING, HEARD,
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-INFINITVE.** 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. Preporuca se/preporucljivo je ..........

III TRANSLATION

1. (Extracts from a deck log)

10. Svibnja
04.20 NE vjetar jicine, nalazimo se bocno od rta Elli. Prošli smo Dardanselski prolaz. Prolazimo tjesnacom Tenedos.
04.30 NE vjetar jicine 5, nalazimo se bocno 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).
13.20 NE vjetar jicine 7/8, kurs 212°. More jako valovito. Brod se valja i posrce. Valovi udaraju (hit) o palubu i povremeno (at intervals) prelazaju preko grotala (break). Zbog lošeg vremena teret se ne ventilira redovno.
14.00 NE vjetar jicine 8/9, kurs 212°. Veoma visoki valovi. Zbog nevremena teret se ne ventilira
redovno. More je možda ušlo (find way into) u skladišta i smocilo (wet) teret. Ovo navodim radi zaštite interesa broda i tereta.

11. Svibnja

07.00 NE vjetar jacine 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 saobracaj". Obavljamo (comply with) lucke i carinske formalnosti.
12.30 Prosljedili za luku Pirej.
13.40 Vezani u bazenu za generalni teret. Zatražili snabdijevanje vodom i gorivom.
14.30 Zapocele trgovacke operacije.

2. Da bi se prijavila pomorska nezgoda potrebno je potkrijepiti (support) prijavu izvacima iz dnevnika.
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