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A LAW TO INCORPORATE THE PROTOCOL OF 1996 TO AMEND THE CONVENTION ON LIMITATION OF LIABILITY FOR MARITIME CLAIMS, 1976 INTO THE LAWS OF THE FEDERAL DEMOCRATIC REPUBLIC OF ETHIOPIA

A Legislation Drafting Project submitted in partial fulfillment of the requirements for the award of the Degree of Master of Laws (LL.M.) in International Maritime Law at the IMO International Maritime Law Institute

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INTRODUCTION

The concept of limiting liability is a well-developed concept in the maritime industry. The concept is widely known as limitation of shipowners' liability, and it is very common to find the concept in many liability conventions, for example on conventions on the carriage of goods by sea, conventions on carriage of passengers and their luggage by sea, conventions on liability and compensation for pollution damage, or the convention on liability for the removal of wrecks.

However, it should be noted that the Limitation of Liability for Maritime Claims Convention is not a liability convention. Therefore, a comprehensive approach of limitation of liabilities is needed as diversified claims may arise out of a single incident. Then, the concept came up with a regime commonly known as a "Global limitation of liability for maritime claims" aiming to provide an overall limit to the shipowner's liability.

The 1976 Convention on Limitation of Liability for Maritime Claims is the most widely accepted treaty on global limitation of liability having as at 19 April 2016, been ratified or acceded to by fifty-four States with 54.80 per cent of the total world tonnage. The Protocol of 1996 amended the Convention on Limitation of Liability for Maritime Claims 1976 (1996 LLMC Protocol). In addition, pursuant to the 1996 LLMC Protocol the International Maritime Organization's (IMO) Legal Committee issued a Resolution LEG.5 (99), 2012. Both the Protocol and the Resolution were adopted to increase the LLMC Convention's limits of liability which had been eroded by inflation and were no longer adequate to satisfy possible claims.

However, the present Ethiopian legal regime has no national legal regime which deals with issues of global limitation of liability for maritime claims. This subjects Ethiopian shipowners to unlimited liability which leads to unfavourable financial situations.

PART ONE

EXPLANATORY NOTE

1. Background

Before the adoption of the Convention on Limitation of Liability for Maritime Claims the concept of limitation of liability had been treated under different legal instruments. Hence, the International Convention Relating to the Limitation of Liability of Owners of Sea-Going Ships, 1957, is followed by the adoption of a complete new convention which is known as the 1976 LLMC Convention. The Protocol of 1996 came about to amend the 1976 LLMC Convention and increase the limits of liability which had been eroded by inflation and were no longer adequate to satisfy possible claims. In addition, the International Maritime Organization (IMO) Legal Committee increased the 1996 LLMC Protocol's limits of liability through Resolution LEG.5(99) adopted on 19 April 2012.

The main purpose of the 1996 Protocol was to provide for enhanced compensation and to establish a simplified procedure for updating the limitation amounts and the limitation amount drastically increased the original limits of liability established by the 1976 LLMC Convention. In addition, the Protocol provided for a simplified revision and amendment procedure modelled on preceding particular liability regimes.[1] However, the Protocol doesn't modify the list of persons entitled to limit liability.

The Protocol also modified Article 3 (Claims excepted from limitation) and Article 18 (Reservations) of the LLMC Convention. The amended Article 18 allows States to reserve the right to exclude the application of Article 2, paragraph 1(d), (e); and to exclude claims for damage within the meaning of the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by sea, 1996 or for any amendment or Protocol thereto. Therefore, the Protocol amends the automatic exclusions and also added an extra optional exclusion to the Convention.

[1] Norman A Martinez Gutierrez ; *New Global Limits of Liability for Maritime Claims, International Community Law Review* 15 (2013) 341-357 (Martinus Nijhoff Publisher), p. 342.

In addition, the Protocol amended Article 3 of the LLMC Convention. The new Article 3 (a) excludes from the application of the Convention 'claims for salvage, including if applicable, any claim for special compensation under Article 14 of the International Convention on Salvage 1989, as amended, or contribution in general average'.[2] Article 14 of the Salvage Convention states that if the salvor has carried out salvage operations in respect of a vessel which has threatened damage to the environment and has failed to earn a reward under Article 13, he will be entitled to special compensation.

Article 3 of the 1996 LLMC Protocol replaced Article 6(1) of the LLMC Convention. Following the LLMC Convention, the new Article retained the establishment of two limitation amounts, namely one for claims for loss of life or personal injury and one for any other claims.[3]

Article 5 of the 1996 LLMC Protocol amended Article 8 of the LLMC Convention by describing the increased limits in a unit of account available for States which are not members to the International Monetary Fund (IMF) to ensure equal treatment.

Moreover, the 1996 LLMC Protocol introduced a more efficient system for the amendment of the limits of liability. This was done through that tacit acceptance procedure introduced by Article 8 of the Protocol. Under this Article, amendments to the Protocol's limits of liability are to be adopted first by IMO's "extended" Legal Committee.[4]

In 2012 the IMO Legal Committee adopted new limits of liability for maritime claims through Resolution LEG.5(99) of 19 April 2012. The Resolution came to force on 8th June 2015 and the significant change that has been brought in by the amendment to the LLMC 1996 Protocol is the drastic increase on the limits of liability amount. The amounts under the original LLMC 1996 Protocol which have been increased by 51% were prompted by a number of high profile bunker pollution incidents, notably the *Pacific Adventurer* incident of Queensland, Australia in 2009.[5]

[2] 1996 LLMC Protocol.
[3] Norman A Martinez Gutierrez ; *New Global Limits of Liability for Maritime Claims, International Community Law Review; op. cit.*, p. 343.
[4] Ibid at p. 344.
[5] http://www.ukpandi.com/knowledge/article/llmc-1996-2012-amendment-faqs-132703/ (26/01/2016).

Under the amendments to the 1996 Protocol, the limits are raised as follows[6]: The limit of liability for claims for loss of life or personal injury on ships not exceeding 2,000 gross tonnage is 3.02 million SDR (up from 2 million SDR).

For larger ships, the following additional amounts are used in calculating the limitation amount:

• For each ton from 2,001 to 30,000 tons, 1,208 SDR (up from 800 SDR)

• For each ton from 30,001 to 70,000 tons, 906 SDR (up from 600 SDR)

• For each ton in excess of 70,000, 604 SDR (up from 400 SDR).

The limit of liability for any other claims for ships not exceeding 2,000 gross tonnage is 1.51 million SDR (up from 1 million SDR). For larger ships, the following additional amounts are used in calculating the limitation amount:

• For each ton from 2,001 to 30,000 tons, 604 SDR (up from 400 SDR)

• For each ton from 30,001 to 70,000 tons, 453 SDR (up from 300 SDR)

• For each ton in excess of 70,000 tons, 302 SDR (up from 200 SDR).

The value of an SDR is determined on the basis of a basket of major currencies. Consequently the value of an SDR moves relative to currency movements.

The 2012 amendment to the LLMC 1996 Protocol automatically applies to States that are party to the LLMC 1996 Protocol by tacit acceptance, all contracting States were notified of the adoption of the new limits in June 2012. Therefore, ship owners visiting contracting States ports will be subject to the new higher limits.

[6] The adopted text of the Resolution, originally contained in LEG 99/WP.8, is found as Annex 2 to LEG 99/14 of 24 April 2012.

2. General Overview of the Convention on Limitation of Liability for Maritime Claims, 1976 as amended by the 1996 Protocol thereto and the 2012 Resolution.

Since the Convention and the Protocol must be read and interpreted as one, this section of the explanatory note focuses on the main provisions of the 1976 LLMC Convention as amended by the 1996 LLMC Protocol and major amendments or actions taken to improve the system upon the 1996 Protocol and the 2012 Resolution.

2.1. Persons Entitled to Limit Liability

As described in the introduction, limitation of liability for maritime claims is referred to as limitation of shipowners' liability but the group of persons protected by the system has not been limited to shipowners, it also grants to persons such as charterers, master and crew members, salvors and insurers.

Article 1 of the LLMC Convention recognizes the right of limitation of liability for shipowners (including the owner, charterer, manager, and operator of a seagoing ship), salvors (which includes any person rendering services in direct connection with salvage operations), any person for whose act, neglect, or default the shipowner or salvor is responsible, and insurers of liability (to the same extent as the assured himself)".[7]

2.1.1. **Shipowners**

Under the regime of this Convention the term shipowner is not specifically clarified to what type of shipowner it refers to, but the task of interpretation is assumed to national courts or domestic law. Scholars label the Convention as being wide enough to include part-owners of a ship encompassing both 'registered' and 'beneficial' owners[8] and include charterers of all kinds, managers or operators of a vessel. It is thus no longer necessary for a person to fight to seek owner status in order to be

[7] Norman A Martinez Gutierrez, *The IMLI Manual on International Maritime Law; op. cit.*, p. 554.
[8] Norman A Martinez Gutierrez, *Limitation of Liability in International Maritime Conventions*; *op. cit.*, p. 22.

entitled to limitation of liability.[9] In addition, the Convention specifically refers to the shipowner of 'a seagoing ship', however many countries extend this point to shipowners of non-seagoing ships.[10] Ethiopia can also follow this practice and extend the right of limitation of liability to the shipowners of non-seagoing ships.

2.1.1.1. Charterers

Charterers are within the definition of "shipowner" in Article 1(2) and are clearly entitled to limit when acting in the capacity of shipowner. However, the Convention failed to qualify which type of charterer may limit his liability under the Convention and questions often arise if it is wide enough to include all charterers and sub-charterers as well. Therefore, the general presumption is that it includes all charterers including demise, time, and voyage charterers, as well as sub-charterers but slot charterers remained questionable.[11]

The reason which makes slot charterers questionable is the fear that their recognition may invite further requests for extension of this right to other persons entering into contracts similar to slot charters, for example volume contracts.[12]

Therefore, in order to avoid such complications which can actually appear because of unqualified definition, Ethiopia can take stand while acceding to the LLMC Protocol through national law. Thereafter, it is advised to limit the definition of "Charterers" only to 'time', 'voyage' and 'bareboat' charterers by excluding other types of charterers like slot charterers and sub-charterers.

2.1.1.2. Managers and operators

The LLMC Convention extends the right to limit liability to the ship's 'manager' and 'operator' but it does not define both terms because of this questions provoked

[9] Xia Chen, *Limitation of Liability for Maritime Claims: a study of U.S. Law, Chinese Law and International Conventions* (Hague: Kluwer Law International, 2001) p. 3.
[10] Norman A Martinez Gutierrez, *The IMLI Manual on International Maritime Law; op. cit.*, p. 555.
[11] Ibid at p. 555.
[12] Norman A Martinez Gutierrez, *Limitation of Liability in International Maritime Conventions*; *op. cit.*, p. 25.

whether crewing agents and mortgagees fall under this definition of 'manager' and 'operator'.

However, it is important to clarify that a mortgagee does not generally fall within the definition of operator and as such does not have an automatic right to limit his liability.[13] His right to limit only arises after he has repossessed the ship, since the act of repossessing the ship will allow him to be considered an 'operator' of the ship.[14]

In addition, for crewing agents, they are independent contractors and the shipowners cannot be vicariously responsible for their act, negligence or default. Therefore, the term in the Convention may not be wide enough to include them, so, they cannot be covered under the scope of Article 1(4).[15]

Ethiopia can also clearly insert a definition of the terms 'managers' and 'operator' under national law in order to avoid wide room for interpretation and litigation.

2.1.2. Salvors

The Protocol's Article 1(1) and (3) extend the benefit of limitation to salvors and to any person for whose act, neglect or default a salvor is responsible under Article 1(4). The protection and recognition granted for salvors under the Protocol even extends when there was no salvage tug involved.[16]

2.1.3. Any person for whose act the shipowner or salvor is responsible

Under Article 1(4) of the Protocol the right to limit liability extends to any person for whose act, neglect or default the shipowner or salvor is responsible. This provision appears to be including master, members of the crew and other servants or agents of

[13] Ibid at p. 31.
[14] Ibid at p. 32.
[15] Patrick Griggs et al., *Limitation of Liability for Maritime Claims* (London: T&F Inform UK Ltd, 4th ed., 2005) p. 9.
[16] Ibid at p. 557.

the owner acting in the course of their employment;[17] such may be the case of stevedores, ship repairers, and pilots.

2.1.4. Liability insurers

The insurer of liability is covered by the LLMC Convention under Article 1(6) in the right to limit liability and this entitles him to benefit to the same extent as the assured himself. Therefore, if the assured is denied the right to limit in accordance with Article 4, then the insurer will also be prevented from limiting his liability.

2.2. Claims Subject to Limitation

Under the legal regimes of limited liability not all maritime claims are subject to global limitation of liability. This part of the explanatory note will discuss various claims subject to and those excepted from limitation, and the rationales of certain claims under the umbrella of this Convention.

2.2.1. Claims subject to limitation of liability

The type of claims in respect of which the right of limitation of liability is offered is specifically provided under Article 2 of the LLMC Convention. However, this provision needs to be observed in line with Article 3 and 4 of the LLMC Convention regardless of the basis of liability.

Article 2(1) (a) "*claims in respect of loss of life or personal injury or loss of or damage to property (including damage to harbour works, basins and waterways and aids to navigation), occurring on board or in direct connexion with the operation of the ship or with salvage operations, and consequential loss resulting therefrom*;"

This provision covered all personal and property claims, provided they occur on board or in direct connection with the operation of the ship or with salvage operations.

[17] Patrick Griggs et al.*; op. cit.,* p. 13.

Therefore, there must be a necessary linkage between losses of or damage to property and the ship in respect to which a claim to limit is made.[18]

Article 2(1) (b) "*claims in respect of loss resulting from delay in the carriage by sea of cargo, passengers or their luggage;"*

In this case the main issue which is addressed by the Convention is the right to limit liability where the occurrence gives rise to a pure economic loss caused by late delivery of the goods.

Article 2(1) (c) *"claims in respect of other loss resulting from infringement of rights other than contractual rights, occurring in direct connexion with the operation of the ship or salvage operations;"*

This include infringement of rights such as a railroad company's right of passage over a bridge spanning a river, the right of access into a port by other ships, or claims in tort for pure economic loss. But, shipowners under a charterparty for loss of the right to earn freight cannot fall under this Article.[19]

Article 2(1) (d) and (e) *"claims in respect of the raising, removal, destruction or the rendering harmless of a ship which is sunk, wrecked, stranded or abandoned, including anything that is or has been on board such ship; claims in respect of the removal, destruction or the rendering harmless of the cargo of the ship;"*

Clams for wreck and cargo removal are both types of claims that are brought by harbour or conservancy authority or other public entities, and the Convention made them subject to limitation under this provision. Though, wreck removal claims are now covered by the Nairobi Convention on the Removal of Wrecks, 2007, it needs to be considered in light of both conventions.

Article 2(1) (f) *"Claims of a person other than the person liable in respect of measures taken in order to avert or minimize loss for which the person liable may limit his liability in accordance with this Convention, and further loss caused by such measures."*

[18] Norman A Martinez Gutierrez, *The IMLI Manual on International Maritime Law; op. cit.*,p. 558.
[19] Ibid at p. 559.

This provision covers expenses incurred at the mere threat of damage as opposed to the actual damage. Claims referred to under this provision must be brought by persons other than those liable and the person liable for the loss, for which the measures were taken to avert or minimize, must be entitled to limitation. The limitation also applies if claims relate to remuneration under a contract with the person liable.[20]

2.2.2. Claims Excepted from Limitation

Article 3 of the LLMC Convention excludes from limitation the following claims: claims for salvage that is, claims by salvors and not claims against them; claims for contribution in general average; claims arising under a shipowner's statutory liability for oil pollution damage; and claims in respect of nuclear damage. It also excludes crew claims against the shipowner or salvor if the law governing their contract of service excluding such claims from limitation or provides for higher limit than that specified under the convention.

Article 3(a) *"claims for salvage, including, if applicable, any claim for special compensation under Article 14 of the International Convention on Salvage 1989, as amended, or contribution in general average;"*

The exclusion of claim for salvage rewards and contributions in general average is because of the self-limiting nature of such claims, so to speak, which obviously makes the global limitation regime unnecessary. In addition, the exclusion is to preserve the integrity of the rules for procedural matters in such claims.[21]

Article 3(b) *"claims for oil pollution damage within the meaning of the International Convention on Civil Liability for Oil Pollution Damage, dated 29 November 1969 or of any amendment or Protocol thereto which is in force;"*

This provision excludes claims for oil pollution damage within the meaning of the CLC whether this is applicable or not. On the other hand, not all claims relating to oil pollution damage are excluded from the Convention; for example claims for pollution

[20] Xia Chen; *op. cit*., p. 48.
[21] Ibid p. 49.

damage caused by bunker oil spills do not fall under CLC unless they relate to bunker spills of a tanker.[22]

Article 3(c) *"claims subject to any international convention or national legislation governing or prohibiting limitation of liability for nuclear damage; (d) claims against the shipowner of a nuclear ship for nuclear damage;"*

Nuclear damage claims are excluded. However, if the relevant State is not a party to an international convention in this field and it does not have domestic legislation prescribing separate limits of liability or preventing limitation, claims for nuclear damage would remain subject to the provision of the LLMC Convention.[23] In addition, claims against the shipowner of a nuclear ship for nuclear damage are also excluded from the application of the Convention.[24]

Article 3(e) *"claims by servants of the shipowner or salvor whose duties are connected with the ship or the salvage operations, including claims of their heirs, dependants or other persons entitled to make such claims, if under the law governing the contract of service between the shipowner or salvor and such servants the shipowner or salvor is not entitled to limit his liability in respect of such claims, or if he is by such law only permitted to limit his liability to an amount greater than that provided for in Article 6."*

Claims by servants of the shipowner or salvor are excluded from limitation of liability if the law governing the relevant contract of service provides for unlimited liability in respect of such claims, or such law only entitles the shipowner or salvor to limit his liability to an amount greater than that prescribed by the Convention.[25]

Article 18 of the Protocol stated claims that are excluded by reservations in which States are allowed at the time of signature, ratification, acceptance, approval, or accession, or at any time thereafter, to reserve the right:

a) To exclude the application of Article 2, paragraphs 1(d) and (e);

[22] Norman A Martinez Gutierrez, *Limitation of Liability in International Maritime Conventions*; *op. cit.*, p. 48.
[23] Norman A Martinez Gutierrez, *The IMLI Manual on International Maritime Law; op. cit.*, p. 563.
[24] Ibid.
[25] Ibid p. 563.

b) To exclude claims for damage within the meaning of the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substance by Sea, 1996 or of any amendment or protocol thereto.

2.3. Conduct Barring Limitation

When a claim is subject to limitation of liability, the shipowner's right to limitation may be denied based on his own conduct. Therefore, the LLMC Convention describes conduct barring the shipowner's right to limitation as follows:

Article 4 "A person liable shall not be entitled to limit his liability if it is proved that the loss resulted from his personal act or omission, committed with the intent to cause such loss, or recklessly and with knowledge that such loss would probably result."

Under this provision the person liable for his personal act or omission must be one of those mentioned in Artice 1. In addition, it must be proved that whether the person liable acted with intent to cause the loss (knowingly and intentionally). If unable to prove intent, a person challenging the right to limit might still succeed if able to establish both a reckless conduct and knowledge that the relevant loss would probably result.[26]

Regarding the scheme of the burden of proof, Article 4 provided that the burden of proving that the shipowner committed certain conduct which would bar limitation lies upon the claimant or the person challenging the right to limit liability.

2.4. The Limits of Liability

The LLMC Convention covered the limitation of liability under Article 6-8. The general limits of liability are discussed under Article 6, limits of liability for passenger claims are prescribed separately under Article 7; and Article 8 discusses the Unit of Account referred to in Article 6 and 7 and the Special Drawing Right (SDR) as defined by the International Monetary Fund (IMF).

[26] Norman A Martinez Gutierrez, *The IMLI Manual on International Maritime Law; op. cit.*, p. 565.

2.4.1. General limitation of liability

Article 6 of the LLMC Convention as amended by the Protocol of 1996 envisages the calculation of limitation amounts for claims for loss of life or personal injuries and for any other claims.

The provision of the Convention sets out the limits of liability in a sliding scale under which the amount per ton decreases in stages as the tonnage increases (thus recognizing that small ships can cause major damage).[27] The limitation liability included in the provision were increased to these modified by Article 3 of the 1996 LLMC Protocol and a further increase to these limits was agreed by the IMO Legal Committee in 2012.

2.4.2. Limitation of liability for passenger claims

Article 7 of the LLMC Convention establishes a global limit of liability specifically designated to cover claims arising on any distinct occasion for loss of life or personal injury to passengers.[28] The particular liability regime governing passenger claims is codified in the Athens Convention relating to the Carriage of Passengers and Their Luggage by sea, 1974 as amended by the 2002 Protocol thereto (Athens Convention). The limit for passenger claims under Article 7 of the LLMC Convention as amended by the 1996 Protocol states as follows:

1. In respect of claims arising on any distinct occasion for loss of life or personal injury to passengers of a ship, the limit of liability of the shipowner thereof shall be an amount of 175,000 Units of Account multiplied by the number of passengers which the ship is authorized to carry according to the ship's certificate.

2. For the purpose of this Article "claims for loss of life or personal injury to passengers of a ship" shall mean any such claims brought by or on behalf of any person carried in that ship:

[27] Ibid at p. 568.
[28] Ibid at p. 571.

(a) under a contract of passenger carriage, or

(b) who, with the consent of the carrier, is accompanying a vehicle or live animals which are covered by a contract for the carriage of goods.

Under this provision the limitation amounts are not calculated by reference to the ship's tonnage, rather it is calculated by reference to the number of passengers the ship is authorized to carry. In addition, Article 15(3) paragraph *3bis* of the LLMC Protocol introduced a new notion which allows States to impose higher limits of liability to this regard.

Nevertheless, as a landlocked country Ethiopia doesn't need to give much consideration to this or to impose higher limits of liability to passenger claims. Since all the ships registered under the flag of the State are cargo and oil tanker ships the need is very low.

2.5. The Limitation Fund

Chapter III of the LLMC Convention incorporated the limitation of fund under its provisions discussing on the constitution and distribution of the fund, persons by or on behalf of whom the fund was constituted and the governing law.

Basically, the tonnage of ships is the measure of shipowner's limitation of liability. However, the LLMC Convention provides that limitation of liability may be invoked even without the constitution of a limitation fund. On the other hand, the Convention allows States Parties to provide in their national law that limitation of liability in respect of actions brought in their respective courts to enforce a claim subject to limitation shall be subject to the establishment of a limitation fund.[29] In general, the Convention gives two options to invoke limitation of liability: one is without constitution of a limitation fund and the other is by constitution of the fund and States can adopt both options in their system or use one.

In this regard, it is advised for Ethiopia to exclude the option to 'limitation of liability without constitution of a limitation fund' because of two reasons: first, the

[29] Ibid at p. 573.

Convention requires constitution of limitation fund by any means for the application of its provision named 'Distribution of the fund'; secondly, Ethiopian Civil Procedure Code does not have provisions governing this area where an action is brought to Courts to enforce a claim subject to limitation, a person liable may invoke the right to limit liability without the constitution of a limitation fund. Therefore, it is more suitable for Ethiopia to use the second option to avoid lengthy trials and complications.

3. Underlying Reasons for Ethiopia to Incorporate the Protocol of 1996 to amend the Convention on Limitation of Liability for Maritime Claims of 1976

Although Ethiopia is a land locked country, as a nation, it highly depends on shipping for majority of its exports and imports trade and it has a strong interest in the effective regulation of international shipping. In addition, Ethiopia is a member to many international maritime conventions and protocols that promote the maritime safety and good environmental practice. But, the main national law regulating the maritime sector, which is the 1960 Maritime Code and other national proclamations and regulations governing the maritime regime, do not cover the area of global limitation of liability to shipowners.

Ethiopia is already a signatory to the conventions which provide special limitation of liability to maritime claims, for example the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 2010 (HNS Convention) and International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 for claims against shipowners and salvors such as claims for personal injury, death and property damage.

The Bunkers Convention established the basis of the liability of the shipowner. Under article 6 of the Convention it states that, "Nothing in this Convention shall affect the right of the shipowner and the person or persons providing insurance or other financial security to limit liability under any applicable national or international regime, such as the Convention on Limitation of Liability for Maritime Claims, 1976,

as amended." Accordingly, it imposes strict liability of the shipowner and left the limitation of the liability of shipowners to State Parties to the Convention.

In Ethiopia there is no national legal regime which deals with such issue. This subjects Ethiopian shipowners to unlimited liability which leads to unfavourable financial situations. For effective application of the Bunkers Convention and for encouraging its shipowners and attract other shipowners in the future by having a comprehensive regime on limitation of liability Ethiopia should acceed to and be part of the 1996 LLMC Protocol.

Therefore, it is very important to accede to the 1996 LLMC Protocol in order to establish a uniform regime for the limitation of liability for general maritime claims. Besides, accession to such Protocol will provide a legal regime which will ensure the legal security and a fair system of limitation of liability to Ethiopian Shipowners.

On the other hand, the Convention excludes damage that is covered by other maritime compensation regimes. Therefore, it is considered that the existing legal regime in Ethiopia governing maritime sector, which is the 1960 Maritime Code[30] limits of liability are too low and, as a result, there is a risk that if the current limits are not up-dated, victims of maritime damage will not be adequately compensated.

Incorporating the Protocol into Ethiopian law would assist economic development by creating certainty for business across different jurisdictions, reducing barriers to trade and facilitating international commerce. It would also provide claimants with compensation for loss or damage that more accurately reflects the scale of their losses.

Moreover, Ethiopia is presently demonstrating its commitment by adopting different IMO conventions. As a trading nation that imports and exports large quantities of goods by sea, it obtains economic benefits by the universal rule of law established by international maritime conventions and protocols. These international rules promote commerce and trade by standardising regulations of ships in most ports they visit.

[30] Article 86 "Amounts of limited liabilities" under the 1960 Ethiopian Maritime Code.

4. Incorporation of the Protocol of 1996 to amend the Convention on Limitation of Liability for Maritime Claims of 1976 into the Laws of Ethiopia

Most international conventions related to Maritime sector are non-self-executing, and the Protocol like most conventions it is not self-executing by itself. It has a general provision which leaves matters to be complemented by the domestic legislation in accordance with the Protocol. Therefore, in any event, would require detailed legislative action through a transformation process for meaningful implementation regardless, whether that State Party follows monistic or dualistic approach.

In Ethiopia, as a monist country, accession to the Protocol is done by the single document which only contains the fact that certain Protocol is acceded to. Based on precedent, almost all international conventions ratified or acceded to by Ethiopia are done the same way with a single page ratification or accession proclamation. For example, in the same way the Bunkers Convention was acceded to on January 2009 by Proclamation no. 620/2009. This brings the practical problem in the implementation of the Convention. This is because of the fact that the accession proclamation does not attach the text of the Convention. In addition, it creates difficulty for the judiciary as well as the executive organ for proper implementation of the Convention since it is not available in the Federal Negarit Gazette.

In general, the current legal system does not allow the accession proclamation document to attach the substantial part of the Convention. Due to the unavailability of this substantial part, the accession proclamation faces a problem on its applicability. In addition, this practice is not in line with the objective set for publicizing laws under Federal Negarit Gazette Proclamation No. 4/1995. This Proclamation requires publicizing of laws for serving public notice. It should be noted that not all of a Convention provisions shall be re-written into the national legislation, for basically the Convention "speaks to its State Parties while domestic legislation speaks to the recipients and users of the legislation."[31]

[31] Proshanto K. Mukherjee; "Transformation of Conventions into National Legislations"; in Proshanto K. Mukherjee; Maritime Violence and other Issues at sea; (Malmo; WMU, 2002), p. 71.

Hence, it is reasonable to recommend that even though Ethiopia is a monist and civil law origin, to rectify such above problems and to play its own role for the safe maritime transport trade, it should enact accession proclamation in line with implementation proclamation as modelled hereunder.

The main reason for issuing implementation proclamation rather than an implementation regulation is because of the State's legal practice restrictions. As per Article 77(3) of the 1995 Constitution of Ethiopia which defines the powers of the Council of Ministers, the Council of Ministers has the power to enact regulation, but it has the power only when it is vested to it by House of Peoples Representatives. However, the preceding practice of the House shows that such power is not vested in relation to ratification or accession of International Maritime related Conventions.

Furthermore, the Accession Proclamation to the Protocol as much as possible should incorporate the provisions of the Convention as amended by the Protocol using the same wording to achieve uniform interpretation and application of the Protocol.

Also, Ethiopia can take stand while acceding to the Protocol through national law by providing a clear definition for unqualified definition of terms. For example, the definition of "Charterers" can only be limited to 'time', 'voyage', 'bareboat' charterers and 'sub-charterers' by excluding other types of charterers like slot charterers; Ethiopia can also clearly insert a definition of the terms 'managers' and 'operator' under national law in order to avoid wide room for interpretation and litigation. The Convention also limited its scope of application to 'sea going ships' only but Ethiopia has the option to extend the scope to 'non-sea going ships' under its national proclamation.

Article 18 of the Protocol gives an option to contracting states to make reservation in relation to Article 2 Sub Article 1(d) and (e) of the protocol. The provision deals with claims subject to limitation and it includes claims in respect of the raising, removal, destruction or the rendering harmless of a ship which is sunk, wrecked, stranded or abandoned, including anything that is or has been on board such ship and also claims in respect of the removal, destruction or the rendering harmless of the cargo of the ship. However, Ethiopia is advised to retain this provision as it is set out under the Protocol. Since, the underlining reason to incorporate the Protocol is to protect

shipowner; this provision can give an advantage of limiting liabilities arising from wreck removal and related liabilities which are known to be very expensive.

Moreover, Ethiopia has an option to make reservations under Article 18 of the Protocol at the time of signature, ratification, acceptance, approval, or accession or at any time thereafter, to reserve the right: To exclude claims for damage within the meaning of the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substance by Sea, 1996 or of any amendment or protocol thereto. Therefore, it is advised for Ethiopia to make reservation to this regard for the reason that the HNS Convention provides higher limitation than the Protocol provides.

According to Article 6 (3) of the Protocol Ethiopia has the option to provide national law that claims in respect of damage to harbour works, basins and waterways and aids to navigation shall have such priority over other claims.

The Protocol under its Article 7 provides option which allows States to impose higher limits of liability for passenger claims. But, as it is discussed on previous section Ethiopia doesn't need to give much consideration to this since all the ships registered under the flag of the State are cargo and oil tanker ships, the need is very low for a landlocked country.

As per Article 10 and 11, the Protocol gives two options to invoke limitation of liability; one is without constitution of a limitation fund and the other is by constitution of the fund and States can adopt both options in their system or use one. As it was discussed in the previous sections, it is advised for Ethiopia to exclude the option to 'limitation of liability without constitution of a limitation fund'.

Under the scope of application, the Convention gives an option to State Parties to regulate by specific provisions of national law the system to which vessels the limitation of liability to be applied. Therefore, it is advised for Ethiopia to apply limitation of liability to vessels which are intended for navigation on inland waterways and ships of less than 300 tons.

Since, the Convention is already in force, as it is mentioned on previous sections, Ethiopia may become a party to the Protocol through accession in accordance to

Article 16 (2) of the Protocol and it will accept the Resolution LEG.5 (99) adopted on 19 April 2012 by way of tacit acceptance.

In addition to that, the scope or application of the Proclamation should be based on nationality of ships which are registered under Ethiopian registry. Currently, the authority to facilitate the scheme on issuance of certificate and different relevant requirements related to this area shall be given to the Ethiopian Maritime Affairs Authority as it has given all responsibilities with regard to maritime affairs as per its establishment Proclamation No.547/2007.

In conclusion, the Draft Proclamation shall be conducted in consideration with the relevant provisions of the existing laws, which need to be amended so as to be compatible to the respective provisions of the Protocol. Accordingly, the 1960 Maritime Code, the 1965 Civil Procedure Code and the Maritime Sector Administration Proclamation (2007) shall be affected in this regard.

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FEDERAL NEGARIT GAZETA

OF THE FEDERAL DEMOCRATIC REPUBLIC OF ETHIOPIA

… Year No…..

ADDIS ABABA ……, 2016

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PROCLAMATION NO. ……/2016.

A PROCLAMATION TO ACCEDE TO THE PROTOCOL OF 1996 TO AMEND THE CONVENTION ON LIMITATION OF LIABILITY FOR MARITIME CLAIMS 1976

WHEREAS, the International Convention on Limitation of Liability for Maritime Claims was adopted by the International Maritime Organization on 19 November 1976 (London);

WHEREAS, the Protocol of 1996 to amend the Convention on Limitation of Liability for Maritime Claims 1976 was adopted during a Diplomatic Conference held at IMO Headquarters on 2 May 1996 (London);

WHEREAS, the IMO Legal Committee adopted new limits of Liability for maritime claims through Resolution LEG.5(99) of 19 April 2012;

WHEREAS, the House of Peoples' Representatives of the Federal Democratic Republic of Ethiopia has declared the accession of Ethiopia to the said Protocol on Limitation of Liability for Maritime Claims at its session held on the …. Day of ……, 2016;

WHEREAS, as per Article 18 of the Protocol Ethiopia makes a reservation in relation to claims for damage within the meaning of the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and

Noxious Substance by Sea, 1996 or of any amendment or protocol thereto, if and when the Convention enters into force;

NOW, THEREFORE, in accordance with Article 55(1) and (12) of the Constitution of the Federal Democratic Republic of Ethiopia it is hereby proclaimed as follows:

1. Short Title

This Proclamation may be cited as "The Limitation of Liability for Maritime Claims Protocol Proclamation No. ----------/ 2016".

2. Approval of the Convention

Ethiopia accedes to the Protocol of 1996 to amend the Convention on Limitation of Liability for Maritime Claims 1976.

3. Implementations

This proclamation shall effectively be applicable by Implementation Proclamation. Notwithstanding the provisions of the Protocol and this Proclamation, the Implementation Proclamation may provide necessary provisions which clearly define the position of Ethiopia in relation to optional provisions of the Protocol and unqualified definitions of terms in the Protocol.

4. Responsibility of the Ministry of Transport and Communications

The Ministry of Transport and Communications is hereby authorized to undertake, in cooperation with the concerned governmental organs, all acts necessary for the implementation of the Protocol.

5. Inapplicable Laws

Any law, regulation, directive and customary practice contrary to this Proclamation shall have no effect.

6. Effective Date

This Proclamation shall enter into force up on the date of publication in the Federal Negarit Gazeta.

Done at Addis Ababa, this……. Day of ……., 2016.

DR MULATU TESHOME

PRESIDENT OF THE FEDERAL DEMOCRATIC REPUBLIC OF ETHIOPIA

FEDERAL NEGARIT GAZETA

OF THE FEDERAL DEMOCRATIC REPUBLIC OF ETHIOPIA

… Year No…..

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Proclamation No. ------/ 2016

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Proclamation No. ------/ 2016

A PROCLAMATION TO IMPLEMENT THE PROTOCOL OF 1996 TO AMEND THE CONVENTION ON LIMITATION OF LIABILITY FOR MARITIME CLAIMS 1976

WHEREAS, having recognized desirability of determining global limitation by certain uniform rules relating to the limitation of liability for maritime claims, to ensure legal security and a fair system to ship owners,

WHEREAS, the International Convention on Limitation of Liability for Maritime Claims was adopted by the International Maritime Organization (IMO) on 19 November 1976 (London);

WHEREAS, the Protocol of 1996 to amend the Convention on Limitation of Liability for Maritime Claims 1976 was adopted during a Diplomatic Conference held at IMO Headquarters on 2 May 1996 (London);

WHEREAS, the IMO Legal Committee adopted new limits of Liability for maritime claims through Resolution LEG.5(99) of 19 April 2012;

WHEREAS, by the House of Peoples' Representatives of the Federal Democratic Republic of Ethiopia approved the accession to the Protocol through its session held on the ----------, 2016;

WHEREAS, it is necessary to enact specific legislation for the effective implementation of such Protocol for global limitation of liability for maritime claims;

NOW, THEREFORE, in accordance with Article 55 (1) and (12) of the Constitution of the Federal Democratic Republic of Ethiopia it is hereby proclaimed as follows:

PART ONE

GENERAL

1. Short Title

This Proclamation may be cited as "Limitation of Liability for Maritime Claims Protocol Implementation Proclamation No. ----------/ 2016".

2. Definition

Unless the context provides otherwise the definition of words in this Proclamation is as follows:

1. "Minister" or "Ministry" shall mean the Minister or Ministry of Transport and Communication respectively.

2. "Authority" shall mean the Maritime Affairs Authority established in accordance with Article 3 of the Maritime Sector Administration Proclamation No. 549/2007.

3. "Convention" means the consolidated text of the Convention on Limitation of Liability for Maritime Claims, 1976 as amended by Protocol of 1996.

4. "Shipowner" shall mean the owner, charterer (only 'time', 'bareboat' and 'voyage' charterers), manager and operator of a seagoing ship and non-seagoing ship.

5. “Salvor” shall mean any person rendering services in direct connexion with salvage operations.

6. “Court” shall mean any court within the jurisdiction of the Federal Democratic Republic of Ethiopian Government.

PART TWO

THE RIGHT OF LIMITATION

3. Persons Entitled to Limit Liability

1. Shipowners and salvors, may limit their liability in accordance with the rules of this Proclamation for claims set out in Article 4. Salvage operations shall also include operations referred to in Article 4, sub Article 1(d).

2. If any claims set out in Article 4 are made against any person for whose act, neglect or default the shipowner or salvor is responsible; such person shall be entitled to avail himself of the limitation of liability provided for in this Proclamation.

3. In this Proclamation the liability of a shipowner shall include liability in an action brought against the vessel itself.

4. An insurer of liability for claims subject to limitation in accordance with the rules of this Proclamation shall be entitled to the benefits of this Proclamation to the same extent as the assured himself.

5. The act of invoking limitation of liability shall not constitute an admission of liability.

4. Claims Subject to Limitation

1. Subject to Articles 5 and 6 the following claims, whatever the basis of liability may be, shall be subject to limitation of liability:

(a) Claims in respect of loss of life or personal injury or loss of or damage to property (including damage to harbour works, basins and waterways and aids to navigation), occurring on board or in direct connexion with the operation of the ship or with salvage operations, and consequential loss resulting therefrom;

(b) Claims in respect of loss resulting from delay in the carriage by sea of cargo, passengers or their luggage;

(c) Claims in respect of other loss resulting from infringement of rights other than contractual rights, occurring in direct connexion with the operation of the ship or salvage operations;

(d) Claims in respect of the raising, removal, destruction or the rendering harmless of a ship which is sunk, wrecked, stranded or abandoned, including anything that is or has been on board such ship;

(e) Claims in respect of the removal, destruction or the rendering harmless of the cargo of the ship;

(f) Claims of a person other than the person liable in respect of measures taken in order to avert or minimize loss for which the person liable may limit his liability in accordance with this Proclamation, and further loss caused by such measures.

2. Claims set out in Sub Article 1 excluding Sub Article 1(d), shall be subject to limitation of liability even if brought by way of recourse or for indemnity under a contract or otherwise.

5. Claims Excepted from Limitation

The rules of this Proclamation shall not apply to:

(a) Claims for salvage, including, if applicable, any claim for special compensation under Article 14 of the International Convention on Salvage 1989, as amended, or contribution in general average;

(b) Claims for oil pollution damage within the meaning of the International Convention on Civil Liability for Oil Pollution Damage, dated 29 November 1969 or of any amendment or Protocol thereto which is in force;

(c) Claims subject to any international convention or national legislation governing or prohibiting limitation of liability for nuclear damage;

(d) claims against the shipowner of a nuclear ship for nuclear damage;

(e) claims by servants of the shipowner or salvor whose duties are connected with the ship or the salvage operations, including claims of their heirs, dependants or other persons entitled to make such claims, if under the law governing the contract of service between the shipowner or salvor and such servants the shipowner or salvor is not entitled to limit his liability in respect of such claims, or if he is by such law only permitted to limit his liability to an amount greater than that provided for in Article 8.

6. Conduct Barring Limitation

A person liable shall not be entitled to limit his liability if it is proved that the loss resulted from his personal act or omission, committed with the intent to cause such loss, or recklessly and with knowledge that such loss would probably result.

7. Counterclaims

Where a person entitled to limitation of liability under the rules of this Proclamation has a claim against the claimant arising out of the same occurrence, their respective claims shall be set off against each other and the provisions of this Proclamation shall only apply to the balance, if any.

PART THREE

LIMITS OF LIABILITY

8. The General Limits

1. The limits of liability for claims other than those mentioned in Article 9, arising on any distinct occasion, shall be calculated as follows:

(a) in respect of claims for loss of life or personal injury,

(i) 3.02 million Units of Account for a ship with a tonnage not exceeding 2,000 tons,

(ii) for a ship with a tonnage in excess thereof, the following amount in addition to that mentioned in (i):

for each ton from 2,001 to 30,000 tons, 1,208 Units of Account;

for each ton from 30,001 to 70,000 tons, 906 Units of Account; and

for each ton in excess of 70,000 tons, 604 Units of Account,

(b) in respect of any other claims,

(i) 1.51 million Units of Account for a ship with a tonnage not exceeding 2,000 tons,

(ii) for a ship with a tonnage in excess thereof, the following amount in addition to that mentioned in (i):

for each ton from 2,001 to 30,000 tons, 604 Units of Account;

for each ton from 30,001 to 70,000 tons, 453 Units of Account; and

for each ton in excess of 70,000 tons, 302 Units of Account.

2. Where the amount calculated in accordance with Sub Article 1(a) is insufficient to pay the claims mentioned therein in full, the amount calculated in accordance with Sub Article 1(b) shall be available for payment of the unpaid balance of claims under Sub Article 1(a) and such unpaid balance shall rank rateably with claims mentioned under Sub Article 1(b).

3. The limits of liability for any salvor not operating from any ship or for any salvor operating solely on the ship to, or in respect of which he is rendering salvage services, shall be calculated according to a tonnage of 1,500 tons.

5. For the purpose of this Proclamation 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.

9. The Limit for Passenger Claims

1. In respect of claims arising on any distinct occasion for loss of life or personal injury to passengers of a ship, the limit of liability of the shipowner thereof shall be an amount of 175,000 Units of Account multiplied by the number of passengers which the ship is authorized to carry according to the ship's certificate.

2. For the purpose of this Article "claims for loss of life or personal injury to passengers of a ship" shall mean any such claims brought by or on behalf of any person carried in that ship:

(a) Under a contract of passenger carriage, or

(b) Who, with the consent of the carrier, is accompanying a vehicle or live animals which are covered by a contract for the carriage of goods.

10. Unit of Account

The Unit of Account referred to in Articles 8 and 9 is the Special Drawing Right as defined by the International Monetary Fund.

11. Aggregation of claims

1. The limits of liability determined in accordance with Article 8 shall apply to the aggregate of all claims which arise on any distinct occasion:

(a) against the person or persons mentioned in Sub Article 5 of Article 1 and any person for whose act, neglect or default he or they are responsible; or

(b) against the shipowner of a ship rendering salvage services from that ship and the salvor or salvors operating from such ship and any person for whose act, neglect or default he or they are responsible; or

(c) against the salvor or salvors who are not operating from a ship or who are operating solely on the ship to, or in respect of which, the salvage services are rendered and any person for whose act, neglect or default he or they are responsible.

2. The limits of liability determined in accordance with Article 9 shall apply to the aggregate of all claims subject thereto which may arise on any distinct occasion against the person or persons mentioned in Sub Article 5 of Article 1 in respect of the ship referred to in Article 9 and any person for whose act, neglect or default he or they are responsible.

PART THREE

THE LIMITATION FUND

12. Constitution of the fund

1. For the purpose of availing himself of the benefit of limitation provided the shipowner shall constitute a fund for the total sum of such of the amounts set out in Articles 8 and 9 as are applicable to claims for which that person may be liable, representing the limit of his liability with the Court or other competent authority.

2. Any fund thus constituted shall be available only for the payment of claims in respect of which limitation of liability can be invoked.

3. A fund may be constituted, either by depositing the sum, or by producing a guarantee acceptable under the Law of the State and considered to be adequate by the Court.

4. A fund constituted by one of the persons mentioned in Sub Article 1(a), (b) or (c) or Sub Article 2 of Article 11 or his insurer shall be deemed constituted by all persons mentioned in Sub Article 1(a), (b) or (c) or Sub Article 2, respectively.

13. Distribution of the fund

1. Subject to the provisions of Sub Article 1, 2 and 3 of Article 8 and of Article 9, the fund shall be distributed among the claimants in proportion to their established claims against the fund.

2. If, before the fund is distributed, the person liable, or his insurer, has settled a claim against the fund such person shall, up to the amount he has paid, acquire by subrogation the rights which the person so compensated would have enjoyed under this Proclamation.

3. The right of subrogation provided for in Sub Article 2 may also be exercised by persons other than those therein mentioned in respect of any amount of compensation which they may have paid, but only to the extent that such subrogation is permitted under the applicable national law.

4. Where the person liable or any other person establishes that he may be compelled to pay, at a later date, in whole or in part any such amount of compensation with regard to which such person would have enjoyed a right of subrogation pursuant to Sub Article 2 and 3 had the compensation been paid before the fund was distributed, the Court may order that a sufficient sum shall be provisionally set aside to enable such person at such later date to enforce his claim against the fund.

14. Bar to other actions

1. Where a limitation fund has been constituted in accordance with Article 12, any person having made a claim against the fund shall be barred from exercising any right in respect of such claim against any other assets of a person by or on behalf of whom the fund has been constituted.

2. The rule of Sub Article 1 shall apply only if the claimant may bring a claim against the limitation fund before the Court administering that fund and the fund is actually available and freely transferable in respect of that claim.

15. Scope of Application

This Proclamation shall apply whenever any person referred to in Article 3 seeks to limit his liability before the Court. Moreover, the provisions of this Proclamation shall apply to:

1. Claims in respect of ships intended for navigation on inland waterways and ships of less than 300tons.

2. Claims in respect of ships constructed for, or adapted to, and engaged in, drilling;

3. Claims in respect of air-cushion vehicles;

4. Claims in respect of floating platforms constructed for the purpose of exploring or exploiting the natural resources of the sea-bed or the subsoil thereof.

16. Recognition and Enforcement

A judgment recognized under this Proclamation shall be enforceable as soon as the formalities required in the 1965 Civil Procedure Code of Ethiopia have been complied with. The formalities shall not permit the merits of the case to be re-opened.

PART FIVE

MISCELLANEOUS PROVISIONS

17. Duty to Report

The Authority shall report the implementation of this Proclamation to the Ministry of Transport annually.

18. Interpretation

This Proclamation shall be interpreted in the light of the object and purpose of the Convention.

19. Power to Enact Regulations

The Council of Ministers may enact regulations necessary to give effect to this Proclamation.

20. Inapplicable Laws

Any law, regulation, directive and customary practice contrary to this Proclamation shall have no effect.

21. Effective Date

This Proclamation shall enter into force up on the date of publication in the Federal Negarit Gazeta.

Done at Addis Ababa, this……. Day of ……., 2016.

DR MULATU TESHOME

PRESIDENT OF THE FEDERAL DEMOCRATIC REPUBLIC OF ETHIOPIA

APPENDICES

1. Convention on Limitation of Liability for Maritime Claims, 1976.
2. Protocol of 1996 to amend the Convention on Limitation of Liability for Maritime Claims, 1976.
3. Limitation of Liability for Maritime Claims RESOLUTION LEG.5 (99), 2012 to amend the 1996 Protocol.

1976 CONVENTION ON LIMITATION OF LIABILITY FOR MARITIME CLAIMS

Adopted in London, United Kingdom on 19 November 1976

THE STATES PARTIES TO THIS CONVENTION,

HAVING RECOGNIZED the desirability of determining by agreement certain uniform rules relating to the limitation of liability for maritime claims,

HAVE DECIDED to conclude a Convention for this purpose and have thereto agreed as follows:

CHAPTER I: THE RIGHT OF LIMITATION

ARTICLE 1 – PERSONS ENTITLED TO LIMIT LIABILITY

1. Shipowners and salvors, as hereinafter defined, may limit their liability in accordance with the rules of this Convention for claims set out in Article 2.

2. The term "shipowner" shall mean the owner, charterer, manager and operator of a seagoing ship.

3. Salvor shall mean any person rendering services in direct connexion with salvage operations. Salvage operations shall also include operations referred to in Article 2, paragraph 1(d), (e) and (f).

4. If any claims set out in Article 2 are made against any person for whose act, neglect or default the shipowner or salvor is responsible, such person shall be entitled to avail himself of the limitation of liability provided for in this Convention.

5. In this Convention the liability of a shipowner shall include liability in an action brought against the vessel itself.

6. An insurer of liability for claims subject to limitation in accordance with the rules of this Convention shall be entitled to the benefits of this Convention to the same extent as the assured himself.

7. The act of invoking limitation of liability shall not constitute an admission of liability.

ARTICLE 2 – CLAIMS SUBJECT TO LIMITATION

1. Subject to Articles 3 and 4 the following claims, whatever the basis of liability may be, shall be subject to limitation of liability:

(a) claims in respect of loss of life or personal injury or loss of or damage to property (including damage to harbour works, basins and waterways and aids to navigation), occurring on board or in direct connexion with the operation of the ship or with salvage operations, and consequential loss resulting therefrom;

(b) claims in respect of loss resulting from delay in the carriage by sea of cargo, passengers or their luggage;

(c) claims in respect of other loss resulting from infringement of rights other than contractual rights, occurring in direct connexion with the operation of the ship or salvage operations;

(d) claims in respect of the raising, removal, destruction or the rendering harmless of a ship which is sunk, wrecked, stranded or abandoned, including anything that is or has been on board such ship;

(e) claims in respect of the removal, destruction or the rendering harmless of the cargo of the ship;

(f) claims of a person other than the person liable in respect of measures taken in order to avert or minimize loss for which the person liable may limit his liability in accordance with this Convention, and further loss caused by such measures.

2. Claims set out in paragraph 1 shall be subject to limitation of liability even if brought by way of recourse or for indemnity under a contract or otherwise. However, claims set out under paragraph 1(d), (e) and (f) shall not be subject to limitation of liability to the extent that they relate to remuneration under a contract with the person liable.

ARTICLE 3 – CLAIMS EXCEPTED FROM LIMITATION

The rules of this Convention shall not apply to:

(a) claims for salvage or contribution in general average;

(b) claims for oil pollution damage within the meaning of the International Convention on Civil Liability for Oil Pollution Damage, dated 29 November 1969 or of any amendment or Protocol thereto which is in force;

(c) claims subject to any international convention or national legislation governing or prohibiting limitation of liability for nuclear damage;

(d) claims against the shipowner of a nuclear ship for nuclear damage;

(e) claims by servants of the shipowner or salvor whose duties are connected with the ship or the salvage operations, including claims of their heirs, dependants or other persons entitled to make such claims, if under the law governing the contract of service between the

shipowner or salvor and such servants the shipowner or salvor is not entitled to limit his liability in respect of such claims, or if he is by such law only permitted to limit his liability to an amount greater than that provided for in Article 6.

ARTICLE 4 – CONDUCT BARRING LIMITATION

A person liable shall not be entitled to limit his liability if it is proved that the loss resulted from his personal act or omission, committed with the intent to cause such loss, or recklessly and with knowledge that such loss would probably result.

ARTICLE 5 – COUNTERCLAIMS

Where a person entitled to limitation of liability under the rules of this Convention has a claim against the claimant arising out of the same occurrence, their respective claims shall be set off against each other and the provisions of this Convention shall only apply to the balance, if any.

CHAPTER II: LIMITS OF LIABILITY

ARTICLE 6 – THE GENERAL LIMITS

1. The limits of liability for claims other than those mentioned in Article 7, arising on any distinct occasion, shall be calculated as follows:

(a) in respect of claims for loss of life or personal injury,

(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 thereof, 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 3,001 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 any other 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 thereof 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.

2. Where the amount calculated in accordance with paragraph 1(a) is insufficient to pay the claims mentioned therein in full, the amount calculated in accordance with paragraph 1(b) shall be available for payment of the unpaid balance of claims under paragraph 1(a) and such unpaid balance shall rank rateably with claims mentioned under paragraph 1(b).

3. However, without prejudice to the right of claims for loss of life or personal injury according to paragraph 2, a State Party may provide in its national law that claims in respect of damage to harbour works, basins and waterways and aids to navigation shall have such priority over other claims under paragraph 1(b) as is provided by that law.

4. The limits of liability for any salvor not operating from any ship or for any salvor operating solely on the ship to, or in respect of which he is rendering salvage services, shall be calculated according to a tonnage of 1,500 tons.

5. For the purpose of this Convention 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.

ARTICLE 7 – THE LIMIT FOR PASSENGER CLAIMS

1. In respect of claims arising on any distinct occasion for loss of life or personal injury to passengers of a ship, the limit of liability of the shipowner thereof shall be an amount of 46,666 Units of Account multiplied by the number of passengers which the ship is authorized to carry according to the ship's certificate, but not exceeding 25 million Units of Account.

2. For the purpose of this Article "claims for loss of life or personal injury to passengers of a ship" shall mean any such claims brought by or on behalf of any person carried in that ship:

(a) under a contract of passenger carriage, or

(b) who, with the consent of the carrier, is accompanying a vehicle or live animals which are covered by a contract for the carriage of goods.

ARTICLE 8 – UNIT OF ACCOUNT

1. The Unit of Account referred to in Articles 6 and 7 is the Special Drawing Right as defined by the International Monetary Fund. The amounts mentioned in Articles 6 and 7 shall be converted into the national currency of the State in which limitation is sought, according to the value of that currency at the date the limitation fund shall have been constituted, payment is made, or security is given which under the law of that State is equivalent to such payment. The value of a

national currency in terms of the Special Drawing Right, of a State Party which is a member of the International Monetary Fund, shall be calculated in accordance with the method of valuation applied by the International Monetary Fund in effect at the date in question for its operations and transactions. The value of a national currency in terms of the Special Drawing Right, of a State Party which is not a member of the International Monetary Fund, shall be calculated in a manner determined by that State Party.

2. Nevertheless, those States which are not members of the International Monetary Fund and whose law does not permit the application of the provisions of paragraph 1 may, at the time of signature without reservation as to ratification, acceptance or approval or at the time of ratification, acceptance, approval or accession or at any time thereafter, declare that the limits of liability provided for in this Convention to be applied in their territories shall be fixed as follows:

(a) in respect of Article 6, paragraph 1(a) at an amount of:

(i) 5 million monetary units for a ship with a tonnage not exceeding 500 tons,

(ii) for a ship with a tonnage in excess thereof, the following amount in addition to that mentioned in (i):

for each ton from 501 to 3,000 tons, 7,500 monetary units;

for each ton from 3,001 to 30,000 tons, 5,000 monetary units;

for each ton from 30,001 to 70,000 tons, 3,750 monetary units; and

for each ton in excess of 70,000 tons, 2,500 monetary units; and

(b) in respect of Article 6, paragraph 1(b), at an amount of:

(i) 2.5 million monetary units for a ship with a tonnage not exceeding 500 tons,

(ii) for a ship with a tonnage in excess thereof, the following amount in addition to that mentioned in (i):

for each ton from 501 to 30,000 tons, 2,500 monetary units;

for each ton from 30,001 to 70,000 tons, 1,850 monetary units; and

for each ton in excess of 70,000 tons, 1,250 monetary units; and

(c) in respect of Article 7, paragraph 1, at an amount of 700,000 monetary units multiplied by the number of passengers which the ship is authorized to carry according to its certificate, but not exceeding 375 million monetary units.

Paragraphs 2 and 3 of Article 6 apply correspondingly to sub-paragraphs (a) and (b) of this paragraph.

3. The monetary unit referred to in paragraph 2 corresponds to sixty-five and a half milligrammes of gold of millesimal fineness nine hundred. The conversion of the amounts referred to in paragraph 2 into the national currency shall be made according to the law of the State concerned.

4. The calculation mentioned in the last sentence of paragraph 1 and the conversion mentioned in paragraph 3 shall be made in such a manner as to express in the national currency of the

State Party as far as possible the same real value for the amounts in Articles 6 and 7 as is expressed there in units of account. States Parties shall communicate to the depositary the manner of calculation pursuant to paragraph 1, or the result of the conversion in paragraph 3, as the case may be, at the time of the signature without reservation as to ratification, acceptance or approval, or when depositing an instrument referred to in Article 16 and whenever there is a change in either.

ARTICLE 9 – AGGREGATION OF CLAIMS

1. The limits of liability determined in accordance with Article 6 shall apply to the aggregate of all claims which arise on any distinct occasion:

(a) against the person or persons mentioned in paragraph 2 of Article 1 and any person for whose act, neglect or default he or they are responsible; or

(b) against the shipowner of a ship rendering salvage services from that ship and the salvor or salvors operating from such ship and any person for whose act, neglect or default he or they are responsible; or

(c) against the salvor or salvors who are not operating from a ship or who are operating solely on the ship to, or in respect of which, the salvage services are rendered and any person for whose act, neglect or default he or they are responsible.

2. The limits of liability determined in accordance with Article 7 shall apply to the aggregate of all claims subject thereto which may arise on any distinct occasion against the person or persons mentioned in paragraph 2 of Article 1 in respect of the ship referred to in Article 7 and any person for whose act, neglect or default he or they are responsible.

ARTICLE 10 – LIMITATION OF LIABILITY WITHOUT CONSTITUTION OF A LIMITATION FUND

1. Limitation of liability may be invoked notwithstanding that a limitation fund as mentioned in Article 11 has not been constituted. However, a State Party may provide in its national law that, where an action is brought in its Courts to enforce a claim subject to limitation, a person liable may only invoke the right to limit liability if a limitation fund has been constituted in accordance with the provisions of this Convention or is constituted when the right to limit liability is invoked.

2. If limitation of liability is invoked without the constitution of a limitation fund, the provisions of Article 12 shall apply correspondingly.

3. Questions of procedure arising under the rules of this Article shall be decided in accordance with the national law of the State Party in which action is brought.

CHAPTER III: THE LIMITATION FUND

ARTICLE 11 – CONSTITUTION OF THE FUND

1. Any person alleged to be liable may constitute a fund with the Court or other competent authority in any State Party in which legal proceedings are instituted in respect of claims subject to limitation. The fund shall be constituted in the sum of such of the amounts set out in Articles 6 and 7 as are applicable to claims for which that person may be liable, together with interest thereon from the date of the occurrence giving rise to the liability until the date of the constitution of the fund. Any fund thus constituted shall be available only for the payment of claims in respect of which limitation of liability can be invoked.

2. A fund may be constituted, either by depositing the sum, or by producing a guarantee acceptable under the legislation of the State Party where the fund is constituted and considered to be adequate by the Court or other competent authority.

3. A fund constituted by one of the persons mentioned in paragraph 1(a), (b) or (c) or paragraph 2 of Article 9 or his insurer shall be deemed constituted by all persons mentioned in paragraph 1(a), (b) or (c) or paragraph 2, respectively.

ARTICLE 12 – DISTRIBUTION OF THE FUND

1. Subject to the provisions of paragraphs 1, 2 and 3 of Article 6 and of Article 7, the fund shall be distributed among the claimants in proportion to their established claims against the fund.

2. If, before the fund is distributed, the person liable, or his insurer, has settled a claim against the fund such person shall, up to the amount he has paid, acquire by subrogation the rights which the person so compensated would have enjoyed under this Convention.

3. The right of subrogation provided for in paragraph 2 may also be exercised by persons other than those therein mentioned in respect of any amount of compensation which they may have paid, but only to the extent that such subrogation is permitted under the applicable national law.

4. Where the person liable or any other person establishes that he may be compelled to pay, at a later date, in whole or in part any such amount of compensation with regard to which such person would have enjoyed a right of subrogation pursuant to paragraphs 2 and 3 had the compensation been paid before the fund was distributed, the Court or other competent authority of the State where the fund has been constituted may order that a sufficient sum shall be provisionally set aside to enable such person at such later date to enforce his claim against the fund.

ARTICLE 13 – BAR TO OTHER ACTIONS

1. Where a limitation fund has been constituted in accordance with Article 11, any person having made a claim against the fund shall be barred from exercising any right in respect of such claim against any other assets of a person by or on behalf of whom the fund has been constituted.

2. After a limitation fund has been constituted in accordance with Article 11, any ship or other property, belonging to a person on behalf of whom the fund has been constituted, which has been arrested or attached within the jurisdiction of a State Party for a claim which may be raised against the fund, or any security given, may be released by order of the Court or other competent authority of such State. However, such release shall always be ordered if the limitation fund has been constituted:

(a) at the port where the occurrence took place, or, if it took place out of port, at the first port of call thereafter; or

(b) at the port of disembarkation in respect of claims for loss of life or personal injury; or

(c) at the port of discharge in respect of damage to cargo; or

(d) in the State where the arrest is made.

3. The rules of paragraphs 1 and 2 shall apply only if the claimant may bring a claim against the limitation fund before the Court administering that fund and the fund is actually available and freely transferable in respect of that claim.

ARTICLE 14 – GOVERNING LAW

Subject to the provisions of this Chapter the rules relating to the constitution and distribution of a limitation fund, and all rules of procedure in connexion therewith, shall be governed by the law of the State Party in which the fund is constituted.

CHAPTER IV: SCOPE OF APPLICATION

ARTICLE 15

1. This Convention shall apply whenever any person referred to in Article 1 seeks to limit his liability before the Court of a State Party or seeks to procure the release of a ship or other property or the discharge of any security given within the jurisdiction of any such State. Nevertheless, each State Party may exclude wholly or partially from the application of this Convention any person referred to in Article 1 who at the time when the rules of this Convention are invoked before the Courts of that State does not have his habitual residence in a State Party or does not have his principal place of business in a State Party or any ship in relation to which

the right of limitation is invoked or whose release is sought and which does not at the time specified above fly the flag of a State Party.

2. A State Party may regulate by specific provisions of national law the system of limitation of liability to be applied to vessels which are:

(a) according to the law of that State, ships intended for navigation on inland waterways

(b) ships of less than 300 tons.

A State Party which makes use of the option provided for in this paragraph shall inform the depositary of the limits of liability adopted in its national legislation or of the fact that there are none.

3. A State Party may regulate by specific provisions of national law the system of limitation of liability to be applied to claims arising in cases in which interests of persons who are nationals of other States Parties are in no way involved.

4. The Courts of a State Party shall not apply this Convention to ships constructed for, or adapted to, and engaged in, drilling:

(a) when that State has established under its national legislation a higher limit of liability than that otherwise provided for in Article 6; or

(b) when that State has become party to an international convention regulating the system of liability in respect of such ships.

In a case to which sub-paragraph (a) applies that State Party shall inform the depositary accordingly.

5. This Convention shall not apply to:

(a) air-cushion vehicles;

(b) floating platforms constructed for the purpose of exploring or exploiting the natural resources of the sea-bed or the subsoil thereof.

CHAPTER V: FINAL CLAUSES

ARTICLE 16 – SIGNATURE, RATIFICATION AND ACCESSION

1. This Convention shall be open for signature by all States at the Headquarters of the Inter-Governmental Maritime Consultative Organization (hereinafter referred to as "the Organization") from 1 February 1977 until 31 December 1977 and shall thereafter remain open for accession.

2. All States may become parties to this Convention by:

(a) signature without reservation as to ratification, acceptance or approval; or

(b) signature subject to ratification, acceptance or approval followed by ratification, acceptance or approval; or

(c) accession.

3. Ratification, acceptance, approval or accession shall be effected by the deposit of a formal instrument to that effect with the Secretary-General of the Organization (hereinafter referred to as "the Secretary-General").

ARTICLE 17 – ENTRY INTO FORCE

1. This Convention shall enter into force on the first day of the month following one year after the date on which twelve States have either signed it without reservation as to ratification, acceptance or approval or have deposited the requisite instruments of ratification, acceptance, approval or accession.

2. For a State which deposits an instrument of ratification, acceptance, approval or accession, or signs without reservation as to ratification, acceptance or approval, in respect of this Convention after the requirements for entry into force have been met but prior to the date of entry into force, the ratification, acceptance, approval or accession or the signature without reservation as to ratification, acceptance or approval, shall take effect on the date of entry into force of the Convention or on the first day of the month following the ninetieth day after the date of the signature or the deposit of the instrument, whichever is the later date.

3. For any State which subsequently becomes a Party to this Convention, the Convention shall enter into force on the first day of the month following the expiration of ninety days after the date when such State deposited its instrument.

4. In respect of the relations between States which ratify, accept, or approve this Convention or accede to it, this Convention shall replace and abrogate the International Convention relating to the Limitation of the Liability of Owners of Sea-going Ships, done at Brussels on 10 October 1957, and the International Convention for the Unification of certain Rules relating to the Limitation of Liability of the Owners of Sea-going Vessels, signed at Brussels on 25 August 1924.

ARTICLE 18 – RESERVATIONS

1. Any State may, at the time of signature, ratification, acceptance, approval or accession, reserve the right to exclude the application of Article 2 paragraph 1(d) and (e). No other reservations shall be admissible to the substantive provisions of this Convention.

2. Reservations made at the time of signature are subject to confirmation upon ratification, acceptance or approval.

3. Any State which has made a reservation to this Convention may withdraw it at any time by means of a notification addressed to the Secretary-General. Such withdrawal shall take effect on the date the notification is received. If the notification states that the withdrawal of a reservation is to take effect on a date specified therein, and such date is later than the date the

notification is received by the Secretary-General, the withdrawal shall take effect on such later date.

ARTICLE 19 – DENUNCIATION

1. This Convention may be denounced by a State Party at any time one year from the date on which the Convention entered into force for that Party.

2. Denunciation shall be effected by the deposit of an instrument with the Secretary-General.

3. Denunciation shall take effect on the first day of the month following the expiration of one year after the date of deposit of the instrument, or after such longer period as may be specified in the instrument.

ARTICLE 20 – REVISION AND AMENDMENT

1. A Conference for the purpose of revising or amending this Convention may be convened by the Organization.

2. The Organization shall convene a Conference of the States Parties to this Convention for revising or amending it at the request of not less than one-third of the Parties.

3. After the date of the entry into force of an amendment to this Convention, any instrument of ratification, acceptance, approval or accession deposited shall be deemed to apply to the Convention as amended, unless a contrary intention is expressed in the instrument.

ARTICLE 21 – REVISION OF THE LIMITATION AMOUNTS AND OF UNIT OF ACCOUNT OR MONETARY UNIT

1. Notwithstanding the provisions of Article 20, a Conference only for the purposes of altering the amounts specified in Articles 6 and 7 and in Article 8, paragraph 2, or of substituting either or both of the Units defined in Article 8, paragraphs 1 and 2, by other units shall be convened by the Organization in accordance with paragraphs 2 and 3 of this Article. An alteration of the amounts shall be made only because of a significant change in their real value.

2. The Organization shall convene such a Conference at the request of not less than one fourth of the States Parties.

3. A decision to alter the amounts or to substitute the Units by other units of account shall be taken by a two-thirds majority of the States Parties present and voting in such Conference.

4. Any State depositing its instrument of ratification, acceptance, approval or accession to the Convention, after entry into force of an amendment, shall apply the Convention as amended.

ARTICLE 22 – DEPOSITARY

1. This Convention shall be deposited with the Secretary-General.

2. The Secretary-General shall:

(a) transmit certified true copies of this Convention to all States which were invited to attend the Conference on Limitation of Liability for Maritime Claims and to any other States which accede to this Convention;

(b) inform all States which have signed or acceded to this Convention of:

(i) each new signature and each deposit of an instrument and any reservation thereto together with the date thereof;

(ii) the date of entry into force of this Convention or any amendment thereto;

(iii) any denunciation of this Convention and the date on which it takes effect;

(iv) any amendment adopted in conformity with Articles 20 or 21;

(v) any communication called for by any Article of this Convention.

3. Upon entry into force of this Convention, a certified true copy thereof shall be transmitted by the Secretary-General to the Secretariat of the United Nations for registration and publication in accordance with Article 102 of the Charter of the United Nations.

ARTICLE 23 – LANGUAGES

This Convention is established in a single original in the English, French, Russian and Spanish languages, each text being equally authentic.

DONE AT LONDON this nineteenth day of November one thousand nine hundred and seventy-six.

IN WITNESS WHEREOF the undersigned being duly authorized for that purpose have signed this Convention.

1996 PROTOCOL TO AMEND THE 1976 CONVENTION ON LIMITATION OF LIABILITY FOR MARITIME CLAIMS

Adopted in London, United Kingdom on 2 May 1996

THE PARTIES TO THE PRESENT PROTOCOL,

CONSIDERING that it is desirable to amend the Convention on Limitation of Liability for Maritime Claims, done at London on 19 November 1976, to provide for enhanced compensation and to establish a simplified procedure for updating the limitation amounts,

HAVE AGREED as follows:

ARTICLE 1

For the purposes of this Protocol:

1. "Convention" means the Convention on Limitation of Liability for Maritime Claims, 1976.

2. "Organization" means the International Maritime Organization.

3. "Secretary-General" means the Secretary-General of the Organization.

ARTICLE 2

Article 3, subparagraph (a) of the Convention is replaced by the following text:

(a) claims for salvage, including, if applicable, any claim for special compensation under Article 14 of the International Convention on Salvage 1989, as amended, or contribution in general average;

ARTICLE 3

Article 6, paragraph 1 of the Convention is replaced by the following text:

1. The limits of liability for claims other than those mentioned in Article 7, arising on any distinct occasion, shall be calculated as follows:

(a) in respect of claims for loss of life or personal injury,

(i) 2 million Units of Account for a ship with a tonnage not exceeding 2,000 tons,

(ii) for a ship with a tonnage in excess thereof, the following amount in addition to that mentioned in (i):

for each ton from 2,001 to 30,000 tons, 800 Units of Account;

for each ton from 30,001 to 70,000 tons, 600 Units of Account; and

for each ton in excess of 70,000 tons, 400 Units of Account,

(b) in respect of any other claims,

(i) 1 million Units of Account for a ship with a tonnage not exceeding 2,000 tons,

(ii) for a ship with a tonnage in excess thereof, the following amount in addition to that mentioned in (i):

for each ton from 2,001 to 30,000 tons, 400 Units of Account;

for each ton from 30,001 to 70,000 tons, 300 Units of Account; and

for each ton in excess of 70,000 tons, 200 Units of Account.

ARTICLE 4

Article 7, paragraph 1 of the Convention is replaced by the following text:

1. In respect of claims arising on any distinct occasion for loss of life or personal injury to passengers of a ship, the limit of liability of the shipowner thereof shall be an amount of 175,000 Units of Account multiplied by the number of passengers which the ship is authorized to carry according to the ship's certificate.

ARTICLE 5

Article 8, paragraph 2 of the Convention is replaced by the following text:

2. Nevertheless, those States which are not members of the International Monetary Fund and whose law does not permit the application of the provisions of paragraph 1 may, at the time of signature without reservation as to ratification, acceptance or approval or at the time of ratification, acceptance, approval or accession or at any time thereafter, declare that the limits of liability provided for in this Convention to be applied in their territories shall be fixed as follows:

(a) in respect of Article 6, paragraph 1(a), at an amount of

(i) 30 million monetary units for a ship with a tonnage not exceeding 2,000 tons;

(ii) for a ship with a tonnage in excess thereof, the following amount in addition to that mentioned in (i):

for each ton from 2,001 to 30,000 tons, 12,000 monetary units;

for each ton from 30,001 to 70,000 tons, 9,000 monetary units; and

for each ton in excess of 70,000 tons, 6,000 monetary units; and

(b) in respect of Article 6, paragraph 1(b), at an amount of:

(i) 15 million monetary units for a ship with a tonnage not exceeding 2,000 tons;

(ii) for a ship with a tonnage in excess thereof, the following amount in addition to that mentioned in (i):

for each ton from 2,001 to 30,000 tons, 6,000 monetary units;

for each ton from 30,001 to 70,000 tons, 4,500 monetary units; and

for each ton in excess of 70,000 tons, 3,000 monetary units; and

(c) in respect of Article 7, paragraph 1, at an amount of 2,625,000 monetary units multiplied by the number of passengers which the ship is authorized to carry according to its certificate.

Paragraphs 2 and 3 of Article 6 apply correspondingly to subparagraphs (a) and (b) of this paragraph.

ARTICLE 6

The following text is added as paragraph 3bis in Article 15 of the Convention:

3bis Notwithstanding the limit of liability prescribed in paragraph 1 of Article 7, a State Party may regulate by specific provisions of national law the system of liability to be applied to claims for loss of life or personal injury to passengers of a ship, provided that the limit of liability is not lower than that prescribed in paragraph 1 of Article 7. A State Party which makes use of the option provided for in this paragraph shall inform the Secretary-General of the limits of liability adopted or of the fact that there are none.

ARTICLE 7

Article 18, paragraph 1 of the Convention is replaced by the following text:

1. Any State may, at the time of signature, ratification, acceptance, approval or accession, or at any time thereafter, reserve the right:

(a) to exclude the application of Article 2, paragraphs 1(d) and (e);

(b) to exclude claims for damage within the meaning of the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996 or of any amendment or protocol thereto.

No other reservations shall be admissible to the substantive provisions of this Convention.

ARTICLE 8

Amendment of limits

1. Upon the request of at least one half, but in no case less than six, of the States Parties to this Protocol, any proposal to amend the limits specified in Article 6, paragraph 1, Article 7, paragraph 1 and Article 8, paragraph 2 of the Convention as amended by this Protocol shall be circulated by the Secretary-General to all Members of the Organization and to all Contracting States.

2. Any amendment proposed and circulated as above shall be submitted to the Legal Committee of the Organization (the Legal Committee) for consideration at a date at least six months after the date of its circulation.

3. All Contracting States to the Convention as amended by this Protocol, whether or not Members of the Organization, shall be entitled to participate in the proceedings of the Legal Committee for the consideration and adoption of amendments.

4. Amendments shall be adopted by a two-thirds majority of the Contracting States to the Convention as amended by this Protocol present and voting in the Legal Committee expanded as provided for in paragraph 3, on condition that at least one half of the Contracting States to the Convention as amended by this Protocol shall be present at the time of voting.

5. When acting on a proposal to amend the limits, the Legal Committee shall take into account the experience of incidents and, in particular, the amount of damage resulting therefrom, changes in the monetary values and the effect of the proposed amendment on the cost of insurance.

6. (a) No amendment of the limits under this Article may be considered less than five years from the date on which this Protocol was opened for signature nor less than five years from the date of entry into force of a previous amendment under this Article.

   (b) No limit may be increased so as to exceed an amount which corresponds to the limit laid down in the Convention as amended by this Protocol increased by six percent per year calculated on a compound basis from the date on which this Protocol was opened for signature.

   (c) No limit may be increased so as to exceed an amount which corresponds to the limit laid down in the Convention as amended by this Protocol multiplied by three.

7. Any amendment adopted in accordance with paragraph 4 shall be notified by the Organization to all Contracting States. The amendment shall be deemed to have been accepted at the end of a period of eighteen months after the date of notification, unless within that period not less than one-fourth of the States that were Contracting States at the time of the adoption of the amendment have communicated to the Secretary-General that they do not accept the amendment, in which case the amendment is rejected and shall have no effect.

8. An amendment deemed to have been accepted in accordance with paragraph 7 shall enter into force eighteen months after its acceptance.

9. All Contracting States shall be bound by the amendment, unless they denounce this Protocol in accordance with paragraphs 1 and 2 of Article 12 at least six months before the amendment enters into force. Such denunciation shall take effect when the amendment enters into force.

10. When an amendment has been adopted but the eighteen-month period for its acceptance has not yet expired, a State which becomes a Contracting State during that period shall be bound by the amendment if it enters into force. A State which becomes a Contracting State after that period shall be bound by an amendment which has been accepted in accordance with paragraph 7. In the cases referred to in this paragraph, a State becomes bound by an amendment when that amendment enters into force, or when this Protocol enters into force for that State, if later.

ARTICLE 9

Final Clauses

1. The Convention and this Protocol shall, as between the Parties to this Protocol, be read and interpreted together as one single instrument.

2. A State which is Party to this Protocol but not a Party to the Convention shall be bound by the provisions of the Convention as amended by this Protocol in relation to other States Parties hereto, but shall not be bound by the provisions of the Convention in relation to States Parties only to the Convention.

3. The Convention as amended by this Protocol shall apply only to claims arising out of occurrences which take place after the entry into force for each State of this Protocol.

4. Nothing in this Protocol shall affect the obligations of a State which is a Party both to the Convention and to this Protocol with respect to a State which is a Party to the Convention but not a Party to this Protocol.

ARTICLE 10

Signature, ratification, acceptance, approval and accession

l. This Protocol shall be open for signature at the Headquarters of the Organization from 1 October 1996 to 30 September 1997 by all States.

2. Any State may express its consent to be bound by this Protocol by:

(a) signature without reservation as to ratification, acceptance or approval; or

(b) signature subject to ratification, acceptance or approval followed by ratification, acceptance or approval; or

(c) accession.

3. Ratification, acceptance, approval or accession shall be effected by the deposit of an instrument to that effect with the Secretary-General.

4. Any instrument of ratification, acceptance, approval or accession deposited after the entry into force of an amendment to the Convention as amended by this Protocol shall be deemed to apply to the Convention so amended, as modified by such amendment.

ARTICLE 11

Entry into force

1. This Protocol shall enter into force ninety days following the date on which ten States have expressed their consent to be bound by it.

2. For any State which expresses its consent to be bound by this Protocol after the conditions in paragraph 1 for entry into force have been met, this Protocol shall enter into force ninety days following the date of expression of such consent.

ARTICLE 12

Denunciation

1. This Protocol may be denounced by any State Party at any time after the date on which it enters into force for that State Party.

2. Denunciation shall be effected by the deposit of an instrument of denunciation with the Secretary-General.

3. A denunciation shall take effect twelve months, or such longer period as may be specified in the instrument of denunciation, after its deposit with the Secretary-General.

4. As between the States Parties to this Protocol, denunciation by any of them of the Convention in accordance with Article 19 thereof shall not be construed in any way as a denunciation of the Convention as amended by this Protocol.

ARTICLE 13

Revision and amendment

1. A conference for the purpose of revising or amending this Protocol may be convened by the Organization.

2. The Organization shall convene a conference of Contracting States to this Protocol for revising or amending it at the request of not less than one-third of the Contracting States.

ARTICLE 14

Depositary

1. This Protocol and any amendments adopted under Article 8 shall be deposited with the Secretary General.

2. The Secretary-General shall:

(a) inform all States which have signed or acceded to this Protocol of:

(i) each new signature or deposit of an instrument together with the date thereof;

(ii) each declaration and communication under Article 8, paragraph 2 of the Convention as amended by this Protocol, and Article 8, paragraph 4 of the Convention;

(iii) the date of entry into force of this Protocol;

(iv) any proposal to amend limits which has been made in accordance with Article 8, paragraph 1;

(v) any amendment which has been adopted in accordance with Article 8, paragraph 4;

(vi) any amendment deemed to have been accepted under Article 8, paragraph 7, together with the date on which that amendment shall enter into force in accordance with paragraphs 8 and 9 of that Article;

(vii) the deposit of any instrument of denunciation of this Protocol together with the date of the deposit and the date on which it takes effect;

(b) transmit certified true copies of this Protocol to all Signatory States and to all States which accede to this Protocol.

3. As soon as this Protocol enters into force, the text shall be transmitted by the Secretary-General to the Secretariat of the United Nations for registration and publication in accordance with Article 102 of the Charter of the United Nations.

ARTICLE 15

Languages

This Protocol is established in a single original in the Arabic, Chinese, English, French, Russian and Spanish languages, each text being equally authentic.

DONE at London this second day of May one thousand nine hundred and ninety-six.

IN WITNESS WHEREOF the undersigned, being duly authorized by their respective Governments for that purpose, have signed this Protocol.

[Signatures not reproduced here.]

RESOLUTION LEG.5(99)

(Adopted on 19 April 2012)

ADOPTION OF AMENDMENTS OF THE LIMITATION AMOUNTS IN THE PROTOCOL OF 1996 TO THE CONVENTION ON LIMITATION OF LIABILITY FOR MARITIME CLAIMS, 1976

THE LEGAL COMMITTEE at its ninety-ninth session,

RECALLING Article 33(b) of the Convention on the International Maritime Organization (hereinafter referred to as the "IMO Convention") concerning the functions of the Committee,

MINDFUL of Article 36 of the IMO Convention concerning rules governing the procedures to be followed when exercising the functions conferred on it by or under any international convention or instrument,

TAKING INTO CONSIDERATION article 8 of the Protocol of 1996 to amend the Convention on Limitation of Liability for Maritime Claims, 1976 (hereinafter referred to as the "1996 LLMC Protocol") concerning the procedures for amending the limitation amounts set out in article 3 of the 1996 LLMC Protocol,

HAVING CONSIDERED amendments to the limitation amounts proposed and circulated in accordance with the provisions of article 8(1) and (2) of the 1996 LLMC Protocol,

1. ADOPTS, in accordance with article 8(4) of the 1996 LLMC Protocol, amendments to the limitation amounts set out in article 3 of the 1996 LLMC Protocol, as set out in the annex to this resolution;

2. DETERMINES, in accordance with article 8(7) of the 1996 LLMC Protocol, that these amendments shall be deemed to have been accepted at the end of a period of 18 months after the date of notification unless, prior to that date, not less than one-fourth of the States that were Contracting States on the date of the adoption of these amendments have communicated to the Secretary-General that they do not accept these amendments;

3. FURTHER DETERMINES that, in accordance with article 8(8) of the 1996 LLMC Protocol, these amendments deemed to have been accepted in accordance with paragraph 2 above shall enter into force 18 months after their acceptance;

4. REQUESTS the Secretary-General, in accordance with article 14(2)(a)(v) of the 1996 LLMC Protocol, to transmit certified copies of the present resolution and the amendments contained in the annex thereto to all States which have signed or acceded to the 1996 LLMC Protocol;

5. FURTHER REQUESTS the Secretary-General to transmit copies of the present resolution and its annex to the Members of the Organization which have not signed or acceded to the 1996 LLMC Protocol.

ANNEX

AMENDMENTS OF THE LIMITS OF LIABILITY IN THE PROTOCOL OF 1996 TO AMEND THE CONVENTION ON LIMITATION OF LIABILITY FOR MARITIME CLAIMS, 1976

Article 3 of the 1996 LLMC Protocol is amended as follows:

in respect of claims for loss of life or personal injury,

the reference to:

- "2 million Units of Account" shall read "3.02 million Units of Account";
- "800 Units of Account" shall read "1,208 Units of Account";
- "600 Units of Account" shall read "906 Units of Account";
- "400 Units of Account" shall read "604 Units of Account";

in respect of any other claims,

the reference to:

- "1 million Units of Account" shall read "1.51 million Units of Account";
- "400 Units of Account" shall read "604 Units of Account";
- "300 Units of Account" shall read "453 Units of Account";
- "200 Units of Account" shall read "302 Units of Account".

**