



IMO
INTERNATIONAL MARITIME LAW INSTITUTE
Established under the auspices of the International Maritime Organization
A specialized agency of the United Nations



**A LAW TO INCORPORATE THE
CONVENTION ON LIMITATION OF
LIABILITY FOR MARITIME CLAIMS, 1976
AND THE 1996 PROTOCOL THERETO INTO
THE LEGISLATION OF THE
PLURINATIONAL STATE OF BOLIVIA**

**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**

Submitted By: Nicolas Joaquin Vasquez Schaer (Bolivia)

Supervisor: Dr. Norman Martinez

Academic Year 2011/2012

*This work is dedicated to my Mother and Father
To their permanent support
To their unconditional love
To their relentless faith
To their immense strength
To the infinity of their wisdom*

Table of Contents

EXPLANATORY NOTE	4
1. Introduction.....	4
2. Bolivia’s Need for a Limitation of Liability System	6
3. The LLMC Convention:	7
3.1 Persons who can limit their liability under the LLMC Convention:	7
3.2 Ships in respect of which liability can be limited.....	9
3.3 Claims under the Proposed Regime of Limitation of Liability:	10
3.4 Loss of rights to limit:.....	13
3.5 General Limits of Liability:	14
3.6 Limitation Funds.....	16
3.7 Distribution of the Limitation Fund.....	18
4. The 1996 Protocol.....	20
4.1 Matters Modified	20
5. Conclusion	24
6. Ratification Procedure	26
6.1 The LLMC convention as a Non-Human Rights Convention:	26
DRAFTS	28
A Law to Incorporate the Convention on Limitation of Liability for Maritime Claims, 1976.....	29
Instrument of accession to the Limitation of Liability for Maritime Claims Convention, 1976.....	31
Instrument of Reservation and Declaration to the Convention on Limitation of Liability for Maritime Claims, 1976.....	32
A Law to Incorporate the Protocol of 1996 to Amend the Convention on Limitation of Liability for Maritime Claims, 1976.....	33
Instrument of accession to the Protocol of 1996 to Amend the Convention on Limitation of Liability for Maritime Claims, 1976.....	35
Instrument of Reservation and Declaration to the Protocol of 1996 to Amend the Convention on Limitation of Liability for Maritime Claims, 1976.....	36
ANNEXES	37
Example of an Incorporative Legislation.....	38
Example of an Incorporative Legislation Containing a Reservation	40
Full Text of the Convention on Limitation of Liability for Maritime Claims, 1976	42
Full Text of the Protocol of 1996 to Amend the Convention on Limitation of Liability for Maritime Claims, 1976.....	58

EXPLANATORY NOTE

1. Introduction

Liability, as the nexus between the wrongdoer and the affected person, is not a new concept. The Roman concept of justice was based on the premise that men “*follow that which is real justice, and not a mere semblance and disguise, and that it is the distinguishing characteristic of the truly just and virtuous man to render every one of his due rights*”.¹ Sometimes though, this liability reaches exorbitant amounts so States react by setting limitations to the liability which persons can be subject to.

Limitation of Liability was at first considered a national matter, and even though procedures regarding the award of limitation were essentially the same, countries reached considerable differences when establishing a limit for liability cases where the same circumstances occurred.²

The sinking of the *RMS Titanic* led to the case of *Ocean Steam Navigation Co. v. Mellor*.³ In this case, it became clear that each country determined the rules of liability along with the issue that generated the said liability. Thus, Justice Holmes clarified that limitation of liability was allowed:

*Not on their being subject to the act of Congress or any law of the United States in their conduct, but if not on that ground, then it must have been because our statute permits a foreign vessel to limit its liability according to the act when sued in the United States.*⁴

¹ CICERO, Marcus Tullius; *The Republic and the Laws*, Digireads.com Publishing, 2009, p. 48.

² MARTINEZ, Norman; *Limitation of Liability in International Maritime Conventions – The relationship between global limitation conventions and particular liability regimes*, Routledge, London, 2011, p. 17.

³ *(The Titanic)* 233 U.S. 718 (1914).

⁴ *RMS Titanic*, *Ibid.* FN 3.

After a series of negotiations, the 1924 International Convention for the Unification of Certain Rules relating to the Limitation of Liability of Owners of Sea-going Vessels was adopted and became the first of three conventions adopted on the subject.

The second convention regarding limitation of liability for maritime claims was the 1957 International Convention relating to the Limitation of the Liability of Owners of Sea-Going Ships. This Convention though, was in need of replacement because of the static amounts for the limitation of liability and the new conventions ratified through the decade of the 1960's.

Today an atypical situation has arisen regarding the applicability of the limitation of liability regimes enshrined in international conventions, since the Convention on Limitation of Liability for Maritime Claims (LLMC Convention) adopted in 1976 is still valid, even though a Protocol was subscribed in 1996 to modify key matters such as the limits of liability themselves.

Thus, a dual regime was created. In this situation, States that have ratified the 1996 Protocol find themselves able to denounce the 1976 Convention or to leave it within their legal system so their shipowners can enjoy the benefit of limitation of liability regardless of the fact the State is a Party to the 1976 Convention or the 1996 Protocol.

2. Bolivia's Need for a Limitation of Liability System

Bolivia has undertaken to create an open international ship registry. Nowadays it has inscribed into its public records 48 seagoing ships and 301 ships enabled for inland-waterway⁵ navigation.⁶ Nevertheless, Bolivia is not a Party to the Convention on Limitation of Liability of Maritime Claims and thus today, seagoing vessels are left without the solid protection this Convention grants to those who fall under its scope of application.

The main benefit of incorporating the Convention of Limitation of Liability for Maritime Claims for a registry like the one Bolivia handles is the creation of a secure and manageable environment in which shipowners, masters, crewmembers and other actors involved in shipping industry can perform their activities, thus generating the opportunity for a rapid and steady growth of the registry.

The growth of the registry will always have the consequence of important economical growth and a perceivable increase in Bolivia's participation in the IMO, because the more tonnage the country possesses, the more influence it has in that international forum, which could lead in the long run to a strengthening of Bolivia's foreign policy.

It is for these reasons that the incorporation of the largest quantity of tonnage possible into the Bolivian International Ship Registry is of great importance to the fulfilment of Bolivia's Maritime Policy.

To achieve this, it is advisable for the country to accede to both the LLMC Convention and its 1996 Protocol, enabling shipowners to exercise the right of limitation in a wide range of circumstances, thus making Bolivia, a desirable flag for registration.

⁵ For the purpose of this project, inland waterway comprises lakes, rivers, lagoons, and other navigable water bodies which are located totally or partially in Bolivian territory (Such as Lake Titicaca, River Desaguadero and River Mamoré).

⁶ Registro Internacional de Buques de Bolivia, obtained from:
<<http://www.ribb.gob.bo/index.php?mode=simple&type=Page&action=buquesActuales>> As at 16 December 2011.

3. The LLMC Convention:

3.1 Persons who can limit their liability under the LLMC Convention:

3.1.1 Shipowners

The shipowner is the primary beneficiary of the limitation provisions contained in the LLMC Convention.

The drafting of the LLMC Convention was performed widely to cover everyone who is in possible management of the ship. Thus, it provides in Article 1 that the persons who are entitled to limit their liability under the provisions of the convention are: “shipowners and salvors”.

The concept of “shipowner” protects not only actual shipowners, but also to explicitly include charterers, managers and operators, and to implicitly deduce the inclusion of part-owners and any other person who has an interest over the ship. A clear example of this deduction is the interpretation declaration of the term “owner” in New Zealand’s incorporation act of the LLMC Convention and Canada’s Marine Liability act which extend even more the application of the term.⁷

3.1.2 Charterers

Charterers are persons who by virtue of a contract have gained control of some or all aspects of the activities of ships. The question though, is raised when the situation of charterers, other than “demise charterers”⁸ is analysed.

As Martinez argues, “*The general perception is that the term includes all charterers*”.⁹ This interpretation is taken to account, partly, as a consequence of the judgment in the case of the *CMA CGM S.A. v. Classica Shipping Co. Ltd* case.¹⁰

⁷ For a discussion of these provisions see Martinez, p. 24.

⁸ who act, to all effects as Shipowners of the chartered vessel.

⁹ Martinez; p. 25.

¹⁰ *CMA CGM S.A. v. Classica Shipping Co. Ltd* [2004] 1 Lloyd’s Law Rep. 460 at 463.

Questions have arisen regarding slot charterers, as to whether they may limit their liability in the same manner as other charterers, but it is of little consequence for the present analysis, for the benefits brought by the LLMC Convention far outweigh these small ambiguities which may have already been confronted contractually in the slot charterer's bill of lading (when he issues it).

3.1.3 Managers and operators

The Convention does not include the definition of "manager" or "operator", thus leaving a clear *numerus apertus*, by which mortgagees in possession and even crewing agents were allowed to limit their liability.

Two views contrast¹¹ when addressing as to whether the terms are sufficiently ample as to cover certain actors (such as crewing agents) which have a participation in the development of the activities of the vessel: The first view pertains to Griggs, Williams and Farr, who state that the terms must be interpreted in liberally. This interpretation includes only persons "*interested in or in possession*"¹² of the vessel, thus excluding crewing agents and other similar actors.

The other perspective is presented by Derrington and Turner¹³ who refer to these terms as all inclusive not only in the commercial aspects but also in the technical and crewing aspects of the vessel, thus encompassing individuals such as crewing agents.

3.1.4 Salvors

Salvors have the right to limit their liability for negligence of a member of the salvage crew operating the salvor's vessel or even the salvaged vessel. This has been product of *intense lobbying*¹⁴ performed by the salvors when negotiating the LLMC Convention, for they were at a disadvantage due to the lack of capacity to limit the liability under the

¹¹ Martinez; p. 31.

¹² GRIGGS, Patrick; WILLIAMS, Richard; and FARR, Jeremy; *Limitation of Liability for Maritime Claims*, Fourth Edition, LLP, London, 2005. p. 8.

¹³ DERRINGTON, Sarah and TURNER, James; *The law and practice of admiralty matters*, Oxford University Press, Oxford, 2007, p. 243.

¹⁴ Martinez, p. 32.

1957 International Convention relating to the Limitation of the Liability of Owners of Sea-Going Ships.

3.1.5 Any Person for whose act the shipowner or salvor is responsible

Bearing in mind the case of *Adler v. Dickson*,¹⁵ the LLMC Convention was drafted to include any person for whose act the shipowner or salvor is responsible. This has included the contracting third parties who provide services for the ships, such as crane operators. This consideration though has been taken into account restrictively, by determining that only those contractors who perform “non-delegable duties” of the shipowner can utilize the Conventions’ provisions to limit their liability.¹⁶

3.1.6 Liability Insurers

Insurers of liability have also advantages when legislation such as the one obtained by the ratification of the LLMC Convention, for the indemnities they have to pay are limited by the LLMC Convention.

The insurers though, are subject to the capacity of the assured as to the limitation of their liability so if the assured finds himself in a situation where he cannot limit his liability, the insurer will be deprived of the benefit of limitation as well.¹⁷

3.2 Ships in respect of which liability can be limited

The Convention limits itself to “seagoing ships” but neither concept was developed in the scope of the Convention and it has been subject to great debate. Navigation, though, appears to be a constant in major maritime nations, when addressing the conceptualization of a “seagoing ship”. In this respect, the United Kingdom and Canada both explicitly include this factor in their legislation when determining the existence of a vessel as to interpret it in a very unrestrictive manner.

¹⁵ *Adler v Dickson (The Himalaya)* [1954] 2 Lloyd's Rep 267.

¹⁶ MANDARAKA-SHEPPARD A.; *Modern Admiralty Law*, Second Edition, Routledge, London, 2007, p. 872; see also, Martinez, p. 33.

¹⁷ Article 1 (6) LLMC Convention.

Due to the large amount of activity in lake and river transportation, it would be wise to follow this approach. For this purpose, Bolivia include attach to the instrument of ratification, a declaration interpreting the term “seagoing” in such a way as to include vessels that do not traverse the seas.

3.3 Claims under the Proposed Regime of Limitation of Liability:

The Convention provides a series of claims which fall under its scope of application, but also provides that some claims are excluded from the applicability of limitation of liability.

3.3.1 Claims subject to Limitation:

The claims subject to limitation in the LLMC Convention are comprehensive, for the Convention was drafted as to include the major protection to the people involved in shipping industries.

In general terms, there exist six categories of claims subject to limitation within the scope of the LLMC Convention are:

- 1. 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;**

The wide drafting of the first category, has led to include limitation of liability of damages caused in circumstances of activities related to dry-docking, amongst all other situation which would encompass the “operation of the vessel”. According to Mandaraka-Sheppard, this term even includes “[...] *claims for personal injury or property caused by*

*a person, for whose acts, neglect or default the owner is responsible when the vessel is in drydock [...]”.*¹⁸

2. Claims in respect of loss resulting from delay in the carriage by sea of cargo, passengers or their luggage;

The second provision, related to damage for delay, is one which results from situations other than those which caused damage or destroyed the goods (which are covered by the first provision listed) had to be included, so the drafting of the Convention takes care to be as broad as possible as to gain the greatest amount of cover to shipowners.

3. 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;

It is necessary to make clear that this provision does not include the freight paid by the charterer in a charterparty. For, all effects it is considered a “contractual right”.

4. 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;

The accession to the Convention and the interpretation of the term “seagoing” must not purport an extra obligation for the State when regarding to the removal of wrecks and cargo in internal waters, in the very likely case of a wreck blocks the river course, the burden of removing that wreck should remain with the shipowner, as to facilitate the accession of the country to the Convention. A reservation, as allowed by Article 18 of the LLMC Convention to this matter may be considered by the parliament when acceding to the treaty.

5. Claims in respect of the removal, destruction or the rendering harmless of the cargo of the ship;

¹⁸ Mandaraka-Shepard, p. 895.

This category of claims was drafted as to cover danger that the cargo may purport to cause the ship. Thus, it is necessary to distinguish this from the provision concerning wreck removal which deals with the movement or destruction of a wrecked vessel and its sunken cargo. Accordingly, a term should be included in the proposed reservation for the same reasons stated with regards of wreck removal.

6. 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.

This establishes protection for the third parties that have performed activities related with all the categories considered beforehand. This legal provision relates not only to the activities themselves but also to further losses that arise from the consequences of such actions. Article 2 (2)¹⁹ of the Convention must be also taken into account when interpreting this provision, for most of the matters related to third party behaviour will be presented to the courts by the means of recourse or indemnity.

It is clear from the drafting of the Convention that the diversity of possible claims that fall under limitation was far too great as to compose an express and exhaustive enumeration.

3.3.2 Claims not subject to Limitation:

It is because of the broad manner in which the Convention addresses maritime claims that the limits imposed to claimants as to which situations are susceptible of limitation, that a list of exclusions had to be included in the Convention. This list, closes the hatch for possible interpretations that may configure an actual abuse on the scope of application of the Convention.

¹⁹ Martinez, p. 46.

By determining expressly, and in a *numerus clausus* manner which situations are not covered under the LLMC Convention, though, a conflict with other systems of compensation to which limitation is antagonistic,

1. *Claims for salvage or contribution in general average;*
2. *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;*
3. *Claims subject to any international convention or national legislation governing or prohibiting limitation of liability for nuclear damage;*
4. *Claims against the Shipowner of a nuclear ship for nuclear damage;*
5. *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.*

3.4 Loss of rights to limit:

A key determination of the LLMC Convention to be considered is that which is contained in Article 4 of the Convention.

This Article provides three situations in which limitation of liability may be excluded from the damaging action, even when it falls under the claims subject to the limitation.

A person may lose his right to limit liability. This person, according to an integrated interpretation of the LLMC Convention, should be the one entitled to limit his liability. It is for this reason that these provisions must be always interpreted alongside Article 1 of the LLMC Convention.

The situations which contemplate barring for any right of limitation of liability are,

1. *Intent*: Related with the fact that the person liable is at all times aware of the consequences of his actions. Thus, the person committing the act must do so seeking the negative effects that it would provoke.
2. *Recklessness*: Recklessness is performing an action that has a high probability of incurring in liability. Foreign Case Law provides for an actual explanation as to when an action is reckless:

*[w]hen conduct is stigmatized as reckless; it is because it engenders de risk of undesirable consequences. When a person acts recklessly, he acts in a manner which indicates that a decision to run the risk or of a mental attitude of indifference to its existence.*²⁰

3. *Knowledge of probable damage*: This term refers to actual knowledge. To something the person liable knew at the moment of the action that made him liable. Not constructive knowledge (what he ought to have known).²¹

It is of extreme importance to state that the last two elements are cumulative, meaning that recklessness and knowledge of probable damage need to exist at the same time to form a situation which would cause the loss of the right of limitation of liability.

3.5 General Limits of Liability:

3.5.1 General Limit

Article 6 (1) of the Convention sets the limits of liability and it reads as follows:

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):*

²⁰ Goldman v. Thai Airways International Ltd. [1983] 3 All ER 693.

²¹ Martinez, p. 65.

- *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; and*
- *for each ton in excess of 30,000 to 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.*

3.5.2 Special limit for passenger claims:

Loss of life and personal injury have always been delicate issues which must be treated in a specific manner, and even though the 1974 Athens Convention relating to the Carriage of Passengers and their Luggage by Sea (Athens Convention) also encompasses a limit for the shipowner's liability, the LLMC Convention will generate a cover in terms of global limitation of liability when the limits of the Athens Convention are too high, and thus, providing a second line of defence for the shipowner, this provided that the procedure is initiated under the Athens regime, as it must be, for the Athens Convention provides in Article 14 limits the right of action of the claimants to the Athens regime.

The limitation criteria established by the LLMC Convention for this type of situation is “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.”²²

²² Article 7 (1) of the LLMC Convention.

This limitation is subject to two different scenarios portrayed in Article 7 as to when a shipowner is entitled to limit his liability in case of a claim for loss of life or personal injury under the terms of the LLMC Convention. These scenarios exist when the people who file a claim against the shipowner are:

- (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.*

Both of these definitions definitely exclude “*visitors, guests and stowaways*”.²³ In both of these scenarios, a contractual relationship exists between the carrier and the person who will board the ship. This contractual relationship may be direct or indirect.

3.5.3 Units of account

A “unit of account” is comprised of the special drawing rights (SDR) as defined by the International Monetary Fund²⁴ at the moment of constitution of the compensation fund.

3.6 Limitation Funds

An extremely important factor concerning the LLMC Convention is the issue concerning the limitation funds, as means to exercise the right of limitation which is purported to incorporate into Bolivia’s legal system.

The Convention, when establishing a special limit for the passenger related claims, also establish by interpretation, a separate limitation amount to compensate the losses caused to the passengers because it would be too prejudicial for the passengers to “compete with other claims under limitation amount calculated in accordance with Article 6”.²⁵

²³ CHEN Xia, “Limitation of Liability for Maritime Claims - A Study of U.S. Law, Chinese Law and International Conventions, Kluwer Law International, The Hague”, P. 90.

²⁴ Special Drawing Right: The SDR is an international reserve asset, created by the IMF in 1969 to supplement its member countries' official reserves. Its value is based on a basket of four key international currencies, and SDRs can be exchanged for freely usable currencies. Obtained From: <<http://www.imf.org/external/np/exr/facts/sdr.htm>> As of December 9, 2011.

²⁵ Martinez, p. 89.

Even though the right of limitation of liability can be invoked without the constitution of a fund, the discussion on limitation funds is, in principle, a discussion concerning the materialization of the effects of the LLMC Convention. Thus, the actual analysis of procedure of the Convention can be explained by examining the Convention's Articles concerning these limitation amounts.

First of all, it is necessary to understand that limitation for liability can be exercised *ex ante facto* or *ex post facto*. This means that the abstract limit for liability as depicted in Article 6 (1) of the LLMC Convention is always present, but the practical recognition for this limitation must be obtained from the State and that recognition could be obtained before the court that has determined the existence of liability or after it has determined its existence.

Limitation funds may be constituted by the person who wishes to limit his liability either by depositing the value of the limitation, or by constituting a guarantee sufficient to the competent authority.²⁶

When referring to the competent authority, the Convention mentions courts, but it immediately opens the possibility to any other competent authority to handle the funds. Bolivia utilizes similar funds and guarantees for other matters. A clear example of this is the customs office, who is authorized by Law N° 1990, "General Law of Customs",²⁷ Article 151 to accept guarantees for liabilities against the customs office.

The constitution of these funds or guarantees has always been regulated by administrative legislation emanated from the executive organ of the country, thus, the Ministries (or even the Supreme Court of Justice, for it has been given that faculty) can issue a communication detailing the nature and the requisites for the said funds.

Another aspect that is vital to take into account is the fact that a person who constitutes these funds uses them to secure the capacity to utilize the vessel and gain revenue even after proceedings such as an *actio in rem* have been initiated against his ship by having

²⁶ Article 11 (2) of the LLMC Convention.

²⁷ Ley 1990 Ley General de Aduanas, June 28 1999.

the limitation fund replace the actual vessel in proceedings. Meaning that, for example, if the vessel were to be arrested, the claimant would have to be directed to the constituted limitation fund instead.

3.7 Distribution of the Limitation Fund

Article 12 of the LLMC Convention describes how the limitation fund must be distributed to the claimants. This disposition must be applied regardless the type of fund created by the shipowner.

Paragraph one of this Article clearly states that the fund will be “*distributed among the claimants in proportion to their established claims against the fund*”.²⁸

Thus, for example, if it has been considered that for all claimants to be satisfied, the amount claimed by them as a group should be 20% less; then, all claims will be reduced in 20% so every one of the claimants can be, at least, partly satisfied.

An important, and unfinished, issue arises when considering the right of subrogation mentioned in the second paragraph of article 12 of the LLMC Convention, which provides:

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.

The words “*up to the amount he has paid*” have given place to a series of uncertainties as whether the ship owner can subrogate the entire claim, or only the compensated amount, leaving the rest as further compensation for the other claimants.

Looking at the matter in the eyes of the shipowner, the main person interested in activating this provision, subrogating only a part of the claim and leaving the rest for further compensation for the other claimants is of no consequence. Thus, forcing the implementation of such a provision would certainly provoke indifference on the part of

²⁸ Article 12 (1) of the LLMC convention.

the shipowner with regards to litigation and bona fide negotiations. This situation becomes even more evident when the existence of the limitation fund is also inserted into the present matter.

It is for these reasons that a simple question must be answered to be able to justify this second interpretation: Why would the shipowner invest such a quantity of resources and time for negotiations when he can just constitute a fund and forget the matter?

4. The 1996 Protocol

It was found that in practice, and considering the advances in technology and the capacity of vessels in conjunction with the real value of the SDR, the LLMC Convention prescribed really low limits of liability for the shipowners. Thus, The Legal Committee of the IMO was entrusted to update these limits to a substantially higher value.

Nevertheless, the limits of liability were not the only subjects analyzed at the conference that finally produced the 1996 Protocol. It provided a series of important modifications to the LLMC Convention of 1976 that would make it a completely new limitation system.

4.1 Matters Modified

4.1.1 Special compensation in salvage services

Article 3 of the LLMC Convention is modified by the 1996 Protocol as to include the special compensation resulting from salvage services that, even though not successful, have managed to avoid or reduce damage to the environment.

These services, though, must be rendered under the scope of the International Convention on Salvage, 1989 to be excluded from the scope of application of the LLMC Convention.

4.1.2 The International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea (HNS Convention)

The 1996 Protocol incorporates Article 18(1)(b) to the LLMC Convention as to include a possible reservation regarding matters of liability related with hazardous and noxious substances. The HNS Convention was adopted in 1996, and provides a separate limitation of liability system, where the transportation of these substances was involved. The list of substances considered within the coverage of the HNS Convention is comprised by more than 6000 items.

To avoid overlapping subject-matters then, the 1996 Protocol provides a possibility for States to make a reservation concerning the matters related to the hazardous and noxious substances, to avoid having a problem related to the decision as to which limitation system is to apply.

4.1.3 Limits of Liability

Both of the limitation funds that amounts calculated under the LLMC Convention were modified in the 1996 Protocol, increasing them exponentially as to give the claimants more possibilities of a fair satisfaction to their claims,

Article 3 of the 1996 Protocol modifies first the fund for claims regarding loss of life and personal injury, maintaining the three tier compensation system based on a calculation of the vessel's tonnage, but dramatically increasing the base values for the calculations:

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 7 (1) of the LLMC Convention is then modified by Article 4 of the 1996 protocol with two substantial differences, one of which would alter the very nature and effect of the global limitation system proposed by the original Convention.

The Article reads as follows:

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 ship owner 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.

The first modification of the provision follows those of the loss of life and personal injury fund established in article 6 of the LLMC Convention, by increasing substantially the amount of compensation from 46,666 units of account, to 175,000 units of account. This increase of the compensation amount of over 350% of the original value demonstrates how the standards for a fair compensation changed.

The second, and more important modification, was the removal of the 25,000,000 units of account cap. This modification reveals the true extent of the nature of the protection of the passenger, who has no other means of compensation when a situation arises, than what the shipowner, as person liable can give him.

In 1976, it was calculated that the cap imposed for passenger claims would only enable satisfaction in full, only when the vessel carried 536 passengers,²⁹ once this cap was reached, the amount of compensation would be reduced for each passenger in order to partially compensate others. Today, with ships able to carry more than 3000 passengers, it was only fitting to remove this cap and increase the compensation due to each person as to avoid extreme injustice to the users of ship transportation services.

4.1.4 Claims not subject to limitation

The claims which are excluded from limitation of liability under the 1996 Protocol have changed with respect to the provision of Article 3 of the LLMC Convention. Article 2 of

²⁹ Provided that their respective claims do not exceed SDR 46,666, see Martinez, p. 118.

the 1996 Protocol modifies Article 3 of the LLMC Convention, stating that not only traditional Salvage Award Claims are excepted from the application of the limitation of liability regime but also claims in the nature of the special compensation provided for in article 14 of the 1989 Salvage Convention.

4.1.5 Tacit Acceptance

The limits provided by the LLMC Convention as amended by the 1996 Protocol can now be modified by tacit acceptance, meaning that an international conference is not needed to increase the limits when necessary, the only thing that would bar the future modification of the limits would be the actual denial of one fourth of the contracting states. This situation provides for the fairness of compensation in the future, but also to ensure the existence of the possibility of limitation for the shipowners.

5. Conclusion

The simultaneous adoption of the 1976 Convention and the 1996 Protocol

The adoption of both International Instruments means the adoption of both systems of limitation, as to ensure the capacity of the shipowners registered within the Bolivian flag as to exercise their right of limitation of liability regardless of the fact the State is a party to the 1976 LLMC Convention or the 1996 Protocol.

This reasoning finds its basis in the fact that the 1996 Protocol does not contain in its Final Clauses any provision regarding the denunciation of the original 1976 Convention, thus, the accession to the Protocol, by those States which already were constituted as Parties to the Convention originated a dual limitation of liability system for them.

Of the 61 States Party to the LLMC Convention, only Belgium, Germany, Japan, the Netherlands, Norway, South Africa, Sweden and the United Kingdom have denounced it. The rest of the countries has opted either to stay with the limitation provided by the original convention or maintaining it in force as to protect their shipowners' right of limitation whilst the 1996 Protocol gains momentum, and its ratified by a sufficient number of States.

Today, the 1996 Protocol has been adopted by more than 40 countries, but still today, most of them retain the original LLMC convention in force as to ensure the right of limitation as explained above.

It is this behaviour of the State Parties of open registries, the one which shows best true caution of these flag States when handling the secure environment they provide to the shipowners for them to realize their activities that was achieved with the right of limitation.

Since the Bolivian registry is very small, this conduct must be emulated, at least until the LLMC Convention loses practical force in front of a new emergent number of States which will ratify the 1996 Protocol. Until that moment, and while a shed of doubt as to

the applicability or not of the right of limitation for the shipowners registered in Bolivia exists, then Bolivian shipowners should have the possibility of limitation covered in all respects with the largest number of States possible, in the largest quantity of situations possible.

Ratifying both instruments achieves this purpose, as to enforce and exercise the right of limitation of liability irrespectively of whatever technical mishap may try to bar this right to the Bolivian ship owner. The double ratification will ensure then that a larger number of ships enter into the Bolivian ship registry, attracted not only by a mere convenience of price, but also by a sense of security and tranquility that only limitation of liability can bring nowadays.

6. Ratification Procedure

In Bolivia, international conventions are divided into three categories:

Human Rights Conventions: Conventions concerning human rights of a supreme character (while they consider more favorable rights than those provided in the Constitution), thus form part of Bolivian legislation and are interpreted with preference even to the Constitution.

Special Conventions: Special Conventions are those concerning frontier matters, monetary integration, structural economic integration and those concerning any cession of competence to supranational international organisms, in the framework of an integration procedure.

These Conventions must be ratified by a *Referendum* in order to form part of the Bolivian Legislation. These Conventions have rank of Law and to be denounced they also require a *Referendum*.

Non-Human Rights Conventions: This category comprehends all Conventions that by exclusion are either of Human Rights or Special. These Conventions have rank of Law. Ratification must be approved by both Chambers of the Bolivian Plurinational Legislative Assembly. Denunciation of a treaty must be done also with the approval of the Plurinational Legislative Assembly, as the assembly is the only organ entitled to “*Dictate Laws, interpret them, derogate them, abrogate them and modify them*”³⁰ and to “*Ratify international Treaties celebrated by the Executive Power, in the forms established by the constitution*”³¹.

6.1 The LLMC convention as a Non-Human Rights Convention:

³⁰ Article 158 (1) (3) of the Political Constitution of the Plurinational State of Bolivia.

³¹ Article 158 (1) (14) of the Political Constitution of the Plurinational State of Bolivia.

The Political Constitution of Bolivia, in its Articles 162 and 163, provides for the Legislative Procedure which is as follows:

1. The Executive Power shall present the initiative to the Assembly.
2. The Initiative will be sent to the Chamber of Representatives (*Cámara de Diputados*)
3. The initiative will be discussed and approved by the Chamber in general terms and in detail with a vote which will require a majority over 51% of the Chamber.
4. The initiative will be taken to the Chamber of Senators (*Cámara de Senadores*)
5. The Initiative will be subject to revision under the same conditions as the Chamber of Representatives.
6. The initiative then will be sent to the President of the Plurinational State for its Promulgation.
7. The Law shall be immediately promulgated in the official Gazette and Compliance with it shall be enforced since the day of the Gazette's Publication, unless the Law states a different time period in which it will enter into force.

DRAFTS



**A Law to Incorporate the Convention on Limitation of Liability for Maritime Claims,
1976**

LAW N° ____

LAW OF ____ of 2 ____

EVO MORALES AYMA

**CONSTITUTIONAL PRESIDENT OF THE PLURINATIONAL STATE OF
BOLIVIA**

By which the Plurinational Legislative Assembly, has sanctioned the following law:

THE PLURINATIONAL LEGISLATIVE ASSEMBLY,

D E C R E E S:

Article 1. In conformity with the power conferred by Article 158, paragraph I, number 14 of the State's Political Constitution, the ACCESSION to the Convention on Limitation of Liability for Maritime Claims, adopted in the city of London, on the Second day of May of the Year one thousand nine hundred seventy-six is hereby RATIFIED.

Article 2. The reservation expressed by the Executive Power in the accession instrument to the Convention of Limitation of Liability for Maritime Claims, 1976 to be sent to the Secretary-General of the International Maritime Organization, depository of the said Convention regarding the inapplicability of Article 2 (1) (d) and 2 (1) (e) of the Convention is hereby APPROVED.

Article 3. The interpretative declaration expressed by the executive power in the Accession instrument to be sent to the Secretary-General of the International Maritime Organization, depository of the said Convention, regarding the interpretation of the term "sea-going", as



including ships of less than 300 tons and ships intended for navigation in internal waterways, is hereby APPROVED.

Refer to the Executive Power for Constitutional ends.

Done at the Session Chamber of the Plurinational Legislative Assembly on the __th day of the month of ___ of the year _____

Fdo. René Oscar Martínez Callahuanca, Héctor Enrique Arce Zaconeta, Zonia Guardia Melgar, Jeanine Añez Chávez, Esteban Ramírez Torrico, Ángel David Cortés Villegas.

Therefore, I promulgate this Law so it is taken and obeyed as a law of the Plurinational State of Bolivia.

Government Palace of the City of La Paz, at the ___ day of the month of ___ of the year _____.

EVO MORALES AYMA, David Choquehuanca Céspedes, Oscar Coca Antezana.



**Instrument of accession to the Limitation of Liability for Maritime Claims
Convention, 1976**

**INSTRUMENT OF ACCESSION
BY THE PLURINATIONAL STATE OF BOLIVIA**

WHEREAS the Convention on Limitation for Liability on Maritime Claims (hereinafter referred to as “the Convention”) was concluded in London on the 19th day of November of the year 1976.

AND WHEREAS Article 16 (c) of the Convention specifies that any State which does not sign the Convention may accede to it at any time once the period for signature has expired;

NOW THEREFORE, The Plurinational State of Bolivia, having considered the Convention, hereby *ACCEDES* to it, and undertakes faithfully to abide by the provisions contained therein, except for those contained in the Reservation and Declaration Instrument which forms an integral part of the present instrument of accession.

IN WITNESS THEREOF, I have signed this Instrument of Accession and affixed hereunto the Seal of The Plurinational State of Bolivia.

Date

EVO MORALES AYMA
Constitutional President of
The Plurinational State of Bolivia



**Instrument of Reservation and Declaration to the Convention on Limitation of
Liability for Maritime Claims, 1976**

**RESERVATION AND DECLARATION
PLURINATIONAL STATE OF BOLIVIA**

I, Juan Evo Morales Ayma, Constitutional President of the Plurinational State of Bolivia,

HEREBY DECLARE that the Government of the Plurinational State of Bolivia makes a reservation in relation to article 2, *Paragraphs (d) and (e) of the Convention of Limitation of Liability for Maritime Claims adopted on 2 May 1976 at London;*

AND HEREBY DECLARE that the Government of the Plurinational State of Bolivia, implementing the *Convention of Limitation of Liability for Maritime Claims adopted on 2 May 1976 at London shall interpret the term “seagoing ship” as follows:*

The term “Sea-going ship” as expressed in Article 1 (2) includes all types of ships of less than 300 tons and all types of ships which are intended for navigation in internal waterways such as rivers, lakes, and any other navigable water body within the territorial limits of the Plurinational State of Bolivia.

IN WITNESS WHEREOF, I have hereunto set my hand and seal.

Done at ____ on _____.

JUAN EVO MORALES AYMA
Constitutional President of
The Plurinational State of Bolivia



A Law to Incorporate the Protocol of 1996 to Amend the Convention on Limitation of Liability for Maritime Claims, 1976

LAW N° ____

LAW OF ____ of 2 ____

EVO MORALES AYMA

CONSTITUTIONAL PRESIDENT OF THE PLURINATIONAL STATE OF BOLIVIA

By which the Plurinational Legislative Assembly, has sanctioned the following law:

THE PLURINATIONAL LEGISLATIVE ASSEMBLY,

D E C R E E S:

Article 1. In conformity with the power conferred by article 158, paragraph I, number 14 of the State's Political Constitution, the ACCESSION to the Protocol of 1996 to Amend the Convention on Limitation of Liability for Maritime Claims, 1976, adopted in the city of London, on the Second day of May of the Year one thousand nine hundred ninety-six is hereby RATIFIED.

Article 2. The reservation expressed by the Executive Power in the accession instrument to the Protocol of 1996 to Amend the Convention on Limitation of Liability for Maritime Claims, 1976 to be sent to the Secretary-General of the International Maritime Organization, depositary of the said Convention regarding the inapplicability of Article 2 (1) (d) and 2 (1) (e) of the Convention, as incorporated from the Convention on Limitation of Liability for Maritime Claims, 1976 by the said protocol is hereby APPROVED.



Article 3. The interpretative declaration expressed by the executive power in the Accession instrument to be sent to the Secretary-General of the International Maritime Organization, depositary of the said Convention, regarding the interpretation of the term “sea-going”, as including ships of less than 300 tons and ships intended for navigation in internal waterways, is hereby APPROVED.

Refer to the Executive Power for Constitutional ends.

Done at the Session Chamber of the Plurinational Legislative Assembly on the ___th day of the month of ___ of the year _____

Fdo. René Oscar Martínez Callahuanca, Héctor Enrique Arce Zaconeta, Zonia Guardia Melgar, Jeanine Añez Chávez, Esteban Ramírez Torrico, Ángel David Cortés Villegas.

Therefore, I promulgate it so it is taken and obeyed as a law of the Plurinational State of Bolivia.

Government Palace of the City of La Paz, at the ___ day of the month of ___ of the year _____.

EVO MORALES AYMA, David Choquehuanca Céspedes, Oscar Coca Antezana.



**Instrument of accession to the Protocol of 1996 to Amend the Convention on
Limitation of Liability for Maritime Claims, 1976**

**INSTRUMENT OF ACCESSION
BY THE PLURINATIONAL STATE OF BOLIVIA**

WHEREAS the Protocol of 1996 to Amend the Convention on Limitation of Liability for Maritime Claims, 1976 (hereinafter referred to as “the 1996 Protocol”) was concluded in London on the 2nd day of May of the year 1996.

AND WHEREAS Article 16 (c) of the 1996 Protocol specifies that any State which does not sign the 1996 Protocol may accede to it at any time once the period for signature has expired;

NOW THEREFORE, The Plurinational State of Bolivia, having considered the 1996 Protocol, hereby *ACCEDES* to it, and undertakes faithfully to abide by the provisions contained therein, except for those contained in the Reservation and Declaration Instrument which forms fundamental part of the present instrument of accession

IN WITNESS THEREOF, I have signed this Instrument of Accession and affixed hereunto the Seal of The Plurinational State of Bolivia.

Date

EVO MORALES AYMA
Constitutional President of
The Plurinational State of Bolivia



Instrument of Reservation and Declaration to the Protocol of 1996 to Amend the Convention on Limitation of Liability for Maritime Claims, 1976

**RESERVATION AND DECLARATION
PLURINATIONAL STATE OF BOLIVIA**

I, Juan Evo Morales Ayma, Constitutional President of the Plurinational State of Bolivia,

HEREBY DECLARE that the Government of the Plurinational State of Bolivia makes a reservation in relation to article 2, *Paragraphs (d) and (e) of the Convention of Limitation of liability for Maritime Claims adopted on 2 May 1976 at London, as modified by the Protocol of 1996 to Amend the Convention on Limitation of Liability for Maritime Claims, 1976;*

AND HEREBY DECLARE that the Government of the Plurinational State of Bolivia, in relation to the interpretation of the *Convention of Limitation of Liability for Maritime Claims adopted on 2 May 1976 at London, as modified by its 1996 Protocol, shall interpret the term “seagoing ship” as follows:*

The term “Sea-going ship” as expressed in Article 1 (2) includes all types of ships of less than 300 tons and all types of ships which are intended for navigation in internal waterways such as rivers, lakes, and any other navigable water body within the territorial limits of the Plurinational State of Bolivia.

IN WITNESS WHEREOF, I have hereunto set my hand and seal.

Done at ____ on ____.

EVO MORALES AYMA
Constitutional President of
The Plurinational State of Bolivia

ANNEXES

Annex 1

Example of an Incorporative Legislation

LAW N° 1957

LAW OF 18TH MARCH OF THE YEAR 1999

HUGO BANZER SUAREZ

PRESIDENT OF THE REPUBLIC

Whereas the Honorable National Congress has sanctioned the following Law:

THE HONORABLE NATIONAL CONGRESS,

D E C R E E S:

UNIQUE ARTICLE.- In Conformity to Article 59, Attribution 12th of the State's Political Constitution, the adhesion to the 1984 Protocol which modifies the International Convention on Civil Liability for Oil Pollution Damage of the year 1969.

Remit to the Executive Power for constitutional ends.

Done at the Session Chamber of the Honorable National Congress on the eleventh day of the month of March on the year one thousand nine hundred ninety nine.

Fdo. Walter Guiteras Denis, Hugo Carvajal Donoso, Gonzalo Molina Ossio, Edgar Lazo Loayza, Roger Pinto Molina, Luis Llerena Gamez.

Therefore, I promulgate it for it to be taken into account and complied as a law of the Republic.

Government Palace of the city of La Paz, on the eighteenth day of the month of March of the year one thousand, nine hundred ninety nine.

HUGO BANZER SUAREZ, Javier Murillo de la Rocha, Carlos Iturralde Ballivián, Erick Reyes Villa Bacigalupi.

Annex 2

Example of an Incorporative Legislation Containing a Reservation

LAW N° 103

LAW OF 7TH APRIL OF THE YEAR 2011

JUAN EVO MORALES AYMA

**CONSTITUTIONAL PRESIDENT OF THE PLURINATIONAL STATE OF
BOLIVIA**

Whereas the Plurinational Legislative Assembly, has sanctioned the following law:

THE PLURINATIONAL LEGISLATIVE ASSEMBLY,

D E C R E E S:

Article 1. In conformity with the attribution stated in article 158, paragraph I, number 14 of the State's Political Constitution, the American Treaty on Pacific Solutions (Bogota Pact) subscribed in the city of Bogota on the thirtieth day of the month of April of the year one thousand nine hundred forty-eight, in the framework of the IX American International Conference is ratified.

Article 2. The reservation made by the Bolivian delegation when signing the American Treaty on Pacific Solutions (Bogota Pact), with relation to Article VI, because is considered that the pacific procedures can also be applied to the controversies that emerge from matters resolved with party settlement, when the said settlement affects vital interests of a State, is confirmed

Remit to the Executive Power for constitutional ends.

Given at the Session Chamber of the Plurinational Legislative Assembly on the fifth day of the month of April of the year two thousand and eleven.

Fdo. René Oscar Martínez Callahuanca, Héctor Enrique Arce Zaconeta, Zonia Guardia Melgar, Jeanine Añez Chávez, Esteban Ramírez Torrico, Ángel David Cortés Villegas.

Therefore, I promulgate it so it is taken and obeyed as a law of the Plurinational State of Bolivia.

Government Palace of the city of La Paz, on the Seventh day of the month of April of the year two thousand and eleven.

EVO MORALES AYMA, David Choquehuanca Céspedes, Oscar Coca Antezana.

Annex 3

Full Text of the Convention on Limitation of Liability for Maritime Claims, 1976

Convention on Limitation of Liability for Maritime Claims, 1976

(London, 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:
 - c) signature without reservation as to ratification, acceptance or approval; or

- d) signature subject to ratification, acceptance or approval followed by ratification, acceptance or approval; or
 - e) 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.

Annex 4

**Full Text of the Protocol of 1996 to Amend the Convention on Limitation of Liability
for Maritime Claims, 1976**

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

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:

2. The limits of liability for claims other than those mentioned in article 7, arising on any distinct occasion, shall be calculated as follows:
 - (c) in respect of claims for loss of life or personal injury,

- (iii) 2 million Units of Account for a ship with a tonnage not exceeding 2,000 tons,
 - (iv) 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,
- (d) in respect of any other claims,
- (iii) 1 million Units of Account for a ship with a tonnage not exceeding 2,000 tons,
 - (iv) 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:

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 ship owner 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:

3. 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 I (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 I 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 l(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 I 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 per cent 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

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.

FINAL CLAUSES

Article 10

Signature, ratification, acceptance, approval and accession

1. 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 I 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 Parties.

Article 14

Depositary

1. This Protocol and any amendments accepted 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.