

DRAFT LEGISLATION ON LIMITATION OF LIABILITY
IN RELATION TO MARITIME CLAIMS
(INCORPORATION OF THE 1976 CONVENTION)

A MARITIME LEGISLATION DRAFTING PROJECT SUBMITTED
IN PARTIAL FULFILMENT OF THE REQUIREMENTS FOR THE
AWARD OF A MASTER OF LAWS DEGREE (LL.M.) AT THE
I.M.O. INTERNATIONAL MARITIME LAW INSTITUTE (I.M.L.I.)

M A L T A

April 1991

Supervisor: Professor P.K. Mukherjee

HASSAN RAJAEI

DRAFTING INSTRUCTIONS

The Government of IRAN has decided to incorporate the 1976 Convention on Limitation of Liability in relation to maritime claims ratified on 19th November 1976 into its laws to replace the present law on limitation of liability which is based on the 1957 Convention on Limitation of Liability for Shipowners. The Government recognises that the 1976 Convention has a number of advantages over the 1957 Convention and is keen on having provisions in relation to these new developments on limitation of liability reflected in the new maritime code. As a result you are instructed to revise the law to incorporate the provisions of the 1976 Convention into the Iranian maritime code.

You are directed to note the following changes made in the 1976 Convention and as far as possible these changes should be incorporated in the new legislation:

(1) Provisions relating to actual fault or privity. Liability in the 1957 Convention is based on actual fault or privity; whereas in the 1976 Convention it is based on presumed fault and the onus for claiming limitation is reversed.

(2) Personal claims - these limits of liability have been drastically raised.

(3) The provisions as regards tonnage - the use of gross tonnage as limitation tonnage instead of net tonnage as was the case in the 1957 Convention.

(4) Under the new convention all proceedings relating to collisions have now been limited to one forum.

(5) As IRAN is a contracting party to salvage, CLC and Fund Conventions, all maritime claims in relation to these matters should be governed by Iranian law and incorporated in the Act.

(6) Uniformity - we need one law for all ports, cargoes and all ships as well as to have uniformity with other countries.

(7) Limits of liability for any salvor not operating, must be incorporated.

Scope of Application

The Act should apply to persons who wish to limit their liability or the release of property located in IRAN. The persons who are entitled to limit their liability are salvors, shipowners, insurers and third parties for whom the shipowners or salvors are vicariously liable.

Claims subject to limitation:

The Committee considering the present law has decided to adopt the convention in its present form mutatis mutandis: the claims are:

- (a) loss of life, personal injury
- (b) delay in carriage
- (c) infringement of rights other than contractual rights
- (d) removal, destruction, rendering harmless of ship
- (e) removal, destruction, rendering harmless of cargo
- (f) other person taking measures in order to avert or minimise loss.

Liability against ship

In this Act liability of a shipowner should include liability for the ship and the invoking of limitation is not to be treated as an admission of liability.

Conduct barring limitation

This is based on personal act or omission committed with the intent to cause damage recklessly and with knowledge

Claims excepted from limitation

Limitation of liability under this part will not apply to the following claims:

- (a) salvage or contribution in general average
- (b) servants of shipowner, salvor, dependants
- (c) air-cushioned vehicles, floating platforms
- (d) oil pollution damage
- (e) nuclear ship for nuclear damage

Calculation of limit of liability

There is a new regime of liability and the limitation of it and the major advantage in this regime is that the personal injury claims are covered exclusively by Article 6(1)(a). Further the limits of liability for any salvor not operating should be calculated as provided in the convention.

The provisions in the convention relating to:

- (a) priorities
- (b) measurement of ship's tonnage
- (c) limitation of liability of port authorities, owner of docks
- (d) limit for passenger claims

- (e) aggregation of claims

- (f) constitution of fund
- (g) distribution of fund
- (h) bar to other claims
- (i) division of loss
- (j) damages for personal injury
- (k) limitation of action

are acceptable to the committee and you are therefore instructed to incorporate these into the law mutatis mutandis.

Conversion of limit of account

The unit of account must be converted into Iranian Rials on the date the security or guarantee is deposited into court.

Accordingly you are hereby instructed to adopt the relevant law taking into account all matters as indicated above.

C O N T E N T S

Chapter I Nationality and Registration of Ships (not included)

Chapter II Preferred Rights (not included)

Chapter III Mortgages on Ships (not included)

Chapter IV Carriage of Goods by Sea (not included)

Chapter V Shipowner - Limitation of Shipowner's Liability

Part I Generality (not included)

Part II Limitation of Liability of the Shipowner

ARRANGEMENT OF ARTICLES

Article 75 - Interpretation

76 - Scope of application

77 - Persons entitled to limit liability

78 - Claims subject to limitation

79 - Liability against ship

80 - Invoking limitation net on admission of liability

81 - Conduct barring limitation

82 - Counter claims

83 - Claims excepted from limitation

84 - Calculation of limit of liability

85 - Priorities

86 - Measurement of ship's tonnage

87 - Limitation of liability of port authority; owner of
docks

88 - Limit for passenger claims

89 - Aggregation of claims

90 - Conversion of unit at account to IRANIAN funds

91 - Constitution of the fund

92 - Distribution of the funds

93 - Bar to other actions

94 - Rule as to division of loss

95 - Damages for personal injury

96 - Right of contribution

97 - Limitation of action

Chapter VI Functions and Responsibilities of the Master and the
Crew (not included)

Chapter VII Respondentia Bond (not included)

Chapter VIII Carriage of Passenger (not included)

Chapter IX Charter Parties (not included)

Chapter X Collision (not included)

Chapter XI Assistance and Salvage at Sea (not included)

Chapter XIIAverage (not included)

Chapter XIIIAdmiralty Court (not included)

Chapter XIVMiscellaneous Regulations (not included)

**SHIPOWNER AND
LIMITATION OF SHIPOWNER'S LIABILITY**

**PART II
LIMITATION AND DIVISION OF LIABILITY**

Interpretation 75. For the purposes of this Article -

1. "salvage operation" includes the operations referred to the Article 78(1) (d), (e) and (f);
2. "salvage services" means services rendered in direct connection with salvage operation;
3. "salvor" means a person rendering salvage services;
4. "ship" includes every description of lighter, barge or like vessel, however propelled and any structure launched and intended for use in navigation as a ship or as a part of a ship but does not include air cushion vehicles and floating platforms constructed for the purpose of exploring or exploiting the natural resources of the sea-bed or the sub-soil thereof;
5. "shipowner" means the owner, charterer, manager and operator of a sea-going vessel;
6. "unit of account" means the Special Drawing Right as defined in section 2 of Article XXI of the Agreement of the International

Monetary Fund;

Scope of 76.(1) This Part shall apply to any person
applicationwho;

(a) seeks to limit his liability before the court; or

(b) seeks to procure the release of a ship or other property or
the discharge of any security given
within the jurisdiction of IRAN.

Persons77.(1) Shipowners and salvors may limit
entitled totheir liabilities in accordance with this
limit liabilitypart.

(2) An insurer of liability for claims subject to limitation
under this part shall be entitled to the
benefit of limitation to the same extent as
the assured.

(3) A person for whose act, neglect or default, the shipowner
or salvor is responsible, may limit his
liability under this part.

Claims subject78.(1) Subject to articles 81 and 83, the
to limitationfollowing claims shall be subject to limitation of
liability regardless of the basis 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 connection 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 connection 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 part and for other loss caused by such measures.

- (2) The claims referred to in subarticle (1) shall be subject to limitation of liability even if brought by way of recourse or for indemnity under a contract or otherwise, so however that, the claims referred to in paragraphs (d), (e) and (f) of subarticle (1) shall not be subject to limitation to the extent that they relate to remuneration under a contract with the person liable.

Liability⁷⁹. For the purposes of this part, the liability of a shipowner shall include liability in an action against his ship.

Invoking⁸⁰. The act of invoking limitation shall not constitute an admission of liability.
an admission
of liability

Conduct ⁸¹. 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.

Counter 82. Where a person entitled to limitation of claims liability under this part has a claim against the claimant arising out of the same occurrence, their respective claims shall be set off against each other and this part shall only apply to the balance, if any.

Claims 83. Limitation of liability under this part accepted from shall not apply to the following claims -

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

(b) claims by servants of the shipowner or salvor whose duties are connected with the ship or the salvage operations, including claims of their heirs, dependents or other persons entitled to make such claims, if under the contract of service between the shipowner or salvor he is not entitled to limit his liability in respect of such claims, or if he is under such contract only permitted to limit his liability to an amount greater than that provided for in Article 84;

(c) claims in respect of air-cushioned vehicles and floating platforms constructed for the purpose of exploring or exploiting the natural resources of the sea-bed or the sub-

soil thereof;

(d) claims for oil pollution damage within the meaning of the Civil Liability for Oil Pollution Damage

Act, dated 1, January, 1972 or of any amendment which is in force;

(e) claims against the shipowner of a nuclear ship for nuclear damage, covered by the Civil Liability of the Shipowner for Nuclear Damage Act, dated 1st January, 1978 or of any amendment which is in force.

Calculation of 84.(1) Subject to Article 85, the limit of limit of liability for claims arising on any liability distinct occasion, shall be calculated as follows -

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

(i) for a ship with a tonnage not exceeding 500 tons, 330,000 units of account

(ii) for a ship with a tonnage in thereof, the following amount in addition to the amount set out in sub-paragraph (1)

(A) for each ton from 501 to 3,000 tons, 500 Units of Account

(B) for each ton from 3,001 to 30,000 tons, 333 Units of Account

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

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

(b) in respect of any other claims:

(i) for a ship with a tonnage not exceeding 500 tons, 167.000
Units of Account

(ii) for a ship with a tonnage in excess thereof the following
amount in addition to the amount
set out in sub-paragraph (i)

(A) for each ton from 501 to 30,000 tons, 167 Units of Account

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

(C) for each ton in excess of 70,000 tons, 83 Units of Account

(2) 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.

Priorities 85.(1) Where the amount calculated in accordance with
subparagraph (1)(a) of Article 84 is
insufficient to pay the claims mentioned
therein in full, the amount calculated in
accordance with sub-paragraph (1)(b) of
Article 84 shall be available for payment
of the unpaid balance of claims under sub-
paragraph 1(a) of Article 84 and such
unpaid balance shall rank rateably with
claims mentioned under subparagraph (1)(b)
of Article 84.

- (2) Without prejudice to the right of claim for loss of life or personal injury referred to in subparagraph (1)(a) of Article 84, claims referred to in Article 87 shall have priority over the claims referred to in subparagraph (1)(b) of Article 84.

Measurement 86. For the purpose of this part, a ship's tonnage shall be her gross tonnage as defined in the Tonnage Regulations, and shall be measured in accordance with the said Regulations.

Limitation of 87. (1) The limit of liability for the owners of a dock or canal or any harbour or port authority liable for any vessel or vessels or to any goods, merchandise or other things whatsoever on board any vessel or vessels shall be to Units of Account of the tonnage of the largest IRANIAN ship.

- (2) The limitation of liability under this Article, shall relate to the whole of any loss or damage which may arise upon one distinct occasion, although such loss or damage may be sustained by more than one person, and shall apply wherever the liability arises

under any enactment and notwithstanding anything contained in any enactment.

- (3) For the purposes of this Article "Port authority" has the same meaning as in the Iranian Port Authorities and Administration Regulation and the expression "owner of a dock or canal" includes any person or authority having the control and management of any dock or canal and any ship repairer using the same, as the case may be.
- (4) Nothing in this Article shall impose any liability in respect of any loss or damage on any such owners or authority in any case where no such liability would have existed if this Act had not been enacted.

Limit for 88.(1) In respect of claims arising on any passenger distinct occasion for loss of life or claims 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.

Aggregation 89.(1) The limits of liability determined in accordance with Article 84 shall apply to the aggregate of all claims which arise on any distinct occasion:

- (a) against the person or persons mentioned in paragraph 5 of Article 75 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 88 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 5 of Article 75 in respect of the ship referred to in Article 88 and any person for whose act, neglect or default he or they are responsible.

Conversion of90. The amount referred to in Articles 84 and unit of Account88 shall be converted into IRANIAN Rials to IRANIAN according to the value of the IRANIAN fundsRials on the date the security or guarantee referred to in Article 91 shall have been deposited.

Constitution91.(1) Any person alleged to be liable and of the fundseeking to limit his liability under this part shall deposit into the court an amount at least equivalent to the limit provided for in Article 84 or Article 88 as appropriate, in the form of a security or guarantee, together with interest thereon from the date of the occurrence giving rise to the liability until the date such security or guarantee is deposited, and the amounts so constituted shall be available only for the

payment of claims in respect of which limitation of liability can be invoked.

(2) A security or guarantee deposited by one of the persons mentioned in paragraphs (a), (b) or (c) of sub-Article (1) of Article 89, or sub-Article (2) of the said Article, or his insurer, shall be deemed to have been deposited by all persons mentioned in these sub-Articles.

(3) For the purposes of this Part the expression "the fund" means a fund with the court or other competent authority of IRAN in which legal proceedings are instituted in respect of claims subject to limitation by any person alleged to be liable and must not be confused with the "The Fund" referred to in the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971.

Distribution⁹². (1) Subject to Articles 84, 85 and 88, of the fund the proceeds of any security or guarantee deposited with the court shall be distributed among the claimants in proportion to their established claims.

(2) The court may stay any proceedings pending in any other court in relation to the same matter, and may proceed in such manner and subject to such regulations as to the exclusion of any claimants who do not come in within a certain time and as to payment of costs, as the court thinks just.

(3) No lien or other right in respect of any ship or property shall affect the proportions in which any amount is distributed amongst several claimants.

(4) All sums paid for or on account of any loss or damage in respect whereof the liability of owners is limited under this Part and all costs incurred in relation thereto may be brought into account among part owners of the same ship in the same manner as money disbursed for the use thereof.

(5) If, before the proceeds of the security or guarantee are distributed, the person liable, or his insurer, has settled

the claim, 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 Part.

- (6) In making any distribution in accordance with this section, the court may if it thinks fit, postpone the distribution of such part of the amount to be distributed as it deems appropriate having regard to any claims subrogate or otherwise that may be established later.

Bar to other93.(1) Where a security or guarantee has actionsbeen deposited with the court in accordance with Article 91, any person having made a claim against such security or guarantee 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 security or guarantee has been deposited.

- (2) Where a ship or other property is seized or arrested in connection with a claim which appears to the court to be founded on liability to which limitation is applicable under this part, and in respect of which a security or guarantee is deposited, the court shall order the release of the ship or property if the security or guarantee has been deposited in IRAN or -

- (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, but where the release is ordered the person on whose application it is ordered shall be deemed to have submitted to the jurisdiction of the court to adjudicate on the claim.
- (3) Sub-Articles (2) and (3) shall apply only if the claimant brings a claim before the court and the security or guarantee deposited with the court is actually available and freely transferrable in respect of that claim.

Rule as to 94. Whereby the fault at two or more vessels, division of damage or loss is caused to one or more of them, or to their cargo or freight, or to any property on board, the liability to make good the damage or loss shall be in proportion to the degree to which each vessel was at fault:

provided that -

- (a) if, having regard to all the circumstances of the case, it is not possible to establish different

degrees of fault, the liability shall be apportioned equally;

(b) nothing in this Article shall,

(i) operate so as to render any vessel liable for any loss or damage to which her fault has not contributed;

(ii) effect the liability of any person under a contract of carriage or any other contract; or

(iii) be construed as imposing any liability upon any person from which he is exempted by any contract or by any provision of law, or as affecting the right of any person to limit his liability in the manner provided by law.

Damages for 95.(1) Where loss of life or personal injury is suffered by any person on board a vessel owing to the fault of that vessel and of any other vessel or vessels, the liability of the owners of the vessels shall be joint and several.

(2) Nothing in this Article shall be construed as depriving any person of any right of defence on which, independently of this Article, he might have relied in an action brought against

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

Right of 96. (1) Where loss of life or personal injury contribution is suffered by any person on board a vessel owing to the fault of that vessel and any other vessel or vessels, and a proportion of the damages is recovered against the owners of one of the vessels which exceeds the proportion in which she was at fault, such owners may recover by way of contribution the amount of the excess from the owners of the other vessel or vessels to the extent to which those vessels were respectively at fault; but no amount shall be so recovered which could not, by reason of any statutory or contractual limitation of, or exemption from, liability, or which could not, for any other reason, have been recovered in the first instance as damages by the persons entitled to sue therefor.

(2) In addition to any other remedy provided by law the persons entitled to any such contribution shall,

for the purpose of recovering the contribution, have, subject to the provisions of this Act, the same rights and powers as the persons entitled to sue for damages in the first instance.

Limitation of 97.(1) Subject to the provisions of this actionArticle, no action shall be maintainable to enforce any claim or lien against a ship or her owners in respect of any damage or loss to another ship, her cargo or freight, or any property on board, or in respect of any damages of loss of life or personal injury suffered by any person on board that other ship, caused by the fault of the former ship, whether such other ship be wholly or partly in fault, or in respect of any salvage services, unless proceedings therein are commenced within two years from the date when the damage or loss or injury was caused or the salvage services were rendered, and an action shall not be maintainable under this Act to enforce any

contribution in respect of an overpaid proportion of any damages for loss of life or personal injury unless proceedings therein are commenced within one year from the date of payment.

- (2) Any court of competent jurisdiction may in accordance with the rules of court extend any such period to such extent and on such conditions as it thinks fit and shall, if satisfied that during the period there has not been a reasonable opportunity of arresting the defendant ship within the jurisdiction of the court or within the territorial waters of the country to which the plaintiff's ship belongs or in which the plaintiff resides or has his principal place of business, extend any such period to an extent sufficient to give such reasonable opportunity.

