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International Maritime Law Institute



**Protocol to Amend the Convention on Limitation of Liability
for Maritime Claims, 1976, adopted in London on 2 May 1996**

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Supervisor: Mr. Norman Martinez

Lt. JG Paula Beatriz Grillo
(Argentine Coast Guard)

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Limitation of liability

Introduction

Limitation of liability for maritime claims is a means to allow those who are parties to a marine adventure, with particular reference to shipowners and their representatives, to limit their liability for loss or damage, and even personal injury or death resulting from the operation of the ship.

Nowadays, this limitation is generally linked to a value amount per ton of the ship's tonnage. Amounts may vary according to the various domestic laws and international conventions. As a rule, if damages sustained exceed the amount arrived at under limitation rules then funds are paid into and held by the relevant court for distribution¹.

These funds are then distributed among claimants in proportion to their established claims, with claimants having to prove against the fund in court. Normally this will be the total of their entitlement and once this amount is proven and claimed it constitutes full and final settlement.

Limitation of Liability has been part of the maritime business world for some centuries. Basically, its original intention was to encourage commerce and trade. This was deemed necessary since going to sea was an adventurous pursuit to be encouraged in the interests of the promotion of international trade².

Furthermore, it should be noted that centuries ago a serious maritime disaster would very likely result in the bankruptcy of the shipowner, who might abandon the ship and her freight into the hands of those third parties with valid claims against him. This was, in practice, a form of limitation of liability.

¹ In the last century, the civil law principle of abandonment has been replaced (except in the United States) by the common law principle of a tonnage limitation. Thus, where there is a total loss of a ship, there is still a right of recovery.

² Hill, Christopher; Maritime Law, 2003. Lloyd's Practical Shipping Guides, p. 394.

Recognition of the fact that the aggrieved third-party claimants would not recover their losses where the shipowners' liability far exceeded his assets was the essence of the pro-limitation argument.

Looking at it from a creditor's point of view, it is surely preferable to live in the certainty of obtaining a substantial percentage of the compensation due rather than facing the uncertainty of not knowing whether or not they would ever receive the much larger sums to which they had a right.

Situation in Argentina

The main source of Argentine maritime law is Navigation Law 20,094³ and the international Conventions approved by the National Congress.

No international Convention on shipowners' limitation of liability has been ratified by the Argentine Republic. Thus, the only legal regime on this issue is the one in Navigation Law 20,094 which deals with it in sections 175 to 182 and 561 to 577⁴. This regime is rather different from the one set forth by the limitation framework of the Convention on Limitation of Liability for Maritime Claims, 1976, as amended by 1996 Protocol.

The discrepancy leads to uncertainty on the part of foreign owners and shipping enterprises that carry out activities in the country. The increasing amount of international maritime traffic and the value of insurable risk make it necessary for Argentina to update its limitation regime in line with current limitation schemes in order to give legal certainty to international maritime transport activities.

³ Passed and promulgated on 15/01/1973.

⁴ Sections 561 to 577 deal with procedural issues.

Outline of Limitation of Liability in Navigation Law 20,094

It must be noted that in Navigation Law 20,094 there are two figures: the *armador*: disponent owner, who makes legal use of the vessel; and the *propietario*: shipowner⁵, who is the actual owner of the vessel, duly registered to his name in the National Register of Ships⁶.

The disponent owner or the shipowner can limit liability as follows:

- (a) Limiting up to the value of the vessel at the end of the voyage on which the event or accident has occurred, plus the gross freight and credits arisen during such voyage; or,
- (b) Putting the vessel at the disposal of the creditors plus the gross freight and the credits arisen during the voyage, and starting the corresponding legal proceedings within three months from the end of the voyage (Article 175).

If the persons entitled to limit liability start the corresponding lawsuit, they must simultaneously constitute the fund at the Federal Court, namely, they must deposit a cash amount corresponding to the value of the vessel, plus the last gross freight and credits.

The Federal Court will appoint a Trustee who will verify the credits submitted by the disponent owner or operator, and other credits which could be submitted by other creditors. Navigation Law 20,094 provides particular procedural rules to be applied at this stage of the limitation of liability proceedings (Articles 565-572).

⁵ Navigation Law defines the *armador* as the person who uses the vessel for one or more voyages under the direction of a master appointed by him. If the *armador* and the *propietario* are different persons, the act from which such separation arises has to be registered in the National Register of Ships otherwise both shall be jointly liable regarding third parties.

⁶ Griggs, Patrick and Williams, Richard. *Limitation of Liability for Maritime Claims*, 1998. LLP, p. 117.

In cases of loss of life or personal injury, if the amount of the limitation fund is insufficient to cover all of the indemnifications up to the equivalent of 13 *pesos argentinos oro*⁷ per ton of the vessel, the balance should be added to the other items of the fund and, up to the equivalent of 13 *pesos argentinos oro* per ton. In the case of ships with a tonnage not exceeding 100 tons, limitation is calculated on the basis of 100 tons.

Persons entitled to limit liability: The disponent owner of a vessel (Article 175). The shipowner or carrier when he is not the disponent owner of the vessel and the master and the members of the crew are also entitled to limit their liability (Article 181).

Claims subject to limitation: According to Article 177 the following claims shall be subject to the limitation of liability

- a) Claims in respect of loss of life or personal injury of any person;
- b) Claims in respect of loss of or damage to property or rights; and
- c) Claims arising from obligations to remove a wrecked vessel or refloat a ship sunk or stranded, or from damages to harbours or waterways. However, abandonment cannot be claimed as limitation before the State when the owner or disponent owner has acted wilfully or recklessly and damages resulted from such a conduct.

In addition, Law 20,094 sets forth provisions on limitation of liability in case of loss of life or personal injury of passengers (Article 331).

Claims exempted from limitation: The following claims are exempted from limitation of liability (Article 178)

- a) Claims arising from salvage or general average;
- b) Claims by the master and members of the crew, or their respective assigns, under contracts of employment; and
- c) Claims by other employees of the disponent owner in respect of services rendered to the vessel.

⁷ See *Unit of Account* on page 5 below.

This benefit can be invoked even if the shipowner or disponent owner's liability arises from ownership, possession, custody or control of the ship, if his fault or the fault of his land-based servants cannot be proved. (Article 177 last paragraph).

Loss of the right to limit: The disponent owner loses the right to limit in case of personal negligence in the occurrence of the accident which originated the claim (Article 175).

The master and the members of the crew will lose the right to limit their liability if they act wilfully or recklessly.

If the master or member of the crew is at the same time owner, co-owner, carrier, disponent owner or manager, he will only be entitled to limit when negligence arises from the exercise of his functions as master or member of the crew (Article 181).

Aggregation of claims: The limitation of liability will apply to the aggregate of all claims arising during the voyage on which the loss or damage has occurred.

Unit of account: The wording of Argentine legislation gives rise to a problem. On the one hand, pursuant to Law 1,130⁸, in Argentina there are two gold coins: the *peso de oro* and the *argentino de oro*. Such Law defined the *peso de oro* as the monetary unit of the Argentine Republic (Article 1) and ordered the production of a gold coin known as *argentino de oro* (Article 2).

On the other hand, Navigation Law 20,094 mentions the *pesos argentinos oro* when referring to limitation of liability (Articles 175, 278 and 337) and the *argentino oro* when referring to the value of the unit of account (Article 176).

The reference in Article 176 to the *argentino oro*, establishing that its quotation shall be the one adopted by the administrative authority, does not mean that such currency had been adopted as unit. It means that being the *argentino oro* the only currency that is

⁸ Law 1,130 was promulgated on November 5, 1881.

quoted, it is necessary to take into account its quotation in order to know the value of a *peso argentino oro*⁹.

As it can be seen the terms used in Navigation Law do not coincide with ones in Law 1,130. The issue regarding which unit of account is applicable according to Argentine legislation is of utmost importance since one *argentino de oro* is five *pesos de oro*.

Traditionally, it was understood that the reference in Navigation Law was to the *peso de oro*. However, in 1994 a division of the Civil and Commercial Federal Court of Appeals of the City of Buenos Aires held¹⁰ that the coin referred to in the Law is the *argentino de oro*.¹¹

Quotation of the Unit of Account: According to Decree 75/76 the *argentino oro*, a coin containing 8.0645g of gold, shall be quoted by the Central Bank of the Argentine Republic¹² on a quarterly basis taking into account the price of gold in London, New York and Paris markets¹³.

The following chart evidences the lack of uniformity regarding the reference to the unit of account in Argentine legislation, especially with reference to Maritime Law:

LAW No. 1130	NAVIGATION LAW 20,094	DECREE 75/76
Art. 1° peso de oro	Art. 175 peso argentino oro	
Art 2° argentino de oro	Art. 176 argentino oro	Art. 1 argentino oro

⁹ Chami, Diego Esteban; Limitación de Responsabilidad por Créditos Marítimos, Third Part. <http://www.espaciosjuridicos.com.ar/datos/AREAS%20TEMATICAS/ECONOMICO/LIMITACION-MARITIMO33.htm>.

¹⁰ In the case *Oholeguy de Devicenzi, G.E. y otros c/Hube, R.R. y otro*, reported in *Diario de Doctrina y Jurisprudencia*, el Derecho, t. 160, p. 481.

¹¹ Griggs, Patrick; Williams, Richard; Farr, Jeremy; *Limitation of Liability for Maritime Claims*, 2005, LLP, p. 167.

¹² http://www.bcra.gov.ar/hm000000_i.asp.

¹³ Decree issued on January 10, 1976 and published in the Official Gazette on January 16, 1976; ADLA XXXVI-A.

Loss of life or personal injury to passengers of a ship: The Argentine Republic is a party to the Athens Convention¹⁴ relating to the carriage of passengers and their luggage by sea (1974). When the Athens Convention is not applicable, the Argentine Navigation Law establishes a limit of 1,500 Gold Argentine Peso per person and accepts higher limits established by agreement (Article 331).

Limitation of liability under international conventions

In addition to the specific package limitation given by the Hague and Hague-Visby Rules in relation to cargo claims, and by the 1974 Athens Convention in relation to claims by individual passengers, shipowners may also rely on a global limitation figure based on the vessel's tonnage. This tonnage-based figure provides the maximum financial liability of the shipowner in respect of all claims arising out of any one incident.

Tonnage limitation can be invoked in one or two ways. The first is by way of defence to an action brought by a particular claimant. The second is by the shipowner initiating limitation proceedings to set up a limitation fund in a particular jurisdiction. The advantage of this procedure is that the establishment of the fund will cap the shipowner's liability to all claimants and not just to the particular claimant who has commenced proceedings against the shipowner. By invoking limitation, the shipowner is not admitting liability in respect of the claims brought against him. He's merely claiming that if it's held liable, its maximum total liability in respect of all claims arising out of the incident will not exceed the amount of the applicable limitation figure.

Historical Development of Limitation of Liability in International Conventions.

The limitation of liability for maritime claims has been addressed by the following International Conventions:

¹⁴ Incorporated to domestic legislation by Law no. 22,718 enacted on January 24 1983 and published in the Official Gazette on January 27 1983. In force since April 28 1987.

- **International Convention for the Unification of Certain Rules Relating to the Limitation of the Liability of Owners of Sea-Going Ships, 1924;**
- **International Convention Relating to the Limitation of the Liability of Owners of Sea-Going Ships, 1957;**
- **Convention on Limitation of Liability for Maritime Claims, 1976;** and
- **Protocol of 1996 to amend the 1976 Convention on Limitation of Liability for Maritime Claims.**

In order to follow the development of the limitation of liability through the international conventions mentioned above, the main characteristics of those conventions are outlined in the following paragraphs.

1924 International Convention for the Unification of Certain Rules Relating to the Limitation of the Liability of Owners of Sea-Going Ships.

This Convention, which was signed in 1924 and came into force in 1931, attempted a compromise between the civil law concept of abandonment and the common law guarantee of a maximum responsibility based upon tonnage. It proved rather unsuccessful, however, and is of relatively marginal significance today.

Persons entitled to limit liability: Only the shipowner.

Ships subject to limitation: Only seagoing vessels.

Claims subject to limitation: Liability is limited in respect of the following

- a) Compensation for damage caused by the master, crew, pilot or any other person in the service of the vessel;
- b) Compensation due by reason of damage caused either to cargo delivered to the master to be transported, or to any goods and property on board;

- c) Obligations arising out of bills of lading;
- d) Compensation due by reason of a fault of navigation committed in the execution of a contract;
- e) Any obligation to remove the wreck of a sunken vessel, and any obligations connected therewith;
- f) Any remuneration for assistance and salvage; and
- g) Obligations arising out of contracts entered into or transactions carried out by the master, acting within the scope of his authority, away from the vessel's home port, where such contracts or transactions are necessary for the preservation of the vessel or the continuation of the voyage, provided that the necessity is not caused by any insufficiency or deficiency of equipment or stores at the beginning of the voyage.

Claims exempt from limitation: The shipowner could not claim limitation if obligations arose out of

- a) His acts or faults;
- b) Contracts entered into or transactions carried out by the master, acting within the scope of his authority, and with expressed authorization or ratification of the owner, where such contracts or transactions were necessary for the preservation of the vessel or the continuation of the voyage; and
- c) The engagement of the crew and other persons in the service of the vessel.

Amount of limitation: The limit of liability established was “the value of the vessel, the freight and the accessories of the vessel” (Article 1), determined after the occurrence giving rise to the limitation (Article 3), permitting abandonment. Freight, including passage money was deemed to be a lump sum fixed at ten per cent of the value of the vessel at the commencement of the voyage, and it was due even though no freight had

been earned (Article 4). In certain cases the liability could not exceed an aggregate sum of £8 sterling per ton (Article 1). An additional £8 sterling per ton was added in cases of “death or bodily injury caused by the acts or faults of the captain, crew, pilot or any other person in the service of the vessel” (Article 7).

The limitation fund: There were no provisions relating to the constitution of a limitation fund but certain rules imply such constitution (Articles 6 and 8), to be determined by the internal laws of the Contracting States (Article 14).

Effects of constitution of the fund: The giving of security for the full limit of liability allowed the release of the arrested vessel (Article 8). The owner might also apply to the court for an order staying proceedings against his property other than the vessel, its freight and accessories, for a period sufficient to permit the vessel’s sale and the distribution of the proceeds among the creditors (Article 9).

Distribution of the fund: The Convention required that the ranking of claims against the fund take account of the order of liens (Article 6 first paragraph).

Monetary unit: Gold value of the pound sterling (Article 1 last paragraph, Article 7 first paragraph and Article 15 first paragraph). Contracting States in which the pound sterling was not a monetary unit reserved the right of translating the sums indicated in the Convention in terms of pound sterling into terms of their own monetary system in round figures (Article 15).

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

This Convention was signed in Brussels in 1957, and came into force in 1968. It set aside the abandonment system and provided for a money limitation. This Convention achieved widespread acceptance among maritime nations, including France, the United Kingdom and Canada. It provided one limit for property damage and another for personal injuries and death, with both limits based upon tonnage. These limits were expressed in gold francs per ton.

Persons entitled to limit liability: The shipowner (Article 1), charterer, manager and operator of the ship, as well as the master, members of the crew and other servants of the owner, charterer, manager or operator acting in the course of their employment (Article 6).

Ships subject to limitation: Seagoing ships, but Contracting States had “the right to decide what other classes of ship shall be treated in the same manner as seagoing ships” for the purposes of the Convention (Article 8).

Claims subject to limitation: The limitation regime applied in relation to claims arising from the following (Article 1.1)

- a) Loss of life of, or personal injury to, any person being carried in the ship, and loss of, or damage to, any property on board the ship;
- b) Loss of life of, or personal injury to, any person, whether on land or on water, loss of or damage to any other property or infringement of any rights caused by the act, neglect or default of any person on board the ship for whose act, neglect or default the owner was responsible or any person not on board the ship for whose act, neglect or default the owner was responsible: Provided however that in regard to the act, neglect or default of this last class of person, the owner would only be entitled to limit his liability when the act, neglect or default was one which occurred in the navigation or the management of the ship or in the loading, carriage or discharge of its cargo or in the embarkation, carriage or disembarkation of its passengers; and
- c) Obligations imposed by law relating to the removal of wreck and arising from or in connection with the raising, removal or destruction of any ship which is sunk, stranded or abandoned and any obligation arising out of damage caused to harbour works, basins and navigable waterways.

Claims exempt from limitation: Exclusions included the following (Article 1.4)

- a) Claims for salvage and general average contributions; and

- b) Claims by the master, crew members or servants of the owner on board the ship or whose duties were connected with the ship, including the claims of their heirs or personal representatives or dependents if the law governing the employment contract did not provide for limitation or established a higher limit than did the Convention.

In addition, the Convention establishes the following (Article 6.3)

- c) In the case of claims against the owner, co-owner, charterer, manager and operator of the ship, who was also the master or a crew member: They could not invoke limitation in respect of their own acts, neglect or default, unless they were committed in their capacity as master or crew member.

Amount of limitation: The Convention established a limit of 1,000 gold francs for each ton of the ship's tonnage in case of property claims. To that sum 2,100 gold francs were added when the occurrence gave rise to personal claims. If the fund of 3,100 gold francs were insufficient to pay the personal claims in full, the unpaid balance of such claims should rank rateably with the property claims for payment against the portion allotted to payment of property claims.

Aggregation of claims: The limit of liability prescribed by the Convention applied to the aggregate of personal claims and property claims which arise on any distinct occasion without regard to any claims which have arisen or might arise on any other distinct occasion. (Article 2.1)

The limitation fund: The Convention permitted the constitution of a limitation fund for claims arising on any distinct occasion where they exceeded the Convention limits. (Article 2.2). The limitation fund, once constituted is available only to pay claims subject to limitation (Article 2.3).

Effects of constitution of the fund: If the limitation fund were actually available for the benefit of the claimant, any action against other assets of the shipowner by claimants against the fund would be barred (Article 2.4).

The giving of satisfactory bail or other security to the full limit of liability, if actually available for the benefit of the claimant, permitted the release of the ship or other property of the shipowner arrested in a Contracting State or of any security already given to avoid arrest (Article 5.1). The mere constitution of the limitation fund did not suffice to permit such release.

However, such release was mandatory where bail or other security had already been given

- a) At the port where the occurrence took place or at the first port of call thereafter;
- b) At the port of disembarkation (for personal injury or death claims); or
- c) At the port of discharge (for cargo claims). (Article 5.2)

Distribution of the fund: The Convention provided for distribution among the claimants in proportion to the amount of their established claims, that is, the claims allowed by the court (Article 3.2).

Unit of account: The gold franc, consisting of sixty-five and a half milligrams of gold of millesimal fineness nine hundred (Article 3.6). This unit of account was replaced, by the 1979 Protocol, by Special Drawing Rights (SDR) as defined by the International Monetary Fund (IMF).

1976 Convention on Limitation of Liability for Maritime Claims

This Convention entered into force in 1984. In exchange for giving to shipowners and others an almost unbreakable right to limited liability, the 1976 Convention requires that they establish limitation funds for the benefit of those to whom they are liable that are much higher in amount than those previously required. Forty or so other countries, including most of the leading maritime nations, have also adopted the 1976 Convention.

Persons entitled to limit liability: This Convention benefits shipowners, salvors, charterers, managers, operators and insurers of a seagoing ship, as well as the vessel itself

and “any person for whose act, neglect or default the shipowner or salvor is responsible” (Article 1).

Claims against salvors: A significant innovation introduced by the 1976 Convention was the extension of the benefit of limitation to salvors (Articles 1.1 and 1.3) and to any person for whose act, neglect or default a salvor is responsible (Article 1.4).

As was demonstrated in the case of *The Tojo Maru*¹⁵, salvors may incur liabilities in the course of salvage operations which are not directly related to the use of a tug or any other vessel. The 1976 Convention therefore provides that in circumstances where, for example, liability is incurred as a result of salvage personnel working on board the casualty, the salvors may limit liability by reference to a notional tonnage of 1,500 tons (Article 6.4).

Ships subject to limitation: Seagoing ships (Article 1.2), but States party can regulate by specific provisions of national law the system of limitation for inland navigation vessels (Article 15.2.a)

Claims subject to limitation: The limitation regime applies in relation to claims arising from the following (Article 2)

- a) 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) Loss resulting from delay in the carriage by sea of cargo, passengers or their luggage;
- c) Other loss resulting from infringement of rights other than contractual rights, occurring in direct connection with the operation of the ship or salvage operations;

¹⁵ [1971] 1 Lloyd's Rep. 341 (H.L). In this case the House of Lords did not allow a salvor to limit their liability for the negligent act of a diver assisting in the salvage operation.

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

e) The removal, destruction or the rendering harmless of the cargo of the ship; and

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 the Convention, and further loss caused by such measures.

In the cases mentioned in d, e and f above claims shall be subject to limitation of liability except to the extent that they relate to remuneration under a contract with the person liable.

Claims exempt from limitation: According to Article 3, the rules of the Convention do not apply to the following

a) Claims for salvage or general average contributions;

b) Claims for oil pollution damage within the meaning of the CLC Convention 1969 or any of its amendments or Protocols;

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; and

e) Claims by servants of the shipowner or salvor whose duties are connected with the ship or the salvage operations (or their heirs or dependants) if the law governing the employment contract does not permit limitation or establishes a higher limitation than does the Convention.

Amount of limitation: Under the 1976 Convention, the limits of liability for claims covered were raised considerably, in some cases up to 250-300 per cent. Limits are

specified for two types of claims - claims for loss of life or personal injury, and property claims (such as damage to other ships, property or harbour works).

The limits under the 1976 Convention were set at 330,000 SDR for personal claims for ships not exceeding 500 tons plus an additional amount based on tonnage.

For other claims, the limit of liability was fixed under the 1976 Convention at 167,000 SDR for ships not exceeding 500 tons. For larger ships the additional amounts were provided on the basis of tonnage.¹⁶

Constitution of a Fund: Any person alleged to be liable can constitute a limitation fund, which once constituted, it is deemed constituted for all persons who could be liable. The Fund is available only to pay claims subject to limitation.

This limitation fund must cover the total personal injury, death and property damage claims and passenger claims together with interest from the date of the occurrence giving rise to liability, until the date of the constitution of the fund.

Distribution of the fund: The distribution takes place in proportion to “established claims”, i.e. claims allowed by the court, rather than claims submitted. No lien or privilege confers any priority over other claimants against the fund.

Unit of account: The limitation amounts are expressed in terms of units of account. Each unit of account is equivalent in value to the SDR as defined by the IMF. States which are not members of the IMF and whose law does not allow the use of SDR may continue to use the old gold franc (referred to as "monetary unit" in the Convention).

Loss of the right to limit: It may be noted that the Convention provides for a virtually unbreakable system of limiting liability. It declares that a person will not be able to limit liability only if "it is proved that the loss resulted from his personal act or omission, committed with the intent to cause such a loss, or recklessly and with knowledge that such loss would probably result".

¹⁶ www.imo.org

Aggregation of claims: The limit of liability applies to the aggregate of all claims which arise “on any other distinct occasion” (Article 9).

Limits for passenger claims: The 1976 Convention enables a shipowner to limit liability for passenger claims resulting from death or personal injury by providing a limitation fund calculated by reference to the number of passengers the vessel is authorized to carry according to her certificate, up to a maximum of 25 million SDR. The amount per passenger was established at 46,666 SDR (Article 7).

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

This Protocol was adopted on 3 May 1996 and entered into force on 13 May 2004. At a diplomatic conference held in the Spring of 1996 at the IMO headquarters in London, the delegates recognised the need to update the 1976 Convention limits. They then agreed the terms of a Protocol, which was to come into force ninety days following the date on which ten States had expressed their consent to be bound by it. On 13 February 2004 Malta became the tenth State to agree to be bound by the Protocol.

Claims excepted from limitation: The 1976 Convention excludes application to claims for salvage and contribution in general average (Article 3.a). The 1996 Protocol extends this exclusion to cover claims for Special Compensation under Article 14 of the International Convention on Salvage 1989 (Article 2).

Delegates to the 1996 Diplomatic Conference, at which the Protocol was drafted, were unanimous in concluding that compensation payable to a salvor who has contributed to the prevention of pollution but who has not received an adequate reward because of the

loss of the ship, should be regarded as a payment for salvage in respect of which no right of limitation should be allowed.¹⁷

The tonnage of a vessel for limitation purposes: In an effort to take account of the potential for small ships to inflict disproportionate damage the 1976 Convention makes provision for a minimum limitation fund, calculated by reference to a notional gross tonnage of 500 tons (Article 6.1). The Protocol increases the minimum gross tonnage for these purposes to 2,000 tons (Article 3) - the same figure as has been adopted for similar limitation purposes in the Hazardous Noxious Substances Convention 1996.

Applying the new minimum tonnage and the increased limits under the 1996 Protocol, there is a six-fold increase regarding total liability for loss of life, personal injury and property claims for the owner of a 500-ton vessel.

At limitation tonnages above the 2,000 tons minimum, on average, limitation amounts under the 1996 Protocol increased by a factor of 2.3.

Claims against salvors: Under the Protocol the salvor's limit is fixed at 2 million SDR in respect of loss of life and personal injury claims and 1 million SDR for property damage and other claims (Article 3.1.a (i) and 3.1.b (i)).

Limits for passenger claims: The 1996 Protocol (Article 4) replaces paragraph 1 of Article 7 of the 1976 Convention making two important changes. First, the amount per passenger is increased from 46,666 SDR to 175,000 SDR; second, the maximum limit of 25 million SDR is abolished. In the future, therefore, the maximum fund will be determined only by the number of passengers that the vessel is licensed to carry.

The abandonment of the maximum limit of 25 million SDR will have a significant impact on the exposure of the owners of cruise ships and large ferries, many of which are permitted to carry 1,000 passengers or more. For example, in the case of a vessel authorized to carry 1,000 passengers the limit of liability under the new arrangements

¹⁷ Griggs, Patrick; Williams, Richard; Farr, Jeremy; Limitation of Liability for Maritime Claims, 2005, LLP, p. 27.

will be 175 million SDR - an increase of 600% on the abandoned maximum of 25 million SDR.

Individual countries can regulate by their local law the system of liability to apply to claims for loss of life or personal injury to passengers, provided that the limit is not lower than that prescribed in the Protocol.

Where the Athens Convention applies, the old limit of 46,666 SDRs per passenger will continue to apply, at least until the 2002 Protocol to that Convention comes into force increasing the limit to 400,000 SDRs per passenger.

Unit of account: The 1996 Protocol (Article 5) amends paragraph 2 of Article 8 of the 1976 Convention incorporating the new limitation tonnages and figures for countries which are not members of the IMF.

Scope of application: The 1996 Protocol (Article 6) allows a State Party to regulate by national law the system of liability to be applied to claims for loss of life or personal injury to passengers. Such limit should not be lower than that prescribed in Article 7.

Reservations: The 1996 Protocol (Article 7) amends paragraph 1 of Article 18 of the 1976 Convention allowing any State to reserve the right “to exclude claims for damage within the meaning of the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996 or of any amendment or protocol thereto”.

Amendment procedure: The 1996 Protocol also introduces a quick amendment procedure for updating limitation amounts (Article 8).

Incorporation to Argentine legislation of the 1996 Protocol to Amend the Convention on Limitation of Liability for Maritime Claims, 1976

As it can be seen from the paragraphs above, the regime established under Navigation Law 20,094 is different from the one set forth by the Convention on Limitation of Liability for Maritime Claims, 1976 as amended by the 1996 Protocol.

Consequently, it is deemed necessary to adapt the Argentine system to international law for the sake of uniformity so as to give legal certainty to international maritime transport activities.

The incorporation of the 1996 Protocol to Amend the Convention on Limitation of Liability for Maritime Claims, 1976 would mean much higher limits of liability and therefore a better remedy for potential claimants.

The limits of compensation established in the 1976 Convention had to be reviewed due to the fact that seventeen years of inflation since the time the Convention was adopted had turned such limits to a small fraction of their 1976 value. As a result, the position of the victims had been severely undermined. In addition, in order to facilitate the up-dating of such figures the Protocol includes a simplified revision and amendment procedure.

The main advantages of incorporating to Argentine legislation the 1996 Protocol to Amend the Convention on Limitation of Liability for Maritime Claims, 1976 will be the following:

- Adoption of limitation amounts expressed in terms of Special Drawing Rights.
- Incorporation of higher limits of liability.

As regards the adoption of SDRs, this will give certainty to potential claimants. From the description of the unit of account as dealt with in the Argentine legislation¹⁸, it is clear

¹⁸ See page 5 above.

that the wording of the different laws on the matter is confusing. Moreover, the adoption of SDRs as unit of account will be a further step towards uniformity.

The purpose of the following paragraphs is to show the differences of the three regimes regarding loss of life or personal injury to any person and loss of life and personal injury to passengers.

General limits: Loss of life or personal injury

In order to clarify the effect under the different regimes the following case is set out: a ship with a tonnage not exceeding 500 tons has an accident and two lives (other than passenger lives) are lost.

On the one hand, under the 1976 Convention (Article 6.1 (a) (i)) the limitation of liability for claims for loss of life or personal injury will be 333,000 Units of Account, that is **USD 480,878** (taking into account SDR value on January 5th 2006, i.e. 1 SDR=USD 1.444080). Under the 1996 Protocol (article 3.1 (a) (i)) the limitation will be 2 million Units of Account, that is **USD 2,888,160**.

On the other hand, if the Navigation Law 20,094 (Articles 175 and 177) were applied to the same case, the limitation would be about **USD 176,865** (13 Gold Argentine Pesos per ton, i.e. 13 x 500 = 6,500 *argentinos oro*). The value of the *argentino oro* being USD 27,21 according to the value of the Ounce Troy on January 5th 2006 in the international markets.

As it can be seen from the example above the amount of limitation is higher both in the Convention and the Protocol, when compared with the Argentine legislation in force.

Loss of life or personal injury		
Ships with a tonnage of less than 500 tons		
Navigation Law	1976 Convention on	1996 Protocol

20,094	Limitation of Liability for Maritime Claims	
USD 176,865	USD 480,878	USD 2,888,160

Loss of life or personal injury to passengers

Regarding claims arising on any distinct occasion for loss of life or personal injury to passengers of a ship, the limit of liability according to 1976 Convention on Limitation of Liability for Maritime Claims 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 (Article 7.1).

Therefore, in the case of a ship authorized to carry 1,000 passengers and because of the cap provided in Article 7, the 1976 Convention will allow 25 million Units of Account. This will amount to a limit of **USD 36,102,000**. (25,000,000 Units of Account x 1,444080)

Under the 1996 Protocol the limitation is 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 4).

Consequently, taking into account the case of a ship authorized to carry 1,000 passengers the limit under the Protocol will be, which will amount to **USD 252,714,000** (1,000 x 175,000 Units of Account x 1,444080)

Argentine law establishes a limit of 1,500 *argentinos oro* for loss of life or personal injury to a passenger, which will amount to **USD 40,815** (1,500 *argentinos oro* per person x USD 27,21). Higher limits can be established by agreement (Article 331).

Loss of life or personal injury to passengers Ship authorized to carry 1,000 passengers		
Navigation Law 20,094	1976 Convention on Limitation of Liability for Maritime Claims	1996 Protocol
USD 40,815 per personal injury or loss of life	USD 36,102,000 in all	USD 252,714,000 in all

Procedural law

In reference to Article 10 of the 1976 Convention as amended, the procedural articles relating to the implementation of the limitation fund will be the ones in Title IV Chapter VII of Navigation Law (Articles 561 -577). According to said Law a fund has to be constituted (Article 562).

Application of Navigation Law 20,094

The articles on Limitation of Liability in Navigation Law 20,094 should remain in force for the cases where:

- the 1976 Convention on Limitation of Liability for Maritime Claims as amended by 1996 Protocol does not apply, and
- the Convention as amended allows for the States Parties to regulate by means of national law.

According to Article 1.1 of the Convention as amended, the persons entitled to limit liability are shipowners and salvors. Article 1.2 defines “shipowner” as the owner, charterer, manager and operator of a **seagoing** ship.

Furthermore, Article 15 (2) of the Convention allows State Parties to 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.

Article 15.3 also allows State Parties to 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.

According to the paragraphs above, the applicable articles of Navigation Law 20,094 should remain in force for the following:

- ships not included in Article 1.2.
- ships intended for navigation on inland waterways, as allowed by Article 15 (2) (a).
- ships of less than 300 tons, as allowed by Article 15. (2) (b).
- claims arising in cases in which only the interests of nationals of the State Party are involved, as allowed by Article 15.3.

Declarations and reservations allowed by the Convention as amended

Reservations

According to Article 18, the 1976 Convention as amended allows two reservations:

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

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

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

- The Navigation Law 20,094 allows for limitation of liability by means of abandonment to the State in respect of the raising, removal, destruction of a ship which is sunk, wrecked or grounded. Consequently, taking into account the spirit of the Law in this respect no reservation will be made in accordance to Article 18 (a). In this way, whilst there will still be limitation of liability this is not by means of abandonment and the limits of liability will be higher.
- As regards the reservation allowed by paragraph (b), it was included in the Convention because it was deemed essential for States which ratify the HNS Convention to exercise this right of reservation.

The reason why it was considered essential was that if this right is not exercised, a State Party to the 1976 Convention might, because of reciprocal treaty obligations under the Convention, be forced to permit the owners of a vessel flying the flag of another 1976 Convention country to limit in respect of a HNS claim in accordance with the terms of the 1976 Convention rather than in accordance with the higher limits imposed by the HNS Convention.

As Argentina is not a Party to the HNS Convention, it is not deemed necessary to make a reservation in this respect.

Declarations

- Regarding the Scope of application to the 1976 Convention as amended, Article 15 (1) establishes that State Parties are entitled to exclude either wholly or partially from the application of the Convention any person who would otherwise be entitled to limitation if such person is not habitually resident or does not have his principal place of business in a State Party at the time when the right to limit is invoked. Similarly, any State Party may exclude a ship if it does not fly the flag of a State Party at the time when the right of limitation is invoked or its release from arrest is sought.

Taking into account the spirit of the Convention as amended, this project is drafted in a manner not to take advantage of this option.

- The manner of calculation employed by the Argentine Republic pursuant to article 8(1) of the Convention shall be the method of valuation applied by the International Monetary Fund.

The depositary of the Protocol shall be notified of the following “The manner of calculation employed by the Argentine Republic pursuant to article 8(1) of the Convention shall be the method of valuation applied by the International Monetary Fund.”

Other options allowed by the Convention as amended

Art 6. 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.

This issue is dealt with by Navigation Law in Article 476 on privileges.

Art 15. (3bis) Notwithstanding the limit of liability prescribed in paragraph 1 of Article 7, a State Party may regulate by specific provisions of national law the system of liability to be applied to claims for loss of life or personal injury to passengers of a ship, provided

that the limit of liability is not lower than that prescribed in paragraph 1 of Article 7. A State Party which makes use of the option provided for in this paragraph shall inform the Secretary- General of the limits of liability adopted or of the fact that there are none.

Bearing in mind the importance of harmonization in this field, Argentina does not intend to make use of the option provided for in article 15 (3bis) of the 1996 Protocol to Amend the Convention on Limitation of Liability for Maritime Claims, 1976 to regulate by specific provisions of national law the system of limitation of liability to be applied to passengers

15. 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.

The Convention shall apply to “ships constructed for, or adapted to, and engaged in, drilling” since the provisions under (a) and (b) do not apply to Argentina.

Incorporation process

According to Article 99.11 of the Argentine Constitution the Executive Power is in charge of concluding international conventions. However, Article 75.22 of the National Constitution provides that between the conclusion and the consent to be bound the Legislative Power is in charge of approving or rejecting treaties concluded with other nations and international organizations. The reason for this is the separation of powers principle.

The mechanism described in the previous paragraph guarantees the participation of the representatives of the people and the representatives of the provinces regarding the decision of issues whereby the country binds itself. The Executive Power is the one in charge of ratification.

After a Convention is approved by both Chambers of Congress, the Executive Power, through the Ministry of Foreign Affairs, deposits the ratification. Implementation takes place by enactment in a separate law; the Convention is not transformed.

Incorporation of the 1996 Protocol to Amend the Convention on Limitation of Liability for Maritime Claims, 1976.

The following draft law to incorporate the 1996 Protocol to Amend the Convention on Limitation of Liability for Maritime Claims 1976 was drafted following the approach taken by Argentine Law 25,137. Such Law incorporates both the Protocol of 1992 to amend the International Convention on Civil Liability for Oil Pollution Damage of 29 November 1969 and the Protocol of 1992 to amend the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage of 18 December 1971.

The choice of law was made considering that Argentina is not a party to the respective Conventions, just to the Protocols mentioned in the paragraph above. This is the same case with the 1996 Protocol object of this legislation drafting project.

It is worth mentioning that by incorporating the 1996 Protocol Argentina will be bound in relation to the parties to it, not to States which are parties only to the Convention.

The Convention is attached as an Annex to this drafting project for interpretation purposes only. It does not form part of the law incorporating the 1996 Protocol.

Publication in the Official Gazette

In order for an international convention to be part of the domestic law of the Argentine Republic, publication in the Official Gazette is necessary, according to Article 2 of the Civil Code¹⁹.

Publication in the Official Gazette makes laws binding on the Argentine State, domestic courts and citizens.

¹⁹ Art.2.- Laws are not binding until after they are published and as of the date they establish. If they do not establish a term, they will be binding after eight days following their official publication.

Law No. /2006

The Protocol to Amend the Convention on Limitation of Liability for Maritime Claims, 1976, adopted in London on 2 May 1996 is hereby approved.

Passed: September 13th 2006.

Promulgated: October 14th 2006.

The Senate and the House of Representatives of the Argentine Nation in Congress assembled, etc. enact the following:

Article 1

Adoption of the Protocol

The Protocol to Amend the Convention on Limitation of Liability for Maritime Claims, 1976, adopted in London on 2 May 1996 and which consists of fifteen (15) articles is hereby approved. The authenticated copy of said Protocol forms part of this law.

Article 2

Jurisdiction

The Federal Courts of the Argentine Nation shall have jurisdiction to hear claims under this Law.

Article 3

Procedural Law

The rules of procedure set forth in Navigation Law 20,094 shall apply to claims arising under this Law. Subsidiarily, the rules of the Argentine Code of Civil and Commercial Procedure shall apply.

Article 4

Navigation Law 20,094

The applicable articles of Navigation Law 20,094 shall remain in force for the following:

- a) Ships other than seagoing ships;

- b) Ships of less than 300 tons; and
- c) Claims arising in cases in which only the interests of nationals are involved.

Article 5

Entry into force

This Law shall enter into force five days after its publication in the Official Gazette.

Article 6

Communication to the Executive Power

Be it communicated to the Executive Power of the Nation.

THE PRESENT LAW WAS PASSED BY THE ARGENTINE CONGRESS, IN BUENOS AIRES, ON THE THIRTEENTH DAY OF SEPTEMBER OF THE YEAR TWO THOUSAND AND SIX.

Protocol of 1996 to amend the Convention on Limitation of Liability for Maritime Claims of 19 November 1976

(London, 2 May 1996)

THE PARTIES TO THE PRESENT PROTOCOL,

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

HAVE AGREED as follows:

Article 1

For the purposes of this Protocol:

1. "Convention" means the Convention on Limitation of Liability for Maritime Claims, 1976.
2. "Organization" means the International Maritime Organization.
3. "Secretary-General" means the Secretary-General of the Organization.

Article 2

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

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

Article 3

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

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

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

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

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

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

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

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

(b) in respect of any other claims,

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

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

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

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

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

Article 4

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

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

Article 5

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Article 6

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

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

Article 7

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

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

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

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

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

Article 8

Amendment of limits

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

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

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

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

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

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

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

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

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

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

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

10. When an amendment has been adopted but the eighteen-month period for its acceptance has not yet expired, a State which becomes a Contracting State during that period shall be bound by the amendment if it enters into force. A State which becomes a

Contracting State after that period shall be bound by an amendment which has been accepted in accordance with paragraph 7. In the cases referred to in this paragraph, a State becomes bound by an amendment when that amendment enters into force, or when this Protocol enters into force for that State, if later.

Article 9

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 1 for entry into force have been met, this Protocol shall enter into force ninety days following the date of expression of such consent.

Article 12

Denunciation

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

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

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

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

Article 13

Revision and amendment

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

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

Article 14

Depositary

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

2. The Secretary-General shall:

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

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

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

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

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

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

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

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

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

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

Article 15

Languages

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

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

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

Annex I

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:

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

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

(c) accession.

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

Article 17

Entry into force

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

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

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

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

Article 18

Reservations

1. Any State may, at the time of signature, ratification, acceptance, approval or accession, reserve the right to exclude the application of Article 2 paragraph 1(d) and (e). No other reservations shall be admissible to the substantive provisions of this Convention.
2. Reservations made at the time of signature are subject to confirmation upon ratification, acceptance or approval.
3. Any State which has made a reservation to this Convention may withdraw it at any time by means of a notification addressed to the Secretary-General. Such withdrawal shall take effect on the date the notification is received. If the notification states that the withdrawal of a reservation is to take effect on a date specified therein, and such date is later than the date the notification is received by the Secretary-General, the withdrawal shall take effect on such later date.

Article 19

Denunciation

1. This Convention may be denounced by a State Party at any time one year from the date on which the Convention entered into force for that Party.
2. Denunciation shall be effected by the deposit of an instrument with the Secretary-General.
3. Denunciation shall take effect on the first day of the month following the expiration of one year after the date of deposit of the instrument, or after such longer period as may be specified in the instrument.

Article 20

Revision and amendment

1. A Conference for the purpose of revising or amending this Convention may be convened by the Organization.
2. The Organization shall convene a Conference of the States Parties to this Convention for revising or amending it at the request of not less than one-third of the Parties.
3. After the date of the entry into force of an amendment to this Convention, any instrument of ratification, acceptance, approval or accession deposited shall be deemed to apply to the Convention as amended, unless a contrary intention is expressed in the instrument.

Article 21

Revision of the limitation amounts and of Unit of Account or monetary unit

1. Notwithstanding the provisions of Article 20, a Conference only for the purposes of altering the amounts specified in Articles 6 and 7 and in Article 8, paragraph 2, or of substituting either or both of the Units defined in Article 8, paragraphs 1 and 2, by other units shall be convened by the Organization in accordance with paragraphs 2 and 3 of this Article. An alteration of the amounts shall be made only because of a significant change in their real value.
2. The Organization shall convene such a Conference at the request of not less than one fourth of the States Parties.
3. A decision to alter the amounts or to substitute the Units by other units of account shall be taken by a two-thirds majority of the States Parties present and voting in such Conference.
4. Any State depositing its instrument of ratification, acceptance, approval or accession to the Convention, after entry into force of an amendment, shall apply the Convention as amended.

Article 22

Depositary

1. This Convention shall be deposited with the Secretary-General.
2. The Secretary-General shall:
 - (a) transmit certified true copies of this Convention to all States which were invited to attend the Conference on Limitation of Liability for Maritime Claims and to any other States which accede to this Convention;
 - (b) inform all States which have signed or acceded to this Convention of:
 - (i) each new signature and each deposit of an instrument and any reservation thereto together with the date thereof;
 - (ii) the date of entry into force of this Convention or any amendment thereto;
 - (iii) any denunciation of this Convention and the date on which it takes effect;
 - (iv) any amendment adopted in conformity with Articles 20 or 21;
 - (v) any communication called for by any Article of this Convention.

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

Article 23

Languages

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

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

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