

COMITE MARITIME INTERNATIONAL

**LIMITED LIABILITY
IN COLLISION CASES**

A Survey by
K. PINEUS
and
H. G. RÖHREKE

INTERNATIONAL MARITIME COMMITTEE

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PREAMBLE AND ACKNOWLEDGEMENTS

In 1965 a comparative study was published showing the limited liability of two vessels of different size under the laws in force in a number of countries*.

The CMI Assembly of 1980 thought it would be a good thing to have such a study brought up to date.

We volunteered to try to do so. Questionnaires were sent to various members of National Associations. The P & I Club of the Swedish Steam Ship Owners' Insurance Association (The Swedish Club) asked their representatives in a number of places in the world to lend us a hand.

We take this opportunity to thank them all.

What follows is a presentation of the problems involved and an analysis of the answers obtained.

Gothenburg and Hamburg, August 1981

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* K. Pineus: Limited Liability in Collision Cases;
Handelshögskolan i Göteborg skrifter 1965:5

PURPOSE

As in 1965, the purpose of this study is to provide the practitioner with some easy access to the laws on Limitation of Shipowner's Liability as they exist in a number of maritime countries. Since the last publication in 1965, quite numerous changes of the laws have occurred. By sending out a questionnaire we have assessed the situation as it presented itself in the various countries as at July 1, 1980.

The answers we have received reveal that many states are parties to the 1957 Convention on Limitation of Liability. Besides this group of countries, there are quite a number which limit liability to the ship's value following more or less the system of the 1924 Limitation Convention. And a third group of countries do prepare themselves to adopt the 1976 Convention on Limitation. Between these three groups of countries differences of limitation values do exist. It is the main aim of our study to show which presently is the limitation value in each of the countries under consideration.

Since this is the main purpose of our study, certain details which played a role in the 1965 study have been left out. This mainly applies to limitation values in national currencies; as will be seen later, these values are either expressed in Special Drawing Rights (SDRs) or are to be assessed on the value of the vessel after the accident and cannot be fixed at any certain amount in national currency due to floating rates of exchange. We have also left out any reference to a minimum tonnage which at least two of the International Conventions provide for - in order not to complicate matters. Finally, we do not take account of the measurement ton that is used in the various laws: indeed, whereas the 1924 and the 1957 Convention and all the laws relating to them refer to the net tonnage plus engine room space, the 1976 Convention refers to the gross tonnage as contained in the 1969 Tonnage Measurement Convention which has not yet entered into force.

SYSTEMS

As indicated above, three systems govern the laws on limitation of liability, the main features of which are as follows:

The 1957 Convention:

The shipowner can limit his liability for property claims to 1.000 francs and for personal and property claims to 3.100

francs for each ton of the ship's tonnage. Of the latter amount a portion of 2.100 francs is appropriated to personal claims only. The franc mentioned is a unit consisting of 65.5 milligrams gold of millesimal fineness nine hundred.

The system of ship's value:

This system relates to the ship's value after the accident at her arrival at the first port reached after the accident plus 10 per cent of the vessel's value at the commencement of the voyage as freight. But, as regards any application of the 1924 Convention, the value shall not exceed a sum of 8 pounds sterling with an additional 8 pounds sterling per ton of the vessel's tonnage in case of death or personal injury. The monetary units are to mean their gold value.

The 1976 Convention:

This Convention also applies a certain figure per ton, the tonnage system. But it differs as to tonnage. The figures are as follows:

- a) In respect of loss of life or personal injury:
 - (i) 333.000 units of account (SDR) for a ship with a tonnage not exceeding 500 tons,
 - (ii) for a ship with a tonnage in excess thereof, in addition:
 - for each ton from 501 to 3.000 tons: 500 SDRs,
 - for each ton from 3.001 to 30.000 tons: 333 SDRs,
 - for each ton from 30.001 to 70.000 tons: 250 SDRs,
 - for each ton in excess of 70.000 tons: 167 SDRs,

- b) In respect of any other claims:
 - (i) 167.000 SDRs for a ship not exceeding 500 tons,
 - (ii) for a ship with a tonnage in excess thereof, in addition:
 - for each ton from 501 to 30.000 tons: 167 SDRs,
 - for each ton from 30.001 to 70.000 tons: 125 SDRs,
 - for each ton in excess of 70.000 tons: 83 SDRs.

The SDR is to be converted into national currency according to the methods of the International Monetary Fund. If a state is not a member of that Fund, the values set out in SDRs are expressed in monetary units of 65.5 milligrams of gold in millesi-

mal fineness nine hundred which are to be converted into national currency according to the law of the state concerned.

RIGHT TO INVOKE LIMITATION OF LIABILITY

All three Conventions on Limitation of Liability entitle not only the owner to invoke limitation. Whereas the 1924 Convention, besides the owner, entitles also the operator and the main charterer to do so, the two following Conventions go further and extend this right also to the manager, master, members of the crew and pilots as well as to their servants. Not all the national laws follow these examples. Where they do, the interpretation of the terms "manager" and "operator" varies.

RATE OF EXCHANGE - DATE OF CONVERSION

Under any system of tonnage limitation where, in order to evade inflationary distortions of limitation values, units of account (the Gold Pound, the Poincaré Franc, the SDR) are used, rates of exchange problems arise. Conversion will have to be made from such units of account into national currencies, and it is of great importance which rules these conversions have to follow. There is also the date of conversion to be taken into account: is it the date of constituting the limitation fund, or the date of payment or else the date of giving security? These are questions which, for the practitioner, can become of some essence and on which national laws should provide the answers.

THE 1979 PROTOCOL

This Protocol which has not yet entered into force provides an answer for the conversion of the Poincaré Franc into SDRs. The Protocol has become necessary since an official gold value has been eliminated from the international monetary system and only a private market for gold continues in existence. The Protocol provides that 15 Poincaré Francs would constitute one SDR and replaces the Franc by the SDR. This has been done by various national legislations already. The SDR itself is then converted into the national legal tender at the rate which is announced daily by the National Bank of each individual country.

THE APPLICABLE LAW

In the 1965 edition already, attention was drawn to the role of conflict of law rules for the determination of the law applicable to foreign vessels. If the limitation rules were the same everywhere a survey of this kind would be superfluous. But since they are not, the conflict of law problem will be of importance for any forum shopping that will survive until there is uniformity. Accordingly, we try to assess the law applicable to the limitation of liability (the Rio Draft Convention concerns itself with the law applicable to liability in collision cases, it does not regulate the law applying to limitation). If the law of limitation is held to be procedural, it may follow the *lex fori*, if it is regarded as substantial, it may follow the law to be applied to liability. In the latter case it may be *lex loci delicti* or the law of the flag or also *lex fori*. From the answers we have received it will be seen that the laws vary to quite an extent.

METHOD OF WORK

The answers to the above subtitles are given in the following part which is drawn up countrywise. Of course, we have given the utmost attention to what the friends have told us in this respect, but, still, there may have been misinterpretations on our part. We thank our friends for their ready help and cooperation on the clear understanding that they are in no way responsible for any mistakes that may appear in the following pages.

The limitation figures for the vessel "EVE" of 35.000 tons should be assessed as follows:

a) According to the 1924 Convention:

Claims for damage to property 35,000 x £ 8 in gold	<u>G£ 280,000</u>
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Claims for loss of life or personal injury, an increase of 35,000 x £ 8 in gold	<u>G£ 280,000</u>
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b) According to the 1957 Convention:

Claims for damage to property 35,000 x Poincaré Franc 1,000	<u>PFR 35,000,000</u>
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Claims for loss of life or personal injury	
35,000 x Poincaré Franc 2,100	<u>PFR 73,500,000</u>

If these values are converted into SDR at the rate of 15 Poincaré Franc to 1 SDR, the figures are as follows:

Claims for damage to property	
35,000 x 66.67 SDR	<u>SDR 2,333,450</u>

Claims for loss of life or personal injury	
35,000 x 140 SDR	<u>SDR 4,900,000</u>

c) According to ship's value:

It then becomes necessary to assess the value of the vessel after the accident plus freight pending, assuming the "EVE" then being worth	\$ 9,000,000
and her voyage freight	<u>\$ 300,000</u>
	\$ 9,300,000
	=====

The value of \$ 9,300,000 would then be her limitation amount in respect of claims for damage to property.

If in addition there are claims for loss of life or personal injury, the minimum figure for "EVE", irrespective of her actual value after the accident, would be in the U.S.A.

35,000 x \$ 60	<u>\$ 2,100,000</u>
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d) According to the 1976 Convention:

Claims for damage to property		SDR
Tons		
500	minimum liability	167,000
29,500	at SDR 167 per ton	4,926,500
<u>5,000</u>	at SDR 125 per ton	<u>625,000</u>
35,000		5,718,500
=====		=====

Claims for loss of life or personal injury		SDR
Tons		
500	minimum liability	333,000
2,500	at SDR 500 per ton	1,250,000
27,000	at SDR 333 per ton	8,991,000
<u>5,000</u>	at SDR 250 per ton	<u>1,250,000</u>
35,000		11,824,000
=====		=====

For states that are not members of the International Monetary Fund, the limitation is calculated in Poincaré Francs. The figures work out as follows:

Claims for damage to property		PFR
Tons		
500	minimum liability	2,500,000
29,500	at PFR 2,500 per ton	73,750,000
<u>5,000</u>	at PFR 1,850 per ton	<u>9,250,000</u>
35,000		85,500,000
=====		=====

Claims for loss of life or personal injury		PFR
Tons		
500	minimum liability	5,000,000
2,500	at PFR 7,500 per ton	18,750,000
27,000	at PFR 5,000 per ton	135,000,000
<u>5,000</u>	at PFR 3,750 per ton	<u>18,750,000</u>
35,000		177,500,000
=====		=====

ARGENTINA

Argentina is not party to any of the International Conventions on Limitation of Shipowner's Liability. Liability is limited to the ship's value after the collision and, alternatively, by abandonment of the vessel, plus freight, passage monies and other remunerations pending. The minimum liability in respect of loss of life or personal injury is Gold Pesos 13 for each ton of the ship's tonnage which is deemed to be at least 100 tons.

Limitation of liability can be invoked by the owner, the carrier, the manager of the vessel, the master, members of the crew and by the servants of the owner.

If limitation of liability is based on Gold Pesos the conversion into national currency is made according to the official rate fixed by authorities or, failing any official rate, according to the contents of gold at the time of payment.

General principles of law will apply in respect of applicable law for the collision claims and the limitation of liability.

If and when the 1976 Convention will be adopted cannot be indicated now.

AUSTRALIA

As of January 31, 1981, the 1957 Convention became part of the Australian Navigation Act, 1912. All the provisions of the 1957 Convention do apply, except as for removal of wreck or damage to harbour works (art. 1 para 1c) with respect of which a reservation has been made. All the persons listed in art. 6, that is to say the charterer, manager operator, master and crew acting in course of their employment are entitled to invoke limitation.

Limitation amounts are expressed in SDRs, and 15 francs of the Convention's monetary units equal one SDR. The SDRs are converted into national currency at the official rate of exchange determined by the Reserve Bank of Australia. The date of conversion is either the date of the constitution of the limitation fund or the date of payment or the date when security is given as provided for in art. 3(6) of the Convention.

If limitation is invoked *lex fori* would apply.

If and when the 1976 Convention will be adopted cannot be indicated now.

BELGIUM

Although Belgium has adhered to the 1957 Convention with effect of January 31, 1976, it has not yet incorporated the contents of this convention into its own law. The Belgian law is still the law of November 28, 1928, which is based on the principles of the 1924 Convention and is contained in art. 46 to 57 of Book II Code de Commerce. (By some the view is held that, since the 1957 Convention has been officially published, it would now have to be applied, but this view cannot as yet be supported by Belgian jurisprudence). Thus, the liability of the shipowner is limited to the ship's value after the accident but to no more than bfrs. 1,400 per ton of the vessel's tonnage plus an additional bfrs. 1,400 in case of death or personal injury. Limitation can be invoked not only by the shipowner but also by "l'affrèteur et l'armateur tenus de la responsabilité du propriétaire du navire".

The Belgian legislator has converted the value of £ 8 of the 1924 Convention into bfrs. 1,400. There the law stands. But as far as the 1957 Convention would come into play, the monetary unit of one Poincaré Franc has been converted into bfrs. 3.22768,

and all rules and regulations are based on this conversion rate. The question has not been decided yet whether or not it would be appropriate to take for conversion the market price for gold. There is some indication, however, that together with the incorporation of the 1957 Convention into the law the 1979 Protocol would be taken account of, thus introducing the SDR-principle into the law.

Under conflict of law rules it is the law governing the shipowner's liability that would also govern the question of limitation. In all cases in which the collision did not take place in Belgian territorial waters and in which neither the law of the 1924 Convention nor that of the 1957 Convention would apply, it is the law of the defendant party or that of the place where the ship was arrested that would govern. It would appear that the law of the forum would be relevant only to a limited degree.

If and when the 1976 Convention will be adopted cannot be indicated now.

BRAZIL

Brazil is not a party to any of the international Conventions. The system of Limitation of Shipowner's Liability is contained in art. 494 of the Brazilian Commercial Code which provides for "liberatory abandonment". By the said system an owner can only invoke limitation by abandoning the ship in natura to his creditors. There is no limitation for death and personal injury claims. For these the owner is held fully liable.

Only the shipowner who is entitled to his property and no other person can invoke limitation of liability.

Brazilian law is to be applied to limitation in cases which are brought before Brazilian courts except in cases in which the parties choose another law if none of such parties is of Brazilian nationality.

If and when the 1976 Convention will be adopted cannot be indicated now.

CANADA

Canada's laws on limitation of liability are based on the 1957 Convention, i.e. Poincaré Francs 1,000 for property damage and Poincaré Francs 3,100 for personal injuries and property damage. The formula for the equivalent value in Canadian dollars is established by the Canadian Gold Franc Conversions Regulations. The basis for conversion is the SDR exchange rate which provided that, on May 7, 1981, the equivalent in national currency was Can. \$ 94.46 per ton for property damage.

If and when the 1976 Convention will be adopted cannot be indicated now.

CHINA, THE PEOPLE'S REPUBLIC OF

The People's Republic of China is not party to any of the International Conventions on Limitation of Shipowner's Liability.

Limitation of liability applies in respect of property damage. The limitation amount is the aggregate of the vessel's value, the freight pending and any claim for unrepaired damage sustained after the commencement of the voyage. The value of the vessel is to be assessed at the time of her arrival at the first port after the accident has occurred. No limitation of liability applies to claims in respect of loss of life or personal injury. For such claims the vessels involved in collision are responsible, jointly and severally.

COLOMBIA

Colombia is not party to any of the International Conventions on Limitation of Shipowner's Liability.

The national law (art. 1531-1539 and 1481-1488 of the Commercial Code) has many traits similar to the 1924 Convention. The tonnage alternative of the Convention is, however, not adopted, except as a minimum rule in respect of claims for loss of life or personal injury, the limit being 15 grams of gold per ton, the value to be certified by the Banco de la República.

Limitation may be invoked by the shipowner, the disponent owner, the time charterer and his sub-charterer, the demise charterer and the lessee of the vessel.

Lex fori will apply if the collision takes place in the territorial waters of Colombia or on the high sea if a Colombian vessel is involved. Decision on liability in collision cases do not go before the courts, but are adjudged by the Maritime Authority, a body belonging to the Executive.

If and when the 1976 Convention will be adopted cannot be indicated now.

EGYPT

Egypt has ratified the 1957 Convention. Its content is, however, not introduced into national law.

Under national law (art. 30 of the Egyptian Maritime Code) the shipowner is entitled to abandon the ship plus freight for limitation of his liability.

The court would, so it is thought, probably apply *lex loci delicti* in respect of limitation if the collision takes place in territorial waters, otherwise *lex fori*.

If and when the 1976 Convention will be adopted cannot be indicated now.

FEDERAL REPUBLIC OF GERMANY

As per law of June 21, 1972, the 1957 Convention has been ratified and its contents have been incorporated into the German legislation.

Limitation can be invoked by the owner and the charterer and by the master, crew and other servants of the persons mentioned. Neither the operator nor the manager of the vessel are entitled to such limitation. The motive for not following the text of the Convention is that there is no definition of operator and manager.

The FRG has not signed the 1979 Protocol. Yet, by law of June 9, 1980, the law ratifying the Convention has been supplemented with respect to values. 15 gold units are being replaced by 1 SDR, and SDRs are to be converted into national currency according to IMF methods. The date for conversion is the date of the constitution of the limitation fund.

Under the conflict of law rules the law governing limitation of liability follows the law governing the claim for collision liability. This, in general, is the *lex loci delicti*. If, however, the collision occurs on the high seas, the applicable law is the law of the flag; the claimant can choose between the law of his own flag and the law of the flag of the colliding vessel.

If and when the 1976 Convention will be adopted cannot be indicated now.

FRANCE

France has become a party to the 1957 Limitation Convention by Law of January 3, 1967, and Decree of October 27, 1967. Limitation can be invoked not only by the owner and the charterer but also by the operator and the master, members of the crew and other servants of the owner.

As per July 1, 1980, it appears that the conversion of the Convention unit into national currency still caused great problems. By art. 61 of the Law of January 3, 1967, the limits of liability had been determined by renvoi to the monetary units of the 1957 Convention which were in Poincaré Francs. It may be hoped that, by introduction of the SDR, this problem has, by now, been solved - the date used for conversion probably being the date of constituting the limitation fund.

Another problem is caused by the question which law, under conflict of law rules, would apply to limitation of liability. According to Professor Rodiere it is, within the domaine of the 1957 Limitation Convention, the *lex fori* that would govern that question. He points towards the fact that no state has made a reservation under art. 7 (2) of the Convention.

By Law of December 29, 1979, the government has been authorised to ratify the 1976 Limitation Convention.

GERMAN DEMOCRATIC REPUBLIC

The German Democratic Republic has acceded to the 1957 Convention and has given effect to it by incorporation into the national legislation in a form appropriate to that legislation. It is the substantial parts of the substantive and procedural law of the Convention which have become part of the national law. The remaining parts of the Convention are effective in their original version. According to these rules, not only the shipowner, but

also the operator, manager and charterer of the vessel can invoke limitation. This also applies to the master, crew and other servants of the persons mentioned.

The figures contained in art. 3 of the Convention constitute the basis for calculation and have to be converted into a national currency. The court will determine into which national currency conversion has to be made. There is no governmental regulation concerning conversion, but the court would request the competent financial authority for an appropriate rule, for which the earliest date under art. 3 para 6 of the Convention, i.e. the date when security is being given, should be decisive. In a collision between nationals of the German Democratic Republic liability would, however, be limited in respect of property claims to Mark 280 and for personal injury claims to Mark 900 per ton of the ship's tonnage.

The conflict of law rule of para 17 of the Law of December 5, 1975, provides that the extent of compensation to be paid in collision cases follow the rule that applies to the liability for the damage itself. Thus, within territorial waters, the *lex loci delicti* would apply, whereas in a collision on the high seas the law of the flag of the vessel liable would govern.

If and when the 1976 Convention will be adopted cannot be indicated now.

GREECE

Greece is not party to any of the Conventions on Limitation of Shipowner's Liability. Under art. 84-89 of the Maritime Code, global limitation is based on the *fortune de mer* system. The shipowner has the option to abandon ship and freight to the creditors, or offering them 3/10 of ship's value at the commencement of the voyage plus an additional 3/10 in respect of claims for loss of life or personal injury.

Under Greek law limitation of liability can be invoked by the shipowner, the charterer and/or the operator provided that in the latter case this is proved by an appropriate entry in the ship's registry - art. 105 Greek Code of Maritime Law.

Greek Code would apply the law of the flag provided that such law is no more detrimental to the claimant than Greek law, in other words does not entitle defendants to invoke lesser limitation than under Greek law.

If and when the 1976 Convention will be adopted cannot be indicated now.

ITALY

Italy is not party to any of the Conventions on Limitations of Shipowner's Liability.

Under art. 275 of Codice della Navigazione global limitation is based on the fortune de mer system. The limitation amount is the value of the ship at the end of the voyage together with freight. The limitation fund should, however, not be less than 1/5 or more than 2/5 of ship's value at the beginning of the voyage. That value is deemed to be the value insured. Limitation is calculated per voyage, not per accident.

Limitation can be invoked by the operator of the vessel who, according to art. 265 of the Code, is the one who takes upon himself the management of the vessel.

According to art. 7 of the Code, the owner's responsibility is governed by the national law of the vessel. It would appear that this rule provides not only for the liability for the collision, but also for the right of limitation of such liability.

JAPAN

Japan has ratified the 1957 Convention using the exception allowed under the Convention in respect of wreck removal expenses. The Convention has been transformed into domestic law which consists of 101 articles with supplemental provisions. The law also contains many procedural provisions.

Limitation can be invoked by the shipowner, charterer, manager and operator of the vessel, and by a ship lessee. Partners with unlimited liability of a judicial person would fall under any of these categories. Also masters, seamen and others (including pilots) can invoke limitation if employed by the owner or other person entitled to limit.

The unit of account of the 1957 Convention is by law translated into Yen 23; thus no problem as to the date of conversion would exist.

If a collision takes place on the high sea between a Japanese vessel and a vessel belonging to a Non-Contracting State, it can be assumed that the law of the flags would apply, but which of these flags is a matter of the law on tort.

If and when the 1976 Convention will be adopted cannot be indicated now.

LIBERIA

The statutory law governing limitation of liability comprises chapter 5, sec. 160-165 of the Liberian Maritime Law. This law is the 1957 Limitation Convention adapted to statutory form, plus the version of the Fire Statute found in the United States Code. Thus, the law on limitation is not the same as in the United States.

The national currency in Liberia is the US \$. Chapter 5 expresses all amounts in that currency, translated at the official price of gold prevailing at the time of enactment. No problem with the date of conversion would arise.

There have been no court decisions in Liberia concerning limitation of liability. By chapter 1, sec. 30, reference is made to the general maritime law of the United States, but only to the application of conflict of law rules. In principle, the law of the forum will apply. In exceptional cases the law of the place where the accident occurred will apply, if, by that law, the law of limitation is substantive (cf. U.S.A., *The Norwalk Victory*).

Although Liberia has enacted the substance of the 1957 Convention it is not party to that Convention. Liberia has now ratified the 1976 Convention and steps are presently being taken to introduce that Convention into Liberian legislation.

MEXICO

Mexico is not party to any of the International Conventions on Limitation of Shipowner's Liability.

The national law has many traits similar to the 1924 Convention, except that the tonnage alternative of the Convention is not adopted; the fortune de mer system applies.

Limitation may be invoked by the shipowner, the manager and/or operator of the ship. The "naviero" is the operator of a maritime enterprise.

Lex fori will apply if the collision takes place in the territorial waters of Mexico or on the high sea if a Mexican vessel is involved.

If and when the 1976 Convention will be adopted cannot be indicated now.

NETHERLANDS

The Netherlands have ratified the 1957 Convention; its contents have been incorporated into national law, Commercial Code, sect. 740 (a)-(d) and Code of Civil Procedure, sect. 320 (a)-(z). Limitation can be invoked by the owner, operator, manager, charterer and all other parties who use the vessel including their servants.

The limitation is expressed in gold franc (Poincaré Franc). It is hoped that the bill for converting them into SDR (15 Poincaré Francs = 1 SDR) will come into effect in 1982.

The conversion into legal tender is made on the date money is deposited in the limitation fund or security is given in lieu.

Lex fori will apply for collision on the high seas unless there is a close connection with some other law or both vessels fly the same flag. When they are of different nationality but their respective laws produce a similar result - other than that of lex fori - the flag laws may apply.

It is expected that the 1976 Convention will be adopted within the next five years.

PANAMA

Under the law of Panama, art. 1078 of the Commercial Code, limitation of liability is based on the fortune de mer system. The insurance indemnity is explicitly said to form part of the fortune de mer.

Whether the said article constitutes substantive law that can be invoked before and accepted by a foreign court or whether it is to be held as merely procedural law with no effect before such court has been decided differently in the courts in the U.S.A.

There is reason to believe that the 1976 Convention will be adopted within the next five years and will also be incorporated into the Commercial Code of Panama.

PERU

Peru is not party to any of the International Conventions on Limitation of Shipowner's Liability. In a both to blame collision the losses lie where they fall, no claim or counterclaim arise and accordingly no limitation will operate.

According to art. 805 of the Commercial Code global limitation is calculated on the basis of ship's value after the collision plus voyage freight earned. The shipowner has the option of abandonment. Claims for loss of life or personal injury take precedence over claims for damage to property.

Limitation can be invoked by the shipowner and also by the manager and/or operator when acting as agent or under the instructions of the shipowner.

Under the Civil Code conversion into national currency is to be made at the date of payment; this rule might well apply also in limitation situations.

Lex loci would apply if the collision takes place in territorial waters, otherwise the law of the flag. When the vessels are of different nationality, the law of the flag that is most favourable to the defendant applies.

Within the next five years Peru might adopt the 1957 Convention, hardly the 1976 Convention.

PHILIPPINES

The Philippines are not party to any of the International Conventions on Limitation of Shipowner's Liability.

According to art. 837 of the Philippine Code of Commerce the liability incurred by the shipowner is limited "to the value of the vessel with all her appurtenances and freight earned during the voyage". The value of the vessel is that after the collision and the freight is that which is actually earned. It appears that limitation is provided per accident, not per voyage.

If the court decides on the establishment of a limitation fund, the date of that decision will be used for conversion; if the fund is established by payment, the date of payment will be reckoned as the proper date for conversion.

Lex fori will apply if the collision took place in the territorial waters of the Philippines or on the high sea if a Philippine vessel is involved.

There is no indication if and when the 1976 Convention will be ratified.

POLAND

Poland has ratified the 1957 Convention and has introduced it into its legal system. But Poland has not revoked the 1924 Convention to which it remains a party. Thus, it will depend on the law of the opposite party which of the two Conventions will be applied in any given case.

If the parties to the collision are both Polish, art. 72 and 73 of the Polish Shipping Code of 1961 will apply. The Code contains provisions corresponding to the 1924 Convention, that is to say liability is limited to the value of the vessel after the accident plus 10 per cent, unless the sums of the 1924 Convention would be lower. No indication is at hand as to the amounts of such sums when expressed in national currency under present day conditions.

If and when the 1976 Convention will be adopted cannot be indicated now.

PORTUGAL

Portugal has ratified the 1957 Convention and, by law no. 49.028 of May 26, 1959, has incorporated it into its national law. Any of the persons mentioned in art. 6 of the Convention is entitled to invoke limitation. Under law no. 543/71 the manager is described as the person who represents the shipowner in court and, under the same law, the operator is the person who, by contract, is entrusted with the exploitation of a maritime enterprise either totally or partially and even temporarily.

Global limitation is calculated on the basis of the 1957 Convention unit, i.e. the Poincaré Franc. The conversion into national currency follows the rules issued by the Portuguese Central Bank which actualises the values every month, taking into account the development of gold prices. The date used for the conversion into national currency is the date of the application to the court for the constitution of the limitation fund.

Art. 45 (1) of the Portuguese Civil Code contains a conflict of law rule according to which the principle of *lex loci delicti* would apply to limitation of liability. It is an open question which rule would govern if the collision took place on the high seas. Portugal is a party to the 1952 Convention on Civil Jurisdiction in Collision Cases and from the answer received that might be taken to mean that the court seized of the case would apply its own law as to the liability issue.

If and when the 1976 Convention will be adopted cannot be indicated now.

SCANDINAVIA

The four Scandinavian countries Denmark, Finland, Norway and Sweden have all ratified the 1957 Convention; its contents have been incorporated into their national legislations.

Limitation can be invoked by the shipowner, the user, charterer, disponent owner, master, members of the crew, pilot or other person employed by the owner, user, charterer or disponent owner in respect of liabilities incurred in the course of their employment. The liability is expressed in Poincaré Franc; the rate of exchange for converting them into SDR (15 Poincaré = 1 SDR) is fixed by Decree.

The conversion into legal tender is made on the date of payment or the date when security is given.

Lex fori will apply both for the collision liability and for the limitation of liability.

The Scandinavian Law Committees recommend that the 1957 Convention be denounced and that national legislation based on the 1976 Convention be introduced without awaiting that the 1976 Convention itself enters into force.

SPAIN

Spain has ratified the 1957 Convention. Its content is, however, not introduced into national law.

Under national law, limitation would appear to follow the *fortune de mer* system, the value of the ship together with the voyage freight, the shipowner having the option of abandonment.

For vessels flying the flag of a Contracting State the court would apply the Convention. For a vessel flying the flag of a Non-Contracting State it is left to the discretion of the court to decide whether to apply *lex fori* or the Convention.

If and when the 1976 Convention will be adopted cannot be indicated now.

SWITZERLAND

With effect of January 1, 1967, Switzerland has incorporated the rules of the 1957 Convention into its law. According to art. 49 Seeschiffahrtsgesetz of September 23, 1953, as amended, the 1957 Convention has become national law. Not only the owner of the vessel but also the carrier responsible for the employment of the vessel can invoke limitation.

Switzerland's national currency is still based on the value of gold. According to a government order of May 9, 1971, 1 Swiss franc corresponds to 47/216 grams of gold; this means that 1 Poincaré Franc equals Swiss francs 0.27. Switzerland has signed and will ratify the 1979 Protocol on conversion of Poincaré Franc into Special Drawing Rights. On May 8, 1981, 1 SDR equalled Sfrs. 2.42233.

The conflict of law rules provide that liability for a collision and the right to limit liability follow the rule of *lex loci delicti* if the collision occurs in territorial or inland waters, whereas if it occurs on the high seas, the law of the flag will govern.

The 1976 Convention will be ratified only if and when it becomes the law of the main seafaring nations.

UNITED KINGDOM

The United Kingdom is a party to the 1957 Limitation Convention since the Merchant Shipping (Liability of Shipowners and others) Act of 1958. The Minister of Transport and Civil Aviation does by statutory instruments translate the Poincaré Franc into current English money. Since gold values are thus immediately translated into the national currency, the question as to the date used for conversion purposes does not arise.

Under English law not only the owner and charterer, but also "any person interested in or in possession of the ship, and, in

particular, any manager or operator of the ship" is entitled to invoke limitation of liability - the legal status of managers and operators depending on the effects of each case without any guidance by statute.

Limitation proceedings are regarded as procedural under English law. It follows that limitation proceedings are governed by *lex fori*. Limitation can be invoked by British as well as by foreign owners etc.; limitation is, as heretofore, dealt with by *lex fori*.

The 1976 Convention has been implemented by the Merchant Shipping Act, 1979, and will be brought into force by order as soon as there have been sufficient ratifications by other states.

U.S.A.

The U.S.A. is not a party to any of the Limitation of Liability Conventions, although the U.S.A. law bears some strong resemblances to the 1924 Convention. According to the law governing in the U.S., limitation is calculated on the basis of the ship's value, plus freight pending, at the conclusion of the voyage on which the casualty occurred. Where there has been loss of life or personal injury in connection with a seagoing vessel, the minimum liability shall be for \$ 60 per ton. In 46 US Code § 183 (c) the tonnage of a seagoing steam or motor vessel is defined as her gross tonnage without deduction on account of engine room - as in art. 11 of the 1924 Convention.

The general rule in the U.S.A. is that only the shipowner himself and the bareboat charterer are entitled to invoke limitation. However, in the Third Judicial Circuit (Pennsylvania, Delaware, New Jersey) there is a possibility that also a "managing operator" might invoke that limitation (cf. *Mission San Francisco - Elna II*, 1959 AMC 982). But this decision, obviously, is related to 46 US Code § 186 where it is said that the "owner" is to include "the charterer of any vessel, in case he shall man, victual and navigate such vessel at his own expense".

There is no problem of conversion since the ship's value is always expressed in national currency.

The amount of limitation is calculated in accordance with the law of the forum since limitation is a procedural matter in the U.S. This would apply if the accident occurred outside U.S. territorial waters. There is a remote possibility that the court would apply the law of the place where the accident occurred if by that law the law of limitation is substantive (The *Norwalk*

Victory, 1949 AMC 393, which, however, was not followed in Ta Chi Navigation Corp. Lim., 1976 AMC 1895).

If and when the 1976 Convention will be adopted cannot be indicated now.

U.S.S.R.

The U.S.S.R. is not party to any of the International Conventions on Limitation of Shipowner's Liability. However, art. 276 of the Merchant Shipping Code of October 1, 1968, uses some principles of the 1924 Convention. The provisions of the said article apply only to shipowners whose ships sail under the Soviet flag (art. 14 (8) of the Code).

Art. 276 provides that, as to property damage, the owner's liability is limited to an amount not exceeding the number of gross registered tons of the ship multiplied by twenty rubles. Instead of paying such an amount, the shipowner may abandon the vessel to his creditors. The value of the vessel, according to art. 277, depends on the condition of the ship at the time of her arrival at the first port of call after the accident; the limitation is per accident, not per voyage. There is no limitation of liability for personal injury claims (art. 275).

The "shipowner" is the person who exploits the vessel in his own name, whether as owner or on any other basis (art. 10) from which it may be assumed that, for the purposes of limitation, also the charterer should be entitled to invoke it.

YUGOSLAVIA

Yugoslavia has ratified the 1957 Convention; its contents have been incorporated into national law. Limitation can be invoked by the shipowner, the charterer, the manager and/or the operator of the ship.

The operator (brodar) is defined as the physical or legal person who, in the capacity of detentor of the vessel undertakes a navigational enterprise. The person registered as the owner or the person entitled to dispose of the ship is prima facie held to be the operator.

The limitation is expressed in national currency. By mistake the figures have been put as 12,000 dinars and 36,000 dinars instead of 1,200 and 3,600. Proceedings to rectify the error are

undertaken. The sums will be converted into SDR in accordance with the Protocol of December 1979.

The law of the flag will apply for limitation purposes wherever the collision took place, unless Yugoslav Law is more strict than the law of the flag, in which case *lex fori* will apply.

If and when the 1976 Convention will be adopted cannot be indicated now.

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