THE TRAVAUX PRÉPARATOIRES

OF

THE LLMC CONVENTION, 1976

AND OF

THE PROTOCOL OF 1996
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Foreword

Limitation of liability has a long history in maritime law, stemming from a recognition of the importance of maritime trade and reflecting a desire to shield shipowners and others involved in the operation of the ship from the potentially crippling financial effects of legal claims.

The existence of different national laws gave rise to moves for the international unification of maritime law on the subject, and this led to the adoption of the *International Convention for the Unification of Certain Rules Relating to the Limitation of Liability, 1924* and, later on, the *International Convention Relating to the Limitation of the Liability of Owners of Seagoing Ships, 1957*. Rapid developments in the 1960’s, particularly depreciation of monetary values, increases in the size of ships and the need to protect other categories of operators, led the Comité Maritime International (CMI) to embark on a further review of the regime, in conjunction with the Legal Committee of the International Maritime Organization (IMO).

The result was the convening of an International Conference by the IMO in November 1976, which adopted the text of the *Convention on Limitation of Liability for Maritime Claims (LLMC Convention)*. The Convention entered into force on 1 December 1986. It was later amended by the 1996 Protocol which increased the compensation limits and also introduced the “tacit acceptance” procedure for updating those limits. As at September 2000, the Protocol was still awaiting entry into force.

The objectives of the LLMC Convention, carried through to the 1996 Protocol, were to enable shipowners and others, including insurers, to limit their liability in a way which would allow legitimate claims to be satisfied, having regard to the availability of effective insurance cover or other financial guarantees. Liability limits were also set at appropriate levels, based on tonnage rather than value of the ship, as in former times.

The LLMC Convention dealt with liability for maritime claims generally, although the subject of liability has also been a prominent feature of a number of other conventions over the past 30 years, largely developed under the aegis of the IMO. The Convention can now therefore be seen as the global instrument for limitation of the shipowner’s liability, while other treaties deal with specific risks. Together, they comprise a comprehensive legal regime dealing with liability in a number of maritime fields, as witness the conventions and protocols on liability and
compensation in respect of oil pollution damage, the carriage of nuclear materials, passengers and their luggage and hazardous and noxious substances, and the draft conventions on civil liability for bunker oil pollution damage and wreck removal.

The topical nature of the subject was also reflected in the adoption in November 1999 by the IMO Assembly of Resolution A.898(21) “Guidelines on Shipowners’ Responsibilities in Respect of Maritime Claims”, which recognises the right of shipowners to limit their liability but which, at the same time, urges shipowners to ensure that their liability under the LLMC Convention is covered by adequate insurance.

Liability is certain to remain a live issue in the maritime community in the years to come. It is an issue that is frequently brought before national courts and one which, no doubt, will continue to be the subject of legal debate and analysis in these and other forums. The interpretation and implementation of the LLMC Convention and its 1996 Protocol, as well as the other legal instruments mentioned, will be greatly enhanced by the availability of ready access to the travaux préparatoires, including the debates, of the Convention and Protocol.

To compile and edit such a formidable range of documents was an immense task and an invaluable service. In this instance, the international maritime community is fortunate indeed that an acknowledged expert in the field, Professor Francesco Berlingieri has undertaken it. The text that has been produced as a result of his labours bears all the hallmarks of his meticulous research and skilled interpretation of events. CMI and Francesco Berlingieri are to be warmly thanked and congratulated for their efforts.

W. A. O’NEIL
Secretary-General
International Maritime Organization
Preface and Acknowledgment

In view of the decision of the Executive Council of the CMI to carry out a study of the implementation and interpretation of the Convention on Limitation of Liability for Maritime Claims, 1976 and of its Protocol of 1996 I have deemed it useful to collect all the travaux préparatoires and publish them arranged under each individual article of the Convention and of the Protocol.

The travaux préparatoires consist of the following:

For the 1976 Convention
- Reports of the Chairman of the CMI International Sub-Committee
- CMI Hamburg Conference
- CMI Introductory Report to IMCO
- Records of the sessions of the Legal Committee of IMCO

For the 1996 Protocol
- Records of the sessions of the Legal Committee of IMO

The page numbers of the original documents are indicated in square brackets.

In view of the fact that the official records of the Diplomatic Conference of 1996 do not include the records of the debate that took place before the Committee of the Whole, I have obtained from the Secretariat of IMO the tapes on which this debate was recorded and have transcribed the interventions of the delegates. Such interventions are therefore published in full or in a summary form in order to provide as complete a legislative history of the Protocol as possible.

I wish to express my personal profound gratitude and that of the CMI to the Secretariat of IMO for its kindness in providing me with copies of all relevant documents as well as with the tapes previously referred to. Without such cooperation this work would have not been possible.

The cost of publication of this book has been defrayed by the CMI Charitable Trust and the proceeds of its sale will be used by the Charitable Trust for the advancement and promotion of its charitable objects.

FRANCESCO BERLINGIERI
Glossary


Legal Committee - 23rd Session: Report of the Legal Committee on the work of its twenty-third session, 3-7 June 1974 - Document LEG XXIII/4 of 18 June 1974


Legal Committee - 72nd Session: Report of the Legal Committee on the work of its seventy-second session, 3-7 April 1995 - Document LEG 72/9 of 10 April 1995


PART I

THE TRAVAUX PRÉPARATOIRES
OF
THE LLMC CONVENTION, 1976
History of the Convention

After IMCO had placed on its agenda the revision of the 1957 International Convention relating to the Limitation of Liability of Owners of Sea-going Ships the Bureau Permanent of the Comité Maritime International decided, at its meeting of 15 February 1972, to establish an International Sub-Committee under the chairmanship of Mr. Alex Rein for the purpose of studying the 1957 Convention with a view to enabling the CMI to advise IMCO, to the extent which might be required.

A questionnaire prepared by the Chairman of the International Sub-Committee was distributed to all CMI National Associations and on the basis of the replies that had been received the Working Group appointed by the International Sub-Committee prepared two alternative drafts: the draft of a Protocol to amend the 1957 Convention and the draft of a new Convention intended to replace the 1957 Convention.

Prior to the preparation of such drafts the Chairman of the International Sub-Committee had attended on 21 June 1973 the nineteenth session of IMCO’s Legal Committee, offering assistance from the CMI in the revision of the 1957 Convention and such offer was accepted by the Legal Committee.

The two drafts, as subsequently amended, were submitted to the CMI Conference held in Hamburg in April 1974 and the Conference, after reviewing the drafts, resolved to submit them both for the consideration of IMCO.

An Introducing Report was then prepared by the Chairman of the International Sub-Committee and was submitted to the Legal Committee of IMCO in May 1974. The Report was accompanied by the draft convention and the draft protocol as well as by a set of explanatory notes.

The two drafts were considered by the Legal Committee at its twenty-third session held in June 1974, with the assistance of the CMI, and the decision was adopted to use the draft convention as the basic working document. The Legal Committee decided to give a second reading to the draft articles, and this was done during the twenty-fifth and twenty-seventh sessions. At its twenty-eighth session the Legal Committee adopted a set of recommended draft articles for an International Convention on Limitation of Liability for Maritime Claims for consideration at the Conference to be convened by IMCO from 1 to 19 November 1976, when the LLMC Convention was adopted.

During the work on the HNS Convention the United Kingdom delegation drew the attention of the IMO Legal Committee on the need for a revision of the limits of liability adopted by the LLMC Convention in 1976 and submitted a draft protocol with provisions on such revision. At its sixty-eighth session, held in July 1993, the Legal Committee decided to commence its consideration of a revision of the LLMC Convention at its next session. The work on the draft Protocol to the LLMC Convention commenced at the subsequent session of the Legal Committee – the 69th session, held from 27 September to 1 October 1993. The work on the draft HNS Convention and the draft Protocol to the LLMC Convention then continued during the 70th session held from 21 to 25 March 1994, the 71st session held from 10 to 14 October 1994 and was completed during the 72nd session, held from 3 to 7 April 1995 when the Legal Committee requested the Secretariat to prepare new drafts on the basis
of the decisions taken at that session and recommended that a diplomatic conference to consider them be convened during the spring of 1996. At its 74th session, in June 1995 the Council considered and approved the proposal and arrangements were then made for the Conference to be held from 15 April to 3 May 1996.

During the sessions the need for a linkage between the LLMC Convention and the future HNS Convention was considered and an Informal Working Group was established with the task to study this problem. A report of the Chairman of that Group was submitted to the Legal Committee at its 73rd session, held from 11 to 13 October 1995.1

In the report four options were identified to solve the question of linkage. As it will appear from the travaux préparatoires2 the Diplomatic Conference decided that there should be no linkage between the two Conventions, but that Article 18 paragraph 1 of the LLMC Convention be amended so to enable State Parties to reserve the right to exclude claims for damage within the meaning of the HNS Convention.

As it is known, compulsory liability insurance is provided by the HNS Convention (Article 12) and in the CLC Convention (Article 7), while no provision is contained in this respect in the LLMC Convention and in its Protocol. However a Resolution was adopted on 25 November 1999 by the Assembly of IMO3 by which “Guidelines on Shipowners’ Responsibilities in Respect of Maritime Claims” were approved. By these Guidelines shipowners are urged to arrange for the liability insurance in respect of their ships.

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(1) Infra, Part II, Appendix V, p. 547.
(2) Infra, p. 501-505.
(3) Infra, p. 643.
At its last session, in Brussels on February 15, 1972, the Bureau Permanent of the CMI decided to initiate the preparations for a revision of the 1957 Limitation of Liability Convention.

A revision of this Convention is on the agenda of IMCO, and it may be expected that IMCO, in the course of the Summer of 1972, will make arrangements for a study of the subject and that the CMI, among others, will be invited to present the views of the commercial interests involved.

The Constitution of the CMI is presently under revision, but it will take some time until a new procedure for CMI’s activities has been agreed and put into operation. In the meanwhile the work must continue within the framework of the present Constitution and traditional CMI practice.

The Bureau Permanent, therefore, decided to establish an International Subcommittee under the chairmanship of the undersigned for the purpose of studying the 1957 Convention with a view to enabling the CMI to advise IMCO to the extent which may be required.

In accordance with traditional CMI practice I have prepared the following Questionnaire which will be submitted to the National Associations as an initial step towards the formation of an International Subcommittee.

Member Associations are requested to kindly submit their replies to the Secretary-General not later than May 15, 1972, and to appoint their representative to the International Sub-Committee which is expected to convene in the course of the Summer or Autumn of this year.

QUESTIONNAIRE

I.

1. The need for revision

Has the 1957 Limitation Convention been ratified by your country?
If so, please state whether a revision is called for and, should such be the case, for what main reasons.
If the Convention has not been ratified, please state the main reasons therefor and on what points the Convention should be modified in order to be acceptable.

(4) CMI Document LIM-1/3-72.
2. **The basic principles to be applied for a revision**

It is suggested that limitation of liability should be permitted only in respect of such excess of liability for which the person liable cannot reasonably be required to carry adequate insurance. It is not in the public interest, and in most cases of little benefit to the creditor, to endeavour to enforce liabilities which are uninsurable from a practical point of view. On the other hand, the fact that there is a ceiling encourages potential debtors to insure up to the ceiling which may be a higher amount than the one they would have chosen had there been no ceiling. This suggestion will entail a substantial increase of the limitation funds as compared with the 1957 Limitation Convention. It is suggested that the right of limitation if based on the principle of insurability should generally be accorded to all persons who become liable for certain claims for damage arising in connection with the operation of sea-going ships.

Finally, it is suggested that limitation should not be denied in cases where the person liable is guilty of fault or privity amounting to simple negligence only.

[18] 3. **Global limitation**

The 1957 Limitation Convention does not deal with the basis on which liability may be established. No revision is suggested on that point.

The Convention confers the right of limitation of liability on certain persons in respect of certain maritime claims. This is a global limitation in the sense that the person liable may limit his liability for all such claims arising on one distinct occasion by establishing one single limitation fund.

Certain claims which would have been subject to limitation under the terms of the 1957 Limitation Convention have been made the subject of separate international limitation conventions with the intention of excluding them from the system of global limitation. This applies to claims in respect of nuclear damage caused by nuclear ships (the 1962 Nuclear Ships Convention) and oil pollution damage caused by tankers (the 1969 Oil Pollution Convention). These conventions deal not only with the limitation of liability for such claims, but also with the conditions of liability.

It is reasonable to assume that separate limitation funds for various types of claims or the exclusion of certain claims from the global limitation system will increase the total cost of insurance and thus reduce the amount of insurance which can reasonably be required for the global limitation. If separate funds are established in respect of certain claims, for example claims for damage caused by hazardous cargo, such claims will receive preferential treatment at the expense of other claims.

It is suggested, therefore, that this Convention should establish a system of global limitation applicable to all limitable liability under other international conventions dealing with the basis of liability.

**Question 3.1.**
Should this Convention deal with the global limitation only, leaving it to other international conventions to deal with the basis for establishing liability for the various types of damage?

**Question 3.2.**
Should the system of global limitation be maintained in respect of all limitable claims which, up to now, have not been made the subject of separate regulation by international convention?
Question 3.3.
Should certain claims be excluded from the system of global limitation and be made subject to separate limitation funds, either by new separate international conventions or by inclusion under the regime of existing separate international conventions such as the 1962 Nuclear Ships Convention or the 1969 Oil Pollution Convention?

4. The system of global limitation

The main features of the system of global limitation contained in the 1957 Limitation Convention appear in the provisions which determine (a) the liabilities subject to global limitation and (b) the principles for construction of the limitation fund. The main issues arising in these two contexts will be dealt with in Parts III and IV of this Questionnaire. The Convention also contains provisions dealing with procedure and other incidental matters. At the present stage, however, these matters can be left aside.

III

5. Liabilities subject to global limitation

In the 1957 Limitation Convention the question of what liabilities are subject to global limitation is determined by three different – but interrelated – criteria. First, the liability must have arisen from loss of life or personal injury (personal claims), or from loss of or damage to property, infringement of any rights, or removal of wreck (property claims). Second, the liability must have arisen, generally speaking, in connection with the operation of the ship. Third, the liability must have been incurred by the shipowner or certain other persons.

6. Personal claims

The 1957 Limitation Convention provides that personal claims are subject to global limitation, but reserves a particular portion of the fund for such claims. Some of the personal claims may also be subject to a separate per capita limitation, cf. e.g. the 1961 Passenger Convention. This latter type of limitation is also well known in national law on civil liability.

It may be argued that liabilities for personal claims should always be limited on a “per capita” basis only. Assuming “per capita” limitation of personal claims, a supplementary global limitation may, however, be considered desirable as regards claims in respect of persons other than passengers or members of the crew; the total amount of such claims arising in any particular case cannot be reasonably predicted, and this may make it difficult to obtain satisfactory insurance.

Question 6.1.
Should a revised Convention contain provisions limiting liabilities in respect of personal claims?

Question 6.2.
Assuming an affirmative answer to Question 6.1., should personal claims be limited on a “per capita” basis?
Question 6.3.
If personal claims are made subject to “per capita” limitation, should all, or certain types of, personal claims also be subject to global limitation?

7. Property claims

Under the 1957 Limitation Convention, global limitation in respect of property claims includes liabilities for the physical loss or damage itself as well as for consequential losses incurred by the owner or other person having interests attached to the property involved. Apparently, liabilities for certain economic losses not necessarily connected with physical damage are also included; the expression “infringement of any rights” seems to cover any contractual (e.g. charterparty) or other right recognized by law, e.g. infringement of the right to free and safe use of ports, canals or navigable waters. Although not expressly stated, liabilities for costs of preventive measures taken after an accident by the person whose property or right (or person) is thereby imperilled are apparently also subject to global limitation.

One group of property claims, claims for loss of or damage to cargo, may also be subject to a separate unit limitation (the 1924 Bills of Lading Convention and the 1968 Protocol). These conventions presuppose global limitation as well (Art. VIII of the 1924 Convention) but it may be argued, as in respect of personal claims subject to per capita limitation, that this is inappropriate. The deletion of [24] this important group of cargo claims from the system of global limitation would undoubtedly have the same effect on the cost of insurance as suggested above under 3.

Question 7.1.
A person otherwise entitled to global limitation may incur liability for damage to the ship itself, e.g. where a charterer has loaded or discharged the goods or shipped dangerous goods. Should liabilities in respect of damage to the ship be subject to global limitation?

Question 7.2.
Should liabilities in respect of losses consequential to the physical loss of or damage to property be subject to global limitation?

Question 7.3.
Should “infringement of any rights” be deleted, or should it be restricted so as not to include contractual rights, or possibly be replaced by an enumeration of particular cases (e.g. blocking of ports, canals or navigable waters and other particular cases)?

Question 7.4.
Should liabilities for the cost of preventive measures taken after an accident by a party likely to suffer loss or damage therefrom be subject to global limitation? (With regard to the liable person’s own costs of such nature, see below under 9.)

Question 7.5.
Should cargo claims subject to unit limitation be subject to global limitation?

8. The connection between the claims and the ship

The 1957 Limitation Convention, Art. 1 (1), sets out in great detail the particular
connection between the ship and the claims which is required for global limitation. Subject to limitation are claims in respect of persons or goods on board the ship as well as claims arising from the act, neglect or default of any person on board the ship or other persons taking part in certain enumerated operations relating to the [26] ship, for whom the owner (or other person entitled to global limitation) has vicarious liability. It is probable, however, that the group of claims subject to global limitation is somewhat enlarged by Art. 1(3), dealing with liability without fault by reason of ownership, possession, custody or control of the ship. Apparently, this provision covers, for instance, all liabilities imposed by national law or international conventions relating to the carriage in ships of hazardous cargo – some of which could perhaps fall outside the enumeration in Art. 1(1).

These detailed provisions can be seen to have caused difficulties in practice (cf. e.g. *The “Tojo Maru”* [1971] 1 Lloyd’s Rep. 341), and for this and other reasons it is suggested that they should be simplified. One possible solution would be to use the general language contained in the 1967 Maritime Liens and Mortgage Convention Art. 4(1): claims in respect of damage “occurring, whether on land or water, in direct connection with the operation of the vessel”.

**Question 8.1.**
Should the provisions describing the required connection between the ship and the claims subject to global limitation be amended or simplified? If the answer is in the affirmative, please suggest how this should be done.

**Question 8.2.**
Should liabilities imposed by law relating to loss or damage occurring in connection with the carriage in ships of hazardous cargo (other than nuclear damage and oil pollution damage) be subject to global limitation?

**9. Cost of preventive measures**

Under the 1957 Limitation Convention the cost of preventive measures taken after an accident by the person liable for the accident, or his insurer, cannot be claimed against the limitation fund. However, it is not in the interest of prevention of damage if no relief is given for such costs. The 1969 Oil Pollution Liability Convention allows the cost of preventive measures to be claimed against the fund, *pari passu* with claims in respect of oil pollution damage.

**Question 9**
Should cost of preventive measures incurred by the liable person be allowed as a claim against the limitation fund?

**[28] 10. Persons entitled to global limitation of liability**

The 1957 Limitation Convention reserves the right of limitation for persons engaged in the operation of the ship, viz. the owner, manager, operator or charterer of the ship (including their servants). It is suggested that under a system of global limitation based on the principle of insurability (see above under 2) the right of limitation should depend on the fact that liabilities of a limitable nature have been incurred. Consequently, it does not appear appropriate to reserve the right of limitation only for certain of the persons running the risk of incurring such liabilities.
Question 10.1.
Should the right to global limitation be reserved for persons engaged in the operation of the ship?

Question 10.2.
Limitable liabilities in respect of personal or property claims may be incurred by persons performing various types of work or services connected with the ship, e.g. by a shipyard repairing the ship, by an independent contractor or dock or port authority loading or discharging cargo, by a person undertaking salvage operations, etc. Should all or some of such persons be entitled to global limitation?

Question 10.3.
Limitable liabilities in respect of personal or property claims may also be incurred by the shipper, consignee or owner of the cargo, e.g. liabilities for loss or damage occurring during loading or discharge of the goods or in connection with the carriage of hazardous cargo, or liabilities for damage to the ship. Under the 1957 Limitation Convention a charterer is entitled to global limitation of such liabilities. Should also the shipper, consignee and owner of the cargo be entitled to global limitation?

IV

11. Principles for construction of the global limitation fund

Under the 1957 Limitation Convention the maximum limitation fund is 3,100 Francs Poincaré for each ton of the ships tonnage. Out of this, 2,100 Francs per ton are reserved for personal claims. The remaining 1,000 Francs per ton are shared between property claims and excess personal claims.

If limitation of liability is permitted only in respect of such excess of liability for which the person liable cannot reasonably be required to carry adequate insurance, the limitation fund should, logically, be in proportion to the ship’s capacity of carrying insurance. It is suggested that the value of the ship is the best indication of such capacity. The value, however, is not a practical standard of measurement and the best approximation both to the value and to the damage risk represented by the ship is probably the size of the ship. And if size shall be the decisive factor the tonnage of the ship is as good as any other measurement.

The “limitation ton”, as used by the 1957 Limitation Convention, should be substituted by the gross ton unit in the new International Convention (1969) on Tonnage Measurement of Ships. Under the said convention the data necessary for the calculation of the “limitation ton” will not be available. The previous “limitation ton” will constitute between 90 and 60 per cent of the new gross ton unit, depending on the type of ship.

Question 11.1
Should the global limitation fund be computed on the basis of the ship’s tonnage or on the basis of other criteria?

Question 11.2.
If the ship’s tonnage shall be maintained as the relevant criterion, should the “limitation ton” be substituted by the new gross ton?
Question 11.3.
Should there be additional amounts for certain types of claims, such as personal claims, and if so, for what claims?

12. Minimum and maximum limitation fund

The 1957 Limitation Convention provides for a minimum limitation fund based on 300 tons, but for no maximum. Both the 1962 Nuclear Ships Convention and the 1969 Oil Pollution Convention have introduced ceilings to the fund, maximum amounts above which there shall be no liability.

[32] It is assumed that a minimum should be retained if the fund is to be calculated on the tonnage. The amount per ton which is reasonable in the higher tonnage brackets is clearly inadequate in respect of ships with small tonnage and large engine power.

If there is to be a maximum it must be based on insurability. In this context it is suggested that insurability must mean technical facilities for insurance.

Question 12.1.
Should there be a minimum limitation fund regardless of the ship’s tonnage or equivalent criterion?

Question 12.2.
Should the amount per ton for the first X tons of any ship be higher than the amount per ton for the balance of the tonnage?

Question 12.3.
Should there be a maximum limitation fund for large ships?

13. Fault or privity of the person liable

Under the 1957 Limitation Convention the right of limitation is forfeited if there is “actual fault or privity” on the part of the person liable. Thus, with certain exceptions for servants, limitation of liability can only be invoked in respect of vicarious or strict liability and only where the person liable is not privy to the circumstances.

It is suggested that this rule be changed for several reasons.

If the limitation fund is to be equivalent to the amount which is reasonably insurable the liability in excess of such amount is of small benefit to the creditors. From the point of view of general prevention the privity rule is not entirely beneficial. The fact that even the smallest degree of negligence on the part of the person who carries liability results in loss of the right of limitation does not induce such a person to take an active part in operations which may entail liability. It is safer to be ignorant of what is going on. Finally, actions for the purpose of “breaking the limitation” are frequent, but relatively seldom successful. The cost of defending such actions is part of the cost of the insurance which could be more profitably applied.

It is suggested that a person should not forfeit his right of limitation unless he has been guilty of a qualified degree of negligence – gross negligence or wilful misconduct.

[34] Question 13.1.
Should limitation of liability be forfeited if there is actual fault or privity on the part of the person liable?

Question 13.2.
What degree of negligence should be required in order to deny right of limitation?

14. Miscellaneous

Should other matters be discussed at this stage?

Oslo, 15th March 1972
Alex Rein.

Second report by the Chairman of the International Subcommittee

Introduction

The International Subcommittee (herein called the Committee) charged with the task of studying the Limitation of Liability Convention of 1957 (herein called the Convention) and reporting to CMI on the question of a possible revision was established under the chairmanship of Mr. Alex Rein (Norway) by CMI’s Bureau Permanent in Brussels on February 15, 1972.

An introductory Report and Questionnaire, dated March 15, 1972, (LIM-1, 3-72) was prepared by the Chairman and circulated by CMI to the National Associations. Replies to the Questionnaire have been received from 14 Associations. The following are included in CMI Documentation 1, 1972: Denmark (LIM-2, 6-72), Italy (LIM-3, 6-72), Switzerland (LIM-4, 6-72), Yugoslavia (LIM-5, 5-72), Norway (LIM-6, 6-72), Greece (LIM-7, 8-72) and Great Britain (LIM-8, 8-72). The following replies have been circulated to the National Associations: Sweden (LIMIT-9, 10-72), Belgium (LIMIT-10, 10-72), Netherlands (LIMIT-11, 10-72), France (LIMIT-12, 10-72), D.D.R. (LIMIT-13, III-73), Canada (LIM-17, I-74) and the Federal Republic of Germany (LIMIT-18, I-74).

The Committee had its first meeting in Antwerp on November 8, 1972, where the following National Associations were represented: Belgium, D.D.R., France, Federal Republic of Germany, Great Britain, Ireland, Japan, Netherlands, Portugal, Sweden, U.S.A., Yugoslavia.

Following a general discussion of the principles for a possible revision of the Convention, in the light of the replies received up to that time, the Committee appointed a Working Group to prepare a first draft. The Group was composed as follows [14]:

Dr. Alex Rein (Norway), Chairman
Mr. Arthur M. Boal (U.S.A.)
Mr. Simon Cotton (Great Britain)

(5) CMI Document LIMIT-19/II-74
Dr. Bern Kröger (Federal Republic of Germany)
Professor Hisashi Tanikawa (Japan)
Mr. André Vaes (Belgium)
Mr. C. Buisseret (Belgium), Deputy


On March 23, 1973, in Brussels, the Chairman of the Committee reported to the Assembly of CMI on the progress of the work. The Chairman of the Committee was appointed to represent CMI at the forthcoming meeting of IMCO's Legal Committee where the revision of the Convention would be put on the agenda.

This meeting took place in London on June 21, 1973, and the Chairman of the Committee accepted, on behalf of CMI, that CMI should act as a “working party” for IMCO in carrying out the preparatory work for the presentation of a first draft.

The Working Group again met in Oslo on September 29 and 30, 1973, and prepared two alternative drafts: a “Maxi Draft” for a new “International Convention on Limitation of Liability for Maritime Claims” and a “Mini Draft” for a Protocol to amend the 1957 Convention. These drafts were submitted to the Committee as Exhibits 1 and 2 to The Chairman’s First Report to the International Sub-Committee, dated October 8, 1973 (LIMIT-14, X-73) (herein called the First Report). Details of the work of the Working Group will be found in this Report.

Comments to the First Report were submitted by France (LIMIT-15, XII-73) and Italy (LIMIT-16, XII-73).

The second meeting of the Committee took place in Brussels on December 17 and 18, 1973. The meeting was attended by the Chairman, the Chief Legal Officer, Professor Jan Ramberg, and delegates representing the following National Associations: Canada, Denmark, the Federal Republic of Germany, France, Great Britain, Ireland, Japan, Netherlands, Norway and Sweden.

The basis for the discussion was the Maxi and Mini Drafts. The outcome was that the Committee decided, in accordance with the prevailing view of the delegates, to present to CMI only a Draft Protocol to amend the existing Convention, although a Maxi Draft would be prepared as a working paper for the Hamburg Conference: see below.

A Drafting Group was appointed and charged with the task of drawing up Drafts on the basis of the prevailing views expressed. As no minutes had been kept, and as substantial drafting difficulties would be encountered, it was understood that the Drafting Group must also be given a relatively free hand in matters of certain substance. For reasons of time no new meeting of the Committee would be possible prior to the Hamburg Conference.

The Drafting Group was composed as follows

Mr. Alex Rein (Norway), Chairman
Mr. J. Niall McGovern (Ireland)
Mr. Jacques Potier (France)
Professor H. Schadee (Netherlands)

The Drafting Group met in Oslo on January 19 and 20, 1974. Professor Schadee was prevented from attending. Professor Emmanuel du Pontavice (France) assisted Mr. Potier, and the Chief Legal Officer was also present. Valuable assistance was rendered to the Group by Professor Sjur Braekhus and Professor Erling C. Selvig.
(Chairman of the Norwegian Association), both professors of maritime law at the University of Oslo.

The Draft Protocol prepared by the Drafting Group is attached to this Report as Appendix A. In order to avoid confusion the provisions of the Draft Protocol are called Sections.

The Chairman's Comments on the Draft

The Scope of the Revision

The Committee decided at its second meeting to base its discussions on the Maxi Draft without prejudice to its final decision as to the scope of revision to be recommended. Most delegates preferred the structure and systematic order of the Maxi Draft to that of the Convention, but the prevailing view was that the ultimate choice between a maxi or mini draft would depend on the number of amendments which would be deemed necessary or desirable. The majority took the view, already reflected in the opinions expressed by most National Associations, that time is not ripe for a radical change of the present system.

Although the discussions revealed that many changes might be called for if the Convention were to be replaced by a new structure, the majority preferred to limit the proposed amendments to such as may reasonably be made by way of a protocol. It was decided, therefore, that the only official document which should be presented by the Committee to the Hamburg Conference should be a Draft Protocol to amend the Convention.

It was realized, however, that the Conference will hardly be inclined to limit its deliberations to the scope of revision reflected in the Draft Protocol. Proposals for more extensive changes, including restructuring of the Convention, are likely to be tabled by National Associations. The [17] Draft Protocol designed for the purpose of incorporating a very limited number of changes into the rather special fabric of the Convention would not be a good working paper for a conference at which the field is wide open for new proposals. It was decided, therefore, that the Chairman's Report should include a working paper in the form of a revised Maxi Draft which should reflect the solutions favoured by the Committee if, in principle, a new convention shall replace the present Convention. It was also agreed that in his Report the Chairman should deal with the questions under discussion in the systematic order of the revised working paper.

This working paper, herein called the Working Paper (WP), prepared by the Drafting Group, is attached as Appendix B.6

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The travaux préparatoires of the LLMC 1976 and of the Protocol 1996

IMCO Legal Committee
Twenty-third Session
3-7 January 1974


4. At its preceding (twenty-second) session (18 to 22 March 1974) the Legal Committee decided to devote the twenty-third session to consideration of the review of the International Convention relating to the Limitation of the Liability of Owners of Sea-Going Ships signed at Brussels on 10 October 1957. This treaty revised and replaced, as between its Parties, an international convention on the same subject signed at Brussels on 25 August 1924.

5. In June 1973, at its nineteenth session, the Committee availed itself of an offer of assistance from the Comité Maritime International (CMI) in the revision of the Convention. This assistance took the form of two sets of draft articles with an accompanying Introductory Report, and these materials were made available by the CMI to the Legal Committee for the latter's twenty-third session.

6. The first of these two sets of draft articles is entitled Draft International Convention on Limitation of Liability for Maritime Claims. The second set of articles is in the form of a draft protocol containing drafts of amended or new provisions which might be incorporated into the 1957 Convention.

[2] On the understanding that the two sets of draft articles are largely identical in substance, the Legal Committee decided to use the draft convention (“Maxi-Draft”) rather than the draft protocol (“Mini-Draft”) as the basic working document of the present session under the second agenda item. This decision was taken without prejudging in any manner the future employment of the draft protocol either as to its substance or its form.

7. The Introductory Report presented by the CMI contains a detailed explanation of the individual draft articles of the “Maxi-Draft” and a synopsis of the “Mini-Draft”. The documentation so helpfully provided by the CMI was presented and further explained by its representatives.

8. The Legal Committee concluded that it should begin its review of the existing régime of limitation of liability for maritime claims by first discussing the principles which had been evolved in the form of these draft articles of a new convention. Each draft article was accordingly examined, explained when necessary and debated in its turn. No restraint was imposed upon the scope of the debate and the major points which were elicited are set out below after an introduction in the order of the numbered draft articles. The texts of the draft articles themselves are set out in the Annex to the present Report.

Introduction

9. The concept of limitation and the extent of the need for revision of existing rules tending to unify the law on the subject were discussed in terms of basic policy objectives, with particular reference to the desirability of keeping insurance premiums at reasonable levels and other insurance aspects of the problems and to the need to
find a proper balance between the interests of those entitled to the benefit of limitation and of potential claimants. Reference was made to the function of limitation where catastrophic losses might have to be contemplated, but could not be economically insured against, and to the aggregation of claims with consequent heavy liability. For these peculiarities of maritime enterprise, in addition to the need for the unhindered mobility of the ship, a global limitation system may perform the function of providing certainty, security and uniformity.

10. The earlier concept of limitation held that a shipowner should be able to free himself from liabilities which exceeded his total interest in a venture subject to marine perils. The more modern view is that a shipowner should be able to free himself from liabilities which exceed amounts coverable by insurance at reasonable costs. It was thought to be in the general interest that shipowners should be able to meet claims up to those amounts and that procedures should be established to facilitate the settlement of claims. Additionally, it was thought that, with respect to the economy of sea transport, it was important to take into account the costs of insurance not for shipowners alone, but the totality of insurance costs for sea carriage, including insurance costs for shippers of cargo.

11. Many changes had taken place since the earliest effort (1924) to unify rules of maritime law on these matters. Monetary values had altered and the limits set in the past were widely considered to be too low. Judicial interpretation in some jurisdictions had disturbed the uniform application of some principles enshrined in the earlier treaties. Newer conventions of maritime law had been concluded with regard to liability for damage caused by nuclear incidents and pollution, and these treaties had other consequences for the shipowner, in particular the 1969 International Convention on Civil Liability for Oil Pollution Damage. A new system of tonnage measurement is in prospect which would have an effect on the system of determining limitation.

12. Revision, in particular of the 1957 Convention on Limitation of Liability, has been seen as necessary. How this revision is to be accomplished and how extensive it is to be must await further study. In the opinion of some, there was no need for a radical revision of the present system. What was required was merely to make the changes which experience had shown were necessary. In their view the general objective would be to make possible a viable and continuing commercial situation in which “limitable claims” may be insured on an economical basis.

Twenty-fifth Session
20-24 January 1975

[1] 1. The Legal Committee met from 20 to 24 January 1975 in its twenty-fifth session. In the unavoidable absence of its Chairman, Mr. G. A. Maslov (USSR), the Vice-Chairman of the Committee, Dr. F. L. Wiswall, Jr. (Liberia) presided.

2. A list of participants attending the session appears in document LEG XXV/INF1.

3. The Committee adopted the Agenda contained in document LEG XXV/1.

Consideration of the review of the 1957 Convention relating to the Limitation of the Liability of Owners of Sea-Going Ships (Agenda item 2).

4. At its twenty-third session in June 1974, the Committee, with the assistance of the Comité Maritime International, began substantive work on the consideration of
the review of the International Convention relating to the Limitation of the Liability of Owners of Sea-Going Ships signed at Brussels on 10 October 1957.

5. Of two draft sets of articles presented by the Comité Maritime International, the Legal Committee decided at the twenty-third session to use the first ("Maxi-Draft") as its basic working document without prejudging the eventual form of instrument which a revision of the 1957 treaty might take.

6. The Comité Maritime International on the request of the Legal Committee, made information on financial limits of liability available for the twenty-fifth session and the European Tugowners Association also submitted observations prior to the session.

7. The Committee decided to give a second reading to the draft articles annexed to the Report of its twenty-third session (LEX XXIII/4), proceeding article by article. In doing this, it was reiterated that the progressive modification of the texts of these draft articles did not reflect the settled opinions of any Member, nor were further changes — and the possible re-introduction of earlier texts — precluded. The text of the draft articles set out in Annex I to the present Report accordingly reflects a stage in the Committee’s consideration of this review, rather than a consensus of governmental opinion. Comments of delegations on the draft articles are set out in their order below.

Twenty-seventh Session
16-20 June 1975

[1] 1. The twenty-seventh session of the Legal Committee convened from 16-20 June 1975 under the chairmanship of Mr. G. A. Maslov (USSR).

2. A list of participants attending the session appears in document LEG XXVII/INF.1.


4. The principal substantive item on the Committee’s agenda was consideration of the review of the International Convention relating to the Limitation of the Liability of Owners of Sea-Going Ships, signed at Brussels on 10 October 1957. This item was the continuation of a study begun at the twenty-third session of the Committee in June 1974 and resumed at the twenty-fifth session in January 1975.

5. At the latter session, it was not possible to examine all the draft Articles annexed to the Report of the twenty-third session (LEX XXIII/4). Accordingly, the Committee first considered the texts of draft Articles 8, 9, 10 and 12, after which it again gave attention to Articles 1, 2 and 3. It also considered a draft Article concerning the scope of application submitted by the delegation of Belgium.

6. The texts of the draft Articles resulting from the discussions of the Committee up to the end of the twenty-seventh session are given in Annex I. A summary of the principal points in the discussions of the session is given in the following paragraphs.

(8) The Draft Articles annexed to Document LEG XXIII/4 are published in Appendix III.

(9) The Draft Articles, annexed to the Report of the Twenty-fifth Session of the Legal Committee (Document LEG XXV/4) are published in Appendix IV.

(10) The Draft Articles, annexed to the Report of the Twenty-seventh Session of the Legal Committee (Document LEG XXVII/4) are published in Appendix V.
Twenty-eighth Session
24 November-5 December 1975

1. The Legal Committee convened in a two-week session from Monday 24 November to Friday 5 December 1975. It was the twenty-eighth session.

2. A list of participants attending the session appears in document LEG XXVIII/INF.1.


4. The twenty-eighth session was the third and concluding session of the Legal Committee devoted to the consideration of the review of the 1957 Convention relating to the Limitation of the Liability of Owners of Sea-Going Ships.

5. At its previous (twenty-seventh) session the Committee decided on the order in which individual articles (including a proposal for an article on financial responsibility) of the draft new international convention on this subject would be examined or re-examined at the present session.

6. The principal points arising from the Committee’s discussions are set out below, following the order of the draft articles as finally presented with this Report.

7. Annex I\footnote{11} contains the set of recommended draft articles for an International Convention on Limitation of Liability for Maritime Claims, together with comments and alternative drafts, where these have been considered appropriate. Annex II contains a summary of observations and proposals on the important\footnote{2} question of a new unit of account for the calculation of the limitation amounts in the Convention. This Annex is to be read in conjunction with the text of draft Article 8 as given in Annex I.

8. The Legal Committee recommends that the text of the draft International Convention on Limitation of Liability for Maritime Claims contained in Annex I, together with any comments and observations thereon, be circulated to governments and interested organizations for consideration at the conference to be convened by the Organization from 1-19 November 1976, with a view to the adoption of a new convention on this subject.

9. The Committee further recommends that the contents of Annex II, together with any comments which may be made on them, be made available to the conference.

10. In order to provide governments and organizations with the fullest possible background information on the draft articles, the Committee also recommends that the Secretary-General be authorized, when submitting these draft articles to the governments and interested organizations invited to the conference, to accompany the draft articles with the records of the discussion of the Legal Committee on the drafts as contained in the Reports of the Committee’s twenty-third, twenty-fifth, twenty-seventh and twenty-eighth sessions.

Twenty-ninth Session
28 June-2 July 1976

\[16\] Any other business (Agenda item 4)

(a) Preparations for the 1976 Conference on Limitation of Liability for Maritime Claims

\(\footnote{11}\) The Draft Articles, annexed to the Report of the Twenty-eighth Session of the Legal Committee (Document LEG XXVIII/7) are published in Appendix VI.
65. The Committee took note of the steps undertaken by the Secretary-General in view of the forthcoming Conference on Limitation of Liability for Maritime Claims as reported in the Secretariat document LEG XXIX/4. It noted in particular [17] that Council had approved the convening of three Conferences to revise the unit of account provisions in the International Convention on Civil Liability for Oil Pollution Damage, 1969, the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971 and the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974, all three Conferences to be held in conjunction with the Limitation of Liability for Maritime Claims Conference.

66. The Committee furthermore considered the Secretary-General's initial proposals on the organization of the work of the Conference and, in particular, on the Committee structure. In this context, a number of delegations expressed their misgivings over the fact that, as a result of decisions of the Council and the Assembly, summary records would be provided only in respect of meetings of the Plenary, but not for meetings of the Committee of the Whole.

67. Some delegations felt that it would be most important for the Conference to hold a first reading of the draft articles of the Convention in a Committee of the Whole rather than in Plenary, even if this meant foregoing the availability of summary records of the proceedings in such a Committee. Other delegations on the other hand took the view that for a legal conference full records of the proceedings were of such fundamental importance that, under the circumstances, it would be preferable to work exclusively in Plenary, even if this implied more formal working and decision-making procedures.

68. After giving careful consideration to these alternatives, the Committee agreed to recommend that substantive consideration of the Convention Articles be undertaken in the plenary sessions of the Conference. The Committee however recommended that a first reading of the draft Articles be held under the simpler procedural provisions normally applicable to committee proceedings. If necessary, the Conference could explicitly provide for this by adapting its Rules of Procedure accordingly.

69. For the future the Committee decided to recommend that Council reconsider its decision on this matter and to make provision in respect of legal conferences, for summary records of meetings of any Committee of the Whole, in addition to such records for plenary meetings. In this connection the Committee noted that the present IMCO practice was not exactly in accordance with the practice adopted by the United Nations in respect of diplomatic conferences held under its auspices.

Diplomatic Conference
Summary Record of the First Plenary Meeting
1 November 1976

[467] The Secretary-General welcomed delegates and declared open the Conference on Limitation of Liability for Maritime Claims convened under the auspices of the Inter-Governmental Maritime Consultative Organization.

The Conference was meeting to continue, in many respects, the work begun by the adoption at Athens in December 1974 of the Athens Convention Relating to the Carriage of Passengers and their Luggage by Sea. That Convention had established the basis and limits of the liability which the shipowner bore towards the passengers carried in his ship and in respect of the luggage of such passengers. The present Conference was meeting to adopt an instrument which would establish the limits of
the liability of the shipowner to persons who might not be on board the ship or who
might not even be linked to the shipowner by a contractual relationship. Thus, the new
Convention would have to set limits to the liability of the shipowner not only towards
persons with whom he had entered into some form of contract but also to third parties,
i.e., to persons with whom he might not have had any dealings whatsoever. Moreover,
it would also deal with the liability of persons – such as salvors – who, not being
shipowners themselves, had such a direct relationship to the operation of the ship that
it was considered reasonable to treat their liability on the same footing as that of the
shipowner.

The basic foundation for both the Athens Conference and the present one had
been material generously placed at the disposal of IMCO’s Legal Committee by the
Comité Maritime International (CMI), and the first draft of both conventions had
been prepared by the CMI. Furthermore, experts from the CMI had participated
actively throughout the long and detailed consideration of those drafts by the Legal
Committee of IMCO, providing additional information, explanation and expert
advice. On behalf of the Secretariat, the Legal Committee and the Member
Governments of IMCO, he expressed his gratitude to the CMI for their co-operation
and assistance. The interest which the CMI maintained in IMCO’s work was
symbolized by the presence of the new President of the CMI, Professor F. Berlingieri,
to whom he extended a warm welcome and sincere felicitations.

He paid tribute to the late President of the CMI, Baron Albert Lilar, under whose
Presidency the close working relationship between IMCO and the CMI had been
forged, and who had contributed greatly to the development of maritime law. He
invited the Conference to observe a minute’s silence in honour of Baron Lilar.

The Conference observed a minute’s silence in honour of Baron Albert Lilar.

The Secretary-General said that the task before the Conference was to provide
for a regime which would balance realistically and equitably the legitimate interests, on
the one hand of the shipowner, and on the other hand, of parties who might suffer loss
and damage as a result of the operation of the ship. To establish such a balance would be
by no means easy; but he was sure that the readiness of governments, as shown on
previous occasions, to work out acceptable and compromise solutions, and the presence
at the Conference of so many persons of expertise and diplomatic skill would contribute
to the success of the difficult assignment before the Conference.

The establishment of international standards and regulations in the maritime
field was, of course, a function which IMCO had been established to perform and
which he ventured to say IMCO had performed with competence and considerate
success. IMCO was now a truly international maritime organization, global both in its
composition and in the scope of its activities, and widely recognized as such.
Moreover, the regulations and standards developed in IMCO were more widely and
readily implemented than was perhaps the case in other areas. For, in spite of
occasional assertions to the contrary, the conventions and instruments adopted in
IMCO did not enter into force less quickly than international conventions generally.
IMCO’s record in that regard was, in fact, better than the average. He therefore
expected that the Convention resulting from the Conference’s deliberations would be
such that it would be speedily accepted by a large number of governments and thus
enter into force within a short period of time.

The Secretariat would do all it could to provide participants with the necessary
facilities, service and assistance. He wished participants every success in their
deliberations.
Election of the president

The Secretary-General reported that Heads of Delegations, at a meeting held earlier that morning, had unanimously agreed to recommend the election as President of the Conference of Mr. Stanley Clinton Davis MP, Parliamentary Under-Secretary of State for Companies, Aviation and Shipping. Mr. Clinton Davis had had a long experience in law as a practising solicitor, a Member of Parliament and as Minister responsible for shipping in the United Kingdom which, as was well known, possessed a large merchant fleet and was the host State to IMCO.

Mr. Bendjenna (Algeria), Mr. Gowland (Argentina) and Mr. Nair (India) supported the candidature of Mr Clinton Davis for the office of President of the Conference.

Mr. Stanley Clinton Davis (United Kingdom) was elected President of the Conference by acclamation. Mr. Clinton Davis (United Kingdom) took the Chair.

The President thanked all delegations for the honour which they had conferred upon the United Kingdom and upon himself by his election. As Minister in the United Kingdom Government concerned with shipping, he was aware of the importance to shipowners, insurers, cargo owners and many others of the existing Convention on the Limitation of the Liability of Owners of Sea-going Ships of 1957, to which some twenty-five States were Parties. A replacement of that Convention was overdue both on economic and legal grounds, and the task of the Conference was to produce that replacement.

The Government of Belgium had for many years played a special role in the development of maritime conventions of this kind, and he associated himself with the tribute which the Secretary-General had paid to the late Baron Lilar for his distinguished work in that field.

Although IMCO had the important task of convening such conferences, many other facets of its work should not be forgotten. In the field of safety, great progress had been made; the International Convention for the Safety of Life at Sea and the Collision Regulations were of the utmost importance to seafarers, as were the traffic separation schemes soon to have mandatory effect. IMCO had also worked to establish standards to eradicate the evil of sub-standard ships; and the recent adoption of a Convention on an international maritime satellite system demonstrated its ability to keep abreast of modern technology.

Following the “Torrey Canyon” disaster, IMCO had done excellent work on the protection of the environment and on the prevention of pollution. For the United Kingdom, a country with a large number of merchant ships and seamen and one which was particularly exposed to pollution risks, the work of IMCO was of inestimable value, and he was proud that it had its headquarters in London – the only such United Nations agency in the United Kingdom. IMCO’s strength lay in its ability to produce practical results without undue controversy, and that was undoubtedly one of the reasons why its work was not as widely known as it should be.

The success of a conference depended in great measure on the effectiveness of the preparations which had been made for it. The Conference owed much to the Comité Maritime International which had assisted the Legal Committee of IMCO in its lengthy development of the draft articles, thus enabling work to be begun on a sound basis.

He hoped that, with the spirit of goodwill and compromise which had characterized IMCO since its inception in 1959, delegations would succeed in adopting a convention which would be even more widely acceptable than the Convention of 1957 which it would replace.
Agenda Item 3 – Election of Vice-Presidents and other Officers of the Conference

The President said that, in accordance with Rule 6 of the Rules of Procedure just adopted, the Conference was required to elect five Vice-Presidents, the Chairman of the Committee of the Whole, and the Chairman of the Drafting Committee.

The Secretary-General said that Heads of Delegations had unanimously recommended that the first three Vice-Presidents should be Mr. R. F. Bondoni (Argentina), Mr. M. A. Bendjenna (Algeria) and Mr. Y. Djavad (USSR) respectively. They had recommended postponing the election of the fourth and fifth Vice-Presidents pending further consultation.

The Conference adopted the recommendations of Heads of Delegations and elected Mr. R. F. Bondoni (Argentina), Mr. M. A. Bendjenna (Algeria) and Mr. Y. Djavad (USSR) first, second and third Vice-Presidents respectively, by acclamation.

The Secretary-General said that Heads of Delegations had unanimously recommended that Ms. B. Blom (Sweden) be appointed Chairman of the Committee of the Whole.

Ms. B. Blom (Sweden) was elected Chairman of the Committee of the Whole by acclamation.

The Secretary-General said that Heads of Delegations had recommended that the election of the Chairman of the Drafting Committee should be postponed pending further consultation.

It was so decided.

Committee of the Whole
Summary Record of the First Meeting
1 November 1976

General debate

The Chairman said that the draft Convention was global in character in two respects: in the first place, it provided for a global limitation of liability, and secondly it concerned all States either because they had a shipping industry or because they were possible claimants. That being so, there were necessarily a number of divergent interests, and differing views were therefore to be expected. The object of all, however, should be to reach a consensus of opinion and a common position. The resulting Convention must gain wider acceptance than that of 1957, and the Conference would have to work efficiently if it was to complete its task within the time available. Some delegations had suggested that proposals on which the Legal Committee of IMCO had not submitted recommendations – in particular, the figures to be inserted in Articles 6 and 7 – should be considered as soon as possible, and she intended to put forward a provisional timetable for the Committee’s deliberations the following day.

Mr. Cleton (Netherlands) said that the limitation of liability was one of the most important items of private maritime law and a concept that was becoming more widely accepted. The present Conference had met to revise the 1957 Convention, which had served its purpose well but which, in the opinion of his Government, now needed some adjustment. In particular, a revision of the limitation amounts fixed by that Convention was called for, to take account of inflation and technological developments. His delegation considered that the new amounts should be calculated in such a way as to enable shipowners to insure their liabilities at commercially

General comments
acceptable premiums. The proposed new tonnage-measurement system would, in any case, considerably increase the size of the limitation funds, and the Netherlands delegation would be satisfied with an increase of 100 per cent in the funds available under the 1957 Convention; its attitude would depend, however, on the decisions taken in respect of other provisions – such as the system of limitation. It also strongly favoured a system providing for unbreakable limits, as that would do away with much litigation regarding the term “actual fault and privity”. So far as the minimum limit was concerned, his delegation was not in favour of any significant increase in the figure contained in the 1957 Convention in order to avoid making it unnecessarily difficult to insure ships of low tonnage.

Of the alternative versions of Article 6, his delegation preferred the one providing for claims for loss of life or personal injury to be separated from other claims, since it appeared that a single fund for both types of claim might result in a considerable increase in insurance premiums.

Turning next to the unit of account, he thought it must be accepted that the gold-based Poincaré franc was no longer a reliable unit and must be abandoned. His delegation had prepared a working paper on Article 8, its view being that the Special Drawing Rights of the IMF would meet the requirement for a stable unit of account which could be determined without ambiguity. His delegation had also prepared a working paper on the provisions dealing with preventive measures; it would revert to that question later.

In conclusion he expressed the hope that the Conference would contribute to the unification of international maritime law.

Mr. Amoroso (Italy) said his Government regarded it as of the utmost importance that the Conference should succeed in its task. Italy, in common with a number of other major countries, had not ratified the 1957 Convention and it was essential that the Conference agree on a text acceptable to most, if not all, participating Governments. Thanks to the efforts of the Legal Committee of IMCO, the Conference was in a position to give detailed consideration to a highly satisfactory draft text which his own Government could accept subject to a certain number of points which he would be raising during its examination article by article.

His Government was in favour of a significant increase in the liability amounts, a view shared by the shipowners themselves. Yet, while due account had to be taken of the inflationary trends of the past few years, one should not fix exaggeratedly high limits. That was a fundamental problem to which he thought the Committee of the Whole would do well to give priority by discussing first Articles 6 and 7 of the draft, since the solution adopted would affect the decision on many other issues. Before a final conclusion was reached, however, he recommended that the position of the insurance market should be investigated.

Mr. Lyon (Canada) said that although Canada had not ratified the 1957 Convention, its provisions had in substance been adopted in Canada’s domestic law. In Canada, a shipowner might limit his liability for damage negligently caused by his ship, provided he had not been privy to such negligence. Nevertheless, innocent victims of such damage should not, in his Government’s view, be left to bear the cost of the damage thus caused; the present draft Convention appeared to offer a means of protecting them by striking an equitable balance between their interests and those of persons engaged in maritime trade. With that in view, the limit fixed should be as high as possible when remaining compatible with the capacity of the shipowners and the position of the insurance market. Lastly, the “fault or privity” rule should be
preserved, and limitation of liability should not apply in cases either of damage to harbour works, etc., or of pollution.

Mr. Wiswall (Liberia) said he did not intend to make any general comments but would raise two important points. In the first place, the Convention currently in force had the major disadvantage of having been ratified by only twenty-five States. By means of a contract, it was possible for a Party to the 1957 Convention to refrain from applying its provisions; that was a totally unacceptable situation. In the second place, serious problems could arise in the case of a salvor not operating from a ship, and an equitable scheme needed to be worked out to deal with that question. His Government would in due course be submitting specific proposals on those two points.

The present Convention belonged to that category of innovatory legal instruments which remained largely a dead letter for lack of wide acceptance. It was to be hoped that existing differences of opinion would be reconciled and a consensus reached, so that the new Convention did not suffer the same fate.

Mr. Herber (Federal Republic of Germany) said that his Government feared that a total revision of the 1957 Convention as envisaged might endanger the harmonization of legislation already achieved in that field. His Government would therefore have preferred to see the adoption of a Protocol containing amendments only to those few Articles really requiring them. There was only need to review the limits of liability amounts and tonnage measurement, and to harmonize the text of the 1957 Convention with those of subsequent Conventions.

If, however, a new Convention was judged necessary, the Federal Republic of Germany thought that further changes should be restricted to the bare essentials. Certain clarifications would have to be introduced with regard to such questions as, for example, the limitation of the liability of salvors; but the basic principles should be left untouched. For example, a system providing for unbreakable limits would be contrary to the criterion of “actual fault and privity” laid down in the 1957 Convention, and it would not be advisable to adopt the principle of a single fund. Both changes would constitute a significant alteration of the actual limitation system.

To avoid the problems bound to arise from the simultaneous existence later of the two legal instruments, a final clause should be inserted requiring States ratifying the new Convention to denounce the previous one.

Mr. Jeannel (France) said that his Government believed that the Conference would have considerable influence in developing shipping and in protecting parties injured in the course of shipping activities. The Conference had become necessary because some of the provisions of the 1957 Convention were now out of date.

The aim of the Conference was twofold: first, it had become necessary to revise the figures set in 1957 so as to take account of the general decline in the purchasing power of currencies and because the usual clause referring to the “Poincaré Franc” was no longer relevant. Whatever solution was adopted should be acceptable to the largest possible number of delegations, so as to avoid parallel systems and especially the need for further revision at a later stage.

Second, the Conference had to make certain adjustments; and in that connexion he felt that the text drafted by the Legal Committee of IMCO was an improvement in certain respects.

In Article 6, his delegation would like priority to be given to claims for damage to harbour installations. His delegation approved the idea expressed in Article 7 of a specific limit on passenger claims. However, in other matters and in particular in
Article 4, his delegation would prefer to retain the wording used in the French text of the 1957 Convention. He stressed that the problem of limits was of great importance, and that the Conference would not be able to make progress unless it had an idea of the figures involved fairly soon.

The Conference’s task, therefore, was to bring the 1957 Convention up to date; and it was his delegation’s view that, without being too revolutionary, the Conference must not remain too greatly attached to the past. It had to take account of current economic facts, including the capacity of the insurance market, so as to find workable and effective solutions and draft an up-to-date legal text on which general consensus could be reached.

Mr. Selvig (Norway) agreed with the remarks of the French representative, and said that his delegation agreed that the Conference must follow the approach suggested by the French delegation.

It had become necessary to revise the 1957 Convention, and the Legal Committee’s draft was of a higher legal and technical standard than the Convention of 1957, and was on the whole satisfactory. The new draft solved certain problems created by the adoption of new international conventions – such as the 1974 Athens Convention – and Article 7 provided a natural and appropriate solution to the problems arising from that Convention. Finally, it was necessary to revise the 1957 Convention because in practice “uninsurable” cases arose. One of the advantages of the IMCO draft was the consensus on the specific point that the limit of liability should be based on the principle of insurability.

That concept had two aspects: a technical aspect involving the capacity of the insurance market, particularly with respect to very large ships, and a practical aspect, involving the need for commercially acceptable insurance premiums. The limit of liability must be set so as not to create an unreasonable burden where insurance premiums were concerned.

Since 1957, there had been a depreciation in the real value of the amounts laid down in the Convention which now represented only 50 per cent of their original value. His delegation had in fact supplied the IMCO Legal Committee with statistics showing the effect on costs of raising the limits of liability, based on its country’s experience. It would have liked to have similar information, to which it attached great importance, from other delegations.

Those considerations led his delegation to conclude that it preferred the basic text of Article 6, starting from the principle that the Conference wished to arrive at a certain average limit of liability with respect to the ships covered. That also seemed to be the most economical solution. Some delegations had said that one disadvantage of the basic text of Article 6 was that it left no balance for claims for damage to property; but his delegation believed that claimants of that kind should indeed be given lower priority.

With respect to Article 4, concerning conduct barring limitation, the fairest solution would be to provide as high a liability limit as possible. Concerning the unit of account in the Convention, his delegation’s view was that Special Drawing Rights should be used.

His delegation thought it would be useful to provide for periodical revision of the limits laid down in the present Convention. Finally, it endorsed the view of those delegations which thought that the Conference should make a thorough examination of the basic principles underlying Articles 4, 6 and 7 and Article 15(2), all of which were closely linked and should therefore be considered at the same time.

Rear Admiral Bursley (United States) said that his delegation strongly supported the principle of global uniformity of limitation. It believed that there was a need to
raise the limits, which ought to be much higher than those in the 1957 Convention. Even doubling the amounts would merely mean a return to the original values with no progress at all.

His delegation was also concerned about how claims resulting from pollution, passenger claims and claims on small ships plying on inland waterways would be dealt with.

The fact that his country was not a Party to the 1957 Convention did not mean that it lacked interest in those matters. On the contrary, it was convinced of the need for a text which took account not only of the interests of shipowners, but of all injured parties.

Mr. Vogel (German Democratic Republic) agreed that there was a need to draft a new Convention acceptable to the largest possible number of States. In practice, the 1957 Convention had not solved certain problems, such as those concerning salvors and the limits of liability, and the text therefore ought to be revised. There was a need to think about raising the limit of liability, which should, as far as possible, be unbreakable. He drew attention to the fact that any increase in cost elements for shipowners caused by higher liability amounts would be reflected in the level of freight rates. The level of freight rates, however, was a matter which was permanently under criticism by groups of countries in the UNCTAD Committee on Shipping. That should be kept in mind when discussing financial figures.

The scope of application had to be seen in the light of the inter-relation of other conventions, such as the 1969 Civil Liability Convention and its possible extension to other substances.

Lord Diplock (United Kingdom) explained that his delegation thought that the Conference should try to set a maximum liability limit that could be insured at reasonable cost. It therefore proposed to make suggestions with respect to the figures to be included in the present Convention.

In that regard, his delegation had assumed that the Convention would apply to all claims with the exception of those arising from pollution, and that maximum liability limits would be unbreakable; in that connexion his delegation supported the present drafting of Article 4.

In Article 6 his delegation proposed to set the liability limit at $500 per ton up to 70,000 tons and at $250 per ton beyond that figure, and to divide that sum up in the proportion of 3 to 1: out of every $500, $375 would be allocated to bodily injuries and $125 to damage to property.

With respect to Article 7, to which his delegation attached considerable importance, he proposed that the figure set should be the same as that in the Athens Convention namely $52,000 per person with a maximum of $40 million for passenger claims. [214] Finally, he stressed that all those matters were connected and that, if Article 4 did not provide for virtually unbreakable limits, there would be repercussions on the insurance market.

Summary Record of the Second Meeting
2 November 1976

The Chairman invited general statements on the subject of the draft Convention.

Mr. Bendjenna (Algeria) said that his delegation regarded the text prepared by the Legal Committee as a useful basis for elaborating a Convention which would be universally acceptable. In the opinion of Algeria, as a Party to the 1957 Brussels
Convention, the liability ceiling was too low and should be raised. However, since such an action would have consequences affecting insurance premiums – and hence the costs borne by shipowners – care should be taken to arrive at a figure acceptable to all concerned.

Mr. Bentein (Belgium) described his Government as having always been in favour of the principle of limitation of liability for the shipowner and for those associated with him. His delegation considered that the text drafted by the Legal Committee would be a valid basis for negotiation at the Conference; it was in many respects an improvement on the 1957 Convention. Although a number of delegates had expressed regret that the Convention should need revision barely eight years after its entry into force, he believed that such a revision should be welcomed if it made the Convention acceptable to a larger number of governments.

His delegation was anxious that the Conference should seek solutions which would not endanger the interests of independent shipowners, avoiding, for example, the fixing of amounts which might prove uninsurable or which might result in excessive costs, thus reducing the capacity of owners to compete in commercial terms. The problem facing the Conference was a difficult and delicate one, and it might in the end be necessary to develop solutions which would satisfy no one completely. It should be borne in mind that whatever scheme for the limitation of liability was adopted, that scheme would be dealing only with exceptional cases, it was to be hoped that cases involving large-scale compensation would become less frequent as a result of IMCO’s valuable work in the field of accident prevention.

In regard to actual amounts, his delegation was chiefly concerned with three questions: first, the question of low tonnage ships with a high passenger-carrying capacity. It was important to choose a maximum figure which bore some relation to the reality of the situation. He would expand that point further when the Committee came to discuss Article 7 in detail. Secondly, there was the question of fishing vessels, which were now to be included in the Convention under the provisions of Article 15(2)(c). The limitations established should be minimum ones which took due account of the owner’s financial situation. Thirdly, there was the question of port authorities, which were not necessarily State-owned bodies with unlimited resources, and whose port charges were designed to cover the normal costs of port operations not to meet exceptional expenditure occasioned through the default of shipowners. His delegation believed that such authorities should be given priority treatment, on a basis comparable to that adopted for property claims. He disagreed with the exclusion of claims by port authorities from the 1957 Convention and felt that proper provision for such claims should be made in the revised text.

On the question of the structure of the system of limitation of liability, his delegation preferred the basic text of Article 6 as offering claimants the best opportunity to receive adequate compensation at an economic price. He would like both Article 4 and Article 6 to be dealt with as early as possible in the course of the Conference, in order to facilitate reaching agreement on the figures involved. His delegation would favour the inclusion of a special clause providing for the limitation amounts to be brought into line with cost-of-living increases, if the units of account system proved inadequate for that purpose. In conclusions his delegation saw no need to provide for a compulsory insurance system, as had been proposed by some countries.

Mr. Nair (India) said his country, as Party to the 1957 Convention, accepted the need for a revised Convention in view of the many developments in the maritime world
since 1957. The Legal Committee’s draft text would provide a useful basis for that
revision.

Although his delegation did not wish at the present stage to propose precise limits
on liability, it believed that certain fundamental principles should be borne in mind.
The revised limits should be capable of being insured at reasonable cost, without
undue impact on the cost of services provided by owners. The right to the limitation
of liability should be as far as possible unbreakable, and to that end the imposition
of preconditions should be reduced to a minimum. The computation of liability on the
basis of tonnage should be in accordance with a three-tier system rather than a
two-tier one, so that in the case of ships of very high tonnage total liability was
maintained within reasonable limits. In addition to the limits fixed on the basis of
 tonnage, there should be a limit on the maximum amount of liability resulting from
any single incident, as was the case under the International Convention on Civil
Liability for Oil Pollution Damage, 1969. While personal claims should be accorded
priority, there should be a limit to such claims beyond which property claims should
also be considered. Finally, Contracting States should be free to regulate the
application of the Convention by national law to suit national conditions.

Mr. Tanikawa (Japan) said that the main object of the revision of the Convention,
in his delegation’s view, should be a substantial increase in the limitation of liability to
a figure approximately double that of the 1957 Convention. With regard to Article 6,
Japan supported the alternative text, and felt that limitation of liability for personal
claims under that Article should be double that of the 1957 Convention; for other
claims, it should be either double or one and a half times that of the 1957 Convention.
The consequence of such an increase would be that maximum limitation of liability, in
the case of personal and other claims occurring simultaneously, would become
approximately two and a half times more than under the 1957 Convention.

On the question of minimum tonnage, his delegation proposed a minimum of
5,000 tons so as to retain full compensation in cases of small-scale damage in
connexion with P and I insurance coverage.

His delegation believed that the per capita limitation in Article 7 was unnecessary,
because where passenger claims were concerned the carrier’s maximum liability for
each passenger ship was already clear from the passenger list, as well as from the
provisions of the Athens Convention and of the relevant national legislation. Only in
connexion with insurance market capacity was a global limitation for catastrophic
cases necessary. $30 million to $50 million might be a suitable figure for the amount
of such a global limitation.

His delegation could agree to the adoption of Special Drawing Rights for units of
account. With regard to Article 4 it agreed in principle with the view expressed the
previous day by the representative of the Federal Republic of Germany. The global
limitation system was completely different from the limitation system relating to
contractual relationship, and the principle of unbreakability for carriers by air was not
applicable to it. His delegation supported the retention of the words in square
brackets in Article 4, since it recognized the ambiguity of the concept of actual fault
or privity.

He stressed the need to give careful consideration to the relationship between the
revised Convention and the 1957 Convention, in order to facilitate an early unification
of national laws relating to the limitation of liability of shipowners.

Mr. Perrakis (Greece) also thought that the text produced by the Legal
Committee would provide an excellent basis for the Conference’s work. He supported
the suggestion made earlier that it would be easier to reach final agreement if Articles 6 and 7 were first considered in their entirety.

He feared that it would be difficult to reach a solution which was both fair and in accordance with the facts of the situation. Some of the figures proposed would produce very inequitable results, leading in effect to the subsidizing of super-tankers [217] by shipowners as a whole. Such an incentive to build very large tankers did nothing to lessen the risks of pollution and the consequent dangers to the environment. The Japanese delegate’s proposal to raise the minimum tonnage to 5,000 tons would similarly harm the interests of owners of small vessels by increasing their insurance coverage disproportionately, and thus tending to price them out of the market. The Conference should take great care before adopting any such measures.

Mr. Vonau (Poland) expressed appreciation of the valuable work done by IMCO’s Legal Committee and by the CMI in preparing the revised text of the Convention.

His delegation was not opposed in principle to a substantial increase in liability limitations, but agreed with the Netherlands representative that such an increase should not exceed reasonable levels. With regard to the limit for passenger claims (Article 7), it should be based on the number of passengers actually carried on board the vessel rather than on the number of passengers the vessel was authorized to carry according to its certificate.

The concept of units of account should be based on two main principles: first, it should be applicable to all States Parties to the Convention, including States which were not members of the International Monetary Fund (IMF); secondly, a settlement based on units of account should have approximately equal value in all countries.

The Chairman said that general statements were now concluded, and invited delegations to begin consideration of the text of the draft Convention.

A number of representatives had expressed the wish to start with discussion on basic issues namely, the limits as defined in Articles 6 and 7. However, she felt that it might be preferable to begin with Article 1, discussing at the same time Article 15(2)(a). The Committee would then proceed to Articles 2 and 3, and then deal rapidly with Article 5 before tackling the basic issues contained in Articles 4 and 6 (which would be discussed simultaneously). She invited comments on her proposed schedule of work.

Mr. Ganten (Federal Republic of Germany) asked whether it was possible to have some indication of the day on which the Conference would be discussing the question of units of account, since his delegation included financial experts who would be travelling from the Federal Republic of Germany especially to participate in the discussion on that specific subject.

The Chairman suggested that the Committee defer discussion of that question until it had before it the document setting out the schedule of work which she had outlined.

Mr. Tanikawa (Japan) said that his delegation wished to submit amendments to Articles 2 and 3. They would be ready for circulation by the end of the day, but he wondered whether they could be submitted orally at the present meeting.

The Chairman thought it preferable to wait until the amendments were available in document form. As a number of delegates had pointed out an interrelationship between some provisions in the early and the later parts of the draft Convention and had stated that their attitude would depend on the solutions adopted in respect of the later provisions, she proposed to take only indicative votes at the present stage.

It was so decided.
The Chairman requested representatives to hand in proposals for amending Articles to the Secretariat within the following time-limits: proposals on Articles 2 and 3 before lunch, proposals on Articles 4, 5, 6 and 7 by the end of the day, and proposals on Articles 8 et seq. as soon as possible. In reply to a question from Mr. Lanchin (United Kingdom), she said that her request covered proposals for figures to replace the letters in square brackets in Articles 6 and 7, to the extent that delegations were able to submit them. For practical purposes, limits of liability would, for the time being, be discussed in terms of United States dollars.

Mr. Selvig (Norway) asked whether the time-limit for proposals concerning figures could be extended slightly.

The Chairman replied that if representatives were not ready to propose figures, they could do so at a later stage provided their other proposals concerning Articles 4 to 7 were handed in before the end of the day.

**Summary Record of the Twenty-Third Meeting**

*16 November 1976*

The Chairman said that, apart from its action on the matters dealt with in document LEG/CONF.5/C.1/WP.82, the Committee had taken tentative decisions on the draft Articles which would now have to be confirmed. That flexible approach had been valuable, since it had enabled the Committee to avoid taking firm decisions on certain issues without regard to their possible repercussions on other related issues. She suggested that the Committee should now go through the draft Convention and take definite decisions on each Article, including any amendments, and any issues still outstanding; the text as approved would then be sent to the Drafting Committee. Proposals which the Committee had rejected in its tentative decisions should be considered as withdrawn, unless any delegation felt that a particular proposal warranted a firm vote.

*It was so decided.*

**Summary Record of the Fourth Plenary Meeting**

*18 November 1976*

Report of the Committee of the Whole (LEG/CONF.5/WP.9)

Ms. Blom (Sweden), Chairman of the Committee of the Whole, introduced the Report. She said that the Committee had considered the Report of the Drafting Committee (LEG/CONF.5/C.3/1 and LEG/CONF.5/C.3/1/Add.1), and had approved the draft texts contained therein, subject to certain modifications and comments which were set out in LEG/CONF.5/WP.9. A few substantive issues had been raised, which had not been dealt with by the Committee but had been left for the Plenary to decide.

The Committee had not examined the results of the work of the Final Clauses Committee. However, it had given consideration to two important questions raised by

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(12) The Report of the Drafting Committee consists of the Draft International Convention on Limitation of Liability for Maritime Claims prepared by it (Official Records, pages 449-465). This Draft is published in Appendix VII and all changes as respects the previous Draft in Appendix VI are shown in bold type.
the texts of the Final Clauses; first, the provisions for revision of the limitation amounts contained in draft Articles 6, 7 and 8, paragraph 2, of the Convention, and secondly the requirements for entry into force of the Convention. Concerning the first question, the Committee had approved a text for a special Article dealing with revision of the limitation amounts, which, if approved by the Plenary, would necessitate certain consequential amendments to draft Article 21. Concerning the second question, the Committee had recommended that the provision on entry into force as recommended by the Committee on Final Clauses, should be amended so that twelve ratifications would suffice to bring the Convention into force. The Committee of the Whole had also recommended that there should be no “tonnage requirement” for the entry into force.

The Plenary was invited to consider the texts of the substantive Articles prepared by the Committee of the Whole and drafted by the Drafting Committee, contained in LEG/CONF/5/C.3/1, LEG/CONF/5/C.3/1/Add.1, and LEG/CONF/5/WP.9.13

The President invited comments on the text of the Draft Convention – contained in the Report of the Drafting Committee (LEG/CONF/5/C.3/1 and LEG/CONF/5/C.3/1/Add.1).14 Since the text had already been extensively discussed at the Committee stage, he urged that, in view of the short time available, debate should be kept to a minimum.

Summary Record of the Fifth Plenary Meeting
19 November 1976

[496] Testimonium

The President proposed that the Conference approve the Testimonium of the Convention.

The Testimonium was adopted unanimously.

The President called for a vote on the Convention as a whole, as amended.

The Convention on Limitation of Liability for Maritime Claims was adopted by the Conference (34 Votes in favour, none against, and 6 abstentions).

Mr. Yanagi (Japan) explained his delegation’s reasons for voting in favour of adoption of the Convention, despite its failings. Those failings were, first, the disappointing formulation of Article 4, particularly in its treatment of gross negligence; secondly, the unsatisfactory minimum figure for the limitation of liability in regard to small ships particularly; thirdly, the adoption of the 1969 method of calculating tonnage measurement, the effect of which would be to cover ships excepted under the 1969 Convention. Where a construction plan was allowed for measurement purposes, actual tonnage might be very different and difficulties would arise in the courts. He also noted that insufficient time had been given for discussion of the formulation of Article 3(c) submitted by Sweden and adopted, and it was not as clear as it might be. His delegation interpreted the provisions as not precluding the possibility that claims in respect of damages caused by nuclear fuel or radioactive...
products or radioactive wastes carried by ordinary traditional ships might be excluded from the application of the Convention. Nonetheless, the Convention had merit and commended itself to his delegation: first, for the substantial increase in the limitation of liability, particularly as passenger claims were separately provided for; secondly, because of the change of Unit of Account to SDR; and thirdly, because with its clearer wording it resolved many of the practical problems met with in implementing the 1957 Convention.

Mr. Montesino (Cuba) wished it to be noted that his delegation’s participation in the Conference and vote in favour of the adoption of the Convention should not be interpreted to mean that his Government was in any way agreeing to any derogation from the principle of full immunity for State-owned ships engaged in commercial activity.

In his delegation’s view, such ships should not be liable to proceedings in the courts of another State, except in accordance with the terms of bilateral agreements.

Ms. Blom (Sweden) explained that her delegation had voted for the Convention although it had abstained from voting on Articles 6 and 21.

The purposes of a system of limitation of liability were to protect persons against losses too catastrophic to insure at reasonable premiums, and to guarantee that compensation would in fact be available to claimants. The retention of a viable system, worldwide and applicable in principle to every kind of claim called for a substantial increase over 1957 Convention rates and also for provisions relating to adjustment of the new amounts on account of changes in monetary values. While her delegation did not consider the new Convention wholly satisfactory, it regarded it as a great improvement on the existing regime. Accordingly, her delegation hoped that the Convention would soon be put into effect and with that in mind had voted for it.

Mr. Selvig (Norway) said that the breadth of support given to the work of the Conference suggested that the new Convention would be a viable instrument and help solve international shipping problems better than the existing system. It represented a considerable improvement on the 1957 Convention, notwithstanding its shortcomings. Those were that limits of liability should be higher, on the principle that liability should be insurable at reasonable rates within market capacity; the arrangements for ships of 500 tons or less and the limits applicable in the lower tonnage ranges were unsatisfactory; non-maritime interest was not adequately provided for. Those were difficulties which would have to be faced at a later stage but were not weighty enough to prevent his delegation from voting in favour of the adoption of a long overdue replacement for the 1957 Convention.

Mr. Nada (Egypt) recalled that his delegation had stated its objection to the provisions on claims for damage to harbour works, etc. He did not agree to the departure from the 1957 solution in that regard. His delegation had not participated in the voting for the adoption of the Convention as a whole, because it believed that the provisions of the new Convention weighed heavily in favour of shipowners. However, the Convention would be seriously considered by the competent authorities in Egypt which would determine, in the light of their consideration, whether or not to accept and accede to the new Conventions.

Mr. Bursley (United States) expressed regret at his delegation’s need to abstain from the vote on a Convention, the text of which was in many ways superior to that contained in existing United States legislation. Indeed, his Government would be able to benefit from the work done in London. However, the limits set in Article 6 were far too low, and not sufficient account had been taken of a concept of commercial
insurability which had been the dominant principle in the preparations for the Conference. His delegation regarded such factors as being material deficiencies which would prove shortsighted in the long run.

The President, while recognizing that the new Convention, like all such instruments resulting from a compromise of conflicting views, was not perfect, felt that it was a matter for congratulation that the Conference had achieved its objective with a generally acceptable instrument. That it had done so was due to a combination of flexibility, capacity for hard work and goodwill on the part of all delegations. He congratulated all delegations for their co-operation and spirit of compromise.
Chapter I
THE RIGHT OF LIMITATION

Article 1
Persons entitled to limit liability

General comments

Comité Maritime International
Hamburg Conference, 1974
Second Report of the Chairman

[18] Persons entitled to limit Liability

In the Maxi Draft submitted to the Committee it was suggested that the right of limitation of liability should be accorded not only to operators (owner, charterer, etc.) and their servants, but also to other persons rendering services in direct connection with the operation of the ship, such as stevedores and salvors, and also to the owner, shipper or receiver of goods carried in the ship. Reasons for this suggestion are given in the First Report (LIMIT-14).

The Committee was not in favour of such a radical change. However, it was unanimously agreed to grant the benefit of limitation to pilots who are not servants of the operator (compulsory pilotage), and to salvors who cannot, under the terms of the present Convention, invoke limitation of liability based on the tonnage of a salvaging vessel (*The Tojo Maru* [1971] 1 Lloyds Rep. 341). Such salvors should have the right to limit on the basis of the tonnage of the ship to which assistance is rendered. It was left to the Drafting Group to implement this solution by amendments to Article 1, paragraph 1, and Article 6, § 2, of the Convention.

The Drafting Group found that in order to protect salvors who are operating outside the ship it would be necessary to change the proviso in Article 1, § 1° b), but this could hardly be done for salvors only. The Group decided to insert the words “in direct connection with the operation of the ship” instead of the words “in the navigation, etc.”. It is fully realized that this is an extension of the right of limitation, but in keeping with the intention of the Committee.

The Committee also decided to introduce limitation of liability for preventive measures in the same way as in the Oil Pollution Convention (1969), and this has been done by adding a new subparagraph d).

In Article 6 § 2 it is proposed to add the words “to pilots and salvors rendering services to a ship” and to delete the proviso regarding aggregation of claims which will be substituted by a new § 3, see below under Aggregation of Claims.

It was agreed to have an express provision to the effect that an insurer of liability may invoke limitation to the same extent as the assured himself, for reasons mentioned in the First Report. This is said in a new § 4 of Article 6.
The new proposed texts of Article 1 § 1 and Article 6 §§ 2 and 4 appear in Sections 2 and 7 of the Draft Protocol.

If it is decided to replace the present Convention by a new convention instead of amending it by way of a protocol, the Committee is in favour of the systematic order of the Working Paper in which the subject of persons entitled to limitation has been dealt with in WP Article 1.

The tenor of §§ 1 to 3 of WP Article 1 is that the right of limitation shall be accorded to the same persons as set out in the Protocol, but the term salvage has been given a definition which specifically includes wreck raising, etc. and preventive measures. A minority of the Committee wanted to bestow the right of limitation on all persons who render services in connection with the operation of the ship although they are not the servants of the operator. The majority was in favour of only including persons rendering services in direct connection with the navigation of the ship. This would apply to pilots in compulsory pilotage and, for instance, to shorebased personnel assisting a ship during berthing. A substantial minority wanted to include all persons rendering services in direct connection with the management or the loading, stowing or discharging of the ship, and this proposal has been put in square brackets in § 2.

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[3] 13. The discussion of the persons to whom the right of limitation is accorded centered on the persons not comprehended in the 1957 Convention, since shipowners, operators and charterers covered by the earlier treaty would also retain the right of limitation under the new draft.

[4] 14. Of those not covered by the 1957 Convention, two categories discussed are also not included in the draft articles: first, the category of certain “contractors” such as owners, shippers and receivers of cargo. It was explained that the CMI decided not to extend the circle of limitation in this regard, owing to the complexity of possible effects on insurance costs and the implications of such extension on non-maritime activities. The second category consists of persons rendering service in the “loading, stowing or discharging of the ship”, a category which falls outside the scope of the concept of “management” of a ship as found in the draft articles. The inclusion of such persons was not agreed in the CMI deliberations, although the matter was discussed there, and some States are understood to extend the right of limitation to such persons.

Paragraph 1

Hamburg Draft Convention
Introductory Report to IMCO

PERSONS ENTITLED TO LIMIT LIABILITY

1. SHIPOWNERS AND SALVORS, AS HEREBINAFTER DEFINED, AND ANY PERSON FOR WHOSE ACT, NEGLIGE OR DEFAULT THEY ARE RESPONSIBLE, MAY LIMIT THEIR LIABILITY IN ACCORDANCE WITH THE RULES OF THIS CONVENTION FOR CLAIMS SET OUT IN ARTICLE 2.
For a clear understanding of the history of this provision it is necessary to consider that the words "and any person for whose act, neglect or default they are responsible" are now the subject of a separate provision in paragraph (4) of article 1.

[392] It is proposed that limitation of liability shall be retained for owners, operators and charterers as in the 1957 Convention, and that the right shall be extended to certain persons rendering services in direct connection with the navigation or management of the ship (§ 2), and to salvors (§ 3).

During the preparation of the CMI Drafts it was proposed that certain “contractors” who are exposed to limitable claims should also be protected, notably owners, shippers and receivers of cargo carried in the ship. They may incur liability for the hazardous properties of the goods, etc., and such liability is sometimes a strict (absolute) liability as in Article 4.6 of the Hague Rules. Claims against such contractors should not be aggregated with claims against the owner or operator, etc., but be satisfied out of a separate fund. However this proposal was rejected by the International Sub-Committee and it was not raised again at the Conference.

Under the 1957 Convention (Article 6) “servants” of the owner, etc. “acting in the course of their employment” are entitled to limit their personal liability in the same way as their principal. The idea is that a person for whom the principal is responsible shall be able to limit; otherwise the principal’s own protection may be impaired. It was suggested to replace the word servants by the wider term “servants or agents”, but it was felt that “agents” might include persons for whom the principal has no vicarious liability. It was also pointed out that the restrictive words “acting in the course of their employment” were too narrow, for instance in the case where the shipowner is held liable for the crew acting outside their employment.

[394] The solution adopted in the Draft is to relate the employee’s right to limitation directly to the fact that the principal is responsible for his “act, neglect or default”.

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[2] 10. It was generally agreed that a salvor should be entitled to limitation of liability rather than being compelled to seek indemnification. In particular a revision of the 1957 Convention would remedy the anomalous situation revealed in the Tojo Maru case where a salvor not working from a ship was deprived of limitation.

Draft Articles

1. SHIPP OWERS AND SALVORS, AS HEREOFATTER DEFINED, MAY LIMIT THEIR LIABILITY IN ACCORDANCE WITH THE RULES OF THIS CONVENTION FOR CLAIMS SET OUT IN ARTICLE 2.

Diplomatic Conference

Committee of the Whole
Summary Record of the First Meeting
1 November 1976

[218] The Chairman noted that the Canadian delegation had submitted an amendment to paragraph 1 (LEG/CONF.5/C.1/WP.5),1 and enquired whether the Canadian representative wished it to be discussed at the present stage.

(1) See note 6.
Mr. Carvell (Canada) said that he had intended putting forward his proposal in connexion with paragraph 3, to which his delegation had also submitted an amendment (in the same document), restricting the definition of salvor to a person “not operating from a ship”. Paragraph 1 would then include salvors only “when sued by a shipowner”, as that would restrict to the bare minimum the extension of the Convention’s provisions to salvors, which would be more equitable. Salvors operating from ships would be entitled to limit their liability in the regular way.

The Chairman asked the Canadian representative whether the two proposals were independent, as they did not seem to her to be of the same scope.

Mr. Carvell (Canada) confirmed that the two proposals were independent, but both had the same aim – namely, to define salvors as persons not operating from a ship; for if they were operating from a ship, they could be included in paragraph 2 under shipowners.

The Chairman felt that the effect of the Canadian suggestion for paragraph 1 would be that salvors would not be entitled to invoke limitation if they were salvors as defined in the Canadian proposal for paragraph 3. She suggested discussing the Canadian proposal in connexion with paragraph 3 and, depending on the outcome, returning to paragraph 1 if necessary.

Paragraph 1 was provisionally approved.

Draft International Convention

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.

Summary Record of the Twenty-third Meeting
16 November 1976

[386] Article 1 was approved, subject to two drafting questions referred to the Drafting Committee (35 votes in favour, none against, and 1 abstention).

Summary Record of the Twenty-sixth Meeting
18 November 1976

[405] The Chairman invited the Committee to continue reviewing the text of the Drafting Committee’s report (LEG/CONF.5/C.3/1 and LEG/CONF.5/C.3/1/Add.1),

(2) The text of the report (pages 449-465) is the following:

[449] Report of the Drafting Committee
1. In accordance with a decision by the Plenary, a Drafting Committee, composed of representatives from the following governments, was established:
   Argentina     Netherlands
   France        Norway
   Greece        Spain
   India         USSR
   Japan         United Kingdom
   Liberia       United States

The representative of Spain did not participate in the Drafting Committee.
2. The Drafting Committee met on 15 and 16 November 1976 under the Chairmanship of Mr. R. Cleton (Netherlands).
3. The draft Articles approved by the Committee are reproduced in the Annex.
in order to assess whether it faithfully reflected the substantive decisions which the Committee had taken.

[406] The present discussions, at that stage, in the Committee’s deliberations, should focus on questions of drafting, any substantive questions henceforward being treated as matters to be raised at the Plenary Conference.

There were no comments.

1976 Convention

1. SHIPOWNERS AND SALVORS, AS HEREAFTER DEFINED, MAY LIMIT THEIR LIABILITY IN ACCORDANCE WITH THE RULES OF THIS CONVENTION FOR CLAIMS SET OUT IN ARTICLE 2.

Paragraph 2

Hamburg Draft Convention
Introductory Report to IMCO

2. THE TERM SHIPOWNER SHALL INCLUDE THE OWNER, CHARTERER, MANAGER AND OPERATOR OF A SEA-GOING SHIP, AND ANY PERSON RENDERING SERVICE IN DIRECT CONNECTION WITH THE NAVIGATION OR MANAGEMENT OF THE SHIP.

[394] The term shipowner is used in a purely technical sense, including “the owner, charterer, manager and operator”, the same persons who enjoy limitation under the 1957 Convention.

In addition, this paragraph extends the right to “any person rendering service in direct connection with the navigation or management of the ship”.

The extent to which independent contractors, employed by the operator, but for whose acts he is not liable, should be protected by limitation of liability has been the subject of extensive discussion within the CMI. It was suggested that such protection should be given to “any person rendering service in direct connection with the operation of the ship” or, alternatively, “any person rendering service in direct connection with the navigation, management, or the loading, stowing or discharging of the ship”. The first alternative was rejected by the International Sub-Committee and not raised again at the Conference. With respect to the second alternative a majority in the Sub-Committee only favoured the inclusion of “the navigation of the ship” and this was also the outcome in the Commission. In the Plenary Session of the Conference, however, the text as it now stands was carried with a substantial majority.

The inclusion of the words “in direct connection with the navigation...of the ship” means that pilots can always limit their liability whether the shipowner is responsible for them or not (compulsory pilotage). The same applies to shorebased personnel who render navigational aid to the ship, berthing masters etc.

The word “management”, which is also used in Article 1, § 1 (b) of the 1957 Convention, is more difficult to construe in the light of the solutions favoured by the Conference. It is quite clear that loading, stowing and discharge fall outside the scope of the term. It is equally clear that a ship repairer who renders service to the ship whilst
it is out of commission (lying at the yard, etc.) cannot limit his liability pursuant to this provision. On the other hand, travelling ship repairers rendering service whilst the ship is in operation are covered by the words “in direct connection with the management of the ship”.

The term “management” may not be the best expression of the thought which lies behind it, but it is strongly felt by a majority in the CMI that the term “navigation” alone is too narrow.

A person who is deemed to be rendering service “in direct connection with the navigation or management of the ship” can invoke limitation of liability for all limitable claims, not only for claims arising out of the service rendered. A travelling ship repairer who takes a turn as a helmsman can limit his liability for his default as such.

The Draft, like the 1957 Convention, does not define the term “sea-going ship”. The dividing line between such a ship and an “inland navigation vessel” (subject to the Geneva Limitation Convention of 1973) must be drawn in accordance with traditional criteria.

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**Twenty-third Session**

15. Of the persons to whom this draft article provides the right to limit liability, the discussion concentrated on those “rendering service in direct connexion with the navigation or management of the ship” (notably the pilot, (compulsory or otherwise) berthing master or similar navigational personnel) the salvor, persons for whom a principal is responsible for “act, neglect or default”, and, finally, the insurer of liability for claims subject to limitation under the draft convention.

16. The Legal Committee examined the extension of the right of limitation to the above-mentioned persons in the light of the special characteristics of maritime risks. Members of the Legal Committee were generally agreed that the insurer, the salvor and the pilot would, in the circumstances foreseen in the draft, benefit from limitation, but some were of the opinion that the “management” concept might be given more precision, and that attention might be paid to the impact on limitation of “hold harmless” clauses in contracts. A clause having the effect of nullifying such clauses might be considered. A view was expressed that the term “sea-going” ship should for these purposes be taken to refer to commercial vessels but should not include pleasure craft. Some delegations suggested that the term “sea-going ships” should be replaced by another term which would clearly indicate that the convention would also apply to vessels, such as harbour tugs, which did not operate in the open seas.

**Twenty-fifth Session**

8. Discussion of Article 1 at the twenty-third session had centred on the question of whether, and to whom, the right of limitation should be extended apart from the shipowner, manager or operator and whether it would be necessary or desirable to specify the type of craft comprised in the concept of the “sea-going ship”.

11. A majority of the Committee did not favour defining the term shipowner to include a “person rendering service in direct connexion with the navigation or management of the ship”, considering the language in paragraph 2 too broad. Travelling ship repairers, tank cleaners, husbanding agents and others who might be
involved in some aspects of “management” fell into a vague category which should not, in the general view of the Committee, be embraced in the term “shipowner” for limitation purposes.

[3] 17. The Legal Committee had earlier discussed, in connexion with draft Article 1, the view of some delegations that a clear meaning of “sea-going ship” might be essential. One delegation proposed at the present session that “ship” should be defined, if for no other reason because “salvor” might mean the salvor of other than a sea-going ship (see Annex II)3 In the view of this [4] delegation certain ships, including those in non-commercial service and pleasure craft, might better be excluded. Moreover, some places such as inland waterways and estuarine areas might be placed outside the scope of the treaty by carefully defining “ship”. 

18. The Committee, although grateful for the proposal advanced for a definition of “ship” and the opportunity to discuss it, wished to give the matter further study. Problems of certainty were perceived in determining what would be comprised in the concept of “commercial” and how, or by whom, the intended uses of a ship would be established. Some delegations did not wish either non-commercial or pleasure craft to be excluded from limitation, preferring, if necessary, a minimum tonnage as the criterion for excluding ships for which the Convention would be inappropriate. Some other delegations questioned whether Article 8 of the 1957 Convention should not be reincluded in the draft Articles, giving States Parties to this Convention the option to apply it to non-seagoing ships.

19. Other delegations pointed out that it would be helpful to know which forms of novel craft, such as air-cushion vehicles and floating platforms, would fall within or outside the definition.

20. One delegation observed that the exclusion of a category of ship – especially one which would normally be sea-going – could interfere with the operation of the balance of fault in cases of proportional liability, as, e.g., a collision governed by the 1910 Convention between a pleasure craft and a cargo ship on commercial service.

21. It was thought by several delegations that a tonnage formula should be sought for those ships which it may be necessary to except from the application of the Convention. Vessels with a tonnage of 20-30 gross tons or less were mentioned in this context.

Draft Articles

2. THE TERM SHIPOWNER SHALL INCLUDE THE OWNER, CHARTERER, MANAGER AND OPERATOR OF A SEA-GOING SHIP.

(3) The text of Annex II is the following:
Proposal by the delegation of Belgium
It is proposed that the following paragraph be added:
“Ship” means any vessel operated on a commercial basis and used principally, or intended to be used principally, for carriage and movement by sea.
Diplomatic Conference

Committee of the Whole
Summary Record of the Second Meeting
2 November 1976

[219] Mr. Vonau (Poland) proposed the addition, at the end of the paragraph, of the phrase “and any person rendering services in direct connexion with the navigation of the ship”. That would eliminate doubts as to whether shipowners could limit their liability in connexion with compulsory pilots, for example.

Mr. Quigley (Ireland) seconded that proposal, and himself proposed the addition of the words “or management” after navigation. If that amendment were not included, attempts might be made to sue persons providing service in connexion with the ship rather than the shipowner. For example, the pilot or a ship repairer might not be regarded as a servant of the shipowner under certain jurisdictions, but the shipowner would have to assume that liability in court.

The Chairman suggested that, in consideration of the difficulty that existed, at the beginning of a Conference, of having proposals circulated in writing a day in advance of discussion, the Polish and Irish oral amendments should be discussed, provided there were no objections.

Mr. Perrakis (Greece) submitted, as a general principle, that the oral proposals might be discussed insofar as they were simple ones, but that it was essential for complicated proposals to be circulated in writing in advance.

Mr. Rein (Observer, CMI), speaking at the Chairman’s invitation, said that the Irish amendment was merely a proposal to re-insert in paragraph 2 a phrase which had been included in the original CMI draft but which had been rejected by the Legal Committee. The Polish proposal restricting the provision to navigation only, would not only cover compulsory pilotage but land-based personnel such as berthing masters.

Mr. Wiswall (Liberia) said that the Polish and Irish proposals touched on the important point of principle of whether limitation of liability should be extended to include persons other than the shipowner. As regards compulsory pilots, for instance, they were always authorized, and often employed, by public authorities, which had the power to impose taxes and were in a better position to protect their employees. To include such pilots within the scope of the Convention would mean that shipowners would have to pay insurance and underwriters assess the risks in respect of persons not employed by or responsible to the shipowner. His delegation was, therefore, opposed to the Polish and Irish proposals. The question of suing in connexion with compulsory pilots could be covered by Article 2. Moreover, the wording of the Irish and Polish proposals was too vague and could lead to an indefinite expansion of the scope of the Convention.

Mr. Perrakis (Greece) noted that there were some ports where in cases of compulsory pilotage, shipowners had to offer a disclaimer excluding the pilot from the limitation of liability. That meant excess liability had to be paid for out of the shipowner’s own pocket. He was inclined to support the Irish proposal; but if it was considered to be too wide in its application, perhaps some intermediate solution could be devised.
The Chairman reminded delegates that New Zealand had made a similar proposal concerning the pilot (LEG/CONF.5/4/Add.3, p. 108). The question of the scope of paragraph 2 of Article 1 had been discussed at great length by the Legal Committee on the basis of the original CMI draft, but the CMI proposal had been rejected.

Mr. Douay (France) indicated that, as a point of drafting the word “comprend” in the first line of the French text, should be replaced by the word “désigne”.

As regards the Irish proposal to retain the words of the original CMI text, he agreed with the comments of the Liberian representative. The concession of limitation of liability should not be granted to all kinds of people who rendered services to the ship, even if concerned with navigation, and certainly not to repairers. Moreover, paragraph 4 of Article 1 clearly stated that, where claims were made against any person for whom the shipowner or salvor was responsible, such person would be entitled to avail himself of the limitation of liability. Pilots should not be included in the provisions of the Article, since certain national legislations did, in fact, make the owner responsible for pilots; in such cases that national legislation would operate and shipowners would protect themselves accordingly. The agreement to include salvors in the draft was already an extension of the 1957 Convention, and his delegation was not in favour of extending it further.

Mr. Bursley (United States) said that his delegation could not support any further addition to the persons entitled to limitation of liability and had only agreed to the extension to salvors because of the wide support it had received in the Legal Committee. It could not, therefore, support the Polish proposal, as it was too broad and would include more persons than compulsory pilots.

The question of whether to include the term “sea-going” would have to be discussed again in connexion with Article 15.

The Chairman, noting that the Irish proposal had received little support, asked whether the Irish representative wished an indicative vote on his proposal.

Mr. Quigley (Ireland) replied in the affirmative.

The Chairman called for indicative votes on the Irish and Polish proposals. There were 3 votes in favour of the Irish proposal, 23 against and 6 abstentions. The proposal was accordingly rejected.

There were 8 votes in favour of the Polish proposal, 16 against and 11 abstentions. The proposal was rejected.

Mr. Hermes (Australia) expressed reservations concerning the word “sea-going” in paragraph 2, but said they were contingent on the Conference’s action on Article 15, paragraph 2(a).

The Chairman proposed to take Article 15(2)(a) before dealing with the word

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(4) The relevant part of document LEG/CONF.5/4/Add.3 is quoted below:

Article 1 in its present form is acceptable to the New Zealand Government. However, it is the New Zealand view that consideration might usefully be given to making express reference to limitation of liability in respect of the actions of a pilot. Although the position in New Zealand is that the shipowner is responsible for the actions of the pilot, and thus would derive the benefits of limitation from the proposed Convention, it is considered that the Article should be extended to ensure that, in other jurisdictions where the shipowner may not be responsible for the actions of the pilot, the shipowner can still retain the benefits of limitation of liability.
“sea-going” in Article 1(2). She drew attention to the Australian and Swedish proposals on pages 65 and 66 of document LEG/CONF.5/4.5

[221] Mr. Hedborg (Sweden) explained that his Government had proposed the deletion of the word “sea-going” from Article 1(2) so that the Convention would apply to all vessels, and it would be left to governments to decide whether special national regulations were necessary for ships used for navigation on inland waterways. There might be vessels which were used for both ocean-going and inland navigation.

Mr. Vonau (Poland) supported the Swedish amendment.

Mr. Cleton (Netherlands) said that if the Convention were to apply to ships used for navigation on inland waterways, it might conflict with other conventions such as the Convention relating to the Limitation of the Liability of Owners of Inland Navigation Vessels (CLN) of the United Nations Economic Commission for Europe, which his Government intended to ratify. He would support the provision in Article 15(2)(a) provided the wording could be changed to read: “inland navigation ships”. The definition in the existing wording imposed a distinction which governments would not find feasible, since some vessels were used on both the high seas and inland waterways.

Mr. Herber (Federal Republic of Germany), while agreeing with the Netherlands representative’s suggestion concerning the wording of Article 15(2)(a), questioned whether the Swedish proposal offered the best solution. If the scope of the Convention were extended unduly, ratification might be hampered, and initially large numbers of reservations would be unavoidable. It would be wiser not to refer to inland navigation, and to leave it to governments to extend the principles of the Convention to inland navigation where necessary. He was therefore in favour of keeping Article 1(2) as it stood. In reply to a question from the Chairman, he said that if the word “sea-going” were deleted from Article 1(2), Article 15(2)(a) would no longer be necessary. He would not propose the deletion of the latter, however, since it provided useful clarification.

Mr. Tanikawa (Japan) suggested that the problem be dealt with at a later stage in connexion with the reservation clauses.

Mr. Bondoni (Argentina) said he would support the proposal to delete the word “sea-going” provided the substance of Article 15(2)(a) were retained. The vast majority of sea-going ships in the American continent also sailed on inland waterways.

Mr. Jeannel (France) saw no useful purpose in the Swedish amendment and felt

(5) The text of the proposals is quoted below:

*Australia*

On the basis that provisions along the lines of Article 15(2) are adopted and the scope of operation of the Convention is thus appropriately dealt with in Chapter IV, Australia would support the deletion of the word “sea-going” from paragraph 2 of this Article.

*Sweden*

It is proposed that the word “sea-going” be deleted in Article 1(2). The Swedish Government considers that the Convention in principle should apply to all ships but that, as provided in Article 15(2), Contracting States should be entitled to regulate by specific provisions the limitation rules to be applied to some vessels, including ships used for inland navigation.
that there were strong arguments against it. In the first place, the Conference was concerned with maritime, not inland, navigation. Moreover, inland transport required an entirely different type of legislation from maritime transport and was a matter for agreement between coastal countries. If the Convention dealt with inland transport it might conflict with existing domestic and other regulations. It would also complicate an already complex subject. He hoped that Article 1(2) would be retained, subject only to his delegation’s drafting amendment. With regard to the link between Article 1(2) and Article 15(2)(a), any country wishing to apply the provisions of the Convention to its inland navigation was obviously free to do so without the need for a provision to that effect. There was no reason why Article 15(2)(a) should not be deleted.

Mr. Sim Mong Soo (Singapore) supported the Swedish proposal to delete the word “sea-going” from Article 1(2). His own country made no distinction between sea-going and non-sea-going ships for the purpose of limitation of liability, and he would like the principle that owners of non-sea-going ships were entitled to limitation of liability to be preserved in the Convention. He supported the principle in Article 15(2)(a), and stressed the need for flexibility concerning special local conditions.

Mr. Wiswall (Liberia) had no objection to the Swedish amendment in principle, but submitted that Article 15(2)(a) took no account of the possibility that a ship normally navigating in inland waterways might occasionally navigate at sea and become involved in an accident. He suggested that the wording might be amended on the following lines: “ships designed for or engaged solely in navigation on inland waterways”. It should be made clear that there would be exemption under national law only for ships actually navigating at all times on inland waterways.

Mr. Selvig (Norway) supported the Swedish amendment. The term “sea-going” was ambiguous, since it could apply to ships that were sea-going normally or at a particular moment. Article 15(2)(a) provided an opening for those States which needed special legislation for ships navigating in inland waterways and left governments free to make the necessary distinction. He saw no danger of conflict with other conventions. He would support the Netherlands proposal if it would help to solve that country’s problem. He would have difficulty in accepting the Liberian proposal, since it would entail the very difficulties that had prompted the Legal Committee to leave it to governments to define inland navigation ships. The representative of the Federal Republic of Germany had referred to the undesirability of too many reservations. Obviously, States should have the option provided in Article 15(2)(a), and it was preferable that it should feature in the substance of the Convention rather than in reservations. A similar provision had been made in Article 7 of the previous Convention. He was in favour of maintaining Article 15(2)(a), either as amended by the Netherlands representative or in its present form.

The Chairman asked the representative of Japan if he wished to maintain his suggestion, since the majority of representatives seemed to prefer to discuss the matter in the present context rather than in connexion with the final clauses and the provisions on reservations.

Mr. Tanikawa (Japan) was prepared to withdraw his suggestion on the understanding that there would be no restriction on the discussion of other types of reservations at a later stage.

The Chairman invited the Committee of the Whole to resume consideration of Article 1(2) (to decide whether or not to delete the word “sea-going”), and, with it,
consideration of Article 15(2)(a) referring to “ships used for navigation on inland waterways” (to decide whether or not the Convention ought to be extended to cover such ships).

Mr. Trotz (German Democratic Republic) thought that the application of the Convention should be restricted to maritime claims and that deletion of the word “sea-going” from Article 1(2) might bring the Convention into conflict with other Conventions. He did not agree with those who held that such deletion would not cause any difficulties. While recognizing the problems connected with navigation on inland waterways, he was convinced that it was unnecessary to extend the scope of the present Convention. It would be enough to specify that States might, under their domestic legislation, extend its application to ships used for navigation on such waterways. His delegation was therefore in favour of retaining the texts of Articles 1(2) and 15(2)(a) unchanged.

Mr. Hedborg (Sweden) asked the representative of the Netherlands for a clarification. If a ship that normally operated on inland waterways were to reach Sweden, for example, should it still be regarded as a ship used for navigation on inland waterways, or would the present Convention be applicable to it?

Mr. Cleton (Netherlands) said that his delegation’s view was that, when a ship was registered, it was for the State concerned to decide whether, under the terms of its own legislation, the vessel should be classed as a ship used for navigation on inland waterways or as a sea-going ship. There might be borderline cases. It was difficult to define the two categories of vessels and the Conference might only be creating difficulties by trying to formulate definitions which could affect the question of limitation of liability. His delegation would be against including any such definitions in the text of the Convention.

Mr. Bursley (United States) commented that his delegation was not alone in appreciating the difficulties involved by the reference to “sea-going” ships in Article 1(2). While it did not wish to extend the scope of the Convention to ships used for navigation on inland waterways, it was anxious that the Convention should arrive at a uniform limitation of liability. It might be worthwhile to give further thought to the point before deciding upon a text. Three texts intended to solve the problem posed by Article 15(2)(a) had already been proposed. The United States had an extensive network of inland waterways, and some of the ships used on them were also occasionally used on the high seas; for that reason his delegation was anxious for the Conference to reach a clear decision on the point.

The Chairman said that the Legal Committee had already spent a considerable amount of time on the question without achieving a clear distinction. That was what had led to include in the introduction to Article 15(2) the words “according to the law of that State” – meaning, in other words, that it was for the State in question to determine the category to which any given ship belonged, thus lending a certain flexibility to the text.

Lord Diplock (United Kingdom) said that, while his own country was not directly interested in navigation on inland waterways, his delegation nevertheless considered on principle that the word “sea-going” should be retained in Article 1(2). The word occurred not only in the 1957 Convention but also in the Brussels Convention of 1924, and had not so far caused any difficulty. Moreover, it did not strike him as desirable for the present international convention to seem to apply to a field which was already covered by another convention, the 1973 CLN Convention. In his
opinion, the retention of the word “sea-going” in Article 1 would render paragraph 2(a) of Article 15 unnecessary. He recalled that there was no such provision in the 1957 Convention. His delegation was not prepared to accept the amendment proposed by the Netherlands, in which the term “inland navigation ship” was used; that term was meaningless in English law. It could accept the amendment put forward by Liberia (made at the previous meeting). If, however, the provisions contained in Article 15(2)(a) were to be retained, his delegation would then prefer to keep to the text proposed by the Legal Committee; that represented the most practical compromise.

Mr. Nair (India) supported the proposal to delete the word “sea-going” and to retain Article 15(2)(a) unchanged.

Mr. Lyon (Canada), like the representative of the United Kingdom, found some difficulty in accepting the term “inland navigation ship” proposed by the Netherlands, and agreed with the representatives of India and Sweden in preferring to delete the word “sea-going” from Article 1(2), while retaining Article 15(2)(a).

Mr. Bentein (Belgium) thought that the word “sea-going” should be retained in Article 1, if only as representing a declaration of principle, the Convention being basically applicable to sea-going ships. He saw no contradiction, however, between its inclusion in that Article and the retention of the text of Article 15. His delegation [225] was ready to accept the Netherlands’ proposal whereby the State concerned was left free to determine the category to which a ship belonged, but could not accept the Liberian proposal limiting a State’s powers in the matter.

Mr. Anatsui (Ghana) thought that the Convention ought basically to apply to sea-going vessels, and that the question of ships used for navigation on inland waterways should be left to the various States. Accordingly, he would prefer to keep Article 1(2) unchanged and was prepared to accept any amendment to Article 15 which would convey that view.

Mr. Makovsky (USSR) commented that it might have been better to reach agreement on the substantive point before trying to draft a text. He did not think it was for the Conference to try to establish a line of demarcation between sea-going vessels and those used for inland navigation. The Legal Committee had always failed in its attempts to do so. As it was for individual States themselves, by virtue of their domestic legislation, to classify ships at the time of registration, the Conference was not, under international law, in a position to formulate a definition.

His delegation regarded a sea-going ship used on inland waterways as subject to greater risk on account of its characteristics and the fact that it was less well adapted to that kind of navigation, and thought that insurance problems might arise if a given ship were subject to different regulations, according to whether it was used at sea or on inland waterways. The Convention should accordingly apply in all cases to sea-going ships only, regardless of where the ship happened to be at the time when it gave rise to a claim.

In respect of the question whether the Convention should be applicable to ships used on inland waterways or whether such vessels should be covered by other texts if used at sea, his delegation thought it could be stipulated that the Articles in question applied to every ship used at sea, and that individual States be left to take their own decisions by virtue of their domestic legislation, in cases where ships were used on inland waterways.

Mr. Perrakis (Greece) thought that the word “sea-going” should be retained in Article 1(2). Referring to the distinction between the two categories of vessels, he said
he was not in favour of leaving the State free to exclude from the benefits of the Convention a ship used for navigation on inland waterways if it was also used at sea.

Mr. Jeannel (France) said that the representative of Sweden appeared to fear that the Convention would no longer apply to sea-going ship if it was used on inland waterways, with the result that, if an accident occurred while it was being used in that way, the shipowner would be unable to claim limitation of liability. His delegation did not think that that was the case, and agreed with the delegation of the USSR that the Convention should apply to sea-going ships wherever they might be. As the representative of the United Kingdom has pointed out, the text of the 1957 Convention had not so far caused any difficulties and there were therefore good reasons for retaining the word “sea-going” in Article 1(2). There was no great need to formulate definitions. It was for the flag State to decide whether a vessel was a sea-going ship or one used for navigation on inland waterways. The texts seemed to him to be in harmony with the objective assigned to them.

The Chairman invited the Committee to decide whether the scope of application of the Convention should be restricted to sea-going ships or extended to ships used on inland waterways as well.

In an indicative vote the first alternative was adopted (19 votes in favour and 10 against).

The Chairman said that the words “sea-going ship” would accordingly be retained in Article 1(2), which would remain unchanged. She then asked the Committee whether a definition of the term “sea-going ship” should be included in the Convention.

The proposal was rejected.

The Chairman next asked the Committee whether or not it wished to retain Article 15(2)(a).

In an indicative vote Article 15(2)(a) was retained (20 votes in favour and 5 against).

The Chairman reminded the Committee of the amendments to the text put forward at the previous meeting by the representatives of the Netherlands and of Liberia.

Mr. Jeannel (France) said that, as the representative of Belgium had pointed out, the French and English texts were not completely in harmony with one another. If the English text employed the phrase “used for”, which correspond to the French “destinés à”, that should meet the understandable concern of the representative of Liberia.

The Chairman invited the Committee to indicate its preference as between the amendment proposed by the representative of Liberia, that proposed by the representative of the Netherlands, and the retention of the existing text.

In an indicative vote the existing text was retained (17 votes in favour and 6 against).

Mr. Amoroso (Italy) asked whether the point raised by the representative of France had been dealt with by the vote just taken, and whether the French text was to be accepted in preference to the English.

The Chairman, after a brief statement on a point of order by Mr. Jeannel (France), put two alternative proposals to the Committee: (i) to replace the words “used for” in the English text by the words “intended for”, and to retain “destinés à”
in the French text; or (ii) retain “used for” in the English text and replace “destinés à” in the French text by “utilisés pour”.

In an indicative vote the Committee decided to replace the words “used for” in the English text by the words “intended for” and to retain the words “destinés à” in the French text.

**Draft International Convention**

2. **The term shipowner shall mean the owner, charterer, manager and operator of a sea-going ship.**

**Summary Record of the Twenty-sixth Meeting**

18 November 1976

[406] Mr. Unkles (Australia) saw no point in retaining the word “sea-going” in paragraph 2, in view of the decisions taken by the Committee and proposed its deletion.

Mr. Jeannel (France) strongly opposed that proposal. The question had already been examined at length, and in any case it was a question of substance rather than drafting.

The Chairman suggested that the representative of Australia should raise the question at the Plenary Conference.

**Plenary Meeting**

**Summary Records of the Fourth Plenary Meeting**

18 November 1976

[477] Mr. Crone (Australia) said that his delegation had difficulty over the word “sea-going” in paragraph 2, in view of the provision regarding application in Article 15(2). He proposed that the word “sea-going” be deleted.

Mr. Lyon (Canada) supported that proposal.

There were 5 votes in favour of the Australian proposal, 21 against and 11 abstentions. The proposal was therefore rejected.

**1976 Convention**

2. **The term shipowner shall mean the owner, charterer, manager and operator of a sea-going ship.**

**Paragraph 3**

*Hamburg Draft Convention*

**Introductory Report to IMCO**

3. **Salvor shall mean any person rendering service in direct connection with salvage operations. Salvage operations shall include operations referred to in Article 2 paragraph 1 (d), (e) and (f).**
Pursuant to the 1957 Convention, salvors can limit their liability in connection with salvage operations provided that they operate from a vessel and only if the act which gives rise to the liability is committed on board the vessel. In the case of the *Tojo Maru* ([1971] 1 Lloyd's Rep. 341) the act was committed outside the vessel and as it was not an act occurring in the navigation, management, etc. of the vessel (Article 1, 1° b) of the 1957 Convention), limitation of liability was denied.

It is unanimously agreed within the CMI that right of limitation should be accorded to salvors not only when the act giving rise to the liability is committed outside a salvaging vessel, but even in cases where no salvage vessel is involved, for instance where a salvage crew is put on board the vessel in danger by means of a helicopter.

The word “salvor” applies equally to professional salvors and persons who render incidental assistance, for instance where a merchant ship salvages another ship en route. “Salvage operations” include salvage of a ship in danger (Brussels Convention 1910/1967) as well as wreck removal, etc. as mentioned in (d) and (e) of the first paragraph of Draft Article 2. For limitation purposes the term also includes the taking of preventive measures (f).

The inclusion of salvors who do not operate from a ship among the persons entitled to limitation creates special problems with respect to aggregation of claims – see Draft Article 7.

**IMCO Legal Committee**

**Twenty-seventh Session**

10. The question was raised whether this provision applied to all persons who performed salvage operations or whether it only referred to salvors who were also shipowners. The suggestion was made that the idea was to make the Convention apply to all who performed salvage operations. However, some delegations felt that the field of application for salvage operations would be too wide if not restricted to operations related to sea-going ships. One delegation suggested that such an extension could not be acceptable since it was essential to ensure that the provision also applied to “life salvors”. It was also questioned whether the definition given for salvage operations (even in conjunction with the provisions of Article 2, paragraph 1(d), (e) and (f)) was not circular. It was however pointed out that paragraph 3 was not intended to serve as a definition but rather as an indicative enumeration of operations included in the meaning of “salvage operations”. To make this part clearer the Committee agreed to the suggestion to insert the word “also” before the word “include” in the second sentence of this paragraph.

**Twenty-eighth Session**

12. One delegation suggested that it should be made clear that the word “person” in paragraph 3 referred to a shipowner or a sea-going ship. Another delegation wished to qualify the word “salvor” in that paragraph with the words “professional or otherwise”.

14. One delegation expressed concern that it had not been made clear in paragraph 3 or in another suitable part of the Convention that salvage operations covered by the new Convention are not necessarily restricted to salvage operations undertaken at sea.
Draft Articles

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

Diplomatic Conference

Committee of the Whole
Summary Record of the First Meeting
1 November 1976

[226] Mr. Popp (Canada) introduced the amendment to Article 1(3) submitted by his delegation (LEG/CONF.5/C.1/WP.5). The aim of the amendment was to ensure that the Convention applied to salvors not operating from a ship, which at present was not made clear until later on in the text.

Mr. Herber (Federal Republic of Germany) drew attention to the relationship between Article 1(3) and Article 6(3). His delegation had proposed an amendment to the latter which, if adopted, would mean that all salvage operations undertaken by salvors in a professional capacity would be dealt with by a special rule. It might be better to defer discussion of the Canadian proposal until Article 6 has been considered.

Lord Diplock (United Kingdom) endorsed that view. He recalled the case of the “Tojo Maru”, and said that it was indeed necessary to take into account the position of salvors not operating from a ship. What was involved in Article 1(3) was, he thought, essentially a drafting question, and it would be better to deal with it after considering Article 6.

Mr. Popp (Canada) agreed that discussion of his delegation’s amendments to Article 1(1) and (3) should be deferred until later.

Draft International Convention

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

1976 Convention

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).**

(6) Document LEG/CONF.5/C.1/WP.5
Proposed amendment by the delegation of Canada:
3. Salvor shall mean any person not operating from a ship and rendering service in direct connection with salvage operations. Salvage operations shall also include operations referred to in Article 2, paragraphs 1(d), (e) and (f).
Paragraph 4

This paragraph did not exist in the CMI Draft and was added by the Legal Committee which moved thereto the words “any person for whose act, neglect or default they are responsible” which appeared in paragraph (1) of the CMI Draft.

**IMCO Legal Committee**  
**Twenty-fifth Session**

[2] 12. With regard to vicarious liability, some delegations preferred the wording of Article 6 of the 1957 Convention referring to the “Master, members of the crew and other servants”. The Committee concluded that a new paragraph (paragraph 4) should include the reference to “any person for whose act, neglect or default the shipowner or salvor is responsible” and that such persons should be entitled to limitation provided in the Convention.

[3] 13. To the category in the new paragraph 4 was added the person “having provided pilotage services”. The Committee recognized that pilots – particularly those of public pilotage services, including “compulsory” pilots – are not always considered as servants of the shipowner but that they should be entitled to limit liability in the same way as a servant.

14. In this connexion, some delegations wished it made clear that where pilotage was concerned, that ambit of limitation would not extend to liability arising between the pilot and the shipowner. These delegations suggested inserting in new paragraph 4 after “pilotage service to the ship”, the words “to the extent that the pilot is held liable in lieu of the shipowner”. These words were added to the draft in brackets and will be given further consideration.

**Annex I**

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, or against any person having provided pilotage service to the ship, [to the extent that the pilot is held liable in lieu of the shipowner,] such person shall be entitled to avail himself of the limitation of liability provided for in this Convention.

**Twenty-seventh Session**

[3] 11. The Committee discussed the phrase “to the extent that the pilot is held liable in lieu of the shipowner” which appeared in brackets. Some delegations felt that the phrase in an amended form, should be maintained as it was essential [4] to clarify that the right to limit liability was extended to persons providing pilotage services only to the extent that such persons were liable to third parties, jointly or in lieu of the shipowner. Other delegations felt that the phrase should be deleted since they felt that it was unnecessary and at the same time likely to create the impression that the Convention was in some way purporting to change the liability regime applicable to such persons, whereas all that was intended was to deal with the limitation of liability of such persons. Yet other delegations felt that the best way out of the problem was to exclude all references to persons who provide pilotage services.

12. Several proposals were made with a view to resolving the difficulty. These included:
(a) a proposal to keep the words in brackets but amend them to read as follows: “to the extent that the pilot is held liable in lieu of, or jointly with, the shipowner”;
(b) a proposal to delete the words in square brackets but add a new paragraph to Article 1 to read as follows: “The provisions of paragraph 4 shall not prevent a person covered by that paragraph from availing himself of applicable rules in national law which modify or limit the liability of such person in a manner more favourable to him than is provided for in this Convention”;
(c) a proposal to delete the words in brackets and add a new paragraph which would read as follows: “The provisions of paragraph 4 shall not prevent the application of applicable rules of national law relating to the limitation of liability of persons covered by that paragraph in a manner different from that provided in this Convention”;
(d) a proposal to delete the words in brackets and add a new Article to the Convention along the following lines: “Any Contracting State may reserve the right to extend the limitation provided for in this Convention to persons who provide pilotage services”; [5]
(e) a proposal to delete not only the words in brackets but also the phrase immediately preceding those words viz. “or against any person having provided pilotage service to the ship”.

13. The majority of the Committee favoured the solution in (e) above, i.e. that the paragraph should contain no reference to persons who provide pilotage services. The words in square brackets, and the phrase immediately preceding them were, accordingly, deleted.

**Twenty-eighth Session**

[2] 13. A delegation, which had proposed the addition to paragraph 4 of words which would specify that the right of limitation was extended to the persons providing pilotage services, stated that it was not satisfied with the present text.

**Draft Articles**

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.**

**Diplomatic Conference**

*Committee of the Whole*

**Summary Record of the First Meeting**

1 November 1976

[227] **The Chairman** recalled that the Committee had before it suggestions relating to Article 1(4) submitted by New Zealand (LEG/CONF.5/4/Add.3),[7]
similar suggestions from the International Chamber of Shipping (LEG/CONF.5/6), and proposals from the Federal Republic of Germany (LEG/CONF.5/4/Add.1). In addition, a proposal on the same point submitted by Sweden in document LEG/CONF.5/4 had now been replaced by a joint proposal of the Danish, Finnish, Norwegian and Swedish delegations (LEG/CONF.5/C.1/WP.6). The United States delegation had also made a proposal (LEG/CONF.5/C.1/WP.8).

Mr. Caughley (New Zealand) said that in his country the pilot’s actions involved the responsibility of the shipowner: but that was not the case in all countries. He had no specific suggestions on rewording the text, but hoped that the present provisions could be extended so as to ensure that the pilot could invoke his liability limit.

The Chairman said that it appeared from the discussion on Article 1(2) at the previous meeting that the Committee did not want pilots to be mentioned specifically.

Mr. Herber (Federal Republic of Germany) was in general agreement with the proposal of the four Nordic delegations. If there was a rule in national law defining the pilot’s responsibility and setting a limit of liability lower than that of the Convention, it was his understanding that the pilot liable must be able to invoke that rule apart from the additional benefit of global limitation under the Convention. The proposal or the Nordic countries would be satisfactory if it were considered necessary or desirable to clarify the situation.

Mr. Selvig (Norway) said that the limit set in the Convention would probably be quite high, and persons involved should be able to invoke a lower limit if there was...
provision for such a limit in their country’s laws. In that respect the Convention was perhaps not quite clear, and any doubt should be dispelled. However, even if the Conference accepted the interpretation of the Nordic countries, it did not necessarily have to adopt their proposal.

Mr. Rein (Observer, CMI), speaking at the invitation of the Chairman, said that the addition proposed by the four Nordic countries was not necessary, since the cases in question would in no way be affected by the global limitation clause, and national laws could set a liability limit lower than that of the Convention for pilots and other servants. In any case, even if it were considered desirable to clarify the position, the proposal would need to be reworded.

Mr. Perrakis (Greece) endorsed the views of the observer from the CMI. The proposal of the Nordic countries was unacceptable – indeed dangerous – for it would affect the right of States to legislate on points not directly connected with the Convention. A State, for instance, decide to exempt pilots from any kind of negligence and should not be restricted in legislating accordingly.

Lord Diplock (United Kingdom) also agreed with the observer from the CMI. He thought that the fears of the Nordic countries were groundless and that their proposed addition would serve no useful purpose.

Mr. Herber (Federal Republic of Germany) was quite satisfied with the explanations given by previous speakers.

Mr. Selvig (Norway) said that the fears of the Nordic countries had been dispelled; they would withdraw their proposal, although they felt that it would have clarified the situation.

Mr. Bursley (United States) introduced his delegation’s amendment to Article 1(4) (LEG/CONF.5/C.1/WP.8). The proposal was to delete the word “responsible” and substitute the phrase “legally liable at law in the absence of contract”. The aim was to limit as far as possible extension of the right to invoke limitation of liability. The present text of paragraph 4 would appear to permit shipowners entitled to limitation to extend that right to other persons by contract.

The Chairman wondered whether that was not a drafting matter.

Mr. Selvig (Norway) thought that, on the contrary, a question of substance was involved. Paragraph 4 was designed to establish the principle that all persons for whom the shipowner had civil responsibility were entitled to invoke limitation. The scope of that principle was normally determined by national law. The United States proposal might be interpreted as inadvertently excluding such civil responsibility which was certainly not the intention. He thought it unnecessary to make the paragraph more specific, for it already seemed to him perfectly clear.

Mr. Bursley (United States) thanked the representative of Norway, and confirmed that his delegation’s intention was indeed to reduce the categories of persons entitled to invoke limitation. If Article 1(4) was understood in that way and if the Committee of the Whole agreed to that interpretation, he was prepared to withdraw his proposal.

Mr. Lyon (Canada) agreed with the Norwegian representative that the proposal could also be considered a substantive one. He shared the concern which had led the United States delegation to submit its amendment, but thought a recommendation that the Drafting Committee should replace “responsible” by “liable” (which had a slightly narrower meaning) might suffice.
Lord Diplock (United Kingdom) saw no reason to doubt the interpretation of paragraph 4, which seemed to him quite clear. The choice of the word “responsible” was, in his view, legally correct in the present context, and he feared that the new version proposed by the United States might, as the Norwegian representative had said, cast doubt on the applicability of the Convention in cases where civil responsibility arose in connexion with the execution of a contract.

The Chairman said that the choice of the appropriate word would therefore be left to the Drafting Committee. She asked whether the United States representative, in the light of the observations which had just been made, was able to withdraw his proposal.

Mr. Bursley (United States) agreed to withdraw the United States proposal (LEG/CONF.5/C.1/WP.8). The views expressed had adequately dispelled his delegation’s fears.

The Chairman noted that the Committee of the Whole had now agreed to retain the text of draft Article 1(4) and of draft Article 1(5), on which no proposals had been made.

Draft International Convention

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

Summary Record of the Twenty-sixth Meeting
18 November 1976

[406] Mr. Cleton (Netherlands) speaking as Chairman of the Drafting Committee, said he would prefer, provided the French delegation had no objection, to have the words “en droit de se prévaloir” replaced by the words “peut se prévaloir” in order to bring the French text more closely into line with the English text.

Mr. Jeannel (France) saw little difference between the two formulations. However, he saw some advantage in retaining the same words “personnes en droit” in paragraph 4, as in the heading. “Personnes qui peuvent limiter leur responsabilité” would be a less suitable wording for the heading from the legal standpoint.

The Chairman thought that the text could be retained without alteration.

1976 Convention

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

Paragraph 5

Hamburg Draft Convention
Introductory Report to IMCO

4. In this Convention the liability of the owner of a ship shall include the liability of the ship herself.
This provision, like the corresponding provision in Article 6, 1° of the 1957 Convention, is hardly necessary, but has been included in order to avoid any misunderstanding.

**IMCO Legal Committee**
**Twenty-fifth Session**

[3] 15. Certain difficulties were encountered in assuring conformity between the English and French languages when referring in paragraph 4 (new paragraph 5) to the Admiralty law concept of an action *in rem*. A suggestion was made that the difficulty might be alleviated if not eradicated by using “any” instead of “the” in both languages before the word “liability”. In jurisdictions where no liability can be said to attach except *in personam*, the non-existence of the action *in rem* would be recognized by inference in speaking of “any” such action, while the existence thereof in other jurisdictions governed by the treaty would be recognized by all parties.

**Twenty-seventh Session**

[5] 14. It was suggested that the drafting of this paragraph might be improved particularly to make it clear that, in respect of the ship, what was intended to be covered were “actions brought against the ship itself”. It was, however, pointed out that such a change might raise substantive issues. In this connexion attention was called to the fact that the wording was identical to the wording of the equivalent provision in the 1957 Convention (Article 6, paragraph 1).

15. It was decided to keep the existing language for the time being, and examine the drafting at a later stage, if necessary.

**Draft Articles**

5. **IN THIS CONVENTION THE LIABILITY OF THE OWNER OF A SHIP SHALL INCLUDE LIABILITY IN AN ACTION BROUGHT AGAINST THE VESSEL ITSELF.**

**Diplomatic Conference**

**Committee of the Whole**

**Summary Record of the First Meeting**

1 November 1976

[229] **The Chairman** noted that the Committee of the Whole had now agreed to retain the text of draft Article 1(4) and of draft Article 1(5), on which no proposals has been made.

**Draft International Convention**

5. **IN THIS CONVENTION THE LIABILITY OF THE OWNER OF A SHIP SHALL INCLUDE THE LIABILITY OF THE SHIP ITSELF.**

**1976 Convention**

5. **IN THIS CONVENTION THE LIABILITY OF A SHIPOWNER SHALL INCLUDE LIABILITY IN AN ACTION BROUGHT AGAINST THE VESSEL HERSELF.**
Paragraph 6

Hamburg Draft Convention
Introductory Report to IMCO

5. 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.

This paragraph has been renumbered (6) in the Convention.

This provision seems to be self evident and would hardly be necessary in the countries which have adhered to the 1957 Convention. Its purpose is to prevent the result at which courts in the United States have arrived, that the benefits of limitation can only be invoked by the shipowner, not by his liability insurer when the claimant proceeds against the insurer under a “direct action” statute. The Supreme Court of the United States has held (the Cushing Case, 1954 AMC 387) that this result does not violate the Federal Limitation Statute, provided that the shipowner’s own right of limitation is not impaired.

Indirectly the shipowner’s right is interfered with if his insurer cannot invoke limitation to the same extent as the shipowner himself, because the premium which the insurer must charge for his “excess liability” to the claimant must ultimately be paid by the shipowner.

All that is said in the present paragraph is that the right of global limitation shall not be circumvented by giving the claimant the right of direct action against the insurer of the limited liability. This is also the solution contained in the 1969 Oil Pollution Liability Convention. The Draft Convention is not intended to interfere with direct action statutes as such.

IMCO Legal Committee
Twenty-fifth Session

[3] 16. The insurer of liability for claims subject to limitation should, in the view of the Committee, be able to invoke limitation rather than be required to seek premiums for unlimited cover, as would be the case in some jurisdiction where a direct action might not, in the absence of specific provision, fall under the prospective Convention.

Draft Articles

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.
The Baltic and International Maritime Conference (BIMCO) had made a proposal on Article 1(6) in Document LEG/CONF.5/6/Add.1. Mr. Leader (Observer, BIMCO), speaking at the invitation of the Chairman, explained that the BIMCO protection and indemnity clubs insured 80 per cent of world tonnage against the claims listed in Article 2. BIMCO believed that the draft Convention should include the principle recognized in Article VII(8) of the International Convention on Civil Liability for Oil Pollution Damage, 1969.

Mr. Cleton (Netherlands) said that it was difficult to come to a decision. It seemed to him that the Convention should specify the rights of the liability insurer when a direct claim was brought against him. The insurer would run the risk of incurring unlimited liability if Article 4 were invoked against the assured, in the absence of a clear stipulation that he has the right to limit his liability.

Mr. Wiswall (Liberia) pointed out that the liability insurer had ways of protecting himself if the insured were refused the right to limit his liability; when the policy was made out he could set a limit on his liability.

Mr. Herber (Federal Republic of Germany) said that he could not accept BIMCO’s suggestions. The rights of the insurer with respect to the insured were determined in the insurance policy, and cases of direct claims against insurers were the exception. He feared that to amend the draft as proposed would create serious difficulties.

Mr. Williams (Observer, IUMI), speaking at the invitation of the Chairman, wondered whether it would not be difficult to put the BIMCO suggestion into effect and whether, objectively speaking, the insurer did not have other ways of protecting himself.

The Chairman noted that the BIMCO proposal had not been supported by any delegation. The text of draft Article 1(6) would therefore remain unchanged. The Committee of the Whole had now concluded its consideration of that article, since no amendments had been received to paragraph 7.

Draft International Convention

6. An insurer of liability for claims subject to limitation in accordance with the rules of this Convention shall be entitled to the benefits granted to the assured by this Convention to the same extent as the assured himself.
1976 Convention

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.

Paragraph 7

Hamburg Draft Convention
Introductory Report to IMCO

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

This paragraph has been renumbered (7) in the Convention.

This provision, corresponding to Article 1, 7° of the 1957 Convention, has been included for the same reason as set out under § 4 above.

IMCO Legal Committee
Twenty-fifth Session

Draft Articles

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

Diplomatic Conference

Committee of the Whole
Summary Record of the Third Meeting
1 November 1976

[229] The Chairman ( . . . ). The Committee of the Whole had now concluded its consideration of that Article (Article 1) since no amendments had been received to paragraph 7.

Draft International Convention

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

1976 Convention

7. The act of invoking limitation of liability shall not constitute an admission of liability.
Article 1 - Persons entitled to limit liability

1976 Convention

ARTICLE 1
PERSONS ENTITLED TO LIMIT LIABILITY

1. SHIPOWNERS AND SALVORS, AS HEREAFTER 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 SEA-GOING 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 AVAL 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 HERSELF.

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

General comments

Comité Maritime International  
Hamburg Conference, 1974  
Second Report of the Chairman

[20] Claims subject to limitation.

If the Convention is to be amended by a Draft Protocol the Committee prefers to retain the positive definition in Article 1 § 1° with the changes which follow from the widening of the group of persons entitled to limit. However, the Committee realizes that the definition can be improved, and if this is to be done the version preferred is the one that appears in WP Article 2.

Subparagraph (a) gives the main definition: claims in respect of personal injury and (physical) damage to property and loss in consequence of such damage (such as loss of profit), arising in direct connection with the operation of the ship or salvage operations. Thus, damage to the ship’s cargo is covered by this provision, but not delayed delivery of cargo which is physically intact. Loss includes loss of the object for practical purposes, for instance where cargo is lost at sea, although it may be physically intact. This is the intention expressed by the definition, although it must be conceded that it is not obviously due to the ambiguity of the terms “loss” and “damage”.

[22] Subparagraph (b) is intended to take care of “abstract loss”. The Convention uses the term “infringement of any rights” which is too wide to give any real guidance. Claims other than those defined in subparagraph (a) shall be subject to limitation only if they are non-contractual. A positive definition such as “claims in tort or based on strict liability” would not be accurate because many claims may be both contractual and in tort. The Committee and the Drafting Group found no better solution than the one already adopted in Article 4 § 1, (IV), of the Liens and Mortgages Convention (1967): “claims not capable of being based on contract”.

Subparagraphs (c), (d), (e), corresponding to § 1° c) of Article 1 of the Convention, are not on the same level as the two previous ones. They are necessary insofar as they define limitable claims which are not covered by (a) and (b), such as wreck removal and the rendering harmless of the cargo, but may be misleading insofar as they provide for limitation of liability for claims which are limitable under (a) or (b), for instance, damage caused to harbour works. The inference may be that liability for damage to harbour works etc. is limitable regardless of the condition of (a) or (b), which, of course, is not the intention. However, it was the express wish of some delegates that the ambiguity already existent in Article 1 § 1° c), of the Convention be retained in order to avoid the misunderstanding that limitation of liability has been abolished with respect to damage to harbour works, etc. It is hoped, however, that the flaw may be remedied by better drafting at a later stage.

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Twenty-eighth Session

[3] 15. The Legal Committee considered a number of suggestions for re-drafting and for changes of substance. One delegation suggested that the first paragraph of the
Article should be drafted as follows:

1. Subject to the provisions of Articles 3 and 4, the owner of a ship, or the insurer providing cover in respect of the owner's liability to third parties, may limit his liability to contractors or third parties if the damage occurred on board or in direct connection with the navigation or operation of the ship.

2. He may also limit his liability in respect of loss resulting from delay of cargo carried and in respect of expenses incurred in the raising, removal, destruction or the rendering harmless of a ship which is sunk, wrecked, stranded or abandoned, or for anything on board including cargo.

3. He may also limit his liability in respect of expenses resulting from measures taken in order to avert or minimize loss for which the person liable may limit his liability in accordance with this Convention, and for further loss caused by these measures.

16. This draft was not acceptable to the Committee.

**Paragraph 1 - Chapeau**

*Hamburg Draft Convention*

*Commentary*

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

[400] The first paragraph of this article contains the positive description of claims subject to limitation and certain adjustment are made in Articles 3 and 4.

*IMCO Legal Committee*

*Twenty-fifth Session*

[4] 22. It was explained that paragraph 1(a) of this draft Article deals with physical damage and personal injury; 1(b) deals with the exceptional, and mandatory, liability for delay under a bill of lading (consequent upon the [5] proposed revision of the Hague Rules); and 1(c) deals with non-contractual damage of consequential nature. These paragraphs were inter-related and considered together.

23. The question was raised whether the provision was intended to have the same scope as the 1957 provision and it was explained that the CMI intended no change.

*Twenty-eighth Session*

[4] 21. A suggestion was made that the words “whatever the basis of liability may be” at the beginning of the Article should be deleted or at least placed in square brackets. In opposing this suggestion some delegations pointed out that different judicial systems used different bases (such as tort or contract) for imposing liability. It was also noted that the same loss might be subject to a rule of fault liability in one place and strict liability in another.

22. The Committee did not accept the proposal to delete or place the words in square brackets.

[5] 27. One delegation proposed an additional paragraph stipulating that any contractual provisions purporting to deprive a person of any benefits of the Convention
to which such person would otherwise be entitled would be invalid. Some delegations agreed on the usefulness of a safeguard against unreasonable contractual terms but felt that because of certain difficulties in formulating a generally acceptable provision in the text of a convention, it might be best to leave the matter for solution by national legislation.

Draft Articles

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

Diplomatic Conference
Draft International Convention

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

1976 Convention

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

Sub-paragraph (a)

Hamburg Draft Convention
Text and Commentary

(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), occurring on board or in direct connection with the operation of the ship or with salvage operations, and consequential loss resulting therefrom;

Sub-paragraph (a) is the hard core in the definition of limitable claims: claims arising from loss of life or personal injury or loss of or damage to property. The words “loss” and “damage” in this connection are used in the concrete sense: physical loss and, broadly speaking, physical damage. The words are used in the same sense both in Article 1 of the 1957 Convention and in Article 4, 1, iv), of the 1967 Liens and Mortgages Convention. However, consequential damage – physical damage as well as abstract damage – arising out of loss or damage in the concrete sense shall give rise to limitation of liability as well as to a maritime lien. In the Liens and Mortgages Convention this may be inferred from the words “claims in respect of”. It was felt, however, that consequential damage should be specifically mentioned, and, in order to indicate that both concrete and abstract damage are included, the term consequential “loss” was adopted in lack of a better word.

Claims for loss or damage, as defined above, shall be subject to limitation
provided that the loss or damage in question is caused in a certain connection with
the ship. In the 1957 Convention this connection is established by a geographical
description: claims for personal injury to a person or damage to property on board
the ship are always limitable. A claim for such loss occurring outside the ship is [402]
limitable if the act which caused the loss was committed on board the ship. With
respect to acts committed outside the ship it is a further condition that the act
occurred in the navigation, management, etc. of the ship (Article 1, 1°).

In the Liens and Mortgages Convention the same problem is solved in a simpler
way: claims for loss “occurring, whether on land or on water, in direct connection
with the operation of the vessel” (Article 4, 1), are secured by maritime liens.

In principle, this is the solution adopted in the Draft Convention, but it is said
expressly that claims for loss occurring on board the ship are limitable in any case.
The equivalent result is probably obtained by interpretation of Article 4, 1 of the
Liens and Mortgages Convention.

The words within parentheses (damage to harbour works, etc.) should not be
necessary, but have been inserted because in some countries the courts will not accept
that claims for such damage are subject to limitation unless specifically stated.

Under sub-paragraph (a) the liability is limitable whether it is based on tort only
(liability for collision damage) or “capable of being built on contract” such as cargo
liability under a charter party or bill of lading, always provided that the loss arises
from concrete damage. Abstract damage other than consequential loss is governed by
the two following sub-paragraphs.

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[5] 24. With regard to sub-paragraph (a) it was indicated that the English and French
texts are meant to be identical in substance, the words “ainsi que le préjudice non
matériel en résultant” being construed as having the same meaning as “and
consequential loss resulting therefrom”. The representative of the CMI confirmed that
the English text expressed the intended concept and had been translated into French.

26. The Committee preferred to retain the wording of Article 2.1(a) and (c).

Draft Articles

(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), OCCURRING ON BOARD OR IN DIRECT CONNEXION WITH THE
OPERATION OF THE SHIP OR WITH SALVAGE OPERATIONS, AND CONSEQUENTIAL
LOSS RESULTING THEREFROM;

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[230] Mr. Lyon (Canada) introduced his delegation’s proposed amendment to sub-
paragraph 1 (a) (LEG/CONF.5/C.1/WP.9), the purpose of which was to limit the scope of application of the limitation to loss of life or personal injury occurring on board ship.

[231] The Chairman asked whether any delegation would second the Canadian proposal.

Having received no support, the Canadian proposal (LEG/CONF.5/C.1/WP.9) was rejected.

Draft International Convention

(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), OCCURRING ON BOARD OR IN DIRECT CONNEXION WITH THE OPERATION OF THE SHIP OR WITH SALVAGE OPERATIONS, AND CONSEQUENTIAL LOSS RESULTING THEREFROM;

Summary Record of the Twenty-Sixth Meeting
18 November 1976

[406] Mr. Jeannel (France) proposed that the phrase “ainsi que le préjudice non matériel en résultant” should be replaced by: “ainsi que tout autre préjudice en résultant” in the French text, in order to bring the French and English texts into concordance.

The proposed amendment was approved.

1976 Convention

(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;

Sub-paragraph (b)

Hamburg Draft Convention
Text and Commentary

(B) CLAIMS IN RESPECT OF LOSS RESULTING FROM DELAY OF CARGO WHICH HAS BEEN RECEIVED FOR TRANSPORT UNDER A BILL OF LADING;

(1) Canada
Document LEG/CONF.5/C.1/WP.9
2 November 1976
[146] Proposed amendment
(a) claims in respect of loss of life or personal injury occurring on board ship or loss of or damage to property (including damage to harbour works, basins and waterways), occurring on board, or in direct connexion with the operation of the ship or with salvage operations, and consequential loss resulting therefrom;
Sub-paragraph (b) allows limitation of liability for abstract loss in one particular case: claims in respect of loss resulting from delay of cargo which has been received for transport under a bill of lading. The reason for this is that it is anticipated that loss by delay may be included under the mandatory provisions of the Hague Rules. This, in itself, may justify limitation, but the main consideration is a practical one: settlements of cargo claims would be greatly complicated if pure loss by delay had to be segregated for limitation purposes from other types of losses covered by the Hague Rules.

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17. In examining the first paragraph of this Article – a description of claims for damages, concrete and abstract, subject to limitation – the Legal Committee examined the reasons set out in the CMI Introductory Report regarding the purposes in particular of sub-paragraphs (b) and (c). It was explained that limitation for loss by delay in (b) was a special provision occasioned by the anticipated inclusion of such loss under the mandatory provisions of the Hague Rules, difficulty or impossibility in separating claims based on direct and consequential damage, as well as by other practical reasons.

18. The suggestion was made that there was no need to specify a bill of lading in (b) or alternatively that a contract of affreightment might be mentioned, but one delegation felt that a reference to some form of agreement would be preferable to none at all.

Twenty-fifth Session

26. The Committee preferred to retain the wording of Article 2.1(a) and (c). The concluding words of 2.1(b) were changed to read under a “contract of carriage” instead of a “bill of lading” in order to take into account liability for delay in cases where no bill of lading had been issued.

ANNEX I

(B) CLAIMS IN RESPECT OF LOSS RESULTING FROM DELAY OF CARGO WHICH HAS BEEN RECEIVED FOR TRANSPORT UNDER A CONTRACT OF CARRIAGE;

Twenty-seventh Session

16. The Committee considered paragraph 1 of this Article and agreed to an amended sub-paragraph (b) submitted by the delegation of Norway. The new text reads:

“(b) claims in respect of loss resulting from delay in the carriage of cargo, passengers or their luggage on board the ship”

Twenty-eighth Session

18. The Committee considered a proposal to delete the provision in sub-paragraph 1(b) of this Article. Some delegates considered that this provision was unnecessary since loss arising from delay was covered by sub-paragraph 1(a). Some other delegations, however, pointed out that sub-paragraph 1(b) referred to loss of a
different kind from that covered by sub-paragraph 1(a), i.e. “abstract loss” (as opposed to “concrete damage”) from delay. They recalled that this “abstract loss” was dealt with in the mandatory provisions of the Hague Rules as interpreted in certain jurisdictions and in the domestic legislation of some States, and pointed out that if that type of loss were treated separately for limitation purposes than other losses covered by the Hague Rules, or relevant national legislation, the settlement of claims would be complicated. In response to this it was suggested that the deletion of sub-paragraph 1(b) might be supplemented by an addition to sub-paragraph 1(a) in order to make it cover also “abstract loss” arising from delay.

19. Some delegations felt that, in view of the relevant provisions of the Hague Rules and the 1974 Athens Convention, there was no need for sub-paragraph (b). They therefore suggested that it be deleted altogether.

20. The Committee decided to retain sub-paragraph 1(b).

Draft Articles

(B) CLAIMS IN RESPECT OF LOSS RESULTING FROM DELAY IN THE CARRIAGE OF CARGO, PASSENGERS OR THEIR LUGGAGE ON BOARD THE SHIP;

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3 November 1976

[236] The Chairman noted that the first examination of sub-paragraph 1(a) of Article 2 had thus been concluded, and invited delegations to consider sub-paragraph 1(b), to which two amendments had been proposed, by Spain (LEG/CONF.5/C.1/WP.10)² and by Japan (LEG/CONF.5/C.1/WP.14).³

Mr. Berenguer (Spain), introducing his delegation’s proposal, said that its purpose was to ensure that sub-paragraph 1(b) referred to the contractual side of the question. Non-contractual rights were mentioned in sub-paragraph 1(c).

The Chairman said that the question appeared to be merely a matter of [237] drafting, for no one would consider the provision as dealing with any subject other than contracts. She suggested that the amendment be submitted to the Drafting Committee.

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² Spain
Document LEG/CONF.5/C.1/WP.10
2 November 1976

³ Japan
Document LEG/CONF.5/C.1/WP.14
2 November 1976

[146] Proposed amendment
Include the words “contract for the” immediately preceding the word “carriage”, so that the final text would read:
“Claims in respect of loss resulting from delay in the contract for the carriage of cargo, passengers or their luggage on board the ship”

[146] In sub-paragraph (b) of paragraph 1, the words “on board the ship” should be deleted.
Mr. Berenguer (Spain) explained that the reason for specific reference to the contract was to distinguish the delay in question from delay due to tort. However, he agreed that the point should be referred to the Drafting Committee.

Mr. Perrakis (Greece) pointed out that the previous speaker’s reference to the question of tort seemed to indicate that the matter was one of substance and not merely of drafting. If a vessel collided with another and the one not having the contract of carriage had caused the first to be delayed, the recipient of goods would have a claim in tort, which should not be excluded from limitation.

Mr. Sundaralingam (Sri Lanka) wondered whether it was prudent to include the provision in sub-paragraph 1(b) in the Convention. In the first place, the Hague Rules were being revised, and UNCTAD and UNCITRAL had already submitted a revised draft to the United Nations General Assembly. That text contained provisions to cover losses resulting from delay in the carriage of cargo. Such provisions should obviously have a place in that Convention which dealt with the commercial aspects of the carriage of cargo. Secondly, his delegation doubts as to whether a provision found elsewhere should be duplicated.

Mr. Rein (Observer, CMI), speaking at the Chairman’s invitation, said that the only intention of sub-paragraph 1(b) had been to refer to contractual relationships. The point mentioned by the Greek representative was covered by sub-paragraph 1(c), where the phrase “in direct connexion with the operation of the ship” referred to the other ship and not to the carrying ship. In that case, delay could be compensated just as well as physical damage.

The Chairman asked whether any delegation would second the Spanish proposal.

Having received no support, the Spanish proposal (LEG/CONF.5/C.1/WP.10) was rejected.

Mr. Tanikawa (Japan) explained that the reason for his delegation’s proposal (LEG/CONF.5/C.1/WP.14) was that delay nearly always occurred at the final stage of the carrier ship’s voyage, and that the causes of delay were not always on board the ship but might occur outside the ship for instance at the port of transhipment. Deletion of the words “on board the ship” would prevent ambiguity.

Mr. Perrakis (Greece) seconded the Japanese proposal.

Mr. Herber (Federal Republic of Germany) also supported the Japanese proposal. If the words “on board the ship” were retained, it would be necessary to investigate where delay had occurred, and that would introduce a complication which he was sure the authors of the draft had never intended.

Mr. Selvig (Norway) would prefer retention of the reference to the ship. The reason for including those words was relevant to the point raised earlier by the Greek representative, the idea being to preserve a reference to the ship making the claim. It might be possible to say “delay of the ship or of its passengers or their luggage”.

Mr. Rein (Observer, CMI) suggested replacing “on board” by the phrase “carried on or in” the ship.

Mr. Unkles (Australia) felt that deletion of the phrase “on board the ship” would perhaps unduly widen the scope of a Convention dealing with maritime claims.

(4) See note 2.
(5) See note 3.
Mr. Perrakis (Greece) submitted that the phrase in question should be deleted so as to provide for such occurrences as the very common one of loss of luggage in a harbour terminal. There should be no limitation for the fault of port authorities over which the shipowner had no control. Moreover, it was not a question of restricting liability to an unacceptable level. As for the fears expressed by the Norwegian representative, the limitation fund and benefit would be invoked only against a claim presented by the ship. As regards the CMI suggestion, he could agree to the phrase “carried by the ship”. The point was to enable a shipowner to limit his liability for something which was not his fault.

Lord Diplock (United Kingdom) said that all were agreed that the provision was intended to cover liability for the cargo, passengers, or their luggage while in the charge of the ship. It might be advisable, however, for the Drafting Committee to consider the wording. It was likely that the Bills of Lading rules would extend liability to the period when such goods and people were in the charge of the ship, even if they were not on board the ship.

Mr. Wiswall (Liberia) agreed that the provision should be referred to the Drafting Committee. However, he was in favour of deleting the words “on board the ship”, as they appeared to introduce a conflict with Article 1(8) of the Athens Convention which defined the period of carriage.

Mr. Trotz (German Democratic Republic) agreed that the provision should be referred to the Drafting Committee. It seemed to him that a solution on the lines proposed by the Greek representative would be the most appropriate. As regards the objection raised by the Australian representative, the deletion of the phrase in question would not extend the scope of application on the limitation provisions, since all the claims referred to fell within the framework of the contract.

The Chairman proposed that the Japanese amendment (LEG/CONF.5/C.1/WP.14) be approved, subject to drafting.

It was so decided.

Draft International Convention

(B) CLAIMS IN RESPECT OF LOSS RESULTING FROM DELAY IN THE CARRIAGE BY SEA OF CARGO, PASSENGERS OR THEIR LUGGAGE;

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[405] The Chairman invited the Committee to continue reviewing the text of the Drafting Committee’s report (LEG/CONF.5/C.3/1 and LEG/CONF.5/C.3/1/Add.1), in order to assess whether it faithfully reflected the substantive decisions which the Committee had taken.

Paragraph 1, sub-paragraph (b)

[407] There were no comments.

(6) See note 3.

(7) The text under review is that of Article 2(1)(b) of the Draft International Convention quoted above.
1976 Convention

(B) CLAIMS IN RESPECT OF LOSS RESULTING FROM DELAY IN THE CARRIAGE BY SEA OF CARGO, PASSENGERS OR THEIR LUGGAGE;

Sub-paragraph (c)

Hamburg Draft Convention
Text and Commentary

(c) CLAIMS IN RESPECT OF OTHER LOSS RESULTING FROM INFRINGEMENT OF RIGHTS OTHER THAN CONTRACTUAL RIGHTS, OCCURRING IN DIRECT CONNECTION WITH THE OPERATION OF THE SHIP OR SALVAGE OPERATIONS;

Sub-paragraph (c) is the main rule on limitation with respect to claims for abstract loss, i.e. loss not resulting from concrete damage. The 1957 Convention uses the term “infringement of any rights”. In English law the term has no exact meaning, and the definition proposed by the International Sub-Committee was “claims in respect of other loss in direct connection with the operation of the ship or salvage operations, not capable of being based on contract”. This is the formula used in the Liens and Mortgages Convention. As, however, the “infringement of rights” conception has not caused undue difficulties in the application of the 1957 Convention the Conference preferred to retain it with the qualification “rights other than contractual rights” in order to exclude loss occasioned by breach of contract.

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Twenty-third Session

[5] 19. Some doubt was voiced with regard to the words “infringement of rights other than contractual rights” in sub-paragraph (c). While it was recognized that the CMI had no intention of allowing limitation for claims in respect of loss resulting from breach of contract, one delegation mentioned that e.g. a contract of towage might be the basis of a claim unconnected with salvage but nonetheless justifying limitation.

Twenty-fifth Session

[5] 25. It was proposed to alter paragraph 1(c) so as to include all contractual claims within the global limitation. Other delegations objected to the extension to all contractual relationships of the right of limitation in cases of breach, but some delegations wished claims for infringement of rights (paragraph 1(c)) to be subject to limitation in all cases. The Committee agreed to retain the draft wording of paragraph 1(c).

26. The Committee preferred to retain the wording of Article 2.1(a) and (c).

Draft Articles

(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;
Mr. Crook (United States) asked what was implied by the use in paragraph 1(c) of the phrase “rights other than contractual rights”? He pointed out that the phrase appeared in the 1957 Convention, to which his country was not a Party.

The Chairman said that the corresponding provision in the 1957 Convention had been interpreted in some countries as not referring to infringements of contractual rights, while the opposite was the case in other countries. For that reason, the CMI had proposed to clarify the situation by inserting the phrase “rights other than contractual rights”. After discussion in the Legal Committee, the phrase had finally been retained in order to exclude damage resulting from the infringement of contractual rights.

She suggested, with the agreement of the French delegation, that consideration of the various proposals relating to Article 2 be completed before dealing with the French proposals (LEG/CONF.5/48 and LEG/CONF.5/C.1/WP.27) which had just been circulated.

It was so decided.

The Chairman proposed that subject to consideration of the French proposal relating to Article 2 as a whole, paragraph (1)(c) of Article 2 be approved.

It was so decided.

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[68] The list of claims given in this Article might well be replaced by a more synthesized formula of identical scope, reading as follows:

1. Subject to Articles 3 and 4, the persons specified in Article 1 may limit their liability to contracting parties or third parties if the damage was caused on board the ship or is directly connected with the navigation or operation of the ship.

2. These persons may also limit their liability for loss resulting from delay in the carriage of cargo, and for expenditure incurred in the raising, removal, destruction or the rendering harmless of a ship which is sunk, wrecked, stranded or abandoned, including anything carried on board such ship, as well as its cargo.

[69] 3. These persons may also limit their liability for claims 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.”

4. (Text of paragraph 2 of draft).


3 November 1976

Proposal submitted by the delegation of France

Article 2, paragraph 1

Amend the text of the French proposal in document LEG/CONF.5/4 as follows:

In paragraph 1, after “contracting parties or third parties”, add the words “whatever its basis”.

At the end of paragraph 1 add the words “or with salvage operations”.

In paragraph 2, amend the second line to read: “...for loss resulting from delay caused to passengers and their baggage and in the carriage of cargo...”.

At the end of paragraph 2, amend “its cargo” to read “the cargo of the ship”.

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The Chairman invited the Committee to consider the draft amendments proposed by the French delegation (LEG/CONF.5/C.1/WP.27).10

Mr. Douay (France) introducing the French proposals, asked delegations to insert, on page 68 of document LEG/CONF.5/4,11 the amendments proposed in document LEG/CONF.5/C.1/WP.27.12 The proposed French text for Article 2(1) contained two paragraphs numbered 1 and 2 which were in fact sub-paragraphs of Article 2(1) and might be more conveniently listed as (a) and (b). Paragraph 1 covered sub-paragraphs (a) and (c) of the basic text, recapitulating all their substance but in simpler and more general form. It dealt with liability to contracting parties or third parties in cases of damage directly connected with the navigation or operation of the ship or with salvage operations, whatever the basis of that liability. Paragraph 2 covered sub-paragraphs (b), (d) and (e) of the basic text.

The French proposal, he noted, made no substantive changes to the basic text, except regarding paragraph 1 of the French delegation’s proposed text and sub-paragraph (c) of the basic text. It should be recalled that Article 1(1)(b) of the 1957 Convention spoke of “infringement of any rights”. The basic text before the Conference had sought to clarify the expression “any rights”, and it accordingly referred specifically in sub-paragraph (c) to “rights other than contractual rights”, reflecting a restrictive interpretation of the 1957 Convention, as the Norwegian representative had incidentally confirmed. France considered that the expression “any rights” applied to contractual and non-contractual rights alike. The text submitted by the French delegation followed that of the 1957 Convention, and was less restrictive than the basic text.

In short, there are two questions at issue. The first was one of substance: did delegations want a broader interpretation of the 1957 Convention covering contractual rights – an interpretation reflected in the text submitted by France – or did they want a more restrictive one, in which case sub-paragraph (c) of the basic text should be adopted subject to drafting. The second question was that of the formulation of the text. The French delegation obviously preferred its own more succinct text, which obviated the need for tedious repetition.

Mr. Makovsky (USSR) supported the French proposal which was indeed clearer and deserved careful consideration. The difference between the French text and the basic text was one of principle. Neither the 1924 Brussels Convention nor the 1957 Convention prevented shipowners from limiting their liability in cases of infringement of contractual rights, although there had been different interpretations of the provisions. In practice, however, the laws of various countries, including the USSR, provided for limitation of liability in such cases. That principle deserved to be maintained and clearly stated.

Mr. Herber (Federal Republic of Germany) also favoured the French text, which he found satisfactory. It was true that, under the laws of most countries, infringement of purely contractual rights would not give rise to claims for compensation; but such cases might occur. The point to be borne in mind was that the Conference was drafting a Convention dealing not with liability but with the limitation of liability and claims.

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(10) See note 9.
(11) See note 8.
(12) See note 9.
Mr. Muller (Switzerland) endorsed the legal position of the French delegation, and in general supported the redraft of the text submitted by that delegation.

Mr. Amoroso (Italy) found the French proposal acceptable both in form and substance.

Mr. Selvig (Norway) was unable to support the French proposal which involved the substantive questions of what could be very large claims. If the liability arose from failure to execute a charter-party or chartering agreement and the resulting damage was of a commercial and not material nature, ought it to be subject to limitation? It was a question which had been discussed time and time again. Then there was the question of indirect damage caused to a third party. The 1924 Convention provided for limitation of liability in cases where the latter arose from “a fault of navigation committed in the execution of a contract”. The 1957 Convention, which had set itself the task of minimizing claims subject to limitation, had excluded that particular category. In his view, that was a reasonable solution, considering in particular that the amount of such claims depended entirely on the clauses of a contract freely concluded by the shipowner, and might be very large indeed.

Mr. Bursley (United States) agreed with the Norwegian representative that claims arising out of a contract might well be considerable. United States legislation ruled out limitation in such cases and his delegation’s understanding was that the provisions of the 1957 Convention took a similar line. The introduction of a new category of claims into the text of the Convention was something his delegation could not accept.

Mr. Suchorzewski (Poland) questioned whether the wording proposed by the French delegation was really in line with the text of the 1957 Convention. If the term “contractual obligations” was used, there was a risk of its being applied, say, to salvors’ remuneration or to the wages of crew members or other servants; and that would be unacceptable. He would be glad for clarification from the French delegation concerning agreement between the two texts.

Mr. Douay (France) explained that with regard to the crew’s wages, for example, claims were excluded from limitation under the provisions of Article 3(d), so that contracts of that type did not enter into the matter. With regard to charter-parties and chartering agreements, which represented the freely expressed wishes of the parties concerned, the shipowner or the shipper could ensure that all appropriate clauses were included. As far as French shippers were concerned, they excluded the application of the 1957 Convention from their contracts whenever they could. It was thus already possible to have contracts in which limitation of liability was excluded. The proposed French text would impose no restriction on the freedom of charter-party signatories. As for the damage caused to third parties, that was no longer covered by contract, and it was impossible to avoid limitation of liability in that connexion.

[246] The Chairman invited the Committee to vote on the French proposal to extend the scope of application of the provisions of paragraph (1)(c) to cover the infringement of contractual rights.

There were 3 votes in favour of the French proposal, 22 against and 9 abstentions. The proposal was rejected.

The French proposal to redraft Article 2(1) (LEG/CONF.5/4, and as amended by LEG/CONF.5/C.1/WP.27)\textsuperscript{13} was rejected.

\textsuperscript{13} See notes 8 and 9.
Summary Record of the Sixth Meeting
4 November 1976

[246] The Chairman, referring to the indicative vote on the French proposal to redraft the text of Article 2 taken at the previous meeting, said that after consultations with delegations, it seemed that there must have been some misunderstanding concerning the matter and that some of the delegations which had abstained had been under the impression that the vote was on both substance and drafting. For that reason, she proposed that the French delegation be given the opportunity to submit a new draft which would take account of the decision of the Committee against the inclusion of “contractual rights” within the scope of Article 2. The Committee would consider the new text when it was ready.

It was so decided.

Mr. Perrakis (Greece) said that his delegation had abstained at the previous meeting because it could accept either text.

Draft International Convention

(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;

Summary Record of the Twenty-Sixth Meeting
18 November 1976

[405] The Chairman invited the Committee to continue reviewing the text of the Drafting Committee’s report (LEG/CONF.5/C.3/1 and LEG/CONF.5/C.3/1/Add.1), in order to assess whether it faithfully reflected the substantive decisions which the Committee had taken.

Paragraph 1, sub-paragraph (c)

[407] Mr. Jeannel (France) proposed that the phrase “de source non contractuelle” be replaced by “de source extra-contractuelle”.

The proposed amendment was approved.

1976 Convention

(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;

(14) The text under review is that of Article 2(1)(c) of the Draft International Convention quoted above.
Sub-paragraphs (d) and (e)

Hamburg Draft Convention
Text and Commentary

(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 ON BOARD SUCH SHIP;

(E) CLAIMS IN RESPECT OF THE REMOVAL, DESTRUCTION OR THE RENDERING HARMLESS OF THE CARGO OF THE SHIP;

[404] Sub-paragraphs (d) and (e), equivalent to Article 1, 1°, c) of the 1957 Convention, are necessary in addition to the previous sub-paragraphs in order to make claims for wreck removal and removal of cargo subject to limitation.

IMCO Legal Committee
Twenty-third Session

[5] 20. An issue raised regarding (d) was whether limitation might be defeated in some jurisdictions by successfully pleading that an owner’s refusal to remove a wreck was conduct falling under Article 4. Under the 1957 Convention, such refusal had on occasion been considered “privity” in those jurisdictions. One delegation proposed that the first paragraph of this Article should be shortened and simplified in respect of its sub-paragraphs (a) to (d) by the substitution of the following text:

“The owner of a ship may in accordance with the provisions of the present Convention limit his liability in contract or vis-à-vis third parties in respect of damage occurring on board the ship or in direct connexion with the navigation or operation of the ship.”

Such wording would be supplemented by specific provisions relating to the extension of limitation to the shipowner for:

[6] (i) claims in respect of removal or destruction of the ship or of the wreck and of the cargo on board, or

(ii) claims in respect of measures taken to minimize damage involving liability in accordance with the draft convention.

The provision would, of course, be subject to the provisions of other draft Articles relating to persons entitled to limit liability, e.g. the insurer and the salvor.

21. The delegation proposing this revision stated that it did not intend a change of substance but considered that a simpler formula would be in order.

Twenty-fifth Session

[5] 27. Sub-paragraphs 1(d) and (e) were also left unchanged, but some delegations noted that the existence of a limitation might, regrettably, be conducive to the neglect of wreck removal by shipowners, and might similarly discourage removal, destruction or rendering harmless of cargoes in cases of necessity.

28. A suggestion was made that 1(d) and (e) might be one sub-paragraph, but the Committee accepted the view that the two sub-paragraphs were concerned with factual situations which might be distinct, e.g., the cargo might be jettisoned or otherwise detached from the ship, and this change was not made.

[6] 29. The question of dealing with wreck removal in this Article prior to a resolution
of the general subject of wreck removal and related issues was mentioned, and
delegations also referred to the reservation permitted by the Protocol of Signature of the
1957 Convention to Article 1, paragraph 1(c) of that Convention. It was considered
preferable to retain the existing text for further consideration and, for the time being,
not to deal with the question of a reservation for claims arising out of wreck removal.

**Twenty-eighth Session**

[5] 24. Some delegations suggested a provision enabling States to enter a reservation
in respect of Article 2.1(d) and (e) in the Final Clauses. This suggestion was not
accepted, but it was noted that such a provision might be presented for consideration
by the conference.

25. Another delegation suggested that this might also be the case if the
Convention did not contain a provision allowing States to establish priority for claims
in respect of damages to harbour works and expenses incurred by a State for wreck
removal (see paragraph 53 on this last point).

**Draft Articles**

(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 CARRIED ON BOARD SUCH SHIP;

(E) CLAIMS IN RESPECT OF THE REMOVAL, DESTRUCTION OR THE RENDERING
HARMLESS OF THE CARGO OF THE SHIP;

**Diplomatic Conference**

**Committee of the Whole**

**Summary Record of the Fifth Meeting**

3 November 1976

[239] The Chairman proposed that paragraphs 1(d) and 1(e) be considered
together. The Committee had before it a proposal by the Japanese delegation
(LEG/CONF.5/C.1/WP.16)\(^{15}\) on the subject of reservations and one by the Canadian
delegation [240] (LEG/CONF.5/C.1/WP.22).\(^{16}\) Since the representative of Canada
has asked that consideration of his proposal be deferred until after Article 6 had been

\(^{15}\) Document LEG/CONF.5/C.1/WP.16
2 November 1976

[150] Proposal submitted by the Japanese delegation
Article (Reservation)
(1) Any State, at the time of signing, ratifying, accepting, approving this Convention or
acceding to it may make any of the reservations set forth in paragraph
[151] (2) No other reservations to this Convention shall be admissible.
(2) The following are the only reservations admissible:
(a) Reservation of the right to exclude the application of Article 2, paragraphs (d), (e) and (f).
(b) Reservation of the right to regulate by specific provisions of national law the system of
limitation of liability to be applied to ships of less than 300 tons.

\(^{16}\) Document LEG/CONF.5/C.1/WP.22
2 November 1976

[154] Proposed amendment by the delegation of Canada
Article 2
discussed, consideration of the United States proposal (LEG/CONF.5/C.1/WP.12)\textsuperscript{17} relating to the same paragraphs would, with agreement of the United States delegation, also be deferred.

Mr. Tanikawa (Japan) introduced his delegation’s proposal for the addition to the final clauses of an Article providing for reservations on Article 2(d), (e) and (f). He laid great emphasis on the proposal, stating that, if the Committee did not admit reservations on the sub-paragraphs in question, his Government would find it extremely difficult to accept the Convention.

Mr. Carvell (Canada), pointing out that his delegation had submitted an amendment to the Japanese proposal, said that he would prefer the Committee to consider his delegation’s proposal after the discussion of Article 6 and the reservation clause.

The Chairman said that a majority of the Committee appeared to prefer to deal with claims arising from damage to harbour works at the same time as those arising from damage to all other types of property covered by the Convention. The Committee would resume consideration of those questions after it had examined Article 6. She suggested that the Committee should indicate its preferences for the various alternatives which had been discussed during the previous meeting in relation to claims for damage to harbour works.

\textit{It was so decided.}

\textit{The result of the show of hands was as follows:}

1. Those favouring the total exclusion from the Convention of claims referred to in paragraphs (d) and (e)\textsuperscript{2} 2
2. Those preferring the inclusion of a reservation clause 10
3. Those favouring the inclusion of such claims and giving them priority within the scope of Article 6 6
4. Those favouring the treatment of such claims equally with other property claims 11

\textit{Draft International Convention}

\textbf{(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 ON BOARD SUCH SHIP;

\textbf{(E)} CLAIMS IN RESPECT OF THE REMOVAL, DESTRUCTION OR THE RENDERING HARMLESS OF THE CARGO OF THE SHIP;

\begin{enumerate}
\item Subject to Articles 3 and 4 etc. etc.
\item \begin{enumerate}
\item \begin{enumerate}
\item claims in respect of the raising, removal, destruction or the rendering harmless of a ship which is sunk, wrecked, stranded or abandoned, including anything carried on board such ship with the exception of claims by a State for expenses incurred by it in regard thereto;
\item claims in respect of the removal, destruction or the rendering harmless of the cargo of the ship with the exception of claims by a State for expenses incurred by it in regard thereto;
\item \end{enumerate}
\end{enumerate}
\end{enumerate}

\textsuperscript{17} United States Document LEG/CONF.5/C.1/WP.12

\textit{2 November 1976}

\[148\] The United States proposes that claims of this type, made by public authorities for actions taken for the safety of navigation or for public health and safety, be moved to Article 3 as claims not subject to limitation.
Summary Record of the Twenty-Fifth Meeting  
17 November 1976

[405] In response to a request for clarification from Mr. Tanikawa (Japan), the Chairman confirmed that she understood the assumption concerning wreck removal in paragraph 3 of the footnote to Annex I to document LEG/CONF.5/C.1/WP.82 as covering both sub-paragraphs (d) and (e) of Article 2(1). Subject to the Committee’s agreement, she would so inform the Chairman of the Drafting Committee.

It was so decided.

Summary Record of the Twenty-Sixth Meeting  
18 November 1976

[405] The Chairman invited the Committee to continue reviewing the text of the Drafting Committee’s report (LEG/CONF.5/C.3/1 and LEG/CONF.5/C.3/1/Add.1), in order to assess whether it faithfully reflected the substantive decisions which the Committee had taken.

[407] Paragraph 1, sub-paragraph (d) and (e)

There were no comments.

1976 Convention

(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;

(18) Document LEG/CONF.5/C.1/WP.82 consists of a note by the Secretariat on the limitation system, in Annex I thereto there being proposals on limitation figures. Here follows a quotation from the Summary Record of the Twenty-second Meeting (for the full text, see p. 245)

[384] The Chairman then put to the vote the compromise solution contained in Annex I to the document on limitation figures (LEG/CONF.5/C.1/WP.82), including the assumption for the figures mentioned in the four paragraphs in the foot note.

Paragraph 3 is so worded:

3. Claims in respect of harbour works etc. and wreck removal should be included among claims subject to limitations. States should be entitled to make a reservation in respect of wreck removal. Whether a reservation should be allowed in respect of damage to harbour works etc. is an open question.

(19) The text under review is that of Article 2(1)(d) and (e) of the Draft International Convention quoted above.
Sub-paragraph (f)

Hamburg Draft Convention
Text and Commentary

(F) CLAIMS 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.

Sub-paragraph (f) deals with claims in respect of preventive measures taken by third parties. Under the 1969 Oil Pollution Liability Convention such claims are subject to limitation, and it is considered that, generally, liability for preventive measures should be subject to global limitation. Cost of preventive measures taken by the liable person himself are dealt with in Article 10.5.

IMCO Legal Committee
Twenty-fifth Session

30. Some delegations considered that the wording of paragraph 1(f) was insufficiently precise with regard to the person taking the measures to avert or minimize loss. They queried whether the shipowner might benefit when measures taken by him were destined to minimize only his own loss. The Committee felt that this would involve a misconstruction of the intent of the provision, and the representative of the CMI stated that the words “person liable” could not refer to the shipowner since he could not be liable to himself in these circumstances. The wording of (f) was retained for further study.

Twenty-eighth Session

23. A suggestion that Article 2.(1)(f) should specify that the “measures taken” to avert or minimize loss would be “by persons other than the person seeking to limit his liability” was not approved by the Committee, because it was recognized that this was the meaning of the provision, since no one could be held liable against himself.

Draft Articles

(F) CLAIMS 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.

Diplomatic Conference

Committee of the Whole
Summary Record of the Fifth Meeting
3 November 1976

[240] Mr. Crook (United States) introduced his delegation’s comments (LEG/CONF.5/C.1/WP.23)20 drawing attention to the relationship between Article

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(20) Document LEG/CONF.5/C.1/WP.23
2 November 1976
[145] Comment by the United States delegation
Article 2(1)(f)
The United States notes that this Article bears a relationship to Article 12(5) and to Article 3(6) and may require modification depending upon the resolution of those Articles.
2(1)(f) and Articles 12(5) and 3(b) and suggesting that some amendment of the former might be necessary depending on the decisions taken on the two latter provisions. Claims arising out of damage caused by oil pollution should perhaps be treated in the same way, the principle on which the 1969 Convention had been based having given rise to some criticism.

Mr. Selvig (Norway) thought, on the contrary, that the provisions to which the United States representative had referred were quite unrelated and concerned different claims. Under Article 2(1)(f), anyone who had taken measures to minimize a loss could apply to the fund for reimbursement of his expenditure if the person liable had limited his liability. As far as the claims referred to in Article 3(b) were concerned, not all were covered by the 1969 Convention. Any expenses incurred in the circumstances provided for in Article 12(5) ranked equally with any other claims on the fund.

Mr. Carvell (Canada) thought that the matter could be clarified by a simple drafting amendment to sub-paragraph (f) so that it read: “claims for further loss caused by the measures taken”.

Mr. Iturralde (Argentina) endorsed the remarks of the Norwegian representative; there was a clear distinction between the situations covered by Article 2(1)(f) and Article 12(5) respectively.

Lord Diplock (United Kingdom) pointed out that the Convention was not designed to create liabilities, but simply to limit liabilities arising from national legislation or other international conventions. The provisions of Article 2(1)(f) certainly did not imply that someone who, on behalf of the person liable, had taken measures to minimise loss could not claim for the full loss against the person liable.

Mr. Clifton (Netherlands), commenting on his delegation’s observations (LEG/CONF.5/C.1/WP.7), said that the question of preventive measures appeared...
even more complicated when considered in connexion with the provisions of the 1969 International Convention on Civil Liability for Oil Pollution Damage, since that Convention provided for a single type of claim only, whereas the present draft provided for several different types. The way in which sub-paragraph (f) was to be interpreted must be made clear. Obviously, it could apply only to claims submitted by someone other than the person attempting to limit his liability, but it was possible for the measures which had caused the further loss to have been taken by the person liable. Claims against the person liable in respect of such further damage should also be subject to limitation, as had emerged from the discussions at the twenty-eighth session of the Legal Committee, where delegations had not accepted the excessively narrow interpretations of the provision which had been given by the CMI. His delegation regarded it as of the first importance that a wide measure of agreement should be reached on the meaning of the sub-paragraph. The same sub-paragraph also covered claims against the person liable by someone who had taken preventive measures by virtue of a contract with that person. Those claims ought not to be subject to limitation as, if they were, the effect would be to discourage people from entering into such contracts. On the contrary, the services rendered ought to be paid for in full. It was for that reason that his delegation had proposed the addition to Article 2(2) of a sentence providing that there should be no limitation of liability in such cases.

Mr. Crook (United States) said that the discussion had clarified matters and it now appeared that there was not in fact any relationship between the provisions of Article 2(1)(f) and those of Article 12(5).

Mr. Douay (France) said that his delegation still had some doubts on the matter. According to the interpretation put forward by the Netherlands delegation (LEG/CONF/5/C.1/WP.7),

Article 2(1)(f) dealt with claims presented by persons other than the person seeking to limit his liability. That was one interpretation, but the provision could also apply to claims presented by the person liable himself. It would therefore be prudent to specify in paragraph (1)(f) that it applied to measures taken by someone other than the person liable who had not entered into a contract with the latter. Otherwise, it would be too easy to circumvent the provisions by entering into a [242] contract with a third party who himself might benefit from the limitation of liability. That interpretation was obvious in the case of paragraphs (a), (b), (c), (d) and (e), but less clear in the case of sub-paragraph (f). The position ought to be spelt out in order not to revert to the situation provided for in Article 12(5).

Mr. Wiswall (Liberia) was equally dissatisfied with the provisions of sub-paragraph (1)(f). He fully shared the views of the United Kingdom representative, namely that the sub-paragraph added nothing to what was contained in paragraph (1)(a). He agreed that there was no direct relation between paragraph (1)(f) and Article 12(5). In his view, the matter could be settled by careful redrafting of paragraph 1(a) and the addition to paragraph (1)(f) of the words “... including loss caused by measures...”, thus avoiding any contradiction with Article 12(5).

The Chairman pointed out that the relationship between paragraph (1)(f) and Article 12(5) had also been discussed by the Legal Committee. Some delegations had thought the wording of paragraph (1)(f) lacked precision with regard to loss suffered by the person taking measures to avert or minimize loss. The Legal Committee had

(22) See note 21.
retained the present text because many delegations had stressed that the words “the person liable” could not refer to the owner of the ship, since the shipowner could not be liable to himself. In view of the confusion over the issue that still existed, an attempt to clarify the text seemed to be wise. It was a drafting matter on which the delegations of Canada, France and Liberia had made suggestions. She noted that no objection had been made to the substance of the sub-paragraph, and asked whether it could now be considered to have been approved in principle by the Committee. The Drafting Committee would then be invited to examine the question of drafting.

**Lord Diplock (United Kingdom)** wished to revert to the question of principle raised by the Netherlands delegation in LEG/CONF/5/C.1/WP.7. He thought that any amendment to the text ought to make it clear that the provision was not applicable solely to measures taken by third parties.

**The Chairman** noted that the Netherlands delegation appeared to be satisfied with the various explanations given, and asked whether the representative of the United Kingdom really thought some amendment was required.

**Lord Diplock (United Kingdom)**, while not desiring to amend the draft, pointed out that at least in English law it was not always acceptable, in interpreting the text of a convention, to refer back to the preparatory work. The Convention should be so clearly drafted that it could be understood without reference to other texts.

**Mr. Jeannel (France)** endorsed the comments of the United Kingdom representative which were in line with the provisions relating to the interpretation of conventions contained in the Convention on the Law of Treaties, according to which the preparatory work was considered as a subsidiary aid in the interpretation of the text. There was therefore every reason to clarify the text of the Convention itself.

His delegation had been greatly interested by the very pertinent analysis of Article 2(1)(f) given by the Netherlands delegation (LEG/CONF/5/C.1/WP.7), and supported the proposed amendment which it contained.

**Mr. Perrakis (Greece)** endorsed the remarks made by the United Kingdom representative. He added that, in his view, paragraph (1)(f) might be deleted even without amending paragraph (1)(a), provided that the brackets in the latter were removed. He thought that the matter could be referred to the Drafting Committee.

**Mr. Rein (Observer, CMI)** speaking at the Chairman’s invitation, said that, after listening to the representative of Greece, he wished to make a few comments since the CMI had been concerned with drafting the provisions in question. So far as most national legislation was concerned, the provisions of Article 2(1)(a) and Article 12(5) were adequate to cover the various cases, but the position was not the same in Scandinavia, for example. Moreover, even if limitation of liability was invoked in error on the basis of Article 2(1)(f) rather than on that of Article 12(5), the consequences would not, in the end, be particularly serious.

**Mr. Selvig (Norway)** thought that the discussion had shown that paragraph (1)(f) was important in its own right, irrespective of the other provisions. He would therefore prefer to retain it. As far as claims submitted by someone other than the person liable were concerned, the important point was not who took the measures but who made the claims. In his view, claims made by a party to a contract against the person liable, before remuneration, should not be subject to limitation.

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(23) See note 21.
(24) See note 21.
Mr. Iturralde (Argentina) was in general agreement with the Norwegian representative that paragraphs (1)(a) and (1)(f) related basically to the same claims. He therefore proposed inserting the provisions of paragraph (1)(f) in paragraph (1)(a) so as to make a single paragraph.

Mr. Perrakis (Greece) said that he had already suggested deleting paragraph (1)(f) which he did not regard as essential.

The Chairman thought that it must be made clear that paragraph (1)(f) related only to claims made by someone other than the person liable. It would be for the Committee to decide whether the text should specify that paragraph (1)(f) also applied to cases where the measures had been taken by the person liable but had caused damage to a third party. She asked if other delegations supported her proposal.

As only two delegations supported the proposal the Chairman proposed that the Drafting Committee would not be asked to amend the text of paragraph (1)(f) along the lines suggested.

It was so decided.

The Chairman invited the Committee to consider the amendment proposed by the Netherlands delegation (LEG/CONF.5/C.1/WP.7) on which a number of speakers had already commented.

Mr. Cleton (Netherlands) said that some delegations had pointed out that the amendment was perhaps wider in scope than the sponsors had realized, for it failed to specify that it dealt solely with claims relating to the remuneration of parties to a contract. Clearly, the scope of the amendment had to be limited to claims of that nature, and that was the very objective of the amendment.

The Netherlands amendment (LEG/CONF.5/C.1/WP.7) was approved.

The Chairman invited the Committee to consider the Japanese proposal (LEG/CONF.5/C.1/WP.16).

[244] Professor Tanikawa (Japan) said that his delegation’s proposal would authorize any State to reserve the right to exclude the application of Article 2(1)(f). The Japanese Government considered that recognizing limitation of liability for claims in respect of preventive measures might have a dissuasive effect and discourage the taking of such measures. There should, therefore, be no limitation of liability for claims in respect of preventive measures.

Having received no support, the Japanese proposal (LEG/CONF.5/C.1/WP.16) was not approved.

Draft International Convention

(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.

(26) See note 21.
(27) See note 15.
(28) See note 15.
Summary Record of the Twenty-Sixth Meeting  
18 November 1976

[405] The Chairman invited the Committee to continue reviewing the text of the Drafting Committee’s report (LEG/CONF/5/C.3/1 and LEG/CONF/5/C.3/1/Add.1),29 in order to assess whether it faithfully reflected the substantive decisions which the Committee had taken.

Paragraph 1, sub-paragraph (f)

There were no comments.

1976 Convention

(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.

Summary Record of the Twenty-Third Meeting  
16 November 1976

Paragraph 1

[386] The Chairman reminded the Committee that the problem of the words “including damage to harbour works, basins and waterways” in sub-paragraph (a) had been resolved by the Committee’s decision on document LEG/CONF/5/C.1/WP.8230 at its previous meeting. A drafting question concerning the words “on board the ship” in sub-paragraph (b) had been referred to the Drafting Committee. Questions concerning wreck removal (sub-paragraph (d)) and destruction or rendering harmless of the cargo (sub-paragraph (e)) had also been settled by the vote on document LEG/CONF/5/C.1/WP.82. The text of sub-paragraph (f) had been referred to the Drafting Committee, so that it should be made clear that the claims in question would be made by persons other than the person liable. The Drafting Committee was also dealing with the position of sub-paragraph (f).

Mr. Herber (Federal Republic of Germany), referring to sub-paragraph (c), asked for confirmation that the reference to contractual rights was to be interpreted as not excluding material damage from the limitation in cases where it also represented infringement of a contract, e.g., in the case of cargo carried, material damage should be covered by sub-paragraph (a).

Lord Diplock (United Kingdom) said that, as far as the English text was concerned, the representative of the Federal Republic of Germany had no cause for concern. It was clear from the wording that sub-paragraph (c) was not related to any claims under sub-paragraph (a) in respect of damage to property.

(29) The text under review is that of Article 2(1)(f) of the Draft International Convention quoted above.

(30) See note 18.
The Chairman drew attention to a proposal by the French delegation (LEG/CONF.5/C.1/WP.72)[31] which had not been discussed. Following a comment by Lord Diplock (United Kingdom), who considered that the proposal was really a drafting matter, she suggested that it be referred to the Drafting Committee.

It was so decided.

Paragraph 1 was approved (34 votes in favour, none against, and 1 abstention) subject to further drafting by the Drafting Committee.

1976 Convention

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.

Paragraph 2

Hamburg Draft Convention
Text and Commentary

2. CLAIMS SET OUT IN THE PRECEDING PARAGRAPH SHALL BE SUBJECT TO LIMITATION OF LIABILITY EVEN IF BROUGHT IN AN ACTION FOR CONTRIBUTION OR INDEMNITY UNDER A CONTRACT OR OTHERWISE.

(31) Document LEG/CONF.5/C.1/WP.72
This provision may not be necessary, but it was felt that it should be expressly stated that a limitable claim does not change its nature when brought as a “recourse claim”. Example: Two tortfeasors are jointly liable for the damage, but only one of them can limit his liability to the claimant who, therefore, proceeds against the other and gets satisfaction in full. The one who has paid seeks contribution from his co-tortfeasor who, as between them, is liable in principle for one half of the damage, but subject to limitation of liability.

The words “under a contract or otherwise” are not necessary but have been added in order to avoid the misunderstanding that limitation is barred just because the recourse action may be built on contract. It goes without saying that limitation is barred if the contract implies a waiver of the right of limitation.

**IMCO Legal Committee**  
**Twenty-third Session**

[6] 22. With regard to paragraph 2 of this Article, the suggestion was made that if it were decided to nullify “hold harmless” agreements or clauses, the Article might be supplemented by the words “and notwithstanding the provisions of any contract to the contrary”.

**Twenty-fifth Session**

[6] 31. A proposal was made by one delegation for a text of Article 2 in a more concise form. This proposal appears in Annex II to the present Report. The text was presented as a drafting revision without substantive consequences, but the delegations of certain Members and Observers felt that the changes from the original text might have implications which should be discussed at a later session.

**ANNEX I**

2. **Claims set out in the preceding paragraph shall be subject to limitation of liability even if brought in an action for contribution or indemnity under a contract or otherwise.**

(32) The relevant part of Annex II to the Report of the Legal Committee on the work of its Twenty-fifth Session is quoted below:

**Annex II**  
**Proposals for alternative draft texts**  
**Article 2**  
**Claims subject to limitation**

**Proposal by the delegation of France**

1. Subject to the provisions of Articles 3 and 4, the owner of a ship, the salvor or the insurer may limit their liability to contractors or third parties if the damage occurred on board or in direct connexion with the navigation or operation of the ship.
2. He may also limit his liability in respect of loss resulting from delay of cargo carried and in respect of expenses incurred in the raising, removal, destruction or the rendering harmless of a ship which is sunk, wrecked, stranded or abandoned, or for anything on board including cargo.
3. He may also limit his liability in respect of expenses resulting from measures taken in order to avert or minimize loss for which the person liable may limit his liability in accordance with this Convention, and for further loss caused by these measures.
4. Claims set out in the preceding paragraphs shall be subject to limitation of liability even if brought in an action for contribution or indemnity under a contract or otherwise.


Twenty-seventh Session

[5] 17. One delegation suggested that a sentence be added to paragraph 2 declaring invalid any provision of a contract which had the effect of depriving a person of the benefits of the Convention to which he would otherwise be entitled. Some delegations felt however that the idea as proposed was too sweeping and seemed to be in conflict with a general principle of law reflected in a number of liability conventions according to which the carrier is expressly entitled to assume a higher limit of liability than that provided for in the respective convention. One of these delegations considered that there might be a need for a provision covering waivers or indemnities but that this question required further reflexion. The delegation having proposed the addition stated its intention to submit a new draft to the twenty-eighth session.

Twenty-eighth Session

[3] 17 The Committee redrafted the English text of paragraph 2 in order to remove possible misunderstanding arising from the use of the word “contribution” in the earlier text, which might have been thought to refer to contribution in general average.

[5] 26. One other delegation suggested that it should be made explicit in Article 2.2 and in other relevant provisions of the Convention, that limitation could always be invoked in arbitration proceedings. The general view was that this was the intent and meaning of the present provision and in other relevant provisions throughout the Convention. The paragraph was accordingly redrafted.

Draft Articles

2. CLAIMS SET OUT IN THE PRECEDING PARAGRAPH SHALL BE SUBJECT TO LIMITATION OF LIABILITY EVEN IF BROUGHT BY WAY OF RECOUSE OR FOR INDEMNITY UNDER A CONTRACT OR OTHERWISE.

Diplomatic Conference

Committee of the Whole
Summary Record of the Twenty-third Meeting
16 November 1976

Paragraph 2

[386] The Chairman recalled that the Committee had tentatively accepted the [387] additional paragraph proposed by the Netherlands delegation (LEG/CONF:5/C.1/WP.7).

Paragraph 2, thus amended, and subject to drafting changes to make it clear that it referred only to claims for remuneration by contractors, was approved (30 votes in favour, none against, and 2 abstentions).

(33) See note 21.
Draft International Convention

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 (f) of paragraph 1 shall not be subject to limitation of liability to the extent that they relate to remuneration for measures taken under a contract with the person liable.***

* The Committee noted that the contractual claims excluded by this provision could also arise under sub-paragraphs (d) and (e).

Summary Record of the Twenty-sixth Meeting
18 November 1976

[405] **The Chairman** invited the Committee to continue reviewing the text of the Drafting Committee’s report (LEG/CONF.5/C.3/1 and LEG/CONF.5/C.3/1/Add.1),34 in order to assess whether it faithfully reflected the substantive decisions which the Committee had taken.

**Paragraph 2**

[407] **Mr. Cleton (Netherlands),** Chairman of the Drafting Committee, drew attention to the footnote on page 451.35 As at present worded, the second sentence in paragraph 2 raised a difficulty in law, since it might be construed to mean that the claims referred to in sub-paragraphs 1(d) and (e) could be regarded as not being subject to limitation of liability. He proposed, in the circumstances, that paragraph 2, line 3, be amended as follows: “Under sub-paragraphs (d), (e) and, (f) of paragraph 1...”

**Mr. Wiswall (Liberia)** recalled that the Drafting Committee had considered the matter without reaching any conclusion. The idea contained in sub-paragraph (f) pertained to measures taken in order to avert or minimize loss for which the person liable might limit his liability.

However, under the provisions of sub-paragraphs (d) and (e), it was possible for measures to be taken without there being any intent to avert or minimize the relevant loss. To refer in sub-paragraph (f) to sub-paragraphs (d) and (e) would be tantamount to introducing a substantive amendment.

**Mr. Cleton (Netherlands),** Chairman of the Drafting Committee, said that, as the representative of Liberia had rightly pointed out, sub-paragraph (f) could in no way be regarded as covering all the measures referred to in sub-paragraphs (d) and (e), and he agreed that a reference to those sub-paragraphs would be tantamount to a substantive amendment. He was in favour of leaving the text as it was.

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(34) The text under review is that of Article 2(2) of the Draft International Convention quoted above.

(35) The footnote appended to Article 2(2) of the Draft International Convention is quoted below:

1. The Committee noted that the contractual claims excluded by this provision could also arise under sub-paragraphs (d) and (e).
Lord Diplock (United Kingdom) saw a danger in confining the reference to sub-paragraph (f). If that sub-paragraph were mentioned, sub-paragraphs (d) and (e) should be mentioned as well.

Mr. Selvig (Norway) felt that the discussion had moved on to a shaky ground. To his mind, once a contract was concluded between the authorities requesting the removal of a wreck and the person liable, the legal liability became a contractual obligation, and the difference was slight.

Personally, rather than add words to paragraph 2, he would prefer to have the second sentence of that paragraph deleted and the reason for deleting it included in the Summary Record of the meeting. Such a solution would be acceptable to his delegation.

Mr. Perrakis (Greece) speaking on a point of order, wondered whether the Committee was considering the text from the drafting standpoint or whether it had reopened discussion on questions of substance. He referred to Rules 31 and 52 of the Rules of Procedure, adding that the Committee had not much time left and that any substantive matter should now come before the Plenary.

The Chairman stressed that the point at issue was to obviate any misinterpretation of the Convention. She asked the Chairman of the Drafting Committee if he would accept the proposal of the representative of Norway for the deletion of the second sentence in paragraph 2.

Mr. Cleton (Netherlands), Chairman of the Drafting Committee, took the view that paragraph 2 without the second sentence might prove a source of confusion even if the Committee’s reasons were correctly recorded in the Summary Record of the meeting; Summary Records were not within the cognizance of the courts. He would prefer the second sentence of paragraph 2 to be retained, and specific mention to be made of it in sub-paragraphs (d) and (e).

The Chairman called for a vote on the proposal to refer to sub-paragraphs (d) and (e) in the second sentence of paragraph 2, and to delete the words “measures taken” in the last line of the paragraph.

The proposal was approved (18 votes in favour, 6 against, and 17 abstentions).

Report of the Committee of the Whole (LEG/CONF.5/WP.9)

3. Article 2.2
The English and French texts are modified to replace the words “sub-paragraphs (d), (e) and (f)” for the words “sub-paragraph (f)” and to delete the words “for measures taken”.

1976 Convention

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 paragraphs 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.
Committee of the Whole
Summary Record of the Sixth Meeting
4 November 1976

The Chairman invited the Committee to consider the Liberian proposal to add a new paragraph to Article 2 (LEG/CONF.5/C.1/WP.1).36

Mr. Wiswall (Liberia) said that his delegation’s proposal was based on two main considerations. In the first place, he assumed that the Convention would reflect public policy. If it was public policy that persons entitled to limitation should in all cases – unless their conduct barred them – be so entitled, then it should not be possible to circumvent that policy by private contracts. Experience showed that unless that was ensured, salvors and similar persons would be under commercial pressure to waive the benefits of the Convention so as to secure maritime commerce. Since the purpose of the Convention was to facilitate the functioning of maritime commerce with reasonable efficiency and to ensure that third parties received compensation, it might be contrary to public policy that private contracts could set the Convention aside.

Under the regime of the 1924 and 1957 Conventions, it was perhaps tolerable that limitation could be set aside by private contract. The present draft Convention, however, was based on insurability, and for parties to be able to waive limitation at will would be tantamount to waiving the insurable limits. Unless the present Convention guaranteed against such waivers, the limits of liability would have to be lowered if insurers were to be able to provide the appropriate insurance.

Mr. Perrakis (Greece) seconded the Liberian proposal.

Mr. Douay (France) said that the Liberian proposal was liable to upset shipping economy, especially the relations between charterers and owners chartering ships. There was no similar provision in the 1957 Convention because it had never been considered that the limitation of liability, which was a favour granted to shipowners, should become a compulsory rule. Under French law, it was possible to waive the application of the limitation of liability to facilitate maritime trade. The Liberian proposal would prevent such waiver. The Convention should allow shipowners an economically favourable system, but limitation should not be compulsory.

He understood the motive behind the proposal, coming as it did from a shipowning but not really maritime country and one not really concerned with chartering and the interests of shippers. But as the representative of a country with a large merchant fleet and many charterers, he opposed the Liberian proposal; if it were adopted, France might be unable to accede to the Convention.

Additional Paragraph
(not adopted)

36 Document LEG/CONF.5/C.1/WP.1
1 November 1976
[142] Proposal submitted by the delegation of Liberia
Article 2
Add a new paragraph 3 as follows:
“3. Any provision of contract which would operate to deprive a person of the benefits of this Convention to which he would otherwise be entitled shall be invalid, but such invalidity shall not in itself void the remaining provisions.”
Mr. Wiswall (Liberia) wished to emphasize that Liberia was an exporter by sea of very large quantities of raw materials in ships which were mostly under the Liberian flag, an increasing number of which were manned by Liberian nationals. He stated, however, that he did not think that such considerations were appropriate in the present context. All participants in the Conference had an interest in maritime affairs. The interests might not all be identical, but they were strong enough to be respected. He felt that arguments on these matters should be based more on legal grounds and less on the individual interests of States.

Mr. Perrakis (Greece) said that the fears of the French delegation were not based on facts. The aim of the Liberian proposal, which he found justified, was to prevent shipowners from being forced to abandon their right to limitation, in such cases as extra-contractual damage, by signing obligatory disclaimers. It had nothing to do with chartering.

Mr. Iturralde (Argentina) said that under civil law – which predominated in France, most European countries and Argentina – the substance of the Liberian proposal would, in fact, be applicable if there was a lack of equality between the Parties. That principle applied particularly in the field of insurance. However, such lack of equality only occurred in exceptional cases, and the type of situations in which the shipowner might find himself were not always exceptional. The general rule in countries of the civil law system was freedom of contract. All clauses, therefore, which would mean a unilateral imposition by one party on another party to a contract were null and void. He had the impression that the situation was similar under the common law system.

It was already of benefit to the shipowner to be able to limit his liability: to add the further benefit suggested in the Liberian proposal would be to give excessive benefit to the shipowner. Moreover, under civil law at any rate, it was not necessary, because a shipowner would get the courts to declare as null and void any clauses which might be considered as “abusive”.

The Chairman called for an indicative vote on the Liberian proposal. The Liberian proposal in LEG/CONF.5/C.1/WP.137 was rejected (3 votes in favour, 26 against, and 10 abstentions).
Article 3

Claims excepted from limitation

General comments

Hamburg Conference
Second Report of the Chairman

Claims excepted from limitation

[22] Claims excepted from limitation although they satisfy the positive criteria of the Convention are set out in Article 1 § 4° of the Convention. It is proposed that this subparagraph be replaced by a new text set out in Section 3 of the Draft Protocol. An identical text appears in WP Article 3.

The new text deviates from the Convention on the following points:

Claims subject to the provisions of the Oil Pollution Convention or to national legislation giving effect to that convention are excepted (b). In principle, this solution is non-controversial, but the modalities are open to discussion. The Committee took the view that national legislation deviating from the convention shall not bar global limitation.

Claims subject to any international convention or any national law governing liability for nuclear damage are excepted on the premise that such special regulation must supersede the general rules of global limitation (c). But regardless of such regulation claims against the owner of a nuclear ship for nuclear damage shall be excepted (d): it is not permissible for the owner of such a ship to rely on the relatively low global limits. Other persons generally entitled to global limitation, however, for instance salvors, may limit their liability for nuclear damage provided that the claim is not subject to regulation mentioned in (c).

It is proposed that claims in respect of loss of life or personal injury to passengers in the ship be excluded from global limitation if subject to any international convention or any equivalent legislation (e). This provision is controversial; some delegates wanted to retain global limitation in addition to per capita limitation; others wanted to retain it provided that the special international or national legislation does not provide for per capita limitation. The majority of the Committee took the view that passenger claims must be excluded altogether because it is impossible to foresee how global limitation will work in conjunction with the relevant special regulation which may differ from country to country.

Subparagraph (f) of the new text corresponds to § 4° b) of Article 1 of the Convention, but has been simplified.

IMCO Legal Committee
Twenty-third Session

[6] 23. It was observed that the exceptions set forth in this Article were part of the effort to harmonize the law of limitation and to make the calculation of the global limitation sum and the determination of its insurability easier. For the delegations which desired that the global limitation should be as comprehensive as possible, these exceptions tended to affect adversely the over-all insurability of maritime risks. These delegations opposed a suggestion that the exceptions in respect of claims arising from
the provisions of multilateral conventions should be provided for by means of a
general “elastic” clause referring to existing or future treaties, instead of specific
references to individual Conventions. One delegation felt that, without an elastic
clause, there was a danger that a State might become a Party to this Convention and
not to others with higher limits, such as the 1969 International Convention on Civil
Liability for Oil Pollution Damage, and thereby seek to apply this Convention’s limits,
to the exclusion of rules of other conventions, with respect to all Parties to this
Convention.

24. In the interest of certainty of cross-reference in the drafting of these
exceptions, it was pointed out that the definitive reference to a treaty concerned with
passengers’ liability could only be determined after the forthcoming conference on
that subject. It would be helpful if the titles of the specific conventions could also be
named in (b), (c), (d) and (e) of this paragraph.

25. Criticism was directed to the references to “national law” or “national
legislation” in four sub-paragraphs of the Article. In particular with regard to (c) and
(e), it was thought by some delegations that the existing words might be interpreted too
widely and that it should be made clear that the national law to be taken into account
should be the law which specifically implements a specific convention. One delegation
considered, on the other hand, that there was no need for reference to national
procedures giving effect to international conventions.

26. In this connexion, the word “equivalent” in sub-paragraph (e) was queried and
some delegations pointed to the different purposes for which national legislation is
employed: in some cases to give domestic effect to non-self-executing treaties, but in
other cases for purposes which might introduce doubt as to the meaning of this
provision on “equivalent limits” of liability.

27. When it was mentioned that permitting more exceptions to limitation might
result in making it less possible to provide economical insurability of calculable risk, the
Committee was reminded that the 1957 Convention did not treat loss of life or personal
injury in the same way as property damage.

Sub-paragraph (a)

Hamburg Draft Convention
Text and Commentary

THE RULES OF THIS CONVENTION SHALL NOT APPLY TO:
(a) CLAIMS FOR SALVAGE OR CONTRIBUTION IN GENERAL AVERAGE;

Sub-paragraph (a) corresponds to Article 1, 4°, a) of the 1957 Convention and
needs no further explanation.
Diplomatic Conference

Committee of the Whole
Summary Record of the Sixth Meeting
4 November 1976

[248] Approved without comment.

Summary Record of the Twenty-Third Meeting
16 November 1976

[388] Mr. Tanikawa (Japan) requested a separate vote on each paragraph of Article 3.
Article 3, paragraph (a) was approved (30 votes in favour, none against, and 1 abstention).

Plenary Meetings
Summary Record of the Fourth Plenary Meeting
18 November 1976

[478] Article 3(a) was adopted (38 votes in favour, none against, and no abstention).

1976 Convention

THE RULES OF THIS CONVENTION SHALL NOT APPLY TO:
(A) CLAIMS FOR SALVAGE OR CONTRIBUTION IN GENERAL AVERAGE;

Sub-paragraph (b)

Hamburg Draft Convention
Text and Commentary

(b) CLAIMS SUBJECT TO THE PROVISIONS OF THE INTERNATIONAL CONVENTION ON CIVIL LIABILITY FOR OIL POLLUTION DAMAGE, DATED 29TH NOVEMBER, 1969, OR TO NATIONAL LEGISLATION GIVING EFFECT TO THAT CONVENTION;

[406] Sub-paragraph (b) excludes claims which are actually subject to limitation of liability under the 1969 Oil Pollution Liability Convention or national legislation giving effect to it. Other national legislation on liability for oil pollution damage does not exclude global limitation. Thus, a country which adheres to the global Limitation Convention cannot prevent global limitation of oil pollution liability otherwise than by adhering to the Oil Pollution Liability Convention.

IMCO Legal Committee
Twenty-fifth Session

[6] 32. Particular attention was paid by the Legal Committee to sub-paragraphs (b), (c) and (e) of this Article, and (e) was deleted. An amendment was made to sub-paragraph (f).
33. Some delegations expressed the view that the exception spelt out in sub-paragraphs (b), (c) and (e) were too precise and too limitative. In their view, there was no need for such particularity about the source of law, since these provisions dealt with exceptions to the possibility of limitation of liability. It was proposed to replace the three sub-paragraphs by a single more generally worded provisions. The representative of the CMI pointed out that each exception was different in its scope and had a bearing on the limits of liability to be fixed in respect of the particular law or treaty. Since the capacity of the insurance market determined to a large extent these special limits, it was necessary to carefully define all claims excepted from limitation.

34. There was a divergence of views as to the advisability of referring specifically to the 1969 Civil Liability Convention in sub-paragraph (b). Some delegations took the view that claims excepted from limitation should be listed in abstract form since an explicit reference to another convention pre-supposed identity of States Parties to the two instruments. In the case of sub-paragraph (b), furthermore, the explicit reference could have the effect of discouraging States from accepting the 1969 Convention. The need for a description of the claim excepted could be achieved by specifying the nature of the claim, such as a general reference to pollution by oil carried in bulk, leaving open for future consideration the possible exclusion of other pollution from limitation of liability. The Committee decided however to leave sub-paragraph (b) unchanged for the time being.

Twenty-seventh Session

18. One delegation proposed that paragraph (b) of this Article be amended to read: (b) Claims subject to the provisions of any international convention governing liability for pollution damage or to national legislation implementing or designed to give effect to such convention.

19. It was pointed out by several delegations that the proposed text would lead to the establishment of a separate limitation amount for pollution damage, and this would have the effect of reducing the capacity of liability insurance available for damage under the proposed convention. It was also felt that the proposal implied that priority would be given to pollution damage as opposed to other damage. Some delegations were not prepared to accept, for instance, that pollution damage have priority over death or personal injury claims.

20. The Committee agreed to keep the existing text of this paragraph and consider further the proposal at the twenty-eighth session.

Twenty-eighth Session

28. It was suggested that there should be a general exclusion in respect of claims for pollution from ships, without specific reference to the 1969 International Convention on Civil Liability for Oil Pollution Damage, since that Convention was currently being considered for possible review and since, in any case, the 1969 Convention provided in Article 3(4) that claims covered by that Convention could not be made under any other law.

29. This proposal was opposed by many delegations which felt that such a general provision would seriously undermine the principles of insurability which required that the new Convention should be as comprehensive as possible.
It was suggested by some delegations, however, that the provision might include, after the reference to the 1969 Convention, the words “or any amendment or protocol thereto which is in force”. They felt that this, with other minor changes, would make the exclusion applicable to any future modifications or revisions of the 1969 Convention. However, in view of the problems of substance and drafting which this change might involve, the Committee decided to leave the provision unchanged. A suggestion to add the words “or any national legislation at least equivalent thereto” to the sub-paragraph as the final words was also rejected by the Committee.

**Draft Articles**

(B) CLAIMS SUBJECT TO THE PROVISIONS OF THE INTERNATIONAL CONVENTION ON CIVIL LIABILITY FOR OIL POLLUTION DAMAGE, DATED 29 NOVEMBER 1969 OR TO NATIONAL LEGISLATION GIVING EFFECT TO THAT CONVENTION;

**Diplomatic Conference**

**Committee of the Whole**

**Summary Record of the Sixth Meeting**

4 November 1976

[248] The Chairman invited consideration of sub-paragraph (b) to which proposals for amendment had been submitted (LEG/CONF5/4/Add.3)\(^1\), LEG/CONF5/6/Add.1,\(^2\)

(1) The relevant part of Document LEG/CONF5/4/Add. 3 is quoted below:

[107] Since the preparation of document LEG/CONF5/4/Add. 2 the Secretariat has received from the Government of New Zealand the observations and proposals quoted below.

[108] Article 3

This Article is generally acceptable, but further consideration might be given, after the words “dated 29 November 1969” in paragraph (b), to the words “or any amendment or protocol thereto which is in force”. Such a provision would ensure that future amendments or protocols to the 1969 Convention do not fall within the scope of this Limitation Convention.

(2) The relevant part of Document LEG/CONF5/6/Add. 1 is quoted below:

[118] (c) Observations and Proposals by International Organizations on the draft Articles

Since the preparation of document LEG/CONF5/6 the Secretariat has received from the Baltic and International Maritime Conference (BIMCO) the observations and proposals attached hereto. The Baltic and International Maritime Conference (“BIMCO”), whose activities are worldwide with members in 87 countries, endorsed the views expressed by the International Chamber of Shipping in pages 112 to 116 of LEG/CONF5/6 and in addition submits the following comments on the draft Convention.

[119] It was clearly the intention of the Legal Committee that the right to limit liability should apply to all claims for pollution damage other than those covered by the 1969 International Convention on Civil Liability for Oil Pollution Damage (the “CLC”) but this may well not be the case having regard to the phrase in paragraph (b) “… or to national legislation giving effect to that Convention”. In some States legislation “giving effect” to the CLC goes beyond the provisions of that Convention. One example is Section 15 of the U.K. Merchant Shipping (Oil Pollution) Act 1971, which makes an owner liable for the cost of preventive measures where, for instance, non-persistent oil has been spilled. Is a claim pursuant to such a section to be unlimitable because it is subject to a provision of national legislation giving effect to the CLC? It is quite clear that the Merchant Shipping (Oil Pollution) Act 1971 is “legislation giving effect to” the CLC and that Section 15 is a provision of it. The present wording could, therefore, lead to unnecessary litigation in some jurisdictions. The difficulty would be overcome and the required result achieved by substituting the present phrase by: “or to national legislation only in so far as it gives effect to that Convention”.

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This Article is generally acceptable, but further consideration might be given, after the words “dated 29 November 1969” in paragraph (b), to the words “or any amendment or protocol thereto which is in force”. Such a provision would ensure that future amendments or protocols to the 1969 Convention do not fall within the scope of this Limitation Convention.

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Mr. Lyon (Canada) introducing his delegation’s proposal (LEG/CONF.5/C.1/WP.19), said that it was consistent with the position adopted by the Canadian delegation at sessions of the Legal Committee prior to the Conference. He would merely add that the object of the Conference was to draw up a convention which would be acceptable to the greatest possible number of States. If pollution claims were not excluded, that would be a disincentive to accepting the Convention, since pollution was a sensitive subject in many countries, including his own.

The Chairman, noting that a number of delegations might not have attended the meetings of the Legal Committee, requested the Canadian representative to indicate why failure to exclude all pollution claims would be a disincentive.

Mr. Lyon (Canada) said that it was his Government’s fundamental position that pollution matters should remain under the control of coastal States. The Canadian regime did not accord with that of the 1969 Convention on Civil Liability for Oil Pollution Damage. If sub-paragraph (b) remained as drafted at present, Canada felt that States not Parties to the 1969 Convention would be forced to accept it, so to speak by the back door. The sub-paragraph had been so drafted as to link the prevention of pollution to a specific convention, whereas that had not been done in connexion with nuclear damage. The Canadian delegation felt that, as with nuclear damage, there should be a blanket exclusion in the case of oil pollution. Unless that was done, the provision would be a disincentive to ratifying the new Convention.

Mr. Bursley (United States) seconded the Canadian proposal.

Mr. Herber (Federal Republic of Germany), introducing LEG/CONF.5/C.1/WP.21, said that its aim was the same as that of the Canadian proposal. Moreover, after seeing the Canadian proposal, his delegation in principle preferred the latter. He agreed with what the Canadian representative had said and, in addition, considered that there should be no overlapping within the subject matter of other conventions. Sooner or later there would be additional conventions in the pollution field, either in the form of a protocol extending the scope of the 1969 Convention or as an additional convention.
on liability as regards other pollutants. To leave sub-paragraph (b) as it stood might be to deny any possibility of extending the exceptions. Its delegation’s proposal was to extend the exceptions to those instruments which were foreseeable – a difficult task – and that was the least that must be done. But a blanket exclusion, such as that proposed by the Canadian delegation, would be preferable.

Mr. Cleton (Netherlands) and Mr Trotz (German Democratic Republic) supported the proposal of the Federal Republic of Germany.

Mr. Caughley (New Zealand) introduced his delegation’s proposal (LEG/CONF.5/4/Add.3, page 108). The proposal was self-explanatory and its aim was the same as that submitted by the Federal Republic of Germany.

Mr. Bentein (Belgium) and Lord Diplock (United Kingdom) supported the New Zealand proposal.

Mr. Cleton (Netherlands) said that the difference between the proposals submitted by the Federal Republic of Germany and by New Zealand was simply a matter of drafting, but the Canadian proposal was more fundamental. In his delegation’s view, exceptions mentioned in Article 3 should be as limited as possible. It should be remembered that each time a fund was instituted, it reduced the total amount of insurance available. Insurers would never provide unlimited coverage and there was, therefore, no point in creating additional exceptions to the general limitation. Certain types of claims were already dealt with in other conventions, or would be in future instruments. His delegation found it difficult to accept that claims which were included in the 1969 Convention should be excepted from the present Convention, as that might lead to confusion. It was prepared to agree to the amendment proposed by the Federal Republic of Germany.

Although realizing that the question of pollution claims was a sensitive subject, and one that was attractive to politicians, he was opposed to the Canadian proposal, as he considered that the present Convention should cover every type of damage and only exclude what was provided for in existing conventions.

Mr. Amoroso (Italy) supported the amendments proposed by New Zealand and the Federal Republic of Germany. He had doubts about the Canadian amendment, which was too general. Many chemical, toxic and other pollutants existed; if the Convention were to be accepted and brought into force, those pollutants would have to be specified.

[250] Mr. Bursley (United States) said that coastal pollution was a matter of major concern to his country, which had always been active in international efforts to deal with the problem. His Government had unfortunately not yet ratified the 1969 Convention; and despite continued pressure on it, he could give no assurance on ratification, since existing domestic legislation was far more comprehensive. It was clear that sub-paragraph (b) as it stood would force pollution claims under United States domestic legislation within the global limitation, thus increasing the likelihood that such claims would not be fully satisfied, with grave domestic consequences. As his delegation understood it, separate and substantial insurance capacity was available in respect of pollution damage outside the scheme for general liability insurance. He therefore did not agree with the proposed modification of sub-paragraph (b) to include domestic regimes, since that would lessen the amount available. By not opening up sub-paragraph (b) to national regimes, a large amount of insurance capability would be left

(7) See note 1.
unused. His delegation’s purpose was to help to produce a convention which had a chance of gaining its Government’s adherence. It would be difficult for his country to ratify a convention which contained provisions such as those in sub-paragraph (b).

Mr. Selvig (Norway) said that the amendments before the Committee raised three issues: the reference to the 1969 Convention would cause difficulties for countries which had not ratified it or did not intend to; the possibility of a future amendment of the 1969 Convention, perhaps by a protocol; and questions concerning other types of damage than of pollution, such as damage by dangerous cargoes or pollution in general.

With regard to the first issue, the idea underlying sub-paragraph (b) – a global limitation fund for damage by ships and a separate fund for oil pollution claims – would be satisfactory for States adhering to the 1969 Convention; but for non-Parties, such as the United States, it would mean that claims normally subject to a separate fund would fall under the global fund and the whole claims coverage would be changed. One way of solving the problem of inequality between Parties and non-Parties to the 1969 Convention would be for the provisions of sub-paragraph (b) to recognise national legislation on oil pollution. His delegation would support that method, particularly as a solution for the Canadian problem and the difficulty of the United States and possibly other States which did not want too many separate funds.

On the second issue, wording on the possibility of a protocol could be included; but such wording should refer specifically to oil pollution, since a protocol to the 1969 Convention could also cover other fields or establish separate limitations for damage other than oil pollution.

Regarding the third issue, the problem was how to make the best use of the capital available for insurance at reasonable cost. Bearing in mind his own country’s concern about pollution because of its long coastline, he felt that the best use could be made of insurance available by a global limitation system rather than division into separate funds. He was strongly opposed to the amendments proposed by Canada and the Federal Republic of Germany, because they destroyed the idea of a global system.

Mr. Lyon (Canada), referring to a remark by the Netherlands representative, said that throughout his country the whole question of environmental pollution – both coastal and inland – was a subject of heated debate. It was not attractive to politicians: it was forced on them at both federal and national level, by the very pronounced concern of all sections of the community.

Mr. Iturralde (Argentina) said that his country, like others in Latin America was keenly interested in conservation of the resources of the sea adjacent to its coast. Oil pollution was not the only danger: the sea-bed was being explored with a view to mining uranium and other ores and provision would have to be made for other sources of pollution and contamination. His delegation therefore supported the Canadian amendment and considered that sub-paragraph (b) should also contain references to the 1969 Convention, any new treaty or protocol revising it, any other international treaty relating to oil pollution damage, and national legislation on oil pollution. He also considered that any sub-paragraph on pollution should include nuclear damage.

The Chairman said that the question of nuclear damage would be dealt with under sub-paragraph (e).

Mr. Philip (Denmark) said that although his country, with its long exposed coastline and islands, was fully aware of the problems of pollution, he supported the views of the Norwegian representative. In striking a balance between the interests of those concerned with preventing damage by pollution and the interests of the shipping community, it was important to avoid a proliferation of conventions on different kinds.
of limitation. The rational solution was to concentrate all problems of limitation in one convention.

In principle, exceptions under sub-paragraph (b) should be limited to the 1969 Convention; but in view of the problems raised concerning the amendments under discussion, he was ready to consider a solution on the lines indicated by the United States representative. In his opinion, the Committee should not adopt the amendments, but should seek a compromise solution, possibly by extending the scope of exemptions under sub-paragraph (b) to certain national legislation with similar scope to that of the 1969 Convention, which ensured a limit of liability that was feasible for insurance by the shipping interests. Reference to certain instruments extending the 1969 Convention might be acceptable, provided it were limited to instruments dealing with substances of the same nature as those treated in the Convention.

Mr. Vonau (Poland) said that he had been impressed by the Canadian representative’s remarks concerning protection of the human environment. His country, too, with its long coastline along the semi-enclosed Baltic Sea, was deeply concerned about protection of the human and maritime environment: he did not agree that that was merely a talking point for politicians and international conferences; it was a problem of the age, and should be dealt with in the present Convention. With regard to the amendment proposed by the Federal Republic of Germany, despite its good intentions he felt it would be unwise to refer to the protocol since the Legal Committee had not yet reached final decisions on it, and no one could say at this stage what the nature and scope of such a protocol would be. He preferred the Canadian amendment, to which he suggested the following addition, to be submitted to the Drafting Committee: “covered by other international instruments in force”.

Mr. Trotz (German Democratic Republic) supported the proposals of the Federal Republic of Germany and New Zealand, which were similar and might be combined. He appreciated that special legislation was required to cover pollution damage, but stressed the need to ensure that any such legislation conformed as far as possible to international law, in order not to create problems in connexion with insurance. If it were left entirely to national legislation, there was a risk of unlimited liability or of widely differing degrees of limitation. He would therefore prefer a reference to existing conventions or protocols; such references to be as broad as possible and not limited to oil pollution. There could also be a reference to national legislation, to meet the difficulties of States which were not, and did not intend to become Parties to the 1969 Convention.

He was in favour of a return to the formula discussed in the Legal Committee, and suggested that the following wording should be added at the end of sub-paragraph (b): “or any national legislation at least equivalent thereto”.

Mr. Tardana (Indonesia) said his Government was very concerned about the problem of coastal pollution. The pollution issue was a very sensitive one in his country, not for political reasons but because of Indonesia’s particular geographical location and physical features. His Government was considering accepting the 1969 Civil Liability Convention, and was working together with other coastal States in the region to solve the pollution problem. His delegation strongly supported the Canadian proposal.

Mr. Jeannel (France) pointed out that there were two different questions involved where sub-paragraph (b) was concerned: one was the definition of the claims referred to and the other was the regime governing such claims. If the Committee was to confine itself in sub-paragraph (b) to defining the category of claims excepted from limitation, it was not so important to include in that sub-paragraph a mention of those States which...
were Party to the 1969 Convention. However, if it wished to define the regime governing those claims under the Convention, it would be necessary to make reference to those States which were Parties to it. He thought the concern expressed by the delegations of Canada and the United States would be met by the reference in the draft text (LEG/CONF/5/WP.1)\(^8\) to national legislation. That text made clear that claims under the 1969 Convention would be excluded and indicated that the regime governing such claims was established by national legislation.

**Mr. Bendjenna (Algeria)** preferred the original draft text in LEG/CONF/5/WP.1\(^9\) to the formula proposed by Canada, which he considered too vague. The effect of the proposal would be that claims for damage caused by oil would not be covered either by the present Convention or by the 1969 Convention. However, he had no objection to the addition proposed by the New Zealand delegation (LEG/CONF/5/4/Add.3).\(^10\)

**The Chairman** suggested that since the question was an important one, the Committee should express a preference regarding the various proposals.

**Mr. Selvig (Norway)** did not think that the debate had yet reached a stage at which the Committee could easily express its preferences. He suggested that a better solution might be to set up a small Working Group to discuss the various possibilities and to present its findings to the Committee.

*That suggestion was adopted.*

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**Summary Record of the Seventh Meeting**

4 November 1976

[254] The Chairman recalled that, at its previous meeting, the Committee had decided to set up a Working Group to deal with the question raised by Article 3(b) (oil pollution damage) and the proposals related thereto. In selecting the membership of the Working Group, her aim had been to ensure an equitable geographical distribution and maintain a balance between the various interests involved. She hoped that the Group members would keep in contact with the other delegations in order to formulate proposals acceptable to the Committee of the Whole.

She proposed that the Working Group be composed of representatives of the following countries: Argentina, Canada, the Federal Republic of Germany, Liberia, Norway, Poland, the United Kingdom and the United States.

*It was so decided.*

**Summary Record of the Fourteenth Meeting**

10 November 1976

[321] The Chairman invited the representative of the United Kingdom to report to the Committee on the results achieved by the restricted Working Group set up to draft a new version of Article 3(b).

**Mr. Lyon (Canada)** pointed out that Canada has been omitted from the list of countries represented in the Working Group (LEG/CONF/5/C.1/WP.64).\(^11\)

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\(^8\) Document LEG/CONF/5/WP.1 is the text of the Draft Articles.

\(^9\) See note 8.

\(^10\) See note 1.

\(^11\) Report of the Working Group set up to provide a new formulation of Article 3(b) of the basic text.
Mr. Whitaker (United Kingdom), Chairman of the Working Group, reported on the progress made. He recalled that the Group had been set up to redraft Article 3(b), which some delegations had found too narrow.

To meet the concerns expressed, two solutions were possible: either to make the reference to the 1969 Convention on Civil Liability for Oil Pollution Damage purely descriptive, or to include, in the reference to national legislation, laws other than those giving effect to that Convention. The first solution seemed to be the more satisfactory, and was therefore given in the Group’s report (LEG/CONF.5/C.1/WP.64).12

Some members of the group, while preferring either the Legal Committee’s draft or the Canadian amendment, had said that they could accept the new version with a view to arriving at a text for the Convention that could be widely supported at the Conference, but that they could not guarantee the agreement of their governments. However, a minority had been unable to support that draft, since they considered that only those claims governed by another international convention should be excluded from the field of application of the present Convention.

Although the basic text excluded only those claims governed by the 1969 Civil Liability Convention – i.e., those arising in one of the States Parties to that Convention – the new text proposed by the Working Group excluded claims covered by the Convention, whether or not that instrument had entered into force in the country concerned. Thus the only claims excluded would be claims for persistent oil pollution damage caused by loaded tankers. If, however, application of the 1969 Civil Liability Convention was extended to other categories of oil or ships, claims for such pollution damage would not be covered by the Convention under discussion at the present Conference either. In other words, while the basic text would have the effect, in a country not Party to the 1969 Civil Liability Convention, of allowing claims for pollution damage to share in the amount laid down under Article 6, the proposed text would allow pollution damage claims to be treated separately just as they would when arising in countries Parties to the 1969 Civil Liability Convention.

Mr. Iwata (Japan) reserved his delegation’s position on the matter for the time being. His country feared to find itself bound by that new version in future, since a protocol could have very wide scope.

Mr. Philip (Denmark) also reserved his delegation’s position pending certain clarifications. He asked the United Kingdom representative whether adoption of the text put forward by the Working Group would imply that certain claims for pollution damage would not necessarily be covered either by the 1969 Civil Liability Convention or by the new Convention.

Mr. Whitaker (United Kingdom) confirmed that that interpretation was correct.

The Chairman said that the proposed new text of Article 3(b) would therefore be sent to the Working Group dealing with Articles 4, 6 and 7. At the suggestion of Mr. Ptak (Poland), she stated that it would be transmitted together with the comments just made by the Chairman of the Working Group on Article 3(b).

It was so decided.

(12) The relevant part of Document LEG/CONF.5/C.1/WP.64/Rev. 1 is quoted below:
The Group elaborated the following text on which, however, it was unable to reach an agreement:
“(b) Claims for oil pollution damage as defined in the International Convention on Civil Liability for Oil Pollution Damage, dated 29 November 1969, or in any amendment or Protocol thereto which is in force.”
Summary Record of the Nineteenth Meeting  
12 November 1976

[359] The Chairman invited the Committee to turn to the report of the Working Group set up to provide a new formulation of Article 3(b) of the basic text (LEG/CONF.5/C.1/WP.64/Rev.1).13 Earlier proposals to amend Article 3(b) had been submitted by Canada (LEG/CONF.5/C.1/WP.19)14 and the Federal Republic of Germany (LEG/CONF.5/C.1/WP.21).15 The Committee had decided to transmit the report to the Working Group on Basic Issues for consideration, but the latter had not considered it for lack of time. The Committee of the Whole should therefore discuss it. The Working Group on Article 3(b) had prepared the text set out in the report, and the delegation of the German Democratic Republic had submitted an amendment thereto (LEG/CONF.5/C.1/WP.73).16

[360] Mr. Trotz (German Democratic Republic) explained that his delegation would have preferred to retain the text of Article 3(b) as set out in the original draft (LEG/CONF.5/WP.1),17 perhaps amended by the proposal submitted by the Federal Republic of Germany (LEG/CONF.5/C.1/WP.21)18 or by New Zealand (LEG/CONF.5/4/Add.3).19 His delegation’s second preference would be for the position expressed by Sweden (LEG/CONF.5/4)20 with regard to pollution matters. If Sweden were to submit a proposal on those lines, his delegation could support it and would not insist on its own proposal.

Introducing his delegation’s proposal (LEG/CONF.5/C.1/WP.73),21 he reiterated his delegation’s view that claims for pollution damage should form part of the global limitation system and that it was regrettable that regulations concerning pollution damage had formed the subject of a special convention. His delegation considered that

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(13) See note 12.
(14) See note 3.
(15) See note 4.
(16) Document LEG/CONF.5/C.1/WP.73
11 November 1976
[194] Proposal of the delegation of the German Democratic Republic
Article 3(b)
Add to the draft of the Working Group in document LEG/CONF.5/C.1/WP.64/Rev. 1 the following text:
“...provided that such claims are subject to these provisions or any national legislation [equivalent thereto] [having the same effect].”
(17) See note 8.
(18) See note 4.
(19) See note 1.
(20) It is thought that the intention was to make reference to the following comments made by Sweden under Article 6:
[82] It is suggested to insert a new paragraph in Article 6 as follows:
“Notwithstanding the provisions of this Article, the limit of liability for claims in respect of oil pollution damage may never exceed [Y] Units of Account for each ton of the ship’s tonnage or [Z] Units of Account, whichever is the lowest.”
To the extent that Article 3(b) does not apply, this Convention will apply to claims relating to oil pollution damage. In order to bring this Convention in conformity with the limitation rules of the 1969 Convention on Liability for Oil Pollution Damage it is suggested to insert a new paragraph in Article 6.
(21) See note 16.
in drafting the Convention on Limitation of Liability for Maritime Claims, the relationship between the general rules contained therein and the special rules of other conventions should be defined so as to ensure that the uniform concept of limitation was maintained. The text produced by the Working Group on Article 3(b) would destroy that concept by leaving claims for oil pollution damage to national legislation, which might incorporate unlimited liability or a wide range of different liability amounts, with serious consequences for the global system.

His delegation’s proposal was not identical with the text in the original draft, which merely referred to the International Convention on Civil Liability for Oil Pollution Damage and legislation giving effect to it, but attempted to formulate a compromise acceptable to States not Parties to that Convention by allowing them to use their own legislation, provided it was equivalent in effect to the new Convention’s provisions. The proposal could be an addition to the original text of Article 3(b); but if the Committee accepted the text submitted by the Working Group, his delegation would propose it as an amendment to the latter.

Mr. Cleton (Netherlands) was afraid that the text proposed by the Working Group might lead to insurance difficulties, and associated his delegation with the proposal of the German Democratic Republic, making provision as it did for States not Parties to the 1969 Civil Liability Convention which had their own legislation regarding oil pollution claims.

Mr. Lyon (Canada) supported the Working Group’s text but not the amendment submitted by the German Democratic Republic, for to his mind the words “subject to” went too far in attempting to define the situation.

Mr. Suchorzewski (Poland) shared the views expressed by the representatives of the German Democratic Republic and the Netherlands. He regretted that the amendment submitted by the former did not deal with other pollutants. His country, with its coastline on the Baltic Sea, was particularly concerned with the danger represented not only by oil but by all pollutants. He would have preferred Article 3(b) to be extended to cover other pollutants as proposed by Canada (LEG/CONF.5/C.1/WP.19) subject, of course, to any other international conventions relating to them.

Mr. Whitaker (United Kingdom), Chairman of the Working Group on Article 3(b), dismissed any idea that the Working Group had failed to explore the possibility of a solution based on national legislation equivalent to the Convention. However, it had been mindful of the fact that Article 3(b) referred only to the limitation provisions of the 1969 Civil Liability Convention. It was very difficult, moreover, to say what was equivalent in national law: was it a provision more or less favourable than [361] in a convention? Some members of the Working Group might have agreed to a text admitting national limits not higher than those provided for in the Convention, while others might have preferred a reference to national law having limits not lower than those of the Convention. The text in document LEG/CONF.5/C.1/WP.64/Rev.1 was a compromise, and hence failed to satisfy any position completely, but an amendment on the lines of LEG/CONF.5/C.1/WP.73 would be no compromise.

(22) See note 3.
(23) See note 12.
(24) See note 16.
The Chairman pointed out that the Committee had discussed the question at length at an earlier meeting (LEG/CONF.5/C.1/SR.6) and should seriously consider whether to recommend the compromise text.

Mr. Brunn (Federal Republic of Germany) said that his country was well aware of the dangers of pollution and generally allowed no limitation of liability for many kinds of pollution damage. At the earlier meeting his delegation had expressed sympathy with the original Canadian proposal and still preferred it. In a spirit of compromise, however, his delegation was prepared to support the new text submitted by the Working Group since during discussion in the Group it had emerged that the wider formula would not get sufficient support in the Committee.

Mr. Tanikawa (Japan) was unable to support the text in LEG/CONF.5/C.1/WP.64/Rev.1 on account of the concluding phrase: “or in any amendment or Protocol thereto which is in force”. Any amendment or Protocol to the 1969 Civil Liability Convention would be a completely independent instrument, and his Government could not commit itself to any convention ahead of time. Subject to deletion of the words placed in square brackets in the proposal of the German Democratic Republic, he would not oppose it.

Mr. Jeannel (France) stressed the point already made that the Working Group’s text was a compromise. It was satisfactory to his delegation in that it had found a middle way between the two opposing viewpoints. His delegation could not support the amendment proposed by the German Democratic Republic, which was the same as the original draft text and was not a compromise. The time had now come for delegations to ask themselves if they were ready to compromise. If they were, they should accept the Working Group’s proposal.

Mr. León Montesino (Cuba) said that since the text in LEG/CONF.5/C.1/WP.64/Rev.1 was a compromise, his delegation could only accept it if it was accompanied by the amendment in LEG/CONF.5/C.1/WP.73.

Mr. Duder (Liberia) said that in general, his delegation supported the proposal of the German Democratic Republic but considered, in view of the comments made by the United Kingdom representative, that it might be improved – if the proposer would agree – by the addition after the word “subject”, of the phrase “as to limitation”.

Mr. Trotz (German Democratic Republic) was prepared to accept that amendment.

Mr. Bursley (United States) said that although the Working Group’s text was less than his delegation had hoped for, it was prepared to accept it in a spirit of compromise. It was satisfactory in that it had arrived at a formula which would be acceptable to those States which were Parties to the 1969 Civil Liability Convention and those which were not.

Mr. Selvig (Norway) agreed that the basic purpose of the Working Group’s text was to enable States not Parties to the 1969 Civil Liability Convention to accede to the new Convention without amending their national legislation or ratifying the 1969 Convention. It should be possible to accept it as a compromise.

(25) Summary Record of the Sixth Meeting, 4 November 1976, at p. 248-252.
(26) See note 12.
(27) See note 12.
(28) See note 16.
The suggestion made by the representative of the Federal Republic of Germany to delete the word “oil” was one of substance and not merely of drafting, and he would oppose it.

He could not accept the amendment proposed by the German Democratic Republic, as it would mean that the purpose of excluding oil pollution damage from limitation would be defeated and that those countries with a higher limit would not be able to become Parties to the new Convention unless they lowered their limits. If the text could be modified to make it clear that a higher limit was allowable, it might be accepted.

The Chairman called for an indicative vote, first on the proposal of the German Democratic Republic and then on the text of the Working Group.

Mr. Lyon (Canada) asked whether there would be a vote on the proposal by the Federal Republic of Germany to delete the word “oil”.

The Chairman said that there would not, as the question had been raised as a point of drafting and no definite proposal had been made.

There were 11 votes in favour of the amendment submitted by the German Democratic Republic (LEG/CONF.5/C.1/WP.73), 29 against and 10 abstentions; the proposal was rejected.

The text proposed by the Working Group on Article 3(b) (LEG/CONF.5/C.1/WP.64/Rev.1) was approved (21 votes in favour, 7 against and 8 abstentions).

The Chairman said that in consequence the latter text would replace that in the original draft for Article 3(b).

Summary Record of the Twenty-third Meeting
16 November 1976

[387] The Chairman recalled that the Committee had tentatively approved the paragraph as amended by the Working Group (LEG/CONF.5/C.1/WP.64/Rev.1).

Mr. Trotz (German Democratic Republic) asked for a vote on the proposal submitted by his delegation and those of Liberia, the Netherlands and Poland (LEG/CONF.5/C.1/WP.83), originally submitted by his delegation as LEG/CONF.5/C.1/WP.73 and rejected. He and his fellow sponsors felt that paragraph (b) as proposed by the Working Group (LEG/CONF.5/C.1/WP.64/Rev.1) was rather
drastic and would destroy the system of global limitation. It would allow unlimited liability, with adverse results for insurability. If liability under the 1969 Civil Liability Convention was too low, it was not the responsibility of the Conference to interfere. The joint proposal offered a compromise.

The Chairman invited the Committee to vote on the joint proposal (LEG/CONF.5/C.1/WP.83). Replying to a point of order raised by Mr. Perrakis (Greece), she explained that what she had proposed was to allow any representative who so wished to ask for a firm vote on any proposal that had been dealt with provisionally in the first reading, and to make a short statement on that proposal. She did not think that Rule 31 of the Rules of Procedure (LEG/CONF.5/2/Rev.1)35 applied.

Mr. Perrakis (Greece) accepted the Chairman's ruling but suggested that the procedure should not prevent more than one person speaking on a proposal.

In reply to a request for clarification from Mr. Duder (Liberia), the Chairman explained that the Committee's tentative decision had been to approve the compromise text proposed by the Working Group (LEG/CONF.5/C.1/WP.64/Rev.1).36 She confirmed that, as she understood it, the provision referred to oil pollution only.

There were 10 votes in favour of the joint proposal (LEG/CONF.5/C.1/WP.83)37 12 against, and 9 abstentions; the proposal was rejected.

Mr. Tanikawa (Japan) requested a separate vote on each paragraph of Article 3.

Article 3, paragraph (b), as amended by LEG/CONF.5/C.1/WP.64/Rev.1,38 was approved (23 votes in favour, 7 against and 4 abstentions).

Draft International Convention

(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;

Summary Record of the Twenty-sixth Meeting
18 November 1976

The Chairman invited the Committee to continue reviewing the text of the Drafting Committee's report (LEG/CONF.5/C.3/1 and LEG/CONF.5/C.3/1/Add.1),39 in order to assess whether it faithfully reflected the substantive decisions which the Committee had taken.

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35 Rule 31 so provided:
When a proposal has been adopted or rejected it may not be reconsidered unless the Conference, by a two-thirds majority of the representatives present and voting, so decides. Permission to speak on a motion to reconsider shall be accorded only to the mover and one other supporter and to two speakers opposing the motion, after which it shall be put immediately to the vote.

36 See note 12.

37 See note 32.

38 See note 12.

39 The text under review is that of Article 3(b) of the Draft International Convention quoted above.
The present discussions, at that stage, in the Committee’s deliberations, should focus on questions of drafting, any substantive questions thenceforward being treated as matters to be raised at the Plenary Conference.

Mr. Selvig (Norway) asked the Chairman of the Drafting Committee why the words “as defined in”, which featured in the initial text submitted to the Drafting Committee, had been replaced by the words “within the meaning of”. The previous wording was more precise, and hence more satisfactory.

Mr. Cleton (Netherlands), Chairman of the Drafting Committee, explained that that it was precisely because the English-speaking delegations in the Drafting Committee had felt that the sense of the former expression had been too limited that they had voiced their preference for the latter.

Mr. Jeannel (France) stressed the undesirability, when drawing up legal provisions at the international level, of employing formulations that were vague or might create confusion. He preferred, in French, the expression “telles qu’elles sont définies dans”, and was at a loss to understand the choice of the very imprecise words “au sens de”.

Lord Diplock (United Kingdom) said that the question was purely one of drafting. In point of fact, “oil pollution damage” was not defined in the 1969 Civil Liability Convention, which gave separate definitions for “oil” and “pollution damage”. He personally preferred the expression “within the meaning of”, but did not regard the matter as one of vital importance.

Mr. Lyon (Canada) concurred with the United Kingdom representative, and thought the expression “within the meaning of” preferable.

Mr. Bentein (Belgium) supported the French representative’s view: the expression “within the meaning of” was ambiguous and lent itself to different interpretations. In addition, he suggested the replacement, in the last line of the French text, of the word “pertinent” by “à celle-ci”.

Mr. Jeannel (France), endorsing the suggestion by the Belgian representative, proposed that the last line of the French text be replaced by the phrase “ou de tout amendement ou de tout protocole à celle-ci qui est en vigueur”.

That proposal was approved.

The Chairman called for a vote on the proposal to replace the words “within the meaning of” by the words “as defined in”.

There were 12 votes in favour of the proposal, 15 against, and 14 abstentions; the proposal was rejected.

Plenary Meetings

Summary Record of the Fourth Plenary Meeting
18 November 1976

Mr. Vogel (German Democratic Republic) drew attention to his delegation’s previous proposals concerning sub-paragraph (b) (LEG/CONF5/C.1/WP.73) and

(40) See note 16.
WP.83, LEG/CONF.5/C.1/SR.23, page 387). The present text was not acceptable to his delegation.

[478] Mr. Makovsky (USSR) said his delegation considered sub-paragraph (b) of Article 3 to be inaccurately worded. It would have preferred the text in the original draft prepared by the Legal Committee of IMCO, and could have accepted the wording in the document submitted by four delegations (LEG/CONF.5/C.1/WP.83).

Mr. Vonau (Poland) associated his delegation with the views expressed by the USSR representative and by the representative of the German Democratic Republic.

Mr. Vogel (German Democratic Republic) requested a separate vote on sub-paragraphs (a) and (b). Only the latter was unacceptable to his delegation.

Article 3(b) was adopted (22 votes in favour, 7 against, and 8 abstentions).

Mr. Bentein (Belgium) said that he had abstained from the vote on sub-paragraph (b) because, although his delegation agreed with the principle, it considered that the wording was ambiguous and might lead to different interpretations in the courts.

Mr. Wiswall (Liberia) associated himself with the view expressed by the Belgian representative.

1976 Convention

(B) CLAIMS FOR 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;

Sub-paragraph (c) and (d)

Hamburg Draft Convention
Text and Commentary

(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;

[406] Sub-paragraph (c) excludes from global limitation any claim which is actually governed by an international convention on liability for nuclear damage, even in the case that such convention prohibits any special limitation. Global limitation shall be available as a relief only if there is no international regulation applicable to the claim in question, but with one exception – see sub-paragraph (d).

Sub-paragraph (d) excludes from global limitation any claim against the owner, charterer, manager or operator (see Draft Article 1.2) of a nuclear ship for nuclear damage.

(41) See note 32.
(42) Summary Record of the Twenty-third Meeting, at p. 387.
(43) See note 32.
The limits of liability which are anticipated for global limitation will not be determined with a view to covering the liability of an operator of a nuclear ship.

**IMCO Legal Committee**

*Twenty-fifth Session*

[6] 32. Particular attention was paid by the Legal Committee to sub-paragraphs (b), (c) and (e) of this Article, and (e) was deleted. An amendment was made to sub-paragraph (f).

33. Some delegations expressed the view that the exceptions spelt out in sub-paragraphs (b), (c) and (e) were too precise and too limitative. In their view, there was no need for such particularity about the source of law, since these provisions dealt with exceptions to the possibility of limitation of liability. It was proposed to replace the three sub-paragraphs by a single more generally worded provision. The representative of the CMI pointed out that each exception was different in its scope and had a bearing on the limits of liability to be fixed in respect of the particular law or treaty. Since the capacity of the insurance market determined to a large extent these special limits, it was necessary to carefully define all claims excepted from limitation.

**Draft Articles**

(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;

**Twenty-seventh Session**

Sub-paragraph (c)

[6] 21. One delegation proposed that this paragraph be deleted. It recalled that a number of nuclear conventions and national legislation provided for a channelling of the liability for nuclear damage arising from maritime transport to the operators of nuclear installations. However, where no such convention or national law applied, and the shipowner was therefore liable for nuclear damage, it was the view of the delegation that the shipowner should be able to benefit from the limitation of liability provided in the proposed convention.

22. Several delegations stated that they were not in favour of this proposal. One delegation indicated that by national policy no one was permitted to limit his liability for nuclear damage under the law of its State. Its government would therefore be unable to participate in a convention which gave the right to limit liability for nuclear damage. Another delegation felt that deletion of that paragraph would create problems in the cases where the shipowner was also the operator of the nuclear installation concerned.

23. The Committee was not able to discuss the proposal in full but considered that it might be discussed further at the twenty-eighth session when governments would have more time to study it.

**Twenty-eighth Session**

Sub-paragraph (c)

[6] 30. The Committee considered provisions on exclusion of claims for nuclear damage with a view to harmonizing the proposed Convention with the legal régime governing liability for such damage, whether from cargo or from the fuel or other
products or waste of the power plants of nuclear ships. The two main problems considered in this regard were:

(a) whether the exclusion of certain claims was meant to cover only cases in which the shipowner was also the “operator” (or had assumed the role of operator) of a nuclear installation in accordance with the provisions of the Paris or Vienna Conventions; and

(b) whether the excluded claims relating to nuclear ships should be those solely connected with the ship’s propulsion, or should include claims for damage resulting from nuclear material transported on the ship.

31. Some delegations felt that the Convention should not cover claims subject to treaties or national legislation which govern or prohibit limitation of liability for nuclear damage or, alternatively, that the shipowner should be deemed to have assumed liability as a nuclear operator. Following consideration of the matter in a Working Group, the Committee decided not to include such a provision. (A provision to this effect had been included in an earlier draft Article 3, contained in document LEG XXV/4, Annex I, as sub-paragraph (c)).

[7] 32. One delegation stated that limitation of liability for nuclear damage was not recognized in its national law and it could, therefore, not agree to the non-inclusion in the Convention of a provision excluding claims for nuclear damage from limitable claims.

33. With regard to the nuclear damage claims against the operator of a nuclear ship, the Committee agreed to include a provision based on Article 3 of the 1971 International Convention relating to Civil Liability in the Field of Maritime Carriage of Nuclear Material. This provision, in sub-paragraph (c) of this Article, replaces sub-paragraph (d) of the previous draft Article 3 contained in document LEG XXV/4, Annex I.

34. One delegation suggested that consideration be given to the inclusion in this sub-paragraph of the words “the nuclear installation of “after the word “involving”.

Sub-paragraph (d)

35. One delegation proposed a new text which would allow a Contracting State to deny limitation, or set higher limits of limitation, by its law in respect of ships registered in, or flying the flag of, that State.

36. Some delegations felt that this was a matter more appropriate for inclusion in a reservation clause and, therefore, considered that any such provision would have to be in the Final Clauses of the convention. One delegation felt that such a provision would result in the loss of a general rule which, in its view, should be in the proposed convention. The Committee agreed to leave the sub-paragraph unaltered.

37. Some delegations stated their fundamental objection to the inclusion of passenger claims in limitable claims and therefore suggested that such claims be excluded from the Convention.

Draft Articles

(c) CLAIMS AGAINST THE OPERATOR OF A NUCLEAR SHIP IN RESPECT OF DAMAGE CAUSED BY A NUCLEAR INCIDENT INVOLVING THE NUCLEAR FUEL OF, OR RADIOACTIVE PRODUCTS OR WASTE PRODUCED IN, SUCH SHIP;
Diplomatic Conference
Committee of the Whole
Summary Record of the Sixth Meeting
4 November 1976

Sub-paragraph (c)

[252] Mr. Tanikawa (Japan), introducing his delegation’s amendments (LEG/CONF.5/C.1/WP.14),44 said his delegation believed claims for all kinds of nuclear damage should be excluded from claims subject to limitation. Under the draft text, only claims against the operator of a nuclear ship were exempt from limitation. He recalled that the original Legal Committee draft had provided for the exclusion of claims in respect of damage caused by other nuclear incidents, along the lines of his [253] delegation’s alternative proposal (contained within brackets under Section II of LEG/CONF.5/C.1/WP.14).45 However, that text had been deleted by the Legal Committee at its twenty-eight session, on the grounds that under the Vienna and Paris Conventions and under most national legislation, liability for nuclear damage was channelled to the operator of the nuclear reactor. That was true in most cases, but not all. It was possible that some States had no applicable national legislation; if so, difficulties might arise if an incident occurred in the waters within the national jurisdiction of such a State (State A) involving nuclear fuel carried by a traditional type ship whose flag State (State B) was a Party to the Convention. The applicable law on tort was the law of State A; and if under the law of that State the shipowner was liable for nuclear damage, the victims might bring an action against him. If that action was brought in another Contracting State, State C, and the owner invoked limitation of liability under the Convention, the court of State C could not deny such limitation even if it had national legislation whereby liability devolved upon the nuclear operator. Such a situation would be completely unacceptable to his delegation, because it was contrary to the public policy of the Japanese Government.

The delegations of Czechoslovakia and Argentina supported the Japanese proposal.

Mr. Filipovic (Yugoslavia) also supported the proposal. In the course of arriving at a consensus in the Legal Committee, some proposals had had to be sacrificed, including the text proposed for paragraph (c) by the CMI. The Japanese proposal deserved support because at present nuclear damage was not covered in respect of third party risks. He preferred the second of the two alternative Japanese proposals, and suggested that the word “nuclear” should be added before “damage” in the first line of the sub-paragraph.

Mr. Unkles (Australia) preferred the first alternative proposal. He suggested that that should be put to the vote first; it might not then be necessary to consider the other.

(44) Document LEG/CONF.5/C.1/WP.14
2 November 1976
[149]Amendments submitted by the Japanese delegation
In sub-paragraph (c), the words “against the operator of a nuclear ship” and “in such ship” should be deleted.
Alternative: after sub-paragraph (c), the following sub-paragraph should be added:
“Claims in respect of damage caused by nuclear incidents involving the operating of reactor and use, transportation and disposition of nuclear fuel material or material contaminated or radio-activated by nuclear fuel material”.
(45) See note 44.
The Chairman called for a vote on the first Japanese proposal (to delete the words “against the operator of a nuclear ship” and “in such ship”).
That proposal was adopted (15 votes in favour, 9 against and 12 abstentions).
Sub-paragraph (c), as amended, was approved.

Draft International Convention

(c) CLAIMS IN RESPECT OF NUCLEAR DAMAGE CAUSED BY A NUCLEAR INCIDENT INVOLVING THE NUCLEAR FUEL OF, OR RADIOACTIVE PRODUCTS OR WASTE PRODUCED IN, A SHIP;

Summary Record of the Twenty-Third Meeting
16 November 1976

Paragraph (c)
[387] The Chairman pointed out that the Committee had tentatively approved a text based on the Japanese proposal in document LEG/CONF.5/C.1/WP.14.46
Mr. Filipovic (Yugoslavia) asked that the word “nuclear” be inserted before “damage”. A nuclear accident could cause other kinds of damage, but only nuclear damage should be excluded.
The Chairman said that the point had been dealt with by the Drafting Committee.

[388] Mr. Tanikawa (Japan) requested a separate vote on each paragraph of Article 3.
Article 3, paragraph (c) as amended by LEG/CONF.5/C.1/WP.14 and by the Yugoslav delegation, was approved (25 votes in favour, 1 against and 6 abstentions).
Article 3, paragraph (d) was approved (32 votes in favour, none against, and 1 abstention).

Summary Record of the Twenty-Sixth Meeting
18 November 1976

[405] The Chairman invited the Committee to continue reviewing the text of the Drafting Committee's report (LEG/CONF.5/C.3/1 and LEG/CONF.5/C.3/1/Add.1),48 in order to assess whether it faithfully reflected the substantive decisions which the Committee had taken.

[406] The present discussions, at that stage, in the Committee's deliberations, should focus on questions of drafting, any substantive questions thenceforward being treated as matters to be raised at the Plenary Conference.

Sub-paragraph (c)

[409] Mr. Cleton (Netherlands), Chairman of the Drafting Committee, said that the text of sub-paragraph (c) had been amended to take account of the proposal by the

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46 See note 44.
47 See note 44.
48 The text under review is that of Article 3(c) of the Draft International Convention quoted above.
Japanese delegation, but that the latter was still not quite satisfied with the sub-paragraph.

Mr. Tanikawa (Japan) drew the Committee members’ attention to the proposal made by his delegation at the sixth meeting (LEG/CONF.5/C.1/SR.6, page 252) and to the decision then taken by the Committee, which had approved that proposal by 15 votes to 9. His delegation considered that the text proposed by the Drafting Committee did not accurately reflect the Committee’s decision. He proposed that the last two lines of sub-paragraph (c) be amended as follows: “involving a nuclear fuel or radioactive products or waste”.

Mr. Filipovic (Yugoslavia) suggested that only the first line of the sub-paragraph should be retained.

The Chairman said that the question was an intricate one, and that the Plenary would have to determine whether the Drafting Committee’s proposed text was in tune with the Committee’s decision. She proposed that a text be submitted to the Conference giving a faithful rendering of the amendments approved by the Committee and worded as follows: “(c) claims in respect of damage caused by a nuclear incident involving nuclear fuel or radioactive products or waste produced”.

That proposal was approved.

Plenary Meetings
Summary Record of the Fourth Plenary Meeting
18 November 1976

Ms. Blom (Sweden) proposed amending the text of Article 3(c) as set out on page 1 of LEG/CONF.5/WP.8. It was, in fact, the basic text originally adopted by the

(49) Summary Records of the Sixth Meeting, 4 November 1976, at p. 120.
(50) Document LEG/CONF.5/WP.8
18 November 1976
[439] Proposal submitted by Sweden
Article 3(c)
It is proposed to amend the text of Article 3(c) to read as proposed by the IMCO Legal Committee:
“(c) claims against the operator (shipowner) of a nuclear ship in respect of damage caused by a nuclear incident involving the nuclear fuel of, or radioactive products or waste produced in, such ships.”

The text proposed by the IMCO Legal Committee was based on the following considerations:
1. The limits of liability provided for in this Convention are inadequate to cover nuclear damage caused by a nuclear ship. Such operators should, therefore incur either liability up to higher limits established by national law or International Conventions or unlimited liability. Claims in respect of nuclear damage caused by nuclear ships should therefore be entirely excluded from the scope of this Convention.

2. Liability for nuclear damage caused by nuclear cargo carried on board an ordinary ship should rest upon the nuclear installation from which or to which the nuclear cargo is transported. This is the solution adopted in the Vienna and Paris Conventions on third party liability for nuclear damage, and in the 1971 International Convention on Maritime Carriage of Nuclear Substances. If, however, the shipowner – despite these conventions or rules of national law – can be held liable, the rules of this Convention should apply. Claims in respect of such damage should therefore not be excluded from the scope of this Convention.

Alternative proposal
If the above-mentioned proposal is not adopted, it is proposed to adopt the text originally proposed by CMI, e.g. to insert in the place of the present (c) the following text:
“(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.
Legal Committee of IMCO, except that the Swedish delegation proposed to use the 
word “shipowner” instead of the word “operator” in order to conform with the 
terminology of the Convention. 

Her delegation’s view was that, of the two kinds of nuclear damage possible – by 
nuclear ships or by nuclear cargo – claims in respect of the former should not be 
covered by the Convention because the damage would be of such magnitude that the 
limits provided for in the Convention were not appropriate; higher or unlimited liability 
was required. As regards damage caused by nuclear cargo, her delegation considered 
that liability should rest on the operator of the nuclear installation to or from which the 
cargo was being carried. That was the solution adopted in other Conventions dealing 
with the transport of nuclear materials. If a shipowner was to be liable for nuclear cargo 
damage, he should be able to limit his liability in accordance with the present 
Convention, and such claims should not be excluded. After a long discussion, that had 
been the solution adopted by the IMCO Legal Committee by a large majority. 

If the proposal was not adopted, her delegation had an alternative proposal to 
submit, to be found on page 439 of LEG/CONF5/WP.8.51 

Mr. Bentein (Belgium) seconded the Swedish proposal. 

Mr. Tanikawa (Japan) opposed the Swedish proposal as it only referred to 
nuclear ships. His delegation considered that the damage caused by nuclear substances 
carried in ordinary ships might cause tremendous damage and should be fully 
compensated and, therefore, not excluded from Article 3(c) of the Convention. 

In the Committee of the Whole, a Japanese proposal had been adopted by an 
overwhelming majority and formed the basis of the text now submitted to the Plenary. 

Mr. Filipovic (Yugoslavia) also opposed the Swedish proposal on the grounds that 
it would encourage shipowners to carry nuclear material in ships and that such material 
was not protected by ordinary insurance. If such claims were excluded from the 
Convention, such a shipowner would limit his liability in the same way as for ordinary 
cargo. His delegation had supported the Japanese proposal although it did not consider 
the text before the Plenary to be satisfactory. It would prefer to see the original CMI 
text which was, in fact, the alternative Swedish proposal. 

There were 12 votes in favour of the Swedish proposal (LEG/CONF5/WP.8 page 
439,52 16 against, and 9 abstentions. The proposal was therefore rejected. 

Ms. Blom (Sweden) then submitted her delegation’s alternative proposal on page 
439 of LEG/CONF5/WP.8,53 which was the text originally proposed by the CMI. Her 
delegation found it difficult to accept the Japanese text which would mean that if an 
ordinary ship collided with a ship carrying nuclear cargo, or with a nuclear ship, and the 
collision was the fault of the ordinary ship, unlimited liability would be incurred by the 
owner of the ordinary ship. That appeared unjust to her delegation. 

Mr. Filipovic (Yugoslavia) seconded the alternative Swedish proposal. 
The alternative Swedish proposal (LEG/CONF5/WP.8 page 439)54 was adopted (20 
votes in favour, 4 against, and 3 abstentions).
1976 Convention

(C) CLAIMS SUBJECT TO ANY INTERNATIONAL CONVENTION OR NATIONAL LEGISLATION GOVERNING OR PROHIBITING LIMITATION OF LIABILITY FORNUCLEAR DAMAGE;
(D) CLAIMS AGAINST THE SHIPOWNER OF A NUCLEAR SHIP FOR NUCLEAR DAMAGE;

Sub-paragraph (e)

Hamburg Draft Convention
Text and Commentary

(f) CLAIMS BY SERVANTS OF THE SHIPOWNER OR SALVOR WHOSE DUTIES ARE CONNECTED WITH THE SHIP OR THE SALVAGE OPERATIONS, INCLUDING CLAIMS OF THEIR HEIRS, PERSONAL REPRESENTATIVES OR DEPENDANTS, TO THE EXTENT LIMITATION OF LIABILITY IN ACCORDANCE WITH THE RULES OF THIS CONVENTION IS NOT PERMITTED UNDER THE NATIONAL LAW GOVERNING THE CONTRACT OF SERVICE.

[408] Sub-paragraph (f) is in substance the same as Article 1, 4°, b) of the 1957 Convention.

IMCO Legal Committee
Twenty-third Session

[7] 28. One delegation remarked that the words “servants of the shipowner or salvor” in sub-paragraph (f) might not, in some jurisdictions, comprehend the Master. In view of this it was generally thought that the reference should include the Master as in the 1957 Convention. Another delegation expressed difficulties with the words “to the extent limitation of liability … is not permitted”. Yet another delegation considered that the language “claims subject” should be more precise. Yet another delegation questioned whether this language was equivalent to the 1957 Convention in other respects.

Twenty-fifth Session

[6] 32. Particular attention was paid by the Legal Committee to sub-paragraphs (b), (c) and (e) of this Article, and (e) was deleted. An amendment was made to sub-paragraph (f).

(55) This sub-paragraph was subsequently lettered (e), sub-paragraph (e) of the CMI Draft having been deleted. See infra, p. 119.
(56) Sub-paragraph (e) of the CMI Draft was worded as follows:
(e) claims in respect of loss of life or personal injury subject to an international convention prepared under the auspices of the United Nations or any of its specialized agencies governing limitation of liability for passengers, or to any national legislation providing for equivalent limits of liability;
33. Some delegations expressed the view that the exception spelt out in sub-paragraphs (b), (c) and (e) were too precise and too limitative. In their view, there was no need for such particularity about the source of law, since these provisions dealt with exceptions to the possibility of limitation of liability. It was proposed to replace the three sub-paragraphs by a single more generally worded provisions. The representative of the CMI pointed out that each exception was different in its scope and had a bearing on the limits of liability to be fixed in respect of the particular law or treaty. Since the capacity of the insurance market determined to a large extent these special limits, it was necessary to carefully define all claims excepted from limitation.

[7] 37. In respect of sub-paragraph (f), a delegation queried why, contrary to the 1957 Convention, the draft did not contain a reference to the “Master”, particularly in view of the fact that, according to some legal systems, the Master was not considered a servant of the shipowner.

38. The Committee’s attention was drawn to a divergence between the English and French text, the latter not containing a reference to “personal representatives”. After some discussion of the difference between the Civil Law and Common Law systems in this regard, it was felt it would be most suitable to leave the determination of the persons entitled to submit claims to the law applicable in the case at hand. The Committee decided, accordingly, to omit the words “personal representative” from the text and to add after the word “dependants”, the words “or other persons entitled to make such claims”.

ANNEX I

(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, TO THE EXTENT LIMITATION OF LIABILITY IN ACCORDANCE WITH THE RULES OF THIS CONVENTION IS NOT PERMITTED UNDER THE NATIONAL LAW GOVERNING THE CONTRACT OF SERVICE.

Twenty-seventh Session

[7] 24. The Australian delegation proposed that this paragraph might be redrafted to state the substance thereof in a more direct way. It indicated that it would present, at a later stage, a proposed draft for consideration by the Committee at the twenty-eighth session.

Twenty-eighth Session

Sub-paragraph (d)

35. One delegation proposed a new text which would allow a Contracting State to deny limitation, or set higher limits of limitation, by its law in respect of ships registered in, or flying the flag of, that State.

(57) Sub-paragraph (f) became sub-paragraph (e) after the deletion of sub-paragraph (e) of the CMI Draft.

(58) Sub-paragraph (e) (formerly (f)) became sub-paragraph (d) following the deletion of sub-paragraph (c) of the CMI Draft which was subsequently reinstated at the Diplomatic Conference.
Although from the Report it would appear that the proposal (of the Australian delegation) to amend the text of this paragraph (d) had not been the subject of a decision, in the draft articles annexed to the Report of the twenty-eighth session there is included this new text of sub-paragraph (d).

36. Some delegations felt that this was a matter more appropriate for inclusion in a reservation clause and, therefore, considered that any such provision would have to be in the Final Clauses of the convention. One delegation felt that such a provision would result in the loss or a general rule which, in its view, should be in the proposed convention. The Committee agreed to leave the sub-paragraph unaltered.

**Draft Articles**

(D) 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 OF THIS CONVENTION.

**Diplomatic Conference**

**Committee of the Whole**

**Summary Record of the Sixth Meeting**

4 November 1976

[253] Approved.

**Draft International Convention**

(D) 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.

**Summary Record of the Twenty-sixth Meeting**

18 November 1976

[405] The Chairman invited the Committee to continue reviewing the text of the Drafting Committee’s report (LEG/CONF5/C.3/1 and LEG/CONF5/C.3/1/Add.1), in order to assess whether it faithfully reflected the substantive decisions which the Committee had taken.

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(59) Although from the Report it would appear that the proposal (of the Australian delegation) to amend the text of this paragraph (d) had not been the subject of a decision, in the draft articles annexed to the Report of the twenty-eighth session there is included this new text of sub-paragraph (d).

(60) The text under review is that of Article 3(d) of the Draft International Convention quoted above.
The present discussions, at that stage, in the Committee’s deliberations, should focus on questions of drafting, any substantive questions thenceforward being treated as matters to be raised at the Plenary Conference.

Sub-paragraph (d)

Mr. Philip (Denmark) urged the advisability, in order to avoid any risk of confusion, of adding the term “respectively” after the words “or salvor”.

Lord Diplock (United Kingdom) saw no point in making that addition, for there was no possibility that ambiguity existed.

1976 Convention

(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.

Plenary Meetings

Summary Record of the Fourth Plenary Meeting

18 November 1976

Article 3 as a whole was adopted (31 votes in favour, none against, and 7 abstentions).

1976 Convention

THE RULES OF THIS CONVENTION SHALL NOT APPLY TO:

(A) CLAIMS FOR SALVAGE OR CONTRIBUTION IN GENERAL AVERAGE;

(B) CLAIMS FOR 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.

Sub-paragraphs not adopted

Hamburg Draft Convention
Commentary

(e) CLAIMS IN RESPECT OF LOSS OF LIFE OR PERSONAL INJURY SUBJECT TO AN INTERNATIONAL CONVENTION PREPARED UNDER THE AUSPICES OF THE UNITED NATIONS OR ANY OF ITS SPECIALIZED AGENCIES GOVERNING LIMITATION OF LIABILITY FOR PASSENGERS, OR TO ANY NATIONAL LEGISLATION PROVIDING FOR EQUIVALENT LIMITS OF LIABILITY;

Sub-paragraph (e) is based on the concept that any international convention on liability for passengers carried in the ship should deal exhaustively with the subject of limitation of such liability. Global limitation, the so-called per capita limitation and per incident must be considered as a whole. The relief of global limitation should not be denied, however, because the claim is subject to regulation by rules which are only called international; any bilateral treaty which is open for adherence by other countries may be called international. Hence, the qualification “prepared under the auspices of the United Nations, etc.”. National legislation on liability for passengers will exclude global limitation only if the limits of liability are equivalent to those of a convention prepared under the auspices of the United Nations. “Equivalent” is a somewhat ambiguous word. It is meant to indicate that the total effect of per capita limitation, per accident limitation, etc. must be equivalent.

IMCO Legal Committee
Twenty-fifth Session

32. Particular attention was paid by the Legal Committee to sub-paragraphs (b), (c) and (e) of this Article, and (e) was deleted. An amendment was made to sub-paragraph (f).

33. Some delegations expressed the view that the exception spelt out in sub-paragraphs (b), (c) and (e) were too precise and too limitative. In their view, there was no need for such particularity about the source of law, since these provisions dealt with exceptions to the possibility of limitation of liability. It was proposed to replace the three sub-paragraphs by a single more generally worded provisions. The representative of the CMI pointed out that each exception was different in its scope and had a bearing on the limits of liability to be fixed in respect of the particular law or treaty. Since the capacity of the insurance market determined to a large extent these special limits, it was necessary to carefully define all claims excepted from limitation.

35. The deletion of sub-paragraph (e) was, by some delegations, considered necessary in consequence of the provision of Article 19 of the Athens Convention
relating to the Carriage of Passengers and their Luggage by Sea, 1974. It was pointed out in argument for the exclusion of these passenger claims that a global limitation might not be appropriate to them, since such claims can, in fact, be quantified by multiplying the number of passengers by the per capita limit in a treaty such as the Athens Convention. On the other hand, it was thought necessary to make sure that the total liability for passengers would be insurable and that a special “catastrophe” limit in Article 6 would be appropriate.

36. Although some delegations opposed the deletion of sub-paragraph (e), or agreed to its deletion on condition that a separate limit should be introduced in the draft for cases of catastrophe, it was generally considered that the claims mentioned in sub-paragraph (e) should be covered by the new draft convention.

Diplomatic Conference Committee of the Whole
Summary Record of the Sixth Meeting
4 November 1976

[253] Mr. Tanikawa (Japan) drew attention to his delegation’s proposal for the addition of a new sub-paragraph (e) (Section III of LEG/CONF.5/C.1/WP.14). Japan considered that an international convention was obligatorily applicable only in cases having an international character; in other words, the Contracting State had a duty to apply the Convention in cases in which the interests of nationals of other Contracting States were in question, but had the right to apply different rules in purely domestic cases. His delegation therefore proposed the exclusion from limitation of any claims in respect of damage caused to nationals of a Contracting State by a ship registered in the same Contracting State in order to make clear that such claims had no international character and were completely outside the application of the Convention.

Mr. Tardana (Indonesia) supported that proposal.

[254] Mr. Herber (Federal Republic of Germany) too was inclined to support the proposal, but suggested it might be more appropriate if it took the form of a reservation, to be included at the end of the Convention, rather than under Article 3.

Mr. Tanikawa (Japan) had no objection to the deferment of discussion of his proposal to a later stage, but could not agree to its taking the form of a reservation. In reply to a suggestion from the Chairman, he expressed willingness for it to be discussed in connexion with the Final Clauses.

Lord Diplock (United Kingdom) said his delegation was opposed to the exemption from the Convention of claims of that kind.

Mr. Perrakis (Greece) suggested that it would be more appropriate to discuss the proposal in the context of Article 15(2).

That suggestion was adopted.
Article 4

Hamburg Conference
Second Report of the Chairman

[24] Conduct barring limitation

Under the present Convention Article 1 § 1° provides that limitation of liability is forfeited by “actual fault or privity” on the part of the person liable. In other words, simple negligence is sufficient. In some later conventions it is provided that the right of limitation shall not be forfeited unless the person liable has acted with the intent to cause loss or recklessly and with knowledge that loss would probably occur.

The Committee favoured a “privity rule” of the latter description, for two reasons:

- Limitation of liability as provided for in the Convention is, in principle, a right for the employer to limit his vicarious liability for his servants, not a right to limit liability for his own faults. The right of limitation accorded to the servants (Article 6 § 2°), regardless of actual fault or privity on their part (§ 3°), had the character of a “Himalaya Clause”; the principal aim was to avoid that the employer must pay without limitation in order to protect his servants.
- To-day, it is generally recognized that the employer needs protection also in cases where he is only guilty of simple negligence, particularly because the courts in some countries are inclined to institute a standard of diligence in the operation of ships which is unrealistically high.

[26] Secondly, when the right of limitation will be lost by simple negligence, claimants are tempted to endeavour to “break the limitation” although they have no indication of blameworthiness on the part of the person liable, hoping that “something will turn up” during the litigation. This has resulted in numerous “privity actions” involving heavy costs which tend to defeat the purpose of the institute of limitation although the claimants rarely succeed in breaking the limitation.

In the view of the Committee the right of limitation should not be forfeited only because the person liable has acted with intent to cause some sort of a loss or recklessly and with the knowledge that some sort of a loss would probably occur. If the actual loss is a remote consequence of the act, limitation should not be denied. The wording favoured by the Committee appears in the new Article 1 § 1° (Section 2 of the Draft Protocol) and in WP Article 4.

In consequence of the attitude of the Committee, § 3° of Article 6 will be deleted (see Section 7 of the Draft Protocol). Employers and servant will be subject to the same “privity rule”.

Hamburg Draft Convention
Text and Commentary

A PERSON LIABLE SHALL NOT BE ENTITLED TO LIMIT HIS LIABILITY IF IT IS PROVED THAT THE LOSS RESULTED FROM HIS PERSONAL ACT OR OMISSION, COMMITTED WITH THE INTENT TO CAUSE SUCH LOSS, OR RECKLESSLY AND WITH KNOWLEDGE THAT SUCH LOSS WOULD PROBABLY RESULT.
Under the 1957 Convention the right of limitation is forfeited by simple negligence ("actual fault or privity") on the part of the person liable (Article 1, 1°), although an exception is made for servants (Article 6, 3°). This has proved to be unsatisfactory for several reasons.

Because strict or absolute liability has little application in maritime law, judges who think that in the particular case there should be liability may, and often do, find "negligence" where, in fact, they are endeavouring to institute strict liability. This automatically excludes limitation of the liability although the right would have been intact if the basis of the liability had been given its proper name.

Also, because simple negligence is a vague conception, judges may be tempted to, and sometimes do, find negligence because they feel that limitation of liability is inequitable in the particular case.

Finally, because the right of limitation is so easily breakable, claimants often endeavour to break it, even in cases where the prospects of success are remote, in the hope that a lawsuit has sufficient "nuisance value" for the person liable to make him pay beyond the limits.

There is also a positive reason for making the limitation less breakable. Since the time when "actual fault or privity" was instituted as a bar to limitation the standard of diligence required in the operation of ships has been raised to a much higher level. Operators of ships should be protected also in cases where they have been guilty of simple negligence in the strict legal sense of the word, particularly when the limits of liability are based on insurability (see Article 6 below).

It is proposed, therefore, that the right of limitation shall not be lost unless the person liable has acted with intent or with a certain recklessness. The formula proposed has been used in some other CMI conventions (1961 Passengers Convention, Article 7; Luggage Convention, Article 7).

The words "recklessly and with knowledge that such loss would probably occur" come very near to the English legal term "wilful misconduct", which normally is the degree of blame required if the insurance cover shall be forfeited (Marine Insurance Act (1906) Sect. 55 (2) a). The proposed text, therefore, implies that there will be right of limitation where the insurance cover is intact. Making the limitation unbreakable to this extent should make possible a significant raise of the limits of liability.

Pursuant to Article 6, 3° of the 1957 Convention, the servants of the shipowner, etc., may limit regardless of their fault or privity, meaning that they can benefit from the limitation fund put up by the shipowner even when they are blameworthy to a very high degree. This rule will not be necessary if Draft Article 4 is adopted as proposed.

IMCO Legal Committee
Twenty-third Session

[7] 29. The provision about conduct barring limitation in the 1924 and 1957 Conventions referred to an “occurrence” which “resulted from the actual fault or privity of the owner”. It was explained that Article 4 is meant to restore the original intent behind the actual fault or privity rule, which has since become uncertain. Specifically, uncertainty in the fixing of insurance costs resulted from the interpretation sometimes given to these words by courts in which claimants sought to set aside limitation by alleging “actual fault or privity”. As a result, higher premiums and re-insurance of excess risk had been common, and the draft Article is intended to remove all this uncertainty.
The result of the new draft Article 4 is thought by its drafters to be a lower rate of insurance and diminution of legal costs, although increased or altered liabilities might well work the other way. One delegation, however, felt that limitation of liability was not justified if there was actual fault or privity on the side of the owner and therefore no change to the 1957 Convention should be made. Another delegation expressed some doubt as to the very narrow provision for conduct barring limitation, insofar as the gross negligence of the liable person should be considered as the factor barring the limitation of his liability. Yet another delegation proposed that to counterbalance the more stringent criterion of fault barring limitation, provision should be made that this new criterion should likewise apply to the servant. Some delegations expressed the view that, in principle, the limitation should be “unbreakable” and questioned whether Article 4 of the draft did not go too far in allowing exceptions.

30. The Legal Committee, recognizing that a completely “unbreakable” limitation might not perhaps be feasible, nevertheless considered that before a final decision on this and other draft Articles was taken, it would be useful to have data as to the costs of liability insurance, and the capacity of the insurance market to provide it. In particular the Committee felt that any information about the application of the “privity rule” under the 1957 Convention would be helpful in predicting the operation of the new provision. One delegation noted that in his country courts often sought to avoid low limits of liability through liberal findings or privity or knowledge on the part of the shipowner, particularly for personal injury claims. This had not caused problems regarding insurance capacity and insurance costs were not a significant portion of operating costs. One primary concern was the risk of catastrophic loss, not insurance costs or capacity for usual cases. To evaluate the proposed Convention, the Legal Committee should request States to obtain information on insurance costs; namely, what are the amounts actually paid at present for insurance coverage, and what are these amounts as a percentage of total operating costs for shipowners. This information was deemed critical by this delegation for assessing the need for and nature of the Convention. Some delegations said that as one of the principal arguments for revision of this Article was that a significant reduction in insurance costs would result, it was essential that specific information on the reduction that might be anticipated should be provided.

Twenty-fifth Session

39. The issue of principle discussed in connexion with this Article arose from its substitution for the concept contained in Article 1.1 of the 1957 Convention which granted the rights of limitation “unless the occurrence giving rise to the claim resulted from the actual fault or privity of the owner”.

40. Judicial interpretation of these words of the 1957 Convention had frequently resulted in denying the right of limitation. The words of Article 4 were intended to restore a measure of “unbreakability” to the limitation which the Convention provides, and thereby in the view of the delegations which favoured the Article, to reduce insurance costs and the incidence of dispute and litigation, and to assure the highest possible insurable limits.

41. Several delegations opposed the proposed text of this Article and considered it contrary to public policy. Some of them, in addition, considered that the wilful misconduct of servants should result in loss of limitation. One delegation proposed a text (see Annex II) which would deprive the person liable of the right of limitation if
the loss resulted from his personal fault or omission or from the acts or omissions of his servants, committed with the intent to cause such loss, or recklessly and with knowledge that such loss would probably result.

42. The Committee recognized that the Article reflected the language used in international air law and previous IMCO Conventions. The CMI representative observed that a condition of high limits in Article 6 would be the large measure of certainty of limitation by virtue of this text of Article 4. The “privity rule” had so often been interpreted to result in the denial of limitation that the object of the 1957 Convention had been defeated and wasteful litigation proliferated. One delegation thought that if Article 6 established very high limits then the consequence of breaking the limit would be less relevant and the argument for departing from the fault and privity rule would be less significant.

43. In response to an inquiry, an insurance expert of one delegation stated that the effect of Article 4 on premiums might not be the most significant factor; however, the basic concern was not any increase in premium cost, but the availability of cover in the insurance market, which would be substantially lessened by a return to the “privity” rule, and would be further lessened if the misconduct of servants could breach the shipowner’s limitation. Some delegation stated a preference, however, for the “privity” rule as in the 1957 Convention.

44. A new text of Article 4 having been proposed, the Committee decided to leave the existing text unchanged and to re-consider the matter at its next session on this subject.

Twenty-eighth Session

[7] 38. In examining this Article the Legal Committee was guided by two main considerations, namely:
(a) that due account should be had to the availability of insurance cover for the limits foreseen in Article 6; and
(b) that the provision should be such that those limits should not easily be “broken”.

[8] 39. It was a widely-held view that judicial interpretation in some States had deprived the 1957 “fault or privity” provision of its intended meaning and function, thus creating uncertainty as to the extent of liability to be covered with consequential difficulty in obtaining insurance cover, even for losses normally subject to limitation.

40. This was particularly so in jurisdictions where the law was based on the English text of the 1957 Convention. Hence, while the French expression of “faute personnelle” did not appear to have created serious problems and could, therefore, be acceptable, it was the view of many delegations that because of the difficulties of the English version of this expression, it was necessary to adopt a new provision which was clear in both languages and was not subject to different interpretation in different jurisdictions. For this reasons these delegations considered that the text proposed in the original CMI draft should be the text to be adopted.

41. In addition it was noted that the CMI draft was identical to Article 13 of the Athens Convention Relating to the Carriage of Passengers and their Luggage by Sea, 1974. This was considered desirable particularly in view of the proposal that the proposed Convention might contain a “ceiling” figure for passenger claims identical to that in the Athens Convention.
42. Some delegations preferred the Convention to contain the same text as the 1957 Convention (Article 1.1) i.e. that a person would be barred from limitation if the loss “resulted from his fault or privity”. The formula was well known and any new criterion would be unwelcome. It was the view of one delegation that the proposed new wording might lead to a text that would result in limits not being broken where they ought, legitimately, to be broken. In this connexion it was pointed out that the 1957 rule on fault and privity included a provision (Article 6.3) that the master or crew member could invoke limitation “even if the occurrence which gives rise to the claims resulted from the actual fault or privity of one or more of such persons”, hence a provision based on the 1957 principle would need to be supplemented by an equivalent provision.

43. A proposal was made by one delegation that the provision should be redrafted as follows:

“A person liable shall not be entitled to limit his liability if it is proved that the loss results from his personal act or omission or from the acts or omissions of his servants committed in the performance of their duties with the intent to cause such loss or recklessly and with knowledge that such loss would probably result.”

This text was not acceptable to the Committee.

44. Another delegation proposed the addition to the text of the phrase: “or from his own gross negligence”.

45. The consequences of each of these suggestions were carefully assessed by the Legal Committee in relation to the possible range of limits to be provided for in Articles 6 and 7. The inter-connexion between these two articles and Article 4 was emphasized, it being the general view that a system with a more or less “unbreakable” limitation would make it possible to fix higher monetary figures than would be insurable where conduct barring limitation could be commonly and successfully pleaded. The discussions in connexion with Articles 6 and 7 are summarized below in paragraphs 50 to 73.

46. On the basis of the discussions in connexion with this Article and Articles 6 and 7, the Committee decided by a majority vote to recommend the draft Article 4 in Annex I. The words in square brackets at the end of this Article were inserted after a proposal to that effect had been approved by a vote in the Committee.

47. Among the proposals not accepted by the Committee was one based on the same text as that contained in the 1957 Convention, with the difference between the English and French texts thereof maintained.

48. The Committee having so decided, the French delegation observed that there had been no vote on the text of the relevant provision in the 1957 Convention. That delegation would have been in favour of the expression “faute personnelle”, as contained in that Convention, subject to an English version different from “fault or privity”, since that version did not appear to be acceptable.

49. However, the majority of the Committee noted that no proposal had been made that the French text of the relevant provision of the 1957 Convention should be retained, with a new English version thereof. Moreover they observed that, in deciding in favour of Article 4 of the draft Convention, presented in Annex I, the Committee had decided not to retain the 1957 texts which were considered unacceptable because, inter alia, of the discrepancies in meaning between the authentic English and French version.
**Draft Articles**

A PERSON 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 [OR FROM HIS OWN GROSS NEGLIGENCE].

**Diplomatic Conference**

*Committee of the Whole*

*Summary Record of the Eighth Meeting*

*5 November 1976*

The Chairman

[263] Turning to proposals related to Article 4, the Swedish and United Kingdom delegations, in LEG/CONF.5/4,1 had proposed that the phrase in square brackets “or from his own gross negligence” should be deleted, and the same proposal was made by Spain in LEG/CONF.5/C.1/WP.10.2 Japan had proposed (LEG/CONF.5/C.1/WP.14)3 that the wording should be retained and France (LEG/CONF.5/C.1/WP.18)4 that the phrase “or from the act or omission of his servants acting in the exercise of their duties” should be added after the word “omission”. There was also a proposal by Australia for the rewording of the

(1) The relevant part of Document LEG/CONF.5/4 is quoted below:

Swedish

[72] The Swedish Government considers that the words “or from his own gross negligence” appearing within square brackets should be deleted. The inclusion of these words would lead to unnecessary and costly litigation and reduce the possibilities to increase the limitation figures.

United Kingdom

[73] The United Kingdom supports the text without the words in square brackets.

(2) Document LEG/CONF.5/C.1/WP.10

Proposed amendments and suggestions by the delegation of Spain

[147] Article 4

Delete, since they are unnecessary, the words appearing in brackets at the end of Article 4.

(3) Document LEG/CONF.5/C.1/WP.14

2 November 1976

Amendments submitted by the Japanese delegation

[149] Article 4

Square brackets should be deleted, in other words, the words “or from his own negligence” should be maintained.

(4) Document LEG/CONF.5/C.1/WP.18

2 November 1976

[152] Article 4 – Conduct barring limitation

Proposal submitted by the delegation of France

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 or from the act or omission of his servants acting in the exercise of their duties, committed with the intent to cause such loss, or recklessly and with knowledge that such loss would probably result.
Article (LEG/CONF.5/C.1/WP.20) and one by Canada (LEG/CONF.5/C.1/ WP24) which would reintroduce the concept of actual fault or privity.

Lord Diplock (United Kingdom) .................................................................

[264] With regard to breakability, his delegation believed that the limits should be made as unbreakable as possible on the principle that breakability should begin where insurability ended. It was firmly opposed to inclusion of the phrase “or from his own gross negligence” in Article 4, on the grounds that it had no meaning in English law and its interpretation would therefore vary from country to country. Similarly, it could not accept the use of the phrase “actual fault or privity” as recommended by Canada because of the uncertainties to which it had been shown to give rise in application. He favoured the retention of the original text of Article 4 (LEG/CONF.5/WP.1).7

[265] Mr. Tanikawa (Japan) .................................................................

His delegation considered that the words in square brackets in Article 4 should be retained from the viewpoint of equity and justice.

Mr. Selvig (Norway) .................................................................

[267] The sponsors were in favour of an unbreakable limit, as far as that was

2 November 1976

[153] Proposal of the delegation of Australia
Article 4
Include the following words at the beginning of the existing text which would become paragraph 1:
“Subject to paragraph 2 of this Article”
and add the following paragraph:
“2. The master or a member of the crew of a ship shall be entitled to limit his liability in all cases unless it is found that:
(a) he is at the same time the owner, co-owner, charterer, manager or operator of the ship; and
(b) the loss resulted from his personal act or omission, committed in his capacity as the owner, co-owner, charterer, manager or operator and with the intent to cause such loss, or recklessly and with knowledge that such loss would probably result”.

The principle contained in this proposed amendment is put forward regardless of the criteria finally adopted for barring limitation.

(6) Document LEG/CONF.5/C.1/WP.24
2 November 1976

[155] Proposed amendment by the delegation of Canada
Article 4 – Conduct barring limitation
Alternative A
A person liable may limit his liability under this Convention only if he proves that the occurrence giving rise to the loss did not result from his actual fault or privity;
Alternative B
A person liable may limit his liability only if he proves that the loss did not result 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 or from his own gross negligence.

possible, on the understanding that the figures proposed would be accepted. If other figures were preferred, the sponsors would have to reconsider their standpoint.

[268] Mr. Chatin (France) introduced his delegation’s proposed amendment to Article 4 (LEG/CONF.5/C.1/WP.18). He drew attention to a discrepancy between the French and English texts of draft Article 4: the word “propre” before “negligence” should read “grave” to conform with the English “gross”. He wished to emphasize that the Article was one of the original provisions in the draft Convention. It substantially modified the 1957 Convention and gave the draft an economic, rather than a legal character. Indeed, as regards barring the right of limitation, the criterion of personal fault was abandoned in Article 4 and replaced by the concept of fault or of omission committed with intent and knowledge.

Such a further qualification of the fault of the owner resulted in strengthening the right of limitation and made it practically unbreakable in court. Such strengthening was deliberate, in order to correct the jurisprudence of courts based on the English version of the treaty which had given rise to difficulties of interpretation.

In the English version, the concept of “actual fault or privity” was much wider than that of personal fault in the French version, because it implied participation. In English courts, the fault of servants was considered to be the fault of the owner who was not permitted to delegate his powers to them; whereas courts basing themselves on the French version adopted a much stricter interpretation which was more in line with the spirit of the treaty.

His delegation would prefer to revert to the criterion of personal fault contained in the 1957 Convention. If the present draft Article 4 were accepted, however, his delegation would propose that the provisions be extended to the shipowner’s servants.

The Chairman asked for seconders to proposals concerning draft Article 4, since they involved changes to the text.

Mr. Hedborg (Sweden) and Mr. Mayans (Spain) supported the United Kingdom proposals.

Mr. Lyon (Canada).

[269] With regard to Article 4, he withdrew Alternative B in his proposal in favour of the French proposal (LEG/CONF.5/C.1/WP.18), but maintained Alternative A, which was a reversion of the “fault or privity” rule of the 1957 Convention. That rule had caused no difficulty in his country, and was in fact strongly supported by industry on the grounds that it operated as an incentive to the proper management and navigation of ships. The new test of conduct barring limitation in Article 4 rendered the limits virtually unbreakable and since unbreakable limits generally seemed to be paired with strict liability, and the new Convention did not deal with the basis of liability, he thought that, if that basis were changed, there should be another trade-off, namely, an increase in the limitation amounts. His delegation’s concern diminished in proportion to the extent that increased limits gave maximum protection to potential claimants.

Mr. Bursley (United States).

(8) See note 4.
(9) See note 6.
(10) See note 4.
(11) See note 6.
[270] His delegation considered that the words in square brackets in Article 4 should be deleted. Regarding the breakdown point, he considered that, in proceeding to a higher level per ton of required coverage, the point should be lower than previously – for example, 10,000 tons. That would permit funds of adequate size for smaller vessels and thus accurately reflect their capacity to cause great damage. The patterns of insurance coverage indicated in his note were consistent with such a low breakdown point. He believed that a quantum increase in 1957 levels was a *sine qua non* for justifying the proposal by the Conference of a standard for breakability as difficult as that in draft Article 4. Doubling the 1957 level was not the kind of increase that would give his delegation any hope of the Convention being accepted by his Government.

[271] **Mr. Pages (Observer, IAPH),** speaking at the invitation of the Chairman, said that he had listened with interest at the previous meeting to the statement of the representative of the United Kingdom, in connexion with the insurance market, that it was by making limitation “unbreakable” as in Article 4 that the greatest advantage could be taken of the global insurance capacity, at the most favourable price. He had nevertheless been surprised by the second proposal regarding Article 6 relating to the way in which the amount specified in the 1957 Convention for property claims was to be adjusted. Since a coefficient of only 2 was used, that increase would just about make it possible to counterbalance the effects of inflation. Those two proposals did not seem to him to be in harmony.

**Mr. Filipovic (Yugoslavia)** regarded Article 4 as one of the most important of all, since the principle of unbreakability was to be contained in it. That principle was, unfortunately, not easy to formulate. The expression “or from his own gross negligence” was vague, as the representative of Spain had pointed out. The expression “fault or privity” was better but, as pointed out by the representative of the United Kingdom, perhaps not the best. It might well be preferable to delete the words in square brackets in Article 4.

He was not satisfied with the proposal contained in document LEG/CONF.5/C.1/WP.18, since it broadened the concept of person liable, in disaccord with the provisions of the 1957 Convention.

**Mr. Philip (Denmark)**  
His delegation favoured the retention of Article 4 in its present form. The highly important principle of unbreakability should be maintained and the words in square brackets deleted. His delegation, that was to say, found the French proposal unacceptable.

**Sir Gordon Wilmer (Liberia)** was in favour of retaining Article 4 as drafted, provided that the words in square brackets were deleted, but was against retaining the expression “actual fault or privity”. The fact that the underlying concept was treated differently by different legislations made it a source of confusion. Non-admission of the right to limit liability obviated the risk of generating unnecessary uncertainty. The wording of Article 4 was similar to that of Article 13 of the 1914 Athens Convention on the Carriage of Passengers and their Luggage by Sea. The idea of actual fault or privity was absent from that text also.

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(12) See note 4.
Mr. Amoroso (Italy) noted that the Legal Committee had wished to exclude the concept of “actual fault or privity” for the reasons the French representative had explained that morning. The words “ou de sa propre négligence” in square brackets were a translation of the English “gross negligence”: a term which, as the representative of the United Kingdom had told them, had no meaning in English law. His delegation could accept the phrase “ou de sa propre faute grave” but was uncertain what its English translation or interpretation would be. It therefore preferred the straightforward deletion of the words in square brackets.

Mr. Nair (India) supported the draft text of Article 4, subject to the deletion – desirable for many reasons – of the words in square brackets. The corresponding provision in the 1957 Convention referred to “actual fault or privity”. In a case of simple negligence, the person responsible ought to be able to invoke some form of protection or limitation; normally, insurance cover was forfeited only if there had been deliberate negligence. The provisions relating to negligence by the shipowner has been introduced at a time when safety standards were less strict. Cases of negligence were today becoming increasingly rare. Moreover, to delete the words in square brackets would bring the text of the present Convention into line with that of the draft Convention on the Carriage of Goods by Sea. Finally, it would avert the possibility of a spate of litigation as to whether or not the right of limitation was breakable.

Mr. Unkles (Australia) Australia’s impression was that if the new text were to include quasi-unbreakable limitations, the amounts would have to be substantially increased.

Mr. Cleton (Netherlands) With regard to Article 4, Mr. Cleton was in favour of the draft text, provided the words in square brackets were deleted. The concept of “actual fault or privity” was a source of difficulty in the case of common law systems, which had created much uncertainty for shipowners and which was also of great concern to the shipping interests of his country.

Mr. Ganten (Federal Republic of Germany) recognized that the phrase “actual fault or privity” in the 1957 Convention, which his Government had been in favour of using, had been a source of uncertainty to various legislations, and that such uncertainty was better avoided. However, it involved an important point of principle for his country, which could not agree that there should be any limitation of liability if the person liable had caused the damage by his own negligence. In any case, once the new Convention had raised the liability limits, the question of the breakability of those limits would lose in significance. The vessels mainly affected were those of relatively low tonnage. Raising the minimum tonnage would also raise the limit of liability, which in turn would solve many of the questions relating to the “actual fault or privity” concept.

His delegation had already stated, during the general debate, that it was prepared to accept the text proposed for Article 4, including the words in square brackets as a compromise, if that was necessary in order to reach agreement on the figures. He suggested that the Committee try to find another compromise formula. His own view was that a satisfactory English text of the formula mentioned by the Italian delegation could be found that would meet the objections put forward by the common law countries to the use of the term “gross negligence”.

Mr. Bendjenna (Algeria) questioned the desirability of including the words in square brackets in Article 4, as they altered its original meaning by introducing a new
idea which was imprecise and ill-defined and might well hamstring the other provisions in the Article which were used for circumventing the liability limitation. Another risk would be that it might lead insurers to raise their insurance and reinsurance premiums; and it was there, and not in the financial capacity of the insurance market, that the problem lay. A further point was that the concept seemed to a [275] certain extent to diminish the liability of the person who caused the damage.

Mr. Perrakis (Greece) .................................................................

Inasmuch as the text of any Convention should be completely unambiguous, the concept of negligence should be eliminated from Article 4, especially since all incidents at sea – apart from natural disasters – were due or ascribable to negligence.

Mr. Iturralde (Argentina) ............................................................

[276] His delegation could accept an unbreakable limit if the amounts were fixed at a reasonable level, but stressed the need to take all due precautions in drafting the Article. In brief, its attitude was based on three principles. First, it believed – together with other countries not represented at the Conference – that the figures adopted should be at least as high as those in the Norwegian and Swedish proposal; second, if those figures were adopted, it could accept a wording for Article 4 such that an unbreakable limit was guaranteed; third, his delegation had a preference for the alternative text for Article 6, because it guaranteed some compensation for property damage. That position was not inflexible and might be changed if the basic text was amended so as to provide such a guarantee and facilitate a better use of the insurance market.

His delegation’s position was based on technical, legal and economic considerations and on a concern to improve the text of the future Convention so that a great many countries would be able to ratify it. It should in no way be considered as unalterable.

Mr. Sim Mong Soo (Singapore) said that his delegation was unable to approve the draft text of Article 4. It was in favour of the amendment proposed by Canada, because the formula used in the 1957 Convention had not caused any problems for Singapore, although he recognized that it had been given different interpretations in different jurisdictions. However, the proposed new form of words would, in his view, also give rise in the future to differing interpretations under the legislation of different countries. It was important to remember that Articles 4 and 6 were closely interconnected. His delegation thought that the figures set in the 1957 Convention should be doubled to take account of inflation and the increased cost of shipping and insurance. It was in favour of the basic text of Article 6, which seemed to provide a better solution and was an improvement on the 1957 Convention.

[277] Mr. Suchorzewski (Poland) could not support the French proposal with respect to Article 4. Intentional damage must entail special punishment. A person liable in such a case therefore lost the right to limit his liability. When the act or omission was attributable to a servant, however, the problem was different for the latter was assumed to be carrying out the instructions of the carrier. In adopting a different course of action, he disobeyed those instructions, but the person liable was still responsible for his actions. Since the Canadian amendment provided for a reversal of the burden of proof, it would be difficult to accept.

His delegation was in favour of the draft text of Article 4, but without the words in square brackets, which might cause some confusion. However, the present draft, along the lines of the 1974 Athens Convention, was logical and well-constructed.
Finally, it thought that the draft text of Article 4 was the best, but without the words in square brackets, since the concept of “gross negligence” might give rise to differing interpretations. Moreover, for economic reasons, it was best to adopt the principle of unbreakability and therefore to reject the French proposal.

Summary Record of the Eleventh Meeting
8 November 1976

The Chairman noted that the Committee had now completed its discussion of basic issues in relation to the limitation system. It was clear that on some of those issues there was a fairly wide divergence of view; in addition there were a number of unknown elements, such as the question of claims for pollution damage which was at present still under consideration by a Working Group. Most of the representatives appeared to prefer that claims involving damage to harbour works or relating to wreck removal should be included in the Convention, while there were some who considered that they should be excluded or made the subject of a reservation. It was proving difficult for the Committee simply to go through the Convention, tackling each Article in turn, because so many issues were closely interrelated, and the position of representatives on one was dependent on the position they adopted on another. The only possible approach, if the Convention was to be acceptable to the large majority of governments, was to work towards a “package deal” or consensus solution.

She suggested that a Working Group be set up, which would proceed on the basis of the discussion which had so far taken place. The Group should not be too small, and should be sufficiently representative of the Committee’s views. The Committee should give it guidelines by indicating its preferences on three main issues:
1. the content of Article 4;
2. whether the basic or the alternative text of Article 6 should be adopted;
3. the principle of a separate limit for passenger claims (Article 7).

The Group would then try to produce a package solution, or if necessary several alternative package solutions, which it would present to the Committee.

The Chairman said that she shared those hopes.

She invited delegations to indicate their preferences on the various issues which she had enumerated.

The result of the show of hands was as follows:
1. Those favouring Article 4 as in the draft text but with the deletion of the words in square brackets: 30
2. Those favouring Article 4 with the inclusion of those words: 3

Mr. Jeannel (France) saw no need for a vote on his delegation’s proposal (LEG/CONF.5/C.1/WP.18), as his delegation had prepared a new text for the Article which he hoped would provide an acceptable solution. His delegation deemed it essential to include the words in the square brackets: should they not be included, it was unlikely that France would become Party to the Convention.

(13) See note 4.
Mr. Lyon (Canada) said that a vote on his delegation’s proposal (LEG/CONF.5/C.1/WP.24)\textsuperscript{14} was unnecessary.

The result of the show of hands was as follows:
1. Those in favour of the basic text: 11
2. Those in favour of the alternative text: 21

Summary Record of the Twenty-second Meeting
16 November 1976

[383] The Chairman requested delegations to revert to the Note by the Secretariat (LEG/CONF.5/C.1/WP.82)\textsuperscript{15} concerning the limitation system in Articles 4 to 6 of the Convention; in particular she drew attention to Annex I containing proposals on limitation figures, with the reminder that those proposals were based on [384] the four assumptions given in the paragraphs in the footnote to that Annex.

She suggested that a vote should first be taken on the proposal in paragraph 3 to entitle States to make a reservation in respect of wreck removal.

Mr. Makovsky (USSR) saw no reason why a decision should not be taken on paragraph 3, but thought that all four paragraphs should then be put to the vote, since they together constituted a compromise solution.

Mr. Jeannel (France) said that paragraph 1, referring to Article 4, raised certain difficulties for his delegation, and it would therefore prefer first of all to ascertain whether – before voting on the whole of the footnote to Annex I – a compromise solution could not be devised for Article 4 on the basis of his delegation’s proposal in document LEG/CONF.5/C.1/WP.65.\textsuperscript{16}

Mr. Helaniemi (Finland) endorsed the statement by the USSR delegation to the effect that the four assumptions formed an entity on which the Committee should vote.

Mr. Perrakis (Greece) said that in order to avoid further loss of time, he was prepared to see the French proposal put to the vote, to be followed by a vote on all four paragraphs.

Lord Diplock (United Kingdom) concurred with the representative of the USSR that what was before the Committee was a compromise solution and that all four paragraphs should be submitted to the Committee together. However, he agreed with the suggestion that the French proposal should first be put to the vote without further discussion.

\textsuperscript{14}See note 6.

\textsuperscript{15}This document is quoted in note 45 under Article 6.

\textsuperscript{16}Document LEG/CONF.5/C.1/WP.65 is quoted below:
Observation submitted by the delegation of France

\textbf{Article 4 - Conduct barring limitation}

\textbf{Proposition to deal separately with tort claims for personal injury}

With a view to harmonizing the wording in French and English of the last paragraph of document LEG/CONF.5./C.1/WP.59 and re-employing a formulation already used in an existing convention (Brussels Convention for the unification of certain rules relating to maritime liens and mortgages, 1967), the delegation of France wishes to propose the following re-wording of the said paragraph:

“2. However, in the case of claims based on tort and not capable of being based on contract, in respect of loss of life or personal injury occurring, whether on land or on water, in direct connexion with the operation of the vessel, the person liable shall not be entitled to limit his liability if it is proved that the loss resulted from his personal act or gross omission, though not from any fault.”
Mr. Unkles (Australia) was prepared to vote on the paragraphs taken as a whole, provided that his delegation’s proposal concerning Article 4 (LEG/CONF5/C.1/WP20)17 was also taken into account.

The Chairman put to the vote the proposal by the French delegation to deal separately with tort claims for personal injury (LEG/CONF5/C.1/WP.65).18 There were 3 votes in favour of the French proposal, 21 against, and 16 abstentions; the proposal was rejected.

The Chairman then put to the vote the compromise solution contained in Annex I to the document on limitation figures (LEG/CONF5/C.1/WP.82),19 including the assumption for the figures mentioned in the four paragraphs in the footnote. The compromise solution, including the four paragraphs, was approved (24 votes in favour, 2 against, and 14 abstentions).

Mr. Tanikawa (Japan), in explanation of his vote, said that the deletion of the words “gross negligence” in Article 4 raised serious difficulties for his delegation, which had therefore found itself in the unfortunate position of not being able to accept the text as a whole.

Summary Record of the Twenty-third Meeting
16 November 1976

[388] The Chairman drew attention to an Australian proposal (LEG/CONF5/C.1/WP.20)20 which had not yet been discussed.

Mr. Unkles (Australia) said that his proposal,21 which had been overlooked in earlier discussions of Article 4, matched the provision contained in Article 6(3) of the 1957 Convention. The principle it contained was an important one which should be incorporated in the revised Convention.

Mr. Selvig (Norway) supported the proposal. However, he pointed out that the provision proposed was not as wide in scope as the corresponding provision in the 1957 Convention, since it mentioned only the master or a member of the crew and did not refer to other persons for whose act, neglect or default the shipowner was responsible (as indicated in Article 1(4)). The provision should also cover persons in that category.

Mr. Unkles (Australia) said that he would have no objection to making such an addition to his proposal.

Lord Diplock (United Kingdom) considered that the Australian proposal was essentially a matter of drafting; in any event it was not necessary, because the principle it contained was already covered by Article 1(4) and by the existing Article 4.

The Chairman noted that, according to the proposal, limitation of liability would be available “in all cases” – for example, in cases of acts committed with intent to cause damage.

(17) See note 5.
(18) See note 16.
(19) See note 15.
(20) See note 5.
(21) See note 5.
Mr. Herber (Federal Republic of Germany) was opposed to the Australian proposal, which he considered raised a point of substance. The proposal would entitle masters and members of the crew to invoke limitation of liability even in cases where they had been seriously at fault, unless they were at the same time owners of the ship. Mr. Perrakis (Greece) said that the proposal was not compatible with Greece’s national law and was accordingly unacceptable to his delegation. The Chairman called for a vote on the Australian proposal. There were 8 votes in favour of the Australian proposal, 16 against, and 11 abstentions; the proposal was rejected.

Draft International Convention

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.

Summary Record of the Twenty-sixth Meeting
18 November 1976

The Chairman invited the Committee to continue reviewing the text of the Drafting Committee’s report (LEG/CONF.5/C.3/1 and LEG/CONF.5/C.3/1/Add.1), in order to assess whether it faithfully reflected the substantive decisions which the Committee had taken.

Article 4 – Conduct barring limitation
There were no comments.

Plenary Meetings

Summary Record of the Fourth Plenary Meeting
18 November 1976

Article 4 was adopted (34 votes in favour, 1 against, and 3 abstentions).

1976 Convention

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.

(22) The text under review is Article 4 of the Draft International Convention quoted above.
Article 5
Counterclaims

*Hamburg Draft Convention*
*Text and Commentary*

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.

This article reproduces Article 1, 5° of the 1957 Convention. Prior to that Convention the principle of “cross liabilities” was employed for limitation purposes in some countries. The principle of “single liability” has now been generally adopted and should be retained.

*IMCO Legal Committee*
*Twenty-fifth Session*

[9]45. The Legal Committee had no comment on this Article and left its text unchanged.

*Twenty-seventh Session*

[7]26. There were no comments on this Article.

*Draft Articles*

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.

*Diplomatic Conference*

*Committee of the Whole*
*Summary Record of the Sixth Meeting*
*4 November 1976*

[254] Article 5 was approved.

*Summary Record of the Twenty-third Meeting*
*16 November 1976*

[389] Article 5 was approved by 35 votes to none, with no abstentions.
Draft International Convention

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.

Summary Record of the Twenty-sixth Meeting
18 November 1976

The Chairman invited the Committee to continue reviewing the text of the Drafting Committee’s report (LEG/CONF.5/C.3/1 and LEG/CONF.5/C.3/1/Add.1),1 in order to assess whether it faithfully reflected the substantive decisions which the Committee had taken.

Article 5 – Counterclaims
There were no comments.

Plenary Meetings

Summary Record of the Fourth Plenary Meeting
18 November 1976

Article 5 was adopted (34 votes in favour, none against, and no abstentions).

1976 Convention

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.

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1 The text under review is Article 5 of the Draft International Convention, quoted above.
Chapter II

LIMITS OF LIABILITY

Article 6

The general limits

General comments

Hamburg Conference
Second Report of the Chairman

Limits of Liability

The Committee proposes to amend Article 3 §§ 1° and 2° of the Convention in accordance with Article 7 of the Maxi Draft for the reasons set out in the Chairman’s First Report (LIMIT-14). The new text appears in Section 5 of the Draft Protocol: there are separate limits for personal claims and property claim and, in effect, two separate limitation funds. The minimum amount can now be defined as an amount of francs instead of by reference to a minimum tonnage. § 5° of Article 3 may, therefore, be deleted.

At its first meeting in November of 1972 the Committee discussed at some length the basis for determining the amounts set out in Section 5. Broadly speaking, there were two basic schools of thought. Some delegates were in favour of the philosophy of the fortune de mer concept: to approximate the limitation fund to the value of the ship. Other preferred to abandon the whole concept, which, intrinsically, is tied up with liability in rem only, and to make “insurability”, from a practical point of view, the guideline for the determination of the amounts. At its second, and last, meeting the Committee refrained from discussing figures. It was generally agreed that the present method of computing the limits – a certain number of monetary units per ton of the ship’s tonnage – would be retained, that the monetary unit would be the Franc Poincaré and that the tonnage would be the gross tonnage. The only open question would be the number of francs per ton (X and Y) and the minimum amount (P and R). The new Convention will have no provision on the philosophy or principles applied in determining the numbers. The Hamburg Conference must decide whether or not CMI shall make any recommendation to IMCO on this point.

Hamburg Draft Convention
Text and Commentary

1. The limits of liability shall be

   (a) In respect of claims for loss of life or personal injury an aggregate amount of A francs per ton for the first P tons of the ship’s tonnage and B francs per ton for tonnage in excess thereof, but in no case less than Y francs;
(B) In respect of other claims an aggregate amount of C francs per ton for the first R tons of the ship’s tonnage and D francs per ton for tonnage in excess thereof, but in no case less than Y francs.

2. For the purpose of this Article the limit of liability for any salvor not operating from another ship shall be calculated by reference to the tonnage of the ship to which salvage services are being rendered.

3. For the purpose of this Article the ship’s tonnage shall be the gross tonnage calculated in accordance with the International Convention on Tonnage Measurement of Ships, 1969.

Important changes are being proposed with respect to the determination of the amounts of limitation. This is largely due to a change in the philosophy by which limitation of liability for maritime claims is justified.

The 1957 Convention was still based on the concept that the limit should approximate to the operators interest in the venture – the value of ship and freight. The guiding principle on which the Draft Convention is based is commercial insurability as set out in the recommendation on the new limits of liability which accompanies the two drafts.

One consequence of this change in approach is that there shall be entirely separate limits for personal claims and other claims. In the 1957 Convention one portion of the fund is reserved exclusively for personal claims while the other portion is shared rateably by property claims and the uncovered balance of personal claims (Article 3, 1°). It is felt that the insurance required should be determined separately for material loss and personal injury and that the system should be simplified as proposed in the draft.

The tonnage of the ship is perhaps not the most appropriate criterion for determining the amount of insurance required, although in P & I insurance premiums are calculated on the basis of the gross tonnage. However, calculation of the limits on the basis of the tonnage is a well established method and the most practical one as it seems impossible to devise a formula in which the various factors which are relevant in determining the amount are given their proper weight. It is proposed, however, that the linear computation on tonnage as used in the 1957 Convention should be replaced by a system under which the amount per ton is decreased in stages on increasing tonnage. An amount per ton which is necessary for middle-sized ships in order to arrive at an acceptable limit may be unnecessarily high and not commercially insurable in respect of very large ships. In this article the system is illustrated by only two stages, but it is envisaged that more stages may be desirable.

A minimum limit, in principle in the same way as in Article 3, 5° of the 1957 Convention is proposed, and under the new system it may be an absolute figure. No maximum has been proposed.

IMCO Legal Committee
Twenty-third Session

32. General support was given to the concept of separate limits for personal claims and other claims, and to some simplifications of the system used in the 1957 Convention. However, some delegations felt that consideration might be given to a single fund with some priority given therein to personal claims. This would entail personal claims being satisfied first from the global amount and other claims being satisfied thereafter. Some delegations also suggested that some priority might be given,
after settlement of personal claims to settlement of claims for damage to harbour works and other public installations. The suggestion was made that this should also be the case in the revised convention and claims would thereafter be used for other claims, in apportioning the limitation Fund.

33. With regard to the criteria for determining the limitation figures, it was emphasized by some delegations that tonnage remains the most practical criterion. Support was given to the concept of modifying the amount per ton as the tonnage figure increases. There was some support also for using the value of the ship as a criterion; it being observed that the tonnage of a ship and the quantum of damage suffered in a collision involving it were not always directly related. It was also pointed out that the principles for determining the limitation figures set out in LEG XXIII/2, Annex III, were generally acceptable.

34. There was also some opposition to a system based on the tonnage or the value of a ship. Some delegations felt that it was not possible to say with sufficient certainty that limitation based on tonnage would provide adequate compensation in respect of personal claims. Because of the special need to ensure adequate compensation in respect of personal claims, it was suggested that per capita determination of limits in case of death and personal injury would be more desirable. At least one delegation felt that per capita determination may prove to be less equitable, unnecessarily complicated and in any event to await the outcome of the passenger and luggage conference in this connexion. Some delegations pointed out however that the per capita approach would make it difficult to determine the total risk for insurance purposes.

[10] In the discussion of the insurance aspect of this matter, the cost factor and the need for further data was again brought up. Some delegations requested a clarification of the “principle of insurability”.

35. The Committee noted that the CMI had offered to endeavour to procure information and provide reasoned recommendations based on available advice from the insurance industry (LEG XXIII/2, Annex III, paragraph 5). The Committee decided to invite the CMI to provide it with figures which might be considered on the basis of the principles contained in the draft articles prepared by the CMI. The CMI was also invited to provide, to the extent possible, information on the impact which the various proposals contained in the CMI draft are likely to have on the range of limitation figures which might be considered feasible, having regard to the need to facilitate the commercial insurability of the liability to claimants.

36. In reply, the representative of the CMI explained at some length the problems involved in obtaining adequate information required to assess the effects of the limits of the 1957 Convention and to formulate views on the possible revised limits. He also confirmed that CMI would do its best to obtain such information in due time and that he would recommend to CMI that concrete advice on the new limits as requested by IMCO should be provided.

37. The Committee felt it advisable that the respective Governments through their delegations to the next session of the Legal Committee which would continue to consider the revision of the 1957 Convention should exchange ideas for possible ranges of the minimum and maximum monetary figures of limits of liability which may serve as the basis for the review of the 1957 Convention.

38. One delegation expressed the view that one had to be aware of the fact that the figures of the new convention might have an impact on the figures of the 1969 civil liability convention and that high figures might possibly make a revision of that convention necessary.
Twenty-fifth Session

Article 6 – (Limits of Liability)

[9] 46. In connexion with this question, the Legal Committee at its twenty-third session had requested the CMI to provide figures and information which might be considered on the basis of the principles contained in the draft articles prepared by it. The CMI had also been requested to provide information on the impact which the various proposals contained in the CMI draft would be likely to have on the range of limitation figures. In compliance with this request the CMI submitted a document (LEG XXV/INF.2) which contains the report of a CMI Working Group concerning, inter alia, data on the capacity of the insurance market and the cost of raising the limits.

[10] 47. The Committee considered the implications of the CMI draft together with a series of alternative proposals formulated by various delegations. It agreed, however, that the complexity of the issues involved was such that it would have been impossible within the available time to express firm views and agreed proposals on an issue involving policy decisions.

48. Some of the most important questions dealt with concerned:
   (a) whether and what sort of treatment should be given to personal claims vis-à-vis property claims, and whether passengers’ claims should be treated differently from other personal claims;
   (b) whether tonnage should be the criterion for determining the limit of liability;
   (c) whether a “catastrophe” limit not based on tonnage for passenger claims should be established
   (d) whether there should be a general tonnage-based limit for other claims with a decreasing amount per ton for larger ships;
   (e) whether two funds should be established, or one fund with a priority of, e.g. two-thirds of the fund in favour of personal claims;
   (f) whether among the property claims a preference should be established in favour of claim resulting from damage to port installations and the like;
   (g) whether in respect of passenger ships a distinction should be made between ships having different passenger capacities to the end of establishing corresponding limits of liability;
   (h) what among the various possibilities would be the most economic system.

49. As mentioned above (paragraph 35 and 36), some delegations considered

(1) Paragraphs 35 and 36 relate to the suggested deletion of sub-paragraph (e) of Article 3 and are reproduced below:

35. The deletion of sub-paragraph (e) was, by some delegations, considered necessary in consequence of the provision of Article 19 of the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974. It was pointed out in argument for the exclusion of these passenger claims that a global limitation might not be appropriate to them, since such claims can, in fact, be quantified by multiplying the number of passengers by the per capita limit in a treaty such as the Athens Convention. On the other hand, it was thought necessary to make sure that the total liability for passengers would be insurable and that a special “catastrophe” limit in Article 6 would be appropriate.

36. Although some delegations opposed the deletion of sub-paragraph (e), or agreed to its deletion on condition that a separate limit should be introduced in the draft for cases of catastrophe, it was generally considered that the claims mentioned in sub-paragraph (e) should be covered by the new draft convention.
that passenger claims should be removed from the limits linked to the ship’s tonnage and put in a special category with a “catastrophe” limit. A proposal was put forward to this effect by two delegations and is set out in Annex II. In this connexion a figure of $46 million was mentioned. One delegation felt that a distinction should be made between ships having different passenger capacities.

50. The proposal contains a second single fund for all other claims, with priority for loss of life or personal injury to the extent of e.g. two-thirds of the limitation amount. This fund would be based on the tonnage of the ship.

51. A number of delegations expressed their concern over the proposal to separate passengers’ claims from other personal claims. In their view one could not justify treating passengers differently from other persons on board the ship, or passengers and crew on another ship, or persons on shore. As regards crew members, it was pointed out that Article 3(f) provided for a possible exception. The proponents, however, felt that a differentiation between passengers’ claims and other personal claims was well justified for a number of reasons. For one, international conventions, national legislation or contracts of carriage often provide a per capita limitation of liability for passengers but not for third parties. Moreover, to include passenger claims among the claims to be satisfied from the global limitation fund would not lead to satisfactory results. The global limitation fund had been conceived with a view to vessels in general and not to passenger ships, whose owners ran a particular risk. This risk was, however, calculable since the maximum number of passengers which could be carried was fixed. Where the ship’s tonnage was relatively modest compared to the number of passengers carried, such as ferries, a limitation fund based on tonnage would leave passengers inadequately covered. The proponents, therefore, considered their proposal as the most-satisfactory solution of the problem, at a reasonable cost.

52. Some delegations felt with regard to the separate fund for passengers’ claims, that it would be difficult to justify the inclusion not only of claims for loss of life or personal injury but also of other claims arising under the passenger’s contract of carriage.

53. One of the proposal’s supporters mentioned that in the light of the objections raised against it, it might be further explored whether different rules should apply depending on the type of vessel involved.

54. Some delegations and an observer proposed priority should be given to claims for damage to public works, such as harbour works and port installations, since they were of paramount importance to shipping. Other delegations were opposed to such a provision. They pointed out that if public bodies were given priority this would be at the expense of private claimants; such a result would be contrary to public policy. The proposals are furthermore incomplete inasmuch as there was other maritime property which was used in the public interest e.g. research or salvage vessels. On the other hand, it was pointed out that in some jurisdictions, harbour works were in private ownership and that in those places the dichotomy between public and private interest did not exist. In any event, these bodies could recoup losses through the levy of port dues. It was observed that the question of priority to be given to claimants for damage to public works and for costs for wreck removal should be seen in connexion with the reservation under Article 2(a) of the Protocol of Signature of the 1957 Convention and that one of these proposals was less drastic than the other. Priorities of this nature existed in other international conventions.

55. The Observer for the IUMI briefly set out the mechanics of maritime insurance. The primary insurers were the P and I Clubs. They, in turn, were reinsured on the ordinary market. Only five to ten per cent of all claims fell on reinsurance. The placing of the reinsurance contract established, however, the market capacity in the
Article 6 - The general limits

most accurate way. This capacity had quickly developed in the recent past (from US $50 million in 1971) and stood now at a possible US $120 million per incident, but could also contract again as quickly. The placement of the reinsurances in the conventional market occurred in several “layers”, each “layer” being spread among different insurers. There were, in essence, three levels of expected financial outgoings for maritime casualties: a “working layer” of $2 to $30 million, a “catastrophe layer” of $30 to $50 million, and a “super-catastrophe layer” of $50 million and above. Any increase of limits in a new convention would tend to elevate the “working layer”, and bring about a greater number of claims on the upper “layers”. This was one of the reasons why it was difficult to estimate the cost effects of, e.g., a doubling of the present limits. As matters stood now and assuming that draft Article 4 remained unchanged it would be unwise to expect the market capacity to be beyond US $100 millions per vessel per incident, excluding oil pollution and nuclear damage.

56. The Committee agreed that the decision in respect of the treatment to be given to small vessels represented one of the most difficult and important aspects of the whole question. An increase in the minimum limitation tonnage from the three-hundred tons in the 1957 Convention was generally deemed necessary, and one delegation suggested a minimum basis of 1,000 gross tons. However, even a definition of small vessels would be difficult to formulate in abstract terms.

57. As to the limitation figures themselves, some delegations argued that the information received was not sufficient to substantiate the alleged inadequacy of the ones established in the 1957 Convention. Additionally it was felt by some that no precise information on the effect of doubling the limits of the 1957 Convention nor on the establishment of new limits had been given and, finally, that the relationship between the future convention and the 1969 Convention on Oil Pollution Damage should be carefully considered in respect of the limits of liability established by the latter.

58. One of the delegations which favoured the existing draft did so in view of its government’s intention to implement a national no-fault compensation scheme, whereby compensation for personal injury would be treated as primarily a public responsibility and actions in tort for personal injury would be abolished. This delegation was, therefore, primarily interested in the provisions relating to claims for loss of or damage to property.

59. One delegation raised for consideration the basis for calculation of limitation of liability in the case of a third party claim arising out of a towage situation. This delegation referred to the differing rules relating to substantive liability. It was suggested that in the towage situation limitation might be calculated on the basis of the combined tonnage of the tug and the tow, rather than by reference to the tonnage of either the tug or the tow.

60. In connection with paragraph 2, the Committee considered a proposal of the European Tugowners Association contained in Annex II (1 bis). While some delegations supported it, others proposed a single limit for any salvage operation, and yet others observed that salvage operations should be excluded and the problems of salvors resolved by other arrangements. One delegation suggested that the salvor should be allowed to avail himself, even in respect of third parties, of the limitation to which the salved vessel would be entitled. Another delegation pointed out that the limits of liability in this even should be considered within the context of the aggregation of claims.

61. The suitability of the 1969 International Convention on Tonnage [14] 60. In connection with paragraph 2, the Committee considered a proposal of the European Tugowners Association contained in Annex II (1 bis). While some delegations supported it, others proposed a single limit for any salvage operation, and yet others observed that salvage operations should be excluded and the problems of salvors resolved by other arrangements. One delegation suggested that the salvor should be allowed to avail himself, even in respect of third parties, of the limitation to which the salved vessel would be entitled. Another delegation pointed out that the limits of liability in this even should be considered within the context of the aggregation of claims.

(1 bis) See infra note 3.
Measurement of Ships as referred to in paragraph 3 was discussed and one delegation pointed out that it might not be applicable to all ships to which this draft convention would apply. One delegation explained that the basic idea of the draft was the use of the gross ton instead of the liability ton used in the 1957 Convention. It was observed, however, that the gross ton will result in an increase of monetary limits in the prospective limitation convention.

62. The Committee considered that it should leave the present text of Article 6 unchanged and examine it, together with proposals contained in Annex II to the present Report, at the next session devoted to this item.

ANNEX I

1. THE LIMITS OF LIABILITY SHALL BE
   (A) IN RESPECT OF CLAIMS FOR LOSS OF LIFE OR PERSONAL INJURY AN AGGREGATE AMOUNT OF A FRANCS PER TON FOR THE FIRST P TONS OF THE SHIP’S TONNAGE AND B FRANCS PER TON FOR TONNAGE IN EXCESS THEREOF, BUT IN NO CASE LESS THAN X FRANCS;
   (B) IN RESPECT OF OTHER CLAIMS AN AGGREGATE AMOUNT OF C FRANCS PER TON FOR THE FIRST R TONS OF THE SHIP’S TONNAGE AND D FRANCS PER TON FOR TONNAGE IN EXCESS THEREOF, BUT IN NO CASE LESS THAN Y FRANCS.

(2) The relevant part of Annex II to the Report of the Legal Committee on the work of its twenty-fifth session is quoted below:

Proposal by the delegation of Belgium
It is proposed that the following sub-paragraph be added to the first paragraph:
“\text{In the category of claims specified in (b) if any claim in respect of the removal or destruction of the ship or wreck and the cargo aboard or in respect of material damage caused to equipment, installations or public works operated in the interests of navigation by a public authority compete with other claims, part of the aggregate amount shall be set aside for the payment of such claims up to the amount of the established claims. This part shall not exceed [one-third] of the aggregate amount except if, by application of the rule of the proportional distribution in accordance with Article 10(1) to the whole of the claims, the amounts to be allocated exceed the part set aside in accordance with the present sub-paragraph}”.

Proposal by the delegation of Norway and Sweden
1. The limit of liability shall be:
   (a) in respect of claims for loss of life or personal injury to passengers of the ship [and for loss of or damage to their luggage, as well as for loss resulting from delay in the carriage of the passengers and/or their luggage,] an aggregate amount of X million francs;
   (b) in respect of all other claims, an aggregate amount of Y francs per ton for the first P tons of the ship’s tonnage and Z francs per ton for tonnage in excess thereof, but in no case less than W francs, provided, however, that claims for loss of life or personal injury shall have priority to the extent of two-thirds of the limitation amount.

Proposal by the delegation of France
To be read in conjunction with the text proposed for Article 7.
The limit of liability shall be fixed at a total amount of A francs for the first P tons of the ship’s tonnage, and at B francs per ton for tonnage in excess thereof, but in no case less than X francs.

Proposal by the European Tugowners Association
It is proposed that the draft provisions of Article 6(2) should be amended to read as follows:
“For the purpose of this Article the limit of liability for any salvor not operating from another ship shall be:
   (a) in respect of claims for loss of life or personal injury X francs;
   (b) in respect of other claims Y francs.”
2. For the purpose of this Article the limit of liability for any salvor not operating from another ship shall be calculated by reference to the tonnage of the ship to which salvage services are being rendered.

3. For the purpose of this Article the ship's tonnage shall be the gross tonnage calculated in accordance with the International Convention on Tonnage Measurement of Ships, 1969.

4. The franc mentioned in this Article shall be a unit consisting of sixty-five and a half milligrams of gold of millesimal fineness nine hundred. The amounts mentioned in paragraph 1 of this Article shall be converted into the national currency of the State in which limitation is sought, on the basis of the official value of that currency by reference to the unit defined above 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. If there is no such official value the competent authority of the State concerned shall determine what shall be considered the official value for the purposes of this Convention.

**Twenty-seventh Session**

[7] Article 6

27. This Article was not discussed.

28. However, in connexion with this Article, the delegation of the United Kingdom introduced a proposal (contained in document LEG XXVII/3/2) that Special Drawing Rights (SDRs) be used as the unit of account for the limitation amounts in the Convention. It recalled that in the changed situation which had developed since the 1957 Convention was adopted, the unit of account used in that Convention (i.e. the Poincaré franc) was no longer a dependable basis and could not usefully be continued in the revised convention. To provide for a unit which would ensure that the decisions would have the same effect, in terms of resources, in all Contracting States, the United Kingdom was proposing that SDRs be the unit of account in the new Convention. While admitting that this was not an ideal measure, the delegation felt that it was the best available and would give a reasonable degree of uniformity and stability in the purchasing power of awards made within the limitation system of the Convention. It noted that a number of organizations and institutions had adopted SDRs as a means of ensuring stability in currency conversions. The delegation noted that there were States which, not being members of the IMF, did not employ the SDRs. However, the position of those States would not be altered significantly since the SDRs would be only a unit by reference to which they could convert their national currencies for the purposes of the Convention. The delegation finally pointed out that the operation of SDRs was simple, with the value of the “basket” calculated daily and made easily available to all.

[8] 29. The delegation of Sweden stated that the authorities had considered the matter and come to the conclusion that the best solution would be to use SDRs in the Convention. The delegation, however, recognized that the matter was very important and involved complex problems, and, therefore, suggested it would be helpful if delegations prepared themselves fully on this, if necessary by seeking the views and advice of financial authorities in their countries, before a fuller discussion of the problem at the twenty-eighth session.

30. The delegation of the United States felt that the Legal Committee might at the twenty-eighth session, consider whether, in the event of another unit of account being
chosen for the revised 1957 Convention, it would be feasible or desirable to consider similar revision of existing IMCO legal conventions in which the Poincaré franc was used as a unit of account. If such revisions were considered feasible, they might be accomplished at the same time as the diplomatic conference for the revision of the 1957 Convention.

31. The Legal Committee was unable in the time available to it to discuss the proposal of the United Kingdom. The Committee decided to give full consideration to the proposal at the twenty-eighth session, and expressed the wish that governments would examine this matter very carefully before that session with a view to instructing their delegations and, where necessary, including persons with specialist expertise in these delegations.

Twenty-eighth Session

[10] Articles 6 and 7 – (The general limits) – (The limit for passenger claims)

50. The Committee considered the following major issues involved in these Articles:

(a) whether passenger claims should be treated differently from other personal claims, with one limitation fund for passenger claims different from the fund available for other claim arising from loss of life or personal injury;

(b) whether an order of priorities among the various other claims should be envisaged, e.g. personal claims before property claims; damage to port installations and wreck removal before other property claims;

(c) whether amounts available for one form of claim, if not exhausted by such claims, should be made available for other claims, reciprocally or otherwise (“spillover in one way or both ways”);

(d) what criteria would be used for establishing the limitation amount (e.g. based on passenger capacity; based on tonnage, with or without a minimum or maximum tonnage limit; fixed amounts, with or without upper ceiling and lower floors);

(e) whether in the case of tonnage based criteria, a different amount per ton should be provided above a certain level in order to cater for very large ships and, if so, by what criteria should any such level be determined;

[11] (f) what unit of account might be used for expressing the various limitation amounts, in order to ensure stability and financial predictability;

(g) what would be suitable as the conversion date for calculating limitation amounts in national currencies.

51. A general discussion in the Committee of the structure of new limitation system led to the following conclusions.

52. Regarding passengers’ claims, it was decided that a special limit should be provided for claims in respect of loss of life or personal injury to passengers of the ship in question. The criterion of the passenger-carrying capacity of a ship was chosen because it was felt that a tonnage criterion would be unsuitable in respect of vessels of modest tonnage which carry large numbers of passengers. For example, a limitation fund based on tonnage for a 4,000 ton ferry with 1,400 passengers could be easily exhausted in a very serious casualty involving that ship. The special limit would be accomplished by establishing a total limitation sum calculated by multiplying an agreed figure by the number of passengers authorized to be carried by the ship according to its safety certificate. This limitation sum would be made subject to a ceiling which would be the maximum amount for which a shipowner would require to obtain insurance cover for his passenger liability. In this connexion it was suggested
that the figure mentioned above (i.e. the figure by which to multiply the passenger-carrying capacity of the ship) should be set by reference to the figure of 700,000 Poincaré francs contained in the Athens (Passenger) Convention of 1974. However, other delegations considered that it would not be possible to consider an acceptable figure until certain principal issues such as the limitation figures for other claims and the contents of the article as conduct barring limitation, had been settled.

53. A special article on a limit for passenger claims was incorporated as a new draft Article 7. This article contains a definition of passenger claims based on the definition of “passenger” contained in the Athens Convention.

54. One delegation questioned the advisability of including reference to per capita figures in this provision.

[12] 55. The Committee, having approved a separate limitation fund for passengers, discussed the limitation fund for claims in respect of loss of life and personal injury for persons other than passengers of the ship in question, and for property claims. It agreed to a single fund in which priority would be given to personal claims, up to the limits of the amount available. This solution is embodied in paragraphs 1 and 2 (basic text) of Article 6. A proposal based on the “two fund” solution was considered by the Committee and is given in the alternative text of paragraph 1 of Article 6. (This would replace paragraphs 1 and 2 of the basic text if the alternative approach were to be adopted).

56. The Committee considered another alternative text for paragraph 1 of Article 6 to read as follows:

“The limit of liability shall be:

(a) in respect of claims for loss of life or personal injury to the persons other than the passengers an aggregate amount of A francs per ton for the first P tons of the ship’s tonnage and B francs per ton for tonnage in excess thereof, but in no case less than X francs;

(b) in respect of claims other than claims for loss of life or personal injury an aggregate amount of C francs per ton for the first R tons of the ship’s tonnage and D francs per ton for tonnage in excess thereof, but in no case less than Y francs”.

This text was not adopted by the Committee.

57. While some delegations favoured a single tonnage formula for determining limitation, a dual rate system of determining amounts for this category of claims was recommended by the Committee, with a higher rate per ton for vessels below a specified tonnage figure, and a lower rate per ton for vessels above tonnage. Both the per ton figure and the specified tonnage were left to be determined by the diplomatic conference. The minimum limit of liability for this category of claims would also be determined by the Conference.

[13] 58. With regard to salvors not operating from another ship, the Committee agreed that the limit of liability should be calculated by reference to the tonnage of the ship to which the salvage services are rendered, but added the proviso that these limits should not be below or above certain figures to be determined later.

59. One delegation proposed a different provision on the liability of salvors as follows:

“1. For the purposes of this Article the limit of liability of salvors, whether or not operating from a ship, shall be based on the tonnage of the ship to which salvage services are being rendered, provided that the limit of liability of the salvor shall be between the minimum calculated by reference to a ship of [X] tons and a maximum calculated by reference to a ship of [Y] tons.

2. In cases of salvage services provided from a ship not professionally engaged in salvage operations, the limit of liability of the salvor shall be fixed at:
(a) an amount calculated by reference to the limit of liability of his own ship without exceeding the maximum provided for in paragraph 1, if the tonnage of the said ship is lower than that of the ship to which salvage services are being rendered;
(b) an amount calculated by reference to the limit of liability of the ship to which salvage services are being rendered without exceeding the maximum laid down in paragraph 1, if the tonnage of the said ship is lower than that of the ship providing salvage services.

3. In the cases provided for in paragraph 2, the minimum limit provided for in paragraph 1 shall be applicable.”

This proposal was not acceptable to the majority of the Committee.

60. One delegation objected to both proposed formulations on salvors on the grounds that the traditional concept of limitation could only be applied to a salvor’s fortune de mer, consisting of all equipment, including all salvage vessels, employed by him in the course of the salvage operation in question.

61. The Committee considered a proposal that priority should be given to damage caused to harbour works, basins (docks), fairways and aids to navigation and claims for wreck removal. As it was not possible to reach agreement on a provision to be included in the text, it was decided to present this proposal in the form of a footnote. Some delegations expressed the view that the principle of such a priority could be adopted whatever alternative regarding limits of liability were finally retained.

Draft Articles

Basic text

1. **The limit of liability for claims other than those mentioned in Article 7 shall be the total of an amount of [B] Units of Account multiplied by the first [C] tons of the ship’s tonnage and [D] Units of Accounts multiplied by the tonnage in excess thereof, but in any case at least [E] Units of Account.**

2. This total amount shall be apportioned in the following manner:
   (A) claims in respect of loss of life and personal injury shall have priority up to the limit of any such amount;
   (B) any balance remaining after settlement of the claims mentioned under (a) shall be distributed among the other claimants.

* A sub-paragraph (c) to paragraph 2 of the basic text was proposed as follows:
   (c) however, a Contracting State may in its national legislation provide that claims for damage caused to harbour works, basins (docks), fairways and aids to navigation as well as claims for the raising, removal or destruction of wrecks in the fairways, roadsteads and harbour basins and their surroundings, shall have priority on the balance after the settlement of claims under (a).

Alternative text (to replace paragraphs 1 and 2 of the basic text)

The limits of liability for claims other than those mentioned in Article 7 shall be:

(A) in respect of claims for loss of life of personal injury, the total of an amount of [K] Units of Accounts multiplied by the first [X] tons
of the ship’s tonnage and \([L]\) Units of Account multiplied by the
tonnage in excess thereof [but in any case at least 300 \([K]\) Units of
Account];

(b) in respect of any other claims, the total of \([M]\) Units of Accounts
multiplied by the first \([X]\) tons of the ship’s tonnage and \([N]\) Units
of Account multiplied by the tonnage in excess thereof [but in any
case at least 300 \([M]\) Units of Account];

provided that in cases where the portion under sub-paragraph (a) is
insufficient to pay the claims in full, the unpaid balance of such claims
shall rank rateably with claims under sub-paragraph (b).

Diplomatic Conference

Committee of the Whole
Summary Record of the Eleventh Meeting
8 November 1976

[289] The Chairman noted that the Committee had now completed its discussion of
basic issues in relation to the limitation system. It was clear that on some of those issues
there was a fairly wide divergence of view; in addition there were a number of
unknown elements, such as the question of claims for pollution damage which was at
present still under consideration by a Working Group. Most of the representatives
appeared to prefer that claims involving damage to harbour works or relating to wreck
removal should be included in the Convention, while there were some who considered
that they should be excluded or made the subject of a reservation. It was proving
difficult for the Committee simply to go through the Convention, tackling each Article
in turn, because so many issues were closely interrelated, and the position of
representatives on one was dependent on the position they adopted on another. The
only possible approach, if the Convention was to be acceptable to the large majority of
governments, was to work towards a “package deal” or consensus solution.

She suggested that a Working Group be set up, which would proceed on the basis
of the discussion which had so far taken place. The Group should not be too small,
and should be sufficiently representative of the Committee’s views. The Committee
should give it guidelines by indicating its preferences on three main issues:

1. the content of Article 4;
2. whether the basic or the alternative text of Article 6 should be adopted;
3. the principle of a separate limit for passenger claims (Article 7).

The Group would then try to produce a package solution, or if necessary several
alternative package solutions, which it would present to the Committee.

[290] Mr. Perrakis (Greece) thought it most important that the Group should also
discuss Article 15(2). His delegation would not be able to take any decision on Articles
6 and 7 until a solution had been reached concerning Article 15(2).

The Chairman explained that she had envisaged the coverage by the Group of all
the questions that had been discussed under the heading of “basic issues relating to the
limitation system”. That would include the subject of Article 15(2) as well as the
question of pollution damage, at present under discussion in another Working Group.

Mr. Ganten (Federal Republic of Germany) supported the Chairman’s proposal
to set up a Working Group. The Group should be left free to determine its method of
work and to decide on the form in which it would present its conclusions.
Lord Diplock (United Kingdom) also supported the proposal.

Mr. Vonau (Poland) was likewise prepared to endorse the proposal, but doubted if it was realistic to expect any kind of “package deal”. It might prove impossible for the Group to arrive at a consensus solution, and it would be better for the Group simply to try to establish where the preferences lay.

Mr. Chatin (France) supported the Chairman’s proposal. Even if the Group were not successful in producing a consensus solution, it would be useful in providing at least an outline of the future Convention. The proposal offered the best possibility of arriving at a Convention which enjoyed a broad measure of support, for it permitted a more flexible approach than did the Committee of the Whole. There should be no restriction on the subjects to be discussed by the Group or on its methods of work; only in that way would it be possible to take due account of the interests of all countries represented at the Conference.

Mr. Bursley (United States), Mr. Tanikawa (Japan), Mr. Selvig (Norway) and Mr. Bentein (Belgium) supported the Chairman’s proposal.

Mr. Djavad (USSR) also supported the proposal and agreed that the Group should be given a specific list of items for discussion. The Working Group method was a practical one, since the method of indicative voting that had been used so far had not yielded substantial results.

Mr. Amoroso (Italy) was likewise in favour of the proposal, but felt that the composition of the Group presented some difficulties. If it were too small it would be insufficiently representative, while if it were too large there was the danger that it would merely repeat the same discussions that had already taken place. He was inclined to favour a Group on the smaller side, as having a greater chance of arriving at a consensus solution.

Mr. Wiswall (Liberia) stressed the importance of the Group’s recommendations being circulated in writing in time to allow the Committee to study them before reaching its decision.

Mr. Müller (Switzerland) said that his delegation would not be seeking membership of the Group.

The Chairman thought it better that the Group should not be too restricted in size. She proposed that it consist of the following delegations: Algeria, Argentina, Australia, Brazil, France, the Federal Republic of Germany, India, Italy, Japan, Liberia, Norway, Poland, Singapore, the USSR, the United Kingdom and the United States.

Mr. Cleton (Netherlands) said that his delegation was disappointed, not with the listing of individual delegations for inclusion but with the fact that the number was so large. He agreed that the various views should be fairly represented, but was afraid that the Working Group thus constituted would be too large to work efficiently. He would have preferred a maximum of ten members.

Mr. Jeannel (France) thought it obvious that a smaller Working Group would be more effective, but the Chairman’s explanation seemed relevant. All viewpoints must be represented, and there should be adequate representation of the countries of the Third World. It was difficult to decide which delegation could be excluded.

Mr. Cleton (Netherlands) said that if the majority were prepared to accept a membership of sixteen, he too would accept that figure.

Mr. Perrakis (Greece) shared the Netherlands representative’s fears. He further
suggested that, as the results of the Working Group’s deliberations would have to be
discussed by the Committee, it was imperative that a time limit for its work should be
established.

The Chairman had in mind that the Working Group should start the following
morning and work for two full days. Its report should be ready the morning after that,
and discussion on it in the Committee of the Whole could start the same afternoon.

Mr. Vonau (Poland) wondered whether the work of the Conference might not be
expedited if, instead of setting up a Working Group, the Chairman herself were to
prepare a paper setting out the points of agreement and disagreement among
dellegations. A decision could then be taken as to whether a Working Group should
indeed be set up: it might not in fact be necessary.

The Chairman did not think that it would be helpful for her to attempt to prepare
such a paper at the present stage. It was essential for delegations to meet together and
discuss informally and freely. That procedure would be more likely to produce a
consensus. However, if the Working Group got into difficulties, she would be
prepared to undertake the proposed task.

It was decided to set up a Working Group.

Mr. Ganten (Federal Republic of Germany) supported the Chairman’s proposal
regarding the composition of the Working Group. If the various interests were
represented, the results of their work would be more likely to shorten the work of the
Committee of the Whole than if the Group were small.

The Chairman called for a vote on her proposal for the composition of the
Working Group.

The composition of the Working Group, as proposed by the Chairman, was
approved (23 votes in favour, 1 against and 10 abstentions).

Mr. Nada (Egypt) explained that he had abstained in the vote on the ground that
he had no definite view for or against. He trusted, however, that the results of the
Working Group’s deliberations would lead to the production of a convention
which would be acceptable to as many States as possible, and not only to those
participating in the Conference. Although more developed than developing countries
were represented at the Conference, he hoped that the Working Group and the
Conference would take the interests of all countries into account.

The Chairman said that she shared those hopes.

Paragraphs 1 and 2

IMCO Legal Committee
Twenty-eighth Session

[14] Limitation figures (for Articles 6 and 7)
62. In discussing the range of possible limits of liability in the various articles,
there was general appreciation of the importance of having due regard to the capacity
of the insurance market to provide cover for liability within these limits, taking into
account other liabilities against which shipowners must seek insurance cover. It was
recalled by some delegations that according to estimates an amount of $100,000,000
per ship per incident seemed to be the limit of cover available at the present time for all shipowners’ liabilities, other than liability for oil pollution damage.

63. It was generally accepted that inflation had seriously eroded the real value of the limitation amounts established in Article 3 of the 1957 Convention: 1,000 Poincaré francs for each ship’s ton for property damage and 3,100 Poincaré francs per ton for personal claims. These figures were considered to be now worth about half of their real value in 1957. It was therefore generally agreed that these figures would require to be substantially increased if the limitation amounts in the new Convention were to be higher in real value than they were when the 1957 Convention was adopted.

64. Another consideration deemed to be relevant in establishing the limitation figures in the new Convention was the problem posed in the case of very small ships and of very large ships. It was observed that to calculate tonnage in accordance with the rules of the International Convention on Tonnage Measurement of Ships, 1969 would introduce standard measurement rules for all ships. It was further noted that the change from the liability ton as used in the 1957 Convention to the gross ton of the 1969 Convention would increase the tonnage of ships taken into account when calculating the limitation amount, and that this would produce a particularly marked effect in the case of certain types of small ships.

65. Taking these and other elements into account, the Legal Committee in a general discussion of limitation figures (including the tonnage factor) took as its basic aim the need to establish limits that would, on the one hand, ensure full payment to claimants in the great majority of cases and in amounts high enough to be politically acceptable and on the other hand provide an ascertainable basis for liability insurance, within available market capacity and at a reasonable cost.

66. While not ready to present recommendations at this stage, the general feeling in the Committee appeared to be in favour of an increase in the limits of liability in real value terms compared with the levels of the 1957 Convention. The increase in nominal value would have to be substantial since it had to take account of the fact that at least a doubling of the 1957 amounts would be necessary to preserve the value of those amounts in current terms. The suggestions made ranged from an increase of 50 per cent to 300 per cent on the 1957 figures. On passenger liability the range of figures suggested for the maximum limit ranged from $25,000,000 to $40,000,000.

67. The Committee’s discussion of tonnage figures was based on the assumption that a general limit would be fixed based on an amount per ton established by reference to the tonnage of ships of certain size, with many delegations agreeing that the minimum tonnage to be considered for this purpose (at present fixed at 300 tons in the 1957 Convention) should be increased. The figures suggested ranged from 500 to 1,500 tons. To meet the problem of the very large ships, it was suggested that a maximum ceiling be established based on an agreed tonnage figure beyond which the tonnage of a particular ship would cease to be taken into account in determining that ship’s limit of liability.

68. It was also proposed that the limitation amounts for ships of more than a given tonnage should be based on a figure which was half that used to calculate limitation for ships below that tonnage. The figures suggested ranged from 30,000 to 70,000 tons. On this basis and assuming that the 1957 figures would be trebled, the limitation figure for a ship of 1,000 tons would be $720,000; for a ship of 30,000 tons the figure would be $21,600,000; for a ship of 40,000 tons the figure would be $28,800,000 and for a very large ship of 240,000 tons, with the amount calculated at half rate after 30,000 tons, the limitation figure would be $97,200,000. It was suggested that these figures were generally within the limits which could be insured on the available market,
although it was recognized that they had to be considered with considerable caution since the capacity of the insurance market tended to fluctuate depending on a number of possible developments.

69. One delegation considered there would be no need for a two-tiered system of tonnage limitation figures for large ships if a limitation figure for property damage was set at twice the 1957 figure (2,000 Poincaré francs or equivalent at today’s values as against 1,000 francs), and the figure for personal damage was increased from 3,100 to 4,500 Poincaré francs or its equivalent at today’s values.

70. Some delegations felt that while the increases proposed in the limitation figures to take account of inflation might be justified, increases based on any other considerations required to be clearly justified. Such increases should not in any case be so excessive as to increase unduly the cost of shipping services.

71. It was emphasized that the Committee was not making any proposals on limitation figures but that the discussion had been on the range of figures which might be considered for adoption in the proposed Convention, depending on the structure of the relevant articles and, particularly, on the principles finally adopted in the provision on “conduct barring limitation” (Article 4). None of the figures mentioned was to be taken as representing the views or proposals of any delegation.

72. The consensus in the Committee was that, in choosing the figures for eventual insertion in the Convention, the Conference should recognize that the capacity of the insurance market was an important consideration to be taken into account, having regard to the fact that other liabilities would also have to be covered within the same capacity. It was also generally recognized that as a general rule the more “unbreakable” the limits of liability were in the Convention, the higher these limits could be while a provision making it relatively easy to “break” the limitation levels would entail a corresponding decrease in the limits to be provided. With regard to the [17] actual figures proposed, some delegations felt that they were too low and hence not likely to be politically acceptable to some Governments, while other delegations felt that they were too high and might be considered by some Governments as tending to defeat the whole purpose of limitation of liability.

73. The general feeling of the Committee was that whatever the limits chosen, it was essential that there should be some arrangement for periodic and easy review of the figures and for rapid application of any revised figures in order to keep abreast of developments in the world’s insurance market and to take account of fluctuation of monetary value owing to inflation and other factors, thus ensuring that the figures in the Convention did not become obsolete and unsatisfactory through economic and other developments.

Diplomatic Conference

Committee of the Whole
Summary Record of the Seventh Meeting
4 November 1976

[255] Article 6 – The general limits

The Chairman invited the Committee, in accordance with the time schedule for its work programme (LEG/CONF.5/C.1/WP.4), to turn its attention to the most important issue to be settled in the Convention – namely, the general limits of liability. The Committee’s deliberations should at the present stage serve as the basis for
The travaux préparatoires of the LLMC 1976 and of the Protocol 1996 subsequent more detailed negotiations. The general debate had already indicated that there was a desire to produce a Convention which provided a uniform and universally applicable solution. Several delegations had also voiced the opinion that the limitation system should be based on the principle of insurability. The majority view seemed to be that claims under the heading of damage caused to harbour works or wreck removal should be subject to limitation but possibly be given priority status as against other property claims. Members of the Committee should now state whether they preferred the basic text of draft Article 6 or the proposed alternative.

Mr. Nair (India) thought that the limit of liability should be kept at a reasonable level, so that adverse effects on the cost of services provided by shipowners, would not be the result. Total limitation should not be more than double the amount laid down in the 1957 Convention. Personal claims should take priority over property claims, although a certain sum, however small, should be set aside for the latter category.

While the Committee might well take the alternative as a basis for discussions, he would prefer limitation to be calculated in three tiers instead of the two provided for in the draft. Ships could be divided into three categories: those with tonnages of 30,000 or less, those with 30,000 to 70,000 and those over 70,000. For personal claims the basic rate would be $300 per ton up to 30,000 tons, $200 for every additional ton in the case of ships in Category II, and $100 per ton in excess of 70,000 tons for ships in Category III. The corresponding figures for property claims would be $100, $75 and $50 respectively. For all personal and property claims arising from a single incident, he suggested a maximum liability limit of 550 million a figure which, though somewhat arbitrary, took account of the limits of insurability.

The Chairman suggested that delegations confine themselves at the present stage to stating the reasons for their decision to opt for the basic text or the alternative.

Lord Diplock (United Kingdom) reminded delegations that it was the British delegation which had proposed the alternative text for Article 6 to IMCO’s Legal Committee. The original CMI draft had also suggested two separate funds without, however, stipulating that the fund for property claims should be drawn upon if personal claims exceeded the capacity of the fund earmarked for them. The text submitted by the United Kingdom provided for a spillover between the two funds. It was a generally accepted principle that priority should be given to personal claims, especially in view of the fact that it was not the usual practice for a person to insure his life, whereas insurance of property was commonplace. As the representative of India had pointed out, one of the arguments against the basic text was that a single fund might be devoted entirely to meeting personal claims leaving nothing for property claims. That would be an undesirable situation. The alternative text was designed to make a larger sum available for property claims, which were the most numerous and would probably remain so, whereas personal claims would very rarely reach the limits indicated. If only one limit were to be provided for both types of claim, the cost of insurance would be higher than under the conditions specified in the alternative text.

Mr. Selvig (Norway) introduced LEG/CONF.5/C.1/WP.35 on behalf of his own delegation and that of Sweden. From the purely technical angle, neither text proposed for Article 6 seemed to offer any distinct advantage. The key consideration was the level of liability which would result from the application of a given formula. Whereas figures which would have the effect of producing a more or less equivalent level of

(3) See Appendix I/A.
liability could easily be written into both the basic and alternative texts, it would be impossible to arrive at an equal level of liability.

He preferred the basic text, which would provide better coverage for both property claims and personal claims, and was therefore more in keeping with the concept of global limitation. It should thus be possible to avoid having to make reservations or establish separate limits of liability for certain categories of claims. By and large the sum available for property claims would be smaller if the alternative were adopted. Unlike the representative of the United Kingdom, he doubted whether property claims were always covered by insurance; as a general rule, third party claims for damage caused on land or arising from pollution were not so covered. The basic text had been criticized for giving absolute priority to personal claims; but, as Sweden had pointed out (LEG/CONF.5/4, page 79), some part of the limitation amount could be set aside for property claims. Document LEG/CONF.5/C.1/WP.35 had been drafted before consideration of the question of priorities in compensation for damage caused to harbour works, but there was no reason why the basic text should not also include a provision covering that point.

Mr. Pelianemi (Finland) noted that the inclusion of certain types of claims in Article 2 would depend on the limits of liability to be fixed by Article 6. He was in

(4) The observations of Sweden are quoted below:

Document LEG/CONF.5/4
27 September 1976
The draft Convention contains two alternative texts of paragraphs 1-2 of this Article. The Swedish Government considers that both alternatives are acceptable provided that the limitation amounts will be substantially increased as compared to the limits established in the 1957 Convention. Merely in order to restore these limits to their value in 1957, a doubling of the limits will be necessary.

Both texts reflect the desire to give priority to claims in respect of loss of life or personal injury. The Swedish Government agrees with this approach. However, according to the basic text such claims shall have full priority. There is, consequently, at least a theoretical possibility that personal claims will be met almost in full while claimants in respect of property damage will receive no compensation at all. If the basic text should be retained it is suggested that a more appropriate solution would be to set aside some part of the limitation amount, e.g. 1/3 or 1/4, for property claims and such personal claims that have not received full compensation out of the amount available exclusively for personal claims. The Swedish Government considers that the proposal for a sub-paragraph (c) to paragraph 2 of the basic text (see footnote) is acceptable.

Since limitation of liability usually will apply as a result of incidents which do not give rise to many personal claims but to large property claims – such as collision or damage to harbour works – the basic text will presumably in practice have the effect of increasing the amounts available to cover property damage. The same result would follow if the figure to be inserted in sub-paragraph (b) of the alternative text were to be considerably higher than the corresponding figure in Article 3.1 of the 1957 Convention. To what extent this is desirable depends largely on the outcome of the preliminary deliberations within IMCO concerning a new convention governing liability for noxious or other hazardous cargo than oil. The Swedish Government is of the opinion that it is preferable in that convention not to establish a specific limit of shipowners’ liability for damage caused by such cargo. Instead, the limits to be established in Article 6 of the Limitation Convention should be adequate for coverage of this liability also. Bearing this in mind it would seem that the basic text is better designed to provide a solution to the problem of global limitation which will obviate the need to establish separate limits of liability in other conventions.

The Swedish Government supports the proposals – appearing in both alternatives – of a minimum limit and a reduced figure per ton in excess of a certain tonnage limit.
favour of the proposal presented by the Norwegian and Swedish delegations, which provided for a substantial rise in the liability limit for property claims.

**Mr. Makovsky (USSR)** preferred the alternative text as being in line with the provisions of the 1957 Convention, which had been ratified by a large number of States and had stood the test of time. It would be risky to abandon a system that had proved satisfactory. The basic text had the great drawback of artificially raising the liability limit for property claims. In practice, the claims for personal injury were fewer than those for damage to property; and those covered by Article 6 would in the future be fewer still, since Article 7 provided for a limit for passenger claims, which [257] meant that Article 6 would apply in the main to property claims. To take the figure of $720 suggested in the Norwegian and Swedish proposal would mean multiplying by nine the limitation provided for in the 1957 Convention. The USSR doubted whether such an increase was necessary or reasonable, and had already asked, in the Legal Committee, for proof that the 1957 Convention figure was inadequate – and no one had been able to supply it. The fact was that, despite inflation, the limit laid down in that Convention remained perfectly adequate. The only people to benefit from the sort of provision proposed in the basic text would be the insurers; but it was not on their account that the Convention was being drafted.

It would be easy to include a provision in the alternative text giving priority to the settlement of claims arising out of damage to harbour works and the removal of wrecks.

**Mr. Herber (Federal Republic of Germany)** also favoured the alternative text which, to his mind and irrespective of the actual figures adopted, represented the only reasonable and equitable solution. Like the 1957 Convention, the alternative text provided for a compensatory system as between the limitation funds for personal and property claims. Two funds at least were undoubtedly necessary; for a single fund large enough to meet both categories of claims would cost an economically unjustifiable amount if it were used only for property claims. The creation of two funds would lighten the burden on shipowners.

**Mr. Unkles (Australia)** was in favour of the basic text. To his mind, priority should be given to third parties who had personal claims and were not insured. If personal claims were few in number the amount available to meet property claims would be all the larger. He was against the addition of sub-paragraph (c), for he considered it inequitable to give public or semi-public bodies priority over individual claimants.

**Mr. Cleton (Netherlands)** was in favour of the alternative text, for all the reasons already advanced during the discussion by its supporters. His delegation, as it had already indicated in the Legal Committee, was concerned above all with the level of insurance premiums. Since the time that the Committee had met, more delegations had become alive to the problem. The Soviet representative had just pointed out, for example, that claims mostly arose from damage to property, and that although the very large sum provided for personal claims would indeed be available for property claims also, the effect would be to raise insurance premium rates. Moreover, the basic text gave absolute priority to personal claims; but that was not so important a point.

He had doubts as to the interpretation to be given to the figures in the Annex to LEG/CONF.5/C.1/WP.35. 3 The Norwegian and Swedish delegations thought that the

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(5) See note 3.
amounts in respect of property claims ought to be set at a high figure. There was no question of minimizing the importance of such claims; but it had to be remembered that in most cases damage to property was insured whereas personal injury was not always insured. In order to observe the principle of insurability, therefore, the Committee should take care not to set the total amount of premiums too high. To do so would have considerable repercussions on shipping costs, and that serious disadvantage would make many governments hesitate to sign the Convention however much they wished to. The Netherlands delegation accordingly maintained its strong preference for the alternative text.

Mr. Nairac (France) endorsed the arguments in favour of the basic text of Article 6. The amounts guaranteed under the alternative for personal injury, which were claimed to be large, were not in fact much larger than those arrived at in the basic text through the operation of absolute priority. The indemnification for property claims was very inadequate and seemed to have been deliberately made so. However, a number of delegations, including that of the USSR, had stressed the size of the figure for such claims, which might well go on increasing. It had been said that the figures in the 1957 Convention ought to be doubled. If they were multiplied by 2.5, with the limits set for property claims, the amounts obtained would be much higher than those in the alternative text, which were hopelessly inadequate. The Norwegian and United States delegations had stressed that account should be taken of the actual possibilities of the insurance market and of reasonable limits for insurance costs. A recent study showed that for all claims taken together the 1957 system, with its limitations, was in most cases satisfactory. With a little effort, an acceptable system for all types of claim could therefore be found.

The French delegation was in favour of including a priority for claims for damage to harbour works in the total limitation amount set in the basic text.

Mr. Tanikawa (Japan) registered his delegation’s preference for the alternative text. With the basic text, the limits for property claims would increase six-fold or more; but most property claims were covered by insurance. His delegation was also against priority for claims for damage to harbour works.

Mr. Rein (Observer, CMI) speaking at the invitation of the Chairman, recalled that at the CMI Conference in Hamburg in 1974, it had been decided to set up two entirely separate funds with no possible spillover. Subsequently, the CMI International Working Group had finally adopted a quite different solution – namely, a single fund but with priorities. Unanimity had been reached in favour of that solution, which was preferable because it allowed better use of existing capacity and also because it was less expensive at a given level. Total cover was clearly lower for a single fund. But insurers fixed their premiums in terms of total cover. In cases of claims for property alone or personal injury alone, the limit was hardly ever invoked. More often than not a single incident involved damage in both categories, which were all covered. Only in extreme cases did sizeable losses of human life exhaust the fund thus endangering the interests of property claimants, a situation which the public understood perfectly well. There was no disadvantage in setting the amount at a higher level, if limitations were fixed. The important point was to guarantee the principle of insurability at reasonable cost.

Mr. Carvell (Canada) agreed with those delegations which had spoken in favour of the basic text and thanked the observer for the CMI for his points of clarification. His delegation was quite satisfied with the explanations given by Norway and Sweden, and their proposals should duly be found to be widely acceptable. The basic text provided for better cover for the various types of claims, and a fund set up along the suggested lines
would relieve the concern felt by the Canadian delegation with regard to the inclusion of a clause on reservations in respect of priorities for claims for damage to harbour works.

Mr. Trotz (German Democratic Republic) submitted that, for his delegation, three problems were involved. Firstly, the limitation amounts depended on whether the fund was constituted so as to cover claims for personal injury or not; there was no reason to set the same high levels for the fund if only property claims were to be covered. Secondly, certain property claims (damage to harbour works, wreck removal) should rank before other property claims. Lastly, the priority of certain claims should not result in other property claims remaining completely unsettled. He recalled his delegation’s earlier suggestion that a proportion of the fund should be reserved for priority claims and another for non-priority claims. Neither the basic nor the alternative texts could solve all these problems; but the alternative text seemed to be the better basis for a solution. His delegation noted with interest the Swedish proposal regarding calculation of the liability amounts.

Mr. Suchorzewski (Poland) saw many reasons for favouring the alternative text. First and foremost, the principle on which the 1957 Convention was based had stood the test and should be retained. His delegation endorsed the remarks of the representative of the United Kingdom, especially with regard to the insurability of property claims. Personal claims should be settled first of all, after which priority would be given to claims for damage to harbour works over other property claims.

Mr. Selvig (Norway), referring to the figures in the Norwegian and Swedish proposal, explained that the lower limit, which applied to small ships in cases where there were only property claims or personal claims, was higher than the figure in the basic text. It had been repeatedly asserted that most property damage was insured. That was, however, not true of damage caused outside the ship, which was always inadequately covered. The protection of property claims would, it had been stated, have the effect of increasing premiums. However, data relating to a period of ten years and 5,000 ships showed that the extended coverage resulted in an increase in the region of 5 per cent only. Those assertions were therefore exaggerated. There was no point in raising the limits, but there was no doubt that the system in force very often did not work satisfactorily.

Mr. Duder (Liberia) said that he had studied with great interest the cost of the various proposals and the amounts indicated by the IUMI. The CMI and the Norwegian delegation had given the Committee to understand that the solution offered in the basic text would be less expensive and had cited the opinions of the P. and I. clubs. He requested the observer for the IUMI to provide confirmation of that view.

Mr. Anatsui (Ghana) expressed support for the basic principle of insurability. The basic text would be less expensive but left some doubts about property claims, which the alternative text did not. His delegation endorsed the Indian suggestion, and was in favour of the alternative text, subject to amendments on points of detail.

Mr. Perrakis (Greece) said that at the Legal Committee he had thought it possible to opt for the basic text, inasmuch as it would not have involved any increase in insurance costs. However, he was now inclined to prefer the alternative text despite the arguments put forward by the observer for the CMI and the Norwegian representative.

Mr. Pages (Observer, IAPH), speaking at the invitation of the Chairman, said that the question under consideration was of great interest to port authorities. It frequently happened that port employees suffered personal injury and harbour works were damaged when catastrophes occurred inside ports. Not always were ports run by
powerful States. In many cases they were run by small organizations with limited financial resources.

His Association recognized, of course, that priority must be given to personal claims, but wondered whether as far as property claims were concerned it was in fact a question of insurable or rather of insured claims. If it was a case of the latter, there was no reason why the victim rather than the insurance company should assume responsibility for the damage. He had listened to the explanations of the observer for the CMI who had said that splitting a fund up into different tiers was not a good solution, since particular tiers might be unused while others ran out. Furthermore, the total cost of insurance was calculated in relation to the whole, i.e. independently of tiers. In the proposed alternative, a spillover system had in fact been provided for. IAPH saw no drawback in accepting the alternative text, provided the spillover worked both ways.

With regard to insurance costs, the IAPH felt that the victim’s possibility of indemnification presupposed that the persons who caused the damage were solvent and insured. Moreover, it believed that the present limitation amounts were adequate to cover all cases of damage in harbours.

To talk about keeping insurance premiums as low as possible was to pose the problem in the wrong way. What was needed was to know whether or not the whole claim was covered by insurance. If it was not, there was a transfer of responsibility from the shipowner to the shipper, the port authorities or the port users. The aim should therefore be to reduce claims to the lowest possible level by making the party responsible pay for them.

Mr. Bendjenna (Algeria) said his delegation was still in favour of fixing the limit of liability at a reasonable figure. In his view, the 1957 Convention, to which Algeria was a Party, should not be regarded as out of date.

His delegation was in favour of the alternative text of paragraph (1) of Article 6 and against giving priority to claims in respect of harbour damage.

Mr. Williams (Observer, IUMI), speaking at the invitation of the Chairman, said that when assessing a given situation, insurers had always to take into account the extent of the liabilities they might have to face, the size of the premiums, the degree and frequency of the risks, and the maximum losses they might have to incur. With regard to the cost of the insurance, what they had to do was to work out how best to cover the client at a reasonable price. It was the insurer’s view that the alternative text proposed for Article 6 seemed to offer the client the best protection at the most reasonable price.

Mr. Amoroso (Italy) felt that the choice between the two texts depended on the amounts to be ultimately set; he would have preferred to have had a statistical study made beforehand, as it would have facilitated the Committee’s work. The basic text was perhaps clearer and might conceivably offer greater possibilities for meeting claims for personal injury, but his delegation was also concerned with the question of costs. If the present liability limitation had to be multiplied by two or three for the new Convention, it would be better to choose the alternative text. His delegation suggested that a comparative study be made on the basis of the model in LEG/CONF3/C.1/WP.356 prepared by the Norwegian and Swedish delegations. The task could be entrusted to a working group, assisted by the insurance experts and composed of representatives who had supported the basic and alternative texts respectively. The Committee could

(6) See note 3.
then reach a compromise solution on the basis of the statistical data prepared for it.

**Mr. Beffa (Cyprus)** was in favour of the alternative text for the first paragraphs of Article 6. While recognizing that priority should be given to personal claims, he regarded property claims as also being of importance.

[261] The system provided for in the 1957 Convention did not seem to have raised any problems so far, and his delegation agreed with the representatives of the USSR and Poland in thinking that it could continue to be applied.

**Mr. Birch Reynardson (Observer, CMI)**, speaking at the invitation of the Chairman, offered clarification on one point in Mr. Rein’s statement. The text drawn up at the 1974 Hamburg Conference of the CMI provided for two funds, to cover personal claims and property claims respectively. Later, a working party set up by the CMI to reconsider the text had concluded that the position in regard to those making personal claims was unsatisfactory. The working party had reported to IMCO in December 1974, its conclusion being that the basic text of Article 6 providing for a single fund was to be preferred. However, that was merely a suggestion by the working party and had not been approved by the CMI. The only official text was the one drawn up in Hamburg.

**Mr. Filipovic (Yugoslavia)** expressed his delegation’s preference for the alternative text. It was not in favour of giving priority to claims in respect of damage to harbour works.

The Chairman suggested that the Committee study the other basic issues related to the limitation system before deciding between the basic and alternative texts of its opening paragraphs. It was only after such a full study that it would be possible to decide on the Italian representative’s proposal to set up a working party.

**Mr. Vonau (Poland)** thought he was correct in stating that fourteen delegations had already expressed a preference for the alternative text, as against six for the basic text. The alternative text had also received the support of the observer for the IUMI. The first paragraph of Article 6 seemed to him to be essential, and he thought the Italian representative’s proposal a good one. He asked the Chairman to take an indicative vote to ascertain the views of the majority.

**Mr. Makovsky (USSR)** did not reject the Italian proposal, which seemed to him to be reasonable, but thought it premature. The important thing, for the moment, was that almost all the representatives who had spoken had expressed a preference for one or other of the two texts.

**Mr. Jeannel (France)** stressed the fact that the Committee was dealing with one of the most important points in the Convention. He agreed with the Chairman that it would be premature to try to complete one part of the discussion without having examined the other paragraphs of Article 6. The purpose of the Convention under consideration was not merely to satisfy the States represented at the Conference, but to find solutions that would enable most governments to become Parties to the Convention. To do that, it was necessary to consider all the elements involved. His own delegation was prepared, meanwhile, to support the Italian proposal, which might provide them with some useful substantive data; for the statements made about insurance costs had not been based on precise figures but represented mere opinions which it would be rash to take as a basis from which to draw final conclusions.

**Mr. Bentein (Belgium)** recalled that at the beginning of the Conference, his delegation had said that it was in favour of the basic text, which had seemed to offer greater possibilities for providing satisfactory indemnification at a reasonable economic price. Although his delegation had not spoken in the present discussion, it...
still remained unconvinced by the arguments advanced against the solution in the basic text. He agreed with the representative of Italy that the choice between the two texts depended on the amounts provided for and the structure of the limitation fund. He therefore supported the suggestion made by the Italian delegation.

The Chairman repeated that to ensure the production of a draft Convention acceptable to the largest possible number of governments, it would be preferable not to take an immediate vote on the first paragraph of Article 6. It would be better to spend the next meeting considering item 2 of the agenda outlined in LEG/CONF.5/C.1/WP.4. As the representative of Poland had pointed out, it appeared that more delegations were in favour of the alternative text, and account would be taken of that during the subsequent discussion.

Mr. Vonau (Poland) drew attention, for future reference, to the proposals in LEG/CONF.5/C.1/WP.4 and to Rules 40 and 34(3) of the Rules of Procedure, but would not insist on his earlier motion that a vote be taken.

Summary Record of the Eighth Meeting
5 November 1976

Article 6 – The general limits (continued) and Article 4 – Conduct barring limitation

The Chairman said that the next item to be discussed according to the draft Agenda (LEG/CONF.5/C.1/WP.4) was the limitation amounts to be inserted in Article 6, including the questions of breakdown point and breakability of limitation. On the subject of the limitation amount, the Committee had before it proposals by the United Kingdom (LEG/CONF.5/4/Add.2 and LEG/CONF.5/C.1/WP.13),7 France (LEG/CONF.5/C.1/

(7) The observations and proposals submitted by the United Kingdom are quoted below:

Document LEG/CONF.5/4/Add.2
Observations: [106]
Paragraphs 1 and 2. The alternative text, which is similar in structure to the corresponding provision in the Convention of 1957, is to be preferred to the basic text. The basic text leaves open the possibility that property claims would be entirely uncompensated, while increasing the exposure of persons liable and so raising their insurance costs. To permit a sufficient increase in the liability limits for the generality of ships without exceeding insurable limits for the largest ships 70,000 tons would be a suitable tonnage for the break between the larger amount per ton below and the smaller amount per ton above that tonnage. The “tonnage platform”, at present 300 tons, should be raised to 500 tons.

Document LEG/CONF.5/4/Add.2
Proposals: [148]
The limits of liability suggested by the United Kingdom are:
Article 6:
A total of US $500 per ton up to 70,000 and US $250 per ton in excess thereof with a minimum of US $250,000.

Thus in the alternative next, figures should be substituted for letters as follows:

K units of account $375
X tons 70,000 tons
L units of account $187_
300K units of account $187,500
M units of account $125
N units of account $62_
300M units of account $62,500

Article 7:
H units of account $52,000
I units of account $40,000,000

2 November 1976
Proposal submitted by the delegation of France [155]
Article 6 of the Draft Convention
N.B. The sums shall be expressed in dollars (units of account).
The limit of liability for claims other than those mentioned in Article 7 shall be the product obtained by multiplying the ship’s tonnage by 500 dollars, up to 30,000 tons, and by 250 dollars over and above that figure.
The said product may not, however, be less than 50,000 dollars.

(9) Document LEG/CONF.5/C.1/WP.28
3 November 1976 [157]
Articles 6 and 7
The limits of liability suggested by Japan are:
Article 6:
In the alternative text:
K units of account $500
L units of account $250
300K units of account $2,500,000
M units of account $120 – 160
N units of account $60 – 80
300M units of account $600,000 – 800,000

Article 7:
H units of account not necessary (see WP.15, para II)
I units of account $30,000,000 – 50,000,000

(10) Document LEG/CONF.5/C.1/WP.30
3 November 1976 [158]
Proposal submitted by the delegation of India
1. In order that, in the case of ships of very large tonnage, the liability of the owner may be kept within reasonable limits, computation of the limitation amount may be made in three stages instead of two as in the draft article. The rate to be applied to the third stage of computation will depend upon the rates fixed for the first and second stages.
2. In addition to the limits fixed on the basis of tonnage, there should be a limit on the maximum amounts of liability for aggregated personal and property claims resulting from a single incident. It is suggested that this limit may be fixed between 40 and 50 million dollars.

3 November 1976 [158]
Proposal submitted by the delegation of the Federal Republic of Germany
Article 6 to be worded as follows:
1. The limits of liability for claims other than those mentioned in Article 7 shall be:
(a) in respect of claims for loss of life or personal injury, the total of an amount of [K] Units of Account for each ton of the ship’s tonnage, but in any case at least 1,500 [K] Units of Account;
(b) in respect of any other claims, the total of [M] Units of Account for each ton of the ship’s tonnage, but in any case at least 1,500 [M] Units of Account;
provided that in cases where the portion under sub-paragraph (a) is insufficient to pay the claims in full, the unpaid balance of such claims shall rank rateably with claims under sub-paragraph (b).
3. Paragraph 4 of the draft convention.

(12) Document LEG/CONF.5/C.1/WP.32
3 November 1976 [159]
Concerning the breakdown point, the proposal by France and the proposal by Norway and Sweden suggested a breakdown point of 30,000 tons in relation to the basic text. The United Kingdom proposed a point of 70,000 tons in relation to the alternative text and Norway a point of 30,000 tons in relation to the alternative text. India had proposed two breakdown points, one of 30,000 tons and another of 70,000 tons.

**Lord Diplock (United Kingdom),** introducing his delegation’s proposed amendments (LEG/CONF.5/4/Add.2 and LEG/CONF.5/C.1/WP13), said that all

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**Comment by the United States delegation**

*Article 6*

This delegation agrees with the views of those Delegations who have stressed the extent of reasonably available insurance coverage as the principal element in determining the amount of Article 6 limitation funds. Only reasonable insurable limits of liability can protect the legitimate interests of shipowners. On the other hand, limits significantly below the levels of reasonably available insurance coverage will not satisfy the interests of claimants, and are not likely to find general acceptance, particularly if the proposed Convention incorporates a strict standard for conduct breaking the limitation such as that contained in the proposed Article 4.

In seeking to determine reasonable limits for purposes of Article 6, the US delegation gathered information on the levels of insurance currently maintained in force with respect to different classes of United States vessels. Although exhaustive data could not be found, this survey made clear that quite high levels of insurance could be, and are, maintained by US operators, at commercially acceptable rates.

This survey also indicated that there was no shortage of capacity to meet operators’ requirements in the insurance markets. Certain classes of new and expensive US vessels could indeed place liability coverage in excess of $100 Million. This experience is not typical, and is not necessarily meant to suggest limits for purposes of Article 6. Nevertheless, it illustrates that insurance capacity exists, and that high levels of coverage can be secured at commercially acceptable rates. Responsible marine insurance authorities have also advised us that these high levels of liability coverage would be available on a worldwide basis if required by this Convention.

[160] Our study revealed a range of levels of insurance coverage depending on the experience and character of the operator. Substantial US-flag operators can be found with total coverage of up to 100 million US dollars per vessel with more available if required. More representative US operators will have total coverage ranging from 45 to 80 million US dollars. Representative one-ship operators have coverage of the order of 20 million US dollars. With respect to small (300 GT) vessels, some operators of offshore service vessels reported that coverage of the order of 1-1.5 million US dollars per vessel was maintained. Insurance for small fishing vessels, however, tends to be difficult to obtain and comparatively quite expensive.

Generalizations regarding reasonably available insurance coverage for US-flag vessels of varying tonnage are necessarily imprecise. However, the following figures may be illustrative:

- 500 GT – $1.25 million
- 5,000 GT – $12.5 million
- 15,000 GT – $26.3 million
- 30,000 GT – $37.5 million
- 60,000 GT – $50.0 million

The United States does not now propose these figures for incorporation in Article 6. Nevertheless, our survey suggests that increases in limitation amounts determined by doubling the levels of the 1957 Brussels Convention will fall far short of the liability coverage that is now commercially available at reasonable rates.

It should be remembered that doubling the 1957 limits simply adjusts for inflation. In order to justify the strengthening of Article 4 as in the present draft far more substantial increase are required.

(13) See note 3.

(14) See note 7.
participants at the Conference were agreed on three points: firstly, that some limitation of maritime claims was necessary; secondly, that the figures aimed at should be the maximum that was insurable at reasonable cost; and thirdly, that the Convention adopted must be acceptable to the great majority of States. The task confronting the Conference was to find how best those goals could be achieved. There were a number of differences to be resolved, notably under Article 6 – whether there should be one fund or two – and under Article 4 – differences regarding the degree of breakability and regarding which claims, if any, should be excluded from limitation.

It was important to avoid confusion between the capacity of the market to undertake insurance and the cost of insurance within that capacity. Leaving aside cases of collision, the major portion of the world’s tonnage was insured in P and I clubs, the first $3 million being in mutual insurance and the balance in the group of clubs. That meant, in effect, that in the long run each shipowner paid the claims against him.

On top of that came a second layer of re-insurance covering figures between $3 million and $30 million, insured at a rate per ton of the total tonnage entered in the clubs. Beyond the figure of $30 million came a series of layers and sub-layers which were not insured on a tonnage basis but on the basis of general risk run; the category between $30 million and $70 million could be described as catastrophic, and the category above $70 million as super-catastrophic. The insurance for those top categories was not provided by the marine market direct, but by several non-marine markets, including life insurance.

The re-insurance premium between $3 million and $30 million accounted for approximately 20 per cent of the total. Since the IUMI had fixed the limit at $100 million, there had been expansion of the market because there had been in fact no claims in excess of $30 million and, thus, no call had been made on the highest categories. However, in the event of there being such a claim, the market would rapidly contract, and that would mean that re-insurance up to the top levels would not be obtainable at any price and that the total capacity of the market would be reduced.

The premium charged in the $3 million to $30 million category depends firstly on exposure to risk and secondly on the frequency with which occurrences in that category fell on the re-insurance fund. That frequency was governed by limitations both in terms of actual figures and in terms of exceptions. As far as the premium was concerned, the exceptions were of greater importance because the fewer the exceptions, the larger the amounts that could be insured for the same premium.

Exposure to higher figures could come from three sources: firstly, the breakability of the limitation clause (Article 4); secondly, exceptions to limitation, such as damage to ports or in connexion with wreck removal; and thirdly, non-acceptance of the Convention by major maritime nations. In that connexion, he stressed the importance of arriving at a draft convention that was acceptable to the majority. (…)

With regard to the exception proposed for damage involving wreck removal, he pointed out that 27 per cent of the claims within the $3 million to $30 million segment came within the category of collisions with fixed objects or wrecks and, therefore, the gap in limitation caused by such an exception would be very large. Referring to the Norwegian and Swedish proposal (LEG/CONF/C.1/WP35), the figures quoted for total exposure brought the largest vessels within the capacity of the market for combined personal injury and damage to property. However, if it were decided to make exceptions regarding ports, wreck removal, etc., the upper margin of insurability might have to be lowered.

(15) See note 3.
Under the draft Convention, the figure for claims for property damage was about double that of 1957. The breakdown point of 70,000 tons came at the top of the $3 million to $30 million layer. Under any increase of limitation, small vessels would be worst affected, because more claims involving small vessels fell within the limitation figures than claim in respect of other vessels. His delegation, therefore, proposed that the minimum should be raised to 500 tons, which was more than double the present minimum if account was taken of the change from limitation tonnage to gross tonnage as a basis for calculation.

His delegation was hopeful that a consensus could be reached on the various issues he had outlined. It was clear that the limitation figures in the basic text would need to be considerably lower, since as at present proposed they were six to eight times higher than those of the 1957 Convention and would present considerable problems for the insurance market.

Mr. Tanikawa (Japan) said that his delegation supported the alternative text and suggested the figures set out in LEG/CONF.5/C.1/WP.28. It should be noted that the figure of $500 was double the amount in the 1957 Convention for personal claims, and his delegation considered that to be essential. The figures of $2.5 million for personal claims and $600,000 for property claims were high, but they were necessary to ensure full compensation in cases involving small ships; and to enable the small shipowners to obtain insurance cover to cover damage caused by steel ships. In other words, Japan wanted a very high minimum figure. His delegation’s position as regards the breakdown point was flexible: anywhere between 30,000 and 70,000 tons would be acceptable. (…)

The Chairman, noting that the Indian representative had not mentioned minimum limits at the previous meeting, asked him whether he wished to comment on the subject.

Mr. Nair (India) said that he supported the minimum limit indicated in the draft text.

Mr. Herber (Federal Republic of Germany), introducing LEG/CONF.5/C.1/WP.29, said that it was an attempt to present a different method of limitation which he felt had not been sufficiently reflected in the papers submitted and which should be considered as a possibility. It was based on the alternative text; but with the aim of simplification, contained no breaking point since his delegation considered that the danger presented by a ship did not necessarily decrease in proportion with its tonnage. In any case, the breaking point could only be fixed arbitrarily and no purpose was served by making an unnecessary number of guesses, as would be required to determine more than one breaking point as had been suggested. Moreover, the fixing of breaking points was equivalent to fixing upper limits and conferred a benefit on larger ships which he was not sure was justified. His delegation, therefore, would prefer to determine one single amount per ton irrespective of the size of the ship; that was, in fact, the solution used in the 1957 Convention.

As regards the figure for each ton of the ship’s tonnage, his delegation considered that the amount should be approximately double that of the 1957 Convention – i.e. for M (property claims) about $200 per ton and for K (personal injury claims) approximately $600 per ton. As the proposal contained no breaking point, the
minimum limit was a relatively high figure per ton. Expressed as tonnage, the minimum should correspond to a tonnage of 1,500 tons. That would give a minimum of $300,000 (i.e. 200 x 1,500) for claims for damage to property and $900,000 (i.e. 600 x 1,500) – for personal injury items.

[266] He reserved his delegation’s position as regards the breakability of limitation in Article 4.

Mr. Selvig (Norway), speaking to LEG/CONF.5/C.1/WP.35,18 said that the basic policy underlying it was, firstly, that a certain minimum limit of liability must be applicable irrespective of the ship’s size. The minimum level should be substantially increased as compared with the present system. Secondly, a general limit should be fixed which would not only compensate for inflation since 1957, but would also in real terms go considerably beyond the present system to take into account the damage-causing potential of modern ships. It should be remembered that ships might cause damage to interests which were not adequately covered by insurance at the present time, for example, pollution damage, against which the injured party was usually not insured.

In setting the proposed limits the authors of the proposal had taken into account the principle of insurability. It appeared that there would be sufficient insurance capacity for all the proposals so far made. The question was, rather, how much of the available capacity should be utilized or, in other words, how much insurance a shipowner should obtain. It was merely a matter of determining what cost a shipowner could reasonably be expected to incur.

For the minimum limit, the Norwegian/Swedish proposal suggested a substantial increase. For property claims the present minimum limit of $24,000 should be raised to $720,000. That figure had been prompted by a study of the United Kingdom proposal (LEG/CONF.5/C.1/WP.13)19 and contrasted with the figure proposed by the United Kingdom. The United Kingdom representative had stated that he wished to see an increase of approximately two and a half times, whereas his proposed figures were actually below that. As regards the property claims limit, it would be seen from the table in LEG/CONF.5/C.1/WP.3520 that the limit in the 1957 Convention in respect of 30,000 tons was $2.4 million and that suggested by the United Kingdom $3.75 million. In real terms that amounted in fact to a decrease. Furthermore, the figures in the 1957 Convention as regards property claims were the same as in the 1924 Convention which meant that, taking inflation into account, the real value of the limit had decreased considerably since 1924.

The minimum liability suggested by the United Kingdom was very low indeed, especially as compared with what owners of motor cars, for example, were expected to pay. That minimum limit was too low to be acceptable to the Norwegian and Swedish delegations, and they had put forward more realistic proposals in their document.

A further point to be borne in mind was that it was hoped that the new Convention would be ratified by a large number of States. Politicians, when deciding whether to ratify, would compare the amounts available with those applicable in other fields of transportation and industry. If the solution adopted in the present Convention was merely an adjustment of the 1957 Convention to allow for inflation, it would be

(18) See note 3.
(19) See note 7.
(20) See note 3.
difficult, to get the Norwegian Parliament to accept it. In his country there was deep dissatisfaction with the 1957 Convention as its coverage was considered to be too low, especially for small ships, and because it made no provision for the many claims not susceptible to insurance concerning, for example, damage to the environment and third parties. Shipping legislation was no longer something special, as it had been in the past; and it was necessary to bring it into line with legislation applicable to other industries and to take account of the needs of other fields, particularly the environment.

[267] Finally, as regards the figures themselves, the sponsors thought – like the United Kingdom – that there was a link between the figures to be inserted and the possibility of adopting a breakdown point, and that there was also a connexion between the amount of the limits and the privity rule in Article 4 and the amount of the claims covered. The breakdown point of 30,000 tons suggested by the United Kingdom was to be considered in connexion with those figures. The figures in the Norwegian/Swedish proposal were based on the assumption that the limit would be increased considerably.

Mr. Nairac (France) said that the figures proposed by his delegation (LEG/CONF.5/C.1/WP.25) related to the basic text of Article 6. His delegation would be prepared to reconsider them after the discussion and possibly on the basis of the alternative text, although they had already been calculated with the aim of achieving a compromise. If the delegations looked at the table in the Norwegian/Swedish paper, they would find that the French proposals struck a balance in the middle. The proposal of $500 for the first 30,000 tons was motivated by France’s experience that very serious damage to ports and installations could be caused by ships of low or average tonnage. The figures suggested for ships of tonnages in excess of 30,000 tons had been chosen with the aim of making them compatible with the other limits in the Convention, and so as to remain within the market capacity.

Mr. Makovsky (USSR), introducing LEG/CONF.5/C.1/WP.34 said that his delegation’s proposal was similar to that by the Federal Republic of Germany, in that it contained no breakdown point; the arguments against such a threshold had already been put forward by the representative of that delegation. His delegation’s position

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(21) See note 8.
(22) Document LEG/CONF.5/C.1/WP.34
3 November 1976 [161]
Proposal submitted by the USSR delegation
Article 6
The USSR delegation basically supports the alternative text of para. 1, Article 6 as shown in LEG/CONF.5/WP.1 with some amendments excluding the tapering system which provided a higher sum for the first X tons and a lower amount for the remainder. Paragraph 1 of Article 6 would then read:
“...The limits of liability for claims other than those mentioned in Article 7 shall be:
(a) in respect of claims for loss of life or personal injury, the total of an amount of [K] Units of Account multiplied by the ship’s tonnage but in any case at least 300 [K] Units of Account;
(b) in respect of any other claims the total of [M] Units of Account multiplied by the ship’s tonnage but in any case at least 300 [M] Units of Account;
provided that in cases where the portion under sub-paragraph (a) is insufficient to pay the claims in full the unpaid balance of such claims shall rank rateably with claims under sub-paragraph (b).
was not, however, inflexible and would depend finally on the figures reached at the outcome of the discussion.

Of the proposals submitted by other delegations, the USSR preferred that of India, as its figures for M and K in the alternative text seemed to be the most realistic. They took due account of the fact that the alteration in the basis for calculating the gross tonnage, as provided for in the 1969 Tonnage Measurement Convention, already produced a considerable increase in the limits of liability.

At the request of the Chairman, Mr. Nair (India) read out the figures relating to his earlier proposal for a three-tier system for computing liability limits:

<table>
<thead>
<tr>
<th>Tonnage Band</th>
<th>Personal Claims</th>
<th>Property Claims</th>
</tr>
</thead>
<tbody>
<tr>
<td>First 30,000 tons</td>
<td>$300 per ton</td>
<td>$100 per ton</td>
</tr>
<tr>
<td>Next 40,000 tons</td>
<td>$200 per ton</td>
<td>$75 per ton</td>
</tr>
<tr>
<td>Tonnage above 70,000 tons</td>
<td>$100 per ton</td>
<td>$50 per ton</td>
</tr>
</tbody>
</table>

He supported the minimum of 300 K Units of Account set forth in the alternative text of draft Article 6, and considered that there should be a total limit on maximum liability for the aggregate of personal and property claims under Article 6 and passenger claims under Article 7, in respect of a single incident, of about $50 million.

He suggested that the Committee should first decide on his proposal for a three-tier system, after which the figures could be adjusted, if necessary, in the light of the discussion.

[268] The Chairman pointed out that she had not asked for seconders for the proposals submitted to the Committee, since the figures would necessarily have to be subject to further negotiation; and moreover it would be useful to have the proposals before the Committee, even if they met with little or no support.

Mr. Lyon (Canada) introduced his delegation’s proposals (LEG/CONF.5/C.1/ WP.24). He fully supported the Norwegian representative’s comments on Article 6 which was closely linked with Article 4.

His delegation’s wish was to find an equitable balance between the interests of the innocent victim, who gained no direct advantage from maritime trade, and of the shipowner and others engaged in maritime trade who did gain an advantage. The interests of both were genuine and should be protected, but neither should be favoured at the expense of the other. His delegation was anxious to see progress in respect of the terms of the draft Convention, its ratification and its implementation. If

(23) Document LEG/CONF.5/C.1/ WP.24
2 November 1976

Proposed amendment by the delegation of Canada
Article 4 – Conduct barring limitation
Alternative A
A person liable may limit his liability under this Convention only if he proves that the occurrence giving rise to the loss did not result from his actual fault or privity.
Alternative B
A person liable may limit his liability only if he proves that the loss did not result 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 or from his own gross negligence.
PART I – THE TRAVAUX PRÉPARATOIRES OF THE LLMC 1976

Article 6 - The general limits

it was to be implemented by his country, two major steps were necessary. Firstly, his delegation must enable the Minister to convince the Cabinet that the Convention was equitable and met Canada’s political realities; and secondly, the Cabinet must convince Parliament, by demonstrating that the Convention did not favour the shipowner at the expense of the innocent victim, both as to personal injury and damage to property. The Committee had heard the case for the shipowners and insurers, who were smaller in number and larger in size than the random society of potential victims, whose [269] interest crystallized only ex post facto. It was up to the government to see that the interests of the victims were protected. A convention tailored to insurance market interests but which did not adequately protect the victim would have little chance of being ratified by his Government or of being implemented in domestic law. He urged the Committee to seek an acceptable, even if imperfect text, rather than one which, though well reasoned from one point of view, was not generally acceptable. He therefore strongly supported the Norwegian and Swedish proposals (LEG/CONF.5/C.1/WP.35).24

Mr. Hedborg (Sweden) said that the figures in document LEG/CONF.5/C/WP.35 were based on the assumption that the limitations under Article 4 would be unbreakable. He therefore considered that the words in square brackets in that Article should be deleted.

Mr. Mayans (Spain) said that his delegation (vide LEG/CONF.5/C.1/WP.10)25 was in favour of deleting the words in square brackets in Article 4, since they would detract from the right to limitation and, more important, gross negligence was not clearly defined in Spanish law. Retention of those words could lead only to unnecessary legal proceedings.

Mr. Bursley (United States) said that speakers at the present meeting had all stressed the importance of establishing limitations to the extent of reasonable available insurance. Everyone recognized that limitations beyond that level would not protect the legitimate interests of shipowners; but unrealistically low levels would not protect the legitimate interests of claimants and would not find general acceptance, particularly in the light of the general view that Article 4 should provide a very difficult hurdle for breaking limitation. His delegation’s note (LEG/CONF.5/C.1/WP.32)26 was the result of an extensive study, made with the co-operation of his country’s shipping and insurance interests, which showed that there was no shortage of insurance capacity for high levels of coverage at commercially acceptable levels. Details of the range of levels of insurance coverage, depending on the experience and character of the operator, were set forth in the second and third paragraphs of the note. Availability at high levels of coverage on a world-wide basis at commercially acceptable rates would be enhanced if required under the present Convention.

His delegation’s paper provided illustrative figures, but did not propose specific values for Article 6. That would be easier once it was known whether the Committee favoured the basic or the alternative text. His delegation had intended to support the

(24) See note 3.
(25) The proposal submitted by Spain is quoted below:

Document LEG/CONF.5/C.1/WP.10
2 November 1976 [147]
Article 4
Delete, since they are unnecessary, the words appearing in brackets at the end of Article 4.
(26) See note 12.
alternative text; but discussion had shown that there was merit in the basic text if it could be modified to give property claims not purely subsidiary access to the fund. His delegation would be submitting a proposal to that effect.

[270] His delegation considered that the words in square brackets in Article 4 should be deleted. Regarding the breakdown point, he considered that, in proceeding to a higher level per ton of required coverage, the point should be lower than previously – for example, 10,000 tons. That would permit funds of adequate size for smaller vessels and thus accurately reflect their capacity to cause great damage. The patterns of insurance coverage indicated in his note were consistent with such a low breakdown point. He believed that a quantum increase in 1957 levels was a sine qua non for justifying the proposal by the Conference of a standard for breakability as difficult as that in draft Article 4. Doubling the 1957 level was not the kind of increase that would give his delegation any hope of the Convention being accepted by his Government.

Summary Record of the Ninth Meeting
5 November 1976

[270] The Chairman drew attention to document LEG/CONF5/C.1/WP.44, which showed, in tabular form, the various amounts mentioned in the discussion of the proposals relating to Article 6. There had not been time to include in the table the figures mentioned at the morning meeting by the representative of the Federal Republic of Germany, which were as follows:

**Personal Claims:**
- Total K units = $600
- No figure for the X tons breakdown point
- Minimum limit of 1,500 K = $900,000

**Property Claims:**
- Total M units = $200
- No figure for the X tons breakdown point
- Minimum limit of 1,500 M = $300,000

Mr. Pages (Observer, IAPH), speaking at the invitation of the Chairman, said that he had listened with interest at the previous meeting to the statement of the representative of the United Kingdom, in connexion with the insurance market, that it was by making limitation “unbreakable” as in Article 4 that the greatest advantage could be taken of the global insurance capacity, at the most favourable price. He had nevertheless been surprised by the second proposal regarding Article 6 relating to the way in which the amount specified in the 1957 Convention for property claims was to be adjusted. Since a coefficient of only 2 was used, that increase would just about make it possible to counterbalance the effects of inflation. Those two proposals did not seem to him to be in harmony.

This Association would be glad to see the Conference decide to exclude the cost of wreck removal from the Convention, so that that cost would be reimbursed without limitation.

As to the method of calculating the limits of liability, he noted that the tonnage basis considered should be that decided at the 1969 Tonnage Conference, i.e. seven

(27) See Appendix I/B.
years ago; he supposed that those new methods of tonnage measurement would become more widely used. Turning to the question of low tonnage ships authorized by harbour authorities to navigate in harbours without the assistance of the harbour pilot or of tugs, both of which were often the cause of damage in harbours, it was for that reason that the IAPH considered the limit of 300 tons specified in the 1957 Convention to be too low; it had suggested that the limit be increased to 3,000 tons, but would even accept 5,000 tons, as proposed by the delegation of Japan.

As far as the amounts to be fixed were concerned, he pointed out that the world fleet had markedly increased, and that its global tonnage was now 500 million tons. In addition, if, as had been agreed, the gold clause had been used as the basis and if that had been allowed to operate without restriction, the 1957 amounts would have been increased by a factor of 4 or 5, based on the value of gold on the open market. The IAPH was asking only that the amounts should be increased to the same extent as would have occurred had the 1957 clauses been allowed to operate freely.

Mr. Rein (Observer, CMI), speaking at the invitation of the Chairman, said that there was no contradiction, as certain delegations had claimed, between the statement by the IUMI and his own statement as to the respective advantages resulting from the establishment of a single fund or of two limitation funds.

Referring to the remarks made by the representative of the United Kingdom as to the factors determining the level of insurance premiums (risk covered, amount and frequency of claims), he explained that, with a single fund, the total risks covered must be greater than with two separate funds. In the latter case, there might be an unused balance; but the cost would still be the same. In other words, for the premiums the owner of a vessel had paid, a larger amount would be available if there was only one fund than if there were two. The IUMI observer had taken a different view; for the same amount of coverage per ton and the same tonnage to cover, the two-fund system would be cheaper than a one-fund system. The risks covered were the same, [272] but the effect of the claims would be less, since a larger number of claims would be subject to limitation.

Mr. Filipovic (Yugoslavia) regarded Article 4 as one of the most important of all, since the principle of unbreakability was to be contained in it. That principle was, unfortunately, not easy to formulate. The expression “or from his own gross negligence” was vague, as the representative of Spain had pointed out. The expression “fault or privity” was better but, as pointed out by the representative of the United Kingdom, perhaps not the best. It might well be preferable to delete the words in square brackets in Article 4.

He was not satisfied with the proposal contained in document LEG/CONF.5/C.1/WP.18, since it broadened the concept of person liable, in disaccord with the provisions of the 1957 Convention.

Mr. Philip (Denmark) disclaimed any desire to impose his own views but was merely intent on finding a text acceptable to the maximum possible number of

(28) This proposal was submitted by France. Its text is quoted below:

Document LEG/CONF.5/C.1/WP.18
2 November 1976 [152]
Conduct barring limitation
Proposal submitted by the delegation of France:
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 or from the act or omission of his servants acting in the exercise of their duties, committed with the intent to cause such loss, or recklessly and with knowledge that such loss would probably result.
governments. His delegation felt that the provisions of Articles 3, 4, 6 and 7 all raised the same problem from different angles, and that the difficulties involved should be dealt with as a whole. In the first place, its main concern was that the increase in the amounts laid down in the 1957 Convention should take account not only of actual inflation since 1957, but also of the prospective inflation in the interval preceding the entry into force of the new Convention. On the second question, that of establishing a minimum liability to balance the two aspects of what was a single problem – i.e. the possibility of including all types of claim, and the need to protect States possessing low tonnage vessels – his delegation took as its starting point the alternative text, and saw the doubling or trebling of the amounts in the 1957 Convention as the solution.

Bearing in mind the fact that the draft Convention contained an Article dealing with passenger claims and that, in the case of both personal and property claims, provision would probably be made as in the 1957 Convention for the possibility of employing unused funds for other types of claim, claims arising out of injury to persons not on board the ship would, by themselves, be given adequate consideration if the Danish delegation’s figures were adopted. All that was needed was to lay rather less emphasis on personal claims and rather more on property claims.

His delegation favoured the retention of Article 4 in its present form. The highly important principle of unbreakability should be maintained and the words in square brackets deleted. His delegation, that was to say, found the French proposal unacceptable.

Sir Gordon Wilmer (Liberia) was in favour of retaining Article 4 as drafted, provided that the words in square brackets were deleted, but was against retaining the expression “actual fault or privity”. The fact that the underlying concept was treated differently by different legislations made it a source of confusion. Non-admission of the right to limit liability obviated the risk of generating unnecessary uncertainty. The wording of Article 4 was similar to that of Article 13 of the 1974 Athens Convention on the Carriage of Passengers and their Luggage by Sea. The idea of actual fault or privity was absent from that text also.

Mr. Duder (Liberia) feared that the figures proposed for the alternative text of Article 6 might create confusion.

It was incorrect to say that the figures proposed by the United Kingdom for the K units were double the amounts set in the 1957 Convention, for the fact the units were different ones. The United Kingdom figures went much further. As the CMI observer had explained, the alternative text would prove cheaper from the underwriters’ standpoint. If there were two limitation funds, one for personal claims and one for property claims, the former would have priority over the latter but the balance remaining would be smaller.

Some delegations had expressed concern about low tonnage vessels. He saw no objection to increasing the minimum amount, but that might involve extra costs for such vessels.

Mr. Amoroso (Italy) recalled that his delegation had always preferred the alternative text of Article 6. It was also in favour in principle of the increase being more or less double the figures contained in the 1957 text but would be prepared to agree to a larger increase.

Mr. Unkles (Australia) pointed out that the present Conference would not have been called if the 1957 Convention had been wholly satisfactory. Australia’s impression was that if the new text were to include quasi-unbreakable limitations, the amounts would have to be substantially increased. That raised the question of determining what
a “substantial” increase was. Taking a figure for the world inflation rate of 180 per cent over the past twenty-years as a reasonable and relatively accurate figure merely to retain the monetary value of the limitations laid down in the 1957 Convention would mean multiplying the latter’s figures by three. The tonnage criteria were admittedly different, but on average they would seem to involve an increase of not more than 20 per cent. His delegation had been disappointed by some of the figures suggested. The proposal put forward by the Norwegian and Swedish delegations represented a perhaps not very generous but nevertheless a fair and reasonable effort to re-establish the values of the 1957 Convention. For the moment, Australia would reserve its position on the clause relating to the unbreakability of the limitations.

[274] Mr. Cleton (Netherlands) supported the alternative text for Article 6. His delegation, he reiterated, would be satisfied if, in the light of the new tonnage criteria, the amount of the limitation fund provided for in the 1957 Convention were to be doubled. The point to be borne in mind was that the new limitation figures would have a shock effect on premiums which might well prevent certain States from acceding to the new Convention. It was generally recognized that the limits of insurability must not be exceeded. The level of premiums was particularly important for low tonnage vessels, which represented a larger proportion of world tonnage than was commonly realized. Moreover, in seeking to draft a Convention that would be acceptable to the largest possible number of States, it was essential to take account of the difficulties that might arise for countries whose standard of living was not comparable with those of Western Europe for example, whose fleets consisted for the most part of low tonnage vessels and for which a world-wide increase in the cost of insurance cover would lead to an excessive rise in transport costs.

As a tentative suggestion, he put forward some figures for limits of liability that were fairly near those proposed by the United Kingdom. For personal claims he suggested $350 for K and $175 for L, without specifying an exact figure for X. The minimum figure based on 500 tons would thus be $175,000. In the case of property claims he suggested $150 for M and $75 for N, with a minimum of $75,000

[275] Mr. Perrakis (Greece) asked the Chairman whether it would be possible to have a table showing the relation between tonnages calculated according to the provisions of the 1957 Convention and those calculated according to the new instrument, that being a vital point in fixing the final figures. His Government’s position on the matter was a flexible one. His delegation thought the United Kingdom figures might be used as a basis. Greece was not in favour of a two-tier system, and would be inclined to opt for the solution proposed by the USSR. As far as the question of the minimum was concerned, it would be necessary first to solve the problems raised by Article 15(2)(b) and (c), and possibly also 15(3). Generally speaking, the insurability element was not the only one to be taken into account. There was also the question of the chargeability of costs and the fact that the repercussions of any increase in them varied from country to country.

The Chairman asked the Secretariat to prepare the table requested by the Greek representative.

Mr. Iturralde (Argentina) stressed the need for efforts by delegations to draw up a text acceptable to the majority not only of the countries represented at the Conference but also of those that were not, as well as being acceptable to the international community as a whole and to shipowning and insurance interests. The discussions so far had not concentrated sufficiently on the economic and political considerations which would have an even more decisive effect than technical and legal considerations in determining acceptance or rejection of the Convention by States.
The first point to be considered was covered for super-tankers. Clearly, a substantial increase in the liability amount would affect the insurance market and insurability. However, the structure of the insurance market and the co-existence of various elements within that market – such as reinsurers and P and I clubs – indicated that the market was in fact capable of absorbing an increase. In that connexion, he recalled that annual losses were no more than 0.2 per cent of the gross tonnage of the merchant fleet. As far as the costs of limiting liability were concerned, it could be said that the burden fell on the victims, whether they were individuals or countries that were neither insurers nor shipowners but merely users of other countries’ shipping services. A study might also be made, following Argentina’s example, of the ratio between the total cost of operating a ship and the total cost of insurance; it would be seen that the latter represented 7 to 8 per cent of the former. The premium for P and I insurance represented less than 50 per cent of the total cost of insurance (the balance being mainly the cost of hull insurance). Considering that the excess of loss premium represented 15 to 20 per cent of the P and I premium (consequently, 0.6 to 0.8 per cent of the daily running cost of the shipowner), and that the increase in the present limits of liability would mainly affect that premium, it must be conceded that any substantial rise would increase the daily running costs of the shipowner by only 0.5 to 1 per cent. That figure showed that, although an increase in the limits would have some repercussions on the insurance market, operating costs would not rise substantially. Consequently, the eventual increase of those costs was only a secondary consideration. On the other hand, it should be remembered that if the shipowner limited his liability, the victims themselves and/or their insurers would have to pay for the damage, which represented a cost to them. It must also be remembered that the shipowner’s other costs (such as shipbuilding costs, or crew’s wages) had risen very sharply during the past ten years, which demonstrated that any possible increase in insurance costs as a result of the present conventions would be of little importance.

Another problem was that of the value of the liability limit, which had been accurately described by the Australian representative. The figure of 3,100 Poincaré francs set in the 1957 Convention was equivalent at the gold rate then in force to a liability limit of $228.49 per ton. At the current rate, it would be equivalent to a limit of $748.80. Not one of the proposals submitted to the Conference fixed a limit at that level.

He asked delegations to guard against the tendency to consider the various problems in the narrow context of very large tonnage ships. That was an unrealistic attitude. It emerged, from a study made by his delegation – and the facts were highly significant – that ships of less than 30,000 tons accounted for 51 per cent of world tonnage, whereas ships of more than 140,000 tons represented a mere 2 per cent. In other words, the Conference’s efforts would focus on sixty to seventy ships, owned by only three countries, in which the insurance market happened to be concentrated. It would be unreasonable to blink the fact that that approach would hardly encourage the countries without ships of that kind, and no intention to acquire any, to ratify the new Convention. The system of evaluating the cost of insurance in terms of tonnage tended to favour high tonnage fleets to the detriment of those of low tonnage.

His delegation could accept an unbreakable limit if the amounts were fixed at a reasonable level, but stressed the need to take all due precautions in drafting the Article. In brief, its attitude was based on three principles. First, it believed – together with other countries not represented at the Conference – that the figures adopted should be at least as high as those in the Norwegian and Swedish proposal, second, if those figures were adopted, it could accept a wording for Article 4 such that an unbreakable limit was guaranteed; third, his delegation had a preference for the
alternative text for Article 6, because it guaranteed some compensation for property damage. That position was not inflexible and might be changed if the basic text was amended so as to provide such a guarantee and facilitate a better use of the insurance market.

His delegation’s position was based on technical, legal and economic considerations and on a concern to improve the text of the future Convention so that a great many countries would be able to ratify it. It should in no way be considered as unalterable.

Mr. Sim Mong Soo (Singapore) said that his delegation was unable to approve the draft text of Article 4. It was in favour of the amendment proposed by Canada, because the formula used in the 1957 Convention had not caused any problems for Singapore, although he recognized that it had been given different interpretations in different jurisdictions. However, the proposed new form of words would, in his view, also give rise in the future to differing interpretations under the legislation of different countries. It was important to remember that Articles 4 and 6 were closely interconnected. His delegation thought that the figures set in the 1957 Convention should be doubled to take account of inflation and the increased cost of shipping and insurance. It was in favour of the basic text of Article 6, which seemed to provide a better solution and was an improvement on the 1957 Convention.

Mr. Vogel (German Democratic Republic) was gratified that most delegations seemed to be in favour of the draft Convention but emphasized that the general [277] opinion of the Committee did not necessarily correspond to that of the international community, since not all nations were represented.

His delegation could not agree to quadrupling the figures in the 1957 Convention. That would be unrealistic, and would involve too great an increase in operating costs. To double the old figures, however, seemed reasonable. The breakdown point for the first X tons might be around 20,000-30,000 tons. The present text of Article 4 would be acceptable, with the deletion of the words in square brackets. If those words were not deleted, his country would face serious difficulties because of its domestic legislation. Nor could his delegation support the French amendment (LEG/CONF.5/C.1/WP.18)29 since that would mean weakening the principle of unbreakability.

Mr. Koronka (Observer, ICS), speaking at the invitation of the Chairman, drew attention to the figures given by the ICS (LEG/CONF.5/6, Annex)30 to illustrate the

(29) See note 28.
(30) The comments made by ICS in connection with the tonnage measurement and the table annexed thereto are quoted below:

Document LEG/CONF.5/6
27 September 1976 [114]

Tonnage Measurement

In this connexion it must also be pointed out that in calculating tonnage the gross tonnage will be calculated in accordance with the rules contained in the International Convention on Tonnage Measurement of Ships, 1969. This Convention provided for a 12 year period during which the new rules would not apply to existing tonnage. The wording of the draft Convention avoids this 12 year period and quite [115] apart from the substantial increase that it would entail for some companies it would also mean that in order to calculate insurance requirements it would be necessary to re-measure ships for this purpose only with consequent unnecessary and heavy costs. There is no question of merely applying a conversion factor and the valuations and measurements require considerable skill. The same considerations which lead the drafters of the Tonnage Measurement Convention to allow a period for adjustment are equally applicable to the present draft Convention. The general increase in tonnage is reflected in the table produced in the Annex.
increase in tonnage following implementation of the 1969 Tonnage Measurement Convention. The table showed clearly that there was no direct correlation between the two systems of calculation and that implementation of the 1969 Convention would involve serious problems for the owners of low tonnage vessels, as proved by the increase of 208 per cent for shelterdeck vessels. Due account must be taken of those problems.

Mr. Bentein (Belgium) was prepared to give his views on the amounts for the alternative text of Article 6, since discussion had centred on that point; but his delegation would prefer the basic text if appropriate amounts could be fixed. Belgium had three objectives: to ensure that the question was considered from the point of view of insurability, to adopt a solution acceptable to the greatest possible numbers of countries, and to take due account of the political aspects. The argument put forward by the Netherlands representative to the effect that increasing premiums would cause a shock was not decisive. An increase in premiums was inevitable in any case, and it was hard to see how setting up one fund or two could affect the matter. Theoretically, the alternative text might have fewer drawbacks, but the solution that the Belgian delegation supported would certainly be just as satisfactory.

Belgium could accept amounts falling between those proposed by the United Kingdom and those by the Norwegian and Swedish delegations. However, it was not in favour of the minimum limit in the Scandinavian proposal, since that would mean

When speaking of the amounts the cumulative effect of the various provisions as well as the figures for insertion must be considered. It is obviously in shipping companies’ interests that the amounts be kept within the levels for which insurance cover can be obtained at an economic cost. It should be borne in mind that the interest of shipping companies is, in this instance, the same as that of the consumer, as an increase in insurance cost inevitably leads to an increase in freight or passenger rates. As in most cases there is additional insurance, the most economic level is that which will provide the most cover for the least overall expenditure. To put an excessive burden on the shipping company, forcing it to obtain cover for sums which underwriters are unwilling or reluctant to underwrite is uneconomic. The higher range of figures mentioned in the Report taken with the other provisions would in the opinion of the ICS, based on discussions with insurers, certainly produce this effect.

ANNEX

<table>
<thead>
<tr>
<th>VESSEL TYPE</th>
<th>OLD GROSS TONNAGE</th>
<th>LIMITATION TONNAGE</th>
<th>NEW GROSS TONNAGE</th>
<th>PERCENTAGE INCREASE</th>
</tr>
</thead>
<tbody>
<tr>
<td>OBO</td>
<td>79,316</td>
<td>68,268</td>
<td>73,608</td>
<td>8%</td>
</tr>
<tr>
<td>CONTAINER SHIP</td>
<td>58,889</td>
<td>54,035</td>
<td>55,883</td>
<td>3%</td>
</tr>
<tr>
<td>BULK CARRIER</td>
<td>35,868</td>
<td>31,200</td>
<td>32,891</td>
<td>5%</td>
</tr>
<tr>
<td>RO/RO FERRY</td>
<td>11,609</td>
<td>9,689</td>
<td>13,522</td>
<td>39 1/2%</td>
</tr>
<tr>
<td>OPEN SHELTERDECK</td>
<td>1,598</td>
<td>1,395</td>
<td>2,555</td>
<td>83%</td>
</tr>
<tr>
<td>CHEMICAL CARRIER</td>
<td>1,597</td>
<td>1,233</td>
<td>1,745</td>
<td>41 1/2%</td>
</tr>
<tr>
<td>BULK CARRIER</td>
<td>1,594</td>
<td>1,455</td>
<td>1,897</td>
<td>30%</td>
</tr>
<tr>
<td>SHELTERDECK</td>
<td>968</td>
<td>624</td>
<td>1,924</td>
<td>208%</td>
</tr>
<tr>
<td>SMALL SHELTERDECK</td>
<td>199</td>
<td>187</td>
<td>273</td>
<td>46%</td>
</tr>
</tbody>
</table>
excluding one category of vessel, and he thought that the minimum for property
damage suggested by the United Kingdom delegation was inadequate.

With respect to the breakdown point for the first X tons, his delegation might
possibly support the three-tier system if it met with the agreement of a considerable [278] number of delegations.

Mr. Filipovic (Yugoslavia) said that his delegation could agree to an amount
double that of 1957. It endorsed the statement of the Polish representative. The three-
tier system proposed by the Indian delegation also seemed reasonable.

Mr. Wiswall (Liberia) thanked the representative of Argentina for pointing out
how unrealistic it was to base discussions at the Conference on a category of ships
constituting so small a percentage of world tonnage. In fact it was the low tonnage
fleets that would increase in the years to come. Moreover, the risk of damage did not
increase with the size of the vessel.

The Chairman noted that there were considerable differences of opinion to be
overcome before agreement was reached. She hoped that delegations would make an
effort to tackle the rest of the discussion in a spirit of compromise. The new Convention
must, of course, ensure a fair balance between the concerns of countries with major
interests in shipping and the insurance market and those of the many other countries,
whether or not represented at the Conference, which were users of shipping services.

Summary Record of the Eleventh Meeting
8 November 1976

[289] The Chairman (…) She invited delegations to indicate their preferences on
the various issues which she had enumerated.
The result of the show of hands was as follows:
1. Those in favour of the basic text – 11
2. Those in favour of the alternative text – 21

Summary Record of the Nineteenth Meeting
12 November 1976

Report of Working Group on Basic Issues relating to the Limitation System
(LEG/CONF.5/C.1/WP.76)

[362] Mr. Suchorzewski (Poland), Chairman of the Working Group on Basic Issues
relating to the Limitation System, introduced the report. Although the Working
Group, despite strenuous efforts, had unfortunately not achieved the results the
Chairman had hoped for – particularly in respect of definite figures for liability limits,
where it had encountered the same difficulties as the Committee of the Whole – it had
nevertheless had some success. A number of widely differing positions were now
reconciled and there was a clearer idea of attitudes on the question of figures. It was
because of the very difficulties that had arisen in the Committee and the Working
Group that the question of figures had not been touched on in the preparatory work
in the Legal Committee. It had been felt that the general feeling was in favour of
including in the Convention a limitation amount double that in the 1957 Convention.
Since most delegations to the present Conference had come with government
instructions based on that idea, the raising of the question of figures had placed them
in a difficult position. The difficulty was not lack of goodwill or readiness to compromise, but the new circumstances. The problem was and would remain the most difficult one before the Conference.

[363] The report was concerned mainly with the problem of figures, since the Working Group had not had time to discuss all the questions referred to it. Suggestions regarding figures were set forth in differing groups, each group containing suggestions of a similar nature. He hoped that the clarification of the situation would facilitate the Committee’s work.

He drew attention to an editorial correction to the report: the last two sentences of paragraph 9 should be transposed.

The Chairman felt that the Working Group had performed a very useful task. Its clarification of the situation and the possible solutions, and the harmonization of views on certain aspects, would greatly help the Committee in its work.

Summary Record of the Nineteenth Meeting
12 November 1976

[365] The Chairman suggested that the Committee should have a general discussion of that part of the Working Group’s report relating to Article 6 (paragraphs 7 to 18 of LEG/CONF.5/C.1/WP.76).31 It might be helpful if the Committee had before it tables of figures indicating what would be the implications for ships of various tonnages of the values suggested.

Mr. Suchorzewski (Poland) thought it would be difficult to produce a single set of figures, since there were a number of different proposals. It might be preferable for the Committee to begin by discussing the two proposals that had been submitted in regard to Article 6(b), and were contained in paragraph 8 of the Group’s report.

Lord Diplock (United Kingdom) approved that suggestion. He agreed with the Chairman that it would be helpful if the Committee could have before it some relevant figures, and suggested that the tables used in the course of the Working Group’s discussions might be reproduced and distributed to the Committee.

The Chairman said that those figures would be made available shortly by the Secretariat.

Mr. Selvig (Norway) agreed that it would be useful for the Committee to be able to refer to a table of figures, but pointed out that the table used during the Working Group’s discussions was now somewhat outdated. The key figures, as far as Article 6 was concerned, were set out on pages 136 and 137 of the Group’s report (LEG/CONF.5/C.1/WP.76).32 He suggested that the Secretariat should convert those figures into a table to facilitate the Committee’s consideration of the subject.

[366] Lord Diplock (United Kingdom) suggested that the table produced by the Secretariat should indicate the rate per ton on which the tonnage figures were based. It would save the Committee time if it could consider a single answer instead of several.

Mr. Unkles (Australia) pointed out that it would be impossible to provide a single answer by means of a single simple arithmetical calculation. The Working Group’s report contained several ideas regarding minimum tonnage as well as several

(31) See Appendix I/C.
(32) See note 31.
Article 6 - The general limits

ideas regarding break-points, and hence there were as many different answers as there were ideas mooted. It would facilitate the Secretariat’s task if the Committee could first reduce the number of minimum tonnages and the number of break-points proposed before requesting that the various figures be set out in tabular form.

Mr. Selvig (Norway) supported that suggestion, and proposed that the various alternatives should be reduced to a single average per ton figure for each of the three tonnage ranges mentioned. That procedure would make it possible to provide an approximate solution for each category, though not one which was correct in all details.

The Chairman suggested that the representatives of Norway, United Kingdom and Australia should contact the Executive Secretary to discuss how the table should be compiled, so that clear instructions could be given to the Secretariat. The table would made available to the Committee the following day.

She called attention to the two proposals for amendment of Article 6(b) (page 135 of LEG/CONF.5/C.1/WP.76).33 There was also a Japanese proposal (LEG/CONF.5/C.1/WP.46)34 and a proposal by the United States (LEG/CONF.5/C.1/WP.58).35 It would be more appropriate to discuss the United States proposal at a later stage.

Mr. Tanikawa (Japan), introducing his delegation’s proposal (LEG/CONF.5/C.1/WP.46)36 described its aim as being to clarify the meaning of the proviso at the end of paragraph 1. It should be possible to make use of the unpaid balance of claims under sub-paragraph (a) even if the sum amount of claims under sub-paragraph (b) had not exceeded its limit.

Mr. Nairac (France), introducing his delegation’s proposal (paragraph 8 of


(34) Document LEG/CONF.5/C.1/WP.46
5 November 1976 [173]
Proposal by the delegation of Japan
Article 6 (alternative text)
In paragraph 1, the following words should be added at the very end of the proviso (in order to make clear the meaning):
“...for payment against the portions under sub-paragraph (b), even if the sum amount of claims under sub-paragraph (b) have not exceeded its limit”.

(35) Document LEG/CONF.5/C.1/WP.58
8 November 1976 [184]
Proposal by the United States delegation
Article 6
In WP.32, the US delegation described current insurance practices for US flag vessels, but did not propose specific figures for Article 6. In a subsequent paper, the US proposed a revision of the basic text. Without prejudice to that proposal, this delegation proposes the following figures for insertion in the alternate text should it be adopted:
K – $1500 – $1900
X – 10,000 tons
L – $350 – $400
300KM [We propose floor of 500K] – $ 750,000 – $950,000
M – $600 – $700
N – $100 – $150
300 [We propose floor of 500K] – $ 300,000 – $350,000
Through use of a comparatively low break point (X = 10,000 tons), this formula will produce limitation funds for vessels below 10,000 tons which more accurately reflect both available insurance and such vessels’ capacity to cause damage.

(36) See note 34.
LEG/CONF.5/C.1/WP.76),\(^\text{(37)}\) said that his country was alive to the need to protect the interests of its merchant fleet, but was also aware of the importance of safeguarding its coasts and harbours. The proposal aimed at providing adequate compensation for both those interests. Discussions in the Working Group and in the Committee of the Whole had indicated a preference for the alternative text as against the basic text, and hence France was prepared, although it favoured the basic text, to work on the basis of the alternative text for the sake of compromise. It would not be practicable for Article 6 to lay down extremely high amounts for the personal injury fund which would not often be utilized; it would be better to specify a method whereby the overall total in both funds could be used in the best interests of all concerned.

Mr. Amoroso (Italy), introducing the proposal of which he was co-sponsor with Australia and Norway (paragraph 8 of LEG/CONF.5/C.1/WP.76),\(^\text{(38)}\) explained that the joint proposal was formulated on precisely the same lines as the French proposal, although the figures it contained were different. The French proposal referred to two-thirds of the total amount specified in sub-paragraph (a), whereas the joint proposal left it to the Conference to decide on the amount once it had approved the underlying principle.

Mr. Unkles (Australia) pointed out that his delegation in fact preferred the basic text for Article 6; but since it seemed probable that the Conference would prefer the alternative text, it had agreed to act as co-sponsor of the joint proposal on the basis of the alternative text.

Mr. Bentein (Belgium) gathered from what had been said that the two proposals were essentially the same and differed only in the amounts of percentages which they contained. He wondered why, in that case, the delegations concerned had not put together a single proposal, leaving the question of amounts to be decided by the Committee of the Whole.

Mr. Nairac (France) agreed that the intent of the two proposals was the same, but explained that there had been insufficient time in the course of the Working Group’s discussions to work out a single combined proposal. There were certain differences between the two texts, relating to the proportion of the fund for personal injury which could be allocated to the property fund. In the French text, the proportion concerned was a proportion of the total specified in sub-paragraph (a), whereas in the joint proposal that proportion was a proportion of the residue only.

Mr. Amoroso (Italy) said that that had not in fact been the intention of the joint proposal. The phrase “not exceeding/one-half/one-third] of that portion, shall be added to the portion under sub-paragraph (b)”, related to the total and not to the residue. He reiterated that the two proposals were substantially the same.

The Chairman assumed that the intention of both proposals was that if property claims did not get full compensation under the property fund, then a certain proportion of the personal injury fund should be made available for the coverage of such claims.

Mr. Selvig (Norway) confirmed that that was the intention. The increase in the property fund was to be effected by first taking account of personal claims and then transferring any residue to the property fund; however, the amount to be transferred should not exceed a certain proportion. If there were no personal claims, for example, it was suggested in the joint proposal that the maximum to be added should be one-half or one-third, but it would be for the Committee to decide what the fraction should be. The intention was to provide a system for increasing the property fund in certain

\(^{(37)}\) See note 33.

\(^{(38)}\) See note 33.
cases where there was no call on the personal fund. The amount concerned would be distributed equally among all property claims.

The Chairman noted that the Committee had now reached tentative preliminary conclusions on several questions, but a number of important problems remained to be solved. It should be borne in mind, when discussing the question of whether to adopt the basic text or the alternative text, that the majority had favoured the latter but that there was still a substantial minority which favoured the former. The Committee had reached a preliminary decision that passenger claims should be subject to a separate limit. Following a discussion on the content of Article 4, the majority had been in favour of the principle of unbreakability and had been opposed to the inclusion of any reference to gross negligence. On the subject of claims for damage to harbour works and for damage relating to wreck removal, the majority had supported the inclusion of all such claims within the scope of the Convention, and some had considered they should be accorded priority. However, the Conference would have to consider whether under a clear-cut alternative system it would be possible to include such claims in the Convention. A number of representatives, on the other hand, had thought such claims should be excluded or made the subject of a reservation. A substantial preference had been shown for having special rules on limitation for vessels of less than 300 tons. All those considerations needed to be borne in mind if the Conference was eventually to arrive at a successful compromise solution.

Summary Record of the Twentieth Meeting
13 November 1976

The Chairman recalled that the previous day the Committee had had before it two proposals for a compromise between the basic and alternative texts of Article 6, based on the principle that part of any balance remaining in the personal injury fund would be transferred to the property fund. The paper prepared by the Secretariat (LEG/CONF.5/C.1/WP.78) clarified certain of the data contained in the report of the Working Group (LEG/CONF.5/C.1/WP.76). She drew attention to a mistake on page 140 of the Secretariat paper (third line, English text) where “$80 to $195” should read “$80 to $95”.

The Chairman invited the Committee to consider whether a compromise could be reached on the basis of permitting spillover between the two funds.

Lord Diplock (United Kingdom) thought it essential to bear in mind the practical effects of such a spillover system. Every representative wished the limitation on personal injury claims to be as high as was compatible with reasonable limits. Furthermore, it was rare in the case of very low tonnage ships for personal injury claims to reach the limits proposed in the Convention. As a result, the premiums charged for insurance against personal injury were low compared with those relating to property loss. His delegation would therefore prefer a system providing for two separate funds, which would enable them to fix a higher limit for personal injury than would be possible if there were only one fund, and to have a fund that was twice as large and limits twice as high. What was now being proposed was a compromise between a single and a two-fund system.

(39) See Appendix I/D.
The proposal put forward by Australia, Italy and Norway (page 135, LEG/CONF.5/C.1/WP.76) would permit a balance equal to half the limitation fund for personal injury claims to be made available to meet property claims in addition to the limitation fund for property damage. In most cases, that would mean doubling the amount of the fund for such claims. To sum up, if the transferable balance were one-third, the increase would amount to 67 per cent; if one half, the increase would be 100 per cent, if two-thirds (as proposed by the French delegation) the increase would be 133 per cent. Those were the facts to be remembered.

Mr. Selvig (Norway) said that the three delegations supported the French proposal in principle but would prefer to keep the proportions of one-half and one-third indicated in square brackets. He agreed with the United Kingdom representative that it was comparatively rare for claims for personal injury to be as high as the limitation figures, and that most claims related to property loss. The spillover principle, as the United Kingdom representative had pointed out, amounted to increasing the property fund without affecting the right to make claims against the personal injury fund, which could be done by reducing the limitation fund for personal injury.

There was a better way of dealing with property claims than that envisaged by the alternative text. If the limitation fund for property loss was too low, one faced the possible exclusion of a number of claims. It seemed preferable to him to retain in principle all claims within the global system. His own view was that the French proposal offered a way out of the difficulty, having the effect of increasing the amount available for property claims without increasing the maximum exposure.

Mr. Filipovic (Yugoslavia) wondered what sort of compromise the proposals on page 135 of LEG/CONF.5/C.1/WP.76 would yield, and how the principle contained in the alternative text would operate in practice. Personally, his own preference had been for the alternative text (two separate funds), but his impression was that representatives were gradually coming back to the basic text. The point at issue was the increase in the property fund, but his delegation objected to the uncertainty that that proposal would give rise to.

Mr. Philip (Denmark) said that the figures given in Annex 1 to LEG/CONF.5/C.1/WP.78 showed that, of a total exposure of $18 million, one-third (i.e. $6 million) was in principle reserved for property loss and two-thirds (i.e. $12 million) for personal injury. If there were no personal claims, $6 million of the $12 million reserved for such claims could be used to meet property claims, in addition to the fund actually constituted for that object. If personal claims exceeded $6 million, the proportion of the $12 million that could be used for property loss would be less than $6 million.

His delegation had no absolute preference as between the basic and the alternative texts, but would perhaps be inclined to favour the latter. It would already be one step forward if figures taking account of inflation could be arrived at. As the United Kingdom representative had said, it was no use considering a solution simply from the theoretical point of view; thought must be given to the figures to be inserted in Article 6. So far as the spillover was concerned, it would be possible for such transfers from the personal to the property fund to be reserved for exceptional cases so that the principle would not operate in cases of claims in respect of the loss of, or

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(40) See note 31.
(41) See note 31.
(42) See note 39.
Mr. Perrakis (Greece) found the results of the Working Group’s deliberations somewhat puzzling. They amounted to a recommendation that the Committee keep to the alternative text, the sole achievement having been to alter the proportion of the personal fund to be transferred to the property fund. As Lord Diplock had said, it was time to abandon theoretical discussion and get down to figures. Before coming to any agreement on these, however, there was a new solution put forward by the Danish representative to be considered, consisting in providing for three funds: one for personal claims, one for property claims and one for public sector claims.

He himself felt that the so-called “compromise” solution should be reversed: the property fund should be increased and the spillover be from that fund to the personal fund, not vice versa. The constitution of a fund for public sector claims should be considered, and the figures adopted be such that they did not have a spiralling effect on shipping costs. He asked when it would be possible to get some precise idea of the figures involved.

Mr. Duder (Liberia) had been much impressed by the figures which the United Kingdom representative had quoted, showing the very high percentage increase that would result from a comparatively small increase in the permitted spillover from a personal to a property fund. He queried whether the 2:1 ratio envisaged between the first and second types of claim was well-founded. In general, he felt that the spillover principle might cause difficulties from the insurers’ standpoint and that it was extremely difficult to discuss it in the present context without having any exact figures to go on. The first thing to do was to establish the ratio between personal claims and property claims. He was also against giving priority to claims in respect of damage to harbour works. Individuals ought to have equality with public bodies.

Mr. Herber (Federal Republic of Germany) expressed his delegation’s readiness to do its utmost to find a compromise solution with regard to determining whether or not the limits of the property loss fund should be raised; but first of all it was those limits, which did not exist at the moment, which had to be determined.

Mr. Cleton (Netherlands) had felt some disappointment, although not surprise, on reading the Working Group’s report. The point at issue was what price States were willing to pay to get a new Convention. The sole object, initially, had been to revise the 1957 Convention so as to adjust the figures in it to correspond to the real purchasing power of the various currencies. It now appeared that there was a desire in some quarters to make major changes both in the figures themselves and in the structure of the limitation funds. However, in the opinion of the Netherlands, which had ratified the 1957 Convention in 1965, the system it had created was working very well, and it was only amounts that needed revision. His delegation would find it very difficult to discuss figures if a solution midway between the basic text and the alternative text were adopted. In that connexion, he agreed with the view that adoption of the concept of a partial spillover would have serious effects on the figures established and would necessitate their re-calculation (LEG/CONF.5/C.1/WP.76, paragraph 9).

His delegation was also much perturbed by the serious repercussions that adoption of a new tonnage measurement system could have on low tonnage ships, the cost of operating which might rise to a totally unacceptable level. A large
part of the Netherlands merchant navy would find itself in difficulty, and his delegation
would be obliged to advise its Government that the Convention was unacceptable.
Lastly, while recognizing the importance of claims resulting from damage to harbour
works, he was against their having priority over other property claims.

Mr. Bentein (Belgium) also expressed disappointment, which in his case arose
not from the Working Group’s report but from the fact that nothing new had come
out of the discussion. His delegation still favoured a compromise solution such as that
set out in the Group’s report. If that could not be accepted, Belgium would find it
necessary to exclude certain claims from the scope of application of the Convention
and vote accordingly. His delegation had always hoped that the question could be
settled in a satisfactory manner, for the solution provided by the 1957 Convention’s
Protocol of Signature was far from ideal.

Mr. Jeannel (France) expressed some fear lest the intricate discussions on
numerical data might have obscured one fundamental aspect of the problem. If the
Conference wanted to establish liability limits, the very least it could do would be to
establish limits which covered the reasonably possible risks. It was unreasonable to cite
the rise in premiums as a reason for refraining from establishing those limits. That was
why his delegation preferred the first alternative, with priority for claims for damage
to harbour works. For example, taking the case of a lock which had cost $2.5 million
to build being badly damaged by a low tonnage vessel – a case which could easily
occur, as smaller vessels were more numerous – it worked out, on the basis of a total
exposure of $18 million for ships of up to 30,000 tons, that the coverage for the
damage caused by a 5,000 ton ship was only slightly more than $1 million. The
proposed system was therefore unsatisfactory. Some delegations had referred to the
problems which might arise in the insurance market and would entail an increase in
premiums. He himself was quite sure that the difference in cost was not very large and
could easily be borne by the shipowners without any serious results. The problem
stemmed from the fact, rather, that the insurer’s real interest lay in covering rare, not
to say improbable, risks and from that angle they found personal claims more
profitable than property claims. However, that did not obviate the necessity of
covering all normal risks.

Contrary to what certain comments had implied, the proposals put forward by
the four delegations did in fact represent a compromise solution. The French
delegation and the others which shared its viewpoint had abandoned the basic text,
and hence total transferability in respect of property claims, together with priority for
certain claims. The supporters of the alternative text, for their part, had made a single
concession, by agreeing to a certain measure of flexibility in the very rigid machinery
envisaged in the second alternative. It was quite correct, therefore, to speak of a
compromise solution. His delegation was prepared to agree to a spillover of half the
fund if that would promote still further progress in that direction.

Mr. Williams (Observer, IUMI), speaking at the invitation of the Chairman, said
that insurers would certainly not be in favour of a spillover as between the property
fund and the personal injury fund. If an amendment to that effect were adopted, it
would certainly bring about an increase in the premium rate.

With regard to the example cited by the French representative, the fact that it cost
more to insure against unspecified risks and obligations than against specific ones was
very understandable, for it was much more difficult to assess possible loss and danger
in the case of the former. It would be a better bargain to take out a specific insurance
for a lock and recover the cost of the premium from the ships making use of [372] it
than to include the risks referred to, which were comparatively easy to assess, in a wider and less specific insurance cover applying equally to other risks as well. The insurance market was a field in which every possibility and every impossibility had to be studied.

The Chairman invited the Committee to give their views on the figures suggested for minimum total exposure (LEG/CONF.5/C.1/WP.76, paragraph 11; LEG/CONF.5/C.1/WP.78, Annex II).44

Lord Diplock (United Kingdom) recalled that his delegation had originally proposed a figure of $0.3 million, but had subsequently accepted one of $0.6 million. When it appeared that opinion was generally divided between $0.3, $0.6 and $0.9 million, his delegation had intimated that it would accept whichever figure commanded a majority. He maintained that position, hoping thus to facilitate progress.

Mr. Philip (Denmark) preferred a minimum figure of $0.6 million, but could accept anything between that and $1 million.

Mr. Perrakis (Greece) thought it impossible to decide on a minimum total exposure without knowing whether there would be one fund or two funds. If there was to be a single common fund, Greece would be disinclined to accept a minimum above $0.3 million.

Mr. Helaniemi (Finland) was prepared to accept a figure of $1 million, or a lower figure if that would promote a compromise.

Mr. Trotz (German Democratic Republic) preferred a minimum somewhere between $0.15 and $0.3 million.

Mr. Ganten (Federal Republic of Germany) said that he was in favour of a figure in the region of $1 million, which he thought necessary to cover claims arising out of damage caused by small ships.

Mr. Tanikawa (Japan) withdrew the figure of $2.2 million as proposed during the discussions of the Working Group, and said that he would support a minimum of $1.2 million.

Mr. Crook (United States) hoped that the minimum would be between $1.25 and $1.5 million, but was prepared to accept a figure between $1.2 and $1 million as the minimum.

Mr. Unkles (Australia) said that he had been in favour of $1.2 million in the Working Group but did not object to a minimum amount of about $1 million. In the light of the considerable damage which a small ship could cause, that figure seemed equitable and could certainly be insured for by shipowners. If, as some delegations still desired, the Conference were to opt for a minimum of $0.3 million, they would be virtually reducing the monetary value of the limits contained in the 1957 Convention, in which case it might be asked what was the point of convening the present Conference. No progress would be possible if the principles originally adopted for revising the 1957 Convention were abandoned. It had been decided at the time that actual increase, and not simply re-establishment of the limits specified by that Convention, would be accompanied by a clause on unbreakability. It was essential that the Conference abide by those principles.

[373] Mr. Jeannel (France) specified that the French delegation was in favour of a figure of $1 million for minimum total exposure.

(44) See note 39.
Mr. Selvig (Norway) reminded the Committee that the value of the Convention would be judged in the light of its most common form of application; and that, of course, was the one where small ships were concerned. It was essential that the figures adopted should be such as to fall short of claimants’ requirements, which was why his delegation had proposed fairly high figures, although they were prepared to accept a figure of $1 million.

Mr. Cleton (Netherlands) said that his delegation opted for a figure of $0.5 million.

Mr. Nilsson (Sweden) said that his delegation was prepared to accept a figure in the region of $1 million.

The Chairman gathered that a fairly large number of delegations were prepared to accept a figure of $1 million or thereabouts. That was a maximum limit for some delegations and a minimum limit for others. She wondered whether they could take an indicative vote to ascertain how many delegations would accept the figure of $1 million.

Mr. Perrakis (Greece) thought that the final choice made by many delegations would depend on the measures to be adopted on the matter of spillover. It was no easy matter to take a decision on the amount of minimum total exposure, for that would be tantamount to signing a blank cheque.

The Chairman thought that the Committee could not be expected to take a decision on the specific question of spillover solely in relation to minimum total exposure. Delegations should, however, be able to state their preference immediately with regard to the amount of such exposure, even if some did so with a mental reservation regarding spillover.

Mr. Iturralde (Argentina) reminded the Committee that the problem confronting them was that of actual total exposure, especially with relation to property claims, because that sector was the most important from the insurance standpoint. In addition, when it came to determine premiums, magnitude of risk weighed much more heavily than total amount of exposure. They could go on talking at cross-purposes indefinitely if essential economic considerations were not taken as a starting-point, and it remained unknown how far each delegation would go as regards exposure for property claims. It had to be realized that, if a delegation accepted an amount greater than $100,000, for example, that might mean that it was as likely to gain or to lose, depending on the interests it represented.

Mr. Philip (Denmark) proposed an indicative vote to discover the preferences of delegations on the assumptions on which Annex II to LEG/CONF.5/C.1/WP.7845 had been based, i.e. that of a 2:1 ratio between the amount for property claims and that for personal injury claims. A higher majority would no doubt be mustered if an amount within the range $0.9-1 million were envisaged, instead of a net figure of $1 million.

Lord Diplock (United Kingdom) noted the comments made by the representative of Greece and suggested an indicative vote to discover how many delegations would accept a minimum total exposure of up to $1 million, on condition that there [374] was no spillover, and how many were willing to agree to that figure with or without spillover.

Mr. Djavad (USSR) stated that, in the Working Group, his delegation had advocated a minimum total exposure for small ships in the range $0.15-0.30 million.

(45) See note 39.
The Soviet delegation did not *a priori* decline to consider other figures but wished to point out that, in the light of the new tonnage provisions, a sum of $0.3 million represented a four-fold increase in the amounts for small ships; $1 million would be a 1,300 per cent increase, for which his delegation could see no justification.

Mr. Amoroso (Italy) said that his delegation had proposed $0.3 million in the Working Group. No one appeared willing to consider proposals other than those in favour of $1 million, but what might be called the “silent majority” at the Conference could not be ignored. His delegation was also *a priori* prepared to reconsider its proposals in a spirit of compromise; but, like the Greek and Danish delegations, wanted first to know how to interpret the proposed 2:1 ratio between the amounts of the funds for property and personal injury claims.

Mr. Vonau (Poland) observed that many delegations were absent and proposed that the indicative vote should not be taken until the morning meeting on Monday, 15 November, thereby giving all delegations time to ponder the subject.

Mr. Filipovic (Yugoslavia) endorsed the suggestion made by the representative of Poland. The sum of $1 million was excessive; his delegation would be able to agree to $0.5 million, on condition that there was to be no spillover.

The Chairman said that the absence of many delegations should not be allowed to hold up discussions. She would follow the suggestion by the United Kingdom representative and ask for an indicative vote to ascertain how many delegations were prepared to go up to – or over, as the case might be – the figure of $1 million on the basis of the alternative text for Article 6, assuming a 2:1 ratio between the amount of the fund for property claims and that for personal injury, without spillover. She would then ask which delegations were prepared to accept the same solution, but with some spillover. That would be on the understanding that such assumptions would not prejudice future decisions on those points.

Mr. Bendjenna (Algeria) reiterated his delegation’s preference as stated in the Working Group, for a range of $0.15-0.3 million, and supported the Polish proposal.

Mr. Nair (India) also endorsed the Polish proposal and associated himself with the delegations of Algeria, Poland and the USSR in advocating the $0.15-0.3 million range.

Mr. Bursley (United States) endorsed the comments made by the Australian delegation. He pointed out that the present Conference had been convened to devise an instrument which would serve the interests of international shipping in one of its main spheres of activity, and not those of shipowners. The text was the result of painstaking efforts by highly competent lawyers, and the discussion had shown its high technical quality. It should nevertheless be remembered that the text had been drafted without any specific limitation in mind and was therefore a theoretical formulation in the sense that those who had drafted it had not been hampered by any of the constraints that might have been imposed by amounts subject to dispute. Their main object had been to produce an equitable balance between the interests of shipowners and claimants on the basis of the concepts of unbreakability and insurability. If they were to stray too far from that theoretical basis, the balance sought by those who had drafted the text would be grossly distorted.

The concept of insurability on which the draft was based implied two premises: the capacity of the insurance market, and the levels of insurance cover which could be placed at reasonable cost. Both concepts had been clearly expounded by the IMCO Legal Committee, which had taken as its main aim “the need to establish limits that could, on the one hand, ensure full payment to claimants in the great majority of cases...
and in amounts high enough to be politically acceptable, and on the other hand provide an ascertainable basis for liability insurance, within available market capacity and at reasonable cost”. The Conference was concerned with the words “politically acceptable”, which conveyed something different to each delegation.

Delegations had expressed widely varying views on the capacity of the insurance market, and the interventions by his delegation on that issue had met with scepticism, if not outright incredulity. Yet the ensuing discussions had made it clear that the United States delegation had been correct in believing that the current capacity of the market for liability coverage exceeded $100 million and was still growing. That capacity made it entirely possible to reach the goal set by the Legal Committee. The only issue outstanding therefore was to decide what cover could be placed at reasonable cost.

That question marked a crossroads for his delegation, which had come to the Conference with the serious purpose of helping to shape a Convention that would be politically acceptable in the United States. Certain delegations had cast doubt on the readiness of his Government to join in the Convention now being drawn up; but it was the considered view of the United States delegation that a regime involving unbreakability coupled with limitation amounts at levels of commercial insurability would have a reasonable expectation of adoption by their Government.

A large number of delegations, however, were now mentioning limitation levels well below those of commercial insurability, saying that to go further would mean exceeding the bounds of reasonable cost. His delegation could not agree with that viewpoint and wished to draw attention to the remarks contained in its working paper concerning the actual cover now carried by United States vessels. The cost of raising insurance cover to high levels from those below which no prudent shipowner would consider it sensible to operate in international commerce was very small and its impact on operating costs would be negligible.

The United States delegation had felt able to make some concessions in respect of high tonnages, but its position was totally at variance with the attitude taken by many delegations as regards small ships. He apologized to the Committee for having spoken at such length; but his delegation believed that at the present stage of the deliberations it was necessary to make clear its opinion that limitation levels below commercial insurability were illogical. If such levels were fixed, the very concept of limitation of liability would be unacceptable.

The Chairman welcomed the timely United States reminder of the basic principles involved; unfortunately, all delegations did not see eye to eye on how the desired objective should be reached.

Mr. Amoroso (Italy) said that his delegation had linked its proposal in favour of minimum total exposure of $0.3 million to a figure of 500 tons. Before continuing [376] discussions on the following Monday, it might be well to ascertain whether the Committee intended to link the question of minimum total exposure with that of tonnage.

The Chairman commented regretfully that the Committee would have great difficulty in coming to a decision by Monday evening. Although the issues still outstanding were few in number, they were particularly difficult because they were interconnected. She hoped that a spirit of compromise would continue to reign when the Committee embarked on its next discussions, and that the aim of the Conference would be kept in sight. The aim was to arrive at a Convention acceptable to a very large number of States.
Summary Record of the Twenty-first Meeting
15 November 1976

The Chairman announced that, following consultations with a number of delegations, a compromise proposal had been worked out aimed at producing a solution acceptable to a large number of delegations, and hence likely to result in a Convention which would be accepted and implemented by many governments. The proposal was contained in LEG/CONF.5/C.1/WP.82. She read out certain corrections to be made to the tables of figures, and informed delegations that the first four lines of the footnote and, consequently, Annex III, should be deleted. The assumptions on which the compromise was based were listed in the footnote to Annex I to the document. She invited comments on the compromise proposal.

Mr. Jeannel (France) thought there had been some misunderstanding as regards the second assumption. He had understood at the meeting of the compromise group that, because of its complexity, provision for spillover would not be included, although such a provision was included in the alternative text for Article 6 which his delegation had originally supported. Moreover, he was disappointed to see that, according to the figures in Annex I, the ratio between personal claims and property claims was no longer that given in the alternative text in LEG/CONF.5/WP.1. That was all the more regrettable if there was to be a spillover of personal claims to property claims, and would make the proposal more difficult for his delegation to accept.

Lord Diplock (United Kingdom) speaking as participant in the compromise group, said that the proposal had been worked out on the basis of the 1957 system, which involved a spillover.

Obviously, the compromise proposal did not represent what any single delegation had wanted: it was the result of give and take on all sides.

Mr. Philip (Denmark) said that, if the Conference was to produce an acceptable Convention, the time had now come for delegations to compromise on their previous positions. He considered that the compromise proposal represented a reasonable

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(46) See Appendix I/E.
(47) The alternative text of Article 6(1) and (2) of the Draft Articles was the following:

THE LIMITS OF LIABILITY FOR CLAIMS OTHER THAN THOSE MENTIONED IN ARTICLE 7 SHALL BE:
(a) in respect of claims for loss of life or personal injury, the total of an amount of [K] Units of Account multiplied by the first [X] tons of the ship’s tonnage and [L] Units of Account multiplied by the tonnage in excess thereof, but in any case at least 300 [K] Units of Account;
(b) in respect of any other claims, the total of [M] Units of Account multiplied by the first [X] tons of the ship’s tonnage and [N] Units of Account multiplied by the tonnage in excess thereof [but in any case at least 300 [M] Units of Account];
provided that in cases where the portion under sub-paragraph (a) is insufficient to pay the claims in full, the unpaid balance of such claims shall rank rateably with claims under sub-paragraph (b).
3. For the purpose of this Article, the limit of liability for any salvor not operating from a ship shall be calculated by reference to the tonnage of the ship to which salvage services are being rendered, but shall in no case be less than [F] Units of Account and not more than [G] Units of Account.
4. For the purpose of this Article the ship’s tonnage shall be the gross tonnage calculated in accordance with the tonnage measurement rules contained in the International Convention on Tonnage Measurement of Ships, 1969.
balance between the many views which had been expressed, and that it was the best which could be achieved.

His understanding of the agreement in the compromise group was that, as the 1957 system was one of the basic assumptions underlying the proposal, claims in respect of damage to harbour works would be included in the limitation figures; according to the third assumption, however, it remained an open question. His delegation considered that regrettable, as it felt that harbour works should be included, but it would accept the possibility of reservation as regards wreck removal.

Mr. Herber (Federal Republic of Germany) expressed his delegation’s [378] gratitude to those who had worked out the compromise proposal. He considered that it provided a satisfactory way of resolving the differences of opinion, and was ready to accept it.

His delegation was, however, concerned that the method of calculation was somewhat difficult; but recognized that, of the various proposals made, it was not the most complicated. As regards its economic effect, the minimum amount for property claims was rather low, especially if harbour works were to be included. As a compromise, however, it was in favour of solving the question mentioned in the third assumption by permitting a reservation.

Mr. Amoroso (Italy) said that, although his delegation considered that some of the figures were rather high, it was prepared, in a spirit of co-operation, to accept the compromise solution so that a consensus could be reached.

Mr. Helaniemi (Finland) said that his delegation could accept the compromise proposal.

Mr. Wiswall (Liberia) said that his delegation had not had time to study the proposal thoroughly, but supported the basic assumptions except that it considered that there should be no reservation as regards wreck removal.

Mr. Nair (India), speaking as a member of the compromise group, appealed to the Committee to support the proposal. The figures were higher than those which his delegation had originally felt able to accept, but it had accepted them in order to achieve a compromise. He hoped that others would do the same.

Mr. Filipovic (Yugoslavia) said that, although the figures were higher than those originally contemplated by his delegation, it was prepared to accept the compromise proposal. As regards the third assumption, his delegation was not happy to see reservations allowed in respect of wreck removal, but would support the provision. As the compromise proposal appeared to be the only way in which the Conference could reach a successful outcome, it should be adopted.

Mr. Tanikawa (Japan) said that his delegation, while appreciating the compromise proposal, still had difficulty in accepting some of the figures. It also had difficulty in accepting the principle of unbreakability in Article 4. At the present stage he could not commit his Government, but would try to contact his authorities and hoped that by the next day he would be able to accept the proposal.

Mr. Makovsky (USSR) said that, like the Indian delegation, his delegation had accepted higher figures than it had wanted. He had participated in the compromise group, considered the proposal satisfactory and urged delegations to accept it. His delegation’s only difficulty was that, in view of the high level of liability proposed, it maintained its views that damage to harbour works should also be covered and was not in favour of allowing reservations on that point. The most his delegation could accept as regards damage to harbour works was that it should have priority within the property damage claim.
Mr. Bendjenna (Algeria) said his delegation was prepared to accept the proposal in a spirit of compromise. He urged other delegations to do likewise.

Mr. Nada (Egypt) said that his country was a Party to the 1957 Convention which allowed for the possibility of reservations regarding claims in respect of damage to harbour works, basins and waterways. He supported the principle of the inclusion of a similar reservation in the present Convention, since it would thereby be rendered more acceptable to poorer countries, which tended to be more representative of the interests of claimants than of those of shipowners.

Lord Diplock (United Kingdom) said that his delegation wholeheartedly supported the compromise proposal. In his view it represented the only hope of a successful conclusion to the Conference.

Mr. Tardana (Indonesia) said that his only difficulty in accepting the proposal was in regard to the third assumption in so far as it related to claims in respect of damage to harbour works. His delegation believed that reservations with regard to such claims should be allowed in the Convention.

Mr. Goh Thean Hock (Singapore) said that he supported the compromise proposal and would also be in favour of allowing reservations in respect of damage to harbour works.

Mr. Bentein (Belgium) also supported the proposal and believed that a reservation regarding claims in respect of damage to harbour works should be included.

The Chairman said that, before reaching a firm decision on the proposal, the Committee should first settle the question of reservations regarding damage to harbour works. She called for a definite vote on that question.

There were 19 in favour of reservations in respect of claims for damage to harbour works, 16 against and 5 abstentions.

The Chairman suggested that the Committee should proceed to an indication of preferences on the compromise proposal as a whole.

Mr. Jeannel (France) could not accept the compromise proposal in its present form, and would need to seek instructions from his Government before voting. In particular, the first assumption, relating to Article 4, required clarification.

Mr. Makovsky (USSR) did not think it advisable for a vote to be taken on the proposal at the present stage. It would be better first to try to reach a compromise on the problem of claims in respect of damage to harbour works, either by according priority to such claims, or by allocating a particular sum to be used for that purpose. Such a compromise might make it possible for those delegations which had doubts on that point to adopt the proposal as a whole.

Mr. Lyon (Canada) also preferred not to proceed to a vote on the proposal at that stage. He suggested that the vote be deferred to allow delegations time to obtain instructions from their governments.

Mr. Ptak (Poland) pointed out that the figures produced by the compromise group, and set out in the Annexes to LEG/CONF.5/C.1/WP.82, had been worked out on the assumption that claims in respect of damage to harbour works would be

(48) See note 46.
included in the Convention without the right of reservation; that assumption was
indeed shared by his delegation. Although the vote that had just been taken indicated
a general acceptance of the principle of allowing such reservations, a two-thirds
majority would be needed if that principle were to be formally adopted by the Plenary.
His delegation could agree to inclusion of reservations regarding claims in [380]
respect of wreck removal, and was also prepared to accept the fourth assumption,
relating to vessels of less than 300 tons.

The Chairman said that she understood the reluctance of delegations formally to
commit themselves on the proposal before they had had time to consult their
governments. However, it would be useful at least to have an indication of preferences
regarding assumptions (1)-(4), so that a definitive vote could be taken the following day.

Mr. Makovsky (USSR) said that, since there seemed to be a large measure of
support for the proposal, an indicative vote was not necessary.

Lord Diplock (United Kingdom) said that it appeared that the obstacle in the
way of acceptance of the proposal was the third assumption as it related to harbour
works. When the subject had been discussed in the compromise group, it had been
proposed that claims in respect of damage to harbour works should be included in the
Convention, because such damage was readily insurable, but that claims regarding
wreck removal should be excluded, because damage of that type was almost
uninsurable. An alternative proposal, which had commanded some support, was that
priority should be given to claims in respect of damage to harbour works, while
keeping within the limitation. He suggested that delegations might consider the latter
proposal a possible solution to the difficulty.

Mr. Jeannel (France) endorsed the views expressed by the representative of the
USSR. He suggested that the vote should be deferred until the following day.
It was so decided.

Summary Record of the Twenty-second Meeting
16 November 1976

[381] The Chairman recalled that at its previous meeting the Committee had voted
on the question of adopting a reservation clause authorizing States to exclude claims
in respect of damage to harbour works. That proposal had been approved, but not by
the two-thirds majority required under the Rules of Procedure of the Conference. In
the interval, consultations had been held for the purpose of finding a compromise
solution acceptable to the greatest possible number of delegations, and two proposals
had now been framed – one by the representative of Norway and the other by the
representative of the United Kingdom.

She therefore suggested that the authors of those proposals should be asked to
submit them. An indicative vote would then be taken on the two proposals together
with the proposal put forward the previous day. Each delegation could of course give
its views on each of the proposals, which would not be mutually exclusive. After the
three indicative votes, a definitive vote would be taken on the proposal that had
received the widest support.

Although that would mean departing from the provisions of the Rules of
Procedure, she hoped that the Committee could approve that course.

Mr. Amoroso (Italy) considered that the procedure suggested by the Chairman
would involve the risk of weakening the position of those delegations that questioned
the desirability of a reservation clause, by creating division among them: they would be asked to opt either for the United Kingdom proposal or for the Norwegian proposal, both of which were designed to by-pass a reservation clause.

The proper action would be to put the two proposals to the vote together, and to determine whether the Committee was or was not in favour of a reservation clause. The discussions would be side-tracked if the reservation clause were voted upon without its first being ascertained whether the Committee was in fact in favour of the very principle of a reservation.

Mr. Makovsky (USSR) endorsed the views of the Italian representative. The procedure suggested by the Chairman was one that might lead to confusion, whereas the situation had changed since the previous day thanks to the efforts made to find a compromise solution based on the recognition of some form of priority for claims for damage to harbour works. The Committee must not now let slip that possibility of compromise. One of the two proposals before the Committee came from a delegation which had voted in favour of a reservation clause at the previous meeting; and that indeed showed that a compromise was possible. The Soviet delegation had no marked preference for either of the proposals.

Mr. Azouz (Tunisia) also agreed with the Italian representative. The Committee must return to the question of whether or not it wished to include a reservation clause, and take an indicative vote. If the vote was negative, the proposal to include a reservation clause would be eliminated and the Committee would then go on to consider the United Kingdom and Norwegian proposals.

Mr. Tardana (Indonesia) was in favour of the procedure suggested by the Chairman.

Mr. Philip (Denmark) was also in favour of that procedure, especially since delegations opposed to reservations would be able to vote in favour of the United Kingdom proposal as well as in favour of the Norwegian one.

[382] The Chairman confirmed that that was correct, and called for a vote on her proposal concerning voting procedure.

The proposal was adopted (28 votes in favour, 1 against and 10 abstentions).

Mr. Selvig (Norway) introduced the text that his delegation wished to be added at the end of paragraph 1 of the alternative text for Article 6. The text had been drafted to take account of the fact that the mode of assessment of the situation with respect to damage caused to harbour works varied considerably from one country to another. Some countries considered that claims arising from such damage should be given preferential treatment, and others that they should be treated on the same footing as all other property claims. His delegation believed it impossible to arrive at a unified solution applicable internationally. Once a limitation fund had been constituted, it should rest with each State to determine the priority to be granted to the various kinds of property claims, and the proportion of the fund to be allotted to each claim, on the understanding that if there were an unpaid balance of personal claims, such claims should have priority over property claims of whatever kind. That protection for personal claims was the first advantage of the Norwegian over the United Kingdom proposal. The second advantage was that the Norwegian proposal was not of a mandatory nature and, since it refrained from a predelimitation of the amount to be set aside for claims in respect of damage to harbour works, it left States free to determine the proportion that they deemed appropriate. Lastly, the amount proposed by the United Kingdom delegation would represent an excessively high percentage of
a limitation fund set up for property damage caused by a low tonnage ship, for it could amount to as much as 50 per cent of the fund.

Lord Diplock (United Kingdom) introduced his delegation’s proposed amendment to the alternative text for Article 6, which had just been distributed.

The proposal met the wish for a compromise solution taking account of the views of delegations that questioned the desirability of providing for reservations or priorities. The proposal was that, in cases where there were claims in respect of damage to harbour works, basins and navigable waterways, such claims should have absolute priority up to a first segment of $100,000 and should then rank rateably with other claims for damage to property. Hence, claims for personal injury could not spill over into that first segment, but, as an offset, the limitation amounts fixed for such claims would be substantially increased.

A special problem arose in respect of low tonnage ships which might nevertheless cause considerable damage in relation to the total size of the fund. That was why a larger proportion of the fund had been reserved for claims for damage to harbour works, basins and navigable waterways in the case of small ships.

The solution submitted to the Committee in those terms guaranteed assured and total cover, and that was a factor of considerable benefit, especially in evaluating the cost of insurance – that advantage being shared, incidentally, by the Norwegian proposal. Furthermore, it permitted the establishment of a uniform system throughout the shipping community, and a guarantee that in every case part of the fund would be available for other claims and an end to the practice of seeking the tribunal offering the best advantage, with the element of uncertainty which that always added.

The United Kingdom delegation hoped that its proposal would be approved by a large majority; but if that were not the case, it would vote in favour of the Norwegian proposal.

[383] The Chairman invited the Committee to indicate their preferences with regard to the three proposals before them.

The Norwegian proposal was approved (24 votes in favour, 11 against, and 6 abstentions).

The United Kingdom proposal was approved (21 votes in favour, 15 against, and 6 abstentions).

There were 16 votes in favour of the proposal to allow States to make reservations with respect to claims for damage to harbour works, 20 against and 5 abstentions; the proposal was rejected.

The Chairman noted that the Norwegian proposal had the widest support.

Mr. Ptak (Poland) proposed that in view of the result of the provisional vote just taken, a slight amendment of an indicative nature should be made to the Norwegian proposal, so as to permit the insertion of the main points contained in the United Kingdom proposal. That could be done by adding the words “... in no case exceeding US$ 100,000” at the end of the text suggested by the Norwegian delegation.

There were 3 votes in favour of the Polish proposal, 9 against and 23 abstentions; the proposal was rejected.

The Chairman put to the vote the proposal by the Norwegian delegation.

The Norwegian proposal was approved (26 votes in favour, 11 against and 6 abstentions).

Mr. Amoroso (Italy) suggested a drafting amendment to the text which had just
been given approval as to its substance. The words “..., totally or partially, ...” should be inserted in order to qualify the priority given to claims for damage caused to harbour works with a view to indicating to the legal authorities that it would be undesirable to provide for a total reservation in that respect.

Mr. Jeannel (France) appreciated the point exercising the mind of the Italian representative, but noted that under the terms of the Norwegian text the priority in question would be defined by the laws of the State concerned, which would thus remain completely sovereign in the matter.

The Chairman suggested that the Italian representative leave that point at the present stage of discussions and take it up later if he deemed it necessary after consultation with his colleagues.

Mr. Nada (Egypt) said that his delegation had voted in favour of inserting into the Convention a reservation clause, the principle of which would be compatible with the provisions contained in the 1957 Convention. The proposals by the delegations of Norway and the United Kingdom departed from that principle, to the regret of his delegation, which had therefore found it necessary to vote against them.

The Chairman requested delegations to revert to the Note by the Secretariat (LEG/CONF.5/C.1/WP.82)\(^{(49)}\) concerning the limitation system in Articles 4 to 6 of the Convention; in particular she drew attention to Annex I containing proposals on limitation figures, with the reminder that those proposals were based on [384] the four assumptions given in the paragraphs in the footnote to that Annex.

She suggested that a vote should first be taken on the proposal in paragraph 3 to entitle States to make a reservation in respect of wreck removal.

Mr. Makovsky (USSR) saw no reason why a decision should not be taken on paragraph 3, but thought that all four paragraphs should then be put to the vote, since they together constituted a compromise solution.

Mr. Jeannel (France) said that paragraph 1, referring to Article 4, raised certain difficulties for his delegation, and it would therefore prefer first of all to ascertain whether – before voting on the whole of the footnote to Annex I – a compromise solution could not be devised for Article 4 on the basis of his delegation’s proposal in document LEG/CONF.5/C.1/WP.65.\(^{(50)}\)

Mr. Helaniemi (Finland) endorsed the statement by the USSR delegation to the effect that the four assumptions formed an entity on which the Committee should vote.

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\(^{(49)}\) See note 46.

\(^{(50)}\) Document LEG/CONF.5/C.1/WP.65
10 November 1976 [190]
Observation submitted by the delegation of France
Article 4 – Conduct barring limitation
Proposal to deal separately with tort claims for personal injury
With a view to harmonizing the wording in French and English of the last paragraph of document LEG/CONF.5/C.1/WP.59 and re-employing a formulation already used in an existing convention (Brussels Convention for the unification of certain rules relating to maritime liens and mortgages, 1967), the delegation of France wishes to propose the following re-wording of the said paragraph:
“2. However, in the case of claims based on tort and not capable of being based on contract, in respect of loss of life or personal injury occurring, whether on land or on water, in direct connexion with the operation of the vessel, the person liable shall not be entitled to limit his liability if it is proved that the loss resulted from his personal act or gross omission, though not from any fault.”
Mr. Perrakis (Greece) said that in order to avoid further loss of time, he was prepared to see the French proposal put to the vote, to be followed by a vote on all four paragraphs.

Lord Diplock (United Kingdom) concurred with the representative of the USSR that what was before the Committee was a compromise solution and that all four paragraphs should be submitted to the Committee together. However, he agreed with the suggestion that the French proposal should first be put to the vote without further discussion.

Mr. Unkles (Australia) was prepared to vote on the paragraphs taken as a whole, provided that his delegation’s proposal concerning Article 4 (LEG/CONF.5/C.1/WP20) was also taken into account.

The Chairman put to the vote the proposal by the French delegation to deal separately with tort claims for personal injury (LEG/CONF.5/C.1/WP.65). The proposal was rejected.

The Chairman then put to the vote the compromise solution contained in Annex I to the document on limitation figures (LEG/CONF.5/C.1/WP.82), including the assumption for the figures mentioned in the four paragraphs in the footnote. The compromise solution, including the four paragraphs, was approved (24 votes in favour, 2 against, and 14 abstentions).

Mr. Tanikawa (Japan), in explanation of his vote, said that the deletion of the words “gross negligence” in Article 4 raised serious difficulties for his delegation, which had therefore found itself in the unfortunate position of not being able to accept the text as a whole.

Mr. Bursley (United States) explained that his delegation had made no comment when the compromise solution had been presented; for although it had felt unable to give that solution positive support, it had nevertheless wished to enable the Committee to arrive at a consensus. However, to ensure that his delegation’s silence was not misconstrued, he wished to specify that the limitation figures were just above the unconscionable level.

Considering the differing viewpoints expressed by the delegations, he was happy to see that the Committee had reached a consensus. Nevertheless, his delegation felt

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(51) Document LEG/CONF.5/C.1/WP.20
2 November 1976 [153]
Proposal submitted by the delegation of Australia
Include the following words at the beginning of the existing text which would become paragraph 1:
“Subject to paragraph 2 of this Article”
and add the following paragraph:
“2. The master or a member of the crew of a ship shall be entitled to limit his liability in all cases unless it is found that:
(a) he is at the same time the owner, co-owner, charterer, manager or operator of the ship; and
(b) the loss resulted from his personal act or omission, committed in his capacity as the owner, co-owner, charterer, manager or operator and with the intent to cause such loss, or recklessly and with knowledge that such loss would probably result.

The principle contained in this proposed amendment is put forward regardless of the criteria finally adopted for barring limitation.

(52) See note 50.
(53) See note 46.
that the Committee should have accepted the fact that the figures were inadequate, rather than attempt to formulate compromises or priorities for harbour work claims which further burdened private claimants.

The Chairman agreed that it was never easy to assess whether a text which had been worked out would prove viable or not. It could at least be said that intensive efforts had been made to try to reach a compromise.

**Draft International Convention**

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 amounts in addition to those mentioned in (I):
            for tonnages from 501-3,000 tons, 500 Units of Account per ton;
            for tonnages from 3,001-30,000 tons, 333 Units of Account per ton;
            for tonnages from 30,001-70,000 tons, 250 Units of Account per ton; and
            for each ton in excess of 70,000 tons, 167 Units of Account,
   (B) In respect of any other claims,
      (i) 166,000 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 amounts in addition to those mentioned in (I):
            for tonnages from 501-30,000 tons, 167 Units of Account per ton;
            for tonnages from 30,001-70,000 tons, 125 Units of Account per ton; 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 unpaid balance of such claims shall rank rateably with claims mentioned under paragraph 1(B).

**Summary Record of the Twenty-sixth Meeting**

18 November 1976

[405] The Chairman invited the Committee to continue reviewing the text of the Drafting Committee’s report (LEG/CONF.5/C.3/1 and LEG/CONF.5/C.3/1/Add.1), in order to assess whether it faithfully reflected the substantive decisions which the Committee had taken.

[406] The present discussions, at that stage, in the Committee’s deliberations, should focus on questions of drafting, any substantive questions thenceforward being treated as matters to be raised at the Plenary Conference.
Article 6 – The general limits

Paragraph 1

Mr. Cleton (Netherlands), Chairman of the Drafting Committee, said that the present wording of that paragraph was not entirely satisfactory, for it could give the wrong impression that the Conference had defined the various classes of ships in accordance with their tonnage. The text could be interpreted, in fact, as signifying that for tonnages of 501 to 3,000 tons, the calculation had to be made on the basis of 500 Units of Account per ton, whereas for the first 500 tons the basis of calculation was 333,000 Units of Account; and the same observation applied, mutatis mutandis, to the other tonnages. He therefore proposed, with a view to clarifying the text, that the opening sentence of sub-paragraph (a)(ii) be worded as follows: “(ii) for a ship with a tonnage in excess thereof, the following amounts for such excess tonnage, in addition to those mentioned in (i)”. 

Mr. Bursley (United States) proposed that the phrase “for tonnages from...” be replaced by the words “for each ton between...and...”.

Lord Diplock (United Kingdom) suggested that the phrase “for each ton from...to...” be used and the words “per ton” be deleted. The wording would thus be “for each ton from...to...Units of Account”.

Mr. Nilsson (Sweden) supported that proposal.

That proposal was approved.

Paragraph 2

Mr. Tanikawa (Japan) recalled that his delegation had proposed an amendment (LEG/CONF.5/C.1/WP.46) designed to clarify the text of paragraph 2, but that the Drafting Committee had felt that the proposed addition served no purpose. His delegation regarded the text proposed by the Drafting Committee as still being ambiguous. It hoped that it would be specified in the Summary Record of the discussions that it was the Committee’s consensus that if the limit for property claims had not been reached by such claims, or if there were no such claims and the personal fund was not exhausted, there should be a spillover from the personal fund into the property fund.

Summary Record of the Twenty-seventh Meeting
18 November 1976

Mr. Douay (France) apologized for reverting to paragraph 1, but would like to replace the introduction to sub-paragraph (b) by the following: “with regard to all claims other than those mentioned in sub-paragraph (a)” so as to make it absolutely clear what was meant.

Mr. Makovsky (USSR) asked the Chairman whether she could repeat the interpretation given by the representative of Japan at the end of the morning session with regard to Article 6(2).

The Chairman explained that the Japanese proposal was to provide that claims for personal injury which had not been met completely from the fund established for
such claims would be met from the fund for damage to property, even if there were no property claims, or the total amount of the property claims did not exceed the limit for such claims.

Mr. Tanikawa (Japan) confirmed that that was the substance of his remarks.

Mr. Makovsky (USSR) said that that had been his understanding of the statement made by the representative of Japan, but feared that it was not in accordance with the standpoint of all members of the Committee. It was essential for that interpretation to be made clear, since the question was a delicate one. In some cases, especially where there was no property damage, it might well be that there would be no fund for property claims. That might lead to difficulties in implementing the provision.

[412] The Chairman recalled that the Japanese delegation had submitted a proposal (LEG/CONF.5/C.1/WP.46), which the Committee had merely forwarded to the Drafting Committee so that the latter could consider whether it should be included in the draft, or whether the draft already dealt with the issue adequately.

Lord Diplock (United Kingdom) thought that the English text of paragraph 2 was perfectly clear and should not cause any difficulties, any more than the equivalent provision of the 1957 Convention, from which it had been taken word for word and which had never given rise to any problems. When claims for personal injury exceeded the amount specified in sub-paragraph (a), they could be satisfied to the extent of the amount mentioned in sub-paragraph (b), whether there were claims for damage to property or not. The application of the provision did not depend on the establishment of a property fund. It merely established the limit to which the carry-over could be satisfied.

Mr. Selvig (Norway) agreed with the view expressed by the representative of the United Kingdom. He pointed out that the 1957 Convention provided for claims for damage to property or for claims for personal injury, or for both at the same time. It should be clearly stated in the text that the sum specified under sub-paragraph (b) was also available when there were no claims for damage to property. For that purpose, he proposed that the following should be inserted after the second line of the English version of paragraph 2: “...of such claims, shall be paid out of the portion under sub-paragraph (b) of paragraph 1 and”; the end of the paragraph would remain unchanged.

The Chairman asked the representative of Japan if he was willing to accept that proposal.

Mr. Tanikawa (Japan) replied in the affirmative.

Mr. Cleton (Netherlands) confirmed that the interpretation given by the Japanese delegation was shared by all the members of the Drafting Committee, and that he was able to accept the proposed wording.

Mr. Jeannel (France) said that he was unable to comment on the matter in the absence of any translation of the amendment proposed by Norway.

Mr. Lyon (Canada) pointed out that, in its present form, the text proposed by the representative of Norway implied that a fund existed; Article 6, however, dealt solely with limits of liability. It would therefore be advisable to adopt a different wording.

Mr. Selvig (Norway) thought that the reason for the amendment was clearly understood; he had no objection to its redrafting.

(55) See note 34.
Mr. Makovsky (USSR) regretted that he could not let the matter drop, but in his view it was one of vital importance and had to be clearly decided. It was not clear from the text that the intention was to allow a fund constituted to meet claims for damage to property to be used for settling claims for personal injury. Furthermore, no limit was given of the extent to which unsatisfied personal claims could claim in the property fund.

Mr. Iturralde (Argentina) also suggested that the problem of the fund should be discussed in connexion with Article 11, which concerned the constitution of the fund, and not Article 6, which dealt with the limits and in which the fund was not mentioned.

Mr. Selvig (Norway) referred to the second hypothesis in document LEG/CONF/5/C.1/WP.82, which had been approved by the Committee; that clearly referred to the 1957 system. The problem was a simple one: in the absence of claims for damage to property, the amounts mentioned in sub-paragraphs (a) and (b) were available to meet claims for personal injury; if both types of claims existed together, they would be treated equally. The problem could be settled by a simple drafting change.

Mr. Bentein (Belgium) agreed that certain points needed to be clarified. In his view, however, if a single fund system was envisaged, into which all the amounts mentioned in sub-paragraphs (a) and (b) were paid, no problem would arise. If, in contrast, constitution of a fund was not compulsory, the suggestion made by the representative of Norway was then fully justified.

Mr. Bursley (United States) suggested an amendment which, in his view, would settle the problem. The following should be inserted after the words “in full” in the second line of paragraph 2: “…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...”; the end of that sentence was the third line of the paragraph, which would remain unchanged.

Mr. Philip (Denmark) said that he was able to accept the other proposals that had been introduced, but wondered whether the simplest approach might not be to amend the introductory sentence of sub-paragraph 1(b) to read: “in respect of claims of the kind mentioned under (a) but exceeding the limit established there and any other claims”. Paragraph 2 could then be deleted.

The Chairman, after the representatives of Norway and Denmark had agreed to withdraw their proposals, put to the vote the amendment proposed by the representative of the United States.

The amendment was approved (32 votes in favour, none against, and 7 abstentions) and paragraph 2 was amended accordingly.

Plenary Meetings
Summary Records of the Fourth Plenary Meeting
18 November 1976

[479] Ms. Blom (Sweden) drew attention to the second paragraph of item 5 of (LEG/CONF/5/WP.9) which referred to a textual amendment to the French text only of

(56) See note 45.
(57) Item 5 of LEG/CONF/5/WP.9 (Report of the Committee of the Whole) is quoted below:

[479] 5. Article 6,1(a)(ii) and (b)(ii)
Article 6, 1(b), which the Committee of the Whole had not discussed. She was afraid it might be misinterpreted, as it only appeared to refer to paragraph 1(a) and not to exclude the claims referred to in Article 7.

Mr. Jeannel (France) said that the French text was quite clear and could not be interpreted as referring to Article 7.

Mr. Herber (Federal Republic of Germany) drew attention to what appeared to be an error in paragraph 1(b)(i) where the figure of 166,000 Units of Account was given. On the basis of the method of calculation set out in LEG/CONF/5/C.1/WP.85, the actual figure should be 166,666. Alternatively, he wondered whether it should not be rounded up to 167,000 as had been done in paragraph 1(b)(ii) where 166.66 had been rounded up to 167 Units of Account. Although in Article 7 the relevant figure of 46,666 had not been rounded up, that was because of the necessity of bringing it exactly into line with the Athens Convention.

Mr. Crone (Australia) supported the proposal that the figure of 166,000 should be rounded up to 167,000.

Mr. Whitaker (United Kingdom) also supported that proposal. He also pointed out that, in LEG/CONF/5/WP.9, the reference to Article 6,3 at the bottom of page 447, the phrase quoted should read “such priority over other claims...” instead of “...the claims...”.

The President said that the word “the” would be replaced by the word “other”.

Mr. Nair (India) proposed that, in paragraph 3 of Article 6, the words “and aids to navigation” should be added after “waterways”. The purpose of his proposal was to include lighthouses, buoys and other aids to navigation in the scope of application of the Convention.

The proposal to round up the figure of 166,000 to 167,000 in Article 6,1(b)(i) was adopted (28 votes in favour, 1 against, and 9 abstentions).

The President noted that the proposal made by the Indian representative had been duly seconded.

[480] The Indian proposal was adopted (25 votes in favour, 3 against, and 10 abstentions).

Mr. Bentein (Belgium) said that, in view of the adoption of the Indian proposal, a consequential change should be made in Article 2,1(a) by adding the same words to the list contained in parenthesis therein.

It was so decided.
Mr. Nada (Egypt) requested a separate vote on paragraph 3 of Article 6. He would vote against it as it was a departure from the provisions of the 1957 Convention, and his delegation did not consider that conceding priority to national laws to regulate the claims referred to afforded sufficient protection in view of the low limit for claims other than those for loss of life and personal injury.

Paragraph 3 of Article 6 was adopted (20 votes in favour, 3 against, and 9 abstentions).

1976 Convention

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 Accounts;

   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).
Article 6 - The general limits

Paragraph 3

Diplomatic Conference
Committee of the Whole
Summary Record of the Fourth Meeting
3 November 1976

[230] Mr. Lyon (Canada) (…) [231] The inclusion of damage to harbour works, basins and waterways was subject to resolution of the question of the right to enter reservations in respect of those items.

The Chairman asked whether any delegation would second the Canadian proposal.

Having received no support, the Canadian proposal (LEG/CONF.5/C.1/WP.9) was rejected.

The Chairman, in connexion with the Canadian representative’s reference to reservations, drew attention to the comments by Australia, the Federal Republic of Germany and New Zealand (LEG/CONF.5/4 and Addenda)60 and to the United States proposal (LEG/CONF.5/C.1/WP.11).61 She suggested that the Committee now

(60) These comments are quoted below:

Australia
Document LEG/CONF.5/4 [68]
Australia’s attitude to the inclusion of claims in respect of damage to harbour works, basins and waterways and in respect of the raising, removal, destruction or the rendering harmless of a ship and its cargo will depend on the limitation amounts prescribed in Article 6 of the Convention.

Federal Republic of Germany
Document LEG/CONF.5/4 Add. 1 [104]
Article 2, paragraph 1(c) – Liability for Damage to Harbour Works, Basins, and Navigable Waterways.

In principle, the Federal Government agrees to the provision of the Draft according to which liability for damage to harbour works, etc. is to be subject to the general rules on the limitation of liability. It is of the opinion, however, that corresponding to paragraph 2 of the Protocol of Signature to the 1957 Convention a reservation should be provided permitting contracting States to regulate these kinds of damage by provisions of national law in derogation of the rules of the Convention. On the basis of such a reservation clause, the contracting States could enact provisions that take better account of the special burdens upon the public budgets by the often great damage caused to harbour works.

New Zealand
Document LEG/CONF.5/4 Add. 3
Article 2

Article 2 is generally acceptable to the Government of New Zealand. However, it is thought that consideration should be given to including a right of reservation in respect of liability for damage to harbour works, basins and waterways. New Zealand domestic law at present confers unlimited liability in relation to such damage and the New Zealand Government would wish to see that principle preserved in the Convention.

(61) LEG/CONF.5/C.1/WP.11
2 November 1976 [147]
Proposal by the United States delegation
Article 2(1)(a)
If limitation amounts under Article 6 are not sufficient, the United States delegation will propose that claims for damage to bridges, and for damage to harbours and works, basins and waterways, be moved to Article 3 as claims not subject to limitation.
consider the question of whether reservations relating to claims concerning damage to harbour works, basins and waterways should in principle be permitted or not, or whether such claims should be excluded from the scope of application of the Convention. She emphasized that although the decision would be a preliminary one, it was necessary to have some indication on that point since the amounts to be inserted in Article 6 would depend on the decision. It would still be possible to return to that question at a later stage.

Mr. Bursley (United States) thought it clear from the United States proposal that his delegation’s attitude to the question was linked with the nature of the funds available under Article 6. He appreciated the Chairman’s reasoning, but the reverse also held good, his own and a number of other delegations had already suggested that Article 6 should be considered early on. It would be difficult to try to solve the problem at the present stage; and without a clear understanding of what Article 6 might provide, his delegation would have to consider the possibility of a reservation in respect of Article 2. That would not, of course, be necessary if the funds provided under Article 6 were sufficient.

Mr. Hermes (Australia) endorsed the previous speaker’s views. If there were at least an indication of the figures likely to be inserted in Article 6, he would feel freer to discuss the question of reservations. If the issue were pursued without such an indication, he might feel compelled to propose the inclusion of a reservation clause which might, when Article 6 was dealt with, prove unnecessary.

The Chairman pointed out that a start had to be made somewhere and that it seemed logical to start with the question of whether claims for damage to harbour works should be subject to limitation or not. It could well be argued that no one could take a stand on the figures until it was known whether the limitation amounts should cover that kind of damage or not.

Mr. Popp (Canada) said that his delegation was in the same position as the United States and Australian delegations. There were several proposals which depended on the figures to be included in Article 6, and it would be more logical to decide on those figures first. He proposed a preliminary exchange of views of the funds to be provided in Article 6.

Mr. Bendjenna (Algeria) was not in favour of the right to enter reservations in respect of liability in respect of claims under paragraph l(d) of Article 2. In his view, liability for that type of claim should be regulated by general law relating to limitation of liability. He also pointed out that liability for wreck removal might be dealt with in a future convention on that subject.

Mr. Selvig (Norway) agreed with the Algerian representative’s view that, in principle, it was desirable for that type of liability to be subject to limitation. Since the United States, Australian and Canadian delegations did not object in principle to the inclusion of such claims in the limitation system and since discussion of the relevant figures would be based on their inclusion there seemed to be no reason why a preliminary decision should not be taken in that regard.

The Chairman explained that what she had had in mind was a preliminary indication of preferences. Representatives would be free to revert to the question of reservations, and the provisions of the Rules of Procedure governing the reconsideration of issues would not apply. A tentative decision was necessary in order to facilitate discussion of Article 6.

Mr. Herber (Federal Republic of Germany) agreed with the Chairman on the
relationship between the two articles and on the need for a preliminary decision on the question of reservations. The advantage of a Committee of the Whole was that everything it submitted to the Plenary would be preliminary. As a result of the general debate, in which a number of delegations had referred to the likelihood of a liability limit of at least double the limit in the 1957 Convention, the Conference now had some idea of the approximate levels envisaged. His own preference would be to exclude damage to harbour works from limitation: many countries would have difficulty in ratifying the Convention if it were included. He would, however – if that was the wish of the majority – support the inclusion, but only subject to the possibility of a reservation as in the case of the 1957 Convention. His own and other countries ratifying that Convention had entered reservations because of their unwillingness to be bound, but had in fact applied the limitation in practice. The possibility of entering reservations would remove uncertainty and would ensure that there was no need to revise the Convention at a later stage in the light of unfortunate experiences because account could be taken of developments while still complying as much as possible with the Convention.

Mr. Jeannel (France) said that in principle his delegation did not favour a limitation of liability for damage to harbour works and for wreck removal. In view of the attitudes of other delegations, however, and in an effort to find a compromise, his delegation had submitted a proposal placing claims in respect of damage to harbour works next in priority to claims in respect of loss of life and personal injury under Article 6 (LEG/CONF.5/4, page 13). If the proposal were accepted and the amounts in Article 6 were adequate, his delegation would not insist on a provision for reservations. The problem of wreck removal, which was connected with the problem of damage to harbour works, should be dealt with in the present Convention: the proposed convention on wreck removal, to which reference had been made, had not been elaborated yet and no one knew what it would contain.

Mr. Nair (India) supported the United States proposal (LEG/CONF.5/C.1/WP.11) and proposed that claims under sub-paragraphs (d) and (e) of Article 2(1) should also be transferred to Article 3. As an alternative, he would support the proposal of the Federal Republic of Germany. Governments should have the right of reservation in respect of limits of liability for removing wrecked or sunken ships, damage to harbour works, basins and waterways, and to navigation aids and bridges.

Mr. Bentein (Belgium), referring to the United States proposal (LEG/CONF.5/C.1/WP.11), said that his delegation had always advocated avoiding reservations and maintaining the principle of uniformity of rules. His Government had ratified the 1957 Convention but had not made use of the reservation clause. In principle, his Government was in favour of including the claims under discussion in the limitation of liability. The French delegation has suggested a useful compromise. Failing satisfaction on that proposal and on the amounts to be inserted in Article 6, his delegation, too, would be compelled to reconsider the question of reservation.

Mr. Makovsky (USSR) said that while the Algerian representative had made an interesting proposal, he doubted its feasibility in view of the uncertainty over the outcome of work on a convention on wreck removal.

With regard to the question of reservations under the present Convention

(62) See note 61.
regarding claims in respect of damage to harbour works and wreck removal, the situation had greatly changed in the past twenty years. Contracting Parties to the 1957 Convention had had the right to enter reservations regarding application of the Convention’s rules to the claims in question but the present draft Convention covered a far wider range of items for which claims might be subject to exemption from the Convention. The position needed very careful consideration, since public interest was involved. He believed that the Convention should cover the possibility of exemption in respect of claims for damage to harbour works and of reimbursement of the cost of raising and removing wrecks. The proposal in the footnote to Article 6 merited serious consideration as a possible compromise in the present situation.

Mr. Wiswall (Liberia) said that conventions with reservations were less likely to enter into force than conventions without reservations, particularly in the maritime field. A convention was intended to reflect agreement between parties; but to the extent that it included reservations, it reflected disagreement. For those reasons his delegation was opposed in principle to reservations, and it would do its best to seek some other solution which would satisfy those delegations which had expressed the intention of making them.

Liberia was firmly opposed to the exclusion of wreck removal claims from limitation. A public authority seldom gave unlimited right of recovery to shipowners when, for example, a pilot had seriously damaged a vessel; the loss was usually borne by the hull underwriters. It was inequitable, if a vessel was lost in the approaches to a harbour, that the port authority – the body which most benefited from having the fairways clear – bore no responsibility for clearing them. It should be remembered that the terms of limitation of liability under discussion went far beyond any previously envisaged by a conference. He did not share the view expressed by some delegations that public authorities should be more favoured than private parties in that respect. He favoured the retention of sub-paragraphs (c), (d) and (e) of Article 2(1) and opposed the suggestion that they should be transferred to Article 3.

Mr. Sim Mong Soo (Singapore) expressed his delegation’s opposition to a limitation of liability in respect of claims for damage to harbour works, basins and waterways, or for claims in respect of wreck removal. Claims by port authorities should be treated differently from other claims, because they were financed by public funds, and because the proper maintenance of ports was of paramount importance to shipping throughout the world.

Singapore had acceded to the 1957 Convention in 1963, and had found that the Convention’s provisions regarding claims in respect of damage to harbour works were inadequate.

If it were not possible for the Conference to agree to exclude such claims from the limitation of liability, Singapore would wish to make a reservation in that regard.

Mr. Amoroso (Italy) said that his delegation had no liking for reservation clauses, which it felt would weaken the Convention. Although it could give support to the United States proposal to exclude claims for damage of that type from limitation, it would prefer the compromise solution suggested by the French delegation – namely, that a secondary priority should be given to claims for such damage under Article 6, following the first priority given to claims for personal injury.

Mr. Bondoni (Argentina) also favoured avoidance of reservations in the interests of achieving international uniformity in the application of the Convention. He supported the views expressed by the delegations of Belgium and Italy.
Mr. Herber (Federal Republic of Germany) was hesitant to accept the French proposal for a preferential ranking of ports’ claims within the fund. The choice in fact lay between including or excluding damage to harbour works, basins and waterways, and anything outside that choice amounted to a reservation. As had been pointed out by the USSR delegation there might at some future date be a Convention on wreck removal, and it would be useful to include a reservation in the present Convention to avoid possible conflict with that future convention. The French proposal would benefit port authorities to the detriment of other creditors where property claims were concerned, and that was unacceptable. If damage to harbours were excluded from limitation, as proposed by the United States, it would be to the detriment of the shipowner. It would be better if claims for damages to public works of all kinds were taken out of the Convention altogether with a view to their inclusion in a possible future convention.

Mr. Vonau (Poland) agreed with the Italian delegation that reservations tended to weaken the force of a convention. The proposal to extend the priorities included under Article 6(2) had received some measure of support, and he was prepared to endorse it, on condition that first priority was given to claims involving human life and that claims regarding harbours and works should have a lower priority.

Mr. Trotz (German Democratic Republic), while welcoming the possibility of making reservations to the Convention, saw the advantage of a compromise solution such as that proposed by France. However, if claims relating to harbour damage and wreck removal were to have priority under that compromise solution, other property claims would be at a disadvantage. That problem might be overcome by dividing the fund for property claims into two parts, one for claims relating to damage to harbour works and the like, and one for all other property claims.

Mr. Perrakis (Greece) submitted that whereas in conventions of a political nature the inclusion of reservations was to be encouraged in the interests of the attainment of peaceful coexistence between nations, in technical conventions they were not acceptable because the objective was uniformity. His delegation supported the principle of unbreakable limits because of the variety of interpretations given by different countries, making it impossible for underwriters or owners to forecast whether or not the limitation would be applied. He pointed out that most major damage to port installations and works occurred to the exclusion of any other type of damage, such as personal injury. It was appropriate that such damage should be covered by a fund which would be separate from that established for private property. Most property was insured, and the cost of claims would be borne by underwriters without the need for subsidies from owners or taxpayers.

His delegation felt the best solution was the compromise proposed by the French delegate, whereby priority would be given to claims involving harbour installations in cases where public authorities needed to recover the costs of a catastrophic incident.

Mr. Selvig (Norway) saw the essence of the question under discussion as being the function to be performed by a global limitation system. If such claims were to be excluded, it did not mean they would not have to be insured, but rather that they would have to be insured on an unlimited basis. He feared that such a measure would have an effect on the overall limits applicable in all cases. However the French proposal would have the most detrimental effect on the overall limit and the interests of other claimants. Both the United States proposal and the French proposal were means of giving preference to those claims, and his delegation would prefer the latter inasmuch as a transfer to Article 3 would create too much uncertainty.
Mr. Bendjenna (Algeria) wished to clarify a point he had made in an earlier intervention. He was not in principle opposed to the inclusion of claims for wreck removal in the present Convention, but felt that such claims should be subject to limitation of liability in the same way as the claims referred to under Article 2(1)(c).

The Chairman said that the discussion had been useful in providing the basis for a tentative conclusion on how to treat claims for damage to harbour works, basins and waterways. Although many delegations had also touched on the question of wreck removal, for the present the debate should be considered as applying only to the former type of claim. Those supporting the two proposals put forward had given different reasons for their support: in some cases support was dependent on the limitation amounts to be included in Article 6, and in others support was given irrespective of the content of Article 6. However, since all that was needed at the present stage was a general indication of the preference of the conference, there was no need to make any distinction regarding the reasons for the views expressed. She proposed that an indicative vote be taken on the following four points:

1. Was the Committee in favour of excluding from the Convention claims for damage to harbour works, basins and waterways?
2. Was the Committee in favour of providing for a clause permitting reservations in respect of such claims?
3. Was the Committee in favour of including such claims in the Convention and giving them priority, within the scope of Article 6?
4. Was the Committee in favour of including such claims and treating them equally with other property claims?

Mr. Jeannel (France) thought it premature for representatives to be asked to take a decision on those questions, particularly when Article 6 had not yet been discussed. He pointed out that his delegation’s own proposal for Article 6 had received a wide measure of support as an acceptable compromise. To take a vote now would be to prejudge the position regarding Article 6.

The Chairman suggested that in that case delegations might prefer to make a choice between total exclusion and possible exclusion by means of reservations, firstly without reference to the ultimate content of Article 6, and secondly on the assumption that Article 6 would provide for adequate limits of liability, with or without the inclusion of the concept of a priority for those claims.

Mr. Cleton (Netherlands) expressed a preference for the Chairman’s initial suggestion, that the Committee be asked to decide on four main issues. The Committee should avoid delaying all its decisions on claims until after Article 6 had been discussed; he personally would prefer to have some indication of delegations’ views on the subject of claims before proceeding to decide the very difficult question of amounts.

Mr. Amoroso (Italy) also supported the Chairman’s first suggestion, although he did not think it entirely appropriate to proceed to a vote at the present stage. It would be better for the Committee to express a preference for one of the four issues presented.

Mr. Crook (United States) preferred the Chairman’s second suggestion. He shared the concern of the French delegation that the Committee should not prejudge the issue of Article 6.

The Chairman said that, in view of the opinions expressed, she would not ask for a vote on each of the questions she had posed, but would ask delegations to indicate by a show of hands which one of the four proposed solutions they preferred.
Mr. Perrakis (Greece) doubted whether the indication of a preference would be more conclusive than a vote on each of the four questions. Moreover, it would be helpful to know how delegations viewed each of the possibilities. His delegation would have difficulty in deciding whether to show preference for the third or fourth question.

The result of the show of hands was as follows:
1. Those favouring the total exclusion from the Convention of claims for damage to harbour works, basins and waterways 6
2. Those preferring the inclusion of a reservation clause concerning such claims 7
3. Those favouring the inclusion of such claims and giving them priority, within the scope of Article 6 12
4. Those favouring the treatment of such claims equally with other property claims 14

The Chairman noted that the first examination of sub-paragraph 1(a) of Article 2 had thus been concluded.

Summary Record of the Seventh Meeting
4 November 1976

[257] Mr. Makovsky (USSR) (…) It would be easy to include a provision in the alternative text giving priority to the settlement of claims arising out of damage to harbour works and the removal of wrecks.

[258] Mr. Nairac (France) (…) The French delegation was in favour of including a priority for claims for damage to harbour works in the total limitation amount set in the basic text.

Mr. Tanikawa (Japan) (…) His delegation was also against priority for claims for damage to harbour works.

Mr. Carvell (Canada) (…) The basic text provided for better cover for the various types of claims, and a fund set up along the suggested lines would relieve the concern felt by the Canadian delegation with regard to the inclusion of a clause on reservations in respect of priorities for claims for damage to harbour works.

Mr. Trotz (German Democratic Republic) (…) Secondly, certain property claims (damage to harbour works, wreck removal) should rank before other property claims.

[259] Mr. Suchorzewski (Poland) (…) Personal claims should be settled first of all, after which priority would be given to claims for damage to harbour works over other property claims.

[261] Mr. Filipovic (Yugoslavia) expressed his delegation’s preference for the alternative text. It was not in favour of giving priority to claims in respect of damage to harbour works.

Summary Record of the Eleventh Meeting
8 November 1976

[289] The Chairman (…) Most of the representatives appeared to prefer that claims involving damage to harbour works or relating to wreck removal should be included in the Convention, while there were some who considered that they should be excluded or made the subject of a reservation.
Summary Record of the Nineteenth Meeting  
12 November 1976

[367] The Chairman (...) On the subject of claims for damage to harbour works and for damage relating to wreck removal, the majority had supported the inclusion of all such claims within the scope of the Convention, and some had considered they should be accorded priority. However, the Conference would have to consider whether under a clear-cut alternative system it would be possible to include such claims in the Convention. A number of representatives, on the other hand, had thought such claims should be excluded or made the subject of a reservation.

Summary Record of the Twentieth Meeting  
13 November 1976

[369] Mr. Philip (Denmark) (...) So far as the spillover was concerned, it would be possible for such [370] transfers from the personal to the property fund to be reserved for exceptional cases so that the principle would not operate in cases of claims in respect of the loss of, or damage to cargo, for example, but would do so in cases of damage to harbour works, wreck removal or pollution?

Mr. Duder (Liberia) (...) He was also against giving priority to claims in respect of damage to harbour works. Individuals ought to have equality with public bodies.

[371] Mr. Cleton (Netherlands) (...) Lastly, while recognizing the importance of claims resulting from damage to harbour works, he was against their having priority over other property claims.

Mr. Jeannel (France) expressed some fear lest the intricate discussions on numerical data might have obscured one fundamental aspect of the problem. If the Conference wanted to establish liability limits, the very least it could do would be to establish limits which covered the reasonably possible risks. It was unreasonable to cite the rise in premiums as a reason for refraining from establishing those limits. That was why his delegation preferred the first alternative, with priority for claims for damage to harbour works.

Summary Record of the Twenty-first Meeting  
15 November 1976

[377] Mr. Philip (Denmark) (...) His understanding of the agreement in the compromise group was that, as the 1957 system was one of the basic assumptions underlying the proposal, claims in respect of damage to harbour works would be included in the limitation figures; according to the third assumption, however, it remained an open question. His delegation considered that regrettable, as it felt that harbour works should be included, but it would accept the possibility of reservation as regards wreck removal.

[378] Mr. Makovsky (USSR) (...) His delegation’s only difficulty was that, in view of the high level of liability proposed, it maintained its views that damage to harbour works should also be covered and was not in favour of allowing reservations on that point. The most his delegation could accept as regards damage to harbour works was that it should have priority within the property damage claim.
Mr. Tardana (Indonesia) said that his only difficulty in accepting the proposal was in regard to the third assumption in so far as it related to claims in respect of damage to harbour works. His delegation believed that reservations with regard to such claims should be allowed in the Convention.

Mr. Goh Thean Hock (Singapore) said that he supported the compromise proposal and would also be in favour of allowing reservations in respect of damage to harbour works.

Mr. Bentein (Belgium) also supported the proposal and believed that a reservation regarding claims in respect of damage to harbour works should be included.

The Chairman said that, before reaching a firm decision on the proposal, the Committee should first settle the question of reservations regarding damage to harbour works. She called for a definite vote on that question.

There were 19 in favour of reservations in respect of claims for damage to harbour works, 16 against and 5 abstentions.

Mr. Makovsky (USSR) did not think it advisable for a vote to be taken on the proposal at the present stage. It would be better first to try to reach a compromise on the problem of claims in respect of damage to harbour works, either by according priority to such claims, or by allocating a particular sum to be used for that purpose. Such a compromise might make it possible for those delegations which had doubts on that point to adopt the proposal as a whole.

Mr. Ptak (Poland) pointed out that the figures produced by the compromise group, and set out in the Annexes to LEG/CONF.5/C.1/WP.82, had been worked out on the assumption that claims in respect of damage to harbour works would be included in the Convention without the right of reservation; that assumption was indeed shared by his delegation. Although the vote that had just been taken indicated a general acceptance of the principle of allowing such reservations, a two-thirds majority would be needed if that principle were to be formally adopted by the Plenary. His delegation could agree to inclusion of reservations regarding claims in respect of wreck removal, and was also prepared to accept the fourth assumption, relating to vessels of less than 300 tons.

The Chairman said that she understood the reluctance of delegations formally to commit themselves on the proposal before they had had time to consult their governments. However, it would be useful at least to have an indication of preferences regarding assumptions (1)-(4), so that a definitive vote could be taken the following day.

Lord Diplock (United Kingdom) said that it appeared that the obstacle in the way of acceptance of the proposal was the third assumption as it related to harbour works. When the subject had been discussed in the compromise group, it had been proposed that claims in respect of damage to harbour works should be included in the Convention, because such damage was readily insurable, but that claims regarding wreck removal should be excluded, because damage of that type was almost uninsurable. An alternative proposal, which had commanded some support, was that priority should be given to claims in respect of damage to harbour works, while keeping within the limitation. He suggested that delegations might consider the latter proposal a possible solution to the difficulty.

(63) See note 46.
Summary Record of the Twenty-second Meeting
16 November 1976

[381] The Chairman recalled that at its previous meeting the Committee had voted on the question of adopting a reservation clause authorizing States to exclude claims in respect of damage to harbour works. That proposal had been approved, but not by the two-thirds majority required under the Rules of Procedure of the Conference. In the interval, consultations had been held for the purpose of finding a compromise solution acceptable to the greatest possible number of delegations, and two proposals had now been framed – one by the representative of Norway and the other by the representative of the United Kingdom.

She therefore suggested that the authors of those proposals should be asked to submit them. An indicative vote would then be taken on the two proposals together with the proposal put forward the previous day. Each delegation could of course give its views on each of the proposals, which would not be mutually exclusive. After the three indicative votes, a definitive vote would be taken on the proposal that had received the widest support.

Mr. Makovsky (USSR) endorsed the views of the Italian representative. The procedure suggested by the Chairman was one that might lead to confusion, whereas the situation had changed since the previous day thanks to the efforts made to find a compromise solution based on the recognition of some form of priority for claims for damage to harbour works. The Committee must not now let slip that possibility of compromise. One of the two proposals before the Committee came from a delegation which had voted in favour of a reservation clause at the previous meeting; and that indeed showed that a compromise was possible. The Soviet delegation had no marked preference for either of the proposals.

[382] Mr. Selvig (Norway) (...) The second advantage was that the Norwegian proposal was not of a mandatory nature and, since it refrained from a predelimitation of the amount to be set aside for claims in respect of damage to harbour works, it left States free to determine the proportion that they deemed appropriate.

Lord Diplock (United Kingdom) introduced his delegation’s proposed amendment to the alternative text for Article 6, which had just been distributed.

The proposal met the wish for a compromise solution taking account of the views of delegations that questioned the desirability of providing for reservations or priorities. The proposal was that, in cases where there were claims in respect of damage to harbour works, basins and navigable waterways, such claims should have absolute priority up to a first segment of $100,000 and should then rank rateably with other claims for damage to property. Hence, claims for personal injury could not spill over into that first segment, but, as an offset, the limitation amounts fixed for such claims would be substantially increased.

A special problem arose in respect of low tonnage ships which might nevertheless cause considerable damage in relation to the total size of the fund. That was why a larger proportion of the fund had been reserved for claims for damage to harbour works, basins and navigable waterways in the case of small ships.

[383] The Chairman invited the Committee to indicate their preferences with regard to the three proposals before them.

The Norwegian proposal was approved (24 votes in favour, 11 against, and 6 abstentions).

The United Kingdom proposal was approved (21 votes in favour, 15 against, and 6 abstentions).
There were 16 votes in favour of the proposal to allow States to make reservations with respect to claims for damage to harbour works, 20 against and 5 abstentions; the proposal was rejected.

Draft International Convention

3. However, without prejudice to claims under paragraph 1(a), a State Party may provide in its national law that claims in respect of damage to harbour works, basins and waterways shall have priority over other claims under paragraph 1(b).

[413] Mr. Cleton (Netherlands) asked that the words “without prejudice to claims under paragraph 1(a)” in the first line of paragraph 3, which seemed to him a statement of the obvious, should be replaced by: “3. However, without prejudice to the right of claim for loss of life or personal injury according to paragraph 2...”

The Chairman put to the vote the amendment to Article 6(3) proposed by the representative of the Netherlands.

The amendment was approved (33 votes in favour, none against, and 4 abstentions).

Mr. Amoroso (Italy) recalled that his delegation had proposed that the words “absolute or partial” should be inserted before “priority”. He thought that there was an even greater need for that amendment now that the text of paragraph 3, in its present form, seemed almost to make it compulsory for absolute priority to be given [414] to those claims in the legislation.

Mr. Jeannel (France) said that he was totally opposed to that suggestion. States were always sovereign, and their freedom was emphasized in the current version of the text. To satisfy the representative of Italy, he proposed that the Summary Record of the meeting should state that the Committee of the Whole considered that the provisions of Article 6(3) left governments completely free to give such absolute or partial priority as they thought desirable. He proposed that, in the French text, the definite article preceding the word “priorité” should be deleted, so that the text would read “…ont priorité sur les autres créances…”; that was in precise agreement with the English text.

The Chairman suggested a different version reading: “…shall have such priority over … as is provided for in that law”.

Mr. Nair (India) proposed that the words “and navigational aids” should be inserted in paragraph 3.

The Chairman thought that that was a question of substance, and should be placed before the Plenary.

The Chairman put to the vote the amendment she had just proposed.

The amendment was approved (23 votes in favour, 1 against, and 13 abstentions).

1976 Convention

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.
Paragraph 4

Hamburg Draft Convention
Text and Commentary

[414] 2. FOR THE PURPOSE OF THIS ARTICLE, THE LIMIT OF LIABILITY FOR ANY SALVOR NOT OPERATING FROM ANOTHER SHIP SHALL BE CALCULATED BY REFERENCE TO THE TONNAGE OF THE SHIP TO WHICH SALVAGE SERVICES ARE BEING RENDERED.

This provision, which has been inserted in order to avoid misunderstandings, follows from Article 7 and will be commented upon in that connection.

IMCO Legal Committee
Twenty-third Session

[10] 39. As in other Articles of the draft, account has been taken in this paragraph of the fact that salvors might not operate on, or even from, a ship when engaged in salvage operations, but might employ such vehicles as helicopters. The draft is intended to deal with the case of a salvor not operating from a ship and provides that the limit of liability of the salvor in such a case would be determined by reference to the tonnage of the ship to which salvage services are being rendered.

[11] 40. There was no objection to this method of resolving the problem. However, some delegations expressed preference for a provision that the limit of liability should in all cases be based on the tonnage of the salvaged ship. There were some delegations which suggested that the limit of liability be based upon the salving vessel only where it is the instrument of damage. It was also suggested that the limitation of liability should be reserved to whomsoever has control or use of the vessel being salvaged. Some delegations even proposed that a professional salvor shall always have the right to limit his liability according to the tonnage of the ship to which assistance was provided except when operating from his own vessel and the tonnage of that vessel is subject to a limitation which is greater than that of the ship to which assistance was provided.

Draft Articles

2. FOR THE PURPOSE OF THIS ARTICLE, THE LIMIT OF LIABILITY FOR ANY SALVOR NOT OPERATING FROM A SHIP SHALL BE CALCULATED BY REFERENCE TO THE TONNAGE OF THE SHIP TO WHICH SALVAGE SERVICES ARE BEING RENDERED, BUT SHALL IN NO CASE BE LESS THAN [F] UNITS OF ACCOUNT AND NOT MORE THAN [G] UNITS OF ACCOUNT.

Diplomatic Conference

Committee of the Whole
Summary Record of the Thirteenth Meeting
9 November 1976

[305] The Chairman invited the Committee to consider the question of the application of the new Convention to salvors. The 1957 Convention did not mention salvors specifically, the owners of salvage vessels being treated in exactly the same way
as other shipowners. Difficulties had arisen, however, following the judgment in the “Tojo Maru” case when the servant of a salvor, having left the salvage vessel to carry out repairs on a ship which had requested assistance, had negligently caused an explosion on the latter. Under the 1957 Convention, limitation of liability for damage caused by a person for whom the shipowner – in the “Tojo Maru” case the salvor – was responsible, but who was not on board the ship, was not allowable unless the act, neglect or default occurred in the navigation or management of the ship. In the “Tojo Maru” case the United Kingdom House of Lords had found that the damage had not been caused in the management or navigation of the salvage vessel, and the shipowner had consequently been denied the right to limit liability.

Article 2, paragraph 1(a), of the draft before the Conference was intended to remedy the deficiency in the 1957 Convention by extending the right to limit liability to all salvors and their servants, whether they were on or off the salvage ship at the time of an incident. The limits set out in Article 6(1) and (2) would therefore apply equally to salvors. The IMO Legal Committee had considered the question of whether there should be separate limits in the case of a salvor leaving the salvage vessel and working on the vessel in distress, but had rejected that idea.

Article 6(3) had been included to provide for a different situation: for example, when salvage operations were performed not from a ship but from a helicopter or crane. In that case, the limit could not be determined by a reference to the tonnage of the salvor’s ship because there was no ship.

In order to facilitate the work of the Committee, she suggested dividing the discussion into two parts, dealing first with salvors who operate from a ship and then with salvors not operating from a ship. As to the first question, three proposals had been made, by Liberia (LEG/CONF.5/C.1/WP.2),64 by the Federal Republic of Germany (LEG/CONF.5/C.1/WP.3)65 and by France (LEG/CONF.5/C.1/WP.17).66

(64) Document LEG/CONF.5/C.1/WP.2
1 November 1976 [142]
Proposal submitted by the delegation of Germany
Amendments to Article 6, paragraph 3
a) Substitute the words “not operating from a ship” by “who is professionally engaged in salvage operations”
b) Delete the words “but shall in no case less than [F] Units of Account and not more than [G] Units of Account”.

(65) Document LEG/CONF.5/C.1/WP.3
1 November 1976 [142]
Proposal submitted by the delegation of Germany
Article 6
Add a new paragraph 4 and renumber present 4 as 5:
“4. For the purpose of this Article, the limit of liability for any salvor operating from a salvage vessel shall be calculated by reference to the total of the tonnages of all vessels participating in the salvage operations under the direction or control of that salvor at the time of the occurrence.”

(66) Document LEG/CONF.5/C.1/WP.17
2 November 1976 [151]
Proposal submitted by the delegation of France
Article 6, paragraph 3
1. For the purpose of this Article, the limit of liability for any salvor, whether or not operating from another ship, shall be calculated by reference to the tonnage of the ship to which salvage services are being rendered; however, the salvor’s liability amount shall fall within a minimum and a maximum. The minimum shall be calculated by reference to the liability amount of a ship of (x) tons and the maximum by reference to that this of (y) tons.
Mr. Wiswall (Liberia), introducing document LEG/CONF.5/C.1/WP.2, said that his delegation regarded the salvor as being entitled to limitation, in that he had a fortune de mer to which reference could be made for the purposes of determining the limitation of his liability. The basis of the Liberian proposal was that, since a salvor would commit resources in proportion to the needs of the operation involved, his fortune de mer should be viewed, for the purposes of computing his limitation of liability, as being represented only by the ships participating in the salvage operation. His delegation had also considered including the value of salvage equipment other than that pertaining to the ship or ships which had been committed to the operation, but had come to the conclusion that it was not possible to devise a satisfactory formula.

The salvage vessels to be taken into account by the proposal would include both those which were owned by the salvor and others which he might have chartered and have under his control, but not salvage vessels on the scene but under the control of another salvor. Nor was it intended that a salvor should be penalized for an incident unconnected with the salvage operations.

Mr. Roth (Federal Republic of Germany), introducing his delegation’s proposal (LEG/CONF.5/C.1/WP.3) criticized the draft text of Article 6(3) as having three disadvantages. First, it would discourage small ships from rendering services outside the ship and particularly on behalf of a larger ship; secondly, it was very difficult to decide what the minimum and maximum amounts should be; and thirdly, it treated both professional and voluntary salvors in the same way.

His delegation’s proposal was that the limit of liability for a professional salvor should be calculated with reference to the ship to which services were rendered, whether or not the salvor was operating from a ship. In that case, the salvor could calculate his risk and take it into account in connexion with the salvage contract. The limitation amount for voluntary salvors, on the other hand, should depend on the tonnage of their own ship. That would encourage people to come to the assistance of other ships.

The question of services provided from some sort of equipment other than a ship should, perhaps, not come within the scope of the Convention, as such claims would not be strictly of a maritime nature and should therefore have no limitation of liability.

Mr. Douay (France) said that the central concept of his delegation’s proposal (LEG/CONF.5/C.1/WP.17) like that of the draft text, was that the limit of liability of a salvor should be calculated on the basis of the tonnage of the ship to which salvage services were being rendered. The French proposal would additionally extend that benefit to any salvor whether operating from a vessel or not.

The French proposal differed from that of the Federal Republic of Germany in that it provided for minimum and maximum amounts (as did the basic text), thus enabling salvors to take out insurance with reference to the minimum and maximum amount of the ship being salvaged. It coincided with the proposal of the
Federal Republic of Germany in containing the concept of the salvor operating professionally, but it also took account of salvage operations conducted from equipment other than a ship.

His delegation believed that its proposal would offer a considerable advantage to salvors because, at present, the liability of salvors not operating from a ship is unlimited. Situations not provided for in the present Convention would remain subject to unlimited liability.

Paragraph 2 of the French proposal enabled the occasional salvor to benefit in the same way as the professional salvor, unless the vessel from which the services were rendered was of a smaller tonnage than the one to which services were rendered. In that case, the limitation would be less than the tonnage of the vessel to which the services were rendered.

He would be interested to hear delegations’ views on whether there should be a different system for the salvor according to whether he was operating from a vessel or not. The French delegation did not think there should be any such difference.

The Chairman invited discussion on the proposals, but asked delegations to confine their remarks to the owners and operators of salvage vessels. She reminded delegates that in the draft Convention salvors were treated in the same manner as other shipowners. She enquired if there were seconders for the proposals just introduced.

Mr. Lozano Lopez (Panama) seconded the Liberian proposal.

Mr. Lyon (Canada) seconded the French proposal.

There being no seconder, the proposal of the Federal Republic of Germany was declared lapsed.

Mr. Howlett (United Kingdom) said that while his delegation supported part of the French proposal, he would like to have the opportunity of discussing it on the basis of whether Article 6(3) should include salvors whether they were operating from a ship or not.

The Chairman appreciated the United Kingdom representative’s difficulty, but wished first to reach a decision in principle on whether owners of salvage vessels should have a separate limitation system.

Mr. Rein (Observer, CMI), speaking at the invitation of the Chairman, said that he saw no merit in drawing a distinction between the professional salvor and the non-professional, or casual or occasional, salvor. There was no such distinction in the 1910 Convention for the Unification of Certain Rules of Law relating to Assistance and Salvage at Sea, Article 8 of which specified, with reference to assessment of the salvage award, that “due regard” was to be had “to the special appropriation (if any) of the salvors’ vessel for salvages purposes”. In other words, if the vessel was specifically equipped for the purpose, the remuneration would be higher even if the operator was not a professional salvor. The distinction between professional and non-professional salvors, which might be acceptable in colloquial usage, was not helpful in the present case. The real distinction was between ships well equipped for the purpose and those which were not so well equipped. Disputes on salvage awards had in many cases been on that very issue. There was therefore no acceptable criterion for differentiating between the so-called professional and non-professional salvors; and the use of those terms would introduce a new distinction which would have no foundation in existing legal practice.

With regard to the Liberian proposal, the question of calculating limitation in respect of a number of vessels was not peculiar to salvage: the same problem would arise, for example, in the case of a tug and tow colliding with a ship. It would be
impracticable to adopt the Liberian solution of basing the calculation on the combined
tonnages of all the vessels involved, since in many cases only a few of the vessels would
actually take part in the salvage operation. The problem posed in the Liberian proposal
was too complex to be adequately dealt with in a single paragraph in a Convention. In
any case, he did not think it warranted the attention which was being given to it in the
context of the present Conference.

As a practical solution he was in favour of treating the salvage vessel in the same
way as any other vessel for limitation purposes – namely, as was done in the 1957
Convention, thereby providing protection for all salvage vessels whether or not
personnel were working on or outside the vessel.

Mr. Douay (France) explained that his proposal was designed to provide a single
regime for all salvors, without distinction between professional and non-professional,
the limitation for all ships being calculated by reference to the tonnage of the ship
being salvaged, but with a maximum and a minimum. An exception was made,
however, that in the case of a small ship with a tonnage below the minimum, the
calculation would be based on that minimum.

Mr. Cleton (Netherlands) agreed with the views of the CMI observer. The
problem concerning the salvor had arisen only since the United Kingdom House of
Lords’ decision on the “Tojo Maru” case. The salvor operating from the salvage vessel
had always been treated as the shipowner, which indeed he was, and there was no need
to change the present system in respect of the item under discussion. He appreciated
the Liberian representative’s point regarding fortune de mer, but that was a different
concept. The Liberian proposal would cause legal complications, for where larger
salvage operations with several vessels were involved, there could be many kinds of
mishap. The main point was that there were no difficulties at present under the 1957
Convention regarding the salvors operating from a salvage vessel.

The distinction between professional and non-professional salvors could cause
difficulties, since there could be many borderline cases which would have to be settled
in court. No one wished to create new problems in the present Convention, and there
was therefore no immediate reason to change the position of the salvor operating from
a ship, who was a normal shipowner.

Mr. Rognlien (Norway) agreed with the CMI observer and the Netherlands
representative. He was opposed to drawing a distinction between professional and
non-professional salvors, and in favour of keeping to the basic text, with the limitation
by reference to the tonnage of the salvor’s ship. He could not support the French
proposal on that point.

He understood the Liberian proposal to mean that the limitation should be
calculated by reference to the total tonnage of a number of ships engaged in the same
salvage operation, when the salvor was the owner or operator of those ships. That was
[309] one interpretation of the rule in Articles 2 and 6 combined, and perhaps what
the Liberian proposal pointed to was the correct interpretation of the Convention. But
as previous speakers had indicated, the problem was a general one not peculiar to
salvors, and should be solved in a general context. If the Liberian proposal were taken
up, it should be stressed that it concerned only vessels involved in one and the same
incident and operated by the same operator. He could not, however, support the
Liberian proposal in the present context.

Mr. Filipovic (Yugoslavia) felt that the comments of the CMI observer and the
Netherlands and Norwegian representatives fairly well covered the situation. His
dlegation considered that the discussions in the Legal Committee and at the present
Conference had all been based on the unfortunate case of the “Tojo Maru”, and that there was no reason to distinguish between professional and non-professional salvors. Professional salvors might be more efficient, but that was not a legal question in the context of the present Convention. He would prefer to see salvage vessels treated in the same way as ordinary vessels and would oppose all proposals differentiating between professional and non-professional salvors.

Mr. Howlett (United Kingdom) suggested that in the case of salvors operating from a ship, it would simplify calculations if the limit could be a fixed sum. In the present context he agreed with the representative of France, but would raise the matter later in connexion with salvors not operating from a ship. The fixed sum might be related to the tonnage of the largest tug, for example 3,000 tons, which would generally give claimants more than at present.

The Chairman, referring to Rule 27 of the Rules of Procedure of the Conference (LEG/CONF.5/2/Rev.1), said that if there were no objections, she would invite representatives to consider the United Kingdom proposal even though it had not been submitted in writing within the prescribed time. She inquired if any delegation would second the United Kingdom proposal.

There being no seconder, the United Kingdom proposal was not considered any further.

Mr. Wijsmuller (Observer ETA) speaking at the invitation of the Chairman, said that he appreciated the intention of the Liberian proposal but felt it unsuitable for the present Convention. A number of representatives at the twenty-eighth session of the Legal Committee, including the Norwegian representative and himself, had pointed out that it would entail complications. With regard to the lapsed proposal by the Federal Republic of Germany, there had been three points: first, it was difficult to distinguish between different kinds of salvor; secondly, in the case of a salvor deemed to be non-professional, there was the vexed question of his limitation if he did not operate from a ship. Thirdly, small-scale professionals might find it difficult to obtain insurance, and would therefore be chary of carrying out salvage work when necessary. He saw no reason why they should not be able to use the ship’s limitation if they used the ship. He appreciated the French representative’s explanations but did not support his proposal. It had the advantage that volunteers not working from a ship had the right to limitation; but it was unnecessary and undesirable to place the non-professional in a better position than the professional.

Mr. Cotton (Observer, ICS), speaking at the invitation of the Chairman, said that the present rules for salvage operations from a ship had worked satisfactorily so far, and he saw no reason to change them. What the owner wanted was quick salvage: the actual amount in case of damage by the salvor was less important. The Liberian proposal appeared to be concerned with securing more money for the owner. For those reasons and in view of the difficulty of defining a professional salvor, he urged support for the existing text.

Mr. Sim (Singapore) observed that the principle that the salvor was entitled to limitation of liability was not a new one, since under the 1957 Convention the salvor operating from a ship was treated in the same way as an owner. He supported the principle in paragraph 3 that the salvor not operating from a ship was entitled to limitation of liability subject to an amount to be decided later. He was not in favour of drawing a distinction between the professional and the non-professional salvor, and agreed with the CMI observer that all salvors, whether professional or not, should receive the same treatment.
The Chairman invited delegations to indicate their views on the Liberian and French proposals by show of hands.

There were 2 votes in favour of the Liberian proposal (LEG/CONF.5/C.1/WP.2)\(^69\) 69 against and 7 abstentions: the proposal was rejected.

There were 4 votes in favour of the part of the French proposal (LEG/CONF.5/C.1/WP.17)\(^70\) relating to salvors operating from a ship, 23 against, and 10 abstentions. It was accordingly rejected.

The Chairman invited the Committee to consider the question of salvors not operating from a ship. In addition to the proposals by the Federal Republic of Germany and France that had already been discussed, there were also proposals by Australia (LEG/CONF.5/C.1/WP.54)\(^71\) and by Sweden (LEG/CONF.5/4, page 81).\(^72\)

She asked the French representative whether his proposal was also applicable where salvors not operating from a ship were concerned.

Mr. Douay (France) said that he would withdraw his proposal in regard to that question.

The Chairman asked the representative of the Federal Republic of Germany whether his proposal was to be considered applicable where salvors not operating from ships were concerned.

Mr. Roth (Federal Republic of Germany) said that since his proposal had lapsed, he saw no reason to revert to it.

Mr. Hermes (Australia), introducing his delegation’s proposal (LEG/CONF.5/C.1/WP.54)\(^73\) said that the present text did not make it sufficiently clear that the salvors referred to could also include salvors operating from the actual ship to which assistance or salvage services were being given. For salvors in that

\(^69\) See note 64.

\(^70\) See note 66.

\(^71\) Document LEG/CONF.5/C.1/WP.54
8 November 1976 [179]

Proposal by the delegation of Australia

Article 6
The Australian delegation believes that paragraph 3 of Article 6 as drafted does not specifically comprehend the case of a salvor operating solely from the ship for which salvage service is being provided, and feels that the Committee would wish to clarify that position.

It is proposed that paragraph 3 be amended by inserting after the words “...not operating from a ship”

the following words in brackets

“(including a salvor operating solely from the ship to, or in respect of which, salvage services are being rendered)”.

\(^72\) The relevant part of LEG/CONF.5/4 is quoted below:

[81] It is suggested that paragraph 3 might be amended as follows:

“For the purpose of this Article the limit of liability for any salvor not operating from a ship shall be [X] Units of Account”.

If the present text of paragraph 3 relating to salvors not operating from a ship will be retained, the minimum limit should be the same as the minimum limit applying to shipowners. The maximum limit should correspond to the maximum limit applying to a large salvage vessel. Bearing in mind that the minimum limit for shipowners might be calculated by reference to a ship of 1,000 to 1,500 gross tons and that the large salvage vessels have a tonnage slightly exceeding 1,500 tons, there does not seem to be much point in such a distinction, however. A specified amount seems, therefore, to be preferable.

\(^73\) See note 71.
category, the figures should be fixed by reference to the tonnage of the vessel from which they were operating and to which services were being rendered.

Mr. Lundh (Sweden), introducing his delegation’s proposal (LEG/CONF.5/4, page 81), said that there were a number of technical difficulties in the way of an equitable settlement of limitation of liability in regard to salvage operations carried out not by a salvage vessel but by helicopter, crane etc. In such cases, a specific amount should be fixed, which could be calculated by reference to a ship of between 1,000 and 1,500 gross tons.

Mr. Bursley (United States) seconded that proposal.

Mr. Iwata (Japan) supported the Australian proposal. However, if its intent was to ensure that a salvor operating from a ship to which services were being rendered was to be treated in the same way as a salvor not operating from such a ship, the matter was in his view primarily one of drafting. He suggested that the Australian proposal be referred to the Drafting Committee for consideration.

Mr. Bursley (United States) disputed that view. The Australian proposal was not merely a matter of drafting, but introduced an entirely different principle on which limit of liability was to be based.

Mr. Rein (Observer, CMI), speaking at the invitation of the Chairman, said that prior to the 1957 Convention, the possibility of salvage operations being performed otherwise than from a ship had never arisen. In recent years, however, such operations had begun to be carried out not only by various airborne units but also by drilling and maintenance platforms which were specially equipped to provide such assistance.

There was no doubt that salvors in that category needed protection in case they should incur liability in going to the aid of shipping. The only question was how that protection should be formulated.

His organization was against the introduction of an entirely new regime based not on tonnage but on some other factor, it would be better to keep the limitation based on the tonnage of the ship to which assistance was being given. Liability might be incurred by salvors either towards the ship receiving the services or towards third parties. In the first case, the salvor could refuse to undertake any services unless any claims against him were waived; and in the second case, he would be able to take advantage of the protection of the fund covering the owner of the ship in distress. Although not ideal, the solution based on the tonnage of the ship receiving aid was a tolerably satisfactory one, if it were decided not to introduce a new regime based on calculation rather than tonnage. However, if it were decided to introduce a new regime, the fixed fund solution had some attractions, particularly if it was related to the tonnage of the salvaged ship and subject to an upper limit, and if it were coupled with aggregation of all claims against the salvor and the owner of the salvaged ship. Both solutions were quite feasible, and his delegation had no preference either way.

Mr. Cotton (Observer, ICS), speaking at the invitation of the Chairman, said that it was easier to arrange insurance on an annual basis than on the basis of a particular incident. There were objections to any proposal based on a varying amount of limitation, since the salvor’s limitation would depend on the vessel being salvaged. Those objections were overcome by the Swedish proposal, and his delegation therefore supported it.

(74) See note 72.
Mr. Rognlien (Norway) also supported the Swedish proposal. The idea of having one general unit of account was a good one, though it would be difficult to decide on a figure before knowing what were to be the minimum amounts to be included in Article 6.

With regard to the Australian proposal, he assumed that the new category of salvor referred to would not include the shipowner or operator of the ship, or persons for whom the operator was responsible. If a member of the crew of the ship to which services were being rendered volunteered as a salvor, his limitation of liability should be the same as that of the shipowner and not regarded as a separate category. That point should be made clear in the text. If a passenger were to volunteer as a salvor, then the Australian formulation was adequate.

Mr. Howlett (United Kingdom) also supported the Swedish proposal. There was much to be said for a fixed sum rather than a calculation; for the former was simpler to apply, although it would not be possible to decide what the sum was to be until the discussions on the first part of Article 6 had been concluded. His delegation favoured the idea of a fixed sum related to the tonnage of the largest tug.

With regard to the Australian proposal, he agreed that the matter was essentially one of drafting.

Mr. Wijsmuller (Observer, ETA), speaking at the invitation of the Chairman, welcomed the general agreement that salvors not operating from ships should receive the benefit of limitation of liability. His Association could support the Swedish proposal: although complications might arise over the aggregation of claims, the avoidance of uncertainty was very important. If the Swedish proposal were not adopted, the Conference would have to fall back on the amendment to the initial CMI proposal made at the twenty-eighth session of the Legal Committee. His Association had supported that amendment, with the proviso that the maximum should not be too high.

Drawing attention to his Association’s proposal (LEG/CONF.5/6, page 111),75 he explained that the reasons behind it were, first, that with a higher maximum, salvors – particularly small-scale local salvors – not operating from a ship would have difficulty in finding adequate insurance, especially where larger ships were concerned. Secondly, that non-professional salvors not operating from a ship would also find difficulty in solving their insurance problems; thirdly, that salvors would be reluctant to offer salvage service to large ships, which were precisely those which posed the greatest risk;

75) The relevant part of LEG/CONF.5/6 is quoted below:
[111] Article 6, paragraph 3
In December 1974 the ETA submitted a representation on this subject proposing certain amendments to the draft provisions to ensure that the limit of liability of a salvor not operating from a ship would be comparable with that of a salvor operating from a ship. The present draft Article 6(3) states that “the limit of liability for any salvor not operating from a ship shall be calculated by reference to the tonnage of the ship to which salvage services are being rendered but shall in no case be less than (F) Units of Account and not more than (G) Units of Account”. The ETA is agreeable to this new wording subject to the maximum sum (G) being comparable and not out of balance with the limits of liability applicable to salvors operating from their tugs. As was indicated in the ETA’s earlier submission, a salvor must have some certainty in advance as to the limit of his liability. So strongly does the ETA regard this aspect that it is prepared, therefore, to agree for this purpose that the maximum sum (G) should be the same as the limitation of liability which would be applicable to a salvor working from the largest tug in the world at present engaged in salvage (2900 tons gross).
and fourthly, that if there were to be a distinction between salvors operating from a ship and those not operating from a ship, costly litigation might well ensue if the limits of liability varied too much. The possibility of such litigation would make it difficult to secure reasonable insurance premiums.

Mr. Rein (Observer, CMI), speaking at the invitation of the Chairman, expressed uncertainty as to how the aggregation aspect was to be taken into account in the proposals under discussion. As he understood it, the basic text suggested that the salvor would have the benefit of aggregation, whereas with the Swedish proposal there should be no aggregation, since provision would be made by an entirely separate fund. He doubted whether the Swedish proposal was preferable to the basic text from the salvor’s viewpoint.

The Chairman invited delegations to indicate their views on the Australian proposal.

The Australian proposal (LEG/CONF.5/C.1/WP.54)\textsuperscript{76} was approved (11 votes in favour, 1 against and 23 abstentions).

The Chairman invited delegations to indicate their preferences with regard to the Swedish proposal.

The Swedish proposal (LEG/CONF.5/4, page 81)\textsuperscript{77} was approved (13 votes in favour, 4 against, and 18 abstentions).

Mr. Iwata (Japan) said that his delegation would appreciate clarification as to how a distinction was to be made between personal claims and property claims in Article 6(3). Neither the basic text nor the Swedish proposal included any provision for making that distinction.

The Chairman said that that question would have to be discussed at a later stage.

Mr. Perrakis (Greece) suggested that delegations be asked to express their preferences with regard to the basic text of Article 6(3).

The Chairman took it that the Committee had already indicated its preference for the Swedish text as against the basic text. However, if the majority so wished, she would call for a show of hands on the basic text.

The basic text of article 6(3), as amended, was approved (12 in favour, 7 against, and 16 abstentions).

Mr. Perrakis (Greece) interpreted the vote as showing that no results had been achieved. In his opinion, the Committee was no farther forward on the subject of Article 6(3) than the IMCO Legal Committee had been.

The Chairman pointed out that the Committee would be reverting to the question the following day.

Summary Record of the Fourteenth Meeting
10 November 1976

[314] The Chairman recalled that on the previous day the Committee had considered the question of “salvors not operating from a ship” (Article 6(3)); that the Australian proposal to make the wording clearer had been approved by 11 votes to 1

\textsuperscript{76} See note 71.
\textsuperscript{77} See note 72.
with 23 abstentions; and that preference had been shown for the proposal by the Swedish delegation (LEG/CONF.5/4),78 as amended by the text submitted by the Australian delegation) by 13 votes to 4 with 18 abstentions, as compared with the basic text, which had mustered only 12 votes to 7, with 16 abstentions. The Committee would resume consideration of the Swedish proposal when it discussed Article 9.

Mr. Perrakis (Greece) reserved the right to reaffirm at a later stage his preference for the basic text.

Mr. Popp (Canada) said that his delegation had submitted an amendment (LEG/CONF.5/C.1/ WP.5)79 to Article 1(1) and (3) designed to differentiate clearly between “salvors” and “shipowners” and to curtail the opportunities enjoyed by salvors to limit their liability when sued by shipowners and not by a third party.

There being no seconder, the Canadian proposal (LEG/CONF.5/C./ WP.5 was declared lapsed.

Summary Record of the Twenty-third Meeting
16 November 1976

[389] The Chairman recalled that it had been agreed in principle to amend the paragraph along the lines indicated in the Swedish proposal (page 81 of LEG/CONF.5/4).80 It had been tentatively agreed that only one specific limitation of liability, namely in respect of salvors not operating from a ship, should be allowed. It had also been agreed that in drafting the provision, the Australian proposal (LEG/CONF.5/C.1/ WP.5)81 should be considered. It had been understood that the limitation amount for salvors not operating from a ship could not be decided until the amounts in paragraph (1) had been fixed. During the discussion, some delegations had expressed the view that the limitation amount should be calculated on the basis of that applicable to a salvage vessel of ordinary size.

Mr. Selvig (Norway) proposed that the figures to be inserted in paragraph (3) should be based on the tonnage of a medium-sized salvage vessel, namely 1,500 tons. The limit for personal claims should be $1 million, and the limit for property claims should be $400,000.

The Chairman pointed out that reference should also be made to the proviso in Article 6(1) relating to claims for damage to harbour works.

Mr. Herber (Federal Republic of Germany) thought that the figures proposed by the Norwegian representative were not high enough. Those who had prepared the original draft had not intended that the limitation amount in the case of salvors not operating from a ship should be calculated on the basis of the tonnage of a salvage ship. If a single figure for limitation of liability was to be specified, that figure should

78) See note 72.
2 November 1976 [143]
Proposed amendment by the delegation of Canada
Article I – Persons entitled to limit liability
1. Shipowners, and salvors when sued by a shipowner, may limit their liability in accordance with the rules of this Convention for claims set out in Article 2.
80) See note 72.
81) See note 71.
be based on the tonnage of the average ship rescued, taking as an upper limit the tonnage of a ship of perhaps 10,000 tons.

Lord Diplock (United Kingdom) said that his delegation favoured a fixed sum for limitation of liability based either on the largest salvage vessels or on a medium-sized salvage vessel. If the amount was fixed on the basis of the vessel being rescued, there would then be no way of knowing in advance what the total exposure of the salvor was likely to be. He pointed out that, if the principle advocated by the representative of the Federal Republic of Germany had been applied in the case of the “Tojo Maru”, the limitation amount would have been very much higher if the diver carrying out salvage operations had performed those operations while not attached to a salvage vessel. It did not make sense from the standpoint of insurability to fix amounts on the basis of tonnage higher than that of a salvage vessel now in use.

[390] Mr. Herber (Federal Republic of Germany) said that, in view of the argument advanced by the United Kingdom representative, he was willing to modify his proposal and to suggest an upper limit of 5000 tons, with $2.7 million for personal claims, and $1.1 million for property claims.

The Chairman, in reply to a request for clarification from the French representative, said that the Committee had now to decide on two proposals. Based on the original Swedish amendment to Article 6(3) (LEG/CONF.5/4 page 81). Those proposals related to the figures to be inserted in the text of Article 6(3) for the tonnage upon which the limitation amounts were to be based, and for the limitation amounts for personal claims and property claims respectively. The Norwegian proposal was that the figure taken as a basis should be 1,500 tons, and that the amounts should be $1 million for personal claims and $400,000 for property claims. The proposal by the Federal Republic of Germany, as now modified, was that the figure taken as a basis should be 5,000 tons, and that the amounts should be $2.7 million for personal claims and $1.1 million for property claims.

She called for a vote on the Norwegian proposal, to be followed by a vote on the proposal by the Federal Republic of Germany.

The Norwegian proposal was approved (16 votes in favour, 4 against, and 15 abstentions).

There were 8 votes in favour of the proposal submitted by the Federal Republic of Germany, 16 against, and 12 abstentions; the proposal was rejected.

The Chairman called for a vote on the Swedish proposal (LEG/CONF.5/4, page 81) containing the figures given in the Norwegian proposal.

That proposal was approved (18 votes in favour, 3 against and 12 abstentions).

Paragraph 3 of Article 6, as amended, was approved.

Draft International Convention

4. The limit of liability for any salvor not operating from any ship or for any salvor operating on the ship to, or in respect of which he is rendering salvage services, shall be calculated according to a tonnage of 1,500 gross tons.
Summary Record of the Twenty-sixth Meeting  
18 November 1976

[405] The Chairman invited the Committee to continue reviewing the text of the Drafting Committee’s report (LEG/CONF.5/C.3/1 and LEG/CONF.5/C.3/1/Add.1), in order to assess whether it faithfully reflected the substantive decisions which the Committee had taken.

[406] The present discussions, at that stage, in the Committee’s deliberations, should focus on questions of drafting, any substantive questions thenceforward being treated as matters to be raised at the Plenary Conference.

[414] Article 6 – The general limits

Paragraph 4

Mr. Cleton (Netherlands), speaking as Chairman of the Drafting Committee, said that, since the paper had been circulated, the Drafting Committee had adopted the Australian proposal (LEG/CONF.5/C.1/WP.54)\(^{85}\) to change “limit” in the first line to “limits” and add the word “solely” after “operating” in the second line.

Mr. Philip (Denmark) thought that the word “gross” in the last line should be deleted to bring it into line with paragraph 1.

Those amendments were adopted.

Mr. Jeannel (France) thought that the Committee was proceeding too fast. He had not understood the Australian amendment, which seemed to him to affect the substance, not merely the drafting, of the paragraph. In his view, it made the paragraph mean exactly the opposite.

Mr. Cleton (Netherlands), pointing out that the Drafting Committee had accepted the amendment, said that, whether or not it affected the substance, the matter had in any case now been decided. He himself saw no objection to the amendment, as a salvor frequently operated both from his own ship and from that to which he was rendering services.

Mr. Wiswall (Liberia) approved the insertion of “solely” in the second line of the paragraph though not in the first, where it would make nonsense of the text.

In reply to a question from the Chairman, Mr. Jeannel (France) said that he could agree to the amendment on condition that the word “solely” was translated by “uniquement”, not by “exclusivement”.

1976 Convention

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.

\(^{85}\) See note 71.
**Paragraph 5**

*Hamburg Draft Convention*

*Text and Commentary*


Under the new Tonnage Measurement Convention the data necessary for the calculation of the “limitation ton” (Article 3, 7° of the 1957 Convention) will not be available, and it is proposed that the new limitation ton be the new gross ton. It is estimated that the present “limitation ton” is between 60 and 90 per cent of the new gross ton, depending on the type of the ship.

*IMCO Legal Committee*

*Twenty-third Session*

[11] 41. The expected entry into force of the International Convention on Tonnage Measurement of Ships, 1969, will provide a measurement ton (the gross ton as defined) which will be the basis of calculation under this Article for the ship’s tonnage. On the one hand it was observed that the gross ton of the new system could be applied for any and all ships at any time the limitation convention enters into force, and, on the other, that the measurement of existing ships, as defined in the 1969 Convention, might continue to be accepted as computed under the previous regime of gross tonnage measurement.

*Draft Articles*

4. FOR THE PURPOSE OF THIS ARTICLE THE SHIP’S TONNAGE SHALL BE THE GROSS TONNAGE CALCULATED IN ACCORDANCE WITH THE TONNAGE MEASUREMENT RULES CONTAINED IN THE INTERNATIONAL CONVENTION ON TONNAGE MEASUREMENT OF SHIPS, 1969.86

1 Paragraphs 3 and 4 are common to both the basic text and the alternative text. If the alternative text is adopted, these paragraphs will be renumbered accordingly.

(86) There was no debate on paragraph 4.
Mr. Iwata (Japan), referring to his proposed amendment (LEG/CONF.5/C.1/WP.15), drew attention to the fact that the 1969 Convention on Tonnage Measurement of Ships had still not come into force. In view of certain difficulties, his Government did not expect to be in a position to ratify that Convention in the future, and many other governments were faced with the same difficulties.

In his report on its thirty-fifth session, the Maritime Safety Committee had recommended that the application of those arrangements for tonnage measurement should be deferred until 1985 for the purposes of the Convention for the Safety of Life at Sea, and that an effort should be made to find some other suitable parameter as a basis.

The Japanese delegation took the view that, in order to permit the widest possible application of the present Convention, there must be no mention, in paragraph 4, of the 1969 Tonnage Measurement Convention.

Mr. Perrakis (Greece) supported the Japanese proposal, in the first place because he did not think that paragraph 4 should contain a reference to a Convention which many governments had deemed premature, and secondly because the new tonnage measurement system would impose a very heavy burden on governments with large fleets which included numerous low tonnage and passenger ships. As far as his own Government was concerned, it was not prepared to shoulder that financial burden.

He wondered, moreover, who would be making the calculations, and on what basis, if a limitation fund were set up.

Mr. Azouz (Tunisia) said that since the 1969 Tonnage Measurement Convention had not yet entered into force, there were certain disadvantages in using it as a criterion. To serve as a criterion, it would first have to be signed (and there were many States which had not done so), and a further essential was that the provisions under discussion should apply only to new vessels, except in the case of those of less than 24 metres in length. His delegation would prefer to take a criterion other than volume, such as weight, or light displacement, or full load displacement.

Mr. Rognlien (Norway) stressed that the main purpose of Article 6(4) was clearly to arrive at some degree of uniformity. It would be highly undesirable if there were different figures because of different tonnage regulations in the various countries. He would prefer reference to be made to the 1969 Tonnage Measurement Convention, which had been ratified by certain States, even though it was not yet in force. He would be grateful if the Secretariat could tell him the number of States which had ratified that Convention.
Article 6 - The general limits

Convention, and what the prospects were on that score. The present Convention would in any case not come into force for several years, and in the meantime the 1969 Tonnage Measurement Convention, to which Article 6(4) referred, might have become operative. Calculation of the tonnage of old ships would not cause any major difficulties, provided that the plans of those ships were available.

Mr. Jeannel (France) wished to clarify a legal point raised by the Japanese and Greek delegations regarding the inadmissibility of referring to an instrument not yet in force. In contrast to domestic law, international law did not lay down hard and fast rules, but was extremely flexible. What mattered was that the text should be definitive; the 1969 Tonnage Measurement Convention satisfied that criterion, since it had been adopted. It could not even be revised because it was not yet in force. It was safe, therefore, to refer to the 1969 Tonnage Measurement Convention and such a reference in no way ran counter to international law. If paragraph 4 was deleted, as two delegations had proposed, he failed to see how ships’ tonnage would be defined in applying the Convention. They might adopt the definition given in the 1957 Convention, but many delegations considered it to be unacceptable since it might falsify tonnages. A new definition of tonnage, to be applied in the present Convention, would then be necessary, but would take a very long time to formulate. Consequently, it seemed simpler to refer to the definitions given in the 1969 Tonnage Measurement Convention. The representative of Norway had rightly argued that it was in the common interest of delegations to unify the rules applied under maritime law. It was for that reason that the French delegation wished Article 6(4) to be retained.

Mr. Busha (Secretary), referring to the request for information by the Norwegian delegation, said that, under the provisions of the 1969 Tonnage Measurement Convention, that Convention would enter into force 24 months after its adoption by 25 States representing 65 per cent of the gross tonnage of the world’s merchant fleets. To date, with the recent deposition of their instruments of accession by two States – namely Algeria and Poland – thirty States had agreed that the provisions of the Convention should be binding upon them; the tonnages of those thirty States represented approximately 55 per cent of the gross tonnage of the world’s merchant fleets.

Mr. Makovsky (USSR) had no objection in principle to the original wording of Article 6(4). He agreed with the French representative that, in international law, it was permissible to refer to an instrument which had not yet entered into force. In the present context, such a reference did not mean that the tonnages in the 1969 Tonnage Measurement Convention would be applied, but simply that the methods of measurement stipulated in that Convention would be used. The tonnage measurement rules given in the 1969 Convention could be included in the text under discussion, but that would mean overloading it to no purpose.

A problem was presented by the conflicting views as to the consequences of changing from net tonnage (to which the 1957 Convention referred) to gross tonnage, as used in the 1969 Tonnage Measurement Convention. At the request of a number of delegations, the Secretariat had produced a note on that subject (LEG/CONF.5/C.1/WP.56). In its present form, however, that document did not
help to clarify the situation, and the document prepared by the International Chamber of Shipping (ICS) (LEG/CONF.5/6) referred only to tonnages for the years 1957 and 1959. It would be seen from the Annex to that document giving a “table showing sample increases in tonnage due to measurement in accordance with the 1969 Tonnage Measurement Convention” that the average increase was 51 per cent. He drew attention to the fact that the figures varied according to the type of ship, and that changing from the 1957 approach to that adopted in 1969 would affect countries in different ways; the greatest increase in tonnage would occur in those countries having the most up-to-date ships.

Mr. Rein (Observer, CMI), speaking at the Chairman’s invitation, said that the far-reaching proposal made by the representative of Tunisia had been discussed during the preparation of the first draft, but had been rejected for a technical reason. Ships increased in weight as they became older, and it would be difficult to decide on the displacement to be taken as a basis for calculation. In addition, displacement was not recorded in any official certificate. For that reason, the simplest solution seemed to be to take the length, breadth and depth of the ship, which were given in registration documents, and to multiply those three factors. That solution, however, had been judged too simple to gain general acceptance. An alternative would have been to retain the earlier basis for calculation; that would have been satisfactory if only it had yielded logical results, but it unfortunately opened the way to far too many exceptions and abuses. That was why it had been decided that the best way out would be to take the 1969 Tonnage Measurement Convention as a basis, since the latter contained rules that were at once more uniform and simpler; those rules could be applied regardless of whether the present Convention came into force or not.

Mr. Vonau (Poland) was in favour of the wording of paragraph 4 as given in the basic document, but reserved the right to comment at a later stage on the words “gross tonnage”.

A few days previously, Poland had ratified the 1969 Tonnage Measurement Convention; that could be expected to increase greatly estimates of the gross world tonnage which the Convention would cover.

Mr. Roth (Federal Republic of Germany) also opted for paragraph 4 as worded in the basic text. Figures were needed which would not be open to misinterpretation, and the 1969 Tonnage Measurement Convention which, he hoped, would be widely applied, contained reliable rules. He assumed that the reference to the 1969 Convention contained in paragraph 4 also applied to the transitional provisions allowing for a 12 year period of grace during which existing ships might retain their old tonnage (Article 3 of the 1969 Tonnage Measurement Convention). If that assumption was correct, he was prepared to accept the text of paragraph 4, in the absence of a better solution.

Annex I contains an analysis, based on 35 ships registered in ten countries, of the effect of the provisions of the 1969 Tonnage Measurement Convention on the tonnage figures of various types of ships.

Annex II gives, in diagram form, the extent of increases and decreases (above and below the median line respectively) in the tonnage of ships resulting from the application of the 1969 Tonnage Measurement Convention. The analysis is based on a selection of 150 ships registered in the United Kingdom. The diagram is taken from a paper read to the Meeting of the Royal Institute of Naval Architects on 21 April 1970.

(89) See note 30. The Annex is omitted.
Mr. Trotz (German Democratic Republic) also thought that a common international basis for calculating limitation amounts was needed, and therefore endorsed the text of paragraph 4; at the same time he reserved the right to revert to the question of gross tonnage if the Conference adopted a global solution. The change to gross tons would necessitate alterations to the basis for calculating limitation amounts; the final attitude of his delegation would consequently depend on the outcome of the discussions on the figures to be inserted.

Mr. Wiswall (Liberia) said that the Convention should specify a uniform method of determining tonnage for the purpose of calculating limitation amounts. Liberia had ratified the 1969 Tonnage Measurement Convention, but the new Convention on limitation might lay down a different basis for calculation. It was desirable for a number of reasons to change the basis currently in use. The document submitted by the Secretariat (LEG/CONF.5/C.1/WP.56)\(^{(90)}\) showed that there was no way of establishing an average increase in ships’ tonnage under the 1969 Convention, because that increase would depend on the type of ship. In comments on that question submitted by the ICS (LEG/CONF.5/6, Annex),\(^{(91)}\) the average increase for a sample of ships was estimated at 51 per cent. Liberia had calculated that the new total gross tonnage of the sample contained in the Secretariat note would be greater than the old by between 20 and 21 per cent. Annex II to the note by the Secretariat indicated that, for most of the 150 ships considered, tonnage did not greatly diminish in relation to the median. The one thing certain was that increases in gross tonnage would be greater in proportion. The period of grace in the 1969 Tonnage Measurement Convention would not need to apply to the new Convention on Limitation, since, while it would be a costly and laborious procedure to measure all ships afresh, that did not need to be done in advance. In the event of an accident, either an approximate calculation, based on information recorded in connexion with a ship’s insurance coverage, could be made, or the ship could be measured from the plans.

Mr. Bursley (United States) supported the basic text in principle, since it provided the necessary basis for uniformity that had been lacking in the calculation methods used until then. The figure given by the Liberian representative for the average increase in gross tonnage tallied with the data available to the United States delegation.

Mr. Pages (Observer, IAPH), speaking at the Chairman’s invitation, said that ports were concerned mainly with the question of tonnage calculation, for their earnings were at stake. If the unit of measurement adopted was of no practical use, it would serve no purpose. He mentioned the continual difficulties and discussions arising in ports in connexion with checking the accuracy of tonnage calculated in terms of the tonnage units in force before the 1969 Tonnage Convention. An unsatisfactory situation had arisen: “dodger ships” tried to exploit all the quirks of the regulations, and the port authorities used tonnages peculiar to each country or each port rather than international tonnage. The concept of net tonnage was not yet completely free of complications; but that of gross tonnage provided much more satisfactory results which were simpler to achieve. Moreover, with the exception of the “dodger ships”, the old gross tonnage and the gross tonnage calculated under the 1969 rules were practically the same for most ships.

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\(^{(90)}\) See note 88.

\(^{(91)}\) See note 30. The Annex is omitted.
Mr. Koronka (Observer, ICS), speaking at the Chairman’s invitation, remarked that the tonnage measurement used in the 1957 Convention was not mentioned in the note by the Secretariat, and was not used for comparison purposes either. He noted, in connexion with Article 6(4), that problems would arise if ships had to be measured again for the purposes of the present Convention. Moreover, taking measurements from plans might result in inaccurate data, and that procedure might not be acceptable to all States. Existing ships must, therefore, be able to keep their present tonnage measurement for a 12 year period, i.e., the period provided in the 1969 Tonnage Measurement Convention.

Mr. Iturralde (Argentina) stressed the need for the averages to be calculated carefully, since they would be reflected in the figures to be included in Article 6. The average of 51 per cent quoted by the ICS had been obtained by adding up the respective averages for nine types of ship and dividing the result by nine. In fact, however, the average increase varied considerably from one type of ship to another, and the various types were represented very unevenly in the fleets of the various countries. There was then a need for a document providing averages showing the real effects of the increase for each type of ship.

Mr. Iwata (Japan) had no objection to the principle of using the same unit as the basis for calculation. The problem at issue was that of applying the 1969 Tonnage Measurement Convention. If that Convention were used as a basis for measuring tonnage for the purposes of the present Convention, Japan might have to give up the idea of becoming a Party to that Convention. It was not only at the international level that unification was needed, but also at the domestic level. Japan was not against other countries using gross tonnage as defined in the 1969 Tonnage Measurement Convention, but, for domestic purposes, it wished to retain its present system of calculating gross tonnage. As a compromise in the search for unification and to assist countries with practical difficulties in that regard, he suggested that a sentence might be added to paragraph 4 stipulating that States not Parties to the 1969 Tonnage Measurement Convention might determine in their domestic legislation the way in which gross tonnage was calculated as a basis for establishing limitation amounts.

Mr. Mensah (Executive Secretary) regretted that the Secretariat had provided the Committee with data which might be considered as inadequate and difficult to interpret because of faulty presentation. The note by the Secretariat was based on information made available by Lloyd’s Register of Shipping. The comparison in Annex I applied to tonnage calculated under the 1969 Convention (in the two left-hand columns) and tonnage calculated by previous methods (right-hand columns). The headings of the columns might have been worded differently, or else explanations provided in an introductory paragraph. He apologized to the Committee for the inadequacy of the information.

The Chairman suggested that the Committee should take an indicative vote on the Japanese proposal in connexion with Article 6(4), which was contained in document LEG/CONF.5/C.1/WP.15.92

There were 4 votes in favour of the Japanese proposal, 25 against and 5 abstentions; the proposal was not adopted.

The Chairman pointed out that one complex problem had still not been resolved.

(92) See note 87.
In their references to the 1969 Convention on Tonnage Measurement, some speakers had mentioned the provisions relating to the transition period contained in its Article 3. The question of ships that had not been measured according to the 1969 Convention had been discussed by the IMCO Legal Committee. When it was asked how the rules of that Convention should be applied to ships which did not have to be measured again under that Convention, the answer given had been that, should the need arise to invoke the limitation rules of the new Convention, calculating the tonnage of such ships for that purpose would present no difficulty. She therefore invited representatives to give their views on the point.

Mr. Whitaker (United Kingdom) endorsed the suggestion made by the representative of the Federal Republic of Germany that the transitional provisions of the Tonnage Measurement Convention should be applied as well as the tonnage measurement rules. Otherwise, there would be a practical problem in respect of ships whose tonnage did not need to be measured again. His delegation would, therefore, be in favour of amending paragraph 4 to include a statement to the effect that, for the purposes of Article 6, the ship’s tonnage should be calculated according to the provisions of the 1969 Convention on Tonnage Measurement.

Mr. Makovsky (USSR) endorsed the remarks of the representative of the United Kingdom.

Ms. Bruzelius (Norway) was unable to accept the interpretation of the representative of the Federal Republic of Germany. Since the main aim of those who had drafted the new Convention had been to achieve uniformity, she felt it impossible to accept that different liability amounts should apply to ships of the same tonnage, depending on whether they had been built before or after the entry into force of the 1969 Convention. It should surely not be so difficult either to calculate a ship’s tonnage on the basis of the Convention if its plans were precise enough, or to determine the effect of the Convention on the older ships. Moreover, the provisions of the 1969 Tonnage Measurement Convention did not require the tonnage of older ships to be calculated on the basis of the new Convention. The question that arose was what, in the event of an accident, the gross tonnage of such ships would be, and how the liability amount could be determined under the new Convention. It would not be acceptable in the event of an accident involving similar ships, for the older ones to be able to retain their former tonnage for a period of twelve years. It was essential, therefore, that, under the Convention being considered at the present Conference, the liability of every ship should be determined on the basis of its gross tonnage calculated according to the rules of the 1969 Convention.

Mr. Iwata (Japan) fully supported the United Kingdom proposal. True, it was essential to try to unify regulations, but the present situation must be taken into account and the inevitability of change accepted. In the example given by the Norwegian representative, it was not so very unusual for the two ships to be treated differently.

Mr. Bursley (United States) explained that, in raising the matter, his delegation’s objective had been to clarify the scope of Article 6(4), the basic text of which did not seem to them to mean what the representative of the Federal Republic of Germany thought it meant. That was a matter of interpretation alone, however, and his delegation was prepared to accept the consensus view on its meaning. The United Kingdom representative, on the other hand, was approaching the problem from a different standpoint in proposing to amend paragraph 4 to reflect the understanding of the Federal Republic of Germany. However as the Norwegian representative had so
aptly demonstrated, the principle underlying that paragraph, namely that of basing calculation of the liability limit on uniform tonnage calculations, was a vital factor in unification. The possible problems of the transitional period had been exaggerated and [320] implementation of the new tonnage measurement would result in unfair treatment. The United States delegation was therefore in favour of retaining the basic text, which would help to promote uniformity and equity.

Mr. Wiswall (Liberia) said that he did not see how it would be possible to allow two similar ships to apply different rules, depending on whether they had been built before or after entry into force of the 1969 Tonnage Measurement Convention. In the case of small ships, the possible establishment of a fund would then lead to differences in amounts varying by as much as 100 per cent.

The Liberian delegation was strongly in favour of maintaining the system envisaged in the draft text. As preceding speakers had stressed, the problems of the transitional period had been exaggerated, and it was unnecessary to recalculate tonnage when the 1969 Convention entered into force. In case of claims, that calculation might be necessary in order to set up a limitation fund. Sufficient information might also be available elsewhere. In case of disagreement, immediate implementation of the tonnage rules in the 1969 Convention would involve serious difficulties.

Mr. Williams (Observer, IUMI), speaking at the Chairman’s invitation, pointed out, in connexion with the Norwegian representative’s remarks, that calculation of tonnage was also necessary in estimating the amount of the insurance premium. To use two different methods of calculation would be unfair.

Mr. Quigley (Ireland) endorsed the views of the Norwegian representative. An important point of law was at issue.

He agreed with the French representative that it was better to keep the present text of paragraph 4 rather than to make its meaning unclear.

The Chairman asked for an indication of the Committee’s view on that question.

Twenty-one delegations were in favour of interpreting the reference to the 1969 Tonnage Measurement Convention in Article 6(4) as being limited to rules for measuring the tonnage of ships, 6 delegations favoured a more extensive interpretation, i.e. one including reference to the provisions on transitional arrangements for existing ships; 10 delegations abstained.

The Chairman stated that the Drafting Committee would be asked to amend the text in order to reflect the majority view.

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16 November 1976

[390] The Chairman said that, at an earlier meeting, the text of paragraph 4 had been approved subject to re-drafting to make it clear that the measurement rules only of the 1969 Convention on Tonnage Measurement of Ships, would apply. Other provisions of that Convention, especially the twelve-year transitional period, would not be applicable in determining the tonnage for the purpose of the present Convention.

She called for a vote on paragraph 4 of Article 6, subject to redrafting on those lines.

With that proviso, paragraph 4 was approved (31 votes in favour, 1 against, and 2 abstentions).
The Chairman said that the Japanese delegation had submitted a proposal that reservation should be permitted with regard to paragraph 4. The proposal had been submitted to the Committee on Final Clauses, which had decided to refer it back to the Committee of the Whole; the text was given in LEG/CONF.5/WP.3, Annex II paragraph 2(c).93

[391] Mr. Tanikawa (Japan) introduced the proposal. He reminded delegates that Article 3 of the 1969 Convention on Tonnage Measurements of Ships, limited the ships to which that Convention was applicable. It was intended, however, that the present Convention should be applicable to all ships and that, consequently, each Contracting State should determine the tonnage of each ship, including those excepted from the Tonnage Measurement Convention, in accordance with the measurement rules of that Convention. To do so would not be an easy matter, particularly for his country, where determination of the tonnage measurement in accordance with the rules of the Tonnage Measurement Convention necessitated actual checking by Government officers. If every ship had to be so measured and checked, the cost in terms both of the manpower and the time needed would prevent many States, including Japan, from becoming Parties to the present Convention, since adequate insurance arrangements would be impossible to make until the tonnage measurement had been so determined.

The Japanese delegation had therefore proposed the reservation clause which would help all States to become Parties to the Convention; that was an essential issue for his country.

Mr. Douay (France) opposed the Japanese proposal on the grounds that the present Convention should contain a uniform system accepted by all Parties. Paragraph 4 referred to the method of calculation laid down in the Tonnage Measurement Convention and did not imply acceptance of the provisions of the whole of that Convention. To accept a calculation method provided for in national law would lead to unnecessary diversity.

Mr. Herber (Federal Republic of Germany) supported the Japanese proposal. His delegation feared that a difficult situation might arise in the period between entry into force of the present Convention and the end of the transitional period provided for in the Tonnage Measurement Convention, and that there might be ships for which no new tonnage measurement was available. His delegation wished national law to be allowed to cover that transitional period.

Mr. Selvig (Norway) said that his delegation opposed the Japanese proposal as it saw it as a means of producing by another method the effect of the principle which had already been rejected. If the Japanese proposal was adopted, tonnage might differ in different countries and therefore the limitation amount would also differ, depending upon whether or not a country had made the reservation. The essence of the
Convention was that the limitation amount should be the same for all countries, and the aim of paragraph 4 of Article 6 was to ensure uniformity of measurement in all countries.

There were 3 votes in favour of the Japanese proposal (LEG/CONF.5/WP.3, Annex II, paragraph 2(c)), 29 against, and 4 abstentions; the proposal was rejected.

**Draft International Convention**

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.

**Summary Record of the Twenty-sixth Meeting**
18 November 1976

[405] The Chairman invited the Committee to continue reviewing the text of the Drafting Committee’s report (LEG/CONF.5/C.3/1 and LEG/CONF.5/C.3/1/Add.1), in order to assess whether it faithfully reflected the substantive decisions which the Committee had taken.

[406] The present discussions, at that stage, in the Committee’s deliberations, should focus on questions of drafting, any substantive questions thenceforward being treated as matters to be raised at the Plenary Conference.

Article 6 – The general limits

There were no comments. Paragraph 5

**1976 Convention**

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.

**Plenary Meetings**

**Summary Record of the Fourth Plenary Meeting**
18 November 1976

[480] Article 6 as a whole, as amended, was adopted (31 votes in favour, none against, and 7 abstentions).\(^\text{95}\)

\(^{94}\) See note 93.

\(^{95}\) There was no debate on paragraph 5.
1976 Convention

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.
Note submitted by the delegations of Norway and Sweden

Article 6 – The General Limits

This Note contains suggestions as to the figures to be inserted in both the basic and the alternative text of Article 6. The suggestions are based on the assumption that the level of liability shall, on the whole, be the same whether the basic text or the alternative text be adopted, but it is recognized that it is not possible to achieve this if due account is taken of the insurance market capacity as total exposure under the alternative text.

The above-mentioned delegations consider that the basic text is preferable since it will provide better overall coverage both for personal claims and property claims and thereby will make it possible to retain a system of global limitation of liability. Thus, there will be no need for reservations in this Convention relating e.g. to damage to harbour works and wreck removal, or to establish separate limits of liability for damage caused by hazardous cargoes.

In order to assist delegations in evaluating the proposals, a table has been elaborated comparing these proposals with proposals put forward by other delegations as well as the 1957 Convention.

Basic Text

1. The limit of liability for claims other than those mentioned in Article 7 shall be the total of an amount of [720 US $] Units of Account multiplied by the first [30,000] tons of the ship’s tonnage and [360 US $] Units of Account multiplied by the tonnage in excess thereof, but in any case at least [720,000 US $] Units of Account.

2. This total amount shall be apportioned in the following manner:

(a) claims in respect of loss of life and personal injury shall have priority up to the limit of any such amount;

(b) any balance remaining after settlement of the claims mentioned under (a) shall be distributed among the other claimants.

Alternative Text

(to replace paragraphs 1 and 2 of the basic text)

The limits of liability for claims other than those mentioned in Article 7 shall be:

(a) in respect of claims for loss of life or personal injury, the total of an amount of [500 US $] Units of Account multiplied by the first [30,000] tons of the ship’s tonnage and [250 US $] Units of Account multiplied by the tonnage in excess thereof, but in any case at least [720,000 US $] Units of Account.

(b) in respect of any other claims, the total of [300 US $] Units of Account multiplied by the first [30,000] tons of the ship’s tonnage and [150 US $] Units of Account multiplied by the tonnage in excess thereof but in any case at least [720,000 US $] Units of Account provided that in cases where the portion under sub-paragraph (a) is insufficient to pay the claims in full, the unpaid balance of such claims shall rank rateably with claims under sub-paragraph (b).

Except for the figures under “Tonnage” all the others which appear in this Table represent millions of US $.
### Article 6 - The general limits

<table>
<thead>
<tr>
<th>Tonnage</th>
<th><strong>NORWAY AND SWEDEN</strong></th>
<th><strong>FRANCE</strong></th>
<th><strong>NORWAY AND SWEDEN</strong></th>
<th><strong>UNITED KINGDOM</strong></th>
<th><strong>1957</strong>&lt;sup&gt;*&lt;/sup&gt;</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td><strong>Total Exposure</strong></td>
<td><strong>Total Exposure</strong></td>
<td><strong>Total Exposure</strong></td>
<td><strong>Total Exposure</strong></td>
<td><strong>Total Exposure</strong></td>
</tr>
<tr>
<td>300</td>
<td>0.500,000</td>
<td>0.720,000</td>
<td>0.720,000</td>
<td>1.44</td>
<td>0.187,500</td>
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<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>0.062,500</td>
</tr>
<tr>
<td>500</td>
<td>0.720,000</td>
<td>0.720,000</td>
<td>0.720,000</td>
<td>1.44</td>
<td>0.187,500</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>0.062,500</td>
</tr>
<tr>
<td>1,000</td>
<td>0.720,000</td>
<td>0.720,000</td>
<td>0.720,000</td>
<td>1.44</td>
<td>0.375,500</td>
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<tr>
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<td></td>
<td></td>
<td></td>
<td>0.125,500</td>
</tr>
<tr>
<td>30,000</td>
<td>0.720,000</td>
<td>15</td>
<td>9</td>
<td>24</td>
<td>11.25</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>3.75</td>
</tr>
<tr>
<td>70,000</td>
<td>21.6</td>
<td>25</td>
<td>15</td>
<td>40</td>
<td>26.25</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
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<td>8.75</td>
</tr>
<tr>
<td>100,000</td>
<td>36</td>
<td>40</td>
<td>32.5</td>
<td>52</td>
<td>31.8</td>
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<td></td>
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<td></td>
<td></td>
<td></td>
<td>10.6</td>
</tr>
<tr>
<td>240,000</td>
<td>46.8</td>
<td>75</td>
<td>67.5</td>
<td>108</td>
<td>68.2</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>19.3</td>
</tr>
</tbody>
</table>

* The calculation is based on Fr. 1,000 = $80. If account were taken of present currency development, US $87 would be the correct figure if the present level of liability (based on the 1957 Convention) in Norway and Sweden were taken into account.

**APPENDIX I/B**

*Document LEG/CONF.5/C.1/WP.44*

5 November 1976 [171]

Comparative Table Relating to Article 6
Prepared by the Chairman

<table>
<thead>
<tr>
<th>ALTERNATIVE TEXT</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Draft text</strong></td>
</tr>
<tr>
<td>K units</td>
</tr>
<tr>
<td>X tons</td>
</tr>
<tr>
<td>Minimum 300 ton x K</td>
</tr>
<tr>
<td>M units</td>
</tr>
<tr>
<td>X tons breakdown</td>
</tr>
<tr>
<td>N units</td>
</tr>
<tr>
<td>Minimum 300 ton x M</td>
</tr>
<tr>
<td>Max limit.</td>
</tr>
</tbody>
</table>
BASIC TEXT (both personal and property claims)

<table>
<thead>
<tr>
<th>Draft text</th>
<th>France</th>
<th>Nor./Swe.</th>
</tr>
</thead>
<tbody>
<tr>
<td>B Units of account</td>
<td>500$</td>
<td>720$</td>
</tr>
<tr>
<td>C Breakdown point</td>
<td>500$</td>
<td>720$</td>
</tr>
<tr>
<td>D Units of account</td>
<td>500$</td>
<td>720$</td>
</tr>
<tr>
<td>E U.o.a. = minimum limit</td>
<td>500$</td>
<td>720$</td>
</tr>
</tbody>
</table>

APPENDIX I/C

The relevant part of the Report is quoted below:

Document LEG/CONF.5/C.1/WP.76
12 November 1976

7. In the light of the indicative vote taken in the Committee of the Whole on the basic and alternative texts of Article 6, the Group proceeded to a discussion on the figures for insertion in the alternative text. It was, however, understood that selection of the alternative text as a basis for the Group’s discussion was not prejudicial to the issue of which text should finally be included in the Convention.

8. In this connexion, attention was drawn to a proposal submitted to the Committee of the Whole by the Australian delegation (C.1/WP.53). A number of delegations felt that the principle of providing for a partial spillover of any residue in the personal injury fund into the property fund could possibly form the basis of a compromise between those delegations which supported the basic text and those who favoured the alternative text. Two conceptually similar proposals were put forward, one by the delegation of France, to read as follows:

“Add the following words after the final sentence in sub-paragraph (b):
However, where a balance remains after full settlement of the claims mentioned under (a), it may be used for settlement of the claims specified in (b) up to [two-thirds] of the total amount specified in (a).”

the other one by the delegations of Australia, Italy and Norway which reads as follows:

“Add the following text at the end of alternative text of paragraph 1 of Article 6:
and provided further that any residue of the portion under sub-paragraph (a) after full payment of the claims under sub-paragraph (a), not exceeding [___] [1/3] of that portion, shall be added to the portion under sub-paragraph (b).”

9. While some delegations supported these proposals, other delegations were opposed to them. Consequently, the Group decided, in view of the time available to it,
not to discuss the merits of these proposals. Moreover, some delegations noted that negotiations on the figures to be inserted in Article 6 (see paragraph 10 below) had been carried out on the assumption of an adoption of the alternative text for Article 6 without amendment. In their view, the adoption of the concept of a partial spillover in some form or another would have serious effects on the figures established and would necessitate their re-calculation. The Group therefore decided to leave it to the Committee of the Whole to establish whether the proposals put forward by the delegations of Australia, France, Italy and Norway could form the basis of a harmonization of positions in respect of Article 6. Other delegations, however, pointed out that the figures proposed by them had been based on the assumption that there would be a measure of spillover.

In respect of the figures themselves, the Group had not been able, in the time available to it, to reach a consensus on the figures to be inserted in Article 6. It was, however, able to achieve a certain convergence of views and to narrow down the gaps between the various figures originally proposed by delegations.

10. In respect of the minimum total exposure the Group concluded that the various viewpoints could be classified in four groups:

– a minimum total exposure in the range of $0.15-$0.3 million (reflecting a minimum tonnage range of 300 to 500 tons) was supported by 6 representatives;
– a minimum total exposure in the range of $0.6-$0.9 million (reflecting a minimum tonnage range of 1,000 to 1,500 tons) was supported by one representative;
– a minimum total exposure of $0.3-$0.9 million (reflecting a minimum tonnage range of 500 to 1,500 tons) was supported by one representative;
– a minimum total exposure in the range of $0.9-$1.25 million (reflecting a minimum tonnage range of 500 to 1,500 tons) was supported by 6 representatives.

One delegation, moreover, supported a minimum total exposure of $2.2 million.

11. In respect of the minimum total exposure the Group concluded that the various viewpoints could be classified in four groups:

– a minimum total exposure in the range of $0.15-$0.3 million (reflecting a minimum tonnage range of 300 to 500 tons) was supported by 6 representatives;
– a minimum total exposure in the range of $0.6-$0.9 million (reflecting a minimum tonnage range of 1,000 to 1,500 tons) was supported by one representative;
– a minimum total exposure of $0.3-$0.9 million (reflecting a minimum tonnage range of 500 to 1,500 tons) was supported by one representative;
– a minimum total exposure in the range of $0.9-$1.25 million (reflecting a minimum tonnage range of 500 to 1,500 tons) was supported by 6 representatives.

One delegation, moreover, supported a minimum total exposure of $2.2 million.

12. Some delegations pointed out, furthermore, that their position on the minimum total exposure would also depend on the provision to be agreed upon in respect of small ships. One delegation also pointed out that, in order to reach a compromise in respect of minimum tonnage, it seemed desirable to narrow down the gap between 300 and 1,500 tons and suggested 750 tons as a basic figure.

13. It was noted that the curve between the minimum total exposure and the total exposure at 30,000 tons was not discussed in the Group. One delegation proposed a first threshold at 15,000 tons with a total exposure of $1 million per thousand tons up to that point. It should, however, be noted that the Group did not discuss the question of breakpoints.

14. In respect of the total exposure of larger vessels the Group selected three representative sizes (30,000 tons, 70,000 tons and 240,000 tons) and reached the conclusions outlined below.

15. In respect of 30,000 tons, three groups of viewpoints emerged:

– a total exposure of $15 million was favoured by 5 representatives;
– a total exposure of $18 million was favoured by 5 representatives;
– a total exposure in a range of $20 to $21 million was favoured by 4 representatives.

One delegation, moreover, supported a total exposure of $27 million.
16. In respect of 70,000 tons, two groups of viewpoints became apparent:
   - a total exposure in the range of $29 to $36 million was favoured by 6 representatives;
   - a total exposure of $42 million was favoured by 7 representatives.
One delegation, moreover, supported a total exposure in the range of $47 to $57 million.

17. In respect of 240,000 tons, two groups of viewpoints became apparent:
   - a total exposure in the range of $59 to $72.5 million was favoured by 4 representatives;
   - a total exposure in the range of $80 to $95 million was favoured by 10 representatives.

18. In respect of all three above-mentioned tonnage figures, the majority of representatives in the Group supported a breakdown at a ratio of two to one for personal injury and property claims respectively. One delegation noted that it could accept such a ratio only if a provision on a partial spillover in respect of unused funds from the personal injury fund to the property fund was incorporated in the Convention.

APPENDIX I/D

The text of the relevant parts of the Report of the Working Group on Basic Issues relating to the Limitation System (Document LEG/CONF/5/C.1/WP.76) is quoted in Appendix I/C. The paper prepared by the Secretariat (Document LEG/CONF/5/C.1/WP.78) is quoted below:

Note by the Secretariat

This paper was prepared by the Secretariat in order to clarify a number of basic data contained in the Report of the Working Group on Basic Issues relating to the Limitation System (Document LEG/CONF/5/C.1/WP.76). Annex I contains explanatory notes in respect of paragraphs 15 to 17 of the Report, Annex II explanatory notes in respect of paragraph 11 of the Report.

ANNEX I

Ad paragraph 15

The following table shows the average total amount of liability per ton (column (b)) for a vessel of 30,000 tons for each of the three alternative total exposure amounts (column (a)) proposed by delegations. The table also indicates the allocation of this average total amount of liability per ton in respect of personal injury claims (column (c)) and property claims (column (d)) on the assumption that the ratio for the distribution of this amount is two to one. The figure in column (c) is the one which would be inserted in place of [K] in Article 6(a), the figure in column (d) the one to be inserted in place of [M] in Article 6(b).
Article 6 - The general limits

<table>
<thead>
<tr>
<th>(a) Total exposure</th>
<th>(b) average total amount per ton</th>
<th>(c) average amount per ton for personal claims</th>
<th>(d) average amount per ton for property claims</th>
</tr>
</thead>
<tbody>
<tr>
<td>$15 million</td>
<td>500</td>
<td>333</td>
<td>167</td>
</tr>
<tr>
<td>$18 million</td>
<td>600</td>
<td>400</td>
<td>200</td>
</tr>
<tr>
<td>$21 million</td>
<td>700</td>
<td>466</td>
<td>234</td>
</tr>
</tbody>
</table>

It is to be noted that these figures are based on the assumption that there is no breakpoint up to 30,000 tons. If one assumes a breakpoint at e.g., 15,000 tons which would be inserted in place of [X], the figures in respect of a total exposure of $18 million would look as follows:

<table>
<thead>
<tr>
<th>(a) Total exposure</th>
<th>(b) for the first 15,000 tons</th>
<th>(c)</th>
<th>(d)</th>
</tr>
</thead>
<tbody>
<tr>
<td>18 million</td>
<td>650</td>
<td>433</td>
<td>217</td>
</tr>
<tr>
<td>for 15,000 to 30,000 tons</td>
<td>550</td>
<td>366</td>
<td>184</td>
</tr>
</tbody>
</table>

In the above case, the figure 433 would be inserted in place of [K], the figure 217 in place of [M], the figure of 366 in place of [L] and the figure 184 in place of [N]. An early breakpoint, e.g. at 15,000 tons, might require a subsequent breakpoint at a higher tonnage, e.g., 70,000 tons. In that case, Article 6 might have to be based on a three or even four layer system.

Ad paragraph 16

There follow similar tables in respect of a ship of 70,000 tons. Column (a) lists the two alternative total exposure amounts proposed by delegations. In respect of the first of these two alternatives, which covers in fact a range of $29 to $36 million, a figure of $35 million was selected for simplicity. If there was no breakpoint, the figures would look as follows:

<table>
<thead>
<tr>
<th>(a) Total exposure</th>
<th>(b)</th>
<th>(c)</th>
<th>(d)</th>
</tr>
</thead>
<tbody>
<tr>
<td>35 million</td>
<td>500</td>
<td>333</td>
<td>167</td>
</tr>
<tr>
<td>42 million</td>
<td>600</td>
<td>400</td>
<td>200</td>
</tr>
</tbody>
</table>

If one assumes a breakpoint at 30,000 tons, to be inserted in place of [X], then the figures could look as follows:
There follows, finally, a similar table for a ship of 240,000 tons. The two alternative total exposures proposed in this context are ranges of figures, the first $59 to $72.5 million, the second $80 to $195 million. For reasons of simplicity, three specific amounts have been selected: $69 million, $84.5 million and $93 million. Here the breakpoint was assumed to be at 70,000 (=X). In respect of the first amount one has taken as a point of departure an exposure at 70,000 tons of $35 million; for the other two amounts one has taken as a point of departure an exposure at 70,000 tons of $42 million. On this basis the data presents itself as follows:

<table>
<thead>
<tr>
<th>(a)</th>
<th>(b)</th>
<th>(c)</th>
<th>(d)</th>
</tr>
</thead>
<tbody>
<tr>
<td>34/35 million</td>
<td>600</td>
<td>433=K</td>
<td>200=M</td>
</tr>
<tr>
<td>for the first 30,000 tons</td>
<td>for 30,000 to 70,000 tons</td>
<td>400</td>
<td>266=L</td>
</tr>
<tr>
<td>41/42 million</td>
<td>700</td>
<td>466=K</td>
<td>234=M</td>
</tr>
<tr>
<td>for the first 30,000 tons</td>
<td>for 30,000 to 70,000 tons</td>
<td>500</td>
<td>333=L</td>
</tr>
</tbody>
</table>

ANNEX II

For the minimum total exposure four different ranges of amounts have been proposed (see column (a)). The table below indicates, on the assumption of a two to one ratio for the distribution of the total amount, for each of these four ranges the range of figures for the minimum exposure in respect of personal injury claims (column (b)) and in respect of property claims (column (c)). The figure in column (b) would be inserted in place of 300 [K] in Article 6(a). The figure in column (c) in place of 300 [M] in Article 6(b).

<table>
<thead>
<tr>
<th>(a)</th>
<th>(b)</th>
<th>(c)</th>
</tr>
</thead>
<tbody>
<tr>
<td>minimum total exposure</td>
<td>minimum exposure for personal injury claims</td>
<td>minimum exposure for property claims</td>
</tr>
<tr>
<td>$</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>0.15 – 0.3 million</td>
<td>100,000 – 200,000</td>
<td>50,000 – 100,000</td>
</tr>
<tr>
<td>0.6 – 0.9 million</td>
<td>400,000 – 600,000</td>
<td>200,000 – 300,000</td>
</tr>
<tr>
<td>0.3 – 0.9 million</td>
<td>200,000 – 600,000</td>
<td>100,000 – 300,000</td>
</tr>
<tr>
<td>0.9 – 1.25 million</td>
<td>600,000 – 800,000</td>
<td>300,000 – 400,000</td>
</tr>
</tbody>
</table>
APPENDIX I/E

Document LEG/CONF.5/C.1/WP.82 is quoted below:

Note by the Secretariat
Following consultations with the Chairman held with a number of delegations a compromise proposal has been worked out aimed at producing a solution acceptable to a large number of delegations at the Conference and, hence likely to result in a Convention which will be accepted and implemented by many governments.

The proposal is given in Annex I to this document.

Annex II gives in tabular form the limitation figures for ships of various tonnages, calculated on the basis of these proposals.

The table in Annex III gives the limitation figures calculated on the alternative basis for dividing the fund between personal and property claims.

ANNEX I

Proposals on limitation figures

<table>
<thead>
<tr>
<th>Ship’s Tonnage</th>
<th>Total Exposure</th>
<th>Personal Claims</th>
<th>Property Claims</th>
</tr>
</thead>
<tbody>
<tr>
<td>0 – 500 tons</td>
<td>US $600,000</td>
<td>US $400,000</td>
<td>US $ 200,000</td>
</tr>
<tr>
<td></td>
<td>(fixed minimum amount for any ship below and up to 500 tons)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>501 – 30,000 tons</td>
<td>US $600 per ton</td>
<td>US $200 per ton</td>
<td></td>
</tr>
<tr>
<td>30,001 – 70,000 tons</td>
<td>US $300 per ton</td>
<td>US $150 per ton</td>
<td></td>
</tr>
<tr>
<td>70,0001 – and above</td>
<td>US $200 per ton</td>
<td>US $100 per ton</td>
<td></td>
</tr>
</tbody>
</table>

1] An alternative basis for dividing the total between personal claims and property claims was suggested as follows:
   Personal claims: US $500,000
   Property claims: US $100,000

These proposals are based on the following assumptions:
1. Unbreakable limit: Article 4 without reference to gross negligence.
2. 1957 system as regards system of liability, e.g. unpaid personal claims rate equally with property claims in the property fund.

3. Claims in respect of harbour works, etc., and wreck removal should be included among claims subject to limitations. States should be entitled to make a reservation in respect of wreck removal. Whether a reservation should be allowed in respect of damage to harbour works etc. is an open question.
4. States would be free to regulate by specific provisions of national law the system of liability to be applied to vessels of less than 300 tons.
ANNEX II

Limitation figures calculated on the basis of the proposals in Annex I*

<table>
<thead>
<tr>
<th>Ship’s Tonnage</th>
<th>Total Exposure</th>
<th>Personal Claims</th>
<th>Property Claims</th>
</tr>
</thead>
<tbody>
<tr>
<td>500 tons</td>
<td>US$ 600,000</td>
<td>US$ 400,000</td>
<td>US$ 200,000</td>
</tr>
<tr>
<td>1,000 tons</td>
<td>US$ 1,000,000</td>
<td>US$ 700,000</td>
<td>US$ 300,000</td>
</tr>
<tr>
<td>1,500 tons</td>
<td>US$ 1,400,000</td>
<td>US$ 1,000,000</td>
<td>US$ 400,000</td>
</tr>
<tr>
<td>2,000 tons</td>
<td>US$ 1,800,000</td>
<td>US$ 1,300,000</td>
<td>US$ 500,000</td>
</tr>
<tr>
<td>3,000 tons</td>
<td>US$ 2,600,000</td>
<td>US$ 1,900,000</td>
<td>US$ 700,000</td>
</tr>
<tr>
<td>10,000 tons</td>
<td>US$ 6,800,000</td>
<td>US$ 4,700,000</td>
<td>US$ 2,100,000</td>
</tr>
<tr>
<td>15,000 tons</td>
<td>US$ 9,800,000</td>
<td>US$ 6,700,000</td>
<td>US$ 3,100,000</td>
</tr>
<tr>
<td>20,000 tons</td>
<td>US$ 12,800,000</td>
<td>US$ 8,700,000</td>
<td>US$ 4,100,000</td>
</tr>
<tr>
<td>30,000 tons</td>
<td>US$ 19,000,000</td>
<td>US$ 12,700,000</td>
<td>US$ 6,300,000</td>
</tr>
<tr>
<td>60,000 tons</td>
<td>US$ 32,500,000</td>
<td>US$ 21,700,000</td>
<td>US$ 10,800,000</td>
</tr>
<tr>
<td>70,000 tons</td>
<td>US$ 37,000,000</td>
<td>US$ 24,700,000</td>
<td>US$ 12,300,000</td>
</tr>
<tr>
<td>100,000 tons</td>
<td>US$ 46,000,000</td>
<td>US$ 30,700,000</td>
<td>US$ 15,300,000</td>
</tr>
<tr>
<td>240,000 tons</td>
<td>US$ 88,000,000</td>
<td>US$ 58,700,000</td>
<td>US$ 29,300,000</td>
</tr>
</tbody>
</table>

* with the total limitation amount for ships of 500 tons and under divided on the basis of:
Personal claims: US $400,000
Property claims: US $200,000

ANNEX III

Limitation figures calculated on the basis of the proposals in Annex I*

<table>
<thead>
<tr>
<th>Ship’s Tonnage</th>
<th>Total Exposure</th>
<th>Personal Claims</th>
<th>Property Claims</th>
</tr>
</thead>
<tbody>
<tr>
<td>500 tons</td>
<td>US$ 600,000</td>
<td>US$ 500,000</td>
<td>US$ 100,000</td>
</tr>
<tr>
<td>1,000 tons</td>
<td>US$ 1,000,000</td>
<td>US$ 800,000</td>
<td>US$ 200,000</td>
</tr>
<tr>
<td>1,500 tons</td>
<td>US$ 1,400,000</td>
<td>US$ 1,100,000</td>
<td>US$ 300,000</td>
</tr>
<tr>
<td>2,000 tons</td>
<td>US$ 1,800,000</td>
<td>US$ 1,400,000</td>
<td>US$ 400,000</td>
</tr>
<tr>
<td>3,000 tons</td>
<td>US$ 2,600,000</td>
<td>US$ 2,000,000</td>
<td>US$ 600,000</td>
</tr>
<tr>
<td>10,000 tons</td>
<td>US$ 6,800,000</td>
<td>US$ 4,800,000</td>
<td>US$ 2,000,000</td>
</tr>
<tr>
<td>20,000 tons</td>
<td>US$ 12,800,000</td>
<td>US$ 8,800,000</td>
<td>US$ 4,000,000</td>
</tr>
<tr>
<td>30,000 tons</td>
<td>US$ 18,800,000</td>
<td>US$ 12,800,000</td>
<td>US$ 6,000,000</td>
</tr>
<tr>
<td>60,000 tons</td>
<td>US$ 32,300,000</td>
<td>US$ 21,800,000</td>
<td>US$ 10,500,000</td>
</tr>
<tr>
<td>70,000 tons</td>
<td>US$ 36,800,000</td>
<td>US$ 24,800,000</td>
<td>US$ 12,000,000</td>
</tr>
<tr>
<td>100,000 tons</td>
<td>US$ 45,800,000</td>
<td>US$ 30,800,000</td>
<td>US$ 15,000,000</td>
</tr>
<tr>
<td>240,000 tons</td>
<td>US$ 87,800,000</td>
<td>US$ 58,800,000</td>
<td>US$ 29,000,000</td>
</tr>
</tbody>
</table>

* with the total limitation amount for ships of 500 tons and under divided on the basis of:
Personal claims: US $500,000
Property claims: US $100,000
APPENDIX I/F

LEG/CONF5/C.1/WP85 17 November 1976 [207]

Proposal by the delegations of the Federal Republic of Germany, the Netherlands, the United Kingdom and the United States

Article 6

1 gold franc = 0.066335 SDR

The ratio of the US dollar to the unit of special drawing right varies from day to day; $1.20 = 1 SDR is used here to retain consistency with the calculations used in Montreal in 1975. Therefore:

- 2,100 francs = 139.3 SDR $167.1 (approximately)
- 1,000 francs = 66.3 SDR $79.6 (approximately)
- 3,100 francs = 209.6 SDR $246.7 (approximately)
- 700,000 francs = 45,434 SDR $55,721 (approximately)

It follows that any dollar figures agreed for the limits of liability should be scaled down in the ratio 6:5 to obtain amounts in SDRs for insertion in Articles 6 and 7, and scaled up in the ratio 1:12.5 to obtain amounts in francs for insertion in Article 8, paragraph 2.

The limits of liability shall be calculated as follows:

(a) in respect of claims for loss of life or personal injury other than those mentioned in Article 7,

(i) [US$400,000] [333,000 SDR = 5,000,000 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 per ton shall be added to the amount mentioned in (i):

- from 501-3,000 tons [US$600] [500 SDR = 750 monetary units] per ton
- from 3,001-30,000 tons [US$400] [333 SDR = 500 monetary units] per ton
- from 30,001-70,000 [US$300] [250 SDR = 375 monetary units] per ton
- for each ton in excess of 70,000 tons [US$200] [167 SDR = 250 monetary units]

(b) in respect of any other claims,

(i) [US$200,000] [166,000 SDR = 2,500,000 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 per ton shall be added to the amount mentioned in (i):

- from 501-30,000 tons [US$200] [167 SDR = 250 monetary units] per ton
- from 30,001-70,000 tons [US$150] [125 SDR = 187.5 monetary units] per ton
- for each ton in excess of 70,000 tons [US$100] [83 SDR = 125 monetary units]

Article 6(3)

In respect of claims for loss of life or personal injury

- [US$1,000,000] [833,000 SDR = 12,500,000 monetary units]

In respect of any other claims

- [US$400,000] [333,000 SDR = 5,000,000 monetary units]

Total [US$1,400,000] [1,166,000 SDR = 17,500,000 monetary units]

Article 7

700,000 monetary units = 46,666 SDR

US$30,000,000 = 25,000,000 SDR = 375,000,000 monetary units.
Article 7
The limit for passenger claims

IMCO Legal Committee
Twenty-eighth Session

[10] 50. The Committee considered the following major issues involved in these Articles:
(a) whether passenger claims should be treated differently from other personal claims, with one limitation fund for passenger claims different from the fund available for other claims arising from loss of life or personal injury;
(b) whether an order of priorities among the various other claims should be envisaged, e.g. personal claims before property claims; damage to port installations and wreck removal before other property claims;
(c) whether amounts available for one form of claim, if not exhausted by such claims, should be made available for other claims, reciprocally of otherwise (“spillover in one way of both ways”);
(d) what criteria would be used for establishing the limitation amount (e.g. based on passenger capacity; based on tonnage, with or without a minimum or maximum tonnage limit; fixed amounts, with or without upper ceiling and lower floors);
(e) whether in the case of tonnage based criteria, a different amount per ton should be provided above a certain level in order to cater for any large ships and, if so, by what criteria should any such level be determined;
[11] (f) what unit of account might be used for expressing the various limitation amount, in order to ensure stability and financial predictability;
(g) what would be suitable as the conversion date for calculating limitation amounts in national currencies.

51. A general discussion in the Committee of the structure of a new limitation system led to the following conclusions.
52. Regarding passengers’ claims, it was decided that a special limit should be provided for claims in respect of loss of life or personal injury to passengers of the ship in question. The criterion of the passenger-carrying capacity of a ship was chosen because it was felt that a tonnage criterion would be unsuitable in respect of vessels of modest tonnage which carry large numbers of passengers. For example, a limitation fund based on tonnage for a 4,000 ton ferry with 1,400 passengers could be easily exhausted in a very serious casualty involving that ship. The special limit would be accomplished by establishing a total limitation sum calculated by multiplying an agreed figure by the number of passengers authorized to be carried by the ship according to its safety certificate. This limitation sum would be made subject to a ceiling which would be the maximum amount for which a shipowner would require to obtain insurance cover for his passenger liability. In this connexion it was suggested that the figure mentioned above (i.e. the figure by which to multiply the passenger-carrying capacity of the ship) should be set by reference to the figure of 700,000 Poincaré francs contained in the Athens (Passenger) Convention of 1974. However, other delegations considered that it would not be possible to consider an acceptable figure until certain principal issues such as the limitation figures for other claims and the contents of the article as conduct barring limitation, had been settled.

53. A special article on a limit for passenger claims was incorporated as a new draft Article 7. This article contains a definition of passenger claims based on the definition of “passenger” contained in the Athens Convention.
54. One delegation questioned the advisability of including reference to per capita figures in this provision.
Draft Articles

[33] 1. In respect of claims 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 [H] 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 [I] 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.

\(^*\) This sum should not exceed 700,000 Poincaré francs; cf. Article 7, paragraph 1 of the Athens Convention relating to the Carriage of Passengers and Their Luggage by Sea, 1974, or its equivalent in Unit of Account terms.

Diplomatic Conference

Committee of the Whole
Summary Record of the Eleventh Meeting
8 November 1976

[285] Mr. Berenguer (Spain) introduced his delegation’s proposal (LEG/CONF.5/C.1/WP.10)\(^1\) for the deletion of Article 7, since injury to passengers would be adequately covered by the alternative text for paragraph 1 of Article 6 (LEG/CONF.5/C.1/WP.1, page 33)\(^2\).

Mr. Tanikawa (Japan), introducing his delegation’s amendment to paragraph 1 (LEG/CONF.5/C.1/WP.15),\(^3\) said that the words it proposed to delete were unnecessary, since the carrier’s liability in respect of each passenger ship was clear from the limitation under the 1974 Athens Convention and the relevant national legislation concerning the carrier’s contract. His delegation was opposed to a per capita limitation. As indicated in his delegation’s proposal (LEG/CONF.5/C.1/WP.28),\(^4\) an appropriate figure for the global limitation might be between $30 million and $50 million.

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(1) The relevant part of this document is quoted below:
LEG/CONF.5/C.1/WP.10
2 November 1976
Proposed amendments and suggestions by the delegation of Spain
[147] Articles 6 and 7
The Spanish delegation supports the alternative text of paragraph 1, Article 6, as shown in LEG/CONF.5/WP.1, excluding the reference to Article 7 – which shall be deleted. Paragraph 1 of Article 6, would then commence:
“The limits of responsibility shall be...”
All further references to Article 7 shall be omitted and the following Articles, consequently, renumbered.

(2) This is the text of the Draft Articles.

(3) Document LEG/CONF.5/C.1/WP.15
2 November 1976
Amendment submitted by the Japanese delegation
[150] II. Article 7
Paragraph 1 should be amended as follows:
“1. In respect of claims for loss of life or personal injury to passengers of a ship, the limit of liability of the shipowner thereof shall be (I) Units of Account”.

(4) See note 9 sub Art. 6.
Mr. Suchorzewski (Poland) strongly supported the principle of Article 7, which was to ensure adequate liability by the carrier in respect of passenger claims. The level of the carrier’s liability was closely linked with the number of passengers carried. In that respect, his delegation’s proposal (LEG/CONF.5/C.1/WP.26)\(^5\) covered three possibilities: the number of passengers corresponding exactly with the number of passengers on the ship’s certificate, or being less than that number, or – exceptionally, in cases of emergency for example – exceeding the certified figure. In all those cases an adequate fund for passengers would be assured.

Mr. Ganten (Federal Republic of Germany) introduced his delegation’s proposal (LEG/CONF.5/C.1/WP.31)\(^6\) which superseded the original proposal in document LEG/CONF.5/4/Add.1. His delegation now agreed in principle with Article 7, but proposed a minimum instead of a maximum limit. There seemed no need for the latter, since the proposed amount of $20,000 would be multiplied by the highest possible number of passengers and would be within the capacity of the insurance market. Experience showed that there were few accidents involving considerable injury to passengers, and there was therefore no need for higher calculation factor to fix the global limitation.

Mr. Bursley (United States) said that, as indicated in his delegation’s comments (LEG/CONF.5/C.1/WP.33),\(^7\) his country was one of the largest global consumers of shipboard passenger accommodation and therefore had a particular interest in

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(5) Document LEG/CONF.5/C.1/WP.26
2 November 1976
[156] Proposal submitted by the delegation of Poland
Article 7
Modify paragraph 1 as follows:
“1. In respect of claims 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 (H) units of account multiplied by the number of passengers actually carried on board of the ship, but not exceeding (I) units of account”.

(6) Document LEG/CONF.5/C.1/WP.31
3 November 1976
[159] Proposal by the delegation of Federal Republic of Germany
Article 7, paragraph 1
1. \( H = 20,000 \)
2. Substitute the words “but not exceeding [I] Units of Account” by “but not less than [2,000,000] Units of Account”.

(7) Document LEG/CONF.5/C.1/WP.33
3 November 1976
[160] Comment by the United States delegation
Article 7
United States citizens are among the world’s principal consumers of passenger services. The United States delegation is accordingly concerned about the limits of passenger liability to be established under Article 7.
In our view, the limits of passenger liability established under the 1974 Athens Convention are much too low to meet the legitimate interests of passenger claimants. The United States does not expect to ratify the Athens Convention, and would be faced with a difficult dilemma if the General Limitation Convention incorporated the Athens limits.
[161] In our view, limits for passenger claims should approximate the limits applicable to international civil aviation flights involving the United States as a point of origin or destination. If such higher limits are not acceptable to the Conference, the United States believes that Article 7 should be deleted. The Convention should be amended to exclude passenger claims from its coverage so that States wishing to become party to the Athens Convention could do so, but other States would not be compelled to accept the Athens passenger limits in acceding to the new General Convention.
adequate compensation for passengers. He saw no reason why compensation for shipboard passengers should differ from that available to aircraft passengers; and to conform with the new Warsaw Convention regime, provision should be made to ensure shipboard passengers at least $300,000 recovery for major accidents with loss of life. With regard to the reference to the Athens Convention, he wished to make it clear that a total fund equal to or less than what was provided for under that Convention would not be sufficient to cover catastrophic cases. He realized that a minimum sum of $300,000 per person was a drastic increase on previous amounts, but previous amounts were unrealistic. If the amount he proposed was unacceptable to the Committee he would suggest the deletion of Article 7 and the exclusion of passenger claims from the present Convention.

**Mr. Selvig (Norway)** referred to his Government’s proposal (LEG/CONF.5/4)⁸ for a limit of liability per passenger equivalent to the amount in the Athens Convention, namely about $60,000, and a maximum liability for passenger ships in respect of passenger claims of $25 million. Application of the *per capita* limitation combined with a ceiling limitation would mean that in the case of major disaster, compensation would be paid up to the *per capita* limit in most cases, except where ships carried more than 400 passengers. A ceiling for passenger claims was needed to take account of insurance market capacity and the relationship between amounts for passenger and other claims.

He opposed the Spanish proposal inasmuch as it would not allow for the ample recovery for passenger claims which was available in the insurance market and should be used. He saw no need for the proposal of the Federal Republic of Germany, which reduced the *per capita* limit below that of the Athens Convention. He could not support the Polish proposal, since insurers would know only the number of passengers a ship might carry, not the number actually carried. The only definite figure was that on the ship’s certificate.

**Mr. Hedborg (Sweden)**, in reply to a question from the Chairman, said that he had nothing to add to the Norwegian representative’s comments. His delegation’s proposal (LEG/CONF.5/4)⁹ was similar to that of the Norwegian delegation.

**Lord Diplock (United Kingdom)** introduced his delegation’s proposals (LEG/CONF.5/4 and LEG/CONF.5/C.1/WP.13).¹⁰ His delegation considered it essential for the Convention to have a special provision for passenger liability, based on the number of passengers carried or authorized to be carried by the vessel. Such liability was not suitable for limitation by tonnage. Article 7 was an essential feature of an acceptable convention on shipowner’s liability. The fund proposed under Article 7 was additional to any fund or funds under Article 6, and a maximum had to be fixed which would have regard to market capacity for the total funds under the two Articles.

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(8) The relevant part of LEG/CONF.5/4 is quoted below:

[83] The limit of liability *per passenger* should be the same as the per passenger amount of liability established by the Athens Convention relating to the Carriage of Passengers and their Luggage at Sea, 1974. The catastrophe limit should be fixed in such a way that the passenger liability of passenger ships equals the corresponding part of the market capacity which is presently used to insure against oil pollution damage under the 1969 Convention about 25 million United States dollars.

(9) The relevant part of LEG/CONF.5/4 is quoted below:

[83] The Swedish Government supports the text of Article 7 and considers that the *per passenger* figure should correspond to the one provided for in Article 7(1) of the 1974 Athens Convention. The maximum limit should be fixed to a sum equalling at least US $ 25 million.

(10) See note 7 sub Art. 6.
The proposal for a maximum figure of $40 million took into account the current largest passenger ship tonnage and the amounts that could be added to the maximum on a tonnage basis under Article 6 without market capacity being exceeded. With regard to the Polish representative’s comments, he had no fixed views on whether the actual or the certified number of passengers carried was preferable, but agreed with the Norwegian representative that the certified number was a known quantity. There was also the possibility of overloading, which could be dealt with by warranty in the insurance policy as a disincentive to overloading. He could understand the Japanese proposal if it were certain that all countries would apply the provisions of the Athens Convention, but that was not the case. If there were no per capita limit, small vessels with 100 passengers would be exposed to the same liability as channel ferries with up to 1,400 passengers, which would not be reasonable. With regard to the proposal by the Federal Republic of Germany, his delegation considered that the per capita limit should not be lower than the limit under the Athens Convention so recently agreed upon, and that a maximum was necessary because it could not be taken – and was unlikely – that the Athens limit would be accepted throughout the world.

Mr. Chatin (France) was in favour of retaining Article 7 and the principle of individual passenger compensation, which was the only fair system. An example given in the IMCO Legal Committee had shown that the system under the 1957 Convention was untenable. His delegation’s proposal concerning compensation (LEG/CONF5/C.1/WP25)\(^{11}\) took into account the Athens Convention as a legal precedent, and also his own country’s needs, since there were only relatively few passenger ships in its fleet. On the basis of a compromise between the capacity of the smallest and largest ships, he proposed an amount of $40 million for an average of 800 passengers. He would support the Polish proposal for cases where the actual number of passengers exceeded the number on the ship’s certificate.

Mr. Hermes (Australia) supported the United Kingdom proposal. Regarding the words “the number of passengers which the ship is authorized to carry according to the ship’s certificate”, in paragraph 1 of draft Article 7, he was not aware of a requirement for an international certificate on passenger capacity and thought that the wording might cause difficulties with insurance. If Article 7 and the United Kingdom proposal were accepted, a form of words might be needed to ensure that such certificate existed.

[288] Mr. Perrakis (Greece) insisted that a passenger should not be treated differently from other persons. Why, for example, should the provisions on compensation to an innocent bystander on the quay be different from those relating to a passenger who had voluntarily accepted the possibility of danger? In his opinion, the formulation of Article 7 was inadequate for an international instrument, since it did not define “passenger” or “passenger vessel”. Perhaps the Drafting Committee would bear those points in mind.

With regard to the Polish proposal, he saw no reason to take the number of passengers on the certificate as a basis for the fund, since the number of passengers actually carried could easily be obtained. The convention should not contain provisions which could have the effect of providing different levels of compensation for different passengers on the same vessel merely because of the number carried at a particular time. Regarding the Norwegian proposal, the number of passengers on the certificate could be exceeded either by order of the authorities in case of emergency or through the fault of an agent or servant of the shipowner, or if sanctioned by the

\(^{11}\) See note 8 sub Art. 6.
carrier. The third case would constitute a fault under Article 4. The fund should therefore be increased. In his opinion, insurance was an irrelevant consideration.

**Mr. Bendjenna (Algeria)** was in favour of keeping Article 7 and supported the Polish proposal. He also considered that the *per capita* limit should be the same as the limit under the Athens Convention, and supported the maximum limit of $25 million.

**Mr. Cleton (Netherlands)** said that Article 7 should be retained. Regarding calculation of the limitation figure, he supported the existing text and opposed the Polish amendment. As to the amount to be inserted in paragraph 1, he would prefer the figure of $25 million rather than $40 million for [I]: it was a matter of insurance capacity and the relationship between Articles 6 and 7, and it was important to leave a residue for other international conventions and future developments. The figure for [H] would have to be carefully considered. In his opinion, the figure proposed by the Federal Republic of Germany was rather low. Using the Athens Convention as a basis would ensure that for smaller ships all passengers would be compensated, even if they claimed the maximum. The main point at the present stage was to fix the maximum limit.

**Mr. Nada (Egypt)** associated himself with the Algerian representative’s views. He supported the Polish proposal (LEG/CONF/5/C.1/WP.26) and agreed that the figure to be inserted under (I) should be $25 million.

**Mr. Lyon (Canada)** supported the United States position as outlined in LEG/CONF/5/C.1/ WP.33. He asked whether it was the intention of the United States delegation, on the assumption that its proposal to delete Article 7 was adopted, to propose consequential amendments to Articles 3, 6 and 11.

**Mr. Bursley (United States)** said that it would be his delegation’s intention, if Article 7 were deleted, to propose bringing the rest of the text into line with that amendment.

It had been pointed out during discussion of Article 6 that, in practice, personal claims constituted only a very small part of those claims for which the limitation principle came into play; it had therefore been suggested that in the context of Article 6 it was more important to concentrate on property claims. In considering an upper limit of $40 million, it should be remembered that that figure indicated only overall recovery; the actual sum that insurers would in practice be called upon to pay would be far lower. It was unrealistic to describe Article 7 as being too generous in its terms and as tending to overload insurance capacity without taking that fact into account.

**Mr. Trotz (German Democratic Republic)** found it difficult to opt for a particular figure, since his delegation’s final position depended on the outcome of discussions on Article 6. However, he would prefer the maximum limit of $25 million proposed by Norway, and a *per capita* amount between $30,000 and $50,000. He was also prepared to accept the Polish proposal.

**Mr. Bredholt (Denmark)** preferred to retain the existing text of Article 7. He agreed with the Norwegian representative that the limit of liability per passenger should be the same as that provided in the Athens Convention, and also that the catastrophe limit should be approximately $25 million.

**Mr. Lyon (Canada)** again asked for confirmation of whether the deletion of Article 7 proposed by the United States delegation would entail the inclusion under Article 3 (Claims excepted from limitation) of passenger claims, and also the omission of references to Article 7 in Article 6(1) and in Article 11.

**Mr. Bursley (United States)** confirmed that that was the case.

(12) See note 5.
(13) See note 7.
Mr. Iturralde (Argentina) submitted that, in view of the importance of safety considerations, the owner should not enjoy the benefit of limitation when his vessel was carrying more passengers than were authorized by its certificate.

The Chairman questioned the need to vote on the Polish proposal (LEG/CONF.5/C.1/WP.26)14 which could be left to the Working Group to discuss. However, there should be some indication of the number of delegations favouring the deletion of Article 7.

Mr. Ganten (Federal Republic of Germany) similarly saw no need to vote on his delegation’s proposal (LEG/CONF.5/C.1/WP.31)15 if the Working Group arrived at figures which were close to those proposed by his delegation, it should feel free to use its own wording.

Lord Diplock (United Kingdom) suggested that the only vote required was on whether or not Article 7 should be deleted.

Mr. Amoroso (Italy) preferred that there should be no vote on that question. Because of its intimate relationship with Article 6, it would be better to allow the Working Group to decide on the inclusion or not of Article 7 after it had considered Article 6.

Mr. Perrakis (Greece) supported that view. Before voting on Article 7, there should be some indication of delegations’ views on how the question of passenger claims should be dealt with if Article 7 were deleted.

The Chairman suggested that preference should be shown for one of the following three questions:

1. Should passenger claims be subject to a separate limitation fund?
2. Should they be included under Article 6?
3. Should they be excluded altogether from the scope of the Convention?

Mr. Selvig (Norway) agreed that the Working Group must have guidance on those three points.

Mr. Bursley (United States) said that his delegation was not categorically opposed to the inclusion of passenger claims in the Convention, but wished to make sure that there would be adequate compensation. He was maintaining his delegation’s proposal (LEG/CONF.5/C.1/WP.33), but did not wish for a vote on it at the present stage. It could be left to the Working Group to take account of the views expressed therein.

The result of the show of hands was as follows:

1. Those favouring passenger claims being subject to a separate limitation fund as in Article 7 of the draft text – 23
2. Those favouring the deletion of Article 7 and the inclusion of passenger claims in Article 6 – 2.

The Chairman said that the Working Group as constituted should start work the following morning and be prepared to report at the end of two days’ discussions.

Mr. Wijsmuller (Observer, ETA), speaking at the Chairman’s invitation, asked whether the Working Group would deal with paragraph 3 of Article 6 before it had been discussed in the Committee.

The Chairman said it would not.

(14) See note 5.
(15) See note 6.
After a procedural discussion in which Mr. Selvig (Norway), Mr. Perrakis (Greece), Mr. Jeannel (France), Mr. Cleton (Netherlands) and Mr. Unkles (Australia) took part, the Chairman proposed that the Committee of the Whole should proceed at the next meeting with consideration of the Articles in the order which she had indicated in LEG/CONF.5/C.1/WP.4.16

It was so decided.

Summary Record of the Nineteenth Meeting
12 November 1976

[363] The Chairman suggested that the Committee should revert to Article 7, on which the Working Group had made some progress.

Mr. Crook (United States), introducing his delegation's proposal (LEG/CONF.5/C.1/WP.75)17 said that his delegation had advocated a much higher limit for passenger claims than seemed acceptable by other delegations, since the matter was one of particular concern to his country. He realized that his delegation’s earlier attitude, that either there should be very high limits or the provisions relating to passengers should be deleted from the Convention, had little chance of acceptance; and bearing in mind the result of the Working Group’s discussions, he felt that a fund established on the basis of the levels in the Athens Convention was likely to find general support. His delegation had been assured that in most cases such a fund would meet the foreseeable range of passenger claims for casualties. It was desirable, however, to include a provision in the Convention that passenger claims for which the fund under Article 7 was not sufficient should have access to any unspent balance in the personal fund under Article 6 after other personal claims had been covered. He gave figures, based on a 30,000 ton ship with 500 passengers, to show how quickly the available funds could be used up. With regard to suggestions that such a situation was unlikely and need not be covered, he said that the possibility existed and was a matter of concern in his country, and should therefore be provided for. In any case, the possibility of using up the fund under Article 7 was so unlikely, insurance costs would be low.

The Chairman said that the Committee had approved the basic idea in the original draft of Article 7 that there should be a separate fund for passengers with a limit based on the amount per passenger authorized on the ship’s certificate. The Working Group (LEG/CONF.5/C.1/WP.76, paragraph 19)18 recommended that the per capita limit for passenger claims should be equivalent to the one contained in

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(16) This document is the “Time Schedule for deliberations in the Committee of the Whole”, at p. 61.
(17) Document LEG/CONF.5/C.1/WP.75
12 November 1976
[195] Proposal by the United States delegation
Revision of Article 7
Draft Article 7 provides that the shipowner’s liability for carriage of passengers is limited to H Units of Account multiplied by the number of passengers that the ship may carry. Maximum coverage is limited to I Units of Account. The United States proposes that passengers, after exhaustion of the Article 7 fund, may also share in any unexpended funds available for loss of life and personal injury under Article 6. The spill-over into Article 6 would allow greater possibility of satisfaction of passenger claims.

(18) The relevant part of LEG/CONF.5/C.1/WP.76 (Report of the Working Group on Basic Issues relating to the limitation system) is quoted below:
Article 7(1) of the 1974 Athens Convention, with a maximum limit of $30 million. As indicated in the same paragraph, two delegations had not supported the recommendation and had advocated higher passenger limits, and a further delegation had proposed a lower limit. The Committee had earlier considered a Polish proposal (LEG/CONF5/C.1/WP.26) but, as indicated in paragraph 20 of the report, the Working Group had not reached any decision on it due to lack of time.

Mr. Bursley (United States) asked whether the words “per capita limit” in the second line of paragraph 19 and the words “per capita calculation factor” in the penultimate line had the same meaning.

Mr. Suchorzewski (Poland), Chairman of the Working Group, replied in the affirmative.

Mr. Selvig (Norway) agreed with the Chairman of the Working Group and thought that the correct wording should be “per capita calculating factor”.

Mr. Ganten (Federal Republic of Germany) wished to explain his difference of view in the Working Group. Without repeating the reasons for his delegation’s proposal (LEG/CONF5/C.1/WP.31), he said that one argument in favour of a per capita calculating factor of $20,000 rather than that of the 1974 Athens Convention was that experience showed that that sum, which was a little over one-third of the amount in the Athens Convention, was sufficient for fixing a global limitation. Passenger claims were rare, and it was important not to fix an unnecessarily high limit, in order to keep down insurance costs. Since the amount he proposed was lower than the Athens Convention limit, a minimum would be necessary, which he suggested should be $2 million.

Mr. Philip (Denmark) said that he had not been a member of the Working Group, but supported the recommendations in paragraph 19 of its report.

Mr. Tanikawa (Japan) said that he supported the Working Group’s recommendations, although he had not supported them in the Working Group.

Mr. Selvig (Norway) suggested that the Committee should postpone consideration of the United States proposal (LEG/CONF5/C.1/WP.75) until it had dealt with Article 6.

Mr. Bursley (United States) concurred.

Lord Diplock (United Kingdom) regarded the United States proposal as being very relevant to Article 7. In the case of a vessel of 60-70,000 tons, the maximum for a
PART I – THE TRAVAUX PRÉPARATOIRES OF THE LLMC 1976

Article 7 - The limit for passenger claims

present-day passenger vessel, its effect would be to add $28 million to the fund available for passengers which the Committee had agreed should be $30 million. The figure agreed for passengers would have to be reconsidered if it were to be supplemented by an almost equivalent sum.

Mr. Jeannel (France) thought it preferable to defer consideration of the United States proposal until Article 6 had been dealt with. In any case, the United States representative had concurred.

Mr. Perrakis (Greece) had no views on when the United States proposal should be discussed, but would like clarification on one point. In the case of an incident with a passenger vessel, would the establishment of a fund under Article 7 entail the establishment of a fund under Article 6? If there were no fund under Article 6, he did not see how there could be a spillover.

Mr. Crook (United States) said that his delegation had hoped that the Working Group would agree that in a case where the provisions of Article 6 were not invoked but there were still passenger claims exceeding the fund under Article 7, there could still be a balance of claims against the owner up to the limit for personal claims under Article 6.

[365] Mr. Suchorzewski (Poland) agreed with the suggestion by previous speakers that discussion of the United States proposal should be deferred until Article 6 had been considered.

Lord Diplock (United Kingdom) indicated his agreement.

It was decided to defer discussion of the United States proposal (LEG/CONF.5/C.1/WP.75)22 pending a decision on Article 6.

The Chairman asked for a show of hands on the Polish proposal (LEG/CONF.5/C.1/WP.26).23

There were 12 votes in favour, 17 against, and 8 abstentions.

The Chairman asked for a show of hands on the Working Group’s recommendation that the per capita limit for passenger claims should be equivalent to the one contained in Article 7(1) of the 1974 Athens Convention.

The Working Group’s recommendation (paragraph 19 of LEG/CONF.5/C.1/WP.76)24 was approved (24 votes in favour, 3 against and 7 abstentions).

The Chairman asked for a show of hands on the Working Group’s recommendation that the maximum limit be fixed at a sum equalling $30 million.

The Working Groups recommendation (paragraph 19 of LEG/CONF.5/C.1/WP.76)25 was approved (24 votes in favour, none against and 11 abstentions).

Summary Record of the Twenty-third Meeting
16 November 1976

[391] The Chairman drew attention to the recommendation of the Working Group on Basic Issues (LEG/CONF.5/C.1/WP.76, page 137)26 that the per capita limit for

(22) See note 17.
(23) See note 5.
(24) See note 18.
(25) See note 18.
(26) See note 18.
passenger claims should be equivalent to that contained in Article 7(1) of the 1974 Athens Convention, and that the maximum limit should be fixed at a sum equalling $30 million.

Article 7 with the inclusion of those figures was approved (25 votes in favour, 1 against and 6 abstentions).

[392] The Chairman drew attention to the proposal by the United States delegation (LEG/CONF.5/C.1/WP.75), consideration of which had previously been deferred.

Mr. Bursley (United States) said that his delegation’s proposal had been an attempt to bridge the gap between what the United States had hoped for as the limitation amount for passengers and what had been proposed in the working groups. However, as the proposal had met with little support, he would reluctantly withdraw it.

**Draft International Convention**

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.

**Summary Record of the Twenty-sixth Meeting**

18 November 1976

[405] The Chairman invited the Committee to continue reviewing the text of the Drafting Committee’s report (LEG/CONF.5/C.3/1 and LEG/CONF.5/C.3/1/Add.1), in order to assess whether it faithfully reflected the substantive decisions which the Committee had taken.

[406] The present discussions, at that stage, in the Committee’s deliberations, should focus on questions of drafting, any substantive questions thenceforward being treated as matters to be raised at the Plenary Conference.

[415] Article 7 was approved without comments.

(27) See note 17.
Plenary Meetings
Summary Record of the Fourth Plenary Meeting
18 November 1976

[480] Article 7 was adopted (34 votes in favour, none against, and 4 abstentions).

1976 Convention

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

Hamburg Draft Convention
Text and Commentary

[308] 4. The franc mentioned in this Article shall be a unit consisting of sixty-five and a half milligrams of gold millesimal fineness nine hundred. The amounts mentioned in paragraph 1 of this Article shall be converted into the national currency of the State in which limitation is sought, on the basis of the official value of that currency by reference to the unit defined above 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. If there is no such official value the competent authority of the State concerned shall determine what shall be considered the official value for the purposes of this Convention.

[414] This paragraph reproduces Article 3, 6° of the 1957 Convention with the difference that the word “official” has been inserted in the second sentence and that the last sentence has been added. Reference is made to the recommendation with respect to the new limits of liability.

IMCO Legal Committee
Twenty-third Session

[11] 42. While not wishing to enter into discussion of monetary, as contrasted with legal matters, the Committee gave attention to the concept of “official value” in this paragraph as well as to the date of the determination of that value.

43. On the question of “official value”, concern was expressed that States Parties to the various Conventions in which clauses similar to the last sentence appear, might assign a particular and artificial “official value” to their national currencies by reference solely to domestic considerations and, possibly, the advantages to be derived from such a value in respect of a particular Convention. The last sentence of this paragraph, as drafted, could be interpreted to permit such a subjective and ad hoc determination. The Committee felt that values set for the conversion of a national currency in relation to the franc should be identical regardless of the convention for the purposes of which the conversion was made. A delegation suggested that information might be provided as to national practice in fixing monetary values. It was felt that the last sentence should be reconsidered in the light of the comments made as to its possible abuse.

[12] 44. The three possible dates for the determination of monetary value (date the limitation fund is constituted, date of payment or date on which security is given) were explained by the representative of the CMI as being alternatives of which the first in time would normally be crucial, it being necessary to know on that occasion the value of the sum in question. Other dates were, however, suggested, including the date of the incident and the date of judgment.
Twenty-eighth Session

[27] Article 8 (Unit of account)

74. The Legal Committee, after a very extensive discussion of the important question of a unit of account for expressing liability under the proposed convention, decided to recommend an article based on the solution adopted at Montreal in 1975 to the Warsaw Convention on International Carriage by Air. In doing this, the Committee decided that the attention of governments and interested international organizations should be drawn to the discussions on this subject, including alternative suggestions and proposals made in those discussions. A summary of the Committee’s deliberations is accordingly attached as Annex II to this Report.

Date of conversion

75. Some delegations preferred that the choice of conversion dates specified in this bracketed article should include, for the sake of greater certainty, the date of the occurrence. The Committee considered that there were advantages and disadvantages in all of the suggested conversion dates, and that the most reasonable solution at this stage was to present, in square brackets, the texts of the principal alternatives discussed in the Committee.

Draft Articles

[34] 1. [T]he 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 of the occurrence] [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 contracting state 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 contracting state which is not a member of the international monetary fund, shall be calculated in a manner determined by that contracting state.

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 of this article may, at the time of ratification 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, at an amount of [B] monetary units multiplied by the first [C] tons of the ship’s tonnage and [D] monetary units multiplied by the tonnage in excess thereof, but in any case at least [E] monetary units; and

(b) in respect of article 7, paragraph 1, at an amount of [H] monetary units multiplied by the number of passengers which the ship is authorized to carry according to its certificate, but not exceeding [I] million monetary units.
The monetary unit referred to above corresponds to sixty-five and a half milligrammes of gold of millesimal fineness nine hundred. This sum may be converted into the national currency concerned in round figures. The conversion of this sum into the national currency shall be made according to the law of the State concerned.]

* This article is presented in square brackets by decision of the Legal Committee following the discussions at the twenty-eighth session.

Diplomatic Conference

Committee of the Whole
Summary Record of the Tenth Meeting
8 November 1976

[279] The Chairman reminded the Committee that according to the time-table it had established, the first reading of the draft Convention should have been completed by the end of the week, so as to enable the Committee to embark on the second reading on the following Monday and Tuesday. That being so, it would have to try to expedite the work. The present meeting had, however, been reserved for consideration of Article 8, with the help of experts specially invited by delegations to participate in the discussion.

She noted that, on Article 8, the Committee had before it proposals that dealt respectively with the actual principle it embodied, the conversion date and the adoption of periodic review arrangements. On the question of the principle, the United Kingdom delegation had put forward the proposal contained in document LEG/CONF.5/4 and the Netherlands delegation had submitted some observations and proposals (LEG/CONF.5/C.1/WP.43). The views of the French, Australian and New Zealand

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(1) The relevant part of LEG/CONF.5/4 is quoted below:

[86] The words “date of the occurrence” should be deleted from paragraph 1. The following should be added at the end of paragraph 1:

“This calculation shall be made in such a manner as to express, in the national currency of the contracting state, as far as possible the same real value of the amounts in Articles 6 and 7 as are expressed there in terms of special drawing rights”.

There is no need for paragraph 2 since if necessary any State which is not a member of the IMF could, on ratifying the Convention, so amend its national law as to permit the application of paragraph 1 with the amendment suggested. Paragraph 2 could only be acceptable if the discretion of the State concerned were limited in the manner suggested in relation to paragraph 1.

(2) Document LEG/CONF.5/C.1/WP.43

4 November 1976 [170]

Observations and proposals by the delegation of the Netherlands

Article 8 – Unit of account
1. The Netherlands Government holds the view that for the purpose of placing all persons liable and persons entitled to compensation in all identical position in all contracting States the limitation amounts should be expressed in a unit of account with a value which is of the greatest possible stability and can be determined without ambiguity. In applying this standard the Netherlands Government wishes to support the use of the Special Drawing Right (SDR) as defined by the IMF as the sole unit of account in the convention.
2. In view of the instability and uncertainty in the value of gold it is felt that paragraph 2 of this Article does not offer a proper solution to the problems for States which are not members
delegations were also to be found in document LEG/CONF.5/4 and Add. 3.

Lord Diplock (United Kingdom) said that the main problem was to find a means of ensuring that the various amounts had an equivalent value. That could no longer be guaranteed by the Poincaré franc system, whose imperfections were now generally admitted; and the progressive abandonment of the gold standard system over the past few years made it essential to choose another unit of account.

The Special Drawing Right (SDR) system seemed the best choice, but even that presented some difficulties; for while it was true that it took account of the comparative inflation rates in the various countries, it took no account of world

of the IMF. Moreover, there is no need for paragraph 2, since these problems are met by the provision contained in the last sentence of paragraph 1. The Netherlands delegation proposes that paragraph 2 of Article 8 be deleted.

3. Under the provision of the last sentence of paragraph 1 the State which is not a member of the IMF shall determine the manner in which the value of its national currency shall be calculated in terms of the SDR In view of the importance of having the data in relative cases readily available, the Netherlands delegation proposes to add at the end of paragraph 1 a sentence reading:

“Such contracting State shall communicate to [the depository] this manner of calculation or the value of its national currency in terms of the Special Drawing Right when depositing an instrument referred to in Article ... and every time there is a change in this manner of calculation or in the value of its national currency in terms of the Special Drawing Right.”

As a matter of drafting, it is recommended to combine the last sentence of the present text of paragraph 1 and the proposed additional sentence in a separate paragraph.

(3) The relevant part of document LEG/CONF.5/4 is quoted below:

[84] Australia

Australia believes that ‘special drawing rights’ should be used as the sole unit of account, particularly to provide consistent limitation amounts among contracting parties and to avoid ‘forum shopping’. If it is necessary to prescribe an alternative unit of account to SDR’s, Australia would favour a unit which has a clearly defined value in terms of all currencies, such as the Franc (UIC).

Such an alternative should be restricted to non-IMF countries. To provide for the possibility of further developments in the international monetary sphere rendering changes in the unit of account desirable, consideration might be given to writing into the proposed Convention provisions which provide a mechanism for the review, periodically or otherwise, and expeditious amendment of the unit of account being used.*

*) Note by the Secretariat: The proposal of the United Kingdom on this point is contained in document LEG/CONF.5/5.

[85] France

The French Government can accept SDR’s (Special Drawing Rights) as the Unit of Account with the following proviso: A clause must be included, prescribing automatic revision, every five years, of the amount of limitation laid down in the Convention. The SDR’s take no account of the general inflation and the prescribed amounts must be adjusted at regular intervals if an annual 5-10 per cent reduction in their true value is to be avoided.

To this end, the French Government will propose to the Diplomatic Conference a draft Article on the question of the procedure for revising Article 8.

(4) The relevant part of Document LEG/CONF.5/4/Add.3 is quoted below:

[109] Article 8

The New Zealand Government supports the substitution of the Special Drawing Right (SDR) of the International Monetary Fund for the gold (Poincaré) franc in the limit formula. It does however, consider that the provision of an alternative detracts from the improvements to be achieved by the SDR provision and diminishes any prospect the SDR has of becoming the established universal standard of liability. For this reason the New Zealand Government opposes a concurrent gold value limit.
inflation generally. Moreover – and that was the subject of the present discussions – there were a number of countries which did not belong to the IMF and whose national legislation precluded them from using the SDR. For that reason Article 8(1) provided that the value in terms of the SDR of the national currency of any of those States was to be “calculated in a manner determined by that Contracting State”. To ensure the uniformity of value that was desired, his delegation suggested the addition at the end of paragraph (1) of the sentence (LEG/CONF.5/4, page 86, English text) which spelt out the whole question. If that suggestion were adopted, paragraph (2) would need to be dropped, since the reference to gold that it contained would merely regenerate the confusion and difficulties to which he had referred, and which had led to the search for a new system.

Mr. Van’t Veer (Netherlands) introduced his delegation’s observations and proposals on Article 8 (LEG/CONF.5/C.1/WP.43). They had as their object the adoption of a unit of account of the greatest possible stability, determinable without ambiguity and permitting of daily quotation. In view of the instability and uncertainty [280] in the value of gold, it was no longer possible to assess the value of the various currencies by reference to it. On the other hand, his delegation was not in favour of creating a special basket for certain countries, a method which it considered unlikely to provide adequate guarantees of uniformity. It proposed, therefore, the deletion of Article 8(2) and the addition at the end of paragraph 1 of a sentence to the effect that “A Contracting State which is not a member of the International Monetary Fund shall communicate to [the depositary] the manner of calculation or the value of its national currency in terms of the Special Drawing Right, when depositing the instrument referred to in Article ... and every time there is a change in the manner of calculation or in the value of its national currency in terms of the Special Drawing Right”. Action on those lines should permit a solution of the problem.

Mr. Hauptmann (Federal Republic of Germany) endorsed the Netherlands delegation’s proposals which seemed to him to provide an acceptable solution. It should be possible to establish a link between the currencies of the countries in question and the SDR. The manner in which a country calculated the value of its currency could be reported by that country at any time.

Mr. Müller (Switzerland) said that his country, which was not a member of the IMF, could accept the choice of the SDR as unit of account, and was prepared to approve the text of Article 8 either as set forth in the draft or with the United Kingdom or Netherlands amendments. However, it would be inconvenient in practice to give notice every time a change in value was registered, for such changes occurred almost every day.

Mr. Van’t Veer (Netherlands) explained that the value of a currency was generally determined daily by the market, but countries with currencies not so determined had the possibility of stating how they calculated their value. Countries would therefore have an option: they could either indicate the value of their currency or specify their method of calculation.

Mr. Müller (Switzerland) thanked the Netherlands representative for his adequate explanations.
Mr. Louis (Belgium) supported the Netherlands proposal. Belgium was in favour of deleting any reference to the gold clause, and hence Article 8(2) itself. In view of the lack of specificity of the last sentence of paragraph 1 in the draft, the option offered by the Netherlands delegation in the complementary sentence seemed to him to be judicious and add clarity.

Mr. Selvig (Norway) feared that the discussion was going too fast and would lead to hasty decisions being taken. Before a final decision was taken, it would be wise to ask for the views of countries not members of the IMF. If those countries, which were in a special position, were able to approve the proposals in question, all participants might then be able to do so.

Mr. Trotz (German Democratic Republic) said that he had certain reservations concerning the deletion of paragraph 2. His country was not a member of the IMF. Its national law did not allow it to calculate the value of its currency by reference to the SDR, even though it was free to specify the method of calculation. If there was a choice between the gold clause and the SDR, countries could not be obliged, legally or in practice, to assign a value to their currencies by reference to the SDR. His delegation, therefore, preferred the text of Article 8 as given in the draft Convention.

Mr. Nikaloychuk (USSR) agreed that, because of inflation and exchange rate fluctuations, it was difficult to find a unit of account that would not involve considerable differences in assessing values. He did not think it wise to adopt the SDR because, on the one hand, setting limits would involve substantial difficulties for non-member countries of the IMF, and on the other hand, the causes of fluctuations in exchange rates would sooner or later have repercussions on the value of the SDR. Those repercussions would vary in different regions of the world, bringing about unpredictable disparities in the balances of payments and currencies of different regions of the world. In his opinion, those repercussions on the value of SDRs had not been sufficiently studied. To accept the SDR as the sole unit of account in such circumstances seemed to him inadmissible.

Mr. Jeannel (France) said that, having heard the views of the representative of the USSR, he could agree to retain paragraph 2. To do so, however, he had to ask whether the representative of the USSR could accept the United Kingdom amendment to add a sentence at the end of paragraph 1.

Mr. Nikolaychuk (USSR) replied that he could accept the United Kingdom amendment if paragraph 2 were retained.

Mr. Selvig (Norway) thought it better to keep the text of Article 8 as it stood in the draft Convention. If he understood the French representative correctly, adoption of the United Kingdom amendment to paragraph 1 would affect paragraph 2 if that paragraph were retained. In that case, a non-member State of the IMF would, in calculating the value of its currency, have to try as far as possible to obtain the same real value as the amounts expressed in terms of the SDR. He thought that a new paragraph 3 might be added to Article 8, combining the United Kingdom and Netherlands proposals, which would also satisfy those countries which wished to retain paragraph 2.

The Chairman asked whether the United Kingdom and Netherlands representatives could agree to the inclusion of their proposals in a new paragraph 3 if paragraph 2 were retained.

Lord Diplock (United Kingdom) and Mr. Nikolaychuk (USSR) said that they could accept that procedure, subject to certain drafting changes.
Mr. Cleton (Netherlands) asked how non-member countries of the IMF would calculate the value of the Poincaré franc if paragraph 2 were retained. His delegation thought that that would be impossible, and it would in any case prefer its own proposal (LEG/CONF/5/C.1/WP.43).7

The Chairman suggested that the Committee should postpone its decision with respect to the “conversion date” until a later stage. She took it that representatives had accepted the principle of paragraph 1 and had approved it subject to the “conversion date”, which had still to be decided upon.

There was then the question whether paragraph 2 should be deleted, as proposed by the Netherlands delegation in LEG/CONF/5/C.1/WP.43,8 or retained, and if so, whether a new paragraph 3 taking account of the United Kingdom and Netherlands proposals should be included.

Mr. Vonau (Poland) pointed out that, from the procedural standpoint, the question was not so much one of retaining paragraph 2, but rather of merging it with the United Kingdom and Netherlands amendments in the form of a new paragraph 3. [282] The Chairman explained that it was because neither the United Kingdom nor the Netherlands delegation had agreed to retain paragraph 2 that she had opted for that procedure.

Lord Diplock (United Kingdom) thought that it would be better to ask the Committee whether it was prepared to accept both paragraph 2 and paragraph 3. If so, no other question would arise. If not, the paragraphs would have to be put to the vote separately.

Mr. Cleton (Netherlands) endorsed that option.

The Chairman put paragraphs 2 and 3 to the vote together, the latter paragraph containing the United Kingdom and Netherlands amendments.

Paragraphs 2 and 3 of Article 8 were adopted (33 votes in favour, 1 against and 4 abstentions).

The Chairman then invited the Committee to consider the “conversion date” to be chosen. The basic text contained two alternatives, and three amendments had been proposed, one by Norway, one by the United Kingdom (LEG/CONF/5/4),9 and one by Japan (LEG/CONF/5/C.1/WP.15).10

Mr. Selvig (Norway) pointed out that, since settling a debt in foreign currency always entailed delay, it would be unwise to choose the date of the occurrence as the “conversion date”, especially because of inflation.

His delegation therefore preferred the second alternative in paragraph 1, namely the date when the limitation fund was constituted. However, in that context, the provisions of Article 10 concerning limitation of liability without constitution of a limitation fund seemed rather too strict.
Lord Diplock (United Kingdom) recognized the importance of the point raised by the Norwegian representative. No one knew what would happen to the currency of the State in which the ship was arrested. For that reason he thought that the date of the occurrence should not be adopted, but rather the date on which the limitation fund was constituted.

Mr. Tanikawa (Japan) preferred the date of the occurrence as the date of conversion into national currency, in order to prevent speculation.

Mr. Wiswall (Liberia) strongly supported the Japanese proposal to take, as the conversion date, the date of the occurrence; in his view, that was the only date which would not lend itself to speculation. The other possible solutions might well encourage what the Convention was trying to do away with. The choice of the date of the occurrence would not prevent a person liable from being urged to constitute a limitation fund, because interest would continue to be paid until the date when the fund was constituted.

The proposal by Norway and the United Kingdom to delete reference to the “date of occurrence” in Article 8(1) was accepted (15 votes in favour, 11 against and 9 abstentions).

The Chairman commented that as a result, it was unnecessary to put the Japanese proposal to the vote. She suggested that the Committee should postpone consideration of the question of “periodic revision of limits”.

Summary Record of the Twenty-fourth Meeting
17 November 1976

[392] The Chairman stated that the Committee had been in favour of deleting the phrase “the date of the occurrence”, including the square brackets, in Article 8(1), making certain alterations to the wording of paragraph 2 in order to bring it into line with the new text for Articles 6 and 7; and adding to Article 8 some new paragraphs containing the sentence proposed by the United Kingdom delegation (page 86 of document LEG/CONF.5/4),11 together with the text proposed by the Netherlands delegation (LEG/CONF.5/C.1/WP.43).12

Paragraph 1
The Chairman called for a vote on Article 8(1) as amended.
Article 8(1) was approved (21 votes in favour, none against, and 7 abstentions).

Paragraph 2
The Chairman called for a vote on Article 8(2), as adapted to correspond to the new provisions contained in Article 6(1).
Article 8(2) was approved (21 votes in favour, none against, and 10 abstentions).

The Chairman called for a vote on the amendment proposed by the United Kingdom delegation (page 86 of LEG/CONF.5/4).13
The proposed amendment was approved (22 votes in favour, none against, and 10 abstentions).

(11) See note 1.
(12) See note 2.
(13) See note 1.
The Chairman called for a vote on the amendment proposed by the Netherlands delegation (LEG/CONF.5/C.1/WP.43).14
The proposed amendment was approved (23 votes in favour, none against, and 11 abstentions).

The Chairman, before proceeding to consideration of the next Article, drew attention to the proposal by the delegations of the Federal Republic of Germany, the Netherlands, the United Kingdom and the United States (LEG/CONF.5/C.1/WP.85)15 which had just been distributed and which dealt with the ratio of the US dollar to the unit of Special Drawing Right. That document stated that on the basis of $1.20 = 1 SDR, “any dollar figures agreed for the limits of liability should be sealed down in the ratio 6:5 to obtain amounts in SDR’s for insertion in Articles 6 and 7, and scaled up in the ratio 1:12.5 to obtain amounts in francs for insertion in Article 8, paragraph 2.”

She saw no need to consider that proposal in detail at the present stage of discussions, and suggested that it be referred to the Drafting Committee, which could then insert the various figures into the texts. The Committee could confine itself for the moment to accepting the proposal in principle.
It was so decided.

Mr. Perrakis (Greece) was prepared to accept that solution provisionally. He was not in a position to verify those figures on the spot, but reserved the right to return to them once he had done so.

Draft International Convention

[460] 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:

(14) See note 2.
(15) See note 58 sub Art. 6.
(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 AMOUNTS IN ADDITION TO THAT MENTIONED IN (I):

- FOR TONNAGES FROM 501-3,000 TONS, 7,500 MONETARY UNITS PER TON;
- FOR TONNAGES FROM 3,001-30,000 TONS, 5,000 MONETARY UNITS PER TON;
- FOR TONNAGES FROM 30,001-70,000 TONS, 3,750 MONETARY UNITS PER TON;

AND FOR EACH TON IN EXCESS OF 70,000 TONS, 2,500 MONETARY UNITS;

(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 PER TON SHALL BE ADDED TO THE AMOUNT MENTIONED IN (I):

- FOR TONNAGES FROM 501-30,000 TONS, 2,500 MONETARY UNITS PER TON;
- FOR TONNAGES FROM 30,001-70,000 TONS, 1,850 MONETARY UNITS PER TON;

AND

FOR EACH TON IN EXCESS OF 70,000 TONS, 1,250 MONETARY UNITS;

(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 SUBPARAGRAPHS (A) AND (B) OF THIS PARAGRAPH.

3. The monetary unit referred to in paragraph 2 corresponds to sixty-five and a half milligrams of gold of millesimal fineness nine hundred. This sum may be converted into the national currency concerned in round figures. The conversion of this sum 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 2, 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.

Summary Record of the Twenty-sixth Meeting
18 November 1976

[405] The Chairman invited the Committee to continue reviewing the text of the Drafting Committee's report (LEG/CONF.5/C.3/1 and LEG/CONF.5/C.3/1/Add.1), in order to assess whether it faithfully reflected the substantive decisions which the Committee had taken.

[406] The present discussions, at that stage, in the Committee's deliberations, should focus on questions of drafting, any substantive questions thenceforward being treated as matters to be raised at the Plenary Conference.
Summary Record of the Twenty-seventh Meeting  
18 November 1976

[415] Paragraph 1
This paragraph was approved without comments.

Paragraph 2
Mr. Cleton (Netherlands) said that some quiet thought needed to be given to the paragraph in the light of the text adopted for Article 6, so that the wording of the two paragraphs should be similar, though not identical.
It was so decided.

The Chairman said that the Secretariat had proposed to insert a comma to the first line of sub-paragraph (b)(ii), after “thereof”.

Paragraph 3
Lord Diplock (United Kingdom) proposed that the second sentence be deleted.
The deletion was decided.

Paragraph 4
The Chairman said that “paragraph 2” in the second line should read “paragraph 3”.
It was so decided.

Plenary Meetings
Summary Record of the Fourth Plenary Meeting  
18 November 1976

[480] Mr. Whitaker (United Kingdom) drew attention to the agreed amendments indicated in LEG/CONF.5/WP.9.16

Article 8, as amended, was adopted (35 votes in favour, none against, and 2 abstentions).

1976 Convention

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

(16) The relevant part of Document LEG/CONF.5/WP.9 (Report of the Committee of the Whole) is quoted below:

[447] 9. Article 8,2
In consequence of the changes in Article 6,1, sub-paragraphs (a) and (b) in the English and French texts are modified in the same manner.
10. Article 8,3
The second sentence of this paragraph is deleted.
11. Article 8,4
The reference to “paragraph 2” is changed to “paragraph 3” in line two in the English and French texts.
Article 8 - Unit of account

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 this sum 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

Hamburg Conference
Second Report of the Chairman

[28] In the Convention individual aggregation of claims is dealt with in Article 2 §§ 1° and 2° whilst the rule on collective aggregation is found in the proviso to § 2° of Article 6. As pointed out in the First Report, collective aggregation is a problem apart from the question whether the circle of persons entitled to the benefit of limitation should be widened.

In view of the conservative attitude taken by the Committee to the latter question the problem of aggregation only arises with respect to salvors, it being understood that the present rule on collective aggregation shall be retained and that claims against a pilot in compulsory pilotage shall be aggregated with claims against the operator and his servants.

Salvors operating from a salvaging vessel, whether it be a salvage vessel or another ship performing salvage services en route, may limit their liabilities on the basis of the tonnage of that ship, and all claims against them will be aggregated with claims against the owner, operator, etc. of the ship. It is proposed that all claims against salvors who are directed from such a ship, whether they operate outside the ship, as in the case of the Tojo Maru, shall also be aggregated with claims against the operator, etc.

With respect to salvors not directed from another ship, for instance a crew put on board the ship in distress by helicopter, the Committee found that the only practical solution, although far from ideal, would be to aggregate claims against them with claims [of] other persons who can limit on the basis of the tonnage of the ship receiving the services.

In the Protocol these rules are set out in Section 7. The new § 3° of Article 6, replacing the present § 3° which becomes obsolete due to the alteration of the privity rule, must be read in conjunction with the new § 2°.

Due to the alteration of the structure of the amounts of limitation in Section 5 of the Protocol the rules of the present §§ 1° and 2° of Article 2 must be slightly amended. This is done in Section 4 of the Protocol.

In the Working Paper a separate Article 7 is devoted to aggregation, both individual and collective, reflecting substantially the same rules as are found in the Protocol.

Hamburg Draft Convention
Text and Commentary

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

(a) against the shipowner and a salvor rendering services to the ship who is not operating from another ship, and any person for whose act, neglect or default they are responsible;

(b) against the shipowner of a ship rendering salvage services to another ship and a salvor operating from the former ship and any person for whose act, neglect or default they are responsible.
It is proposed that all claims arising on one distinct occasion against the owner, charterer and operator of the ship and all persons for whom they are responsible, shall be aggregated. This is in accordance with the 1957 Convention.

The extension of the salvors' right of limitation raises special problems with regard to aggregation of claims. Under the 1957 Convention salvors operating from a ship (whether a salvage vessel or an ordinary ship) can limit liability for claims arising from acts committed on board such ship (hereafter referred to as the salvage vessel), and claims against them are aggregated with claims against other persons (the owner, etc.) who are entitled to limit on the basis of the tonnage of the salvage vessel. In the case of the Tojo Maru a salvor operating from a salvage vessel was denied limitation because the act giving rise to the claim was committed outside the salvage vessel and did not occur in connection with the navigation, management, etc. of the vessel. Within the CMI it was generally agreed that it is in the interest of all concerned that the benefit of limitation should be given to salvors also in the Tojo Maru situation.

Once the right of limitation is thus extended, however, it is hardly feasible to deny the right to salvors who are not operating from a ship, for instance salvors put on board the ship in distress by helicopter or wreck removers who operate by means of a floating crane. How should limitation be effected in such cases? The Conference was not in favour of introducing special rules for such cases. The solution which was adopted was to let such salvors limit liability on the basis of the tonnage of the ship which is receiving the salvage services and to aggregate claims against the salvors with claims against other persons who are entitled to limit on the basis of the tonnage of that ship.

It was proposed at the Conference, as an alternative solution, that the limitation of salvors' liability should always be based on the tonnage of the ship to which the salvage service is rendered, but the proposal was rejected, mainly on the grounds that it would mean a substantial reduction of the protection which salvors are enjoying today.

The words “salvors operating from another ship” indicate that the operations are directed or carried out by means of another ship. There is limitation regardless of whether the act which gives rise to the claim is performed on board the ship, outside the ship, or on board the ship which is receiving the services.

IMCO Legal Committee
Twenty-third Session

Subject to the views, expressed in paragraphs 39 and 40 of this Report, on the limits applicable to salvors, there was support for the principles set out in Article 7, but, the drafting of the sub-paragraph was questioned by those who felt that it should be clear that the phrase “on any distinct occasion” should not be construed, in conjunction with the two sub-paragraphs, as meaning that a salvor and a shipowner should necessarily be jointly liable on all occasions. It was thought that the word “or” in place of “and” might clarify the matter in each of the sub-paragraphs. In the view of one delegation deletion of the paragraphs would probably give better effect to the intent behind the Article because they added nothing to what was already said.

Twenty-fifth Session

The two delegations which proposed a new draft text of Article 6 (see Annex II), also prepared a draft Article 7 as an illustration of the operation of the principle of
aggregation in the event that their new text of Article 6 were adopted. This text also appears in Annex II.¹

64. The intention of the Article was to assure that all claims arising on one distinct occasion against the shipowner, salvor, persons for whom they are responsible and a pilot would be aggregated in accordance with the provisions of Article 6, paragraph 2, of the 1957 Convention. However, salvors and pilots are not mentioned in the 1957 Convention. Since Article 1 of the new draft includes salvors and pilots, it was generally agreed that these persons should be mentioned also in this Article.

[15] 65. A question was raised as to the desirability of having the same global limitation for liability of salvors and pilots, in respect of passenger claims, as salvors and pilots do not have the benefit of per capita limitation under the 1974 Athens Convention. It was, however, pointed out that since an action against a servant should not defeat the shipowner’s limitation, neither, via an indemnity, should an action against a salvor or pilot.

Twenty-eighth Session

[17] 76. Consequent upon the decision to adopt a separate limit for passenger claims (Article 7), the Committee agreed to insert a new paragraph on aggregation regarding claims against the shipowners of the ships which are referred to in Article 7.

Daft Articles

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 shipowner and the salvor or salvors, if any, rendering services to the ship who are not operating from another ship, and any person for whose act, neglect or default he or they are responsible;
   
   (B) against the shipowner of a ship rendering salvage services to another ship and the salvor or salvors operating from the former ship and any person for whose act, neglect or default he or they are responsible.

2. The limit of liability set out in Article 7 shall apply to the aggregate of all claims subject thereto which may arise on any distinct occasion against the shipowner of the ship referred to in Article 7 and any person for whose act, neglect or default he is responsible.

(1) Annex II to the Report of the Legal Committee on the work of its twenty-fifth session. Proposal by the delegations of Norway and Sweden

1. The limit of liability set out in paragraph 1, sub-paragraph (a), of Article 6 shall apply to the aggregate of claims subject thereto which arise on any distinct occasion against the shipowner and any salvor rendering service to the ship who is not operating from another ship, and any person for whose act, neglect or default they are responsible or who has provided pilotage service to the ship.

2. The limit of liability determined in accordance with paragraph 1, sub-paragraph (b), of Article 6 shall apply to the aggregate of claims subject thereto which arise on any distinct occasion.
Diplomatic Conference
Committee of the Whole
Summary Record of the Fifteenth Meeting
10 November 1976

[322] The Chairman drew attention to the proposals by Norway and Sweden (LEG/CONF.5/4, pages 87 and 88).2

Ms. Bruzelius (Norway) said that the purpose of her delegation’s proposed amendment was to bring Article 9 into line with earlier amendments which made the draft Convention applicable to salvors not operating from a ship. The Swedish proposal had the same purpose, and was essentially the same amendment couched in a different form. Although her delegation attached great importance to the issue of aggregation in regard to salvors who were not operating from a ship, it had no special preference as between its own proposal and that of Sweden.

Mr. Lundh (Sweden) said that his delegation’s proposal similarly aimed at redrafting Article 9 in order to take account of the difference between Article 6(1) and

(2) The relevant part of Document LEG/CONF.5/4 is quoted below:
[87] Norway
Article 9 should be redrafted, possibly in the following manner:
“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 shipowner and any person for whose act, neglect or default he is responsible;
(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;
(c) against the salvor or salvors rendering salvage services to a ship who are not operating from another ship, and any person for whose act, neglect or default he or they are responsible.”
This provision is based on the presumption that there will be a difference between the amounts of liability of a salvor operating from a ship, and a salvor who is not operating from a ship. The latter case is dealt with in Article 9(1)(a) of the draft. The provision was originally based on the presumption that the salvor who is not operating from a ship, should be allowed to limit his liability to the limit of the salvaged vessel. The provisions of Article 6(3) of the draft breaks with this presumption as it introduces a maximum and minimum amount of limitation in addition to the original principle. In order to avoid any complications that may arise due to the fact that different limits may be applicable to the salvor and the salvaged vessel (if both are liable), Article 9 should be redrafted.
[88] Sweden
“1. The limits of liability determined in accordance with paragraphs 1 and 2 [1] of Article 6 shall apply to the aggregate of all claims which arise on any distinct occasion against the shipowner, including the owner, charterer, manager and operator of the ship, and any person for whose act, neglect or default he or they are responsible.
2. The limit of liability determined in accordance with paragraph 3 of Article 6 shall apply to the aggregate of all claims which arise on any distinct occasion against the salvor and any person for whose act, neglect or default he is responsible.”
3. (present paragraph 2).”
In the comments to Article 6(3) it has been proposed that the liability for salvors not operating from a ship should be limited to a specific amount. If this proposal were to be adopted, consequent amendments are required in Article 9. In addition, some drafting amendments are needed. It is submitted that this amendment is required even if the present text of Article 6.3 is retained since the limit provided for therein may be different from the one applying to the owner of the ship to whom salvage services are being rendered and both the salvor and the owner may be held liable.
(2) on the one hand, and Article 6(3) on the other. He suggested that, in order to save time, the Committee might base its discussion only on the Norwegian proposal, which substantially coincided with his own. If the underlying principle of the proposals was [323] adopted, both texts could be submitted to the Drafting Committee for consideration.

Mr. Unkles (Australia) asked for clarification as to whether sub-paragraphs (a), (b) and (c) of the Norwegian proposal were intended to be disjunctive or cumulative. He believed they should be disjunctive, and could agree to the proposal if the word “or” was added between sub-paragraphs (a) and (b) and sub-paragraphs (b) and (c).

Mr. Rein (Observer, CMI), speaking at the invitation of the Chairman, suggested that the Norwegian delegation should withdraw its proposal in favour of Sweden’s, which was preferable from the drafting standpoint.

Mr. Sturms (Netherlands) thought it would be simpler, in paragraph (1) of the Swedish proposal, if the phrase “including persons mentioned in paragraph 2 of Article 1” were substituted for the phrase “including the owner, charterer, manager and operator of the ship, and any person for whose act, neglect or default he or they are responsible”.

He saw no need for sub-paragraph (b) of the Norwegian proposal: the case of the owner acting as salver was adequately covered by paragraph 1 of the Swedish proposal. On the other hand, he preferred sub-paragraph (c) of the Norwegian proposal to paragraph 2 of the Swedish proposal, for it used the phrase “salver or salvors”, thus covering the case of several salvors operating at the same time. He considered, too, that the principle contained in paragraph 1 of the Swedish proposal should also appear in paragraph 3 (present paragraph 2).

Mr. Rognlien (Norway) explained that his delegation had thought it preferable to provide for three separate categories of persons against whom claims might be made, each category being the subject of a separate sub-paragraph. He agreed with the Netherlands delegate that in principle those persons specified in Article 1(2) should be covered: it was for that reason that his delegation had used the term “shipowner” rather than “owner” in sub-paragraph (b), but he could accept the Netherlands formulation. He also agreed that the sub-paragraphs were not intended to be cumulative and that it might be better to add the word “or” between one sub-paragraph and another; but that was a point that could be left to the Drafting Committee.

The Chairman suggested that an indicative vote be taken only on the Norwegian proposal. If approved, it would be passed on to the Drafting Committee for consideration, together with other proposals that had been made in the course of the discussion.

Mr. Unkles (Australia) was prepared to agree to a vote on the Norwegian proposal on the understanding that the three sub-paragraphs were not to be interpreted as cumulative.

Mr. Sturms (Netherlands) could likewise agree to the vote being taken only on the Norwegian proposal, but would like the principle contained in paragraph 1 of the Swedish proposal to be inserted in Article 7 of the basic text (Limit for passenger claims). In reply to a question from the Chairman, he concurred that that point was primarily a drafting one.

The Chairman called for an indicative vote on the Norwegian proposal.
Summary Record of the Twenty-fourth Meeting
17 November 1976

The Chairman invited the Committee to take a decision on Article 9, and recalled that it had provisionally agreed to amend the text in accordance with the Norwegian proposal (LEG/CONF.5/4, page 87) to devote a special paragraph to salvors.

Article 9, as amended, was approved (30 votes in favour, none against, and 7 abstentions).

Draft International Convention

1. The limits of liability determined in accordance with Article 6 shall apply to the aggregate of 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 from 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.

Summary Record of the Twenty-sixth Meeting
18 November 1976

The Chairman invited the Committee to continue reviewing the text of the Drafting Committee’s report (LEG/CONF.5/C.3/1 and LEG/CONF.5/C.3/1/Add.1), in order to assess whether it faithfully reflected the substantive decisions which the Committee had taken.

The present discussions, at that stage, in the Committee’s deliberations, should focus on questions of drafting, any substantive questions thenceforward being treated as matters to be raised at the Plenary Conference.

(3) See note 2.
Summary Record of the Twenty-seventh Meeting  
18 November 1976

Paragraph 1

[415] The Chairman said that there would be consequential amendments to sub-paragraph (c) to bring it into line with the amended version of Article 6(4).

Mr. Selvig (Norway) wished it put on record that the reference to “the shipowner” in sub-paragraph (b) included all those persons mentioned in Article 1(2) who were referred to in paragraph 1(a) of the present Article.

It was so decided.

Paragraph 2

Approved without comments.

Summary Record of the Fourth Plenary Meeting  
18 November 1976

[480] The President drew attention to the amendment in the report of the Committee of the Whole (LEG/CONF.5/WP.9).4

Article 9, thus amended, was adopted (38 votes in favour, none against, and no abstentions).

1976 Convention

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.

(4) The relevant part of Document LEG/CONF.5/WP.9 (Report of the Commission of the Whole) is quoted below:

[447] 12. Article 9,1(c)

The English and French texts are modified to substitute “solely on” for “from” after “who are operating” in line two.
**Article 10**

*Limitation of liability without constitution of a fund*

**Hamburg Draft Convention**

*Text and Commentary*

ARTICLES 10 AND 12 SHALL APPLY CORRESPONDINGLY TO THE DISTRIBUTION OF THE AMOUNTS DETERMINED IN ACCORDANCE WITH ARTICLE 6.

[418] The constitution of a limitation fund is not a condition for limitation of liability – see the comments to Draft Article 9. The distribution of the amounts to which the liability may be limited shall, however, be performed in the same way whether or not a fund has been constituted. This is the meaning of the 1957 Convention although it has not been specifically expressed.

**IMCO Legal Committee**

*Twenty-third Session*

[12] 46. The essential purpose of this Article, based on the principle that a person should be entitled to limitation of liability whether or not he elects to constitute a fund, is to provide that the distribution of the amounts of the liability shall be done in the same way as if a fund had been constituted.

47. Some delegations disagreed with the policy of allowing to the person liable the option of establishing a fund or not. Other delegations contested the utility or desirability of making the constitution of the fund a prerequisite of limitation. It was costly, often unnecessary and of no advantage to the claimant if, as was frequently the case, other forms of security (including the ship) were available. Moreover a mandatory provision for creation of a fund would require provisions on enforcement of judgments and possibly compulsory insurance.

**Twenty-fifth Session**

[8] 33. The Committee’s discussion of this Article centred on the question whether the establishment of a limitation fund should be a condition precedent to enable a person liable to limit his liability. As it appeared that different States had, or preferred, different solutions and as the Committee noted that it was neither possible nor essential to attempt to unify State practice in this regard, it could only agree upon a provision which stated that, while the establishment of a limitation fund was not a necessary prerequisite for the right to limit liability, a Contracting State could provide in its national law that such fund would be a prerequisite for the right to limit liability. On the basis of a proposal by a Working Group, the Committee adopted a new text for Article 8. This text also provides that even where it was permissible to limit liability without establishing a limitation fund, the provisions of Article 10 would apply correspondingly. Questions of procedure in connexion with the application of the new Article would be dealt with according to the law of the State in which the action is brought.

34. It was suggested that the text might be amended to clarify that a Contracting State could provide in its laws that some form of “adequate security”, not necessarily a “limitation fund”, would be required to enable a person to limit his liability. The view was expressed that this point was sufficiently dealt with in Article 9, paragraph 2.
35. The delegation of Australia had proposed revisions to draft Articles 9 and 11 which dealt with the point discussed by the Committee under Article 8. In the light of the decision taken by the Committee under Article 8, it did not discuss the Australian proposal further but agreed to append the proposal to this Report for the information of governments, with a view to possible discussion thereof at a later stage. The Australian proposal appears in Annex II to this Report.1

(1) Annex II to the Report of the Legal Committee on the work of its Twenty-seventh Session is quoted below:

**ANNEX II**

**Note by the Government of Australia**

The Australian Government wishes to submit for consideration by the Legal Committee the attached proposed revision of Articles 9 to 11 (Appendix A) together with explanatory notes (Appendix B).

**APPENDIX A**

**Proposed Articles 9-11**

**Article 9 – Constitution of the fund**

1. A person who wishes to limit his liability pursuant to this Convention shall constitute a fund with the Court or other competent authority in any Contracting State in which action is brought. The fund shall be constituted in the amounts set out in Article 6 together with interest thereon from the date of the occurrence giving rise to the liability until the date of the constitution of the fund. The 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 Contracting State where the fund is constituted and considered to be adequate by the Court or other competent authority. All claims subject to limitation against the person liable shall be satisfied out of the limitation fund.

3. A fund constituted by one of the persons mentioned in (a) or (b) of Article 7 or his insurer shall be constituted for the benefit of all persons mentioned in (a) or (b) respectively.

**Article 9A**

1. Any judgment, pronounced by a Court or other competent authority of a Contracting State in respect of a claim subject to limitation under this Convention, and which is enforceable in the State of origin where it is no longer subject to ordinary forms of review, shall be recognized in the Contracting State in which the limitation fund has been constituted if, subject to paragraphs 2 and 3 of this Article, the laws of that Contracting State so permit.

2. Each contracting State shall take appropriate measures to ensure that, where a limitation fund is constituted within its jurisdiction pursuant to Article 9, and subject to paragraph 3 of this Article, its Courts or other competent authorities shall recognize a judgment referred to in paragraph 1 of this Article.

(a) where the defendant submitted to the jurisdiction of the Court or other competent authority by which the judgment was pronounced; or

(b) where the defendant was resident in or had a place of business in the contracting State in which the judgment was pronounced at the time the proceedings in respect of that judgment were commenced.

3. The Courts or other competent authorities of the contracting State in which the limitation fund has been constituted may refuse to recognize a judgment referred to in paragraph 1 of this Article if it is proved that any of the following circumstances exist:

(a) the judgment was given by default and the defendant did not acquire knowledge of the proceedings in sufficient time to act upon it;

(b) the defendant was not given a fair and adequate opportunity to defend his interests;

(c) the judgment is in respect of a cause of action which had already, as between the same parties, formed the subject of a judgment or an arbitral award which, under the law of the contracting State in which the limitation fund has been constituted, is recognized as final and conclusive;

(d) the judgment was obtained by fraud of any of the parties;

(e) the right to enforce the judgment is not vested in the person by whom the application for enforcement is made;

(f) the judgment concerned is contrary to the public policy of the contracting State in which the limitation fund has been constituted.
The travaux préparatoires of the LLMC 1976 and of the Protocol 1996

Twenty-eighth Session

[18] 77. The first paragraph of Article 10 was slightly redrafted to specify that a Contracting State may provide in its national law that the constitution of a limitation fund would be a prerequisite for the right to limit liability.

4. A judgment recognized under paragraph 1 of this Article shall be enforceable as against the limitation fund in the contracting State in which the limitation fund has been constituted as soon as the formalities required in that contracting State have been complied with. The formalities shall not permit the merits of the case to be reopened.

5. If pursuant to the laws of the contracting State in which the limitation fund has been constituted and consistently with this Article a judgment referred to in paragraph 1 of this Article is not recognized in the Courts or other competent authorities of the contracting State in which the limitation fund has been constituted, the claimant shall be entitled to bring a new action before the Courts or other competent authorities of that State. Each contracting State shall ensure that its Courts or other competent authorities possess the necessary jurisdiction to entertain such actions.

6. In a new action pursuant to paragraph 5 of this Article the previous judgment shall be a defence only to the extent to which it has been satisfied.

Article 10 – Distribution of the fund

1. Each part of the fund shall be distributed among the claimants in proportion to their established claims against that part of the fund.

2. A claim in respect of which a judgment referred to in paragraph 1 of Article 9A has been pronounced shall be deemed to be an established claim for the purpose of this Article when the judgment is enforceable pursuant to paragraph 4 of Article 9A.

3. The procedural law of the State in which the fund has been constituted shall determine what other claims are established for the purpose of this Article.

4. If, before the fund is distributed, the person liable, or his insurer, has compensated 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.

5. The right of subrogation provided for in paragraph 4 of this Article 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.

6. 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 4 and 5 of this Article 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.

7. Claims in respect of expenses reasonably incurred or sacrifices reasonably made voluntarily by the person liable to avert or minimize loss shall rank equally with other claims against the fund.

Article 11 – Bar to other actions

1. Where a limitation fund has been constituted in accordance with Article 9, and a ship or other property, belonging to a person by or on behalf of whom the fund has been constituted, has been arrested within the jurisdiction of a contracting State for a claim which is subject to limitation under this Convention, the Court or other competent authority of that State may order the release of such ship or other property or of any security given. However, such release shall always be ordered if the limitation fund has been constituted:

(a) at the port where the accident giving rise to the claim took place, or, if it took place out of port, at the first port of call thereafter;

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

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

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

3. The rules of the preceding paragraphs shall apply only if the claimant has access to the Court or other competent authority administering the limitation fund and the fund is actually available in respect of his claim.
Draft Articles

1. LIMITATION OF LIABILITY MAY BE INVOKED NOTWITHSTANDING THAT A
LIIMITATION 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.

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APPENDIX B
Exploratory Notes

Article 9 – Constitution of the fund

Paragraph 1

Under the present draft Convention constitution of a limitation fund is within the discretion of
the shipowner or the person wishing to limit his liability. He is therefore able to claim limitation
of liability whether or not he has actually constituted a limitation fund. The amended text
substitutes ‘shall’ for ‘may’ in paragraph 1. There is no other change to the existing text. The
effect of the amendment is that the constitution of limitation fund is a condition precedent to
the limitation of liability pursuant to the Convention. A similar approach is taken in Article V(3)
of the International Convention on Civil Liability for Oil Pollution Damage.

Both the existing draft and the proposed revised draft stipulate the Court or other competent
authority in any contracting State in which action is brought as the place where the fund is to
be constituted.

It is the intention that only the one fund should be constituted in respect of any one incident
giving rise to claims subject to limitation.

Paragraphs 2 and 3

These paragraphs remain the same. Adoption of the Article in the above form would entail the
deletion of Article 8.

New Article 9A – Enforcement of claims against the fund

This article is intended to deal with the situation in which claims that are to be satisfied out of
the limitation fund are made initially in a jurisdiction other than that in which the limitation
fund is established. The existing draft makes no provision concerning the circumstances in
which a judgment obtained in a jurisdiction other than that in which the fund is established may
be enforceable against the fund. In the view of the Australian delegation provision on these
matters is necessary.

The draft text attempts to establish rules that would govern the recognition in the contracting
State in which the fund is established of judgments obtained in other contracting States.

Development of rules on these matters clearly is not simple. The Convention does not purport
to create any particular cause of action and therefore it appears that it is not possible to lay down
rules governing the jurisdiction in which a claim may be brought in the first instance.

Recognition of judgments must be governed, it seems, not so much by any substantive rules
based on the claim having been brought in a particular and proper jurisdiction in the first
instance but rather on the general rules of private international law governing the recognition of
foreign judgments. Paragraph 1 of the proposed new article follows this approach. The text of
this paragraph is similar to Article X(1) of the International Convention on Civil Liability for
Oil Pollution Damage. There are, however, certain basic and generally accepted rules governing
the circumstances in which a judgment obtained in one jurisdiction may or may not be
enforceable in another jurisdiction. For example, a judgment obtained in proceedings in which
both parties actively participated is normally enforceable in another jurisdiction; on the other


Diplomatic Conference
Committee of the Whole
Summary Record of the Fifteenth Meeting
10 November 1976

[324] Article 10 was approved without comment.

Summary Record of the Twenty-fourth Meeting
17 November 1976

[394] The Chairman called for a vote on Article 10, which had not been the subject of any amendment.
Article 10 was approved (35 votes in favour, none against, and 2 abstentions).

hand, a judgment obtained by fraud is not normally enforceable in another State. Paragraphs 2 and 3 of the draft article attempt to give effect to these basic rules. The text of paragraph 3 is similar to Articles 20(5) and 20(7) of the Convention on Damage caused by foreign Aircraft to third Parties on the Surface (Rome, 1952). Paragraph 4 provides that foreign judgments which are recognized in the contacting State in which the fund is constituted are enforceable against the fund. A similar provision is found in Article X(2) of the International Convention on Civil Liability for Oil Pollution Damage. Paragraphs 5 and 6 make provision for the bringing of a new action in the contracting State in which the fund has been constituted where a foreign judgment has not been recognized in that State. A similar approach is adopted in Article 20(8) of the Convention on Damage caused by a foreign Aircraft to third parties on the Surface.

Article 10
Distribution of the fund
New paragraphs 2 and 3
Two new paragraphs have been added, numbered paragraphs 2 and 3. The remainder of the Article is unchanged but the former paragraphs 2-5 have been renumbered as 4-7 respectively. The two new paragraphs set out the circumstances in which claims are to be regarded as established claims. Paragraph 3 would cover, for example, claims that are settled.

Article 11
Bar to other actions
Paragraph 1
The suggested text substitutes the words ‘a claim which is subject to limitation under this Convention for the words “made a claim against the fund’ in the second line. The intention is to bar the exercise of rights against assets other than the fund in respect of all claims subject to limitation, not merely in respect of those claims that have actually been made against the fund. This paragraph is of course subject to paragraph 3.

Paragraph 2
The suggested text makes changes to the existing draft:
(i) ‘after’ is omitted from the first line and ‘and’ is inserted after ‘Article 9’ in the second line. The intention is that, provided a fund has been established, the requirement for the release of an arrested vessel should apply whether the ship was arrested before or after the constitution of the fund.
(ii) ‘may be raised against the fund’ is deleted from the fourth line and ‘is subject to limitation under this Convention’ is substituted. This amendment appears desirable if the proposed amendment to paragraph 1 is adopted.
(iii) ‘occurrence’ is deleted from paragraph (a) and ‘accident giving rise to the claim’ is substituted. The change is essentially of a drafting nature. The words proposed are essentially those used in Articles 5(2)(a) and 5(2)(b) of the 1957 Convention.

Paragraph 3
The suggested text adds, after ‘Court’ in the second line, the words ‘or other competent authority’. The change is of a drafting nature and is proposed for the sake of uniformity with the other articles of the Convention.
Draft International Convention

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.

Summary Record of the Twenty-sixth Meeting
18 November 1976

[405] The Chairman invited the Committee to continue reviewing the text of the Drafting Committee’s report (LEG/CONF/5/C.3/1 and LEG/CONF/5/C.3/1/Add.1), in order to assess whether it faithfully reflected the substantive decisions which the Committee had taken.

[406] The present discussions, at that stage, in the Committee’s deliberations, should focus on questions of drafting, any substantive questions thenceforward being treated as matters to be raised at the Plenary Conference.

Summary Record of the Twenty-seventh Meeting
18 November 1976

[416] Approved without comments.

Plenary Meetings
Summary Record of the Fourth Plenary Meeting
18 November 1976

[480] Article 10 was adopted (36 votes in favour, none against, and no abstentions).

1976 Convention

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

Articles 11-13

General comments

Hamburg Conference
Second Report of the Chairman


The constitution of a limitation fund is not, under the present Convention, a condition for limitation of liability. The person liable may constitute a fund (Article 2 § 2°) for defensive purposes, but his right of limitation is not impaired if he elects not to do it.

The Committee was unanimously of the opinion that this system should be retained and that no form of compulsory insurance should be introduced, substantially for the reasons set out in the First Report.

It was realized that certain other changes in the rules of the Convention on the constitution and distribution of the amounts of limitation might be desirable if the Convention is to be given a complete overhaul, but in case of a mini-revision, as proposed by the majority of the Committee, the fund rules will be retained as they are with only minor amendments.

These amendments are found in Section 6 of the Protocol.

§ 5°, replacing the present § 5° of Article 3, which becomes obsolete because of the new Article 3 § 1°, introduces a provision equivalent to Article V, 8 of the Oil Pollution Convention.

§ 6° reproduces the present § 6° with the only addition that the value of the currency shall be the official value, i.e. the value notified by the State in question to the International Monetary Fund. The Committee realizes that this does not solve the problem in cases where the notification does not correspond to the real gold value or where the currency is “floating”, but this is a problem which is being dealt with by another CMI Subcommittee.

§ 7° introduces the gross tonnage calculated in accordance with the new Convention on Tonnage Measurement instead of the present “limitation tonnage”.

The Limitation Fund: The system proposed in the Working Paper

Chapter III of the Working Paper sets out the fund rules which the Committee favours in case of a more extensive revision.

It will be noted that in the Working Paper the term “limitation fund” is reserved for a fund which has actually been constituted, whilst in the Convention it is used as a common denomination for the amounts of limitation whether constituted as a fund or not. The technique used is to apply the provisions for the distribution of the fund (WP Articles 10 and 12) correspondingly where no fund has been constituted – see WP Article 8.
It follows from the system that the constitution of a fund is a condition for invoking the rules of WP Article 11 – bar to other actions.

The rules of WP Chapter III are substantially the same as the equivalent provisions of the Oil Pollution Convention.

It appears to be doubtful under the present Convention whether the liable person can limit his liability for interest accruing on the claim after the occurrence and cost awarded to the claimant. There are conflicting solutions in Contracting States. Thus, the Scandinavian maritime codes have an express provision to the effect that the liability for interest and costs is unlimited. In some countries the courts have arrived at the same result without statutory authority. In other countries, including Holland, the courts have held that once a fund has been constituted in the prescribed amounts, interest and costs pertaining to the claims are added to the claims for limitation purposes. The Committee realized the need for uniformity on this very important point, but no prevailing majority could be mustered for any concrete solution. The Dutch delegate proposed to copy the rule of the Geneva Convention of March 1, 1973, on Inland Transports (CLN): to add to the fund “les montants des intérêts moratoires”, at a rate determined by the State in which the fund is constituted, from the date of the occurrence to the date of the constitution of the fund. The objection to this solution is that the person liable has no duty to constitute a fund and, therefore, should not be liable for “intérêts moratoires” if he elects not to do it. His liability for interest and costs pertaining to the claim, however, the amounts of which are largely determined by his own attitude, should not be subject to limitation. On the other hand, interest accruing on a constituted fund should not be added to the fund.

Hamburg Draft Convention
Commentary

CHAPTER III – THE LIMITATION FUND

In the 1957 Convention limitation of liability is not conditional upon the constitution of a limitation fund. In most cases where limitation is invoked settlement is effected without any fund procedure. The constitution of a fund is a defensive measure which the liable person may or may not make use of. He may be interested to do it to avoid arrest of his vessel or other property, because there is a large number of claimants, etc. It is proposed that this system should be retained.

The main purpose of making the fund a condition for limitation is to deny limitation if the person liable cannot pay up to the limit, with the result that the claimants can put him in bankruptcy and get dividends on their unlimited claims. But this material result, if it is desired, can be achieved by the introduction of a simple rule to that effect.

In the 1969 Oil Pollution Convention an obligatory fund procedure is coupled with compulsory insurance and the right for the claimant to proceed directly against the insurer. Compulsory insurance, however desirable it might be, is hardly feasible for practical reasons with respect to global limitation. The apparatus which would have to be established would be out of proportion to the benefits reaped. Within the CMI it is
felt that it is sufficient as inducement to adequate insurance coverage that there is a
limit to the total exposure to maritime claims. Then, those who are exposed will, in
their own interest, cover themselves up to the limit which may be higher than the
amount of insurance they would have considered had there been no limit. Also, the
insurance industry will be able to offer better terms if the whole shipping industry is
in need of coverage up to “standard limits”. Marine liability insurance – Protection
and Indemnity insurance as it is always called – is unique in that cover is provided
virtually without ceiling. This could hardly have been done but for the global limitation
of liability for maritime claims.

If compulsory insurance is not introduced there is no real advantage in making
limitation conditional upon the constitution of a fund – unless the fund must be
established within a short time after the incident, but this would put an unreasonable
burden on the person liable. He would be obliged to deposit large sums of money, or
provide expensive securities, in all cases where, ultimately, it may be necessary to
invoke limitation, although it may be doubtful whether there is liability at all and
although no claimant has asked for security. Claimants who want security for their
claims can normally obtain it, if at all obtainable, by threatening to arrest the ship or
other property belonging to the person liable. Very often claimants are satisfied with a
form of security, for instance an “open letter” from an underwriter who is known to
them, which would not be acceptable to the court or other competent authority as an
adequate limitation fund. In practice, therefore, in most cases where security must be
provided in order to avoid arrest, it is given individually to each claimant, not by the
constitution of a fund.

From the point of view of the claimants this is an advantage. An obligatory fund
procedure involving court procedure will inevitably tend to delay settlements.

The question whether the claimant should be given the right of “direct action”
against the liability underwriter of the person liable – which is a question apart from
that of compulsory insurance – is not touched upon in the draft. It is felt that this is a
matter for national legislation, not related to whether the liability is limited or not.
Article 11

Constitution of the fund

Hamburg Draft Convention
Text and Commentary

1. The person liable may constitute a fund with the Court or other competent authority in any Contracting State in which action is brought. The fund shall be constituted in the amounts set out in Article 6 together with interest thereon from the date of the occurrence giving rise to the liability until the date of the constitution of the fund. The 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 Contracting State where the fund is constituted and considered to be adequate by the Court or other competent authority. All claims subject to limitation against the person liable shall be satisfied out of the limitation fund.

3. A fund constituted by one of the persons mentioned in (a) or (b) of Article 7 or his insurer shall be constituted for the benefit of all persons mentioned in (a) or (b), respectively.

The provisions of this Article are substantially the same as the equivalent rules in Article V of the 1969 Oil Pollution Liability Convention, although the systematic order is somewhat different.

However, the rule on interest in paragraph 1 is new. In principle, the Draft Convention, like the Oil Pollution Liability Convention, leaves it to national law to decide whether a claim against the fund shall carry interest, and whether such interest shall be payable out of the fund or in addition to the fund. It is proposed, however, that when a fund is constituted, interest, at a rate determined by the court, shall be added to the fund from the date of the occurrence giving rise to the liability until the date of the constitution of the fund. The purpose of the rule is to induce the person liable to put up security at an early date. The security which is being put up (guarantees) does not carry interest, and the actual interest payable from the constitution of the fund until payment is made must be determined by national law. The amount of interest which is added to the fund becomes part of the fund whether or not the claims against the fund carry interest.

IMCO Legal Committee
Twenty-third Session

48. This draft Article reproduces in part the provision of Article 5 of the International Convention on Civil Liability for Oil Pollution Damage, 1969. Its main innovation, however, is the obligation to pay interest, to be added to the fund as from the date of the occurrence giving rise to the liability (paragraph 1). The purpose of interest is to induce the person liable to put up security at an early date. The
Committee considered in connexion with Article 8 whether the constitution of a fund should be left to the option of the liable person or represent a precondition for enjoying the benefit of limitation. Opinions were again expressed in connexion with this Article as to whether such a precondition were justified. One member of the Committee was of the opinion that the 1957 Convention made it a condition of limitation that a fund should be established and it was pointed out that the 1969 International Convention on Civil Liability for Oil Pollution Damage (Article 5.3) so provides. Some delegations pointed to the special nature of the damage in cases such as the oil pollution Convention, while other delegations maintained the view that it was to the advantage of claimants to require that a person wishing to limit his liability should be obliged to constitute a fund.

49. As to the obligation to add interest to the fund, there was support for a solution aiming at providing in addition to the fund, an amount to be applied to cover interest on claims against the fund. However, as to the question whether and upon what date claims against the fund should carry interest and whether such interest should be drawn from the fund or should be an amount in addition thereto for which the shipowner was liable, the CMI draft left this to be decided according to national law.

50. The Committee considered in particular various aspects of the provision contained in paragraph 1 according to which the constitution of the fund will take place in any contracting State in which action is brought. It was suggested that it should be possible for a fund to be constituted at any time, even before the commencement of legal action. It was felt that, in order to ensure the efficient settlement of claims, the fund should, when constituted, be recognized in other contracting States. Finally, as to the meaning of the word “action”, it was suggested that the expression might be too narrow and thus exclude execution proceedings. It was therefore proposed to use the phrase “contracting State in which proceedings are taken”.

Twenty-seventh Session

[9] 36. The Committee agreed on certain drafting changes in the text of this Article. These included, in particular, the deletion from paragraph 2 of the sentence which reads: “All claims subject to limitation against the person liable shall be satisfied out of the limitation fund”. It was felt that this sentence was superfluous and could also be misleading. The Committee also amended paragraph 3 to remove possible ambiguity.

Draft Articles

1. Any person liable may constitute a fund with the court or other competent authority in any Contracting State in which legal proceedings are instituted. The fund shall be constituted in the amounts set out in Article 6 or 7 respectively together with interest thereon from the date of the occurrence giving rise to the liability until the date of the constitution of the fund. The 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 Contracting State 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) OR (B) OR PARAGRAPH 2 OF (B) OF ARTICLE 9 OR HIS INSURER SHALL BE DEEMED CONSTITUTED BY ALL PERSONS MENTIONED IN PARAGRAPH 1 (A) OR (B) OR PARAGRAPH RESPECTIVELY.

Twenty-eighth Session

[18] 78. The delegation of Australia introduced a proposal at the Committee's twenty-seventh session for the addition of a new article on enforcement of claims against a limitation fund (Article 9A in Annex II of LEG XXVII/4). The Committee felt that the matter should be examined by the diplomatic conference. One delegation considered that, at that time, it might be advisable to raise the matter of enforcement of arbitration awards as well.

79. It was pointed out that international conventions already exist governing the enforcement of foreign judgments and awards, and these would necessarily have to be borne in mind in amending any provision in the proposed Convention.

Diplomatic Conference
Committee of the Whole
Summary Record of the Fifteenth Meeting
10 November 1976

[324] The Chairman drew attention to proposals by Norway and Sweden (LEG/CONF.5/4, pages 90 and 91 respectively)\(^1\) and by the United States (LEG/...
Ms. Bruzelius (Norway) said that in her delegation’s view, the shipowner or person liable who had constituted a fund in accordance with the Convention should be free from other actions even if the fund was constituted with a court not in a Contracting State, so long as the fund fulfilled the requirements of the Convention. There were certain countries which in fact implemented the provisions of the Convention without having actually ratified it (one such country was Canada). To allow for that possibility, her delegation proposed the deletion of the word “Contracting” before “State” in paragraph 1. The same objective could be achieved by the addition of a new paragraph 4 to Article 13.
Mr. Mallinson (United Kingdom) supported the Norwegian proposal, on the assumption that the Convention would eventually contain provisions along the lines of those set out in Article 13 of the draft text.

Mr. Unkles (Australia) was opposed to the deletion of the word “Contracting”. It should be open to persons claiming limitation to constitute a fund only in States which were Parties to the Convention. His delegation’s view on the matter was related to its position on subsequent provisions concerning enforcement. The Committee should not drop the word “Contracting” without careful consideration.

Mr. Ptak (Poland) supported that view. All the subsequent Articles were closely linked to Article 11 – notably Article 13(2) – and there was no guarantee that non-Contracting States would apply the provisions which they contained. The Convention should be considered as binding on Contracting States only.

Mr. Bendjenna (Algeria) was also opposed to the deletion of the word “Contracting”. To permit States which were not Parties to the Convention to participate in a limitation fund would be treading on dangerous ground.

The Chairman called for an indicative vote on the Norwegian proposal. There were 10 votes in favour of the proposal, 11 against and 13 abstentions; the proposal was rejected.

Mr. Lyon (Canada) pointed out that paragraph 1 of Article 11 contained a reference to the interest on the fund, but there was no indication of any formula whereby that interest was to be calculated. He wished to know whether it was proposed to include such a formula.

Ms. Bruzelius (Norway) pointed out that her delegation’s comments (page 90 of LEG/CONF.5/4) drew attention to the absence from the text of provisions on interest. However, her delegation was not putting forward any proposal for inserting such provisions, for it considered that all questions relating to interest should be solved by the relevant national legislation: they should not be seen as being covered by the terms of the Convention.

Mr. Perrakis (Greece) supported that view. As he understood it, Article 14 made it clear that rules relating to the constitution and distribution of a limitation fund were governed by the law of the State in which the fund was constituted.

The Chairman drew attention to the Swedish proposal for a new paragraph 3 (LEG/CONF.5/4, page 91). Mr. Lundh (Sweden), introducing his delegation’s proposal, said that Sweden considered that either all issues relating to the question of interest should be regulated in the Convention, or all those issues should be left to national legislation in the State in which the fund was set up. In the former case, if the fund was constituted in cash, the competent authority should be required to deposit the money in such a way that interest would accrue until the fund was distributed. If the fund consisted of a guarantee, that guarantee should also cover interest from the date of the constitution of the fund until its distribution. However, in view of shortage of time, his delegation was willing to withdraw that proposal on the understanding that other issues relating to interest beyond those covered by Article 11(1) would be governed by national legislation.

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(3) See note 1.

(4) See note 1.
Mr. Jeannel (France) took it as clearly understood that all issues relating to interest not covered by the Convention would in fact be left to be settled under national law.

Mr. Mallinson (United Kingdom) said that his delegation agreed with the Swedish Government’s views on paragraph 1. Moreover, it would have supported the proposed new paragraph 3, as it considered that United Kingdom jurisdiction would benefit from a provision on those lines. However, if his was the only delegation wishing to discuss it, he would not press the matter.

Paragraph 1 of Article 11 was approved.

Paragraphs 2 and 3 of Article 11 were approved without comment.

Mr. Bursley (United States) introduced his delegation’s proposal (LEG/CONF5/C.1/WP.61) to add a paragraph 4 to Article 11. Article 11 appeared to offer unlimited freedom for a person seeking limitation to select the forum in which to initiate a limitation action or to constitute a fund. The United States delegation considered that the locus of the fund should take into account the interests not only of the person seeking limitation but also of the claimants. The proposed paragraph 4 was designed to do so.

Mr. Lyon (Canada) seconded the United States proposal.

Mr. Muller (Switzerland) pointed out that limitation proceedings were normally initiated after a claimant had sued the shipowner. If the United States proposal was adopted, he wondered what would happen if the shipowner was sued before a court which announced that the forum was convenient for hearing the claim but inconvenient for the constitution of the fund.

Mr. Philip (Denmark) shared the Swiss representative’s doubts. Not only was it possible to regard the arrest forum as a forum non conveniens, but many legislations stipulated that it must be so considered. If the United States proposal was adopted, a shipowner would be prevented from receiving the benefits conferred by Article 13. Moreover, the principle of forum non conveniens was unknown to Continental law and many courts would find it difficult to administer.

Mr. Perrakis (Greece) agreed with the two previous speakers; he added that for the court of one Party to the Convention to declare that the court of another Party was inconvenient would infringe the equality of Contracting States.

Mr. Jeannel (France) interpreted the text of Article 11 as indicating that the choice of court was left to the claimant. It seemed to him very unlikely that a shipowner would deliberately set up a fund in a court other than the one in which proceedings were brought. Moreover, the principle of forum non conveniens was not recognized in French law and, as the Danish representative had said, would be difficult to implement. Furthermore, if in a case in which proceedings were being instituted in only one court and that court refused to set up a fund, then the fund could not be set up at all. Yet it was in the interests of both the shipowner and the claimant that the fund should be established.

Mr. Bursley (United States) recalled that it was not unknown for sham suits to be brought so as to establish jurisdiction in a particular forum to the detriment of large numbers of claimants. For example, a cruise ship with a large number of passengers from a particular locality might suffer an incident in a remote part of the world. If a
fund were constituted in that remote area, a large number of claimants might have serious problems in pursuing their just remedies.

The Chairman called for an indicative vote on the United States proposal. There were 2 votes in favour of the United States proposal (LEG/CONF.5/C.1/WP.61), 24 against, and 10 abstentions; the proposal was rejected.

Mr. Hermes (Australia) introduced his Government’s proposal (LEG/CONF.5/4, page 93) for the inclusion of a new text, Article 11A, incorporating enforcement of claims against the fund. His Government viewed the Convention as extending considerable benefits to the shipowner, and considered that the interests of...
claimants should be equally favoured. The proposed text was designed to ensure the recognition, in the Contracting State in which the fund had been constituted, of judgements obtained in other Contracting States. Unless some such provision was made, many claimants would be faced with considerable difficulties.

He was aware that many people considered that such proposals, although sound, should have no place in the present Convention. His Government felt, however, that whereas careful attention was paid to basic matters of principle when drafting conventions, it very often happened that inadequate rules were provided for the enforcement of judgements. The proposal was not a novel one: similar provisions existed in other conventions, such as the 1969 Convention on Civil Liability for Oil Pollution Damage and the Convention on Damage caused by Foreign Aircraft to Third Parties on the Surface (Rome, 1952).

The Chairman invited delegations to indicate their views with regard to the Australian proposal.

There being no seconder, the Australian proposal (LEG/CONF.5/4, page 93) was not considered further.

Article 11 was approved as a whole.

6. In a new action pursuant to paragraph 5 of this Article the previous judgement shall be a defence only to the extent to which it has been satisfied."

The proposed Article 11A is intended to deal with the situation in which claims that are to be satisfied out of the limitation fund are made initially in a jurisdiction or jurisdictions other than that in which the limitation fund is established. The existing draft makes no provision concerning the circumstances in which a judgement obtained in a jurisdiction other than that in which the fund is established may be enforceable against the fund. In Australia's view provision on these matters is necessary.

The draft text attempts to establish rules that would govern the recognition in the Contracting State in which the fund is established of judgments obtained in other Contracting States. Development of rules on these matters clearly is not simple. The Convention does not purport to create any particular cause of action and therefore it appears that it is not possible to lay down rules governing the jurisdiction in which a claim may be brought in the first instance. Recognition of judgements must be governed, it seems, not so much by any substantive rules based on the claim having been brought in a particular and proper jurisdiction in the first instance but rather on the general rules of private international law governing the recognition of foreign judgements. Paragraph 1 of the proposed new article follows this approach. The text of this paragraph is similar to Article X(1) of the International Convention on Civil Liability for Oil Pollution Damage (Brussels, 1969). There are, however, certain basic and generally accepted rules governing the circumstances in which a judgement obtained in one jurisdiction may or may not be enforceable in another jurisdiction. For example, a judgement obtained in proceedings in which both parties actively participated is normally enforceable in another jurisdiction; on the other hand, a judgement obtained by fraud is not normally enforceable in another State.

Paragraphs 2 and 3 of the draft article attempt to give effect to these basic rules. The text of paragraph 3 is similar to Article 20(5) and 20(7) of the Convention on Damage caused by Foreign Aircraft to Third Parties on the Surface (Rome, 1952).

Paragraph 4 of Article 11A provides that foreign judgements which are recognized in the Contracting State in which the fund is constituted are enforceable against the Fund. A similar provision is found in Article X(2) of the International Convention on Civil Liability for Oil Pollution Damage.

Paragraphs 5 and 6 of Article 11A make provision for the bringing of a new action in the Contracting State in which the fund has been constituted where a foreign judgement has not been recognized in that State. A similar approach is adopted in Article 20(8) of the Convention on Damage caused by Foreign Aircraft to Third Parties on the Surface.

(8) See note 7.
Summary Record of the Twenty-fourth Meeting
17 November 1976

[394] The Chairman called for a vote on Article 11, which had likewise been accepted with amendment.

Article 11 was approved (35 votes in favour, none against, and 2 abstentions).

Draft International Convention

1. Any person liable may constitute a fund with the Court or other competent authority in any State Party in which legal proceedings are instituted. The fund shall be constituted in the amounts set out in Articles 6 or 7 respectively 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), respectively.

Summary Record of the Twenty-seventh Meeting
18 November 1976

[416] Paragraph 1

Lord Diplock (United Kingdom) thought that the second sentence was ambiguous as it was not the intention that every fund must be the sum of all the amounts set out in Articles 6 and 7. If there were no passenger claims, for example, there would be no obligation to set up a passenger fund. He proposed amending the text to read: “The fund shall be constituted in such of the amounts set out in Articles 6 and 7 as may be applicable to claims for which that person is liable together with interest.”

Mr. Bursley (United States) suggested that “may be liable” would be more accurate.

Lord Diplock (United States) thought “is” more consistent with the wording of the first sentence.

Mr. Wiswall (Liberia) considered the substance more important than consistency in wording, and was therefore in favour of “may be liable”.

Mr. Selvig (Norway), while appreciating Lord Diplock’s point, said that the wording used assumed the existence of only one fund. He suggested using the phrases “such funds as may be applicable” and “in the applicable amount”, respectively.

Mr. Bentein (Belgium) thought that the question was one of substance. He had hitherto interpreted the Article as meaning one fund; but if the United Kingdom was now proposing two separate funds, as it appeared, he could accept that if the Conference agreed.
The Chairman said that the question must be considered in the light of Article 6 and 7. It was not intended that a person against whom there was a property claim, for example, should be obliged to set up a passenger fund if there were no passenger claims.

Mr. Selvig (Norway) said that that held equally good in cases where there were no personal claims. The matter was one of drafting only.

Mr. Jeannel (France) asked that the first line of the French text be amended to read: “Toute personne dont la responsabilité peut être mise en cause...”. If the proposed amendments to the second sentence were adopted, the French version should read: “...créances dont cette personne peut être responsable...”.

Lord Diplock (United Kingdom), after consultation with other representatives, read out a new draft of the first sentences which had emerged from their discussions, although there had not been time for it to be agreed by everyone concerned:

“Any person liable may constitute a fund with the Court or other competent authority in any State Party in which legal proceedings in respect of claims to limitation are instituted. The fund shall be constituted in the sum of such of the amounts set out in Articles 6 and 7 as are applicable to such claims together with interest thereon...”

Mr. Selvig (Norway), referring to the use of the words “such claims”, asked whether a person liable might set up a second fund for, say, a personal claim in the same place as he had already set up a fund for a property claim, in respect of the same occurrence.

Lord Diplock (United Kingdom) said that the same problem had arisen under the 1957 Convention and was covered by Article 13(3). The essence of a limitation fund was that it was a bar to other actions; but if a personal injury claim was later made against a person who had set up a fund for property claims, that would not – under Article 13(3) – be a bar to the constitution of a second fund.

Mr. Selvig (Norway) inquired whether or not the matter was one of substance. Could the person liable constitute a whole fund? It might, he suggested, be better to amend the text to read: “...such of the amounts...as are applicable to claims for which that person may be liable...”.

The Chairman put the Norwegian and United Kingdom proposals to the vote.

The Norwegian proposal was approved (12 votes in favour, 1 against, and 23 abstentions).

The United Kingdom proposal, as amended by the Norwegian proposal, was approved (31 votes in favour, none against and 7 abstentions).

With reference to the French text, Mr. Jeannel (France) said that his earlier proposal was an essential one: no one could be described as “responsable” in French except as a result of a judgment of a Court. Until that time, he was no more than “susceptible d’être responsable”.

Lord Diplock (United Kingdom) thought that the English text would always be so understood, but was willing to amend it to read “Any person alleged to be liable...”.

After some discussion, the Chairman put the two texts to the vote.

The French amendment was approved (16 votes in favour, none against and 17 abstentions) and its equivalent in English, as proposed by the United Kingdom, was approved (12 votes in favour, none against and 11 abstentions).

The Chairman said that the amendments to the paragraph would involve consequential amendments to subsequent Articles, up to and including Article 15.

Paragraphs 2 and 3
Approved without comments.
Plenary Meetings
Summary Record of the Fourth Plenary Meeting
18 November 1976

[480] The President drew attention to the amendment in the report of the Committee of the Whole (LEG/CONF5/WP.9).9

Article 11, thus amended, was adopted (37 votes in favour, none against, and no abstentions).

1976 Convention

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.

(9) The relevant part of Document LEG/CONF5/WP.9 (Report of the Committee of the Whole) is quoted below:

[447] 13. Article 11.1
In the English and French texts modify the opening words to read in English:
“Any person alleged to be liable…”
and in French:
“Toute personne dont la responsabilité peut être mise en cause”.
In the English and French texts, the following words are added at the end of the first sentence after the word “instituted”:
“in respect of claims subject to limitation”
and the second sentence in both language texts is modified as follows:
“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.”
Article 12

Distribution of the fund

Hamburg Draft Convention
Text and Commentary

[312] 1. EACH PART OF THE FUND SHALL BE DISTRIBUTED AMONG THE CLAIMANTS IN PROPORTION TO THEIR ESTABLISHED CLAIMS AGAINST THAT PART OF THE FUND.

2. IF, BEFORE THE FUND IS DISTRIBUTED, THE PERSON LIABLE, OR HIS INSURER, HAS COMPENSATED 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 OF THIS ARTICLE 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 OF THIS ARTICLE 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.

5. CLAIMS IN RESPECT OF EXPENSES REASONABLY INCURRED OR SACRIFICES REASONABLY MADE VOLUNTARILY BY THE PERSON LIABLE TO AVERT OR MINIMIZE LOSS SHALL RANK EQUALLY WITH OTHER CLAIMS AGAINST THE FUND.

[422] In substance, this Article corresponds to the equivalent provisions in Article V of the 1969 Oil Pollution Liability Convention, including paragraph 5 which allows costs of preventive measures incurred by the liable person himself to be claimed against the fund.

IMCO Legal Committee
Twenty-third Session

[14] Paragraph 1

51. The representative of the CMI stated that the “established claims” referred to in paragraph 1 were to be understood as claims that were enforceable in the State in which the fund had been constituted. Article 3, 2 of the 1957 Convention contained a similar provision. Basically, a claimant had to approach the courts of the State in which the fund had been established if he wanted access to the fund. If there was no agreement on the recognition of judgments among the States involved, then the procedure depended on the rules of enforcement in the State in which the fund had been established. These rules, of course, varied from State to State. Experience had shown that, by and large, Governments were not willing to enter into multilateral treaties on the enforcement of judgments.
52. One delegation said that a serious deficiency in the Convention was that it did not deal adequately with the problems that arose when more than one State was involved in claims arising out of the one incident. In the view of this delegation it was essential that the Convention should make provision concerning the jurisdiction in which a fund was to be established and provision for recognition and enforcement of claims made in different jurisdictions. Without such provisions, according to the delegation, the Convention did not establish a satisfactory scheme. Against this it was, however, pointed out that unlike some other conventions, the present draft convention applied to a large number of diverse claims; that it was therefore quite impossible to adopt provisions on the appropriate fora and that, without rules dealing with the forum question, the matter of recognition and enforcement could not be settled in the draft convention.

53. In reply to a query whether maritime liens preferences should be taken account of in the distribution of the fund under paragraph 1, the representative of the CMI stated that, neither under the 1957 Convention nor under the draft convention, could a lien be asserted by a claimant in a limitation proceeding. One delegation pointed out that under the 1957 Convention the priorities established by the lex fori would apply to the distribution of the fund unless the State in question was party to the 1967 maritime liens and mortgages Convention or had adopted corresponding national legislation. Priorities established in that Convention should not be changed by the present draft Convention. Moreover, attention was drawn to the fact that in some jurisdictions the question of priorities had been considered as a procedural one under the 1957 Convention and it was suggested that, for clarification, a provision be adopted to the effect that “there should be no priorities in satisfaction other than a pro rata satisfaction out of the fund”.

54. One delegation pointed out that the provisions of the 1957 Convention on the matters discussed were somewhat complicated. To enforce his claim against the fund, a claimant must “establish” his claim to the satisfaction of the court administering the fund (Article 3, paragraph 2). Whether a judgment of a foreign court will then be recognized, depends on law and treaties applicable in the State where the fund has been constituted.

55. This delegation also said that the position of the claimant was different if he wanted for any reason to enforce his claim in a State other than that where a fund had been constituted. A claimant’s possibility to do so was in practice to some extent limited by the provision of Article 5, paragraphs 1 and 2 relating to the claimant’s right to have a ship or other property belonging to the shipowner arrested in a jurisdiction other than that where the fund has been constituted.

56. In cases where the fund had not been constituted at any of the places enumerated in Article 5, paragraph 2, the court could decide at its discretion whether to release the ship, with the practical consequence, in most cases, that the claimant would have to enforce his claim against the fund, and “establish” his claim to the satisfaction of the court administering the fund. The court would, under Article 5, paragraph 1, consider the inconvenience to the claimant of having to do so, and the interest of the shipowner in not having to pay claims separately and thus in addition to the fund already constituted. In cases where the ship is not released, the shipowner’s interest is to some extent protected by recourse against the fund in accordance with Article 3, paragraphs 3 and 4.

57. In the context of Article 5, paragraphs 1 and 2, one would also have to take account of Article 2, paragraph 4, which seems to be inconsistent with Article 5, paragraph 1. However, Article 2, paragraph 4 applies only where the claimant has
already made his claims against the fund, preventing him in that case from enforcing his claim against any other assets belonging to the shipowner by means of a maritime lien or otherwise. Article 2, paragraph 4, is further limited to cases in which the limitation fund is “actually available” for the benefit of the claimants.

[16] Paragraph 5

58. In reply to a question as to the relationship between claims referred to in paragraph 5 and claims for contribution in general average referred to in Article 3(a) the representative of the CMI explained that if the person who made the sacrifice was not himself liable for the peril which caused the damage, he could then claim expenses under general average and paragraph 5 would not apply. Where, on the other hand, the shipowner himself had caused a peril from which he was trying to save the vessel and the cargo, he was not entitled to any contribution in general average.

59. With regard to the relationship between the provision of Article 2, 1(f) and Article 10, 5, the representative of the CMI noted that the former dealt with claims by a third party taking preventive measures to avert or minimize loss. Paragraph 5 of Article 10, on the other hand, dealt with situations where the liable person himself or someone on his behalf took such measures. Here the CMI had felt that it would be in the interest of all concerned if the shipowner was induced to avert or minimize losses by entitling him to claim his own expenses against the fund.

60. One delegation expressed the view that such a principle of economic inducement, if also applied to the averting of loss of life or of personal injury, would be contrary to its country’s public policy. Another delegation felt that there was no justification for exempting personal injury cases. A third delegation expressed the view that if an economic inducement was felt necessary, there were alternative means for providing it, without, in effect, rewarding the shipowner for taking measures to reduce the consequences of his negligence. For example, setting a sufficiently high limit of liability could stimulate the shipowner’s interest in keeping the number and amount of claims low. Alternatively, it would be possible to construe the shipowner’s inactivity in averting or minimizing loss as a negligent omission giving rise to a new incident and consequently the establishment of a second fund. Finally, the matter could, it seemed, also be solved by considering that failure to minimize damage was covered by Article 4 of the draft Convention which contained a specific reference to omission. In any case there was no need to retain paragraph 5 in the draft Convention.

[17] 61. Several delegations, on the other hand, voiced support for the idea expressed in paragraph 5 although noting that its present wording was not very clear. For example, it was felt that it would be useful to make it clear that the term “loss” did not include any loss incurred by the shipowner in minimizing his own damage; otherwise there could be a double recovery to his advantage. Similarly, the reference to expenses incurred “to avert” loss could lead to unacceptable interpretations of the provision, as there would be doubt whether the measures were restricted to those taken after an event or might include measures taken even before an incident.

62. The view was also expressed that there was need for an additional provision establishing a minimum time limit before the fund was distributed so as to enable all claimants to have an idea as to how much time was available for them to submit their claims.
Paragraph 1

37. The Committee considered that paragraph 1 of this Article could only be considered when the provision of Article 6 had been further clarified.

Paragraphs 2, 3 and 4

38. No comments were made on paragraphs 2, 3 and 4 of this Article.

Paragraph 5

39. The Committee considered this paragraph in the context of three main issues, namely:

(a) whether expenses incurred as a result of measures taken by a person liable to prevent or minimize damage giving rise to liability subject to limitation should be entitled to share in the limitation fund;

(b) whether the expenses referred to should include loss incurred as a result of reasonable “sacrifices” made by the shipowner;

(c) whether expenses incurred in connexion with salvage operations, wreck removal or pollution measures should be included in the scope of application of the paragraph, when the salvage operations were wholly or partly for the purpose of preventing or minimizing damage to parties other than the person liable.

40. The Committee decided, following consideration of the issues in the plenary and in a small working group, to adopt a new text of this paragraph. The draft, leaves it open whether these expenses should rank equally in any limitation fund or only in such fund or part of a fund as is not reserved for claims for loss of life or personal injury. The Committee considered that that question can only be decided when it was known what form Article 6 would finally take.

41. The Committee noted that it was not entirely clear or agreed whether the draft included (or should include) expenses in connexion with salvage operations, wreck removal or pollution measures but it was felt that the issue could be considered at a later stage. Following a final decision, consideration would be given to drafting a text which would leave no doubt as to what was intended.

42. One delegation expressed the view that while it was in favour of providing an incentive to persons liable to take measures to prevent or reduce damage, it felt this incentive should be in a different form. For this reason it submitted an alternative draft text of the paragraph as follows:

“A person liable shall not be entitled to limit his liability if it is proved that, after an incident causing or threatening to cause damage has occurred, the person could have taken reasonable measures to prevent or minimize loss, and failed to do so.”

Some delegations which preferred to see paragraph 5 deleted, felt that this new approach should be given further consideration at a later date. One delegation emphasized that it could only accept paragraph 5 in its redrafted form if it clearly excluded expenses in connexion with wreck removal and pollution measures.

Twenty-eighth Session

80. Some delegations expressed concern that the provisions of a new limitation convention might discourage the application of the International Convention on Civil
Liability for Oil Pollution Damage, 1969, by establishing a level of limitation higher than that of the earlier convention. They recommended the insertion, after paragraph 1, of the following paragraph:

“Notwithstanding the provisions of paragraph 1 of this Article, claimants for oil pollution damage as defined in the 1969 International Convention on Civil Liability for Oil Pollution Damage shall in no event receive compensation in excess of that which would have been recoverable in respect of such claims if the provisions of that Convention, or any Protocol thereto which is in force, had been applicable thereto.”

81. Other delegations considered that, regardless of the importance of the issue and the merits of the proposed addition, the inclusion of such a provision might create the impression that the Legal Committee had concluded that the level of limitation in the proposed Convention would be higher than those in the 1969 Convention, whereas the Committee had not arrived at any such conclusion. Still other delegations felt that the problem to which attention had been drawn was one which could be solved by different means. In any case, it was generally felt that it would be inadvisable to adopt a provision which appeared to attempt to bind some Contracting States to the provisions of another Convention which, for one reason or another, they had not thought it fit to accept.

82. Another suggestion was that consideration might be given to the possible priority to be accorded to matters dealt with in the 1926 and 1967 (Brussels) Conventions for the Unification of Certain Rules relating to Maritime Liens and Mortgages, Brussels.

83. Other delegations felt that this subject would not be appropriate for treatment in a convention on the limitation of liabilities whose purpose was to determine the extent of the claims and not the means of satisfying them.

84. Some delegations proposed that paragraph 5 be deleted. They felt that it was not acceptable to give to the shipowner, on top of the right to limit his liabilities, the right to share in the limitation fund in respect of measures which he took to limit the damage suffered by other persons.

One delegation considered that the paragraph would also have the effect of reducing the fund available to third party claims. Other delegates, however, felt that the paragraph was necessary since it provided a useful incentive for the shipowner or salvor to take measures to minimize damage. The Committee decided to retain the paragraph, but with the square brackets in the last part. The decision on the removal of the brackets would depend on the decisions taken on Article 7 in respect to the structure of the limitation fund or funds.

Draft Articles

1. Subject to the provisions of paragraph… of Article 6*, 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, of 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 of this Article may also be exercised by persons other 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 established 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 of this Article 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.

5. Where an incident occurs which causes or threatens to cause damage giving rise to liability subject to limitation under this Convention and the person liable for that damage voluntarily takes measures to prevent or minimize such damage, any expenses reasonably incurred, including loss resulting from sacrifices made, by him in taking those measures shall rank equally with any claims in [such part of the] [such a] fund [as is not reserved for claims for loss of life or personal injury]**.

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Diplomatic Conference
Committee of the Whole
Summary Record of the Fifteenth Meeting
10 November 1976

[327] The Chairman presumed, in view of the fate of the Australian proposal for Article 11A, that the consequent Australian proposal for a new version of Article 12 should be considered to have been withdrawn.

Mr. Hermes (Australia) agreed that that was so.

The Chairman said that the Swedish proposal (LEG/CONF.5/4, page 98)¹ had also been withdrawn. There were therefore no proposals concerning paragraphs 1, 2, 3 and 4 of the Article. She invited comments on those paragraphs.

Mr. Bursley (United States) sought information as to the full import of the phrase “up to the amount he has paid” in paragraph 2.

The Chairman understood the phrase as meaning that if the person liable had paid part compensation to one of the claimants against the fund, he was then entitled to invoke that claim against the fund. The aim of the provision was to facilitate the settlement of claims in advance, but the claimant might not have been paid in full and could therefore claim against the fund for the rest of his claim.

Mr. Wiswall (Liberia) agreed with that interpretation except for the last phrase.

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¹ See note 7 sub Art. 11.
The basis of most settlements would be a waiver of excess claim by the claimant. It would discourage settlements if the claimant could claim against the fund for more. In his view, the words referred to were superfluous, as it was unlikely that a claimant would accept payment in part.

Mr. Rein (Observer, CMI), speaking at the Chairman’s invitation, said that the use of the word “subrogation” did not mean that the amount paid would be recognized as a claim against the fund. The burden was still on the liable person who had subrogated to prove that he was liable. If the words in question were not included, the person liable would, under the doctrine of subrogation, be able to claim in full against the fund regardless of what he had already paid.

The Chairman pointed out that the same wording had been used in Article 5(5) of the 1969 Civil Liability Convention. Paragraphs 1, 2, 3 and 4 of Article 12 were approved.

The Chairman said that proposals concerning paragraph 5 had been submitted by the United Kingdom (LEG/CONF.5/4, page 98)\(^2\) by New Zealand (LEG/CONF.5/4/Add.3)\(^3\) and by the Netherlands (LEG/CONF.5/C.1/WP.60)\(^4\).

(2) The relevant part of Document LEG/CONF.5/4 is quoted below:

United Kingdom

The words in square brackets at the end of paragraph 5 should be included in the text. Expenses incurred in taking preventive measures should rank only with property claims. Which of the alternative words in brackets in the penultimate line should be included depends upon the text chosen for Article 6.

(3) The relevant part of document LEG/CONF.5/4/Add.3 is quoted below:

The New Zealand Government questions the provision in Article 12 which will allow a shipowner to share in the Limitation Fund in respect of measures taken to limit the damage suffered by other persons. While the principle is supported, the New Zealand Government feels that it should not be included in the proposed Convention in a way that reduces the availability of compensation to other parties. On balance, the New Zealand Government has reservations about this provision, although the remainder of the Article can be fully supported.

(4) Document LEG/CONF.5/C.1/WP.60

8 November 1976

Observations and proposal submitted by the delegation of the Netherlands

Article 12, paragraph 5

1. The provision of Article 12, paragraph 5 seems to be in itself inequitable. A shipowner, who runs the risk of being held liable, does what each debtor is obliged to do: he takes measures to minimize the damage. Then, the shipowner is credited in the distribution of damages with a claim equal to the costs of his endeavours to minimize the damage. As a result of the equally ranking of the shipowners’ expenses with claims of his creditors against the limitation fund, the claims of the latter are cut down by their debtor’s measures to minimize the damage he has inflicted upon them.

2. Nevertheless, a provision to this effect was introduced in the 1969 Oil Pollution Liability Convention, which however, is dealing only with claims for pollution damage. The present Convention, on the other hand, is dealing with claims of among themselves a different nature. Under this Convention, a possible effect of such provision would be that the measures taken in respect of a certain category of claims can diminish disproportionately other claims, considering that preventive measures can be more expensive than the damage avoided and that they may be taken partly for the benefit of the property (the ship) of the person liable.

3. At the same time it has to be recognized that, in the absence of such provision, there is a possibility that a shipowner may decide, with a view to the economic consequences and in spite of his general obligation, to refrain from taking preventive measures. How far an omission to minimize damage may be considered as conduct barring the right to limit liability depends on the content to be given to Article 4. It may be imagined that economic inducement to take measures becomes more important as the limitation is made less breakable.
Mr. Sturms (Netherlands) said that his delegation’s proposal (LEG/-CONF.5/C.1/WP.60) was to delete paragraph 5. As was pointed out, the paragraph seemed inequitable since the claims of creditors might be reduced by the cost of measures which the owner should take in any case. The point to remember was that preventive measures could be more expensive than the damage avoided, nor was it always certain that such measures had been taken to prevent damage to other persons and not to the ship. As worded, the paragraph could only mean that the shipowner was permitted to assert against the fund expenses incurred by him in connexion with salvage operations, although the claim for remuneration of the salvage acts was not subject to limitation. As a result, other claims would be reduced to a great extent.

Mr. Bursley (United States) and Mr. Lyon (Canada) seconded the Netherlands proposal.

Mr. Mallinson (United Kingdom) did not agree with the views of the Netherlands representative or share his concern. The effect of paragraph 5 was limited to reasonable expenses, and courts in the United Kingdom would be very stringent in considering the measures taken in particular cases. He was therefore in favour of including the paragraph, which should be limited to providing that the claims in question ranked equally with property claims under the Convention, with personal claims continuing to take precedence. Wording on the lines of the words in square brackets should therefore be retained, although the exact drafting of the limitation would depend on the final drafting of Article 6, regarding which the Committee had already expressed a preference for the alternative text.

Mr. Rein (Observer, CMI), speaking at the invitation of the Chairman, construed the Netherlands delegation’s reason for proposing the deletion of paragraph 5 as being that since the person liable for damage had a duty in law to take preventive measures, there was no need to compensate him for so doing. It could equally well be argued that the victim had a duty to reduce potential damage so as to reduce liability, and should therefore not be allowed to recover expenses from the fund. Paragraph 5 had a practical rather than a legal basis. Although the person liable had a duty in law to take preventive measures, unless some inducement existed he frequently evaded that duty, and to prove such evasion was not easy. It had been stated that the comparable rule in the 1969 Civil Liability Convention was satisfactory, since it involved the same types of claim and there was therefore no conflict between claimants; but the fund under the present Convention covered a variety of claims and there might well be conflicting interests. As he understood it, the words “reasonably incurred” applied both to the

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4. The main concern of the Netherlands delegation in respect of this provision is that its practical effect may run counter to the purpose of the Convention. The present wording cannot be read but to mean that the shipowner is permitted to assert against the fund expenses incurred by him in connexion with salvage operations, though the claim for remuneration of the salvage acts is not subject to limitation. As a consequence, other claims would be reduced to a great extent. The same goes for expenses for claims by servants in this respect.

6. The inequity and practical difficulties in the application of the provision lead the Netherlands delegation to propose that Article 12, paragraph 5 be deleted.

(5) See note 4.
relationship between the cost of measures taken and the expectation of success and to
cases where the measures were not successful. If the person liable took preventive
measures for one set of circumstances but not for others, the expenses would not have
been reasonably incurred.

With regard to the United Kingdom proposal, there would, if there were two
parts in the fund – one for personal claims and one for property claims – and if the
cost of all preventive measures concerning loss of life were met from the property fund,
be no inducement to incur heavy expenses, with doubtful outcome, in order to save
lives. The cost of preventive measures should be met by the fund, which would cover
damage should the measures fail.

Mr. Douay (France) strongly supported the Netherlands proposal to delete
paragraph 5. The provision was an innovation taken from the 1969 Civil Liability
Convention. That Convention provided an economic inducement to encourage the
owner to take immediate measures against pollution, the owner being insured for
reasonable expenses which would rank equally with any claim for pollution damage.
In the present Convention, the owner or other person entitled to limitation of liability,
who was liable and had caused damage, would try to reduce the extent of the damage,
and claims in respect of measures to do so would rank equally with other types of
claim. Paradoxically, however, the amount available for other claimants – such as
victims – would be reduced, since the person who had set up a fund would be [329]
claiming from his own fund.

Mr. Pages (Observer, IAPH), speaking at the invitation of the Chairman,
expressed his Association’s doubts as to the advantages of paragraph 5 and the
feasibility of distinguishing between reasonable and unreasonable expenses in the
courts. It therefore supported the views of the Netherlands delegation.

Mr. Lyon (Canada) endorsed the views of the Netherlands and French
representatives. He also shared the doubts of the previous speaker on the assessment
of what was reasonable or not reasonable. He wondered how the United Kingdom
representative could be so sure of what the courts would decide. He emphatically
supported the deletion of paragraph 5.

Mr. Bursley (United States) was also strongly in favour of the Netherlands
proposal.

Mr. Ptak (Poland) fully agreed with the CMI observer. There was no obligation
under Polish law for anyone to take measures to minimize damage; but everyone was
required to help in case of disaster, and failure to help in saving life was punishable
under the penal code. There was therefore no possibility of a person who caused
damage being remunerated for preventive or other measures in respect of saving life.
The argument for giving the owner or other entitled person reasonable remuneration
for sacrifice or reasonable expenses to minimize or prevent further damage was fully
justified, but only from the part of the fund designated for claims for damage to
property. The Polish courts would have no difficulty in determining whether
preventive measures had been incurred reasonably or not, and he was sure that courts
elsewhere would have the necessary experts for that purpose.

Mr. Iturralde (Argentina) supported the Netherlands observations and proposal.

Ms. Bruzelius (Norway) favoured the retention of paragraph 5, for the reasons
voiced by previous speakers. It was a useful innovation and was as appropriate to the
present Convention as the comparable provision was to the 1969 Civil Liability
Convention. It was also to some extent complementary to Article 2(1)(f). She doubted
whether the courts would have any difficulty in deciding whether expenses had been reasonably incurred. She appreciated the CMI observer’s point that personal claims for the cost of measures for saving lives should be covered under the personal fund, but it would be difficult to accept that as a principle. It would be better to restrict application of paragraph 5 to costs under the property fund.

Mr. Wiswall (Liberia) felt that the Committee was losing sight of the fundamental nature of the Convention which, like the 1969 Liability Convention, was based on insurability. Criticism of paragraph 5 took no account of the pressure, coming primarily from the underwriters, to mitigate third party loss. Paragraph 5 was very relevant as far as mitigation was concerned.

He saw no difficulty in determining reasonably incurred expenses: it was a regular function of the courts to determine whether claims had a reasonable basis and whether the amounts claimed were satisfactory. The United Kingdom suggestion was both valid and helpful. As to personal injury or loss of life, the person liable for damage had a fundamental legal obligation to act, regardless of whether he could recover in mitigation. The United Kingdom proposal would not seriously detract from the benefits of paragraph 5.

Mr. Roth (Federal Republic of Germany) agreed with representatives who were in favour of a provision on the lines of paragraph 5. He would be satisfied to leave the question of reasonable expenses to court decision.

Mr. Trotz (German Democratic Republic) supported the basic idea in paragraph 5 and was in favour of retaining it. The use of the word “voluntarily” would preclude the possibility of the person liable for damage being able to share in the distribution of funds for the costs which he had to pay as a legal obligation, since it was made clear that only measures taken voluntarily would be subject to reimbursement out of the fund. Under his own country’s legislation, for example, all persons were legally bound to minimize damage.

The Chairman invited representatives to indicate their views on the Netherlands proposal.

There were 12 votes in favour of the Netherlands proposal, 15 against and 7 abstentions; the proposal was rejected.

Mr. Bursley (United States) asked if he was correct in understanding the German Democratic Republic representative’s interpretation of “voluntarily” as referring to claims for measures taken beyond those required by law, and if that was the general understanding.

The Chairman explained that the wording was taken from Article V(8) of the 1969 Civil Liability Convention. She was not in a position to offer an interpretation at the moment.

Mr. Bendjenna (Algeria) said that the reason for his abstention in the show of hands was that he would consider paragraph 5 acceptable provided it was ascertainable whether expenses had been incurred or measures taken reasonably. There would otherwise be an element of uncertainty which would affect the action taken by the person liable.

The Chairman thought it would be difficult to define precisely the implications of the words “voluntarily”. However, it clearly indicated a restriction on the possibility of making claims for preventive measures.

Mr. Wiswall (Liberia) saw the issue of reasonableness as one of fact, which should be left to the courts. However, the voluntary character of an act was a legal
issue, and would depend on the law applying in the place where the act of mitigation was carried out.

Mr. Perrakis (Greece) agreed with the representative of Liberia, but submitted that measures or expenses imposed by the authorities on the shipowner or salvor would not be considered as voluntary.

Mr. Djavad (USSR) endorsed the views of the representative of Greece. He had abstained in the show of hands, for he saw no possibility of a unanimous decision on the question of whether or not any expenses incurred of sacrifices made by the person causing the damage to minimize such damage should be taken into account in distributing the limitation fund. Everything depended on the extent of the damage that had been or might be caused. If the damage exceeded the liability limit, the person causing the damage would take measures to reduce the damage, which [331] would be in the interests of the victim or injured party; but if the damage was less than the limit of liability, the person liable would minimize the damage in his own interests, because he would have to compensate the damage up to the limit under the Convention. In that case, paragraph 5 would give him double compensation.

Mr. Rein (Observer, CMI), speaking at the invitation of the Chairman, submitted that the word “voluntarily” had to be taken in conjunction with the phrase “takes measures to prevent or minimize such damage”. The intention was to exclude all cases where the measures taken were incidental and not voluntary – for example, if an owner used ships not specifically designed to prevent the damage in respect of which the particular claim had been made, or if an owner had brought to the assistance of his stricken ship one of his own ships which happened to be on the spot for other purposes. Voluntary action implied a choice between at least two courses: if a measure was the only course open, there would be no reason to allow the expenses.

The Chairman said that since twelve representatives had indicated a firm preference for deleting paragraph 5, it would be advisable to consider whether a compromise could be found. She asked representatives to reflect on the matter during the next few days.

Summary Record of the Seventeenth Meeting
11 November 1976

[349] The Chairman drew attention to a new proposal submitted by the Australian delegation (LEG/CONF.5/C.1/WP.68).6

Mr. Unkles (Australia) apologized for re-opening the debate on Article 12, but felt that in the light of the discussion at a previous meeting his delegation’s proposal was relevant.
His delegation had hoped that more comprehensive enforcement provisions would be included in the Convention than it appeared was likely. His delegation considered it essential, however, that some enforcement provision should be included, in fairness to claimants. The Australian proposal for a new paragraph 6 in Article 12 was designed to ensure that a judgement given in one Contracting State could be enforced against a limitation fund established in a different Contracting State without undue expense or delay. The proposal replaced his Government’s original proposal in LEG/CONF.5/4. He was prepared to accept a different wording, but was insistent on the principle.

The Chairman asked whether the proposal was intended to place an obligation on States or to make a recommendation.

Mr. Unkles (Australia) said that the proposal was couched in mandatory terms, and his delegation would prefer the provision to be mandatory, but might accept the use of the word “may” instead of “shall”.

Mr. Cleton (Netherlands), Mr. Philip (Denmark) and Mr. Bursley (United States) seconded the Australian proposal.

Mr. Wiswall (Liberia) said that although he had not spoken on the subject when the Australian delegation had submitted its first proposal, he had felt concern about the matter and still did so. In the first place, international conventions already existed on the recognition of foreign judgements and on the enforcement of foreign arbitral awards, and the present Convention should not introduce provisions which might conflict with them. Moreover, it was not clear from the Australian proposal as to whether it called for the enforcement of a final judgement *in toto* – in which case it would be unjust – or a final judgement allowing a claim against the fund – in which case it would appear to be useless, as the court would in any case have to determine if a judgement was valid.

Mr. Unkles (Australia) in response to a request by the Chairman, explained that the intention of the Australian proposals was that foreign judgements should be treated on a par with other claims on the fund.

Mr. Cleton (Netherlands) said that although he had seconded the Australian proposal, he realized it needed re-drafting. In view of the other conventions on enforcement mentioned by the Liberian representative, the re-draft must be compatible with them. The principle, however, was important: if it was accepted that limitation fund could be set up in one country involving ships seized in another country, there should be some guarantee that claimants would have access to the limitation fund.

Mr. Rognlien (Norway) found the new Australian proposal more acceptable than the earlier one submitted at the Committee’s fifteenth meeting. As he understood what it proposed was not formal recognition of a foreign judgement but some sort of *exequatur* in the State of the fund, some kind of review of the judgement, especially if there had been a suspicion of fraud. He himself would prefer to use the text of Article X of the 1969 Convention on Civil Liability for Oil Pollution Damage, which did contain an enforcement provision.
Summary Record of the Eighteenth Meeting
12 November 1976

[351] The Chairman invited the Committee to resume its consideration of the proposal relating to Article 12 submitted by the Australian delegation (LEG/CONF/5/C.1/WP.68).7

Mr. Jeannel (France) said that he had given careful thought to the proposal; he had come to the conclusion that, taking into account the repercussions it would have on the French legal system as well as the other provisions in the Convention, it was an unnecessary proposal. However, if the Australian delegation attached special importance to it, his delegation would not oppose it. In the light of the previous day’s comments on the drafting and the Australian delegation’s further proposal, he suggested, to avoid prolonging the discussion, that the word “shall” in the first line should be replaced by “may”, so as to render the wording more flexible and avoid making the provision obligatory for Contracting States.

Mr. Moller (Switzerland) said that, in order not to prolong the discussion unduly, he would refrain from explaining the reasons that prevented him from accepting the Australian proposal.

Mr. Nilsson (Sweden) thought the proposal an interesting one but pointed out that it had already been decided, for very good reasons, to reject a new Article 11A which had had the same purpose. To introduce rules governing the execution of judgments was a complex matter, with serious implications for the shipping industry and liable to make it necessary to revise other parts of the Convention. It would certainly call for the most careful examination and for consultation with the appropriate legal and maritime experts. Seeing how little time the Conference had left, and the importance of the questions still to be settled, he thought that it would be better not to follow up the Australian proposal, especially as the text prepared by the Legal Committee was based on the system adopted in the 1957 Convention, [352] which had functioned quite satisfactorily.

Mr. Bentein (Belgium), while appreciating the reasons underlying the Australian proposal, thought that the fears expressed by that delegation might be somewhat exaggerated. The question of the recognition of judgments could be dealt with adequately on the basis of international conventions already in force. There were then two possible solutions: either the establishment of a complete set of technical rules or, as in other conventions, the adoption of a general formula binding Contracting States to take political measures to help claimants by simplifying the procedure. There might be some doubt, however, as to whether a formula of that kind could properly be included in a technical convention.

Mr. Perrakis (Greece) said that he could support the text proposed by the Australian delegation, provided that the phrase “without undue expense or delay” were deleted. Greece would treat the judgments in question in exactly the same way as any other foreign judgment.

Mr. Howlett (United Kingdom) said that, quite apart from its drafting defects, the proposal was based on a principle which the United Kingdom could not accept. The question was a highly complicated one and could not be dealt with satisfactorily in the present context.

(7) See note 6.
Mr. Unkles (Australia) accepted the Greek suggestion that the last five words of the text should be deleted. He pointed out that it was not fair to say that the question had not been considered in sufficient detail. His delegation’s proposal would not oblige States to make provision in every case; it stipulated that they were to make provision only “if necessary”.

The Chairman invited the Committee to decide by an indicative vote what action it wished to take on the Australian delegation’s proposal.

There were 5 votes in favour of the proposal, 22 against and 10 abstentions. The proposal was accordingly rejected.

Draft International Convention
Document LEG/CONF.5/C.3/1
16 November 1976

1. Subject to the provisions of paragraph 1 of Article 6, 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.

5. Where an incident occurs which causes or threatens to cause damage giving rise to liability subject to limitation under this Convention and the person liable for that damage voluntarily takes measures to prevent or minimize such damage, any expenses reasonably incurred, including loss resulting from sacrifices made, by him in taking those measures shall rank equally with any claims in such part of the fund as is not reserved for claims for loss of life or personal injury.

Summary Record of the Twenty-fourth Meeting
17 November 1976

[394] Mr. Selvig (Norway) requested that a separate vote be taken on the first four paragraphs of Article 12.

The Chairman invited the Committee to vote on the first four paragraphs of Article 12, subject to the reference made in paragraph 1 to the provisions of Article 6, for which the Drafting Committee had not so far produced a text.
The first four paragraphs of Article 12 were approved (36 votes in favour, none against).

The Chairman recalled that there had been a proposal to delete paragraph 5, but that the Committee had provisionally agreed otherwise by 15 votes in favour to 12 against, and 7 abstentions.

Mr. Lyon (Canada) called attention to the fact that his delegation had raised strong objections regarding paragraph 5 and pointed out that the voting had been very close. His delegation had made great efforts to try to reach a compromise; but if paragraph 5 were retained, it would be very difficult to transpose its provisions into Canadian law. He therefore requested that the proposal to delete paragraph 5 be put to the vote again.

The Chairman called for a vote on the Canadian proposal to delete paragraph 5.

There were 11 votes in favour of the Canadian proposal, 15 against, and 10 abstentions; the proposal was rejected.

The Chairman noted that paragraph 5 was retained. With regard to the bracketed words remaining in the last part of the paragraph, and in view of the decision which had been taken to establish two limitation funds – one for personal claims and the other for property claims – she proposed the deletion of the bracketed words “[such a]” in the final sentence, to be followed by a vote on paragraph 5.

There followed an exchange of views in which Mr. Bursley (United States), Lord Diplock (United Kingdom), Mr. Vonau (Poland) and the Chairman took part.

It was decided to delete the words “[such a]” from paragraph 5 and to put the paragraph to the vote.

Article 12(5) as amended, was approved (12 votes in favour, 10 against, and 16 abstentions).

Mr. Nada (Egypt) wondered whether the text which the Commission had just approved for paragraph 5 was not at odds with the text it had adopted the previous day concerning the priority to be given to claims in respect of damage to harbour works.

Mr. Selvig (Norway) supported that view. It would be better to specify that, in the case of aggregated claims, account should be taken of the provisions of Article 6(1)(b).

The Chairman recognized the validity of those observations, and said that the question would be referred to the Drafting Committee.

Draft International Convention
Document LEG/CONF/5/C.3/i/Add.1*
17 November 1976

1. Subject to Article 6, 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.

5. WHERE AN INCIDENT OCCURS WHICH CAUSES OR THREATENS TO CAUSE DAMAGE GIVING RISE TO LIABILITY SUBJECT TO LIMITATION UNDER THIS CONVENTION AND THE PERSON LIABLE FOR THAT DAMAGE VOLUNTARILY TAKES MEASURES TO PREVENT OR MINIMIZE SUCH DAMAGE, ANY EXPENSES REASONABLY INCURRED, INCLUDING LOSS RESULTING FROM SACRIFICES MADE, BY HIM IN TAKING THOSE MEASURES SHALL BE CONSIDERED AS CLAIMS SUBJECT TO PARAGRAPH 1(B) OF ARTICLE 6.


Summary Record of the Twenty-sixth Meeting 18 November 1976

[405] The Chairman invited the Committee to continue reviewing the text of the Drafting Committee’s report (LEG/CONF.5/C.3/1 and LEG/CONF.5/C.3/1/Add.1), in order to assess whether it faithfully reflected the substantive decisions which the Committee had taken.

[406] The present discussions, at that stage, in the Committee’s deliberations, should focus on questions of drafting, any substantive questions thenceforward being treated as matters to be raised at the Plenary Conference.

[419] Mr. Selvig (Norway) proposed a consequential amendment to Article 12(1). The Committee had now decided on the concept of a single fund. Article 12(1), which read “Subject to the provisions of paragraph 1 of Article 6, the fund shall be distributed among the claimants in proportion to their established claims against the fund”, would therefore need to be amended to include a reference to Article 7 in addition to paragraph 1 of Article 6.

The Chairman asked whether it had not been the understanding that the proviso related to the provisions according to which there would be distribution of the fund among claimants in proportion to their established claims.

Mr. Philip (Denmark) said that that was correct. A reference was made to Article 6 because there were exceptions in that Article to the rules of distribution in Article 12. There were no such exceptions in Article 7, and hence no need to refer to it.

Mr. Selvig (Norway) was not prepared to accept that conclusion; now that Article 11 had been amended, it was clear that the fund would be constituted in the sum of the amounts set out in Articles 6 and 7, and thus made the situation different. Previously the question had been left open.
Mr. Jeannel (France) agreed with the Norwegian representative, but thought that the wording, in French, should be “... et de celles de l’article 7”.

Mr. Selvig (Norway) pointed out that, now that the Committee had re-drafted Article 6, the relevant provisions were contained in paragraphs 1, 2 and 3 of that Article.

Mr. Philip (Denmark), on a point of order, said that Article 6(4) must be mentioned as well, since it also referred to amounts.

Mr. Cleton (Netherlands) did not think that that was necessary.

The Chairman put to the vote the Norwegian proposal to amend Article 12(1) to read: “Subject to the provisions of paragraphs 1, 2 and 3 of Article 6, and those of Article 7, the fund . . .”.

The proposal was approved (26 votes in favour, none against and 9 abstentions).

Summary Record of the Fourth Plenary Meeting
18 November 1976

[481] The President drew attention to the amendment in the report of the Committee of the Whole (LEG/CONF.5/WP.9).8

Mr. Cleton (Netherlands) asked for a separate vote on paragraph 5. As explained in the Committee of the Whole, his delegation had serious objections to it.

Mr. Lyon (Canada) supported the request, for similar reasons.

There were 11 votes in favour of paragraph 5, 11 against, and 12 abstentions.

Paragraph 5 was not adopted, having failed to obtain the required two-thirds majority.

The amendments in LEG/CONF.5/WP.9 were adopted.

Article 12, as amended, was adopted (35 votes in favour, none against and 2 abstentions).

1976 Convention

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.

(8) The relevant part of Document LEG/CONF.5/WP.9 (Report of the Committee of the Whole) is quoted below:

Article 12,1

The English text and French texts are modified to substitute for “Article 6” the words “the provisions of paragraphs 1, 2 and 3 of Article 6 and of Article 7”.

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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

Hamburg Draft Convention
Text and Commentary

1. WHERE, AFTER THE OCCURRENCE GIVING RISE TO THE LIABILITY, A PERSON LIABLE IS ENTITLED TO LIMIT HIS LIABILITY AND A LIMITATION FUND HAS BEEN CONSTITUTED IN ACCORDANCE WITH ARTICLE 9 BY HIM OR FOR HIS BENEFIT

   (A) NO PERSON HAVING A CLAIM ARISING OUT OF THAT OCCURRENCE SHALL BE ENTITLED TO EXERCISE ANY RIGHT IN RESPECT OF SUCH CLAIM AGAINST ANY OTHER ASSETS OF THE PERSON LIABLE;

   (B) THE COURT OR OTHER COMPETENT AUTHORITY OF ANY CONTRACTING STATE SHALL ORDER THE RELEASE OF ANY SHIP OR OTHER PROPERTY BELONGING TO THE PERSON LIABLE, WHICH HAS BEEN ARRESTED IN RESPECT OF A CLAIM ARISING OUT OF THAT OCCURRENCE, AND SHALL SIMILARLY RELEASE ANY BAIL OR OTHER SECURITY FURNISHED TO AVOID SUCH ARREST.

2. THE RULES OF THE PRECEDING PARAGRAPH SHALL APPLY ONLY IF THE CLAIMANT HAS ACCESS TO THE COURT ADMINISTERING THE FUND AND IF THE FUND IS ACTUALLY AVAILABLE IN RESPECT OF HIS CLAIM.

[424] The constitution of a limitation fund is not a condition for limitation, but once it has been constituted it gives the person liable protection against arrests, etc., a protection which is not accorded to him if he elects to limit his liability “en plein droit”. The rules are materially the same as in Article IV of the 1969 Oil Pollution Liability Convention.

IMCO Legal Committee
Twenty-third Session

[17] 63. The CMI proposed that instead of the draft Article 11 (in Annex I of LEG/XXIII/2) a new text, on the lines of Section 6 of the Draft Protocol (Annex II of LEG/XXIII/2), should form the basis of the discussion. This is based on Article 2.4 of the 1957 Convention, with suitable amendments thereto. It was noted that Section 6 would have to be re-drafted to fit into the draft Convention.

   64. One delegation which favoured the text of Section 6 in place of draft Article 11 explained that this text, more or less along the lines of the 1957 procedure, was preferable because, while a court in a contracting State had the basic right to release an arrested ship, only in a limited number of situations was it required to release it without bail. The original draft Article 11 procedure appeared to compel the release of a ship by a court or other authority of a contracting State once a fund had been constituted in that or some other contracting State. This could cause inconvenience to claimants.

   65. The view that the forum of a contracting State where a fund was constituted would not have the exclusive right to adjudicate was endorsed by another member of
the Committee who considered, however, that on this the provision in the original Article 11 was preferable to the similar provision of Section 6. The reason for this preference was that paragraph 1(a) of Article 11 clearly prohibits an action in rem (“against any other assets”), but not in personam, once a fund has been constituted; whereas Section 6 leaves the release of a ship to the discretion of the court.

[18] 66. The new draft Article proposed by the CMI is reproduced as Article 11 in the draft Convention annexed to this report. The Legal Committee did not discuss this draft.

67. A draft Article which corresponds to Article 4 of the 1957 Convention; this text was not intended to constitute a general statement of governing law other than in the context of Chapter III concerning the fund, nor to replace Article 1, paragraph 6 and Article 5, paragraph 5 as well as Article 4 of the 1957 Convention. With a combined version, Article 1, paragraph 6 and Article 5, paragraph 5, simply did not appear in the CMI draft as they were regarded as unnecessary.

68. One member of the Committee recommended that the provision of Article 5.5 of the 1957 Convention should be incorporated in this Article, but other members observed that the only part of this provision which might be useful would be a reference to time limits, provided this were confined to the time in which a claim could be brought against a fund.

69. Interest payments and costs were other procedural aspects which might, in the view of the Legal Committee, be mentioned in an article on governing law.

Twenty-fifth Session

[15] 66. The Committee considered the re-draft of Article 11 prepared by the CMI. It was explained that the previous CMI draft, drawn from the 1969 International Convention on Civil Liability for Oil Pollution Damage, and mandatorily requiring the release of the arrested property, might not be suitable to the great variety of claims subject to global limitation and that, therefore, the principles of Article 5 of the 1957 Convention had better be maintained.

67. It was pointed out that, in the new draft, release of an arrested ship was mandatory only if one of the criteria in sub-paragraphs (a)-(d) of paragraph 2 were to be met, otherwise release is at the discretion of the court.

68. Some delegations expressed the view that the establishment of a fund should be a condition precedent to the right to claim limitation, and one of these delegations went on to say that the convention should contain rules relating to the jurisdiction in which a fund could be established and to the distribution of the assets of the fund where claims were brought in more than one jurisdiction. This delegation also expressed the view that paragraph 3 of Article 11 was unclear. One observer pointed out that this text was virtually identical to Article 6, paragraph 2, of the 1969 Civil Liability Convention and that similar wording is found in Article 2 of the 1957 Convention.

Twenty-seventh Session

[11] 44. This Article was not discussed. However, the Committee noted that certain
drafting changes might be needed in the light of the changes which had been made to other Articles.

**Twenty-eighth Session**

[19] Paragraph 1
85. The Committee considered a suggested redraft of this paragraph contained in Annex II of LEG XXVII/4 but decided not to adopt it.

[20] Paragraph 2
86. The Committee adopted a re-draft of this paragraph to make it clear that the constitution of a limitation fund for the purpose of obtaining release of an arrested ship or other property need not be before such an arrest had taken place.

87. The proposal was made that release of an arrested ship should in all cases be mandatory after a limitation fund has been constituted. It was, however, decided to retain the present text which left discretion with the court or other competent authority in all cases other than those specified.

**Draft Articles**

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, a 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 Contracting State 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;

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

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

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

3. **The rules of the preceding paragraphs shall apply only if the claimant has access to the Court administering the limitation fund and the fund is actually available in respect of his claim.**
The Chairman noted that the Committee had before it a proposal by the delegation of Italy (LEG/CONF.5/C.1/WP.45) and another by the delegation of Switzerland (LEG/CONF.5/C.1/WP.50).

Mr. Amoroso (Italy), introducing his delegation’s proposal (LEG/CONF.5/C.1/WP.45) explained that it was designed to clarify Article 12(1) and thus obviate the misunderstandings that adoption of the present text might entail.

The text of the draft seemed to imply – since it was written in the past tense – that a person having already made a claim against the fund should 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 had been constituted, but that, on the other hand, a person who had not yet made a claim when the fund was constituted could exercise his rights against any other assets of that person. His delegation was therefore submitting a form of words which it felt to be more legally valid: “... any person entitled to make a claim subject to limitation in accordance with the present Convention ....”.

The Chairman pointed out that the changes requested by the Italian delegation could not be regarded as mere clarifications: they involved an amendment of substance.
Mr. Müller (Switzerland) introduced his delegation’s proposal (LEG/CONF.5/C.1/WP.50)\(^4\) and described its aims as coinciding with those of the Italian proposal. The fact of constitution of the fund should be recognized in all the Contracting States, and the shipowner should then be fully protected when he had discharged his obligations in that regard. His delegation accordingly maintained that the release of any ship in any Contracting State whatsoever should be compulsory. That rule used the same terms as Article VI of the 1969 Convention on Civil Liability for Oil Pollution Damage, which was more up to date than the 1957 Brussels Convention on which Article 13 of the present draft Convention was based. In paragraph 2 of that text, the possibility of release was merely optional and was left to the sole discretion of the legal authorities of the country in which the fund had been constituted. That solution was neither correct nor just.

He was in full agreement with the Italian proposal, but pointed out that if paragraph 1 as worded in that proposal was adopted, it logically followed that paragraph 2 of the draft Convention should be deleted. His delegation would nevertheless prefer its own proposal (LEG/CONF.5/C.1/WP.50)\(^5\). If the Committee was unable to approve it, he reserved the right to submit the possible alternative set forth in that document.

Mr. Douay (France) supported the Italian proposal for reasons of substance as well as of form. First, the new text went further than the draft Convention, and made some useful clarifications in it. The new wording was designed to cover a situation in which a person who was entitled to make a claim but had not yet come forward might choose to request the arrest of a ship belonging to the person liable or the seizure of other assets of that person, rather than claim from the fund, either because that course seemed to offer him more guarantees, or for other reasons. That choice appeared to be available under Article 13 of the present Convention. On the contrary, under the proposed amendment, a claimant could not take action against other assets of the person liable merely because he was able to make a claim on the fund. Secondly, the expression “entitled to make a claim” was much more appropriate than the wording used in the draft.

With regard to the Swiss proposal, he said that although paragraph 1(a)\(^{[333]}\) corresponded to the Italian proposal, 1(b) contained an original provision furnishing an additional guarantee to the person liable who had constituted a limitation fund. That was contrary to what was provided in the text of the draft – i.e. that the court could maintain an arrest or attachment of assets of the person liable situated in another Contracting State. However, it was desirable to free the other assets of the person liable when he had constituted a fund.

The French delegation was therefore in favour of both proposals.

The Chairman asked whether the representative of Italy agreed with the Swiss representative that the adoption of his proposed text for paragraph 1 would involve deleting paragraph 2 of the draft text, and that his proposal and that put forward by the representative of Switzerland were along similar lines.

Mr. Amoroso (Italy) confirmed that paragraph 2 would no longer be warranted, as all the other assets of the person liable would then be freed. He agreed that his proposal converged with that of his Swiss colleague.

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(4) See note 2.
(5) See note 2.
Mr. Sahraoui (Algeria) pointed out that the text of the Italian proposal had the merit of defining the relationship that existed between the claimant and the fund; in other words, it made quite clear that it referred only to “a person entitled to make a claim subject to limitation in accordance with the present Convention”.

Mr. Hermes (Australia) was highly critical of the Italian and Swiss proposals. His attitude might seem paradoxical, he admitted, as he had spoken elsewhere in support of the provisions they contained. However, their adoption in the present context would be illogical. It was true that the same rule was to be found in the 1969 Civil Liability Convention, but the situation in that case was very different in that the constitution of that fund had been obligatory. In any event, the question was clearly a basic one of prime importance. Neither the distinction drawn between a claimant who had already put forward his claim and the claimant who had not yet done so, nor the provision that would result in a claimant’s having to go half across the world to obtain compensation, were acceptable. A claimant ought to have full right of access to the court which best suited him. The proposals called for very careful scrutiny, and the wisest course would be to reject them.

Mr. Philip (Denmark) asked whether the Italian proposal, in particular, implied that a person was not entitled to bring an action in the courts of a country other than that in which the fund had been constituted. If such was not the case, he would be able to support the proposal. As he saw it, the question involved was one of execution, not of jurisdiction.

Mr. Perrakis (Greece) thanked the representatives of Italy and Switzerland for having raised the matter. His own delegation had been about to suggest the deletion of Article 13(1) on the ground that it was out of place in the draft Convention. No one, surely, would lay a claim against the fund if the person liable had other assets. He disagreed with the arguments advanced by the Australian representative and saw no reason why different legal systems could not co-exist and be recognized as of equal validity. He agreed with the representative of Denmark that the question was one of execution rather than jurisdiction.

His delegation fully supported the Italian proposal and was also in favour of the Swiss proposal, although the latter was of a more radical nature than the solution it would itself prefer and which it reserved the right to present at a later stage.

Mr. Wiese (United States) was against the proposals, both of which would give the shipowner a freedom of action which was undesirable in the sense that it would allow him to constitute a fund from which claimants would have great difficulty in obtaining compensation.

Mr. Rein (Observer, CMI), speaking at the Chairman’s invitation, described the background to the provisions. The reason underlying the rule in Article 5 of the 1957 Convention was valid, but the solution that emerged was less satisfactory. The court could maintain the arrest unless the place in which the fund had been constituted appeared to have been a reasonable choice, in which case it must order the ship’s release. Under the present Convention, a case could arise in which an arrest was maintained even though the claimant had established his right to claim against the fund. The solution offered by the 1969 Civil Liability Convention was similar to those now before the Committee. The draft Convention left the question of whether or not a release should be ordered to the discretion of the judge, except in specific circumstances. The question before them was, in fact, a simple one. Could an exception to the rule be allowed and might a shipowner constitute the fund wherever he liked, provided the claimant could bring his action wherever it suited him?
Mr. Amoroso (Italy), in reply to the representative of Denmark, said that he would also like to give certain explanations, as it might be necessary for the Conference to make its position clear with regard to the basic principle or philosophy underlying the constitution of a limitation fund. Such a fund gave claimants security; and if a shipowner had constituted a fund, he had done his best to ensure that claims for compensation were met. Accordingly, it would be appropriate to free him from other claims. Otherwise, what would be the use of constituting a fund?

The Conference had therefore to decide on a question of principle: did the constitution of a fund free a shipowner or not? If it was accepted that the claimant could claim against other assets, no shipowner would ever constitute a limitation fund again.

Mr. Müller (Switzerland), in reply to certain criticisms of the two proposals, pointed out that the principle adopted was that already laid down in Article 2(4) of the 1957 Brussels Convention, which he then read out. Article 13(3) of the present draft Convention was essentially the same as Article VI(2) of the 1969 Civil Liability Convention. The problem was not therefore one of drafting. What the representative of Australia had said was not altogether correct: the problem was not to establish whether or not the constitution of a fund was obligatory, but to specify that the rule applied only if a fund had been constituted. The provisions of Article 13(3) were a kind of guarantee clause (an “emergency brake”) which was also reproduced in the Swiss proposal. The CMI Observer had said that, if the proposed amendment were adopted, claims might be made in any part of the world; the same problem of long distances could, however, arise even if the fund were constituted in the same place as that in which the arrest had been made. He agreed with the representative of Italy that the text as a whole would be meaningless if it was accepted that, even if a fund had been constituted, a person could claim against the shipowner’s other assets.

Mr. Makovsky (USSR) gave unreserved support to the proposal of the Swiss delegation (LEG/CONF.5/C.1/WP.50) and to that of the Italian delegation (LEG/CONF.5/C.1/WP.45). He also endorsed the views expressed as to the interpretation of the principle underlying Article 13. For practical reasons, it seemed more logical to him to adopt the Swiss delegation’s proposal, which was essentially the same as the provisions of Article VI of the 1969 Civil Liability Convention, to which [335] his country had adhered. That text was preferable to that of 1957. By adopting the Swiss proposal, they would make it easier for States which were not Parties to the 1957 Convention to adhere to the present instrument.

Mr. Wiswall (Liberia) recalled that limitation of liability had had two aims: firstly, to ensure the continuance of maritime trade by preventing a shipowner from being obliged to cease trading following the loss of a ship and secondly, to direct all claims to be made against the fund so as to ensure that every claimant was fairly compensated. That was why the clause had been included in the 1969 Civil Liability Convention. He was afraid that, if the provisions of Article 13(2) of the present Convention were adopted, the whole purpose of the Convention would be lost. Those provisions allowed considerable geographical freedom and, if adopted in their present form, might well cause some injustice.

The Conference should try to draft a convention that was equally fair to the

(6) See note 2.
(7) See note 1.
interest of claimants, maritime trade and the insurance industry. It could not however, lay down rules guaranteeing that the Convention would be applied in an equitable manner; that was the reason for including Article 13(3). The task of the Conference was to ensure that the provisions of Article 4 were not nullified by Article 13.

Mr. Howlett (United Kingdom) was not in favour of either of the proposed amendments; it would be preferable, in his view, to retain the present text of Article 13(1) and (2). Those paragraphs were based on the principles established in the 1957 Convention and seemed to him to be adequate to prevent the abuses that had been mentioned.

Mr. Rognlien (Norway) was also against adopting the two amendments, which he thought too heavy weighted against claimants. The Italian proposal was too restrictive and did not strike a fair balance between the interests of shipowners and those of claimants.

Mr. Abecassis (Observer, BIMCO), speaking at the invitation of the Chairman, said that he merely wished to point out that, under the 1969 Civil Liability Convention, claims could be made only in the place where the oil pollution damage had occurred. Every effort had been made to ensure that the fund was constituted in the State where the loss had been suffered. If the principles on which the 1969 Convention was based were to be reproduced in the present Convention, it would then be necessary to distinguish between their respective purposes.

Mr. Nilsson (Sweden) was also strongly opposed to the two proposals under consideration. Each had the same purpose and would have the same effect. Their proposers had pointed out that the system proposed by the Legal Committee of IMCO was not entirely satisfactory and left certain loopholes. That was obvious; but the overall effect of the two proposals should be considered and an attempt be made to defend the interests of claimants and of shipowners with equal fairness. The two proposals, however, were damaging to the interests of claimants and, if accepted, could hinder ratification of the Convention by a number of States. As the BIMCO Observer had said, it was not reasonable to compare the present Convention with that of 1969, since the latter dealt with specific problems. The situation in the present case was very different, and what was advisable in one Convention was not necessarily advisable in another.

Mr. Trotz (German Democratic Republic) said that the BIMCO Observer and the representative of Sweden had voiced his own thoughts. The places where the fund could be constituted under the 1969 Convention were fairly restricted. It was therefore impossible to compare the present Convention with the Civil Liability Convention. Taking into account the wide geographical possibilities for constituting a fund in accordance with the present Convention, the basic text was preferable.

Mr. Bentein (Belgium) was not surprised that the text of Article 13 and of the two proposals under consideration should have given rise to difficulties. The 1957 Convention was drafted in a way that precluded any such difficulties. If the present text was compared with that of Articles 5 and 2(4) of the 1957 Convention, it was clear that, under the latter, once a fund had been constituted, none of the shipowner's other assets could be seized. In contrast, Article 5 dealt quite separately with the question of constituting a limitation fund – namely, by seizing the ship. Those responsible for drafting the 1957 text had thus provided for a hermetically sealed system so far as the methods of constituting a fund were concerned. In its desire to produce a more closely-knit text, the Legal Committee had amalgamated two problems; that was why the Committee was finding it difficult to accept either Article 13 of the basic text or the proposals of the two delegations.
His delegation would be willing to accept the two proposed amendments provided that they were accompanied by provisions laying down the jurisdiction in which a limitation fund could be constituted; as they stood, the two proposals left the party concerned entirely free to constitute it where he liked. If that was not possible, his delegation would wish to retain the basic text.

Mr. Müller (Switzerland) did not think it possible to say, as the United Kingdom representative had done that Article 13 was based on the text in the 1957 Convention.

Mr. Mallinson (United Kingdom) said that he merely wished to point out how serious it would be to include in Article 13 the concept contained in the two proposed amendments. He emphasized, in particular, the possible effects of Article 13(3) should the claimant be entitled to make a claim but had not, in fact, done so. Under the legislation of certain countries, that might render Article 13 null and void. The question was therefore more complex than might appear. Adoption of the two proposals would only make him more uncertain, and he was strongly against it.

Mr. Ganten (Federal Republic of Germany) regarded the basic text as completely acceptable. Paragraph 2 of that text seemed to him to establish a suitable balance between the interests of shipowners and those of claimants. He was therefore in favour of retaining the basic text.

Mr. Sim (Singapore) expressed his strong objections to the two proposals, which could not be described as a compromise solution. He would prefer retention of the basic text of Article 13, as it took the interests of both shipowners and claimants into account and was an equitable compromise.

Mr. Anatsui (Ghana) could not accept the two proposed amendments, which would be damaging to claimants. The basic text seemed to him to be satisfactory.

The Chairman invited representatives to indicate their preferences on the question.

There were 6 votes in favour of the proposals by Switzerland (LEG/CONF.5/C.1/WP.50) and Italy (LEG/CONF.5/C.1/WP.45), 20 against and 12 abstentions; the proposals were rejected.

Mr. Müller (Switzerland) introduced the alternative proposal suggested by the Swiss delegation (LEG/CONF.5/C.1/WP.50). His delegation thought that the most suitable place for constituting a fund so that it had the greatest effect (after which a court was required to order release) was the State where the shipowner had his principal place of business. If a different place were chosen, the judgments of a foreign court might prove to be inadmissible in that State. In common with several other countries, Switzerland was already applying a provision of that kind. His delegation would like either sub-paragraph (e) or sub-paragraph (f), as proposed in its note, to be added to Article 13(2), its preference being for sub-paragraph (e). At its twenty-eighth session, however, the Legal Committee had adopted a revised version of paragraph 2 in order to make it clear that the constitution of a limitation fund for the purpose of obtaining release of an arrested ship need not be before such an arrest had taken place. (Circular letter No. 286, Annex III, p.65). The ICS had also proposed that the first
sentence in paragraph 2 should be clarified by adding the phrase “whether before or after constitution of a limitation fund” (LEG/CONF.5/6, p. 116).

If the Committee considered that a matter of drafting was alone involved, his delegation’s proposal could be referred to the Drafting Committee.

The Chairman noted that the Swiss proposal was supported by the delegations of the German Democratic Republic and Poland. As to the point raised by the observer of the ICS, discussions in the Legal Committee had proved that it was not a question of drafting but a point on which opinions differed.

Mr. Trotz (German Democratic Republic) said that the text needed to be clarified. Either sub-paragraph (e) or (f), as proposed by Switzerland, should therefore be added, since they had the advantage of providing for a special new jurisdiction for constituting the fund corresponding to the normal jurisdiction for civil proceedings.

Mr. Douay (France) was entirely in favour of adding a sub-paragraph (e) stipulating that a court in the State where the shipowner had his principal place of business should be competent. The concept of place of business matched that of domicile; it was therefore adequate, and preferable to ordinary residence, which was more flexible and applied only to persons.

He could not, however, accept sub-paragraph (f). He failed to see how it was possible to require the shipowner to have a place of business in the State where the ship was registered. A ship’s place of registry should not in itself be regarded as the place where a court’s jurisdiction applied. What mattered was the shipowner’s place or residence.

Mr. Rein (Observer, CMI), speaking at the Chairman’s invitation, stated that, in most cases, a shipowner’s principal place of business was located in a shipping centre; that was a suitable place to bring an action. Difficulties could arise only if the shipowner’s principal place of business were in a remote place where legal actions involving shipping were rarely brought. In such a case, the legal recourse provided in the State where arrest had occurred would have to be extended to the place where the limitation fund was established. That would provide the necessary security.

Mr. Philip (Denmark) thought that, in the light of the changes made by the Legal Committee in paragraph 2, there were grounds for interpreting the present wording as meaning that it did not matter whether arrest took place before or after a limitation fund had been constituted.

The Chairman observed that the paragraph had not been clarified during the preparatory work on the Convention, and that differences of opinion might well exist as to its scope.

Mr. Müller (Switzerland) made an oral amendment to his delegation’s alternative proposal by deleting the phrase “or, in the absence thereof, his ordinary residence” from sub-paragraph (e) and deleting sub-paragraph (f) entirely.

(11) The relevant part of Document LEG/CONF.5/6 is quoted below:

Article 13.2
The first sentence could be clarified by the addition of the words “whether before or after constitution of a limitation fund,” between “which” and “has” in the third line.

There is no justification for limiting the occasions on which a court must order release once a limitation fund has been established in a Contracting State. Sub-paragraphs (a) to (d) should therefore be deleted. It should be noted that Article 13.3 gives all the protection that is necessary.
The Chairman asked the Committee for an indicative vote on the Swiss proposal, as amended.

The Swiss proposal, as amended, was approved (19 votes in favour, 7 against, and 12 abstentions), and transmitted to the Drafting Committee.

Mr. Nilsson (Sweden) introduce his delegation’s proposals to amend Article 13(3) (LEG/CONF.5/C.1/WP.51). It was an attempt to make the text clearer. His delegation considered that the wording of the basic text (“the claimant has access to the Court”) was ambiguous. It would be better to have a more specific wording stipulating that the claimant might bring an action.

Turning to the other amendment submitted by Sweden (LEG/CONF.5/4, p. 99), he explained that there were good grounds for including the words “and freely transferable”, since the claimant might not be able to take advantage of the amounts deposited in the limitation fund in the event of exchange control regulations preventing the transfer of those amounts. Such a situation must not be allowed to arise. The problem was no abstract one and might well crop up from time to time in various parts of the world.

The Chairman noted that the Swedish proposals were supported by the delegations of Australia, Denmark and Ghana.

Mr. Mallinson (United Kingdom) said that he did not fully understand the aim of the first Swedish proposal. The present text of paragraph 1 made it quite clear that the whole of Article 13 applied only if a claimant brought an action. He fully appreciated the reasons underlying the second Swedish proposal, but thought its scope too wide. In the majority of cases only part of the amounts in the fund, not the whole, would need to be transferred to a claimant. That point must be borne in mind, and if the Swedish proposal were adopted it would have to be sent back to the Drafting Committee.

(12) Document LEG/CONF.5/C.1/WP.51
8 November 1976
Proposal submitted by the delegation of Sweden
Article 13
Paragraph 3 of this Article should be amended as follows:

“3. The rules of the preceding paragraphs shall apply only if the claimant may bring action before the Court administering the limitation fund and the fund is actually available in respect of his claim.”

(13) The relevant part of Document LEG/CONF.5/4 is quoted below:

Sweden
It is proposed to add the words “and freely transferable” after the words “actually available” in the text.

The meaning of the provision in paragraph 3 to the effect that the claimant shall have “access to” the court administering the limitation fund is not quite clear. It is suggested that the correct interpretation is that the claimant may “bring action” or “enforce his claim” before this court and that the provision should be redrafted accordingly.

In order to achieve the purpose of the limitation fund it seems necessary to provide that the fund shall be not only “actually available” but also “freely transferable”. Otherwise the currency regulations of the State where the fund has been constituted may prevent that the distributed amounts can be transferred to the country where the claimant has his place of business or habitual residence. In addition, a provision should be included in the Convention making it an obligation for Contracting States to authorize the free transfer and payment of sums intended for the constitution of the fund and of compensation distributed from the limitation fund (cf. Article XII(2) in the 1962 Nuclear Ships Convention and Article 34(7) of the 1971 Oil Pollution Fund Convention.
Summary Record of the Seventeenth Meeting
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Mr. Jeannel (France), referring to the first of the two amendments, said that the words “effectivement disponible” included the sense of the words “librement transférable”, so that there was no need to amend the French text.

Mr. Mallinson (United Kingdom), in reply to a question from the Chairman, expressed his agreement with the proposed insertion of the words “and freely transferable” in the English text.

Mr. Nilsson (Sweden), referring to his delegation’s amendment in document LEG/CONF.5/C.1/WP.51 said that he had discussed a number of solutions with the French and United Kingdom representatives, but that none of them represented an improvement on his delegation’s amendment. He appreciated the objections raised to it by certain representatives; but since his delegation could not produce any better wording, he preferred its amendment to be voted on. Should it not be approved, he would suggest reverting to the Legal Committee’s draft text which, though slightly ambiguous, would be acceptable to his delegation.

Mr. Rognlien (Norway) supported the Swedish proposal and suggested that it should be referred to the Drafting Committee without a vote. As he understood it, the words “freely transferable” did not impose an obligation on States. Since, according to paragraph 3, the provisions of paragraphs 1 and 2 would apply only if the fund was freely transferable, the only consequence of the fund not being freely transferable to other currencies would be that the claimant would not be barred under Article 13(1) and (2) and would be free to assert his claim to other assets in the fund.

Mr. Makovsky (USSR), referring to the Swedish amendment in document LFG/CONF.5/C.1/WP.51 expressed preference for the wording in the Legal Committee’s draft, which corresponded to Article VI(2) of the 1969 Civil Liability Convention. The Swedish amendment would give the claimant the possibility of invoking reasons other than circumstances beyond his own control for not making a claim against the fund.

Mr. Nelson (Ghana) felt that the Swedish proposal in document LEG/CONF.5/C.1/WP.51 would make the original text clearer and more precise. He also supported the Swedish proposal in document LEG/CONF.5/4: it would be unfortunate if a successful claimant found his money blocked.

The Chairman invited the Committee to indicate their attitude to the two amendments by show of hands.

The amendment proposed by Sweden (LEG/CONF.5/C.1/WP.51) was approved (11 votes in favour, 10 against and 15 abstentions).

The Chairman noted that the amendment had been approved; but in view of the large number of abstentions, it would be submitted to the Drafting Committee to see if the text could be made more precise.

(14) See notes 12 and 13.
(15) See note 12.
(16) See note 12.
(17) See note 12.
The Swedish proposal (LEG/CONF.5/4, page 99 – for the English text only)\textsuperscript{18} was approved (19 votes in favour, 6 against and 11 abstentions).

Article 13 as a whole was approved.

Summary Record of the Twenty-fourth Meeting
17 November 1976

[395] The Chairman called for a vote on paragraph 1, which the Committee had already provisionally approved.

Paragraph 1 was approved (36 votes in favour, none against, and 2 abstentions).

The Chairman recalled that the Committee, by 9 votes in favour, 7 against and 12 abstentions, had approved the addition to paragraph 2 of a new sub-paragraph (e) with the following wording: “(e) in the State where the shipowner has his principal place of business”.

Mr. Selvig (Norway) requested that that sub-paragraph be voted on separately at that juncture. There was no such provision whatsoever in the 1957 Convention, and the introduction of the concept of the shipowner’s place of business might destroy the balance reflected by sub-paragraphs (a) to (d) and create difficulties. Furthermore, that provision was too rigid. The constitution of a fund in the State in which the shipowner had his principal place of business, irrespective of the place where the damage had been caused, impeded the exercise of all other rights, which was tortious, especially if the place in question was remote.

Mr. Müller (Switzerland) regretted that the representative of Norway had reverted to that question, especially as his own delegation had already dwelt at length on the land-locked countries’ position. The State where the arrest was made (sub-paragraph (d)) might itself be remote, and in the case of a sunken ship, no arrest could have been made at all. There had to be protection of the shipowner’s interests, and the most convenient tribunal was undoubtedly the one in the State where he had his principal place of business.

The Chairman asked the Committee whether they were prepared to approve the addition to the text of the new sub-paragraph (e) which she had already read out.

The Committee decided to add new sub-paragraph (e) to the basic text (17 votes in favour, 15 against and 7 abstentions).

The Chairman invited the Committee members to vote on paragraph 2 as a whole.

Paragraph 2 as a whole was approved (20 votes in favour, none against, and 17 abstentions).

The Chairman recalled that the Committee had provisionally decided to add the words “and freely transferable” after the words “actually available” in paragraph 3. She invited the Committee to vote on that addition to the text.

The addition was approved (25 votes in favour, none against, and 13 abstentions).

The Chairman drew attention to the further proposal to replace the phrase “if the claimant had access to the Court” by the words “if the claimant may bring action before the Court”, and asked the Committee whether they were prepared to approve

\textsuperscript{18} See note 13.
the text of paragraph 3 as just amended and to refer that last suggestion to the Drafting Committee.

Paragraph 3, as amended, was approved (25 votes in favour, none against, and 12 abstentions).

**Draft International Convention**

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; or
   (E) in the State where the shipowner has his principal place of business.

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.**

**Summary Record of the Twenty-sixth Meeting**

**18 November 1976**

[405] The Chairman invited the Committee to continue reviewing the text of the Drafting Committee’s report (LEG/CONF5/C.3/1 and LEG/CONF5/C.3/1/Add.1), in order to assess whether it faithfully reflected the substantive decisions which the Committee had taken.

[406] The present discussions, at that stage, in the Committee’s deliberations, should focus on questions of drafting, any substantive questions thenceforward being treated as matters to be raised at the Plenary Conference.

**Summary Record of the Twenty-seventh Meeting**

**18 November 1976**

[419] Mr. Amoroso (Italy) enquired, with respect to Article 13(2), if the ship was wrecked, whether a fund could be set up in the port of destination.
The Chairman pointed out that the text of Article 13(2) reflected that of Article 5(2) of the 1957 Convention; she wondered whether anyone was prepared to embark on interpretation at that stage.

Mr. Vonau (Poland) could not see how release of a wreck could be ordered.

Mr. Selvig (Norway), on a point of order, said that the Committee should not be dealing with questions of substance at that stage.

Lord Diplock (United Kingdom) pointed out that there was no need to have a ship in order to seize a person’s other property. The provision did not deal only with the ship.

Article 13 was approved.

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Plenary Meetings
Summary Record of the Fourth Plenary Meeting
18 November 1976

[481] Mr. Selvig (Norway) introduced his delegation’s amendment to paragraph 2, sub-paragraph (e) (LEG/CONF.5/WP.7)\(^{19}\) and pointed out that the word “effective” in the first line should be deleted.

The amendment had been proposed because sub-paragraph (e) did not correspond with the provisions of paragraphs 1 and 2 of Article 5 of the 1957 Convention and thus disturbed the balance of the provisions on other actions; because the shipowner’s place of business could be far away from the place of the accident, that would make it difficult for the claimant to make a claim. The amendment had also been proposed in order to meet points raised by the representative of Switzerland concerning landlocked countries.

If his amendment were not accepted, he would ask for a separate vote on sub-paragraph (e).

Ms. Blom (Sweden) seconded the amendment.

Mr. Djavad (USSR) opposed the amendment. According to Article 13, a person liable under the Convention’s jurisdiction had no guarantee that his liability would be limited in accordance with the Convention’s limitations, even though the fund had been established with the prescribed limits. In other words, the Article permitted liability above the limitation under the Convention. Sub-paragraph (e) improved the text, although it did not remove all the drawbacks; but the Norwegian amendment would alter the sense of the sub-paragraph and upset the balance of the Convention. Moreover, the Committee of the Whole had adopted the Swiss proposal to include sub-paragraph (e) by a large majority.

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\(^{19}\) Document LEG/CONF.5/WP.7
18 November 1976
Proposal submitted by Norway
Article 13
Paragraph 2, sub-paragraph (e) should read:
(e) in the State where the shipowner has his effective principal place of business, provided that the ship is registered in a land-locked State Party.
Mr. Müller (Switzerland), while appreciating the understanding shown for the problems of landlocked countries, pointed out that they were only one of the relevant arguments. Reference had also been made to Article 2(4) of the 1957 Convention and to the balance between the 1957 Convention and the present [482] Convention. In view of the support for his proposal, however, he felt bound to maintain his position.

Ms. Blom (Sweden) said that her delegation could, if necessary, accept sub-paragraph (e) as proposed by Norway but not as approved by the Committee of the Whole. If the fund was set up in one of the places referred to in sub-paragraphs (a)-(c), the claimant – in the absence of rules of enforcement of foreign judgements – would, in practice, be forced to bring an action at the place where the fund had been constituted. It was therefore necessary to restrict paragraph 2 as far as possible to places having a connexion with the accident; otherwise the claimant would be subject to heavy expenses if the fund were constituted in a far distant place.

Mr. Jeannel (France), while appreciating the difficulties of the Swedish representative, pointed out that it was quite normal for claims to be brought in the State where the shipowner had his place of business. As a way out of the difficulty, he proposed that the word “effective” should be inserted in sub-paragraph (e).

Mr. Vonau (Poland) endorsed the points made by the representatives of the USSR and Switzerland. His objection to the Norwegian amendment was that it ran counter to the purpose of the Convention which was intended to unify the principles for limitation of shipowners’ liability and was based on the principle of equality for owners in all countries concerned. The Norwegian amendment would give advantage to landlocked countries, to the disadvantage of the majority of other countries, and if it were adopted, his country would find it difficult to accept the Convention. He agreed that landlocked countries should have some privileges, because they were disadvantaged in lacking access to the sea; but that was a matter of public international law, not private law.

Ms. Blom (Sweden) regretted that the French proposal did not solve her difficulty. She agreed that all or most countries accepted the State where the shipowner had his principal place of business as a forum for claims against him; but sub-paragraph (e) would, in practice, mean that a claim would be subject to the exclusive jurisdiction of that State, and that would be unacceptable.

Mr. Djavad (USSR) regretted that in view of what the Swedish representative had just said, he would be obliged to oppose the Norwegian amendment. It did not solve the main argument in favour of it, namely the problem of excessive distance between the place of the accident and the place of the claim.

Mr. Jeannel (France) maintained his proposal, which referred to the Drafting Committee’s text, not the Norwegian amendment.

The President noted that the proposal had been duly seconded. He then invited the Conference to vote on the Norwegian amendment to sub-paragraph (e) of paragraph (1) (LEG/CONF.5/WP.7).20

There were 8 votes in favour of the Norwegian proposal, 24 against, and 7 abstentions.

The Norwegian amendment (LEG/CONF.5/WP.7) was not adopted, having failed to obtain the required two-thirds majority.

(20) See note 19.
The President invited the Conference to vote on the French proposal to insert the word “effective” before “principal” in sub-paragraph (e).

There were 17 votes in favour, 11 against and 8 abstentions.
Sub-paragraph (e) was not adopted, having failed to obtain the required two-thirds majority.

The President invited the Conference to vote on Article 13 as amended, namely, excluding sub-paragraph (e).

Mr. Vonau (Poland) on a point of order, asked for a reconsideration of Article 13 in accordance with Rule 31 of the Rules of Procedure (LEG/CONF.5/2/Rev.1)21 as he did not think the Conference had intended to delete sub-paragraph (e) of paragraph (1).

The proposal was supported by Mr. Montesino (Cuba), Mr. Decerega (Panama) and Mr. Filipovic (Yugoslavia), and opposed by Mr Lyon (Canada).

The President put to the vote the Polish proposal for reconsideration of Article 13. There were 20 votes in favour, 15 against, and 6 abstentions.

The proposal was not adopted, having failed to obtain the required two-thirds majority.

Article 13, as amended, was adopted (27 votes in favour, 2 against, and 9 abstentions).

Mr. Montesino (Cuba) explained that he had not taken part in the vote but would have abstained had he done so.

**1976 Convention**

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:

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(21) Rule 31 of the Rules of Procedure so provided:

Reconsideration of Proposals

Rule 31

When a proposal has been adopted or rejected it may not be reconsidered unless the Conference, by a two-thirds majority of the representatives present and voting, so decides. Permission to speak on a motion to reconsider shall be accorded only to the mover and one other supporter and to two speakers opposing the motion, after which it shall be put immediately to the vote.
(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

Hamburg Draft Convention
Text and Commentary

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 connection therewith, shall be governed by the law of the State in which the fund is constituted.

[426] This article corresponds to Article 4 of the 1957 Convention.

IMCO Legal Committee
Twenty-seventh Session

[11] 45. The Legal Committee made no change in this draft article, but a suggestion was made that a single draft article might be introduced in the Convention to deal with all matters relating to “governing law” including the matters dealt with in Article 8 above.

Twenty-eighth Session

[20] 88. The Committee noted the view expressed at its twenty-seventh session that a single article might be included in the Final Clauses to deal with this and the subject dealt with in Article 10. It was felt that this point might be taken into account in preparing the draft Final Clauses.

Draft Articles

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 in which the fund is constituted.

Diplomatic Conference
Committee of the Whole
Summary Record of the Seventeenth Meeting
11 November 1976

[340] Mr. Ptak (Poland) introduced his delegation’s amendment (LEG/CONF.5/C.1/WP.37).1

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1 Document LEG/CONF.5/C.1/WP.37
3 November 1976
Proposal submitted by the delegation of Poland
Article 14
Before the word “State” insert the word “contracting”.
Mr. Tardana (Indonesia) and Mr. Filipovic (Yugoslavia) seconded the amendment.

Mr. Jeannel (France) declared himself to be strongly in favour.

The Polish amendment (LEG/ICONF.5/C.1/WP.37) was approved (27 votes in favour, none against and 7 abstentions).

Mr. Berenguer (Spain), introducing his delegation’s amendment (LEG/CONF.5/C.1/WP.10) stressed the advisability of setting a time-limit – of not more than two years – for submitting claims, as the judge concerned would no doubt wish to know the total damage in order to avoid making awards in excess of the fund.

Mr. Ptak (Poland) seconded the amendment.

Mr. Mallinson (United Kingdom) strongly opposed the amendment. It would be inappropriate in a convention on limitation of liability and would entail a change in law in many countries. Even if it were acceptable, the present Article would not be the right place for it.

Mr. Cleton (Netherlands) agreed with the United Kingdom representative.

The present Convention was not concerned with claims but with limitation of claims, and claims could come from very different sources. The inclusion of such a provision would only give rise to difficulties.

Mr. Jeannel (France) endorsed the views of the United Kingdom and Netherlands representatives. The task of the Conference was to review the 1957 Convention, and it had been made clear that the subject was solely limitation and had nothing to do with regimes for liability. Such regimes were a matter for national legislation; and the introduction of a provision concerning prescription of claims would mean encroaching on national legislation and going beyond the Conference’s terms of reference. He would certainly find it difficult to accept any provision which altered the regime for liability established under his own country’s legislation.

Mr. Ptak (Poland) explained that he had seconded the amendment in the belief that it would be useful in the establishment of claims against the fund. He did not share the French representative’s view that it would conflict with national legislation. Provisions concerning time-limits appeared in many international conventions – for example in the 1910 Collisions Convention and in the Protocol to the 1924 Convention on Bills of Lading. Whether time limits were a procedural matter or a substantive matter depended on the country concerned. A provision of the kind under consideration would be useful in providing uniformity. The time-limit need not necessarily be two years. He recognized that more time might be needed for the preparation of claims, and he therefore suggested that the limit should be three years.

Mr. Berenguer (Spain) said he would have no objection to extending the time-limit to three years.

The Chairman invited the Committee to indicate their views on the principle of the amendment.

There were 3 votes in favour of the Spanish proposal (LEG/CONF.5/C.1/WP.10), 24 against, and 10 abstentions; the proposal was rejected.

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(2) Document LEG/CONF.5/C.1/WP.10
2 November 1976
Article 14
Add the following new paragraph:
“Any claim for the recovery of damages shall be proscribed after two years from the date on which any such action could have been initiated”.

(3) See note 2.
Summary Record of the Twenty-fourth Meeting  
17 November 1976

[396] The Chairman called for a vote on Article 14 as amended by the Committee, which had decided nem. con. to insert the word “Contracting” before the word “State” in the last line.

The text of Article 14, as amended, was approved (37 votes in favour, none against, and 1 abstention).

Mr. Wiswall (Liberia) pointed out that the text as approved would need to be concorded with that submitted by the Drafting Committee (LEG/CONF.5/C.3/1, page 455) which used the term “State Party”.

Draft International Convention

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.

Summary Record of the Twenty-sixth Meeting  
18 November 1976

[405] The Chairman invited the Committee to continue reviewing the text of the Drafting Committee’s report (LEG/CONF.5/C.3/1 and LEG/CONF.5/C.3/1/Add.1), in order to assess whether it faithfully reflected the substantive decisions which the Committee had taken.

[406] The present discussions, at that stage, in the Committee’s deliberations, should focus on questions of drafting, any substantive questions thenceforward being treated as matters to be raised at the Plenary Conference.

Summary Record of the Twenty-seventh Meeting  
18 November 1976

[417] Approved without comments.

Plenary Meetings  
Summary Record of the Fifth Plenary Meeting  
19 November 1976

[484] Article 14 was adopted by 33 votes to 1.

1976 Convention

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

General comments

IMCO Legal Committee
Twenty-seventh Session

[1] 7. The Committee considered a proposal from the delegation of Belgium dealing with the application of the Convention to certain ships and craft. This proposal [2] was in substitution for a draft provision (defining the term “ship” in paragraph 2 of Article 1) which had been presented by the same delegation to the twenty-fifth session and was contained in Annex II to document LEG XXV/4. The new text reads as follows:

“1. This Convention shall not apply to:
   (a) ships mainly used for navigation in inland waterways;
   (b) ships of any type of less than .... gross tons or of an equivalent capacity;
   (c) craft which capacity cannot be measured by virtue of Article 6, paragraph 3 of this Convention.

2. Contracting States have the right to regulate by specific provisions of national law the system of limitation of liability to be applied to the ships or craft mentioned under paragraph 1 of this Article.”

8. In introducing the new text the delegation of Belgium explained that its purpose in submitting the draft text was primarily to invite attention to certain problems regarding the application of the proposed Convention to certain types of ships and other craft. It emphasized that the text submitted by it was only to enable the principle to be examined, on the understanding that once the substantive issue had been resolved one way or another, suitable wording would be found to express the agreed idea. In the discussion which followed, delegations indicated that, not having had time to study the proposal, their comments would only be preliminary. Among the matters commented upon were:

(a) It was questioned whether it would be acceptable to exclude ships operating in inland waterways from the purview of the convention. In any case it was pointed out that the use of the expression “mainly used for navigation in inland waterways” would lead to difficulties in interpretation, particularly with regard to “dual purpose” vessels which operate both at sea and in inland waterways.

(b) With regard to the proposal to exclude ships of less than a specified gross tonnage, it was suggested that as such ships could cause considerable damage it would be useful to include them in the scope of application of the Convention, with special limitation provisions for them as envisaged under Article 6.
With regard to the provisions about ships whose capacity cannot be measured by virtue of Article 6, paragraph 3 of the Convention, it was doubted whether in fact there was a genuine problem which required to be dealt with in the Convention and, if so, whether the proposed provision was the appropriate way to deal with it.

It was suggested that the proposed paragraph 2 was not necessary, in any case, or that the problem might be dealt with in a “reservation” clause.

It was the general view of the Committee that the issue raised in the Belgian proposal deserved further consideration and it was decided to come back to the matter at the twenty-eighth session when governments would have had the opportunity to examine the matter more thoroughly. Some delegations expressed some doubt about the continued omission of a definition of the term “ship”.

**Twenty-eighth Session**

The Committee considered a proposal to add a new article on scope of application. The proposed provisions of this article were designed to provide solutions to problems relating to Articles 7 and 8 of the 1957 Convention as well as paragraph 2, sub-paragraph (b), of the Protocol of Signature thereto. After some discussion it agreed to recommend this new provision with paragraphs 2 and 3 thereof in square brackets.

**Draft Articles**

1. **This Convention shall apply whenever any person referred to in Article 1 seeks to limit his liability before the court of a Contracting State or seeks to procure the release of a ship or other property or of any security given within the jurisdiction of any such State. Nevertheless, each Contracting State 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 Contracting State, or does not have his principal place of business in a Contracting State, or any ship in respect of which limitation or release is sought which does not at the time specified above fly the flag of a Contracting State.**

2. **A Contracting State may regulate by specific provisions of national law the system of limitation of liability to be applied to vessels which according to the law of that State are:**
   - (a) ships used for navigation on inland waterways;
   - (b) pleasure craft of less than [20] gross tons;
   - (c) fishing vessels of less than [20] gross tons.

3. **This Convention shall not apply to:**
   - (a) air-cushion vehicles;
   - (b) floating platforms such as those used for the purpose of exploring or exploiting the natural resources of the sea-bed.]

*If this proposal is accepted, the term “sea-going” in Article 1, paragraph 2, may be deleted.*
Paragraph 1

Diplomatic Conference
Committee of the Whole
Summary Record of the Seventeenth Meeting
11 November 1976

[341] Paragraph 1.1

Paragraph 1 was approved without comment.

Draft International Convention

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.

Summary Record of the Twenty-fourth Meeting
17 November 1976

[316] The Chairman called for a vote on paragraph 1.

The text of paragraph 1 was approved (35 votes in favour, none against, and 2 abstentions).

Plenary Meetings
Summary Record of the Fifth Plenary Meeting
19 November 1976

[484] Article 15, as set forth in Document LEG/CONF.5/C.3/1/Add.1 and modified by LEG/CONF.5/WP.92 was adopted as a whole (30 votes in favour, 1 against and 8 abstentions).

(1) The relevant text is that quoted at p. 341.
(2) See note 18.
1976 Convention

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.

Paragraph 2

Diplomatic Conference
Committee of the Whole
Summary Record of the Second Meeting
2 November 1976

[219] Mr. Hermes (Australia) expressed reservations concerning the word “sea-going” in paragraph 2, but said they were contingent on the Conference’s action on Article 15, paragraph 2(a).

The Chairman proposed to take Article 15(2)(a) before dealing with the word “sea-going” in Article 1(2). She drew attention to the Australian and Swedish proposals on pages 65 and 66 of document LEG/CONF.5/4.

[221] Mr. Hedborg (Sweden) explained that his Government had proposed the deletion of the word “sea-going” from Article 1(2) so that the Convention would apply to all vessels, and it would be left to governments to decide whether special national regulations were necessary for ships used for navigation on inland waterways. There might be vessels which were used for both ocean-going and inland navigation.

Mr. Vonau (Poland) supported the Swedish amendment.

(3) The text of the proposals is quoted below:

Australia
On the basis that provisions along the lines of Article 15(2) are adopted and the scope of operation of the Convention is thus appropriately dealt with in Chapter IV, Australia would support the deletion of the word “sea-going” from paragraph 2 of this Article.

Sweden
It is proposed that the word “sea-going” be deleted in Article 1(2).

The Swedish Government considers that the Convention in principle should apply to all ships but that, as provided in Article 15(2), Contracting States should be entitled to regulate by specific provisions the limitation rules to be applied to some vessels, including ships used for inland navigation.
Mr. Cleton (Netherlands) said that if the Convention were to apply to ships used for navigation on inland waterways, it might conflict with other conventions such as the Convention relating to the Limitation of the Liability of Owners of Inland Navigation Vessels (CLN) of the United Nations Economic Commission for Europe, which his Government intended to ratify. He would support the provision in Article 15(2)(a) provided the wording could be changed to read: “inland navigation ships”. The definition in the existing wording imposed a distinction which governments would not find feasible, since some vessels were used on both the high seas and inland waterways.

Mr. Herber (Federal Republic of Germany), while agreeing with the Netherlands representative’s suggestion concerning the wording of Article 15(2)(a), questioned whether the Swedish proposal offered the best solution. If the scope of the Convention were extended unduly, ratification might be hampered, and initially large numbers of reservations would be unavoidable. It would be wiser not to refer to inland navigation, and to leave it to governments to extend the principles of the Convention to inland navigation where necessary. He was therefore in favour of keeping Article 1(2) as it stood. In reply to a question from the Chairman, he said that if the word “sea-going” were deleted from Article 1(2), Article 15(2)(a) would no longer be necessary. He would not propose the deletion of the latter, however, since it provided useful clarification.

Mr. Tanikawa (Japan) suggested that the problem be dealt with at a later stage in connexion with the reservation clauses.

Mr. Bondoni (Argentina) said he would support the proposal to delete the word “sea-going” provided the substance of Article 15(2)(a) were retained. The vast majority of sea-going ships in the American continent also sailed on inland waterways.

Mr. Jeannel (France) saw no useful purpose in the Swedish amendment and felt that there were strong arguments against it. In the first place, the Conference was concerned with maritime, not inland, navigation. Moreover, inland transport required an entirely different type of legislation from maritime transport and was a matter for agreement between coastal countries. If the Convention dealt with inland transport it might conflict with existing domestic and other regulations. It would also complicate an already complex subject. He hoped that Article 1(2) would be retained, subject only to his delegation’s drafting amendment. With regard to the link between Article 1(2) and Article 15(2)(a), any country wishing to apply the provisions of the Convention to its inland navigation was obviously free to do so without the need for a provision to that effect. There was no reason why Article 15(2)(a) should not be deleted.

Mr. Sim Mong Soo (Singapore) supported the Swedish proposal to delete the word “sea-going” from Article 1(2). His own country made no distinction between sea-going and non-sea-going ships for the purpose of limitation of liability, and he would like the principle that owners of non-sea-going ships were entitled to limitation of liability to be preserved in the Convention. He supported the principle in Article 15(2)(a), and stressed the need for flexibility concerning special local conditions.

Mr. Wiswall (Liberia) had no objection to the Swedish amendment in principle, but submitted that Article 15(2)(a) took no account of the possibility that a ship normally navigating in inland waterways might occasionally navigate at sea and become involved in an accident. He suggested that the wording might be amended on the following lines: “ships designed for or engaged solely in navigation on inland waterways”. It should be made clear that there would be exemption under national law only for ships actually navigating at all times on inland waterways.
Mr. Selvig (Norway) supported the Swedish amendment. The term “sea-going” was ambiguous, since it could apply to ships that were sea-going normally or at a particular moment. Article 15(2)(a) provided an opening for those States which needed special legislation for ships navigating in inland waterways and left governments free to make the necessary distinction. He saw no danger of conflict with other conventions. He would support the Netherlands proposal if it would help to solve that country’s problem. He would have difficulty in accepting the Liberian proposal, since it would entail the very difficulties that had prompted the Legal Committee to leave it to governments to define inland navigation ships. The representative of the Federal Republic of Germany had referred to the undesirability of too many reservations. Obviously, States should have the option provided in Article 15(2)(a), and it was preferable that it should feature in the substance of the Convention rather than in reservations. A similar provision had been made in Article 7 of the previous Convention. He was in favour of maintaining Article 15(2)(a), either as amended by the Netherlands representative or in its present form.

The Chairman asked the representative of Japan if he wished to maintain his suggestion, since the majority of representatives seemed to prefer to discuss the matter in the present context rather than in connexion with the final clauses and the provisions on reservations.

Mr. Tanikawa (Japan) was prepared to withdraw his suggestion on the understanding that were would be no restriction on the discussion of other types of reservations at a later stage.

[223] The Chairman invited the Committee of the Whole to resume consideration of Article 1(2) (to decide whether or not to delete the word “sea-going”), and, with it, consideration of Article 15(2)(a) referring to “ships used for navigation on inland waterways” (to decide whether or not the Convention ought to be extended to cover such ships).

Mr. Trotz (German Democratic Republic) thought that the application of the Convention should be restricted to maritime claims and that deletion of the word “sea-going” from Article 1(2) might bring the Convention into conflict with other Conventions. He did not agree with those who held that such deletion would not cause any difficulties. While recognizing the problems connected with navigation on inland waterways, he was convinced that it was unnecessary to extend the scope of the present Convention. It would be enough to specify that States might, under their domestic legislation, extend its application to ships used for navigation on such waterways. His delegation was therefore in favour of retaining the texts of Articles 1(2) and 15(2)(a) unchanged.

Mr. Hedborg (Sweden) asked the representative of the Netherlands for a clarification. If a ship that normally operated on inland waterways were to reach Sweden, for example, should it still be regarded as a ship used for navigation on inland waterways, or would the present Convention be applicable to it?

Mr. Cleton (Netherlands) said that his delegation’s view was that, when a ship was registered, it was for the State concerned to decide whether, under the terms of its own legislation, the vessel should be classed as a ship used for navigation on inland waterways or as a sea-going ship. There might be borderline cases. It was difficult to define the two categories of vessels and the Conference might only be creating difficulties by trying to formulate definitions which could affect the question of limitation of liability. His delegation would be against including any such definitions in the text of the Convention.
Mr. Bursley (United States) commented that his delegation was not alone in appreciating the difficulties involved by the reference to “sea-going” ships in Article 1(2). While it did not wish to extend the scope of the Convention to ships used for navigation on inland waterways, it was anxious that the Convention should arrive at a uniform limitation of liability. It might be worthwhile to give further thought to the point before deciding upon a text. Three texts intended to solve the problem posed by Article 15(2)(a) had already been proposed. The United States had an extensive network of inland waterways, and some of the ships used on them were also occasionally used on the high seas; for that reason his delegation was anxious for the Conference to reach a clear decision on the point.

The Chairman said that the Legal Committee had already spent a considerable amount of time on the question without achieving a clear distinction. That was what had led to include in the introduction to Article 15(2) the words “according to the law of that State” – meaning, in other words, that it was for the State in question to determine the category to which any given ship belonged, thus lending a certain flexibility to the text.

Lord Diplock (United Kingdom) said that, while his own country was not directly interested in navigation on inland waterways, his delegation nevertheless considered on principle that the word “sea-going” should be retained in Article 1(2). The word occurred not only in the 1957 Convention but also in the Brussels Convention of 1924, and had not so far caused any difficulty. Moreover, it did not strike him as desirable for the present international convention to seem to apply to a field which was already covered by another convention, the 1973 CLN Convention. In his opinion, the retention of the word “sea-going” in Article 1 would render paragraph 2(a) of Article 15 unnecessary. He recalled that there was no such provision in the 1957 Convention. His delegation was not prepared to accept the amendment proposed by the Netherlands, in which the term “inland navigation ship” was used; that term was meaningless in English law. It could accept the amendment put forward by Liberia (made at the previous meeting). If, however, the provisions contained in Article 15(2)(a) were to be retained, his delegation would then prefer to keep to the text proposed by the Legal Committee; that represented the most practical compromise.

Mr. Nair (India) supported the proposal to delete the word “sea-going” and to retain Article 15(2)(a) unchanged.

Mr. Lyon (Canada), like the representative of the United Kingdom, found some difficulty in accepting the term “inland navigation ship” proposed by the Netherlands, and agreed with the representatives of India and Sweden in preferring to delete the word “sea-going” from Article 1(2), while retaining Article 15(2)(a).

Mr. Bentein (Belgium) thought that the word “sea-going” should be retained in Article 1, if only as representing a declaration of principle, the Convention being basically applicable to sea-going ships. He saw no contradiction, however, between its inclusion in that Article and the retention of the text of Article 15. His delegation was ready to accept the Netherlands’ proposal whereby the State concerned was left free to determine the category to which a ship belonged, but could not accept the Liberian proposal limiting a State’s powers in the matter.

Mr. Anatsui (Ghana) thought that the Convention ought basically to apply to sea-going vessels, and that the question of ships used for navigation on inland waterways should be left to the various States. Accordingly, he would prefer to keep Article 1(2) unchanged and was prepared to accept any amendment to Article 15 which would convey that view.
Mr. Makovsky (USSR) commented that it might have been better to reach agreement on the substantive point before trying to draft a text. He did not think it was for the Conference to try to establish a line of demarcation between sea-going vessels and those used for inland navigation. The Legal Committee had always failed in its attempts to do so. As it was for individual States themselves, by virtue of their domestic legislation, to classify ships at the time of registration, the Conference was not, under international law, in a position to formulate a definition.

His delegation regarded a sea-going ship used on inland waterways as subject to greater risk on account of its characteristics and the fact that it was less well adapted to that kind of navigation, and thought that insurance problems might arise if a given ship were subject to different regulations, according to whether it was used at sea or on inland waterways. The Convention should accordingly apply in all cases to sea-going ships only, regardless of where the ship happened to be at the time when it gave rise to a claim.

In respect of the question whether the Convention should be applicable to ships used on inland waterways or whether such vessels should be covered by other texts if used at sea, his delegation thought it could be stipulated that the Articles in question applied to every ship used at sea, and that individual States be left to take their own decisions by virtue of their domestic legislation, in cases where ships were used on inland waterways.

Mr. Perrakis (Greece) thought that the word “sea-going” should be retained in Article 1(2). Referring to the distinction between the two categories of vessels, he said he was not in favour of leaving the State free to exclude from the benefits of the Convention a ship used for navigation on inland waterways if it was also used at sea.

Mr. Jeannel (France) said that the representative of Sweden appeared to fear that the Convention would no longer apply to sea-going ship if it was used on inland waterways, with the result that, if an accident occurred while it was being used in that way, the shipowner would be unable to claim limitation of liability. His delegation did not think that that was the case, and agreed with the delegation of the USSR that the Convention should apply to sea-going ships wherever they might be. As the representative of the United Kingdom has pointed out, the text of the 1957 Convention had not so far caused any difficulties and there were therefore good reasons for retaining the word “sea-going” in Article 1(2). There was no great need to formulate definitions. It was for the flag State to decide whether a vessel was a sea-going ship or one used for navigation on inland waterways. The texts seemed to him to be in harmony with the objective assigned to them.

The Chairman invited the Committee to decide whether the scope of application of the Convention should be restricted to sea-going ships or extended to ships used on inland waterways as well.

In an indicative vote the first alternative was adopted (19 votes in favour and 10 against).

The Chairman said that the words “sea-going ship” would accordingly be retained in Article 1(2), which would remain unchanged. She then asked the Committee whether a definition of the term “sea-going ship” should be included in the Convention.

The proposal was rejected.

The Chairman next asked the Committee whether or not it wished to retain Article 15(2)(a).

In an indicative vote Article 15(2)(a) was retained (20 votes in favour and 5 against).
The Chairman reminded the Committee of the amendments to the text put forward at the previous meeting by the representatives of the Netherlands and of Liberia.

Mr. Jeannel (France) said that, as the representative of Belgium had pointed out, the French and English texts were not completely in harmony with one another. If the English text employed the phrase “used for”, which correspond to the French “destinés à”, that should meet the understandable concern of the representative of Liberia.

The Chairman invited the Committee to indicate its preference as between the amendment proposed by the representative of Liberia, that proposed by the representative of the Netherlands, and the retention of the existing text.

In an indicative vote the existing text was retained (17 votes in favour and 6 against).

Mr. Amoroso (Italy) asked whether the point raised by the representative of France had been dealt with by the vote just taken, and whether the French text was to be accepted in preference to the English.

The Chairman, after a brief statement on a point of order by Mr. Jeannel (France), put two alternative proposals to the Committee: (i) to replace the words “used for” in the English text by the words “intended for”, and to retain “destinés à” in the French text; or (ii) retain “used for “ in the English text and replace “destinés à” in the French text by “utilisés pour”.

In an indicative vote the Committee decided to replace the words “used for” in the English text by the words “intended for” and to retain the words “destinés à” in the French text.

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8 November 1976

[282] The Chairman . . . . . . She suggested that the Committee should postpone [283] consideration of the question of “periodic revision of limits” and deal instead with that of the “minimum tonnage” below which small vessels would be unaffected by the present Convention. A number of delegations had already referred to that issue in the context of Article 6(1) and (2), and several proposed amendments had been submitted. The delegation of the United Kingdom had proposed 500 tons (LEG/CONF.5/4/Add.2), the delegation of the Federal Republic of Germany, 1,500 tons (LEG/CONF.5/C.1/WP.29), the delegation of the USSR, 300 tons (LEG/CONF.5/C.1/WP.34), and the delegation of New Zealand, 300-500 tons (LEG/CONF.5/4/Add.3). Article 15(2)(b) and (c) specified a gross tonnage of 200 tons, but the Japanese delegation had proposed that Article 15(2) should be deleted.

(4) See note 7 sub Art. 6.
(5) See note 11 sub Art. 6.
(6) See note 22 sub Art. 6.
(7) Document LEG/CONF.4/Add.3
27 October 1976
The New Zealand Government supports the alternative text. That text will ensure that property claims have a greater chance of being satisfied than they would under the basic text. As indicated above, New Zealand has a system whereby its citizens are automatically entitled to compensation for personal injury and their dependants entitled to compensation in respect
altogether (LEG/CONF.5/C.1/WP.15)\(^8\) and a reservation added to the final clauses “of the right to regulate by specific provisions of national law the system of limitation of liability to be applied to ships of less than 300 tons” (LEG/CONF.5/C.1/WP.16).\(^9\) The French delegation had proposed that Article 15(b) and (c) should be deleted and a new paragraph (b) inserted, containing a reference to “vessels of less than 300 tons” (LEG/CONF.5/C.1/WP.38).\(^10\)

Mr. Tanikawa (Japan) said that the minimum tonnage specified for small ships should be 300 tons, and recalled that a reservation clause to that effect was already to be found in the 1957 Protocol. He would like to see that clause retained, but would not insist on it and was prepared to accept the proposal by the French delegation (LEG/CONF.5/C.1/WP.38).\(^11\)

Mr. Jeannel (France) pointed out that his delegation’s proposal was designed to exempt the large number of vessels of very low tonnage from the present Convention and to deal with them on the basis of the specific problems that they might raise.

Mr. Ganten (Federal Republic of Germany) endorsed both the French and the Japanese proposals, because they were identical in substance, but wished to suggest a modification of the figures, whereby small vessels were those of 500 tons or less. In

of their deaths, in the case of accidents occurring in New Zealand waters. Having regard to New Zealand domestic law, it is desirable that two separate limits of liability be set for, on the one hand, loss of life or personal injury, and on the other hand, all other claims. The New Zealand Government has reservations about increasing the minimum tonnage used for limitation. At this stage it would prefer the minimum tonnage to remain at 300 to 500 tons and that Contracting States be entitled to make provision in national legislation for vessels of small tonnage. In view of the fact that the International Convention on Tonnage Measurement of Ships provides for a 12 year period during which the new rules will not apply to existing tonnage, unless the ship is altered or the owner requests their application, the New Zealand Government has reservations about the inclusion of paragraph 4 of Article 6. Regard should be had to possible cost to the shipowner in re-measuring ships for the purpose of the calculation of insurance requirements. This cost could be unreasonably high and consideration should be given to retaining the present basis of tonnage measurement for existing ships until such ships are measured in accordance with the 1969 Convention.

\(^{(8)}\) See note 87 sub Art. 6.

\(^{(9)}\) The relevant part of the article on reservations proposed by Japan is quoted below:

_Document LEG/CONF.5/C.1/WP.16_

2 November 1976
Proposal submitted by the Japanese delegation

The following article should be added in the final clauses:

Article (Reservation)
(1) Any State, at the time of signing, ratifying, accepting, approving this Convention or acceding to it make any of the reservations set forth in paragraph (2). No other reservations to this Convention shall be admissible.
(2) The following are the only reservations admissible:
(a) Reservation of the right to exclude the application of Article 2 paragraphs (d), (e) and (f).
(b) Reservation of the right to regulate by specific provisions of national law the system of limitation of liability to be applied to ships of less than 300 tons.

\(^{(10)}\) _Document LEG/CONF.5/C.1/WP.38_

4 November 1976
Proposal by the delegation of France

Article 15, paragraph 2
The French delegation proposes to delete sub-paragraphs (b) and (c) of Article 15(2) and to replace them by a new sub-paragraph (b), as follows:

(b) regulate the system of limitation of liability to be applied to vessels of less than 300 tons.

\(^{(11)}\) See note 10.
document LEG/CONF.5/C.1/WP.29, his delegation had proposed very high minimum tonnages, because it was small ships which caused the most damage in ports. His delegation did not think, however, that there was a need to harmonize the legal provisions relating to such ships in view of the fact that they were confined mainly to territorial waters. States themselves were better able to deal with ships in that category than was the Convention, and should be free to do so. He therefore supported the principle underlying the French proposal, but the figure should be increased to 500 tons.

Mr. Amoroso (Italy) conceded that small vessels were entitled to special treatment because the provisions of the present Convention were liable to prove somewhat onerous in their case; but he doubted whether either the Japanese or the French proposal was a real solution to the problem. The present issue was not one of deciding on the figure to be adopted for the minimum limit. His doubts were concerned with the principles themselves — namely the principle of reservations at the time of ratification, and that of the applicability of domestic legislation in the case of a small vessel which caused damage while navigating in foreign waters. It might be preferable to include an Article stipulating that the Convention was not applicable to vessels of 300 or 500 tons or less.

Mr. Tardana (Indonesia), while supporting in principle the proposed amendments submitted by Japan and France, expressed his preference for the French proposal, and agreed with the representative of the Federal Republic of Germany that the minimum unit should be raised from 300 to 500 tons.

Mr. Makovsky (USSR) considered that a minimum of 300 tons was preferable for two reasons. Firstly, the present draft called for a change from the net tonnage used in the 1957 Convention to gross tonnage, which would automatically lead to an increase of about 50 per cent in the minimum tonnage. Secondly, it was to be feared that a marked increase in the minimum tonnage would be unfavourably received by countries not represented at the Conference. Any such increase would primarily affect small fishing vessels; and that might lead those countries with large fishing fleets but few or no cargo vessels to refrain from ratifying a Convention which would bear too heavily on their fishing vessels. The Conference needed to be realistic and to take account of a reaction of that kind.

Turning to the Japanese proposal, he said that he would not like reservation clauses to be included in the Convention, since previous experience had shown that such clauses frequently gave rise to misunderstandings and objections. It would be better to settle the question of reservations beforehand. He, like the representative of Italy, had misgivings about the proposal made by the French delegation. If States were allowed to exempt small vessels from the application of the Convention, the situation would be unclear and ill-defined, as there were no means of knowing in advance what the various types of domestic legislation might stipulate.

Mr. Bursley (United States) thought that the French proposal was sensible; but at the same time, in the light of the revised criteria used to calculate tonnage, he was in favour of the proposal put forward by the representative of the Federal Republic of Germany to raise the minimum limit from 300 to 500 tons.

Mr. Selvig (Norway) stressed that two fundamental issues were involved. The first concerned the general minimum liability limit, regardless of the size of the vessel. His delegation had already submitted proposals on that matter and wished to remind...
the Committee that one of the main purposes of revising the 1957 Convention was to establish a reasonable limitation; a considerable increase in the present limitation level was therefore essential. The second issue was that of special treatment for vessels of less than a certain tonnage or for those belonging to particular categories. Delegations should remember that, in its Protocol of signature, the 1957 Convention had accorded States the right to regulate the system of limitation of liability to be applied to ships of less than 300 tons. It was essential to ensure uniform treatment of all ships in that category operating in foreign waters. The best solution appeared to be the exemption of certain types of ship from the provisions of the Convention; for that reason, Article 15(2) should be retained, with the possible inclusion of other types of ship. The limit of 200 tons was too low and should be raised, but there was no need to adopt the excessively high limit of 500 tons proposed by Japan and the Federal Republic of Germany; ships of that tonnage should be covered by the Convention.

Mr. Jeannel (France) made some further comments on the amendment proposed by his delegation. France wanted to see a figure of 1,000 tons multiplied by X units of account adopted in Article 6 for the purpose of calculating the minimum amount of liability; such a formula was essential if an adequate minimum amount was to be obtained, and every vessel— even if of less than 1,000 tons— should be insured for that amount. Such a provision should not, however, apply to small vessels, because they would thereby be forced to carry too heavy a burden. That exemption would be in the interests of the developing countries, which often had large numbers of small vessels used for purposes very different from those of large-scale international shipping.

Small vessels of that kind often required special regulation on account of their equipment or use, and should therefore be made subject to appropriate rules, either under domestic legislation or by exclusion from the field of application of the present Convention when they operated in the waters of the flag State. If it proved impossible to harmonize the liability rules for small vessels with those for vessels of higher tonnage, it was imperative that the Convention should exclude small vessels. Notwithstanding the fears expressed by the representative of Italy, a certain degree of harmonization would thereby be achieved, because it would thus be made clear that either the rules of the Convention applied or domestic legislation. He could not accept a tonnage as high as that proposed by Japan and the Federal Republic of Germany, firstly because the tons were no longer the same as in the 1957 Convention, and secondly because the vessels affected were small vessels operated under specific conditions for specific purposes, and not small cargo vessels, for example. The figure of 300 tons was consequently adequate and ought not to be exceeded.

**Summary Record of the Eighteenth Meeting**

**12 November 1976**

[349] Ms. Bruzelius (Norway) introduced her delegation’s proposal (LEG/CONF.5/C.1/WP.70) for the addition of a new paragraph 4 to Article 15.

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(13) *Document LEG/CONF.5/C.1/WP.70*  
11 November 1976  
Proposal submitted by the delegation of Norway  
Article 15, paragraph 4  
“4. A Contracting States that makes use of the option provided for by paragraph 2 (of this Article) shall inform the depositary of the limits adopted in its national legislation. The depositary shall transmit any such information to the Contracting States.”
During the discussion on tonnages to be applicable in Article 15(2), much higher figures had been mentioned than those given in the draft text. It was not yet known what the final figures would be; but her delegation thought it would in any case be helpful if States making use of the option provided for in Article 15(2) informed the depositary of the limits of liability adopted in their national legislation; and especially so if the figures were much higher than those mentioned. The subject was of importance for trade between neighbouring countries.

The provision should perhaps be included in the final clauses, but her delegation thought it appropriate for it to be discussed in connexion with Article 15.

Mr. Nilsson (Sweden) and Mr. Philip (Denmark) seconded the Norwegian proposal.

Mr. Whitaker (United Kingdom) said that Article 15(2), as drafted, implied that there would be limitation of liability for ships not subject to the Convention, but he was not sure whether that had been agreed in principle. His delegation could accept that implication if the figure in Article 15(2)(b) and (c) was in the region of 300 gross tons, but not if it was 20 gross tons.

Mr. Nilsson (Sweden) favoured the inclusion of the Norwegian proposal in the final clauses, and suggested it be submitted to the Final Clauses Committee for consideration.

Mr. Cleton (Netherlands) shared the United Kingdom representative’s concern, and thought the Norwegian proposal might be re-drafted.

Ms. Bruzelius (Norway) said her delegation was willing to have the proposal re-drafted to take into account the concern expressed by some delegations.

The Chairman proposed that consideration of the Norwegian proposal (LEG/CONF.5/C.1/WP.70) should be deferred until a decision had been reached on Article 15(2).

It was so decided.

Mr. Tanikawa (Japan) said that he had provisionally withdrawn sub-paragraph (b) of his proposal and supported the French proposal (LEG/CONF.5/C.1/WP.38).

Mr. Douay (France) said that the purpose of the French proposal was simply to revert, in the new Convention, to the system of the 1957 Convention – in other words, to include provision for reservations in the Protocol of Signature. The 300-ton limit was adequate and ought not to be increased to 500 tons. He invited the Committee to decide whether they wished to include in Article 15, as in the draft text, a provision permitting States to regulate the system of limitation of liability to be applied to fishing vessels and pleasure craft of less than 20 gross tons, or whether they wished to include a reservation in respect of all ships of less than 300 tons. His delegation would, on the whole, prefer a reservation which would perhaps be more generally acceptable.
Mr. Ganten (Federal Republic of Germany) supported the French proposal but repeated that, in the view of his delegation, the limit should be fixed at 500 tons, which represented an internationally recognized line of demarcation in ship classification. It must be left open to the Contracting Parties to take special measures with regard to small ships. It should be possible to allow some flexibility in fixing the limit by taking not only the tonnage but also, for example, the power into consideration. There was a direct connexion between the question under discussion and that of the minimum figures to be inserted in Article 6.

Mr. Amoroso (Italy) repeated his view that small ships ought to be excluded from the scope of the Convention. He would prefer the latter to include an Article stipulating that it did not apply to ships of, or less than, a given tonnage, which could be either 300 or 500 tons. A reservation might be confusing. In any case, a reservation could apply only to ships used for navigation in territorial waters. So far as international navigation was concerned, the Convention must always apply as between two States which had ratified it.

Mr. Selvig (Norway) thought that it should be borne in mind that the Convention was intended to apply to all types of ships on international voyages. If it did not, the outcome of actions brought in different countries would also be different. Whether the Convention included a reservation or provided for the application of national legislation – and his delegation had no particular preference for either – it should apply only to small ships making international or regional voyages. He thought that the figure of 500 tons was too high, especially in the context of regional traffic, and suggested a figure of 200 tons instead.

Lord Diplock (United Kingdom) said that the figure of 500 tons proposed by the delegation of the Federal Republic of Germany was more or less in line with that of 300 tons mentioned in the Protocol of Signature to the 1957 Convention, which had been accepted by the majority of countries. However, his delegation was ready to accept whichever figure was accepted by the majority. The figure selected must depend to a large extent on the minimum figures to be inserted in Article 6, and it was difficult to take a decision so long as the latter had not been settled. His delegation thought that, from the technical point of view, a reservation would be preferable to the inclusion of a provision in the Convention.

Mr. Bentein (Belgium) wished to establish exactly what the proposal covered before committing himself, and gave a concrete example. Suppose a shipping accident were to be caused by a ship of a Contracting State B near the coast of Contracting State A and that State A’s domestic legislation provided for higher limits than those laid down in the Convention, whereas State B’s legislation provided for lower ones. Suppose further that State B’s ship were then to be brought into the nearest State A port, and that its owner, following seizure of the ship, was obliged to constitute a limitation fund. Would the competent court of State A apply the legislative provisions of State B or would it keep to the limits in force inside its own territory? Once it knew the answer to that question, his delegation would be able to define its position.

Lord Diplock (United Kingdom) said that the court would apply the limitation rules of State A.

Mr. Unkles (Australia) expressed the fear that, if small ships were to be excluded when outside their territorial waters, problems might arise in connexion with salvors operating from their ships. His delegation would therefore prefer to retain the basic text.

Mr. Perrakis (Greece) said that his delegation was in favour of the amendment
suggested in the course of the discussion by the representative of Italy. The position of small ships navigating inside territorial waters was of the greatest importance for a country such as Greece. He thought the French proposal, amended as proposed by the Italian delegation, should be sent to the Drafting Committee.

The Chairman invited the representative of Italy to specify the tonnage figure he wished to include in his proposal.

Mr. Amoroso (Italy) replied that the proposed figure was 100 tons.

The Chairman noted that the Committee of the Whole wished to examine the Italian proposal to insert, in the draft Convention, provisions stipulating that it did not apply to ships of less than 100 tons, despite the fact that the proposal in question had not been submitted in writing.

Mr. Cleton (Netherlands) thought that the United Kingdom representative should have given a rather less categorical reply to the question raised by the representative of Belgium. The issue depended entirely on the rules governing conflict of laws; those rules varied from country to country and had recently undergone considerable change. For instance, a court in the Netherlands would apply, in the case of a collision between two ships registered in another country, the legislation in force in the country of origin of those ships, not the lex fori. He did not think, however, that it was the task of the Conference to settle that question. The proposal under discussion would, by excluding small ships, raise all the problems resulting from the lack of uniformity in the rules on conflict of laws and regulations relating to such ships.

Mr. Bursley (United States) said that the limitation system was also causing him concern, since Article 15(2)(b) and (c) and the figures in square brackets did not appear very satisfactory. Three solutions might be adopted: the first would be to exempt small ships from the scope of the Convention; the second would be to leave each Contracting State free to apply its own rules to such ships; and the third was to leave the way open for reservations. Whatever option was chosen, the results would be much the same, and he thought that it ought to be possible to reach a consensus in favour of the first or second solution, the first being that preferred by his delegation.

With respect to the major problem of tonnage limits, the figures in the basic text needed to be considerably increased; but the proposed amounts were on the whole excessive. The most suitable tonnage appeared to be that proposed by the representative of Norway.

Mr. Philip (Denmark) said that, if the Conference adopted the formula proposed by the French delegation, the figure advocated by the Norwegian delegation should be inserted. He agreed with the reply made by the United Kingdom representative to the question put by the representative of Belgium – namely that, if the French proposal was accepted, the lex fori would apply in all cases. If, however, the suggestion made by the representative of Italy was accepted, a different picture emerged, inasmuch as national legislation would then determine the system of limitation.

Mr. Trotz (German Democratic Republic) agreed with the representative of Norway that ships not operating in international waters should be excluded from the Convention. He wondered if agreement could be reached on the choice of specific figures, because the proposed provision was only a partial solution. His delegation’s position would depend on any decision that might be taken on the amounts to be inserted in Article 6.

Mr. Iturralde (Argentina) agreed with the comments made by the representative of the United States, and thought that 200 tons would be the most suitable figure.
Mr. Makovsky (USSR) said that he had followed carefully the various comments made and was fully aware of the many difficulties involved in the matter under discussion on account both of the different national regulations applicable to conflict of laws and the amounts to be finally adopted in the present Convention. The difficulties raised by small ships had already existed in 1957, however, and the solution adopted in the Brussels Convention had been ratified by many States. He considered that the Committee should take a firm attitude and decide to adhere to the firm and reliable foundations provided by the 1957 Convention. His delegation would support the French proposal and the figure it contained.

Mr. Wiswall (Liberia) thought it preferable to adopt a solution whereby reservations would be expressed rather than a category of ships excluded; that category included vessels used in domestic commerce and operating on inland waterways. Like the representative of the German Democratic Republic, he considered that the efforts on the part of the Working Group to establish limitation amounts were directly relevant to that issue, and he was in favour of a figure of 100 tons.

Mr. Amoroso (Italy) said that the discussion had not disposed of the fears voiced by the representative of Belgium, which were also his own. He was prepared to reconsider the figure he had given, which could be put in brackets, if that would facilitate agreement.

Mr. Carvell (Canada) thought that calculation of tonnage should be made clearer in Article 15 and be identical with the formula adopted in Article 6(4).

Mr. Quigley (Ireland) considered that it would be wrong to forget that their aim was to achieve uniformity and to avoid as far as possible the pitfalls of selecting the most advantageous forum. The best solution would be to leave Contracting States the option of expressing reservations and declaring that the Convention would not apply to a given category of ships. The tonnage limit ought not to be too high, as it was desirable to avoid a plethora of systems.

Mr. Bendjenna (Algeria) stated that his delegation fully endorsed the French proposal. Algeria was a party to the 1957 Convention, which he thought had proved very satisfactory in application.

Mr. Bentein (Belgium) endorsed the remarks made by the representative of Ireland, and hoped that an acceptable solution would be found to the problem of minimum limitation amounts.

Mr. Leon Montesino (Cuba) supported the proposal by the French delegation.

Mr. Perrakis (Greece) said that he could accept either the French proposal, as amended by the representative of the Federal Republic of Germany, or the Italian proposal if the same amendment were included, on the understanding that in either case his position was subject to the decisions to be taken with respect to the amounts to be inserted in Article 6.

Mr. Azouz (Tunisia), on the technical point raised by the Canadian representative, said that he did not see why the tonnage measurement rules in the 1969 Tonnage Measurement Convention, the principles of which were accepted and applied in the framework of Article 6(4), could not be applied to the type of small ship in question. Regulation through domestic legislation would result in too many differences. His delegation was in favour of the figure of 300 tons contained in the French proposal.
The Chairman suggested that the report of the Working Group on revision of limitation amounts and units of account (LEG/CONF.5/C.1/WP.67)\(^{(16)}\) should be passed to the Committee on Final Clauses.

*It was so decided.*

The Chairman said that she would ask the Drafting Committee to take into account the comments of the Canadian and Tunisian representatives. She asked the Committee to indicate their preference with respect to small ships, first by indicating which principle they preferred (total exclusion from the scope of application of the Convention, basic text or reservations), and then their choice of tonnage.

Mr. Tanikawa (Japan) said that he was afraid that there might have been some misunderstanding concerning the number of questions before the Committee. His delegation had provisionally withdrawn its proposal (LEG/CONF.5/C.I/WP.16).

Lord Diplock (United Kingdom), like the representative of Japan, thought that the Committee had to decide on a question of principle: were low tonnage ships to be totally excluded from the scope of application of the Convention; should they be the subject of a reservation; or should they be treated in accordance with the provisions of the basic text? His delegation was against exclusion of ships, but had no preference as between a reservation and the basic text.

The Chairman noted that 9 delegations thought that low tonnage ships should be totally excluded from the scope of application of the Convention and that 28 delegations were in favour either of retaining the basic text of Article 15 or of making a reservation.

She then invited the Committee to decide between the five tonnage figures proposed for Article 15(2)(b) and (c).

[357] The results were as follows:

- In favour of the figure of 500 tons: 4
- In favour of the figure of 300 tons: 17
- In favour of the figure of 200 tons: 8
- In favour of the figure of 100 tons: 5
- In favour of the figure of 20 tons: 3

The Chairman announced that the largest number of delegations, therefore, was in favour of the figure put forward by the French delegation. Those results would be sent to the Drafting Committee.

Mr. Jeannel (France) pointed out that the basic text, which mentioned pleasure craft and fishing vessels, was not the same as the French proposal (LEG/CONF.5/WP.38)\(^{(17)}\) which covered all ships of less than 300 tons. There was a difference of substance between the texts.

The Chairman replied that she had taken it for granted that the reference to pleasure craft and fishing vessels was no longer relevant when the Committee was in favour of 300 tons as the figure.

\(^{(16)}\) See note 13 sub Art. 21.

\(^{(17)}\) See note 15.
Summary Record of the Twenty-fourth Meeting
17 November 1976

[396] The Chairman recalled the decisions provisionally taken by the Committee with regard to paragraph 2; to replace the words “used for” by the words “intended for” in the English text of sub-paragraph (a), and to replace sub-paragraphs (b) and (c) by a single paragraph reading: “ships of less than 300 gross tons”, gross tonnage being defined in accordance with the provisions of Article 6, paragraph 4.

The text as amended was approved (33 votes in favour, none against, and 4 abstentions).

Draft International Convention

[462] 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 gross tons.

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 in its national legislation or of the fact that there are none.

Summary Record of the Twenty-seventh Meeting
18 November 1976

[418] The Chairman said that a missing comma should be inserted in sub-paragraph (a) after “State”.

Mr. Cleton (Netherlands) proposed that, in this paragraph and elsewhere in the Article, the word “depositary” be substituted for “Secretary-General”.

It was so decided.

After some discussion as to the deletion or otherwise of the word “gross” in sub-paragraph (b), Mr. Wiswall (Liberia), who had been anxious for its retention, finally agreed to its deletion provided that the Summary Record stated that the sub-paragraph was to be read in conjunction with Article 6(5).

Plenary Meetings
Summary Record of the Fifth Plenary Meeting
19 November 1976

[484] Mr. Azouz (Tunisia) asked for a separate vote on sub-paragraph 2(a). He proposed deletion of the sub-paragraph or the replacement of the words “ships intended for navigation on inland waterways” by the words “vessels which are not sea-going ships”. The fact was that the Conference on the Law of the Sea had not yet reached agreement on the definition of inland waterways; it was therefore possible, depending on the decision taken on that question, that certain ships would one day be excluded from the field of application of the Convention now under consideration. The present wording of sub-paragraph 2(a) might thus give rise to problems of interpretations.
Mr. Noebel (Federal Republic of Germany) withdrew his delegation’s proposal concerning paragraph 2 in document LEG/CONF.5/WP.6.

Mr. Jeannel (France) seconded the Tunisian representative’s proposal for the deletion of sub-paragraph 2(a), and also the request for a separate vote on that sub-paragraph.

There were 3 votes in favour of deletion, 23 against and 11 abstentions; the proposal was therefore rejected.

Mr. Lyon (Canada) proposed a sub-amendment to the English text of the amendment to paragraph 4 proposed in document LEG/CONF.5/WP.9 by the addition of the word “to” after the word “adapted”.

The Canadian amendment was adopted.

[485] Article 15, as set forth in Document LEG/CONF.5/C.3/1/Add.1 and modified by LEG/CONF.5/WP.9 was adopted as a whole (30 votes in favour, 1 against and 8 abstentions).

1976 Convention

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 DEPOSITORY OF THE LIMITS OF LIABILITY ADOPTED IN ITS NATIONAL LEGISLATION OR OF THE FACT THAT THERE ARE NONE.

(18) The relevant part of Document LEG/CONF.5/WP.9 is quoted below:

15. Article 15,2(a) and (b)

The English and French texts are modified by the addition of a comma in (a) after “State” and the deletion of “gross” before “tons” in (b).

The concluding sentence of paragraph 2 and also of paragraph 4 in both language texts are modified to substitute the word “depositary” for “Secretary-General”.

(19) See note 18.
Paragraph 3

Diplomatic Conference
Committee of the Whole
Summary Record of the Sixth Meeting
4 November 1976

[253] Mr. Tanikawa (Japan) drew attention to his delegation’s proposal for the addition of a new sub-paragraph (e) (Section III of LEG/CONF.5/C.1/WP.14). Japan considered that an international convention was obligatorily applicable only in cases having an international character; in other words, the Contracting State had a duty to apply the Convention in cases in which the interests of nationals of other Contracting States were in question, but had the right to apply different rules in purely domestic cases. His delegation therefore proposed the exclusion from limitation of any claims in respect of damage caused to nationals of a Contracting State by a ship registered in the same Contracting State in order to make clear that such claims had no international character and were completely outside the application of the Convention.

Mr. Tardana (Indonesia) supported that proposal.

[254] Mr. Herber (Federal Republic of Germany) too was inclined to support the proposal, but suggested it might be more appropriate if it took the form of a reservation, to be included at the end of the Convention, rather than under Article 3.

Mr. Tanikawa (Japan) had no objection to the deferment of discussion of his proposal to a later stage, but could not agree to its taking the form of a reservation. In reply to a suggestion from the Chairman, he expressed willingness for it to be discussed in connexion with the Final Clauses.

Lord Diplock (United Kingdom) said his delegation was opposed to the exemption from the Convention of claims of that kind.

Mr. Perrakis (Greece) suggested that it would be more appropriate to discuss the proposal in the context of Article 15(2). That suggestion was adopted.

Summary Record of the Seventeenth Meeting
11 November 1976

[347] Mr. Tanikawa (Japan) introduced his delegation’s proposal (LEG/CONF.5/C.1/WP.49) for the insertion of a new paragraph in Article 15. It was designed to make it
quite definite that claims which were of purely domestic interest and had no international character were outside the scope of the Convention, and was submitted in replacement of the proposal in document LEG/CONF5/C.1/WP.14 for a new sub-paragraph (e) in Article 3.

Mr. Rognlien (Norway) seconded the Japanese proposal.

Mr. Philip (Denmark) had no objection to the principle underlying the Japanese proposal, but was critical of its formulation. As it stood, the proposal made it possible, for example, for a Danish ship sailing in Japanese waters and with Japanese nationals on board which collided with a Japanese ship registered in Japan and not in international waters, to fall outside the scope of the Convention. Japanese nationals on the Danish ship should not be excluded from the scope of the Convention. [348] If the wording of the Japanese proposal were changed, his delegation could support it.

Mr. Tanikawa (Japan) agreed that the Japanese proposal could be amended to take that situation into account.

Mr. Tardana (Indonesia) strongly supported the Japanese proposal, which specifically referred to ships not engaged on international voyages.

Mr. Rognlien (Norway) said that although his delegation had seconded the Japanese proposal, it considered that the text should be amended so as to indicate clearly that it referred to claims in respect of damage caused only to nationals of the Contracting State. Perhaps phraseology could be added specifying that the subparagraph referred to claims in respect of damage to nationals of the Contracting State provided they had no consequences on the claims by claimants not nationals of the Contracting State. If it was made clear that only nationals were involved, the phrase “not engaged on international voyages” could perhaps be deleted. He suggested that the proposal should be referred to the Drafting Committee.

Mr. Roth (Federal Republic of Germany) supported the Japanese proposal, which would enable the question of ferries to islands near his country’s coastline to be made subject to the provisions of national law. Although his country considered such traffic to be sea traffic, some countries considered it to be inland waterway traffic.

Mr. Makovsky (USSR) supported the Japanese proposal in principle, but agreed with the comments made by the Norwegian representative. The criterion should be whether the incident had any effect on foreign interests: if foreign citizens were affected, the Convention should apply.

Mr. Ptak (Poland) had no objection to the Japanese proposal, but doubted whether it was necessary. Moreover, if the proposal was adopted, it might introduce the new difficulty of defining a ship not engaged on international voyages.

Mr. Cotton (Observer, ICS), speaking at the Chairman’s invitation, submitted that if the Japanese proposal was adopted, a case in which nationals and non-nationals were involved in the same incident might lead to an increase in the total liability. Furthermore, it might seem unfair that nationals and non-nationals should be treated differently. Careful attention to drafting was essential before such a proposal could be accepted.

Proposal of the Japanese delegation for the Drafting Committee
Article 15

“3. A Contracting State 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 national of other [Contracting] States are in no way involved.”
Mr. Nilsson (Sweden) could support the idea underlying the Japanese proposal, but would have to consider a re-draft before committing himself to approving it.

The Chairman called for an indicative vote on the principle of the Japanese proposal on the understanding that its application should not adversely affect claimants who were nationals of other States.

The principle of the Japanese proposal (LEG/CONF.5/C.1/WP.49)\textsuperscript{22} was approved (21 votes in favour, 1 against, and 12 abstentions).

The Chairman proposed that the text be referred to the Drafting Committee, and invited the Danish and Japanese representatives to co-operate in preparing a new draft.

It was so decided.

Draft International Convention

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.

Summary Record of the Twenty-fifth Meeting
17 November 1976

The Chairman called for a vote on the new paragraph proposed by the Japanese delegation (LEG/CONF.5/C.1/WP.49/Rev.1), which had been provisionally approved and was to be found on page 456 of the Draft Articles drawn up by the Drafting Committee (LEG/CONF.5/C.3/1).

The Japanese proposal was approved (26 votes in favour, none against, and 11 abstentions).

Plenary Meetings
Summary Record of the Fifth Plenary Meeting
19 November 1976

Article 15, as set forth in Document LEG/CONF.5/C.3/1/Add.1 and modified by LEG/CONF.5/WP.9,\textsuperscript{23} was adopted as a whole (30 votes in favour, 1 against and 8 abstentions).

1976 Convention

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.

\(\text{(22)}\) See note 21.

\(\text{(23)}\) The modification did not relate to paragraph 3.
Paragraph 2

The Chairman recalled that the Committee had already considered paragraph 2, but there were now two proposals for additions to it.

Ms. Bruzelius (Norway) introduced her delegation’s proposal (LEG/CONF.5/C.1/WP.55), for a new sub-paragraph (d) adding drilling vessels used for the purpose of exploring or exploiting the natural resources of the sea-bed to the categories of ship in respect of which States could regulate the system of limitation of liability by national law. Norwegian interests owned a number of drilling vessels, and a Government committee appointed to study rules to regulate their legal status had concluded that there was a need for national, and if possible international, rules governing such vessels, since they operated in different parts of the world. If there were no provision in the Convention allowing for special rules for the limitation of liability in respect of drilling ships, which were considered as ships and were sea-going, they would be entitled to limitation of liability under the Convention, whereas platforms would not be so entitled since they were not ships. Her delegation considered that drilling ships should not be subject to different treatment from platforms, and therefore proposed that both should be subject to the provisions of national law giving them equality regarding limitation of liability. Both types had tonnages below 10,000 which would give them inadequate liability limitation under the Convention. States should therefore be allowed, if they so wished, to introduce their own domestic legislation for the purpose.

Mr. Nilsson (Sweden), Mr. Quigley (Ireland) and Mr. Tardana (Indonesia) seconded the amendment.

Mr. Perrakis (Greece) could have accepted the Norwegian proposal if it applied to paragraph 3, but felt that as an addition to paragraph 2 – which was designed to enable countries to introduce lower liability limits for vessels of secondary importance such as those used for the livelihood of poor fishermen or local craft on inland waterways – it could have disastrous consequences in the event of damage. For political reasons, too, his delegation would oppose the amendment. At the United Nations Law of the Sea Conference, great concern had been expressed regarding the effects of the activities of drilling platforms in the continental shelf and the implications of such activities within areas under foreign jurisdiction, particularly in case of accident. His Government could not accept a provision that would enable
States in which a drilling vessel was registered to treat it differently from other vessels. He would oppose such an addition to paragraph 2.

Ms. Bruzelius (Norway) explained that her delegation had no intention of introducing for drilling vessels, a limit of liability lower than the one which would be established by the present Convention; on the contrary, her Government’s aim was to introduce higher limits for drilling vessels of all types. She had no particular preference as to whether the proposed text could feature in paragraph 2 or paragraph 3 of Article 15, but had thought that the Conference might prefer the former. Norway had never interpreted paragraph 2 as permitting only lower limits of liability for the types of ship listed, but rather as leaving Contracting States free to regulate those limits by national legislation. She recalled that the IMCO Legal Committee had on many occasions discussed the possibility of introducing specific rules for pleasure craft which would in fact result in much higher limits of liability than those envisaged in the provisions under discussion.

Mr. Douay (France) fully appreciated the arguments advanced by the Norwegian representative, but could not accept her proposal. He agreed that the case of small vessels engaged in exploiting the natural resources of the sea-bed presented something of a problem, and he could agree to the exclusion from the Convention of the floating platforms defined under paragraph 3(b). France had national legislation applicable to both ships and other structures engaged in exploring or exploiting the continental shelf, but that legislation did not regulate questions concerning the status of the vessel or questions concerning the shipowner’s liability. At what precise point, he wondered, did a vessel engaged in exploiting the sea-bed (which benefited from the Convention) turn into a very small vessel engaged in exploitation of the sea-bed (which was excluded from the scope of the Convention)? That situation might lead to a number of difficulties.

If vessels in that category were usually less than 10,000 tons, as stated by the Norwegian representative, there was a danger that their limitation of liability would be inadequate in relation to the risks they were running. That danger existed not only under the terms of the 1957 Convention but also under all the proposals that had hitherto been discussed. The Conference should envisage a higher limitation for low tonnage ships, in recognition of the cases where the limitation for small vessels would be inadequate. If the Norwegian proposal were adopted, the costs of insurance for the vessels envisaged were likely to be greatly increased; it would be difficult, for example, to cover third party risk in cases where two such vessels were involved in a collision, since it would not be easy to establish whether the ship had ceased to be a platform and become a vessel.

Mr. Wiswall (Liberia) said that his delegation could support the Norwegian proposal, though it had no strong views as to whether it should be placed in Article 15 or elsewhere in the Convention. However, he wished to propose two amendments. First, his delegation saw no reason why such a vessel involved in an incident in the ordinary course of navigation should not be entitled to invoke limitation of liability on the basis of its tonnage as a carrying vessel. He therefore proposed that the paragraph be amended by the addition of the phrase “when in use for that purpose” after “resources of the sea-bed”.

Secondly, an increasing number of vessels equipped for drilling were engaged not in commercial exploitation but in scientific research, and should be entitled to the benefits of the Convention. He therefore proposed that the word “commercially” should be added before “exploring or exploiting”.
Mr. Philip (Denmark) supported the Norwegian proposal. He could also support the first Liberian amendment since it was not detrimental to the intent of the proposal. However, he could not agree to the restriction which the Liberian representative sought to introduce in his second amendment. It was likely that new legislation would soon be introduced to cover drilling vessels, but in the meantime it was reasonable to make provision for them as proposed.

Mr. Cleton (Netherlands) said the relationship between paragraphs 2 and 3 of Article 15 was not clear to him. If the limitation of liability for certain vessels was to be regulated by national law, it followed that those vessels were in practice excluded from the Convention. Paragraph 2, as at present worded, represented a new concept in an international convention, and he did not see how it was to be differentiated from paragraph 3.

It was important for the Convention to make clear that for the various categories of vessels under paragraph 2, Contracting States were free to provide higher limitation of liability, or even unlimited liability.

He could concur with the Norwegian view that vessels engaged in drilling operations presented a problem and that there should be a new regime to cover them. He could not, however, support the argument that the criterion adopted should be low tonnage; for if that criterion were adopted, it would follow that for some vessels the limitation would be lower although they were within a category that was particularly at risk.

He could support the first amendment proposed by Liberia, but feared that if the vessels in question were to be limited to those engaged in commercial exploitation, it would mean that any future national or international regime covering drilling vessels would be too restricted.

Mr. Whitaker (United Kingdom) considered that paragraph 2 was in the nature of a reservation and should be separated from paragraphs 1 and 3, which were basically concerned with the scope of the Convention. It was difficult to discuss the proposed amendment to paragraph 2 on its own without knowing what was to be the content of the other parts of the paragraph.

In his view, drilling vessels were of a type which called for uniform rules in a way that the vessels described under paragraph 2(a) (b) (c) did not. The former might be of substantial size and capable of inflicting considerable damage. If the criterion of tonnage measurement was not suitable, it might be possible to introduce a special provision to cover them along the lines of Article 7, which established a limit not based on tonnage for passenger ships. If the intention of paragraph 2 was to give Contracting States freedom to provide higher limitations of liability, that intention should be clearly stated. As now worded, the paragraph merely left it open to Contracting States to provide either a higher or lower limitation.

His delegation could not at the present stage support the Norwegian proposal. While he would not object to the exclusion from the Convention of claims for damage arising from exploitation of the sea-bed, and while he could accept separate national limitations for ships engaged in such operations on their own continental shelf, he could not agree that for purposes of limitation such ships should not generally be treated like other ships, since the risks they incurred were precisely comparable to those incurred by other ships engaged in navigation.

Mr. Makovsky (USSR) thought it unwise to exclude drilling vessels from the scope of the Convention, although it was unimportant whether such vessels were dealt with under paragraph 2 or paragraph 3 of Article 15. The number of vessels engaged
in drilling operations was constantly increasing and presented a considerable risk to normal shipping. He understood the reasons underlying the Norwegian proposal, but felt it would be sufficient if those reasons were set out in the Summary Record. Any provision which left it open to States to provide lower limitations of liability for drilling vessels was unacceptable.

As he understood it, the Convention would not prevent any State from establishing higher limitations than those laid down in the Convention for its own vessels; if it were thought necessary to spell that out as far as drilling vessels were concerned, a provision could be introduced to that effect. The best solution would be to establish a specific international instrument covering vessels of that type; but in the meantime they should be covered by the Convention, which at least provided for a minimum limitation.

Mr. Rein (Observer, CMI), speaking at the invitation of the Chairman, said that there seemed to be some misunderstanding regarding the Norwegian proposal. All maritime conventions applied to sea-going ships; however, the majority of structures that were now used for drilling operations at sea were not in fact ships, and those which were shiplike in shape were very few. For example, out of 60 drilling platforms in the Norwegian fleet, only one was shaped like a ship. The present situation was that neither the 1957 Convention nor the new Convention would be applicable to the majority of drilling vessels.

The CMI had undertaken the task of regulating the situation regarding drilling vessels, and had concluded that it was bound by tradition to regard drilling ships as being covered by the regime of international conventions and drilling platforms as being outside the scope of those conventions. It had considered it undesirable for all structures employed in drilling operations to be subject to the same rules, whether or not they looked like a ship. On the other hand, where insurance was concerned, both vessels and platforms were dealt with on the same terms, both for hull and P and I insurance. In addition, when engaged in drilling operations, all structures were subject to the regime imposed on them by the Continental Shelf State, and hence would bear unlimited liability for any pollution caused during drilling.

The object of the Norwegian proposal was to allow governments to create a sensible regime to cover all units engaged in drilling, whether or not shaped like a ship. Its purpose was not to lessen the obligation of such vessels but rather to subject them to a stricter regime.

Eventually, all drilling structures would be subject to a new international convention. The agenda of the forthcoming CMI conference, scheduled to take place in Rio de Janeiro in 1977, would include such a convention; but pending its production something ought to be done, and Norway was merely asking to be allowed to treat drilling ships in the same way as drilling platforms for the interim period.

On the question of whether such units should be excluded from the Convention (which would mean that their liability was unlimited unless regulated by national legislation) or included in the Convention under Article 15(2), he favoured the latter solution.

Mr. Nilsson (Sweden) wholeheartedly endorsed the explanation given by the CMI Observer. Several of the previous interventions had been based on a misunderstanding of the Norwegian proposal. The main reason for his delegation’s support of that proposal was its belief that the same limitation of liability should be applied to all structures engaged in the activity of exploration and exploitation of the sea-bed. It was not only a question of creating a sensible limitation for such structures, but also of avoiding any ambiguity which might arise from the exception provided for
floating platforms under paragraph 3(b), since it was difficult to make a clear
distinction between a floating platform and a drilling ship.

With regard to the proposal to limit the scope of the new sub-paragraph 2(d) to
operations within the drilling phase, a limitation of that kind would give rise to
difficulties because of the problem of defining whether operations were inside or
outside the drilling phase. He could not support the proposal that a special limitation
of liability for drilling vessels should be provided in the Convention. It would be very
dangerous to try to develop a special provision to cover the minority of vessels that
were engaged in exploitation of the sea-bed, particularly at such a late stage in the
Conference’s deliberations. To do so would be to broach many complex questions
which his delegation was not prepared to pronounce on at the present stage.

It was not his Government’s intention to introduce a lower limit than the one
which would emerge from the Convention; it was rather to encourage the introduction
of a higher limit covering all types of drilling equipment, whether vessels or platforms.

Mr. Petrakis (Greece) said the CMI Observer’s explanation and the Swedish
representative’s intervention had done nothing to allay his fears. As he saw it, the
arguments they had advanced did not tally with what was set out in the text. It was
claimed that the intent of the Norwegian proposal was to increase limitation; but its
effect would be to confer absolute power on Contracting States to introduce lower
limitations, or indeed to have none at all. He supported the views expressed by
the United Kingdom delegation, and found the Norwegian proposal unacceptable.

Mr. Bursley (United States) favoured the Norwegian proposal in the general
sense. It had to be remembered, however, that apart from the complexities already
mentioned, a substantial proportion of mobile drilling platforms were not of ship
configuration. The Norwegian representative had spoken of those in ship form, but
those of other nations were often of other types. For the latter to be treated on the basis
of their tonnage would be unrealistic, in view of their actual size. Moreover, they were
not self-propelled. Usually they moved in complex flotillas and were insulated from
normal marine hazards.

In the United States, permits for such equipment incorporated unlimited liability
features, and he considered that to be highly desirable. He was inclined to favour
placing the proposed Norwegian text in paragraph 3, so as to remove drilling vessels
from the scope of the Convention, although he realized that it would perhaps be more
logical to place it in paragraph 2, as the Norwegian delegation had proposed. In any
case, the proposal should be redrafted to accommodate the various situations.

Ms. Bruzelius (Norway) explained that her delegation’s intention had been to
make it clear that drilling vessels would be exempted from applicability only where
national legislation had been adopted and was applicable to such ships. It had also
been intended to refer only to drilling ships, since floating platforms would obviously
fall outside the scope of the Convention. If the proposal was not acceptable in
connexion with Article 15, it might perhaps be feasible to make a specific provision in
the Convention referring to cases in which national legislation had established higher
limits and indicating how the provision might fit in with a future international
convention on drilling ships. She wished to make it clear, however, that her
Government attached great importance to the possibility of being able to regulate
drilling ships on an equal footing with drilling platforms.

The Chairman called for an indicative vote on the principle of the Norwegian
proposal to allow States to introduce higher limits for drilling ships than were provided
for in the Convention.
The principle of the Norwegian proposal (LEG/CONF.5/C.1/WP.55)\textsuperscript{25} was accepted (18 votes in favour, 1 against and 15 abstentions).

The Chairman then proposed the establishment of a small Working Group to prepare a revised text of the Norwegian proposal. She suggested that it be composed of the delegations of Norway, the United Kingdom and Liberia, and that it should prepare a text for the following morning.

It was so decided.

Summary Record of the Eighteenth Meeting
12 November 1976

[352] The Chairman recalled that the representative of India had been going to take advice on the proposal submitted by his delegation (LEG/CONF.5/C.1/WP.42).

Mr. Nair (India) said that, after consulting with the United Kingdom delegation, and the CMI Observer, he wished to withdraw his proposal.

Mr. Tanikawa (Japan), introducing his delegation’s proposal to delete Article 15(3) (LEG/CONF.5/C.1/WP.15),\textsuperscript{26} said that, in its view, floating platforms should be considered as ships.

The Chairman noted that there was no support for the Japanese proposal, which could accordingly not be considered.

Mr. Perrakis (Greece) reminded the Committee that, during the discussion on paragraph 2(b) of the Article on reservations proposed by the Japanese delegation (LEG/CONF.5/C.1/WP.16),\textsuperscript{27} the representative of Japan had said that he would be reverting to the matter when Article 15(2) was considered.

[357] Still on the subject of Article 15, she recalled that a Working Group had been set up the previous day to draft the provisions covering ships constructed for or engaged in drilling. The text drafted by that Group was given in LEG/CONF.5/C.1/WP.74\textsuperscript{28} which was now before the Committee.

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\textsuperscript{(25)} See note 24.

\textsuperscript{(26)} Document LEG/CONF.5/C.1/WP.15
Amendment submitted by the Japanese delegation
IV Article 15
Paragraph 2 and 3 should be deleted.

\textsuperscript{(27)} See note 9.

\textsuperscript{(28)} Document LEG/CONF.5/C.1/WP.74
12 November 1976
Report of the Working Group on the drafting of a new paragraph of Article 15 dealing with ships constructed for and engaged in drilling
1. The Working Group met on 11 November 1976. It was composed of the following delegations:
Liberia
Norway
United Kingdom
2. The Group agreed to submit to the Committee of the Whole the following new paragraph 3 of Article 15:
“3. This Convention shall not apply to ships constructed for and engaged in drilling:
(a) when a Contracting State has established under its national legislation a higher limit of liability than that otherwise provided for in Article 6; or

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Mr. Whitaker (United Kingdom), Chairman of the Working Group, introducing the Group’s report (LEG/CONF.5/C.1/WP.74), recalled that the provisions concerning ships “constructed for and engaged in drilling” had been formulated to meet the concern expressed the previous day by the Norwegian representative. Thus Contracting States would be free to introduce higher limits by national law or by accepting any future convention with respect to such ships. The Working Group thought that the proposal with respect to paragraph 4(b) could be further improved so as to eliminate the possibility of differing interpretations.

Mr. Unkles (Australia) said that he could support the Working Group’s text, but proposed to add to renumbered paragraph 4(b) on page 133 the words “and engaged in” after “constructed for”, so as to bring the wording into line with that of paragraph 3.

Mr. Perrakis (Greece) said that the text was not satisfactory either as to substance or to form. First, paragraph 3(b) should make it clear which Contracting State was involved. He would prefer phraseology such as “in cases where a higher limit of liability than that otherwise provided for in Article 6 has been established . . .”. Second, paragraph 3(b) now contained an entirely new concept of international legislation: it mentioned a convention not yet in existence. In his view, paragraph 3(b) was quite useless.

Mr. Filipovic (Yugoslavia) supported the principle of the text proposed in LEG/CONF.5/C.1/WP.74, which faithfully reflected the points made in the previous day’s discussion; but he agreed with the representative of Greece that paragraph 3(b) was superfluous.

In addition it would be advisable to make it clear on page 133 of the document, that the exploration was non-commercial.

Mr. Whitaker (United Kingdom), in reply to a request for clarification concerning paragraph 3 (a) from the Chairman, explained that reference was made to national legislation because the ship was carrying out drilling operations under an authorization granted by the State in question.

Mr. Quigley (Ireland) pointed out that some ships engaged in drilling operations had not been “constructed” but “adapted” for the purpose. Were such ships covered by the provisions under discussion?

Mr. Philip (Denmark) said that, in principle, his delegation supported the proposal. However, he agreed with the representative of Greece that the text of Article 15(3)(a) should be made more specific. In the introduction to paragraph 3, the words “in a Contracting State” might perhaps be added after “in drilling”. He did think, however, that sub-paragraph (b) should be retained.

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

Accordingly, present paragraph 3 should be renumbered paragraph 4. In conformity with the agreed wording of new paragraph 3 the Working Group suggested the following change in the wording of (b) of that paragraph. Sub-paragraph (b) of re-numbered paragraph 4 should read as follows:

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

(29) See note 28.
Mr. Vonau (Poland) had some doubts about the word “utilisés” in the French text, which did not have exactly the same meaning as the English “engaged in”. It seemed to mean that a ship en route to the place where the drilling operations were being carried out would not be excluded from the scope of application of the Convention; it was only during the drilling operations that it would be excluded.

Mr. Jeannel (France) agreed with the Polish representative: the word “utilisés” in the French text had a much wider meaning than “engaged in”. The text should therefore be amended along the following lines: “This Convention shall not apply to ships constructed for drilling while engaged in such operations.”

The definition of the “Contracting State” in Article 15(3)(a) and (b) should be made more explicit. Either a ship was drilling on the continental shelf in the “economic zone of a State” – to borrow an expression used at the Conference on the Law of the Sea – and was then perhaps subject to the liability laws of the State in question, or it was drilling outside areas under national jurisdiction, in which case it was subject to the law of the flag State. Which State the “Contracting State” actually was, therefore, had to be made clear, and that was a question of drafting.

Summary Record of the Nineteenth Meeting
12 November 1976

[359] The Chairman reverted to the report of the Working group on the drafting of a new paragraph of Article 15 dealing with ships constructed for and engaged in drilling (LEG/CONF.5/C.1/WP.74). She doubted whether it was necessary to continue the discussion on drilling vessels at the present stage, and suggested that delegations wishing to speak on the report should communicate their comments to members of the Working Group and that the latter should meet again at the beginning of the following week to prepare a new draft, in the light of those comments and suggestions made at the previous meeting.

Draft International Convention
Document LEG/CONF.5/C.3/1
16 November 1976

4. This Convention shall not apply in a State Party to this Convention to ships constructed for 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.

(30) See note 28.
Summary Record of the Twenty-fourth Meeting
17 November 1976

[396] Mr. Whitaker (United Kingdom) submitted the amendments to the text of the original report of the Working Group on the drafting of a new paragraph of Article 15 dealing with ships constructed for and engaged in drilling (LEG/CONF.5/C.1/WP.74), which the Working Group proposed to make in order to meet the criticisms levelled at certain expressions in that report. In the introductory sentence, the phrase “before the courts of a Contracting State” would be inserted after the words “shall not apply”, and in sub-paragraphs (a) and (b) the words “when a Contracting State” would be replaced by the words “when that State”.

Mr. Lyon (Canada) pointed out that the emphasis in the discussions that had previously taken place had been on the operational aspect of the problem, and that it had been a question first and foremost of ships used for drilling operations. The present wording, which related on the one hand to the ship itself, and on the other to the situation in which it found itself, did not cover either the case of ships constructed for other purposes and adapted for possible use for drilling operations. He suggested that a form of words be used such as “ships constructed for or adapted to and engaged in drilling operations”.

Mr. Whitaker (United Kingdom) felt able to accept the Canadian suggestion on behalf of the Working Group, which had at no time envisaged the interpretation in a narrow sense of the expression used.

Mr. Makovsky (USSR) had no objection to sub-paragraph (a), but questioned the need for sub-paragraph (b). In point of fact, the Convention would not apply in the case of a State Party which had concluded with other States non-Parties a separate Convention specifying a completely different system of liability limitation.

Mr. Douay (France) said that while he had no intention of calling into question the Working Group's decisions, he wished to point out that the French version of the draft Articles prepared by the Drafting Committee contained a number of errors. The amendment proposed by the Chairman of the Working Group whereby the words “before the courts of a State Party” would be inserted in the introductory sentence disposed of the first of the points troubling him. However, the wording of paragraph 4 of the French text (Annex to LEG/CONF.5/C.3) did not fully render the meaning of the English words “engaged in”. His delegation considered that it would be advisable to replace those words by “aux navires construits pour les opérations de forage et lorsqu’ils sont utilisés pour ces opérations”, which was a more faithful rendering of the original English. Similarly, in sub-paragraph (a), the words “under its national legislation” ought not to be translated by “dans le cadre de sa législation nationale”.

His delegation hoped that the Drafting Committee would bear those comments in mind when framing the definitive text of the paragraph in question.

Mr. Whitaker (United Kingdom) recalled that there had in fact been a difference of opinion at the time that proposal had been discussed, and that one delegation had been against retention of sub-paragraph (b), while another wished to retain it. In the event of the United Kingdom becoming Party to a new Convention on ships engaged

(31) Reference is made here to the French text of the Draft International Convention.
in drilling, all it would do would be to specify in its legislation the liability limits laid down in that Convention.

Mr. Bendjenna (Algeria) shared the fears expressed by the representative of the USSR and was therefore unable to agree to sub-paragraph (b) of the new paragraph 3.

The Chairman called for a vote on the Working Group’s proposal concerning sub-paragraph (a) of the new paragraph 3 as amended in the course of the meeting. The proposal was approved (28 votes in favour, none against and 9 abstentions).

The Chairman called for a vote on the Working Group’s proposal concerning sub-paragraph (b) of the new paragraph 3 as amended in the course of the meeting. The proposal was approved (9 votes in favour, 5 against, and 23 abstentions).

The Chairman drew attention to the proposal in LEG/CONF.5/C.1/WP.7432 to amend sub-paragraph (b) of paragraph 3 of the draft text (the provision concerning floating platforms) and to renumber the latter paragraph as paragraph 4.

Mr. Vonau (Poland) wondered whether the wording of the proposed sub-paragraph was sufficiently comprehensive, and whether it might not give rise to misinterpretation by specialists on the law of the sea, since it might be regarded as excluding the subsoil of the sea-bed. It would be advisable to stipulate expressly that the provisions related to the exploration or exploitation of the natural resources of the sea-bed and its subsoil, thus completing sub-paragraph 4(b) in that sense.

His delegation also deemed it desirable to include floating platforms used for scientific research in sub-paragraph (b).

Mr. Whitaker (United Kingdom) believed he was expressing the views of the other members of the Working Group in agreeing that reference to the subsoil of the sea-bed could indeed be inserted in sub-paragraph (b). Moreover, speaking for his delegation, he saw no obstacle to a reference to the inclusion of the floating platforms mentioned by the Polish representative; he suggested that that end would be achieved by not being specific and instead employing the simplest form of expression, namely, “floating platforms”.

Mr. Unkles (Australia) pointed out that it might be better to retain the words “for the purpose of exploring or exploiting”, which had already been used in a text approved by the Committee and relating to ships.

The Chairman called for a vote on the text of sub-paragraph (b) of the original paragraph 3, which now became paragraph 4, as amended in the course of the meeting by the representative of Poland. The text of sub-paragraph (b) was approved (19 votes in favour, 1 against and 17 abstentions).

The Chairman called for a vote on the new paragraph 4 (paragraph 3 of the basic text) as amended in the course of the meeting, as a whole. The new paragraph 4 was approved (25 votes in favour, 1 against and 13 abstentions).

The Chairman called for a vote on the proposal by the Norwegian delegation (LEG/CONF.5/C.1/WP.70) which appears on page 455 of the Draft Articles.33

(32) See note 28.
(33) See note 13.
The Norwegian proposal was approved (26 votes in favour, 4 against, and 7 abstentions).

Mr. Whitaker (United Kingdom) requested that the wording of Article 15(3) be concorded with that already approved for the special limits of liability.

The Chairman put that proposal to the vote after noting that it was supported by other delegations.

The United Kingdom proposal was approved (26 votes in favour, 4 against and 7 abstentions).

The Chairman accordingly invited the Drafting Committee to act on that proposal.

Draft International Convention

4. The Courts of a State Party shall not apply this Convention to ships constructed for 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 Secretary-General accordingly.

Summary Record of the Twenty-seventh Meeting
18 November 1976

[418] The Chairman said that it had been agreed the previous day to include the words “or adapted” after “constructed” in the second line.

Mr. Wiswall (Liberia) said that the Drafting Committee had thought the addition unnecessary but he himself had no objection provided that it was understood that the adaptation must be one that actually altered the structure of the vessel. He asked for his statement to be included in the Summary Record.

The Chairman said that the question had been discussed in the Committee of the Whole; they had been told that the text as it stood was sufficient, but had decided that to add “or adapted” could do no harm. She thought that they had better stand by their decision provided that the Committee accepted the Liberian representative’s interpretation.

It was so decided.

Mr. Filipovic (Yugoslavia), referring to sub-paragraph (b), said that any future convention was expected to provide for higher limits; what would happen if that proved not to be the case?

The Chairman asked him to raise the question in the Plenary session and to propose a suitable wording.
Plenary Meetings
Summary Record of the Fifth Plenary Meeting
19 November 1976

[484] Mr. Makovsky (USSR) asked for a separate vote on sub-paragraphs 4(a) and (b). In the case of sub-paragraph (b), it was possible that a State Party to the present Convention might apply a different Convention in its relations with certain States, and there was no certainty that that other Convention would stipulate the same liability limits. Sub-paragraph (b) might therefore open the way to partial denunciation of the Convention.

Sub-paragraph 4(a), as set forth in document LEG/CONF.5/C.3/1/Add.1 and LEG/CONF.5/WP.9 (as amended by Canada) was adopted (30 votes in favour, none against, 8 abstentions).

Mr. Zivkovic (Yugoslavia) endorsed the USSR representative’s comments and proposed the deletion of sub-paragraph 4(b), which would substantially modify the established principles of international law.

Mr. Bendjenna (Algeria) supported the Yugoslav representative’s proposal.

There were 8 votes in favour of the proposal, 11 against and 16 abstentions; the proposal was therefore rejected.

Sub-paragraph 4(b) was adopted (15 votes in favour, 7 against and 17 abstentions).

Article 15, as set forth in document LEG/CONF.5/C.3/1/Add.1 and modified by LEG/CONF.5/WP.9, was adopted as a whole (30 votes in favour, 1 against and 8 abstentions).

1976 Convention

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.

(34) The relevant part of Document LEG/CONF.5/WP.9 is quoted below:
16. Article 15,4
The English and French texts are modified to insert after the word “constructed” the words “or adapted”.

PART I – THE TRAVAUX PRÉPARATOIRES OF THE LLMC 1976

Chapter IV - Scope of application
Paragraph 5

Diplomatic Conference
Draft International Convention

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.

Committee of the Whole
Summary Record of the Twenty-sixth Meeting
18 November 1976

[405] The Chairman invited the Committee to continue reviewing the text of the Drafting Committee’s report (LEG/CONF.5/C.3/1 and LEG/CONF.5/C.3/1/Add.1), in order to assess whether it faithfully reflected the substantive decisions which the Committee had taken.

Summary Record of the Twenty-seventh Meeting
18 November 1976

[418] There were no comments.

Plenary Meetings
Summary Record of the Fifth Plenary Meeting
19 November 1976

[484] Article 15, as set forth in Document LEG/CONF.5/C.3/Add.1 and modified by LEG/CONF.5/WP.9, was adopted as a whole (30 votes in favour, 1 against and 8 abstentions).

1976 Convention

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.
Diplomatic Conference
Committee of the Whole
Summary Record of the Seventeenth Meeting
11 November 1976

The Chairman drew attention to the Indian proposal (LEG/CONF.5/C.1/WP.42) for a new sub-paragraph (d) to Article 15, paragraph 2.

Mr. Nair (India) said that the proposal was self-explanatory. It should be remembered that a vessel was capable of giving rise to maritime claims right from the time of launching. His delegation felt that it would be in the interest of the shipbuilding industry of Contracting States to have the right to extend the system of limitation of liability to vessels under construction within their territories.

Mr. Filipovic (Yugoslavia) seconded the Indian proposal.

Mr. Rognlien (Norway) wondered if ships under construction could be regarded as sea-going ships. If they were not, they did not fall within the scope of the Convention. If, however, they were moved by their own engine at sea, they should not be excluded.

Mr. Rein (Observer, CMI), speaking at the Chairman’s invitation, pointed out that it was recognized in both Conventions on the Limitation of Liability that once a ship was waterborne the rules of the Convention should apply whether the vessel was self-propelled or not. A ship under construction became a ship as soon as it was afloat. The Indian amendment was therefore unnecessary.

Mr. Cleton (Netherlands) found the Indian proposal puzzling. When the Convention was silent on the question of whether a ship under construction was a sea-going one or not, it was for national legislation to decide. In his country, it was not necessary for a vessel to be waterborne in order to be considered a ship: as soon as it had reached a certain shape, it would be considered to be a vessel. He was afraid that

Proposal submitted by the delegation of India
Article 15
Under Article 8 of the 1957 Convention on Limitation of Liability of Shipowners, Contracting States have the right to decide what other classes of ships shall be treated in the same manner as sea-going ships for purposes of that Convention. Under that Article, our country extended the right of limitation of liability to the owners, builders or other persons having an interest in any vessel built in India from the time of launching of the vessel until its registration. The corresponding Article in the draft of this revised Convention is Article 15, paragraph 2, but this only permits Contracting States to regulate by national legislation the System of Liability to be applied to certain specific classes of ships which do not include ships under construction. It is, however, desirable in the interest of the shipbuilding industry of the Contracting States that they should have the right to extend the system of limitation of liability to vessels under construction within their territories.

It is therefore suggested that the following additions may be made to Article 15, paragraph 2: (d) “ships under construction or in the course of construction in the territory of a Contracting State”.

(35) Document LEG/CONF.5/C.1/WP.42
4 November 1976
Proposal submitted by the delegation of India
adoption of the Indian proposal would have a contrary effect to what was intended –

namely, that the Convention would not apply to ships under construction unless

national legislation was enacted. If it was intended that the Convention should

explicitly apply to ships under construction, a more positive provision should be
drafted.

Mr. Whitaker (United Kingdom) said that the statute in the United Kingdom
giving effect to the 1957 Convention ensured that a shipbuilder or repairer operating
at the time of an incident was entitled to limitation, and the draft for the new
Convention as it stood gave no reason to think that that law should be changed. The
Indian proposal was based on a false antithesis between a ship under construction and
a sea-going ship. A sea-going ship under construction would come within the scope of
the Convention. The Indian proposal might create difficulties which did not really
exist.

The Chairman suggested that the Indian representative should contact the United
Kingdom and Netherlands representatives in an attempt to solve the matter, and that
the Committee should return to the Indian proposal at the next meeting.

It was so decided.
Chapter V

FINAL CLAUSES

Article 16

Signature, Ratification and Accession

Diplomatic Conference
Draft International Convention

1. This Convention shall be open for signature until [...] and shall thereafter remain open for accession.

2. States [members of ............] 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 depositary].

Report of the Committee on Final Clauses
Document LEG/CONF.5/WP3

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 Inter-Governmental Maritime Consultative Organization (hereinafter referred to as “the Secretary-General of the Organization”).
Plenary Meetings
Summary Record of the Fifth Plenary Meeting
19 November 1976

[485] The President proposed that the Conference, having completed consideration of the substantive Articles of the draft Convention, should now proceed to consider the Final Clauses prepared by the Committee on Final Clauses and drafted by the Drafting Committee, taking into account, where appropriate, the proposals of the Committee of the Whole.

Mr. Wiswall (Liberia), Chairman of the Committee on Final Clauses, said that his Committee had not been able to complete its work in the way it had wanted to, owing to lack of time. It had prepared a preliminary report (LEG/CONF.5/WP.3) which it had not been able to examine and approve finally.

He therefore wished to apprise the Plenary Conference of certain comments made in his Committee, and the results of the vote taken, so that they could appear in the summary records of the Conference.

With regard to Article 16 as set forth in document LEG/CONF.5/C.3/1, he called attention to a slight alteration as compared with the original wording. In paragraph 3, the word “depositary” had been replaced by “Secretary-General of the Inter-Governmental Maritime Consultative Organization”. He suggested that the words “Inter-Governmental Maritime Consultative” in the text should be deleted. The Committee on Final Clauses had not voted on that Article.

Article 16, as amended, was adopted (40 votes in favour, none against, no abstentions).

1976 Convention

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

Draft International Convention

1. This Convention shall enter into force on the first day of the month following one year after the date on which twenty 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, provided that at least five of such States shall each have on their national register a tonnage equal to or greater than one million gross tons.

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 acceede 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.

Committee of the Whole
Summary Record of the Twenty-fifth Meeting
17 November 1976

[400] Mr. Filipovic (Yugoslavia) said that, at the last meeting of the Committee on Final Clauses, of which he had been a member, the Chairman had stated that the Committee’s report would contain an account of all the questions that had been discussed and that the Committee would meet again. The Committee had not met again, however; and its report (LEG/CONF.5/WP.3) contained no reference to differences of opinion concerning, for example, making entry into force subject to ratification by States with a large tonnage, or the question of the implementation of amendments dealt with in Article E, paragraph 5.
He proposed that the tonnage criterion – “provided that at least five of such States shall each have on their national register a tonnage equal to or greater than one million gross tons” – at the end of Article 17(1) as set out in LEG/CONF.5/C.3/1, should be deleted. The paragraph should reflect more adequately the changes which had taken place in the world community since 1957, and States with large fleets should no longer have the privilege of making entry into force of the Convention dependent on their ratification of it. Such a provision was an infringement of the sovereignty and equality of the States Parties to the Convention.

Lord Diplock (United Kingdom) said that, as the representative of a State possessing a large tonnage, he agreed with the Yugoslav representative. He saw no practical advantage in the tonnage provision and was aware of its psychological disadvantages. He therefore supported the Yugoslav proposal to delete the tonnage provision, and proposed in addition reducing the number of instruments necessary for entry into force from twenty to twelve. Previous conventions had required eight or ten ratifications. Twenty was a large number and might take years to achieve, whereas twelve seemed a reasonable compromise.

Mr. Wiswall (Liberia), speaking as Chairman of the Committee on Final Clauses, said that the Yugoslav representative’s criticisms of the Committee’s report were justified, but the Secretariat had found it impossible to produce the type of report he had intended and there had been no time for the Committee to meet again to approve its report. He, as Chairman, had read through the report before it was submitted to the Conference. In the Committee, votes had been taken on three proposals concerning the number of ratifications required and two had been taken on the tonnage question, so that the matter had been fully considered.

Mr. Nada (Egypt) endorsed the views expressed by the Yugoslav representative and supported his proposal to delete the tonnage provision. The Convention already discriminated strongly enough in favour of shipowners.

Mr. Amoroso (Italy) said that his delegation would have liked to retain the reference to tonnage as had been customary in the past but in view of the reactions of certain delegations, was prepared to accept its deletion. His delegation also considered that twenty was too large a number of ratifications necessary for entry into force and suggested fifteen; if, however, a majority preferred twelve, it was prepared to accept that figure.

Mr. Bendjenna (Algeria) supported the Yugoslav proposal and added that if, in addition, the United Kingdom proposal was approved, his delegation would have no objection to the text of Article 17(1).

Mr. Selvig (Norway) also supported the Yugoslav proposal, which was consistent with the views expressed by his country in other international bodies. The tonnage requirement had never played an important role as regards the 1957 Convention. The latter provided for ten ratifications, but his delegation could accept the figure of twelve proposed by the United Kingdom.

Mr. Azouz (Tunisia) and Mr. Nair (India) associated themselves with the views of the Yugoslav representative and the position adopted by the Algerian representative.

Mr. Perrakis (Greece) said that the reason for the introduction of the tonnage criterion in the past had nothing to do with discrimination, but had been intended – along with other criteria – to ensure uniformity of application. What would be the value of the Convention if it were ratified only by ten land-locked States, for example?
It would not be good international law if the majority of the world’s fleets were owned by non-Contracting States.

Mr. Nada (Egypt), in exercise of his right of reply, said that he had referred to discrimination advisedly. If equality and sovereignty were only to be regarded as empty words, his country ought not to have been invited to the Conference since Egypt, and many of the other countries represented, did not possess one million gross tons of shipping.

The Chairman called for a vote on the Yugoslav proposal to delete the phrase “provided that at least five of such States shall each have on their national register a tonnage equal to or greater than one million gross tons” from the end of Article 17(1).

The Yugoslav proposal was approved (28 votes in favour, 1 against, and 10 abstentions).

The United Kingdom proposal to replace the word “twenty”, in the second line of paragraph 1, by the word “twelve” was approved (20 votes in favour, 2 against, and 16 abstentions).

Summary Record of the Twenty-seventh Meeting
18 November 1976

[424] Mr. Azouz (Tunisia) asked whether the criterion of tonnage was still applicable to Article 17. If so, he had an objection to raise.

The Chairman replied that the Committee had taken a decision the previous day to recommend to the Plenary that, under Article 17, the number of States required for entry into force of the Convention should be reduced to 12 and that the provisions relating to the tonnage criterion should be deleted. That recommendation by the Committee would be included in its report to the Plenary.

The Chairman announced that the Committee had concluded its work.

Mr. Lyon (Canada) congratulated the Chairman on the skill, patience and expedition with which she had conducted the Committee’s business.

The Chairman thanked the Committee for its patience and understanding, and the Secretary-General, the Executive Secretary and all members of the staff for their co-operation.

Mr. Jeannel (France) added his delegations’ compliments to the Chairman, to those of Mr. Lyon, and expressed his appreciation of the admirable way in which the Secretariat had carried out its task. The production and distribution of documents had been an example for all international organizations.

The Secretary-General said he was grateful to the Chairman and delegations for the trust reposed in the Secretariat, and was greatly encouraged by the tributes paid to it. He congratulated the Chairman on her wisdom, leadership and charm in conducting the work of the Committee, and thanked leaders of delegations and the Chairmen of Committees for their help in bringing the Committee’s work to a successful conclusion.
Mr. Wiswall (Liberia), Chairman of the Committee on Final Clauses, said that Article 17 had given rise to lengthy discussion in the Committee. He referred to Documents LEG/CONF.5/C.2/WP.1; WP.3 and WP.4 inter alia. The Committee had begun by giving consideration to the number of States required for entry into force of the Convention, and had voted on three proposals in that connexion. The proposal to set the number at 10 had received five votes, the proposal to require 15 States had received one vote, and the proposal requiring 20 States had received seven votes. The Committee had also considered that it would be desirable to specify a “tonnage requirement”. A proposal that five of the States bringing the Convention into force should have at least two million register tons of shipping received four votes, a proposal that the tonnage should be one million received six votes. He recalled that the Committee of the Whole had proposed a different requirement for entry into force of the Convention.

Ms. Blom (Sweden), Chairman of the Committee of the Whole, said that her Committee had recommended a figure of 12 States, rather than 20, as the requirement for entry into force of the Convention. The Committee of the Whole had come to the conclusion that there was no justification for a “tonnage requirement” and had accordingly recommended that that requirement should be dispensed with.

The President called for a vote on paragraph 1, as amended by the Committee of the Whole, i.e. with the number of States required for entry into force of the Convention fixed at 12, and without any tonnage requirement.

Paragraph 1, as proposed by the Committee of the Whole, was adopted (31 votes in favour, 1 against and 8 abstentions).

Mr. Selvig (Norway) said that paragraph 4 of Article 17 permitted a State becoming Party to the present Convention to continue to be Party to other Conventions on Limitation of Liability, with the consequent possibility of a great many...
legal difficulties. It was essential that the new Convention take precedence over all others, and that States Parties to it denounce earlier Conventions. That was why the Norwegian delegation had proposed an alternative which was to be found in the footnote on page 457 of the Annex to document LEG/CONF.5/C.3/1. The Committee on Final Clauses had considered that alternative and had approved it by 7 votes to 4. That Committee had then examined a Japanese proposal and approved it by 7 votes to 5. Lastly, it had decided by 8 votes to 6 to submit only the Japanese text to the Committee of the Whole, and that text had therefore now become the present paragraph 4.

Mr. Vonau (Poland) thought that the new Convention should only replace earlier Conventions as between States Parties to the new Convention. He was against the imposition of any obligation to denounce the Conventions of 1924 and 1957. An obligation of that kind would run counter to the principles of international law, and in particular to the provisions laid down in Article 16 of the 1957 Convention.

Mr. Cleton (Netherlands) said that the words “and/or which is also a Party to the International Convention for the Unification of certain Rules relating to the Limitation of the Liability of the Owners of Sea-going Vessels, signed at Brussels on 25 August 1924”, should be inserted in footnote 1 after the words “Sea-going Vessels”.

Ms. Blom (Sweden) said that the words “done at Brussels on 10 October 1957” should also be inserted after the words “Sea-going Vessels”.

Mr. Herber (Federal Republic of Germany) and Mr. Philip (Denmark) seconded the Norwegian proposal to replace the present paragraph 4 by the text set forth in footnote 1.

[487] There were 11 votes in favour of the Norwegian proposal, 13 against and 17 abstentions. The proposal was therefore rejected.

Article 17, as a whole, was adopted (38 votes in favour, none against, and 2 abstentions).

1976 Convention

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.

(4) The footnote referred to by Mr. Selvig is quoted below:

[457] 1 Should the plenary adopt paragraph 4 of this Article contained in the Report of the Committee on Final Clauses (Document LEG/CONF.5/WP.3, Annex I, page 2) the Drafting Committee suggests that it read as follows:

“A State Party to this Convention which is also a Party to the 1957 Convention relating to Limitation of the Liability of Sea-going Vessels shall denounce the Convention of 1957 or the Convention of 1924, or both as the case may be.”
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 Seagoing 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

Diplomatic Conference
Draft International Convention

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.

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.

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[487] Mr. Wiswall (Liberia), Chairman of the Committee on Final Clauses, drew attention to the fact that Article 18 had not been examined either by his Committee or by the Committee of the Whole, but only in the Drafting Committee.

Mr. Cleton (Netherlands) confirmed, in his capacity as Chairman of the Drafting Committee, that the Committee on Final Clauses had already completed its work by the time, the Committee of the Whole had decided in favour of providing for two reservations in respect of Article 2(1)(d) and (e) which more or less corresponded to those specified in the 1957 Convention. As he saw it, Article 18 was in keeping with normal practice in treaty law. He merely noted that it had been suggested in the Drafting Committee that the word “reservation” be used in the singular in paragraph 2 of the English text.

Mr. Makovsky (USSR) was in favour of using the plural, but what he particularly objected to was the retention of the second sentence of paragraph 1. His Government might be unable to accept a Convention with that provision. The fact that Article 18 had not been formulated in the customary manner and had not been the subject of consideration along normal lines was to be deeply regretted. The question of reservations should be resolved in accordance with the general principles of treaty law and be governed by the rule that while reservations could not indeed relate to substantive previsions, States were entitled to express reservations relating to non-substantive provisions. He advised the Conference not to create a precedent of that kind.

Mr. Bendjenna (Algeria) fully approved the USSR representative’s point and said that his delegation requested the deletion of the second sentence of paragraph 1.
Mr. Selvig (Norway) also regretted the fact that it had not been possible to study that Article properly, but thought that a distinction should be made between the present Convention and other less technical and juridical types of convention. The provisions of the Vienna Convention on Treaty Law were rather vague on the subject of reservations. He drew attention to the dangerous situation that might flow from the deletion of that sentence: it would allow the various States Parties to make reservations which could produce disparities in respect of the fund. The USSR representative had advanced the thesis that the principles of treaty law forbade the entering of reservations concerning substantive provisions; and he himself wondered whether that was also the interpretation given by the Conference as a whole. Proceeding from the viewpoint expressed by the USSR representative, it should be possible to work out an acceptable solution. It would amount to a statement that no reservation could be entered with regard to the substantive provisions of the present Convention; but that formula would need to be accompanied by a list of the Articles in that category which could not be the subject of a reservation, such as Articles 1 to 15, Article 18, of course, and Articles 20 bis or 21 if adopted.

Mr. Jeannel (France) opposed the deletion of the sentence, as it would open the way to the entering of innumerable reservations, thus defeating the aim of unification which the Convention was designed to achieve. He suggested a solution which the USSR representative might find satisfactory – namely, that the latter specify the points on which he would like to be able to express reservations. He personally would in any case be prepared to accept the solution recommended by the Norwegian representative.

Mr. Makovsky (USSR) said that while he himself had no desire to put forward any other reservations than those expressly provided for in paragraph 1, he regarded as a matter of principle the possibility of making reservations in the context of a legal instrument like that now about to be adopted. In consequence, he could not accept the French representative’s suggestion. As to the solution proposed by the Norwegian representative, he found it interesting; but the time available to the Conference to complete its work would not allow it to differentiate between provisions which were substantive and those which were not. Hence the unavoidable solution was to delete the second sentence of paragraph 1.

Lord Diplock (United Kingdom) was glad to note that the USSR representative was not intending to make reservations. In view of the reasons cited by the latter, he could agree to discard the second sentence, although his personal preference was for the retention of that paragraph in its present form.

Ms. Blom (Sweden) requested the adjournment of the discussion on that point until after the Conference had completed its examination of the concluding Articles of the draft convention. She hoped it would be possible at that stage to reach a compromise.

The President suggested that the meeting be suspended so as to permit representatives to engage in consultations.

The meeting was suspended at 11 a.m. and resumed at 11.25 a.m.

Mr. Makovsky (USSR) said that he would have actually preferred the second sentence to be deleted. However, following the contacts he had just had with other participants in the Conference he was now in a position to propose a compromise solution which would consist in completing that sentence along the following lines: “No other reservation shall be admissible in respect of the substantive provisions of
this Convention”.

The President thanked Mr. Makovsky for that very constructive proposal which had the support of some of the delegations.

Mr. Bendjenna (Algeria) regretted that the deletion of the second sentence had not been found possible, but said he was prepared to adopt the USSR representative’s amendment.

The President called for a vote on paragraph 1, with the amendment proposed by the USSR representative.

Paragraph 1 of article 18, as amended, was adopted (29 votes in favour, 1 against, and 8 abstentions).

Lord Diplock (United Kingdom) said that it would be advisable to retain the plural in paragraph 2 of that Article.

The President called for a vote on Article 18 as a whole, as set forth in document LEG/CONF.5/C.3/1/Add.1.

Article 18 as a whole was adopted (36 vote in favour, none against, and 1 abstention).

1976 Convention

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

Diplomatic Conference
Draft International Convention

1. This Convention may be denounced by a State Party at any time after 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.

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Article 19 was adopted (38 votes in favour, none against, and no abstentions).

1976 Convention

1. This Convention may be denounced by a State Party at any time after 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

Diplomatic Conference  
Draft International Convention

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.

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Article 20 was adopted (37 votes in favour, none against, and 1 abstention).

1976 Convention

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 and of Unit of Account or monetary unit

Diplomatic Conference
Committee of the Whole
Summary Record of the Twelfth Meeting
9 November 1976

Draft article on revision of the limitation amounts

Mr. Jeannel (France) introduced the draft article on the revision of the limitation amounts proposed by the French delegation (LEG/CONF.5/C.1/WP.39). Recalling that the 1957 Convention had provided for a method of calculating the amounts in the various national currencies and ensuring balanced transfers from one currency to another, with indexation on the basis of parity with gold, he noted that in principle the limits fixed by that Convention had, in consequence, maintained considerable stability.

Since that time, however, in the wake of the difficulties experienced by the international monetary system and the fundamental changes that had occurred with regard to the linkage of currencies with gold, it had proved impossible to apply the provisions relating the liability limits to the Poincaré franc, and those limits had accordingly remained fixed at 1957 values. Developments in the international monetary system had led the IMF member countries to frame a new transfer system, namely, that of the Special Drawing Right, as incorporated in Article 8 of the new draft Convention. But while that system met one of the requirements which had dictated the

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(1) Document LEG/CONF.5/C.1/WP.39
4 November 1976
Proposal by the delegation of France

Article...
The amount specified in Article ... of the present Convention may be changed in accordance with the following provisions:
(a) The Depositary Government shall convene a Revision Conference, to which the Contracting Parties shall be invited, every five years after the signature of the present Convention.
If the Convention has not entered into force five years after being signed, the first Revision Conference shall take place one year after the entry into force of the Convention. Subsequent Revision Conferences shall be held every five years from that date.
(b) The sole purposes of the Revision Conference shall be to change, if need be, the limitation amounts specified in Articles ... of the present Convention.
(c) After the Revision Conference has adopted new limitation amounts by a two-thirds majority, this amendment shall enter into force under the following conditions: The amendment shall be communicated by the Depositary Government to all Contracting Parties for acceptance and to all States Signatories to the Convention for information. The amendment shall be considered as accepted after a period of six months from its adoption, unless during that period at least one-third of the Contracting Parties lodge an objection with the Depositary Government. Once so accepted, an amendment shall enter into force on the sixtieth day after its acceptance in respect of all Contracting Parties with the exception of those which, before the end of that period, declare that they are not bound by the amendment.
(d) Any State which becomes a Party to the Convention after the entry into force of an amendment of this kind shall be bound by the Convention as amended.
adoption of the Poincaré franc, in the sense that it provided a method of conversion of currencies, it did not meet the desired aim of maintaining the real value of the limitation amounts. What the SDR system did was to establish the value of a unit of account in relation to a basket of currencies. However, there was a high level of inflation in a good many countries and a moderate degree of inflation even in those with stable conditions, with the result that the values of the national currencies, and hence of the SDRs, were steadily decreasing, involving a real danger that, in a few years’ time the situation would be back to what it was at present. It was essential, therefore, if the SDR was to be adopted as the unit of account, to find a formula for revising the limits laid down in the Convention, preferably at regular intervals.

[295] The French delegation proposed that they be revised every five years, an interval it regarded as adequate seeing that the strong currencies in the basket compensated, at least to some extent, for the loss of value of the weaker ones. It also proposed that the intervals be calculated, not from the date of the entry into force of the Convention but from that of its signature. Experience had shown that the process of ratification could be a long one, with a period of, perhaps, five years elapsing between the date of adoption and that of entry into force; and during all that time the SDR might lose in value.

The main thing was to compensate for the fall in value of the national currencies, but there could be other reasons for revision also. It might prove necessary not merely to maintain the value of the amounts previously established but actually to increase them.

Mr. Whitaker (United Kingdom) explained that the reason his delegation had not presented specific proposals on the subject in its submission in document LEG/CONF.5/5 was because of the difficulties which had been experienced at previous conferences. It was clearly essential to provide for a quicker and more flexible method of revision than that employed for amending the substantive provisions of the Convention, and it ought not to be necessary to have to call a special revision conference. If Article 8 was adopted and its provisions incorporated in the three other conventions to be considered at the revision conferences the following week, any subsequent amendments to the four Conventions could be adopted simultaneously. It was with that object in view and for reasons of convenience that the United Kingdom

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(2) Document LEG/CONF.5/5
27 September 1976
Observations and Proposals by Governments on the Draft Final Clauses
This document contains a proposal by the United Kingdom for an additional article to be included in the Final Clauses.
Observations and proposals received after the preparation of this document will be issued in addenda thereto.
United Kingdom
One of the reasons for preparing the proposed new Convention is that the limits of liability in the Convention of 1957 no longer have the same purchasing power as they did in that year; and that the capacity of the insurance market is now larger than it was then. Indeed it could be said that the limits were already out of date by the time that the Convention came into force in 1968. Similar developments are to be expected in the future; and to avoid having to hold a revision conference soon after the new convention comes into force it would be advisable to make provision for the ready amendment of the limits of liability in the light of changes in the purchasing power of money and in the capacity of the insurance market. This would call for an additional article among the final articles, relating only to amendment of the limits of liability. Such an amendment might be adopted by the Legal Committee of IMCO by a two-third majority and would come into force when accepted by two-third of the parties.
had suggested that IMCO’s Legal Committee might be made responsible for implementing the procedure for adopting amendments. If the French delegation’s proposal were adopted, it would mean convening four conferences at the same time. It would be appropriate, therefore, to decide which body should be competent to adopt amendments.

As to the acceptance procedure, he recalled that a general preference for an explicit acceptance procedure had emerged from the Athens Conference. The United Kingdom, in any event, was in favour of the latter, since a tacit acceptance procedure would in its case as in that of many other countries, involve a number of legislative and parliamentary problems.

Lastly, he had always understood that IMCO would be the depositary of the new Convention, and would like to know how the term “Depositary Government” in the French proposal was to be interpreted.

Mr. Bursley (United States) expressed support in principle for the views of the French and United Kingdom representatives. It was necessary to adopt a procedure that would enable the limitation amounts to be altered in the light of inflation and the evolution of the insurance market. The procedure for tacit acceptance would need to be carefully studied, since future changes to be made would involve technical points rather than matters of substance. The Legal Committee could usefully examine the question of whether modification of the limitation amounts was desirable, and he suggested that the subsequent procedure might be similar to that provided for by the Guatemala Protocol to the Warsaw Convention. His delegation would be presenting a proposal along those lines.

Mr. Roth (Federal Republic of Germany) shared the concern of the French delegation. An accelerated procedure should be provided for altering the liability amounts, separate from that for amending other provisions of the Convention.

[296] However, the French proposal was too rigid; there was no point in convening revision conferences at regular intervals, because the need for revision would depend on the situation at any given time, and that was impossible to forecast. It would be better if such conferences were convened at the request of a specified, but very small, number of States. He was not in favour of tacit acceptance; since any changes in liability amounts affected the basic provision of the Convention, an explicit procedure was called for.

Mr. Müller (Switzerland) said that he could, in principle, support adoption of machinery for revising liability amounts which would dispense with the need to amend the Convention itself. He would have supported the French proposal, but for the fact that the French representative had referred to possible revision for “other reasons”. That was not satisfactory to Switzerland. His Government was prepared to accept a simplified revision system for technical matters, and to consider, for example, that a decision taken by two-thirds of the Parties should bind the remainder. When, however, it came to amendments affecting a basic issue, such a procedure was difficult to accept, since any fundamental alterations required legislation or ratification by Parliament. In his view, the sole purpose of a revision conference was to alter or adapt limitation amounts in order to reflect changes in the value of the unit of account.

Mr. Makovsky (USSR) agreed that it would become necessary at a future date, to revise the limitation amounts stipulated by the new Convention, but was against an accelerated and simplified amendment procedure. The purpose of the present Conference was to produce a Convention which, although not perfect from the legal
point of view, would be acceptable to most countries and as widely applicable as possible. Ten States had acceded to the 1924 Convention, and twenty to that of 1957, but many countries had not signed either instrument and had widely differing legislation. In consequence, the main concern should be to strive for uniformity. Adoption of a simplified amendment procedure would be a move in the opposite direction and would give rise to a plethora of limitation systems and rules. If a revision conference were to meet after a lapse of five years, some countries would accept the new limitation amounts, while others would not. There would then be a number of conventions, which would not all have the same signatories; for that reason, IMCO should follow the customary procedure and convene an international conference with the task of revising limitation amounts. The proposed five year interval was, in any event, far too short.

Mr. Hermes (Australia) favoured a revision mechanism, whether periodic or not. He agreed with the representative of the Federal Republic of Germany that a conference for that purpose should be convened at the request of a certain number of countries. He supported in principle the proposals made by the United Kingdom, but not the suggestion concerning the role of the Legal Committee of IMCO, because some members of that Committee might not be completely familiar with the issue involved. He was strongly opposed to a tacit acceptance procedure; explicit acceptance by a majority of States was necessary.

Mr. Cleton (Netherlands) supported the proposal to establish special machinery for revising limitation amounts; he also thought that the Conference would do well to provide for the possible revision of the unit of account, should the SDR no longer be able to play the role assigned to it. His delegation regarded IMCO as the body competent to carry out such revision, but all Contracting States, whether members of IMCO or not, should be invited to participate. He had no objection to a tacit acceptance procedure; but since it did not seem to satisfy some delegations, it would be best to try to reach a compromise solution. Any revision procedure ought to be initiated at the request of a certain number of countries – say three, for example. It was inadvisable to decide on periodic revisions, because experience had shown that such a system imposed constraints. It might prove necessary, as the French delegation had proposed, to take signature of the Convention as the point of departure, rather than its entry into force.

Revision should be of a technical nature only and not involve changes of substance. That distinction had not been clearly made in the proposals before the Committee. If limitation amounts had to be altered, the respective positions of those States which had accepted the new amounts and those which had not must be made clear.

Mr. Rognlien (Norway) said that, in principle, he was in favour of the French proposal. Provision had to be made for revising limitation amounts, and a simplified procedure was therefore required; any such procedure should, however, deal with technical matters only. For that reason, no precise terms of reference should be imposed on any future review conferences; it was, moreover, unwise to specify that such conferences had to be held every five years. He would suggest that a conference should be convened at the request of four Member States of IMCO, for example, following which the Secretary-General would take the necessary measures. A revision conference could be asked to take appropriate steps to define relationships between countries which had accepted the revised amounts and those which retained the original amounts. To reduce the difficulties involved, the revised amounts should be
approved by a large majority; that meant, for example, that at least half the number of States Parties to the new Convention would have to attend such a conference and a two-thirds majority of the participating States would be required. He did not think that the tacit acceptance procedure proposed by France was realistic; it was necessary to find a formula which Contracting States could accept without undue difficulty.

Mr. Zivkovic (Yugoslavia) supported the French proposal. The new Convention should include an article on the periodic revision of limitation amounts, such revision to be carried out by a conference of Parties to the Convention, which would be concerned with the effects of inflation.

Mr. Wiswall (Liberia) said that the amounts laid down in the new Convention would have to be revised in the light not only of changes in currency values but also of developments affecting the capacity of the insurance market. A diplomatic conference should be given the task of revision, not because he wanted to deprive the IMCO Legal Committee of an appropriate role in the revision of international instruments, or that he doubted the Committee’s competence, but for practical reasons. In the first place, the Committee was required to prepare its work programme far in advance, and secondly it already had a heavy work programme. Another reason was that Governments would need to send financial experts to a meeting of the Committee dealing with revision; that would save neither time nor money. There was no need for revision conferences to be held at regular intervals.

He did not favour a tacit acceptance procedure for revising limitation amounts, because the changes in the limitation amounts were so important that governments should be allowed to decide explicitly whether they accepted any such changes. The tacit acceptance procedure might be used, on the other hand, when it came merely to changing the unit of account since, on that issue, an adequate degree of flexibility would be required if the position of the SDR were to change abruptly.

Mr. Bentein (Belgium) supported a specific revision clause designed at least to adjust the amounts stipulated by the new Convention, particularly since the insertion of the SDR was not completely satisfactory where maintenance of currency values was concerned. Inclusion of such a clause did, however, raise difficulties, because the problem of adjusting limits was not confined to the present Convention. The Belgian delegation had no precise formula to offer, but was willing to seek a solution which would go beyond the scope of the Convention and thereby avoid unequal treatment.

In his view, a flexible revision formula was required, which would steer clear of fixed regular intervals and leave Contracting States free to alter amounts as circumstances might dictate. For that reason, he supported the suggestion made by the representative of the Federal Republic of Germany. The Belgian delegation would find it difficult to accept a tacit acceptance procedure; adjustment of amounts was a fundamental issue requiring explicit consent by States. In addition, the reasons for the revision would have to be given, and due heed paid not only to inflation but also to the capacity of the insurance market. He did not see how the question of the unit of account could be made to fit into a revision of limitation amounts; he hoped that a solution would be found which did not call for alteration of the unit of account. Special attention should be given, in addition, to the disputes that might be caused by the simultaneous existence of original and revised amounts. In conclusion, he supported the French proposal to take signature of the Convention as the point of departure.

Mr. Iwata (Japan) fully appreciated the reasons underlying the French proposal but regarded the question of limitation amounts as of primary importance in the sense
that it impinged directly on the rights and obligations of nations; it therefore occupied a vital position in the new Convention, requiring consideration by parliament. That was why he could not endorse a tacit acceptance procedure, although a method of revising amounts which would meet the changing economic situation should be developed. The Japanese delegation would shortly submit an amendment to the French proposal.

Mr. Bredholt (Denmark) supported the idea of holding periodic revision conferences, as proposed by the French delegation; he was ready to accept a compromise solution based on the suggestions made by the representative of the Federal Republic of Germany, who was opposed to a fixed-interval revision system, advocating instead the convening of a revision conference whenever necessary, at the request of a limited number of States. He, like the representative of Norway, favoured the adoption of revised amounts by a two-thirds majority, of which at least half were Parties to the original Convention.

Mr. Perrakis (Greece) stressed the complexity of the problem. Some delegations thought that the revision conference could be convened by a certain number of States, but they still had to decide how many, and which States. Revision might take place before the Convention had even come into force and that was unacceptable to his Government. Such a procedure was unknown in both public and private international law. The Greek delegation wished to make a number of practical suggestions: any revision, whatever the procedure adopted, should be confined to technical matters, and his delegation endorsed the views of the Swiss delegation on that point. Moreover, such revision could not be envisaged before the present Convention had entered into force.

The revision conference should be convened by two or more Parties to the Convention, and the acceptance procedure should not be tacit.

Since untoward events might call for speedy adoption of new provisions – for instance if the SDR was no longer quoted on the international market, or if the IMF ceased functioning – it would be advisable to consider the inclusion of a safeguard clause in the Convention.

Mr. Trotz (German Democratic Republic) favoured inclusion of a review clause in the draft, but thought that problems would then arise. A diplomatic revision conference should be convened at the request of a number of States, or of an IMCO body, but without any fixed time-table; it should be held if circumstances warranted. The results of such a conference should not enter into force in the Contracting States until approved by each of those States.

It had been suggested that revision of the unit of account should be considered as a technical matter, and that therefore a tacit acceptance procedure should be adopted. However, he recalled that the Conference was going to agree upon a very sensitive compromise regarding the unit of account. For that reason, his delegation would prefer that question also to be grounds for convening a revision conference and should be subject to an explicit acceptance procedure.

Mr. Sahraoui (Algeria) endorsed the views of the representative of the German Democratic Republic. It would be logical to include in the Convention a clause taking account of possible currency fluctuations. A fairly simple method might be adopted, but his delegation wished to make its own position clear in two respects. First, it considered that a request for revision could hardly be made by only four or five States; the number should be about ten. Second, it agreed with Mr. Perrakis as to the need to specify which States could convene a revision conference, and that they should be States Parties to the Convention. The amendments to be made might well go beyond
the merely technical, affecting the very principles of the Convention. The body most
competent to undertake the revision was a diplomatic conference bringing together a
large number of States. Finally, the explicit acceptance procedure seemed best, since it
could take account of States’ different legislations and allow their sovereignty to be
preserved.

Mr. de Berenguer (Spain) recognized the close connexion between adopting a
new unit of account and amending the liability limits. Whether the SDR, the Poincaré
franc or another unit of account was adopted, changes in the economic and monetary
situation might require its revision. Moreover, depending on the course taken by
events and on whether inflation continued or was replaced by deflation, the amounts
would need to be changed. His delegation agreed with the Swiss delegation that the
acceptance procedure should not be tacit. Few countries would be able to persuade
their parliaments to agree to complete freedom of action by an international
conference. Moreover, in some countries, the merchant navy was operated by state or
semi-state bodies, and increasing the amounts would be a budgetary matter. The
procedure for revising those amounts might be modelled on that of the 1974 Athens
Convention, i.e. at the request of a much larger number of States. His delegation
hoped that the two-thirds majority recommended by the Norwegian delegation would
be acceptable. As for the insurance market, clarification and information would be
needed with respect to its development during the five-year period. The number of
Contracting States from which requests must be received before a revision conference
was convened must be clearly specified, and the interval between revisions should not
automatically be five years.

[300] The Chairman recalled that, at the end of the previous day’s meeting, a
consensus had been reached on the question of the unit of account.

Mr. Anatsui (Ghana) recognized the need for providing for revision of limitation
amounts. The revision conference should be convened by IMCO or by a small number
of States after entry into force of the Convention, and the acceptance procedure should
be explicit. The French proposal would involve problems of a constitutional nature for
Ghana.

Mr. Helaniemi (Finland), said that he was able to endorse the view expressed by
the majority of speakers. Revision must be possible, though not necessarily at regular
intervals. A five-year period was too long in any case. He supported the suggestion of the
Norwegian representative that the Secretary-General of IMCO should convene the
revision conference at the request of four or five Member States of the Organization.
Finally, he did not think that the tacit acceptance procedure would involve any problems.

Mr. Iturralde (Argentina) said that revision would be necessary if international
events led to changes in the value of the amounts as laid down by common agreement
in the Convention. Nevertheless, the sole purpose of a revision clause should be to
reestablish the real equivalent values of the various amounts fixed when the
Convention was signed. Any other revision of the instrument would be an integral one,
and IMCO should convene a conference at the request of four or six States. The
competent authority should be the IMCO Assembly, not the Legal Committee. Finally,
his delegation was in favour of explicit acceptance.

Mr. Pages (Observer, IAPH), speaking at the Chairman’s invitation, said that the
IAPH was one of those permanent victims of shipping accidents that had helplessly to
watch while the value of the amounts fixed at the Brussels Conference went on
declining; that decline had started as soon as the Convention had been signed, i.e. long
before its entry into force. The present Conference gave it hope, but also caused it concern. The amounts should be revised automatically and periodically by means of a diplomatic conference. The simpler, more rapid and more effective the implementation procedures, the better.

Mr. Müller (Switzerland) remarked that the present general discussion concerned only participating States.

The Chairman felt that contributions from observers might be of assistance to the Committee.

Mr. Hodnett (Observer, IUMI), speaking at the Chairman’s invitation and in reply to the Spanish representative, said that normally there should not be any upheaval every five years in the insurance market. Every year, efforts were made to use to the maximum the capacity of P and I insurance. The problem was merely one of sending the relevant information to IMCO. Possibly after some years, experience would show whether, on the basis of global statistics, the market’s capacity could be put to even better use than in the past.

Mr. Whitaker (United Kingdom) recalled his initial statement that the Legal Committee of IMCO should be asked to amend the final clauses by including an additional article relating to amendment of the limits of liability (LEG/CONF/5/5). Since that proposal had received little support, his delegation was prepared to withdraw it. A revision conference should be held at the request of a small number of Contracting States; if the number was to be as much as ten, he would prefer that the revision of the amounts should take place at fixed intervals, as the French delegation had proposed (LEG/CONF/5/C.1/WP.39).

Mr. Jeannel (France) replied to the questions raised in connexion with his delegation’s amendment (LEG/CONF/5/C.1/WP.39). In answer to the query of the United Kingdom representative regarding the expression “depositary government”, he said that it had not been the intention of the proposal to take the depositary functions from IMCO. To make the point clear he proposed that the word “government” be deleted. He then explained the difference between the explicit and the tacit amendment procedure. For an amendment adopted by the traditional two-thirds majority to be applicable by the States Parties to the Convention, it would either have to be adopted by those States and they would then have to make known their acceptance explicitly to the depositary (and that might involve long delays, since administrative procedures were not always very swift), or else be given a period in which to accept or reject the amendment. When that period had expired, any State which had not made its position clear would be deemed to have accepted the amendment. The tacit acceptance procedure for amendments had the advantage of rapidity and also of giving States an opportunity of rejection.

He was very well aware of the problem raised by the Swiss delegation, and would be prepared to agree that revision should deal only with adjustment of the amounts so as to bring them into line with the real value of the SDR, leaving other considerations aside, if that would allow of a general consensus and the adoption of a rapid and effective procedure.

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(3) See note 2.
(4) See note 1.
(5) See note 1.
On the question whether revision should be undertaken by a special Conference or by IMCO, and in particular the Legal Committee, his delegation believed that it was for a conference to perform that technical task which was more financial than legal. Thus the Legal Committee, despite its qualifications, did not seem to be the appropriate body.

With respect to the intervals between revisions his delegation had proposed a five-year interval so as to avoid what had been described as perpetual revision. However, his delegation was prepared to accept the idea of a conference convened upon notification to the depositary, but in that case at relatively short intervals.

It was true, as the Belgian representative had pointed out, that the problem of revising the amounts would arise for other conventions as well: as it happened, revision conferences for the 1974 Athens Convention and the 1971 Civil Liability Convention were to be held the following week, but he feared that certain difficulties would arise if the problem were put in such broad terms. There was nothing to stop States requesting a revision from stating that they would like their request extended to other conventions, or the Secretary-General, in sending out notification of such a request, from indicating the desirability of extending the revision to other conventions.

He wished to reassure the Greek delegation, which had feared that the French proposal would allow the Convention to be revised even before its entry into force, that that was not his delegation’s intention: a period of one year from the entry into force of the Convention had been laid down. The problem would no longer arise, however, if the principle of periodicity were abandoned and provision made for the revision conference to be convened at the request of States Parties to the Convention; that presupposed the entry into force of the Convention.

[302] Mr. Bursley (United States), on a point of order, said that in his delegation’s proposal (LEG/CONF.5/C.1/WP.62) just distributed, the word “reserved”, in the third line from the bottom of the first page, should be replaced by “rejected”.

(6) Document LEG/CONF.5/C.1/WP.62
9 November 1976
Proposal by the delegation of the United States
Any new convention on global limitation should include procedures for simple and speedy revision of limitation amounts to keep the limits realistic in the event of continued inflation and increases in the availability of insurance cover. The existing draft does not contain such procedures. Accordingly, the limitation amounts could only be revised through the difficult and slow process of a revision conference.

We agree with the UK comment in LEG/CONF/5/5 that the new Convention could quickly be made obsolete by changes in the insurance market and by inflation. We associate ourselves with the purpose underlying the text submitted by France (LEG/CONF.5/C.1/WP.39). The United States is of the view, however, that the approach to the problems approved by many States at the 1971 Guatemala City Conference on the Warsaw Convention would more effectively preserve the limits of the new Maritime Convention. The Guatemala formulation incorporates the essence of the approach suggested by UK and France but it assures the necessary increases in the limitation and liability levels unless they are reserved by a two thirds majority at the review conference. The United States urges adoption of the following language:

Article ...
1. Conferences of the Parties to this Convention shall be convened during the fifth and tenth years respectively after the date of entry into force of this convention for the purpose of reviewing the limits established in Articles ... of the Convention.
2. At each of the Conferences mentioned in paragraph 1 of this Article the limit of liability in Articles ... in force at the respective dates of these Conferences shall not be increased by an amount exceeding ...
The Chairman noted that the Committee had held a constructive debate on the system of revising liability limits, which had met with the approval of the majority of delegations, but that divergent opinions on points of detail had arisen.

She therefore proposed to ask a number of questions so as to find out delegation's preferences. On the basis of that information, a text would be drafted by a Working Group.

First of all, she asked for an indication of preference as to the purpose of the revision of the Convention.

23 delegations were in favour of revision following changes in currency values, 10 delegations were in favour of a more general revision, i.e. following changes in the capacity of the insurance market, and 14 delegations believed that revision was necessary following such changes as made it difficult to apply the rules on the unit of account.

Mr. Rognlien (Norway) asked how, if a change in the purchasing power of currencies was the sole requirement for a revision, calculations would be made with SDRs and which country's purchasing power would be taken into account.

The Chairman agreed that the Working Group would be asked to draft a text that was not too strict, and that interpreting the results of a revision of the unit of account would be rather difficult.

Mr. Wiswall (Liberia) thought that it would be difficult to draft a text on the basis of the replies to those questions. The essential point was whether there should be a special revision conference. His delegation did not believe that such a conference was necessary, but had voted in favour of it by mistake, as the result of a misunderstanding. The results of the preceding vote should therefore be amended. Only delegations in favour of a special revision conference should take part in the consultation.

The Chairman asked for an indication of preferences on a number of questions.

The Committee of the Whole was in favour of formulating provisions for the possible revision of the unit of account (14 votes in favour, 8 against).

The Committee of the Whole was in favour of revision only after the entry into force of the Convention (19 votes in favour, 6 against).

28 delegations were in favour of convening a revision conference only at the request of a number of States; 4 delegations considered that such revision conferences should be held at regular intervals.

28 delegations were in favour of convening revision conferences only upon request by States Parties to the Convention; 8 delegations were in favour of allowing other States not Parties to initiate conferences.

[303] There were 5 votes in favour of giving the Secretary-General of IMCO the right to request the convening of revision conferences and 9 against. The proposal was rejected.

Mr. Jeannel (France) wished to clarify his delegation's position on the role of Secretary-General of IMCO. Although according to the indication just given the

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3. Subject to paragraph 2 of this Article, unless before the thirty-first day of December of the fifth and tenth years after the date of entry into force of this Convention the aforesaid Conferences decide otherwise by a two-thirds majority vote of the Parties present and voting, the limits of liability in Articles in force at the respective dates of these Conferences shall on those dates be increased by ...

4. The applicable limit shall be that which, in accordance with the preceding paragraphs, is in effect on the date of the event which caused the claim.
Secretary-General of IMCO could not convene a revision conference, there was no objection to the Secretary-General drawing the attention of States to the need for convening such a conference.

Mr. Bendjenna (Algeria) asked how many States would need to request the convening of such a conference before it could be held.

The Chairman thought it best to defer a reply to that question: she considered that there might be a relationship between the number of Contracting States necessary to bring a convention into force and the number necessary to convene a conference for the revision of that convention.

Mr. Rognlien (Norway) agreed that the matter should be postponed until later. His own view was that there was no relationship between the number of Contracting States necessary to bring a convention into force and that necessary to convene a revision conference.

Mr. Whitaker (United Kingdom) did not share that view. In reply to a question from the Chairman, he confirmed that his delegation could withdraw its amendment.

Mr. Iwata (Japan) recalled that it was common practice to invite to a revision conference those countries which had taken part in the diplomatic conference at which the instrument had been drawn up.

The Committee of the Whole was of the opinion that the Convention should be revised by a special revision conference, rather than by the IMCO Assembly (24 in favour, 1 against).

The Chairman asked whether the rule for the majority required for adoption of an amendment should stipulate simply a two-thirds majority or two-thirds with half the States concerned being Contracting States.

Mr. Mensah (Executive Secretary) observed that where a convention had entered into force, a conference to revise it was normally open to Contracting Parties only, with perhaps the right to participate as observers granted to non-Parties. Unless the Conference wanted to adopt an approach differing from that usual practice, there would be no need to have a provision on the lines envisaged, i.e. the second proposal.

The Chairman concluded that the second proposal should then be disregarded.

Mr. Rognlien (Norway) recognized that, in international law, a procedure for revision did exist, but wondered whether practically speaking, only States which had ratified the Convention should be invited to take part in its revision. It would in fact be a good thing if States not Parties to the Convention but which were Members of IMCO were able to make their influence felt when the text was revised.

Mr. Jeannel (France) recalled that, on the question of entitlement to take the [304] initiative of calling for a revision, the Committee had already indicated that only States Parties to the Convention were empowered to do so. Under the procedure adopted, States Parties to the Convention would transmit their request to the Secretary-General of IMCO.

He fully agreed with the Executive Secretary’s remarks. The procedure adopted should, moreover, be simple and rapid. Intervention by States not Parties to the Convention might hamper that procedure. A revision conference was of course free to decide that States not Parties to the Convention should take part in such a conference; but his delegation believed that the present Conference should follow the normal procedure and provide that revision conferences would be conferences of States Parties to the Convention.
The Chairman confirmed that the overwhelming majority of participants was in favour of leaving the initiative of convening the revision conference to the Contracting Parties. As to which States would be authorized to attend the revision conference, the Committee might ask the Working Group to look into the matter, bearing in mind similar rules in other Conventions.

The Chairman called for a series of indicative votes and noted the following results:

- 17 delegations believed that only States Parties to the Convention should be able to vote at the revision conference, while 11 delegations held the opposite view.
- 31 delegations were in favour of a two-thirds majority vote, while 2 delegations were in favour of the United States proposal, according to which the limits would automatically be raised by a certain percentage unless two-thirds voted against such an increase.
- 24 delegations were in favour of the explicit acceptance procedure, while 5 were in favour of tacit acceptance.
- 5 delegations thought that the tacit acceptance procedure could be adopted for amending the unit of account.
- 11 delegations considered that there was a need to draft rules establishing the relationship between States bound by the earlier limits and those bound by the new limits, and 3 held the opposite view.

The Chairman said that those indicative votes would enable a small Working Group to draft the relevant provisions. She would revert later to the composition of the Working Group.

Summary Record of the Fourteenth Meeting
10 November 1976

[314] The Chairman said that it had been decided, after consultation, that the Working Group to be set up for the purpose of drawing up rules for the periodic revision of liability limits would have the following membership:

- Egypt, France, Iran, Japan, Netherlands and the United Kingdom.

Draft International Convention

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 of Account 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 of Account 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 amendment adopted in accordance with the provisions of this Article shall enter into force on the first day of the month following the
NINetieth day after its acceptance by two-thirds of the States Parties. Acceptance shall be effected by the deposit of a formal instrument to that effect with the Secretary-General of the Organization.

5. For a State Party which subsequently accepts an amendment, that amendment shall enter into force for that State on the first day of the month following the ninetieth day after the date of deposit of its instrument of acceptance.

6. After entry into force of an amendment a Party which has accepted the amendment is entitled to apply the amended Convention vis-à-vis vessels and nationals of a Party which has not accepted the amendment.

7. 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.

Summary Record of the Twenty-fifth Meeting
17 November 1976

[401] The Chairman recalled that it had been decided at the previous meeting to discuss a new French proposal on the revision of the limitation amounts (LEG/CONF.5/WP.4).7

Mr. Jeannel (France) apologized for submitting a proposal at such a late stage; but in the light of the devaluation of many currencies, considered the matter extremely important. Moreover, his delegation had received instructions to the effect that, if the Special Drawing Right (SDR) was adopted as the unit of account, his delegation should ensure that it was linked to a revision system.

His delegation had earlier proposed (LEG/CONF.5/C.1/WP.398 and LEG/...
a revision system based on two factors – namely, periodicity and an accelerated procedure based on tacit acceptance of amendments. He thought that the principle of that proposal had been favourably received; but some delegations had not been in favour of the idea of periodicity, while others had objected to the tacit acceptance system. He had taken those attitudes into account in preparing the new proposal (LEG/CONF.5/WP.4).

The text drafted by the Committee on Final Clauses (LEG/CONF.5/WP.3 Article E) differed from the normal revision system only by specifying that a revision conference should be convened at the request of one quarter rather than the usual one-third of the States Parties. Moreover, paragraph 5 of Article E, as drafted, was unacceptable to many delegations as it was contrary to the fundamental rules on the effect of treaties and would modify the relationship between two States at the request of one.

The new French proposal differed from the earlier one in that it contained no provision for a periodic revision conference and no reference to the tacit acceptance procedure. It did not refer to changing the unit of account but only to the question of dealing with inflation, so that the amounts accepted when the Convention was drafted should not be constantly devalued. It might be five or six years before the Convention came into force, and by then the SDR would certainly have decreased in value to the detriment of victims. It was unacceptable for a Convention to fix limits which could not be exceeded and yet were constantly diminishing in value.

Furthermore, some governments represented at the present Conference considered that the amounts already agreed to were too low. After studying the Convention, some of those governments might well hesitate to become Parties to it.

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(9) Document LEG/CONF.5/C.1/SR.12 is the Summary Record of the Twelfth Meeting of the Committee of the Whole.

(10) The text drafted by the Committee on Final Clauses was the following:

**ARTICLE E**

**REVISION OF THE LIMITATION AMOUNTS AND OF UNITS OF ACCOUNT**

1. **Notwithstanding the provisions of Article “D”, 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 of Account defined in Article 8, paragraphs 1 and 2, by other units of account 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 1/4 of the States Parties.**

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

4. **Any amendment adopted in accordance with the provisions of this Article shall enter into force on the first day of the month following the 90th day after its acceptance by two-thirds of the States Parties. Acceptance shall be effected by the deposit of a formal instrument to that effect with the Secretary-General of the Organization.**

5. **After entry into force of an amendment a Party which has accepted the amendment is entitled to apply the amended Convention vis-à-vis vessels and nationals of a Party which has not accepted the amendment. Any State becoming a Party to the Convention after entry into force of an amendment shall apply the Convention as amended.**
Changing the unit of account would be a much wider and, moreover, a political question. The proposal in LEG/CONF.5/WP.4,11 however, dealt only with the non-political question of inflation. The philosophy underlying the proposal was that the factual and the political elements should be separated. It was a fact on which all experts were agreed that the SDR would depreciate in value. The proposed Committee for the Revision of Limitation Amounts would not meet continuously but would be set up in advance. It would meet only for a short time if at least three States requested it to do so. Its task would be limited to a study of the statistics available and to deciding whether or not there had been a real loss of value of the unit of account. It would then make a recommendation which would not be binding upon anyone but would be addressed to the Secretary-General, who would communicate it to Governments. Only then would the political element come into play, in a decision to convene a conference to raise the limitation amounts in the light of the devaluation of the unit of account, if one quarter of the States Parties to the Convention, as provided for in Article E, requested the convening of such a Conference. The sole aim of the Conference would be to increase the figures for the amounts given in the Convention.

As the Poincaré franc had been abandoned, his delegation considered it of fundamental importance to provide for such a revision mechanism in order to maintain the true value of the amounts given in the Convention.

In reply to a question from the Chairman, **Mr. Jeannel (France)** said that his proposal was intended to replace draft Article E as proposed by the Committee on Final Clauses. It retained certain provisions, such as the requirement that not less than one quarter of the States Parties must request the convening of a conference, but introduced a number of new provisions.

**Mr. Bentein (Belgium)** seconded the proposal, but asked for clarification. As he understood it, the proposal comprised two stages: a technical preparatory stage in which a revision committee would be established, and a subsequent political stage in which a revision conference would be convened. What rules of procedure would govern such a conference? Did the proposal apply solely to the circumstances prevailing after the Convention had come into force?

**Mr. Jeannel (France)** explained that he had had in mind the normal procedure provided for in international conventions. The proposal referred to the period after entry into force of the Convention, as was clear from the second paragraph.

**Lord Diplock (United Kingdom)** said that he had intended to raise the same question as the Belgian representative and also to ask whether the procedure prescribed in paragraph 3 of the existing draft was meant to be included in the French proposal or whether the implication was that no decision at a revision conference would be binding on anyone who did not agree to it.

**Mr. Jeannel (France)** explained that the two-thirds majority rule in paragraph 3 would obviously apply, since it was normal procedure at international conferences. Once the Convention had come into force, Contracting States would be bound by the procedure provided for under the Convention.

**Mr. Wiswall (Liberia)** said that the Committee on Final Clauses had discussed Article E at great length, on the basis of the Working Group’s report.
He would be reporting in detail to the plenary meeting. After considerable discussion on the legal implications of paragraph 5, in particular the first sentence, the Committee on Final Clauses had finally agreed that such a provision would be permissible in accordance with paragraph 1 of Article 40 of the Vienna Convention on the Law of Treaties, 1969.

Mr. Perrakis (Greece) asked if he was correct in assuming that the French proposals had budgetary and constitutional implications for IMCO, as far as the establishment of a committee and the convening of a conference were concerned.

The Secretary-General said that the Secretary-General of IMCO could act solely on the instructions of the IMCO Council or the Assembly. If the Council and the Assembly agreed that IMCO should be the depositary for the Convention and the Convention included a provision on the lines of the French proposal, acceptance of the

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11 November 1976

Report of a Working Group on the Preparation of a draft Article dealing with Revision of Limitation Amounts and of Units of Account

1. The Working Group met on 19 November 1976. It was composed of the following delegations:
   Egypt
   France
   Iran
   Japan
   Netherlands
   United Kingdom
2. The Working Group elected Mr. R. Cleton (Netherlands) as its Chairman.
3. The Group agreed to submit to the Committee of the Whole the following draft Article.

ARTICLE ...

REVISION OF THE LIMITATION AMOUNTS AND OF UNITS OF ACCOUNT

1. NOTwithstanding the provisions of Article (1) a conference for the sole purpose 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 of account defined in Article 8, paragraphs 1 and 2, by other units of account shall be convened by [the depositary] in accordance with paragraphs 2 and 3 of this Article. An alteration of the amounts shall be made only with a view to adapting these amounts to any change in the purchasing power of the units of account in which they have been expressed.

2. [The depositary] shall convene the conference at the request of not less than [1/4] of the contracting parties.

3. [All contracting parties and all signatories of the convention] [all contracting parties, all signatories of the convention and all members of the organization not being contracting parties or signatories of the convention] [all states] shall be invited to participate in the conference.

4. A decision to alter the amounts or to substitute the units of account by other units of account shall be taken by a two-thirds majority of the contracting parties present and voting in the conference.

5. Any amendment adopted in accordance with the provisions of this article shall enter into force on the [90th] day following its acceptance by (2/3) of the contracting parties. Acceptance shall be effected by the deposit of a formal instrument to that effect with the [depository].

6. After entry into force of an amendment a contracting party which has accepted the amendment is entitled to apply the amended convention vis-à-vis vessels and nationals of a party which has not accepted the amendment. Any state becoming a party to the convention after entry into force of an amendment shall apply the convention as amended.

* Article in the final clauses relating to the general revision of the Convention.
function of depositary would imply that the money necessary to comply with the provisions would be available. He could not, of course, anticipate Council or Assembly action at the present juncture.

Mr. Perrakis (Greece) said that, in the light of the Secretary-General’s explanation, his delegation was strongly opposed to the French proposal.

Mr. Müller (Switzerland) said that his delegation understood that the French proposal was to set up a committee of financial experts to prepare for the review conference so that the latter would be working with the full facts and not facing the difficulties of the present Conference. It would be better not to specify financial experts, since they might well be experts in economics or other relevant fields. He would prefer to see paragraphs 3, 4 and 5 of Article E retained, because they referred to the second, political, stage. He could, however, accept the technical aspect of the French proposal. He also felt that it would be desirable not to appoint experts until it had been decided to convene a meeting, since they might otherwise not be available at the appropriate time.

Mr. Yeretzian (Observer, OCTI), speaking at the invitation of the Chairman, stressed the importance of the French proposal and cited two conventions, still in force, in which amounts expressed in gold francs had lost between 25 and 50 per cent of their value in the period from 1970 to 1975. There was a risk of an even more rigid devaluation in the case of the present Convention.

Mr. Selvig (Norway) said that his delegation would support any proposal designed to ensure that the real value of the limitation amounts was maintained. He would vote in favour of the five principles embodied in the French proposal, which seemed to him to be in conformity with the principles generally approved by the Committee (LEG/CONF.5/C.1/SR.12). With regard to the Liberian representative’s comment, he hoped that any decision taken by the Committee would be without prejudice to paragraph 5 of Article E, which was not relevant to the present discussion but would have to be dealt with later.

Mr. Herber (Federal Republic of Germany) said he could understand the concern underlying the French proposal, but was worried about its practical effects. He saw no need to appoint a special committee, and considered the indexation of figures which would result from such a special procedure, to be undesirable and dangerous. The procedure might moreover well lead to premature and frequent revision of the Convention, which was not desirable either for stability or for unification.

Mr. Jeannel (France), referring to the Swiss proposals, expressed his willingness to refer to “experts” rather than “financial experts”, to find wording to the effect that experts should be appointed only when it had been decided to convene the committee, and to incorporate paragraphs 3 and 4 of Article E. He agreed with the Norwegian representative that paragraph 5 of that Article should be dealt with separately.

The Chairman pointed out that the Committee was discussing the French proposal, which concerned the procedure for revising the limitation amounts, and not the content of paragraph 5 of Article E. The French representative had agreed to incorporate paragraphs 3 and 4 of Article E in his proposal, and had no objection to paragraph 5 being discussed in the plenary meeting. On that understanding, she
proposed that the Committee should decide on the principles contained in the French proposal – namely, the possibility of convening a meeting of experts to decide whether the limitation amounts had fallen by more than 10 per cent and to recommend accordingly to the Secretary-General of IMCO. If the principles were approved, she would suggest appointing a small working group to draft a proposal, taking into account the views expressed during the meeting, for submission to the plenary meeting; it would then be discussed in conjunction with the report of the Committee on Final Clauses. In reply to a question from Mr. Makovsky (USSR), she agreed that the French proposal had been intended to replace Article E.

She invited the Committee to vote on the principles of the French proposal (LEG/CONF.5/WP.4), including paragraphs 3 and 4 of Article E and without prejudice to paragraph 5 of that Article.

The proposal was approved (16 votes in favour, 12 against, and 12 abstentions).

The Chairman proposed that a working group, composed of representatives of France, Switzerland, Belgium and Norway, should be appointed to draft a text based on the principles of the French proposal and bearing in mind the views expressed in the discussion, and to report directly to the plenary meeting.

It was so decided.

Summary Record of the Twenty-seventh Meeting
18 November 1976

The Chairman recalled that, at the previous day’s meeting, the Committee had discussed a proposal by the French delegation (LEG/CONF.5/WP.4) for a new Article on revision of the limitation amounts, originally intended to replace Article E of the Final Clauses. The Committee had decided to set up a small Working Group to discuss the matter, and the Group’s proposal had now been circulated (LEG/CONF.5/C.1/WP.86).

1. The Working Group met on 17th November 1976. It was composed of delegations representing the following countries:
   - Belgium
   - France
   - Norway
   - Switzerland


3. The Group, in confining itself to the French proposal, did not consider the question whether a separate Article on Revision of Unit of Account would be needed nor did it consider the question relating to possible adaptations of draft Article 21 (Revision of the Limitation Amounts and of Units of Account) as appearing in document LEG/CONF.5/C.3/Add.1.

(14) See note 7.
(15) See the text supra, in note 10.
(16) Document LEG/CONF.5/C.1/WP.86
18 November 1976
Report of a Working Group on a Procedure relating to the Revision of Limitation Amounts

1. The Working Group met on 17th November 1976. It was composed of delegations representing the following countries:
   - Belgium
   - France
   - Norway
   - Switzerland


3. The Group, in confining itself to the French proposal, did not consider the question whether a separate Article on Revision of Unit of Account would be needed nor did it consider the question relating to possible adaptations of draft Article 21 (Revision of the Limitation Amounts and of Units of Account) as appearing in document LEG/CONF.5/C.3/Add.1.
Mr. Nairac (France) said that the Group’s aim had been to re-frame the French proposal. The proposed new Article 20 bis provided that, when the Convention had entered into force, if three or more States Parties to it considered that the real value of the unit of account used in the Convention had depreciated by more than 10 per cent, those States could request the convening of an expert committee whose recommendations with respect to a change in the value of the unit of account would have to be adopted by a two-thirds majority. A conference could then be convened to revise the limitation amounts, if a request for such a conference was made by more than one-fourth of the States Parties.

Mr. Herber (Federal Republic of Germany) reiterated his opposition to the proposal, which was superfluous. The Convention already contained sufficient provisions for revision of the unit of account. It was unnecessary to set up an expert committee, which would only look into statistics published by the IMF: any country could do that on its own. However, if the proposal were accepted by the Committee, his delegation would like to make two drafting amendments: in paragraph 1 to amend “the real value of the unit of account applied by this Convention”, to read: “the real value of the amounts in Articles 6 and 7” and in paragraph 2 to amend “the real value of the unit of account to read: “the real value of the amounts in Articles 6 and 7”.

Mr. Bendjenna (Algeria) pointed out that the proposed expert committee would require highly qualified financial experts, who might not be available to developing States. The developing countries would thus de facto be eliminated from membership of the committee, whose composition would be limited. He agreed that statistics published by international organizations could be examined by States themselves. There was no need for a committee of experts. Three States were too few to request the convening of the expert committee, and even a 7 per cent depreciation could have disastrous results; yet the proposed expert committee would have to wait for a 10 per cent depreciation before it could meet. For all those reasons the proposal was unacceptable to his delegation, which would prefer the basic text.

ANNEX

**Article 20bis**

**Revision of the Limitation Amounts**

1. **If, when this Convention has entered into force, three States Parties or more consider that the real value of the unit of account applied by this Convention has depreciated more than ten per cent, such State Parties may request the Secretary-General of the Organization to convene an expert committee to which each State Party to this Convention may designate one member.**

2. **The committee shall examine the question of the real value of the unit of account on the basis of international official statistics. Any recommendation by the committee in light of its findings shall be adopted by two-thirds majority.**

3. **Any recommendation by the committee shall be communicated by the Secretary-General to the States Parties to this Convention.**

4. **If requested by more than one-fourth of the States Parties, the Secretary-General shall convene a conference to revise the limitation amounts on account of the change in their real value. A decision to alter the amounts shall be adopted by a two-thirds majority of the States Parties present and voting in the Conference.**

5. **The Conference shall adopt appropriate provisions on the entry into force of any amendment adopted by the Conference.**

(17) Article 21 bis is the new article proposed by the Working Group. See note 16.
Mr. Djavad (USSR) pointed out that establishment of a new body within IMCO had financial implications both for the organization and for Member States. How far was the Conference entitled to decide on a matter having financial implications without knowing how much would be involved? The views of the appropriate executive organs of IMCO should be sought, but perhaps some clarification could be given by the Secretariat now.

If the decision were adopted, his delegation could accept it in principle, but only if the explanations he had requested were satisfactory. However, his delegation thought that the depreciation percentage was too small, since it would mean excessively frequent meetings of the expert committee; it would be better to fix the percentage at more than 20 per cent.

Finally, his delegation saw no need for paragraph 5 of the Article, for it went without saying that the Conference would adopt appropriate provisions on the entry into force of any amendment adopted by the Conference.

The Secretary-General said that the proposal could indeed have financial implications for IMCO. However, as he had said on a previous occasion, it would be for the Council and the Assembly to decide whether to accept responsibility for implementing the proposal. All he could say was that it would be very difficult to make any specific financial proposal for incorporation in the IMCO budget, because it was hard to estimate the exact number of meetings involved. However, if such a provision were incorporated in the Convention, and if the Organization, aware of the provision, accepted depositary functions in respect of the Convention, then it could be taken that the Organization had accepted the consequential financial responsibilities. While the IMCO Council had indicated that it did not wish to increase the number of meetings in IMCO, he could not predict how it would react to a provision which had been put into a Convention by decision of a diplomatic conference.

Mr. Iwata (Japan) agreed with the remarks made by the representatives of the Federal Republic of Germany and Algeria. Such an Article might delay the work of revising the unit of account. If it was the intention to adjust to economic changes, then the present basic text was the best, suitably adapted to take account of the wishes of those delegations that desired revision of the unit of account. It would, moreover, be difficult to impose a fresh responsibility on the Organization. His delegation was therefore unable to support the proposed new Article.

Mr. Bursley (United States) supported the proposal made by the representative of the Federal Republic of Germany for a change in the second line of paragraph 1, and wished to amend that line further to read: “or more consider that the real value of the amounts in Articles 6 and 7 of this Convention...”. Line 1 of paragraph 2 should, moreover, be amended to read: “... of the real value of the amounts in Articles 6 and 7”.

The Chairman suggested that the wording of paragraphs 1 and 2 should be: “...real value of the amounts set out in Articles 6 and 7 and in paragraph 2 of Article 8” and that “Secretary-General of the Organization” in the third line of paragraph 1 be amended to read “the depositary”.

Mr. Herber (Federal Republic of Germany) agreed to those amendments.

Mr. Lyon (Canada) proposed two drafting amendments. In paragraph 1, “three States Parties or more” should be amended to read “three or more States Parties”, and “such State Parties” in the third line of that paragraph should read “such States Parties”.

Mr. Selvig (Norway) said that the drafting amendments proposed were acceptable to his delegation, as was the Soviet proposal to delete paragraph 5.
The problem raised by the Algerian representative might be solved by deleting the word “expert” in the fourth line of paragraph 1.

Mr. Wiswall (Liberia) pointed out that, in adopting the proposed Article, IMCO would be by-passing the work of many other international organizations, including the United Nations Economic and Social Council, which had more time to deal with such matters. IMCO should not be requested to shoulder such a burden.

Mr. Jeannel (France) said that the argument concerning financial implications was not a weighty one, since the proposed committee would meet very seldom, and not for long.

Some representatives had argued that international bodies other than IMCO could do the work of revising the value of the unit of account; but IMCO could hardly ask the Economic and Social Council or another body to examine IMCO Conventions to assess whether the amounts were valid or not. He would hesitate to adopt such a course.

He was prepared to accept all the amendments proposed – namely to change 10 per cent to 20 per cent (which would guarantee that few meetings need be held); to delete paragraph 5; to make the amendments proposed by the representatives of the Federal Republic of Germany and the United States; and to delete the word “expert” from paragraph 1. He therefore hoped that the proposal could now be adopted.

Mr. Müller (Switzerland), in reply to the Chairman, said that his delegation could accept the amendments.

Mr. Djavad (USSR) thanked Mr. Jeannel for his disarming courtesy, which had enabled all the points raised to be cleared up. Perhaps the French delegation could agree to one further amendment to paragraph 1 – namely, to add the words “ad hoc” before “committee”, so as to avoid the implication that the committee would be a new standing body of IMCO.

Mr. Jeannel (France) agreed to that amendment.

The Chairman put to the vote proposed Article 20 bis, as amended.

Paragraph 1, as amended, was approved (19 votes in favour, 13 against, and 3 abstentions).

Paragraph 2, as amended, was approved (17 votes in favour, 8 against, and 8 abstentions).

Paragraphs 3 and 4 were approved (18 votes in favour, 4 against and 11 abstentions).

The Chairman, having recalled that paragraph 5 had been withdrawn, said that certain consequential amendments would be required to Article 21 (LEG/CONF.5/CD.3/1/Add.1) if Article 20 bis were to be adopted by the Plenary. She suggested that the heading of Article 21 might be reworded as follows: “Revision of Units of Account or monetary unit”; that the words “altering the amounts specified in Articles 6 and 7 and in Article 8, paragraph 2, or of” be deleted from paragraph 1, and that the whole of the last sentence of that paragraph be deleted. The words “alter the amounts or to” should be deleted from paragraph 3.

Mr. Cleton (Netherlands) drew attention to the fact that Article 20 bis contained no specific provision with regard to the provisions of Article 21(6), which had been included with a view to solving the problems that arose when several sets of amount

(18) See text at p. 402
were included in the same convention. If Article 20 bis were approved by the Plenary, provisions of the same tenor as those in Article 21(6) and perhaps other paragraphs of that Article would have to be included. His delegation would be obliged, when a vote was taken in Plenary on Articles that were related to one another but did not contain the appropriate legal provisions, to vote against such Articles. Delegations were perhaps at that late stage not aware of all the implications of the provisions they had adopted, and the Convention might end up with some poor Articles.

**The Chairman** recalled that a provision similar to that of Article 21(6) had been deliberately omitted from Article 20 bis.

**Mr. Jeannel (France)** confirmed that that was the case.

**The Chairman** asked whether the Netherlands delegation wanted the Committee to decide at that time whether or not to insert in Article 20 bis a provision of the same kind as in Article 21(6), or to wait till the Plenary had taken a decision on whether to accept Article 20 bis.

**Mr. Cleton (Netheriands)** said that the least the Committee could do would be to add a provision similar to that of paragraph 6 of Article 21; but other provisions needed to be studied now that the system was to be different. A revision conference would not be free to add the new provisions necessary to avoid conflict between the different versions of the Convention.

**The Chairman** suggested that, to save time, the Netherlands representative should wait until the Plenary had decided whether or not to adopt Article 20 bis.

**Mr. Tanikawa (Japan)** said that he realized that, when the units of account were revised, the amounts would also usually be revised, and therefore two kinds of conference should be convened for the purpose of amending the unit of account.

**Mr. Whitaker (United Kingdom)** said that his delegation shared the view expressed by the Netherlands representative in his first intervention, and added that one of the reasons why it had voted against paragraph 1 of Article 20 bis was because paragraph 5 did not contain what it considered to be suitable provisions on the entry into force of amendments. The United Kingdom also attached importance to the inclusion of the provisions of Article 21(4), (5) and (6) in Article 20 bis; in its view, without such paragraphs the Convention would have a short life; if States which had accepted revised amounts could not apply them to States which had not accepted such amounts, the former States would have to denounce the Convention.

**Mr. Makovsky (USSR)** said that he had thought that the Committee, in returning to Article 21, had intended only to tidy up the text. However, the Committee was now discussing the substance of that Article, and in the process had passed over several others.

If the Committee was indeed discussing the substance of Article 21, his delegation had some serious objections to the whole concept.

**The Chairman** replied that the Committee was not in fact discussing the substance of Article 21, but was merely formulating a recommendation to the Plenary that, if Article 20 bis were adopted, certain consequential amendments would have to be made to Article 21. Moreover, the Committee was not going to discuss paragraph 6 of Article 21.

**Mr. Makovsky (USSR)** said that he would therefore reserve his comments on Article 21(6) for the Plenary.

**Mr. Wiswall (Liberia)** wholeheartedly endorsed the point made by the
Netherlands and United Kingdom representatives. A paragraph analogous to paragraph 7 of Article 21 was also essential in Article 20 bis.

The Chairman enquired whether the Committee agreed that, if Article 20 bis were approved by the Plenary, it should recommend that the consequential amendments she had read out be made to Article 21.

It was so decided.

Plenary Meetings
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[489] Articles 20 bis and 21 – Revision of the Limitation Amounts

Mr. Zivkovic (Yugoslavia) requested that Articles 20 bis and 21 be voted on paragraph by paragraph, as his delegation had serious objections to raise with regard to Article 21(6) in particular.

Mr. Vonau (Poland) associated himself with the request by the Yugoslav representative.

The President asked the representative of Sweden whether she could agree to that procedure.

Ms. Blom (Sweden) recalled that the Committee of the Whole, of which she had been Chairman, had come to the conclusion during its second week of discussions, that it was essential to lay down provisions relating to revision of limitation amounts, and had set up a Working Group to formulate such provisions. The Committee of the Whole had examined the draft produced by the Working Group. During those discussions, some delegations had stated that it would be advisable to make special provisions governing revision of the limitation amounts, whereupon several representatives had suggested the adoption of a different formula; and in that way Article 20 bis set forth in LEG/CONF.5/WP.919 had been worked out. If that Article were to be adopted, a number of alterations would have to be made to Article 21.

(19) The relevant part of Document LEG/CONF.5/WP.9 (Report of the Committee of the Whole) is quoted below:

Document LEG/Conf.5/WP.9
18 November 1976

Report of the Committee of the Whole

The Committee of the Whole also gave consideration to two issues raised by the texts of the Final Clauses which, in the opinion of the Committee, involved important questions of substance. These issues related to:
(i) the provisions for revision of the limitation amounts contained in draft Articles 6, 7 and 8, paragraph 2, of the Convention, and
(ii) the requirements for entry into force of the Convention.

With regard to the first of these matters, the Committee of the Whole considered and approved a draft article for revision of the limitation amounts contained in draft Articles 6, 7 and 8, paragraph 2 of the Convention. It observed that if this draft Article were approved by the Conference, certain consequential changes would be required in draft Article 21 which the Committee on Final Clauses had prepared with a view to the future revision of both the limitation amounts and the Units of Account or monetary units. The text of the draft article approved and designated Article 20 bis is as follows:
prepared by the Committee on Final Clauses and reviewed by the Drafting Committee (LEG/CONF.5/C.3/1/Add.1). She had no objection to the procedure requested by the representative of Yugoslavia.

Mr. Wiswall (Liberia), Chairman of the Committee on Final Clauses, pointed out that the Committee had in fact examined the text of Article 21, but not that of Article 20 bis.

Mr. Jeannel (France) commented that the Conference would have to study the text for Article 20 bis containing the amendments made by the Committee of the Whole.

[490] Mr. Herber (Federal Republic of Germany) said that he could not endorse the proposal for a new Article, since he thought it would serve no purpose to constitute an ad hoc committee of that nature. Such a procedure was liable to result in frequent revisions and run counter to the efforts to achieve unification, which was the objective of the present Conference.

Mr. Azouz (Tunisia) asked that the last line of paragraph 1 of the French text of Article 20 bis be amended to read: “... désigner un membre au sein de ce comité”.

Ms. Blom (Sweden) pointed out that the words “Unit of Account” should be replaced by “amounts” in the second line of paragraph 2 of Article 20 bis as given in document LEG/CONF/5/WP.9.

Mr. Cleton (Netherlands) had no objection to adoption of provisions on revision

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**ARTICLE 20 BIS**

**Revision of the Limitation Amounts**

1. **If, when this Convention has entered into force, three or more States Parties consider that the real value of the amounts set out in Articles 6, 7 and in paragraph 2 of Article 8, has depreciated more than twenty per cent, such States Parties may request the depositary of the Organization to convene an ad hoc Committee to which each State Party may designate one member.**

2. **The Committee shall examine the question of the real value of the Unit of Account set out in Articles 6, 7 and in paragraph 2 of Article 8 on the basis of international official statistics. Any recommendation by the Committee in light of its findings shall be adopted by a two-thirds majority.**

3. **Any recommendation by the Committee shall be communicated by the Secretary-General to the States Parties to this Convention.**

4. **If requested by more than one-fourth of the States Parties, the Secretary-General shall convene a Conference to revise the limitation amounts on account of the change in their real value. A decision to alter the amounts shall be adopted by a two-thirds majority of the States Parties present and voting in the Conference.**

Concerning the requirements for entry into force of the Convention, the Committee modified Article 17 (“Entry into force”) to require a number of twelve rather than twenty States to agree to be bound as a pre-requisite to the entry into force of the Convention, and it decided that no tonnage requirement would be retained in paragraph 1 of the Article. Accordingly “twelve” is substituted for “twenty” in line two of that Article and the final phrase following the word “accession”, is deleted.

**Action requested of the Conference**

The Conference is invited to consider the texts of the substantive Articles prepared by the Committee of the Whole and drafted by the Drafting Committee. These texts are presented in the Report of the Drafting Committee (LEG/CONF/5/C3/1 and LEG/CONF/5/C.3/1/Add.1) and in the present Report (LEG/CONF/5/WP.9).

(20) See text at p. 402
of amounts, but was unable to accept Article 20 bis, which he considered superfluous and complicated. If the Conference were to adopt that Article, it ought also to adopt the paragraph suggested by the delegation of Argentina in document LEG/CONF.5/WP.10 in order to make its provisions capable of application. Otherwise the text of Article 21 ought to be retained in its present form.

Mr. Perrakis (Greece) wished to associate himself with the statement by the representative of the Federal Republic of Germany.

Mr. Iturralde (Argentina) endorsed the proposal contained in document LEG/CONF.5/WP.9. In the light of the discussions which had taken place during the present conference, it seemed absolutely necessary to call in a group of experts to settle such a delicate technical question.

Mr. Zivkovic (Yugoslavia) repeated that the wording of paragraph 6 of Article 21 had no legal justification and was unacceptable to his delegation, because it ran counter to the fundamental principles governing the establishment of international treaties. It could not be allowed that a State Party should be constrained to tolerate the application to itself of an amendment which it had not accepted. He wished to request that his statement be recorded in the summary record of the present meeting.

The President called for a vote on Article 20(bis) as amended, with the word “depositary” in the fourth line of paragraph 1 replaced by the words “Secretary-General”.

There were 16 votes in favour, 15 against, and 9 abstentions. Having failed to obtain the required two-thirds majority, Article 20(bis) was rejected.

Article 21 – Paragraph 1

Mr. Wiswall (Liberia), Chairman of the Committee on Final Clauses, said the Article had given rise to lengthy discussion and had been the subject of a number of indicative votes. In paragraph 1, lines 3 and 4, a proposal to delete the phrase “or of substituting either or both ... by other units” had received 2 votes; another proposal to put the phrase between square brackets had received 4 votes, and a proposal to retain the phrase had received 14 votes. The Committee on Final Clauses had decided to add the last sentence which appeared in paragraph 1.

Mr. Vonau (Poland) associated himself with the views expressed by the representative of Yugoslavia with regard to paragraph 6 of Article 21, which was totally unacceptable from the constitutional point of view. That was a crucial element in the Convention which, according to the decision taken, would either permit Poland to become a Party to the Convention or make that action impossible. He believed that other delegations had the same objections, and requested that a roll-call vote be taken on the last sentence of paragraph 1 of Article 21, in accordance with Rule 36 of the Rules of Procedure.

Mr. Sebbah (Algeria) pointed out that the last sentence of paragraph 1 concerning the alteration of amounts might lead to confusion, because the phrase “significant change” was too vague. He proposed that the sentence should be amended by the addition of a reference to a 20 per cent depreciation in real value.

Mr. Montesino (Cuba) supported that proposal.

The President called for a vote on the Algerian proposal to make the last sentence of paragraph 1 of Article 21 more specific.

There were 10 votes in favour of the proposal, 13 against, and 15 abstentions; the proposal was therefore rejected.
The President called for a vote on paragraph 1 of Article 21, as set forth in document LEG/CONF.5/C.3/1/Add.1. Paragraph 1 of Article 21 was adopted (36 votes in favour, 1 against and 1 abstention).

Paragraph 2

Mr. Wiswall (Liberia), Chairman of the Committee on Final Clauses, recalled that the paragraph concerned the number of States Parties necessary to request the convening of a Revision Conference. A proposal that the number should be one-fifth of States Parties had received 7 votes; another proposal that the number should be one-third of the Contracting Parties had received 6 votes; and the original proposal that the number should be one-fourth had received 10 votes.

The President called for a vote on paragraph 2 of Article 21. Paragraph 2 of Article 21 was adopted (38 votes in favour, none against, and 2 abstentions).

Paragraph 3

Mr. Wiswall (Liberia), Chairman of the Committee on Final Clauses, recalled that when the original draft of paragraph 3 had been submitted to it, the Committee had considered the paragraph unnecessary, and had voted by 18 votes to 1 for its deletion. In the absence of such a paragraph, however, one might wonder which States would participate in such a Revision Conference. Normally it was customary to invite all IMCO Member States, whether or not they were Parties to the Convention.

He pointed out that in paragraph 3 as set forth in the text, only States Parties could participate in the vote.

Paragraph 3 of Article 21 was adopted (36 votes in favour, none against, and 3 abstentions).

Paragraphs 4 and 5

Mr. Wiswall (Liberia), Chairman of the Committee on Final Clauses, recalled that the Committee had considered the question of whether the requirements for entry into force of the Convention should also apply to amendments or whether the requirements should be different according to whether the amendments related to changes in the limitation amounts or in the unit of account, and, if so, what procedure should be adopted for one or other of those types of amendments.

In a series of indicative votes, the Committee had voted by 11 to 2 against the principle of applying the requirements for entry into force of the Convention to amendments relating to changes in the limitation amounts, and by 6 to 4 against applying the Convention’s entry into force requirements to amendments involving changes in the unit of account.

The Committee had voted by 12 to 3 against the tacit amendment procedure for amendments to the limitation amounts, and by 14 to 1 against the tacit amendment procedure for amendments to change the unit of account.

(21) See text at p. 402.
Ms. Blom (Sweden) said her delegation would not be able to support the provisions contained in paragraphs 4 and 5 because it was strongly opposed to entry into force being made conditional upon acceptance of the amendment by two-thirds of the States Parties. That was a dangerous solution which might well jeopardize the entire amendment procedure. Where 12 Contracting States were involved it was possible to require acceptance by 8 of them; but where 60 Contracting States were involved, to require acceptance by 40 of them was unjustified.

Her delegation could support paragraphs 6 and 7 of Article 21.

Mr. Wiswall (Liberia) pointed out that a legal problem might arise in connexion with paragraphs 4 and 5 when reference was made to the first line of paragraph 1, which read “...a Conference only for the purpose of altering the amounts...”. It would be preferable to avoid that difficulty by specifying the procedure for entry into force of the amendment.

Mr. Jeannel (France) strongly supported the views of the Swedish delegation. The procedure was already cumbersome, and there was a danger that such provisions would make it more cumbersome still and paralyse the revision system. He doubted whether it was appropriate to establish in the present Convention rules governing entry into force since such rules were for a sovereign conference to decide.

The President, after having confirmed that the Swedish delegation had not made a concrete proposal, called for a vote on paragraph 4 of Article 21.

There were 16 votes in favour of paragraph 4 of Article 21, 15 against, and 8 abstentions. Not having obtained the required two-thirds majority, the paragraph was declared rejected.

The President noted that in view of the vote on paragraph 4, paragraph 5 of Article 21 had become redundant and there was therefore no need to put it to the vote. It was to be deemed as having been rejected along with paragraph 4.

It was so decided.

Paragraph 6

The President recalled that the Yugoslav delegation, supported by the delegation of Poland, had requested the deletion of paragraph 6; the delegation of Poland had also requested a roll-call vote on the paragraph.

Mr. Wiswall (Liberia), Chairman of the Committee on Final Clauses, recalled that the paragraph had given rise to lengthy discussion in the Committee. The discussion had centred on whether it was desirable to include such a paragraph, and also whether such a paragraph was permissible under the Law of Treaties. Under the Vienna Convention on the Law of Treaties, the general principle was that a State Party to a Convention was not required to accept an amendment to that Convention unless it had signified its acceptance of that amendment. However, paragraph 6 dealt with the relations of States Parties which had accepted the amendment vis-à-vis State Parties which had not accepted the amendment but which would be obliged to apply it. A proposal to delete the paragraph had been rejected by 11 votes to 6, and a proposal to substitute the phrase “which has accepted” for the phrase “which has not accepted” in the third line of paragraph 6 had been rejected by 12 votes to 6.

He reserved the right to intervene in the discussion again on behalf of the Liberian delegation.

Mr. Makovsky (USSR) said that with respect to paragraph 6, his delegation’s position was similar to that of the Yugoslav and Polish delegations. He considered the
paragraph unacceptable; but the situation was now somewhat different to what it had been before consideration of Article 21. At the present stage, his delegation wished to make a compromise proposal, which would consist in the deletion of the whole of Article 21, and the addition to Article 20 of a new paragraph stating that a Conference only for the purpose of revising limitation amounts and units of account might be convened at the request of one-quarter of States Parties. That idea had already received support in the Committee of the Whole.

Mr. Jeannel (France) was strongly opposed to paragraph 6 on legal grounds; it was, in fact, contrary to the basic rule set forth in paragraph 4 of Article 40 of the Vienna Convention on the Law of Treaties. It was true that paragraph 1 of Article 21 made it possible to set aside the application of that basic rule, but his delegation was firmly opposed to that being done. The adoption of such a provision would mean in practice that, in a case where two States were Parties to a Convention, one of them could come to an agreement with a third State to alter its relations with the other State without the latter’s agreement. That was unacceptable and could endanger the stability of international relations.

In addition, acceptance of such provisions would mean that a State agreed to be bound in advance by decisions taken by third parties, which constituted a serious infringement of the rights of States and of Parliaments (since such a Convention would in fact be submitted to Parliaments for acceptance).

He considered that paragraph 6 should be deleted, as proposed by the USSR delegation.

Mr. Cleton (Netherlands) thought that, on the contrary, it was important that the paragraph should be retained. If there was to be a special revision procedure, there would – after a certain number of years – be different versions of the limitation amounts, which would complicate the situation. If paragraph 6 were not retained, it would be difficult for States Parties which had not accepted certain amendments to apply different amounts to different ships, and chaos might ensue. The aim should be to formulate a Convention which would not give rise to too many complications in application.

Mr. Wiswall (Liberia) said that, at the beginning of the consideration of Article 21 in plenary, his delegation had been in favour of the retention of paragraph 6, in the belief that an exception was justified in view of the provisions of paragraphs 4 and 5; paragraph 4, in particular, provided that an amendment would enter into force upon acceptance by two-thirds of the States Parties, which in his view constituted a guarantee.

However, since paragraphs 4 and 5 had been deleted, his delegation could not longer support paragraph 6, and would also vote against Article 21 as a whole.

Mr. Herber (Federal Republic of Germany) favoured the retention of paragraph 6. At first sight the paragraph might appear to give cause for concern, but what was involved was a justification of the uniform application of the new amounts.

As the Liberian representative had said, the situation was perhaps theoretically different after the deletion of paragraphs 4 and 5. He associated himself with the economic and political arguments put forward by the Netherlands representative.

Since no provision equivalent to paragraph 6 had been inserted in the 1968 Protocol to the 1924 Hague Rules it had been necessary instead to include a clause regarding the effect of denunciation of the 1924 Hague Rules as between the Parties to the 1968 Protocol. If the Conference did not include paragraph 6 in the new
Convention it would have to envisage that a future revision conference would have to provide for a denunciation clause similar to the one contained in the 1968 Protocol.

Mr. Sebbah (Algeria) regretted that paragraphs 4 and 5 had been deleted. It would have been possible to arrive at a more positive result if the statement by the Swedish delegation could have been made the subject of a proposal and put to the vote.

With regard to paragraph 6 of Article 21, his delegation agreed with the French delegation that the paragraph as it stood was frankly unacceptable, since it called in question the sovereignty of States. He proposed that the paragraph should be worded as follows: “After entry into force of an amendment, such an amendment shall be applicable to the Party which has not accepted it only after its express acceptance by that Party”.

The President asked the Polish representative if he maintained his request for a roll-call vote on paragraph 6.

Mr. Vonau (Poland) replied that the insertion of such a provision in the Convention would set a totally unacceptable precedent. The point was so important that he must insist on a roll-call vote.

A roll-call vote was accordingly taken on the proposal to delete paragraph 6 of Article 21.

Having been drawn by lot by the President, the Netherlands were called upon to vote first. The result of the vote was as follows.

In favour: Poland, Singapore, Spain, Sri Lanka, Thailand, Trinidad and Tobago, Tunisia, Turkey, USSR, Yugoslavia, Algeria, Cuba, Egypt, France, German Democratic Republic, Ghana, Greece, India, Indonesia, Iran, Jordan, Liberia.

Against: Netherlands, Norway, Sweden, United Kingdom, United States, Argentina, Belgium, Chile, Denmark, Finland, Federal Republic of Germany, Ireland, Japan, Australia.

Abstentions: New Zealand, Switzerland, Austria, Canada, Italy, Brazil.

Absent: Panama, Bulgaria, Cyprus, Mexico, Monaco.

There were 22 votes in favour of the proposal to delete paragraph 6, 14 against and 6 abstentions. Not having received the required two-thirds majority, the proposal was declared rejected.

The Secretary-General, at the request of the representative of the USSR, explained that the motion to delete paragraph 6 having failed, the next proposal to be considered was the amendment put forward by Algeria. After that, the paragraph, amended or not as the case might be, would be submitted for adoption by the Conference.

Mr. Bendjenna (Algeria) suggested the following wording for the amendment of paragraph 6: “After the entry into force of an amendment, that amendment shall not be applicable to a Party that has not accepted it, until it has been expressly accepted by that Party.”

Mr. Montesino (Cuba) seconded the proposal.

The President called for a vote on the amendment proposed by Algeria.

There were 18 votes in favour of the amendment, 13 against, and 9 abstentions. Not having received the requisite two-thirds majority, the amendment was not adopted.

At the request of Mr. Djavad (USSR), a roll-call vote was taken on paragraph 6 as it stood.
Having been drawn by lot by the President, Jordan was called upon to vote first. The result of the vote was as follows:

In favour: Netherlands, Norway, Spain, Sweden, United Kingdom, United States, Argentina, Australia, Belgium, Chile, Denmark, Finland, Federal Republic of Germany, Ireland, Japan.

[496] Against: Jordan, Liberia, Poland, Singapore, Sri Lanka, Thailand, Trinidad and Tobago, Tunisia, Turkey, USSR, Yugoslavia, Algeria, Cuba, Egypt, France, German Democratic Republic, Ghana, Greece, India, Indonesia, Iran.

Abstentions: New Zealand, Switzerland, Austria, Brazil, Bulgaria, Canada, Italy.

Absent: Mexico, Monaco, Panama, Brazil, Cyprus.

There were 15 votes in favour of Article 21, paragraph 6, 21 against, and 6 abstentions. Not having received the requisite two-thirds majority, paragraph 6 was declared rejected.

Paragraph 7

The President called for a vote on paragraph 7 of Article 21.

Article 21, paragraph 7 was adopted (36 votes in favour, none against and 1 abstention).

The President called for a vote on Article 21 as a whole, as it now stood.

Article 21 as a whole was adopted (29 votes in favour, 2 against, and 10 abstentions).

1976 Convention

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.

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19 November 1976

[496] Article 22—Depositary (LEG/CONF.5/C.3/1/Add.1)
The President called for a vote on Article 22.
Article 22 was adopted (40 votes in favour, none against, and no abstentions).

1976 Convention

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.
APPENDIX I


Appendix B

Article 1
Persons entitled to limit liability

1. Shipowners and salvors, as hereinafter defined, and any person for whose act, neglect or default they are responsible, may limit their liability in accordance with the rules of this Convention for claims set out in Article 2.

2. The term shipowner shall include the owner, charterer, manager and operator of a seagoing ship, and any person rendering service in direct connection with the navigation, management, or the loading, stowing or discharging of the ship.

3. Salvor shall mean any person rendering service in direct connection with salvage operations. Salvage operations shall include operations referred to in Article 2 (c) and (d) and (e).

4. In this Convention the liability of the owner of a ship shall include the liability of the ship herself.

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

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

Article 2
Claims subject to limitation

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 consequential loss, occurring in direct connection with the operation of the ship or with salvage operations;

(b) claims in respect of other loss in direct connection with the operation of the ship or salvage operations, not capable of being based on contract;

(c) claims in respect of the raising, removal, destruction or the rendering harmless of a ship which is sunk, wrecked, stranded or abandoned, including anything on board such ship, and damage caused to harbour works, basins and navigable waterways;

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

(e) claims 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.
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 subject to the provisions of the International Convention on Civil Liability for Oil Pollution Damage, dated 29th November, 1969, or to national legislation giving effect to that convention;
(c) claims subject to any international convention or national law governing liability for nuclear damage;
(d) claims against the shipowner of a nuclear ship for nuclear damage;
(e) claims in respect of loss of life or personal injury to any person being passenger of the ship, subject to an international convention governing limitation of liability for such claims, or to any equivalent national legislation;
(f) claims by servants of the shipowner or salvor whose duties are connected with the ship or the salvage operations, including claims of their heirs, personal representatives or dependants, to the extent limitation of liability in accordance with the rules of this Convention is not permitted under the national law governing the contract of service.

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. The limitation of the liability

Article 6
Limits of liability

1. The limits of liability shall be
(a) in respect of claims for loss of life or personal injury an aggregate amount of X francs per ton of the ship’s tonnage, but not less than P francs;
(b) in respect of other claims an aggregate amount of Y francs per ton of the ship’s tonnage, but not less than R francs.

2. For the purpose of this Article the ship’s tonnage shall be the gross tonnage calculated in accordance with the International Convention on Tonnage Measurement of Ships, 1969.

3. The francs mentioned in this Article shall be a unit consisting of sixty-five and a half milligrams of gold millesimal fineness nine hundred. The amounts mentioned in paragraph 1 of this Article shall be converted into the national currency of the State in
which limitation is sought, on the basis of the official value of that currency by reference to the unit defined above at the date the liable person shall have constituted the limitation fund, made the payment or given a guarantee, which under the law of that State, is equivalent to such payment.

**Article 7**

Aggregation of claims

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

(a) against the shipowner and salvors rendering services to the ship who are not directed from another ship, and any person for whose act, neglect or default they are responsible;

(b) against the shipowner of a ship rendering salvage services to another ship and salvors directed from the former ship and any person for whose act, neglect or default they are responsible.

**Article 8**

Distribution of the amounts

Articles 10 and 12 shall apply correspondingly to the distribution of the amounts determined in accordance with Article 6.

**CHAPTER III. THE LIMITATION FUND**

**Article 9**

Constitution of the fund

1. The person liable may constitute a fund in the amounts set out in Article 6 with the Court or other competent authority in any Contracting State in which action is brought. The 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 Contracting State where the fund is constituted and considered to be adequate by the Court or other competent authority. All claims subject to limitation against the person liable shall be satisfied out of the limitation fund.

3. A fund constituted by one of the persons mentioned in § 1° or § 2° of Article 7 or his insurer shall be constituted for the benefit of all persons mentioned in § 1° or § 2°, respectively.

**Article 10**

Distribution of the fund

1. Each part of the fund shall be distributed among the claimants in proportion to their established claims against that part of the fund.

2. If, before the fund is distributed, the person liable, or his insurer, has compensated 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 of this Article 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 of this Article 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 claim against the fund.

5. Claims in respect of expenses reasonably incurred or sacrifices reasonably made voluntarily by the person liable to avert or minimize loss shall rank equally with other claims against the fund.

Article 11
Bar to other actions

1. Where, after the occurrence, a person liable is entitled to limit his liability and a limitation fund has been constituted in accordance with Article 9 by him or for his benefit
   (a) no person having a claim arising out of that occurrence shall be entitled to exercise any right in respect of such claim against any other assets of the person liable;
   (b) the Court or other competent authority of any Contracting State shall order the release of any ship or other property belonging to the person liable, which has been arrested in respect of a claim arising out of that occurrence, and shall similarly release any bail or other security furnished to avoid such arrest.

2. The rules of the preceding paragraph shall apply only if the claimant has access to the Court administering the fund and if the fund is actually available in respect of his claim.

Article 12
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 connection therewith, shall be governed by the law of the State in which the fund is constituted.
APPENDIX II*

DRAFT INTERNATIONAL CONVENTION ON THE LIMITATION OF THE LIABILITY FOR MARITIME CLAIMS

DATED APRIL 4 1974

(HAMBURG DRAFT)

CHAPTER I. THE RIGHT OF LIMITATION

Article 1

Persons entitled to limit liability

1. Shipowners and salvors, as hereinafter defined, and any person for whose act, neglect or default they are responsible, may limit their liability in accordance with the rules of this Convention for claims set out in Article 2.

2. The term shipowner shall include the owner, charterer, manager and operator of a seagoing ship, and any person rendering service in direct connection with the navigation, management, or the loading, stowing or discharging of the ship.

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

4. In this Convention the liability of the owner of a ship shall include the liability of the ship herself.

5. 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.

6. 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 consequential loss, (including damage to harbour works, basins and waterways), occurring on board or in direct connection with the operation of the ship or with salvage operations, and consequential loss resulting therefrom;

(b) claims in respect of other loss in direct connection with the operation of the ship or salvage operations, not capable of being based on contract;

(b) claims in respect of loss resulting from delay of cargo which has been received for transport under a bill of lading;

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

* This text shows the additions and deletions as respects the text in Appendix I.
(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 carried on board such ship; and damage caused to harbour works, basins and navigable waterways;

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

(f) claims 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 the preceding paragraph shall be subject to limitation of liability even if brought in an action for contribution or indemnity under a contract or otherwise.

**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 subject to the provisions of the International Convention on Civil Liability for Oil Pollution Damage, dated 29th November, 1969, or to national legislation giving effect to that convention;

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

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

(e) claims in respect of loss of life or personal injury to any person being passenger of the ship, subject to an international convention governing limitation of liability for such claims, or to any equivalent national legislation subject to an international convention prepared under the auspices of the United Nations or any of its specialized agencies governing limitation of liability for passengers, or to any national legislation providing for equivalent limits of liability;

(f) claims by servants of the shipowner or salvor whose duties are connected with the ship or the salvage operations, including claims of their heirs, personal representatives or dependants, to the extent limitation of liability in accordance with the rules of this Convention is not permitted under the national law governing the contract of service.

**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. THE LIMITATION OF THE LIABILITY

Article 6
Limits of liability

1. The limits of liability shall be
   (a) in respect of claims for loss of life or personal injury an aggregate amount of \( X \) francs per ton of the ship’s tonnage, but not less than \( P \) francs \( A \) francs per ton for the first \( P \) tons of the ship’s tonnage and \( B \) francs per ton for tonnage in excess thereof, but in no case less than \( Y \) francs;
   (b) in respect of other claims an aggregate amount of \( Y \) francs per ton of the ship’s tonnage, but not less than \( R \) francs \( C \) francs per ton for the first \( R \) tons of the ship’s tonnage and \( D \) francs per ton for tonnage in excess thereof, but in no case less than \( Y \) francs.

2. For the purpose of this Article the limit of liability for any salvor not operating from another ship shall be calculated by reference to the tonnage of the ship to which salvage services are being rendered.

3. For the purpose of this Article the ship’s tonnage shall be the gross tonnage calculated in accordance with the International Convention on Tonnage Measurement of Ships, 1969.

4. The franc mentioned in this Article shall be a unit consisting of sixty-five and a half milligrams of gold of millesimal fineness nine hundred. The amounts mentioned in paragraph 1 of this Article shall be converted into the national currency of the State in which limitation is sought, on the basis of the official value of that currency by reference to the unit defined above at the date the liable person shall have constituted the limitation fund, made the payment or given a guarantee, 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. If there is no such official value the competent authority of the State concerned shall determine what shall be considered the official value for the purposes of this Convention.

Article 7
Aggregation of claims

The limits of liability determined in accordance with Article 6 shall apply to the aggregate of claims which arise on any distinct occasion
   (a) against the shipowner and salvors a salvor rendering services to the ship who are not directed is not operating from another ship, and any person for whose act, neglect or default they are responsible;
   (b) against the shipowner of a ship rendering salvage services to another ship and salvors directed a salvor operating from the former ship and any person for whose act, neglect or default they are responsible.

Article 8
Distribution of the amounts

Articles 10 and 12 shall apply correspondingly to the distribution of the amounts determined in accordance with Article 6.
CHAPTER III. THE LIMITATION FUND

Article 9

Constitution of the fund

1. The person liable may constitute a fund in the amounts set out in Article 6 with the Court or other competent authority in any Contracting State in which action is brought. The fund shall be constituted in the amounts set out in Article 6 together with interest thereon from the date of the occurrence giving rise to the liability until the date of the constitution of the fund. The 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 Contracting State where the fund is constituted and considered to be adequate by the Court or other competent authority. All claims subject to limitation against the person liable shall be satisfied out of the limitation fund.

3. A fund constituted by one of the persons mentioned in §1 or §2 (a) or (b) of Article 7 or his insurer shall be constituted for the benefit of all persons mentioned in §1 or §2 (a) or (b), respectively.

Article 10

Distribution of the fund

1. Each part of the fund shall be distributed among the claimants in proportion to their established claims against that part of the fund.

2. If, before the fund is distributed, the person liable, or his insurer, has compensated 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 of this Article 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 of this Article 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.

5. Claims in respect of expenses reasonably incurred or sacrifices reasonably made voluntarily by the person liable to avert or minimize loss shall rank equally with other claims against the fund.

Article 11

Bar to other actions

1. Where, after the occurrence giving rise to the liability, a person liable is entitled to limit his liability and a limitation fund has been constituted in accordance with Article 9 by him or for his benefit
(a) no person having a claim arising out of that occurrence shall be entitled to exercise any right in respect of such claim against any other assets of the person liable;
(b) the Court or other competent authority of any Contracting State shall order the release of any ship or other property belonging to the person liable, which has been arrested in respect of a claim arising out of that occurrence, and shall similarly release any bail or other security furnished to avoid such arrest.

2. The rules of the preceding paragraph shall apply only if the claimant has access to the Court administering the fund and if the fund is actually available in respect of his claim.

**Article 12**

**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 connection therewith, shall be governed by the law of the State in which the fund is constituted.
APPENDIX III

LEG XXIII/4
DRAFT ARTICLES FOR AN INTERNATIONAL CONVENTION
ON LIMITATION OF LIABILITY FOR MARITIME CLAIMS

CHAPTER I. THE RIGHT OF LIMITATION

Article 1
Persons entitled to limit liability

1. Shipowners and salvors, as hereinafter defined, and any person for whose act, neglect or default they are responsible, may limit their liability in accordance with the rules of this Convention for claims set out in Article 2.

2. The term shipowner shall include the owner, charterer, manager and operator of a sea-going ship, and any person rendering service in direct connection with the navigation or management of the ship.

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

4. In this Convention the liability of the owner of a ship shall include the liability of the ship herself.

5. 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.

6. 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), occurring on board or in direct connection with the operation of the ship or with salvage operations, and consequential loss resulting therefrom;

(b) claims in respect of loss resulting from delay of cargo which has been received for transport under a bill of lading;

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

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

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

* This text shows the additions and deletions as respects the text in Appendix II.
(f) claims 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 the preceding paragraph shall be subject to limitation of liability even if brought in an action for contribution or indemnity under a contract or otherwise.

**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 subject to the provisions of the International Convention on Civil Liability for Oil Pollution Damage, dated 29th November, 1969, or to national legislation giving effect to that Convention;

(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 in respect of loss of life or personal injury subject to an international convention prepared under the auspices of the United Nations or any of its specialized agencies governing limitation of liability for passengers, or to any national legislation providing for equivalent limits of liability;

(f) claims by servants of the shipowner or salvor whose duties are connected with the ship or the salvage operations, including claims of their heirs, personal representatives or dependants, to the extent limitation of liability in accordance with the rules of this Convention is not permitted under the national law governing the contract of service.

**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. THE LIMITATION OF THE LIABILITY**

**Article 6**

*Limits of liability*

1. The limits of liability shall be

(a) in respect of claims for loss of life or personal injury an aggregate amount of A francs per ton for the first P tons of the ship’s tonnage and B francs per ton for tonnage in excess thereof, but in no case less than $\frac{\gamma}{X}$ francs;

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*Note: This text is a fragment from the IMCO Draft Articles, XXIII Session.*
(b) in respect of other claims an aggregate amount of C francs per ton for the first R tons of the ship’s tonnage and D francs per ton for tonnage in excess thereof, but in no case less than Y francs.

2. For the purpose of this Article, the limit of liability for any salvor not operating from another ship shall be calculated by reference to the tonnage of the ship to which salvage services are being rendered.

3. For the purpose of this Article the ship’s tonnage shall be the gross tonnage calculated in accordance with the International Convention on Tonnage Measurement of Ships, 1969.

4. The franc mentioned in this Article shall be a unit consisting of sixty-five and a half milligrams of gold of millesimal fineness nine hundred. The amounts mentioned in paragraph 1 of this Article shall be converted into the national currency of the State in which limitation is sought, on the basis of the official value of that currency by reference to the unit defined above 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. If there is no such official value the competent authority of the State concerned shall determine what shall be considered the official value for the purposes of this Convention.

Article 7
Aggregation of claims

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

(a) against the shipowner and a salvor rendering services to the ship who is not operating from another ship, and any person for whose act, neglect or default they are responsible;

(b) against the shipowner of a ship rendering salvage services to another ship and a salvor operating from the former ship and any person for whose act, neglect or default they are responsible.

Article 8.
Distribution of the amounts

Articles 10 and 12 shall apply correspondingly to the distribution of the amounts determined in accordance with Article 6.

CHAPTER III. THE LIMITATION FUND

Article 9
Constitution of the fund

1. The person liable may constitute a fund with the Court or other competent authority in any Contracting State in which action is brought. The fund shall be constituted in the amounts set out in Article 6 together with interest thereon from the date of the occurrence giving rise to the liability until the date of the constitution of the fund. The 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 Contracting State where the fund is constituted and considered to be adequate by the Court or other competent authority. All claims subject to limitation against the person liable shall be satisfied out of the limitation fund.

3. A fund constituted by one of the persons mentioned in (a) or (b) of Article 7 or his insurer shall be constituted for the benefit of all persons mentioned in (a) or (b), respectively.

Article 10

Distribution of the fund

1. Each part of the fund shall be distributed among the claimants in proportion to their established claims against that part of the fund.

2. If, before the fund is distributed, the person liable, or his insurer, has compensated 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 of this Article 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 of this Article 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.

5. Claims in respect of expenses reasonably incurred or sacrifices reasonably made voluntarily by the person liable to avert or minimize loss shall rank equally with other claims against the fund.

Article 11

Bar to other actions

1. Where, after the occurrence giving rise to the liability, a person liable is entitled to limit his liability and a limitation fund has been constituted in accordance with Article 9 by him or for his benefit:

(a) no person having a claim arising out of that occurrence shall be entitled to exercise any right in respect of such claim against any other assets of the person liable;

(b) the Court or other competent authority of any Contracting State shall order the release of any ship or other property belonging to the person liable, which has been arrested in respect of a claim arising out of that occurrence, and shall similarly release any bail or other security furnished to avoid such arrest.

1. Where a limitation fund has been constituted in accordance with Article 9, 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. Where, after a limitation fund has been constituted in accordance with Article 9, a ship or other property, belonging to a person on behalf of whom the fund has been constituted, has been arrested within the jurisdiction of a Contracting State for a claim which may be raised against the fund, the Court or other competent authority of such State may order the release of such ship or other property or of any security given. 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;
(b) at the port of disembarkation in respect of claims for loss of life or personal injury;
(c) at the port of discharge in respect of damage to cargo;
(d) in the State where the arrest is made.

2.3. The rules of the preceding paragraphs shall apply only if the claimant has access to the Court administering the limitation fund and if the fund is actually available in respect of his claim.

Article 12
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 connection therewith, shall be governed by the law of the State in which the fund is constituted.
APPENDIX IV

LEG XXV/4
DRAFT ARTICLES¹ FOR AN INTERNATIONAL
CONVENTION ON LIMITATION OF LIABILITY
FOR MARITIME CLAIMS

CHAPTER I. THE RIGHT OF LIMITATION

Article 1
Persons entitled to limit liability

1. Shipowners and salvors, as hereinafter defined, and any person for whose act, neglect or default they are responsible, may limit their liability in accordance with the rules of this Convention for claims set out in Article 2.

2. The term shipowner shall include the owner, charterer, manager and operator of a sea-going ship, and any person rendering service in direct connection with the navigation or management of the ship.

3. Salvor shall mean any person rendering service in direct connection with salvage operations. Salvage operations shall 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, or against any person having provided pilotage service to the ship, [to the extent that the pilot is held liable in lieu of the shipowner] 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 the owner of a ship shall include the liability of the ship herself.

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), occurring on board or in direct connection with the operation of the ship or with salvage operations, and consequential loss resulting therefrom;

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¹ This text shows the additions and deletions as respects the text in Appendix III.

(1) The Legal Committee at its twenty-fifth session reviewed in detail Articles 1-7 and 11, whereas Articles 8, 9, 10 and 12 were not considered.

(2) A definition of “ship” appears in Annex II.

(3) An alternative draft text appears in Annex II.
(b) claims in respect of loss resulting from delay of cargo which has been received for transport under a bill of lading contract of carriage;

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

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

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

(f) claims 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 the preceding paragraph shall be subject to limitation of liability even if brought in an action for contribution or indemnity under a contract or otherwise.

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 subject to the provisions of the International Convention on Civil Liability for Oil Pollution Damage, dated 29th November, 1969, or to national legislation giving effect to that Convention;

(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 in respect of loss of life or personal injury subject to an international convention prepared under the auspices of the United Nations or any of its specialized agencies governing limitation of liability for passengers, or to any national legislation providing for equivalent limits of liability;

(f) claims by servants of the shipowner or salvor whose duties are connected with the ship or the salvage operations, including claims of their heirs, personal representatives or dependants or other persons entitled to make such claims, to the extent limitation of liability in accordance with the rules of this Convention is not permitted under the national law governing the contract of service.

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. THE LIMITATION OF THE LIABILITY

Article 6

Limits of liability

1. The limits of liability shall be
   (a) in respect of claims for loss of life or personal injury an aggregate amount of A francs per ton for the first P tons of the ship’s tonnage and B francs per ton for tonnage in excess thereof, but in no case less than X francs;
   (b) in respect of other claims an aggregate amount of C francs per ton for the first R tons of the ship’s tonnage and D francs per ton for tonnage in excess thereof, but in no case less than Y francs.

2. For the purpose of this Article, the limit of liability for any salvor not operating from another ship shall be calculated by reference to the tonnage of the ship to which salvage services are being rendered.

3. For the purpose of this Article the ship’s tonnage shall be the gross tonnage calculated in accordance with the International Convention on Tonnage Measurement of Ships, 1969.

4. The franc mentioned in this Article shall be a unit consisting of sixty-five and a half milligrams of gold of millesimal fineness nine hundred. The amounts mentioned in paragraph 1 of this Article shall be converted into the national currency of the State in which limitation is sought, on the basis of the official value of that currency by reference to the unit defined above 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. If there is no such official value the competent authority of the State concerned shall determine what shall be considered the official value for the purposes of this Convention.

Article 7

Aggregation of claims

The limits of liability determined in accordance with Article 6 shall apply to the aggregate of claims which arise on any distinct occasion
   (a) against the shipowner and a salvor rendering services to the ship who is not operating from another ship, and any person for whose act, neglect or default they are responsible;
   (b) against the shipowner of a ship rendering salvage services to another ship and a salvor operating from the former ship and any person for whose act, neglect or default they are responsible.

Article 8

Distribution of the amounts

Articles 10 and 12 shall apply correspondingly to the distribution of the amounts determined in accordance with Article 6.

(4) Alternative draft texts appear in Annex II.
(5) An alternative draft text appears in Annex II.
CHAPTER III. THE LIMITATION FUND

Article 9

Constitution of the fund

1. The person liable may constitute a fund with the Court or other competent authority in any Contracting State in which action is brought. The fund shall be constituted in the amounts set out in Article 6 together with interest thereon from the date of the occurrence giving rise to the liability until the date of the constitution of the fund. The 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 Contracting State where the fund is constituted and considered to be adequate by the Court or other competent authority. All claims subject to limitation against the person liable shall be satisfied out of the limitation fund.

3. A fund constituted by one of the persons mentioned in (a) or (b) of Article 7 or his insurer shall be constituted for the benefit of all persons mentioned in (a) or (b), respectively.

Article 10

Distribution of the fund

1. Each part of the fund shall be distributed among the claimants in proportion to their established claims against that part of the fund.

2. If, before the fund is distributed, the person liable, or his insurer, has compensated 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 of this Article 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 of this Article 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.

5. Claims in respect of expenses reasonably incurred or sacrifices reasonably made voluntarily by the person liable to avert or minimize loss shall rank equally with other claims against the fund.

Article 11

Bar to other actions

1. Where a limitation fund has been constituted in accordance with Article 9, any person having made a claim against the fund shall be barred from exercising any

(6) An alternative draft text appears in Annex II.
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. Where, after a limitation fund has been constituted in accordance with Article 9, a ship or other property, belonging to a person on behalf of whom the fund has been constituted, has been arrested within the jurisdiction of a Contracting State for a claim which may be raised against the fund, the Court or other competent authority of such State may order the release of such ship or other property or of any security given. 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;
(b) at the port of disembarkation in respect of claims for loss of life or personal injury;
(c) at the port of discharge in respect of damage to cargo;
(d) in the State where the arrest is made.

3. The rules of the preceding paragraphs shall apply only if the claimant has access to the Court administering the limitation fund and the fund is actually available in respect of his claim.

Article 12

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 connection therewith, shall be governed by the law of the State in which the fund is constituted.

ANNEX II

Proposals for alternative draft texts

Article 1

Persons entitled to limit liability

Proposal by the delegation of Belgium

It is proposed that the following paragraph be added:

“Ship” means any vessel operated on a commercial basis and used principally, or intended to be used principally, for carriage and movement by sea.

Article 2

Claims subject to limitation

Proposal by the delegation of France

1. Subject to the provisions of articles 3 and 4, the owner of a ship, the salvor or the insurer may limit their liability to contractors or third parties if the damage occurred on board or in direct connection with the navigation or operation of the ship.

2. He may also limit his liability in respect of loss resulting from delay of cargo carried and in respect of expenses incurred in the raising, removal, destruction or the
rendering harmless of a ship which is wrecked, stranded or abandoned, or for anything
on board including cargo.
3. He may also limit his liability in respect of expenses resulting from measures taken
in order to avert or minimize loss for which the person liable may limit his liability in
accordance with this Convention, and for further loss caused by these measures.
4. Claims set out in the preceding paragraphs shall be subject to limitation of liability
even if brought in an action for contribution or indemnity under a contract or
otherwise.

Article 4
Conduct barring limitation

Proposal by the delegation of France

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

Article 6
Limits of liability

Proposal by the delegation of Belgium

It is proposed that the following sub-paragraph be added to the first paragraph:
“In the category of claims specified in (b) if any claim in respect of the removal or
destruction of the ship or wreck and the cargo aboard or in respect of material damage
caused to equipment, installations or public works operated in the interests of
navigation by a public authority compete with other claims, part of the aggregate
amount shall be set aside for the payment of such claims up to the amount of the
established claims. This part shall not exceed [one-third] of the aggregate amount
except if, by application of the rule of the proportional distribution in accordance with
Article 10(1) to the whole of the claims, the amounts to be allocated exceed the part
set aside in accordance with the present sub-paragraph.”

Proposal by the delegations of Norway and Sweden

1. The limit of liability shall be:
   (a) in respect of claims for loss of life or personal injury to passengers of the ship
       [and for loss of or damage to their luggage, as well as for loss resulting from
delay in the carriage of the passengers and/or their luggage,] an aggregate
amount of X million francs;
   (b) in respect of all other claims, an aggregate amount of Y francs per ton for the
       first P tons of the ship’s tonnage and Z francs per ton for tonnage in excess
thereof, but in no case less than W francs, provided, however, that claims for
loss of life or personal injury shall have priority to the extent of two-thirds of
the limitation mount.

2. For the purpose of paragraph 1(b), the limit ...........................................

3. .............................................

4. .............................................
Proposal by the delegation of France

The limit of liability shall be fixed at a total amount of A francs for the first P tons of the ship’s tonnage, and at B francs per ton for tonnage in excess thereof, but in no case less than X francs.

Proposal by the European Tugowners Association

It is proposed that the draft provisions of Article 6(2) should be amended to read as follows:

“For the purpose of this Article the limit of liability for any salvor not operating from another ship shall be:

(a) in respect of claims for loss of life or personal injury X francs;
(b) in respect of other claims Y francs.”

Article 7
Aggregation of claims

Proposal by the delegations of Norway and Sweden

1. The limit of liability set out in paragraph 1, sub-paragraph (a), of Article 6 shall apply to the aggregate of claims subject thereto which arise on any distinct occasion against the shipowner and any salvor rendering service to the ship who is not operating from another ship, and any person for whose act, neglect or default they are responsible or who has provided pilotage service to the ship.

2. The limit of liability determined in accordance with paragraph 1, sub-paragraph (b), of Article 6 shall apply to the aggregate of claims subject thereto which arise on any distinct occasion:

(a) against the shipowner and any salvor rendering service to the ship who is not operating from another ship, and any person for whose act, neglect or default they are responsible or who has provided pilotage service to the ship;
(b) against the shipowner of a ship rendering salvage service to another ship and a salvor operating from the former ship, and any person for whose act, neglect or default they are responsible or who has provided pilotage service to the former ship.

Article 10
Distribution of the fund

Proposal by the delegation of France

1. (a) Claims in respect of personal injury shall have priority in the distribution of the fund;
(b) Claims in respect of damage caused to public works and harbour works, basins, port approach channels and roadsteads, as well as claims in respect of expenses for the raising, removal or destruction of wrecks in harbours and in their approach channels and dependencies shall have priority over the part of the fund remaining after settlement of claims under paragraph (a) above;
(c) Settlement of other claims shall be by proportional distribution of that part of the fund remaining after settlement of claims under paragraphs (a) and (b) above.
APPENDIX V*

LEG XXVII/4
DRAFT ARTICLES FOR AN INTERNATIONAL CONVENTION
ON LIMITATION OF LIABILITY FOR MARITIME CLAIMS

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 include the owner, charterer, manager and operator of a sea-going ship.
3. Salvor shall mean any person rendering service in direct connection with salvage operations. Salvage operations shall 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 or against any person having provided piloting service to the ship, (to the extent that the pilot is held liable in lieu of the shipowner) 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 the owner of a ship shall include the liability of the ship 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), occurring on board or in direct connection with the operation of the ship or with salvage operations, and consequential loss resulting therefrom;
   (b) claims in respect of loss resulting from delay of cargo which has been received for transport under a contract of carriage in the carriage of cargo, passengers or their luggage on board the ship;
   (c) claims in respect of other loss resulting from infringement of rights other than contractual rights, occurring in direct connection with the operation of the ship or salvage operations.

(*) This text shows the additions and deletions as respects the text in Appendix IV.
(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 carried on board such ship;
(e) claims in respect of the removal, destruction or the rendering harmless of the cargo of the ship;
(f) claims 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 the preceding paragraph shall be subject to limitation of liability even if brought in an action for contribution or indemnity under a contract or otherwise.

**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 subject to the provisions of the International Convention on Civil Liability for Oil Pollution Damage, dated 29th November, 1969, or to national legislation giving effect to that Convention;
(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, to the extent limitation of liability in accordance with the rules of this Convention is not permitted under the national law governing the contract of service.

(Text not decided)

**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. THE LIMITATION OF THE LIABILITY

Article 6
Limits of liability

1. The limits of liability shall be
   (a) in respect of claims for loss of life or personal injury an aggregate amount of A francs per ton for the first P tons of the ship’s tonnage and B francs per ton for tonnage in excess thereof, but in no case less than X francs;
   (b) in respect of other claims an aggregate amount of C francs per ton for the first R tons of the ship’s tonnage and D francs per ton for tonnage in excess thereof, but in no case less than Y francs.

2. For the purpose of this Article, the limit of liability for any salvor not operating from another ship shall be calculated by reference to the tonnage of the ship to which salvage services are being rendered.

3. For the purpose of this Article the ship’s tonnage shall be the gross tonnage calculated in accordance with the International Convention on Tonnage Measurement of Ships, 1969.

4. The franc mentioned in this Article shall be a unit consisting of sixty-five and a half milligrams of gold of millesimal fineness nine hundred. The amounts mentioned in paragraph 1 of this Article shall be converted into the national currency of the State in which limitation is sought, on the basis of the official value of that currency by reference to the unit defined above 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. If there is no such official value the competent authority of the State concerned shall determine what shall be considered the official value for the purposes of this Convention.

Article 7
Aggregation of claims

The limits of liability determined in accordance with Article 6 shall apply to the aggregate of claims which arise on any distinct occasion
   (a) against the shipowner and a salvor rendering services to the ship who is not operating from another ship, and any person for whose act, neglect or default they are responsible;
   (b) against the shipowner of a ship rendering salvage services to another ship and a salvor operating from the former ship and any person for whose act, neglect or default they are responsible.

Article 8
Distribution of the amounts

Articles 10 and 12 shall apply correspondingly to the distribution of the amounts determined in accordance with Article 6.

(3) An alternative draft text appears in Annex II to document LEG XXV/4 (Appendix IV).
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 9 has not been constituted unless, under the law of the Contracting State where action is brought 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 10 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 Contracting State in which action is brought.

CHAPTER III. THE LIMITATION FUND

Article 9
Constitution of the fund

1. The person liable may constitute a fund with the Court or other competent authority in any Contracting State in which legal proceedings are instituted. The fund shall be constituted in the amounts set out in Article 6 together with interest thereon from the date of the occurrence giving rise to the liability until the date of the constitution of the fund. The 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 Contracting State where the fund is constituted and considered to be adequate by the Court or other competent authority. All claims subject to limitation against the person liable shall be satisfied out of the limitation fund.

3. A fund constituted by one of the persons mentioned in (a) or (b) of Article 7 or his insurer shall be considered for the benefit of deemed constituted by all persons mentioned in (a) or (b), respectively.

Article 10
Distribution of the fund

1. Each part of the fund shall be distributed among the claimants in proportion to their established claims against that part of the fund.

2. If, before the fund is distributed, the person liable, or his insurer, has compensated 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.

(4) The Legal Committee recommended that the final clauses of the Convention contain a provision whereby States would be required to notify the depositary if under their national law a limitation fund was required as a condition for the right to limit liability.

(5) An alternative draft text appears in Annex II to document LEG XXV/4 (Appendix IV).
3. The right of subrogation provided for in paragraph 2 of this Article 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 of this Article 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.

5. Claims in respect of expenses reasonably incurred or sacrifices reasonably made voluntarily by the person liable to avert or minimize loss shall rank equally with other claims against the fund. Where an incident occurs which causes or threatens to cause damage giving rise to liability subject to limitation under this Convention and the person liable for that damage voluntarily takes measures to prevent or minimize such damage, any expenses reasonably incurred, including loss resulting from sacrifices made, by him in taking those measures shall rank equally with any claims in [such part of the] [such a] fund [as is not reserved for claims for loss of life or personal injury].

Article 11

Bar to other actions

1. Where a limitation fund has been constituted in accordance with Article 9, 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. Where, after a limitation fund has been constituted in accordance with Article 9, a ship or other property, belonging to a person on behalf of whom the fund has been constituted, has been arrested within the jurisdiction of a Contracting State for a claim which may be raised against the fund, the Court or other competent authority of such State may order the release of such ship or other property or of any security given. 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;
   (b) at the port of disembarkation in respect of claims for loss of life or personal injury;
   (c) at the port of discharge in respect of damage to cargo;
   (d) in the State where the arrest is made.

3. The rules of the preceding paragraphs shall apply only if the claimant has access to the Court administering the limitation fund and the fund is actually available in respect of his claim.

Article 12

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 connection therewith, shall be governed by the law of the State in which the fund is constituted.
APPENDIX VI

LEG XXVIII/7
DRAFT INTERNATIONAL CONVENTION ON LIMITATION
OF LIABILITY FOR MARITIME CLAIMS

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 include the owner, charterer, manager and operator of a sea-going ship.
3. Salvor shall mean any person rendering service in direct connection with salvage operations. Salvage operations shall 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 the owner of a ship shall include the liability of the ship herself 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), occurring on board or in direct connection with the operation of the ship or with salvage operations, and consequential loss resulting therefrom;
(b) claims in respect of loss resulting from delay in the carriage of cargo, passengers or their luggage on board the ship;
(c) claims in respect of other loss resulting from infringement of rights other than contractual rights, occurring in direct connection with the operation of the ship or salvage operations.
(d) claims in respect of the raising, removal, destruction or the rendering harmless of a ship which is sunk, wrecked, stranded or abandoned, including anything carried on board such ship;

(*) This text shows the additions and deletions as respects the text in Appendix V, except for article 3, which shows the additions and deletions as respect the text in Appendix IV.
(e) claims in respect of the removal, destruction or the rendering harmless of the cargo of the ship;
(f) claims 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 the preceding paragraph shall be subject to limitation of liability even if brought in an action for contribution or by way of recourse or for indemnity under a contract or otherwise.

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 subject to the provisions of the International Convention on Civil Liability for Oil Pollution Damage, dated 29th November, 1969, or to national legislation giving effect to that Convention;
(c) claims subject to any international convention or national legislation governing or prohibiting limitation of liability for nuclear damage;
(d) claims against the shipowner or operator of a nuclear ship for nuclear in respect of damage caused by a nuclear incident involving the nuclear fuel of, or radioactive products or waste produced in, such ship;
(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, to the extent limitation of liability in accordance with the rules of this Convention is not permitted under the national law governing the contract of service 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 of this Convention.

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 [or from his own gross negligence].

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. THE LIMITATION OF THE LIMITS OF LIABILITY

Article 6
Limits of liability The general limits

1. The limits of liability shall be
(a) in respect of claims for loss of life or personal injury an aggregate amount of A francs per ton for the first P tons of the ship’s tonnage and B francs per ton for tonnage in excess thereof, but in no case less than X francs;
(b) in respect of other claims an aggregate amount of C francs per ton for the first R tons of the ship’s tonnage and D francs per ton for tonnage in excess thereof, but in no case less than Y francs.

2. For the purpose of this Article, the limit of liability for any salvor not operating from another ship shall be calculated by reference to the tonnage of the ship to which salvage services are being rendered.

3. For the purpose of this Article the ship’s tonnage shall be the gross tonnage calculated in accordance with the International Convention on Tonnage Measurement of Ships, 1969.

4. The franc mentioned in this Article shall be a unit consisting of sixty-five and a half milligrams of gold of millesimal fineness nine hundred. The amounts mentioned in paragraph 1 of this Article shall be converted into the national currency of the State in which limitation is sought, on the basis of the official value of that currency by reference to the unit defined above 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. If there is no such official value the competent authority of the State concerned shall determine what shall be considered the official value for the purposes of this Convention.

Basic text

1. The limit of liability for claims other than those mentioned in Article 7 shall be the total of an amount of [B] Units of Account multiplied by the first [C] tons of the ship’s tonnage and [D] Units of Account multiplied by the tonnage in excess thereof, but in any case at least [E] Units of Account.

2. This total amount shall be apportioned in the following manner:
(a) claims in respect of loss of life and personal injury shall have priority up to the limit of any such amount;
(b) any balance remaining after settlement of the claims mentioned under (a) shall be distributed among the other claimants.\(^1\)

Alternative text (to replace paragraphs 1 and 2 of the basic text)

The limits of liability for claims other than those mentioned in Article 7 shall be:

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\(^1\) A sub-paragraph (c) to paragraph 2 of the basic text was proposed as follows:
(c) however, a Contracting State may in its national legislation provide that claims for damage caused to harbour works, basins (docks) fairways and aids to navigation as well as claims for the raising, removal or destruction of wrecks in the fairways, roadsteads and harbour basins and their surroundings, shall have priority in the balance after the settlement of claims under (a).
(a) in respect of claims for loss of life or personal injury, the total of an amount of \( [K] \) Units of Account multiplied by the first \( [X] \) tons of the ship’s tonnage and \( [L] \) Units of Account multiplied by the tonnage in excess thereof, but in any case at least \( 300 [K] \) Units of Account;

(b) in respect of any other claims, the total of \( [M] \) Units of Account multiplied by the first \( [X] \) tons of the ship’s tonnage and \( [N] \) Units of Account multiplied by the tonnage in excess thereof [but in any case at least \( 300 [M] \) Units of Account];

provided that in cases where the portion under sub-paragraph (a) is insufficient to pay the claims in full, the unpaid balance of such claims shall rank rateably with claims under sub-paragraph (b).

3. For the purpose of this Article, the limit of liability for any salvor not operating from a ship shall be calculated by reference to the tonnage of the ship to which salvage services are being rendered, but shall in no case be less than \( [F] \) Units of Account and not more than \( [G] \) Units of Accounts.

4. For the purpose of this Article the ship’s tonnage shall be the gross tonnage calculated in accordance with the tonnage measurement rules contained in the International Convention on Tonnage Measurement of Ships, 1969.²

Article 7

The limit for passenger claims

1. In respect of claims 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 \( [H] \) Units of Account multiplies by the number of passengers which the ship is authorized to carry according to the ship’s certificate, but not exceeding \( [I] \) 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 above 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 of the occurrence] [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 Contracting State which is a member of the

(2) Paragraphs 3 and 4 are common to both the basic text and the alternative text. If the alternative text is adopted, these paragraphs will be renumbered accordingly.

(3) This sum should not exceed 700,000 Poincaré francs; cf. Article 7, paragraph 1 of the Athens Convention, or its equivalent in Unit of Account terms.
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 Contracting State which is not a member of the International Monetary Fund, shall be calculated in a manner determined by that Contracting State.

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 of this Article may, at the time of ratification 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, at an amount of [B] monetary units multiplied by the first [C] tons of the ship's tonnage and [D] monetary units multiplied by the tonnage in excess thereof, but in any case at least [E] monetary units; and

(b) in respect of Article 7, paragraph 1, at an amount of [H] monetary units multiplied by the number of passengers which the ship is authorized to carry according to its certificate, but not exceeding [I] million monetary units.

The monetary unit referred to above corresponds to sixty-five and a half milligrammes of gold of millesimal fineness nine hundred. This sum may be converted into the national currency concerned in round figures. The conversion of this sum into the national currency shall be made according to the law of the State concerned.

Article 79
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 shipowner and a salver the salver or salvors, if any, rendering services to the ship who are not operating from another ship, and any person for whose act, neglect or default he or they are responsible;

(b) against the shipowner of a ship rendering salvage services to another ship and the salver or salvors operating from the former ship and any person for whose act, neglect or default he or they are responsible.

2. The limit of liability set out in Article 7 shall apply to the aggregate of all claims subject thereto which may arise on any distinct occasion against the shipowner of the ship referred to in Article 7 and any person for whose act, neglect or default he is responsible.

Article 810
Limitation of liability without constitution of a limitation fund

1. Limitation of liability may be invoked notwithstanding that a limitation fund

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(4) This Article is presented in square brackets by decision of the Legal Committee following the discussions at the twenty-eighth session. A summary of the discussions is reproduced in Annex II to this Report.
as mentioned in Article 9 has not been constituted. unless, under the law of the

However, a Contracting State 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 its 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 10 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 Contracting State in which action is brought.

CHAPTER III. THE LIMITATION FUND

Article 9
Constitution of the fund

1. The Any person liable may constitute a fund with the Court or other competent authority in any Contracting State in which legal proceedings are instituted. The fund shall be constituted in the amounts set out in Article 6 Articles 6 or 7 respectively together with interest thereon from the date of the occurrence giving rise to the liability until the date of the constitution of the fund. The 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 Contracting State 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) or (b) or paragraph 2 of Article 7 or his insurer shall be deemed constituted by all persons mentioned in paragraph 1(a) or (b) or paragraph 2, respectively.

Article 10
Distribution of the Fund

1. Each part of the Subject to the provisions of paragraph ..... of Article 6, the fund shall be distributed among the claimants in proportion to their established claims against that part of the fund.

2. If, before the fund is distributed, the person liable, or his insurer, has compensated 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 of this Article may also be exercised by persons other than those therein mentioned in respect of any amount

(5) The reference to the paragraph of Article 6 will depend on which alternative text of Article 6 is finally adopted.
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 of this Article 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.

5. Where an incident occurs which causes or threatens to cause damage giving
rise to liability subject to limitation under this Convention and the person liable for
that damage voluntarily takes measures to prevent or minimize such damage, any
expenses reasonably incurred, including loss resulting from sacrifices made, by him in
taking those measures shall rank equally with any claims in [such part of the] [such a]
fund [as is not reserved for claims for loss of life or personal injury].

Article 11

Bar to other actions

1. Where a limitation fund has been constituted in accordance with Article 9,
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. Where, After a limitation fund has been constituted in accordance with
Article 9, 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 Contracting State 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 may order the release of such ship or other property or of any
security given. 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;
(b) at the port of disembarkation in respect of claims for loss of life or personal
injury;
(c) at the port of discharge in respect of damage to cargo;
(d) in the State where the arrest is made.

(6) The decision on the square brackets can be taken after the text of Article 7 has been finalized.
The States Parties to this Convention, 
HAVING RECOGNIZED the desirability of determining by agreement certainuniform rules relating to the limitation of liability for maritime claims;
HAVE DECIDED to conclude a Convention for this purpose and have theretoagreed 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 inaccordance with the rules of this Convention for claims set out in Article 2.

2. The term shipowner shall include mean the owner, charterer, manager andoperator of a sea-going ship.

3. Salvor shall mean any person rendering service in direct connection withsalvage operations. Salvage operations shall also include operations referred to inArticle 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 entitledto avail himself of the limitation of liability provided for in this Convention.

5. In this Convention the liability of the owner of a ship shall include liability inan action brought against the vessel herself.

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

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

Article 2
Claims subject to limitation

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

(a) claims in respect of loss of life or personal injury or loss of or damage toproperty (including damage to harbour works, basins and waterways), occurring on board or in direct connection with the operation of the ship orwith 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 on board the ship;

(*) This text shows the additions and deletions as respects the text in Appendix VI.
(c) claims in respect of other loss resulting from infringement of rights other than contractual rights, occurring in direct connection with the operation of the ship or salvage operations;
(d) claims in respect of the raising, removal, destruction or the rendering harmless of a ship which is sunk, wrecked, stranded or abandoned, including anything carried 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 the preceding paragraph 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 sub-paragraph (f) of paragraph 1 shall not be subject to limitation of liability to the extent that they relate to remuneration for measures taken 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 subject to the provisions for oil pollution damage within the meaning of the International Convention on Civil Liability for Oil Pollution Damage, dated 29 November 1969 or to national legislation giving effect to that Convention of any amendment or Protocol thereto which is in force;
(c) claims against the operator of a nuclear ship in respect of nuclear damage caused by a nuclear incident involving the nuclear fuel of, or radioactive products or waste produced in, such a ship;
(d) 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 of this Convention.

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 from his own gross negligence.

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 Limitation of Liability

Article 6

The general limits

Basic text

1. The limit of liability for claims other than those mentioned in Article 7 shall be the total of an amount of \([B]\) Units of Account multiplied by the first \([C]\) tons of the ship's tonnage and \([D]\) Units of Account multiplied by the tonnage in excess thereof, but in any case at least \([E]\) Units of Account.

2. This total amount shall be apportioned in the following manner:
   (a) claims in respect of loss of life and personal injury shall have priority up to the limit of any such amount;
   (b) any balance remaining after settlement of the claims mentioned under (a) shall be distributed among the other claimants.

Alternative text (to replace paragraphs 1 and 2 of the basic text)

The limits of liability for claims other than those mentioned in Article 7 shall be:
   (a) in respect of claims for loss of life or personal injury, the total of an amount of \([K]\) Units of Account multiplied by the first \([X]\) tons of the ship's tonnage and \([L]\) Units of Account multiplied by the tonnage in excess thereof, but in any case at least 300 \([K]\) Units of Account;
   (b) in respect of any other claims, the total of \([M]\) Units of Account multiplied by the first \([X]\) tons of the ship's tonnage and \([N]\) Units of Account multiplied by the tonnage in excess thereof but in any case at least 300 \([M]\) Units of Account;

provided that in cases where the portion under sub-paragraph (a) is insufficient to pay the claims in full, the unpaid balance of such claims shall rank rateably with claims under sub-paragraph (b).

3. For the purpose of this Article, the limit of liability for any salvor not operating from a ship shall be calculated by reference to the tonnage of the ship to which salvage services are being rendered, but shall in no case be less than \([F]\) Units of Account and not more than \([G]\) Units of Accounts.

4. For the purpose of this Article the ship's tonnage shall be the gross tonnage calculated in accordance with the tonnage measurement rules contained in the International Convention on Tonnage Measurement of Ships, 1969.

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 tonnages from 501-3,000 tons, 500 Units of Account per ton;
for tonnages from 3,001-30,000 tons, 333 Units of Account per ton; 
for tonnages from 30,001-70,000 tons, 250 Units of Account per ton; and 
for each ton in excess of 70,000 tons, 167 Units of Account,
(b) in respect of any other claims,
(i) 166,000 Units of Account for a ship with a tonnage not exceeding 500 
ton,
(ii)for a ship with a tonnage in excess thereof the following amount in 
addition to that mentioned in (i):
for tonnages from 501-30,000 tons, 167 Units of Account per ton;
for tonnages from 30,001-70,000 tons, 125 Units of Account per ton; 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 unpaid balance of such 
claims shall rank rateably with claims mentioned under paragraph 1(b).
3. However, without prejudice to claims under paragraph 1(a), a State Party 
may provide in its national law that claims in respect of damage to harbour works, 
basins and waterways shall have priority over other claims under paragraph 1(b).
4. The limit 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 gross 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 

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 [H] 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 [H] 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 above 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 of the 
ocurrence] [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 Contracting 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 Contracting State Party which is not a member of the International Monetary Fund, shall be calculated in a manner determined by that Contracting 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 of this Article may, at the time of signature without reservation as to ratification, approval or accession or at the time of ratification, 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, at an amount of 

\[B\] monetary units multiplied by the first \[C\] tons of the ship's tonnage and \[D\] monetary units multiplied by the tonnage in excess thereof, but in any case at least \[E\] monetary units;

(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 those mentioned in (i):
for tonnages from 501-3,000 tons, 7,500 monetary units per ton;
for tonnages from 3,001-30,000 tons, 5,000 monetary units per ton;
for tonnages from 30,001-70,000 tons, 3,750 monetary units per ton; and
for each ton in excess of 70,000 tons, 2,500 monetary units; and

(b) in respect of Article 7, paragraph 1, at an amount of \[H\] monetary units multiplied by the number of passengers which the ship is authorized to carry according to its certificate, but not exceeding \[I\] million monetary units.

(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 per ton shall be added to the amount mentioned in (i):
for tonnages from 501-30,000 tons, 2,500 monetary units per ton;
for tonnages from 30,001-70,000 tons, 1,850 monetary units per ton; 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 above in paragraph 2 corresponds to sixty-five and a half milligrammes of gold of milleseimal fineness nine hundred. This sum may be converted into the national currency concerned in round figures. The conversion of this sum 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 2 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 2, 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 shipowner and the salvor or salvors, if any, rendering services to the ship who are not operating from another ship, 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 to another from that ship and the salvor or salvors operating from the former 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 from 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 set out in 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 shipowner 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 is 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 Contracting 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 Contracting State Party in which action is brought.

CHAPTER III. THE LIMITATION FUND

Article 11
Constitution of the fund

1. Any person liable may constitute a fund with the Court or other competent authority in any Contracting State Party in which legal proceedings are instituted. The fund shall be constituted in the amounts set out in Articles 6 or 7 respectively 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 Contracting 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), or (b) or (c) or paragraph 2 of Article 9 or his insurer shall be deemed constituted by all persons mentioned in paragraph 1(a), or (b) or (c) or paragraph 2, respectively.

Article 12
Distribution of the Fund

1. Subject to the provisions of paragraph 2 of Article 6, 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 of this Article 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 of this Article 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.

5. Where an incident occurs which causes or threatens to cause damage giving rise to liability subject to limitation under this Convention and the person liable for that damage voluntarily takes measures to prevent or minimize such damage, any expenses reasonably incurred, including loss resulting from sacrifices made, by him in taking those measures shall rank equally with any claims in such part of the fund as is not reserved for claims for loss of life or personal injury be considered as claims subject to paragraph 1(b) of Article 6.

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 Contracting 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; or
(e) in the State where the shipowner has his principal place of business.

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 connection
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 gross tons.
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 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 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 Secretary-General 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 Inter-Governmental Maritime Consultative 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 twenty 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, provided that at least five of such States shall each have on their national register a tonnage equal to or greater than one million gross tons.

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.

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 after 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 amendment adopted in accordance with the provisions of this Article shall enter into force on the first day of the month following the ninetieth day after its acceptance by two-thirds of the States Parties. Acceptance shall be effected by the deposit of a formal instrument to that effect with the Secretary-General.

5. For a State Party which subsequently accepts an amendment, that amendment shall enter into force for that State on the first day of the month following the ninetieth day after the date of deposit of its instrument of acceptance.

6. After entry into force of an amendment a Party which has accepted the amendment is entitled to apply the amended Convention vis-à-vis vessels and nationals of a party which has not accepted the amendment.

7. 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.
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 sea-going ship.
3. Salvor shall mean any person rendering service in direct connection 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 the owner of a ship shall include liability in an action brought against the vessel herself.
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 connection with the operation of the ship or with salvage operations, and consequential loss resulting therefrom;
   (b) claims in respect of loss resulting from delay in the carriage by sea of cargo, passengers or their luggage;

(*) Text of the Convention adopted by the Diplomatic Conference, showing the additions and deletions as respects the Draft in Appendix VII.
(c) claims in respect of other loss resulting from infringement of rights other than contractual rights, occurring in direct connection with the operation of the ship or salvage operations;
(d) claims in respect of the raising, removal, destruction or the rendering harmless of a ship which is sunk, wrecked, stranded or abandoned, including anything that is or has been on board such ship;
(e) claims in respect of the removal, destruction or the rendering harmless of the cargo of the ship;
(f) claims of a person other than the person liable in respect of measures taken in order to avert or minimize loss for which the person liable may limit his liability in accordance with this 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 sub-paragraph (f) of paragraph 1 paragraphs 1(d), (e) and (f) shall not be subject to limitation of liability to the extent that they relate to remuneration for measures taken 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 in respect of nuclear damage caused by a nuclear incident involving the nuclear fuel of, or radioactive products or waste produced in, a ship 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. LIMITATION 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 tonnages each ton from 501 to 3,000 tons, 500 Units of Account per ton;
         for tonnages each ton from 3,001 to 30,000 tons, 333 Units of Account per ton;
         for tonnages each ton from 30,001 to 70,000 tons, 250 Units of Account per ton; and
         for each ton in excess of 70,000 tons, 167 Units of Account,
   (b) in respect of any other claims,
      (i) 166,000 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 tonnages each ton from 501 to 30,000 tons, 167 Units of Account per ton;
         for tonnages each ton from 30,001 to 70,000 tons, 125 Units of Account per ton; 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 unpaid balance of such claims shall rank rateably with claims mentioned under paragraph 1(b) 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 claims under paragraph 1(a) 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 gross 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 those mentioned in (i):
         for tonnages each ton from 501 to 3,000 tons, 7,500 monetary units per ton;
         for tonnages each ton from 3,001 to 30,000 tons, 5,000 monetary units per ton;
         for tonnages each ton from 30,001 to 70,000 tons, 3,750 monetary units per ton; 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 per ton shall be added to the amount in addition to that mentioned in (i):
         for tonnages each ton from 501 to 30,000 tons, 2,500 monetary units per ton;
         for tonnages each ton from 30,001 to 70,000 tons, 1,850 monetary units per ton; 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. This sum may be  
converted into the national currency concerned in round figures. The conversion of this  
sum 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 2 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 2, 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 from 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 or 7 respectively 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.

5. Where an incident occurs which causes or threatens to cause damage giving rise to liability subject to limitation under this Convention and the person liable for that damage voluntarily takes measures to prevent or minimize such damage, any expenses reasonably incurred, including loss resulting from sacrifices made, by him in taking those measures shall be considered as claims subject to paragraph 1(b) of Article 6.
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; or
   (e) in the State where the shipowner has his principal place of business.

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 connection 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 gross tons.
A State Party which makes use of the option provided for in this paragraph shall
inform the Secretary-General 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 Secretary-General 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 Inter-Governmental Maritime Consultative 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 twenty 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, provided that at least five of such States shall each have on their national register a tonnage equal to or greater than one million gross tons.

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 Seagoing 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 Seagoing 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 after 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 amendment adopted in accordance with the provisions of this Article shall enter into force on the first day of the month following the ninetieth day after its acceptance by two thirds of the States Parties. Acceptance shall be effected by the deposit of a formal instrument to that effect with the Secretary-General.

5. For a State Party which subsequently accepts an amendment, that amendment shall enter into force for that State on the first day of the month following the ninetieth day after the date of deposit of its instrument of acceptance.

6. After entry into force of an amendment a Party which has accepted the amendment is entitled to apply the amended Convention vis-à-vis vessels and nationals of a party which has not accepted the amendment.

7. 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.
PART II

THE TRAVAUX PRÉPARATOIRES
OF
THE PROTOCOL OF 1996
REVISION OF THE LIMITS

The purpose of the Protocol – General statements

IMO Legal Committee
Sixty-ninth Session


[12] 60. The delegation of the United Kingdom introduced document LEG 69/4/11 which contained the text of a draft protocol to amend the Convention on Limitation of Liability for Maritime Claims, 1976 (LLMC). In its view the limits of compensation established in LLMC were in need of urgent review, bearing in mind that seventeen years of inflation since the Convention was adopted had turned these limits to a small fraction of their 1976 value. As a result the position of the victims had been severely undermined. In order to facilitate [13] the up-dating of such limits, and to at least preserve their real value in the future, the draft included a simplified revision and amendment procedure: amendments to the limits could be adopted by the Legal Committee and accepted in accordance with the system of tacit acceptance of amendments. This procedure had been modelled on the basis of the 1992 CLC and Fund Protocols and the 1990 Protocol to the Athens Convention.

61. The Committee welcomed the proposed draft as a basic text for its further deliberations on this agenda item. There was general agreement on the need to update the limits as well as on the convenience of introducing a simplified amendment procedure which would enable further adjustments to such limits to be made in a rapid and efficient way. One delegation, however, expressed its reservations regarding draft article 10, paragraph 9, which does not follow the amendment procedures in other instruments such as MARPOL, which allows States to opt out of a particular amendment and which covers substantive provisions of the LLMC rather than purely technical matters.

62. Most delegations were in favour of a revision which was restricted to these issues. Reference was, however, made to a number of other issues which could be considered in this context. The views expressed on these issues are summarized under the subheadings below.

Limits of compensation

63. The need for an overall increase of limits should not prevent the possibility of looking into the specific limits for various claims bearing in mind the particular features

(1) See Appendix I.
in each case. This was specially important in cases of passenger claims for loss of life and personal injury. In such cases it was suggested that Parties should be allowed under their domestic law to establish higher limits or even no global limitation at all. The relationship between these specific limits and passenger claims based on tort had to be considered. The case of significant increases to the limits for small vessels should also be reviewed.

67. Several delegations indicated that it would be important to know why LLMC had been accepted by a comparatively low number of countries. Conflicts with statutory law and dissatisfaction about the level of the limits were mentioned as likely explanations.

Conclusion

68. The Committee agreed that a target date to approve a draft protocol should be fixed at its next session. The opinion was expressed that the aim should be to conclude the work on the revision of the 1976 Convention to coincide with the conclusion of the work on the HNS convention. This might have the effect that, at least initially, the scope of the revision of LLMC would have to be restricted to limits and procedures for amendments only. In order to facilitate a final assessment by the Committee, it was suggested that submissions referring to any other kind of amendments should be submitted in writing for consideration by the Committee at its next session.

69. It was suggested by one delegation that any such additional proposed amendments should be dealt with as a matter of priority to enable the Committee to determine the scope of the revision of the LLMC.

Seventieth Session

71. One delegation observed that the increase of limits in respect of other types of claims should be established on the basis of statistics indicating the degree of erosion of real values.

74. The observer delegation of the International Association of Ports and Harbours (IAPH) referred to the data contained in its document LEG 70/5/1 on monetary erosion of the SDR, after the adoption of the 1976 LLMC Convention. This erosion had reduced real values to half or less than the 1976 values. The revision of the Convention should take into account the need to update limits for loss of life and personal injuries in the case of victims other than passengers. Additionally, the revision should take account of material damage caused to port installations, which in many cases assumed catastrophic proportions.

77. The Secretariat was requested to try to collect further information on the erosion of the SDR and its impact upon the value of the limits of compensation in real terms.

79. In reflecting on the rationale behind the need to increase the limits of compensation, several delegations agreed that the purpose of this increase should be

(2) See Appendix II.
to offer in real terms higher compensation rather than to update the eroded real value of the present limits. Mention was also made of the need to ensure that shipowners showed evidence of insurance cover or guarantee contracted to cover the limits of their liability.

Note by the Secretariat

1. At its seventieth session held from 21 to 25 March 1994, the Legal Committee continued with the consideration of revision of the Convention on Limitation of Liability for Maritime Claims, 1976 on the basis of the draft protocol submitted by the United Kingdom to the previous session of the Committee held from 27 September to 1 October 1993 (document LEG 69/4/1), and further submissions to its seventieth session.

2. The Committee agreed that the conclusion of the work on this agenda item should coincide with the conclusion of the work on the HNS convention, and also confirmed its view that the scope of revision should extend only to the limits and procedures for amendments.

3. The Committee unanimously agreed that the limit of compensation for passenger claims should be updated to make it correspond with the 1990 Protocol to the Athens Convention and, therefore, to include between square brackets the figure of 175,000 Units of Account in article 3 of the draft protocol (article 7, paragraph 1 of the Convention). The Committee further decided, in the same provision, to put the expression “but not exceeding [ ] million Units of Account” into square brackets.

4. A revised version of the draft protocol, including the amendments referred to in paragraph 3, is annexed to this document.4

5. Further to the above, attention is drawn to the decision of the Committee at its sixty-ninth session that an assessment should be made regarding the applicability of articles 20 and 21 of the present Convention in relation to the proposed tacit amendment procedure and the possible need to revise the amendment procedure of the Convention.

Seventy-first Session

[14] 82. The Committee also took note of the submission by IAPH on the need to revise the limitation amounts because of the monetary erosion of the real value of the SDR since the adoption of the 1976 Convention.
Article 1

Article 1 has not been the subject of any discussion.

Text of the Protocol

FOR THE PURPOSES OF THIS PROTOCOL:


2. “ORGANIZATION” MEANS THE INTERNATIONAL MARITIME ORGANIZATION.

3. “SECRETARY-GENERAL” MEANS THE SECRETARY-GENERAL OF THE ORGANIZATION.

Article 2

New text of article 3, subparagraph (a) of the Convention

IMO Legal Committee
Seventy-second Session

[15] 97. The Committee agreed that it was desirable to clarify that the exemption for salvage claims in article 3, subparagraph (a) included claims for special compensation under article 14 of the 1989 Salvage Convention. The Committee decided to include article 1bis in the draft protocol as proposed in document LEG 72/5/15 with the additional text “for special compensation” after the word “claim”.

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Chairman Then it seems to me that in article 2 there is an amendment proposed by the Japanese delegation in document No. 37 and perhaps we could take that up. Is the Japanese delegation prepared to speak on that?

(5) See Appendix VII.
(6) Tape no. 38.
Japan Thank you Mr. Chairman. The reason why this delegation has submitted the document you have just referred to is because we feel a little bit uncomfortable with the specific reference to a particular article of a particular convention to which Japan is not a party. Mr. Chairman, suppose that this delegation, or any other delegation made a proposal to add a claim under whatsoever article of the Japanese Commercial Code to the list of claims to be excluded from the limitation regime. I think you would feel quite uncomfortable with that. I am saying this because from the viewpoint of a State which is not a party to the Salvage Convention of 1989, any claim under that Convention is just a claim arising under the local law of another State which happens to be a State Party to the 1989 Convention. Whether or not that part of local law originated from an international clause of some kind is irrelevant. For us a claim under article 14 of the Salvage Convention of 1989 does not exist except when rules of private international law designate the law of a State which is a party to that Convention and has incorporated that provision of the 1989 Convention into its national law. This is the point I wanted to make. Of course some countries have no objections to the new addition of claims under the 1989 Salvage Convention to the list. So I think this is rather a matter of drafting. You may think that our proposal is just stating the obvious, but we feel that on balance it must be better to clarify this point the way we suggested in our document. So the suggested wording there is of course subject to refinement by the Drafting Committee.

Chairman Thank you. Well, Ladies and Gentlemen, this is the proposal. I am wandering whether there are any objections to it. If not, then can we accept it? It seems that there is general acceptance.

(7) The text of document LEG/CONF.10/6(b)/3 is quoted below:

Submitted by Japan

1. Reference is made to the draft Protocol of 1996 to amend the Convention on Limitation of Liability for Maritime Claims, 1976, as presented in LEG/CONF.10/6(b). Japan would like to propose some revisions to the draft Protocol as attached at annex.

Action requested of the Conference

2. The Conference is invited to consider these proposed revisions during discussion of Protocol of 1996 to amend the Convention on Limitation of Liability for Maritime Claims, 1976.

Annex

1. Article 2 of the draft Protocol

It is our understanding that the proposed amendment of article 3(a) of the Convention as provided for in article 2 of the draft Protocol is intended to clarify the interpretation of the present article 3(a) of the Convention, and not to change the substance of the article. In any event, claims for special compensation under article 14 of the 1989 Salvage Convention will not be recognized in a State Party which is not a party to the Salvage Convention, unless the rules of private international law designate, as applicable law on claims on salvage, the law of a State which is a party to the Salvage Convention. If this understanding is correct, it might be appropriate to insert the following words between the word “amended,” and the word “or” on the second line of the proposed text of article 3(a) in order to clarify the meaning of a specific reference to the 1989 Salvage Convention in the amendment “to the extent that such a claim is recognized under the applicable law of a State where limitation of liability is invoked”.

(Explanation)

It is desirable to clarify how the amended version of article 3(a) of LLMC as provided for in article 2 of the draft Protocol is intended to operate with regard to those States which are not parties to the 1989 Salvage Convention.
Record of decisions of the Eighth Meeting
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Article 2

The Committee noted the proposal in document LEG/CONF.10/6(b)/3. The Committee adopted the proposal and referred the matter to the Drafting Committee.

Text of the Protocol

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;

(8) See note 7 supra.
Article 3

The general limits

New text of Article 6 paragraph 1 of the Convention

Chairman

So far we have not really had any exchange of view on the limits in article 3 of the draft Protocol. I know that we had an extensive discussion on limits and linkage on Monday and that that discussion produced some ideas which seem to be moving in the direction of option “C” of the linkage document that was produced, but I don’t think we really focused too much yet on the possible limits or the ideas about limits in the LLMC Protocol and, therefore, Ladies and Gentlemen, I would propose that we have a short discussion on what people think about these limits, if that only to say that not much can be said until the limits for the HNS Convention are settled and the relationship, if not the linkage, between the two instruments is settled, but I think it is important for us to know what people think about these limits, and in that regard I draw your attention to the fact that of course there is already a proposal on the table and that is the Japanese working paper, WP.No.1 which has proposed some limits. So one way to open the discussion might be simply to ask the Japanese delegation to introduce that paper, and then to proceed from there. I know that that paper was submitted perhaps also to solve another problem, but I think that it does contain figures and it would be useful for us to know what delegations think about that proposal. So, if that is acceptable to the Committee, that is the way I wish to proceed. (…) So Ladies and Gentlemen, can we perhaps open the discussion with a brief introduction of the WP.No.1, the Japanese paper which proposes some limits for the Protocol.

(9) Tape no. 38.
(9 bis) See Appendix V, at page 549.
(10) The relevant part of document LEG/CONF.10/CW/WP.1 is quoted below:

III. Limitation in the 1996 LLMC

1. 1996 LLMC shall provide for the following limitation to personal injury claims:
   (1) [5,000,000] SDR for a ship with a tonnage not exceeding [5,000] tons.
   (2) For a ship with a tonnage in excess thereof, the following amount in addition to that mentioned in (1):
       for each ton in excess of [5,000] tons, [600] SDR
   (3) The liability shall not exceed [80,000,000] SDR.

2. 1996 LLMC shall provide for the following limitation to the property claims:
   (1) [3,000,000] SDR for a ship with a tonnage not exceeding [5,000] tons.
   (2) For a ship with a tonnage in excess thereof, the following amount in addition to that mentioned in (1):
       for each ton in excess of [5,000] tons, [420] SDR.
   (3) The liability shall not exceed [59,700,000] SDR.

If the LLMC Protocol adopts the above system and figures, the result might become as the graphic in the attached annex. (Omitted).
Japan Thank you Mr. Chairman. This delegation has already proposed some figures and ideas of the amounts for limits in WP.1. In the second page for the personal claims and the property claims the platform for such limitation starts with limits for small ships of 5000 tons. This delegation proposes for personal injury claims 5,000,000 SDRs and for the property claims a platform of 3,000,000. This 3,000,000 is the equivalent figure of CLC 1992 figure. Then the increase for over 5000 tons ships for personal injury claim is 600 SDRs per ton with an upper limit of 80,000,000 SDRs and for property claims for over 5000 tons ships we start from 3,000,000 SDRs and 420 SDRs per ton with an upper limit of 59,700,000 SDRs. This is the same figure as in the 1992 CLC.

Chairman Ladies and Gentlemen I think it is all laid out in the working paper and I wonder whether there is any reaction on the limits members of the Committee would like to share with us. May be is just a bit too early in the morning? Well I am certainly not to interpret that to mean that this paper is accepted. Perhaps we could come back a little later and see what people think. Well, Ladies and Gentlemen, I do not want to press the point too much, too early and so let us then get down to the draft articles themselves.

Chairman Then I think the next amendment is in Article 3 and is proposed by the IAPH in document No. 1.11

IAPH We believe that there is a very significant difference in structure between the draft HNS Convention and the LLMC Convention as regards compensation of two types of damage. The HNS provides for overall amounts to be shared between the various claims with priority being granted for personal damage. The 1976 Convention includes unsymmetrical provisions as regards article 6. A small sum is provided for in the case of personal injury and there is another sum for material damages with the possibility of an overflow for the amounts for personal damage to material damages, but not the other way around. What was suggested in the presentation is a merger of these two funds maintaining the priority for personal injury and in the structure of the 1976 Convention an equivalent provision, which would enable when there is an amount available on the personal injury account, be made available for the compensation of damage to property.

Japan This delegation is opposed to the proposal because we fear that it leads to the limits set for the property claims becoming meaningless, with insurance implications. So we are opposed to any idea which might affect the structure of the LLMC as we know it. Thank you.

Denmark We have the same view as the Japanese delegation. We fear that this is in fact destroying the whole structure of the LLMC Convention.

France We support the Danish and Japanese delegations. The difference of structure which is referred to is justified by the specific nature of the HNS claims. The HNS is not provided for initially as regards the carriage of passengers and we wouldn’t wish the kind of suggestion which has been made to be adopted. Thank you.

Chairman Before I call on any other speaker I would like to know whether there is any support of this proposal. It does not seem to be so in that case I think we can regard it as rejected.

(11) The text of this document is not quoted, the proposal having been rejected.
Chairman I am going to propose figures for both instruments. After listening very carefully to the debate that took place here yesterday and after some informal discussions and in putting forward these figures, I recognise that they are a compromise that will not please everyone. Some of course will argue that they are too high, and others will argue that they are too low, but I have genuinely tried to come up with a compromise which I hope in the final analysis will prove to be acceptable to the Committee. Now in the case of the HNS Convention I would like to propose the following figures:

- for the first tier
  - for a ship not exceeding 2,000 units of tonnage I would propose 10,000,000 SDRs
  - for a ship with a tonnage in excess of 2,000 tons the following amounts in addition to the small ship minimum, I propose 1,500 SDRs per unit of tonnage up to a limit for ships of 50,000 tons at 82,000,000 SDRs and then for a ship between 50,000 and 100,000 unit I would propose 360 SDRs per unit of tonnage to be reached at a ceiling of 100,000,000 SDRs at 100,000 tons.

Based on that maximum I would propose 250,000,000 SDRs for the HNS Fund. I hope these figures are clear.

With regard to the LLMC Protocol as you know the figures there are divided into two and before I give them I would like to make one or two observations about the logic or the reasoning for arriving at these figures. In working out these figures I was very mindful of two factors. First and foremost I am conscious of the fact that we might get this right to save the notion of limitation of liability which as you know is under critical review in many jurisdictions. Secondly, I have taken into account what many delegations have said that represent Contracting Parties to the existing Convention and I have been mindful that there is a need to increase these limits significantly in the mind of those delegations. It is my belief that a great deal of those States are bearing in mind that this Protocol might be implemented to bring into force the amending procedure that will insure that over the years the limits will be kept reasonably up to date. So in the light of these factors I would like to propose the following figures. I will deal first with the figures for loss of life and personal injury and what I would propose is:

- for a ship not exceeding 2,000 tons, 2,000,000 SDRs;
- for a ship with a tonnage in excess of 2,000 tons the following amounts in addition to the small ships minimum:
  - for a ship between 2,001 and 30,000 tons: 800 SDRs per unit of tonnage;
  - for a ship between 30,001 and 70,000 tons: 600 SDRs per unit of tonnage;
  - for a ship exceeding 70,000 tons: 400 SDRs per unit.

That is for the loss of life and personal injury. In respect of any other claims:

- for a ship not exceeding 2,000 tons: 1,000,000 SDRs
- for a ship with a tonnage in excess of 2,000 tons the following amounts in addition to the small ships minimum. I have just mentioned:
  - for a ship between 2,001 and 30,000 tons: 400 SDRs per unit of tonnage;
  - for a ship between 30,001 and 70,000 tons: 300 SDRs per unit of tonnage;
  - for a ship exceeding 70,000 tons: 200 SDRs per unit of tonnage.

(12) Tapes nos. 87 and 88.
That was the best I could do bearing in mind the views that were expressed here yesterday and as I say in the case of LLMC figures, taking into account very much the views of Contracting States which have already joined the system and many of whom would like to see a significant increase of those numbers in order to remain in the system. I hope that you will regard this as an acceptable compromise in the case of both instruments, so that if at all possible to accept this by consensus.

**Germany** This delegation has followed the development of the HNS Convention now for 25 years which has now a silver anniversary already and during the last two weeks has followed the discussions within this Committee and on the floor and this delegation agrees with the figures you gave us and if I may add we all came here with slightly different expectations but for the result of all these things I have to say first of all, Mr. Chairman, I have deep respect how you tried to get us over this stumbling block and I know what a difficult job that was and so I am not picking up any individual figure of your proposal as I understand we are here at a critical point of the situation and I do not repeat any of the other remarks. My delegation is willing to accept this proposal as it stands.

**Russian Federation** Our delegation wholeheartedly agrees with the analysis which you have just given us regarding the achievements of this Conference over the last two weeks. Yesterday we said that the main issue, is the issue of small ships and your proposal just contains an element of compromise in this respect. Obviously compromise doesn’t mean satisfying everyone’s requirements. We know that both sides will remain dissatisfied. However we feel that the adoption of this compromise would mean adopting the Convention and justifying the hope we entertained when we came to this Conference. We fully support your compromise, Mr. Chairman.

**Croatia** Your proposal has two parts. The first one is the HNS Convention and this is a new Convention, new limits and a new proposal. But what really very much makes a compromise is the second part, the LLMC Protocol where I think nobody will be quite satisfied. We have heard yesterday in some long speeches one of our honourable delegates state that life is priceless. Of course it is. But before the Courts it has a price. It depends on how high is your salary, how old are you and how many family members you have to support. That is the price of your life. It differs really from country to country, all these factors vary from country to country and in every conference there is a great discussion on how much the limits in respect of claims for loss of life and personal injury should be. There is a very big difference between countries because these factors differ from country to country. We shall make now a compromise. If I really understood your LLMC figures, they are about 2½ times higher than the figures of the 1976 Convention. But one of the factors we discussed yesterday is of course the time factor. In 20 years the inflation rate must have been 100% increase. So it is really an increase of 1½ times. It is not so much if you look at it this way. This is something that should satisfy, I think, all delegates. We support your proposal and think it is the only way to save the Convention.

**Malaysia** We had a keen interest in the development of the HNS Convention as well as of the LLMC Protocol. We feel that your figures are reasonable and acceptable by our delegation.

**Mexico** We want to publicly acknowledge your efforts. We are not opposed to a consensus.

**The Netherlands** We support the compromise.

**Japan** This delegation would like to express its gratitude for your efforts to find a compromise and its acceptance of your proposal.
Ghana We are very pleased that we can accept your proposal.

Rep. of Korea We still are of the opinion that the figures you proposed are on the high side. Particularly as regards the LLMC Protocol this is true in respect of ships below 500 tons. In practice we have increased the limit by five times. Our views have not been taken into account. Nevertheless we are very well aware that we came here in a spirit of compromise. With some reluctance we have decided to support your proposal as a whole.

All other delegates who took the floor (Norway, Italy, Chile, Singapore, France, Denmark, Iran, Australia, Canada, Spain, Israel, Nigeria, United States, India, United Kingdom, Greece, Sweden, Indonesia) stated that they accepted the Chairman’s proposal, who was therefore adopted by consensus.

Chairman We can adopt this package by consensus. I am deeply grateful to all delegations.

Text of the Protocol
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;
   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 Accounts;
   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

The limit for passenger claims (art. 7 of the Convention)

IMO Legal Committee
Seventieth Session

[15] 71. The delegation of Germany introduced document LEG 70/5/2\textsuperscript{13} stating that the main purpose of amending the limitation amounts was that their real value had been eroded by inflation. Limits for passenger claims for loss of life and personal injury should be raised from 46,666 Units of Account to 175,000 Units, because this amount corresponded with the amount set out for these types of claims under the Protocol of 1990 to amend the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974.

72. In introducing document LEG 70/5/3,\textsuperscript{14} jointly submitted by Finland and the United Kingdom, the delegation of Finland proposed that in the case of passengers

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(13) The text of document LEG 70/5/2 is quoted below:

Submission by the Federal Republic of Germany

1. The Federal Republic of Germany is of the opinion that an independent liability system must be developed for maritime transport of hazardous and noxious substances, which provides appropriate liability for the specific risks involved in transport of hazardous goods. In the opinion of the Federal Republic of Germany, the regulations on liability for transport of hazardous and noxious substances must be clearly separated from the general regulations on liability limits, governed by the Convention on Limitation of Liability for Maritime Claims, 1976. The Federal Republic of Germany points to the fact that, in the case of claims covered by the International Convention on Civil Liability for Oil Pollution Damage, 1969, this has already been provided for in Article 3(b) of the 1976 Convention on Limitation of Liability for Maritime Claims.

2. Independent of this, the Federal Republic of Germany is in favour of an appropriate increase in the liability limits set out in the 1976 Convention on Limitation of Liability for Maritime Claims. In determining the level of liability limits, the effect of inflation since 1976 must be taken into account in such a way as to sufficiently compensate for the risk potential in maritime transport.

3. The Federal Republic of Germany shares the doubts raised at the sixty-ninth session of the Legal Committee of IMO as to whether the limits for passenger claims as set out in Article 7 of the 1976 Convention are still current taking into account the revision of the Convention Relating to the Carriage of Passengers and their Luggage by Sea, 1974, by the 1990 Protocol. It recalls that the amount of 46,666 Units of Account set out in Article 7, paragraph 1 of the Convention on Limitation of Liability for Maritime Claims, 1976, corresponds with the liability limits incumbent on the carrier for the death or personal injury to a passenger set out in Article 7, paragraph 1, first sentence of the Convention Relating to the Carriage of Passengers and their Luggage by Sea, 1974, as amended by the Protocol to the Athens Convention, 1976, and that this amount has been raised to 175,000 Units of Account according to Article II, paragraph 2 of the 1990 Protocol to amend the Athens Convention, 1974.

(14) The text of document LEG 70/5/3 is quoted below:

Proposal to amend Article 7, paragraph 1
Submitted by Finland and the United Kingdom

1. A Protocol to amend the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea 1974 was adopted in 1990. When it comes into force, the Protocol will increase the limit on a carrier’s liability for the death of or personal injury to a passenger from 46,666 SDR to 175,000 SDR.

2. The new limits on liability in the revised Athens Convention need to be taken into account in the revision of the Convention on Limitation of Liability for Maritime Claims 1976 (LLMC).
claiming for loss of life or personal injury, article 7, paragraph 1 of the Convention be amended to reflect not only the limits established in the 1990 Protocol to the Athens Convention, but also to remove the 25 million SDR ceiling per incident. This deletion, which would enable victims to obtain full compensation, was in line with the existence of ships and ferries carrying an increasing number of passengers. At present, the full 46,666 Units of Account are therefore not available to passengers if the ship is authorized to carry more than 535 of them. When the limit of 175,000 SDR per passenger of the 1990 Protocol to the Athens Convention applies, the 25 million SDR ceiling contained in the 1976 LLMC Convention would mean that full compensation would only be available to 142 passengers. The political decision to delete this ceiling is also justified bearing in mind that in accordance with article 3 of the Athens Convention, a carrier is liable for the death of or personal injury to a passenger only if the incident was due to the fault or neglect of the carrier or his servants or agents. When death or injury is a result of fault or neglect on the part of the carrier, he should [16] not have the right to limit his liability further than provided for in the 1990 Protocol to the Athens Convention. Bearing in mind that the removal of the 25 million SDR involved considerations of policy related to the cost of insurance, the delegation noted that this deletion did not imply the complete abolition of the global limit: this limit would now be decided by multiplying the number of passengers the ship is authorized to carry by the per passenger limit of 175,000 SDR laid down in the 1990 Athens Protocol.

75. The Committee unanimously agreed that the limit of compensation for passenger claims should be updated to make it correspond with the 1990 Protocol to the Athens Convention. The proposal to delete the ceiling of 25 million SDR was supported by several delegations. Other delegations expressed their interest to study the matter further, while some delegations expressed their reservations regarding the proposal. In their opinion, such a decision involved considerations of a political kind which should be directly related to an assessment of the impact of the deletion upon the possibility of obtaining insurance at reasonable costs. The Committee was
tentatively informed that such a possibility remained feasible but further investigations in the insurance market would be necessary.

80. The Committee decided to include between square brackets the figure of 175,000 Units of Account in article 3 of the draft protocol (article 7, paragraph 1 of the Convention) and, in the same provision, put the expression “but not exceeding [ ] Units of Account” into square brackets.

### Seventy-first Session

[15] 86. In considering draft article 7, paragraph 1, most delegations supported the proposal made by Finland and the United Kingdom at the last session to remove the overall ceiling per incident. This deletion would have the effect that individual passenger claims will only be limited in accordance with the Athens Convention and corresponding regimes. There would still be a global limit, decided by the number of passengers allowed multiplied by the limitation amount of 175,000 provided for in the Athens Protocol. Some delegations, while not opposing this proposal, expressed the need to obtain further information and explore the insurance implications. A proposal was also made to reexamine the possibility of readjusting the overall ceiling, particularly considering that the Athens Protocol awards a maximum of 175,000 units per passenger on board whereas the draft text stipulates 175,000 per passenger allowed.

87. In summing up, the Chairman concluded that the proposal to remove the overall ceiling for passenger claims had met with overwhelming support. In view, however, of the reservations made by some delegations, he felt that it was too early to remove the text within square brackets at this session.

### Note by the Secretariat

3 A proposal to remove the overall ceiling for passenger claims met overwhelming support. In view, however, of the reservations made by some delegations, it was concluded that it was too early to remove the text within square brackets in draft article 3 (article 7, paragraph 1 of the present Convention).

4 Some delegations expressed their readiness to consider a proposal that a State Party could reserve the right to exclude the application of limitation of liability for loss of life or personal injury to passengers. There was, however, not yet sufficient support for inserting that proposal in the draft text.

### Seventy-second Session

[14] 94. The Committee agreed to remove the overall ceiling for passenger claims and, as a consequence, to delete the text within square brackets at the end of paragraph 1 of article 3 of the draft protocol.

95. However, some delegations were of the opinion that the overall ceiling for passenger claims should be retained in an effort to serve the main principle of limitation of liability without damaging the interests of claimants.

(15) Document LEG 72/5 of 27 January 1995, Appendix VI.
96. One delegation proposed that the overall limitation amount should be based on the number of passengers actually on board and not the number of passengers the vessel is allowed to carry. This proposal was not adopted.

**Diplomatic Conference Committee of the Whole**

**19 April 1996**

Chairman In carrying on the Draft Articles, before we come to the next amendment it seems to me that in Article 4 of the Protocol there is a set of square brackets and I am wondering whether we could eliminate them. I don’t think this is tied to the general limitation discussion since this has to do with the per passenger limit and it would bring this text in line with the Athens Convention. Is there any objection to removing the square brackets?

Greece Allow me to make some sort of a statement. I will try to be quite soft. Greece, as I believe everybody here, duly endorses the objective of this Conference to establish new liability limits for passengers claims, in order to protect these victims and to provide adequate and appropriate regulated compensation consistent with public expectation, whilst at the same time preserving the principle of limitation of liability which according to LLMC itself is the substance and the aim of this Convention. However I regret to say as far as Article 4 is concerned that this objective is not fully accomplished. As you are well aware, our delegation in the last session of the Legal Committee has stated that the figure of 175,000 units of account must be multiplied by the number of passengers actually on board the ship and not multiplied by the number of passengers the ship is allowed to carry. I regret to say that no serious account has actually been ever taken of the fact that the ship is not always carrying the number of passengers that is allowed and no one can reasonably expect that this is always the case. Having in mind what mentioned above allow me to refer to the ICS submission and multiply figures set out in the example described in the first paragraph of page 2. It is clearly stated that a ship allowed to carry 2000 passengers would face a potential liability of 350,000,000 SDRs. At the same time the same ship carrying only 100 passengers would be obliged to face again a potential liability of 350,000,000 SDRs. It follows that the application of this provision as I have described it is indeed problematic. That is because the whole conception, the whole idea of a LLMC regime in our opinion is abolished and the attractiveness of such regime becomes meaningless. Well, since as you are well aware of the problem, we have not submitted any written submission as regards this. I would like only to state our consciousness of the fact that this provision is not, allow me to say, based on quite rational grounds. If the real will of this Conference is not to limit the liability for passengers’ claims according to the passengers the ship is actually carrying, in this case I would suggest in order to save the essence of an LLMC regime to lower in a way this figure which according to ICS and according to our opinion is not clearly insurable. In this case leaving the text as it is, I would propose 1000 [100,000] units of account instead of 1075 [175,000] units of account.

(16) Tape no. 38.
Chairman Just as a point of clarification I think you mean 100,000 instead of 175,000.

Greece Excuse me Mr. Chairman: 100,000 instead of 175,000.

Chairman Well I guess this is not settled as I thought it was. So we have to try to settle it. We have heard the proposal, and although it is not in writing it is sufficiently clear to be able to focus on it and I know we had this debate in the Legal Committee. So it is not a new debate, so I would welcome some view.

Finland We don’t see any reason for a deviation from the figures in the Athens Convention.

Denmark We agree.

Japan This delegation also is against the Greek proposal, at least in respect of the limit per person.

Canada We see it likewise.

Chairman Is there any support for the Greek proposal? I see none, so can I assume that the main proposal in the Draft Articles is carried and that we can remove the square brackets? Thank you.

Text of the Protocol

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

New text of Article 8, paragraph 2 of the Convention

Diplomatic Conference
Committee of the Whole

The new text of article 8, paragraph 2 of the Convention was agreed by the Committee of the Whole following the adoption of the new limits in article 6 and in article 7.\(^{17}\)

Text of the Protocol
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, 6,500 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.

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\(^{17}\) Document LEG/CONF.10/CW/10 of 1 May 1996.
Article 6

Addition of paragraph 3 bis in article 15 of the Convention
(National regulation of the limit for passenger claims)

IMO Legal Committee
Seventieth Session

[16] 73. The delegation of Japan introduced document LEG 70/5/4 which contained a proposal to amend article 15. The proposal would allow States Parties to increase by national law the limits of liability in the case of claims for loss or personal injury to passengers. The delegation explained that such an amendment would be essential to reconcile the international regime regulated in the 1976 LLMC Convention with its current national system.

78. Most delegations were unable to accept the possibility of a State Party to the protocol imposing upon ships, other than those flying its flag, limits for passenger claims higher than those to be established in the protocol. In their view, the common ground agreed for the elaboration and implementation of the treaty would be affected if Parties were allowed to impose higher limits on ships flying the flag of other Parties. One delegation mentioned the possibility that a vessel operating between two States should not have lower limits of liability than vessels flagged in either of those two States.

Seventy-first Session

[14] 83. In introducing the proposal in document LEG 71/4/2, the Japanese delegation emphasized its view that claims for personal injury or death should not be subject to limitation. If this proposal was not accepted Japan would not be able to ratify the protocol.

84. There was not much support for the first option (deletion of article 7 of the draft). With regard to the second option, some delegations expressed their readiness to consider further this option. One delegation made the suggestion that a reservation might be acceptable if unlimited liability was confined to cases where no foreign interests are involved.

(18) The text of document LEG 70/5/4 is quoted below:

Submission by Japan

Background
At the sixty-ninth session of the Legal Committee, draft Protocol to amend the Convention on Limitation of Liability for Maritime Claims, 1976 was submitted by the United Kingdom.
With regard to the claims for loss of life or personal injury to passengers of a ship in particular, it would be necessary to set up a system of liability which provides an adequate protection for such claims. For this purpose the following provision, which enables each State Party to establish its own system of liability, should be added as 2 bis, in Article 15.
Proposal
“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.”

(19) The proposal in document LEG 71/4/2 has subsequently been repeated in document LEG 72/5/2. See infra note 20.
88. The proposal for a reservation put forward from Japan had received some interest. There was, however, not yet sufficient support for inserting that proposal in the draft text.

Seventy-second Session
3-7 April 1995

90. The Committee focused on the proposal submitted by Japan in document LEG 72/5/2 containing three options concerning liability for claims for loss of life or personal injury to passengers. The Japanese delegation emphasized its view that claims for personal injury or death should not be subject to limitation. Recalling that there was no support at the Committee’s last session for option one (abolishing limits by deletion of article 7 of LLMC 1976) this delegation stated that option two (adding paragraph 3bis in article 15 of LLMC 1976) and three (amending article 18, paragraph 1 of LLMC 1976) were preferable and provided the minimum requirement for Japan to ratify the protocol.

91. Some delegations did not support these options on the grounds that uniformity would not be achieved if each State had the possibility of establishing higher limits of liability for passenger claims. The view was also expressed that there was a need for passengers to know with certainty what limits of liability would apply.
One delegation suggested that, in the interests of a compromise, a State might create its own limits of liability under option two, provided such limits would apply only to vessels flying the flag of that State.

92. Another delegation stated that the scope of revision should be confined to the review of limitation amounts and the introduction of a tacit acceptance procedure as had been decided in an earlier session. The proposals contained in document LEG 72/5/2 went beyond this agreement.

93. Most delegations, however, expressed their support for option two on the grounds that this would permit States Parties to set higher limits of liability for personal injury and loss of life in respect of passengers than that prescribed in article 7, paragraph 1 of LLMC 1976, but would preclude a State from setting lower limits of liability for such claims. Accordingly, the Committee instructed the Secretariat to include option two in the draft articles.

Diplomatic Conference
Committee of the Whole
19 April 1996

Chairman Then I think we come to Article 6 where there is a proposal by Japan and by Norway in documents 3 and 5. So we take up first the proposal in document 3 by Japan and I would ask that delegation to introduce it.

Japan Thank you Mr. Chairman. This proposal is modelled upon a similar provision which is already contained in paragraph 2 of Article 15 of the 1976 LLMC. And the policy is also the same.

Chairman Is there any objection to this proposal?

Greece Allow me to say that while I am not opposing to this proposal, I feel that we must be very cautious of the fact that we may be establishing in this case unlimited liability. It clearly states that the limits of liability adopted or the fact that there are none. Not any limit of liability, simply that it does not exist. I don’t think that this is consistent with the substance of a LLMC regime, to establish no limits. Thank you.

Chairman I did not hear this intervention as opposing this proposal, but expressing some concern and caution. So with that concern and caution can I assume, since there has been no other opposition to it, that we can accept this proposal? It is so decided. Then there is a Norwegian proposal contained in Document No. 5. Would Norway like to briefly explain this?

Norway Thank you Mr. Chairman. We feel this is a purely drafting amendment. The Convention sets out the limits in two different articles, in Article 7 in units of account and in Article 8 in so-called monetary units. We therefore think that art. 6 of the Protocol, art. 15 of the Convention should refer both to the limits in art. 7 and in art. 8. We think this is just something that the draftsmen have forgotten. Thank you.

Chairman This does strike me as purely a drafting point and if there is no opposition to it, could we regard it as standing referred to the Drafting Committee? I see no opposition, so this will be referred to the Drafting Committee.

(21) Tape no. 38.
Record of decisions of the Eighth Meeting
19 April 1996

The Committee decided to adopt the amendment to the text of article 6 proposed in document LEG/CONF.10/6(b)/3 to add the following text at the end of the paragraph 3bis:

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

The Committee referred to the Drafting Committee a drafting proposal in document LEG/CONF.10/6(b)/5 relating to article 6 of the draft LLMC Protocol.

Text of the Protocol

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.

65. The implications of either establishing a linkage between LLMC and the HNS Convention or having a free-standing HNS convention should be carefully studied. Even though some claims such as pollution damage to the environment *per se* were not covered by LLMC, the adoption of a free standing HNS convention would nevertheless necessitate the introduction of an exception for HNS claims in article 3, similar to the exclusion in that article of claims for oil pollution damage.

66. The observer delegation of the P and I Clubs reminded the Committee of the existing problems in finding adequate market capacity to cover two separate funds, namely one under LLMC and another under HNS. In its opinion, the existence of two funds would result in a reduction of cover within each fund and the increase of insurance costs.

58. In introducing document LEG 70/4/2, the observer delegation of the International Group of P & I Clubs explained the way in which shipowners’ liabilities are currently insured. He referred to the present trends of the insurance market which indicated that the estimated capacity available in the future to cover shipowners’ liability might have to be revised downwards. A separate HNS fund would reduce the capacity available in respect of any one incident. Better use of this capacity would be made if a fund established in accordance with the HNS convention were to offer compensation additional to the one provided by any fund established in accordance with the 1976 LLMC Convention.

59. Several delegations explained that this information strengthened the case in favour of a linkage between the HNS convention and other limitation of liability regimes mentioned in article 7 of the draft HNS convention.

60. Other delegations restated their preference for a free-standing HNS regime but showed their readiness to consider the possibility of a linkage in view of the limited insurance capacity available to cover the liability of the shipowner.

61. Some delegations were of the opinion that in order to ensure uniformity, the linkage should be compulsory, rather than optional, for countries Party to both the LLMC and the HNS conventions. In this regard, the Committee was reminded that level of compensation for HNS victims provided by the HNS convention would be preserved by the operation of the amendment introduced to the second sentence of article 7, paragraph 3. This amendment ensured that the aggregate amount of the fund under paragraph 1 and the supplementary fund under paragraph 3 should be the same as the amount in paragraph 3 of article 6.

62. During the discussion reference was made to the need of assessing the situation in the insurance market not only to establish the highest possible limits but bearing in mind the serious problem posed by small ships. Since ships of lower tonnage were likely
to be the source of significant HNS damage, a solution would have to be found in order to ensure the availability of appropriate insurance cover, at reasonable costs.

63. In summing up the discussion, the Chairman concluded that no one had spoken against the linkage since also those who had some misgivings were prepared to accept the draft article 7 in its present form. The Committee therefore agreed to remove all square brackets from article 7, paragraph 1. The Committee further took particular note of the small ship’s problem and the ongoing consultations between some delegations and the insurance industry. The Committee agreed to revert to this issue at its next session and encouraged submission of documents to assist the deliberations.

[15] 69. The Committee agreed that the conclusion of the work on this agenda item should coincide with the conclusion of the work on the HNS convention, and also confirmed its view that the scope of revision should extend only to the limits and procedures for amendments.

71. (Delegation of Germany) ….. In the opinion of this delegation, the regulations on liability for transport of hazardous and noxious substances should be clearly separated from the general regulations on liability limits governed by the 1976 LLMC Convention. Accordingly, an exclusion clause should be introduced in article 3. Alternatively, the possibility of a reservation giving right to this exclusion should be allowed.

[16] 76. Several delegations expressed some doubts on the convenience of introducing an exception clause or reservation regarding the linkage between the LLMC protocol and the HNS convention, bearing in mind the decision taken by the Committee to enable Parties to the HNS treaty to establish such a link. Nevertheless, the Committee agreed that the question should be studied further on the basis of written proposals.

**Seventy-first Session**

[13] **Linkage with other limitation regimes**

72. In the light of the progress made during informal consultations concerning the linkage between the prospective HNS convention and the LLMC protocol, the Committee reverted to its consideration of article 7 in the draft HNS convention.

73. Most delegations were in favour of amending this article by replacing the optional clause included in paragraph 1 of that article with a provision making the linkage mandatory. In their opinion, this solution was the only viable one, bearing in mind the need to make use of the limited insurance capacity in order to ensure that adequate compensation for HNS victims will be available.

74. Other delegations were against deciding on the question of compulsory linkage until decisions on the main features of the prospective LLMC protocol have been adopted.

75. Against this background it was concluded that, even if there seemed to be an emerging view in favour of compulsory linkage, and informal consultations should proceed on that basis, the text of article 7 should remain unchanged for the time being. There was no agreement with regard to equal treatment. This issue and other related questions would have to be considered in the light of the conclusions adopted in respect of the prospective LLMC protocol. The proposal in document LEG 71/3/15 would be kept in abeyance pending the outcome of these considerations.
Note by the Secretariat

2. The Committee decided that a proposal put forward by Germany in document LEG 71/4/1\(^{23}\) on compulsory denunciation should be included within square brackets in the draft protocol. Article 5, paragraph 3 should accordingly also be put within square brackets.

Seventy-second Session

\[14\] 89. Since the issue on linkage had not yet been resolved, the Committee agreed to leave that issue aside for the time being and decided to consider a number of other issues identified by the Chairman from the draft text and in various submissions.

Final clauses

\[15\] 100. The Committee adopted the proposal by Germany contained in LEG 72/WP.4\(^{24}\) for a reservation clause in respect of HNS claims.

Seventy-third Session

D. Report on intersessional work on linkage (agenda item 4)

\[4\] 12. The Chairman of the Informal Working Group on Linkage introduced document LEG 73/4.\(^{25}\) He noted that the purpose of this document was to explain in a clear and concise manner four options, with their advantages and shortcomings, identified by the Group to solve the question of linkage between the HNS convention and the general limitation of liability regimes. It was hoped that the report would focus attention on the problem of linkage and alternative solutions for the consideration of the diplomatic conference.

Diplomatic Conference
Committee of the Whole
Record of decisions of the Seventeenth Meeting
30 April 1996\(^{26}\)

Consideration of articles of the draft HNS convention

The Committee considered the proposals, comments and observations of delegations regarding the issue of linkage of the HNS convention with the limitation of liability regimes. The Committee noted the indication of preferences by delegations.

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\(^{23}\) See Appendix IV.

\(^{24}\) The text of document LEG 72/WP.4 is quoted below:

Submission by Germany

Relating to the draft 1996 Protocol

Article X

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, paragraph 1(d) and (e),

(b) to apply to claims subject to the HNS Convention the limits of liability set out under that Convention.”

\(^{25}\) See Appendix V.

The Committee decided there would be no linkage of the HNS Convention with other limitation of liability regimes.

Committee of the Whole
1 May 1996

Chairman In the spirit of IMO I think that as a result of this decision we have to make a number of consequential amendments to the Draft Articles. [With respect to the HNS Convention] in the light of our discussion about linkage of course art. 9 will disappear and the result is that we have to make some consequential amendment to art. 8, for example deleting the words “subject to art. 9”. And then as a result of the deletion of art. 9 I believe a number of changes have already been made to art. 10, 11, 13, 14 and 35 and with your permission we can leave that to the Drafting Committee. With respect to the LLMC Protocol again as a result of our decision to remove art. 9 and to essentially deal with two Conventions, I believe a new article has to be inserted, art. 7, which will propose an amendment to art. 18 para. 1 of the Convention. I read out the amendment to art. 18, § 1 dealing with reservations. Sub-paragraph (a) essentially will remain as it is and there will be added a new para. (b) which would read as follows: “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”. And then at the end of the existing art. 18 the sentence reading “No other reservation shall be admissible to the substantive provisions of the Convention” would of course be taken up in the new text.

Brazil I should like to point out that instead of having a reservation clause excluding the HNS claims we would like to have a new sub-paragraph in art. 3 in the same line as sub-paragraph (b) that excluded wilful damage within the meaning of the 1969 Convention. I think it is more appropriate to have a new sub-paragraph there to exclude HNS claims from the scope of the LLMC.

Chairman Yes, certainly it seems to me that this is a question of taste really, it could be done that way. I hope we can resolve this pretty fast because we want to try to end this as soon as possible, in order to let the Drafting Committee to get on with its work.

Germany This delegation can go along with what you suggested, so we would have to make some consequential changes in the articles you spelt out with regard to the HNS Convention and the LLMC Protocol. With regard to the last comment whether we have to change art. 3 of the LLMC or whether we have to change art. 18, the reservation clause, this delegation in a spirit of compromise would rather like to go along the way expressed by you, and have a reservation clause.

France We support Germany. We prefer to change art. 18 rather than art. 3, particularly in view of countries which might accede at a later date the Convention.

Norway As regards art. 39, the supersession clause, this has nothing to do with linkage and I would say that this is a standard clause in all limitation of liability conventions and we strongly suggest that this clause should remain in the Convention.

(27) Tapes nos. 88 and 89.
in the form it has, provided, however, that the Chairman of the Drafting Committee may have a point that it should be adjusted so as to make it clear that the LLMC Protocol will not supersede the HNS Convention. According to my understanding of the article, I think this is pretty clear already but I would not object a clarification in that respect. As regards the LLMC amendments I have no strong feelings whether the amendment should be made in art. 18 or in art. 3. However generally our preference would be for clear rules in the Protocol than in the Convention, so that we would prefer art. 3 to a right of reservation in art. 18. But in a spirit of compromise we accept anything to-day.

Chairman We should take quick advantage of that.

Finland Only to state we fully support the proposal and the remarks made by Germany.

Japan This delegation totally associates itself with the position taken by Germany.

Denmark We also support the remarks made by Germany.

Chairman It seems to me that the general view is that there could be a reservation.

Mexico We believe that art. 3 should be amended since it indicates that all these matters are excluded from the LLMC.

Chairman In the light of what I just said I hope that Mexico can also go along with the suggestion that we should go along the reservation route, that seems to be the way most delegations wish to go.

Mexico Since Brazil accepts we also can accept.

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Record of decisions of the Nineteenth Meeting
1 May 1996

The Committee adopted a proposal to replace the text of article 18(1) of the LLMC Convention with:

1. ANY STATE MAY, AT THE TIME OF SIGNATURE, RATIFICATION, ACCEPTANCE, APPROVAL OR ACCESION, 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.

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Text of the Protocol
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 the limits

**IMO Legal Committee**

*Seventy-first Session*

**Note by the Secretariat**

6 In the light of the decision taken by the Committee at its sixty-ninth session (LEG 69/11, paragraph 64) that an assessment should be made regarding the applicability of articles 20 and 21 of the present Convention, a new article 4bis providing for the replacement of article 21 of the present Convention has been included in the draft. The new article contains the provisions on amendments of limits previously incorporated in article 10 of the draft protocol.

**Seventy-second Session**

[15] 99. The Committee considered draft article 4bis, paragraph 1 and 6(c) in document LEG 72/530 concerning amendment of limits. One delegation noted that the number of States Parties necessary to propose an amendment of limits would depend on the number of States required for entry into force of the protocol. The Committee agreed to retain the square brackets but to delete the bracketed figures in paragraph 1 and to put square brackets around the word “three” in paragraph 6(c). The Committee also took note of a drafting correction in draft article 10 which should make reference to article 4bis and not to article 10.

**Diplomatic Conference**

*Committee of the Whole*

*19 April 1996*

**Chairman** I now come to art. 8 of the Protocol because this is where I think we have a set of square brackets with blank spaces and I think that it would be appropriate for us to have a discussion here on what delegations feel to be appropriate figures to be included here. I think we have to launch this discussion in order to have an idea. We have of course a similar provision in the Athens Convention, I think, in the Athens Protocol of 1990. What are the figures there? There the figures are one half of States Parties to the Protocol or at least and in no case less than six. I am not suggesting that these should be the figures, I am just trying to kick start the discussion here.

**Japan** Thank you Mr. Chairman. This delegation would like to support your observation based upon the Athens Convention.

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(29) Document 72/5 of 27 January 1995, Appendix VI.
(30) See Appendix VI.
(31) Tapes nos. 38-40.
(32) See Appendix VII.
Chairman Thank you. I see some nodding in the room. I take it then that we can accept that and refer it to the Drafting Committee? It is so decided. Then in the same article, in paragraph 6(b) second line there is a percentage. Again this is equivalent to what is in the Protocol to the Athens Convention. Can we accept the figure of six?

United States Thank you Mr. Chairman. It seems to be a long standing view of the United States that the tacit amendment procedures are only to be used when the amendment is based on some scientific or technical criteria. Otherwise we are concerned that the tacit procedure could be used to substantively amend an article of a Convention which is contrary to international law. This would also create constitutional problems in some nations. The concern that we have for the streamlined tacit amendment procedure for amending the LLMC limit is the same as we expressed in our paper LEG/CONF/10/6/30\textsuperscript{33} as that document addressed a similar procedure set forth in art. 45 of the HNS Convention. Regarding the figure of 6% appearing in square brackets in art. 8(6)(b) of the Protocol, we do not know how this figure was derived. We are of the view that this figure should be tied to some scientific or technical benchmark as the average rate of inflation in Contracting States plus some fixed low percentage. If others here to-day share similar views, we would be happy to work with those other countries in drafting appropriate language.

Chairman Well, Ladies and Gentlemen, again this article has been around for a long time. I think it has been the subject of extensive discussions in the Legal Committee not only in connection with this instrument, but in connection with the Athens Convention. I am not quite sure what to make of the United States intervention. It seems to be to the effect that there is some reservation about this article, but I do not hear that intervention as an opposition to it. There is however some concern about the percentage in paragraph 6(b). So I think we must hear some views before we can resolve this.

France We think 6% is fairly high.

Chairman I wish just to remind you that 6% is the figure on the 1992 Protocol.

Italy We share the concern of the United States that this kind of inflationary element should be linked to some objective element and not to be left to a free index.

Chairman I just point out that I have been party to these discussions for many many years. Of course 6% is intended to be an upper limit. In other words any increase cannot be more than 6%. That does not mean that it has to be 6%. It could be anything from 1% to 6%. So perhaps delegations will want to take that into account, especially when you talk about setting some kind of scientific criteria. I have some difficulty in seeing how that could be done but just we should remind ourselves this is an upper limit.

Germany I think all delegations share some kind of problem with an amendment about these things and increased figures. But anyway we have to find a solution to live with that. And since we have in other circus from other Conventions always these discussions and we did not find a way out to solve that problem and since we have in other instruments likewise these kinds of provisions this delegation, which does not see any better solution, goes along with this proposal and since we have to have really very strong argument to look for something new which we did not find in all previous discussions, so, and especially with the safeguard remarked by our Chairman that 6%

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\textsuperscript{33} LEG/CONF/10/6/30 (US Paper).
is not the figure we have to raise but is the most upper limit that can be raised to, I propose that we delete the square brackets and keep the text as it stands.

**Norway** We like this tacit amendment procedure because we are a lot more worried about the inflation of the limitation amount than the risk that the limitation amount should be increased too much. To us the number 6 could be higher, but we accept it as a sort of compromise. We do not really see what there may be of unscientific about the number 6.

**Finland** This matter was very thoroughly discussed in the 1992 Conference and there was a Working Party for this purpose which got through the figures in subparagraphs (b) and (c) and actually that was the best result that could be achieved at that time and we suppose it hasn’t changed after that time.

**Chairman** I certainly hope we can avoid the torture of another Working Group, but we will see what happens.

**Japan** This kind of proceeding has been discussed not only in IMO Legal Committee, but also in UNCITRAL, UNCTAD and so on and we found this type of limit might be suitable for such automatic amendment for the change of the limit. In our experience in IMO Legal Committee and Conferences sponsored by IMO already established some typical types for this kind of provisions. We already adopted 6% three times.

**Greece** We must look at inflation figures world-wide. We have 0% inflation, or about 0.5% world-wide. Therefore that figure of 6% is too high. May be in the past in 1992 inflation figures were higher, and that was why then that specific figure was adopted but, as of to-day that figure is too high. I will propose a figure from 2% to 3%. This would be in accordance with the projection of economists. I would like to add another dimension in that specific question. I think that it would be more appropriate for the approach of this matter here to adopt a consumers price index: a wholesale index would be more appropriate because the costs are different in different sectors. Therefore the figure suggested, of 2% or 3% may be even high in that case, but as a compromise it could be adopted.

**Chairman** I just want to emphasise again that this is an upper limit. It is not to be fixed at 6%. May be the drafting isn’t crystal clear, but it does not mean that any increase that is agreed upon should be 6%. I want delegations to clearly understand that, because it could be fixed at 1%; it could be fixed at 2%.

**United Kingdom** I think we can support the comments made by a number of preceding speakers, particularly Japan and Germany. The tacit amendment procedure that is proposed is a very important feature of this instrument as far as the United Kingdom is concerned. As you have repeated, the limit is 6% and we can live with that. I remind everybody that this can only be addressed every five years. It seems to me that it would build in the possibility that there could be inflation at a greater scale than we have to-day. I am sure there is not many Finance Ministers that would wish to predict what position we will be in 20 years time. I think it is a sensible compromise that we settle at 6%.

**Denmark** As many delegations before me, such as Japan, Norway, Finland, Germany and the UK we support the figure of 6% which is in fact the figure we have supported in the CLC and Fund Conventions.

**Spain** Our delegation would go along with previous speakers and keep the figure of 6%. The projections of the economists would leave us with very uncertain forecasts.
Canada This delegation appreciates of course the difficulties Contracting States are facing when implementing the tacit amendment procedure and surely are free to make any representation as they wish as a justification for increasing figures. But it seems to us that these grounds or the methods by which the limits should be raised ought not to appear in the tacit amendment procedure itself. So we are quite supportive of the text as we now have it. As to the 6% I would only wish to add that if there was a mind in this Group to lower the figure, we should be very careful not pick a figure that ends up defeating the whole purpose of the tacit amendment procedure so that itself in time would have to be amended by a Conference, and that of course defeats the entire purpose. We need a reasonably high upper limit and as some have already pointed out it does not necessarily mean that the increase would be of that figure, but it is an upper limit and it strikes us that the figure of 6% is quite acceptable and we would not wish to pursue the debate much longer on that.

Italy We take the floor once more to share what you have stated, i.e. that this point should be taken care of by the Drafting Committee indicating the word you have used, that is maximum 6% per year. About the 6%, this is the prevailing number which was used by politicians and economists in the seventies and in the early part of the eighties. It was considered that an inflation of 6% was going to be helpful for the growth of the economy in general. As we all know the same people are suggesting us to keep as close as possible to 1% or 2% in order to promote larger employment. So the projection of the next 10/20 years, unless we change our mind altogether, is towards a much lower figure and from that point of view we would also share the observation made by Greece.

Chairman I don’t want to point out for the third time that it is of course open to the Legal Committee in five years time, or later when it comes to consider this question, if it will come to consider it, to set the increase at a much lower limit and it is perfectly acceptable under this provision. I am somewhat concerned that we will continue this discussion that has taken place on a number of occasions in the Legal Committee, for which there have been working groups set up and I don’t hear anything new coming out of this debate at all. May I call on the delegation of Mexico.

Mexico We would just like to endorse the United States views. We are concerned for the tacit amendment procedure. As our concern is not limited to the Protocol, and this only refers to figures, when we will come back to the HNS Convention, we will come back on this problem.

Ghana This delegation wishes to support the proposal made by Germany. The words to our mind are very clear: 6% is the upper limit. No limit can be increased so as to exceed that amount.

Russian Fed. Our delegation shares the view that was expressed by Germany, Japan, and the UK on this issue. We agree that 6% is the figure that exists in other Conventions; we understand of course that it is difficult to justify that figure using scientific methods, but we do support it. As to the procedure itself, we know that problems could arise, but they are the sort of problems which were considered a long time ago, when the tacit procedure was first adopted in the IMO, but at that time we took the view and continue to take the view that this procedure is used for purely technical issues and revision of limits is considered as a purely technical problem and the intent in the first place is to accelerate the revision of the Convention in the interest of the basic purposes of the Convention, in this case to provide adequate compensation to the victims. Now what happened before the tacit amendment procedure was introduced, I could refer in this connection to the Load Line
Convention, thirty years have passed and we have not managed to agree on any amendment at all to that Convention. It was adopted but it can’t be amended specifically because no provision of this kind was included. It is highly important to include this provision. If we decide to go back and delete the tacit amendment procedure for technical amendments, then I don’t think we would be happy of the result, because years and years can go by before amendments will come into force. Therefore we strongly support this amendment procedure and we hope that that procedure will continue to prevail in the future. Not just in the Protocol, but also in this Convention under consideration now.

**The Netherlands** This Association would like to associate itself to the views firstly expressed by Germany and supported by other delegations afterwards. Specially to those delegations who referred to your words that this is an upper limit and your reference to the 1992 Protocol. As regards the observation made by the United States, there is of course some logic in it and even if the provision stands as it is now, it goes without saying in our view that if it will be debated; we cannot just take a figure out of the air but we have to establish a relationship with the facts like the figures of inflation, the cost of living experience about the average level of damage and things like that. So we would like to leave the provision as it is. We think 6% is an acceptable figure.

**Sweden** We would like to support the introduction of the figure of 6% to the Protocol. Especially we would like to support the comments made by Norway.

**Venezuela** We would like to say that we share the concern expressed by the United States as to the use of the tacit amendment procedure. With regard to the problem of limits, and the maximum amount of 6%, we could go along with the majority which appears to accept this limit, but provided this is indeed the maximum as you yourself indicated, Mr. Chairman.

**Poland** Not about the 6%, but about the principle. We share the views expressed by the United States, Mexico, Venezuela, that the amendment procedure under art. 8 concerning the limits is a problem from the procedural point of view for this delegation, simply because we introduce most probably for the first time ever the tacit amendment procedure to the main body of the Convention; to the articles, not to the technical annexes as I infer from what has been said by Prof. Ivanov from the Russian Federation. I totally agree with him that there is a precedent in respect of the tacit amendment procedure, but we used it until now only in respect of the technical annexes and clearly they were annexes and we never accepted the tacit amendment procedure to amend the main body of the Convention. Having said so we are not of course in a position to oppose the solution which is acceptable to this Conference. We just have the suggestion, Sir, that may be the Drafting Committee will think about it and remove the limits from the main body of the Convention and annex them of course as an integral part of the Convention, but still as an annex to the Convention.

**Chairman** I can only say that it has existed in IMO Conventions in 1992. We have at least two precedents already.

**Belgium** We agree to remove the square brackets.

**Republic of Korea** We wish to maintain this provision and delete the square brackets.

**Cuba** We support the principle put forward by you and Mexico and U.S. with regards to the tacit amendment procedure.

**Australia** We just want to reiterate that the tacit amendment procedure has been introduced as a very important part of the Convention. We wouldn’t wish to see that
upset. As to the limit of 6%, it is an upper limit, there are plenty of safeguards in the text, that requires two thirds of the parties voting for it. They will no doubt introduce all the relevant criteria including rates of inflation and whatever else they wish to introduce in deciding on exactly the figure they want to have at that time. And I think it has to be left up to the Parties at the time when the proposal of amendment to the limit is put forward to decide what the relevant criteria are. We would on that basis accept the 6% limit, that is currently a quite reasonable one.

**France** I want to be sure that my first statement has been properly understood. As you know France is in favour of a high level of compensation and the risk I had in mind when I spoke before is that this fairly high level of 6% might later be unsatisfactory in relation to the limits; we may end up with a level which is lower than that we wanted. What I meant was that we would be better placed to appreciate this 6% figure when we know what the limits are going to be. This being said, Mr. Chairman, following many statements I see that no delegation share our concern on this and therefore my delegation is quite prepared to support the 6%. I noticed that I didn’t reply to the question you raised regarding the tacit amendment procedure. On that point my delegation is in favour of what exists now.

**Morocco** We also believe that the ceiling provided for in 6(b) is a reasonable limit.

**Chairman** We had a fairly full debate. Let me say at the start that I hope very much we do not have a working group on this one, because it has been exhaustively discussed, as I said before, in the Legal Committee; it was exhaustively discussed, as we were reminded, in 1992. It was discussed in 1990 and, believe it or not, it was already discussed a way back in 1976, whether there should be a tacit amendment procedure in the 1976 Convention. So my view is based on the interventions that have been made that while there have been some serious reservations voiced about the procedure the way it operates, I think that the overwhelming majority of other interventions has been in favour of this procedure and therefore I would take it that it is the wish of the Committee that this procedure be maintained and that we can remove the square brackets in paragraph 6(b). Of course the reservations that have been made will be noted but I think that they have been answered by other interventions. If that is the decision of the Committee, then we have completed that particular article. I beg you pardon, there is another set of square brackets in paragraph 6(c). I think this is again a figure that is equivalent to what we have in the Athens Convention and is the same as in the 1992 Protocol.

**Japan** This figure is related to the 6% in sub-paragraph (b) and this delegation therefore proposes to delete the square brackets.

**Chairman** Is there anybody against? If not I think we can remove the square brackets and I think this time we have resolved this article.

### Text of the Protocol

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 value and the effect of the proposed amendment on the cost of insurance.

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

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

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

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

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

10. When an amendment has not 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
Scope of application

IMO Legal Committee
Seventy-second Session
3–7 April 1995

[15] 98. The Committee noted the proposal in document LEG 72/5/1\(^{(34)}\) for draft article 5, paragraph 3 concerning application of the protocol. Several delegations expressed the view that the proposed provision was unclear as to whether the protocol could apply to an incident occurring before the entry into force for the State concerned, if the protocol as such had entered into force before the time of the incident. The Committee agreed to amend the proposed draft article 5, paragraph 3 by inserting after the words “entry into force”, the additional text “for each State” and agreed to the inclusion of the article, as amended, in the protocol.

Diplomatic Conference
Committee of the Whole
19 April 1996\(^{(35)}\)

Chairman

There are of course square brackets in articles 9(4) and 10(4) but my reading of these provisions is that they are directly related to the question of linkage and therefore I think we should probably leave these for now, until the questions of limits and linkage have been settled in the HNS Convention.

1 May 1996\(^{(36)}\)

Chairman

We now turn to the Protocol again. We have to focus on art. 9(4)\(^{(37)}\) with the assistance of the Chairman of the Drafting Committee.

Chairman of Drafting Committee

The Drafting Committee has taken the view that it has got no instructions at all in relation to this particular paragraph that is left within square brackets no decision having been taken by the Committee of the Whole as far as we are aware. I do need instructions on this.

Germany

We are of the view that art. 9(4) should be deleted. The reason for that is whether there can be a State party both to the LLMC and the Protocol. We should leave that to treaty law in general. It is superfluous.

Norway

If art. 10(4) goes out, art. 9(4) stays; if art. 10(4) stays, art. 9(4) goes out. We think perhaps the better way to start is from art. 10(4). For us art. 10(4) should go out. This was here because of the linkage, but since now we are dispensed with linkage, this should go out. Consequently art. 9(4) should stay in because in the situation when

\(^{(34)}\) See Appendix VII.
\(^{(35)}\) Tape no. 40.
\(^{(36)}\) Tapes nos. 90 and 91.
\(^{(37)}\) See Appendix VII.
a State is party both to the Convention and the Protocol – you may be party to both – and indeed there is a tradition for that, in particular as a transitional measure, and the reason why this is possible should, as the German delegate said, be decided by international law and the text of the 1976 Convention. And indeed the text as it exists in the Convention and the Protocol clearly states that the obligation to limit under the limits of the Convention and the Protocol only applies to ships from other Convention States. It is stated in art. 15(1): each State Party may exclude wholly or partly from the application of this Convention any person referred to in art. 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”. And for this situation, Mr. Chairman, art. 9 is necessary to make clear when the Protocol applies and then when the LLMC Convention applies. My suggestion is that in accordance with the traditional maritime law, in particular in the field of limitation, we delete art. 10(4) and we retain art. 9(4).

**Poland** We support the view of Germany. We think the problem should be left to the general law.

**Denmark** We support the view of Norway. Let me point out that you said yourself as for art. 9 that this is not an unusual clause. We prefer to have the text in so that we don’t have to see how this issue is interpreted by Courts. As for art. 10(4) we prefer the text to be deleted.

**Mexico** We support Norway.

**France** We feel that the provision in art. 9(4) could be deleted and that we can rely on the law of treaties.

**Switzerland** We support the views expressed by Poland, Germany and France.

**Greece** We thought that this problem was settled as a part of the package. Art. 9(4) should be retained as suggested by Norway.

**Italy** We support the position put forward by Germany, Poland, France and others.

**Finland** We support the proposal of Norway.

**Vanuatu** We support the propose of Norway.

**Chairman** I think that we have to resolve this with some kind of a vote. Is there agreement to delete art. 10(4)?

**Germany** I have the impression that there might be some misunderstanding here in this room. This delegation thought that this was a sort of compromise to delete that provision and leave it up to treaty law, because in fact there might be different understandings of how to read art. 15 of the LLMC. Art. 15 deals with the scope of application of the Limitation of Liability Convention and in fact the interpretation which has been presented by the Norwegian delegation is not the same we would understand. In fact, because there might be different understandings of how to read the LLMC it was the view of this delegation in order to reach a compromise not to deal with this subject matter, speed the discussion up and not to have a provision on that and in fact it has to be decided really under the LLMC itself whether you can be a member to both different Limitation of Liability Conventions. In fact it is difficult to understand, at least from the point of view of this delegation, that you in your internal law apply different figures, so that you have different limits of liability apply in the same situation. We do not deal with the linkage here, we do not deal with anything that has been debated under the HNS. We only deal with the relationship between the original Limitation of Liability Convention of 1976 and the Amendment Protocol. It is
my understanding that once you want to ratify the Amendment Protocol you are happy with the limits which are fixed here in the Amendment Protocol. You want to apply those. So in the spirit of compromise, that was the idea of this delegation, we should not discuss how do we interpret art. 15 of the LLMC Convention and just leave it up. The other question is how to deal with art. 10(4). This delegation can very well go along with what has been suggested by Norway, to delete art. 10(4) but we would urge the delegations here to consider whether it is really wise to leave art. 9(4) in here. It is not the same subject matter and in fact we can leave it up to treaty law and leave it up to the States to decide whether it is really appropriate to have both the Amendment Protocol and the LLMC. I just wanted to make that clear again because I was afraid that, listening to the discussions, there was not a clear understanding of the position of this delegation.

Chairman We have to try to resolve this quickly, because we are going to put the Drafting Committee into a lot of difficulties if we can’t resolve this. Can we agree first of all to delete paragraph 4 of article 10? I think that there is general agreement, so now to get down to art. 9(4) and I have some more speakers now.

Croatia Just may be to help to find a way out of this situation we have the same provisions in the Hague and Hague-Visby Rules. You can both be a State Party to the Hague and Hague-Visby Rules and you can denounce the Hague Rules and be only Party to the Hague-Visby Rules. But you must have this provision if you want to be a Party to both the Convention and the Protocol. It is not too unusual to be a State Party to both the original Conventions and the original Convention with its Protocol, if you want to keep some special relations with the States which are members of the original Convention and those which are members of the original Convention and the Protocol. So the same situation exists in the Hague Rules and in the Hague-Visby Rules.

Chairman Thank you. But we remain deadlocked. I can only see one way out. 

Greece In paper LEG/CONF.10 6(b)38 there is an Annex and in this Annex there is a notice reflecting on which basis this text was included and the notice reads as follows: “The removal of either the brackets or the text within them should be considered in the light of the decision to be taken by the Conference on a proposal for the compulsory denunciation included within square brackets in art. 10(4)”. Since we have decided already to delete paragraph (4) of art. 10, there is only one decision we can take, that is that the provision in art. 9(4) should be retained. And this notice reflects exactly what was agreed in the Legal Committee.

Chairman Well, if it is of any help to this Committee I have just been referred to art. 3(3) of the Athens Protocol of 1990. An identical provision is there.

Germany Of course we can look at other Conventions, but what I tried to say is if you look into other Conventions, you have to look into the scope of application of different Conventions. In fact neither the Athens Convention nor the Hague-Visby Rules have similar provisions as we have in art. 15, we have a lex fori rule in art. 15 of the LLMC Convention. We should not state in general that there does not exist such a provision; of course there may very will exist such a provision, but we should focus on this Protocol and not work on other conventions which deal with contractual situations. So I think this is not a way out of this situation.

(38) Appendix VIII.
Chairman Well I can only see one way out of this now, to vote on it. So that is what I would propose to do. Those in favour of keeping the text please raise your cards. Those against. According to our account 22 in favour of the text, 14 against with 12 abstentions. So we keep the text.

Text of the Protocol

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

Diplomatic Conference
Committee of the Whole
1 May 1996

Chairman We have not yet decided on art. 10(1). I am instructed that reasonable time would be the 1st of October 1996, i.e. one year from the 1st October. Is that acceptable? I see no objection.

Text of the Protocol

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.

(39) Tape no. 91.
(40) See Appendix VII.
Article 11

Entry into force

IMO Legal Committee
Seventy-second Session
3-7 April 1995

[15] This delegation also proposed that the provisions on entry into force of the draft protocol article 7, paragraph 1, should be harmonized with entry into force under article 17 of LLMC 1976 so that it would be calculated at the “first day of the month following” the specified period of time. This time reference should also be co-ordinated with the denunciation provisions in article 8 of the draft protocol and article 19 of LLMC 1976. Another delegation proposed that reference should be made to the date the “tenth State” became party to the instrument rather than the date “[10] States” had become Parties. The Chairman’s suggestion that these matters could be left to the Secretariat when preparing the new draft was accepted by the Committee.

Diplomatic Conference
Committee of the Whole
19 April 1996

Chairman If that is the understanding of the Committee, then I think we have more or less completed except for Article 11. This is a set of square brackets relating to the number of States. I suspect we may not be able to settle this until we have an idea of what the limits are, but I would invite preliminary views on this provision.

Liberia It is recognised that one needs to have this Protocol coming into force as soon as possible, particularly in respect of the higher limits. We also incorporated in the Draft Protocol the removal of the right of the parties to agree to amendments as we have just discussed. So once we have completed this process, I think we need to have an appreciable number of parties to the Convention accept that this right can be given up as per article 8. We also recognise that the 1976 Convention had 12 States. But again that was the beginning. We would like to know how many parties to the 1976 Convention we have at this time and based on that and on our concern about article 8 we need a number higher than 10.

Chairman Of course pursuant to art. 8 – I want to point that out, this is the way I read it anyway – it will be a meeting of the Legal Committee at which all Contracting States will be invited, so it is not a question of Contracting States giving up any right here. I just wanted to clarify that that is the way I read art. 8.

Japan Although the 1976 LLMC has 12 States, this delegation considers that 10 is suitable for this Protocol. Therefore it is proposed to delete the square brackets.

Finland We would like to see this Protocol coming into force as soon as possible and therefore we support the deletion of the square brackets.

(41) Tapes nos. 40 and 41.
(42) See Appendix VII.
Poland In 1976 the membership of the United Nations was around 130 and there was a 12 States requirement. In 1996 membership is around 180 States and we decrease the requirement. That is our observation, Sir. Are we on a good road?

United Kingdom We fully subscribe the views expressed by Professor Tanikawa.

Chairman I don’t see any other speakers at this time. My sense of the meeting is of course that a very limited exchange has taken place, but there seems to be a sentiment in favour of the number 10, i.e. of the removal of the square brackets, although one or two delegations have expressed reservations. I am not quite sure what to make of the Polish intervention. I would be inclined in order to expedite our business to remove the square brackets and proceed as the Japanese delegation has suggested.

Liberia I asked a question, I did not get a reply, but to come back to what you made of my intervention, viz. that the parties do not give up any rights. Participation in the Legal Committee is another matter. The rights that States Parties are giving up is the right to consent explicitly to any amendment which therefore is withdrawn by the inclusion of art. 8. I would think Mr. Chairman that the number in square brackets could be resolved easily and I think we would have to look at some other decisions of this Conference before we make a decision on what number we should put in there. Therefore I would suggest that we leave the square brackets and come back to that at another time.

Russian Federation I should like to support what has been said by the distinguished representative of Liberia and leave the figure in square brackets for the moment. We are not worried by the problem of art. 8, nor the number of countries members of the United Nations, because not all such countries are parties to the 1976 Convention, Far from it. But why are we also supporting to adjourn a decision. It is because we feel that the substantive changes – I have in mind the limits – have not yet been agreed. It is therefore premature to assess at this stage how many countries should be necessary for the coming into force of the Protocol. It could not be excluded an increase to 15, if that will prove necessary.

Chairman I have a number of speakers on the list, but I would suggest that perhaps I was a little hasty in trying to resolve this and that we should probably leave this figure in square brackets for the moment. It seems to me that we are more or less finished with the Protocol at this time and in light of the discussions we had before the break I think I would take the advice of the Liberian and the Russian delegations that we should perhaps keep the question of entering into force open and see what the shape of our Protocol will be and then we will have to return on this subject. My proposal is that we should try to return to the HNS Convention and deal with some lose ends in that text.

1 May 1996

Chairman Then we have entry into force, art. 11 § 1. Can we accept the 10 States? I see no objection. Thank you. I think that completes our work.

(43) Tape no. 91.
Text of the Protocol

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

IMO Legal Committee
Seventy-first Session

[14] 77. Under this item of the agenda the Committee focused on the proposals contained in the annex to document LEG 71/4/1, in particular the requirement for compulsory denunciation.

78. Some delegations were against the proposal that Parties to the LLMC Protocol should have to denounce the Convention as a requisite to becoming Party to the protocol. In their view it was unavoidable that a dual regime would exist, and it was in the interest of the shipowner and victims that treaty law relations between LLMC Parties were preserved. Questions concerning denunciation of LLMC should neither be associated with the linkage with the HNS regime, nor included in the protocol. States becoming Party to the protocol would have to decide on questions relating to the denunciation of the parent Convention.

79. Some other delegations supported the proposal on the grounds that it would achieve greater uniformity and avoid as far as possible unequal treatment of claims.

80. It was stated that in the view of these delegations the draft HNS convention had always been laid out on the unchallenged presumption of equal treatment to all ships and that in so far as Contracting Parties to the LLMC Convention as well as to the future HNS convention should assure that all ships entering their jurisdiction and carrying HNS cargo would fully comply with the insurance requirements of the HNS convention and therefore provisions in the LLMC Convention were necessary. Other delegations opposed this view.

81. The Committee decided that the proposal on compulsory denunciation should be included within square brackets within the draft protocol. Paragraph 3 of article 5 of the draft contained in the annex to document LEG 71/4 should accordingly also be put within square brackets.

Diplomatic Conference

Text of the Protocol

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.

(44) See Appendix IV.
(45) Document LEG 71/4, Appendix III.
(46) See the text submitted to the Committee of the Whole in Appendix VII.
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

Diplomatic Conference

Text of the Protocol

1. A CONFERENCE FOR THE PURPOSE OF REVISING OR AMENDING THIS PROTOCOL MAY BE CONVENED BY THE ORGANIZATION.

2. THE ORGANIZATION SHALL CONVENE A CONFERENCE OF CONTRACTING STATES TO THIS PROTOCOL FOR REVISING OR AMENDING IT AT THE REQUEST OF NOT LESS THAN ONE-THIRD OF THE CONTRACTING PARTIES.

(47) See the text submitted to the Committee of the Whole in Appendix VII.
Article 14

Depositary

Text of the Protocol

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

2. The Secretary-General shall:
   (a) inform all States which have signed or acceded to this Protocol of:
      (i) each new signature or deposit of an instrument together with the date thereof;
      (ii) each declaration and communication under Article 8, paragraph 2 of the Convention as amended by this Protocol, and Article 8, paragraph 4 of the Convention;
      (iii) the date of entry into force of this Protocol;
      (iv) any proposal to amend limits which has been made in accordance with Article 8, paragraph 1;
      (v) any amendments 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.

(48) See the text submitted to the Committee of the Whole in Appendix VII.
APPENDIX I

INTERNATIONAL MARITIME
ORGANIZATION

LEGAL COMMITTEE-69th session
Agenda item 4

CONSIDERATION OF POSSIBLE REVISION OF THE CONVENTION
ON LIMITATION OF LIABILITY FOR MARITIME CLAIMS, 1976

Submissions by the United Kingdom

PROTOCOL OF 199.. TO AMEND THE CONVENTION ON LIMITATION
OF LIABILITY FOR MARITIME CLAIMS, 1976

THE PARTIES TO THE PRESENT PROTOCOL,

CONSIDERING that it is desirable to amend the London Convention relating to
the 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 1, 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) [ ] 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, [ ] Units of Account;
           for each ton from 3,001 to 30,000 tons, [ ] Units of Account;
           for each ton from 30,001 to 70,000 tons, [ ] Units of Account; and
           for each ton in excess of 70,000 tons, [ ] Units of Account,

   (b) in respect of any other claims,
      (i) [ ] 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, [ ] Units of Account;
for each ton from 30,001 to 70,000 tons, [ ] Units of Account, and for
each ton in excess of 70,000 tons, [ ] Units of Account.

Article 3

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 [ ] 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 [ ] million Units of Account.

Article 4

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) [ ] 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, [ ] monetary units;
        for each ton from 3,001 to 30,000 tons, [ ] monetary units;
        for each ton from 30,001 to 70,000 tons, [ ] monetary units; and
        for each ton in excess of 70,000 tons, [ ] monetary units; and
(b) in respect of Article 6, paragraph 1(b), at an amount of:
   (i) [ ] 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, [ ] monetary units;
        for each ton from 30,001 to 70,000 tons, [ ] monetary units; and
        for each ton in excess of 70,000 tons, [ ] monetary units; and
(c) in respect of Article 7, paragraph 1, at an amount of [ ] monetary units multiplied by the number of passengers which the ship is authorized to carry according to its certificate, but not exceeding [ ] million monetary units.

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

Article 5

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. 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 6**

**Signature, ratification, acceptance, approval and accession**

1. This Protocol shall be open for signature at the Headquarters of the Organization from [ ] to [ ] 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;
   (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 7**

**Entry into force**

1. This Protocol shall enter into force 90 days following the date on which [10] 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 90 days following the date of expression of such consent.

**Article 8**

**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 12 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 9
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 10
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 (hereinafter referred to as “the Legal Committee”) for consideration at a date at least six months after the date of its circulation.

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

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

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

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

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

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

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

9. All Contracting States shall be bound by the amendment, unless they denounce this Protocol in accordance with paragraphs 1 and 2 of article 8 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 not 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 11**

**Depositary**

1. This Protocol and any amendments accepted under article 10 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 10, paragraph 1;
      (v) any amendment which has been adopted in accordance with article 10, paragraph 4;
      (vi) any amendment deemed to have been accepted under article 10, 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 language, each text being equally authentic.

Done at …
CONSIDERATION OF A POSSIBLE REVISION OF THE CONVENTION ON LIMITATION OF LIABILITY FOR MARITIME CLAIMS, 1976

Submitted by IAPH

MONETARY EROSION OF THE IMF’S SDR AND THE AMOUNTS OF LIMITATIONS OF LIABILITY IN MARITIME TRANSPORT

The Special Drawing Rights (SDR) of the International Monetary Fund, (IMF) are, at present, the unit of account on which the limitations of liability fixed by various international conventions covering maritime, air and land transport, currently in force, are based.

The SDR value is composed of a basket of currencies, which undergoes the average erosion of all the different elements that compose it. The same thing is true for its purchasing power on the different national markets and, in consequence, for the practical value of the amounts of limitations of liability. This value is passed on, in the case of a serious accident, onto the compensation of victims, among which are the Port Authorities, with frequent damage to their personnel and their works.

The situation calls for the frequent and rapid revision of the amounts of the limitations of liability. This is, however, not the case.

1. The Limitations of Liability of the Carrier or Transport Owner

The liability of the owner of the transport (ship, hovercraft, etc) or the transport operator was traditionally limited:

- to protect him against the consequences of major disasters, which were likely to ruin him and lead to him abandoning his activity.
- to enable him to cover his liability by insurance, for both his own interests as well as those of his passengers and shippers.

Over the years, these limitations of liability have been confirmed by:

- first the possibility for the ship owner to free himself from all liability by abandoning his ship and freight (receipts for the voyage involved) and next by the definition of various amounts, established, initially, in national currencies and then by reference to a value that was considered to be very stable, the Gold Franc and then finally by reference to the IMF’s SDR.
In this way it was hoped that one could escape from the paralysis of the Gold Franc reference system, which resulted from the practice of certain States of substituting official but arbitrary values for the true value of the Gold Franc.

2. **International Maritime Conventions from 1976 onwards**

   The SDR was introduced as the unit of account for the limitations of liability in the International Convention on Maritime Claims of 19th November 1976.

   At the time these limitations were debated:
   - in correlation with the last reference rates of the Gold Franc which certain States had given for their rational currencies during the Jamaica Agreements (January 1976).
   - as if they were going to come into force the following day.
   
   Simultaneously, Protocols of the same date substituted the SDR for the Gold Franc in:
   - The 29th November 1969 Convention on Civil Liability for Oil Pollution Damage,
   - The 18th December 1971 Convention on the Establishment of an International Fund for the Compensation of Oil Pollution Damage,
   - The 13th December 1974 Convention relating to the Carriage of Passengers and their Luggage by Sea.

   Since that time the purchasing power of the SDR and therefore the limitations of liability established by these conventions has undergone very heavy erosion and whilst the revision of most of the limitation amounts have been undertaken, they are still not yet in force and in no cases has the possibility of a mechanism for their rapid revision or an indexing of the SDR value been debated.

3. **Evolution of the SDR Purchasing Power from December 1976 to July 1993**

   The object of the attached table is to retrace the evolution in various countries of the purchasing power of the SDR between the end of 1976 and July 1993, (the latest information available).

   It was established:
   - from the October 1993 international financial statistics (monthly) published by the IMF,
   - and limited to the 12 countries, for which statistical data is published more regularly and quickly,
   - and based on the consumer price index, since the industrial price index is published more slowly and also suffers from a lack of homogeneity.

   Comparison of the results of the final calculations highlights:
   - a serious and general drop in the SDR's purchasing power at a local level, between the end of 1976 and July 1993 i.e. nearly 17 years,
   - An even steeper drop in States whose currencies have devalued more slowly than the SDR, but where, nevertheless, the effect of some inflation has been felt.
   - an equally steep drop, in countries where the stability of the currency only partially reflects internal inflation.

   Thus the fall in the purchasing power of the SDR on average is around 50% with the extreme being around 75%.
CONCLUSION

The present study, no doubt, contains numerous points that could be contested both on the basis of the method used and in its calculation.

It would have been preferable to extend it to numerous other countries and, possibly to use the industrial and/or wholesale price index, but this would have raised the delicate problem of access to statistical documentation.

However, its ambition is simply to raise a question of major importance to the maritime world and to stress the urgency with which effective solutions need to be found.

This is what the Port Authorities, who rank among the victims of all too frequent damage, wish to do in this paper.

<table>
<thead>
<tr>
<th>SDR VALUE IN LOCAL CURRENCY</th>
<th>CONSUMER PRICE INDEX BASIS 100 - YEAR 1985</th>
<th>SEPT. 1993 / EBD 1976, RATIO ON LOCAL PLANE</th>
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</thead>
<tbody>
<tr>
<td>BELGIUM</td>
<td>41.806</td>
<td>49.531</td>
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APPENDIX III

INTERNATIONAL MARITIME ORGANIZATION

LEG 71/4
29 June 1994
Original: ENGLISH

LEGAL COMMITTEE
71st Session
Agenda item 4

CONSIDERATION OF REVISION OF THE CONVENTION ON LIMITATION OF LIABILITY FOR MARITIME CLAIMS, 1976

Note by the Secretariat

1 At its seventieth session held from 21 to 25 March 1994, the Legal Committee continued with the consideration of revision of the Convention on Limitation of Liability for Maritime Claims, 1976 on the basis of the draft protocol submitted by the United Kingdom to the previous session of the Committee held from 27 September to 1 October 1993 (document LEG 69/4/1), and further submissions to its seventieth session.

2 The Committee agreed that the conclusion of the work on this agenda item should coincide with the conclusion of the work on the HNS convention, and also confirmed its view that the scope of revision should extend only to the limits and procedures for amendments.

3 The Committee unanimously agreed that the limit of compensation for passenger claims should be updated to make it correspond with the 1990 Protocol to the Athens Convention and, therefore, to include between square brackets the figure of 175,000 Units of Account in article 3 of the draft protocol (article 7, paragraph 1 of the Convention). The Committee further decided, in the same provision, to put the expression “but not exceeding [ ] million Units of Account” into square brackets.

4 A revised version of the draft protocol, including the amendments referred to in paragraph 3, is annexed to this document.

5 Further to the above, attention is drawn to the decision of the Committee at its sixty-ninth session that an assessment should be made regarding the applicability of articles 20 and 21 of the present Convention in relation to the proposed tacit amendment procedure and the possible need to revise the amendment procedure of the Convention.

* * *
ANNEX

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

THE PARTIES TO THE PRESENT PROTOCOL,

CONSIDERING that it is desirable to amend the London convention relating to the 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:


2. “Organization” means the International Maritime Organization.

3. “Secretary-General” means the Secretary-General of the Organization.

Article 2

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

(a) in respect of claims for loss of life or personal injury,
   (i) [ ] 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, [ ] Units of Account;
      for each ton from 3,001 to 30,000 tons, [ ] Units of Account;
      for each ton from 30,001 to 70,000 tons, [ ] Units of Account; and
      for each ton in excess of 70,000 tons, [ ] Units of Account,
(b) in respect of any other claims,
   (i) [ ] 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, [ ] Units of Account;
      for each ton from 30,001 to 70,000 tons, [ ] Units of Account; and
      for each ton in excess of 70,000 tons, [ ] Units of Account.

Article 3

1. 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 authorised to carry according to the ship's certificate [but not exceeding [ ] million Units of Account].

**Article 4**

1. 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) [ ] 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, [ ] monetary units;
         for each ton from 3,001 to 30,000 tons, [ ] monetary units;
         for each ton from 30,001 to 70,000 tons, [ ] monetary units; and
         for each ton in excess of 70,000 tons, [ ] monetary units; and

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

      (i) [ ] 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, [ ] monetary units;
         for each ton from 30,001 to 70,000 tons, [ ] monetary units; and

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

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

**Article 5**

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. 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 6
Signature, ratification, acceptance, approval and accession
1. This Protocol shall be open for signature at the Headquarters of the organisation from [ ] to [ ] 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;
   (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 7
Entry into force
1. This Protocol shall enter into force 90 days following the date on which [10] 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 90 days following the date of expression of such consent.

Article 8
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 12 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 9
Revision and amendment
1. A conference for the purpose of revising or amending this Protocol may be convened by the organisation.
2. The Organisation 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 10
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 Organisation and to all Contracting States.

2. Any amendment proposed and circulated as above shall be submitted to the Legal Committee of the organisation (hereinafter referred to as “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 Organisation, shall be entitled to participate in the proceedings of the Legal Committee for the consideration and adoption of amendments.

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

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

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

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

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

7. Any amendment adopted in accordance with paragraph 4 shall be notified by the Organisation 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 8 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 11
Depositary
1. This Protocol and any amendments accepted under article 10 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 10, paragraph 1;
      (v) any amendment which has been adopted in accordance with article 10, paragraph 4;
      (vi) any amendment deemed to have been accepted under article 10, 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 12
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 …
APPENDIX IV

INTERNATIONAL MARITIME ORGANIZATION

LEGAL COMMITTEE-71st session
Agenda item 4

CONSIDERATION OF REVISION OF THE CONVENTION ON LIMITATION OF LIABILITY FOR MARITIME CLAIMS, 1976

Memorandum submitted by Germany


1 Separation of the HNS Convention from the 1976 Convention

If the Convention on Limitation of Liability for Maritime Claims, 1976, (hereinafter referred to as the 1976 Convention) is not linked to the Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea (hereinafter referred to as the HNS Convention), the following provisions are required on adoption of the HNS Convention:

(1) Restriction of the scope of application of the 1976 Convention

Claims in respect of damage in connection with the carriage of hazardous and noxious substances by sea, as suggested in Article 1 of the enclosed draft proposals to the draft protocol to amend the 1976 Convention, must be removed from the scope of application of the 1976 Convention. Settlement of these claims thus remains a matter to be covered by the HNS Convention.

(2) Guarantee of uniform application of the amended version of the 1976 Convention

In order to ensure the most all-inclusive implementation possible of the HNS Convention, as proposed in Article 3, paragraph 4 of the enclosed draft proposals to the draft protocol to amend the 1976 Convention, the Protocol to Amend the Convention should be ratified in conjunction with obligatory denunciation of the original version of the 1976 Convention. This provision prevents a State Party to the Protocol to Amend the Convention continuing to apply the provisions of the original version of the 1976 Convention in respect to States Parties to the latter Convention.
2 Linking the HNS Convention to the 1976 Convention

If the 1976 Convention is linked to the HNS Convention on the basis of the provision contained in Article 7 of the Draft HNS Convention, this leads to a need for the 1976 Convention to be considerably amended, as well as to the possibility of many different versions of both the 1976 Convention and the HNS Convention becoming applicable. The amendments, which because of the option contained in Article 7 of the Draft HNS Convention must contain rights to choose on the part of the States Parties, render the right of overall limitation of liability pursuant to the 1976 Convention not only unclear but also no longer able to be enacted. At the same time they lead to doubt being cast upon the system of overall limitation of liability pursuant to the 1976 Convention.

The following should be noted in detail:

(1) Unequal treatment of claimants falling within the scope of the 1976 Convention

In a State which links the HNS Convention to the 1976 Convention pursuant to Article 7 of the Draft HNS Convention, the sum of liability made available pursuant to the 1976 Convention is shared between persons making claims in respect of damage in connection with the carriage of hazardous and noxious substances by sea and the claimants to all other claims. This applies irrespective of the fact that the former claimants enjoy additional protection under the HNS Convention. In a State which does not link the above-mentioned Conventions, on the other hand, the claimants who fall within the scope of the 1976 Convention are not obliged to share with the claimants who enjoy protection under the HNS Convention the sum of liability made available to them. The former claimants therefore receive considerably more than they would in a State which links the Conventions. In consequence, the extent of the sum of liability owed to each individual claimant depends greatly on the State in which the limitation fund is constituted.

The result of this unequal treatment of claimants who fall within the scope of the 1976 Convention is that the limitation funds no longer appear to be of equal value. States which do not link the above-mentioned Conventions may therefore no longer be obliged to recognize a limitation fund constituted in another State Party which does not accord equal protection to claimants falling within the scope of the 1976 Convention. If this obligation to recognize limitation funds constituted abroad ceases to apply, the 1976 Convention is touched at the core and the aim pursued by this Convention, namely to standardize the law relating to overall limitation of liability, is placed in question. Linking the 1976 Convention to the HNS Convention therefore removes the right to limitation of liability pursuant to the 1976 Convention.

(2) Scope of application

Article 7 of the Draft HNS Convention provides that the 1976 Convention may cover claims in respect of damage in connection with the carriage of hazardous and noxious substances by sea, thus creating a need for the 1976 Convention to be amended as follows: either claim in respect of damage in connection with the carriage of hazardous and noxious substances by sea
should be removed from the scope of application of the 1976 Convention, whilst at the same time determining by means of a reservation clause that the States Parties may continue to apply the 1976 Convention to such claims, or the present area of application of the 1976 Convention must be retained and by means of a reservation clause the States Parties to the 1976 Convention are given the possibility of not applying the Convention to claims in respect of damage in connection with the carriage of hazardous and noxious substances by sea.

Both solutions entail considerable difficulties since by including reservation clauses the great number of different potential applications of the 1976 Convention are opened up. The 1976 Convention thus becomes impracticable. Doubt is cast upon the legal uniformity which has been striven for and achieved by means of the Convention.

(3) Limitation of liability without constitution of a limitation fund

If the possibility is opened up of linking the 1976 Convention to the future HNS Convention, the possibility which exists pursuant to Article 10, paragraph 1, first sentence of the 1976 Convention of invoking a limitation of liability without constituting a limitation fund must be subject to restriction. Pursuant to Article 6, paragraph 3 of the Draft HNS Convention, it is always necessary to constitute a limitation fund in order to invoke limitation of liability. If therefore claims in respect of damage in connection with the carriage of hazardous and noxious substances by sea fall within the scope of the 1976 Convention, and if any such claims are made, limitation of liability without constitution of a limitation fund must be excluded. Procedural law will thus become considerably more complicated in future and in the end will no longer be practicable.

(4) Bar to other actions when a limitation fund has been constituted

If the possibility is opened up of linking the 1976 Convention to the HNS Convention, the limitation fund must be considered to have varying effects. If claims in connection with the carriage of hazardous and noxious substances by sea fall within the scope of the 1976 Convention, constitution of a limitation fund (and of the supplementary fund mentioned in the Draft HNS Convention) must therefore, in contrast to Article 13, paragraph 1 of the 1976 Convention, lead to a bar to other actions. In Article 13, paragraph 1 of the 1976 Convention, according to which the bar to other actions only applies to parties which have already made a claim against the limitation fund, can only be justified if Article 10, paragraph 1, first sentence of the 1976 Convention may continue to be applied, in other words if the liable party can invoke the limitation of liability by way of defence in respect of the other claimants. Since, however, as mentioned at (3), Article 10, paragraph 1, first sentence of the Convention cannot be applied if claims are made in respect of damage in connection with the carriage of hazardous and noxious substances by sea, in this respect Article 13, paragraph 1 of the 1976 Convention cannot be retained. Only so will it be possible to reach an accord with Article 8, paragraph 1, letter (a) of the Draft HNS Convention according to which constitution of a limitation fund also leads to all-inclusive bar to other actions.
Because of the possibility of amending Article 13, paragraph 1 of the 1976 Convention – as explained above – procedural provisions may be applied which vary greatly. The aim pursued with the 1976 Convention, namely, to reach an internationally uniform regulation on certain fundamental questions of procedural law, is thus no longer attained.

(5) **Place of constitution of the limitation fund**

The possibility provided for in Article 6, paragraph 3 of the Draft HNS Convention of constituting a limitation fund with the court or other competent authority of one of the States Parties in which an action can be brought in respect of claims subject to limitation must be excluded if the 1976 Convention is linked to the HNS Convention. This is because pursuant to Article 11, paragraph 1, first sentence of the 1976 Convention, a limitation fund may only be constituted in the State Party in which legal proceedings are instituted in respect of claims subject to limitation. Here, therefore, it is not possible to constitute a limitation fund in a State Party where as yet no claims have been brought before a court.

If the 1976 Convention is linked to the HNS Convention, the limitation fund also does not have to be constituted in the location where claims have been made in respect of damage in connection with the carriage of hazardous and noxious substances by sea, as it would under Article 33 of the HNS Convention. It is sufficient for it to be constituted in a location where any of the relevant claims has been brought before a court. Article 33 of the Draft HNS Convention, which strives for concentration of court competences, thus becomes largely meaningless.

(6) **Release of the owner’s property when a limitation fund is constituted**

If the 1976 Convention is linked to the HNS Convention, pursuant to Article 13, paragraph 2, first sentence of the 1976 Convention, it must be a matter for the judge to determine whether to order release of the owner’s property once a limitation fund has been constituted if the limitation of liability is invoked in respect of claims made in respect of damage in connection with the carriage of hazardous and noxious substances by sea. Article 8, paragraph 1, letter (b) of the Draft HNS Convention according to which subsequent to constitution of a limitation fund the ship or other property belonging to the owner must be released, must therefore not become applicable in this case.

Because Article 7, paragraph 7 of the Draft HNS Convention only allows the owner’s property to be released if the supplementary fund has been constituted, Article 13, paragraph 2 of the 1976 Convention must then be restricted for cases where claims made in respect of damage in connection with the carriage of hazardous and noxious substances by sea also come within the scope of this Convention and the limitation of liability being invoked for these claims. In such cases, Article 13, paragraph 2 of the 1976 Convention may only be applied if the supplementary fund has been constituted in accordance with the HNS Convention.
3 Conclusions

If the 1976 Convention is linked to the HNS Convention, the consequences for the 1976 Convention, as explained at 2, are so considerable that doubt is thus cast on the right to limitation of liability. The necessary changes lead to the many different potential applications of the 1976 Convention, which is thus at the same time made no longer practicable. The internationally uniform regulation being striven for is lost.

Doubt is cast on the fundamental concept of the 1976 Convention because the sum made available to individual claimants can differ greatly from one State Party to the other and the funds constituted in the States Parties no longer appear to be of equal value. The system of overall limitation of liability under the 1976 Convention is thus lost. From the German point of view, this can no longer be justified. We are of the view that the way forward is that proposed at 1.

* * *

ANNEX

DRAFT PROPOSALS TO THE DRAFT PROTOCOL OF ...
TO AMEND THE CONVENTION ON LIMITATION OF LIABILITY FOR MARITIME CLAIMS, 1976

Article 1

After subparagraph (e) of Article 3 of the Convention on Limitation of Liability, 1976 a new subparagraph shall be inserted reading as follows:

“(f) claims for damage in connection with the carriage of hazardous and noxious substances by sea 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 (HNS), dated ... or of any amendment or Protocol thereto which is in force.”

Article 2

The Convention on Limitation of Liability for Maritime Claims, 1976 (hereinafter referred to as the 1976 Convention) and this Protocol shall, as between the Parties to this Protocol, be read and interpreted together as one single instrument.

Article 3

1. This Protocol shall be open for signature at the Headquarters of the International Maritime Organization (hereinafter referred to as “the Organization”) from ... until ..., and shall thereafter remain open for accession.

2. Any State may become a Party to this Protocol by:
   (a) signature without reservation as to ratification, acceptance or approval;
   (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.

4. Any Party to the 1976 Convention may sign without reservation as to ratification, acceptance or approval, ratify, accept, approve or accede to this Protocol only if it denounces the 1976 Convention.

5. Any instrument of ratification, acceptance, approval or accession deposited after the entry into force of an amendment to the 1976 Convention as amended by this Protocol shall be deemed to apply to the Convention so amended, as modified by such amendment.

**Article 4**

1. This Protocol shall enter into force, subject to the provisions of paragraph (3) of this article, on the first day of the month following the expiration of twelve months after the date on which (twelve) States have signed without reservation as to ratification, acceptance or approval or have deposited instruments of ratification, acceptance, approval or accession.

2. When a State ratifies, accepts, approves or accedes to this Protocol after (twelve) States have signed without reservation as to ratification, acceptance or approval or have deposited instruments of ratification, acceptance, approval or accession, this Protocol enters into force in respect of that State, subject to the provisions of paragraph (3) of this article, on the first day of the month following the expiration of twelve months after the date of the deposit of its instrument of ratification, acceptance, approval or accession.

3. For the purpose of this article, signatures without reservation as to ratification, acceptance or approval, ratifications, acceptances, approvals and accessions in respect of this Protocol by States Parties to the 1976 Convention shall not be effective until such denunciations as may be required on the part of those States in respect of the latter Convention have themselves become effective.
APPENDIX V

INTERNATIONAL MARITIME ORGANIZATION

LEGAL COMMITTEE
73rd Session
Agenda item 4

REPORT ON INTERSESSIONAL WORK ON LINKAGE
Report of the Chairman of the Informal Working Group on Linkage

1 In keeping with the directions of the Legal Committee, the Informal Working Group on Linkage resumed work on the linkage problem shortly after the close of the seventy-second session and laboured over the last four months resulting in the Report on Intersessional Work on Linkage set out in LEG 73/INF.2.

2 A small group of delegations agreed to take the lead and were ably assisted by many other delegations who provided input and insightful comments by correspondence.

3 In recognition of the complexity and importance of the issue, several delegations took time from their busy schedules to meet in order to advance the work.

4 As the work was progressing, it soon became apparent that, despite much reflection on the subject since the seventy-first session, there remained some confusion on the nature of the basic elements of the problem. In order to provide clarity, it was agreed to approach the problem by analysing specifically two issues; namely, “linkage” and “gaps”.

Gaps

5 It has always been understood that gaps arise where a shipowner is able to limit liability under a general limitation regime at a level which is lower than the limit on a shipowner’s liability under the HNS Convention. The Informal Working Group identified two ways of dealing with gaps:
   (a) avoiding gaps: by requiring States to denounce the earlier limitation of liability Conventions; or
   (b) gap filling: either by the HNS Fund or some other mechanism (for example, by States party to the earlier Conventions).

6 During the preparation of this paper, a third “hybrid” option for dealing with gaps came to light. This option is referred to in the paper as “accepting gaps”. Accepting gaps means that the gap problem would not be addressed as such in the HNS Convention. Thus, should a gap result in a State which ratifies the HNS Convention, that State could resolve the problem by adopting a domestic solution. It is noted that the underlying principle of this option is that the HNS Fund would not pay any more than it would have, had the gap not occurred.
Linkage

7 An incident may give rise to limitation procedures under both the HNS Convention and an existing general limitation regime, the forthcoming 1996 Limitation Convention, or national legislation. If these procedures are “linked”, a claimant under the HNS Convention would, in the first instance, be referred to the limitation funds and limitation procedures of the general limitation regimes. The HNS Fund would only need to be constituted as a supplementary fund, if necessary because of the apparent or foreseeable cost of the damage.

8 The Informal Working Group identified two solutions to the problem, namely:
(a) no linkage: limitation proceedings under the HNS Convention would be entirely separate from the general limitation proceedings under other Conventions or national law; or
(b) linkage: limitation proceedings under the HNS Convention would be combined with proceedings under a general limitation regime.

9 In order to further aid comprehension of the problem, those delegations which had already produced papers on the linkage problem (namely Norway, Germany and the United Kingdom) agreed to revise their contributions and order them in a similar format. Thus, LEG 73/INF.2 identifies three options, namely options A, B and C, and approaches these options by setting out the impact of jurisdictional issues, the impact on the gap problem and the advantages and disadvantages of each option. In addition, and very helpfully, each delegation proposes drafting suggestions for amending the text of the draft HNS Convention and the draft LLMC Protocol.

10 While much of this material will not be entirely new to the Committee, it is hoped that the new structure and conciseness of the presentations will aid comprehension and assist delegations in formulating their policy respecting this problem.

11 What is entirely new to the Committee is the inclusion of the “hybrid” option referred to above. This option is set out comprehensively in section 3 of LEG 73/INF.2.

12 This option originated during the work of the lead delegations and is designed as an attempt to capture the essential elements of a solution that, it is hoped, shares the advantages of both the traditional approaches to gaps while avoiding the disadvantages. Thus, the reference to a “hybrid” solution.

13 The fundamental features of this proposal are:
(a) that the cost of gaps would result in full compensation not being paid to victims of incidents in States that do not adopt a domestic solution to the problem;
(b) that the HNS Fund would not pay for gaps; and
(c) that the text of the HNS Convention would not itself seek to avoid gaps.

14 The Informal Working Group on Linkage is presenting this new option not with a view to multiplying the number of available options but as a genuine attempt to provide the Committee as a whole with a new approach to the problem which it is hoped, together with the original options, will assist delegations in arriving at a consensus for a solution that will find majority support at the Diplomatic Conference.

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REPORT ON INTERSESSIONAL WORK ON LINKAGE

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SECTION 1: GENERAL INTRODUCTION

1.1 At the close of the seventy-second session of the Legal Committee, the informal working group on linkage agreed to co-operate intersessionally with a view to developing a number of possible solutions to the linkage problem. In keeping with this understanding, the object of this paper is to explore the problems of linkage between the HNS Convention and the general limitation of liability regimes.

1.2 In the opinion of the working group, the linkage problem consists of two separate issues: “gaps” and “linkage”.

Gaps

1.3 A gap is created if a shipowner is able to limit liability under a general limitation regime at a level which is lower than the limit on shipowner’s liability under the HNS Convention. With respect to the limitation regime created by national law and the forthcoming 1996 LLMC Protocol, such problems of conflict can be circumvented through drafting. However, it is more difficult to address gap problems caused by conflicts with existing conventions: the 1924, 1957 and 1976 Limitation Conventions.*

1.4 A gap occurs if HNS damage is caused in the territory of an HNS State by a ship flagged in a non-HNS State, where the two States have treaty obligations under the 1924, 1957 or 1976 Limitation Convention. A gap is created because the shipowner is able to limit liability under the general Limitation Convention and cannot be required to constitute a supplementary fund under the HNS Convention. The 1924, 1957 and 1976 Conventions provide for much lower limits on shipowner liability than the limits proposed for the HNS Convention.*

* It has been argued that the gap arises because Article 39 of the HNS Convention (the supersession clause) allows the retention of existing limitation of liability conventions. The sponsors of this paper have not been able to agree, however, on the proper construction of the last words of Article 39, according to which nothing in this article shall affect the obligations of States Parties to States not party to this Convention arising under such convention. Option B is drafted on the assumption that this clause intends only to clarify the relationship between a State Party to the HNS Convention and a State not party to that Convention, but would not overrule any legal obligation under the HNS Convention and allow the retention of any membership of conventions which are in conflict with the HNS Convention, in particular limitation of liability conventions. Such conventions would therefore have to be denounced. Since the passage has been interpreted differently by others, Option B proposes its deletion in order to avoid any misunderstanding. Options A and C are drafted on the assumption that the last words of Article 39 are not meaningless or undesirable. Just as in Article XII of CLC, this passage would be necessary to guard against and resolve possible conflicts with numerous existing conventions. The words would allow State Parties to the HNS Convention to remain party to existing conventions, including limitation conventions. However, the HNS Convention would supersede those conventions as between State Parties to the HNS Convention and where there is no conflict between conventions. Article 39 would, however, not prevent the HNS Convention from requiring the denunciation of specified limitation of liability conventions.
1.5 The working group identified a number of ways of addressing gaps:
(a) avoiding gaps: by requiring States to denounce the earlier conventions; or
(b) gap filling: either by the HNS Fund, or some other mechanism, for example
by the State Party to the earlier conventions.

1.6 During the preparation of this paper a third “hybrid” option for dealing with gaps
has come to light. This option will be referred to in this paper as “accepting gaps”.
Accepting gaps means that the gap problem would not be addressed in the HNS
Convention. Should a gap result in a State which ratifies the HNS Convention, that
State would find a domestic solution. The underlying principle is that the HNS Fund
would not pay any more than it would have, had the gap not occurred.

NOTE: The Committee’s attention is drawn to the fact that the “hybrid” option arose
spontaneously and did not benefit from detailed study within the linkage working
group. This option is put forward therefore on the same footing as the other options
which have been under discussion within the working group for some time; namely, as
part of a menu of possible solutions to the linkage problem. All options are presented
without prejudice to the position of any delegation member of the informal working
group on linkage.

Linkage

1.7 An incident may give rise to limitation procedures under both the HNS
Convention and a general limitation regime (for example, the existing 1924, 1957, and
1976 Limitation Conventions, the forthcoming 1996 LLMC Convention, or a national
limitation regime). If these limitation procedures are “linked”, a claimant under the
HNS Convention would, in the first instance, be referred to the limitation funds and
limitation procedures of the general limitation regimes. The HNS first tier fund would
only need to be constituted as a supplementary fund, if necessary because of the
apparent or foreseeable cost of the damage.

1.8 Linkage has been proposed because it has been submitted that this procedure
would bring advantages, for example that it allows for higher limits of shipowner
liability for HNS damage for the same insurance premiums because it would make the
best use of available insurance capacity.

1.9 The vast majority of shipowners insure their third party liabilities by entering P&I
Clubs. The fourteen P&I Clubs which make up the International Group of P&I Clubs
between them cover some 90% of the world’s ocean-going tonnage.

1.10 Insurance cover is provided in a series of layers. The first layer of liability is
provided by the shipowner’s P&I Club. The next layer consists of a pooling
arrangement between all the Clubs in the International Group. The third layer is
provided by reinsurance. The reinsurance risk is also divided into several layers. In
order to spread their risk, underwriters will often write a portion of the risk at the
lower level, where the premium is high, together with a portion of the risk at a higher
level, where the premium is lower. The success of this system rests on underwriters’
knowledge that limitation law will prevent claims coming against the higher levels except in exceptional circumstances.

1.11 It is argued that, with linkage, this arrangement would continue to function because HNS liability would be seen as additional to the general liability regime. Without linkage, the HNS Convention would provide for a separate limitation fund for HNS claims alongside the general limitation fund and it is said that this arrangement would therefore be disrupted.

1.12 There are, however, disadvantages associated with linkage. Linkage would add to the complexity of the HNS Convention. This might make the HNS Convention unattractive to some States.

1.13 There are also many differences between the limitation proceedings provided for in the HNS Convention and the proceedings of general limitation regimes. These differences would lead to conflicts. To resolve these conflicts, one set of rules would have to be given precedence over the other. It is argued that this would be detrimental to the interests of claimants (either to HNS or to non-HNS claimants depending on which set of rules was given precedence).

1.14 Two ways of dealing with linkage have been identified by the working group:

(a) **No linkage**: limitation proceedings under the HNS Convention would be entirely separate from general limitation proceedings under other conventions or national law. Victims would be able to pursue HNS claims only under the HNS Convention.

(b) **Linkage**: limitation proceedings under the HNS Convention would be combined with proceedings under a general limitation regime. The scope of the options for linkage would depend on decisions taken on gaps.

### SECTION 2: OPTIONS IDENTIFIED AT THE COMMITTEE’S SEVENTY-SECOND SESSION

#### Introduction

2.1 The present text of the HNS Convention (LEG/CONF.10/6(a)) allows for gaps, provides for the HNS Fund to fill these gaps and for linkage with any general limitation conventions or with national limitation regimes (Articles 9 and 14(1)(c)).

2.2 The working group proposes that any solution to the problems of gaps and linkage should be based on the following principles:
(a) the solution must be practical, and must provide for maximum flexibility in order to encourage the wide acceptance of the HNS Convention and the LLMC Protocol and, equally important, their early entry into force;

(b) any solution found must maintain the equitable balance between the interests of shipowners and the interests of potential contributors to the second tier which the Legal Committee has sought to achieve in drafting the HNS Convention;

(c) the overall purpose of the HNS Convention is to provide the best possible protection for victims of HNS damage; and

(d) the goal of uniformity of international law must be kept in mind.

2.3 Bearing in mind these principles, the working group’s discussions have focused on a number of options, each of which seeks to address the issues of gaps and linkage:

(a) **Gap filling and linkage:** This would involve mandatory denunciation of the 1924 and 1957 limitation conventions, but States would be allowed to retain membership of the 1976 LLMC Convention for a transitional period. Gaps would be filled by State Parties to the 1976 LLMC Convention according to a mechanism contained in the HNS Convention. There would be linkage of limitation proceedings under the HNS Convention with proceedings under either the 1976 or 1996 LLMC Conventions or a national limitation regime. (Proposed by Norway)

(b) **Avoiding gaps and no linkage:** This would involve mandatory denunciation of all existing limitation conventions covering HNS damage (i.e. the 1924, 1957 and 1976 Limitation Conventions). There would therefore be no gaps. HNS claims would be excluded from the scope of the 1996 LLMC Convention. (Proposed by Germany – see LEG 71/4/1)

(c) **Avoiding gaps and linkage:** This too would involve mandatory denunciation of all existing limitation conventions. There would therefore be no gaps. There would be linkage of limitation proceedings under the HNS Convention with proceedings under either the 1996 LLMC Convention or a national limitation regime. (Proposed by the UK)

2.4 All references to the HNS Convention or to the LLMC Protocol are references to the draft texts of these treaties as they appear in documents LEG/CONF.10/6(a) and LEG/CONF.10/6(b).

**Option A: Gap filling and linkage**

**Purpose of Option A**

2.5 This part of the paper elaborates on the first of the above options: gap filling and
linkage. This option would allow State Parties to the HNS Convention to retain their membership of the 1976 LLMC Convention for a transitional period. Accordingly, no State Party to the 1976 LLMC Convention would have to postpone ratification of the HNS Convention until the 1996 LLMC Protocol had entered into force. In certain circumstances this would create a gap problem, which could be solved in a number of ways, as set out below.

2.6 This proposal would not allow State Parties to the HNS Convention to retain membership of the 1924 or 1957 Limitation Conventions, as their limitation amounts are considered to be too low in this context. (The option could be modified on this point if this were thought desirable, since the denunciation of the two conventions is not a necessary consequence of linkage.)

2.7 There would be linkage between the HNS Convention and the 1976/1996 LLMC Conventions. A special HNS first tier fund would need to be established only if and in so far as the 1976/1996 LLMC funds were not sufficient to satisfy claims.

Impact on jurisdictional issues

2.8 The general advantages of linkage would be preserved by this option. In particular, it would help to deter double arrests of ships. Thus, once a 1996 LLMC fund is constituted in an HNS State in respect of an HNS accident, there will be restrictions on new arrests of the ship both in 1996 LLMC States and HNS States. The same would apply mutatis mutandis if a 1976 LLMC fund had been constituted. Such restrictions on new arrests are desirable and are warranted because the LLMC fund would be constituted as security for claims.

Impact on the gap problem

2.9 The 1996 LLMC will provide that a shipowner will be liable for HNS damage up to the first tier level of the HNS Convention; accordingly no gap problem will arise (see LEG 72/9, paragraph 100, and LEG/CONF.10/6(b), Article 7). However, the position under the 1976 LLMC is different. In most cases this would not cause problems, because the HNS Convention would supersede the 1976 LLMC Convention, or because that Convention would not apply. In a few cases, however, a gap problem will arise where the shipowner cannot be held liable for the full HNS first tier amount.

2.10 A number of ways of filling the gap have been suggested, for example the HNS Fund could fill the gap in the first instance, but be refunded in full from contributors in the State Parties which caused the gap (Article 20bis of the attached draft articles). Alternately, as suggested in LEG/CONF.10/6(a), the gap would be filled by the general contributors to the HNS Fund.
Advantages and disadvantages

2.12 Advantages of allowing retention of the 1976 LLMC Convention for a transitional period:

(a) It is possible that, if retention of the earlier limitation regimes were not allowed, States would be left without an effective limitation of liability convention pending the widespread ratification of the 1996 LLMC Convention. This might delay the entry into force of the HNS Convention.

(b) It would be consistent with established practice in maritime law conventions to allow the retention of earlier conventions, at least for a period of time.

(c) Retention of the 1976 LLMC Convention is necessary to achieve sufficiently far-reaching rules to deter double arrests of ships during the transitional period.

2.12 Advantages of linkage:

(a) Shipowners would not have to insure a full 1996 LLMC fund in addition to the full HNS first tier limitation fund, and this might enable HNS first tier limitation amounts to be set higher than without linkage.

(b) A situation where the HNS Convention in itself increased payments to non-HNS claimants in HNS incidents would be avoided, because those claimants would still have to compete with the HNS claimants for the LLMC fund. This may make it possible to set the HNS first tier limitation amount higher than without linkage.

(c) Insurance market concerns about the increasing value of claims may be eased, which will make it function better to serve the needs of the industry.

(d) The constitution of an LLMC fund under the linkage procedure would deter double arrests of ships.

(e) A first tier fund covering HNS damage could be constituted in minor incidents without having to put up security for the full HNS first tier limitation amount. This would also prevent double arrests of ships in these situations.

(f) The claimant could pursue both HNS claims and non-HNS claims before one and the same court in most cases.
2.13 Disadvantages of allowing retention of the 1976 LLMC Convention for a transitional period:

(a) States may not be encouraged to denounce the 1976 LLMC Convention before the end of the transitional period.

(b) A gap problem would be created. Some of the proposed methods for solving this problem would add to the complexity of the Convention.

(c) The HNS Fund would be involved in more cases than if retention were not allowed. In particular, the HNS Fund could be involved in incidents involving small ships, which are entitled to low limitation amounts under the 1976 LLMC Convention.

2.14 Disadvantages of linkage:

(a) Traditionally, maritime law conventions have not included such provisions.

(b) Linkage complicates the HNS Convention.

2.15 Other disadvantages of Option A:

(a) States would be required to denounce the 1957 and 1924 Limitation Conventions in order to ratify the HNS Convention and would be required to denounce the 1976 LLMC Convention after a transitional period.

Proposed amendments to implement Option A

2.16 Proposed amendments to the HNS Convention:

(a) Replace Article 9 with:

Article 9
Linkage

1.* If the law of a State Party provides that claims against the owner in respect of an incident may be claimed in a fund set up by a potentially liable party or his or her insurers after the time of the incident, the limitation fund referred to in article 8 shall be constituted by this initial fund and, if necessary, a supplementary fund.

* A wording of Article 9 similar to that proposed in Option C could also be applied in respect of Option A.
2. The initial fund shall be available for all claims against the owner arising on the same occasion, including claims not covered by the present Convention. It may also be available for claims against other persons arising on the same occasion.

3. The owner shall, for the purpose of availing itself of the benefit of limitation provided for in article 8, paragraph 1, constitute a supplementary fund to compensate any unpaid balance of claim under this Convention if the initial fund is likely to be insufficient to pay all claims under this Convention in full or provides inadequate security in this respect. This supplementary fund shall be constituted in the sum of the balance that is expected to remain unpaid, but it shall not exceed the difference between the limit established in accordance with article 8, paragraph 1, and the sum expected to be paid from the initial fund to claimants for damage covered by this Convention.

4. Article 8(3) to 8(11) shall apply mutatis mutandis to the constitution of the supplementary fund. If the initial fund has been constituted in a State Party, then the supplementary fund shall be constituted before the same court or other competent authority.

(b) Replace the words “a fund” with “funds” in the chapeau of Article 10.
(c) Add a new subparagraph to Article 15(b):

[... the HNS Fund shall have the following tasks:

— (b) to prepare an estimate in the form of a budget of:]

— (v) special contributions to be paid in the course of the year

The present articles 15(b)(v) and 15(b)(vi) shall be renumbered to article 15(b)(vi) and 15(b)(vii), respectively.

(d) Add a new Article 20bis:

Article 20bis
Special contributions

1. If liabilities under article 14 of this Convention arise that would not have arisen but for the obligations of one or more State Parties under the Convention on Limitation of Liability for Maritime Claims, 1976, then special contributions shall be made in respect of each of these State Parties.

2. The special contributions shall be calculated separately for each incident, and shall cover all costs of the HNS Fund attributable to:
   (i) the obligations of State Parties under the Convention on Limitation of Liability for Maritime Claims, 1976;
   (ii) the non-payment of special contributions, or;
   (iii) the administration of special contributions.
3. If special contribution shall be paid in respect of more than one State Party, the total amount of the special contributions needed shall be shared by these State Parties in a ratio corresponding to the relative amount of their initial contribution pursuant to article 19.

4. Article 17 shall apply to special contributions in respect of a State Party unless that State instructs the HNS Fund otherwise within a time limit fixed by the HNS Fund and reimburses the HNS Fund for any extra costs incurred because of such instructions.

(d) Add a new Article 42bis:

Article 42bis

Existing limitation of liability conventions

1. State Parties to this Convention shall not also be State Parties to:
   (a) the International Convention for the Unification of certain Rules relating to the Limitation of the Liability of Owners of Sea-Going Vessels, 1924; or
   (b) the International Convention relating to the Limitation of the Liability of Owners of Sea-Going Ships, 1957, unamended or as amended by the Protocol of 1979.

2. (a) Each State Party to this Convention, and each State which has deposited an instrument of ratification, acceptance, approval or accession, shall denounce the Convention on Limitation of Liability for Maritime Claims, 1976, when at least one of the following requirements are fulfilled:
   (i) [... years have passed since the entry into force of this Convention
   (ii) the number of State Parties to the Convention on Limitation of Liability for Maritime Claims, 1976, is [eight] or less than [eight]
   (iii) the number of State Parties to the Protocol of 1996 to Amend the Convention on Limitation of Liability for Maritime Claims, 1976, is [twenty] or more than [twenty], including [eight] or more States that have been State Parties to the unamended Convention on Limitation of Liability for Maritime Claims, 1976.

   (b) The instrument of denunciation of the Convention on Limitation of Liability for Maritime Claims, 1976, shall be deposited within six months after the time specified in subparagraph (a), or as soon thereafter as permitted by article 19 of that Convention. It shall specify that the denunciation shall take effect as soon as legally possible.*

* Article 19 of LLMC 1976 provides:
1. This Convention may be denounced by a State Party at any time after one year from the date on which the Convention entered into force for that State 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.
Proposed amendments to the LLMC Protocol

2.17 No amendments to the draft LLMC Protocol are necessary to implement Option A.

Option B. Avoiding gaps and no linkage

Purpose of option B

2.18 Option B provides for the strict separation of the HNS Convention from any other conventions on limitation of liability. Thus the limitation of liability of the shipowner under the HNS Convention may not be determined by the provisions of any general limitation of liability regime but only by the HNS Convention. The LLMC Convention (as revised by the 1996 LLMC Protocol) shall be applicable only to claims other than those within the meaning of the HNS Convention.

2.19 The solution suggested in Option B aims at avoiding any conflict between the existing conventions on limitation of liability (the 1924, 1957 and 1976 Conventions) and the HNS Convention. By requiring the denunciation of the said limitation conventions it ensures that the HNS Convention and the limits set out therein apply without any exception to any ship entering or leaving a port of a contracting State or arriving at or leaving an offshore terminal in its territorial sea.

2.20 By providing for no linkage of the HNS Convention to any other convention on limitation of liability, under Option B there would be no need to make considerable changes to the procedural rules of the LLMC Convention in the 1996 Protocol. This will ensure that the system established under the LLMC Convention may remain unchanged and will reduce the risk that many States which are now State Parties to the LLMC Convention will not ratify the 1996 LLMC Protocol.

2.21 Finally, Option B aims at providing a simple and practical solution.

Impact on jurisdictional issues

2.22 A strict separation of the HNS Convention from the LLMC Convention will avoid the non-applicability of Article 35 of the HNS Convention in cases where an incident has also caused damage other than that covered by the HNS Convention.

Impact on the gap problem

2.23 Option B will not create any gap problem because State Parties to the HNS Convention will not be able to remain State Parties to the 1924, 1957 or 1976 Conventions.

2.24 By avoiding gaps, Option B will ensure that the sharing of costs of compensation for HNS damage between shipowners and cargo interests will be predictable. Thus, no complicated gap filling mechanism need be invented.
Advantages and disadvantages

2.25 Advantages of option B:

(a) By providing for no linkage, amendments to the LLMC Convention would be kept to a minimum. As set out in document LEG 71/4/1, linkage would require the revision of the following provisions:

(i) Article 10(1) of the LLMC Convention, since this provision provides for limitation of liability without the constitution of a limitation fund whereas Article 8(3) of the HNS Convention requires the constitution of a fund in all cases.

(ii) Article 11(1) of the LLMC Convention, since this provision provides for the constitution of a limitation fund only in a State Party where legal proceedings have already been instituted in respect of claims subject to limitation whereas Article 8(3) of the HNS Convention requires the constitution of a fund even if no action has been brought in respect of HNS claims.

(iii) Article 13(1) of the LLMC Convention, which – in contrast to Article 10(1)(a) of the HNS Convention – provides that persons having a claim subject to limitation may, under certain conditions, exercise their rights against assets of the shipowner other than the limitation fund that has been constituted by him.

(iv) The first sentence of Article 13(2) of the LLMC Convention, which – contrary to Article 10(1)(b) of the HNS Convention – provides for the possibility of maintaining an arrest or attachment order even if a limitation fund has been constituted.

(v) The second sentence of Article 13(2) of the LLMC Convention which, under certain conditions, requires the release of the shipowner’s property after a limitation fund has been constituted in accordance with the LLMC Convention. Where there was linkage, the release should not be ordered without the constitution of a supplementary fund under Article 9 of the HNS Convention.

(b) Guarantees maximum legal security by avoiding the application of the LLMC Convention in several different versions. The treatment of non-HNS claimants will be the same in all State Parties to the LLMC Convention. Limitation funds under the LLMC Convention will be of equal value in all State Parties.

(c) Avoids non-application of Article 35 of the HNS Convention in cases where an incident has caused damage other than that covered by the HNS Convention.
(d) No gaps. Ensures that the sharing of costs between shipowners and cargo interests would be predictable. No necessity for any complicated gap filling mechanism. The limits on shipowner liability for HNS claims would be the same in the waters of all State Parties to the HNS Convention.

(e) No possibility of State liability. No risk that the HNS Fund would not be able to recover the costs of compensation.

(f) Ensures the clarity and practicability of limitation of liability systems.

(g) Enhances the uniformity and modernity of international maritime law by requiring denunciation of outdated limitation conventions.

2.26 Disadvantages of Option B:

(a) States would be required to denounce the 1976, 1957 and 1924 Limitation Conventions.

(b) It has been suggested that this may delay entry into force of the HNS Convention if States decide not to ratify the HNS Convention until the 1996 LLMC Protocol has entered into force. The sponsors of this paper have not been able to agree, however, whether such a delay would in fact be likely.

(c) It may not be possible to make the most effective use of the capacity of the insurance market. The limits on shipowners’ liability under the HNS Convention may need to be set at lower levels than if there had been linkage and there may need to be a corresponding reduction in the total amount of compensation available from shipowners and the HNS Fund together.

Proposed amendments to implement Option B

2.27 Proposed amendments to the HNS Convention:

(a) Delete Article 9 and Article 11(2).

(b) The chapeau of Article 10(1) should read as follows:

“1. Where the owner, after an incident, has constituted a fund in accordance with article 8 and is entitled to limit liability”.

(c) Article 13(1)(a) should read as follows:

“(a) to provide compensation for damage in connection with the carriage of hazardous and noxious substances by sea, to the extent that the protection afforded by chapter II after the application of article 8 of this Convention is inadequate or not available; and”.
(d) Delete from Article 14(1)(c) the words “, or under the terms of any other international convention in force or open for signature, ratification or accession at the date of this Convention”.

(e) Article 35 should be amended as follows:

Paragraph 2(c) should read as follows:

“(c) the State Party where a fund has been constituted in accordance with article 8, paragraph 3. “

The opening words in paragraph 5 should read as follows:

“5. After a fund under article 8 has been constituted”.

(f) Delete in Article 39 the following words:

“however, nothing in this article shall affect the obligations of State Parties to States not party to this Convention arising under such conventions”.

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2.28 Proposed amendments to the LLMC Protocol:

Add to the draft Protocol of 1996 to Amend the Convention on Limitation of Liability for Maritime Claims 1976, a new Article 2bis:

“Article 2bis

After subparagraph (e) of Article 3 of the Convention, a new subparagraph shall be inserted reading as follows:

“(f) claims for damage in connection with the carriage of hazardous and noxious substances by sea within the meaning of the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substance by Sea (HNS), dated … or of any amendment or Protocol thereto which is in force.”

Option C: Linkage while avoiding gaps

Purpose of Option C

2.29 Under Option C there would be linkage of limitation proceedings under the HNS Convention with proceedings under either the 1996 LLMC Convention or a national regime. There would be no gaps, because State Parties to the HNS Convention would be required to denounce the 1924, 1957 and 1976 Conventions.
Impact on jurisdictional issues

Amendments to the HNS Convention

2.30 The HNS Convention would be amended to provide for linkage while avoiding gaps.

2.31 The HNS Convention would prevent linkage with a general limitation regime which creates gaps. In State Parties to the 1996 LLMC Protocol, the HNS Convention would require limitation proceedings under the HNS Convention to be combined with proceedings under the 1996 LLMC Protocol. In States with national general limitation regimes, the HNS Convention would require limitation proceedings under the HNS Convention to be combined with proceedings under the national regime. States would not, however, be obliged either to ratify the 1996 LLMC Protocol or to establish a national limitation regime. Linkage would be mandatory, therefore, only for State Parties to the 1996 LLMC Protocol and States with national limitation regimes.

2.32 In order to avoid gaps, State Parties to the HNS Convention would have to apply the limits provided for in the HNS Convention to all shipowners liable for HNS damage in their waters. State Parties to the HNS Convention would not therefore be able to be party to the 1924, 1957 or 1976 Limitation Conventions.

Amendments to the LLMC Protocol

2.33 Two amendments would be made to the 1996 Protocol to the LLMC Convention. First, a provision would be added to resolve any conflict between the HNS Convention and the revised LLMC Convention. This provision would clarify that, in the event of a conflict, the provisions of the HNS Convention would prevail. Secondly, linkage of the 1996 LLMC Convention and the HNS Convention would be made mandatory for all States which are party to both instruments.

Linkage procedure

2.34 The linked claims procedure for HNS and non-HNS claims would work as follows. Initially, both HNS and non-HNS claims would be met in accordance with the procedure of either the 1996 LLMC Convention or a national limitation regime. If, however, this does not allow full payment of compensation, the shipowner would be required to establish a supplementary fund to pay any remaining HNS claims. This would ensure that shipowners meet their full liability under the HNS Convention.

Impact on the gap problem

2.35 Option C would avoid gaps. States would have to denounce the 1976, 1957 and
1924 Limitation Conventions before they could become party to the HNS Convention. And, once a State had become party to the HNS Convention, it would not be able to become party to any convention which creates gaps.

2.36 By avoiding gaps, option C would ensure that the sharing of the costs of compensation for HNS damage between shipowners and cargo interests would be predictable and would not be influenced by the choice of any individual State.

Advantages and disadvantages

2.37 Advantages of option C:

(a) Offers the advantages of linkage (but restricted to the 1996 LLMC Convention and national limitation regimes).
(b) No gaps. Ensures that the sharing of costs between shipowners and cargo interests will be predictable. No necessity for any complicated gap filling mechanism. The limits on shipowner liability for HNS claims would be the same in the waters of all State Parties to the HNS Convention.
(c) Enhances the uniformity and modernity of international maritime law by requiring denunciation of outdated limitation conventions.
(d) No possibility of State liability. No risk that the HNS Fund would not be able to recover the costs of compensation.

2.38 Disadvantages of Option C:

(a) States would be required to denounce the 1976, 1957 and 1924 Limitation Conventions.
(b) It has been suggested that this may delay entry into force of the HNS Convention if States decide not to ratify the HNS Convention until the 1996 LLMC Protocol has entered into force. The sponsors of this paper have not been able to agree, however, whether such a delay would in fact be likely.

Proposed amendments to implement Option C

2.39 Proposed amendments to the HNS Convention:

(a) In paragraph 5 of Article 8, Limitation of liability, delete the phrase “before the fund is distributed”.
(b) Replace Article 9 with:

“1. A State Party shall not permit an owner liable under this Convention to limit liability other than in accordance with this Convention.

1bis Subject to paragraph 4, a State Party shall require an owner liable under this Convention to constitute an initial fund in accordance with the provisions of any international convention or national law on the limitation of the owner’s liability which is in force and is consistent with paragraph 1. (HNSC 7(1))
2. The initial fund shall be available to meet all claims against the owner arising from an incident, including claims not covered by the present Convention, whether the latter are claims against the owner himself or against any person having constituted the fund on the owner’s behalf. [HNSC 7(2) and LEG 71/3/15]

3. Where the initial fund is insufficient to pay all claims in full, the owner shall constitute a supplementary fund to compensate any unpaid balance of claims under this Convention. The supplementary fund shall be constituted in the sum of such unpaid balance but it shall not exceed the difference between the limit established in accordance with article 8, paragraph 1, and the initial fund. [HNSC 7(3)]

4. The initial fund and the supplementary fund shall be constituted before one and the same court, being the court or other competent authority of a State Party referred to in article 8, paragraph 3, and in the form prescribed by that paragraph.

6. Article 8, paragraphs 4, 5, 6, 7, 8, 9, 10 and 11, shall apply mutatis mutandis in respect of the supplementary fund. [HNSC 7(6)]

(c) Replace the chapeau of paragraph 1 of Article 10, Bar to other actions, with:

“Where the owner, after an incident, is entitled to limit liability and has constituted an initial fund in accordance with article 8 and has also constituted a supplementary fund or satisfied the court or other competent authority that a supplementary fund will be constituted at some future date if needed:”.

(d) In Article 11, Death and injury, add a new sentence at the end of paragraph 2:

“They shall rank equally for the balance with other claims. [LEG 71/3/15]

(e) Amend paragraph 1(c) of Article 14, Compensation, to read:

“(c) because the damage exceeds the owner’s liability under the terms of chapter II.”.

(f) In Article 43, Entry into force, add a new sentence at the end of paragraph 2:

“However, any State may, at the time of the deposit of its instrument of ratification, acceptance, approval or accession in respect of this Convention, declare that such ratification, acceptance, approval or accession shall not take effect before the entry into force of the Protocol of 1996 to the Convention on Limitation of Liability for Maritime Claims 1976 for that State”. [FUND PROT 30(4)]
2.40 Proposed amendments to the LLMC Protocol:

(a) Add a new paragraph to Article 1, Definitions:


(b) Add a new Article 9bis, Relationship with the HNS Convention:

1. The Convention as amended by this Protocol shall not be considered as incompatible with the HNS Convention.*

2. A State Party to this Protocol and to the HNS Convention shall apply the Convention as amended by this Protocol to claims under the HNS Convention in accordance with Article 9 of that Convention.

SECTION 3: HYBRID SOLUTION – ACCEPTING GAPS

Introduction

3.1 When the linkage working group met in the margins of LEG72, it agreed to prepare a paper describing three options for dealing with linkage and gaps and setting out the advantages and disadvantages of each. These are the three options described in section 2 above.

3.2 Until very recently the discussions on linkage have concentrated on two main strategies for dealing with gaps, both of which present certain disadvantages. As mentioned in paragraph 1.6 above, during the preparation of this paper, a third “hybrid” strategy – “accepting gaps” – has come to light which, it is hoped, shares the advantages of both of the traditional approaches to gaps while avoiding their disadvantages. The two traditional strategies and the new “hybrid” strategy are described below.

3.3 Gaps can be avoided if States are prevented from combining membership of the HNS Convention with membership with the 1924, 1957 or 1976 Limitation Conventions. The disadvantage of this strategy is that some States believe that the commercial interests of their shipping fleets are best served by membership of an international general limitation regime with wide application. These States may therefore wish to remain members of one or more of the 1924, 1957 and 1976 Conventions; at least*

* Article 30(2) of the 1969 Vienna Convention on the Law of Treaties provides that: When a treaty specifies that it is subject to, or that it is not to be considered as incompatible with, an earlier or later treaty, the provisions of that other treaty prevail. This paragraph therefore provides for the provisions of the HNS Convention to prevail over those of the LLMC Convention.
in the short term, until the 1996 LLMC Protocol has been widely accepted. It has been argued that this could delay the entry into force of the HNS Convention.

3.4 Gaps can also be filled. That is, the HNS Fund could pay compensation whenever sufficient compensation is not available from the shipowner, even if the shipowner limits liability under the 1924, 1957 or 1976 Limitation Convention. The HNS Fund could recover the costs of gaps in two ways: the levies paid by all contributors could be increased, or a special cost-recovery mechanism could be put into place involving only the States which create gaps.

3.5 In the discussions on linkage, a number of States have said that, if the cost of gaps is to be shared among all contributors to the HNS Fund, this would make the HNS Convention politically unacceptable. The receivers of HNS in some of the States which create gaps by remaining, or becoming, party to the 1924, 1957 or 1976 Limitation Conventions may pay a very small proportion of the total contributions to the HNS Fund. It is suggested that it would be politically difficult for a State which is not party to the 1924, 1957 or 1976 Limitation Conventions, but where receivers paid a large proportion of contributions to the HNS Fund, to accept that its receivers should face additional costs because of decisions taken by other States.

3.6 If gaps are filled by a special mechanism involving only State Parties to the 1924, 1957 and 1976 Limitation Conventions this too presents disadvantages. Such a mechanism would add to the complexity to the HNS Convention and may not be viable if large costs have to be shared among very few States.

Proposal

3.7 The third way of dealing with gaps is to accept them. Accepting gaps means that:

(a) the cost of gaps would result in full compensation not being paid to victims in States which do not adopt a domestic solution to this problem;

(b) the HNS Fund would not pay for gaps; and

(c) the drafting of the HNS Convention would not seek to avoid gaps (that is, States would be free to be party to the 1924, 1957 and 1976 Limitation Conventions).

3.8 This third way of dealing with gaps can be viewed as a hybrid of the two other strategies. It has the advantages of both: States are not obliged to denounce the 1924, 1957 and 1976 Limitation Conventions; gaps do not lead to additional payments for contributors to the HNS Fund; the complexity of the HNS Convention is not increased.

3.9 The main disadvantage of this hybrid strategy of dealing with gaps is that victims could receive reduced compensation payments. Another disadvantage is that the
payment of claims may be delayed. However, in general, both disadvantages would only affect States which had created a gap by virtue of their membership of the 1924, 1957 or 1976 Limitation Conventions. Moreover, States could chose to avoid the problem by denouncing these conventions, or by establishing national mechanisms to address gaps. States would not be obliged to denounce any existing convention, however, at least not until the expiry of a transitional period. In the interim (that is, before denunciation takes effect) they could avoid the problem by establishing a national mechanisms to address gaps.

3.10 An example might help to illustrate how this method of dealing with gaps would work:

Total HNS damage = 150,000,000 SDR
Limit on shipowner’s liability determined by HNS Convention = 100,000,000 SDR
Actual limit on shipowner’s liability = 38,167,500 SDR

3.11 A gap of 61,832,500 SDR has been created because treaty obligations between the coastal State and the flag State have allowed the owner of this 100,000 GT ship to limit liability under the 1976 LLMC Convention. The HNS Fund does not pay any more compensation than it would have done had no gap been created. It therefore pays only 50 million SDR.

3.12 To calculate the size of individual compensation payments, the HNS Fund would follow a procedure similar to that which is followed by the IOPC Fund when claims exceed the limit on the total compensation available under the CLC and Fund Conventions together. In such cases compensation payments from the IOPC Fund are reduced pro rata. This ensures that no claimant receives a higher proportion of their established claim than another and that the total compensation paid for any one incident does not exceed the limits established in the 1971 Fund Convention, as amended. For example, if the total of eligible claims was double the limit on compensation, each claimant would receive 50% of their agreed claim. As it is rarely possible to estimate the total amount that will be claimed immediately after an incident has occurred, compensation can be paid in stages.

Implications for linkage

3.13 The method of dealing with gaps described in paragraphs 3.6 to 3.11 would be applicable whether or not the HNS Convention provides for linkage. This gives the following options for dealing with linkage and gaps, additional to those introduced in paragraph 1.14:

(e) Accepting gaps with no linkage: There would be no global mechanism for gap filling. If a gap occurred it would result in reduced compensation which States may wish to address with a domestic solution. The HNS Fund would not pay any more than it would have, had the gap not occurred. HNS claims would be excluded from the scope of the 1996 LLMC Convention.
(d) **Accepting gaps with linkage**: There would be no global mechanism for gap filling. If a gap occurred it would result in reduced compensation which States may wish to address with a domestic solution. The HNS Fund would not pay any more than it would have had the gap not occurred. There would be linkage of limitation proceedings under the HNS Convention with proceedings under the applicable general limitation regime.

3.14 While unable to reach a consensus on whether or not the HNS Convention should provide for linkage, some members of the linkage working group believe that the options above represent workable solutions to the problem of gaps which meet the concerns of both shipowning interests (because no State would be forced to denounce a general limitation convention) and cargo interests (because receivers would not have to pay for gaps).

**Drafting considerations**

**Without linkage**

3.15 The amendments required to implement Option E – accepting gaps with no linkage – are the same as those needed to implement Option B – avoiding gaps with no linkage – except that Option E would not provide for compulsory denunciation of the 1924, 1957 and 1976 Limitation Conventions. That is, Article 9 and all references to Article 9 would be deleted from the HNS Convention and a provision would be added to the LLMC Protocol to remove HNS claims from the scope of the revised LLMC Convention.

**With linkage**

3.16 Similarly, the amendments required to implement Option D – accepting gaps with linkage – would be the same as those to implement Option A – gap filling with linkage – except that the new Article 20bis on special contributions would not be needed and the inclusion of the new Article 42bis would become optional.

**Other amendments (with or without linkage)**

3.17 In both cases an amendment would also be required to Article 14 of the HNS Convention to clarify that:

(i) if a gap is created, the HNS Fund pays compensation only if the HNS damage exceeds the limit on the shipowner’s liability determined under the HNS Convention;

(ii) if a gap is created and the HNS damage exceeds the limit on the shipowner’s liability determined under the HNS Convention, the size of compensation payments paid by the HNS Fund is reduced in proportion to the size of the gap.
3.18 This amendment could take the form of a new paragraph 5 of Article 14:

“5. If liabilities under this article arise which would not have arisen but for the obligations of one or more State Parties under the Convention on Limitation of Liability for Maritime Claims 1976, then a sum shall be deducted from the liability of the HNS Fund that equals those extra liabilities. Paragraph 6 shall apply *mutatis mutandis* to any amounts payable after the franchise has been deducted.”

This text would need to be modified slightly if retention of the 1924 and 1957 Limitation Conventions were accepted in addition to retention of the 1976 Convention.

**BIBLIOGRAPHY**

- **LEG 71/3/15** French submission proposing amendments to reduce the problems of linkage
- **LEG 71/4/1** German memorandum proposing the separation of the HNS Convention from the LLMC Convention
- **LEG 72/4/5** Linkage concept paper submitted by France, the Netherlands, Norway and the UK
- **LEG 72/4/6** Proposed amendments to the HNS Convention submitted by France, the Netherlands and the UK
- **LEG 72/5/1** Proposed amendments to the LLMC Protocol submitted by France, the Netherlands and the UK
Note by the Secretariat

1 At its seventy-first session (October 1994), the Legal Committee continued its consideration of a draft protocol to amend the Convention on Limitation of Liability for Maritime Claims, 1976, on the basis of submissions made to that session. A summary of the discussions of the Committee is given in the report of the session (LEG 71/13, paragraphs 77-89).

2 The Committee decided that a proposal put forward by Germany in document LEG 71/4/1 on compulsory denunciation should be included within square brackets in the draft protocol. Article 5, paragraph 3 should accordingly also be put within square brackets.

3 A proposal to remove the overall ceiling for passenger claims met overwhelming support. In view, however, of the reservations made by some delegations, it was concluded that it was too early to remove the text within square brackets in draft article 3 (article 7, paragraph 1 of the present Convention).

4 Some delegations expressed their readiness to consider a proposal that a State Party could reserve the right to exclude the application of limitation of liability for loss of life or personal injury to passengers. There was, however, not yet sufficient support for inserting that proposal in the draft text.

5 A revised version of the draft protocol, including the amendments referred to in paragraph 2, is annexed to this document.

6 In the light of the decision taken by the Committee at its sixty-ninth session (LEG 69/11, paragraph 64) that an assessment should be made regarding the applicability of articles 20 and 21 of the present Convention, a new article 4bis providing for the replacement of article 21 of the present Convention has been included in the draft. The new article contains the provisions on amendments of limits previously incorporated in article 10 of the draft protocol.

Action requested by the Committee

7 The Committee is invited to consider the draft protocol annexed to this document.
ANNEX

PROTOCOL OF 199.. TO AMEND THE CONVENTION ON LIMITATION OF LIABILITY FOR MARITIME CLAIMS, 1976

THE PARTIES TO THE PRESENT PROTOCOL,

CONSIDERING that it is desirable to amend the London Convention relating to the 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:


2. “Organization” means the International Maritime Organization.

3. “Secretary-General” means the Secretary-General of the Organization.

Article 2

1. 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) [ ] 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, [ ] Units of Account;
for each ton from 3,001 to 30,000 tons, [ ] Units of Account;
for each ton from 30,001 to 70,000 tons, [ ] Units of Account; and
for each ton in excess of 70,000 tons, [ ] Units of Account,

(b) in respect of any other claims,

(i) [ ] 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, [ ] Units of Account;
for each ton from 30,001 to 70,000 tons, [ ] Units of Account; and
for each ton in excess of 70,000 tons, [ ] Units of Account.”
Article 3

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 [but not exceeding [ ] million Units of Account].”

Article 4

1. 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) [ ] 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, [ ] monetary units;
      for each ton from 3,001 to 30,000 tons, [ ] monetary units;
      for each ton from 30,001 to 70,000 tons, [ ] monetary units; and
      for each ton in excess of 70,000 tons, [ ] monetary units; and

(b) in respect of article 6, paragraph 1(b), at an amount of:
   (i) [ ] 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, [ ] monetary units;
      for each ton from 30,001 to 70,000 tons, [ ] monetary units; and
      for each ton in excess of 70,000 tons, [ ] monetary units; and

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

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

Article 4bis

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 (hereinafter referred to as “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 value and the effect of the proposed amendment on the cost of insurance.

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

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

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

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

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

9. All Contracting States shall be bound by the amendment, unless they denounce this Protocol in accordance with paragraphs 1 and 2 of article 8 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 5**

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

**Article 6**

*Signature, ratification, acceptance, approval and accession*

1. This Protocol shall be open for signature at the Headquarters of the Organization from [ ] to [ ] 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;

   (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 Party to the 1976 Convention may sign without reservation as to ratification, acceptance or approval, ratify, accept, approve or accede to this Protocol only if it denounces the 1976 Convention.]

[5.] 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 7

Entry into force

1. This Protocol shall enter into force 90 days following the date on which [10] 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 90 days following the date of expression of such consent.

Article 8

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 12 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 9

Revision and amendment

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

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

Article 10

Depositary

1. This Protocol and any amendments accepted under article 10 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 10, paragraph 1;
(v) any amendment which has been adopted in accordance with article 10, paragraph 4;
(vi) any amendment deemed to have been accepted under article 10, 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 11
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 …
APPENDIX VII

INTERNATIONAL MARITIME ORGANIZATION

LEGAL COMMITTEE-72nd session

Agenda item 5

CONSIDERATION OF REVISION OF THE CONVENTION ON LIMITATION OF LIABILITY FOR MARITIME CLAIMS, 1976

Submitted under the lead country procedure by France, the Netherlands and the United Kingdom

Revised draft LLMC Protocol

Introduction

1 A revised version of the draft Protocol to amend the 1976 Limitation of Liability for Maritime Claims Convention is annexed to this submission.

2 Many of the provisions of the draft Protocol are unchanged compared to the text annexed to document LEG 72/5. The new text which has been added to the draft Protocol has been indicated by the use of bold type.

Linkage

3 The main purpose of the changes which have been made to the draft Protocol is to facilitate the “linkage” of the 1996 LLMC Convention (that is, the 1976 Convention as amended by the 1996 Protocol) with the HNS Convention.

4 Three changes have been made:

(a) The amendment provided for by the new Article 6 would clarify that, when (and only when) HNS damage has been caused, it is the jurisdictional provisions of the HNS Convention which would determine where a limitation fund can be established under the 1996 LLMC Convention.
(b) The amendment provided for by the new Article 7 would widen the scope of the subrogation provisions of the 1996 LLMC Convention.
(c) The new Article 11 clarifies that, when (and only when) a 1996 LLMC Convention limitation fund is constituted during proceedings under the HNS Convention, this fund is available to meet all HNS claims (even if a State has reserved the right not to apply the LLMC Convention to certain claims, e.g. wreck removal claims).

Other changes

5 Four other changes have been made to the draft Protocol:

(a) The new Article 2 would amend Article 3 of the 1976 Convention (claims
excepted from limitation) to clarify that claims for salvage include claims for special compensation under Article 14 of the 1989 Salvage Convention.

(b) The text which the Protocol would substitute for Article 7(1) of the 1976 Convention does not provide for an aggregate cap for the limit for passenger claims. In other words, the text which is in square brackets in document LEG 72/5 has been deleted.

(c) Clarification has been added (Article 8(3)) that the Protocol would not have retrospective effect.

(d) The draft Protocol incorporates, in square brackets, changes proposed by Germany (document LEG 71/4/1) and Japan (LEG 71/4/2).

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ANNEX

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

THE PARTIES TO THE PRESENT PROTOCOL,

CONSIDERING that it is desirable to amend the Convention on the 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,

CONSCIOUS that it is also necessary to amend the Convention on the Limitation of Liability for Maritime Claims 1976 to reflect the adoption of the International Convention on Salvage 1989 and the International Convention on Liability and Compensation for Damage in connection with the Carriage of Hazardous and Noxious Substances by Sea 1996,

HAVE AGREED as follows:

Article 1
Definitions

For the purposes of this Protocol:


2. “Organization” means the International Maritime Organization.

3. “Secretary-General” means the Secretary-General of the Organization.

**Article 1bis**

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

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

**Article 2**

Article 6, paragraph 1, of the Convention is replaced by the following text: [new limits].

**Article 3**

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 4**

Article 8, paragraph 2, of the Convention is replaced by the following text: [new limits].

**Article 4bis**

*Amendment of limits*

Article 21 of the Convention is replaced by the following text:

“Amendment of limits

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

2. Any amendment proposed and circulated as above shall be submitted to the Legal Committee of the Organization (hereinafter referred to as “the Legal Committee”) for consideration a date at least six months after the date of its circulation.
3. All Contracting States, 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 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 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 value 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 the Protocol of [1996] to this Convention 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 this Convention increased by [six] percent per year calculated on a compound basis from the date on which the Protocol of [1996] to this Convention 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 multiplied by three.

7. The Organization shall notify all Contracting States of any amendment adopted in accordance with paragraph 4. 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 quarter 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 has 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 Convention in accordance with Article 19 at least six months before the amendment enters into force. Subject to paragraph 3 of Article 19, such denunciation shall take effect when the amendment enters into force.

10. When an amendment has not been adopted but the [eighteen month] period for its acceptance has not yet expired, a State which becomes a Contracting Party 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 Convention enters into force for that State, if later.”
Article 4ter

Place of constitution of a limitation fund

A new paragraph is added at the end of Article 11 of the Convention:

“4. Notwithstanding paragraph 1 of this Article, when damage as defined in Article 1, paragraph 6 of the HNS Convention has been caused in one or more State Parties to that convention, and the courts of such State or States have exclusive jurisdiction to consider actions for compensation for such damage in accordance with Article 30, paragraph 1, of that Convention, the court or other competent authority of any other State where it is sought to constitute a limitation fund under this Article shall decline to constitute such a fund.”

Article 4quater

Article 12 of the Convention is amended as follows.

1. Paragraphs 3 and 4 are renumbered 4 and 5 respectively.

2. A new paragraph is added after paragraph 2:

“3. Without prejudice to paragraph 2, the right of subrogation shall exist where a shipowner has been held liable in respect of damage within the meaning of Article 1, paragraph 6, of the HNS Convention in any State not Party to that Convention.”

Article 5

Interpretation and application

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 of this Protocol.

Final Clauses

Article 6

Signature, ratification, acceptance, approval and accession

1. This Protocol shall be open for signature at the Headquarters of the Organization from [...] to [...] and shall thereafter remain open for accession.
2. Any State may express its consent to be bound by this Protocol by:
   (a) signature without reservation as to ratification, acceptance or approval;
   (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 Party to the Convention may sign without reservation as to ratification,
   acceptance or approval, ratify accept, approve or accede to this Protocol only if it
   denounces the Convention. Denunciation must take effect no later than the date of
   entry into force of this Protocol.]

5. 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 7
Entry into force

1. This Protocol shall enter into force 90 days following the date on which [10]
   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 90 days following the date of expression of such consent.

Article 7bis
Reservations

1. Subject to paragraph 2 of this Article, 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), [or Article 7,] of the Convention as
   amended by this Protocol. No other reservations shall be admissible to the
   substantive provisions of the Convention as amended by this Protocol.

2. Notwithstanding paragraph 1, the Convention as amended by this Protocol shall
   apply to any claim brought against a limitation fund constituted under the Convention
   as amended by this Protocol during proceedings under the HNS Convention.

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

4. Any State which makes a reservation to the Convention as amended by this
   Protocol 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 8**

**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 12 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 9**

**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 10**

**Depositary**

1. This Protocol, and any amendments accepted under Article 21 of the Convention as amended by this Protocol, 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, paragraphs 2 and 4, of the Convention as amended by this Protocol;
      (iii) the date of entry into force of this Protocol;
      (iv) any proposal to amend limits which has been made in accordance with Article 21, paragraph 1, of the Convention as amended by this Protocol;
      (v) any amendment which has been adopted in accordance with Article 21, paragraph 4, of the Convention as amended by this Protocol;
      (vi) any amendment deemed to have been accepted under Article 21, paragraph 7, of the Convention as amended by this Protocol, together with the date on which that amendment shall enter into force in accordance with paragraph 8 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;
      (viii) any notification under Article 7bis of this Protocol; and
(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 11**

*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 …
APPENDIX VIII

INTERNATIONAL MARITIME ORGANIZATION

INTERNATIONAL CONFERENCE ON HAZARDOUS AND NOXIOUS SUBSTANCES AND LIMITATION OF LIABILITY, 1996

Agenda item 6(b)

CONSIDERATION OF A DRAFT PROTOCOL OF 1996 TO AMEND THE CONVENTION ON LIMITATION OF LIABILITY FOR MARITIME CLAIMS, 1976

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

THE PARTIES TO THE PRESENT PROTOCOL,

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

HAVE AGREED as follows:

Article 1

For the purposes of this Protocol:


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 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) [ ] 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, [ ] Units of Account;
        for each ton from 3,001 to 30,000 tons, [ ] Units of Account;
        for each ton from 30,001 to 70,000 tons, [ ] Units of Account; and
        for each ton in excess of 70,000 tons, […] Units of Account,

(b) in respect of any other claims,
   (i) [ ] 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, [ ] Units of Account;
        for each ton from 30,001 to 70,000 tons, [ ] Units of Account; and
        for each ton in excess of 70,000 tons, [ ] 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 l(a) at an amount of:
   (i) [ ] 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, [ ] monetary units;
for each ton from 3,001 to 30,000 tons, [ ] monetary units; for each ton from 30,001 to 70,000 tons, [ ] monetary units; and for each ton in excess of 70,000 tons, [ ] monetary units; and

(b) in respect of article 6, paragraph 1(b), at an amount of:
(i) [ ] 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, [ ] monetary units;
for each ton from 30,001 to 70,000 tons, [ ] monetary units; and for each ton in excess of 70,000 tons, [ ] monetary units; and

(c) in respect of article 7, paragraph 1, at an amount of [ ] 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.”

**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 apply to claims subject to the HNS Convention the limits of liability set out under that Convention.”

**Article 8**

**Amendment of limits**

1. Upon the request of at least [ ], but in no case less than [ ], 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 (hereinafter referred to as “the Legal Committee”) for consideration at a date at least six months after the date of its circulation.

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

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

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

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

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

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

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

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

9. All Contracting States shall be bound by the amendment, unless they denounce this Protocol in accordance with paragraphs 1 and 2 of article 8 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 [ ] to [ ] 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;

   (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 Party to the 1976 Convention may sign without reservation as to ratification, acceptance or approval, ratify, accept, approve or accede to this Protocol only if it denounces the 1976 Convention. In the case of such denunciation any expression of consent to be bound by the Protocol shall, for the purposes of article
11, paragraph 1, only be effective ninety days before the denunciation takes effect in accordance with article 19, paragraph 3 of the 1976 Convention.]²

[5.] 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 90 days following the date on which [10] 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 90 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 12 months, or such longer period as may be specified in the instrument of denunciation, after its deposit with the Secretary-General.

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

Article 13

Revision and amendment

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

2. The Organization shall convene a conference of Contracting States to this Protocol for revising or amending it at the request of not less than one-third of the Contracting Parties.
Article 14
Depositary

1. This Protocol and any amendments accepted under article 8 shall be deposited with the Secretary-General.

2. The Secretary-General shall:

   (a) inform all States which have signed or acceded to this Protocol of:
       (i) each new signature or deposit of an instrument together with the date thereof;
       (ii) each declaration and communication under article 8, paragraph 2 of the Convention as amended by this Protocol, and article 8, paragraph 4 of the Convention;
       (iii) the date of entry into force of this Protocol;
       (iv) any proposal to amend limits which has been made in accordance with article 8, paragraph 1;
       (v) any amendment which has been adopted in accordance with article 8, paragraph 4;
       (vi) any amendment deemed to have been accepted under article 8, paragraph 7, together with the date on which that amendment shall enter into force in accordance with paragraphs 8 and 9 of that article;
       (vii) the deposit of any instrument of denunciation of this Protocol together with the date of the deposit and the date on which it takes effect;

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

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

Article 15
Languages

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

Done at…

* * *
ANNEX

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

Article 9
1 The removal of either the brackets or the text within them should be considered
in the light of the decision to be taken by the Conference on a proposal for a
compulsory denunciation included within square brackets in article 10, paragraph 4
(see note 2).

Article 10
2 The Legal Committee decided to include a proposal on compulsory denunciation
within square brackets. The second sentence has been introduced to co-ordinate this
provision with that in article 19 of the 1976 Convention. With this co-ordination, it has
not been felt necessary to abandon the modern treaty language used in article 11 in
order to harmonize the expression for the calculation of the day for entry into force
with the then traditional treaty language used in article 17 of LLMC 1976 (see
paragraph 100, LEG 72/9). Such harmonization may further complicate the co-
ordination just referred to.

* In making this submission under the lead country procedure, the delegations doing so wish to
indicate that their action in no way binds or commits their Governments in future negotiations on the
proposed convention.
PART III

TEXTS
FINAL ACT OF THE INTERNATIONAL CONFERENCE ON LIMITATION OF LIABILITY FOR MARITIME CLAIMS, 1976

1. Pursuant to resolution A-369(IX) of 14 November 1975 adopted by the Assembly of the Inter-Governmental Maritime Consultative Organization, the Council of the Organization decided, at its thirty-sixth session in June 1976, to convene a diplomatic conference to consider the adoption of a convention on limitation of liability for maritime claims.

2. The Conference was held in London from 1 to 19 November 1976. The following States were represented by delegations at the Conference:

   Algeria    Japan
   Argentina   Jordan
   Australia   Liberia
   Austria     Mexico
   Belgium     Monaco
   Brazil      Netherlands
   Bulgaria    New Zealand
   Canada      Norway
   Chile       Panama
   Cuba        Poland
   Cyprus      Singapore
   Denmark     Spain
   Egypt       Sri Lanka
   Finland     Sweden
   France      Switzerland
   German Democratic Republic   Thailand
   Germany, Federal Republic of    Trinidad and Tobago
   Ghana       Tunisia
   Greece      Turkey
   India       Union of Soviet Socialist Republics
   Indonesia   United Kingdom of Great Britain and
                Northern Ireland
   Iran        United States of America
   Ireland     Yugoslavia
   Italy

3. At the invitation of the Organization, the following organization in the United Nations system sent a Representative to the Conference:
   United Nations Conference on Trade and Development

4. The following States were represented at the Conference by Observers:
   Democratic People’s Republic of Korea
   Libyan Arab Republic
   Romania

5. The following inter-governmental organizations sent Observers to the Conference:
   International Institute for the Unification of Private Law
   East African Harbours Corporation
   Central Office for International Railway Transport
6. The following non-governmental organizations also sent Observers to the Conference:
   - International Chamber of Shipping
   - International Union of Marine Insurance
   - International Chamber of Commerce
   - International Association of Lighthouse Authorities
   - International Maritime Committee
   - International Association of Ports and Harbours
   - Baltic and International Maritime Conference
   - International Law Association
   - Oil Companies International Marine Forum
   - European Tugowners Association
   - International Association of Drilling Contractors
   - Oil Industry International Exploration and Production Forum

7. Mr. S. Clinton Davis, of the delegation of the United Kingdom, was elected President of the Conference. The following were elected Vice-Presidents:
   - Captain R.F. Bondoni (Argentina)
   - Mr. M.A. Bendjenna (Algeria)
   - Mr. Y. Djavad (USSR)
   - Mr. S. Tardana (Indonesia)
   - Mr. A. Saffari (Iran)

8. The following officers of the Conference were appointed:
   - Secretary-General: Mr. C.P. Srivastava
   - Executive Secretary: Mr. T.A. Mensah
   - Deputy Executive Secretary: Mr. T.S. Busha

9. The Conference established the following Committees:
   - **Committee of the Whole:**
     - Chairman: Ms B. Blom (Sweden)
   - **Committee on Final Clauses:**
     - Chairman: Dr. F.L. Wiswall, Jr. (Liberia)
   - **Drafting Committee:**
     - Chairman: Mr. R. Cleton (Netherlands)
   - **Credentials Committee:**
     - Chairman: Mr. W.P. Crone (Australia)

10. The Conference had before it and used as a basis for its discussions the following documentation:
    - a set of draft articles for an International Convention on Limitation of Liability for Maritime Claims, prepared by the Legal Committee of the Organization;
    - a summary of the discussions of the Legal Committee on the question of a new unit of account for expressing limits of liability under the proposed Convention on Limitation of Liability for Maritime Claims, including observations and proposals made in connexion with that question:
- a summary of the records of the discussion of the Legal Committee on the draft articles as contained in the Reports of the Committee’s twenty-third, twenty-fifth, twenty-seventh and twenty-eighth sessions;
- draft final clauses for the said Convention prepared by the Secretariat;
- comments and observations on, and suggested amendments to, the above draft articles and provisions submitted by Governments and interested organizations.

11. As a result of its deliberations, recorded in the reports of the respective Committees, and in the records of the plenary sessions and of the Committee of the Whole, the Conference adopted the CONVENTION ON LIMITATION OF LIABILITY FOR MARITIME CLAIMS, 1976.

12. The Conference also agreed upon an Understanding in relation to Participation of States in the Convention and the Performance of Depositary Functions by the Secretariat-General of the Inter-Governmental Maritime Consultative Organization, the text of which is attached to this Final Act.

13. The text of this Final Act is deposited with the Secretary-General of the Inter-Governmental Maritime Consultative Organization. It is established in a single original text in the English, French, Russian and Spanish languages.

14. The Secretary-General of the Inter-Governmental Maritime Consultative Organization shall send certified copies of this Final Act and certified copies of the authentic texts of the Convention to the Governments of the States invited to be represented at the Conference, in accordance with the wishes of those Governments.

IN WITNESS WHEREOF the undersigned have affixed their signatures to this Final Act.

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

***
CONVENTION ON LIMITATION OF LIABILITY FOR MARITIME CLAIMS, 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 sea-going 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 herself.

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 paragraphs 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 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 Accounts;
           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 the limitation fund shall have been constituted, payment is made, or security is given which at under the law of the 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 this sum 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 Seagoing 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 after 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.

* Signatures omitted.
UNDERSTANDING OF THE CONFERENCE IN RELATION TO PARTICIPATION IN
THE CONVENTION AND THE PERFORMANCE OF DEPOSITARY FUNCTIONS
IN RELATION THERETO BY THE SECRETARY-GENERAL OF THE
INTER-GOVERNMENTAL MARITIME CONSULTATIVE
ORGANIZATION (IMCO)

In accordance with its terms, the Convention on Limitation of Liability for Maritime Claims, 1976, will be open to participation by all States and the Secretary-General of the Inter-Governmental Maritime Consultative Organization (IMCO) will act as depositary. It is the understanding of the Conference that the Secretary-General, in discharging his functions as depositary of a convention with an “all States” clause, will follow the practice of the General Assembly of the United Nations in implementing such a clause and, whenever advisable, will request the opinion of the IMCO Assembly before receiving a signature or an instrument of ratification, acceptance, approval or accession.
PART III - TEXTS

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

THE PARTIES TO THE PRESENT PROTOCOL,

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

HAVE AGREED AS FOLLOWS:

Article 1

For the purposes of this Protocol:

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;
          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 Accounts;
  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, 6,500 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 the 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 value and the effect of the proposed amendment on the cost of insurance.

6. a) No amendment of the limits under this article may be considered less than five years from the date on which this Protocol was opened for signature nor less than five years from the date of entry into force of a previous amendment under this article.
   b) No limit may be increased so as to exceed an amount which corresponds to the limit laid down in the Convention as amended by this Protocol increased by six per cent per year calculated on a compound basis from the date on which this Protocol was opened for signature.
   c) No limit may be increased so as to exceed an amount which corresponds to the limit laid down in the Convention as amended by this Protocol multiplied by three.

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

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

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

10. When an amendment has not 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 Parties.

**Article 14**

*Depositary*

1. This Protocol and any amendments accepted under article 8 shall be deposited with the Secretary-General.

2. The Secretary-General shall:
   
a) inform all States which have signed or acceded to this Protocol of:
   
i) each new signature or deposit of an instrument together with the date thereof;
   
ii) each declaration and communication under article 8, paragraph 2 of the Convention as amended by this Protocol, and article 8, paragraph 4 of the Convention;
   
iii) the date of entry into force of this Protocol;
   
iv) any proposal to amend limits which has been made in accordance with article 8, paragraph 1;
   
v) any amendment which has been adopted in accordance with article 8, paragraph 4;
   
vi) any amendment deemed to have been accepted under article 8, paragraph 7, together with the date on which that amendment shall enter into force in accordance with paragraphs 8 and 9 of that article;
   
vii) the deposit of any instrument of denunciation of this Protocol together with the date of the deposit and the date on which it takes effect;

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

3. As soon as this Protocol enters into force, the text shall be transmitted by the Secretary-General to the Secretariat of the United Nations for registration and publication in accordance with Article 102 of the Charter of the United Nations.
Article 15
Languages

This Protocol is established in a single original in the Arabic, Chinese, English, French, Russian and Spanish language, 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 the purpose, have signed this Protocol.*

* Signatures omitted.
ACTE FINAL DE LA CONFERENCE INTERNATIONALE DE 1976
SUR LA LIMITATION DE LA RESPONSABILITE
EN MATIERE DE CREANCES MARITIMES


2. La Conférence s’est tenue à Londres du 1er au 19 novembre 1976. Les Etats suivants étaient représentés à la Conférence par des délégations:

   Algérie   Japon
   Allemagne, République fédérale d’   Jordaine
   Argentine   Libéria
   Australie   Mexique
   Autriche   Monaco
   Belgique   Norvège
   Brésil   Nouvelle-Zélande
   Bulgarie   Panama
   Canada   Pays-Bas
   Chili   Pologne
   Chypre   République démocratique allemande
   Cuba   Royaume-Uni de Grande-Bretagne et d'Irlande du Nord
   Danemark   Singapour
   Egypte   Sri Lanka
   Espagne   Suède
   Etats-Unis d’Amérique   Suisse
   Finlande   Thaïlande
   France   Trinité-et-Tobago
   Ghana   Tunisie
   Grèce   Turquie
   Inde   Union des République socialistes soviétiques
   Indonésie   Yougoslavie
   Iran   Italie

3. Sur l’invitation de l’Organisation, l’organisme suivant des Nations Unies avait envoyé un représentant à la Conférence:
   Conférence des Nations Unies sur le commerce et le développement.

4. Les Etats suivants étaient représentés à la Conférence par des observateurs:
   République arabe libyenne
   République populaire démocratique de Corée
   Roumanie

5. Les organisations intergouvernementales suivantes avaient envoyé des observateurs à la Conférence:
   Institut international pour l’unification du droit privé
   East African Harbours Corporation
   Office central des transports internationaux par chemins de fer.
6. Les organisations non gouvernementales suivantes avaient également envoyé des observateurs à la Conférence:
   - Chambre internationale de la marine marchande
   - Union internationale d’assurances transports
   - Chambre de commerce internationale
   - Association internationale de signalisation maritime
   - Comité maritime international
   - Association internationale des ports
   - Conférence maritime internationale et baltique
   - Association de droit international
   - Oil Companies International Marine Forum
   - Association européenne des propriétaires de remorqueurs
   - International Association of Drilling Contractors
   - Oil Industry International Exploration and Production Forum

7. M. S. Clinton Davis, de la délégation du Royaume-Uni, a été élu président de la Conférence. Les personnes dont les noms suivent ont été élues vice-présidents:
   - M. R.F. Bondoni (Argentine)
   - M. M.A. Bendjenna (Algérie)
   - M. Y. Djavad (URSS)
   - M. S. Tardana (Indonésie)
   - M. A. Saffari (Iran)

8. La Conférence a nommé les personnes suivantes pour exercer les fonctions de:
   - Secrétaire général: M. C.P. Srivastava
   - Secrétaire général de l’Organisation
   - Secrétaire exécutif: M. T.A. Mensah
   - Directeur des affaires juridiques et des relations extérieures de l’Organisation
   - Secrétaire exécutif adjoint: M. T.S. Busha
   - Directeur adjoint de la Division juridique de l’Organisation

9. La Conférence a constitué les commissions et comités ci-après:
   - **Commission plénière:**
     - Président: Mme B. Blom (Suède)
   - **Commission des clauses finales:**
     - Président: M. F.L. Wiswall (Libéria)
   - **Comité de rédaction:**
     - Président: M.R. Cleton (Pays-Bas)
   - **Commission de vérification des pouvoirs:**
     - Président: M. W.P. Crone (Australie)

10. La Conférence était saisie des documents suivants qui ont servi de base à ses délibérations:
    - un projet d’articles d’une convention internationale sur la limitation de l’responsabilité en matière de créances maritimes, établi par le Comité juridique de l’Organisation;
    - un résumé des débats du Comité juridique sur la question de l’utilisation d’une nouvelle unité de compte pour exprimer les limites de la responsabilité dans la
The travaux préparatoires of the LLMC 1976 and of the Protocol 1996

convention envisagée sur la limitation de la responsabilité en matière de créances maritimes, y compris les observations et propositions formulées à cet égard;
– un résumé de l’examen du projet d’articles par le Comité juridique, tel que consigné dans les rapports du Comité sur les travaux de ses vingt-troisième, vingt-cinquième, vingt-septième et vingt-huitième sessions;
– un projet de clauses finales de ladite convention, établi par le Secrétariat;
– des commentaires, des observations et des propositions d’amendement présentés par les gouvernements et les organisations intéressées au sujet des projets d’articles et de dispositions susmentionnés.

11. À la suite de ses délibérations, qui sont consignées dans les rapports des différents comités et commissions et dans les comptes rendus des séances plénière et des réunions de la Commission plénière, la Conférence a adopté la CONVENTION DE 1976 SUR LA LIMITATION DE LA RESPONSABILITE EN MATIERE DE CREANCES MARITIMES.

12. La Conférence a également convenu d’une interprétation relative à la participation des Etats à la Convention et à l’exercice des fonctions de dépositaire par le Secrétaire général de l’Organisation intergouvernementale consultative de la navigation maritime, dont le texte est joint au présent Acte final.


14. Le Secrétaire général de l’Organisation intergouvernementale consultative de la navigation maritime adressera des copies certifiées conformes du présent Acte final, ainsi que des copies certifiées conformes des textes authentiques de la Convention aux gouvernements des Etats invités à se faire représenter à la Conférence, en fonction des vœux qu’ils auront exprimés.

EN FOI DE QUOI les soussignés ont apposé leur signature au bas du présent Acte final.

FAIT A LONDRES ce dix-neuf novembre mil neuf cent soixante-seize.
CHAPITRE PREMIER - LE DROIT À LIMITATION

Article premier

1. Les propriétaires de navires et les assistants, tels que définis ci-après, peuvent limiter leur responsabilité conformément aux règles de la présente Convention à l’égard des créances visées à l’article 2.


3. Par “assistant”, on entend toute personne fournissant des services en relation directe avec les opérations d’assistance ou de sauvetage. Ces opérations comprennent également celles que vise l’article 2, paragraphe 1, alinéas d), e) et f).

4. Si l’une quelconque des créances prévues à l’article 2 est formée contre toute personne dont les faits, négligences et fautes entraînent la responsabilité du propriétaire ou de l’assistant, cette personne est en droit de se prévaloir de la limitation de la responsabilité prévue dans la présente Convention.

5. Dans la présente Convention, l’expression “responsabilité du propriétaire de navire” comprend la responsabilité résultant d’une action formée contre le navire lui-même.

6. L’assureur qui couvre la responsabilité à l’égard des créances soumises à limitation conformément aux règles de la présente Convention est en droit de se prévaloir de celle-ci dans la même mesure que l’assuré lui-même.

7. Le fait d’invoquer la limitation de la responsabilité n’emporte pas la reconnaissancedecette responsabilité.

Article 2

1. Sous réserve des articles 3 et 4, les créances suivantes, quel que soit le fondement de la responsabilité, sont soumises à la limitation de la responsabilité:
a) créances pour mort, pour lésions corporelles, pour pertes et pour dommages à tous biens (y compris les dommages causés aux ouvrages d’art des ports, bassins, voies navigables et aides à la navigation) survenus à bord du navire ou en relation directe avec l’exploitation de celui-ci ou avec des opérations d’assistance ou de sauvetage, ainsi que pour tout autre préjudice en résultant;
b) créances pour tout préjudice résultant d’un retard dans le transport par mer de la cargaison, des passagers ou de leurs bagages;
c) créances pour d’autres préjudices résultant de l’atteinte à tous droits de source extra-contractuelle, et survenus en relation directe avec l’exploitation du navire ou avec des opérations d’assistance ou de sauvetage;
d) créances pour avoir renfloué, enlevé, détruit ou rendu inoffensif un navire coulé, naufragé, échoué ou abandonné, y compris tout ce qui se trouve ou s’est trouvé à bord;
e) créances pour avoir enlevé, détruit ou rendu inoffensive la cargaison du navire;
f) créances produites par une personne autre que la personne responsable, pour les mesures prises afin de prévenir ou de réduire un dommage pour lequel la personne responsable peut limiter sa responsabilité conformément à la présente Convention, et pour les dommages ultérieurement causés par ces mesures.

2. Les créances visées au paragraphe 1 sont soumises à la limitation de la responsabilité même si elles font l’objet d’une action, contractuelle ou non, récursoire ou en garantie. Toutefois, les créances produites aux termes des alinéas d), e) et f) du paragraphe 1 ne sont pas soumises à la limitation de responsabilité dans la mesure où elles sont relatives à la rémunération en application d’un contrat conclu avec la personne responsable.

**Article 3**

**Créances exclues de la limitation**

Les règles de la présente Convention ne s’appliquent pas:

a) aux créances du chef d’assistance, de sauvetage, ou de contribution en avarie commune;
b) aux créances pour dommages dus à la pollution par les hydrocarbures au sens de la Convention internationale sur la responsabilité civile pour les dommages dus à la pollution par les hydrocarbures en date du 29 novembre 1969, ou de tout amendement ou de tout protocole à celle-ci qui est en vigueur;
c) aux créances soumises à toute convention internationale ou législation nationale régissant ou interdisant la limitation de la responsabilité pour dommages nucléaires;
d) aux créances pour dommages nucléaires formées contre le propriétaire d’un navire nucléaire;
e) aux créances des préposés du propriétaire du navire ou de l’assistant dont les fonctions se rattachent au service du navire ou aux opérations d’assistance ou de sauvetage ainsi qu’aux créances de leurs héritiers, ayants cause ou autres personnes fondées à former de telles créances si, selon la loi régissant le contrat d’engagement conclu entre le propriétaire du navire ou l’assistant et les
préposés, le propriétaire du navire ou l’assistant n’est pas en droit de limiter sa responsabilité relativement à ces créances ou si, selon cette loi, il ne peut le faire qu’à concurrence d’un montant supérieur à celui prévu à l’article 6.

**Article 4**
**Conduite supprimant la limitation**
Une personne responsable n’est pas en droit de limiter sa responsabilité s’il est prouvé que le dommage résulte de son fait ou de son omission personnels, commis avec l’intention de provoquer un tel dommage, ou commis témérairement et avec conscience qu’un tel dommage en résulterait probablement.

**Article 5**
**Compensation des créances**
Si une personne en droit de limiter sa responsabilité selon les règles de la présente Convention a contre son créancier une créance née du même événement, leurs créances respectives se compensent et les dispositions de la présente Convention ne s’appliquent qu’au solde éventuel.

**CHAPITRE II - LIMITES DE LA RESPONSABILITÉ**

**Article 6**
**Limites générales**
1. Les limites de la responsabilité à l’égard des créances autres que celles mentionnées à article 7, nées d’un même événement, sont fixées comme suit:
   a) s’agissant des créances pour mort ou lésions corporelles,
      i) à 333 000 unités de compte pour un navire dont la jauge ne dépasse pas 500 tonneaux;
      ii) pour un navire dont la jauge dépasse le chiffre ci-dessus, au montant suivant, qui vient s’ajouter au montant indiqué à l’alinéa i):
          pour chaque tonneau de 501 à 3 000 tonneaux, 500 unités de compte;
          pour chaque tonneau de 3 001 à 30 000 tonneaux, 333 unités de compte;
          pour chaque tonneau de 30 001 à 70 000 tonneaux, 250 unités de compte; et
          pour chaque tonneau au-dessus de 70 000 tonneaux, 167 unités de compte,
   b) s’agissant de toutes les autres créances,
      i) à 167 000 unités de compte pour un navire dont la jauge ne dépasse pas 500 tonneaux;
      ii) pour un navire dont la jauge dépasse le chiffre ci-dessus, au montant suivant, qui vient s’ajouter au montant indiqué à l’alinéa i):
          pour chaque tonneau de 501 à 30 000 tonneaux, 167 unités de compte;
          pour chaque tonneau de 30 001 à 70 000 tonneaux, 125 unités de compte; et
          pour chaque tonneau au-dessus de 70 000 tonneaux, 83 unités de compte.

2. Lorsque le montant calculé conformément à l’alinéa a) du paragraphe 1 est insuffisant pour régler intégralement les créances visées dans cet alinéa, le montant calculé conformément à l’alinéa b) du paragraphe 1 peut être utilisé pour régler le
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solde impayé des créances visées à l’alinéa a) du paragraphe 1 et ce solde impayé vient en concurrence avec les créances visées à l’alinéa b) du paragraphe 1.

3. Toutefois, sans préjudice du droit des créances pour mort ou lésions corporelles conformément au paragraphe 2, un Etat Partie peut stipuler dans sa législation nationale que les créances pour dommages causés aux ouvrages d’art des ports, bassins, voies navigables et aides à la navigation ont, sur les autres créances visées à l’alinéa b) du paragraphe 1, la priorité qui est prévue par cette législation.

4. Les limites de la responsabilité de tout assistant n’agissant pas à partir d’un navire, ou de tout assistant agissant uniquement à bord du navire auquel ou à l’égard duquel il fournit des services d’assistance ou de sauvetage, sont calculées selon une jauge de 1500 tonneaux.

5. Aux fins de la présente Convention, la jauge du navire est la jauge brute calculée conformément aux règles de jaugeage prévues à l’Annexe I de la Convention internationale de 1969 sur le jaugeage des navires.

Article 7
Limite applicable aux créances des passagers

1. Dans le cas de créances résultant de la mort ou de lésions corporelles des passagers d’un navire et nées d’un même événement, la limite de la responsabilité du propriétaire du navire est fixée à un montant de 46 666 unités de compte multiplié par le nombre de passagers que le navire est autorisé à transporter conformément à son certificat, mais ne peut dépasser 25 millions d’unités de compte.

2. Aux fins du présent article, l’expression “créances résultant de la mort ou de lésions corporelles des passagers d’un navire” signifie toute créance formée par toute personne transportée sur ce navire ou pour le compte de cette personne:
   a) en vertu d’un contrat de transport de passager; ou
   b) qui, avec le consentement du transporteur, accompagne un véhicule ou des animaux vivants faisant l’objet d’un contrat de transport de marchandises.

Article 8
Unité de compte

1. L’unité de compte visée aux articles 6 et 7 est le Droit de tirage spécial tel que défini par le Fonds monétaire international. Les montants mentionnés aux articles 6 et 7 sont convertis dans la monnaie nationale de l’Etat dans lequel la limitation de la responsabilité est invoquée; la conversion s’effectue suivant la valeur de cette monnaie à la date où le fonds a été constitué, le paiement effectué ou la garantie équivalente fournie conformément à la loi de cet Etat. La valeur, en Droit de tirage spécial, de la monnaie nationale d’un Etat Partie qui est membre du Fonds monétaire international, est calculée selon la méthode d’étalonnage appliquée par le Fonds monétaire international à la date en question pour ses propres opérations et transactions. La valeur, en Droit de tirage spécial, de la monnaie nationale d’un Etat Partie qui n’est pas membre du Fonds monétaire international, est calculée de la façon déterminée par cet Etat Partie.
2. Toutefois, les États qui ne sont pas membres du Fonds monétaire international et dont la législation ne permet pas d’appliquer les dispositions du paragraphe 1 peuvent, au moment de la signature sans réserve quant à la ratification, l’acceptation ou l’approbation, ou au moment de la ratification, de l’acceptation, de l’approbation ou de l’adhésion, ou encore à tout moment par la suite, déclarer que les limites de la responsabilité prévues dans la présente Convention et applicables sur leur territoire sont fixées comme suit:

   a) en ce qui concerne l’alinéa a) du paragraphe 1 de l’article 6:
      i) à 5 millions d’unités monétaires pour un navire dont la jauge ne dépasse pas 500 tonneaux;
      ii) pour un navire dont la jauge dépasse le chiffre ci-dessus, au montant suivant, qui vient s’ajouter au montant indiqué à l’alinéa i):
          pour chaque tonneau de 501 à 3 000 tonneaux, 7 500 unités monétaires;
          pour chaque tonneau de 3 001 à 30 000 tonneaux, 5 000 unités monétaires;
          pour chaque tonneau de 30 001 à 70 000 tonneaux, 3 750 unités monétaires; et
          pour chaque tonneau au-dessus de 70 000 tonneaux, 2 500 unités monétaires;
   b) en ce qui concerne l’alinéa b) du paragraphe 1 de l’article 6:
      i) à 2,5 millions d’unités monétaires pour un navire dont la jauge ne dépasse pas 500 tonneaux;
      ii) pour un navire dont la jauge dépasse le chiffre ci-dessus, au montant suivant, qui vient s’ajouter au montant indiqué à l’alinéa i):
          pour chaque tonneau de 501 à 30 000 tonneaux, 2 500 unités monétaires;
          pour chaque tonneau de 30 001 à 70 000 tonneaux, 1 850 unités monétaires; et
          pour chaque tonneau au-dessus de 70 000 tonneaux, 1 250 unités monétaires; et
   c) en ce qui concerne le paragraphe 1 de l’article 7, à un montant de 70 0000 unités monétaires multiplié par le nombre de passagers que le navire est autorisé à transporter conformément à son certificat, mais ne dépassant pas 375 millions d’unités monétaires.

Les paragraphes 2 et 3 de l’article 6 s’appliquent en conséquence aux alinéas a) et b) du présent paragraphe.

3. L’unité monétaire visée au paragraphe 2 correspond à soixante-cinq milligrammes et demi d’or au titre de neuf cents millièmes de fin. La conversion en monnaie nationale des montants indiqués au paragraphe 2 s’effectue conformément à la législation de l’État en cause.

4. Le calcul mentionné à la dernière phrase du paragraphe 1 et la conversion mentionnée au paragraphe 3 doivent être faits de façon à exprimer en monnaie nationale de l’État Partie la même valeur réelle, dans la mesure du possible, que celle exprimée en unités de compte dans les articles 6 et 7. Au moment de la signature sans réserve quant à la ratification, l’acceptation ou l’approbation, ou lors du dépôt de l’instrument visé à l’article 16, et chaque fois qu’un changement se produit dans leur méthode de calcul ou dans la valeur de leur monnaie nationale par rapport à l’unité de compte ou à l’unité monétaire, les États Parties communiquent au dépositaire leur méthode de calcul conformément au paragraphe 1, ou les résultats de la conversion conformément au paragraphe 3, selon le cas.
Article 9
Concours de créances

1. Les limites de la responsabilité déterminées selon l’article 6 s’appliquent à l’ensemble de toutes les créances nées d’un même événement:
   a) à l’égard de la personne ou des personnes visées au paragraphe 2 de l’article premier et de toute personne dont les faits, négligences ou fautes entraînent la responsabilité de celle-ci ou de celles-ci; ou
   b) à l’égard du propriétaire d’un navire qui fournit des services d’assistance ou de sauvetage à partir de ce navire et à l’égard de l’assistant ou des assistants agissant à partir dudit navire et de toute personne dont les faits, négligences ou fautes entraînent la responsabilité de celui-ci ou de ceux-ci;
   c) à l’égard de l’assistant ou des assistants n’agissant pas à partir d’un navire ou agissant uniquement à bord du navire auquel ou à l’égard duquel des services d’assistance au de sauvetage sont fournis et de toute personne dont les faits, négligences ou fautes entraînent la responsabilité de celui-ci ou de ceux-ci.

2. Les limites de la responsabilité déterminées selon l’article 7 s’appliquent à l’ensemble de toutes les créances pouvant naître d’un même événement à l’égard de la personne ou des personnes visées au paragraphe 2 de l’article premier s’agissant du navire auquel il est fait référence à l’article 7 et de toute personne dont les faits, négligences ou fautes entraînent la responsabilité de celle-ci ou de celles-ci.

Article 10
Limitation de la responsabilité sans constitution d’un fonds de limitation

1. La limitation de la responsabilité peut être invoquée même si le fonds de limitation visé à l’article 11 n’a pas été constitué. Toutefois, un Etat Partie peut stipuler dans sa législation nationale que lorsqu’une action est intentée devant ses tribunaux pour obtenir le paiement d’une créance soumise à limitation, une personne responsable ne peut invoquer le droit de limiter sa responsabilité que si un fonds de limitation a été constitué conformément aux dispositions de la présente Convention ou est constitué lorsque le droit de limiter la responsabilité est invoqué.

2. Si la limitation de la responsabilité est invoquée sans constitution d’un fonds de limitation, les dispositions de l’article 12 s’appliquent à l’avenant.

3. Les règles de procédure concernant l’application du présent article sont régies par la législation nationale de l’Etat Partie dans lequel l’action est intentée.

Chapitre III - Le fonds de limitation

Article 11
Constitution du fonds

1. Toute personne dont la responsabilité peut être mise en cause peut constituer un fonds auprès du tribunal ou de toute autre autorité compétente de tout Etat Partie
dans lequel une action est engagée pour des créances soumises à limitation. Le fonds est constitué à concurrence du montant tel qu’il est calculé selon les dispositions des articles 6 et 7 applicables aux créances dont cette personne peut être responsable, augmenté des intérêts courus depuis la date de l’événement donnant naissance à la responsabilité jusqu’à celle de la constitution du fonds. Tout fonds ainsi constitué n’est disponible que pour régler les créances à l’égard desquelles la limitation de la responsabilité peut être invoquée.

2. Un fonds peut être constitué, soit en consignant la somme, soit en fournissant une garantie acceptable en vertu de la législation de l’Etat Partie dans lequel le fonds est constitué, et considérée comme adéquate par le tribunal ou par toute autre autorité compétente.

3. Un fonds constitué par l’une des personnes mentionnées aux alinéas a), b) ou c) du paragraphe 1 ou au paragraphe 2 de l’article 9, ou par son assureur, est réputé constitué par toutes les personnes visées aux alinéas a), b) ou c) du paragraphe 1 ou au paragraphe 2 respectivement.

Article 12
Répartition du fonds

1. Sous réserve des dispositions des paragraphes 1, 2 et 3 de l’article 6 et de celles de l’article 7, le fonds est reparti entre les créanciers, proportionnellement au montant de leurs créances reconnues contre le fonds.

2. Si, avant la répartition du fonds, la personne responsable, ou son assureur, a réglé une créance contre le fonds, cette personne est subrogée jusqu’à concurrence du montant qu’elle a réglé, dans les droits dont le bénéficiaire de ce règlement aurait joui en vertu de la présente Convention.

3. Le droit de subrogation prévu au paragraphe 2 peut aussi être exercé par des personnes autres que celles ci-dessus mentionnées, pour toute somme qu’elles auraient versée à titre de réparation, mais seulement dans la mesure où une telle subrogation est autorisée par la loi nationale applicable.

4. Si la personne responsable ou toute autre personne établit qu’elle pourrait être ultérieurement contrainte de verser en totalité ou en partie à titre de réparation une somme pour laquelle elle aurait joui d’un droit de subrogation en application des paragraphes 2 et 3 si cette somme avait été versée avant la distribution du fonds, le tribunal ou toute autre autorité compétente de l’Etat dans lequel le fonds est constitué peut ordonner qu’une somme suffisante soit provisoirement réservée pour permettre à cette personne de faire valoir ultérieurement ses droits contre le fonds.

Article 13
Fin de non-recevoir

1. Si un fonds de limitation a été constitué conformément à l’article 11, aucune personne ayant produit une créance contre le fonds ne peut être admise à exercer des droits relatifs à cette créance sur d’autres biens d’une personne par qui ou au nom de laquelle le fonds a été constitué.
2. Après constitution d’un fonds de limitation conformément à l’article 11, tout navire au tout autre bien appartenant à une personne au nom de laquelle le fonds a été constitué, qui a été saisi dans le ressort d’un État Partie pour une créance qui peut être opposée au fonds, ou toute garantie fournie, peut faire l’objet d’une mainlevée ordonnée par le tribunal ou toute autre autorité compétente de cet État. Toutefois, cette mainlevée est toujours ordonnée si le fonds de limitation a été constitué:
   a) au port où l’événement s’est produit ou, si celui-ci s’est produit en dehors d’un port, au port d’escale suivant;
   b) au port de débarquement pour les créances pour mort ou lésions corporelles;
   c) au port de déchargement pour les créances pour dommages à la cargaison; ou
c) dans l’État où la saisie a lieu.

3. Les dispositions des paragraphes 1 et 2 ne s’appliquent que si le créancier peut produire une créance contre le fonds de limitation devant le tribunal administrant ce fonds et si ce dernier est effectivement disponible et librement transférable en ce qui concerne cette créance.

**Article 14**

**Loi applicable**

Sous réserve des dispositions du présent chapitre, les règles relatives à la constitution et à la répartition d’un fonds de limitation, ainsi que toutes règles de procédure en rapport avec elles, sont régies par la loi de l’État Partie dans lequel le fonds est constitué.

**CHAPITRE IV - CHAMP D’APPLICATION**

**Article 15**

1. La présente Convention s’applique chaque fois qu’une personne mentionnée à l’article premier cherche à limiter sa responsabilité devant le tribunal d’un État Partie, tente de faire libérer un navire ou tout autre bien saisi ou de faire lever toute autre garantie fournie devant la juridiction dudit État. Néanmoins, tout État Partie a le droit d’exclure totalement ou partiellement de l’application de la présente Convention toute personne mentionnée à l’article premier qui n’a pas, au moment où les dispositions de la présente Convention sont invoquées devant les tribunaux de cet État, sa résidence habituelle ou son principal établissement dans l’un des États Parties ou dont le navire à raison duquel elle invoque le droit de limiter sa responsabilité ou dont elle veut obtenir la libération, ne bat pas, à la date ci-dessus prévue, le pavillon de l’un des États Parties.

2. Un État Partie peut stipuler aux termes de dispositions expresses de sa législation nationale quel régime de limitation de la responsabilité s’applique aux navires qui sont:
   a) en vertu de la législation dudit État, des bateaux destinés à la navigation sur les voies d’eau intérieures;
   b) des navires d’une jauge inférieure à 300 tonneaux.
Un État Partie qui fait usage de la faculté prévue au présent paragraphe notifie au dépositaire les limites de la responsabilité adoptées dans sa législation nationale ou le fait que de telles limites ne sont pas prévues.
3. Un Etat Partie peut stipuler aux termes de dispositions expresses de sa législation nationale quel régime de limitation de la responsabilité s’applique aux créances nées d’événements dans lesquels les intérêts de personnes qui sont ressortissantes d’autres Etats Parties ne sont en aucune manière en cause.

4. Les tribunaux d’un Etat Partie n’appliquent pas la présente Convention aux navires construits ou adaptés pour les opérations de forage lorsqu’ils effectuent ces opérations:
   a) lorsque cet Etat a établi dans le cadre de sa législation nationale une limite de responsabilité supérieure à celle qui est prévue par ailleurs à l’article 6; ou
   b) lorsque cet Etat est devenu Partie à une convention internationale qui fixe le régime de responsabilité applicable à ces navires.

Dans le cas où s’applique l’alinéa a) ci-dessus, cet Etat en informe le dépositaire.

5. La présente Convention ne s’applique pas:
   a) aux aéroglisseurs;
   b) aux plates-formes flottantes destinées à l’exploration ou à ressources naturelles des fonds marins et de leur sous-sol.

**CHAPITRE V - CLAUSES FINALES**

**Article 16**

*Signature, ratification et adhésion*

1. La présente Convention est ouverte à la signature de tous les Etats au siège de l’Organisation intergouvernementale consultative de la navigation maritime (ci-après dénommée “l’Organisation”) du 1er février 1977 au 31 décembre 1977 et reste ensuite ouverte à l’adhésion.

2. Tous les Etats peuvent devenir Parties à la présente Convention par:
   a) signature sans réserve quant à la ratification, l’acceptation ou l’approbation; ou
   b) signature sous réserve de ratification, d’acceptation ou d’approbation, suivie de ratification, d’acceptation ou d’approbation; ou
   c) adhésion.

3. La ratification, l’acceptation, l’approbation ou l’adhésion s’effectuent par le dépôt d’un instrument en bonne et due forme à cet effet auprès du Secrétaire général de l’Organisation (ci-après dénommé “le Secrétaire général”).

**Article 17**

*Entrée en vigueur*

1. La présente Convention entre en vigueur le premier jour du mois qui suit l’expiration d’une période d’un an à compter de la date à laquelle douze Etats soit l’ont signée sans réserve quant à la ratification, l’acceptation ou l’approbation, soit ont déposé un instrument approprié de ratification, d’acceptation, d’approbation ou d’adhésion.
2. Pour un État qui dépose un instrument de ratification, d’acceptation ou d’approbation de la Convention ou d’adhésion à celle-ci ou qui signe sans réserve quant à la ratification, l’acceptation ou l’approbation après que les conditions régissant l’entrée en vigueur de la Convention ont été remplies mais avant la date de son entrée en vigueur, la ratification, l’acceptation, l’approbation ou l’adhésion ou la signature sans réserve quant à la ratification, l’acceptation ou l’approbation prend effet à la date de l’entrée en vigueur de la Convention ou le premier jour du mois qui suit le quatre-vingt-dixième jour après la date de la signature ou du dépôt de l’instrument, si cette dernière date est postérieure.

3. Pour tout État qui ultérieurement devient Partie à la présente Convention, la Convention entre en vigueur le premier jour du mois qui suit l’expiration d’une période de quatre-vingt-dix jours à compter de la date à laquelle cet État a déposé son instrument.

4. S’agissant des relations entre les États qui ratifient, acceptent, approuvent la présente Convention ou qui y adhèrent, la présente Convention remplace et abroge la Convention internationale sur la limitation de la responsabilité des propriétaires de navires de mer, faite à Bruxelles le 10 octobre 1957 et la Convention internationale pour l’unification de certaines règles concernant la limitation de la responsabilité des propriétaires de navires de mer, signée à Bruxelles le 25 août 1924.

**Article 18**

**Réserve**

1. Tout État peut, lors de la signature, de la ratification, de l’acceptation, de l’approbation ou de l’adhésion, réserver le droit d’exclure l’application des alinéas d) et e) du paragraphe 1 de l’article 2. Aucune autre réserve portant sur une question de fond de la présente Convention n’est recevable.

2. Une réserve faite lors de la signature doit être confirmée lors de la ratification, de l’acceptation ou de l’approbation.

3. Tout État qui a formulé une réserve à l’égard de la présente Convention peut la retirer à tout moment au moyen d’une notification adressée au Secrétaire général. Ce retrait prend effet à la date à laquelle la notification est reçue. S’il est indiqué dans la notification que le retrait d’une réserve prendra effet à une date qui y est précisée et que cette date est postérieure à celle de la réception de la notification par le Secrétaire général, le retrait prend effet à la date ainsi précisée.

**Article 19**

**Dénonciation**

1. La présente Convention peut être dénoncée par l’une quelconque des Parties à tout moment après un an à compter de la date à laquelle la Convention entre en vigueur à l’égard de cette Partie.

2. La dénonciation s’effectue par le dépôt d’un instrument auprès du Secrétaire général.
3. La dénonciation prend effet le premier jour du mois qui suit l’expiration d’une année à compter de la date du dépôt de l’instrument ou à l’expiration de toute période plus longue qui pourrait être spécifiée dans cet instrument.

**Article 20**

**Révision et amendement**

1. L’Organisation peut convoquer une conférence ayant pour objet de réviser ou d’amender la présente Convention.

2. L’Organisation convoque une conférence des Etats Parties à la présente Convention ayant pour objet de la réviser ou de l’amender, à la demande du tiers au moins des Parties.

3. Tout instrument de ratification, d’acceptation, d’approbation ou d’adhésion déposé après la date d’entrée en vigueur d’un amendement à la présente Convention est réputé s’appliquer au texte modifié de la Convention, à moins qu’une disposition contraire ne soit stipulée dans l’instrument.

**Article 21**

**Révision des montants de limitation et de l’unité de compte ou de l’unité monétaire**

1. Nonobstant les dispositions de l’article 20, une conférence ayant pour seul objet de réviser les montants fixés aux articles 6 et 7 et au paragraphe 2 de l’article 8, ou de remplacer l’une ou l’autre ou l’une et l’autre des deux unités définies aux paragraphes 1 et 2 de l’article 8 par d’autres unités, est convoquée par l’Organisation conformément aux paragraphes 2 et 3 du présent article. La révision des montants n’est faite qu’à la suite d’une modification sensible de leur valeur réelle.

2. L’Organisation convoque la Conférence à la demande du quart au moins des Etats Parties.

3. La décision de réviser les montants ou de remplacer les unités par d’autres unités est prise à la majorité des deux tiers des Etats Parties présents et votants à cette conférence.

4. Tout Etat qui dépose son instrument de ratification, d’acceptation, d’approbation ou d’adhésion à la Convention après l’entrée en vigueur d’un amendement applique la Convention telle que modifiée.

**Article 22**

**Dépositaire**

1. La présente Convention est déposée auprès du Secrétaire général.

2. Le Secrétaire général:
   a) transmet des copies certifiées conformes de la présente Convention à tous les Etats invités à participer à la Conférence sur la limitation de la responsabilité en matière de créances maritimes et à tous les autres Etats qui adhèrent à la Convention;
b) informe tous les États qui ont signé la Convention ou y ont adhéré:
   i) de toute signature nouvelle, de tout dépôt d’instrument et de toute réserve
      s’y rapportant, ainsi que de la date à laquelle cette signature ou ce dépôt
      sont intervenus;
   ii) de la date d’entrée en vigueur de la présente Convention ou de tout
       amendement à ladite Convention;
   iii) de toute dénonciation de la présente Convention et de la date à laquelle
        celle-ci prend effet;
   iv) de tout amendement adopté conformément aux articles 20 ou 21;
   v) de toute communication requise par l’un quelconque des articles de la
      présente Convention.

3. Dès l’entrée en vigueur de la présente Convention, le Secrétaire général en adresse
   une copie certifiée conforme au Secrétariat de l’Organisation des Nations Unies en vue
   de son enregistrement et de sa publication conformément à l’Article 102 de la Charte
   des Nations Unies.

**Article 23**

**Langues**

La présente Convention est établie en un seul exemplaire original en langues
anglaise, espagnole, française et russe, chaque texte faisant également foi.

FAIT A LONDRES ce dix-neuf novembre mil neuf cent soixante-seize.

EN FOI DE QUOI les sousignés, dûment autorisés à cet effet, ont signé la
présente Convention.*

* La liste des signatures n’est pas reproduite.
PROTOCOLE DE 1996 MODIFIANT LA CONVENTION DE 1976 SUR LA LIMITATION DE LA RESPONSABILITE EN MATIERE DE CREANCES MARITIMES

LES PARTIES AU PRESENT PROTOCOLE,

CONSIDERANT qu’il est souhaitable de modifier la Convention sur la limitation de la responsabilité en matière de créances maritimes, faite à Londres le 19 novembre 1976, afin d’offrir une indemnisation accrue et d’établir une procédure simplifiée pour la mise à jour des montants de limitation,

SONT CONVENUES de ce qui suit:

Article 1

Au sens du présent Protocole,


3. “Secrétaire général” signifie le Secrétaire général de l’Organisation.

Article 2

L’alinéa a) de l’article 3 de la Convention est remplacé par le texte ci-après :

“a) aux créances du chef d’assistance ou de sauvetage, y compris, dans les cas applicables, toute créance pour une indemnité spéciale en vertu de l’article 14 de la Convention internationale de 1989 sur l’assistance, telle que modifiée, ou aux créances du chef de contribution en avarie commune;”

Article 3

Le paragraphe 1 de l’article 6 de la Convention est remplacé par le texte ci-après:

“1. Les limites de la responsabilité à l’égard des créances autres que celles mentionnées à l’article 7, nées d’un même événement, sont fixées comme suit:

a) s’agissant des créances pour mort ou lésions corporelles,
   i) à 2 millions d’unités de compte pour un navire dont la jauge ne dépasse pas 2000 tonneaux;
   ii) pour un navire dont la jauge dépasse le chiffre ci-dessus, au montant suivant, qui vient s’ajouter au montant indiqué à l’alinéa i):
      pour chaque tonneau de 2001 à 30000 tonneaux, 800 unités de compte;
      pour chaque tonneau de 30001 à 70000 tonneaux, 600 unités de compte;
      et
      pour chaque tonneau au-dessus de 70000 tonneaux, 400 unités de compte,
b) s’agissant de toutes les autres créances,
   i) à 1 million d’unités de compte pour un navire dont la jauge ne dépasse pas 2000 tonneaux;
   ii) pour un navire dont la jauge dépasse le chiffre ci-dessus, au montant suivant, qui vient s’ajouter au montant indiqué à l’alinéa i):
       pour chaque tonneau de 2001 à 30000 tonneaux, 400 unités de compte;
       pour chaque tonneau de 30001 à 70000 tonneaux, 300 unités de compte.

   et

   pour chaque tonneau au-dessus de 70000 tonneaux, 200 unités de compte.

Article 4

Le paragraphe 2 de l’article 7 de la Convention est remplacé par le texte ci-après:

“1. Dans le cas de créances résultant de la mort ou de lésions corporelles des passagers d’un navire et nées d’un même événement, la limite de la responsabilité du propriétaire du navire est fixée à un montant de 175000 unités de compte multiplié par le nombre de passagers que le navire est autorisé à transporter conformément à son certificat.”

Article 5

Le paragraphe 2 de l’article 8 de la Convention est remplacé par le texte ci-après:

“2. Toutefois, les Etats qui ne sont pas membres du Fonds monétaire international et dont la législation ne permet pas d’appliquer les dispositions du paragraphe 1 peuvent, au moment de la signature sans réserve quant à la ratification, l’acceptation ou l’approbation, ou au moment de la ratification, de l’acceptation, de l’approbation ou de l’adhésion, ou encore à tout moment par la suite, déclarer que les limites de la responsabilité prévues dans la présente Convention et applicables sur leur territoire sont fixées comme suit:

   a) en ce qui concerne l’alinéa a) du paragraphe 1 de l’article 6:
       i) à 30 millions d’unités monétaires pour un navire dont la jauge ne dépasse pas 2000 tonneaux;
       ii) pour un navire dont la jauge dépasse le chiffre ci-dessus, au montant suivant, qui vient s’ajouter au montant indiqué à l’alinéa i):
           pour chaque tonneau de 2001 à 30000 tonneaux, 12000 unités monétaires;
           pour chaque tonneau de 30001 à 70000 tonneaux, 9000 unités monétaires;
           et
           pour chaque tonneau au-dessus de 70000 tonneaux, 6000 unités monétaires;

   b) en ce qui concerne l’alinéa b) du paragraphe 1 de l’article 6:
       i) à 15 millions d’unités monétaires pour un navire dont la jauge ne dépasse pas 2000 tonneaux;
       ii) pour un navire dont la jauge dépasse le chiffre ci-dessus, au montant suivant, qui vient s’ajouter au montant indiqué à l’alinéa i):
           pour chaque tonneau de 2001 à 30000 tonneaux, 6000 unités monétaires;
           pour chaque tonneau de 30001 à 70000 tonneaux, 4500 unités monétaires;
           et
pour chaque tonneau au-dessus de 70000 tonneaux, 3000 unités monétaires; et
c) en ce qui concerne le paragraphe 1 de l’article 7, à un montant de 2625000 unités monétaires multiplié par le nombre de passagers que le navire est autorisé à transporter conformément à son certificat.

Les paragraphes 2 et 3 de l’article 6 s’appliquent en conséquence aux alinéas a) et b) du présent paragraphe.”

**Article 6**

Le texte suivant est ajouté en tant que paragraphe 3bis à l’article 15 de la Convention:

“3bis Nonobstant la limite de la responsabilité prescrite au paragraphe 1 de l’article 7, un Etat Partie peut stipuler aux termes de dispositions expresses de sa législation nationale quel régime de responsabilité s’applique aux créances pour mort ou lésions corporelles des passagers d’un navire, sous réserve que la limite de la responsabilité ne soit pas inférieure à celle prescrite au paragraphe 1 de l’article 7. Un Etat Partie qui fait usage de la faculté prévue au présent paragraphe notifie au Secrétaire général les limites de la responsabilité adoptées ou le fait que de telles limites ne sont pas prévues.”

**Article 7**

Le paragraphe 1 de l’article 18 de la Convention est remplacé par ce qui suit:

“1. Tout Etat peut, lors de la signature, de la ratification, de l’acceptation, de l’approbation ou de l’adhésion, ou à tout moment par la suite, se réserver le droit:
   a) d’exclure l’application des alinéas d) et e) du paragraphe 1 de l’article 2,
   b) d’exclure les créances pour dommages au sens de la Convention internationale de 1996 sur la responsabilité et l’indemnisation pour les dommages liés au transport par mer de substances nocives et potentiellement dangereuses ou de tout amendement ou protocole y relatif.
Aucune autre réserve portant sur une question de fond de la présente Convention n’est recevable.”

**Article 8**

*Modification des limites*

1. A la demande d’au moins la moitié et, en tout cas, d’un minimum de six des Etats Parties au présent Protocole, toute proposition visant à modifier les limites prévues au paragraphe 1 de l’article 6, au paragraphe 1 de l’article 7 et au paragraphe 2 de l’article 8 de la Convention telle que modifiée par le présent Protocole, est diffusée par le Secrétaire général à tous les Membres de l’Organisation et à tous les Etats contractants.

2. Tout amendement proposé et diffusé suivant la procédure ci-dessus est soumis au Comité juridique de l’Organisation (le Comité juridique) pour que ce dernier l’examine six mois au moins après la date à laquelle il a été diffusé.
3. Tous les États contractants à la Convention telle que modifiée par le présent Protocole, qu’ils soient ou non Membres de l’Organisation, sont autorisés à participer aux délibérations du Comité juridique en vue d’examiner et d’adopter les amendements.

4. Les amendements sont adoptés à la majorité des deux tiers des États contractants à la Convention telle que modifiée par le présent Protocole, présents et votants au sein du Comité juridique, élargi conformément au paragraphe 3, à condition que la moitié au moins des États contractants à la Convention telle que modifiée par le présent Protocole soient présents au moment du vote.

5. Lorsqu’il se prononce sur une proposition visant à modifier les limites, le Comité juridique tient compte de l’expérience acquise en matière d’événements et, en particulier, du montant des dommages qui en résultent, des fluctuations de la valeur des monnaies et de l’incidence de l’amendement proposé sur le coût des assurances.

6. a) Aucun amendement visant à modifier les limites en vertu du présent article ne peut être examiné avant l’expiration d’un délai de cinq ans à compter de la date à laquelle le présent Protocole a été ouvert à la signature, ni d’un délai de cinq ans à compter de la date d’entrée en vigueur d’un amendement antérieur adopté en vertu du présent article.

b) Aucune limite ne peut être relevée au point de dépasser un montant correspondant à la limite fixée dans la Convention telle que modifiée par le présent Protocole majorée de six pour cent par an, en intérêt composé, à compter de la date à laquelle le présent Protocole a été ouvert à la signature.

c) Aucune limite ne peut être relevée au point de dépasser un montant correspondant au triple de la limite fixée dans la Convention telle que modifiée par le présent Protocole.

7. Tout amendement adopté conformément au paragraphe 4 est notifié par l’Organisation à tous les États contractants. L’amendement est réputé avoir été accepté à l’expiration d’un délai de dix-huit mois après la date de sa notification, à moins que, durant cette période, un quart au moins des États qui étaient des États contractants au moment de l’adoption de l’amendement ne fassent savoir au Secrétaire général qu’ils ne l’acceptent pas, auquel cas l’amendement est rejeté et n’a pas d’effet.

8. Un amendement réputé avoir été accepté conformément au paragraphe 7 entre en vigueur dix-huit mois après son acceptation.


10. Lorsqu’un amendement a été adopté mais que le délai d’acceptation de dix-huit mois n’a pas encore expiré, tout État devenant État contractant durant cette période est lié par l’amendement si celui-ci entre en vigueur. Un État qui devient État contractant après expiration de ce délai est lié par tout amendement qui a été accepté conformément au paragraphe 7. Dans les cas visés par le présent paragraphe, un État est lié par un amendement à compter de la date d’entrée en vigueur de l’amendement ou de la date d’entrée en vigueur du présent Protocole à l’égard de cet État, si cette dernière date est postérieure.
Article 9

1. La Convention et le présent Protocole sont, entre les Parties au présent Protocole, considérés et interprétés comme formant un seul instrument.

2. Un Etat qui est Partie au présent Protocole mais n’est pas Partie à la Convention est lié par les dispositions de la Convention telle que modifiée par le présent Protocole à l’égard des autres Etats Parties au Protocole, mais n’est pas lié par les dispositions de la Convention à l’égard des Etats Parties uniquement à la Convention.

3. La Convention telle que modifiée par le présent Protocole ne s’applique qu’aux créances nées d’événements postérieurs à l’entrée en vigueur, pour chaque Etat, du présent Protocole.

4. Aucune des dispositions du présent Protocole ne porte atteinte aux obligations qu’a un Etat Partie à la fois à la Convention et au présent Protocole à l’égard d’un Etat qui est Partie à la Convention mais qui n’est pas Partie au présent Protocole.

Clauses FINALES

Article 10

Signature, ratification, acceptation, approbation et adhésion


2. Tout Etat peut exprimer son consentement à être lié par le présent Protocole par:
   a) signature sans réserve quant à la ratification, l’acceptation ou l’approbation; ou
   b) signature sous réserve de ratification, d’acceptation ou d’approbation, suivie de ratification, d’acceptation ou d’approbation; ou
   c) adhésion.

3. La ratification, l’acceptation, l’approbation ou l’adhésion s’effectuent par le dépôt d’un instrument à cet effet auprès du Secrétaire général.

4. Tout instrument de ratification, d’acceptation, d’approbation ou d’adhésion déposé après la date d’entrée en vigueur d’un amendement à la Convention telle que modifiée par le présent Protocole est réputé s’appliquer à la Convention ainsi modifiée et telle que modifiée par ledit amendement.

Article 11

Entrée en vigueur

1. Le présent Protocole entre en vigueur quatre-vingt-dix jours après la date à laquelle dix Etats ont exprimé leur consentement à être liés par lui.

2. Pour tout Etat qui exprime son consentement à être lié par le présent Protocole après que les conditions d’entrée en vigueur prévues au paragraphe 1 ont été remplies,
le présent Protocole entre en vigueur quatre-vingt-dix jours après la date à laquelle ce consentement a été exprimé.

Article 12
Dénonciation

1. Le présent Protocole peut être dénoncé par l’un quelconque des Etats Parties à tout moment à compter de la date à laquelle il entre en vigueur à l’égard de cet Etat Parties.

2. La dénonciation s’effectue par le dépôt d’un instrument de dénonciation auprès du Secrétaire général.

3. La dénonciation prend effet douze mois après la date du dépôt de l’instrument de dénonciation auprès du Secrétaire général ou à l’expiration de toute période plus longue qui pourrait être spécifiée dans cet instrument.

4. Entre les Etats Parties au présent Protocole, la dénonciation par l’un quelconque d’entre eux de la Convention en vertu de l’article 19 de ladite convention n’est en aucun cas interprétée comme une dénonciation de la Convention, telle que modifiée par le présent Protocole.

Article 13
Révision et modification

1. L’Organisation peut convoquer une conférence ayant pour objet de réviser ou de modifier le présent Protocole.

2. L’Organisation convoque une conférence des Etats contractants au présent Protocole, ayant pour objet de le ré viser ou de le modifier, à la demande du tiers au moins des Parties contractantes.

Article 14
Dépositaire

1. Le présent Protocole et tous les amendements acceptés en vertu de l’article 8 sont déposés auprès du Secrétaire général.

2. Le Secrétaire général:
   a) informe tous les Etats qui ont signé le présent Protocole ou y ont adhéré:
      i) de toute nouvelle signature ou de tout dépôt d’un nouvel instrument, et de la date à laquelle cette signature ou ce dépôt sont intervenus;
      ii) de toute déclaration et communication effectuées en vertu du paragraphe 2 de l’article 8 de la Convention telle que modifiée par le présent Protocole et en vertu du paragraphe 4 de l’article 8 de la Convention;
      iii) de la date d’entrée en vigueur du présent Protocole;
      iv) de toute proposition visant à modifier les limites qui a été présentée conformément au paragraphe 1 de l’article 8;
      v) de tout amendement qui a été adopté conformément au paragraphe 4 de l’article 8;
vi) de tout amendement qui est réputé avoir été accepté en vertu du paragraphe 7 de l’article 8, ainsi que de la date à laquelle cet amendement entre en vigueur, conformément aux paragraphes 8 et 9 de cet article;

vii) du dépôt de tout instrument de dénonciation du présent Protocole, ainsi que de la date à laquelle ce dépôt est intervenu et de la date à laquelle la dénonciation prend effet;

b) transmet des copies certifiées conformes du présent Protocole à tous les États signataires et à tous les États qui y adhèrent.


**Article 15**

**Langues**

Le présent Protocole est établi en un seul exemplaire original en langues anglaise, arabe, chinoise, espagnole, française et russe, tous les textes faisant également foi.

FAIT A LONDRES ce deux mai mil neuf cent quatre-vingt seize.

EN FOI DE QUOI, les soussignés, dûment autorisés à cet effet par leurs gouvernements respectifs, ont apposé leur signature au présent Protocole.
RESOLUTION A.898(21)  
adopted on 25 November 1999  
GUIDELINES ON SHIPOWNERS’ RESPONSIBILITIES  
IN RESPECT OF MARITIME CLAIMS

THE ASSEMBLY,

RECALLING Article 15(j) of the Convention on the International Maritime Organization concerning the functions of the Assembly in relation to regulations and guidelines concerning maritime safety and the prevention and control of marine pollution from ships, and legal matters related thereto,

RECOGNIZING that shipowners generally enjoy the right to limit their liability for many maritime claims,

BELIEVING that the right to limited liability must be balanced by a duty for the shipowner to take proper steps to ensure that legitimate claims are met, in particular by taking out effective insurance cover,

CONSIDERING that there is therefore a need to recommend minimum international standards for the responsibilities of shipowners in respect of maritime claims,

CONSIDERING FURTHER that these guidelines represent a valuable contribution to the Organization’s objective of discouraging the operation of sub-standard and inadequately insured ships,

CONCERNED that, if shipowners do not have effective insurance cover, or another effective form of financial security, eligible claimants may not obtain prompt and adequate compensation,

CONVINCED that recommendatory guidelines are an appropriate means of establishing a framework of good practice to encourage all shipowners to take steps to ensure that claimants receive adequate compensation following incidents involving their ships,

HAVING CONSIDERED the recommendation made by the Legal Committee at its eightieth session,

1. ADOPTS the Guidelines on shipowners’ responsibilities in respect of maritime claims set out in the Annex to the present resolution;
Guidelines on shipowners’ responsibilities in respect of maritime claims

2. INVITES Member Governments to urge shipowners to comply with the Guidelines;

3. REQUESTS the Legal Committee to keep the Guidelines under review and amend them as necessary.

* * *

ANNEX

GUIDELINES ON SHIPOWNERS’ RESPONSIBILITIES IN RESPECT OF MARITIME CLAIMS

1 Definitions

1.1 In these Guidelines:

.1 Cargo claims means claims in respect of loss of, damage to, or delay in the delivery of cargo carried by sea;

.2 Insurance means insurance with or without deductibles, and comprises, for example, indemnity insurance of the type currently provided by members of the International Group of P&I Clubs, and other effective forms of insurance (including self-insurance) and financial security offering similar conditions of cover;

.3 Insurer means any person providing insurance for a shipowner;

.4 Limitation Convention means the International Convention on Limitation of Liability for Maritime Claims 1976, including any amendment that is in force internationally;

.5 Relevant claims means the claims referred to in Article 2, paragraph 1, of the Limitation Convention, except for cargo claims;

.6 Shipowner means the owner of a seagoing ship, or any other organization or person who or which has assumed responsibility for the operation of such a ship; and

.7 Gross tonnage is calculated according to the tonnage measurement rules contained in Annex I of the International Convention on Tonnage Measurement of Ships 1969.

2 Scope of application

2.1 Shipowners are urged to comply with these Guidelines in respect of all seagoing ships of at least 300 gross tonnage. Shipowners are also encouraged to comply with the Guidelines in respect of ships of less than 300 gross tonnage.

2.2 These Guidelines do not apply to any warship, naval auxiliary, or other ship owned or operated by a State and used, for the time being, only on government non-commercial service, unless that State decides otherwise.
3 Shipowners’ responsibilities

3.1 Shipowners should arrange for their ships insurance cover that complies with these Guidelines.

3.2 Shipowners should also take proper steps when relevant claims arise in connection with the operation of one of their ships.

4 Scope of insurance cover

4.1 Shipowners should ensure that liability for relevant claims up to the limits set under Articles 6 and 7 of the Limitation Convention is covered by insurance. If, however, the shipowner is entitled to invoke a limit of liability lower than that set by the Limitation Convention, the insurance need only respond up to that lower limit.

4.2 To satisfy the previous paragraph, the insurance need respond only if:

1. the shipowner’s liability has been established at law; and
2. the shipowner has complied with all the conditions of cover prescribed under the insurance contract.

5 Certificates

5.1 Shipowners should ensure that their ships have on board a certificate issued by the insurer. Where more than one insurer provides cover for relevant claims, a single certificate confirming the identity of the main liability insurer is sufficient.

5.2 As a minimum, the certificate should include:

1. the name of the ship;
2. the ship’s IMO number;
3. the name of the insurer;
4. the place of business of the insurer;
5. the name of the assured and co-assured, if known; and
6. an attestation that the insurance meets the recommended standards set out in these Guidelines regarding the risks covered by that insurer.
INTERNATIONAL CONVENTION ON LIABILITY AND COMPENSATION
FOR DAMAGE IN CONNECTION WITH THE CARRIAGE OF
HAZARDOUS AND NOXIOUS SUBSTANCES BY SEA, 1996

THE STATES PARTIES TO THE PRESENT CONVENTION,

CONSCIOUS of the dangers posed by the world-wide carriage by sea of hazardous
and noxious substances,

CONVINCED of the need to ensure that adequate, prompt and effective
compensation is available to persons who suffer damage caused by incidents in
connection with the carriage by sea of such substances,

DESIRING to adopt uniform international rules and procedures for determining
questions of liability and compensation in respect of such damage,

CONSIDERING that the economic consequences of damage caused by the
carriage by sea of hazardous and noxious substances should be shared by the shipping
industry and the cargo interests involved.

HAVE AGREED as follows:

CHAPTER I - GENERAL PROVISIONS

Article 1
Definitions

For the purposes of this Convention:

1. “Ship” means any seagoing vessel and seaborne craft, of any type whatsoever.

2. “Person” means any individual or partnership or any public or private body,
whether corporate or not, including a State or any of its constituent subdivisions.

3. “Owner” means the person or persons registered as the owner of the ship or, in the
absence of registration, the person or persons owning the ship. However, in the case
of a ship owned by a State and operated by a company, which in that State is registered
as the ship’s operator, “owner” shall mean such company.

4. “Receiver” means either:
   a) the person who physically receives contributing cargo discharged in the ports
and terminals of a State Party; provided that if at the time of receipt the person
who physically receives the cargo acts as an agent for another who is subject to
the jurisdiction of any State Party, then the principal shall be deemed to be the
receiver, if the agent discloses the principal to the HNS Fund; or
   b) the person in the State Party who in accordance with the national law of that
State Party is deemed to be the receiver of contributing cargo discharged in the
ports and terminals of a State Party, provided that the total contributing cargo received according to such national law is substantially the same as that which would have been received under (a).

5. “Hazardous and noxious substances” (HNS) means:
   a) any substances, materials and articles carried on board a ship as cargo, referred to in (i) to (vii) below:
      i) oils carried in bulk listed in appendix I of Annex I to the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto, as amended;
      ii) noxious liquid substances carried in bulk referred to in appendix II of Annex II to the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto, as amended, and those substances and mixtures provisionally categorized as falling in pollution category A, B, C or D in accordance with regulation 3(4) of the said Annex II;
      iii) dangerous liquid substances carried in bulk listed in chapter 17 of the International Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk, 1983, as amended, and the dangerous products for which the preliminary suitable conditions for the carriage have been prescribed by the Administration and port administrations involved in accordance with paragraph 1.1.3 of the Code;
      iv) dangerous, hazardous and harmful substances, materials and articles in packaged form covered by the International Maritime Dangerous Goods Code, as amended;
      v) liquefied gases as listed in chapter 19 of the International Code for the Construction and Equipment of Ships Carrying Liquefied Gases in Bulk, 1983, as amended, and the products for which preliminary suitable conditions for the carriage have been prescribed by the Administration and port administrations involved in accordance with paragraph 1.1.6 of the Code;
      vi) liquid substances carried in bulk with a flashpoint not exceeding 60 C (measured by a closed cup test);
      vii) solid bulk materials possessing chemical hazards covered by appendix B of the Code of Safe Practice for Solid Bulk Cargoes, as amended, to the extent that these substances are also subject to the provisions of the International Maritime Dangerous Goods Code when carried in packaged form; and
   b) residues from the previous carriage in bulk of substances referred to in (a)(i) to (iii) and (v) to (vii) above.

6. “Damage” means:
   a) loss of life or personal injury on board or outside the ship carrying the hazardous and noxious substances caused by those substances;
   b) loss of or damage to property outside the ship carrying the hazardous and noxious substances caused by those substances;
   c) loss or damage by contamination of the environment caused by the hazardous and noxious substances, provided that compensation for impairment of the environment other than loss of profit from such impairment shall be limited to
costs of reasonable measures of reinstatement actually undertaken or to be undertaken; and

d) the costs of preventive measures and further loss or damage caused by preventive measures.

Where it is not reasonably possible to separate damage caused by the hazardous and noxious substances from that caused by other factors, all such damage shall be deemed to be caused by the hazardous and noxious substances except if, and to the extent that, the damage caused by other factors is damage of a type referred to in article 4, paragraph 3.

In this paragraph, “caused by those substances” means caused by the hazardous or noxious nature of the substances.

7. “Preventive measures” means any reasonable measures taken by any person after an incident has occurred to prevent or minimize damage.

8. “Incident” means any occurrence or series of occurrences having the same origin, which causes damage or creates a grave and imminent threat of causing damage.

9. “Carriage by sea” means the period from the time when the hazardous and noxious substances enter any part of the ship’s equipment, on loading, to the time they cease to be present in any part of the ship’s equipment, on discharge. If no ship’s equipment is used, the period begins and ends respectively when the hazardous and noxious substances cross the ship’s rail.

10. “Contributing cargo” means any hazardous and noxious substances which are carried by sea as cargo to a port or terminal in the territory of a State Party and discharged in that State. Cargo in transit which is transferred directly, or through a port or terminal, from one ship to another, either wholly or in part, in the course of carriage from the port or terminal of original loading to the port or terminal of final destination shall be considered as contributing cargo only in respect of receipt at the final destination.

11. The “HNS Fund” means the International Hazardous and Noxious Substances Fund established under article 13.

12. “Unit of account” means the Special Drawing Right as defined by the International Monetary Fund.

13. “State of the ship’s registry” means in relation to a registered ship the State of registration of the ship, and in relation to an unregistered ship the State whose flag the ship is entitled to fly.

14. “Terminal” means any site for the storage of hazardous and noxious substances received from waterborne transportation, including any facility situated off-shore and linked by pipeline or otherwise to such site.

15. “Director” means the Director of the HNS Fund.


17. “Secretary-General” means the Secretary-General of the Organization.
Article 2

Annexes

The Annexes to this Convention shall constitute an integral part of this Convention.

Article 3

Scope of application

This Convention shall apply exclusively:

a) to any damage caused in the territory, including the territorial sea, of a State Party;

b) to damage by contamination of the environment caused in the exclusive economic zone of a State Party, established in accordance with international law, or, if a State Party has not established such a zone, in an area beyond and adjacent to the territorial sea of that State determined by that State in accordance with international law and extending not more than 200 nautical miles from the baselines from which the breadth of its territorial sea is measured;

c) to damage, other than damage by contamination of the environment, caused outside the territory, including the territorial sea, of any State, if this damage has been caused by a substance carried on board a ship registered in a State Party or, in the case of an unregistered ship, on board a ship entitled to fly the flag of a State Party; and

d) to preventive measures, wherever taken.

Article 4

1. This Convention shall apply to claims, other than claims arising out of any contract for the carriage of goods and passengers, for damage arising from the carriage of hazardous and noxious substances by sea.

2. This Convention shall not apply to the extent that its provisions are incompatible with those of the applicable law relating to workers’ compensation or social security schemes.

3. This Convention shall not apply:

a) to pollution damage as defined in the International Convention on Civil Liability for Oil Pollution Damage, 1969, as amended, whether or not compensation is payable in respect of it under that Convention; and

b) to damage caused by a radioactive material of class 7 either in the International Maritime Dangerous Goods Code, as amended, or in appendix B of the Code of Safe Practice for Solid Bulk Cargoes, as amended.

4. Except as provided in paragraph 5, the provisions of this Convention shall not apply to warships, naval auxiliary or other ships owned or operated by a State and used, for the time being, only on Government non-commercial service.

5. A State Party may decide to apply this Convention to its warships or other vessels
described in paragraph 4, in which case it shall notify the Secretary-General thereof specifying the terms and conditions of such application.

6. With respect to ships owned by a State Party and used for commercial purposes, each State shall be subject to suit in the jurisdictions set forth in article 38 and shall waive all defences based on its status as a sovereign State.

**Article 5**

1. A State may, at the time of ratification, acceptance, approval of, or accession to, this Convention, or any time thereafter, declare that this Convention does not apply to ships:
   a) which do not exceed 200 gross tonnage; and
   b) which carry hazardous and noxious substances only in packaged form; and
   c) while they are engaged on voyages between ports or facilities of that State.

2. Where two neighbouring States agree that this Convention does not apply also to ships which are covered by paragraph 1(a) and (b) while engaged on voyages between ports or facilities of those States, the States concerned may declare that the exclusion from the application of this Convention declared under paragraph 1 covers also ships referred to in this paragraph.

3. Any State which has made the declaration under paragraph 1 or 2 may withdraw such declaration at any time.

4. A declaration made under paragraph 1 or 2, and the withdrawal of the declaration made under paragraph 3, shall be deposited with the Secretary-General who shall, after the entry into force of this Convention, communicate it to the Director.

5. Where a State has made a declaration under paragraph 1 or 2 and has not withdrawn it, hazardous and noxious substances carried on board ships covered by that paragraph shall not be considered to be contributing cargo for the purpose of application of articles 18, 20, article 21, paragraph 5 and article 43.

6. The HNS Fund is not liable to pay compensation for damage caused by substances carried by a ship to which the Convention does not apply pursuant to a declaration made under paragraph 1 or 2, to the extent that:
   a) the damage as defined in article 1, paragraph 6(a), (b) or (c) was caused in:
      i) the territory, including the territorial sea, of the State which has made the declaration, or in the case of neighbouring States which have made a declaration under paragraph 2, of either of them; or
      ii) the exclusive economic zone, or area mentioned in article 3(b), of the State or States referred to in (i);
   b) the damage includes measures taken to prevent or minimize such damage.
**Article 6**

**Duties of State Parties**

Each State Party shall ensure that any obligation arising under this Convention is fulfilled and shall take appropriate measures under its law including the imposing of sanctions as it may deem necessary, with a view to the effective execution of any such obligation.

**CHAPTER II - LIABILITY**

**Article 7**

**Liability of the owner**

1. Except as provided in paragraphs 2 and 3, the owner at the time of an incident shall be liable for damage caused by any hazardous and noxious substances in connection with their carriage by sea on board the ship, provided that if an incident consists of a series of occurrences having the same origin the liability shall attach to the owner at the time of the first of such occurrences.

2. No liability shall attach to the owner if the owner proves that:
   a) the damage resulted from an act of war, hostilities, civil war, insurrection or a natural phenomenon of an exceptional, inevitable and irresistible character; or
   b) the damage was wholly caused by an act or omission done with the intent to cause damage by a third party; or
   c) the damage was wholly caused by the negligence or other wrongful act of any Government or other authority responsible for the maintenance of lights or other navigational aids in the exercise of that function; or
   d) the failure of the shipper or any other person to furnish information concerning the hazardous and noxious nature of the substances shipped either i) has caused the damage, wholly or partly; or ii) has led the owner not to obtain insurance in accordance with article 12; provided that neither the owner nor its servants or agents knew or ought reasonably to have known of the hazardous and noxious nature of the substances shipped.

3. If the owner proves that the damage resulted wholly or partly either from an act or omission done with intent to cause damage by the person who suffered the damage or from the negligence of that person, the owner may be exonerated wholly or partially from liability to such person.

4. No claim for compensation for damage shall be made against the owner otherwise than in accordance with this Convention.

5. Subject to paragraph 6, no claim for compensation for damage under this Convention or otherwise may be made against:
   a) the servants or agents of the owner or the members of the crew;
   b) the pilot or any other person who, without being a member of the crew, performs services for the ship;
c) any charterer (howsoever described, including a bareboat charterer), manager or operator of the ship;
(d) any person performing salvage operations with the consent of the owner or on the instructions of a competent public authority;
(e) any person taking preventive measures; and
(f) the servants or agents of persons mentioned in (c), (d) and (e);

unless the damage resulted from their personal act or omission, committed with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result.

6. Nothing in this Convention shall prejudice any existing right of recourse of the owner against any third party, including, but not limited to, the shipper or the receiver of the substance causing the damage, or the persons indicated in paragraph 5.

Article 8
Incidents involving two or more ships

1. Whenever damage has resulted from an incident involving two or more ships each of which is carrying hazardous and noxious substances, each owner, unless exonerated under article 7, shall be liable for the damage. The owners shall be jointly and severally liable for all such damage which is not reasonably separable.

2. However, owners shall be entitled to the limits of liability applicable to each of them under article 9.

3. Nothing in this article shall prejudice any right of recourse of an owner against any other owner.

Article 9
Limitation of liability

1. The owner of a ship shall be entitled to limit liability under this Convention in respect of any one incident to an aggregate amount calculated as follows:
   a) 10 million units of account for a ship not exceeding 2,000 units of tonnage; and
   b) for a ship with a tonnage in excess thereof, the following amount in addition to that mentioned in (a):
      for each unit of tonnage from 2,001 to 50,000 units of tonnage, 1,500 units of account
      for each unit of tonnage in excess of 50,000 units of tonnage, 360 units of account

   provided, however, that this aggregate amount shall not in any event exceed 100 million units of account.

2. The owner shall not be entitled to limit liability under this Convention if it is proved that the damage resulted from the personal act or omission of the owner, committed with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result.
3. The owner shall, for the purpose of benefiting from the limitation provided for in paragraph 1, constitute a fund for the total sum representing the limit of liability established in accordance with paragraph 1 with the court or other competent authority of any one of the States Parties in which action is brought under article 38 or, if no action is brought, with any court or other competent authority in any one of the States Parties in which an action can be brought under article 38. The fund can be constituted either by depositing the sum or by producing a bank guarantee or other guarantee, acceptable under the law of the State Party where the fund is constituted, and considered to be adequate by the court or other competent authority.

4. Subject to the provisions of article 11, the fund shall be distributed among the claimants in proportion to the amounts of their established claims.

5. If before the fund is distributed the owner or any of the servants or agents of the owner or any person providing to the owner insurance or other financial security has as a result of the incident in question, paid compensation for damage, such person shall, up to the amount that person has paid, acquire by subrogation the rights which the person so compensated would have enjoyed under this Convention.

6. The right of subrogation provided for in paragraph 5 may also be exercised by a person other than those mentioned therein in respect of any amount of compensation for damage which such person may have paid but only to the extent that such subrogation is permitted under the applicable national law.

7. Where owners or other persons establish that they may be compelled to pay at a later date in whole or in part any such amount of compensation, with regard to which the right of subrogation would have been enjoyed under paragraphs 5 or 6 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 the claim against the fund.

8. Claims in respect of expenses reasonably incurred or sacrifices reasonably made by the owner voluntarily to prevent or minimize damage shall rank equally with other claims against the fund.

9. a) The amounts mentioned in paragraph 1 shall be converted into national currency on the basis of the value of that currency by reference to the Special Drawing Right on the date of the constitution of the fund referred to in paragraph 3. The value of the 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 on the date in question for its operations and transactions. The value of the 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.

b) Nevertheless, a State Party which is not a member of the International Monetary Fund and whose law does not permit the application of the provisions of paragraph 9(a) may, at the time of ratification, acceptance,
approval of or accession to this Convention or at any time thereafter, declare that the unit of account referred to in paragraph 9(a) shall be equal to 15 gold francs. The gold franc referred to in this paragraph corresponds to sixty-five-and-a-half milligrams of gold of millesimal fineness nine hundred. The conversion of the gold franc into the national currency shall be made according to the law of the State concerned.

c) The calculation mentioned in the last sentence of paragraph 9(a) and the conversion mentioned in paragraph 9(b) shall be made in such manner as to express in the national currency of the State Party as far as possible the same real value for the amounts in paragraph 1 as would result from the application of the first two sentences of paragraph 9(a). States Parties shall communicate to the Secretary-General the manner of calculation pursuant to paragraph 9(a), or the result of the conversion in paragraph 9(b) as the case may be, when depositing an instrument of ratification, acceptance, approval of or accession to this Convention and whenever there is a change in either.

10. For the purpose of this article the ship’s tonnage shall be the gross tonnage calculated in accordance with the tonnage measurement regulations contained in Annex I of the International Convention on Tonnage Measurement of Ships. 1969.

11. The insurer or other person providing financial security shall be entitled to constitute a fund in accordance with this article on the same conditions and having the same effect as if it were constituted by the owner. Such a fund may be constituted even if, under the provisions of paragraph 2, the owner is not entitled to limitation of liability, but its constitution shall in that case not prejudice the rights of any claimant against the owner.

Article 10

1. Where the owner, after an incident, has constituted a fund in accordance with article 9 and is entitled to limit liability:

   a) no person having a claim for damage arising out of that incident shall be entitled to exercise any right against any other assets of the owner in respect of such claim; and

   b) the court or other competent authority of any State Party shall order the release of any ship or other property belonging to the owner which has been arrested in respect of a claim for damage arising out of that incident, and shall similarly release any bail or other security furnished to avoid such arrest.

2. The foregoing shall, however, only apply if the claimant has access to the court administering the fund and the fund is actually available in respect of the claim.

Article 11

Death and injury

Claims in respect of death or personal injury have priority over other claims save to the extent that the aggregate of such claims exceeds two-thirds of the total amount established in accordance with article 9, paragraph 1.


Article 12
Compulsory insurance of the owner

1. The owner of a ship registered in a State Party and actually carrying hazardous and noxious substances shall be required to maintain insurance or other financial security, such as the guarantee of a bank or similar financial institution, in the sums fixed by applying the limits of liability prescribed in article 9, paragraph 1, to cover liability for damage under this Convention.

2. A compulsory insurance certificate attesting that insurance or other financial security is in force in accordance with the provisions of this Convention shall be issued to each ship after the appropriate authority of a State Party has determined that the requirements of paragraph 1 have been complied with. With respect to a ship registered in a State Party such compulsory insurance certificate shall be issued or certified by the appropriate authority of the State of the ship’s registry; with respect to a ship not registered in a State Party it may be issued or certified by the appropriate authority of any State Party. This compulsory insurance certificate shall be in the form of the model set out in Annex I and shall contain the following particulars:
   a) name of the ship, distinctive number or letters and port of registry;
   b) name and principal place of business of the owner;
   c) IMO ship identification number;
   d) type and duration of security;
   e) name and principal place of business of insurer or other person giving security and, where appropriate, place of business where the insurance or security is established; and
   f) period of validity of certificate, which shall not be longer than the period of validity of the insurance or other security.

3. The compulsory insurance certificate shall be in the official language or languages of the issuing State. If the language used is neither English, nor French nor Spanish, the text shall include a translation into one of these languages.

4. The compulsory insurance certificate shall be carried on board the ship and a copy shall be deposited with the authorities who keep the record of the ship’s registry, or, if the ship is not registered in a State Party, with the authority of the State issuing or certifying the certificate.

5. An insurance or other financial security shall not satisfy the requirements of this article if it can cease, for reasons other than the expiry of the period of validity of the insurance or security specified in the certificate under paragraph 2, before three months have elapsed from the date on which notice of its termination is given to the authorities referred to in paragraph 4, unless the compulsory insurance certificate has been issued within the said period. The foregoing provisions shall similarly apply to any modification which results in the insurance or security no longer satisfying the requirements of this article.

6. The State of the ship’s registry shall, subject to the provisions of this article, determine the conditions of issue and validity of the compulsory insurance certificate.

7. Compulsory insurance certificates issued or certified under the authority of a State Party in accordance with paragraph 2 shall be accepted by other States Parties for the
purposes of this Convention and shall be regarded by other States Parties as having the same force as compulsory insurance certificates issued or certified by them even if issued or certified in respect of a ship not registered in a State Party. A State Party may at any time request consultation with the issuing or certifying State should it believe that the insurer or guarantor named in the compulsory insurance certificate is not financially capable of meeting the obligations imposed by this Convention.

8. Any claim for compensation for damage may be brought directly against the insurer or other person providing financial security for the owner’s liability for damage. In such case the defendant may, even if the owner is not entitled to limitation of liability, benefit from the limit of liability prescribed in accordance with paragraph 1. The defendant may further invoke the defences (other than the bankruptcy or winding up of the owner) which the owner would have been entitled to invoke. Furthermore, the defendant may invoke the defence that the damage resulted from the wilful misconduct of the owner, but the defendant shall not invoke any other defence which the defendant might have been entitled to invoke in proceedings brought by the owner against the defendant. The defendant shall in any event have the right to require the owner to be joined in the proceedings.

9. Any sums provided by insurance or by other financial security maintained in accordance with paragraph 1 shall be available exclusively for the satisfaction of claims under this Convention.

10. A State Party shall not permit a ship under its flag to which this article applies to trade unless a certificate has been issued under paragraph 2 or 12.

11. Subject to the provisions of this article, each State Party shall ensure, under its national law, that insurance or other security in the sums specified in paragraph 1 is in force in respect of any ship, wherever registered, entering or leaving a port in its territory, or arriving at or leaving an offshore facility in its territorial sea.

12. If insurance or other financial security is not maintained in respect of a ship owned by a State Party, the provisions of this article relating thereto shall not be applicable to such ship, but the ship shall carry a compulsory insurance certificate issued by the appropriate authorities of the State of the ship’s registry stating that the ship is owned by that State and that the ship’s liability is covered within the limit prescribed in accordance with paragraph 1. Such a compulsory insurance certificate shall follow as closely as possible the model prescribed by paragraph 2.

CHAPTER III - COMPENSATION BY THE INTERNATIONAL HAZARDOUS AND NOXIOUS SUBSTANCES FUND (HNS FUND)

Article 13

Establishment of the HNS Fund

1. The International Hazardous and Noxious Substances Fund (HNS Fund) is hereby established with the following aims:
   a) to provide compensation for damage in connection with the carriage of hazardous and noxious substances by sea, to the extent that the protection afforded by chapter II is inadequate or not available; and
   b) to give effect to the related tasks set out in article 15.
2. The HNS Fund shall in each State Party be recognized as a legal person capable under the laws of that State of assuming rights and obligations and of being a party in legal proceedings before the courts of that State. Each State Party shall recognize the Director as the legal representative of the HNS Fund.

Article 14
Compensation

1. For the purpose of fulfilling its function under article 13, paragraph 1(a), the HNS Fund shall pay compensation to any person suffering damage if such person has been unable to obtain full and adequate compensation for the damage under the terms of chapter II:
   a) because no liability for the damage arises under chapter II;
   b) because the owner liable for the damage under chapter II is financially incapable of meeting the obligations under this Convention in full and any financial security that may be provided under chapter II does not cover or is insufficient to satisfy the claims for compensation for damage; an owner being treated as financially incapable of meeting these obligations and a financial security being treated as insufficient if the person suffering the damage has been unable to obtain full satisfaction of the amount of compensation due under chapter II after having taken all reasonable steps to pursue the available legal remedies;
   c) because the damage exceeds the owner's liability under the terms of chapter II.

2. Expenses reasonably incurred or sacrifices reasonably made by the owner voluntarily to prevent or minimize damage shall be treated as damage for the purposes of this article.

3. The HNS Fund shall incur no obligation under the preceding paragraphs if:
   a) it proves that the damage resulted from an act of war, hostilities, civil war or insurrection or was caused by hazardous and noxious substances which had escaped or been discharged from a warship or other ship owned or operated by a State and used, at the time of the incident, only on Government non-commercial service; or
   b) the claimant cannot prove that there is a reasonable probability that the damage resulted from an incident involving one or more ships.

4. If the HNS Fund proves that the damage resulted wholly or partly either from an act or omission done with intent to cause damage by the person who suffered the damage or from the negligence of that person, the HNS Fund may be exonerated wholly or partially from its obligation to pay compensation to such person. The HNS Fund shall in any event be exonerated to the extent that the owner may have been exonerated under article 7, paragraph 3. However, there shall be no such exoneration of the HNS Fund with regard to preventive measures.

5. a) Except as otherwise provided in subparagraph (b), the aggregate amount of compensation payable by the HNS Fund under this article shall in respect of any one incident be limited, so that the total sum of that amount and any
amount of compensation actually paid under chapter II for damage within the scope of application of this Convention as defined in article 3 shall not exceed 250 million units of account.

b) The aggregate amount of compensation payable by the HNS Fund under this article for damage resulting from a natural phenomenon of an exceptional, inevitable and irresistible character shall not exceed 250 million units of account.

c) Interest accrued on a fund constituted in accordance with article 9, paragraph 3, if any, shall not be taken into account for the computation of the maximum compensation payable by the HNS Fund under this article.

d) The amounts mentioned in this article shall be converted into national currency on the basis of the value of that currency with reference to the Special Drawing Right on the date of the decision of the Assembly of the HNS Fund as to the first date of payment of compensation.

6. Where the amount of established claims against the HNS Fund exceeds the aggregate amount of compensation payable under paragraph 5, the amount available shall be distributed in such a manner that the proportion between any established claim and the amount of compensation actually recovered by the claimant under this Convention shall be the same for all claimants. Claims in respect of death or personal injury shall have priority over other claims, however, save to the extent that the aggregate of such claims exceeds two-thirds of the total amount established in accordance with paragraph 5.

7. The Assembly of the HNS Fund may decide that, in exceptional cases, compensation in accordance with this Convention can be paid even if the owner has not constituted a fund in accordance with chapter II. In such cases paragraph 5(d) applies accordingly.

Article 15

Related tasks of the HNS Fund

For the purpose of fulfilling its function under article 13, paragraph 1(a), the HNS Fund shall have the following tasks:

a) to consider claims made against the HNS Fund;

b) to prepare an estimate in the form of a budget for each calendar year of:

Expenditure:

i) costs and expenses of the administration of the HNS Fund in the relevant year and any deficit from operations in the preceding years; and

ii) payments to be made by the HNS Fund in the relevant year;

Income:

iii) surplus funds from operations in preceding years, including any interest;

iv) initial contributions to be paid in the course of the year;

v) annual contributions if required to balance the budget; and

vi) any other income;

c) to use at the request of a State Party its good offices as necessary to assist that State to secure promptly such personnel, material and services as are necessary to enable the State to take measures to prevent or mitigate damage arising from an incident in respect of which the HNS Fund may be called upon to pay compensation under this Convention; and

...
d) to provide, on conditions laid down in the internal regulations, credit facilities with a view to the taking of preventive measures against damage arising from a particular incident in respect of which the HNS Fund may be called upon to pay compensation under this Convention.

Article 16

General provisions on contributions

1. The HNS Fund shall have a general account, which shall be divided into sectors.

2. The HNS Fund shall, subject to article 19, paragraphs 3 and 4, also have separate accounts in respect of:
   a) oil as defined in article 1, paragraph 5(a)(i) (oil account);
   b) liquefied natural gases of light hydrocarbons with methane as the main constituent (LNG) (LNG account); and
   c) liquefied petroleum gases of light hydrocarbons with propane and butane as the main constituents (LPG) (LPG account).

3. There shall be initial contributions and, as required, annual contributions to the HNS Fund.

4. Contributions to the HNS Fund shall be made into the general account in accordance with article 18, to separate accounts in accordance with article 19 and to either the general account or separate accounts in accordance with article 20 or article 21, paragraph 5. Subject to article 19, paragraph 6, the general account shall be available to compensate damage caused by hazardous and noxious substances covered by that account, and a separate account shall be available to compensate damage caused by a hazardous and noxious substance covered by that account.

5. For the purposes of article 18, article 19, paragraph 1(a)(i), paragraph 1(a)(ii) and paragraph 1(c), article 20 and article 21, paragraph 5, where the quantity of a given type of contributing cargo received in the territory of a State Party by any person in a calendar year when aggregated with the quantities of the same type of cargo received in the same State Party in that year by any associated person or persons exceeds the limit specified in the respective subparagraphs, such a person shall pay contributions in respect of the actual quantity received by that person notwithstanding that that quantity did not exceed the respective limit.

6. “Associated person” means any subsidiary or commonly controlled entity. The question whether a person comes within this definition shall be determined by the national law of the State concerned.

Article 17

General provisions on annual contributions

1. Annual contributions to the general account and to each separate account shall be levied only as required to make payments by the account in question.

2. Annual contributions payable pursuant to articles 18, 19 and article 21, paragraph
5 shall be determined by the Assembly and shall be calculated in accordance with those articles on the basis of the units of contributing cargo received or, in respect of cargoes referred to in article 19, paragraph 1(b), discharged during the preceding calendar year or such other year as the Assembly may decide.

3. The Assembly shall decide the total amount of annual contributions to be levied to the general account and to each separate account. Following that decision the Director shall, in respect of each State Party, calculate for each person liable to pay contributions in accordance with article 18, article 19, paragraph 1 and article 21, paragraph 5, the amount of that person's annual contribution to each account, on the basis of a fixed sum for each unit of contributing cargo reported in respect of the person during the preceding calendar year or such other year as the Assembly may decide. For the general account, the above-mentioned fixed sum per unit of contributing cargo for each sector shall be calculated pursuant to the regulations contained in Annex II to this Convention. For each separate account, the fixed sum per unit of contributing cargo referred to above shall be calculated by dividing the total annual contribution to be levied to that account by the total quantity of cargo contributing to that account.

4. The Assembly may also levy annual contributions for administrative costs and decide on the distribution of such costs between the sectors of the general account and the separate accounts.

5. The Assembly shall also decide on the distribution between the relevant accounts and sectors of amounts paid in compensation for damage caused by two or more substances which fall within different accounts or sectors, on the basis of an estimate of the extent to which each of the substances involved contributed to the damage.

Article 18

Annual contributions to the general account

1. Subject to article 16, paragraph 5, annual contributions to the general account shall be made in respect of each State Party by any person who was the receiver in that State in the preceding calendar year, or such other year as the Assembly may decide, of aggregate quantities exceeding 20,000 tonnes of contributing cargo, other than substances referred to in article 19, paragraph 1, which fall within the following sectors:
   a) solid bulk materials referred to in article 1, paragraph 5(a)(vii);
   b) substances referred to in paragraph 2; and
   c) other substances.

2. Annual contributions shall also be payable to the general account by persons who would have been liable to pay contributions to a separate account in accordance with article 19, paragraph 1 had its operation not been postponed or suspended in accordance with article 19. Each separate account the operation of which has been postponed or suspended under article 19 shall form a separate sector within the general account.
Article 19

Annual contributions to separate accounts

1. Subject to article 16, paragraph 5, annual contributions to separate accounts shall be made in respect of each State Party:
   a) in the case of the oil account,
      i) by any person who has received in that State in the preceding calendar year, or such other year as the Assembly may decide, total quantities exceeding 150,000 tonnes of contributing oil as defined in article 1, paragraph 3 of the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971, as amended, and who is or would be liable to pay contributions to the International Oil Pollution Compensation Fund in accordance with article 10 of that Convention; and
      ii) by any person who was the receiver in that State in the preceding calendar year, or such other year as the Assembly may decide, of total quantities exceeding 20,000 tonnes of other oils carried in bulk listed in appendix I of Annex I to the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto, as amended;
   b) in the case of the LNG account, by any person who in the preceding calendar year, or such other year as the Assembly may decide, immediately prior to its discharge, held title to an LNG cargo discharged in a port or terminal of that State;
   c) in the case of the LPG account, by any person who in the preceding calendar year, or such other year as the Assembly may decide, was the receiver in that State of total quantities exceeding 20,000 tonnes of LPG.

2. Subject to paragraph 3, the separate accounts referred to in paragraph 1 above shall become effective at the same time as the general account.

3. The initial operation of a separate account referred to in article 16, paragraph 2 shall be postponed until such time as the quantities of contributing cargo in respect of that account during the preceding calendar year, or such other year as the Assembly may decide, exceed the following levels:
   a) 350 million tonnes of contributing cargo in respect of the oil account;
   b) 20 million tonnes of contributing cargo in respect of the LNG account; and
   c) 15 million tonnes of contributing cargo in respect of the LPG account.

4. The Assembly may suspend the operation of a separate account if:
   a) the quantities of contributing cargo in respect of that account during the preceding calendar year fall below the respective level specified in paragraph 3; or
   b) when six months have elapsed from the date when the contributions were due, the total unpaid contributions to that account exceed ten per cent of the most recent levy to that account in accordance with paragraph 1.

5. The Assembly may reinstate the operation of a separate account which has been suspended in accordance with paragraph 4.
6. Any person who would be liable to pay contributions to a separate account the operation of which has been postponed in accordance with paragraph 3 or suspended in accordance with paragraph 4, shall pay into the general account the contributions due by that person in respect of that separate account. For the purpose of calculating future contributions, the postponed or suspended separate account shall form a new sector in the general account and shall be subject to the HNS points system defined in Annex II.

**Article 20**

**Initial contributions**

1. In respect of each State Party, initial contributions shall be made of an amount which shall for each person liable to pay contributions in accordance with article 16, paragraph 5, articles 18, 19 and article 21, paragraph 5 be calculated on the basis of a fixed sum, equal for the general account and each separate account, for each unit of contributing cargo received or, in the case of LNG, discharged in that State, during the calendar year preceding that in which this Convention enters into force for that State.

2. The fixed sum and the units for the different sectors within the general account as well as for each separate account referred to in paragraph 1 shall be determined by the Assembly.

3. Initial contributions shall be paid within three months following the date on which the HNS Fund issues invoices in respect of each State Party to persons liable to pay contributions in accordance with paragraph 1.

**Article 21**

**Reports**

1. Each State Party shall ensure that any person liable to pay contributions in accordance with articles 18, 19 or paragraph 5 of this article appears on a list to be established and kept up to date by the Director in accordance with the provisions of this article.

2. For the purposes set out in paragraph 1, each State Party shall communicate to the Director, at a time and in the manner to be prescribed in the internal regulations of the HNS Fund, the name and address of any person who in respect of the State is liable to pay contributions in accordance with articles 18, 19 or paragraph 5 of this article, as well as data on the relevant quantities of contributing cargo for which such a person is liable to contribute in respect of the preceding calendar year.

3. For the purposes of ascertaining who are, at any given time, the persons liable to pay contributions in accordance with articles 18, 19 or paragraph 5 of this article and of establishing, where applicable, the quantities of cargo to be taken into account for any such person when determining the amount of the contribution, the list shall be prima facie evidence of the facts stated therein.

4. Where a State Party does not fulfil its obligations to communicate to the Director the information referred to in paragraph 2 and this results in a financial loss for the HNS Fund, that State Party shall be liable to compensate the HNS Fund for such loss.
The Assembly shall, on the recommendation of the Director, decide whether such compensation shall be payable by a State Party.

5. In respect of contributing cargo carried from one port or terminal of a State Party to another port or terminal located in the same State and discharged there, States Parties shall have the option of submitting to the HNS Fund a report with an annual aggregate quantity for each account covering all receipts of contributing cargo, including any quantities in respect of which contributions are payable pursuant to article 16, paragraph 5. The State Party shall, at the time of reporting, either:
   a) notify the HNS Fund that that State will pay the aggregate amount for each account in respect of the relevant year in one lump sum to the HNS Fund; or
   b) instruct the HNS Fund to levy the aggregate amount for each account by invoicing individual receivers or, in the case of LNG, the title holder who discharges within the jurisdiction of that State Party, for the amount payable by each of them. These persons shall be identified in accordance with the national law of the State concerned.

Article 22
Non-payment of contributions

1. The amount of any contribution due under articles 18, 19, 20 or article 21, paragraph 5 and which is in arrears shall bear interest at a rate which shall be determined in accordance with the internal regulations of the HNS Fund, provided that different rates may be fixed for different circumstances.

2. Where a person who is liable to pay contributions in accordance with articles 18, 19, 20 or article 21, paragraph 5 does not fulfil the obligations in respect of any such contribution or any part thereof and is in arrears, the Director shall take all appropriate action, including court action, against such a person on behalf of the HNS Fund with a view to the recovery of the amount due. However, where the defaulting contributor is manifestly insolvent or the circumstances otherwise so warrant, the Assembly may, upon recommendation of the Director, decide that no action shall be taken or continued against the contributor.

Article 23
Optional liability of States Parties for the payment of contributions

1. Without prejudice to article 21, paragraph 5, a State Party may at the time when it deposits its instrument of ratification, acceptance, approval or accession or at any time thereafter declare that it assumes responsibility for obligations imposed by this Convention on any person liable to pay contributions in accordance with articles 18, 19, 20 or article 21, paragraph 5 in respect of hazardous and noxious substances received or discharged in the territory of that State. Such a declaration shall be made in writing and shall specify which obligations are assumed.

2. Where a declaration under paragraph 1 is made prior to the entry into force of this Convention in accordance with article 46, it shall be deposited with the Secretary-General who shall after the entry into force of this Convention communicate the declaration to the Director.
3. A declaration under paragraph 1 which is made after the entry into force of this Convention shall be deposited with the Director.

4. A declaration made in accordance with this article may be withdrawn by the relevant State giving notice thereof in writing to the Director. Such a notification shall take effect three months after the Director’s receipt thereof.

5. Any State which is bound by a declaration made under this article shall, in any proceedings brought against it before a competent court in respect of any obligation specified in the declaration, waive any immunity that it would otherwise be entitled to invoke.

**Article 24**

**Organization and administration**

The HNS Fund shall have an Assembly and a Secretariat headed by the Director.

**Article 25**

**Assembly**

The Assembly shall consist of all States Parties to this Convention.

**Article 26**

The functions of the Assembly shall be:

a) to elect at each regular session its President and two Vice-Presidents who shall hold office until the next regular session;

b) to determine its own rules of procedure, subject to the provisions of this Convention;

c) to develop, apply and keep under review internal and financial regulations relating to the aim of the HNS Fund as described in article 13, paragraph 1(a), and the related tasks of the HNS Fund listed in article 15;

d) to appoint the Director and make provisions for the appointment of such other personnel as may be necessary and determine the terms and conditions of service of the Director and other personnel;

e) to adopt the annual budget prepared in accordance with article 15(b);

f) to consider and approve as necessary any recommendation of the Director regarding the scope of definition of contributing cargo;

g) to appoint auditors and approve the accounts of the HNS Fund;

h) to approve settlements of claims against the HNS Fund, to take decisions in respect of the distribution among claimants of the available amount of compensation in accordance with article 14 and to determine the terms and conditions according to which provisional payments in respect of claims shall be made with a view to ensuring that victims of damage are compensated as promptly as possible;

i) to establish a Committee on Claims for Compensation with at least 7 and not more than 15 members and any temporary or permanent subsidiary body it
may consider to be necessary, to define its terms of reference and to give it the authority needed to perform the functions entrusted to it; when appointing the members of such body the Assembly shall endeavour to secure an equitable geographical distribution of members and to ensure that the States Parties are appropriately represented; the Rules of Procedure of the Assembly may be applied, \textit{mutatis mutandis}, for the work of such subsidiary body;

j) to determine which States not party to this Convention, which Associate Members of the Organization and which intergovernmental and international non-governmental organizations shall be admitted to take part, without voting rights, in meetings of the Assembly and subsidiary bodies;

k) to give instructions concerning the administration of the HNS Fund to the Director and subsidiary bodies;

l) to supervise the proper execution of this Convention and of its own decisions;

m) to review every five years the implementation of this Convention with particular reference to the performance of the system for the calculation of levies and the contribution mechanism for domestic trade; and

n) to perform such other functions as are allocated to it under this Convention or are otherwise necessary for the proper operation of the HNS Fund.

\textbf{Article 27}

1. Regular sessions of the Assembly shall take place once every calendar year upon convocation by the Director.

2. Extraordinary sessions of the Assembly shall be convened by the Director at the request of at least one-third of the members of the Assembly and may be convened on the Director’s own initiative after consultation with the President of the Assembly. The Director shall give members at least thirty days’ notice of such sessions.

\textbf{Article 28}

A majority of the members of the Assembly shall constitute a quorum for its meetings.

\textbf{Article 29}

\textit{Secretariat}

1. The Secretariat shall comprise the Director and such staff as the administration of the HNS Fund may require.

2. The Director shall be the legal representative of the HNS Fund.

\textbf{Article 30}

1. The Director shall be the chief administrative officer of the HNS Fund. Subject to the instructions given by the Assembly, the Director shall perform those functions which are assigned to the Director by this Convention, the internal regulations of the HNS Fund and the Assembly.
2. The Director shall in particular:
   a) appoint the personnel required for the administration of the HNS Fund;
   b) take all appropriate measures with a view to the proper administration of the
      assets of the HNS Fund;
   c) collect the contributions due under this Convention while observing in
      particular the provisions of article 22, paragraph 2;
   d) to the extent necessary to deal with claims against the HNS Fund and to carry
      out the other functions of the HNS Fund, employ the services of legal,
      financial and other experts;
   e) take all appropriate measures for dealing with claims against the HNS Fund,
      within the limits and on conditions to be laid down in the internal regulations
      of the HNS Fund, including the final settlement of claims without the prior
      approval of the Assembly where these regulations so provide;
   f) prepare and submit to the Assembly the financial statements and budget
      estimates for each calendar year;
   g) prepare, in consultation with the President of the Assembly, and publish a
      report on the activities of the HNS Fund during the previous calendar year;
   and
   h) prepare, collect and circulate the documents and information which may be
      required for the work of the Assembly and subsidiary bodies.

Article 31

In the performance of their duties the Director and the staff and experts appointed
by the Director shall not seek or receive instructions from any Government or from
any authority external to the HNS Fund. They shall refrain from any action which
might adversely reflect on their position as international officials. Each State Party on
its part undertakes to respect the exclusively international character of the
responsibilities of the Director and the staff and experts appointed by the Director,
and not to seek to influence them in the discharge of their duties.

Article 32

Finances

1. Each State Party shall bear the salary, travel and other expenses of its own
description to the Assembly and of its representatives on subsidiary bodies.

2. Any other expenses incurred in the operation of the HNS Fund shall be borne by
the HNS Fund.

Article 33

Voting

The following provisions shall apply to voting in the Assembly:
   a) each member shall have one vote;
   b) except as otherwise provided in article 34, decisions of the Assembly shall be
      made by a majority vote of the members present and voting;
c) decisions where a two-thirds majority is required shall be a two-thirds majority vote of members present; and

d) for the purpose of this article the phrase “members present” means “members present at the meeting at the time of the vote”, and the phrase “members present and voting” means “members present and casting an affirmative or negative vote”. Members who abstain from voting shall be considered as not voting.

Article 34

The following decisions of the Assembly shall require a two-thirds majority:

a) a decision under article 19, paragraphs 4 or 5 to suspend or reinstate the operation of a separate account;

b) a decision under article 22, paragraph 2, not to take or continue action against a contributor;

c) the appointment of the Director under article 26(d);

d) the establishment of subsidiary bodies, under article 26(i), and matters relating to such establishment; and

e) a decision under article 51, paragraph 1, that this Convention shall continue to be in force.

Article 35

Tax exemptions and currency regulations

1. The HNS Fund, its assets, income, including contributions, and other property necessary for the exercise of its functions as described in article 13, paragraph 1, shall enjoy in all States Parties exemption from all direct taxation.

2. When the HNS Fund makes substantial purchases of movable or immovable property, or of services which are necessary for the exercise of its official activities in order to achieve its aims as set out in article 13, paragraph 1, the cost of which include indirect taxes or sales taxes, the Governments of the States Parties shall take, whenever possible, appropriate measures for the remission or refund of the amount of such duties and taxes. Goods thus acquired shall not be sold against payment or given away free of charge unless it is done according to conditions approved by the Government of the State having granted or supported the remission or refund.

3. No exemption shall be accorded in the case of duties, taxes or dues which merely constitute payment for public utility services.

4. The HNS Fund shall enjoy exemption from all customs duties, taxes and other related taxes on articles imported or exported by it or on its behalf for its official use. Articles thus imported shall not be transferred either for consideration or gratis on the territory of the country into which they have been imported except on conditions agreed by the Government of that country.

5. Persons contributing to the HNS Fund as well as victims and owners receiving compensation from the HNS Fund shall be subject to the fiscal legislation of the State
where they are taxable, no special exemption or other benefit being conferred on them in this respect.

6. Notwithstanding existing or future regulations concerning currency or transfers, States Parties shall authorize the transfer and payment of any contribution to the HNS Fund and of any compensation paid by the HNS Fund without any restriction.

**Article 36**

*Confidentiality of information*

Information relating to individual contributors supplied for the purpose of this Convention shall not be divulged outside the HNS Fund except in so far as it may be strictly necessary to enable the HNS Fund to carry out its functions including the bringing and defending of legal proceedings.

**CHAPTER IV - CLAIMS AND ACTIONS**

**Article 37**

*Limitation of actions*

1. Rights to compensation under chapter II shall be extinguished unless an action is brought thereunder within three years from the date when the person suffering the damage knew or ought reasonably to have known of the damage and of the identity of the owner.

2. Rights to compensation under chapter III shall be extinguished unless an action is brought thereunder or a notification has been made pursuant to article 39, paragraph 7, within three years from the date when the person suffering the damage knew or ought reasonably to have known of the damage.

3. In no case, however, shall an action be brought later than ten years from the date of the incident which caused the damage.

4. Where the incident consists of a series of occurrences, the ten-year period mentioned in paragraph 3 shall run from the date of the last of such occurrences.

**Article 38**

*Jurisdiction in respect of action against the owner*

1. Where an incident has caused damage in the territory, including the territorial sea or in an area referred to in article 3(b), of one or more States Parties, or preventive measures have been taken to prevent or minimize damage in such territory including the territorial sea or in such area, actions for compensation may be brought against the owner or other person providing financial security for the owner’s liability only in the courts of any such States Parties.

2. Where an incident has caused damage exclusively outside the territory, including the territorial sea, of any State and either the conditions for application of this Convention set out in article 3(c) have been fulfilled or preventive measures to prevent
or minimize such damage have been taken, actions for compensation may be brought
against the owner or other person providing financial security for the owner’s liability
only in the courts of:
   a) the State Party where the ship is registered or, in the case of an unregistered
      ship, the State Party whose flag the ship is entitled to fly; or
   b) the State Party where the owner has habitual residence or where the principal
      place of business of the owner is established; or
   c) the State Party where a fund has been constituted in accordance with article 9,
      paragraph 3.

3. Reasonable notice of any action taken under paragraph 1 or 2 shall be given to the
defendant.

4. Each State Party shall ensure that its courts have jurisdiction to entertain actions
for compensation under this Convention.

5. After a fund under article 9 has been constituted by the owner or by the insurer or
other person providing financial security in accordance with article 12, the courts of
the State in which such fund is constituted shall have exclusive jurisdiction to
determine all matters relating to the apportionment and distribution of the fund.

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Article 39

Jurisdiction in respect of action against the HNS Fund
or taken by the HNS Fund

1. Subject to the subsequent provisions of this article, any action against the HNS
Fund for compensation under article 14 shall be brought only before a court having
jurisdiction under article 38 in respect of actions against the owner who is liable for
damage caused by the relevant incident or before a court in a State Party which would
have been competent if an owner had been liable.

2. In the event that the ship carrying the hazardous or noxious substances which
caused the damage has not been identified, the provisions of article 38, paragraph 1,
shall apply mutatis mutandis to actions against the HNS Fund.

3. Each State Party shall ensure that its courts have jurisdiction to entertain such
actions against the HNS Fund as are referred to in paragraph 1.

4. Where an action for compensation for damage has been brought before a court
against the owner or the owner’s guarantor, such court shall have exclusive jurisdiction
over any action against the HNS Fund for compensation under the provisions of article
14 in respect of the same damage.

5. Each State Party shall ensure that the HNS Fund shall have the right to intervene
as a party to any legal proceedings instituted in accordance with this Convention
before a competent court of that State against the owner or the owner’s guarantor.

6. Except as otherwise provided in paragraph 7, the HNS Fund shall not be bound
by any judgement or decision in proceedings to which it has not been a party or by any
settlement to which it is not a party.
7. Without prejudice to the provisions of paragraph 5, where an action under this Convention for compensation for damage has been brought against an owner or the owner’s guarantor before a competent court in a State Party, each party to the proceedings shall be entitled under the national law of that State to notify the HNS Fund of the proceedings. Where such notification has been made in accordance with the formalities required by the law of the court seized and in such time and in such a manner that the HNS Fund has in fact been in a position effectively to intervene as a party to the proceedings, any judgement rendered by the court in such proceedings shall, after it has become final and enforceable in the State where the judgement was given, become binding upon the HNS Fund in the sense that the facts and findings in that judgement may not be disputed by the HNS Fund even if the HNS Fund has not actually intervened in the proceedings.

Article 40

Recognition and enforcement

1. Any judgement given by a court with jurisdiction in accordance with article 38, which is enforceable in the State of origin where it is no longer subject to ordinary forms of review, shall be recognized in any State Party, except:
   a) where the judgement was obtained by fraud; or
   b) where the defendant was not given reasonable notice and a fair opportunity to present the case.

2. A judgement recognized under paragraph 1 shall be enforceable in each State Party as soon as the formalities required in that State have been complied with. The formalities shall not permit the merits of the case to be re-opened.

3. Subject to any decision concerning the distribution referred to in article 14, paragraph 6, any judgement given against the HNS Fund by a court having jurisdiction in accordance with article 39, paragraphs 1 and 3 shall, when it has become enforceable in the State of origin and is in that State no longer subject to ordinary forms of review, be recognized and enforceable in each State Party.

Article 41

Subrogation and recourse

1. The HNS Fund shall, in respect of any amount of compensation for damage paid by the HNS Fund in accordance with article 14, paragraph 1, acquire by subrogation the rights that the person so compensated may enjoy against the owner or the owner’s guarantor.

2. Nothing in this Convention shall prejudice any rights of recourse or subrogation of the HNS Fund against any person, including persons referred to in article 7, paragraph 2(d), other than those referred to in the previous paragraph, in so far as they can limit their liability. In any event the right of the HNS Fund to subrogation against such persons shall not be less favourable than that of an insurer of the person to whom compensation has been paid.

3. Without prejudice to any other rights of subrogation or recourse against the HNS
Fund which may exist, a State Party or agency thereof which has paid compensation for damage in accordance with provisions of national law shall acquire by subrogation the rights which the person so compensated would have enjoyed under this Convention.

**Article 42**

**Supersession clause**

This Convention shall supersede any convention in force or open for signature, ratification or accession at the date on which this Convention is opened for signature, but only to the extent that such convention would be in conflict with it; however, nothing in this article shall affect the obligations of States Parties to States not party to this Convention arising under such convention.

**CHAPTER V - TRANSITIONAL PROVISIONS**

**Article 43**

**Information on contributing cargo**

When depositing an instrument referred to in article 45, paragraph 3, and annually thereafter until this Convention enters into force for a State, that State shall submit to the Secretary-General data on the relevant quantities of contributing cargo received or, in the case of LNG, discharged in that State during the preceding calendar year in respect of the general account and each separate account.

**Article 44**

**First session of the Assembly**

The Secretary-General shall convene the first session of the Assembly. This session shall take place as soon as possible after the entry into force of this Convention and, in any case, not more than thirty days after such entry into force.

**CHAPTER VI - FINAL CLAUSES**

**Article 45**

**Signature, ratification, acceptance, approval and accession**

1. This Convention shall be open for signature at the Headquarters of the Organization from 1 October 1996 to 30 September 1997 and shall thereafter remain open for accession.

2. States may express their consent to be bound by 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 an instrument to that effect with the Secretary-General.

**Article 46**  
**Entry into force**

1. This Convention shall enter into force eighteen months after the date on which the following conditions are fulfilled:
   a) at least twelve States, including four States each with not less than 2 million units of gross tonnage, have expressed their consent to be bound by it, and
   b) the Secretary-General has received information in accordance with article 43 that those persons in such States who would be liable to contribute pursuant to article 18, paragraphs 1(a) and (c) have received during the preceding calendar year a total quantity of at least 40 million tonnes of cargo contributing to the general account.

2. For a State which expresses its consent to be bound by this Convention after the conditions for entry into force have been met, such consent shall take effect three months after the date of expression of such consent, or on the date on which this Convention enters into force in accordance with paragraph 1, whichever is the later.

**Article 47**  
**Revision and amendment**

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

2. The Secretary-General shall convene a conference of the States Parties to this Convention for revising or amending the Convention, at the request of six States Parties or one-third of the States Parties, whichever is the higher figure.

3. Any consent to be bound by this Convention expressed after the date of entry into force of an amendment to this Convention shall be deemed to apply to the Convention as amended.

**Article 48**  
**Amendment of limits**

1. Without prejudice to the provisions of article 47, the special procedure in this article shall apply solely for the purposes of amending the limits set out in article 9, paragraph 1 and article 14, paragraph 5.

2. Upon the request of at least one half, but in no case less than six, of the States Parties, any proposal to amend the limits specified in article 9, paragraph 1, and article 14, paragraph 5, shall be circulated by the Secretary-General to all Members of the Organization and to all Contracting States.

3. 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.
4. All Contracting States, 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.

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

6. 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. It shall also take into account the relationship between the limits established in article 9, paragraph 1, and those in article 14, paragraph 5.

7. a) No amendment of the limits under this article may be considered less than five years from the date this Convention 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 a limit laid down in this Convention increased by six per cent per year calculated on a compound basis from the date on which this Convention was opened for signature.
   
   c) No limit may be increased so as to exceed an amount which corresponds to a limit laid down in this Convention multiplied by three.

8. Any amendment adopted in accordance with paragraph 5 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 no less than one-fourth of the States which 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.

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

10. All Contracting States shall be bound by the amendment, unless they denounce this Convention in accordance with article 49, paragraphs 1 and 2, at least six months before the amendment enters into force. Such denunciation shall take effect when the amendment enters into force.

11. 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 8. In the cases referred to in this paragraph, a State becomes bound by an amendment when that amendment enters into force, or when this Convention enters into force for that State, if later.
**Article 49**  
*Denunciation*

1. This Convention 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. 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. Notwithstanding a denunciation by a State Party pursuant to this article, any provisions of this Convention relating to obligations to make contributions under articles 18, 19 or article 21, paragraph 5 in respect of such payments of compensation as the Assembly may decide relating to an incident which occurs before the denunciation takes effect shall continue to apply.

**Article 50**  
*Extraordinary sessions of the Assembly*

1. Any State Party may, within ninety days after the deposit of an instrument of denunciation the result of which it considers will significantly increase the level of contributions from the remaining States Parties, request the Director to convene an extraordinary session of the Assembly. The Director shall convene the Assembly to meet not less than sixty days after receipt of the request.

2. The Director may take the initiative to convene an extraordinary session of the Assembly to meet within sixty days after the deposit of any instrument of denunciation, if the Director considers that such denunciation will result in a significant increase in the level of contributions from the remaining States Parties.

3. If the Assembly, at an extraordinary session, convened in accordance with paragraph 1 or 2 decides that the denunciation will result in a significant increase in the level of contributions from the remaining States Parties, any such State may, not later than one hundred and twenty days before the date on which the denunciation takes effect, denounce this Convention with effect from the same date.

**Article 51**  
*Cessation*

1. This Convention shall cease to be in force:
   a) on the date when the number of States Parties falls below 6; or
   b) twelve months after the date on which data concerning a previous calendar year were to be communicated to the Director in accordance with article 21, if the data shows that the total quantity of contributing cargo to the general account in accordance with article 18, paragraphs 1(a) and (c) received in the States Parties in that preceding calendar year was less than 30 million tonnes.

   Notwithstanding (b), if the total quantity of contributing cargo to the general account in accordance with article 18, paragraphs 1(a) and (c) received in the States
Parties in the preceding calendar year was less than 30 million tonnes but more than 25 million tonnes, the Assembly may, if it considers that this was due to exceptional circumstances and is not likely to be repeated, decide before the expiry of the above-mentioned twelve month period that the Convention shall continue to be in force. The Assembly may not, however, take such a decision in more than two subsequent years.

2. States which are bound by this Convention on the day before the date it ceases to be in force shall enable the HNS Fund to exercise its functions as described under article 52 and shall, for that purpose only, remain bound by this Convention.

**Article 52**

**Winding up of the HNS Fund**

1. If this Convention ceases to be in force, the HNS Fund shall nevertheless:
   a) meet its obligations in respect of any incident occurring before this Convention ceased to be in force; and
   b) be entitled to exercise its rights to contributions to the extent that these contributions are necessary to meet the obligations under (a), including expenses for the administration of the HNS Fund necessary for this purpose.

2. The Assembly shall take all appropriate measures to complete the winding up of the HNS Fund including the distribution in an equitable manner of any remaining assets among those persons who have contributed to the HNS Fund.

3. For the purposes of this article the HNS Fund shall remain a legal person.

**Article 53**

**Depositary**

1. This Convention and any amendment adopted under article 48 shall be deposited with the Secretary-General.

2. The Secretary-General shall:
   a) inform all States which have signed this Convention or acceded thereto, and all Members of the Organization, of:
      i) each new signature or deposit of an instrument of ratification, acceptance, approval or accession together with the date thereof;
      ii) the date of entry into force of this Convention;
      iii) any proposal to amend the limits on the amounts of compensation which has been made in accordance with article 48, paragraph 2;
      iv) any amendment which has been adopted in accordance with article 48, paragraph 5;
      v) any amendment deemed to have been accepted under article 48, paragraph 8, together with the date on which that amendment shall enter into force in accordance with paragraphs 9 and 10 of that article;
      vi) the deposit of any instrument of denunciation of this Convention together with the date on which it is received and the date on which the denunciation takes effect; and
   b) transmit certified true copies of this Convention to all States which have signed this Convention or acceded thereto.
3. As soon as this Convention enters into force, a certified true copy thereof shall be transmitted by the depositary to the Secretary-General of the United Nations for registration and publication in accordance with Article 102 of the Charter of the United Nations.

**Article 54**

**Languages**

This Convention 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 third 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 Convention.
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It includes the reference to the Conference documents discussed during the sessions, the names of the speakers and of the delegations.

The second part of the Index, covering the Travaux Préparatoires of the 1996 Protocol, is based on the work of the Legal Committee of IMO and of the Diplomatic Conference. In this part the names of the individual speakers were not available and, therefore, only the names of the delegations are indicated.
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