

International Convention relating to the Limitation of the Liability of Owners of Sea-Going Ships, and Protocol of Signature

(Brussels, 10 October 1957)

THE HIGH CONTRACTING PARTIES,

HAVING RECOGNISED the desirability of determining by agreement certain uniform rules relating to the limitation of the liability of owners of sea-going ships;

HAVE DECIDED to conclude a Convention for this purpose, and thereto have agreed as follows:

Article 1

(1) The owner of a sea-going ship may limit his liability in accordance with Article 3 of this Convention in respect of claims arising from any of the following occurrences, unless the occurrence giving rise to the claim resulted from the actual fault or privity of the owner:

(a) loss of life of, or personal injury to, any person being carried in the ship, and loss of, or damage to, any property on board the ship;

(b) loss of life of, or personal injury to, any other person, whether on land or on water, loss of or damage to any other property or infringement of any rights caused by the act, neglect or default of any person on board the ship for whose act, neglect or default the owner is responsible or any person not on board the ship for whose act, neglect or default the owner is responsible: Provided however that in regard to the act, neglect or default of this last class of person, the owner shall only be entitled to limit his liability when the act, neglect or default is one which occurs in the navigation or the management of the ship or in the loading, carriage or discharge of its cargo or in the embarkation, carriage or disembarkation of its passengers;

(c) any obligation or liability imposed by any law relating to the removal of wreck and arising from or in connection with the raising, removal or destruction of any ship which is sunk, stranded or abandoned (including anything which may be on board such ship) and any obligation or liability arising out of damage caused to harbour works, basins and navigable waterways.

(2) In the present Convention the expression "personal claims" means claims resulting from loss of life and personal injury; the expression "property claims" means all other claims set out in paragraph 1 of this Article.

(3) An owner shall be entitled to limit his liability in the cases set out in paragraph (1) of this Article even in cases where his liability arises, without proof of negligence on the part of the owner or of persons for whose conduct he is responsible, by reason of his ownership, possession, custody or control of the ship.

(4) Nothing in this Article shall apply:

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

(b) to claims by the Master, by members of the crew, by any servants of the owner on board the ship or by servants of the owner whose duties are connected with the ship, including the claims of their heirs, personal representatives or dependents, if under the law governing the contract of service between the owner and such servants the owner 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 3 of this Convention.

(5) If the owner of a ship is entitled to make a claim against a 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.

(6) The question upon whom lies the burden of proving whether or not the occurrence giving rise to the claim resulted from the actual fault or privity of the owner shall be determined by the *lex fori*.

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

Article 2

(1) The limit of liability prescribed by Article 3 of this Convention shall apply to the aggregate of personal claims and property claims which arise on any distinct occasion without regard to any claims which have arisen or may arise on any other distinct occasion.

(2) When the aggregate of the claims which arise on any distinct occasion exceeds the limits of liability provided for by Article 3 the total sum representing such limits of liability may be constituted as one distinct limitation fund.

(3) The fund thus constituted shall be available only for the payment of claims in respect of which limitation of liability can be invoked.

(4) After the fund has been constituted, no claimant against the fund shall be entitled to exercise any right against any other assets of the shipowner in respect of his claim against the fund, if the limitation fund is actually available for the benefit of the claimant.

Article 3

(1) The amounts to which the owner of a ship may limit his liability under Article 1 shall be:

(a) where the occurrence has only given rise to property claims an aggregate amount of 1,000 francs for each ton of the ship's tonnage;

(b) where the occurrence has only given rise to personal claims an aggregate amount of 3,100 francs for each ton of the ship's tonnage;

(c) where the occurrence has given rise both to personal claims and property claims an aggregate amount of 3,100 francs for each ton of the ship's tonnage, of which a first portion amounting to 2,100 francs for each ton of the ship's tonnage shall be exclusively appropriated to the payment of personal claims and of which a second portion amounting

to 1,000 francs for each ton of the ship's tonnage shall be appropriated to the payment of property claims: Provided however that in cases where the first portion is insufficient to pay the personal claims in full, the unpaid balance of such claims shall rank rateably with the property claims for payment against the second portion of the fund.

(2) In each portion of the limitation fund the distribution among the claimants shall be made in proportion to the amounts of their established claims.

(3) If before the fund is distributed the owner has paid in whole or in part any of the claims set out in Article 1 paragraph (1), he shall *pro tanto* be placed in the same position in relation to the fund as the claimant whose claim he has paid, but only to the extent that the claimant whose claim he has paid would have had a right of recovery against him under the national law of the State where the fund has been constituted.

(4) Where the shipowner establishes that he may at a later date be compelled to pay in whole or in part any of the claims set out in Article 1 paragraph (1) 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 the shipowner at such later date to enforce his claim against the fund in the manner set out in the preceding paragraph.

(5) For the purpose of ascertaining the limit of an owner's liability in accordance with the provisions of this Article the tonnage of a ship of less than 300 tons shall be deemed to be 300 tons.

(6) The franc mentioned in this Article shall be deemed to refer to 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 value of that currency by reference to the unit defined above at the date on which the shipowner 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.

(7) For the purpose of this convention tonnage shall be calculated as follows:

- in the case of steamships or other mechanically propelled ships there shall be taken the net tonnage with the addition of the amount deducted from the gross tonnage on account of engine room space for the purpose of ascertaining the net tonnage;

- in the case of all other ships there shall be taken the net tonnage.

Article 4

Without prejudice to the provisions of Article 3, paragraph (2), of this Convention, the rules relating to the constitution and distribution of the limitation fund, if any, and all rules of procedure shall be governed by the national law of the State in which the fund is constituted.

Article 5

(1) Whenever a shipowner is entitled to limit his liability under this Convention, and the ship or another ship or other property in the same ownership has been arrested within the

jurisdiction of a Contracting State or bail or other security has been given to avoid arrest, the Court or other competent authority of such State may order the release of the ship or other property or of the security given if it is established that the shipowner has already given satisfactory bail or security in a sum equal to the full limit of his liability under this Convention and that the bail or other security so given is actually available for the benefit of the claimant in accordance with his rights.

(2) Where, in circumstances mentioned in paragraph (1) of this Article, bail or other security has already been given:

(a) at the port where the accident giving rise to the claim occurred;

(b) at the first port of call after the accident if the accident did not occur in a port;

(c) at the port of disembarkation or discharge if the claim is a personal claim or relates to damage to cargo;

the Court or other competent authority shall order the release of the ship or the bail or other security given, subject to the conditions set forth in paragraph (1) of this Article.

(3) The provisions of paragraphs (1) and (2) of this Article shall apply likewise if the bail or other security already given is in a sum less than the full limit of liability under this Convention: Provided that satisfactory bail or other security is given for the balance.

(4) When the shipowner has given bail or other security in a sum equal to the full limit of his liability under this Convention such bail or other security shall be available for the payment of all claims arising on a distinct occasion and in respect of which the shipowner may limit his liability.

(5) Questions of procedure relating to actions brought under the provisions of this Convention and also the time limit within which such actions shall be brought or prosecuted shall be decided in accordance with the national law of the Contracting State in which the action takes place.

Article 6

(1) In this Convention the liability of the shipowner includes the liability of the ship herself.

(2) Subject to paragraph (3) of this Article, the provisions of this Convention shall apply to the charterer, manager and operator of the ship, and to the master, members of the crew and other servants of the owner, charterer, manager or operator acting in the course of their employment, in the same way as they apply to an owner himself: Provided that the total limits of liability of the owner and all such other persons in respect of personal claims and property claims arising on a distinct occasion shall not exceed the amounts determined in accordance with Article 3 of this Convention.

(3) When actions are brought against the master or against members of the crew such persons may limit their liability even if the occurrence which gives rise to the claims resulted from the actual fault or privity of one or more of such persons. If, however, the master or member of the crew is at the same time the owner, co-owner, charterer, manager or operator of the ship the provisions of this paragraph shall only apply where the

act, neglect or default in question is an act, neglect or default committed by the person in question in his capacity as master or as member of the crew of the ship.

Article 7

This Convention shall apply whenever the owner of a ship, or any other person having by virtue of the provisions of Article 6 hereof the same rights as an owner of a ship, limits or seeks to limit his liability before the Court of a Contracting State or seeks to procure the release of a ship or other property arrested or the bail or other security given within the jurisdiction of any such State.

Nevertheless, each Contracting State shall have the right to exclude, wholly or partially, from the benefits of this Convention any non-Contracting State, or any person who, at the time when he seeks to limit his liability or to secure the release of a ship or other property arrested or the bail or other security in accordance with the provisions of Article 5 hereof, is not ordinarily resident 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 of liability or release is sought which does not at the time specified above fly the flag of a Contracting State.

Article 8

Each Contracting State reserves the right to decide what other classes of ship shall be treated in the same manner as sea-going ships for the purposes of this Convention.

Article 9

This Convention shall be open for signature by the States represented at the tenth session of the Diplomatic Conference on Maritime Law.

Article 10

This Convention shall be ratified and the instruments of ratification shall be deposited with the Belgian Government which shall notify through diplomatic channels all signatory and acceding States of their deposits.

Article 11

(1) This Convention shall come into force six months after the date of deposit of at least ten instruments of ratification, of which at least five shall have been deposited by States that have each a tonnage equal or superior to one million gross tons of tonnage.

(2) For each signatory State which ratifies the Convention after the date of deposit of the instrument of ratification determining the coming into force such as is stipulated in paragraph (1) of this Article, this Convention shall come into force six months after the deposit of their instrument of ratification.

Article 12

Any State not represented at the tenth session of the Diplomatic Conference on Maritime Law may accede to this Convention.

The instruments of accession shall be deposited with the Belgian Government which shall inform through diplomatic channels all signatory and acceding States of the deposit of any such instruments.

The Convention shall come into force in respect of the acceding State six months after the date of the deposit of the instrument of accession of that State, but not before the date of entry into force of the Convention as established by Article 11(1).

Article 13

Each High Contracting Party shall have the right to denounce this Convention at any time after the coming into force thereof in respect of such High Contracting Party. Nevertheless, this denunciation shall only take effect one year after the date on which notification thereof has been received by the Belgian Government which shall inform through diplomatic channels all signatory and acceding States of such notification.

Article 14

(1) Any High Contracting Party may at the time of its ratification of or accession to this Convention or at any time thereafter declare by written notification to the Belgian Government that the Convention shall extend to any of the territories for whose international relations it is responsible. The Convention shall six months after the date of the receipt of such notification by the Belgian Government extend to the territories named therein, but not before the date of the coming into force of this Convention in respect of such High Contracting Party.

(2) Any High Contracting Party which has made a declaration under paragraph 1 of this Article extending the Convention to any territory for whose international relations it is responsible may at any time thereafter declare by notification given to the Belgian Government that the Convention shall cease to extend to such territory. This denunciation shall take effect one year after the date on which notification thereof has been received by the Belgian Government.

(3) The Belgian Government shall inform through diplomatic channels all signatory and acceding States of any notification received by it under this Article.

Article 15

Any High Contracting Party may three years after the coming into force of this Convention in respect of such High Contracting Party or at any time thereafter request that a Conference be convened in order to consider amendments to this Convention.

Any High Contracting Party proposing to avail itself of this right shall notify the Belgian Government which shall convene the Conference within six months thereafter.

Article 16

In respect of the relations between States which ratify this Convention or accede to it, this Convention shall replace and abrogate the International Convention for the unification of certain rules concerning the limitation of the liability of the owners of sea-going ships, signed at Brussels, on the 25th of August 1924.

IN WITNESS WHEREOF the Plenipotentiaries, duly authorized, have signed this Convention.

DONE at Brussels, this tenth day of October 1957, in the French and English languages, the two texts being equally authentic, in a single copy, which shall remain deposited in the archives of the Belgian Government, which shall issue certified copies.

PROTOCOL OF SIGNATURE

(1) Any State, at the time of signing, ratifying or acceding to this Convention may 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 1 paragraph (1)(c).

(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.

(c) Reservation of the right to give effect to this Convention either by giving it the force of law or by including in national legislation, in a form appropriate to that legislation, the provisions of this Convention.

Protocol amending the International Convention relating to the Limitation of the Liability of Owners of Sea-Going Ships of 10 October 1957

(Brussels, 21 December 1979)

THE CONTRACTING PARTIES TO THE PRESENT PROTOCOL,

BEING PARTIES to the International Convention relating to the limitation of the liability of owners of sea-going ships, done at Brussels on 10 October 1957,

HAVE AGREED as follows:

Article I

For the purpose of this Protocol, "Convention" means the International Convention relating to the limitation of the liability of owners of sea-going ships and its Protocol of signature, done at Brussels on 10 October 1957.

Article II

(1) Article 3, paragraph (1) of the Convention is replaced by the following:

"(1) The amounts to which the owner of a ship may limit his liability under Article 1 shall be:

(a) where the occurrence has only given rise to property claims an aggregate amount of 66.67 units of account for each ton of the ship's tonnage;

(b) where the occurrence has only given rise to personal claims an aggregate amount of 206.67 units of account for each ton of the ship's tonnage;

(c) where the occurrence has given rise both to personal claims and property claims an aggregate amount of 206.67 units of account for each ton of the ship's tonnage, of which a first portion amounting to 140 units of account for each ton of the ship's tonnage shall be exclusively appropriated to the payment of personal claims and of which a second portion amounting to 66.67 units of account for each ton of the ship's tonnage shall be appropriated to the payment of property claims. Provided however that in cases where the first portion is insufficient to pay the personal claims in full, the unpaid balance of such claims shall rank rateably with the property claims for payment against the second portion of the fund."

(2) Article 3, paragraph (6) of the Convention is replaced by the following:

"(6) The unit of account mentioned in paragraph (1) of this Article is the Special Drawing Right as defined by the International Monetary Fund. The amounts mentioned in that paragraph shall be converted into the national currency of the State in which limitation is sought on the basis of the value of that currency on the date on which the shipowner 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. The value of the national currency, in terms of the Special Drawing Right, of a 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 the national currency, in terms of the Special Drawing Right, of a State which is not a member of the International Monetary Fund, shall be calculated in a manner determined by that State.

(7) Nevertheless, a State which is not a member of the International Monetary Fund and whose law does not permit the application of the provisions of paragraph (6) of this Article may, at the time of ratification of the Protocol of 1979 or accession thereto or at any time thereafter, declare that the limits of liability provided for in this Convention to be applied in its territory shall be fixed as follows:

(a) in respect of paragraph (1), (a) of this Article, 1,000 monetary units;

(b) in respect of paragraph (1), (b) of this Article, 3,100 monetary units;

(c) in respect of paragraph (1), (c) of this Article, 3,100, 2,100 and 1,000 monetary units, respectively.

This monetary unit referred to in this paragraph corresponds to 65.5 milligrammes of gold of millesimal fineness 900'. The conversion of the amounts specified in this paragraph into the national currency shall be made according to the law of the State concerned.

(8) The calculation mentioned in the last sentence of paragraph (6) of this Article and the conversion mentioned in paragraph (7) of this Article shall be made in such a manner as to express in the national currency of the State as far as possible the same real value for the

amounts in paragraph (1) of this Article as is expressed there in units of account. States shall communicate to the depositary the manner of calculation pursuant to paragraph (6) of this Article or the result of the conversion in paragraph (7) of this Article, as the case may be, when depositing an instrument of ratification of the Protocol of 1979 or of accession thereto or when availing themselves of the option provided for in paragraph (7) of this Article and whenever there is a change in either."

(3) Article 3, paragraph (7) of the Convention shall be renumbered Article 3 paragraph (9).

Article III

This Protocol shall be open for signature by the States which have signed the Convention or which are Parties thereto.

Article IV

(1) This Protocol shall be ratified.

(2) Ratification of this Protocol by any State which is not a Party to the Convention shall have the effect of ratification of the Convention.

(3) The instruments of ratification shall be deposited with the Belgian Government.

Article V

(1) States not referred to in Article III may accede to this Protocol.

(2) Accession to this Protocol shall have the effect of accession to the Convention.

(3) The instruments of accession shall be deposited with the Belgian Government.

Article VI

(1) This Protocol shall come into force three months after the date of the deposit of six instruments of ratification or accession.

(2) For each State which ratifies this Protocol or accedes thereto after the sixth deposit, this Protocol shall come into force three months after the deposit of its instrument of ratification or accession.

Article VII

(1) Any Contracting Party may denounce this Protocol by notification to the Belgian Government.

(2) The denunciation shall take effect one year after the date on which the notification has been received by the Belgian Government.

Article VIII

(1) Each State may at the time of signature, ratification or accession or at any time thereafter declare by written notification to the Belgian Government which among the territories for whose international relations it is responsible, are those to which the present Protocol applies. The Protocol shall three months after the date of the receipt of such notification by the Belgian Government extend to the territories named therein, but not before the date of the coming into force of the Protocol in respect of such State.

(2) This extension also shall apply to the Convention if the latter is not yet applicable to these territories.

(3) Any Contracting Party which has made a declaration under paragraph (1) of this Article may at any time thereafter declare by notification given to the Belgian Government that the Protocol shall cease to extend to such territories. This denunciation shall take effect one year after the date on which notification thereof has been received by the Belgian Government.

Article IX

The Belgian Government shall notify the signatory and acceding States of the following:

1. The signatures, ratifications and accessions received in accordance with Articles III, IV and V.
2. The date on which the present Protocol will come into force in accordance with Article VI.
3. The notifications with regard to the territorial application in accordance with Article VIII.
4. The declarations and communications made in accordance with Article II.
5. The denunciations received in accordance with Article VII.

IN WITNESS WHEREOF the undersigned, duly authorized thereto, have signed this Protocol.

DONE at Brussels, this 21st day of December 1979, in the English and French languages, both texts being equally authentic, in a single copy, which shall remain deposited in the archives of the Belgian Government, which shall issue certified copies.