

# MARITIME LAW ASSOCIATION OF THE UNITED STATES.

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## DRAFT INTERNATIONAL CONVENTION FOR THE UNIFICATION OF CERTAIN RULES OF LAW RELATING TO THE LIMITATION OF THE LIABILITY OF OWNERS OF SEA-GOING VESSELS.

### ARTICLE I.

The liability of the owner of a vessel is limited to an amount equal to the value of the vessel, her freight, and the accessories of the vessel and her freight, in respect of:—

- (1) Compensation due to others by reason of damage caused, whether on land or on water, by the acts and faults of the master, crew, pilot, or any other person in the service of the vessel;
- (2) Compensation due by reason of damage caused to cargo delivered to the master to be transported, or by reason of damage caused to any goods and property on board;
- (3) Liabilities arising on bills of lading signed by or on behalf of the master;
- (4) Compensation due by reason of the breach of a contract through faults of navigation;
- (5) Liabilities arising out of any obligation to raise the wreck of a sunken vessel or any responsibilities connected therewith;
- (6) Compensation for assistance and salvage;
- (7) The contribution due from the vessel or freight to general average;
- (8) Liabilities arising on contracts entered into or acts done by the master away from the vessel's port of registry by virtue of his legal powers, where such contracts

or acts were necessary for the preservation of the vessel or the continuation of the voyage if the necessity was not caused by any insufficiency or defect in equipment or stores at the commencement of the voyage.

In no case, however, shall such liability exceed an aggregate sum of £8 per ton of the vessel's tonnage, except in the cases mentioned in paragraphs 5, 6, and 7 (above) in respect of which the limit of £8 a ton has no application.\*

#### ARTICLE 2.

The limitation of liability laid down in the foregoing Article does not apply:—

- (1) to obligations arising from faults of the owner;
- (2) to obligations arising under paragraphs 3 and 8 of Article 1 where the owner has expressly authorised or ratified the acts in question;
- (3) to obligations resulting from the engagement of the master, crew, and other persons in the service of the vessel.

When the master of a vessel is also owner, or a part owner, of the vessel, he cannot obtain limitation of liability for his faults other than his faults of navigation and the faults of persons in the service of the vessel."

#### ARTICLE 3.

An owner who avails himself of the limitation of his liability to the value of the vessel must prove that value. The valuation shall be according to the condition of the vessel at the points of time hereinafter set out:—

- (1) In cases of collision or other accidents, and as regards all claims for damages or other payments arising

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\* The "protocole de clôture" will reserve to the high contracting parties the right of not allowing liability to be limited to the value of vessel and freight in respect of damage occasioned to ports, docks, and navigable ways, or to ratify on these points only on a condition of reciprocity. It is understood that in no case can the liability for damage exceed £8 per ton.

therefrom, including claims arising out of contracts, which have arisen before the arrival of the vessel at the first port reached after the accident, and also as regards all claims for general average contributions arising out of the accident, the valuation shall be according to the condition of the vessel on her arrival at that port.

If before her arrival at that port a fresh accident, unconnected with the previous accident, has reduced the value of the vessel, any such diminution of value shall not be taken into account in calculating the liability on claims arising out of the previous accident.

As respects accidents occurring during the sojourn of a vessel at a port, the valuation shall be according to the condition of the vessel at that port after the accident;

- (2) If it is a question of claims relating to the cargo, or arising on a bill of lading, not being claims provided for in the preceding paragraph, the valuation shall be according to the condition of the vessel at the port of destination of the cargo, or, if the voyage is previously abandoned, at the time when it is abandoned.

If the cargo is destined to more than one port, and the damage arises from one cause, the valuation shall be according to the condition of the vessel at the first of those ports.

- (3) In all the other cases mentioned in Article 1, the valuation shall be according to the condition of the vessel at the end of the voyage.

#### ARTICLE 4.

The value of the freight mentioned in Article 1 includes:—

- (1) In the case mentioned in Article 3 (1) two-thirds of the gross freight accruing to the owner on account of goods on board at the time of the accident;
- (2) In the case mentioned in Article 3 (2) two-thirds of the gross freight accruing to the owner on account of

goods on board at the time of the arrival of the vessel at the port ;

- (3) In the case mentioned in Article 3 (3) two-thirds of the gross freight accruing to the owner for the voyage.

The provisions as to freight apply also to passage money and demurrage.

#### ARTICLE 5.

The accessories mentioned in Article 1 include the sums hereinafter enumerated where paid to the owner since the commencement of the voyage :—

- (1) Compensation for material damage sustained by the vessels and not yet repaired, or for loss of the freight specified in Article 4.
- (2) Compensation for general average losses, in so far as those losses consist in material damage sustained by the vessel and not yet repaired, or in loss of the freight specified in Article 4.
- (3) Two-thirds of any remuneration for assistance or salvage, without taking into account any sums allotted to the master and other persons in the service of the vessel.

Payments made or due to the owner on policies of insurance, and bonuses, subventions, and other national subsidies, are not deemed to be accessories of the vessel or of the freight.

#### ARTICLE 6.

Unless special circumstances justify another interpretation, the term "voyage," for the purpose of this Convention means the voyage for which a vessel is fitted out and equipped, or the voyage undertaken by a vessel in execution of a contract of affreightment, or the voyage which she has brought to a conclusion by a complete discharge of the goods on board, whether or not she takes on board new cargo.

## ARTICLE 7.

The various claims attaching to a single accident, or as respects which in the absence of an accident the value of a ship is ascertained in a single port, rank with one another against the amount representing the limit of the owner's liability, regard being had to the rank of their respective liens.

## ARTICLE 8.

Where death or personal injury is caused by the act or fault of the captain, crew, pilot, or any other person in the service of the vessel, the owner of the vessel is liable to the victim or his legal personal representatives, up to a maximum amount of £7 per ton of the vessel's tonnage over and above the limit of liability provided for in the preceding Articles.\*

If the victim or his legal personal representatives are not fully compensated by this amount, they rank, as regards the balance of their claims, with the other claims against the amounts specified in the preceding Articles, regard being had to the priority of their lien.

The same limitation of liability applies to passengers on the carrying ship, but does not apply to the crew or other persons in the service of that ship whose right of action in the case of death or personal injuries remains governed by the law of the ship's flag.†

## ARTICLE 9.

If the vessel is arrested in the course of her voyage, the claimant who arrests the vessel is entitled to the bail given to effect her release according to the terms on which the bail is given and his rights are not affected by subsequent events, nor

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\* The victims of one accident and their representatives rank together against the sum constituting the limit of liability.

† The protocole de clôture will contain an Article authorising the contracting Powers to reserve to themselves the right of deciding that the owner of a ship not used for carrying passengers and not exceeding 300 tons is responsible for damage due to death or personal injury in accordance with the general terms of the Convention, but without the necessity of applying to this liability the provisions of paragraph 1 of this Article.

shall the fact that a bail has been given be used to derogate from the rights of other claimants.

#### ARTICLE 10.

In the event of any action or proceeding being taken against the owner of a vessel on one of the grounds enumerated in Article 1, or Article 8, the Court may, if it thinks fit, on the application of the owner of the vessel, order that execution should not be levied on the goods of the owner other than the vessel, her freight and accessories, until such time has elapsed as may be sufficient to allow him to realise his vessel and effect a division of the proceeds amongst his creditors.

#### ARTICLE 11.

Where a person other than the owner of the vessel, or where, in the case of a charter, whether a time charter or a voyage charter or any other description of charter, the charterer is liable under one of the heads enumerated in Article 1 or Article 8, the provisions of this Convention shall apply to that person in like manner as they apply to the owner.

If in any of the circumstances specified in the preceding paragraph, the owner is himself liable, Article 4 shall have effect as though for two-thirds of the gross freight there were substituted two-thirds of the freight or hire accruing to the owner in respect of the period elapsing between the beginning of the voyage and the various points of time indicated in the said Article 4.

#### ARTICLE 12.

For the purposes of this Convention, the expression "tonnage" means, in the case of steamers and other mechanically propelled vessels, net tonnage with an addition for engine room space, and in the case of sailing vessels, net tonnage.

#### ARTICLE 13.

The provisions of this Convention shall be applied in each contracting State in cases in which one of the parties interested

belongs to another contracting State, as well as in any other cases provided for by the national laws.

But the principle formulated in the preceding paragraph does not affect the right of the contracting States not to apply the provisions of this Convention in favour of persons belonging to a non-contracting State.

#### ARTICLE 14.

This Convention does not apply to vessels of war nor to other Government vessels appropriated exclusively to a public service.

#### ARTICLE 15.

Nothing in the foregoing provisions shall be deemed to affect in any way the competence of tribunals, modes of procedure, or methods of execution authorised by the national laws.

#### ARTICLE 16.

Those contracting States in which the pound sterling is not a monetary unit reserve to themselves the right of translating the sums indicated in this Convention in terms of pounds sterling into terms of their own monetary system in round figures.\*

#### ARTICLE 17.

After an interval of, at most, two years from the day when this Convention is signed, the Belgian Government shall place itself in communication with the Governments of the High Contracting Parties which have declared themselves prepared to ratify the Convention with a view to deciding whether it should be put into force. The ratifications shall be deposited at Brussels at a date to be fixed by agreement between the said Governments. The first deposit of ratifications shall be recorded in a Protocol signed by the Representatives of the Powers which

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\* It will be better, at a later stage, to transfer this provision to the "Protocole de Clôture."

take part therein and by the Belgian Minister for Foreign Affairs. The subsequent deposit of ratifications shall be made by means of a written notification, addressed to the Belgian Government and accompanied by the instrument of ratification.

A duly certified copy of the Protocol relating to the first deposit of ratifications and also of the instruments of ratifications accompanying them shall be immediately sent by the Belgian Government, through the diplomatic channel, to the Powers who have signed this Convention, or, who have acceded to it. The said Government shall in the cases contemplated in the preceding paragraph inform them at the same time of the date on which it received the notification.

#### ARTICLE 18.

Non-signatory Powers may accede to the present Convention whether or not they have been represented at the International Conference at Brussels.

A Power which desires to accede notifies its intention in writing to the Belgian Government, forwarding to it the act of accession, which shall be deposited in the archives of the said Government.

The Belgian Government shall immediately forward to all the Powers which have signed or acceded to the Convention a duly certified copy of the notification as well as of the act of accession, mentioning the date on which it received the notification.

#### ARTICLE 19.

The present Convention applies, in the case of each Contracting State, to the Mother Country, and also to all Colonies, Possessions, or Protectorates, and all areas within the jurisdiction of a Consular Officer.

Notwithstanding the above, each Contradicting Power has the right of not applying the Convention in its self-governing Colonies or Possessions. In such cases, it shall declare its intention in the instrument of ratification or the act of accession.



Similarly, and subject to the same provisions, in so far as there exists in any Colony, Possession, or Protectorate, a special code of law for the native population and similar inhabitants, each Contracting Power has the right of not applying the Convention to such persons.

When a Power desires ultimately that the Convention should be put in operation in one of its self-governing Colonies or Possessions, or should be extended to the native population or similar inhabitants, it shall make known its wish by means of a special notification addressed in writing to the Belgian Government. This notification shall be deposited in the archives of the Belgian Government, who shall immediately transmit to the other Contracting States a duly certified copy of the notification mentioning the date upon which it was received.

#### ARTICLE 20.

The present Convention shall take effect in the case of the Powers who have taken part in the first deposit of ratifications one year after the date of the Protocol recording such deposit. As respects the Powers which ratify subsequently or which accede, and also in cases in which the Convention is ultimately put into effect in accordance with the second paragraph of Article 19, it shall take effect six months after the notifications specified in paragraph 1 of Article 17, and paragraph 2 of Article 19, have been received by the Belgian Government.

#### ARTICLE 21.

In the event of one of the Contracting Parties wishing to denounce the present Convention, the denunciation shall be notified in writing to the Belgian Government, which shall immediately communicate a duly certified copy of the notification to all the other Powers informing them of the date on which it was received.

The denunciation shall only operate in respect of the denouncing Power, and only on the expiry of one year after the notification has reached the Belgian Government.

## ARTICLE 22.

Any one of the Contracting States shall have the right three years after this Convention comes into force to call for a fresh Conference with a view to possible amendments.

Any Power exercising this right must notify its intention to the other Powers through the Belgian Government, which will make arrangements for convening the Conference.