

Transition of Shipowners' Liability Laws and Changes of P. & I. Clubs in the U. K. (Part III-1)

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I. Preface

In my previous treatises (Part I to Part II-2) on the captioned subject, I have dealt with the circumstances under which the Protection Clubs developed into the Protection and Indemnity Clubs and extended their cover, along with the transition of shipowners' liability laws (mainly the Merchant Shipping Acts), during the period from the middle of the 19th century to immediately after the end of the second world war.

Since the end of the second world war, many international maritime conventions and some international maritime civil agreements have been adopted for the purpose of international unification of maritime laws and practices. Most of these conventions and civil agreements are those relating to prevention of oil pollution or to liability or compensation for oil pollution damage. The main international maritime conventions to be dealt with in this treatise are as enumerated below.

- (1) International Convention for the Prevention of Pollution of the Sea by Oil, 1954 (hereinafter referred to as the "1954 Convention for the Prevention of Oil Pollution")
- (2) International Convention relating to the Limitation of the Liability of Owners of Sea-going Ships, 1957 (hereinafter referred to as the "1957 Convention on Shipowners' Liability")
- (3) International Convention for the Prevention of Pollution of the Sea by Oil, 1954 as amended by the Final Act of the International Conference on the Prevention of Pollution of the Sea by Oil, 1962 (hereinafter referred to as the "1962 Amendments to the 1954 Convention for the Prevention of Oil Pollution")
- (4) Amendments adopted by the IMCO Resolution A175 (VI) of October 21, 1969 to the International Convention for the Prevention of Pollution of the Sea by Oil, 1954 (hereinafter referred to as the "1969 Amendments to the 1954 Convention for the Prevention of Oil Pollution")
- (5) International Convention relating to Intervention on the high Seas in Cases of Oil Pollution Casualties, 1969 (hereinafter referred to as the "1969 Public Law Convention")
- (6) International Convention of Civil Liability for Oil Pollution Damage, 1969 (hereinafter referred to as the "1969 Liability Convention")
- (7) International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971 (Supplementary to the International Convention on Civil Liability for Oil Pollution Damage, 1969) (hereinafter referred to as the "1971 Fund Convention")

- (8) International Convention for the Prevention of Pollution from Ships, 1973 (hereinafter referred to as the "1973 Convention for the Prevention of Pollution")
- (9) Convention on Limitation of Liability for Maritime Claims, 1976 (hereinafter referred to as the "1976 Convention on Maritime Claims")
- (10) Protocol to the International Convention on Civil Liability for Oil Pollution Damage, 1969: London, November 19, 1976 (hereinafter referred to as the "1976 Protocol to the 1969 Liability Convention")
- (11) Protocol to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971: London, November 19, 1976 (hereinafter referred to as the "1976 Protocol to the 1971 Fund Convention")
- (12) Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships, 1973 (hereinafter referred to as the "1978 protocol to the 1973 Convention for the Prevention of Pollution")
- (13) Protocol amending the International Convention relating to the limitation of the Liability of Owners of Sea-going Ships (Brussels, October 10, 1957), December 21, 1979 (hereinafter referred to as the "1979 Protocol to the 1957 Convention on Shipowners' Liability")
- (14) Protocol of 1984 to amend the International Convention on Civil Liability for Oil Pollution Damage, 1969 (hereinafter referred to as the "1984 Protocol to the 1969 Liability Convention")
- (15) Protocol of 1984 to amend the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971 (hereinafter referred to as the "1984 Protocol to the 1971 Fund Convention")

In addition to the above international conventions, there are the international civil agreements as mentioned below, which will be dealt with in my succeeding treatise (Part III-2).

- (a) Tanker Owners Voluntary Agreement concerning Liability for Oil Pollution, 1969 (TOVALOP, 1969)
- (b) Contract Regarding an Interim Supplement to Tanker Liability for Oil Pollution, 1971 (CRISTAL, 1971)
- (c) Supplement of 1987 to Tanker Owners Voluntary Agreement concerning Liability for Oil Pollution, 1969 (TOVALOP Supplement, 1987)
- (d) Contract Regarding a Supplement to Tanker Liability for Oil Pollution, 1987 (Amended CRISTAL, 1987)

As seen from the numbers of the above international conventions and civil agreements, shipowners' legal liability which has undergone the most remarkable changes in the latter half of this century is that for oil pollution damage. Therefore, the transition of the British laws regarding the prevention of oil pollution and shipowners' liability for oil pollution damage will be dealt with in this treatise (Part III-1), and the changes of the cover provided by P. & I. Clubs for such liability in the U.K. in the succeeding treatise (Part III-2).

II. Transition of the British Laws regarding the Prevention of Oil Pollution and Shipowners' Liability for Oil Pollution Damage

Since 1950 a large number of the British laws regarding the prevention of oil pollution and shipowners' liability for oil pollution damage were passed, and many of them were those into which

the international conventions were incorporated. It may, therefore, be said that the United Kingdom is a country which not only has made an important contribution to the preparation of the international conventions but has immediately given effect to such conventions. For the purpose of this treatise, the laws regarding the prevention of oil pollution and the Merchant Shipping Acts regarding shipowners' liability for oil pollution damage will be explained in the order of the year of enactment as below:

1. Oil in Navigable Waters Act, 1955 (giving effect to the 1954 Convention for the Prevention of Oil Pollution)
2. Merchant Shipping (Liability of Shipowners and Others) Act, 1958 (giving effect to the 1957 Convention on Shipowners' Liability)
3. Oil in Navigable Waters Act, 1963 (giving effect to the 1962 Amendments to the 1954 Convention for the Prevention of Oil Pollution)
4. Oil in Navigable Waters Act, 1971 (giving effect to the 1969 Amendments to the 1954 Convention for the Prevention of Oil Pollution and the 1969 Public Law Convention)
5. Merchant Shipping (Oil Pollution) Act, 1971 (giving effect to the 1969 Liability Convention)
6. Prevention of Oil Pollution Act, 1971
7. Merchant Shipping Act, 1974 (giving effect to the 1971 Fund Convention)
8. Merchant Shipping Act, 1979 (giving effect to the 1976 Convention on Maritime Claims, etc.)
9. Merchant Shipping Act, 1981 (giving effect to the 1979 Protocol to the 1957 Convention on Shipowners' Liability)
10. Merchant Shipping Act, 1984 (giving effect to the International Convention on Tonnage Measurement of Ships, 1969)

The outlines of the above Acts are as mentioned below.

1. Oil in Navigable Waters Act, 1955 (giving effect to the 1954 Convention for the Prevention of Oil Pollution)

Though there was already the Oil in Navigable Waters Act, 1922, the above 1955 Act may be said to be the first Act for the prevention of oil pollution in its substance. The main provisions of the above 1955 Act are as stated below.

- (1) If any persistent oil, such as crude oil, fuel oil, lubricating oil, heavy diesel oil, etc. or oily mixture is discharged from a British ship registered in the United Kingdom (hereinafter referred to as "British Ship") into the prohibited sea area shown in the Schedule to the Act, the owner or master of the ship shall be guilty of an offence (sections 1 and 2 and the Schedule) and shall be liable to a fine not exceeding £1,000 (section 6), provided that it shall be a defence to prove that such discharge was due to securing the safety of the ship, prevention of loss of or damage to the ship or cargo thereon or salvage of human life (section 4).
- (2) The Minister of Transport (hereinafter referred to as the "Minister") may make regulations requiring British ships to be fitted with the equipment to prevent oil pollution (section 5) and regulations requiring masters of British ships to keep records of discharge or escape of oil or oily mixture (section 7).
- (3) The Minister may direct harbour authorities to provide oil reception facilities (facilities for

enabling ships using the harbour to discharge or deposit oil residues) (section 8).

- (4) Transfer of oil to or from a ship in any harbour at night is, in principle, prohibited (section 9).
- (5) In case of discharge or escape of oil or oily mixture from a ship into the waters of a harbour, the owner or master of the ship shall forthwith report the occurrence to the harbour master (section 10).

The above 1955 Act which did not apply to British government ships was amended by the Oil in Navigable Waters Act, 1963 to be mentioned in 3. below.

By the way, the Clean Air Act, 1956 was passed and a part of this Act applied to ships. If dark smoke was discharged from a ship into air beyond the allowed period in a calm water area or territorial waters of the United Kingdom, the owner, master, etc. of the ship should be guilty of an offence (sections 1 and 20) and be liable to a fine not exceeding £100 (section 27).

2. Merchant Shipping (Liability of Shipowners and Others) Act, 1958 (giving effect to the 1957 Convention on Shipowners' Liability)

Most parts of the above 1958 Act became effective on August 1, 1958. The purpose of this Act was to amend, in line with the 1957 Convention on Shipowners' Liability, the relevant sections of the following Acts:

- (a) section 503 of the Merchant Shipping Act, 1894
- (b) section 1 of the Merchant Shipping (Liability of Shipowners) Act, 1898
- (c) section 2 of the Merchant Shipping (Liability of Shipowners and Others) Act, 1900
- (d) sections 69 to 71 of the Merchant Shipping Act, 1906.

Here, the changes of the system of limitation of shipowners' liability under the Merchant Shipping Act, 1894 and subsequent Acts will be traced as below.

(1) Merchant Shipping Act, 1894

Under section 502 of the above 1894 Act, no owner of a British sea-going ship shall be liable for loss or damage happening without his actual fault or privity in the following cases:

- (a) where any goods, merchandise, etc. on board his ship are lost or damaged by reason of fire on board the ship, or
- (b) where any gold, silver, jewels, etc. loaded on board his ship without prior declaration of the true nature and value thereof are lost or damaged by reason of robbery, embezzlement, etc.,

and under section 503 of the above Act, no owner of a ship, British or foreign, shall, in case of any of the following events occurring without his actual fault or privity:

- (a) where loss of life or personal injury is caused to any person on board the ship,
- (b) where loss or damage is caused to any goods, merchandise, etc. on board the ship,
- (c) where loss of life or personal injury is caused to any person on board any other ship by reason of the improper navigation of his ship,
- (d) where loss or damage is caused to any other ship or any goods, merchandise, etc. thereon by reason of the improper navigation of his ship,

be liable to damages beyond £15 for each ton of the ship's tonnage in respect of loss of life or personal injury and beyond £8 for each ton of the ship's tonnage in respect of loss of or damage to vessels, goods, merchandise, etc. The tonnage of a steamship shall be her gross

tonnage without deduction on account of engine room, and the tonnage of a sailing ship shall be her registered tonnage.

(2) Merchant Shipping (Liability of Shipowners) Act, 1898

By section 1 of the above 1898 Act, the provisions of Part VIII (sections 502 to 509) of the Merchant Shipping Act, 1894 were extended to apply to owners, builders or other parties interested in any British ship built at any place in Her Majesty's dominions from the launching of the ship until the registration thereof.

(3) Merchant Shipping (Liability of shipowners and Others) Act, 1900

While, under section 503 (d) of the Merchant Shipping Act, 1894, the cause of the limitation of shipowners' liability was limited to loss of or damage to other ships or goods, merchandise, etc. thereon only as mentioned in (1) above, by section 1 of the above 1900 Act, it was extended to include loss of or damage to any property or infringement of any property right, whether on land or on water or whether fixed or moveable, caused by reason of the improper navigation or management of the ship.

Further, by section 2 of the above 1900 Act, the liability of any dock or canal owner, harbour authority or conservancy authority for loss of or damage to any vessel or any goods, merchandise, etc. thereon was limited to £8 for each ton of the tonnage of the largest registered British ship which had entered, within the past five years including the time of the accident for which they were liable, the area over which they performed any duty or exercised any powers.

(4) Merchant Shipping Act, 1906

By section 69 of the above 1906 Act, the tonnage of a steamship for the purpose of limitation under the Merchant Shipping Acts of the liability of owners of ships, docks or canals, etc. was amended from "the gross tonnage without deduction on account of engine room" as provided in subsection 2 (a) of section 503 of the Merchant Shipping Act, 1894 to "the registered tonnage with the addition of any engine room space deducted for the purpose of ascertaining that tonnage", and by section 71 of the above 1906 Act, the word "owner" used in the provisions of Part VIII (sections 502 to 509) of the Merchant Shipping Act, 1894 was extended to include demise-charterer.

(5) Merchant Shipping Act, 1921

By section 1 of the above 1921 Act, the word "ship" used in the provisions of part VIII of the Merchant Shipping Act, 1894 was extended to include lighter, barge, etc. used in navigation in Great Britain, with the result that an owner of lighter, barge, etc. became to be able to entertain the limitation of his liability. The above 1921 Act did not, however, affect his liability for loss of life or personal injury caused to any person carried in his lighter, barge, etc. (section 3).

(6) Pilotage Authorities (Limitation of Liability) Act, 1936

While the liability of pilotage authorities as the owners of ships was limited under the Merchant Shipping Acts, by section 1 of the Pilotage Authorities (Limitation of Liability) Act, 1936, their liability for loss of or damage to any property or any property right caused by a ship not owned by them was limited to £100 multiplied by the number of pilots holding licenses from the pilotage authority for the district of the pilotage authority at the time of occurrence of the loss or damage.

(7) Crown Proceedings Act, 1947

By section 5 of the above 1947 Act, the provisions of the Merchant Shipping Acts, 1894 to 1940 for the limitation of shipowners' liability were extended to apply for the purpose of limiting the liability of His Majesty in respect of His Majesty's ships.

Most of the Acts enumerated in (1) to (7) above were amended by the Merchant Shipping Act, 1958. The main amendments by this Act were as stated below.

- (a) (i) The limit of shipowners' liability for loss of life or personal injury and (ii) the limit of liability of owners of ships, docks or canals, harbour authorities, etc. for loss of or damage to any property or property right, which had been (i) £15 for each ton of the ship's tonnage under section 503 of the 1894 Act and (ii) £8 for each ton of the ship's tonnage under section 503 of the 1894 Act and section 2 of the 1900 Act, were amended to (i) 3,100 gold francs and (ii) 1,000 gold francs for each ton of the ship's tonnage, and in case of loss of life or personal injury, any ship of less than 300 tons were deemed to be a ship of 300 tons (section 1).
- (b) "Loss of life or personal injury caused to any person carried in any other vessel" in subsection 1 (c) of section 503 of the Merchant Shipping Act, 1894 was extended to "loss of life or personal injury caused to any person not carried in the ship", and the cause of accident which had been limited to "improper navigation of the ship" or "improper navigation or management of the ship" under subsection 1 (c) and (d) of section 503 of the above 1894 Act was extended to "the act or omission of any person (whether on board the ship or not) in the navigation or management of the ship or in the loading, carriage or discharge of its cargo or in its embarkation, carriage or disembarkation of its passengers, or any other act or omission of any person on board the ship" (subsection 1 of section 2).
- (c) It was made clear that where any obligation or liability arises (i) in connection with removal of wreck, etc. or (ii) in respect of any damage (however caused) to harbour works, etc. the occurrence giving rise to the obligation or liability should be treated as one of the occurrences mentioned in subsection 1 (b) and (d) of section 2 (subsection 2 of section 2).
- (d) It was provided that the Minister of Transport might by order make provision for setting up a fund to be used for making to harbour or conservancy authorities of payment needed to compensate them for the reduction of amounts recoverable by them due to the limitation of shipowners' liability in connection with removal of wreck, etc. as mentioned in (c) (i) above (subsections 6 and 7 of section 2), though, as a matter of fact, such order was not made.
- (e) Not only shipowners and demise-charterers as provided in the Merchant Shipping Acts, 1894 and 1906 but charterers, persons interested in or in possession of ships (in particular managers or operators of ships), masters and crew also became to enjoy the benefit of the limitation of their liability in connection of ships (section 3).
- (f) It was provided that where a ship or other property was arrested in connection with a claim for a limited liability or a security is given to prevent or obtain release from such an arrest, the court may, and in the case of the guarantee having been given in a port of a Convention country, shall order the release of the ship, property or security (section 5) and that if satisfactory security for a limited liability had been given, no judgment or decree for a claim for the liability should be enforced (section 6).
- (g) It was also provided that in making any distribution of a limitation fund in accordance with section 504 of the Merchant Shipping Act, 1894, the court might postpone the distribution of

such part of the amount to be distributed as it deems appropriate having regard to any claims which might later be established before a court of any country outside the United Kingdom and that no lien or other right in respect of any ship or property should affect the proportions of distribution of a limitation fund (section 7).

In short, one of the main objects of the Merchant Shipping (Liability of Shipowners and Others) Act, 1958 was to increase the limits of shipowners' liability which had remained unchanged for about a century since the passing of the Merchant Shipping Amendment Act, 1862 to those provided in the 1957 Convention on Shipowners' Liability. In view, however, of the fact that even if oil pollution damage of any large scale occurred, the shipowners' liability was limited by the above 1958 Act, it seems that the people did not recognize the dreadfulness of oil pollution damage at that time.

3. Oil in Navigable Waters Act, 1963 (giving effect to 1962 Amendments to the 1954 Convention for the Prevention of Oil Pollution)

At a conference in 1962 of the Inter-Governmental Maritime Consultative Organization (IMCO) which started on March 17, 1958 and was renamed the International Maritime Organization (IMO) in May 1982, the amendments to 1954 Convention for the Prevention of Oil Pollution was proposed and the 1962 Amendments to the 1954 Convention for the Prevention of Oil Pollution was adopted at a conference of the contracting states of the 1954 Convention. In accordance with the above 1962 Amendments, the Oil in Navigable Waters Act, 1955 referred to in 1 above was amended in 1963.

The main amendments by the 1963 Act were as stated below.

- (1) While, in the Schedule to the 1955 Act, the sea areas where British ships were prohibited from discharging oil or oily mixture were provided separately in respect of tankers and other ships, under the 1963 Act the prohibited sea areas in respect of tankers became to apply to all ships (subsection 1 of section 1).
- (2) It was provided that, if any oil or oily mixture was discharged anywhere at sea from a British new ship of 20,000 gross tons or more, the owner or master of the ship should be guilty of an offence, unless it was proved that by reason of special circumstances it had been impracticable or unreasonable to retain the oil or oily mixture in the ship (subsection 1 of section 2).

The above 1963 Act was amended by the Oil in Navigable Waters Act, 1971 to be mentioned in 4 below.

Incidentally, by the Order in Council made under section 1 (I) (i) of the Hovercraft Act, 1968, Part VIII of the Merchant Shipping Act, 1894 as amended by the Merchant Shipping (Liability of Shipowners and Others) Act, 1958 applied to carriage of property by hovercraft in so far as hovercraft were in navigable waters or other sea areas.

4. Oil in Navigable waters Act, 1971 (giving effect to the 1969 Amendments to the 1954 Convention for the Prevention of Oil Pollution and the 1969 Public Law Convention)

The "Torrey Canyon" case which occurred on March 18, 1967 taught people the dreadfulness of pollution of large sea area by escape of large quantity of oil from a tanker, and in view of the above case, the following three conventions were adopted in 1969:

- (1) the 1969 Amendments to the 1954 Convention for the Prevention of Oil Pollution for the purpose of further strengthening the regulations made by the 1962 Amendments to the above 1954 Convention by way of complete prohibition of discharge of oil or oily mixture from a ship into the sea,
- (2) the 1969 Public Law Convention for the purpose of giving public authorities of an adjacent country the power to take necessary actions in order to prevent or reduce oil pollution in case where an accident has occurred to or in a foreign vessel, whether in or outside the territorial waters of the country and oil from the ship will or may cause pollution on a large scale to the coast of the country, and
- (3) the 1969 Liability Convention on civil liability for oil pollution damage caused by a tanker.

For the purpose of amending the Oil in Navigable Waters Acts, 1955 and 1963 mentioned in 1 and 3 above in line with the Conventions (1) and (2) above, the Oil in Navigable Waters Act, 1971 was passed.

Under the above 1971 Act,

- (a) if any ship registered in the United Kingdom has discharged oil or oily mixture into any part of the sea in or outside the territorial waters of the United Kingdom, the owner or master of the ship shall be guilty of an offence (sections 1 and 2) and be liable for a fine not exceeding £50,000 (section 7), and
- (b) if an accident has occurred to or in a ship, whether registered in the United Kingdom or not, and oil from the ship will or may cause pollution on a large scale in the territorial waters of the United Kingdom, the Secretary of State may take necessary actions including sinking or destruction of the ship for the purpose of preventing or reducing oil pollution (section 8).

Further, under the above 1971 Act, Her Majesty may by Order in Council provide that the provision (b) above shall apply to a ship which is not a ship registered in the United Kingdom and is for the time being outside the territorial waters of the United Kingdom (subsection 10 of section 8), and by the Order in Council enacted subsequently, the provision (b) above became to apply to such a ship as from November 22, 1971.

The Oil in Navigable Waters Act, 1971 was consolidated into the Prevention of Oil Pollution Act, 1971 to be mentioned in 7 below which was passed immediately after the passing of the Oil in Navigable Waters Act, 1971.

5. Merchant Shipping (Oil Pollution) Act, 1971 (giving effect to the 1969 Liability Convention)

- (1) The above Act imposes strict liability on the owner of a ship carrying persistent oil in bulk as cargo for pollution damage caused by escape or discharge of such oil from the ship into the territorial waters of the United Kingdom, including the cost of preventive measures and further loss or damage caused by such measures (section 1).
- (2) The owner of such a ship is, however, exempted from such liability if he proves that the pollution damage
 - (a) resulted from an act of war, hostilities, civil war, insurrection or natural phenomenon of an exceptional, inevitable and irresistible nature, or
 - (b) was wholly caused by an act or omission done with intent to do damage by a third party, or
 - (c) was wholly caused by the negligence or wrongful act of a government or other authority

responsible for maintenance of lights or other navigational aids in the exercise of that function (section 2).

- (3) No claim for pollution damage shall be made against the owner of such a ship otherwise than under section 1 of the Act (limitation of the extent of damages), and no claim for pollution damage under section 1 of the Act shall be made against the servants or agents of the owner of such a ship or a person who is engaged in salvage operations of the ship under the agreement with the owner (channelling of liability to the owner of the ship) (section 3).
- (4) The owner of such a ship shall be entitled to limit his liability for pollution damage to the amounts provided in the 1969 Liability Convention, that is, in respect of any one incident, to an aggregate amount of 2,000 gold francs for each ton of the ship's tonnage as provided in subsection 2 of section 503 of the Merchant Shipping Act, 1894 as amended by the Merchant Shipping Act, 1906, but not exceeding 210 million gold francs (section 4).
- (5) Section 5 of the Act provides for the constitution of a fund by the owner of such a ship with a court in order to avail himself of the limitation of his liability and for the distribution of the fund among the claimants.
- (6) Where the owner of such a ship has constituted the above fund with a court, the court shall order the release of any ship or other property belonging to the owner which has been arrested in respect of a claim for pollution damage (section 6).
- (7) The owner of a ship (other than government ships) registered in the United Kingdom and carrying more than 2,000 tons of persistent oil in bulk as cargo shall be required to maintain insurance or other financial security in the sums fixed by applying the limits of liability to cover his liability for pollution damage (enforcement of maintaining insurance or other financial security) (sections 10 and 11). Such security is, in fact, provided by P. & I. Clubs.
- (8) Any claim for pollution damage may be brought directly against the insurer or other person providing the above financial security (section 12).

As seen in the above, this Act applied only to the liability of owners of tankers for pollution damage, and their liability for personal or property damage other than oil pollution damage and the liability of owners of ships other than tankers were still regulated by the Merchant Shipping (Liability of Shipowners and others) Act, 1958 as mentioned in 2 above.

6. Prevention of Oil Pollution Act, 1971

The Oil in Navigable Waters Acts, 1955, 1963, and 1971 as mentioned in 1, 3 and 4 above and section 5 of the Continental Shelf Act, 1964 (providing for the regulation of escape or discharge of oil from oil pipelines, etc. into sea) were consolidated into the Prevention of Oil Pollution Act, 1971.

7. Merchant Shipping Act, 1974 (giving effect to the 1971 Fund Convention)

While the 1969 Liability Convention imposed severe liability on the owners of tankers, at the conference at which the above Convention was adopted, not only the dissatisfaction that the relief of victims of oil pollution was still not sufficient under the above Convention by reason of exclusions of shipowners' liability in certain circumstances or limitation of their liability was expressed but the opinion that the economic consequences of oil pollution damage should not exclusively be borne by the shipping industry but should in part be borne by the oil cargo interest was maintained.

As a result, at the above conference, the resolution for establishment of an international fund for

compensation for oil pollution damage was passed, and the IMCO was requested to prepare the draft Convention in respect of the above resolution. Thus, the draft Fund convention prepared by the IMCO was adopted at the international conference held in Brussels on December 18, 1971.

As the 1971 Fund Convention is supplementary to the 1969 liability Convention, the Merchant shipping Act, 1974 giving effect to the 1971 Fund Convention is supplementary to the Merchant Shipping (Oil Pollution) Act, 1971 giving effect to the 1969 Liability Convention as mentioned in 5 above. The outlines of the 1974 Act are as mentioned below.

- (1) The Fund established under the 1974 Act shall give compensation to any victim of oil pollution damage, if the victim has been unable to obtain full compensation for the damage under the 1971 Act, because
 - (a) the shipowner is not liable for the damage under section 2 of the 1971 Act (except the damage caused by an act of war, civil war, etc.), or
 - (b) the shipowner or guarantor liable for the damage under the 1971 Act cannot meet his obligations in full, or
 - (c) the damage exceeds the limit of liability under the 1971 Act (section 4).
- (2) The contributors to the Fund shall be the persons who receive in the ports of any Fund Convention country the contributing oil carried by sea to such ports, that is, the oil cargo owners (section 2).
- (3) The limit of aggregate amount of compensation payable by the Fund per any one incident shall be that provided in Article 4 of the 1971 Fund Convention, that is, 450 million gold francs for the time being, including the amount of damages actually paid by the shipowner under the 1969 Liability Convention, and the above limit may be increased to 900 million gold francs by three-fourths vote at the Assembly of the Fund in future (section 4). (Subsequently, the above limit was successively increased to 675 million gold francs (or 45 million Special Drawing Rights (SDR) as defined by the IMF) in April 1979, to 787.5 million gold francs (or 52.5 million SDR) in December 1986 and to 900 million gold francs (or 60 million SDR) in December 1987.)
- (4) Unless the pollution damage resulted from the wilful misconduct of the shipowners, the Fund shall indemnify the shipowner and his guarantor for that portion of the aggregate amount of liability under the Merchant Shipping (Oil Pollution) Act, 1971 as mentioned in 5 above which is in excess of 1,500 gold francs for each ton of the ship's tonnage or 125 million gold francs, whichever is the less and which is not in excess of the limit of shipowner's liability under the above 1971 Act, that is, 2,000 gold francs for each ton of the said tonnage or 210 million gold francs, whichever is the less (section 5). This system is called Roll Back system, and as the matter of fact, the persons who are entitled to receive indemnification from the Fund under this system are P. & I. Clubs as the shipowners' guarantors.

Further, in order to give effect to the 1971 Resolution of the IMCO to limit tank size of a tanker for the purpose of preventing oil pollution of large scale (Amendments to the International Convention for the Prevention of Pollution of the Sea by Oil, 1954, concerning Tank Arrangements and Limitation of Tank Size (Resolution A. 246 (VII) adopted on October 15, 1971), the 1974 Act gives the Secretary of State the power to make regulations concerning building of tankers and to prohibit tankers which do not comply with the regulations from entering into or leaving ports in the United Kingdom or to punish the owners of such tankers with a fine (Part II).

8. Merchant Shipping Act, 1979 (giving effect to the 1976 Convention on Maritime Claims, etc.)

The above 1979 Act was passed to give effect to the following Conventions, Protocols to Conventions, etc.:

- (a) the 1973 Convention for the Prevention of Pollution
- (b) the Protocol relating to Intervention on the High Seas in cases of Pollution by Substances other than Oil, 1973
- (c) the Protocol to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974, London, November 19, 1976
- (d) the 1976 Convention on Maritime Claims
- (e) the 1976 Protocol to the 1969 Liability Convention
- (f) the 1976 Protocol to the 1971 Fund Convention
- (g) the 1978 protocol to the Convention (a) above.

The provisions of the above 1979 Act are outlined as below.

(1) Incorporation of the 1976 Convention on Maritime Claims

The 1976 Convention on Maritime Claims was incorporated in the 1979 Act (section 17) in place of Part VIII of the Merchant Shipping Act, 1894 as amended by the Merchant Shipping Act, 1958, and the owners, charterers, managers or operators of ships and salvors are entitled to limit their liability to a broad extent including the liability for removal of wreck, etc. (Articles 1 and 2 of Schedule 4, Part I, Chapter I).

However, the liability for pollution damage under the 1969 Liability Convention (or the Merchant Shipping (Oil Pollution) Act, 1971 giving effect to the above Convention) is excluded from the application of limitation of liability under the 1979 Act (Article 3 of Schedule 4, Part I, Chapter I and section 4 of Schedule 4, Part II).

The limits of their liability under the 1979 Act are as stated below.

(A) The general limits of their liability per any one incident (Article 6 of Schedule 4, Part I, Chapter II).

- (a) in respect of claims for loss of life or personal injury
 - (i) 333,000 SDR 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) above:
 - for each ton from 501 to 3,000 tons, 500 SDR
 - for each ton from 3,001 to 30,000 tons, 333 SDR
 - for each ton from 30,001 to 70,000 tons, 250 SDR
 - for each ton in excess of 70,000 tons, 167 SDR
- (b) in respect of any other claims
 - (i) 167,000 SDR 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) above:
 - for each ton from 501 to 30,000 tons, 167 SDR
 - for each ton from 30,001 to 70,000 tons, 125 SDR
 - for each ton in excess of 70,000 tons, 83 SDR

Notwithstanding the above provisions, Article 15 of the 1976 Convention on

Maritime Claims provides that a State Party may regulate by specific provisions of national law the system of limitation of liability to be applied to ships of less than 300 tons, and section 5 of Schedule 4, Part II to the 1979 Act provides that the limits of liability of the owner of a ship of less than 300 tons shall be as follows:

- (a) in respect of loss of life or personal injury, 166,667 SDR for each ton of the ship's tonnage
- (b) in respect of any other claims, 83,333 SDR for each ton of the ship's tonnage.

For the purpose of calculating the limit of liability for each ton of the ship's tonnage, the ship's tonnage shall be its gross tonnage calculated in the manners prescribed by an order made by the Secretary of State, and such order shall give effect to the regulation in Annex I of the International Convention on Tonnage Measurement of Ships, 1969 (section 5 of Schedule 4, Part II).

(B) The limit for passenger claim

In respect of claims arising from any one incident for loss of life or personal injury to passengers of a ship, the limit of shipowner's liability shall be the amount of 46,666 SDR multiplied by the number of passengers which the ship is authorized to carry according to the ship's certificate, but not exceeding 25 million SDR (Article 7 of Schedule 4, Part I, Chapter II).

The limit of shipowner's liability as mentioned above shall be converted from SDR into Sterling at the conversion rate fixed by the IMF on the date on which the limitation fund is constituted, payment is made or security is given (Article 8 of Schedule 4, Part I, Chapter II and section 7 of Schedule 4, Part II).

(2) Incorporation of the 1973 Convention for the Prevention of Pollution and the 1978 Protocol thereto

The above 1973 Convention was adopted in order to include in the substances subject to regulation not only the persistent oil as provided in the 1954 Convention for the Prevention of Oil Pollution as amended in 1962 and 1969 but every kind of substance which may cause pollution of the sea, such as chemicals, sewage, etc. The section 20 of the 1979 Act provides that Her Majesty may by Order in Council make such provision as She considers appropriate for the purpose of giving effect to the above 1973 Convention, 1978 Protocol thereto, etc., and the Order in Council made under the above provision was put in force simultaneously with the effectuation of the above 1973 Convention and 1978 Protocol thereto, i.e., on October 2, 1983.

(3) Incorporation of the 1976 Protocol to the 1969 Liability Convention

By subsection 1 of section 38 of the 1979 Act, the limits of shipowner's liability provided in section 4 of the Merchant Shipping (Oil Pollution) Act, 1971, that is, 2000 gold francs for each ton of the ship's tonnage, but not exceeding 210 million gold francs, were substituted by 133 SDR for each ton of the ship's tonnage, but not exceeding 14 million SDR.

(4) Incorporation of the 1976 protocol to the 1971 Fund Convention

By subsection 4 of section 38 of the 1979 Act, 1,500, 2,000, 125 million and 210 million gold francs provided in section 5 of the Merchant Shipping Act, 1974 in respect of the amount for which the shipowner and his guarantor shall be indemnified by the Fund were substituted by 100, 133, 8,333,000 and 14 million SDR respectively.

Extracts from the Merchant Shipping Act, 1979

17. Limitation of liability. (1) The provisions of the Convention on Limitation of Liability for Maritime Claims 1976 as set out in Part I of Schedule 4 to this Act (hereafter in this section and in Part II of that Schedule referred to as 'the Convention') shall have the force of law in the United Kingdom.

(2) The provisions of Part II of that Schedule shall have effect in connection with the Convention, and the preceding subsection shall have effect subject to the provisions of that Part.

20. Prevention of pollution from ships etc.

(1) Her Majesty may by Order in Council make such provision as She considers appropriate for the purpose of giving effect to any provision of any of the following which have been ratified by the United Kingdom, namely—

- (a) the International Convention for the Prevention of Pollution from Ships (including its protocols, annexes and appendices) which constitutes attachment 1 to the final act of the International Conference on Marine Pollution signed in London on 2nd November 1973;
- (b) the Protocol relating to Intervention on the High Seas in Cases of Marine Pollution by Substances other than Oil which constitutes attachment 2 to the final act aforesaid;
- (c) the Protocol relating to the said Convention which constitutes attachment 2 to the final act of the International Conference on Tanker Safety and Pollution Prevention signed in London on 17th February 1978;
- (d) any international agreement not mentioned in the preceding paragraphs which relates to the prevention, reduction or control of pollution of the sea or other waters by matter from ships; and in paragraph (d) of this subsection the reference to an agreement includes an agreement which provides for the modification of another agreement, including the modification of an agreement mentioned in paragraphs (a) to (c) of this subsection.

(2) The powers conferred by the preceding subsection to make provision for the purpose of giving effect to an agreement include power to provide for the provision to come into force although the agreement has not come into force.

(3) Without prejudice to the generality of subsection (1) of this section, an Order under that subsection may in particular include provision—

- (a) for applying for the purpose mentioned in that subsection any enactment or instrument relating to the pollution of the sea or other waters and any of the following enactments, namely—
 - sections 446 to 450 of the Merchant Shipping Act 1894 (which relate to dangerous goods),
 - sections 55 to 58 of the Merchant Shipping Act 1970 (which relate to investigations of shipping casualties),
 - sections 10 to 13 of and Schedules 2 and 3 to the Merchant Shipping Act 1974 (which relate to oil tankers);
- (b) with respect to the carrying out of surveys and inspections for the purpose aforesaid, the issue, duration and recognition of certificates for that purpose and the payment in connection with such a survey, inspection or certificate of fees of amounts determined with the approval of the Treasury.
- (c) for repealing the provisions of any enactment or instrument so far as it appears to Her Majesty that those provisions are not required having regard to any provision made or proposed to be made by virtue of this section;
- (d) with respect to the application of the Order to the Crown and the extra-territorial operation of any provision made by or under the Order;
- (e) for the extension of any provisions of the Order, with or without modifications, to any of the Channel

Islands, the Isle of Man, any colony and any country or place outside Her Majesty's dominions in which Her Majesty has jurisdiction in right of the government of the United Kingdom;

- (f) for imposing penalties in respect of any contravention of a provision made by or under the Order, not exceeding, in respect of any one contravention, a fine of £1,000 on summary conviction and imprisonment for two years and a fine on conviction on indictment; and
- (g) for detaining any ship in respect of which such a contravention is suspected to have occurred and, in relation to such a ship, for applying section 692 of the Merchant Shipping Act 1894 (which relates to the detention of a ship) with such modifications, if any, as are prescribed by the Order;

and nothing in any of the preceding provisions of this subsection shall be construed as prejudicing the generality of any other of those provisions and in particular paragraph (f) shall not prejudice paragraph (a).

(4) An Order under subsection (1) of this section may—

- (a) make different provision for different circumstances;
- (b) provide for exemptions from any provisions of the Order;
- (c) provide for the delegation of functions exercisable by virtue of the Order;
- (d) include such incidental, supplemental and transitional provisions as appear to Her Majesty to be expedient for the purposes of the Order;
- (e) authorise the making of regulations and other instruments for any of the purposes of this section (except the purposes of paragraphs (a) and (c) of the preceding subsection) and apply the Statutory Instruments Act 1946 to instruments made under the Order; and
- (f) provide that any enactment or instrument applied by the Order shall have effect as so applied subject to such modifications as may be specified in the Order.

(5) An Order in Council in pursuance of paragraph (b) or (d) of subsection (1) of this section may apply to areas of land or sea or other waters within the seaward limits of the territorial waters of the United Kingdom notwithstanding that the agreement in question does not relate to those areas.

(6) A draft of an Order in Council proposed to be made by virtue of subsection (1) of this section shall not be submitted to Her Majesty in Council unless the draft has been approved by a resolution of each House of Parliament or the Order is to contain a statement that it is made only for any of the following purposes, namely, the purpose of giving effect to an agreement mentioned in paragraphs (a) to (c) of that subsection, the purpose of providing as authorised by subsection (2) of this section in relation to such an agreement and the purposes of the preceding subsection, or the Order extends only to a territory mentioned in subsection (3) (e) of this section; and a statutory instrument containing an Order which contains such a statement shall be subject to annulment in pursuance of a resolution of either House of Parliament.

38. Replacement of gold francs by special drawing rights for certain purposes of Merchant Shipping (Oil Pollution) Act 1971 and Merchant Shipping Act 1974

(1) In section 4 of the Merchant Shipping (Oil Pollution) Act 1971 (which among other things enables a ship's owner to limit in certain circumstances his liability under section 1 of that Act so that it does not exceed 2,000 gold francs for each ton of the ship's tonnage or 210 million gold francs, whichever is less)—

- (a) for the words "2,000 gold francs" and "210 million gold francs" in subsection (1) (b) there shall be substituted respectively the words "133 special drawing rights" and "14 million special drawing rights"; and

(b) subsections (3) to (5) (which relate to the value of gold francs) shall cease to have effect.

(2) In section 5 of that Act (which among other things relates to payment into court of the amount of a limit determined in pursuance of that section), after subsection (2) there shall be inserted the following subsection—

(2A) A payment into court of the amount of a limit determined in pursuance of this section shall be made

- shall be conclusive evidence of those matters for the purposes of this Act;
- (c) a document purporting to be such a certificate shall, in any proceedings, be received in evidence and, unless the contrary is proved, be deemed to be such a certificate;
- (d) in section 5 (1) (a) and (b) (which specify the portion of the aggregate amount of a liability for which the said Fund is to give indemnity) for the words "1,500 francs" and "2,000 francs" there shall be substituted respectively the words "100 special drawing rights" and for the words "125 million francs" and "210 million francs" there shall be substituted respectively the words "8,333,000 special drawing rights" and "14 million special drawing rights";
- (e) at the end of section 5 there shall be inserted the following subsection—
- (8) For the purpose of converting into sterling the amount in special drawing rights adjudged to be payable by the Fund by way of indemnity in such proceedings as are mentioned in subsection (4) of this section, paragraphs (a) to (c) of subsection (13) of section 4 of this Act shall have effect—
- (a) if the liability in question has been limited in pursuance of section 5 of the Merchant Shipping (Oil Pollution) Act 1971, as if—
- (i) for the reference in the said paragraph (a) to the amount there mentioned there were substituted a reference to the amount adjudged as aforesaid, and
- (ii) for any reference to the day on which the judgment is or was given there were substituted a reference to the day on which the determination of the limit was made in pursuance of the said section 5; and
- (b) if the liability in question has not been so limited, with the modification made by paragraph (a) (i) of this subsection and as if for any reference to the day on which the judgment is or was given there were substituted a reference to the day on which the said amount was so adjudged;
- (f) in section 6 (5) (a) (which refers to provisions of the said article 4 as set out in Schedule I to that Act) after the words "as set out" there shall be inserted the words "as amended";
- (g) in Schedule I for the words "450 million francs" wherever they occur there shall be substituted the words "30 million special drawing rights" and for the words "900 million francs" there shall be substituted the words "60 million special drawing rights".
- (5) It is hereby declared that the powers to make Orders in Council conferred by section 18 of the said Act of 1971 and section 20 of the said Act of 1974 (which provide for the extension of those Acts to any of the countries mentioned in those sections and for those Acts to have effect as if references in them to the United Kingdom included references to any of those countries) include power to make Orders in Council in respect of those Acts as amended by this section.
- (6) An order made by virtue of section 52(2) of this Act which appoints a day for the coming into force of any of the preceding provisions of this section may contain such transitional provisions as the Secretary of State considers appropriate in connection with the coming into force of the provision in question.

SCHEDULE 4

Section 17, 18, 19, 49, 51(2)

CONVENTION ON LIMITATION OF LIABILITY FOR MARITIME CLAIMS 1976

PART I

TEXT OF CONVENTION

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 or operator of a seagoing ship.

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

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

5. In this Convention the liability of a shipowner shall include liability in an action brought against the vessel 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 paragraph 1 (d), (e) and (f) shall not be subject to limitation of liability to the extent that they relate to remuneration under a contract with the person liable.

ARTICLE 3

Claims excepted from limitation

The rules of this Convention shall not apply to:

- (a) claims for salvage or contribution in general average;
- (b) claims for oil pollution damage within the meaning of the International Convention on Civil Liability for Oil Pollution Damage dated 29th 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 to 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.

CHAPTER II. LIMITS OF LIABILITY

ARTICLE 6

The general limits

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

- (a) in respect of claims for loss of life or personal injury,
 - (i) 333,000 Units of Account for a ship with a tonnage not exceeding 500 tons,
 - (ii) for a ship with a tonnage in excess thereof, the following amount in addition to that mentioned in (i):
 - for each ton from 501 to 3,000 tons, 500 Units of Account;
 - for each ton from 3,001 to 30,000 tons, 333 Units of Account;
 - for each ton from 30,001 to 70,000 tons, 250 Units of Account, and
 - for each ton in excess of 70,000 tons, 167 Units of Account,
- (b) in respect of any other claims,
 - (i) 167,000 Units of Account for a ship with a tonnage not exceeding 500 tons,
 - (ii) for a ship with a tonnage in excess thereof the following amount in addition to that mentioned in (i):
 - for each ton from 501 to 30,000 tons, 167 Units of Account;
 - for each ton from 30,001 to 70,000 tons, 125 Units of Account; and
 - for each ton in excess of 70,000 tons, 83 Units of Account.

2. Where the amount calculated in accordance with paragraph 1(a) is insufficient to pay the claims mentioned therein in full, the amount calculated in accordance with paragraph 1 (b) shall be available for payment of the unpaid balance of claims under paragraph 1 (a) and such unpaid balance shall rank rateably with claims mentioned under paragraph 1 (b).

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.

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 authorised 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.

PART II

PROVISIONS HAVING EFFECT IN CONNECTION WITH CONVENTION

Interpretation

1. In this Part of this Schedule any reference to a numbered article is a reference to the article of the Convention which is so numbered.

Right to limit liability

2. The right to limit liability under the Convention shall apply in relation to any ship whether seagoing or not, and the definition of "shipowner" in paragraph 2 of Article 1 shall be construed accordingly.

Claims subject to limitation

3.— (1) Paragraph 1 (d) of Article 2 shall not apply unless provision has been made by an order of the Secretary of State for the setting up and management of a fund to be used for the making to harbour or conservancy authorities of payments needed to compensate them for the reduction, in consequence of the said paragraph 1 (d), of amounts recoverable by them in claims of the kind there mentioned, and to be maintained by contributions from such authorities raised and collected by them in respect of vessels in like manner as other sums so raised by them.

(2) Any order under sub-paragraph (1) above may contain such incidental and supplemental provisions as appear to the Secretary of State to be necessary or expedient.

(3) If immediately before the coming into force of section 17 of this Act an order is in force under section 2 (6) of the Merchant Shipping (Liability of Shipowners and Others) Act 1958 (which contains provisions corresponding to those of this paragraph) that order shall have effect as if made under this paragraph.

Claims excluded from limitation

4.— (1) The claims excluded from the Convention by paragraph (b) of Article 3 are claims in respect of any liability incurred under section 1 of the Merchant Shipping (Oil Pollution) Act 1971.

(2) The claims excluded from the Convention by paragraph (c) of Article 3 are claims made by virtue of any of sections 7 to 11 of the Nuclear Installations Act 1965.

The general limits

5.— (1) In the application of Article 6 to a ship with a tonnage less than 300 tons that article shall have effect as if—

(a) paragraph (a) (i) referred to 166,667 Units of Account; and

(b) paragraph (b) (i) referred to 83,333 Units of Account.

(2) For the purposes of Article 6 and this paragraph a ship's tonnage shall be its gross tonnage calculated in such manner as may be prescribed by an order made by the Secretary of State.

(3) Any order under this paragraph shall, so far as appears to the Secretary of State to be practicable, give effect to the regulations in Annex I of the International Convention of Tonnage Measurement of Ships 1969.

Limit for passenger claims

6.— (1) In the case of a passenger steamer within the meaning of Part III of the Merchant Shipping Act 1894 the ship's certificate mentioned in paragraph 1 of Article 7 shall be the passenger steamer's certificate issued under section 274 of that Act.

(2) In paragraph 2 of Article 7 the reference to claims brought on behalf of a person includes a reference to any claim in respect of the death of a person under the Fatal Accidents Act 1976, the Fatal Accidents (Northern Ireland) Order 1977 or the Damages (Scotland) Act 1976.

Units of Account

7.— (1) For the purpose of converting the amounts mentioned in Articles 6 and 7 from special drawing rights into sterling one special drawing right shall be treated as equal to such a sum in sterling as the International Monetary Fund have fixed as being the equivalent of one special drawing right for—

(a) the relevant date under paragraph 1 of Article 8; or

(b) if no sum has been so fixed for that date, the last preceding date for which a sum has been so fixed.

- (2) A certificate given by or on behalf of the Treasury stating—
- (a) that a particular sum in sterling has been fixed as mentioned in the preceding sub-paragraph for a particular date; or
 - (b) that no sum has been so fixed for that date and that a particular sum in sterling has been so fixed for a date which is the last preceding date for which a sum has been so fixed.

shall be conclusive evidence of those matters for the purposes of those Articles; and a document purporting to be such a certificate shall, in any proceedings, be received in evidence and, unless the contrary is proved, be deemed to be such a certificate.

9. Merchant Shipping Act, 1981 (giving effect to the 1979 Protocol to the 1957 Convention on Shipowners' Liability)

By section 1 of the above 1981 Act, the gold francs being the unit of account of the limits of liability of shipowners and others provided in the Merchant Shipping (Liability of Shipowners and Others) Act, 1958 as mentioned in 2 above was substituted by the SDR as below:

(1) liability of shipowners

3,100 gold francs for personal damage and 1,000 gold francs for property damage for each ton of the ship's tonnage provided in section 503 of the Merchant Shipping Act, 1894 as amended by the 1958 Act were substituted by 206.67 SDR for personal damage and 66.67 SDR for property damage for each ton of the ship's tonnage respectively (subsection 2 of section 1).

(2) liability of owners of docks, harbour authorities, etc.

1,000 gold francs for property damage for each ton of the tonnage of the largest ship which entered the dock, harbour, etc. during the past five years as provided in section 2 of the Merchant Shipping (Liability of Shipowners and Others) Act, 1900 as amended by the 1958 Act was also substituted by 66.67 SDR for each ton of the tonnage of such largest ship (subsection 4 of section 1).

and it was provided in subsection 3 of section 1 of the 1981 Act that the conversion of the SDR into sterling should be made at the conversion rate prevailing

- (a) if a limitation action is brought, on the date on which the limitation fund is constituted, and
- (b) in any other case, on the date of the judgment in question.

The 1976 Convention on Maritime Claims as mentioned in 8 above was not effective until December 1986. Under the circumstances, the provisions in the above 1981 Act amending the 1894 and 1900 Acts were made as the interim legislation pending the effectuation of the provisions in the Merchant Shipping Act, 1979 corresponding to the above 1976 Convention.

Extracts from the Merchant Shipping Act, 1981

1. Substitution of special drawing rights in limitation provisions of Merchant Shipping Acts

(1) Section 503 of the Merchant Shipping Act 1984, as amended by the Merchant Shipping (Liability of Shipowners and Others) Act 1958, shall have effect subject to the provisions of subsection (2) and (3) below, being provisions consequential on a Protocol signed on 21st December 1979 amending the International Convention of 1957 relating to the limitation of the liability of owners of sea-going ships.

(2) The amounts per ton to be taken into account under subsection (1) (i) and (ii) of the said section 503 shall, instead of being amounts respectively equivalent to 3,100 and 1,000 gold francs, be amounts respectively equivalent to 206.67 and 66.67 special drawing rights.

- (3) The special drawing rights referred to above are the special drawing rights as defined by the International Monetary Fund, and their equivalent shall be determined on the basis of the value of sterling—
- (a) if a limitation action is brought, on the date on which the limitation fund is constituted; and
 - (b) in any other case, on the date of the judgment in question.
- (4) The amount per ton to be taken into account under section 2 of the Merchant Shipping (Liability of Shipowners and Others) Act, 1900, as amended by the said Act of 1958, shall, instead of being an amount equivalent to 1,000 gold francs, be an amount equivalent to 66.67 special drawing rights and subsection (3) above shall apply also for the purposes of this subsection.
- (5) In section 1 (1) of the said Act of 1958 (which is in part superseded by the foregoing provisions)—
- (a) the words from “or section two” to the end of paragraph (b) shall be omitted; and
 - (b) for the words “and the number by which the amount substituted by paragraph (a) of this subsection is to be multiplied” there shall be substituted the words “the number by which the amount equivalent to 206.67 special drawing rights is to be multiplied”.
- (6) In section 5 of the said Act of 1958 (release of ship where guarantee given in Convention country) “the Convention” shall mean the Convention there mentioned with or without the amendments made by the Protocol referred to in subsection (1) above and “Convention country” shall be construed accordingly.

10. Merchant Shipping Act, 1984

The above 1984 Act was passed to incorporate into the Merchant Shipping Act the Merchant Shipping (Tonnage) Regulations, 1982 which gave effect to the International Convention on Tonnage Measurement of Ships, 1969 that became effective in July 1982.

By this Act, the ship's tonnage as the basis of calculating the limits of shipowners' liability which had been “the registered tonnage with the addition of any engine room space deducted for the purpose of ascertaining that tonnage” under subsection 2 of section 503 of the Merchant Shipping Act, 1894 as amended by the 1906 Act and subsection 2 of section 4 of the Merchant Shipping (Oil Pollution) Act, 1971 was amended to “the register tonnage but without making any deduction of any tonnage allowance for propelling machinery space” (section 12).

III Supplements

As mentioned above, almost all of the international conventions relating to the oil pollution adopted before 1984 were incorporated into the British laws.

Subsequently, the 1984 Protocol to the 1969 Liability Convention and the 1984 Protocol to the 1971 Fund Convention were adopted at the international conference held in London in April and May 1984. The purpose of these protocols was to increase the limits of shipowners' liability and compensation by the Fund under the above Conventions in view of the depreciation of monetary value and the experiences of oil pollution incidents which actually occurred during more than ten years since the adoption of the above Conventions. The contents of these Protocols are as stated below.

- (1) the 1984 Protocol to the 1969 Liability Convention as amended by the 1976 Protocol
- The limits of shipowners' liability which are 133 SDR for each ton of the ship's tonnage, but not exceeding 14 million SDR under the 1976 Protocol to the 1969 Liability Convention shall be amended to the following amounts:
- (a) 3 million SDR for a ship not exceeding 5,000 tons
 - (b) for a ship exceeding 5,000 tons but not exceeding 140,000 tons, 420 SDR for each ton of the ship's tonnage in excess of 5,000 tons in addition to 3 million SDR, and

(c) 59.7 million SDR for a ship exceeding 140,000 tons.

(2) the 1984 Protocol to the 1971 Fund Convention as amended by the 1976 Protocol

The limit of the aggregate amount of compensation payable by the Fund per any one incident (including the amount of damages actually paid by the shipowner under (1) above), which was, as mentioned in 7 above, increased from 450 million gold francs (or 30 million SDR) at the start to 675 million gold francs (or 45 million SDR) as from April 1, 1979, to 787.5 million gold francs (or 52.5 million SDR) as from december 1, 1986 and to 900 million gold francs (or 60 million SDR) as from December 1, 1987, shall be increased to 135 million SDR, and further to 200 million SDR when there are three State Parties to the above 1984 Protocol in respect of which the combined quantity of oil received by persons in such States during the preceding calendar year equalled or exceeded 600 million tons.

It cannot be anticipated when the above 1984 Protocols will become effective. The United Kingdom has not yet ratified these Protocols as at the end of December 1987. When the United Kingdom has ratified them, the necessary amendments to the British laws will naturally be made.

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