

Convention seeks to establish uniform principles and rules with respect to the limits to which ships on the international voyages might be loaded having regard to the need for safeguarding life and property at sea. Under the Convention, it is provided that no ship to which the Convention is applicable, shall proceed to sea on an international voyage after the date on which the Convention enters into force, unless it has been surveyed, marked, and provided with an International Load Line Certificate (1966) or, where appropriate, an International Load Line Exemption Certificate.

PART IX

Safety Legislation

55. The sinking of the *Titanic* in 1912 impressed on the maritime nations the need for uniform regulations for preventing collisions at sea. Conferences were held in London at the invitation of the United Kingdom Government in 1914, 1929 and 1948 for the purpose of adopting uniform measures for the safety of life at sea.

56. The existing legislation in this field is as follows :

(i) The Convention for promoting Safety of Life at Sea, London, May 31, 1929,⁹¹ and the Simla Rules, 1931 concerning safety of life at sea.⁹²

(ii) The International Convention for the Safety of Life at Sea, 1948⁹³ and the International Regulations Preventing Collisions at Sea, adopted by the 1948 Conference on Safety of Life at Sea.

91. IV Hudson, *International Legislation* (1932), 2724.

92. *British Shipping Laws Series*, Vol. 8 on "International Conventions of Merchant Shipping" by Dr. Nagendra Singh, at p. 101.

93. *Ibid.*, at p. 102.

(iii) The International Convention for Safety of Life at Sea, June 17, 1960,⁹⁴ and International Regulations for Preventing Collisions at Sea, June 17, 1960,⁹⁵ adopted by the International Conference on Safety of Life at Sea, convened in 1960 by the IMCO. This Convention and the Regulations revised the earlier conventions and regulations thoroughly. The Convention contains provision relating to construction, survey and certificate, communication, casualties, fire protection, life-saving appliances applicable to passenger and cargo ships, safety of navigation, carriage of grain, carriage of dangerous goods and nuclear ships. This Convention came into force on May 26, 1965. The Convention and the Regulations are administered by the IMCO. Amendments to the Convention respecting fire safety measures for future passenger ships were adopted by the Fifth IMCO Assembly in October 1967.

(iv) An *Ad Hoc* Sub-Committee for IMCO on revision of Simla Rules met from 23 to 27 September 1968 in order to consider all aspects of revision of the Simla Rules of 1931 which deal with safety requirements for unberthed passenger ships in pilgrim and other special trades.

(v) The IMCO has produced a revised Code of Signals related essentially to the safety of navigation and persons suitable for signalling by all means, including radio-telegraphy and radio-telephony. The Code of Signals came into force as from April 1, 1969.

(vi) An International Maritime Dangerous Goods Code governing the classification, documentation, identification and marking, labelling, packaging, storage and segregation of dangerous goods transported by sea and including provisions for fire precaution and fire-fighting, has been developed by the IMCO.

57. At the Second Conference of the UNCTAD, held in February-March 1968, Mr. Umar of Indonesia pointed

94. *Ibid.*, at p. 114.

95. *Ibid.*, at p. 260.

out before the Committee on Shipping that the Governments of the developing countries were not always in a position to give effect to certain shipping conventions, such as safety conventions, because of their lack of technical capacity and the financial implications. According to him, the developing countries were unable to ratify these conventions, in as much as they required very high standards of safety and efficiency. He further stated that the inability of developing countries to meet these standards might create difficulties for their vessels in foreign ports.⁹⁶ Mr. McQueen of the U.K. felt that this was no reason for the safety standards to be lowered or that they should differ according to whether a country was developed or developing.⁹⁷

58. The current activities of some of the international bodies relating to this matter are as follows:

(i) The IMCO has prepared (a) amendment to the 1969 Convention in relation to the carriage of shipborne navigational equipment, the use of the automatic pilot and the carriage of nautical publications, and is going to recommend them to governments for adoption. Amendments to the Convention were also prepared with a view to improving the arrangements for life-saving appliances. Preparation of a revised version of Chapter VI (Grain Rules) of the Convention is in its final stages. A number of recommendations aiming at improving the safety of navigation have been adopted by the Maritime Safety Committee, (b) also a Code of Safe Practices for Bulk Cargoes has been formulated under the aegis of the IMCO. This Code sets standards for the safe storage and carriage of bulk cargoes, including ore, ore content rates and similar materials. The Code also recommends that a

96. In his statement of Feb. 21, 1968: See UNCTAD Doc. TD/II/C.4/S.R. 15.

97. In his statement of Feb. 21, 1968: See UNCTAD Doc. TD/II/C.4/S.R.16.

Certificate stating the transportable moisture limits and the certified moisture content of the cargo shall be provided at the loading point to the shipmaster and to the appropriate authority, (c) also, in cooperation with F.A.O. and I.L.O., IMCO is compiling a Code of Safety for Fishermen and Fishing Vessels. The Code consists of two parts, of which Part B is "Code of Safety and Health Requirements for the Construction and Equipment for Fishing Vessels".

(ii) The International Chamber of Shipping has continued to cooperate with IMCO in its work on maritime safety. The Chamber has prepared tanker safety guides in relation to the carriage of both petroleum and chemicals in bulk. The draft of the Petroleum Guide has been circulated to the relevant IMCO Sub-Committee, and close liaison is being maintained in the preparation of the Chemical Guide and the international group concerned with oil tanker terminals and with classification societies, to ensure mutual compatibility with similar work being undertaken by those bodies.

(iii) The Council for Mutual Economic Assistance (CMEA) drafted regulations on working conditions and safety standards and on sanitary and living conditions on board merchant ships, in collaboration with the bodies responsible for the technical inspection and classification of the vessels of countries cooperating under the Agreement of December 15, 1961. These regulations were subsequently recommended for application to new designs of ships for use in inter-CMEA trade.

PART X

Jurisdiction in cases of Collisions between vessels

59. It has been the practice of several States to assume jurisdiction over foreign merchant ships in regard to collisions on the high seas. The jurisdiction in such cases is, however, exercised only when the foreign ship in question enters internal waters. There has been a lack of uniformity in the practice of

States as regards civil jurisdiction in collision cases involving conflict of laws.....As regards the penal jurisdiction of a State in matters of collision on the high seas, it may be said that, despite the decision of the Permanent Court of International Justice in one *Lotus case*, it is now generally agreed that criminal or disciplinary proceedings may not be instituted against the master or any other person responsible for the damage caused by his ship except before the courts of the flag State or of the State of which such person is a national. In a penal case arrest or detention of a ship, even as a measure of investigation, shall be ordered by any authorities other than those of the flag State.....There are cases where jurisdiction can be exercised even when a foreign merchant ship remains on the high seas, warships of all nations have the right to require any suspicious merchant ship on the high seas to show its flag.

60. The existing treaties and conventions on this subject are as follows :

(i) The International Convention for the Unification of Certain Rules of Law respecting Collisions between Vessels, Brussels, 1919.⁹⁸ The Convention did not decide the question of the competence of courts.

(ii) Treaty on International Commercial Navigation Law, Montevideo, March 19, 1940,⁹⁹ adopted by the Second South American Congress on Private International Law held at Montevideo from March 6 to 19, 1940. Articles 5 to 11 of the Convention provide for jurisdiction in respect of civil and criminal matters arising out of collisions between vessels.

(iii) International Convention for the Unification of Certain Rules relating to Civil Jurisdiction in Matters of

98. *British Shipping Laws Series*, Vol. 8 on "International Conventions of Merchant Shipping" by Dr. Nagendra Singh, at p. 1047. The Convention adopted on the initiative of C.M.I.

99. *Ibid.*, at p. 1099.

Collisions, Brussels, May 10, 1952.¹⁰⁰ The Convention seeks to minimize conflicts of jurisdiction in cases of collisions. The Convention provides that an action for collision between vessels can be introduced either before the Court where the defendant has his habitual residence or place of business, or before the court of the place where the defendant's vessel has been arrested or where arrest could have been effected and bail or other security has been furnished, or before the court of the place of collision, when collision has occurred within the internal waters of a State. In regard to salvage suits, the national courts generally exercise the same type of jurisdiction as they have in collision cases.

(iv) International Convention for the Unification of Certain Rules relating to Penal Jurisdiction in Matters of Collisions and other Incidents of Navigation, Brussels, May 10, 1952.¹⁰¹ The Convention provides in respect of proceeding against the master or any other person responsible for the damage caused by his ship, and in regard to arrest or detention and investigation of the ship.

(v) The Geneva Convention on the High Seas, 1958,¹⁰² adopted at the Conference on the Law of the Sea, held at Geneva. Article 11 of the Convention provides for penal jurisdiction in matters of collisions. Article 22 provides that a warship may board a foreign merchant ship on the high seas provided that there is reasonable ground for suspecting that the latter ship is engaged in piracy or in the slave trade, or that it is of the same nationality as the warship, although flying a foreign flag or refusing to show its flag. Article 23 recognizes the right to hot pursuit. The authorities of a State can authorize their warships to pursue a foreign ship even on the high seas in certain circumstances if they have reason to suspect that the ship has violated the laws and regulations of that State whilst in its internal or territorial waters.

100. *Ibid.*, at p. 1131. Adopted at the initiative of C.M.I.

101. *Ibid.*, at p. 1134. Adopted on the initiative of C.M.I.

102. *Ibid.*, at p. 1145.

PART XI

Salvage and assistance

61. The existing legislation on the subject is as follows :

(i) The International Convention for the Unification of Certain Rules of Law respecting Assistance and Salvage at Sea, Brussels, 1910.¹⁰³ The Convention deals with the problem of payment of remuneration to persons who have taken part in salvage operations. Article 2 of the Convention lays down the principle that every act of assistance or salvage which has a useful result gives rise to a claim for equitable remuneration, but in no case shall the amount to be paid exceed the value of the property salvaged. Article 3 provides that persons who have taken part in salvage operations despite the express and reasonable prohibition of the vessel assisted, are denied any right to remuneration. Article 9 provides that no remuneration is due from persons whose lives are saved, provided that nothing in the Convention shall affect national laws on the subject. Legal action is barred after the expiry of two years from the day on which the operations of assistance or salvage terminate, under Article 10. Article 11 provides that "every Master is bound, so far as he can do so without serious danger to his vessel, her crew and passengers, to render assistance to every body, even though an enemy, found at sea in danger of being lost".

(ii) Treaty on International Commercial Navigation Law, Montevideo, March 19, 1940,¹⁰⁴ adopted at the Second South American Congress on Private International Law. Articles 12 to 14 of the Convention provide in regard to the law applicable to assistance and salvage matters and the forum for settlement of disputes relating to these matters.

103. *Ibid.*, at p. 1112. Adopted on the initiative of C.M.I.

104. *Ibid.*, at p. 1099.

(iii) The 1958 Geneva Convention on the High Seas,¹⁰⁵ which in Article 12, imposes a duty on every State to require the master of a ship sailing under its flag to render assistance to persons and ships in distress at sea insofar as he can do so without serious danger to his own vessel and persons thereon.

62. It may be stated that the Legal Committee of the IMCO has sent questionnaires to governments to elucidate their practice relating to salvage of ships in distress.

PART XII

Maritime Mortgages and Liens

63. Most maritime nations assume jurisdiction in respect of maritime claims against foreign ships lying in their waters. A foreign ship which is within jurisdiction can be arrested by the local authorities to enforce a maritime claim.

64. The existing legislation on the subject is as follows :

(i) The International Convention for the Unification of Certain Rules of Law relating to Maritime Liens and Mortgages, Brussels, April 10, 1926.¹⁰⁶ The Convention recognizes a number of claims as maritime liens.

(ii) Treaty on International Commercial Navigation Law, Montevideo, March 19, 1940,¹⁰⁷ adopted by the Second South American Congress on Private International Law, held at Montevideo from March 6 to 19, 1940. Article 31 of the Convention provides for hypothecations.

105. *Ibid.*, at p. 1145.

106. *Ibid.*, at p. 1087. Adopted on the initiative of C.M.I.

107. *Ibid.*, at p. 1099.

(iii) International Convention relating to the Arrest of Sea-going Ships, Brussels, May 10, 1952.¹⁰⁸ The Convention provides for arrest of a ship by the contracting parties to secure a maritime claim. According to Article 1(2) "Arrest" in this context means "the detention of a ship by judicial process to secure a maritime claim, but does not include the seizure of a ship in execution or satisfaction of a judgment." Under Article 7(1), the Courts of the country in which a ship has been arrested may determine the case according to its merits, provided that they are empowered to do so by the domestic law of that country, or in any of the cases enumerated under the said Article. Article 1(1) of the Convention enumerates the maritime claims in respect of which a contracting State may arrest a foreign ship.

(iv) The revised Convention on Maritime Mortgages and Liens, of May 27, 1967.

65. It may be pointed out that the two Conventions on maritime liens and mortgages of April 10, 1926 and May 27, 1967 might affect the purchase and ownership of vessels by developing countries.

PART XIII

Liability of carriers

66. Mr. Georges Ripert has termed limitation of the shipowner's liability as a "fundamental principle" of maritime law.¹¹⁰ All maritime nations follow some scheme of limitation of the shipowner's liability. However, there was no

108. *Ibid.*, at p. 1126. Adopted on the initiative of C.M.I.

109. Pointed out in a Working Paper on International Shipping Legislation, prepared by the UNCTAD Secretariat : Doc. No. BD/B/C.4/15L/2.

110. *Droit Maritime*, p. 139 (4th Edn. 1952).

uniformity in the laws of these nations until 1924 as regards the limitation of liability of a shipowner for the wrongful acts of his master on any person in the service of his vessel. The principle adopted for the limitation of such liability varied from nation to nation. Some nations limited the liability of a shipowner to the value of the wreck in addition to the freight and "accessories". This want of uniformity was obviously unsound and the Comité Maritime International directed its efforts to finding a basis of common agreement consistent alike with the interests of those connected with shipping, merchants, the travelling public and underwriters.

67. The existing legislation on the subject is as follows :

- (i) The International Convention for the Unification of Certain Rules relating to the Limitation of the Liability of Owners of Sea-going Vessels, Brussels, August 29, 1924.¹¹¹ Under the Convention, the liability of the ships-owner is generally limited to the value of the vessel, its freight, and accessories; but in specified instances the shipowner may further limit his liability for property damage to a lesser amount of £8/- per ton.¹¹² Freight is always fixed at ten per cent of the value of the ship at the commencement of the voyage.¹¹³ Claimants of damages for death or personal injuries have exclusively at their disposal an additional fund of £8/- per ton, and if they are not fully satisfied, they rank equally with other claimants in the distribution of the general fund.¹¹⁴ The various claims connected with a single accident rank with one another against the amount representing the extent of the owner's liability.¹¹⁵ The Convention spe-

111. *L.N.T.S.*, Vol. 120 (1931), p. 125. In force, June 21, 1931. Adopted on the initiative of C.M.I.

112. Article 1.

113. Article 4.

114. Article 7.

115. Article 6.

cifies the time of valuation,¹¹⁶ and the method of calculation of tonnage.¹¹⁷ While the monetary unit referred to mean gold values, States have reserved the right to translate the sum in terms of their own monetary systems and to accord to the debtor the right to pay in national currency at the rate of exchange at the time of valuation.¹¹⁸ Limitation of liability is excluded with respect to obligations arising out of personal acts or faults of the shipowner and out of engagements of persons in the service of the vessel.¹¹⁹ The Convention applies to sea-going vessels belonging to a contracting State and in all other cases provided for by national laws. A contracting State, however, is free not apply the Convention in favour of nationals of non-contracting States.¹²⁰ By express provisions, the Convention does not apply to ships of war and government vessels serving exclusively a public purpose,¹²¹ nor does it affect matters before national courts.¹²²

- (ii) The International Convention relating to the Limitation of the Liability of Owners of Sea-going Ships, Brussels, October 10, 1957,¹²³ adopted on the basis of a new text of Convention on the subject, prepared by the Comité Maritime International. Under this Convention, the shipowner may limit his liability in respect of claims arising from a number of enumerated

116. Article 3.

117. Article 11.

118. Article 15.

119. Article 2.

120. Article 12.

121. Article 13.

122. Article 14.

123. See *British Shipping Laws Series*, Vol. 8 on "International Conventions of Merchant Shipping" by Dr. Nagendra Singh, at p. 1064 (1963).

instances (exclusive of salvage, contribution in general average, and contracts for personal services), unless the occurrence giving rise to the claims has resulted from the actual fault or privity of the owner.¹²⁴ Subject to certain exceptions, the same right is accorded to the Charterer, Manager or Operator of the ship and to the servants of the owner....¹²⁵ the *lex fori* determines who has the burden of proof of the owner's fault or privity.¹²⁶ The limits of liability are set out in Article 3 under which the liability is limited to the tonnage of the vessel, which is easily ascertainable, and not to the value of the vessel. Where the occurrence has given rise to property damage only, the limit is 1,000 francs per ton. Where the occurrence has given rise to claims for death and personal injuries only, the limit is 3,100 francs per ton. Where it has given rise to both property damage and personal claims, the limit is still 3,100 francs but the first 2,100 are appropriated exclusively to the payment of personal claims and the rest to claims for property damage, with unsatisfied claimants of the first category ranking equally with claimants of the second category in the distribution of the second portion of the fund. The fund must be constituted for each distinct occurrence.¹²⁷ The details of construction and distribution of the fund and all rules of procedure are matters governed by the national laws of the contracting States.¹²⁸ The Convention applies to sea-going ships,¹²⁹ but the contracting States have the right to decide what other classes of ships will be treated in

124. Article 1.

125. Article 6.

126. Article 1, Section 6.

127. Article 2.

128. Article 4.

129. Article 1, Section 1.

the same manner.¹³⁰ The Convention further applies whenever a person entitled to claim limitation seeks to limit his liability or to procure release of property before the courts of a contracting State. The contracting States, however, are free not to apply the Convention in favour of a non-contracting State, a person who has his residence or principal place of business in a non-contracting State, or ship which flies the flag of a non-contracting State.¹³¹

- (iii) International Convention relating to Stowaways, Brussels, October 10, 1957.¹³² The Convention lays down that if a stowaway is discovered in a port or at sea, the master may deliver him to the appropriate authority at the first convenient port of a contracting State and he may be sent to the State of which he claims to be a national at the shipowner's expense.
- (iv) The International Convention for the Unification of Certain Rules relating to the Carriage of Passengers by Sea, April 29, 1961,¹³³ approved at the 1961 Brussels Conference on Maritime Law. Article 6 of the Convention provides that the "liability of the carrier for the death of or personal injury to a passenger shall in no case exceed 250,000 francs, each franc consisting of 65.5 milligrams of gold of millesimal fineness 900"; that "nevertheless the national legislation of any High Contracting Party may fix as far as the carriers who are subjects of such State are concerned a higher per capita limit of liability"; and that the limits of liability therein prescribed "shall apply to the aggregate of the claims put forward by

130. Article 8.

131. Article 7.

132. See *British Shipping Laws Series*, Vol. 8 on "International Conventions of Merchant Shipping" by Dr. Nagendra Singh, at p. 1064. Adopted on the initiative of C.M.I.

133. *Ibid.*, at p. 1067.

or on behalf of any one passenger, or his personal representatives, heirs or dependants on any distinct occasion".

- (v) The International Convention on the Liability of Operators of Nuclear Ships, Brussels, May 25, 1962,¹³⁴ dealing with the problems of liability for damage resulting from the operation of atom-powered vessels. The Convention imposes absolute liability on the operation of a nuclear ship for any damage caused by a nuclear incident involving the nuclear fuel of, or radio-active products or waste in the ship.¹³⁵ This liability is limited to 1,500 million convertible gold francs in respect of any nuclear incident even if caused by the fault or privity of the operator.¹³⁶ The Convention further provides for limitation of actions,¹³⁷ jurisdiction of national courts,¹³⁸ satisfaction of judgments,¹³⁹ and settlement of disputes between contracting States either by arbitration or submission to the International Court of Justice.¹⁴⁰ The contracting States have reserved the right to deny access to their waters and harbours by any nuclear ship.¹⁴¹ The Convention applies to nuclear damage occurring in any part of the world and involving the nuclear fuel or radioactive products or waste produced in a nuclear ship flying the flag of a contracting State.¹⁴²

134. *Ibid.*, at p. 1071.

135. Article 2.

136. Article 3.

137. Article 5.

138. Article 10.

139. Article 11.

140. Article 20.

141. Article 17.

142. Article 13.

- (vi) The Protocol to amend the 1924 International Convention for the Unification of Certain Rules of Law relating to Bills of Lading, 1968.¹⁴³ The Protocol deals chiefly with raising the limits of liability of the carrier, as laid down by the 1924 Convention on the subject.

68. Dr. T. K. Thommen, in his report on "International Legislation on Shipping", has pointed out: "The vessels and cargoes are in most cases insured and therefore claims arising out of collisions or loss of or damage to cargoes are now predominantly disputes between underwriters representing the rival interests. Owing to the limitation of the shipowner's liability under these two (1924 and 1957) Conventions and owing to the immunities granted to them under the Hague Rules, the shippers are often compelled to insure the cargoes to their full value, lest they should find themselves without any adequate remedy. As a consequence, the same cargo is likely to be insured twice—once by the shipowner and again by the owner of the cargo. When claims arise in respect of the cargo, the dispute is carried on by the underwriters, albeit in the names of the shipowners and cargo owners". At the second session of the UNCTAD, held in February-March, 1968, Mt. Khalil of the U.A.R. expressed the view that the 1924 Convention was adopted at a time when most of the present developing countries were under colonial rule, so that the Conventions mainly served the shipowner's interests. According to him, the 1957 Convention also favoured the shipowners rather than the shippers. He also stated that the double insurance by the shipper and the shipowner worked to the benefit of Insurance Company and the detriment of developing countries.¹⁴⁴ Mr. McQueen of the U.K. stated that limitation of liability of the shipowner was a commonly

143. Adopted on the initiative of C.M.I.

144. In his statement of February 19, 1968 before the Fourth Committee: See UNCTAD Doc. TD/II/S.R. 14.

accepted principle applying to all means of transport. He thought that if such limitation were abolished, shippers would have to pay higher insurance premia, which would increase freight rates still further. According to him such a step would be detrimental to shippers in developed and developing countries alike.¹⁴⁵

69. The current activities of international bodies in the field of limitation of shipowner's liability are as follows:

- (i) The Legal Committee of the IMCO is likely to deal with this matter in the near future. The Committee has concentrated on the determination of the burden of liability—with all its attendant complexities—for the consequences of a casualty on the high seas leading to accidental pollution on a large scale.
- (ii) The UNIDROIT is also holding some Conferences with a view to co-ordinating the work of unification concerning the liabilities of carriers for personal injuries sustained by passengers. The Institute has also prepared a draft convention on the limitation of liability of owners of inland ships, and a draft convention on the liability of the carrier of goods by inland ships.

PART XIV

State immunity

70. In view of the increasing practice of governments of owning or operating a large number of merchant ships, the question of the jurisdictional immunities of these ships is of practical importance.

71. The existing legislation on this matter is as follows:

- (i) International Convention for the Unification of Certain Rules relating to the Immunity of State-

145. *Ibid.*, in his statement of Feb. 12, 1968, Doc. TD/II/C. 4/S.R. 15.