



Number 35 of 1996

MERCHANT SHIPPING (LIABILITY OF SHIPOWNERS AND OTHERS) ACT, 1996

AN ACT TO GIVE THE FORCE OF LAW TO THE CONVENTION ON LIMITATION OF LIABILITY FOR MARITIME CLAIMS, 1976, DONE AT LONDON ON THE 19th DAY OF NOVEMBER, 1976, THE CONVENTION RELATING TO THE CARRIAGE OF PASSENGERS AND THEIR LUGGAGE BY SEA, 1974, DONE AT ATHENS ON THE 13th DAY OF DECEMBER, 1974, AS AMENDED BY THE PROTOCOL THERETO DONE AT LONDON ON THE 19th DAY OF NOVEMBER, 1976, THE INTERNATIONAL CONVENTION FOR THE UNIFICATION OF CERTAIN RULES OF LAW RELATING TO BILLS OF LADING DONE AT BRUSSELS ON THE 25th DAY OF AUGUST, 1924, AS AMENDED BY THE PROTOCOLS THERETO DONE AT BRUSSELS ON THE 23rd DAY OF FEBRUARY, 1968, AND THE 21st DAY OF DECEMBER, 1979, RESPECTIVELY, AND TO PROVIDE FOR RELATED MATTERS. [14th December, 1996]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART I

PRELIMINARY AND GENERAL

1.—(1) This Act may be cited as the Merchant Shipping (Liability of Shipowners and Others) Act, 1996.

Short title, commencement, collective citation and construction.

(2) This Act shall come into operation on such day or days as by order or orders made by the Minister under this section may be fixed therefor, either generally or with reference to a particular purpose or provision and different days may be fixed for different purposes and different provisions.

(3) The Merchant Shipping Acts, 1894 to 1993, and this Act may be cited together as the Merchant Shipping Acts, 1894 to 1996, and shall be construed together as one.

2.—(1) In this Act, unless the context otherwise requires—

Interpretation generally.

[No. 35.] *Merchant Shipping (Liability of Shipowners and Others) Act, 1996.* [1996.]

Pr.I S.2

“the Central Bank” means the Central Bank of Ireland;

“the Minister” means the Minister for the Marine.

(2) (a) In this Act a reference to a section or Schedule is a reference to a section of, or a Schedule to, this Act unless it is indicated that reference to some other enactment is intended.

(b) In this Act a reference to a subsection or paragraph is a reference to a subsection or paragraph of the provision in which the reference occurs, unless it is indicated that reference to some other provision is intended.

(c) In this Act a reference to any other enactment is a reference to that enactment as amended, extended or adapted by or under any subsequent enactment.

Repeals.

3.—Each enactment mentioned in *column (2)* of the *Fourth Schedule* is hereby repealed to the extent specified in *column (3)* of that Schedule.

Orders.

4.—(1) The Minister may by order amend or revoke an order made by him or her under this Act (other than an order under *section 1 (2)*) but including an order under this subsection).

(2) An order under *subsection (1)* shall be made in the like manner and its making shall be subject to the like (if any) consents and conditions as the order that it is amending or revoking.

(3) A reference in this Act to an order in force shall, as respects such an order that is amended by an order in force under this section, be construed as a reference to the first-mentioned order as so amended.

(4) An order under this Act (other than an order under *section 1 (2)*) shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling such order is passed by either such House within the next twenty-one days on which that House has sat after the order is laid before it, the order shall be annulled accordingly but without prejudice to the validity of anything previously done thereunder.

Expenses.

5.—The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Finance, be paid out of moneys provided by the Oireachtas.

PART II

CONVENTION ON LIMITATION OF LIABILITY FOR MARITIME CLAIMS, 1976

Interpretation (*Part II*).

6.—In this Part—

“Contracting State” means a state that is a party to the 1976 Convention;

[1996.] *Merchant Shipping (Liability of Shipowners and Others) Act, 1996.* [No. 35.]

“the 1976 Convention” means the Convention on Limitation of Liability for Maritime Claims, 1976, done at London on the 19th day of November, 1976. Pr.II S.6

7.—(1) Subject to the provisions of this Part, the 1976 Convention shall have the force of law in the State and judicial notice shall be taken thereof. 1976 Convention to have the force of law.

(2) For convenience of reference there is set out in the *First Schedule* the text in the English language of the 1976 Convention.

8.—The Minister may by order declare that any state specified in the order is a Contracting State and such an order that is in force shall be evidence that that state is a Contracting State. Declarations as respects states which are parties to the 1976 Convention.

9.—References in the 1976 Convention to a ship shall be construed as including references to any structure (whether completed or in the course of completion) launched and intended for use in navigation as a ship or a part of a ship. Construction of references to ship in 1976 Convention.

10.—The right to limit liability under the 1976 Convention shall apply in relation to any ship whether seagoing or not and the definition of “shipowner” in paragraph 2 of Article 1 of that Convention shall be construed accordingly. Right to limit liability extends to non-seagoing ships.

11.—(1) Notwithstanding paragraph 1 (*d*) or 1 (*e*) of Article 2 of the 1976 Convention, the right to limit liability under that Convention shall not apply to claims (including claims under Part IV of the Act of 1993) 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 a ship and Article 3 (claims excepted from limitation) of that Convention shall be construed accordingly. Restriction on right to limit liability.

(2) *Subsection (1)* shall have effect in lieu of section 53 of the Act of 1993.

(3) In this section “the Act of 1993” means the Merchant Shipping (Salvage and Wreck) Act, 1993.

12.—The reference in Article 3 of the 1976 Convention to a nuclear ship includes a reference to a ship carrying nuclear material (whether or not the ship is powered by such material). Construction of reference to nuclear ship in Article 3 of 1976 Convention.

13.—(1) For the purpose of the limits of liability specified in Articles 6 and 7 of the 1976 Convention, the value in the currency of the State of the unit of account specified in that Convention shall be taken to be the value, ascertained in accordance with Article 8 of that Convention, in that currency of such a unit of account on the relevant day specified in the said Article or, if its value on that day cannot be so ascertained, its value in that currency on the latest day before such day on which it can be so ascertained. Conversion of amounts in units of account into currency of the State for the purposes of 1976 Convention.

(2) For the purposes of this section a certificate purporting to be signed by an officer of the Central Bank and stating that—

[No. 35.] *Merchant Shipping (Liability of Shipowners and Others) Act, 1996.* [1996.]

Pr.II S.13

- (a) a specified amount in the currency of the State is the value of such a unit of account on a specified day, or
- (b) the value in the currency of the State of such a unit of account on a specified day cannot be ascertained in accordance with the 1976 Convention and that a specified amount in the currency of the State is the value, calculated in accordance with that Convention, of such a unit of account on a specified day (being the latest day before the first-mentioned specified day on which such value can be ascertained as aforesaid),

shall be admissible as evidence of the facts stated in the certificate.

Rate of interest to be applied for purposes of Article 11 of 1976 Convention.

14.—The Minister may, with the consent of the Minister for Finance, prescribe by order the rate of interest to be applied for the purposes of paragraph 1 of Article 11 of the 1976 Convention.

Power of court to stay proceedings where fund is constituted.

15.—Where a fund is constituted with a court in accordance with Article 11 of the 1976 Convention for the payment of claims arising out of any occurrence, the court may stay any proceedings relating to any claim arising out of that occurrence which are pending in that court, or any court of lower jurisdiction to that court, against the person by whom the fund has been constituted.

Provision with respect to liens or other rights in respect of ship or property.

16.—No lien or other right in respect of any ship or property shall affect the proportions in which under Article 12 of the 1976 Convention the fund mentioned in that Article is distributed among the several claimants concerned.

Submission to jurisdiction of court deemed in certain circumstances.

17.—Where the release of a ship or other property is ordered under paragraph 2 of Article 13 of the 1976 Convention the person on whose application it is ordered to be released shall be deemed to have submitted to the jurisdiction of the court to adjudicate on the claim for which the ship or property was arrested or attached.

PART III

CONVENTION RELATING TO THE CARRIAGE OF PASSENGERS AND THEIR LUGGAGE BY SEA, 1974

Interpretation (*Part III*).

18.—In this Part—

“the 1974 Convention” means the Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974, done at Athens on the 13th day of December, 1974, and references to that Convention shall, unless the context otherwise requires, be construed as references to that Convention as amended by the 1976 Protocol;

“the 1976 Protocol” means the Protocol to the 1974 Convention done at London on the 19th day of November, 1976.

1974 Convention and 1976 Protocol to have the force of law.

19.—(1) Subject to the provisions of this Part, the 1974 Convention and the 1976 Protocol shall have the force of law in the State and judicial notice shall be taken thereof.

[1996.] *Merchant Shipping (Liability of Shipowners and Others) Act, 1996.* [No. 35.]

(2) For convenience of reference there are set out in *Parts I and II*, respectively, of the *Second Schedule*, the texts in the English language of the 1974 Convention and the 1976 Protocol. Pr.III S.19

20.—The Minister may by order declare that any state specified in the order is a party to—

Declarations as respects states which are parties to 1974 Convention and 1976 Protocol.

(a) the 1974 Convention, or

(b) both that Convention and the 1976 Protocol,

and such an order that is in force shall be evidence that that state is such a party.

21.—For the purposes of paragraph 2 of Article 2 of the 1974 Convention, provisions of such an international convention as is mentioned in that paragraph which, apart from this section, do not have mandatory application to carriage by sea shall be treated as having mandatory application to carriage by sea if it is stated in the contract of carriage for the carriage in question that those provisions are to apply in connection with the carriage.

Provision as respects non-application of 1974 Convention by Article 2 (2) thereof.

22.—The reference to the law of the court in Article 6 of the 1974 Convention shall be construed as a reference to the Civil Liability Act, 1961.

Construction of reference in 1974 Convention to law of the court.

23.—The Minister may by order provide that, in relation to a carrier whose principal place of business is in the State, paragraph 1 (inserted by the 1976 Protocol) of Article 7 of the 1974 Convention shall have effect with the substitution for the monetary limit specified in that paragraph of a higher monetary limit specified in the order (which shall not be lower than the monetary limit specified in paragraph 1 of Article 7 of the Convention referred to in *section 7*).

Monetary limit under Article 7 of the 1974 Convention: power to increase as against certain carriers.

24.—(1) For the purpose of determining the amount of damages that may be awarded pursuant to the 1974 Convention by any court or other tribunal in proceedings in which the provisions of Article 7 or 8 of that Convention fall to be applied, the value in the currency of the State of a unit of account specified in that Convention shall be taken to be the value, ascertained in accordance with that Convention, in that currency of such of a unit of account on the day of the award or, if its value on that day cannot be so ascertained, its value in that currency on the latest day before such day on which it can be so ascertained.

Conversion of amounts in units of account into currency of the State for purposes of 1974 Convention.

(2) For the purposes of this section, a certificate purporting to be signed by an officer of the Central Bank and stating that—

(a) a specified amount in the currency of the State is the value of such a unit of account on a specified day, or

(b) the value in the currency of the State of such a unit of account on a specified day cannot be ascertained in accordance with the 1974 Convention and that a specified amount in the currency of the State is the value, calculated in accordance with that Convention, of such a unit of account on a specified day (being the latest day before

[No. 35.] *Merchant Shipping (Liability of Shipowners and Others) Act, 1996.* [1996.]

Pt.III S.24

the first-mentioned specified day on which such value can be ascertained as aforesaid),

shall be admissible as evidence of the facts stated in the certificate.

Application of 1974 Convention where defendant a national of non-Protocol state.

25.—(1) If, as respects the application, by virtue of Article 2 of the 1974 Convention, of the provisions of that Convention in particular proceedings, any state referred to in that Article is not a party to the 1976 Protocol, the provisions of that Convention, without the amendments thereof effected by the said Protocol, shall apply in relation to any defendant in those proceedings who is a national of the said state.

(2) For the purposes of such application of the provisions of the 1974 Convention in relation to a defendant aforesaid, the official value in the currency of the State of a franc referred to in Article 9 of that Convention (“the gold franc”) shall be taken to be the official value in that currency of the gold franc on the day of the award concerned or, if its value on that day cannot be ascertained, on the latest day before such day on which it can be ascertained.

(3) For the purposes of *subsection (2)*, a certificate purporting to be signed by an officer of the Central Bank and stating that—

(a) a specified amount in the currency of the State is the value of a gold franc on a specified day, or

(b) the value in the currency of the State of a gold franc on a specified day cannot be ascertained and that a specified amount in the currency of the State is the value of a gold franc on a specified day (being the latest day before the first mentioned specified day on which such value can be ascertained),

shall be admissible as evidence of the facts stated in the certificate.

Construction of reference in 1974 Convention to contract of carriage.

26.—A reference in the 1974 Convention to a contract of carriage does not include a reference to a contract of carriage which is not for reward.

Powers of court where liability limited under 1974 Convention.

27.—A court before which proceedings are brought in pursuance of Article 17 of the 1974 Convention to enforce a liability which is limited by virtue of Article 12 of that Convention may at any stage of the proceedings make such order as appears to the court to be just and equitable having regard to the provisions of the said Article 12 and to any other proceedings which have been or are likely to be begun in the State or elsewhere to enforce the liability in whole or in part; without prejudice to the generality of the foregoing such a court shall, where the liability is or may be partly enforceable in other proceedings in the State or elsewhere, have jurisdiction to award an amount less than the court would have awarded if the limitation applied solely to the proceedings before the court or to make any part of its award conditional on the results of any other proceedings.

Action for damages under 1974 Convention deemed to be action founded on tort.

28.—(1) An action for damages under the 1974 Convention (“a 1974 Convention action”) shall be deemed for the purposes of every enactment and rule of law to be an action founded on tort.

[1996.] *Merchant Shipping (Liability of Shipowners and Others) Act, 1996.* [No. 35.]

(2) *Subsection (1)* shall not have the effect of applying to a 1974 Convention a provision of an enactment or a rule of law that is inconsistent with a provision of the 1974 Convention. Pt.III S.28

29.—Nothing in this Part shall prejudice the operation of *Part II* of this Act (which limits a shipowner's liability in certain cases of loss of life, injury or damage). Saving as respects operation of *Part II*.

PART IV

CARRIAGE OF GOODS BY SEA

30.—(1) In this Part—

Interpretation (*Part IV*).

“the 1924 Convention” means the International Convention for the unification of certain rules of law relating to bills of lading done at Brussels on the 25th day of August, 1924, and references to that Convention shall be construed, other than in *paragraph (a) of subsection (2)*, as references to that Convention as amended by the 1968 and 1979 Protocols;

“the 1968 Protocol” means the Protocol to the 1924 Convention done at Brussels on the 23rd day of February, 1968;

“the 1979 Protocol” means the Protocol to the 1924 Convention done at Brussels on the 21st day of December, 1979;

“the Rules” means Articles I to X of the 1924 Convention.

(2) In this Part and Article X of the Rules, “Contracting State” means a state that is a party to any of the following—

- (a) the 1924 Convention,
- (b) the 1968 Protocol,
- (c) the 1979 Protocol,

whether generally as respects its territory or as respects any place or territory specified in an order under *section 32*, and shall, where it is such a party only in respect of a place or territory aforesaid, be construed so that this Part and the Rules shall have effect only in relation to that place or territory.

31.—(1) Subject to the provisions of this Part, the Rules shall have the force of law in the State and judicial notice shall be taken thereof. Rules to have the force of law.

(2) For convenience of reference there is set out in the *Third Schedule* the text in the English language of the Rules.

32.—The Minister may by order declare that any state specified in the order is a Contracting State, whether generally as respects its territory or as respects any place or territory specified in the order, and such an order that is in force shall be evidence that that state is a Contracting State as aforesaid. Declarations as respects states which are Contracting States.

[No. 35.] *Merchant Shipping (Liability of Shipowners and Others) Act, 1996.* [1996.]

Pr.IV
Bills of lading and application of Rules.

33.—(1) Without prejudice to Article X (c) of the Rules, the Rules shall have the force of law in relation to—

- (a) any bill of lading if the contract contained in or evidenced by it expressly provides that the Rules shall govern the contract, and
- (b) any receipt which is a non-negotiable document marked as such if the contract contained in or evidenced by it is a contract for the carriage of goods by sea which expressly provides that the Rules are to govern the contract as if the receipt were a bill of lading,

but subject, in a case where *paragraph (b)* applies, to any necessary modifications and, in particular, with the omission in Article III of the Rules of the second sentence of paragraph 4 and of paragraph 7.

(2) If and so far as the contract contained in or evidenced by a bill of lading or receipt referred to in *paragraph (a)* or *(b)* of *subsection (1)* applies to deck cargo or live animals, the Rules shall, so far as they have the force of law by virtue of that subsection, have effect as if Article I (c) of the Rules did not exclude deck cargo and live animals.

(3) Subject to the provisions of this section, nothing in this Part shall be taken as applying anything in the Rules to any contract for the carriage of goods by sea, unless the contract expressly or by implication provides for the issue of a bill of lading or any similar document of title.

(4) In this section “deck cargo” means cargo which by the contract of carriage concerned is stated as being carried on deck and is so carried.

Application of Rules where port of shipment is a port in the State.

34.—Without prejudice to *section 31*, the Rules shall have the force of law in relation to and in connection with the carriage of goods by sea in ships where the port of shipment is a port in the State, whether or not the carriage is between ports in two different states within the meaning of Article X of the Rules.

Absolute warranty of seaworthiness not to be implied in contracts to which Rules apply.

35.—There shall not be implied in any contract for the carriage of goods by sea to which the Rules apply any absolute undertaking by the carrier of the goods to provide a seaworthy ship.

Conversion of amounts in units of account into currency of the State for purposes of Rules.

36.—(1) For the purposes of the limit of liability specified in Article IV of the Rules, the value in the currency of the State of a unit of account specified in that Article shall be taken to be the value, ascertained in accordance with that Article, in that currency of such a unit of account on the relevant day specified in that Article, or if its value on that day cannot be so ascertained, its value in that currency on the latest day before such day on which it can be so ascertained.

(2) For the purposes of this section a certificate purporting to be signed by an officer of the Central Bank and stating that—

- (a) a specified amount in the currency of the State is the value of such a unit of account on a specified day, or

[1996.] *Merchant Shipping (Liability of Shipowners and Others) Act, 1996.* [No. 35.]

- (b) the value in the currency of the State of such a unit of account on a specified day cannot be ascertained in accordance with the Rules and that a specified amount in the currency of the State is the value, calculated in accordance with the Rules, of such a unit of account on a specified day (being the latest day before the first-mentioned specified day on which such value can be ascertained as aforesaid),

Pt.IV S.36

shall be admissible as evidence of the facts stated in the certificate.

37.—Nothing in this Part shall prejudice the operation of *Part II* of this Act.

Further saving as respects operation of *Part II.*

PART V

MISCELLANEOUS

38.—(1) Subject to *subsection (3)*, the owner of a ship shall not be liable for any loss or damage in the following cases, namely—

Exclusion of liability in certain cases.

- (a) where any property on board the ship is lost or damaged by reason of fire on board the ship; or
- (b) where any gold, silver, watches, jewels or precious stones on board the ship are lost or damaged by reason of larceny, robbery or other dishonest conduct and their nature and value were not at the time of shipment declared by their owner or shipper to the owner or master of the ship in the bill of lading or otherwise in writing.

(2) Subject to *subsection (3)*, where the loss or damage referred to in a case aforesaid arises from anything done or omitted to be done by any person in his or her capacity as master or member of the crew of the ship or (otherwise than in that capacity) in the course of employment as a servant of the owner of the ship, *subsection (1)* shall also relieve of liability for such loss or damage—

- (a) that person, and
- (b) where that person is a servant of a person whom *subsection (1)* would not, apart from this paragraph, relieve of liability for such loss or damage, that other person.

(3) This section shall not relieve a person of any liability—

- (a) for loss or damage resulting from any such personal act or omission of the person as is mentioned in Article 4 of the Convention referred to in *section 7*,
- (b) that is imposed on the person by the Convention referred to in *section 19*.

(4) In this section—

“master” means, in relation to a ship, the person having, for the time being, the command or charge of the ship;

“owner” includes, in relation to a ship, any part owner and any charterer, manager or operator of the ship.

[No. 35.] *Merchant Shipping (Liability of Shipowners and Others) Act, 1996.* [1996.]

Pt.V
Adaptation of
certain references.

39.—A reference in any enactment to a provision of the Merchant Shipping Acts, 1894 to 1993, being a provision that is repealed by this Act and which corresponds to a provision of this Act, shall, unless the context otherwise requires, be construed as a reference to the said provision of this Act.

Section 7 (2).

FIRST SCHEDULE

CONVENTION ON LIMITATION OF LIABILITY FOR MARITIME CLAIMS, 1976

THE STATES PARTIES TO THIS CONVENTION,

HAVING RECOGNIZED the desirability of determining by agreement certain uniform rules relating to the limitation of liability for maritime claims,

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

CHAPTER I. THE RIGHT OF LIMITATION

ARTICLE 1

Persons entitled to limit liability

1. Shipowners and salvors, as hereinafter defined, may limit their liability in accordance with the rules of this Convention for claims set out in Article 2.

2. The term "shipowner" shall mean the owner, charterer, manager and operator of a 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,

[1996.] *Merchant Shipping (Liability of Shipowners and Others) Act, 1996.* [No. 35.]

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; SCH.1

- (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 29 November 1969 or of any amendment or Protocol thereto which is in force;
- (c) claims subject to any international convention or national legislation governing or prohibiting limitation of liability for nuclear damage;
- (d) claims against the shipowner of a nuclear ship for nuclear damage;
- (e) claims by servants of the shipowner or salvor whose duties are connected with the ship or the salvage operations, including claims of their heirs, dependants or other persons entitled to make such claims, if under the law governing the contract of service between the shipowner or salvor and such servants the shipowner or salvor is not entitled to limit his liability in respect of such claims, or

[No. 35.] *Merchant Shipping (Liability of Shipowners and Others) Act, 1996.* [1996.]

SCH.1

if he is by such law only permitted to limit his liability to an amount greater than that provided for in Article 6.

ARTICLE 4

Conduct barring limitation

A person liable shall not be entitled to limit his liability if it is proved that the loss resulted from his personal act or omission, committed with the intent to cause such loss, or recklessly and with knowledge that such loss would probably result.

ARTICLE 5

Counterclaims

Where a person entitled to limitation of liability under the rules of this Convention has a claim against the claimant arising out of the same occurrence, their respective claims shall be set off against each other and the provisions of this Convention shall only apply to the balance, if any.

CHAPTER II. LIMITS OF LIABILITY

ARTICLE 6

The general limits

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

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

[1996.] *Merchant Shipping (Liability of Shipowners and Others) Act, 1996.* [No. 35.]

for each ton from 30,001 to 70,000 tons, 125 Units of Account; and
for each ton in excess of 70,000 tons, 83 Units of Account.

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

3. However, without prejudice to the right of claims for loss of life or personal injury according to paragraph 2, a State Party may provide in its national law that claims in respect of damage to harbour works, basins and waterways and aids to navigation shall have such priority over other claims under paragraph 1 (b) as is provided by that law.

4. The limits of liability for any salvor not operating from any ship or for any salvor operating solely on the ship to, or in respect of which he is rendering salvage services, shall be calculated according to a tonnage of 1,500 tons.

5. For the purpose of this Convention the ship's tonnage shall be the gross tonnage calculated in accordance with the tonnage measurement rules contained in Annex 1 of the International Convention on Tonnage Measurement of Ships, 1969.

ARTICLE 7

The limit for passenger claims

1. In respect of claims arising on any distinct occasion for loss of life or personal injury to passengers of a ship, the limit of liability of the shipowner thereof shall be an amount of 46,666 Units of Account multiplied by the number of passengers which the ship is authorized to carry according to the ship's certificate, but not exceeding 25 million Units of Account.

2. For the purpose of this Article "claims for loss of life or personal injury to passengers of a ship" shall mean any such claims brought by or on behalf of any person carried in that ship:

- (a) under a contract of passenger carriage, or
- (b) who, with the consent of the carrier, is accompanying a vehicle or live animals which are covered by a contract for the carriage of goods.

ARTICLE 8

Unit of Account

1. The Unit of Account referred to in Articles 6 and 7 is the Special Drawing Right as defined by the International Monetary Fund. The amounts mentioned in Articles 6 and 7 shall be converted into the national currency of the State in which limitation is sought, according to the value of that currency at the date the limitation fund shall have been constituted, payment is made, or security is given which under the law of that State is equivalent to such payment. The

[No. 35.] *Merchant Shipping (Liability of Shipowners and Others) Act, 1996.* [1996.]

SCH.1

value of a national currency in terms of the Special Drawing Right, of a State Party which is a member of the International Monetary Fund, shall be calculated in accordance with the method of valuation applied by the International Monetary Fund in effect at the date in question for its operations and transactions. The value of a national currency in terms of the Special Drawing Right, of a State Party which is not a member of the International Monetary Fund, shall be calculated in a manner determined by that State Party.

2. Nevertheless, those States which are not members of the International Monetary Fund and whose law does not permit the application of the provisions of paragraph 1 may, at the time of signature without reservation as to ratification, acceptance or approval or at the time of ratification, acceptance, approval or accession or at any time thereafter, declare that the limits of liability provided for in this Convention to be applied in their territories shall be fixed as follows:

- (a) in respect of Article 6, paragraph 1 (a) at an amount of:
 - (i) 5 million monetary units for a ship with a tonnage not exceeding 500 tons;
 - (ii) for a ship with a tonnage in excess thereof, the following amount in addition to that mentioned in (i):
 - for each ton from 501 to 3,000 tons, 7,500 monetary units;
 - for each ton from 3,001 to 30,000 tons, 5,000 monetary units;
 - for each ton from 30,001 to 70,000 tons, 3,750 monetary units; and
 - for each ton in excess of 70,000 tons, 2,500 monetary units; and
- (b) in respect of Article 6, paragraph 1 (b), at an amount of:
 - (i) 2.5 million monetary units for a ship with a tonnage not exceeding 500 tons;
 - (ii) for a ship with a tonnage in excess thereof, the following amount in addition to that mentioned in (i):
 - for each ton from 501 to 30,000 tons, 2,500 monetary units;
 - for each ton from 30,001 to 70,000 tons, 1,850 monetary units; and
 - for each ton in excess of 70,000 tons, 1,250 monetary units; and
- (c) in respect of Article 7, paragraph 1, at an amount of 700,000 monetary units multiplied by the number of passengers which the ship is authorized to carry according to its certificate, but not exceeding 375 million monetary units.

Paragraphs 2 and 3 of Article 6 apply correspondingly to sub-paragraphs (a) and (b) of this paragraph.

3. The monetary unit referred to in paragraph 2 corresponds to sixty-five and a half milligrammes of gold of millesimal fineness nine hundred. The conversion of the amounts referred to in paragraph 2 into the national currency shall be made according to the law of the State concerned.

[1996.] *Merchant Shipping (Liability of [No. 35.]
Shipowners and Others) Act, 1996.*

4. The calculation mentioned in the last sentence of paragraph 1 and the conversion mentioned in paragraph 3 shall be made in such a manner as to express in the national currency of the State Party as far as possible the same real value for the amounts in Articles 6 and 7 as is expressed there in units of account. States Parties shall communicate to the depositary the manner of calculation pursuant to paragraph 1, or the result of the conversion in paragraph 3, as the case may be, at the time of the signature without reservation as to ratification, acceptance or approval, or when depositing an instrument referred to in Article 16 and whenever there is a change in either. SCH.1

ARTICLE 9

Aggregation of claims

1. The limits of liability determined in accordance with Article 6 shall apply to the aggregate of all claims which arise on any distinct occasion:

- (a) against the person or persons mentioned in paragraph 2 of Article 1 and any person for whose act, neglect or default he or they are responsible; or
- (b) against the shipowner of a ship rendering salvage services from that ship and the salvor or salvors operating from such ship and any person for whose act, neglect or default he or they are responsible; or
- (c) against the salvor or salvors who are not operating from a ship or who are operating solely on the ship to, or in respect of which, the salvage services are rendered and any person for whose act, neglect or default he or they are responsible.

2. The limits of liability determined in accordance with Article 7 shall apply to the aggregate of all claims subject thereto which may arise on any distinct occasion against the person or persons mentioned in paragraph 2 of Article 1 in respect of the ship referred to in Article 7 and any person for whose act, neglect or default he or they are responsible.

ARTICLE 10

Limitation of liability without constitution of a limitation fund

1. Limitation of liability may be invoked notwithstanding that a limitation fund as mentioned in Article 11 has not been constituted. However, a State Party may provide in its national law that, where an action is brought in its Courts to enforce a claim subject to limitation, a person liable may only invoke the right to limit liability if a limitation fund has been constituted in accordance with the provisions of this Convention or is constituted when the right to limit liability is invoked.

2. If limitation of liability is invoked without the constitution of a limitation fund, the provisions of Article 12 shall apply correspondingly.

3. Questions of procedure arising under the rules of this Article shall be decided in accordance with the national law of the State Party in which action is brought.

CHAPTER III. THE LIMITATION FUND

ARTICLE 11

Constitution of the fund

1. Any person alleged to be liable may constitute a fund with the Court or other competent authority in any State Party in which legal proceedings are instituted in respect of claims subject to limitation. The fund shall be constituted in the sum of such of the amounts set out in Articles 6 and 7 as are applicable to claims for which that person may be liable, together with interest thereon from the date of the occurrence giving rise to the liability until the date of the constitution of the fund. Any fund thus constituted shall be available only for the payment of claims in respect of which limitation of liability can be invoked.

2. A fund may be constituted, either by depositing the sum, or by producing a guarantee acceptable under the legislation of the State Party where the fund is constituted and considered to be adequate by the Court or other competent authority.

3. A fund constituted by one of the persons mentioned in paragraph 1 (a), (b) or (c) or paragraph 2 of Article 9 or his insurer shall be deemed constituted by all persons mentioned in paragraph 1 (a), (b) or (c) or paragraph 2, respectively.

ARTICLE 12

Distribution of the fund

1. Subject to the provisions of paragraphs 1, 2 and 3 of Article 6 and of Article 7, the fund shall be distributed among the claimants in proportion to their established claims against the fund.

2. If, before the fund is distributed, the person liable, or his insurer, has settled a claim against the fund such person shall, up to the amount he has paid, acquire by subrogation the rights which the person so compensated would have enjoyed under this Convention.

3. The right of subrogation provided for in paragraph 2 may also be exercised by persons other than those therein mentioned in respect of any amount of compensation which they may have paid, but only to the extent that such subrogation is permitted under the applicable national law.

4. Where the person liable or any other person establishes that he may be compelled to pay, at a later date, in whole or in part any such amount of compensation with regard to which such person would have enjoyed a right of subrogation pursuant to paragraphs 2 and 3 had the compensation been paid before the fund was distributed, the Court or other competent authority of the State where the fund has been constituted may order that a sufficient sum shall be provisionally set aside to enable such person at such later date to enforce his claim against the fund.

ARTICLE 13

Bar to other actions

1. Where a limitation fund has been constituted in accordance with Article 11, any person having made a claim against the fund shall be barred from exercising any right in respect of such claim against any other assets of a person by or on behalf of whom the fund has been constituted.

[1996.] *Merchant Shipping (Liability of Shipowners and Others) Act, 1996.* [No. 35.]

2. After a limitation fund has been constituted in accordance with Article 11, any ship or other property, belonging to a person on behalf of whom the fund has been constituted, which has been arrested or attached within the jurisdiction of a State Party for a claim which may be raised against the fund, or any security given, may be released by order of the Court or other competent authority of such State. However, such release shall always be ordered if the limitation fund has been constituted: SCH.1

- (a) at the port where the occurrence took place, or, if it took place out of port, at the first port of call thereafter; or
- (b) at the port of disembarkation in respect of claims for loss of life or personal injury; or
- (c) at the port of discharge in respect of damage to cargo; or
- (d) in the State where the arrest is made.

3. The rules of paragraphs 1 and 2 shall apply only if the claimant may bring a claim against the limitation fund before the Court administering that fund and the fund is actually available and freely transferable in respect of that claim.

ARTICLE 14

Governing law

Subject to the provisions of this Chapter the rules relating to the constitution and distribution of a limitation fund, and all rules of procedure in connexion therewith, shall be governed by the law of the State Party in which the fund is constituted.

CHAPTER IV. SCOPE OF APPLICATION

ARTICLE 15

1. This Convention shall apply whenever any person referred to in Article 1 seeks to limit his liability before the Court of a State Party or seeks to procure the release of a ship or other property or the discharge of any security given within the jurisdiction of any such State. Nevertheless, each State Party may exclude wholly or partially from the application of this Convention any person referred to in Article 1 who at the time when the rules of this Convention are invoked before the Courts of that State does not have his habitual residence in a State Party or does not have his principal place of business in a State Party or any ship in relation to which the right of limitation is invoked or whose release is sought and which does not at the time specified above fly the flag of a State Party.

2. A State Party may regulate by specific provisions of national law the system of limitation of liability to be applied to vessels which are:

- (a) according to the law of that State, ships intended for navigation on inland waterways;
- (b) ships of less than 300 tons.

[No. 35.] *Merchant Shipping (Liability of Shipowners and Others) Act, 1996.* [1996.]

SCH.1

A State Party which makes use of the option provided for in this paragraph shall inform the depositary of the limits of liability adopted in its national legislation or of the fact that there are none.

3. A State Party may regulate by specific provisions of national law the system of limitation of liability to be applied to claims arising in cases in which interests of persons who are nationals of other States Parties are in no way involved.

4. The Courts of a State Party shall not apply this Convention to ships constructed for, or adapted to, and engaged in, drilling:

- (a) when that State has established under its national legislation a higher limit of liability than that otherwise provided for in Article 6; or
- (b) when that State has become party to an international convention regulating the system of liability in respect of such ships.

In a case to which sub-paragraph (a) applies that State Party shall inform the depositary accordingly.

5. This Convention shall not apply to:

- (a) air-cushion vehicles;
- (b) floating platforms constructed for the purpose of exploring or exploiting the natural resources of the sea-bed or the subsoil thereof.

CHAPTER V. FINAL CLAUSES

ARTICLE 16

Signature, ratification and accession

1. This Convention shall be open for signature by all States at the Headquarters of the Inter-Governmental Maritime Consultative Organization (hereinafter referred to as "the Organization") from 1 February 1977 until 31 December 1977 and shall thereafter remain open for accession.

2. All States may become parties to this Convention by:

- (a) signature without reservation as to ratification, acceptance or approval; or
- (b) signature subject to ratification, acceptance or approval followed by ratification, acceptance or approval; or
- (c) accession.

3. Ratification, acceptance, approval or accession shall be effected by the deposit of a formal instrument to that effect with the Secretary-General of the Organization (hereinafter referred to as "the Secretary-General").

Entry into force

1. This Convention shall enter into force on the first day of the month following one year after the date on which twelve States have either signed it without reservation as to ratification, acceptance or approval or have deposited the requisite instruments of ratification, acceptance, approval or accession.

2. For a State which deposits an instrument of ratification, acceptance, approval or accession, or signs without reservation as to ratification, acceptance or approval, in respect of this Convention after the requirements for entry into force have been met but prior to the date of entry into force, the ratification, acceptance, approval or accession or the signature without reservation as to ratification, acceptance or approval, shall take effect on the date of entry into force of the Convention or on the first day of the month following the ninetieth day after the date of the signature or the deposit of the instrument, whichever is the later date.

3. For any State which subsequently becomes a Party to this Convention, the Convention shall enter into force on the first day of the month following the expiration of ninety days after the date when such State deposited its instrument.

4. In respect of the relations between States which ratify, accept, or approve this Convention or accede to it, this Convention shall replace and abrogate the International Convention relating to the Limitation of the Liability of Owners of Sea-going Ships, done at Brussels on 10 October 1957, and the International Convention for the Unification of certain Rules relating to the Limitation of Liability of the Owners of Sea-going Vessels, signed at Brussels on 25 August 1924.

ARTICLE 18

Reservations

1. Any State may, at the time of signature, ratification, acceptance, approval or accession, reserve the right to exclude the application of Article 2 paragraph 1 (d) and (e). No other reservations shall be admissible to the substantive provisions of this Convention.

2. Reservations made at the time of signature are subject to confirmation upon ratification, acceptance or approval.

3. Any State which has made a reservation to this Convention may withdraw it at any time by means of a notification addressed to the Secretary-General. Such withdrawal shall take effect on the date the notification is received. If the notification states that the withdrawal of a reservation is to take effect on a date specified therein, and such date is later than the date the notification is received by the Secretary-General, the withdrawal shall take effect on such later date.

ARTICLE 19

Denunciation

1. This Convention may be denounced by a State Party at any time after one year from the date on which the Convention entered into force for that Party.

[No. 35.] *Merchant Shipping (Liability of Shipowners and Others) Act, 1996.* [1996.]

SCH.1

2. Denunciation shall be effected by the deposit of an instrument with the Secretary-General.

3. Denunciation shall take effect on the first day of the month following the expiration of one year after the date of deposit of the instrument, or after such longer period as may be specified in the instrument.

ARTICLE 20

Revision and amendment

1. A Conference for the purpose of revising or amending this Convention may be convened by the Organization.

2. The Organization shall convene a Conference of the States Parties to this Convention for revising or amending it at the request of not less than one-third of the Parties.

3. After the date of the entry into force of an amendment to this Convention, any instrument of ratification, acceptance, approval or accession deposited shall be deemed to apply to the Convention as amended, unless a contrary intention is expressed in the instrument.

ARTICLE 21

Revision of the limitation amounts and of Unit of Account or monetary unit

1. Notwithstanding the provisions of Article 20, a Conference only for the purposes of altering the amounts specified in Articles 6 and 7 and in Article 8, paragraph 2, or of substituting either or both of the Units defined in Article 8, paragraphs 1 and 2, by other units shall be convened by the Organization in accordance with paragraphs 2 and 3 of this Article. An alteration of the amounts shall be made only because of a significant change in their real value.

2. The Organization shall convene such a Conference at the request of not less than one-fourth of the States Parties.

3. A decision to alter the amounts or to substitute the Units by other units of account shall be taken by a two-thirds majority of the States Parties present and voting in such Conference.

4. Any State depositing its instrument of ratification, acceptance, approval or accession to the Convention, after entry into force of an amendment, shall apply the Convention as amended.

ARTICLE 22

Depositary

1. This Convention shall be deposited with the Secretary-General.

2. The Secretary-General shall:

- (a) transmit certified true copies of this Convention to all States which were invited to attend the Conference on Limitation of Liability for Maritime Claims and to any other States which accede to this Convention.

[1996.] *Merchant Shipping (Liability of Shipowners and Others) Act, 1996.* [No. 35.]

(b) inform all States which have signed or acceded to this Convention of: SCH.1

- (i) each new signature and each deposit of an instrument and any reservation thereto together with the date thereof;
- (ii) the date of entry into force of this Convention or any amendment thereto;
- (iii) any denunciation of this Convention and the date on which it takes effect;
- (iv) any amendment adopted in conformity with Articles 20 or 21;
- (v) any communication called for by any Article of this Convention.

3. Upon entry into force of this Convention, a certified true copy thereof shall be transmitted by the Secretary-General to the Secretariat of the United Nations for registration and publication in accordance with Article 102 of the Charter of the United Nations.

ARTICLE 23

Languages

This Convention is established in a single original in the English, French, Russian and Spanish languages, each text being equally authentic.

DONE AT LONDON this nineteenth day of November one thousand nine hundred and seventy-six.

IN WITNESS WHEREOF the undersigned being duly authorized for that purpose have signed this Convention.

(Here follow signatures on behalf of certain States).

SECOND SCHEDULE

Section 19 (2).

CONVENTION RELATING TO THE CARRIAGE OF PASSENGERS AND THEIR LUGGAGE BY SEA, 1974 AND PROTOCOL THERETO

PART I

CONVENTION RELATING TO THE CARRIAGE OF PASSENGERS AND THEIR LUGGAGE BY SEA, 1974

The States Parties to this Convention,

HAVING RECOGNIZED the desirability of determining by agreement certain rules relating to the carriage of passengers and their luggage by sea;

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

[No. 35.] *Merchant Shipping (Liability of Shipowners and Others) Act, 1996.* [1996.]

SCH.2 Pt.I

ARTICLE 1

Definitions

In this Convention the following expressions have the meaning assigned to them:

1. (a) “carrier” means a person by or on behalf of whom a contract of carriage has been concluded, whether the carriage is actually performed by him or by a performing carrier;

(b) “performing carrier” means a person other than the carrier, being the owner, charterer or operator of a ship, who actually performs the whole or a part of the carriage;
2. “contract of carriage” means a contract made by or on behalf of a carrier for the carriage by sea of a passenger or of a passenger and his luggage, as the case may be;
3. “ship” means only a seagoing vessel, excluding an air-cushion vehicle;
4. “passenger” means any person carried in a ship,
 - (a) under a contract of 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 not governed by this Convention;
5. “luggage” means any article or vehicle carried by the carrier under a contract of carriage, excluding:
 - (a) articles and vehicles carried under a charter party, bill of lading or other contract primarily concerned with the carriage of goods; and
 - (b) live animals;
6. “cabin luggage” means luggage which the passenger has in his cabin or is otherwise in his possession, custody or control. Except for the application of paragraph 8 of this Article and Article 8, cabin luggage includes luggage which the passenger has in or on his vehicle;
7. “loss of or damage to luggage” includes pecuniary loss resulting from the luggage not having been re-delivered to the passenger within a reasonable time after the arrival of the ship on which the luggage has been or should have been carried, but does not include delays resulting from labour disputes;
8. “carriage” covers the following periods:
 - (a) with regard to the passenger and his cabin luggage, the period during which the passenger and/or his cabin luggage are on board the ship or in the course of embarkation or disembarkation, and the period during which the passenger and his cabin luggage are transported by water from land to the ship or vice-versa, if the cost of such transport is included in the fare or if the vessel used for this purpose of auxiliary transport has been put at the disposal of the passenger by the carrier. However, with regard to

[1996.] *Merchant Shipping (Liability of Shipowners and Others) Act, 1996.* [No. 35.]

the passenger, carriage does not include the period during which he is in a marine terminal or station or on a quay or in or on any other port installation; SCH.2 Pt.I

- (b) with regard to cabin luggage, also the period during which the passenger is in a marine terminal or station or on a quay or in or on any other port installation if that luggage has been taken over by the carrier or his servant or agent and has not been re-delivered to the passenger;
- (c) with regard to other luggage which is not cabin luggage, the period from the time of its taking over by the carrier or his servant or agent on shore or on board until the time of its re-delivery by the carrier or his servant or agent;

9. "international carriage" means any carriage in which, according to the contract of carriage, the place of departure and the place of destination are situated in two different States, or in a single State if, according to the contract of carriage or the scheduled itinerary, there is an intermediate port of call in another State:

10. "Organization" means the Inter-Governmental Maritime Consultative Organization.

ARTICLE 2

Application

1. This Convention shall apply to any international carriage if:
 - (a) the ship is flying the flag of or is registered in a State Party to this Convention, or
 - (b) the contract of carriage has been made in a State Party to this Convention, or
 - (c) the place of departure or destination, according to the contract of carriage, is in a State Party to this Convention.

2. Notwithstanding paragraph 1 of this Article, this Convention shall not apply when the carriage is subject, under any other international convention concerning the carriage of passengers or luggage by another mode of transport, to a civil liability regime under the provisions of such convention, in so far as those provisions have mandatory application to carriage by sea.

ARTICLE 3

Liability of the carrier

1. The carrier shall be liable for the damage suffered as a result of the death of or personal injury to a passenger and the loss of or damage to luggage if the incident which caused the damage so suffered occurred in the course of the carriage and was due to the fault or neglect of the carrier or of his servants or agents acting within the scope of their employment.

2. The burden of proving that the incident which caused the loss or damage occurred in the course of the carriage, and the extent of the loss or damage, shall lie with the claimant.

[No. 35.] *Merchant Shipping (Liability of Shipowners and Others) Act, 1996.* [1996.]

SCH.2 Pt.I

3. Fault or neglect of the carrier or of his servants or agents acting within the scope of their employment shall be presumed, unless the contrary is proved, if the death of or personal injury to the passenger or the loss of or damage to cabin luggage arose from or in connection with the shipwreck, collision, stranding, explosion or fire, or defect in the ship. In respect of loss of or damage to other luggage, such fault or neglect shall be presumed, unless the contrary is proved, irrespective of the nature of the incident which caused the loss or damage. In all other cases the burden of proving fault or neglect shall lie with the claimant.

ARTICLE 4

Performing carrier

1. If the performance of the carriage or part thereof has been entrusted to a performing carrier, the carrier shall nevertheless remain liable for the entire carriage according to the provisions of this Convention. In addition, the performing carrier shall be subject and entitled to the provisions of this Convention for the part of the carriage performed by him.

2. The carrier shall, in relation to the carriage performed by the performing carrier, be liable for the acts and omissions of the performing carrier and of his servants and agents acting within the scope of their employment.

3. Any special agreement under which the carrier assumes obligations not imposed by this Convention or any waiver of rights conferred by this Convention shall affect the performing carrier only if agreed by him expressly and in writing.

4. Where and to the extent that both the carrier and the performing carrier are liable, their liability shall be joint and several.

5. Nothing in this Article shall prejudice any right of recourse as between the carrier and the performing carrier.

ARTICLE 5

Valuables

The carrier shall not be liable for the loss of or damage to monies, negotiable securities, gold, silverware, jewellery, ornaments, works of art, or other valuables, except where such valuables have been deposited with the carrier for the agreed purpose of safe-keeping in which case the carrier shall be liable up to the limit provided for in paragraph 3 of Article 8 unless a higher limit is agreed upon in accordance with paragraph 1 of Article 10.

ARTICLE 6

Contributory fault

If the carrier proves that the death of or personal injury to a passenger or the loss of or damage to his luggage was caused or contributed to by the fault or neglect of the passenger, the court seized of the case may exonerate the carrier wholly or partly from his liability in accordance with the provisions of the law of that court.

Limit of liability for personal injury

1. The liability of the carrier for the death of or personal injury to a passenger shall in no case exceed 700,000 francs per carriage. Where in accordance with the law of the court seized of the case damages are awarded in the form of periodical income payments, the equivalent capital value of those payments shall not exceed the said limit.*

2. Notwithstanding paragraph 1 of this Article, the national law of any State Party to this Convention may fix, as far as carriers who are nationals of such State are concerned, a higher *per capita* limit of liability.

ARTICLE 8*

Limit of liability for loss of or damage to luggage

1. The liability of the carrier for the loss of or damage to cabin luggage shall in no case exceed 12,500 francs per passenger, per carriage.

2. The liability of the carrier for the loss of or damage to vehicles including all luggage carried in or on the vehicle shall in no case exceed 50,000 francs per vehicle, per carriage.

3. The liability of the carrier for the loss of or damage to luggage other than that mentioned in paragraphs 1 and 2 of this Article shall in no case exceed 18,000 francs per passenger, per carriage.

4. The carrier and the passenger may agree that the liability of the carrier shall be subject to a deductible not exceeding 1,750 francs in the case of damage to a vehicle and not exceeding 200 francs per passenger in the case of loss of or damage to other luggage, such sum to be deducted from the loss or damage.

ARTICLE 9*

Monetary unit and conversion

1. The franc mentioned in this Convention shall be deemed to refer to a unit consisting of 65.5 milligrams of gold millesimal fineness 900.

2. The amounts referred to in Articles 7 and 8 shall be converted into the national currency of the State of the court seized of the case on the basis of the official value of that currency, by reference to the unit defined in paragraph 1 of this Article, on the date of the judgment or the date agreed upon by the parties. If there is no such official value, the competent authority of the State concerned shall determine what shall be considered as the official value for the purpose of this Convention.

* Other than for the purposes of *section 25*, reference should be made to the amendments of these provisions effected by Article II of the 1976 Protocol.

[No. 35.] *Merchant Shipping (Liability of Shipowners and Others) Act, 1996.* [1996.]

SCH.2 Pt.I

ARTICLE 10

Supplementary provisions on limits of liability

1. The carrier and the passenger may agree, expressly and in writing, to higher limits of liability than those prescribed in Articles 7 and 8.
2. Interest on damages and legal costs shall not be included in the limits of liability prescribed in Articles 7 and 8.

ARTICLE 11

Defences and limits for carriers' servants

If an action is brought against a servant or agent of the carrier or of the performing carrier arising out of damage covered by this Convention, such servant or agent, if he proves that he acted within the scope of his employment, shall be entitled to avail himself of the defences and limits of liability which the carrier or the performing carrier is entitled to invoke under this Convention.

ARTICLE 12

Aggregation of claims

1. Where the limits of liability prescribed in Articles 7 and 8 take effect, they shall apply to the aggregate of the amounts recoverable in all claims arising out of the death of or personal injury to any one passenger or the loss of or damage to his luggage.
2. In relation to the carriage performed by a performing carrier, the aggregate of the amounts recoverable from the carrier and the performing carrier and from their servants and agents acting within the scope of their employment shall not exceed the highest amount which could be awarded against either the carrier or the performing carrier under this Convention, but none of the persons mentioned shall be liable for a sum in excess of the limit applicable to him.
3. In any case where a servant or agent of the carrier or of the performing carrier is entitled under Article 11 of this Convention to avail himself of the limits of liability prescribed in Articles 7 and 8, the aggregate of the amounts recoverable from the carrier, or the performing carrier as the case may be, and from that servant or agent, shall not exceed those limits.

ARTICLE 13

Loss of right to limit liability

1. The carrier shall not be entitled to the benefit of the limits of liability prescribed in Articles 7 and 8 and paragraph 1 of Article 10, if it is proved that the damage resulted from an act or omission of the carrier done with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result.
2. The servant or agent of the carrier or of the performing carrier shall not be entitled to the benefit of those limits if it is proved that the damage resulted from an act or omission of that servant or agent done with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result.

ARTICLE 14

SCH.2 Pt.I

Basis for claims

No action for damages for the death of or personal injury to a passenger, or for the loss of or damage to luggage, shall be brought against a carrier or performing carrier otherwise than in accordance with this Convention.

ARTICLE 15

Notice of loss or damage to luggage

1. The passenger shall give written notice to the carrier or his agent:

(a) in the case of apparent damage to luggage:

(i) for cabin luggage, before or at the time of disembarkation of the passenger;

(ii) for all other luggage, before or at the time of its re-delivery;

(b) in the case of damage to luggage which is not apparent, or loss of luggage, within fifteen days from the date of disembarkation or re-delivery or from the time when such re-delivery should have taken place.

2. If the passenger fails to comply with this Article, he shall be presumed, unless the contrary is proved, to have received the luggage undamaged.

3. The notice in writing need not be given if the condition of the luggage has at the time of its receipt been the subject of joint survey or inspection.

ARTICLE 16

Time-bar for actions

1. Any action for damages arising out of the death of or personal injury to a passenger or for the loss of or damage to luggage shall be time-barred after a period of two years.

2. The limitation period shall be calculated as follows:

(a) in the case of personal injury, from the date of disembarkation of the passenger;

(b) in the case of death occurring during carriage, from the date when the passenger should have disembarked, and in the case of personal injury occurring during carriage and resulting in the death of the passenger after disembarkation, from the date of death, provided that this period shall not exceed three years from the date of disembarkation;

(c) in the case of loss of or damage to luggage, from the date of disembarkation or from the date when disembarkation should have taken place, whichever is later.

[No. 35.] *Merchant Shipping (Liability of Shipowners and Others) Act, 1996.* [1996.]

SCH.2 Pt.I

3. The law of the court seized of the case shall govern the grounds of suspension and interruption of limitation periods, but in no case shall an action under this Convention be brought after the expiration of a period of three years from the date of disembarkation of the passenger or from the date when disembarkation should have taken place, whichever is later.

4. Notwithstanding paragraphs 1, 2 and 3 of this Article, the period of limitation may be extended by a declaration of the carrier or by agreement of the parties after the cause of action has arisen. The declaration or agreement shall be in writing.

ARTICLE 17

Competent jurisdiction

1. An action arising under this Convention shall, at the option of the claimant, be brought before one of the courts listed below, provided that the court is located in a State Party to this Convention:

- (a) the court of the place of permanent residence or principal place of business of the defendant, or
- (b) the court of the place of departure or that of the destination according to the contract of carriage, or
- (c) a court of the State of the domicile or permanent residence of the claimant, if the defendant has a place of business and is subject to jurisdiction in that State, or
- (d) a court of the State where the contract of carriage was made, if the defendant has a place of business and is subject to jurisdiction in that State.

2. After the occurrence of the incident which has caused the damage, the parties may agree that the claim for damages shall be submitted to any jurisdiction or to arbitration.

ARTICLE 18

Invalidity of contractual provisions

Any contractual provision concluded before the occurrence of the incident which has caused the death of or personal injury to a passenger or the loss of or damage to his luggage, purporting to relieve the carrier of his liability towards the passenger or to prescribe a lower limit of liability than that fixed in this Convention except as provided in paragraph 4 of Article 8, and any such provision purporting to shift the burden of proof which rests on the carrier, or having the effect of restricting the option specified in paragraph 1 of Article 17, shall be null and void, but the nullity of that provision shall not render void the contract of carriage which shall remain subject to the provisions of this Convention.

ARTICLE 19

Other conventions on limitation of liability

This Convention shall not modify the rights or duties of the carrier, the performing carrier, and their servants or agents provided for in

[1996.] *Merchant Shipping (Liability of Shipowners and Others) Act, 1996.* [No. 35.]

international conventions relating to the limitation of liability of SCH.2 Pt.I owners of seagoing ships.

ARTICLE 20

Nuclear damage

No liability shall arise under this Convention for damage caused by a nuclear incident:

- (a) if the operator of a nuclear installation is liable for such damage under either the Paris Convention of 29 July 1960 on Third Party Liability in the Field of Nuclear Energy as amended by its Additional Protocol of 28 January 1964, or the Vienna Convention of 21 May 1963 on Civil Liability for Nuclear Damage, or
- (b) if the operator of a nuclear installation is liable for such damage by virtue of a national law governing the liability for such damage provided that such law is in all respect as favourable to persons who may suffer damage as either the Paris or the Vienna Conventions.

ARTICLE 21

Commercial carriage by public authorities

This Convention shall apply to commercial carriage undertaken by States or Public Authorities under contracts of carriage within the meaning of Article 1.

ARTICLE 22

Declaration of non-application

1. Any Party may at the time of signing, ratifying, accepting, approving or acceding to this Convention, declare in writing that it will not give effect to this Convention when the passenger and the carrier are subjects or nationals of that Party.

2. Any declaration made under paragraph 1 of this Article may be withdrawn at any time by a notification in writing to the Secretary-General of the Organization.

ARTICLE 23

Signature, ratification and accession

1. This Convention shall be open for signature at the Headquarters of the Organization until 31 December 1975 and shall thereafter remain open for accession.

2. States may become Parties to this Convention by:

- (a) signature without reservation as to ratification, acceptance or approval;
- (b) signature subject to ratification, acceptance or approval followed by ratification, acceptance or approval; or

[No. 35.] *Merchant Shipping (Liability of Shipowners and Others) Act, 1996.* [1996.]

SCH.2 Pt.I

(c) accession.

3. Ratification, acceptance, approval or accession shall be effected by the deposit of a formal instrument to that effect with the Secretary-General of the Organization.

ARTICLE 24

Entry into force

1. This Convention shall enter into force on the ninetieth day following the date on which ten States have either signed it without reservation as to ratification, acceptance or approval or have deposited the requisite instruments of ratification, acceptance, approval or accession.

2. For any State which subsequently signs this Convention without reservation as to ratification, acceptance or approval, or deposits its instrument of ratification, acceptance, approval or accession, the Convention shall come into force on the ninetieth day after the date of such signature or deposit.

ARTICLE 25

Denunciation

1. This Convention may be denounced by a Party at any time after the date on which the Convention entered into force for that Party.

2. Denunciation shall be effected by the deposit of an instrument with the Secretary-General of the Organization who shall inform all other Parties of the receipt of the instrument of denunciation and of the date of its deposit.

3. A denunciation shall take effect one year after the deposit of an instrument of denunciation, or after such longer period as may be specified in the instrument.

ARTICLE 26

Revision and amendment

1. A Conference for the purpose of revising or amending this Convention may be convened by the Organization.

2. The Organization shall convene a Conference of the Parties to this Convention for revising or amending it at the request of not less than one-third of the Parties.

3. Any State becoming a Party to this Convention after the entry into force of an amendment adopted by a conference convened in accordance with this Article shall be bound by the Convention as amended.

[1996.] *Merchant Shipping (Liability of Shipowners and Others) Act, 1996.* [No. 35.]

ARTICLE 27

SCH.2 Pt.I

Depository

1. This Convention shall be deposited with the Secretary-General of the Organization.
2. The Secretary-General of the Organization shall:
 - (a) inform all States which have signed or acceded to this Convention of:
 - (i) each new signature and each deposit of an instrument together with the date thereof;
 - (ii) the date of entry into force of this Convention;
 - (iii) any denunciation of this Convention and the date on which it takes effect;
 - (b) transmit certified true copies of this Convention to all signatory States and to all States which have acceded to this Convention.
3. Upon entry into force of this Convention, a certified true copy thereof shall be transmitted by the Secretary-General of the Organization to the Secretariat of the United Nations for registration and publication in accordance with Article 102 of the Charter of the United Nations.

ARTICLE 28

Languages

This Convention is established in a single original in the English and French languages, both texts being equally authentic. Official translations in the Russian and Spanish languages shall be prepared by the Secretary-General of the Organization and deposited with the signed original.

IN WITNESS WHEREOF the undersigned being duly authorized for that purpose have signed this Convention.

DONE at Athens this thirteenth day of December one thousand nine hundred and seventy-four.

(Here follow signatures on behalf of certain States).

PART II

PROTOCOL TO THE CONVENTION RELATING TO THE CARRIAGE OF PASSENGERS AND THEIR LUGGAGE BY SEA, 1974

THE PARTIES TO THE PRESENT PROTOCOL,

BEING PARTIES to the Athens Convention Relating to the Carriage of Passengers and their Luggage by Sea, done at Athens on 13 December 1974;

[No. 35.] *Merchant Shipping (Liability of Shipowners and Others) Act, 1996.* [1996.]

Sch.2 Pt.II

HAVE AGREED AS FOLLOWS:

ARTICLE I

For the purpose of the present Protocol:

1. "Convention" means the Athens Convention Relating to the Carriage of Passengers and their Luggage by Sea, 1974.
2. "Organization" has the same meaning as in the Convention.
3. "Secretary-General" means the Secretary-General of the Organization.

ARTICLE II

(1) Article 7, paragraph 1 of the Convention is replaced by the following text:

1. The liability of the carrier for the death of or personal injury to a passenger shall in no case exceed 46,666 units of account per carriage. Where in accordance with the law of the court seized of the case damages are awarded in the form of periodical income payments, the equivalent capital value of those payments shall not exceed the said limit.

(2) Article 8 of the Convention is replaced by the following text:

1. The liability of the carrier for the loss of or damage to cabin luggage shall in no case exceed 833 units of account per passenger, per carriage.

2. The liability of the carrier for the loss of or damage to vehicles including all luggage carried in or on the vehicle shall in no case exceed 3,333 units of account per vehicle, per carriage.

3. The liability of the carrier for the loss of or damage to luggage other than that mentioned in paragraphs 1 and 2 of this Article shall in no case exceed 1,200 units of account per passenger, per carriage.

4. The carrier and the passenger may agree that the liability of the carrier shall be subject to a deductible not exceeding 117 units of account in the case of damage to a vehicle and not exceeding 13 units of account per passenger in the case of loss of or damage to other luggage, such sum to be deducted from the loss or damage.

(3) Article 9 of the Convention and its title are replaced by the following:

Units of Account or Monetary Unit and Conversion

1. The Unit of Account mentioned in this Convention is the Special Drawing Right as defined by the International Monetary Fund. The amounts mentioned in articles 7 and 8 shall be converted into the national currency of the State of the Court seized of the case on the basis of the value of that currency on the date of the judgment or the date agreed upon by the Parties. The value of the national currency, in terms of the Special Drawing

Right, of a State which is a member of the International Monetary Fund, shall be calculated in accordance with the method of valuation applied by the International Monetary Fund in effect at the date in question for its operations and transactions. The value of the national currency, in terms of the Special Drawing Right, of a State which is not a member of the International Monetary Fund, shall be calculated in a manner determined by the State.

2. Nevertheless, a State which is not a member of the International Monetary Fund and whose law does not permit the application of the provisions of paragraph 1 of this Article may, at the time of ratification or accession or at any time thereafter, declare that the limits of liability provided for in this Convention to be applied in its territory shall be fixed as follows:

- (a) in respect of Article 7, paragraph 1, 700,000 monetary units;
- (b) in respect of Article 8, paragraph 1, 12,500 monetary units;
- (c) in respect of Article 8, paragraph 2, 50,000 monetary units;
- (d) in respect of Article 8, paragraph 3, 18,000 monetary units;
- (e) in respect of Article 8, paragraph 4, the deductible shall not exceed 1,750 monetary units in the case of damage to a vehicle and shall not exceed 200 monetary units per passenger in the case of loss of or damage to other luggage.

The monetary unit referred to in this paragraph corresponds to sixty-five and a half milligrammes of gold of millesimal fineness nine hundred. The conversion of the amounts specified in this paragraph into the national currency shall be made according to the law of the State concerned.

3. The calculation mentioned in the last sentence of paragraph 1 and the conversion mentioned in paragraph 2 shall be made in such a manner as to express in the national currency of the State as far as possible the same real value for the amounts in Articles 7 and 8 as is expressed there in units of account. States shall communicate to the depositary the manner of calculation pursuant to paragraph 1 or the result of the conversion in paragraph 2 as the case may be, when depositing an instrument referred to in Article III and whenever there is a change in either.

ARTICLE III

Signature, Ratification and Accession

1. The present Protocol shall be open for signature by any State which has signed the Convention or acceded thereto and by any State invited to attend the Conference to Revise the Unit of Account Provisions in the Athens Convention Relating to the Carriage of Passengers and their Luggage by Sea, 1974, held in London from 17 to 19 November 1976. This Protocol shall be open for signature from 1 February 1977 to 31 December 1977 at the Headquarters of the Organization.

[No. 35.] *Merchant Shipping (Liability of Shipowners and Others) Act, 1996.* [1996.]

SCH.2 Pt.II

2. Subject to paragraph 4 of this Article, the present Protocol shall be subject to ratification, acceptance or approval by the States which have signed it.

3. Subject to paragraph 4 of this article, this Protocol shall be open for accession by States which did not sign it.

4. The present Protocol may be ratified, accepted, approved or acceded to by States Parties to the Convention.

5. Ratification, acceptance, approval or accession shall be effected by the deposit of a formal instrument to that effect with the Secretary-General.

6. Any instrument of ratification, acceptance, approval or accession deposited after the entry into force of an amendment to the present Protocol with respect to all existing Parties or after the completion of all measures required for the entry into force of the amendment with respect to all existing Parties shall be deemed to apply to the Protocol as modified by the amendment.

ARTICLE IV

Entry into Force

1. The present Protocol shall enter into force for the States which have ratified, accepted, approved or acceded to it on the ninetieth day following the date on which ten States have either signed it without reservation as to ratification, acceptance or approval or have deposited the requisite instruments of ratification, acceptance, approval or accession.

2. However, the present Protocol shall not enter into force before the Convention has entered into force.

3. For any State which subsequently signs this Protocol without reservation as to ratification, acceptance or approval, or deposits its instrument of ratification, acceptance, approval or accession, the present Protocol shall come into force on the ninetieth day after the date of such signature or deposit.

ARTICLE V

Denunciation

1. The present Protocol may be denounced by a Party at any time after the date on which the Protocol enters into force for that party.

2. Denunciation shall be effected by the deposit of an instrument with the Secretary-General who shall inform all other Parties of the receipt of the instrument of denunciation and of the date of its deposit.

3. A denunciation shall take effect one year after the deposit of an instrument of denunciation, or after such longer period as may be specified in the instrument.

Revision and Amendment

1. A Conference for the purpose of revising or amending the present Protocol may be convened by the Organization.
2. The Organization shall convene a Conference of the Parties to the present Protocol for revising or amending it at the request of not less than one-third of the Parties.

ARTICLE VII

Depositary

1. The present Protocol shall be deposited with the Secretary-General.
2. The Secretary-General shall:
 - (a) inform all States which have signed or acceded to the present Protocol of:
 - (i) each new signature and each deposit of an instrument together with the date thereof;
 - (ii) the date of entry into force of the present Protocol;
 - (iii) the deposit of any instrument of denunciation of the present Protocol together with the date on which the denunciation takes effect;
 - (iv) any amendments to the present Protocol;
 - (b) transmit certified true copies of the present Protocol to all States which have signed the present Protocol or acceded thereto.
3. Upon entry into force of the present Protocol, a certified true copy thereof shall be transmitted by the Secretary-General to the Secretariat of the United Nations for registration and publication in accordance with Article 102 of the Charter of the United Nations.

ARTICLE VIII

Languages

The present Protocol is established in a single original in the English and French languages, both texts being equally authentic. Official translations in the Russian and Spanish languages shall be prepared by the Secretary-General and deposited with the signed original.

DONE AT LONDON this nineteenth day of November one thousand nine hundred and seventy-six.

IN WITNESS WHEREOF the undersigned being duly authorized for that purpose have signed the present Protocol.

(Here follow signatures on behalf of certain States).

[No. 35.] *Merchant Shipping (Liability of Shipowners and Others) Act, 1996.* [1996.]

Section 31 (2).

THIRD SCHEDULE

ARTICLES I TO X OF THE INTERNATIONAL CONVENTION FOR THE UNIFICATION OF CERTAIN RULES OF LAW RELATING TO BILLS OF LADING AS AMENDED BY THE 1968 AND 1979 PROTOCOLS

ARTICLE I

In this Convention the following words are employed with the meanings set out below:

- (a) "Carrier" includes the owner of the vessel or the charterer who enters into a contract of carriage with a shipper.
- (b) "Contract of carriage" applies only to contracts of carriage covered by a bill of lading or any similar document of title, in so far as such document relates to the carriage of goods by sea; it also applies to any bill of lading or any similar document as aforesaid issued under or pursuant to a charter party from the moment at which such instrument regulates the relations between a carrier and a holder of the same.
- (c) "Goods" includes goods, wares, merchandise, and articles of every kind whatsoever except live animals and cargo which by the contract of carriage is stated as being carried on deck and is so carried.
- (d) "Ship" means any vessel used for the carriage of goods by sea.
- (e) "Carriage of goods" covers the period from the time when the goods are loaded on to the time they are discharged from the ship.

ARTICLE II

Subject to the provisions of Article VI, under every contract of carriage of goods by sea the carrier, in relation to the loading, handling, storage, carriage, custody, care, and discharge of such goods shall be subject to the responsibilities and liabilities, and entitled to the rights and immunities hereinafter set forth.

ARTICLE III

1. The carrier shall be bound before and at the beginning of the voyage to exercise due diligence to:

- (a) Make the ship seaworthy;
- (b) Properly man, equip, and supply the ship;
- (c) Make the holds, refrigerating and cold chambers, and all other parts of the ship in which goods are carried, fit and safe for their reception, carriage and preservation.

2. Subject to the provisions of Article IV, the carrier shall properly and carefully load, handle, stow, carry, keep, care for, and discharge the goods carried.

[1996.] *Merchant Shipping (Liability of Shipowners and Others) Act, 1996.* [No. 35.]

3. After receiving the goods into his charge, the carrier or the master or agent of the carrier shall, on demand of the shipper, issue to the shipper a bill of lading showing among other things: SCH.3

- (a) The leading marks necessary for identification of the goods as the same are furnished in writing by the shipper before the loading of such goods starts, provided such marks are stamped or otherwise shown clearly upon the goods if uncovered, or on the cases or coverings in which such goods are contained, in such a manner as should ordinarily remain legible until the end of the voyage;
- (b) Either the number of packages or pieces, or the quantity, or weight, as the case may be, as furnished in writing by the shipper;
- (c) The apparent order and condition of the goods.

Provided that no carrier, master, or agent of the carrier shall be bound to state or show in the bill of lading any marks, number, quantity, or weight which he has reasonable grounds for suspecting not accurately to represent the goods actually received or which he has had no reasonable means of checking.

4. Such a bill of lading shall be *prima facie* evidence of the receipt by the carrier of the goods as therein described in accordance with paragraph 3 (a), (b) and (c). However, proof to the contrary shall not be admissible when the bill of lading has been transferred to a third party acting in good faith.

5. The shipper shall be deemed to have guaranteed to the carrier the accuracy at the time of shipment of the marks, number, quantity, and weight, as furnished by him, and the shipper shall indemnify the carrier against all loss, damages, and expenses arising or resulting from inaccuracies in such particulars. The right of the carrier to such indemnity shall in no way limit his responsibility and liability under the contract of carriage to any person other than the shipper.

6. Unless notice of loss or damage and the general nature of such loss or damage be given in writing to the carrier or his agent at the port of discharge before or at the time of the removal of the goods into the custody of the person entitled to delivery thereof under the contract of carriage, such removal shall be *prima facie* evidence of the delivery by the carrier of the goods as described in the bill of lading.

If the loss or damage is not apparent, the notice must be given within three days of the delivery.

The notice in writing need not be given if the state of the goods has at the time of their receipt been the subject of joint survey or inspection.

Subject to paragraph 6 *bis* the carrier and the ship shall in any event be discharged from all liability whatsoever in respect of the goods, unless suit is brought within one year of their delivery or of the date when they should have been delivered. This period may, however, be extended if the parties so agree after the cause of action has arisen.

In the case of any actual or apprehended loss or damage the carrier and the receiver shall give all reasonable facilities to each other for inspecting and tallying the goods.

6 *bis*. An action for indemnity against a third person may be brought even after the expiration of the year provided for in the preceding paragraph if brought within the time allowed by the law

[No. 35.] *Merchant Shipping (Liability of Shipowners and Others) Act, 1996.* [1996.]

SCH.3

of the Court seized of the case. However, the time allowed shall be not less than three months, commencing from the day when the person bringing such action for indemnity has settled the claim or has been served with process in the action against himself.

7. After the goods are loaded, the bill of lading to be issued by the carrier, master, or agent of the carrier to the shipper shall, if the shipper so demands, be a "shipped" bill of lading, provided that if the shipper shall have previously taken up any document of title to such goods, he shall surrender the same as against the issue of the "shipped" bill of lading. At the option of the carrier such document of title may be noted at the port of shipment by the carrier, master, or agent with the name or names of the ship or ships upon which the goods have been shipped and the date or dates of shipment, and when so noted, if it shows the particulars mentioned in paragraph 3 of Article III, it shall for the purpose of this Article be deemed to constitute a "shipped" bill of lading.

8. Any clause, covenant, or agreement in a contract of carriage relieving the carrier or the ship from liability for loss or damage to or in connection with goods arising from negligence, fault, or failure in the duties and obligations provided in this Article, or lessening such liability otherwise than as provided in this Convention, shall be null and void and of no effect. A benefit of insurance in favour of the carrier or similar clause shall be deemed to be a clause relieving the carrier from liability.

ARTICLE IV

1. Neither the carrier nor the ship shall be liable for loss or damage arising or resulting from unseaworthiness unless caused by want of due diligence on the part of the carrier to make the ship seaworthy and to secure that the ship is properly manned, equipped, and supplied and to make the holds, refrigerating and cold chambers, and all other parts of the ship in which goods are carried fit and safe for their reception, carriage, and preservation in accordance with the provisions of paragraph 1 of Article III. Whenever loss or damage has resulted from unseaworthiness, the burden of proving the exercise of due diligence shall be on the carrier or other person claiming exemption under this Article.

2. Neither the carrier nor the ship shall be responsible for loss or damage arising or resulting from:

- (a) Act, neglect, or default of the master, mariner, pilot, or the servants of the carrier in the navigation or in the management of the ship.
- (b) Fire, unless caused by the actual fault or privity of the carrier.
- (c) Perils, dangers, and accidents of the sea or other navigable waters.
- (d) Act of God.
- (e) Act of war.
- (f) Act of public enemies.

[1996.] *Merchant Shipping (Liability of Shipowners and Others) Act, 1996.* [No. 35.]

- (g) Arrest or restraint of princes, rulers, or people or seizure under legal process. SCH.3
- (h) Quarantine restrictions.
- (i) Act or omission of the shipper or owner of the goods, his agent, or representative.
- (j) Strikes or lock-outs or stoppage or restraint of labour from whatever cause, whether partial or general.
- (k) Riots and civil commotions.
- (l) Saving or attempting to save life or property at sea.
- (m) Wastage in bulk or weight or any other loss or damage arising from inherent defect, quality, or vice of the goods.
- (n) Insufficiency of packing.
- (o) Insufficiency or inadequacy of marks.
- (p) Latent defects not discoverable by due diligence.
- (q) Any other cause arising without the actual fault or privity of the carrier, or without the fault or neglect of the agents or servants of the carrier; but the burden of proof shall be on the person claiming the benefit of this exception to show that neither the actual fault or privity of the carrier nor the fault or neglect of the agents of the carrier contributed to the loss or damage.

3. The shipper shall not be responsible for loss or damage sustained by the carrier or the ship arising or resulting from any cause without the act, fault, or neglect of the shipper, his agents, or his servants.

4. Any deviation in saving or attempting to save life or property at sea or any reasonable deviation shall not be deemed to be an infringement or breach of this Convention or of the contract of carriage, and the carrier shall not be liable for any loss or damage resulting therefrom.

5. (a) Unless the nature and value of such goods have been declared by the shipper before shipment and inserted in the bill of lading, neither the carrier nor the ship shall in any event be or become liable for any loss or damage to or in connection with the goods in an amount exceeding 666.67 units of account per package or unit or 2 units of account per kilogramme of gross weight of the goods lost or damaged, whichever is the higher.

(b) The total amount recoverable shall be calculated by reference to the value of such goods at the place and time at which the goods are discharged from the ship in accordance with the contract or should have been so discharged.

The value of the goods shall be fixed accordingly to the commodity exchange price, or, if there be no such price, according to the current market price, or, if there be no commodity exchange price or current market price, by reference to the normal value of goods of the same kind and quality.

[No. 35.] *Merchant Shipping (Liability of Shipowners and Others) Act, 1996.* [1996.]

SCH.3

- (c) Where a container, pallet or similar article of transport is used to consolidate goods, the number of packages or units enumerated in the bill of lading as packed in such article of transport shall be deemed the number of packages or units for the purpose of this paragraph as far as these packages or units are concerned. Except as aforesaid such article of transport shall be considered the package or unit.
- (d) The unit of account mentioned in this Article is the Special Drawing Right as defined by the International Monetary Fund. The amounts mentioned in sub-paragraph (a) of this paragraph shall be converted into national currency on the basis of the value of that currency on a date to be determined by the law of the Court seized of the case.

The value of the national currency, in terms of the Special Drawing Right, of a State which is a member of the International Monetary Fund, shall be calculated in accordance with the method of valuation applied by the International Monetary Fund in effect at the date in question for its operations and transactions. The value of the national currency, in terms of the Special Drawing Right, of a State which is not a member of the International Monetary Fund, shall be calculated in a manner determined by that State.

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

- (i) in respect of the amount of 666.67 units of account mentioned in sub-paragraph (a) of paragraph 5 of this Article, 10,000 monetary units;
- (ii) in respect of the amount of 2 units of account mentioned in sub-paragraph (a) of paragraph 5 of this Article, 30 monetary units.

The monetary unit referred to in the preceding sentence corresponds to 65.5 milligrams of gold of millesimal fineness 900. The conversion of the amounts specified in that sentence into the national currency shall be made according to the law of the State concerned.

The calculation and the conversion mentioned in the preceding sentences shall be made in such a manner as to express in the national currency of the State as far as possible the same real value for the amounts in sub-paragraph (a) of paragraph 5 of this Article as is expressed there in units of account.

States shall communicate to the depositary the manner of calculation or the result of the conversion as the case may be, when depositing an instrument of ratification of the Protocol of 1979 or of accession thereto and whenever there is a change in either.

[1996.] *Merchant Shipping (Liability of Shipowners and Others) Act, 1996.* [No. 35.]

- (e) Neither the carrier nor the ship shall be entitled to the benefit of the limitation of liability provided for in this paragraph if it is proved that the damage resulted from an act or omission of the carrier done with intent to cause damage, or recklessly and with knowledge that damage would probably result. SCH.3
- (f) The declaration mentioned in subparagraph (a) of this paragraph, if embodied in the bill of lading, shall be *prima facie* evidence, but shall not be binding or conclusive on the carrier.
- (g) By agreement between the carrier, master or agent of the carrier and the shipper other maximum amounts than those mentioned in subparagraph (a) of this paragraph may be fixed, provided that no maximum amount so fixed shall be less than the appropriate maximum mentioned in that subparagraph.
- (h) Neither the carrier nor the ship shall be responsible in any event for loss or damage to, or in connection with, goods if the nature or value thereof has been knowingly misstated by the shipper in the bill of lading.

6. Goods of an inflammable, explosive, or dangerous nature to the shipment whereof the carrier, master, or agent of the carrier has not consented with knowledge of their nature and character may at any time before discharge be landed at any place or destroyed or rendered innocuous by the carrier without compensation, and the shipper of such goods shall be liable for all damages and expenses directly or indirectly arising out of or resulting from such shipment. If any such goods shipped with such knowledge and consent shall become a danger to the ship or cargo, they may in like manner be landed at any place or destroyed or rendered innocuous by the carrier without liability on the part of the carrier except to general average, if any.

ARTICLE IV bis

The defences and limits of liability provided for in this Convention shall apply in any action against the carrier in respect of loss or damage to goods covered by a contract of carriage whether the action be founded in contract or in tort.

If such an action is brought against a servant or agent of the carrier (such servant or agent not being an independent contractor), such servant or agent shall be entitled to avail himself of the defences and limits of liability which the carrier is entitled to invoke under this Convention.

The aggregate of the amounts recoverable from the carrier, and such servants and agents, shall in no case exceed the limit provided for in this Convention.

Nevertheless, a servant or agent of the carrier shall not be entitled to avail himself of the provisions of this Article, if it is proved that the damage resulted from an act or omission of the servant or agent done with intent to cause damage or recklessly and with knowledge that damage would probably result.

[No. 35.] *Merchant Shipping (Liability of Shipowners and Others) Act, 1996.* [1996.]

SCH.3

ARTICLE V

A carrier shall be at liberty to surrender in whole or in part all or any of his rights and immunities, or to increase any of his responsibilities and liabilities under this Convention provided such surrender or increase shall be embodied in the bill of lading issued to the shipper.

The provisions of this Convention shall not be applicable to charter parties, but if bills of lading are issued in the case of a ship under a charter party they shall comply with the terms of this Convention. Nothing in these rules shall be held to prevent the insertion in a bill of lading of any lawful provision regarding general average.

ARTICLE VI

Notwithstanding the provisions of the preceding articles, a carrier, master, or agent of the carrier and a shipper shall in regard to any particular goods be at liberty to enter into any agreement in any terms as to the responsibility and liability of the carrier for such goods, and as to the rights and immunities of the carrier in respect of such goods, or concerning his obligation as to seaworthiness so far as this stipulation is not contrary to public policy, or concerning the care or diligence of his servants or agents in regard to the loading, handling, stowage, carriage, custody, care, and discharge of the goods carried by sea, provided that in this case no bill of lading has been or shall be issued and that the terms agreed shall be embodied in a receipt which shall be a non-negotiable document and shall be marked as such.

Any agreement so entered into shall have full legal effect.

Provided that this Article shall not apply to ordinary commercial shipments made in the ordinary course of trade, but only to other shipments where the character or condition of the property to be carried or the circumstances, terms, and conditions under which the carriage is to be performed are such as reasonably to justify a special agreement.

ARTICLE VII

Nothing herein contained shall prevent a carrier or a shipper from entering into any agreement stipulation, condition, reservation, or exemption as to the responsibility and liability of the carrier or the ship for the loss or damage to, or in connection with the custody and care and handling of goods prior to the loading on, and subsequent to the discharge from, the ship on which the goods are carried by sea.

ARTICLE VIII

The provisions of this Convention shall not affect the rights and obligations of the carrier under any statute for the time being in force relating to the limitation of the liability of owners of sea-going vessels.

ARTICLE IX

This Convention shall not affect the provisions of any international Convention or national law governing liability for nuclear damage.

[1996.] *Merchant Shipping (Liability of Shipowners and Others) Act, 1996.* [No. 35.]

ARTICLE X

SCH.3

The provisions of this Convention shall apply to every bill of lading relating to the carriage of goods between ports in two different States if:

- (a) the bill of lading is issued in a Contracting State,
- or
- (b) the carriage is from a port in a Contracting State,
- or
- (c) the contract contained in or evidenced by the bill of lading provides that the rules of this Convention or legislation in any State giving effect to them are to govern the contract

whatever may be the nationality of the ship, the carrier, the shipper, the consignee, or any other interested person.

Each Contracting State shall apply the provisions of this Convention to the bills of lading mentioned above.

This Article shall not prevent a Contracting State from applying the rules of this Convention to bills of lading not included in the preceding paragraphs.

FOURTH SCHEDULE

Section 3.

ENACTMENTS REPEALED

Session and Chapter or Number and Year (1)	Short Title (2)	Extent of Repeal (3)
57 & 58 Vict., c. 60	Merchant Shipping Act, 1894.	Part VIII (sections 502 to 509).
61 & 62 Vict., c. 14	Merchant Shipping (Liability of Shipowners) Act, 1898.	The whole Act.
63 & 64 Vict., c. 32	Merchant Shipping (Liability of Shipowners and others) Act, 1900.	The whole Act.
6 Edw. 7, c. 48	Merchant Shipping Act, 1906.	Sections 69, 70 and 71.
1 & 2 Geo. 5, c. 42	Merchant Shipping Act, 1911.	Section 1 (2).
11 & 12 Geo. 5, c. 28	Merchant Shipping Act, 1921.	The whole Act (in so far as it relates to Part VIII of the Merchant Shipping Act, 1894).
No. 46 of 1947	Merchant Shipping Act, 1947.	Section 13 and the Second Schedule.
No. 34 of 1993	Merchant Shipping (Salvage and Wreck) Act, 1993.	Section 53.

[No. 35.] *Merchant Shipping (Liability of Shipowners and Others) Act, 1996.* [1996.]

ACTS REFERRED TO

Civil Liability Act, 1961	1961, No. 41
Merchant Shipping Act, 1894	1894, c. 60
Merchant Shipping (Liability of Shipowners) Act, 1898	1898, c. 14
Merchant Shipping (Liability of Shipowners and others) Act, 1900	1900, c. 32
Merchant Shipping Act, 1906	1906, c. 48
Merchant Shipping Act, 1911	1911, c. 42
Merchant Shipping Act, 1921	1921, c. 28
Merchant Shipping Act, 1947	1947, No. 46
Merchant Shipping (Salvage and Wreck) Act, 1993	1993, No. 34