The Effects on Limitation of Liability of the 1976 Limitation Convention and the 1969 Tonnage Convention Regulations

Historically, the concept of allowing a shipowner to limit liability arose as a matter of public policy, with the aim of encouraging trade. Until 1968, in the United Kingdom and many other countries, the regime for determining a shipowner's limit of liability was based upon the International Convention Respecting the Limitation of the Liability of Owners of Sea Going Ships, 1957 (the 1957 Convention) - click here for a list of contracting states. Since 1957, as the values of cargoes, vessels, port installations and the like vastly increased, and claims arising from marine casualties similarly escalated, many claimants felt that the limits imposed by the 1957 Convention were unreasonably low. Thus, in cases where limitation of liability was likely to be involved, costly and time consuming litigation often ensued in an effort to "break the fund". Also, since 1957 a number of other Conventions have been introduced which have dealt with liability in particular fields, for example the Civil Liability Convention on oil pollution Conventions such as these introduced financial limits for their particular category of liability much greater than the overall limits provided for in the 1957 Convention. To avoid, either in general or in particular circumstances, the specific Convention limits being negated by the much lower global limits of the 1957 Convention, amendments were required. In addition to assuaging the desire of potential claimants for higher limits, change was required to make more certain of the entitlement to limit liability. The product of this need for change is the 1976 Convention on the Limitation of Liability for Maritime Claims (the 1976 Convention).

The 1976 Convention came into force on 1st December 1986 (Click here for list of contracting states).

One of the fundamental changes that will be introduced by the 1976 Convention is the method by which the limitation fund is calculated. Although still tonnage based, the 1976 Convention departs from the concept of limitation tonnage found in the 1957 Convention, which was the ship's net registered tonnage plus the propelling machinery tonnage. By contrast the 1976 Convention adopts the vessel's gross tonnage as defined by the regulations contained in Annex I of the 1969 Tonnage Convention ("the 1969 Tonnage Convention Regulations"), as the limitation tonnage. This approach results in the limitation tonnage for all vessels increasing, and the increases for certain types of vessel, notably vessels of the roll-on roll-off type, are dramatic. This is due to the change in the method of determining gross tonnage which, under the 1969 Tonnage Convention Regulations, is based upon absolute physical characteristics of the vessel rather than the internal design. Briefer, for the purposes of the 1957 Convention, gross register tonnage is a measure of the total internal capacity of a ship, including that of the underdeck and the tweendeck spaces, the superstructure and deck houses. Certain spaces, such as navigational spaces, galleys, stairways etc. are exempted from inclusion in the gross tonnage so as to encourage their adequate provision.

Net register tonnage is a measure of the volume of space available for cargo and passengers and is thus a measure of the earning capacity of the vessel. It is calculated by deducting from gross tonnage those spaces which are necessary for operating the vessel. Deductions include the master's and crew's accommodation spaces, safety and storage spaces, and the propelling machinery space. It can be seen from the descriptions above that the measurement of tonnage involves different categories of spaces. Exempted spaces are those which are considered essential from the point of view of safety, and deducted spaces are those which are necessary for the operation of the vessel. An exempted space is excluded both from the measurement of gross and net tonnage. A deducted space must first of all be included in the gross tonnage before it can be deducted for the purposes of calculating net tonnage.

The major component of gross tonnage is the under deck tonnage. This is the volume of the space below the tonnage deck bounded by:

1. The tonnage deck itself.
2. The upper surface of the double bottom tanks or similar.
3. The inner face of the frames or sparring.

The tonnage deck is the upper deck in ships with less than three continuous decks or the second deck from below in ships with three or more decks. Also included in gross tonnage is: -

a. The "hewn off" volume i.e. the space between the tonnage deck and the upper deck.

b. The volume of permanently enclosed spaces on or above the upper deck less any exempted spaces. Whether such spaces are included in the measurement of gross tonnage or not depends upon whether they are open or closed spaces within the meaning of the tonnage measurement rules.

This method of tonnage measurement is commonly known as the Moorsom system.

Given the method of determination of tonnage, alterations in ship design, provided such alterations were made within the limitations imposed by safety considerations could have a substantial effect upon ships tonnage. This in turn could influence the operating cost of a vessel. Developments over the years in ship design and methods of propulsion, particularly the reduced space required for propelling machinery, as against relatively little change in the method of tonnage measurement, gave rise to complaints that the gross tonnage obtained using this Moorsom system did not give a true representation of the size and earning capacity of ships. Although most maritime nations adopted the Moorsom system of measurement, the nature of the rules, and the different individual interpretations of those rules, gave rise to the possibility of the tonnage of similar ships being significantly different in different jurisdictions. The 1969 Tonnage Convention Regulations represent the culmination of many years of effort to adopt a unified system of tonnage measurement - the Universal Measurement System or U.M.S.

For most ship types gross tonnage under Moorsom and U.M.S. systems of measurement will be very similar. For some types of vessel - tankers, bulkers, and ore carriers - gross tonnages under the U.M.S. will actually fall to around 95-96% of Moorsom tonnages. In contrast, the U.M.S. gross tonnages of closed Ro-Ro ships and ferries will be between about 135% and 160% of Moorsom gross tonnages. In the case of open Ro-Ro ships the U.M.S. gross tonnage will be of the order of 30% of the Moorsom gross. The reason for these increases is, as mentioned above, the inclusion in the U.M.S. system of a very large space which was exempted from measurement under the Moorsom system.

Even if a vessel's gross tonnage is relatively unchanged by the U.M.S. system, her limitation tonnage will still be substantially increased because of the removal of the benefit of the deducted spaces (other than propelling machinery space) already introduced when limitation tonnage was based
around the Moomsnet register tonnage.

(Click here for article on Tonnage Measurement of Ships.)

In addition to increasing limitation tonnage by virtue of the adoption of U.M.S. gross tonnage, the 1976 Convention also increases the value of the limitation fund. Under the 1957 Convention the unit of account was originally the Gold Franc. Limitation amounts were 1,000 Gold Francs per limitation ton for property claims, and 3,100 Gold Francs per limitation ton for the property and personal layers of the limitation fund combined. Since November 1964 the Special Drawing Right of the International Monetary Fund (the S.D.R.) has been substituted in many jurisdictions for the Gold Franc as the unit of account. The corresponding S.D.R. multipliers became 65.67 S.D.R. ($72.75 as at 1st December, 1985) for the property layer and 206.67 S.D.R. ($225.50 as at 1st December, 1985) for the personal and property layers combined.

The 1976 Convention introduces a sliding scale for the calculation of limitation funds as follows: -

**Property claims alone**

<table>
<thead>
<tr>
<th>Tonnage not exceeding 500 tons</th>
<th>187,000 SDR (334 SDR per ton)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Over each ton</td>
<td>501 - 30,000</td>
</tr>
<tr>
<td></td>
<td>30,001 - 70,000</td>
</tr>
<tr>
<td></td>
<td>70,001 - upwards</td>
</tr>
</tbody>
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**Loss of Life and Personal injury claims**

<table>
<thead>
<tr>
<th>Tonnage not exceeding 500 tons</th>
<th>333,000 SDR (667 SDR per ton)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Over each ton</td>
<td>501 - 30,000</td>
</tr>
<tr>
<td></td>
<td>30,001 - 70,000</td>
</tr>
<tr>
<td></td>
<td>70,001 - upwards</td>
</tr>
</tbody>
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In May 1998 IMO introduced a Protocol to amend the 1976 Convention. The Protocol increases the levels of compensation available but is not yet in force (as at November 1999).

It is noted worthy that for the first time a "platform" or minimum limitation fund is introduced for property claims. This will be of particular concern to the owners of small vessels, such as tugs.

Under the 1957 Convention a vessel of 10,000 limitation tons would have the following limitation figures: -

**Property claims**

666,700 SDR

**Personal claims**

1,400,000 SDR

2,066,700 SDR ($2,255,038.37 as at 1st December, 1985)

Under the 1976 Convention the figures for a vessel of 10,000 limitation tons will be as follows: -

**Property claims**

1,753,500 SDR

**Personal claims**

3,014,000 SDR

Total fund 5,667,500 SDR ($5,183,979.27 as at 1st December, 1985)

Thus for a vessel of constant limitation tonnage, under the provisions of the 1976 Convention the total fund is increased by a factor of 2.74. The personal layer increases by a factor of 2.80, the property layer by factor of 2.63. It should be understood, however, that for any particular vessel the limitation tonnage will also usually increase for the reasons explained above. This will result in an increase in the amounts of limitation funds for particular vessels by factors probably in excess of 3.

Hand in hand with the increase in limitation amounts is an increased certainty of the right to limit liability. The 1957 Convention test of "actual fault or privity" of the owner as conduct depriving him of his rights of limitation has been replaced. Under the 1976 Convention the right to limitation is lost as a result of the act or omission of the person liable being "committed with the intent to cause such loss, or recklessly and with knowledge that such loss would probably result". It is important to note that under this test conduct which denies the right to limit liability would also be conduct that would prejudice a Member's Club cover. Whereas, in the past, the Club has been content, in appropriate cases, to provide security for the full amount of claims (in excess of a vessel's limitation fund) provided the guarantee was made subject to the right to plead limitation, such a situation may no longer occur once the 1976 Convention comes into force.

The 1976 Convention also introduces changes regarding the persons who are entitled to limit liability and the claims which are subject to limitation.

Under the 1957 Convention, as the full title implies, the owner of a seagoing ship was the party entitled to limit his liability. The 1976 Convention extends the availability of limitation to salvors, persons for whose acts, neglects, or defaults the ship owner or salvor is responsible, and an insurer of liability for claims which are subject to limitation in accordance with the Rules of the 1976 convention. These provisions are embodied in Article 1 of the convention which also clarifies the extent of the meaning of the words "ship owner" and "salvor".

The purpose of the amendment regarding salvors is to enable a salvor to limit liability in circumstances similar to those which prevailed in the case of the "Tojo Maru" (1972 AC 242). In that case it was decided by the English House of Lords that a salvor could not limit liability in respect of damage caused to the "Tojo Maru" by a diver who caused an explosion by negligence welding the hull of the vessel. His employers were not able to limit liability by reference to the tonnage of the tug because the diver was not working on board the tug at the time the explosion occurred.

The amendment will enable a salvor to claim the right of limitation when operating on board a ship in respect of which salvage services are being rendered, although away from the tug itself (the so-called "absent-tug" situation).

The 1976 Convention covered personal and property damage which was caused by persons on board the ship, and only covered damage caused by people not on board the ship if it occurred in connection with the navigation of the ship or in the loading, carriage or discharge of its cargo or in the embarkation, carriage or disembarkation of its passengers. The 1976 Convention makes reference to events occurring on board or in direct connection with the operation of the ship, a much wider definition.

This article is necessarily a very brief summary of the provisions of the 1976 Convention. Members and the Club will be faced with a number of new problems, not the least being the substantial increase in limitation funds. It remains to be seen whether courts will uphold the shipowners rights to limit under the Convention in the face of this increased exposure.

From 1st September 1999 new interest rate provisions apply in the UK to calculation of the limitation fund under the 1976 Convention. Click here for further information.

¹ The International Convention on Tonnage Measurement of Ships, 1969 (IMO)