

MEMORANDUM FOR THE CABINET BY THE  
HON. PRIME MINISTER

International Convention relating to the  
Limitation of the Liability of Owners of  
Sea-Going Ships

In 1957, the United Kingdom became a party to the Brussels Convention relating to the Limitation of the Liability of Owners of Sea-going Ships. The Convention introduces no new principle and, in effect, increases the maximum limits of liability fixed by a previous Brussels Convention of 1924.

2. The occurrences in respect of which claims may be limited are, briefly put, events which give rise to "personal claims" or to "property claims" but which do not result from the actual fault or privity of the shipowner.

3. The amounts to which the shipowner may limit his liability are set out in the Convention. These are:

- (a) 1,000 gold francs (about £24) for each ton of the ship's tonnage in respect of property claims;
- (b) 3,100 gold francs (about £74) for each ton of the ship's tonnage in respect of personal claims;
- (c) where there are both kinds of claims, 3,100 gold francs for each ton of the ship's tonnage, divided into two portions of 2,100 (about £50) and 1,000 gold francs in respect of personal and property claims respectively, with any unpaid balance on the former claims ranking rateably with the latter against the second portion.

4. Where the aggregate of the claims arising on any distinct occasion exceeds the said limits of liability the total representing such limits of liability constitutes a "limitation fund". In any competition among claimants against any portion of the fund, creditors receive an amount calculated pro rata to the amounts of their claims as proved. There is a minimum tonnage platform of 300 tons. By rendering the full amount of his "limitation fund" available to creditors the shipowner can avoid any arrest or other restraint placed on the ship.

5. The Convention provides that any High Contracting Party may together with or at any time after its ratification of the Convention declare by written notice to the Belgian Government (to be later circularised by the Belgian Government to other

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signatory or acceding States) that the Convention shall extend to any of the territories for whose international relations it is responsible. This is of importance to Malta having regard to the fact that the United Kingdom has ratified the Convention.

6. The United Kingdom has given effect to the Convention by means of the Merchant Shipping (Liability of Shipowners and Others) Act, 1958. Subsequent to the enactment of this legislation the United Kingdom ratified the Convention but reserved the right to make all or any of the reservations in the Protocol in respect of any of the territories for whose international relations it is responsible.

7. The reservations permissible by the Protocol and of direct interest to Malta are:

- (a) that of the right to exclude the application of that Article of the Convention regarding the right of shipowners to limit their liability for the removal of wrecks and damage to harbour works; and
- (b) that of the right to regulate by specific provisions of national law the system of limitation of liability to be applied to ships of less than 300 tons, i.e. in effect, the application of the minimum tonnage platform of 300 tons only to cases of death or personal injury and not of damage to property.

8. In referring the Convention to the Malta Government, the Secretary of State pointed out that:

- (a) the previous provisions relating to shipowners' liability are contained in Part VIII of the Merchant Shipping Act, 1894;
- (b) the Merchant Shipping (Liability of Shipowners and Others) Act, 1958, gives effect to the Convention mainly by amendment of that Part; and
- (c) the 1958 Act could be applied to overseas territories by Order-in-Council, under section 11 of that Act.

9. The Malta Government were asked to state:

- (a) whether the Convention should be extended to Malta;
- (b) whether the Malta Government wished the U.K. Act of 1958 to be extended to Malta by Order-in-Council, as recommended by the Secretary of State or, alternatively

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- (c) whether it was proposed to introduce local legislation on the lines of the U.K. Act of 1958.  
(Action on the lines of either (b) or (c) to be completed before the extension of the Convention to Malta).

10. The advice given to the Government by the Law Officers after full consideration of the points raised by the Secretary of State and the observations made by the Comptroller of Customs and Superintendent of the Ports was as follows:-

- (a) The Convention should extend to Malta subject to two reservations (see (c) and (d) below).
- (b) The most practical and expeditious way of giving effect to the Convention in Malta would be by Order-in-Council under section 11 of the U.K. Act of 1958, the reason being that Merchant Shipping legislation is very complex and spreads over many Acts. Part VIII of the Merchant Shipping Act 1894 applies to Malta and the 1958 Act is built mainly around that Part. Therefore every advantage was indicated in accepting extension by Order-in-Council.
- (c) The reservation relating to the removal of wrecks etc. should be entered on Malta's behalf.

It was observed that the position in U.K. was that most harbour authorities could recover the whole cost of wreck removal (less any proceeds from the sale of the wreck) from the shipowners concerned. The extension to Malta of the right of shipowners to limit their liability for wreck removal might therefore result in monetary losses to Government. The U.K. Act consequently provided that the Minister of Transport and Civil Aviation could by order set up a fund out of which harbour authorities might be compensated for such losses by means of contributions raised by them in respect of vessels. However it was doubtful whether the raising of a fund among shipowners for the compensation of the local Harbour Authority would be practicable in Malta. It was therefore suggested that the Secretary of State be asked (1) whether contributions would be payable by all vessels calling at Malta, (2) whether the results obtainable by consultation with

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shipowners in the United Kingdom (for the setting up of the abovementioned fund) would be applicable to Malta, and (3) whether the amount of the contributions which would have to be enforced in Malta would not be so large as to constitute a deterrent to the use of the ports. The information thus obtained would enable a decision to be taken whether to make the reservation permanent or temporary.

- (d) The reservation regarding the minimum tonnage platform of 300 tons should be entered on behalf of Malta.

11. The above views were accepted by the previous Administration in 1961, who so informed the Secretary of State.

12. No reply was received to the questions (1), (2) and (3) in paragraph 10(c), but the Secretary of State evidently felt that, as most territories had asked for the reservation relating to the removal of wrecks to be entered on their behalf, such reservation should be permanent, and he sent this Government a draft composite Order-in-Council, incorporating such reservation on a permanent basis.

13. Except that they now think that the reservation in regard to wreck removal should be made on a permanent basis, the Law Officers advise that the advice originally tendered by them still holds good, i.e. the Convention may be applied to Malta, with the two Reservations. However, in view of the present stage of Malta's constitutional development, it is for consideration whether the Convention should not be extended by local enactment rather than by the extension to Malta of the U.K. legislation by means of an Order-in-Council. In this connection, the arguments at 10(b) still apply.

14. Ministers are accordingly asked to say whether they agree that this Convention should be extended to Malta with the reservations regarding wreck removal and the application of the minimum tonnage platform, and if so, by which means this Convention should be so extended.

21st September, 1963.