

Unit of Account Provision and Provisions for the Adjustment of the Limit of Liability in International Transport and Liability Conventions (1982)

63. At its 256th meeting, on 28 July 1982, the Commission adopted the following decision:

The United Nations Commission on International Trade Law

Recognizing that many international transport and liability conventions of both a global and a regional character contain limitation of liability provisions, where in the limitation of liability is expressed in a unit of account,

Noting that the limitation of liability as fixed in these conventions may become seriously affected over time by changes in monetary values, thereby destroying the intended balance of the convention as adopted,

Believing that a preferred unit of account for many conventions, particularly for those of global application, would be the Special Drawing Right as determined by the International Monetary Fund,

Being of the opinion that the conventions should in any event contain a provision which would facilitate the adjustment of the limit of liability to changes in monetary values,

1. *Adopts* the unit of account provision and the two alternative provisions for the adjustment of the limit of liability in international transport and liability conventions as contained in the annexes to the present decision;

2. *Recommends* that in the preparation of future international conventions containing limitation of liability provisions or in the revision of existing conventions the unit of account provision as adopted by the Commission should be used;

3. *Recommends further* that in such conventions one of the two alternative provisions for adjustment of the limitation of liability as adopted by the Commission should be used;

4. *Suggests* that, when the sample price index provision is to be used in such a convention, consideration be given to the nature of the intended price index and the institution to be charged with its preparation, revision and calculation;

5. *Requests* the General Assembly to recommend the use of these provisions in the preparation of future international conventions containing limitation of liability provisions or in the revision of existing conventions.

*Annex I**

Universal unit of account

1. The unit of account referred to in article [] of this Convention is the Special Drawing Right as defined by the International Monetary Fund. The amounts mentioned in article [] are to be expressed in the national currency of a State according to the value of such currency at the date of judgement or the date agreed upon by the parties. The equivalence between the national currency of a Contracting State which is a member of the International Monetary Fund and the Special Drawing Right is to 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 equivalence between the national currency of a Contracting State which is not a member of the International Monetary Fund and the Special Drawing Right is to be calculated in a manner determined by that State.

2. The calculation mentioned in the last sentence of paragraph 1 is to be made in such a manner as to express in the national currency of the Contracting State as far as possible the same real value for amounts in article [] as is expressed there in units of account. Contracting States must communicate to the Depository the manner of calculation at the time of signature or when depositing their instrument of

* In the English text of the Report (as it appeared in documents A/37/17 and A/CN.9/230), the third sentence in Annex I, paragraph 1, was erroneously omitted. Documents A/37/17/Corr.2 (English only) and A/CN.9/230/Corr.1 (English only) corrected the omission and are incorporated here.

ratification, acceptance, approval or accession and whenever there is a change in the manner of such calculation.

Annex II

Sample price index

1. The amounts set forth in article [] shall be linked to [a specific price index which might be considered appropriate for a particular convention]. On coming into force of this [Protocol-Convention], the amounts set forth in article [] shall be adjusted by an amount, rounded to the nearest whole number, corresponding in percentage to the increase or decrease in the index for the year ending on the last day of December prior to which this [Protocol-Convention] came into force over its level for the year ending on the last day of December [of the year in which the Protocol or Convention was opened for signature]. Thereafter, they shall be adjusted on the first day of July of each year by an amount, rounded to the nearest whole number, corresponding in percentage to the increase or decrease in the level in the index for the year ending on the last day of the previous December over its level for the prior year.

2. The amounts set forth in article [] shall not, however, be increased or decreased if the increase or decrease in the index does not exceed [] per cent. Where no adjustment was made in the previous year because the change was less than [] per cent, the comparison shall be made with the level for the last year on the basis of which an adjustment was made.

3. By the first day of April of each year the Depositary shall notify each Contracting State and each State which has signed the [Protocol-Convention] of the amounts to be in force as of the first day of July following. Changes in the amounts shall be registered with the Secretariat of the United Nations in accordance with General Assembly regulations to give effect to Article 102 of the Charter of the United Nations.

Annex III

Sample amendment procedure for limit of liability

1. The Depositary shall convene a meeting of a Committee composed of a representative from each Contracting State to consider increasing or decreasing the amounts in article []:

(a) Upon the request of at least [] Contracting States, or

(b) When five years have passed since the [Protocol-Convention] was opened for signature or since the Committee last met.

2. If the present [Protocol-Convention] comes into force more than five years after it was opened for signature, the Depositary shall convene a meeting of the Committee within the first year after it comes into force.

3. Amendments shall be adopted by the Committee by a [] majority of its members present and voting.^a

4. Any amendment adopted in accordance with paragraph 3 of this article shall be notified by the Depositary to all Contracting States. The amendment shall be deemed to have been accepted at the end of a period of [6] months after it has been notified, unless within that period not less than [one-third] of the States that were Contracting States at the time of the adoption of the amendment by the Committee have communicated to the Depositary that they do not accept the amendment. An amendment deemed to have been accepted in accordance with this paragraph shall enter into force for all Contracting States [12] months after its acceptance.

5. A Contracting State which has not accepted an amendment shall nevertheless be bound by it, unless such State denounces the present Convention at least one month before the amendment has entered into force. Such denunciation shall take effect when the amendment enters into force.

6. When an amendment has been adopted by the Committee but the [6] month period for its acceptance has not yet expired, a State which becomes a Contracting State to this Convention during

^a The Conference of Plenipotentiaries may wish to insert a list of criteria to be taken into account by the Committee.

that period shall be bound by the amendment if it comes into force. A State which becomes a Contracting State to this Convention after that period shall be bound by any amendment which has been accepted in accordance with paragraph 4.