

tions the unit of account article be substantially in the form of article 26, paragraph 1 of the Hamburg Rules and of paragraph 4 as modified to the extent necessary by the deletions of paragraphs 2 and 3.

CONCLUSION

98. The Working Group thus concluded its deliberations in response to the mandate entrusted to it by the Commission. The conclusions reached by the Working Group are contained in paragraphs 54, 90 and 97. All decisions were taken by consensus.

ANNEX

Statement of the delegation of the Soviet Union*

Guided by the task which the Commission entrusted to this Working Group – namely, “establishing a system for determining a universal unit of constant value which would serve as a point of reference in international [transport and liability] conventions for expressing amounts in monetary terms” – the Soviet Union is prepared to agree to the use for these purposes of the SDR as a unit of account calculated by the International Monetary Fund on the basis of a “basket” of the principal currencies of the capi-

talist countries. The Soviet Union assumes, in this connection, that the limits of liability fixed in these units will, for practical purposes, be converted into the national currencies of the countries participating in the conventions, on the basis of their published currency exchange rates.

In taking this step, the Soviet Union hopes that it will help to eliminate the dualism in the methods of calculating liability under international conventions, a dualism which has persisted until recently since the time when the major capitalist currencies were backed by gold. This step does not imply any change in the Soviet Union's positions *vis-à-vis* IMF, but is an indication of its desire to find constructive approaches to the solution of existing international problems in keeping with the traditions of co-operation which have been established in the climate of international détente. In the view of the Soviet Union, the use of the SDR unit of account to express the limit of liability in international conventions must not encroach on the basic provisions in the currency legislation of those countries which are not members of IMF and which, consequently, do not recognize the SDR as a medium of international payments.

Inasmuch as amounts expressed in SDRs are subject to depreciation under the effect of inflation, the task of maintaining their constant value can, in a more or less satisfactory manner, be solved by indexing these amounts to the current prices of the goods and services characteristic of the kinds of liability in question. The participants in the conventions must themselves determine the representative composition of these “baskets”, and the Commission must subsequently ensure that their value is periodically calculated by competent international organizations (e.g. UNCTAD). The indexes obtained in this way may be used under the conventions for the periodic adjustment of the initial amounts of liability.

* Original: Russian.

2. WORKING PAPER SUBMITTED TO THE WORKING GROUP ON INTERNATIONAL NEGOTIABLE INSTRUMENTS AT ITS TWELFTH SESSION (VIENNA, 4-12 JANUARY 1982): REPORT OF THE SECRETARY-GENERAL: UNIT OF ACCOUNT OF CONSTANT VALUE (A/CN.9/WG.IV/WP.27)*

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* 23 November 1981.

Introduction

1. At its eleventh session the Commission adopted the proposal of the delegation of France that the Commission "should study ways of establishing a system for determining a universal unit of constant value which would serve as a point of reference in international [transport and liability] conventions for expressing amounts in monetary terms".¹

2. The proposal was examined by the UNCITRAL Study Group on International Payments at its meetings in 1978, 1979 and 1980. The Study Group was of the view that the most desirable approach was to combine the use of the Special Drawing Right (SDR) with a suitable index which would preserve over time the purchasing power of the monetary values set forth in the international conventions in question.

3. At its fourteenth session the Commission had before it a report of the Secretary-General (A/CN.9/200)* which reflected the view of the Study Group. The report contained an annex prepared by the Staff of the International Monetary Fund at the request of the Commission's secretariat which discussed issues relating to the choice of an appropriate index to be used in connection with the SDR. It was there suggested that for most purposes a consumer price index would be suitable, but that other indexes could be used if desired.

4. The Commission at its fourteenth session referred the matter to the Working Group on International Negotiable Instruments.² The Working Group was requested to consider various possibilities in regard to the formulation of a unit of account of constant value and to prepare a text, if possible. The Secretary-General was requested to conduct such studies as seemed desirable in the light of the discussion in the Commission and to submit those studies to the Working Group. This report is submitted in response to that request.

I. SDR as a unit of account

5. The limits of liability in most transport and liability conventions adopted prior to 1975 were expressed in units of account measured in gold. Although a few earlier conventions had mentioned specific national currencies,³ most later conventions defined the unit of account as either 10/31

of a gram of gold of millesimal fineness nine hundred, otherwise known as the germinal franc, or 65.5 milligrams of gold of millesimal fineness nine hundred, otherwise known as the Poincaré franc. In 1975 three protocols were adopted to the Warsaw Convention for the Unification of Certain Rules relating to International Carriage by Air by which the Poincaré franc was replaced as the unit of account by the Special Drawing Right (SDR).⁴ The formula first adopted in Montreal has been modified in several later conventions. The currently standard formulation was first used in the Hamburg Rules.⁵

6. The SDR has been chosen as the unit of account in these conventions primarily because of the stability of its exchange rate. A second important reason has been that the value of the SDR is calculated and published daily by the International Monetary Fund for 43 currencies. The value of any other currency measured in SDR can easily be calculated so long as it has an exchange rate with any one of those 43.

7. However, since the national law of some non-member States of the International Monetary Fund does not permit their use of the SDR, the Hamburg formula also provides a separate rule of calculation for those States. The limit of liability is expressed in "monetary units", which are equivalent to the gold content either of the germinal franc or of the Poincaré franc depending on the convention. Since the original value of the SDR was equal to 0.888 671 grams of fine gold, an amount almost exactly equal to the gold content of three germinal francs or to fifteen Poincaré francs, the limits of liability in the various conventions as expressed in "monetary units" are three or fifteen times those limits as expressed in "units of account", subject to rounding.

8. This coupling of a "monetary unit" expressed in gold

tuted for the pound sterling. By a further Protocol of 21 December 1979 the SDR was substituted for the Poincaré franc.

The limits of liability in the Convention for the Unification of Certain Rules Relating to International Carriage by Air (Warsaw, 12 October 1929) were "deemed to refer to the French franc consisting of 65.5 milligrams of gold of millesimal fineness 900" (art. 22, para. 4). The reference to the "French" franc was removed by a Protocol of 28 September 1955. By Protocols of 25 September 1975 the SDR was substituted for the franc in the Convention, and the Convention as amended.

A more recent liability convention which refers specifically to a national currency in the limit of liability provision is the Vienna Convention on Civil Liability for Nuclear Damage (21 May 1963) which uses the United States dollar. "The United States dollar referred to in this Convention is a unit of account equivalent to the value of the United States dollar in terms of gold on 29 April 1963; that is to say US\$35 per one troy ounce of fine gold." (Art. V, para. 3).

⁴ The three protocols of 25 September 1975 amend the original Convention signed at Warsaw on 12 October 1929, the Convention as amended by the Protocol Done at The Hague on 25 September 1955, and the Convention as amended by the Protocols Done at The Hague on 28 September 1955 and at Guatemala City on 8 March 1971. A fourth protocol adopted on the same date made substantive amendments to the Convention and, at the same time, substituted the SDR for the Poincaré franc.

⁵ United Nations Convention on the Carriage of Goods by Sea, 1978 (Hamburg, 31 March 1978), art. 26 (Yearbook . . . 1978, part three, I, B). The text of the article is reproduced in annex II to this report.

* Yearbook . . . 1981, part two, II, C.

¹ *Official Records of the General Assembly, Thirty-third session, Supplement No. 17 (A/33/17)*, para. 67 (Yearbook . . . 1978, part one, II, A). The French proposal as contained in A/CN.9/156/Annex is set forth in Annex I to this report.

² *Official Records of the General Assembly, Thirty-sixth session, Supplement No. 17 (A/36/17)*, para. 32 (Yearbook . . . 1981, part one, A).

³ The limits of liability in the International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading (Brussels, 24 August 1924) were expressed in pounds sterling. According to article 9 the monetary unit was "to be taken to be gold value". By a Protocol of 23 February 1968 the Poincaré franc was substituted

with a "unit of account" expressed in SDR has seemed to raise no fundamental objections on the part of the non-member States of the International Monetary Fund. It is, however, a less than completely desirable solution that the limit of liability in the same convention should be expressed in two different units for different States. More important, however, is the fact that the member States of the International Monetary Fund are required to calculate the limit of liability in their national currencies in accordance with the method of valuation of their currencies in terms of the SDR applied by the International Monetary Fund in effect at the date in question. On the other hand, those States for which the limits of liability are expressed in monetary units are required to calculate the limit of liability in their national currency according to the law of the State concerned. In order to achieve a uniform result, the conversion from monetary units is to be made in such a manner as to express in the national currency of the State as far as possible the same real value of the limits of liability as are expressed in units of account measured in SDR. There is no experience as yet whether this admonition will achieve the desired result.

9. The Hamburg formula does not provide a solution for the problem of inflation (or deflation), which has the same type of effect on a basket of currencies such as the SDR as it does on a national currency. The major effort in the diplomatic conferences which have adopted the conventions and protocols using the SDR as the unit of account has been to devise means of expeditiously revising the limit of liability by a revision conference or by other institutional means. These efforts are discussed further below.⁶

II. Possible solutions for the maintenance of real value

A. BASKET OF GOODS AND SERVICES CHARACTERISTIC OF INTERNATIONAL TRADE

10. It is in this context that the delegation of France suggested at the eleventh session of the Commission that UNCITRAL might "explore the possibility of creating a unit which would be determined and would evolve by reference to the value of a number of goods and services characteristic of international trade".⁷ In discussing the proposal this report is limited to a consideration of some of the institutional consequences of creating such a unit of account for transport and liability conventions. It does not attempt to suggest what might be the content of the basket itself.

11. The use of an appropriate basket of goods and services as the unit of account in international transport and

liability conventions would overcome the two objections raised to the use of the SDR. In a period of inflation the limit of liability, as measured by the national currencies in which payment for damages would eventually be made, would automatically increase and there would be no political, though there might be economic, reasons for any State not to apply the unit of account.

12. The composition of the basket to be used as the unit of account should be such that an increase in loss in monetary terms suffered by a claimant due to inflation would be matched by an increase in the limit of liability. Ideally, the basket should match the characteristics of the type of damage for which compensation would be claimed. Ultimately, this would call for a separate basket of goods and services for each convention since there are important differences in the nature of the losses which are suffered under them. These losses include death or bodily injury to individuals, loss or damage to their luggage, loss or destruction of goods carried as freight by sea, air, rail, road and inland waterways, and damage to shore lines, fisheries and the like from oil pollution.⁸ No single basket of goods and services could be fully appropriate for all these purposes.

13. This degree of precision, however, may not be necessary. A limit of liability in a convention is chosen in the first instance through a process which does not admit of fine calculations. The purpose of a unit of account of constant value would be to ensure that the real value of the limit of liability remained approximately the same as originally agreed. Therefore, it would be reasonable to expect that one, or no more than two or three, baskets of goods and services would adequately serve the purposes for all the conventions in question.

14. Nevertheless, the choice of the goods and services to be included and the weights to be given to each would lead to significant differences in the result over an extended period of time. Moreover, the changing character of international trade would suggest that a mechanism would be necessary to substitute from time to time different goods or services for those in the basket as originally calculated or to change their weights. Therefore, the services of a technically qualified international statistical or economic organization would be necessary to suggest the content of the original basket or baskets, to suggest revisions of the content as needed, and to calculate the value of the basket or baskets at the periodic intervals called for in the unit of account provision.

15. It would be possible that the organization so charged would be given the authority to construct, calculate and revise the basket under criteria set forth in the unit of account provision. More likely, however, that organiza-

⁶ See paras. 27 to 40.

⁷ See annex I.

⁸ A list of transport and liability conventions in which the SDR has been adopted as the unit of account is contained in annex VI.

tion would report to some other political or legal entity which would make the final decision.

16. The value of the basket as calculated would have to be available to its ultimate users throughout the world. This suggests that arrangements would have to be made for its prompt publication in a suitable manner by an appropriate international body.

17. The value of the basket of goods and services would ultimately have to be calculated in some monetary unit or unit of account for monetary purposes. That monetary unit or unit of account could be a national currency widely used in international trade. However, that would leave the unit of account in question subject to the exchange fluctuations of the currency chosen. Therefore, it would be preferable that a basket of currencies such as the SDR be used as the basis for calculation. If the value of the basket of goods and services were published as a ratio of the current value to that of some fixed earlier date, it would serve as an index which could be applied directly to the limits of liability.

B. SDR WITH PERIODIC ADJUSTMENTS TO THE LIMIT OF LIABILITY

1. Use of index clause

18. The report submitted by the Secretary-General to the fourteenth session of the Commission suggested that the best available method for creating a unit of account of constant value was to combine the use of the SDR with a suitable price index linked to the SDR.⁹ The report contained an annex prepared by the staff of the International Monetary Fund in which it was stated that:

"If the SDR in conjunction with a suitable SDR price index were chosen as a unit of account for use in international conventions, the data needed for calculating monthly values of the index, as well as monthly exchange rates between the SDR and the currencies of IMF member countries (and of some non-member countries) would be available in the monthly IMF publication *International Financial Statistics*. Moreover, there would in principle appear to be no obstacle to calculation of the monthly price index by the IMF staff, with a delay of no more than three months."¹⁰

19. In the annex were discussed a number of the factors to be considered in the creation of such an index. It was suggested that for most purposes a consumer price index would be suitable. It was recognized, however, that it would be possible to specify any of a number of other price indexes — producer prices, export prices, GNP deflators etc. — if that were found to be preferable. As to the country composition of the index, the annex stated that it would be best to combine the national price indexes of the

countries whose currencies were contained in the SDR currency basket with weights corresponding to the currency composition of the basket.

20. This proposal would combine the relative stability of the SDR, a mechanism for adjusting the limit of liability in order to maintain its real value, the agreement of a technically qualified organization to undertake the necessary calculations, and a means of publishing the results.

21. To this proposal the objection was raised in the Commission that indexing contributed to inflation.¹¹ If indexing were generalized throughout the economy, a rise in prices would automatically increase various monetary obligations, such as wages, rents and pensions, bringing about added costs and further inflation.

22. The objection to indexing as stated in the Commission was not an objection to an increase in the limit of liability. Indeed, it was recognized that the limits of liability must be increased periodically in a period of inflation.¹² The objection to indexing lies in the direct link between the increase in prices which has already occurred and the consequent increase in costs which occurs as a result of the use of the index. It is feared that once the inflationary process begins, there is no possibility of breaking the circle.

23. It would appear that the use of an index in connection with a limit of liability provision in a transport or liability convention would not have the same degree of inflationary effect. The monetary obligation that arises out of these conventions exists only to the extent that damage has occurred of the nature described in the convention. If the limit of liability is at an appropriate level, some of the claims to be paid would be of a lesser sum. Therefore, an increase in the limit of liability of a certain percentage could be expected to lead to an increase in the total amount of claims paid, and of the insurance premium, of a smaller percentage.

24. Nevertheless, if the objections to the automatic adjustment of the limit of liability through the use of an SDR price index are thought to outweigh its advantages, a less automatic formula could also be considered.

25. For example, the depositary of a convention could periodically notify all Contracting States of the new limit of liability by use of the index. This new limit of liability might go into effect six months later in the absence of veto by one third of the Contracting States.¹³

26. A variation of the above procedure would be that the limit of liability might be increased only if the index

¹¹ *Official Records of the General Assembly, Thirty-sixth session, Supplement No. 17 (A/36/17)*, para. 28 (Yearbook . . . 1981, part one, A).

¹² *Ibid.*, para. 27.

¹³ See paras. 36-40, below, for similar rules in respect of an amendment proposed by a revision conference. Of particular importance is the effect on a Contracting State of an increase which has entered into force even though that State has objected to the increase.

⁹ A/CN.9/200 (Yearbook . . . 1981, part two, II, C).

¹⁰ *Ibid.*, annex I, p. 6.

increased by a certain percentage. This would adjust the frequency of revision to the rate of inflation. Combining these two variations, the adjustment in the limit of liability would be made periodically, but only if the index had increased by the requisite percentage.¹⁴

2. Revision conference

(a) General remarks

27. The view was expressed at the fourteenth session of the Commission that it was preferable to adjust the limits of liability through a revision conference. In addition to the arguments advanced against the use of an index, it was stated that "the erosion of currencies was not the only reason for changing the limit of liability. Technical changes, such as a change in the nature of the cargo carried, might also justify a change in the limit of liability. These factors could only be taken into account by a revision conference".¹⁵

28. On the other hand, the view was expressed that "recent experience had shown such rapid generalized inflation that a revision conference would need to be held at least every five years for each convention in question if the limits of liability were not to deteriorate excessively".¹⁶

29. Experience has shown that the traditional procedures used to amend a convention, which include a diplomatic conference and the acceptance of the protocol of amendment by a high percentage of the Contracting States, at which time it enters into force only for those States, is usually time-consuming, costly and problematical as to its results. As conventions have become more technical in their concerns and as the need for complete uniformity of text among the Contracting States has become of greater importance, a number of special procedures have been developed to facilitate the process of amending a convention and to apply the amendment to all Contracting States.

30. These special procedures have concentrated on two aspects, the actions necessary for the revision process to commence and the actions necessary for the proposed amendments to go into force.

(b) Convening of the conference

31. A number of conventions which anticipate future amendments to various provisions have provided that a revision conference should be convened on the request of not less than one-third of all Contracting States.¹⁷ The Ham-

burg Rules provide, however, that the request of only one-fourth of the Contracting States is necessary to convene a conference to revise the limit of liability or the unit of account.¹⁸

32. A variant of this procedure is to be found in the CVN, the CLN, the CMR, the CVR and in the four protocols to these conventions by which the SDR was substituted as the unit of account in place of the germinal franc.¹⁹ After the convention or protocol has been in force for three years any Contracting State may request the depositary to convene a revision conference. The conference will be convened if, within four months after the depositary has notified the other Contracting States of the request, not less than one-fourth of them notify the depositary of their concurrence with the request. By this rule the action of only one Contracting State is necessary to cause the procedure to commence officially and the four month deadline undoubtedly causes some pressure on the other Contracting States to react to the proposal.

33. A procedure which is available in the case of some conventions is illustrated by the Convention Relative aux Transports Internationaux Ferroviaires (COTIF) (Berne, 9 May 1980). According to this Convention, which is the most recent one governing international rail traffic in Europe and the Middle East, a Revision Commission was created to decide on proposals for amending the majority of the substantive rules for the international carriage by rail of passengers and their luggage (CIV) (annex A to the Convention) and for the international carriage by rail of goods (CIM) (annex B to the Convention), including an increase in the limits of liability.²⁰ The Revision Commission can be convened by the Office Centrale des Transports Ferroviaires on its own initiative or at the request of five States.* To the extent that the Revision Commission can propose amendments to the substantive rules contained in the annexes to the Convention, which are then submitted directly to the Contracting States for approval, the Commission serves the same role as would a diplomatic conference.

34. Even though the procedure in COTIF relies upon the existence of a permanent Revision Commission in the framework of an international organization, a similar pro-

* This sentence has been corrected from the original report.

¹⁸ Art. 33 reproduced in annex IV of this report.

¹⁹ Convention on the Contract for the International Carriage of Passengers and Luggage by Inland Waterway (CVN) (Geneva, 6 February 1976) and the Protocol of 5 July 1978; Convention Relating to the Limitation of the Liability of Owners of Inland Navigation Vessels (CLN) (Geneva, 1 March 1973) and the Protocol of 5 July 1978; Convention on the Contract for the International Carriage of Goods by Road (CMR) (Geneva, 19 May 1956) and the Protocol of 5 July 1978; Convention on the Contract for International Carriage of Passengers and Luggage by Road (CVR) (Geneva, 1 March 1973) and the Protocol of 5 July 1978.

²⁰ The Revision Commission is created by art. 8. Its competence to review proposed amendments to the annexes is set forth in art. 19, para. 3. The procedure to be followed is set forth in art. 21. See para. 40, below.

¹⁴ See annex III.

¹⁵ *Official Records of the General Assembly, Thirty-sixth session, Supplement No. 17 (A/36/17)*, para. 28 (Yearbook . . . 1981, part one, A).

¹⁶ *Ibid.*, para. 30.

¹⁷ Hamburg Rules, art. 32 (Yearbook . . . 1978, part three, I, B); United Nations Convention on International Multimodal Transport 1980, art. 39 (Final Act of the United Nations Conference on a Convention on International Multimodal Transport and Convention on International Multimodal Transport of Goods, TD/MT/CONF/17, 1981).

vision could be envisaged for any convention. For example, in the Convention on Civil Liability for Oil Pollution Damage Resulting from Exploration for and Exploitation of Seabed Mineral Resources (London, 1 May 1977), a Committee composed of a representative of each Contracting State was established to consider the limits of liability and extent of required insurance as set forth in that convention and to make recommendations to the Contracting States as to any amendments in those amounts.²¹ As in COTIF only one Contracting State need request that the Committee be convened to consider amendments to these amounts. It is to be expected that a Contracting State would feel less hesitant to convene a meeting of a committee to consider such an amendment than it would to convene a diplomatic conference to do so, even if the membership of the committee was identical to the expected participation in the conference.

35. In addition to these procedures which have already been adopted in various conventions, it would be possible to use an index to cause the revision process to commence. For example, if an appropriate SDR price index increased by a certain percentage, a revision conference might be convened by the depositary. Alternatively, if a given index rose above a certain percentage, a revision conference might be convened on the request of one Contracting State, or of some other similarly small number. For this purpose, the nature of the index chosen may not be of vital importance since it would serve only as a device to authorize a State to request that the revision conference be convened. One suggestion would be that if the cost of living index of three of the five States whose currencies enter into the SDR basket were to rise by more than 25 per cent, a revision conference could be convened on the request of one State. Other possibilities could also be envisaged.

(c) *Entering into force*

36. The most difficult procedural problem to be faced in amending a convention is to decide on the actions necessary for an amendment to enter into force after it has been adopted by a revision conference or by a revision commission, and to decide on its applicability to those Contracting States to the original convention which have not accepted the amendment. The traditional rule that the amendment enters into force only on its positive acceptance by a certain number of States and only as to those States which have so accepted it can lead to the situation faced in the Warsaw Convention where three separate limits of liability are in force between different pairs of States.

37. The minimal change from traditional practice is that the original convention provides for the number of acceptances necessary for an amendment to enter into force. The Hamburg Rules provide, for example, that an

amendment of the limit of liability or of the unit of account enters into force one year following its acceptance by two-thirds of the Contracting States.²² In a departure from traditional practice, after the amendment has entered into force, a Contracting State which has accepted the amendment is entitled to apply the Convention as amended in its relations with all Contracting States which have not within six months after the adoption of the amendment notified the depositary that they are not bound by the amendment. This procedure, however, still leaves the possibility that two different limits of liability might be in force under the convention.

38. The Convention on Civil Liability for Oil Pollution Damage Resulting from Exploration for and Exploitation of Seabed Mineral Resources (London, 1 May 1977) goes beyond the Hamburg Rules. If three-fourths of the representatives of the Contracting States in the Committee formed for the purpose of considering proposals to amend the limit of liability vote in favour of an amendment, it enters into force seven months after it has been notified to the Contracting States without the need for any positive act of acceptance.²³ However, the old limit of liability remains in force for any Contracting State which within six months notifies the depositary Government that it is unable to accept the recommended amount.

39. This Convention is also interesting because it is the only one to indicate factors which should be taken into account by the Committee in making its recommendation on a new limit of liability. Those factors are:

“(a) Any information concerning events causing or likely to cause pollution damage having a bearing on the objects of this Convention;

“(b) Any information on increases and decreases occurring after the entry into force of this Convention in the costs of goods and services of the kinds involved in the treatment and remedying of marine oil spillages;

“(c) The availability of reliable insurance cover against the risk of liability for pollution damage.”²⁴

40. The most far-reaching provision of all is to be found in COTIF. An amendment decided upon by the Revision Commission enters into force for all Contracting States on the first day of the twelfth month after it was sent to them unless one-third of the Contracting States have objected within the first four months after the amendment was sent.²⁵ However, if a State objects within the four months period and also denounces the Convention at least two months before the amendment is to enter into force, the amendment enters into force only at the time the denunciation of the Convention by that State takes effect.

²² Article 33 (Yearbook . . . 1978, part three, I, B).

²³ Article 9, paras. 3 and 4.

²⁴ Art. 9, para. 2.

²⁵ Art. 21, See para. 33, above.

²¹ Article 9, reproduced in annex V of this report.

3. Relationship between unit of account and monetary unit

41. The Hamburg formula accepts the necessity, for those non-member States of the International Monetary Fund whose national law does not permit the use of the SDR, of calculating the limit of liability in a monetary unit in the ratio of one unit of account measured in SDR to three monetary units measured in germinal francs (10/31 of a gram of gold of millesimal fineness nine hundred) or to fifteen monetary units measured in Poincaré francs (sixty-five and one half milligrams of gold of millesimal fineness nine hundred). Therefore, whatever the procedure chosen for an increase in the limit of liability, it should be such as to preserve that ratio.

42. To this end, *inter alia*, the Contracting States which avail themselves of the possibility of applying the limit of liability in monetary units should be required to communicate to the depositary the manner of calculation of the conversion from monetary units to the national currency of that State, but they should not be required to communicate the result of that calculation.²⁶ With this change an increase in the limit of liability in units of account and in monetary units would automatically increase the limit of liability in the national currency of all Contracting States by a uniform percentage.

Conclusion

43. The erosion of the purchasing value of the maximum compensation recoverable under conversions which specify a limit of liability is a serious problem and means should be found at least to assure periodic increases in the liability as necessary.

44. At the present time there appears to be no preferable alternative to the use of the SDR as the unit of account for expressing the limit of liability in international conventions. The creation of a new unit of account would entail serious institutional difficulties.

45. Technically, the best method available for the purpose of maintaining the real value as regards the limit of liability is to combine the use of the SDR with a suitable price index linked to the SDR. However, if the objections to the automatic adjustment of the limit of liability through the use of an SDR price index are thought to outweigh its advantages, less automatic procedures can be envisaged

²⁶ For example, when Czechoslovakia signed the Hamburg Rules on 6 March 1979, it declared, in conformity with article 26, that the conversion of the amounts of the limit of liability into the Czechoslovak currency was to be made in the ratio of 0.48 Czechoslovak koruna (Kčs) to one monetary unit, and that "the limits of liability provided for in this Convention to be applied in the territory of the Czechoslovak Socialist Republic are fixed as follows:

6,000. - Kčs per package or other shipping unit, or

18. - Kčs per kilogram of gross weight of the goods."

An increase of the limit of liability as expressed in units of account or monetary units would not, therefore, automatically increase the limit of liability in Czechoslovak koruny as it would in currencies of member States of the International Monetary Fund.

whereby a certain increase in the index or passage of a certain period of time would cause the procedure for increasing the limit of liability to commence.

46. If it is considered that on balance it is preferable for the limit of liability to be increased through a revision conference, or through a revision committee, various steps can be taken to facilitate the convening of the conference or commission and to bring into force the amendments adopted by it.

47. The Working Group might wish to consider these suggestions and decide whether any of them should be recommended to the Commission. The Working Group might also wish to consider whether the suggestions to be recommended to the Commission should be in the form of a draft text and, if so, whether it would wish to commence the preparation of such a text at this session of the Working Group.

ANNEX I

Proposal by France for the Programme of Work of the Commission made at its Eleventh Session (1978)

(A/CN.9/156, annex)*

At the recent United Nations Conference on the Carriage of Goods by Sea, the question of determining a unit of account which would enable the amounts fixed by the Convention on the Carriage of Goods by Sea to be expressed in national currencies was raised once again.

The abandonment of the reference to gold in transactions between monetary authorities in 1968 and the discontinuance of the convertibility of the dollar into gold in 1971 spelled the end of the system of reference to gold which had been used for decades in international conventions on carriage and liability, whether in the form of the so-called germinal franc (10/31 milligrams of gold of millesimal fineness nine hundred), used principally in conventions on carriage by rail, road and inland waterway, the Poincaré franc (65.5 milligrams of gold of millesimal fineness nine hundred), used mainly in conventions on carriage by air or sea, or the E.M.A. unit (0.88867088 milligrams of fine gold) of the European Monetary Agreement and the Paris Convention on Civil Liability in the field of Nuclear Energy.

The most recent conventions have used the International Monetary Fund unit known as "special drawing rights" (SDR). This is only a temporary solution, however, for SDRs, which are made up essentially of a "basket" of currencies, do not guarantee a constant real value. Above all, they pose very serious problems for countries which are not members of IMF, for whom a different system must be established. This difficulty now arises each time a unit of value has to be expressed in an international convention, and none of the solutions proposed so far, however ingenious, has been completely acceptable to everyone.**

The French Government suggests that, as part of its long-term programme of work, UNCITRAL should study ways of establishing a system for determining a universal unit of constant value which would serve as a point of reference in international conventions for

* As a document of the eleventh session of the Commission it was also reproduced in Yearbook . . . 1978, part two, IV, C.

** On this point, see document A/CONF.89/C.1/L.109 of the United Nations Conference on the Carriage of Goods by Sea. (Footnote in original.) (Official Records, A/CONF.89/14, part one, E, ANNEX.)

expressing amounts in monetary terms. UNCITRAL could, for instance, explore the possibility of creating a unit which would be determined and would evolve by reference to the value of a number of goods and services characteristic of international trade.

ANNEX II

Hamburg Rules*

Unit of account

Article 26.—1. The unit of account referred to in article 6 of this Convention is the Special Drawing Right as defined by the International Monetary Fund. The amounts mentioned in article 6 are to be converted into 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 value of a national currency, in terms of the Special Drawing Right, of a Contracting State which is a member of the International Monetary Fund 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 value of a national currency in terms of the Special Drawing Right of a Contracting State which is not a member of the International Monetary Fund is to be calculated in a manner determined by that State.

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 of this article may, at the time of signature, 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:

12,500 monetary units per package or other shipping unit or
37.5 monetary units per kilogram of gross weight of the goods.

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

4. The calculation mentioned in the last sentence of paragraph 1 and the conversion mentioned in paragraph 3 of this article 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 the amounts in article 6 as is expressed there in units of account. Contracting States must communicate to the depositary the manner of calculation pursuant to paragraph 1 of this article, or the result of the conversion mentioned in paragraph 3 of this article, as the case may be, at the time of signature or when depositing their instruments of ratification, acceptance, approval or accession, or when availing themselves of the option provided for in paragraph 2 of this article and whenever there is a change in the manner of such calculation or in the result of such conversion.

ANNEX III

Sample SDR price index provision

1. The amounts set forth in article [] shall be adjusted effective on the first day of July of each year, commencing on the first day of July [19], by an amount corresponding to the increase or decrease in the [Consumer Price Index in Special Drawing Rights as published by the International Monetary Fund] for the month ending on the last day of the previous December over the same period one year earlier.

2. The provision in paragraph 1, however, shall not be invoked if the ratio of increase or decrease in the [Consumer Price Index in Special Drawing Rights] over the preceding year does not exceed

[15] per cent. Where no adjustment was made in the previous year because the ratio was less than [15] per cent the comparison shall be made with [19] or with the last year on the basis of which an adjustment was made, whichever is later.

3. By the first day of April of each year the [depositary] shall notify each Contracting Party and each State which has signed this [Convention-Protocol] of the amounts to be in force as of the first day of July following, rounded to the nearest number of Special Drawing Rights and monetary units and, after the entry into force of this [Convention-Protocol], the [depositary] shall at the same time transmit to the Secretariat of the United Nations a notice of the amounts to be in force as from the first day of July following for registration and publication under Article 102 of the Charter of the United Nations.*

ANNEX IV

Hamburg Rules**

Revision of the limitation amounts and unit of account or monetary unit

Article 33.—1. Notwithstanding the provisions of article 32, a conference only for the purpose of altering the amount specified in article 6 and paragraph 2 of article 26, or of substituting either or both of the units defined in paragraphs 1 and 3 of article 2 by other units is to be convened by the depositary in accordance with paragraph 2 of this article. An alteration of the amounts shall be made only because of a significant change in their real value.

2. A revision conference is to be convened by the depositary when not less than one-fourth of the Contracting States so request.

3. Any decision by the conference must be taken by a two-thirds majority of the participating States. The amendment is communicated by the depositary to all the Contracting States for acceptance and to all the States signatories of the Convention for information.

4. Any amendment adopted enters into force on the first day of the month following one year after its acceptance by two-thirds of the Contracting States. Acceptance is to be effected by the deposit of a formal instrument to that effect, with the depositary.

5. After entry into force of an amendment a Contracting State which has accepted the amendment is entitled to apply the Convention as amended in its relations with Contracting States which have not within six months after the adoption of the amendment notified the depositary that they are not bound by the amendment.

6. Any instrument of ratification, acceptance, approval or accession deposited after the entry into force of an amendment to this Convention, is deemed to apply to the Convention as amended.

ANNEX V

Convention on Civil Liability for Oil Pollution Damage Resulting from Exploration for and Exploitation of Seabed Mineral Resources

Article 9.—1. A Committee composed of a representative of each State Party is hereby established.

2. If a State Party considers that any of the amounts currently applicable under Article 6 or 8 is no longer adequate, or is otherwise unrealistic, it may convene a meeting of the Committee to consider the matter. States which have signed this Convention but are not yet

* It would also be necessary to provide in the final clauses that when the Convention enters into force and the depositary transmits a certified copy of the Convention to the Secretariat of the United Nations for registration and publication under Article 102 of the Charter, he also indicates the amounts then in force under the various articles (Footnote in original.)

** Yearbook . . . 1978, part three, I, B.

* Yearbook . . . 1978, part three, I, B.

Parties will be invited to participate in the work of the Committee as observers. The Committee may recommend to the States Parties an amendment to any of the amounts if representatives of at least three-quarters of the States Parties to this Convention vote in favour of such a recommendation. In making such a recommendation, the Committee shall take into account:

(a) Any information concerning events causing or likely to cause pollution damage having a bearing on the objects of this Convention;

(b) Any information on increases and decreases occurring after the entry into force of this Convention in the costs of goods and services of the kinds involved in the treatment and remedying of marine oil spillages;

(c) The availability of reliable insurance cover against the risk of liability for pollution damage.

3. Any amount recommended in accordance with paragraph 2 of this Article shall be notified by the depositary Government to all States Parties. It shall replace the amount currently applicable thirty days after its acceptance by all States Parties. A State Party which has not, within six months of such notification or such other period as has been specified in the recommendation, notified the depositary Government that it is unable to accept the recommended amount, shall be deemed to have accepted it.

4. If the recommended amount has not been accepted by all States Parties within six months, or such other period as has been specified in the recommendation, after it has been notified by the depositary Government it shall, thirty days thereafter, replace the amount currently applicable as between those States Parties which have accepted it. Any other State Party may subsequently accept the recommended amount which shall become applicable to it thirty days thereafter.

5. A State acceding to this Convention shall be bound by any recommendation of the Committee which has been unanimously accepted by States Parties. Where a recommendation has not been so accepted, an acceding State shall be deemed to have accepted it unless, at the time of its accession, that State notifies the depositary Government that it does not accept such a recommendation.

ANNEX VI

Transport and Liability Conventions and Protocols to such Conventions which use the SDR for the Unit of Account*

Conventions

Convention on Limitation of Liability for Maritime Claims, London, 19 November 1976

European Convention on Products Liability in Regard to Personal Injury and Death, Strasbourg, 27 January 1977

Convention on Civil Liability for Oil Pollution Damage Resulting from Exploration for and Exploitation of Seabed Mineral Resources, London, 1 May 1977

* The listing contains the conventions and protocols of which the Secretariat of the Commission is aware and has a copy. It does not purport to be definitive. (Footnote in original.)

United Nations Convention on the Carriage of Goods by Sea, 1978 (Hamburg Rules), Hamburg, 31 March 1978*

Convention Relative aux Transports Internationaux Ferroviaires (COTIF), Berne, 9 May 1980

United Nations Convention on International Multimodal Transport of Goods, Geneva, 24 May 1980**

Protocols

Additional Protocol No. 1 to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air Signed at Warsaw on 12 October 1929, Montreal, 25 September 1975 (Protocols No. 2 and 3 introduced the SDR as the unit of account into the Convention as amended by the Protocol done at The Hague on 28 September 1955 and into the Convention as amended by the Protocols done at The Hague on 28 September 1955 and at Guatemala City on 8 March 1971. Protocol No. 4 made substantive amendments to the Convention as amended by the Protocol done at The Hague and also introduced the use of the SDR.)

Protocol to the International Convention on Civil Liability for Oil Pollution Damage, 1969, London, 19 November 1976

Protocol to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971, London, 19 November 1976

Protocol to the Athens Convention Relating to the Carriage of Passengers and their Luggage by Sea, 1974, London, 19 November 1976

Protocol to the Convention on the Contract for the International Carriage of Passengers and Luggage by Inland Waterway (CVN), Geneva, 5 July 1978

Protocol to the Convention Relating to the Limitation of the Liability of Owners of Inland Navigation Vessels (CLN), Geneva, 5 July 1978

Protocol to the Convention on the Contract for the International Carriage of Goods by Road (CMR), Geneva, 5 July 1978

Protocol to the Convention on the Contract for the International Carriage of Passengers and Luggage by Road (CVR), Geneva, 5 July 1978

Protocol to Amend the Convention on Damage Caused by Foreign Aircraft to Third Parties on the Surface Signed at Rome on 7 October 1952, Montreal, 23 September 1978

Protocol Amending the International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading, 25 August 1924 as Amended by the Protocol of 23 February 1968, Brussels, 21 December 1979

Protocol Amending the International Convention Relating to the Limitation of Liability of Owners of Sea-Going Ships dated 10 October 1957, Brussels, 21 December 1979

* Yearbook . . . 1978, part three, I, B.

** Final Act of the United Nations Conference on a Convention on International Multimodal Transport and Convention on International Multimodal Transport of Goods, TD/MT/CONF/17, 1981.

3. NOTE BY THE SECRETARIAT: UNIVERSAL UNIT OF ACCOUNT FOR INTERNATIONAL PAYMENTS (A/CN.9/220)*

1. The report of the Working Group on International Negotiable Instruments on the work of its twelfth session, at which the subject of a universal unit of account of con-

stant value for use in international conventions was considered (A/CN.9/215),* is before the Commission at this session. The background for the action on this subject is

* 18 May 1982.

* Reproduced in this volume, part two, II, B, 1.