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UNIVERSAL UNIT OF ACCOUNT FOR
INTERNATIONAL CONVENTIONS

Note by the Secretariat

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 constant 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 described in paragraphs 1 to 4 of the Working Group's report. This note is intended to make certain suggestions in respect of the recommendations of the Working Group.

Two alternative means of adjusting for inflation

2. In conformity with the request of the Commission the Working Group prepared and recommended to the Commission two texts which provide alternative means for adjusting the limits of liability in a transport or liability convention for the effects of inflation. The first of these two alternatives, found in paragraph 53 of the report, is a sample price index provision. The second, in paragraph 90, provides for an expedited revision process for the limited purpose of revising the limits of liability.

3. Following the meeting of the Working Group the UNCITRAL Secretariat requested the comments of the Treaty Section of the Office of Legal Affairs, the office which exercises the responsibilities of the Secretary-General as the depositary of certain international conventions and for the registration of other international conventions under Article 102 of the Charter of the United Nations. The Treaty Section made several drafting suggestions based upon its experience.

4. It recommended that paragraph 3 of the sample price index provision in paragraph 53 of the report be changed to read as follows:

"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."

The suggested wording is simpler than the existing wording and covers all cases, including that where the Secretary-General is himself the depositary. Furthermore, it eliminates the need for the footnote to the suggested text.

5. In respect of the sample amendment procedure for limit of liability in paragraph 90 of the report it was pointed out that the term "Party" to the convention, i.e. a State for which the convention was in force, was used in paragraph 6 while "Contracting State", i.e. a State which has done all that is required in order to be bound by the convention but for which the necessary period of time has not passed, was used throughout the rest of the provision.

6. Paragraph 6 of the sample amendment procedure is in implementation of paragraph 4 which provides that only those States which had the right to participate in the meeting of the committee provided for in paragraphs 1 and 2 have the right during the following six months to object to an amendment adopted by the committee. Paragraph 5 goes on to say that all States which had the right to attend the meeting of the committee are bound by the amendment once it goes into effect, unless they denounce the convention. Paragraph 6 provides that a State that joins at a later time is also bound by the amendment. It has been suggested that for the sake of consistency such a State should be described as "a State which becomes a Contracting State". 1/

Sample provision for universal unit of account for limit of liability

7. During the session of the Working Group the delegate of the Soviet Union stated that, although the Soviet Union was not a member of the International Monetary Fund and under its law the Special Drawing Right could not be used as a means of payment, the Soviet Union was prepared to agree to the use as a unit of account in international transport conventions of the SDR as calculated by the International Monetary Fund. 2/ The Working Group expressed its hope

1/ A simplified procedure for the entry into force of amendments of the amounts laid down in the 1969 Convention on Civil Liability for Oil Pollution Damage and the 1971 Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage was before the Legal Committee of the Inter-Governmental Maritime Consultative Organization at its 48th session held from 1 to 5 March 1982. This simplified procedure was similar to that proposed by the UNCITRAL Working Group. The report of the UNCITRAL Working Group was also before the IMCO Legal Committee.

At the end of a substantial discussion which repeated many of the considerations expressed in the UNCITRAL Working Group, the IMCO Legal Committee accepted that some action was necessary and it agreed to give further consideration to the matter at a future session (IMCO document LEG/48/6).

2/ The full statement is reproduced in the Annex to A/CN.9/215.

that other States which were not members of the International Monetary Fund would also be able to rely on the SDR as the unit of account in limit of liability provisions in international conventions. 3/

8. As a consequence the Working Group recommended to the Commission that it recommend that in the preparation of future international conventions containing limit of liability provisions or in the revision of existing conventions the unit of account 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 deletion of paragraphs 2 and 3 of that article. 4/

9. Paragraphs 95 and 96 of the report of the Working Group contain two different suggestions as to the means by which the first paragraph for a universal unit of account for use in connexion with a limit of liability provision might be formulated on the basis of article 26, paragraph 1 of the Hamburg Rules. 5/

10. The Commission may wish to prepare such a provision as recommended by the Working Group. The Commission may also wish to prepare a second paragraph for such a provision, consistent in terminology with that used in the first paragraph, based upon article 26, paragraph 4 of the Hamburg Rules as modified to the extent necessary by the deletion of paragraphs 2 and 3 of that article.

Recommendation to the General Assembly

11. The Commission may wish to invite the General Assembly to recommend that, in the preparation of future international conventions containing limit of liability provisions or in the revision of existing conventions, the Contracting States use the unit of account provision and one of the two alternative provisions for adjusting the limit of liability for the effects of price changes, as adopted by the Commission.

3/ Ibid., para. 93.

4/ Ibid., para. 97.

5/ Article 26 of the Hamburg Rules is reproduced in A/CN.9/WG.IV/WP.27, Annex IV, which will be available at the session of the Commission.