



# General Assembly

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**United Nations Commission  
on International Trade Law**  
Working Group III (Transport Law)  
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## **Transport Law: Preparation of a draft convention on the carriage of goods [wholly or partly] [by sea]**

### **Procedure for amendment of limitation amounts—Drafting proposal by the Government of the United States of America**

#### **Note by the Secretariat\***

In preparation for the eighteenth session of Working Group III (Transport Law), the Government of the United States of America submitted to the Secretariat the proposal attached hereto as an annex with respect to the procedure for the amendment of the limitation amounts in the draft convention on the carriage of goods [wholly or partly] [by sea]. The Government of the United States of America advised that the document was intended to facilitate consideration of the topic of the procedure for the amendment of limitation amounts in the Working Group by proposing revised text for draft article 104 of the draft convention.

The document in the attached annex is reproduced in the form in which it was received by the Secretariat.

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\* The late submission of the document reflects the date on which its contents were communicated to the Secretariat.



## **Annex**

### **Procedure for Amendment of Limitation Amounts**

#### **General comment**

1. As discussed in A/CN.9/WG.III/WP.34, the United States supports an expedited procedure to amend limits which avoids the full panoply of formalities normally required to amend the draft Convention. At the same time, the United States is of the view that it is important to ensure that such amendments to liability limits reflect a broad consensus on the need for a change and that the procedure ensures a stable, predictable commercial environment regarding risk management arrangements. Unless otherwise indicated, the following comments relate to draft article 104 of A/CN.9/WG.III/WP.56.

#### **Draft paragraph 2**

2. Initiating a change to the liability limits should require the support of at least half of the parties to the draft Convention. The number of parties does not necessarily correlate to the percentage of cargo volume or cargo value covered by the draft convention, nor of a country's number of transport providers. A requirement of only one quarter of the parties would permit the initiation of the process to change a material term of a formal treaty without insuring that there is a consensus on the need for change, particularly amongst those most affected. Requiring the support of half of the parties does not tie the change to a cargo volume or value requirement, but it does insure that the need for change will be a widely held view. We believe that review of limits agreed in a formal treaty should not be undertaken absent such a widely held view. Several comparable treaties require the support of at least half of the parties to initiate an amendment. In addition to the 2002 Protocol to the Athens Convention, the 1990 Protocol to the Athens Convention, the Convention for Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, and the 1996 Protocol to the Convention on Limitation of Liability for Maritime Claims adopt such a procedure.

3. Under existing practices in international private law, significant changes to concluded texts are usually produced by the same multilateral bodies that formulated the original text, acting through their general membership (and, in the case of UNCITRAL, observer States), and not only Contracting States to a particular treaty (although States party can also always agree to amendments as between themselves, or inter se). UNCITRAL, for example, amended its first convention (the 1974 Convention on the Limitation Period in the International Sale of Goods) not by action of the Contracting States but by the Commission elaborating a 1980 amending Protocol to the Convention.

#### **Draft paragraph 4**

4. Similarly, strict voting procedures tend to politicize issues, and are not in line with the Commission's consistent practice of making decisions by consensus, which is a more appropriate method for the formulation of uniform rules on private law matters. Given that the initial limitation adopted in draft article 64 will have been

adopted by consensus, any amendment should be adopted in the same manner. Any amendment adopted by the Commission should, following the normal practice, be referred to the General Assembly for approval upon the recommendation of the Commission.

**Draft paragraph 5**

5. The need for and utility of this provision requires further discussion. Our current view is that such a provision is not necessary.

**Draft paragraph 6**

6. The relevant date for permitting the amendment procedure should be seven years after the draft convention enters into force and seven years after prior amendments under this procedure. Given the informal nature of this amendment procedure, there should be restrictions on the level of increases that can be approved. We suggest 21% for any single adjustment, and no more than a cumulative increase of 100%.

**Draft paragraphs 7 and 8**

7. If the amendment has been adopted by consensus at a meeting open to Contracting States, UNCITRAL members and observer States, and subsequently approved by the General Assembly, there is no need to insert yet another approval process before the amendment enters into force. Also, 18 months is an unnecessarily long period of time between approval by the General Assembly and entry into force. This amendment procedure only applies to the amendment of the liability amount. It should not take many months for a Contracting State to study that one figure and determine whether it supports it. Twelve months should be sufficient, provided that at least a certain number of Contracting States have ratified, accepted or approved the amendment by that time. (The exact number should probably be the same as is required for entry into force of the draft convention under draft article 101.)

**Draft paragraph 9**

8. The United States could not accept a provision that would bind all Contracting States to an amendment of the limitation amount unless they denounce the entire draft convention. A Contracting State should be able to denounce a specific amendment rather than the entire convention. As this is intended to be an expedited amendment procedure, the time after which it will enter into force for a Contracting State if that State does not denounce it may be relatively short and not sufficient for some States to comply with their domestic legal procedures. A State may have to denounce the amendment simply because it had not concluded its internal approval process. Therefore, the amendment procedure should allow for a State to withdraw its denunciation at anytime.

9. Attached below is our proposed text of draft article 104. We appreciate the opportunity to comment on this important subject.

U.S. Proposal for Article 104

Article 104. Amendment of limitation amounts

1. Without prejudice to the provisions of article 103, the special procedure in this article shall apply solely for the purpose of amending the limitation amount set out in article 64, paragraph 1, of this Convention.
2. At the request of at least one half of the Contracting States to this Convention to amend the limitation amount specified in article 64, paragraph 1, of this Convention and subject to paragraph 5(a) of this article, the depositary shall convene a meeting of all Contracting States and all Members of the United Nations Commission on International Trade Law to consider whether the limitation amount should be modified.
3. The meeting shall take place on the occasion of and at the location of the next session of the United Nations Commission on International Trade Law.
4. Except as provided in paragraph 5 of this article, the normal procedures of the United Nations Commission on International Trade Law and the United Nations General Assembly shall apply to this meeting and to any recommendations resulting from it.
5. (a) No amendment of the limit under this article may be considered less than seven years from the date of entry into force of this Convention or less than seven years from the date of entry into force of a previous amendment under this article.  
  
(b) No limit may be increased or decreased by more than twenty-one per cent in any single adjustment.  
  
(c) No limit may be increased or decreased by more than two times the original amount, cumulatively.
6. Any amendment adopted in accordance with paragraphs 2 through 5 of this article shall enter into force twelve months after either its adoption or its ratification, acceptance, or approval by [x] Contracting States, whichever is later.
7. All Contracting States shall be bound by the amendment, unless they denounce the amendment in accordance with article 105 before the amendment enters into force. Such denunciation shall take effect when the amendment enters into force, and may be withdrawn at any time.
8. When an amendment has been adopted but has not yet entered into force because the twelve-month period has not yet expired, a State which becomes a State Party during the twelve-month period shall be bound by the amendment when the amendment enters into force or when this Convention enters into force for that State, if later.