

**Questionnaire on the Limitation of Liability of Carriers**

**2005-11-10**

## **1 Introduction**

In its 13<sup>th</sup> session in New York, the Working Group had its second round debate on the provisions concerning limitation of liability. The deliberations and decisions are reproduced in the report A/CN.9/552. The UNCITRAL secretariat has prepared a revised draft of the convention which is numbered A/CN.9/WG.III/WP.56. This questionnaire is based on those draft provisions of A/CN.9/WG.III/WP.56.

## **2 Article 64.1 Basis of limitation of liability**

*“Subject to articles 65 and 66(1), the carrier’s liability for breaches of its obligations under this Convention is limited to [...] units of account per package or other shipping unit, or [...] units of account per kilogram of the gross weight of the goods lost or damaged, whichever is the higher, except when the nature and value of the goods have been declared by the shipper before shipment and included in the contract particulars, or when a higher amount than the amount of limitation of liability set out in this article has been agreed upon between the carrier and the shipper.”*

**2.1 Which one of the following limits of carrier’s liability should be set up in the convention? Do you have any comments on your choice?**

**2.1.1 The limit of liability is 666.67SDR/per package or shipping unit, or 2 SDR per kilo in gross weight, whichever is higher.**

This proposal is the same as the corresponding provision of 1979 protocol of 1968 Hague-Visby Rules.

**2.1.2 The limit of liability is 835SDR/per package or shipping unit, or 2.5 SDR per kilo in gross weight, whichever is higher.**

This proposal is the same as the corresponding provision of 1978 Hamburg Rules.

**2.1.3 The limit of liability is [750SDR]/per package or shipping unit, or [2.25 SDR] per kilo in gross weight, whichever is higher.**

This proposal limit is an average one of the amounts provided in 1979 protocol

of 1968 Hague-Visby Rules and 1978 Hamburg Rules.

**2.1.4 If none of the limits mentioned above is satisfactory, how high an amount may be acceptable?**

**2.1.5 What shall be taken into account to estimate the limitation mentioned above except those provided in Article 104 (5)?**

Article 104 (5) provides that the followings shall be taken into account: the experience of incidents, the amount of damage resulting therefrom, changes in the monetary values, the effect of the proposed amendment on the cost of insurance.

**2.2 Do you think it advisable to broaden the application of the limitation with the words of “the carrier’s liability for breaches of its obligations under this Convention”?**

As the footnote 210 of WP56, “the carrier’s liability for breaches of its obligations under this Convention” is intended to replace of “in connection with...”. In Hague or Visby Rules, the usage is “loss of or damage to or in connection with the goods...”. However, under Hamburg Rules, the words relating to the physical loss of goods with “loss of or damage to”, the loss resulting from delay in delivery is provided in another separate paragraph. Because Article 65 of WP56 is only limited to economic loss caused by delay in delivery, therefore Article 64(1) is intended to including any loss or damage to the goods if only the carrier breaches its obligations under this Convention, not limited to physical loss of or damage to the goods.

### **3 Article 64.2 Basis of limitation of liability**

*“Variant A of paragraph 2*

*[2. Notwithstanding paragraph 1, if (a) the carrier cannot establish whether the goods were lost or damaged [or whether the delay in delivery was caused] during the sea carriage or during the carriage preceding or subsequent to the sea carriage and (b) provisions of an international convention [or national law] would be applicable under article 27 if the loss, damage, [or delay] occurred during the carriage preceding or subsequent to the sea carriage, then the carrier’s liability for such loss,*

*damage, [or delay] is limited according to the limitation terms of any international convention [or national law] that would have been applicable if the place where the damage occurred had been established, or the limitation terms of this Convention, whichever would result in the highest limitation amount.]*

*Variant B of paragraph 2*

*[2. Notwithstanding paragraph 1, if the carrier cannot establish whether the goods were lost or damaged [or whether the delay in delivery was caused] during the sea carriage or during the carriage preceding or subsequent to the sea carriage, the highest limit of liability in the international [and national] mandatory provisions that govern the different parts of the transport applies.]”*

**3.1 Which option is preferable, Variant A or Variant B? Please give your comments.**

**3.2 Whether only the limits set out in those relevant regimes shall be applied, or the other provisions, such as the provision relating to loss of the right to limit liability as well as the provision of defining the unit, etc. shall also be applied to such case?**

#### **4 Article 65 Liability for loss caused by delay**

*“Variant A*

*Subject to paragraph 66(2), compensation for physical loss of or damage to the goods caused by delay must be calculated in accordance with article 23 and [, unless otherwise agreed,] liability for economic loss caused by delay is limited to an amount equivalent to [one times] the freight payable on the goods delayed. The total amount payable under this article and paragraph 64(1) may not exceed the limit that would be established under paragraph 64(1) in respect of the total loss of the goods concerned.*

*Variant B*

*Subject to paragraph 66(2), unless otherwise agreed, if delay in delivery causes [consequential] loss not resulting from loss of or damage to the goods carried and hence not covered by article 23, the liability for such loss is limited to an amount equivalent to [one times] the freight payable on the goods delayed. The total amount payable under this article and article 64(1) may not exceed the limit that would be established under article 64(1) in respect of the total loss of the goods concerned.”*

**4.1 Is it acceptable to calculate the amount payable as compensation for economic loss of goods caused by delay in delivery to an amount equivalent to**

**one times the freight payable on the goods delayed?**

This proposal is lower than the corresponding provision in 1978 Hamburg Rules. Some national laws have similar provision on this point, such as Chinese Maritime Code.

**4.2 Is it acceptable to calculate the amount payable as compensation for economic loss of goods caused by delay in delivery to an amount equivalent to 2.5 times of freight payable on the goods delayed?**

This is the same as the corresponding provision of 1978 Hamburg Rules.

**4.3 How many times of freight payable on the goods delayed is acceptable for the compensation for economic loss of goods caused by delay in delivery in your country regardless Question 4.1 and Question 4.2?**

**4.4 Is it necessary to have a second tier limit based on certain times the total freight payable under the contract of carriage for carrier's liability for delay in delivery, as what have been provided in Article 6 (1)(b) of 1978 Hamburg Rules?**

Article 6 (1)(b) of 1978 Hamburg Rules provides that “ The liability of the carrier for delay in delivery according to the provisions of Art.5 is limited to an amount equivalent to two and a half times the freight payable for the goods delayed, but not exceeding the total freight payable under the contract of carriage of goods by sea.”

**4.5 Which option is preferable, Variant A or Variant B? Please give your comments.**

**4.6 Shall the words with “unless otherwise agreed” be remained in Variant A?**

It is noted that “unless otherwise agreed” with square bracket exits in Variant A, however, the square bracket is deleted in Variant B.

**5 Art.66 Loss of the right to limit liability**

*“1. Neither the carrier nor any of the persons referred to in article 19 may limit their liability as provided in articles 64 and 26(4), [or as provided in the contract of carriage,] if the claimant proves that the loss of, or the damage to the goods or the breach of the carrier’s obligation under this Convention resulted from a personal act or omission of the person claiming a right to limit done with the intent to cause such loss or damage, or recklessly and with knowledge that such loss or damage would probably result.*

*2. Neither the carrier nor any of the persons mentioned in article 19 may limit their liability as provided in article 65 if the claimant proves that the delay in delivery resulted from a personal act or omission of the person claiming a right to limit done with the intent to cause the loss due to delay or recklessly and with knowledge that such loss would probably result.”*

**5.1 Is it advisable to stipulate the delay issue in a separate paragraph?**

**5.2 Is it necessary that the words “[or as provided in the contract of carriage]” shall be remained in paragraph 1?**

## **6 Article 104 Amendment of limitation amounts**

*1. Without prejudice to article 103, the special procedure in this article applies solely for the purposes of amending the limitation amount set out in paragraph 64(1) of this Convention.*

*2. Upon the request of at least [one quarter] of the Contracting States to this Convention, the depositary must circulate any proposal to amend the limitation amount specified in paragraph 64(1) of this Convention to all of the Contracting States and must convene a meeting of a Committee composed of a representative from each of the Contracting States to consider the proposed amendment.*

*3. The meeting of the Committee must take place on the occasion and at the location of the next session of the United Nations Commission on International Trade Law.*

*4. Amendments must be adopted by the Committee by a two-thirds majority of its members present and voting.*

*5. When acting on a proposal to amend the limits, the Committee will take into account the experience of incidents and, in particular, the amount of damage resulting therefrom, changes in the monetary values and the effect of the proposed amendment on the cost of insurance.*

*6. (a) No amendment of the limit under this article may be considered less than [five] years from the date on which this Convention was opened for signature nor less than [five] years from the date of entry into force of a previous amendment under this article.*

*(b) No limit may be increased so as to exceed an amount that corresponds to the limit laid down in this Convention increased by [six] per cent per year calculated on a*

*compound basis from the date on which this Convention was opened for signature.*

*(c) No limit may be increased so as to exceed an amount that corresponds to the limit laid down in this Convention multiplied by [three].*

*7. Any amendment adopted in accordance with paragraph 4 must be notified by the depositary to all Contracting States. The amendment is deemed to have been accepted at the end of a period of [eighteen] months after the date of notification, unless within that period not less than [one fourth] of the States that were Contracting States at the time of the adoption of the amendment have communicated to the depositary that they do not accept the amendment, in which case the amendment is rejected and has no effect.*

*8. An amendment deemed to have been accepted in accordance with paragraph 7 enters into force [eighteen] months after its acceptance.*

*9. All Contracting States are bound by the amendment unless they denounce this Convention in accordance with article 105 at least six months before the amendment enters into force. Such denunciation takes effect when the amendment enters into force.*

*10. When an amendment has been adopted but the [eighteen]-month period for its acceptance has not yet expired, a State that becomes a Contracting State during that period is bound by the amendment if it enters into force. A State that becomes a Contracting State after that period is bound by an amendment that has been accepted in accordance with paragraph 7. In the cases referred to in this paragraph, a State becomes bound by an amendment when that amendment enters into force, or when this Convention enters into force for that State, if later.”*

As noted at paragraph 40 and 44 of A/CN.9/552, the Working Group requested that the Secretariat prepare draft provisions for a rapid amendment procedure for the limitation on liability, using existing models and proposals. The current provision is based upon the amendment procedure set out at Art.23 of the 2002 Protocol to the Athens Convention (“Athens Convention”) and Art.24 of the United Nations Convention on the Liability of Operators of Transport Terminals in International Trade (“OTT Convention”).

#### **6.1 Where is the appropriate place to stipulate the amendment procedure issue?**

#### **6.2 Is it necessary to include the amendment of limitation amount provided in Art.65 in the amendment procedure of Article 104**

It is noted that the proposal amendment procedure is only concerned with amending the limitation amount set out in paragraph 64(1) of this Convention.

**6.3 How many Contracting States may request the amendment procedure in paragraph 2 of Art. 104? [one quarter] or [one half] or any other provisions?**

**6.4 Is it necessary to adopt the amendments by a two-thirds majority of UNCITRAL members to present and vote in paragraph 4? What is the relation between the contracting States of this convention and the members of UNCITRAL?**

It is noted that two-thirds majority of contracting states may vote the amendments in 92 CLC, 96 HNS, 1996 protocol of 76LLMC as well as Athens Convention (2002 protocol). As set out in footnote 25 of A/CN.9/WG.III/WP.39, para. 23(5) the Athens Convention is as follows: “Amendments shall be adopted by a two –thirds majority of the Contracting States to the Convention as revised by this Protocol present and voting in the Legal Committee... on condition that at least one half of the Contracting States to the Convention as revised by this Protocol shall be present at the time of voting.”

**6.5 Are there any other elements be taken into account except those mentioned in paragraph 5 of this clause?**

**6.6 How long interval may trigger the new amendment procedure since last amendments in paragraph 6(a)? [five] years or [seven] years or any others?**

**6.7 How high percent is available to increase the amount of limitation per year calculated in paragraph (b)? [six percent] or any others?**

**6.8 Is it necessary to provide to decrease the amount of limitation in this clause? Is the percent referred in Question 6.7 available to decrease the amount of limitation?**

**6.9 Is it necessary to stipulate the highest limits as provided in paragraph 6 (c)?**



[three] times or any others is available?

6.10 How long the new amendment on the amount of limitation shall be entered into force? [eighteen] months or [twelve] months or any others?

7 Other supplementary or comments on above questions.

**8 The limitation of liabilities of carrier under different modes on the loss of or damages to the cargo**

The working group has already sent out the questionnaire on above mentioned topic to all countries, and the UNCITRAL secretariat has prepared a document numbered A/CN.9/WG.III/WP.53, according to the answers received. However, since there are no marks in some boxes in the previous questionnaire, it is not quite clear whether there are no national provisions on mentioned topic or there is no difference between national law and international conventions approved. And not all the countries submitted their answers. Therefore, we arrange one new questionnaire as the followings in order to know every national law in the limitation of liability of carriers under different modes.

Modes	Conditions	Names	limits	others
Air	Conventions and/or protocols entered into or accessed			
	National law on Limitations of liabilities			
Rail	Conventions and/or protocols entered into or accessed			
	National law on Limitations of liabilities			

Road	Conventions and/or protocols entered into or accessed			
	National law on Limitations of liabilities			
Sea	Conventions and/or protocols entered into or accessed			
	National law on Limitations of liabilities			
Multimodal transport	Conventions and/or protocols entered into or accessed			
	National law on Limitations of liabilities			

Noted: If there is neither convention or protocol nor national provision on the limitation of liability of carriers, please mark with "X" in relative boxes above.

**8.1 If it had been answered in previous questionnaire, please answer 8.2 in this questionnaire if any.**

**8.2 Are there any new changes or amendments or any supplements on national law after last answering?**

**8.3 Is it same on the limitation of liability of carriers between domestic carriage and international transportation in your country in each single modal transportation? If not, please remark in the box of "others" in above table.**