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Item 9 (b) of the provisional agenda

**HARMONIZATION OF REQUIREMENTS CONCERNING INTERNATIONAL
INLAND WATER TRANSPORT AND FACILITATION OF ITS OPERATIONS,
INCLUDING THE STUDY OF LEGAL PROVISIONS: CONSIDERATION OF
THE POSSIBILITY OF INTRODUCING A COMMON LEGAL REGIME
FOR THE LIMITATION OF THE LIABILITY OF OWNERS OF INLAND
NAVIGATION VESSELS ON A EUROPE-WIDE BASIS**

**Revision of the 1988 Strasbourg Convention on Limitation of Liability
in Inland Navigation (CLNI)**

**Transmitted by the Central Commission for the Navigation
of the Rhine (CCNR)**

Note: In the context of the discussions on the possibility of introducing a common legal regime for the limitation of the liability of owners of inland navigation vessels on a Europe-wide basis, the secretariat has reproduced below the general presentation of the Additional Protocol to the 1988 Strasbourg Convention on Limitation of Liability in Inland Navigation, adopted as the basic text by the meeting of governmental experts held on 12 June 2007 in Strasbourg, and the preliminary draft additional protocol. Both texts were transmitted by the Central Commission for the Navigation of the Rhine (CCNR), which is organizing the revision process. The report of the meeting of governmental experts is available from the CCNR secretariat. The next meeting will be held on 13 and 14 November 2007 in Strasbourg, with the scope of the Convention as its main topic.

Annex

I. GENERAL PRESENTATION OF THE DRAFT ADDITIONAL PROTOCOL TO THE 1988 STRASBOURG CONVENTION ON LIMITATION OF LIABILITY IN INLAND NAVIGATION (CLNI)

1988 Strasbourg Convention on Limitation of Liability in Inland Navigation (CLNI)

General presentation of the draft additional protocol to CLNI

CLNI, signed in 1988 by the States members of the Central Commission for the Navigation of the Rhine (CCNR) and Luxembourg, entered into force on 1 September 1997. Four States are parties to CLNI: Luxembourg, the Netherlands, Switzerland and Germany.

Purpose of CLNI

CLNI establishes a system of caps limiting vessel owners' liability in case of loss caused during navigation. Vessel owners and salvors, as defined in article 1 of CLNI, may limit their liability - whatever the basis of the liability,¹ and provided it is not proved that there was wilful misconduct on their part² - through a fund constituted with a competent court or national authority, the amount of which is determined in accordance with the provisions of CLNI. The limits of liability provided for in the Convention thus replace any national provisions on limitation of liability (for example, provisions limiting liability to the value of the vessel and the cargo, or provisions stipulating unlimited liability). The general limits agreed in CLNI set ceilings on the entirety of the damages payable for and arising out of the same occurrence, whatever the basis of the damages: an action in contract or quasi-tort brought against the owner, or an action brought against the vessel herself.³

The fund is constituted either by depositing the amount or by producing a guarantee acceptable under the legislation of the State party in which the fund is constituted. The fund may be constituted by the owner or the owner's insurer. In practice, the insurance company is responsible for the fund since, while the Convention does not establish an explicit obligation to take out insurance,⁴ in reality, in order to benefit from limitation of liability the owner must be insured.

¹ Art. 1, para. 3.

² Art. 4: "A person shall not be entitled to limit his liability if it is proved that the loss resulted from his personal act or omission, committed with the intent to cause such loss, or recklessly and with knowledge that such loss would probably result."

³ CLNI, art. 4.

⁴ There is no compulsory insurance on the Rhine. Compulsory insurance is a matter for States to decide.

Once a fund is constituted in a State party, no other State party may authorize arrest, attachment or other proceedings against the owner. CLNI thus constitutes protection for the owner. It is also a safeguard for victims of loss in that it prevents vessel owners from evading their liability, for example by operating their vessels as limited liability companies.

Scope of CLNI

CLNI provides for three distinct funds:

1. A fund for claims in respect of loss of life or personal injury to third parties (liability in quasi-tort): the amount to be deposited in this fund is calculated on the basis of the vessel's tonnage and power (art. 6, para. 1, of CLNI, to be amended by art. 3, para. 1 (a) of the additional protocol);
2. A fund for claims in respect of material damage, including damage to the environment: the amount to be deposited in this fund is equivalent to half the preceding amount (art. 6, para. 1 (b), of CLNI, to be reproduced in art. 3, para. 1 (b) of the additional protocol);⁵
3. A fund for claims in respect of loss of life or personal injury to passengers (liability in contract): the amount to be deposited in this fund is calculated on the basis of the vessel's passenger transport capacity (art. 7 of CLNI, to be amended by art. 4 of the additional protocol).

Under CLNI, the following claims are excepted from the caps limiting liability:

- Claims in respect of salvage (art. 3, para. (a));
- Claims for nuclear damage (art. 3, paras. (b) and (c));
- Claims by servants of the vessel owner (art. 3, para. (d)).

In addition, States parties may exclude the application of the limits provided for in the Convention in the following areas:

- Damage to the environment (art. 18, para. 1 (a)): States parties may exclude from limitation of liability "damage due to a change in the physical, chemical or biological quality of the water". The four States that are currently parties to CLNI have made use of this reservation;⁶

⁵ If fund 1 is insufficient to cover the claims in respect of loss of life or personal injury to third parties, CLNI allows for half of the sum provided for fund 2 to be used for that purpose (art. 6, para. 1 (c)).

⁶ The Netherlands has provided for the constitution of a special fund for damage to the environment.

- Damage to third parties caused by the carriage of dangerous goods (art. 18, para. 1 (b)): States parties may exclude from limitation of liability “damage caused by dangerous goods during their carriage” if their domestic regulations provide for higher limits or for unlimited liability. Of the four States parties to CLNI, the Netherlands and Germany have made use of this reservation;
- Damage related to the conduct of pleasure craft and military vessels (art. 18, para. 1 (d)): States parties may stipulate that only vessels for commercial use may benefit from limitation of liability. Of the four States parties to CLNI, Switzerland, Luxembourg and Germany have made use of this reservation;
- Personal injury to passengers (art. 6 of the draft additional protocol): the draft additional protocol allows for States parties to exclude the application of the limits set for claims in respect of loss of life or personal injury to passengers if their domestic regulations provide for higher limits or for unlimited liability;
- Geographical scope of CLNI (art. 9 of the draft additional protocol): the draft additional protocol allows for the exclusion of the application of the rules of the protocol, in their entirety or in part, on certain waterways: France and Switzerland already plan to make use of this reservation. The Netherlands, Luxembourg and Germany will probably not make use of this reservation, having already elected to extend the scope of CLNI to all their waterways. Belgium has declared its intention to apply CLNI on all its waterways.

Purpose of the negotiations on the draft additional protocol

The draft additional protocol has two objectives:

- (1) To extend the scope of CLNI to all European States for which inland navigation represents a significant economic activity;
- (2) To re-evaluate the general limits of liability.

CLNI, as amended by the protocol, could thus constitute the first step towards the harmonization of the law on civil liability in inland navigation. The Convention confines itself to setting common ceilings on damages; it does not define the applicable liability regime,⁷ which continues to be governed by the domestic laws of each State. Given its limited objectives, it is unlikely to come into conflict with States’ domestic regulations.

⁷ In particular, limitation of liability is not linked to a presumption of liability.

The amounts fixed should be similar to those applied in other modes of transport if this instrument is to have any chance of being ratified by the majority of the participating States.⁸

While it is not a question, in negotiating this protocol, of renegotiating CLNI in its entirety, the issue of the material scope of the Convention could be raised in relation to certain specific elements. It is important to ensure that the adoption of the protocol constitutes a genuine step forward in the harmonization process and that its provisions are not subject to an excessive number of reservations. In this regard, the willingness of States to be bound by general limits of liability for damage to the environment and personal injury to passengers is questionable.

⁸ An instrument providing for amounts that lag behind those normally applied will ultimately have little chance of being ratified by the States.

**I. PRELIMINARY DRAFT ADDITIONAL PROTOCOL TO THE
1988 STRASBOURG CONVENTION ON LIMITATION OF
LIABILITY IN INLAND NAVIGATION**

**Preliminary draft additional protocol to the
1988 Strasbourg Convention on Limitation
of Liability in Inland Navigation**

*(Preliminary draft elaborated under the auspices of the Central Commission for the
Navigation of the Rhine in order to facilitate the accession of non-signatory States)*

The States Parties to this Protocol,

CONVINCED of the utility of harmonizing the law applicable to limitation of liability in
inland navigation on all waterways,

Have agreed as follows:

Article 1

For the purposes of this Protocol, the term “Convention” shall mean the Convention on
Limitation of Liability in Inland Navigation (CLNI), adopted at Strasbourg in 1988.

Article 2

Replace article 3, paragraph (a), of the Convention with the following text:

“(a) Claims for salvage, including, where applicable, any claim for special compensation
under article 14 of the International Convention on Salvage, of 1989, as amended, or
claims for contribution in general average;”.

Article 3

Replace article 6, paragraph 1, of the Convention with the following text:

“1. The limits of liability for claims other than those mentioned in article 7, arising on
any distinct occasion, shall be calculated as follows:

- (a) In respect of claims for loss of life or personal injury,
 - (i) For a vessel not used for cargo, in particular a passenger vessel, ... units
of account per cubic metre of displacement at maximum permitted draft,
increased for vessels equipped with mechanical means of propulsion
by ... units of account per kW of power of the machines providing the
propulsion;

- (ii) For a cargo vessel, ... units of account per tonne of the vessel's deadweight, plus ... units of account per kW of power of the machines providing the propulsion for vessels equipped with mechanical means of propulsion;
 - (iii) For a pusher or tug, ... units of account per kW of power of the machines providing the propulsion;
 - (iv) For a pusher which, at the moment when the damage was caused, was coupled to barges in a pushed train, the amount of liability calculated in conformity with (iii) shall be increased by ... units of account per tonne of deadweight of the pushed barges; this increase shall not apply in so far as it can be proved that the pusher has provided salvage services to one or more of these barges;
 - (v) For a vessel equipped with mechanical means of propulsion which at the time when the damage was caused was providing propulsion for other vessels coupled to this vessel, the amount of liability calculated in conformity with (i), (ii) or (iii) shall be increased by ... units of account per tonne of deadweight or cubic metre of displacement of the other vessels; this increase shall not apply in so far as it can be proved that this vessel has furnished salvage services to one or more of the coupled vessels;
 - (vi) For floating and mobile appliances or plant in the sense used in the second sentence of article 1, paragraph 2 (b), their value at the time of the occurrence;
- (b) In respect of all other claims, half of the sums mentioned in (a);
- (c) When the amount calculated in accordance with (a) is insufficient to pay the claims mentioned therein in full, the amount calculated in accordance with paragraph (b) shall be available for payment of the unpaid balance of claims under paragraph (a) and such unpaid balance shall rank rateably with claims mentioned under paragraph (b);
- (d) In no case shall the limits of liability be less than ... units of account for claims in respect of loss of life or personal injury or less than ... units of account for all other claims."

Article 4

Replace article 7, paragraph 1, of the Convention with the following text:

"1. In respect of claims arising on any distinct occasion for loss of life or personal injury to passengers of a vessel, the limit of liability of the owner thereof shall be an amount of ... units of account multiplied by the number of passengers which the vessel is authorized to carry according to its certificate."

Article 5

For article 15, read:

“This Convention shall apply when a person referred to in article 1 invokes the limitation of liability before the court of a Contracting State or requests the release of a vessel or other property which has been arrested or attached, or of a security given in the national territory of a Contracting State.”

Article 6

Replace article 18, paragraphs 2, 3 and 4, of the Convention with the following text:

“2. Notwithstanding the limit of liability prescribed in article 7, paragraph 1, a State Party may stipulate expressly in its domestic legislation the liability regime that shall apply to claims for loss of life or personal injury to passengers of a vessel, provided that the limit of liability is not less than that prescribed in article 7, paragraph 1. Any State Party which takes advantage of the provisions of the present paragraph shall notify the depositary of the limits of liability adopted or of the fact that no such limits are provided for.

3. Reservations made at the time of signature are subject to confirmation upon ratification, acceptance or approval.

4. Any State which has made a reservation to the Convention may withdraw it at any time by means of a notification addressed to the depositary. The withdrawal shall take effect on the date the notification is received or on a later date specified therein.

5. Unless a declaration is made to the contrary at the time of the deposit of the instrument of ratification, acceptance, approval or accession, reservations made by a Contracting State to the Convention prior to ratification, acceptance or approval of the Protocol shall continue to apply, provided that they concern provisions that have not been amended by the Protocol.”

Article 7

Replace article 20, paragraph 4, of the Convention with the following text:

“4. Any decision to revise the limitation amounts provided for in articles 6 and 7 or to replace the unit of account mentioned in article 8 shall be taken by a two-thirds majority of the Contracting States present and voting, provided that at least half the Contracting States to the Convention are represented at the time of voting.”

FINAL CLAUSES

Article 8

Uniform instrument

1. The Convention and this Protocol shall be considered and interpreted as constituting a single instrument between the Parties to this Protocol.

2. A State which is a Party to this Protocol but is not a Party to the Convention shall be bound by the provisions of the Convention as amended by this Protocol in respect of the other States Parties to this Protocol.

3. The Convention as amended by this Protocol shall apply only to claims arising out of occurrences subsequent to the entry into force, for each State, of this Protocol.

Article 9

Signature, ratification, acceptance, approval and accession

1. This Protocol shall be open for signature by States from ... to ..., at the headquarters of the Central Commission for the Navigation of the Rhine at Strasbourg.

2. States may express their consent to be bound by this Protocol by:

(a) Signature without reservation as to ratification, acceptance or approval; or

(b) Signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval; or

(c) Accession.

3. Any State may, at the time of signature, ratification, acceptance, approval or accession, reserve the right to exclude the application of the rules of the Protocol in their entirety or in part on certain of its waterways.

4. Any State which has made a reservation referred to in article 18 of the Convention as amended by this Protocol may withdraw it at any time by means of a notification addressed to the depositary. The withdrawal shall take effect on the date the notification is received or on a later date specified therein.

5. Ratification, acceptance, approval or accession shall be effected by the deposit of an instrument to that effect with the Secretary-General of the Central Commission for the Navigation of the Rhine.

Article 10

Entry into force

1. This Protocol shall enter into force on the first day of the month following the expiry of a period of three months as from the date on which all the States Parties to the Convention [on the date of the adoption of this Protocol] deposit their instruments of ratification, acceptance, approval or accession.

2. For a State which deposits an instrument of ratification, acceptance, approval or accession after all the conditions for the entry into force of this Protocol have been met, the Protocol shall enter into force on the first day of the month following the expiry of a period of three months as from the date of the deposit of the instrument.

Article 11

Denunciation

1. This Protocol may be denounced by any of the States Parties by a notification addressed to the depositary, at any time after one year from the date on which the Protocol entered into force for that Party.

2. Denunciation shall be effected by the deposit of an instrument of denunciation with the Secretary-General of the Central Commission for the Navigation of the Rhine.

3. Denunciation shall take effect on the first day of the month following the expiry of a period of one year from the date on which the notification is received or after such longer period as may be specified therein.

4. In the relations between the States Parties to this Protocol, denunciation of the Convention by any of the States Parties under article 19 of the said Convention shall under no circumstances be interpreted as denunciation of the Convention as amended by this Protocol.

Article 12

Depositary

1. This Protocol shall be deposited with the Secretary-General of the Central Commission for the Navigation of the Rhine.

2. The Secretary-General shall:

(a) Transmit certified true copies of this Protocol to all the signatory States and to all States which accede to it;

- (b) Inform all States which have signed or acceded to this Protocol of:
- (i) Each new signature and each deposit of an instrument and any declaration or reservation thereto together with the date thereof;
 - (ii) The date of entry into force of this Protocol;
 - (iii) Any denunciation of this Protocol and the date on which it takes effect;
 - (iv) Any amendment deemed to have been accepted under article 20, paragraph 5, of the Convention and the date on which the amendment enters into force, in conformity with article 20, paragraph 6, of the Convention;
 - (v) Any communication called for by any provision of the Convention or this Protocol.

Article 13

Languages

This Protocol is established in a single original in the Dutch, French and German languages, all the texts being equally authentic.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective Governments, have signed this Protocol.

Done at Strasbourg, on ...
