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**HARMONIZATION OF THE LEGAL FRAMEWORK FOR
INTERNATIONAL INLAND WATER TRANSPORT:
THE 1988 STRASBOURG CONVENTION ON LIMITATION
OF LIABILITY IN INLAND NAVIGATION**

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

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

Note by the secretariat: 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, and following a decision by SC.3 to follow the work done by CCNR for the revision of the 1988 Strasbourg Convention on Limitation of Liability in Inland Navigation (ECE/TRANS/SC.3/178, para. 29), the secretariat reproduces in the annex to this document the latest version of the preliminary draft additional protocol to the Convention. The Working Party may wish to exchange opinions on the proposed amendments to the scope of the Convention and to the limitation of liability regarding personal injury to passengers.

* The secretariat reproduces the document as received.

Annex

PROTOCOL ADDITIONAL TO THE 1988 STRASBOURG CONVENTION ON LIMITATION OF LIABILITY IN INLAND NAVIGATION

I. INTRODUCTION

1. The draft protocol being submitted takes into consideration the discussions held during meetings in November 2007 and April 2008. The amendments mainly address the following points:

- (1) *Exclusion of sporting boats from the scope of the Convention* (result of the November 2007 meeting): article 2 (e) of the Protocol;
- (2) *Limitation of liability for personal injury to passengers, coupled with the possibility for States parties to enter reservations*: article 4 and article 6 (2) of the Protocol.

2. At the meeting held in April 2008, three options were retained, corresponding to the three formulations proposed for article 4 of the draft protocol.

Option 1

- Adjusting for inflation by increasing by 50% the amounts cited in the 1988 CLNI, article 7;
- Maintaining the upper and lower limits, themselves reassessed by 50%.

Option 2

- Adopting the amount cited in the 1996 LLMC Protocol (175,000 SDRs);
- Maintaining the upper and lower limits in the 1988 CLNI, possibly reassessed by 50%.

Option 3

- Adopting the amount cited in the 1996 LLMC Protocol (175,000 SDRs);
- Dropping the upper and lower limits set out in the 1988 CLNI.

3. In any event, provision is made for States parties to enter reservations, provided the limitation on liability established in their domestic law is not lower than the one set by the additional protocol (art. 6 (2) of the protocol).

(3) *Applicable law and scope of CLNI*: article 5 of the protocol/article 15 of CLNI

(a) *Scope of application*

4. Until now, the draft protocol has not expressly specified its geographical scope. The scope has been implicitly understood, as the States parties have had the possibility of entering reservations to exclude certain domestic waterways from the scope of application of the protocol. This possibility implied that the protocol would apply to all waterways in the territory of the States parties except where a reservation excluded specifically listed waterways.

5. The current draft puts forward two possible options for defining the scope of application.

Option 1 (restricted scope)

- In principle, the protocol would apply to waterways in the territory of the States parties that are governed by an international legal regime. The concept of “international legal regime” in this case would be defined as one covered by Annexes I and II to the European Agreement on Main Inland Waterways of International Importance (AGN).
- States parties would be permitted to make declarations extending the geographical scope of the protocol to other domestic waterways unlisted in Annexes I and II to AGN.

This option is akin to the one adopted in the 1988 CLNI (CLNI applied to the Rhine and Moselle, but States could extend the scope of application to other domestic waterways).

Option 2 (broad scope)

- In principle, the protocol would apply to all waterways in the territory of the States parties;
- States parties could enter reservations excluding some of their waterways from the scope of the protocol; waterways listed in Annex I to the AGN could not be the subject of such reservations.

(b) *Applicable law*

6. The current draft of the protocol makes it clearer that owners may invoke CLNI before any court in a State party, as long as the accident in question has taken place on a waterway falling within the geographical scope of CLNI. Thus, under CLNI, the applicable law in relation to the overall limitation of the owner’s liability would be the law of the forum, no matter the type of issue in question (liability for negligence, or contractual liability).

7. For example, if an Italian passenger on a cruise ship suffers personal injury during a cruise on the Rhine, under the rules on conflict of laws, the applicable law is the one agreed upon by the parties to the contract, but the passenger must still benefit from the peremptory rules of the

law of his or her country of usual residence.¹ In this case, the applicable law would thus be the one chosen by the parties in the contract and, perhaps, the peremptory rules of Italian law. Thus it would not necessarily be that of a State party to CLNI. On the other hand, the owner could invoke CLNI before any courts in the States parties to CLNI, as long as the accident took place within the geographical scope of CLNI, no matter what law applied to the case in question.

(4) Signature, ratification, acceptance, approval and accession: article 9 of the protocol

8. Under the formula defining the geographical scope of CLNI, assuming that article 5, option 1 is retained, the protocol would be open to signature only by those States in whose territory there are waterways subject to an international legal regime, or assuming that article 5, option 2 is retained, it would be open to signature by any interested State.

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

(Preliminary draft produced under the auspices of the Central Commission for the Navigation of the Rhine to facilitate accession by 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

Article 3 of the Convention to read as follows:

“The rules of this Convention shall not apply to:

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

“(b) Claims subject to any international convention or national legislation governing or prohibiting limitation of liability for nuclear damage;

¹ Specifically, see the Rome Convention, art. 5 (2).

- “(c) Claims against the owner of a nuclear vessel for nuclear damage;
- “(d) Claims by servants of the vessel owner or salvor whose duties are connected with the vessel or the salvage operations, including claims of their heirs, dependants or other persons entitled to make such claims, if under the law governing the contract of service between the vessel owner or salvor and such servants the vessel owner or salvor is not entitled to limit his liability in respect of such claims, or if he is by such law only permitted to limit his liability to an amount greater than that provided for in article 6.
- “(e) Claims against the owner of a sport or pleasure craft, or a vessel not used in navigation for profit.”

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, 200 units of account per cubic metre of displacement at maximum permitted draft, increased for vessels equipped with mechanical means of propulsion by 700 units of account per kW of power of the machines providing the propulsion;
 - “(ii) For a cargo vessel, 200 units of account per tonne of the vessel’s deadweight, plus 700 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, 700 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 100 units of account per tonne of deadweight of the pushed barges; this increase shall not apply insofar 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 100 units of

account per tonne of deadweight or cubic metre of displacement of the other vessels; this increase shall not apply insofar 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 200,000 units of account for claims in respect of loss of life or personal injury or less than 100,000 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

Option 1: an amount of 90,000 units of account multiplied by the number of passengers which the vessel is authorized to carry according to the vessel’s certificate, or, if the number of passengers which the vessel is authorized to carry is not prescribed, this limitation shall be determined by the number of passengers actually carried at the time of the occurrence.

“The limits shall not be less than 1,080,000 units of account or more than the following amounts:

“(a) 4.5 million units of account for vessels with an authorized passenger transport capacity of not more than 100;

“(b) 9 million units of account for vessels with an authorized passenger transport capacity of not more than 180;

“(c) 18 million units of account for vessels with an authorized passenger transport capacity of more than 180.

Option 2: an amount of 175,000 units of account multiplied by the number of passengers which the vessel is authorized to carry according to the vessel's certificate, or, if the number of passengers which the vessel is authorized to carry is not prescribed, this limitation shall be determined by the number of passengers actually carried at the time of the occurrence.

"The limits shall not be less than [720,000] [1,080,000] units of account or more than [12] [18] million units of account.

Option 3: an amount of 175,000 units of account multiplied by the number of passengers which the vessel is authorized to carry according to the vessel's certificate, or, if the number of passengers which the vessel is authorized to carry is not prescribed, this limitation shall be determined by the number of passengers actually carried at the time of the occurrence."

Article 5

Article 15, paragraphs 1 and 2, of the Convention to read:

Option 1

"1. This Convention shall apply to the limitation of liability of the owner of a vessel or a salvor when, at the time of the occurrence giving rise to the claims, a person 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, and when:

"(a) The vessel has sailed on a waterway subject to an international sailing regime; or

"(b) Salvage services have been furnished along one of the said waterways to a vessel in danger or the cargo of such a vessel; or

"(c) A vessel sunk, wrecked, stranded or abandoned along one of the said waterways or the cargo of such a vessel has been raised, removed, destroyed or rendered harmless.

"This Convention shall also apply to the limitation of liability of a salvor furnishing assistance services from an inland navigation vessel to a sea-going vessel in danger along one of the said waterways or the cargo of such a vessel.

"A waterway shall be understood to be subject to an international sailing regime if it is mentioned in Annexes I and II to the European Agreement on Main Inland Waterways of International Importance (AGN), signed at Geneva on 19 January 1996.

- “2. Any State may, at the time of signature, ratification, acceptance, or approval of this Convention or of a protocol additional to this Convention, or upon accession, or at any subsequent time, declare by means of a notification addressed to the depositary that this Convention shall also apply to waterways other than those mentioned in paragraph 1, provided that they are situated in the territory of that State. This Convention shall take effect, for the waterways mentioned in the notification, on the first day of the month following the expiry of a period of three months following the receipt of the notification or, if this Convention has not yet entered into force, on its entry into force.”

Option 2

- “1. This Convention shall apply to the limitation of liability of the owner of a vessel or a salvor when, at the time of the occurrence giving rise to the claims, a person 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, and when:

“(a) The vessel has sailed on a waterway in the territory of the Contracting State; or

“(b) Salvage services have been furnished along one of the said waterways to a vessel in danger or the cargo of such a vessel; or

“(c) A vessel sunk, wrecked, stranded or abandoned along one of the said waterways or the cargo of such a vessel has been raised, removed, destroyed or rendered harmless.

“This Convention shall also apply to the limitation of liability of a salvor furnishing assistance services from an inland navigation vessel to a sea-going vessel in danger along one of the said waterways or the cargo of such a vessel.

- “2. Any State may, at the time of signature, ratification, acceptance, or approval of this Convention or of a protocol additional to this Convention, or upon accession to one of these instruments, or at any subsequent time, declare by means of a notification addressed to the depositary that this Convention shall not be applicable on certain waterways listed in Annex I to this Convention.”

Article 6

Replace article 18 of the Convention with the following text:

- “1. Any State may, at the time of signature, ratification, acceptance or approval of this Convention or of a protocol additional to this Convention, or upon accession to one of these instruments, or at any subsequent time, reserve the right to exclude the application of the rules of this Convention in their entirety or in part:

- “(a) To claims for damage due to a change in the physical, chemical or biological quality of the water;
- “(b) To claims for damage caused by dangerous goods during their carriage, insofar as such claims are governed by an international convention or domestic law which excludes the limitation of liability or sets limits of liability higher than provided for in this Convention;
- “(c) To claims mentioned in article 2, paragraph 1 (d) and (e) of the Convention;
- “(d) To lighters exclusively used in ports for trans-shipments.
- “2. Any Contracting State may, at the time of signature, ratification, acceptance or approval of this Convention or of a protocol additional to this Convention, or upon accession to one of these instruments or at any subsequent time, declare that it will not apply to claims resulting from an occurrence on its waterways the maximum limits of liability provided for in article 7, paragraph 1, if such claims are subject to an international convention or to the national requirements of that State, which exclude the limitation of liability or set limits on liability that are higher than those set out in this Convention.
- “3. A State that makes use of the possibility provided in paragraph 1 (b) or paragraph 2 shall inform the depositary of the limits of liability adopted, or that no such limits are provided for.
- “4. Reservations made at the time of signature are subject to confirmation upon ratification, acceptance or approval.
- “5. Any State which has made a reservation to this 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.
- “6. 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 this Convention are present 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 all States in whose territory there is a waterway subject to a sailing regime within the meaning of the third sentence of article 15, paragraph 1,] from ... to ..., at the headquarters of the Central Commission for the Navigation of the Rhine at Strasbourg.
2. States [mentioned in paragraph 1] 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.

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 ...
