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INLAND TRANSPORT COMMITTEE

Working Party on Inland Water Transport

Fifty-third session
Geneva, 4-6 November 2009
Item 7 (c) of the provisional agenda

**HARMONIZATION OF THE LEGAL FRAMEWORK FOR INTERNATIONAL
INLAND WATER TRANSPORT**

Addendum

The 1988 Strasbourg convention on limitation of liability in inland navigation

Proposal submitted by the Republic of Serbia

Note by the secretariat

In the context of the decision of fifty-first session of the Working Party to monitor the developments related to the revision of the Strasbourg Convention on Limitation of Liability of Owners of Inland Navigation Vessels (ECE/TRANS/SC.3/178, para. 29), the secretariat reproduces below the proposal by the Republic of Serbia, prepared in the context of the negotiations on the draft additional protocol to the convention and aimed at creating unified pan-European rules on general average in inland navigation.

The Working Party may wish to consider the proposal and, if appropriate, instruct the secretariat to organize an expert meeting on this issue in 2010, so that a proposal of the draft rules is ready for the next session of the Working Party.

1. The Republic of Serbia has taken an active participation in the work on the Additional Protocol to the Strasbourg Convention on Limitation of Liability of Owners of Inland Navigation Vessels. Considering that the Strasbourg Convention is based on the International Convention on Limitation of Liability for Maritime Claims (LLMC'96), having in mind that in the judicial practice of the United Kingdom of Great Britain and Northern Ireland the opinions on the application of the convention appear to be contradictory (the case of "Aegean Sea" and "CMA Djakarta") and considering the questionnaire that the Comité Maritime International sent to their National Associations, the Ministry of Infrastructure of the Republic of Serbia considers it necessary to raise the question of charterers' rights to limit their liability in relation to the recourse claim (indemnity claim) by ship owner if the owner is obliged to pay for claims that are covered by Article 2 of the LLMC Convention.

2. Having in mind that this is a dominant, if not the only case of claims for loss or damage to cargo conveyed on ship and the owner of the ship is obliged to pay, the question is whether the Strasbourg Convention should go a step further and specify charterers' rights ("time" and other charterers) to limit their liability in relation to the recourse claim (indemnity claim) by ship owner, which requires compensation for loss or damage to cargo that had to be paid to the owner of cargo.

3. Being aware of the significant role of UNECE when it comes to unification of law in inland navigation, the Ministry of Infrastructure of the Republic of Serbia invites the UNECE Working Party on Inland Water Transport to begin working on the unification of Rules of General Average in inland navigation - one of the oldest institutes in the maritime and inland navigation law.

4. On the Rhine, the Rules of General Average have been established by the International Association for the Rhine Ships Register (IVR). On the Danube this issue is regulated by the Bratislava agreement. It should be emphasized that the IVR Rules on General Average is an exceptional starting point, which is not surprising given in mind the great expertise demonstrated by IVR experts in all documents elaborated by IVR up to this day (e.g. General European conditions for contracts concerning the carriage of pushed barges by bush boats 2007, the Draft European Convention on liability for damage in connection with carriage of hazardous and noxious substances by inland waterways). This is certainly a reason why, in the future, UNECE experts group should base their work on the solutions that are offered by the IVR. Furthermore, the basic difference between maritime law and the law of inland navigation in terms of General Average is that in the inland navigation General Average only applies if it is explicitly mentioned in the contract. The Ministry of Infrastructure of the Republic of Serbia is strongly committed to the preservation of its contractual character and in this regard considers that the Working Party should also propose a clause that the parties could include in contracts.

5. Given the harmonization process of all relevant legal documents of the River commissions, the European Union and UNECE, the Republic of Serbia believes that such an initiative by UNECE would be very useful for all participants of inland water transport, especially for insurance companies and ship owners.