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Economic Commission for Europe**Inland Transport Committee****Working Party on Inland Water Transport****Working Party on the Standardization of Technical
and Safety Requirements in Inland Navigation****Forty-second session**

Geneva, 13–15 February 2013

Item 9 of the provisional agenda

Pan-European Rules on General Average in Inland Navigation**Serbia/International Association for the Rhine Ships Register
joint position paper on UNECE draft Resolution on Pan-
European Rules on General Average****Note by Serbia****I. Mandate**

1. It is recalled that at its forty-first session, the Working Party on the Standardization of Technical and Safety Requirements in Inland Navigation (Working Party) took note of the comments and proposals submitted by the Russian Federation (ECE/TRANS/SC.3/WP.3/2012/17) and Ukraine (ECE/TRANS/SC.3/WP.3/2012/17/Add.1) on ECE/TRANS/SC.3/WP.3/2011/7 on draft Pan-European Rules on General Average, transmitted by Serbia. The Working Party asked Serbia, in consultation with the International Association for the Rhine Ships Register (IVR), to examine the proposals of the Russian Federation and the Ukraine and formulate its comments and proposals in this regard.

2. Reproduced below is Serbia's detailed response to the proposals by the Russian Federation and Ukraine, for the consideration of the Working Party.

II. Comments on the proposals from the Russian Federation

3. The Ministry of Transport of the Republic of Serbia (Republic of Serbia or Ministry of Transport) has studied, jointly with IVR, the proposal of the Russian Federation to the Serbian text of a UNECE draft Resolution on Pan-European Rules on General Average in

Inland Navigation that was submitted for consideration of the Working Party. Below Serbia presents its position paper for consideration by the Working Party at its forty-second session.

4. In regard to the Russian proposal on paragraphs 1 and 2 of the Draft Resolution, the Ministry of Transport and IVR are of the view that this proposal changes the substance of the Serbian/IVR proposal. The essence of the Serbian/IVR proposal for adoption of a single legal instrument is to avoid the existence of two different packages of Rules on General Average (i.e. Danube and IVR). Having in mind the wide acceptance of the IVR rules by the shipping and insurance community in the European Union, the Republic of Serbia proposed to accept the IVR rules as a single package of rules on general average for recognition on a Pan-European level within the framework of UNECE. Should the proposal of the Russian Federation be accepted, UNECE would have adopted yet a third package of rules on general average in addition to the Danube and IVR rules. Having in mind that this intention of the Russian proposal is in contrast with the basic idea of the Serbian/IVR proposal, the Republic of Serbia proposes to accept the original proposal on a UNECE Resolution on Pan-European Rules on General Average in Inland Navigation.

5. For the reasons mentioned above, the Republic of Serbia cannot accept the Russian proposal in regard to Rules IX, X, XIII, XVI, XVII and XXVII.

6. Regarding the Russian proposal on paragraph 1 of the Rule I, the Ministry of Transport and IVR cannot accept the Russian proposal as the definition of general average proposed by Serbia and IVR has been defined closely in relation to the York-Antwerp Rules (hereinafter: YAR) and follows the same line. The wide acceptance of the YAR and large jurisprudence in this regard justified the usage of this definition.

7. Regarding the Russian proposal on paragraph 2 of Rule I, the Ministry of Transport and IVR cannot accept the Russian proposal as the inclusion of the proposed word is superfluous. The distribution of the general average losses is determined under Rule XII, therefore, there is no need to refer to it also in Rule I.

8. Regarding the Russian proposal on Rule III, the Ministry of Transport believes that the wording "shall not be affected" instead of the Russian proposal "shall also be maintained" should be much more effective in the sense of alignment of the text of the Draft Resolution with the text of YAR. Regarding the Russian proposal on the inclusion of the words "joint", the Ministry of Transport and IVR believe that there is no need for an additional qualification of the adventure as "joint".

9. Regarding the Russian proposals on Rule VI, the Ministry of Transport and IVR would like to emphasize that it is of high importance to define the allowances by means of a survey. Reference is made to the comment to this rule where the principle according to which the amount of an allowance in general average in respect of material damage must be fixed on the basis of a survey report. Thus, the only proof recognized as fixing the extent of material losses is the survey report and should not be replaced by the proposed "cost of repairing". Regarding the Russian proposal on paragraphs 3 and 8, this is covered under Rule XII, so contributory values must not be mixed up with allowances.

10. Regarding the Russian proposal on Rule X, there is a clear difference between "fee" and "allowances". The allowances mentioned under this rule state which costs are "allowed" as general average costs. The fees for each of these allowances are not dealt with by this provision and depend on these very costs.

11. In regard to the Russian proposal on Rule XVI, the Ministry of Transport and IVR would like to emphasize that correction of the general average statement is of course possible at any time, which, however, is a different situation from contestation. Rule XVI intends to clarify that parties have the right to contest the statement by judicial control

which is a step further. Following this argumentation, paragraph 1 is superfluous. Paragraphs 2–4 are dependent on the national procedure at court and should not be dealt with in this rule.

12. Regarding the Russian proposal for deleting the Rule XVII, the Ministry of Transport and IVR need further clarification on the reasons for deleting this particular Rule.

13. In regard to the Russian proposal on paragraph 2 of Rule XIX, general average is the situation in which a vessel and its cargo are saved from a common peril. The authors of both the YAR and IVR general average rules have avoided giving a definition of peril. Therefore it is not desirable to add different situations to this rule and the proposed paragraph 2 from the Russian side should be deleted.

14. Regarding the Russian proposals on Rule XXIV, the Ministry of Transport and IVR believe that the Russian proposal can be accepted in the sense of addition of the word “place” to the term “port of refuge”, with the aim of aligning the text of the Draft Resolution with the text of YAR (see Rule XI of the YAR).

15. Regarding the Russian proposals on Rule XXV, the Republic of Serbia cannot accept the Russian proposal, having in mind that the word “caravan” is used only in an informal context. The word “convoy” has its legal usage (please note that the text of UNECE Resolution No. 61 and Resolution No. 24 use the term “convoy”).
