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Working Party on Inland Water Transport

Working Party on the Standardization of Technical and Safety Requirements in Inland Navigation

Forty-first session

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Item 8 of the provisional agenda

Pan-European Rules on General Average in Inland Navigation

Pan-European Rules on General Average

Note by the secretariat

I. Introduction and terms of reference

1. At its fortieth session, the Working Party noted the proposals by Ukraine and the Russian Federation concerning the text of the draft Pan-European Rules on General Average contained in ECE/TRANS/SC.3/WP.3/2011/7, approved the general concept proposed by the Russian Federation regarding the future Pan-European Rules on General Average and agreed to replace in paragraphs 1 and 2 of the draft resolution the references to the “IVR General Average Rules, 2006 edition” with “Pan-European Rules on General Average”. The secretariat was requested to circulate the Ukrainian proposal in all three working languages, together with detailed proposals to be transmitted by the Russian Federation on possible expansion of the scope of the resolution based on their national legislation so that the Working Party could proceed at its forty-first session with the first reading of the text of the Pan-European Rules on General Average as contained in ECE/TRANS/SC.3/WP.3/2011/7 (ECE/TRANS/SC.3/WP.3/80, para. 50).

2. The proposal of the Russian Federation referred to in paragraph 1, above, is presented hereunder. New wording proposed for the Rules appears in *italic and bold script*, and proposed deletions are struck through. In the interests of economy, the provisions of the Rules for which no comments have been made have been left out, meaning that their wording will remain the same as in ECE/TRANS/SC.3/WP.3/2011/7.

II. Proposals of the Russian Federation

3. It is proposed to change the text of paragraphs 1 and 2 of the draft resolution as follows:

“1. Take such steps as may be deemed necessary to harmonize its national legislation with rules contained in the annex to this resolution which aim, in the case of damage to the interests involved in common commercial adventure on the inland waterways which fulfil the requirements for the general average, and if the Parties involved agree before or after such incident occurs, to settle the damage as the general average, the enclosed ~~IWR~~ *Pan-European* General Average Rules, ~~edition 2006~~, will apply;

2. Undertake to recommend ship owners and operators of the ships flying its flag to include into the Contract of Carriage or Bills of Lading the clause which is read as follow: ‘In the case of general average the ~~IWR~~ *Pan-European* General Average Rules, ~~2006 edition~~, *annexed to Resolution No. ... of the Working Party on Inland Water Transport* shall apply.’ This clause shall be known as ‘Inland Navigation General Average Clause’.”

4. It is proposed to amend the text of the annex to the draft resolution as follows. The proposed new wording of the Rules is given in italic and bold script, and proposed deletions are struck through. In the interests of economy, the provisions of the Rules for which no comments have been made have been left out, meaning that their wording will remain the same as in ECE/TRANS/SC.3/WP.3/2011/7.

III. Annex

General Average Rules

Rule I General average

1. *Losses sustained as a result of sacrifices and expenditure reasonably made and/or incurred, in extraordinary circumstances, for the purpose of saving a vessel and its cargo from a common peril and transport charges* are general average.

2. *General average shall be distributed between the vessel, cargo and the transport charges in proportion with their contributory values at the time and place of the end of the joint adventure as determined in accordance with Rule XII.*

Rule III Effect of fault

When the event which necessitated the sacrifice or expenditure is the consequence of a fault committed by one of the parties to the *joint* adventure, ~~there shall nevertheless be~~ rights to contribution *shall also be maintained*, but this shall not prejudice any remedies or defences which may be open by reason of legal or contractual provisions against or to that party in respect of such fault.

Rule IV Exclusions Exclusion of indirect losses¹**Rule VI Allowances – vessel**

~~1. The extent of physical damages allowable in general average shall be determined on the basis of surveys as provided in Rule XIII.~~

1. *The constituent losses of general average resulting from damage to the vessel, its machinery and supplies (hereinafter referred to as physical damages) shall be determined on the basis of surveys carried out by licensed experts as provided in Rule XIII, or if it is impossible to carry out a survey, from the cost of repairing, mending or replacing what is damaged or lost.*

2. *If the vessel has not been repaired, the losses owing to damage to the vessel shall be determined by the decrease in the value of the vessel owing to the damage. According to the estimate, this shall not exceed the cost of repairing the vessel.*

3. *In the event of total loss of the vessel or if the cost of repairing the damages exceeds the value of the vessel when intact, the losses recognized as general average shall be determined as the difference between the estimated value of the vessel when intact, after deduction of the estimated value of repair of damage unrelated to the general average, and the value of the vessel in its damaged state, which may be determined by the net proceeds from the sale of the remains of the vessel.*

4. From the sum allowable as general average, the following shall be deducted in respect of “new for old”:

one fifth of the renewals to vessels, motors, machinery or boilers which have been in service from 1 to 5 years;

one fourth of the renewals to vessels, motors, machinery or boilers which have been in service from 6 to 10 years;

one third of the renewals to vessels, motors, machinery or boilers which have been in service over 10 years;

No deduction for anchors and anchor chains. No deduction shall be made from the costs of temporary repairs, or from renewals to vessels, motors, machinery or boilers which have been in service for less than 1 year at the date of the accident.

5. Towing and coupling lines shall be allowed at their net cost.

6. The deductions shall be made only from the cost of the new material or parts when finished and ready to be installed in the vessel.

7. When a vessel is afloat no loss or damage caused by the use of one or more anchors shall be allowed in the general average.

8. *Losses from damage to the vessel shall not exceed the amount of indemnity of expenses in the event of loss of the vessel.*

Rule IX Allowances – interest

Amounts allowable in general average shall bear interest, calculated from the date of their payment or from the moment when the party entitled thereto received or would have received the items sacrificed until three months after the date of adjustment.

¹ The text of Rule IV remains unchanged as in ECE/TRANS/SC.3/WP.3/2011/7.

~~Each year the Board of Directors of the IVR shall decide the rate of interest which shall apply.~~

The applicable percentage rate shall be based on the Euribor-rate and shall be used for calculating the interest accruing during the following calendar year.

Rule X ~~Allowances — survey costs, etc.~~ *Fee for establishing the statement of general average*

~~The costs of survey and investigation necessary for the preparation of the statement of general average as well as the fees and disbursements of the Average Adjusters and those of the IVR shall be allowed in general average.~~

For the establishment of the statement of general average a fee shall be charged. It shall include the costs of survey and investigation necessary for the preparation of the statement of general average, *which is included in the statement of general average and shall be distributed among all interested parties proportional with their share of participation in the general average.*

Rule XII Contributory values

1. The contributory value of the vessel shall be based, in principle, on her value at the termination of the adventure ~~and in the condition in which she is at that moment; in assessing this value, the commercial value shall only be taken into account by way of indication,~~ *figured on the basis of the actual net value of the vessel at the end of its voyage. The amount compensated in proportion with the general average for sacrificed property shall be added to the value if it is not already included therein.*

2. The contributory value of cargo shall be based, in principle, on its CIF value at the termination of the adventure and its condition at that time. The contributory value of the cargo sold during the voyage shall be its net-proceeds of sale with the addition of any amount made good as general average.

3. From the values so determined shall be deducted all expenses subsequent to the event which gave rise to the general average, until the termination of the adventure as originally foreseen. Any special compensation which falls upon the ship by virtue of Article 14 of the International Convention on Salvage 1989 shall not be deducted from the value as referred to under paragraph 1 above.

4. To the values so determined shall be added the amounts made good in general average for physical damage.

5. Mails, provisions, passengers' luggage including checked luggage, and personal effects shall not contribute.

6. To the extent that the freight is at the risk of the carrier, it shall contribute upon its gross amount. Insofar as unpaid freight is allowed in general average it shall contribute upon the amount so allowed.

Rule XIII Surveys

~~4-~~ In all cases giving rise to a demand for allowance in general average, the cause, nature and extent of the physical damages shall be ascertained in the following manner:

(a) as to cargo: by survey conducted as soon as possible after the delivery of damaged goods. The concerned in the vessel are to be notified in order to enable them to participate in the survey. Failing such notice, or in case no demand for such a survey has been made within eight days after delivery, the cargo shall, subject to proof to the contrary, be presumed to have been delivered in good condition.

(b) as to the vessel: by a survey by one or more surveyors as soon as possible after the accident and if possible before the commencement of a new voyage. The concerned in cargo are to be notified by a note in the Average Bond and may be represented at the survey.

~~2. In case of several surveyors attending and there being disagreement among them, another surveyor, whose decision shall be binding, shall be appointed by the President of the Average Committee of the IVR.~~

Rule XVI *Correcting and* contesting the statement of general average

All statements of general average with all supporting documents can be submitted for approval to the IVR. This procedure does not result in any renunciation by the parties concerned of a judicial proceeding or arbitration.

1. Miscalculations detected in the general average statement after its registration in the general average statement register may be corrected by the average adjuster at his or her own initiative, or at the request of persons receiving distributions of the general average, by filing a supplement (adding an addendum) to the general average statement, the addendum being an integral part thereof.

2. Persons receiving distributions of the general average may challenge the general average statement in court within six months of the date of receipt of the general average statement or addendum thereto. They must inform the average adjuster by sending him or her a copy of the claim.

3. The average adjuster has the right and if summoned, the duty, to take part in court deliberations relating to disputes concerning the general average statement and to provide substantive explanations.

4. A court considering a dispute relating to a general average statement may leave the general average statement in effect, amend it or cancel it, and may assign the average adjuster the task of drawing up a new general average statement in accordance with its decision.

Rule XVII ~~Treatment of cash deposits and guarantees~~

~~When cash deposits have been collected as security for cargo's liability to contribute to general average, such deposits shall be paid, without any delay, into a special account in the joint names of the Average Adjuster and the IVR, with a bank indicated in the average bond.~~

~~The sum so deposited, together with accrued interest, if any, shall be held as security for payment to the parties entitled thereto of the general average or special charges payable by cargo in respect of which this security has been collected.~~

~~Payments on account or refunds of deposits may be made with the written approval of the average adjuster and the IVR. Such deposits, payments or refunds shall be without prejudice to the ultimate liability of the parties.~~

~~Sums so deposited shall bear interest at the rate mentioned in Rule IX, which interest shall be made good in general average, any bank interest earned being credited to the general average.~~

~~Costs incurred in putting up security for settling under the average statement, or for fulfilment of obligations towards salvors and others shall likewise be allowed in general average.~~

~~Payments on account made on the basis of the security shall also bear interest at the rate mentioned in Rule IX, which interest shall be made good in general average.~~

Rule XIX Raising a sunken vessel, *fire on a vessel*

1. If the vessel has sunk (unless this was brought about for the purpose of saving the vessel and the cargo from a common peril) the expenses of raising the vessel and cargo in one and the same operation together with the damage intentionally caused to the vessel and/or the cargo for that purpose are general average, but not the damages caused by the accident.

2. *Losses sustained by the vessel and/or the cargo as a result of water or other damage to the vessel and/or the cargo, including losses owing to the grounding of a vessel or flooding of a burning vessel, shall be recognized as general average. Losses sustained by the vessel and/or cargo as a result of smoke or heat, regardless of how they are caused, shall not be subject to indemnification.*

Rule XX Indemnity for Assistance by towage etc.

1. Where towage assistance is rendered to a stranded vessel, constituting a general average act, the remuneration paid to the assisting vessel shall be admitted in general average, but may include only the following items:

(a) indemnity due for proceeding to the place of the accident, remaining at that place, rendering services and returning therefrom.

(b) the value of equipment lost, and/or the cost of repairing damage suffered by the assisting party during the course of the actual refloating operations. Save in exceptional circumstances the refloating operations commence at the moment the towing rope is attached and terminate at the moment when the towing rope is or can be released. For example, the situation when the assisting vessel herself, before attaching or after releasing the towing rope, is in the zone of danger in direct connection with the rendering of assistance, shall be considered as an exceptional circumstance.

(c) indemnity for demurrage, but exclusively during the period the assisting vessel is immobilized for the execution of replacement or repair work as referred to above.

(d) any loss other than personal injuries suffered by third parties during the refloating, including claims for demurrage, insofar as the assisting party has had to satisfy legally justified claims for indemnification.

2. The above provisions are likewise applicable in case of intervention by a pushboat.

Rule XXIV ~~Port of refuge~~ *Place of refuge*

~~1. When, apart from the case mentioned by Rule XXII, the barge master performs a general average act by taking his vessel into a port and/or by remaining there, only the expenses of entering and leaving, towage costs, port dues and the expenses for guarding the loaded ship shall be allowed in general average.~~

~~2. However, when a vessel enters a port and/or remains there because of low water, this shall not justify any allowance in general average.~~

1. *Expenses for calling at a port or other place of refuge as a result of flooding, ice drifts or sudden, abrupt lowering of water levels in inland waterways, or other emergencies requiring the vessel to call stay or depart from a port or other place of refuge shall be recognized as general average.*

2. *If flooding or ice drifts begin once the vessel has called with its cargo at the port of debarkation and the vessel is obliged to leave the port of debarkation before finishing unloading so as to call at another, safe, port, the other port shall be considered the place of refuge.*

3. *If owing to flooding or ice drifts the vessel is unable to continue its journey and must remain in port after unloading the part of the cargo intended for that port, the port shall be considered the place of refuge for the vessel only for the cargo intended for other ports.*

Rule XXV ~~Convoys~~ Vessel caravan

1. For the purpose of this Rule, a ~~convoy~~ *caravan* is considered to be a group of vessels coupled with each other in such a way that none of the vessels has any freedom of independent movement.

2. When measures are taken to preserve a vessel and/or some or all vessels of ~~such convoy~~ *a caravan* and their cargo from a common peril, Rules I to XXIV shall be applied accordingly. A vessel forming part of a ~~convoy~~ *caravan* is not in common peril with another vessel of that ~~convoy~~ *caravan*, if by a mere uncoupling of the connection with ~~such the~~ other vessel she can be placed in safety.

3. If a common peril exists Rules I to XXIV shall be applied as much for the profit as to the charge of those concerned in the vessels of the convoy and their cargoes.

4. For the calculation of contributory values and allowances the vessels will be considered to be "the vessel" and the total cargo carried in those vessels will be considered to be "the cargo" in the sense these words bear in Rules I to XXIV.

Rule XXVII Application of the Rules

1. *These Rules shall apply unless the parties have agreed otherwise.*

2. *In the event that an agreement between the parties so stipulates, and also in cases where these Rules are insufficient to determine the type of average, amounts of general average losses and their distribution, other rules on general average and international merchant shipping customs shall apply.*
