

**CMI**  
**INTERNATIONAL SUBCOMMITTEE ON GENERAL AVERAGE**

**REPORT OF THE MEETING HELD AT THE**  
**2013 DUBLIN SYMPOSIUM**

**Introduction**

Following the circulation on 12 March 2013 of the [questionnaire](#) of the International Working Group on General Average (IWGGA), replies were received from national maritime law associations (NMLA's) and organizations with or without CMI (associate) member status. The questionnaire and the replies were collated in an [IWGGA report dated 12 August 2013](#). As more replies were received over the summer months in the run-up to the CMI/IMLA Dublin Symposium the report was updated to an [IWGGA report of 13 September 2013](#). The questionnaire had by then drawn some 25 replies.

At the CMI/IMLA Dublin Symposium (28 September - 1 October 2013) the first meeting was held of the CMI International Subcommittee on General Average (ISCGA) on Saturday 28 and Sunday 29 September 2013. The ISCGA meeting, under the chairmanship of Bent Nielsen, was attended by the following persons:

Andreas Bach (Switzerland)  
Andrew Bardot (United Kingdom/International Group)  
Ben Browne (United Kingdom/IUMI)  
Nelson Cavalcante e Silva Filho (Brazil)  
Richard Cornah (United Kingdom/AAA)  
Frédéric Denèfle (France)  
Jürgen Hahn (Germany)  
Michael Harvey (United Kingdom/ADM)  
Haedong Jeon (Korea)  
Kiran Khosla (United Kingdom/ICS)  
Martin Kröger (Germany)  
Jolien Kruit (Netherlands)  
Jiro Kubo (Japan)  
Darren Lehane (Ireland)  
Didem Light (Turkey)  
Eamonn Magee (Ireland)  
Sveinung Måkestad (Norway)  
Dan Malika Gunasekera (Sri Lanka)  
Howard M. McCormack (United States)  
Bent Nielsen (Denmark/Chairman)  
John O'Connor (Canada)  
Adriana P. Padovan (Croatia)  
Rucemah Pereira (Brazil)  
Erik Rosaeg (Norway)  
Katrina Ross (United Kingdom/ICS)  
Peter Sandell (Finland)  
Dieter Schwampe (Germany)  
Jonathan Spencer (United States)  
Andrew Taylor (United Kingdom)  
Taco van der Valk (Netherlands/Co-rapporteur)

Esteban Vivanco (Argentina)  
Jiangou Yang (China)

The discussions at the meeting were held on the basis of a document named '[CMI Notes \(September 2013\)](#)' prepared by Richard Cornah, which document contained a shortened version of each question (shown below in italics) and a summary of the responses from MLAs and other interested parties (shown below in plain type).

This report contains the conclusions of the ISCGA meeting of 28 and 29 September 2013, which are shown below in boldface.

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## SECTION 1

1. *During the discussion leading up to the 2004 Rules some parties advocated the "abolition" of General Average.*

1. There was no support for "abolition" of the principles but generally no wish to see those principles extended. Primary concerns related to the cost and complexity of aspects of the general average process.

**ISCGA: The subject of abolition will be dropped, and not discussed further.**

2. *The IWG invites your general comments as to whether the YARs need to be changed in any way to accommodate the new approach that the Rotterdam Rules bring to contracts of carriage.*

2. Consideration of any changes to YARs being necessitated by the Rotterdam Rules was generally considered to be either premature or unnecessary.

The practical issues were noted but were generally felt to be outside this scope of YARs but specific suggestions were made by:-

- Argentina (Reversal of Rule D)
- Switzerland
- IUMI (Production of documents)

**ISCGA: The subject of a change of the YARs in view of the new approach of the Rotterdam Rules (question 2a) is premature and should be dropped and not discussed further. The practical issues (question 2b) raised by respondents which are not connected purely to the Rotterdam Rules may discussed at a later stage.**

3. *Should the YARs include a section of definitions?*

3. The majority considered that the advantages of the definitions section were outweighed by the possible consequences. Those favouring a section for definitions were:-

- Argentina
- Norway
- Switzerland

and others noted instances where re-drafting of individual rules might be desirable to clarify the meaning of certain words and phrases.

**ISCGA: A definitions section was rejected. The redrafting issues raised should be taken up by the IWGGA for further work.**

4. *Do you consider the existing approach should be maintained, or should the YARs at the expense of brevity, provide a more self-contained and complete code that needs*

*less knowledge of external practice or law?*

4. The majority favoured maintaining the present brevity of the YARs, rather than attempting to produce a more self-contained code, in order to maintain the present flexibility and clarity of the rules.

A more self-contained code was considered to be desirable by:-

- China
- Switzerland

**ISCGA: The subject will be dropped, and not discussed further.**

5. *The 2004 Rules introduced several "tidying up" amendments, including a more extensive numbering system. Do MLA's consider this should be maintained?*

5. The "tidying up" changes of format adopted by YARs 2004 were unanimously welcomed, subject to the caveat for ICS/BIMCO that other changes to YARs 1994 were agreed to be necessary.

**ISCGA: The tidying up/redrafting issues should be taken up by the IWGGA for further work.**

6. *Should CMI offer itself as part of the 2016 Rules as providing an arbitration or mediation facility relating to the application of the Rules (excluding issues pertaining to the contract of affreightment)?*

6. The majority were against including any express provision in YARs relating to dispute resolution, with several replies referring to the existing arrangements provided by AAA and AMD. Those in favour were:-

- Finland
- Slovenia
- Switzerland

**ISCGA: It was noted that the AMD and the AAA have existing dispute resolution panels which are not very often used. The CMI might put up a reference to these panels on the CMI website. It was also suggested references to these or other panels could be attached to the YARs as appendices (while not being part of the YARs). It was agreed that the issue should be taken up by the IWGGA for further work.**

- 7a. *Could additional provisions in the YARs relating to enforcement offer greater uniformity and certainty in these areas?*

- 7a. The majority were against including any additional express terms in YARs relating to enforcement, with the only exceptions being:-

- Slovenia

- Switzerland

**ISCGA: The subject will be dropped, and not discussed further.**

7b. *Should CMI consider offering, or including in the YARs, a recommended standard version of key documents such as the Average Guarantee and Average Bond?*

7b. A significant majority favoured the idea of standard wordings for security documents but that majority was divided between those in favour of such wordings being set out as part of the YARs and those who considered they should be made available by other means. The difficulty in agreeing a wording acceptable to all parties and circumstances was noted.

IUMI put forward for discussion two additional suggestions to reduce the time and complexity of collecting security:

- (i) The BIMCO Average Bond Clause
- (ii) Amending policy wordings so that insurers assume a direct liability for GA contributions.

while noting that (ii) faced considerable practical difficulties.

**ISCGA: It was concluded that standard documents should not be part of the YARs, but that the CMI might help by recommending wordings. The subject will be dropped for now, but may be discussed further at a later stage.**

8. *Are there any changes that might be made to the York Antwerp Rules that might further assist with the widespread use of Absorption Clauses?*

8. It was unanimously agreed that no changes to YARs were required in relation to GA Absorption Clauses in hull policies.

**ISCGA: The subject will be dropped, and not discussed further.**

9. *Do you consider that express wording in YARs would be desirable to deal with the general principles or regulate specific allowances regarding piracy?*

9. The majority considered that no new wording was required in YARs to deal with piracy, with the general principles set out in the lettered rules offering sufficient guidance.

Those disagreeing were:-

- Argentina
- Finland
- Italy
- Slovenia

Belgium and IUMI suggested that consideration should be given to a new rule to deal

specifically with the removal of cargo by pirates.

**ISCGA: The subject will be dropped, and not discussed further.**

*10a. Adjusters' fees*

10a. No recommendations for dealing with adjusters' fees within the YARs were put forward but the following specific comments were made:-

(i) ICS/BIMCO: A widening of expenses admissible at a port of refuge relating to cargo operations might reduce professional fees of all types.

(ii) IUMI: The adjusters' fees should be paid by whomever appointed them.

**ISCGA: The subject raised by IUMI will be dropped, and not discussed further. The subject raised by ICS/BIMCO required further explanation by ICS/BIMCO so it was left to be discussed later.**

*10b. Costs of collecting security*

10b. With regard to the costs of collecting security the following suggestions were made:-

China: Assistance of P&I service and ships agents

Japan: Exclusion of low value cargoes.

Switzerland: Requests for security by rated insurance companies currently increasing costs.

AMD: A single standard security document.

ICS/BIMCO: Use of BIMCO Average Bond Clause; provision of GA security at the port of refuge rather than at destination.

**ISCGA: The subject was discussed at some length. Adjusters might be willing to decide that a case was not worthwhile to pursue in general average due to low value cargo, provided the YARs would give the adjuster authority to do so. It was considered that all stakeholders should take part in the discussion. The subject might also be raised in the IUMI Salvage Forum. It was decided that the subject should be taken up by the IWGGA for further work.**

*10c. Format of adjustments*

10c. With regard to the format of adjustments IUMI would prefer that adjusters should identify precisely what rules are being relied upon, but noted that this would best be dealt with under a Rule of Practice.

**ISCGA: The point raised by IUMI may be discussed at a later stage.**

*10d. Involvement of legal and other representatives*

- 10d. It was generally agreed that legal costs should continue to be accepted in relation to GA expenditure, e.g. salvage.

**ISCGA: The subject will be dropped, and not discussed further.**

11. *It is open to all parties receiving this questionnaire to raise questions or points that are not already covered by the questionnaire.*

11. The suggestions made under "other matters" included:-

Belgium: Exclusion of low value cargoes.

France : Rights of cargo access to be recognised and ways sought to reduce the time required to issue a GA adjustment.

Israel: Rights of cargo access to be recognised and the right of cargo interests to declare GA to be established.

Norway: Low value cargo to be excluded; currency of adjustment to be fixed.

AMD: Use of SDRs as the currency of adjustment and for interest calculations.

IUMI: Exclusion of low value cargo to be formalised within YARs; provision within YARs to establish a single agreed currency for all adjustments.

**ISCGA: The low value cargo issue (Belgium, Norway, IUMI) was the same as raised under 10b. It should therefore be taken up by the IWGGA for further work. The issues raised by France and Belgium were connected and should therefore also be taken up by the IWGGA for further work. The currency issue raised by AMD was explained by Michael Harvey and subsequently discussed at length. Should the currency be used of the main loss? Should a single currency be used, which was likely to be USD? Should the SDR be used? Should carriers include a currency provision in their general average clause, or should a currency provision be used in the security documentation? Ben Browne warned of payments in USD having to be cleared in New York, which could create problems in case sanctions were in place. Hahn stated that he had obtained approval from the Bundesbank in a certain case. It was decided that this point too should therefore be taken up by the IWGGA for further work.**

## SECTION 2

### RULE OF INTERPRETATION

1. There was no support for changing the Rule of Interpretation with the following exceptions:

- Belgium
- Slovenia
- Spain

- Switzerland

**ISCGA: The subject will be dropped, and not discussed further.**

RULE PARAMOUNT

2. There was no support for changing the Rule Paramount with the following exceptions:-

- Slovenia
- Switzerland

**ISCGA: The subject will be dropped for now, but may be discussed later.**

RULE OF APPLICATION

3. The majority were not in favour of including a Rule of Application. Those supporting its inclusion were:-

- Slovenia
- Switzerland
- Spain
- IUMI

A decision on this point was considered to be premature by:-

- UK
- ICS/BIMCO.

**ISCGA: The subject will be dropped for now, but may be discussed later.**

SECTION 3

RULE A

1. No changes to Rule A were suggested.

**ISCGA: The subject will be dropped, and not discussed further.**

RULE B

2.1 *Are the provisions relating to common safety situations involving tug and tow satisfactory?*

2.1 The majority considered the provisions to Rule B to be satisfactory but the following suggested changes, or that further discussion was necessary:-



- Norway
- Switzerland
- AAA
- IUMI (in relation to the casting off of a tow being considered to be a GA act.)

**ISCGA: The tug and tow issues should be taken up by the IWGGA for further work. The history of the related Rhine Rule should be looked into.**

2.2 *Are further provisions needed to deal with allowances under Rules X and XI relating to tug and tow at a port of refuge?*

2.2 The majority responding did not consider further provisions were required regarding Rule X and XI allowances in a tug and tow situation. Those favouring changes or further discussions were:-

- Argentina
- Canada (with regard to integrated tug and barge units)
- AMD

**ISCGA: The tug and tow issues should be taken up by the IWGGA for further work. The history of the related Rhine Rule should be looked into.**

#### RULE C

3.1 *The general exception of "loss of market" is considered by some commentators to be unfair. Is this an issue that should be revisited?*

3.1 A significant majority were against re-visiting the issue of "loss of market" in Rule C. Those in favour of further consideration of this point were:-

- Canada
- Spain

**ISCGA: The subject will be dropped, and not discussed further.**

3.2a *Should the second paragraph of Rule C include express reference to the exclusion of liabilities (see Lowndes C.37)?*

3.2a A small majority were against including express reference to the exclusion of liabilities in Rule C, but the following favoured a clarifying amendment:-

- Argentina
- Netherlands
- Slovenia
- Spain
- Switzerland
- AAA
- AMD

**ISCGA: The tidying up/redrafting issues should be taken up by the IWGGA for**

**further work.**

3.2b *Should Rule C (second paragraph) make it clear that "in respect of" includes preventative measures?*

3.2b Responses were roughly evenly divided with regard to a clarifying amendment regarding preventive measures. Those in favour included:-

- Argentina
- Belgium
- Brazil
- Slovenia
- Spain
- Switzerland
- AAA
- AMD
- IUMI

**ISCGA: The tidying up/redrafting issues should be taken up by the IWGGA for further work.**

RULE D

4. There were no general support for amendments to Rule D but the following specific points were raised.

Argentina: The contributing interests should pay the contribution in every case.

Netherlands: Considered that the wording was vague and could be improved.

AAA: An express provision relating to the treatment of recoveries.

AMD: A return to the "pay first, sue later" approach that already applies to LOF salvage.

**ISCGA: The issue of express wording relating to recoveries should be taken up by the IWGGA for further work. The issue of 'pay first, sue later' will be dropped, and not discussed further.**

RULE E

5.1 *Are the present time limits sufficient or could further measures be included to help speed up the adjustment process?*

5.1 The majority considered the present time limits to be sufficient, however:-

Netherlands: Proposed a specific amendment to the wording.

Switzerland, AMD: Considered the existing periods may be too generous.

**ISCGA: The subject will be dropped, and not discussed further.**

5.2 *In the existing wording of paragraph three, does a request for (say) cargo claims by the adjuster re-start the clock for the 12 month period? If so, should the period in all cases be from the date of the casualty?*

5.2 It appeared to be generally agreed that the time limit should run from the casualty date but the responses with regard to the need for a clarifying amendment varied.

**ISCGA: IWGGA should review the wording to see if it matched the agreed intention.**

#### RULE F

6.1 *Since 1974, substituted expenses are allowed wholly to GA "without regard to savings to other interests". The 1974 change was made in the interest of uniformity and simplicity, however do you consider this issue should be revisited?*

6.1 It was unanimously agreed that the words "without regard to the savings to other interests" should be retained in Rule D.

**ISCGA: The subject will be dropped, and not discussed further.**

6.2 *The wording of Rule F refers only to any extra "expense" and the drafting committee in 1924 rejected the proposal that the words "or loss" should be included. Do you consider this Rule should be amended to include "loss"?*

6.2 A significant majority were against adding the words "or loss" to Rule F. Those in favour of the change were:-

- Brazil
- Spain

Similarly the majority felt there was no pressing need to clarify the limits of what constitutes an "expense".

**ISCGA: The subject will be dropped, and not discussed further.**

6.3 *It has been suggested that the most common Rule F allowances for towage to destination and forwarding of cargo (after deduction of voyage savings) are of such clear general benefit to commercial interests that they should be allowed directly as General Average (subject always to the Rule Paramount) without having to consider General Average savings, which may often involve difficult or artificial calculations.*

6.3 The question as originally drafted should perhaps have made it clearer than any Rule F allowance is for "extra" expense and therefore assumes a credit for voyage savings etc. The "savings" referred to in the question are the notional GA costs that have

been avoided.

The proposition was therefore that costs of towage to destination and forwarding should be allowed as GA on a substantive rather than substituted basis, as supported by ICS/BIMCO. The issue probably needs to be re-visited with this clarification in mind.

**ISCGA: The towage to destination issue should be taken up by the IWGGA for further work.**

RULE G

7.1 *The Rule sets out "non-separation allowances" and specifies that such allowances can only be made "for so long as justifiable under the contract of affreightment and the applicable law". Is there a better formula to determine a reasonable cut off point for such allowances?*

7.1 The difficulties surrounding frustration of a voyage by delay were noted, but no solutions within the framework of the YARs were put forward or considered to be possible.

**ISCGA: The subject will be dropped, and not discussed further.**

7.2 *With regard to "non-separation allowances" there is variation in practice as to whether allowances can continue after repairs are completed and while the vessel regains position, with many adjusters taking the view that, once available for trading, allowances should cease. Do you consider this requires express provision in the Rules or can this be left to the discretion of the Adjuster?*

7.2 The majority considered that the cut-off point for NSA/Rule G allowances should be left to the discretion of the adjuster. The following felt that the point should be considered further:-

- Croatia
- Spain
- Switzerland
- AMD
- IUMI

**ISCGA: The subject will be dropped and not discussed further.**

7.3 *Do you consider that the requirement for notification should be retained, or does it give rise to difficulties in practice?*

7.3 It was unanimously agreed that the requirement for notification in Rule G should be retained.

**ISCGA: The subject will be dropped, and not discussed further.**

7.4 *Where a voyage is frustrated by reason of delay (e.g. the damage is serious and requiring lengthy repair but is not so costly as to make the vessel a commercial total loss), should non-separation allowances continue only up to the point at which it becomes apparent that the voyage is frustrated, or up to the point at which the delay became sufficient to frustrate the voyage?*

7.4 The replies appeared to be inconsistent in some cases and further discussion is required to clarify respondents' views.

**ISCGA: Due to different approaches under national laws, the subject will be dropped, and not discussed further.**

7.5 *Deciding how long is "justifiable under the contract of affreightment and the applicable law" has proved controversial in some cases. Given that the decision is often "fact sensitive" and subject to differing criteria according to national laws, is there a better way of establishing an equitable cut-off point for such allowances?*

7.5 All respondents noted the uncertainties surrounding what was "justifiable under the contract of affreightment" but no obvious solution within the YARs framework was suggested.

**ISCGA: The subject will be dropped, and not discussed further.**

7. *(Additional)*

AAA suggested a clarifying amendment to Rule G to ensure that it reflected the perceived intention of its "Bigham" provisions and the judgment in the "City of Colombo".

**ISCGA: It was felt that there was an issue of tidying up/redrafting which should be taken up by the IWGGA for further work.**

#### SECTION 4

##### RULE I-V

1/5 The principles set out in these Rules were considered to remain important and no significant issues were raised. There was limited support for up-dating archaic wording.

Other specific comments were made as follows:-

Netherlands: Rule 1 may now be superfluous.

AMD, ICS/BIMCO, Denmark: "Custom of trade" in Rule 1 should perhaps be re-visited.

**ISCGA: The subjects raised by the Netherlands and AMD, ICS/BIMCO and Denmark were dropped, and will not be discussed further. It was felt that there were issues of tidying up/redrafting which should be taken up by the IWGGA for further work.**

## RULE VI

6.1(a) *The debate regarding the inclusion or exclusion of salvage where the law or contract already provides for a means of distribution between the parties (for simplicity we suggest this is referred to as LOF salvage, although other contracts/jurisdictions achieve the same effect) was unresolved after Beijing.*

*Looking to 2016 the current options would appear to be:*

- i) Retaining the 1994 position*
- ii) Adopting the 2004 position*
- iii) Adopting a compromise position as put forward by CMI in Beijing which would also involve deciding on a percentage figure.*
- iv) Continuing as in (i) but encouraging adjusters "ad hoc" approach wherever possible.*
- v) Continuing as in (i) and (iv) but including an express provision obliging the adjuster to consider the possibility of not including salvage, perhaps linked to the Rule Paramount.*

6.1(a) The options put forward in relation to Rule VI were supported as follows (options (i), (iv) and (v) are not mutually exclusive).

- (i) Argentina, Brazil, Croatia, Denmark, Finland, Norway, ICS/BIMCO.
- (ii) Belgium, Canada, France, Italy, Japan, Spain, Ukraine, IUMI.
- (iii) Switzerland.
- (iv) China, Croatia, Denmark, Netherlands, Norway, AMD, AAA.
- (v) Netherlands.

UK and Germany were unable to establish a consensus within their Associations.

6.1(b) *Are there other options that should be considered?*

6.1(b) With regard to other options for dealing with the issue, AMD put forward three specific situations in which re-apportionment should take place, thus proceeding by express inclusion rather than exclusion.

**ISCGA: Following a compromise proposal by AMD and further suggestions of situations in which re-apportionment should take place (differential salvage, or difference between exchange rates applying at date of salvage or GA), it was concluded that the issue should be taken up by the IWGGA for further work.**

6.1(c) *If options (ii) or (iii) are supported, should an amendment to Rule XVII be made so that salvage payments are not deducted from contributory values when salvage is not allowed as GA?*

6.1(c) There was relatively little comment on the possibility of amending Rule XVII, if

option (ii) was adopted, to avoid the need for deduction of salvage payments. AAA and AMD considered this a logical step if that route is pursued.

**ISCGA: See under 6.1 (b). It was concluded that the issue should be taken up by the IWGGA for further work.**

6.2 *At present Rule VI of YARS 1994 makes no reference to legal and other costs incidental to a salvage operation and subsequent award. Such costs are customarily allowed by adjusters under Rule C, as a direct consequence of the GA act of engaging salvors.*

6.2 There was general support for the continuing allowance of legal costs in connection with salvage. Some felt a need for clarifying amendments but to some extent these can only be considered fully when the issues under 6.1 above are resolved.

**ISCGA: See under 6.1 (b). It was concluded that the issue should be taken up by the IWGGA for further work.**

#### RULES VII-VIII

7/8 There were no issues with the principle involved and some support for updating the wording in places.

**ISCGA: It was felt that there were issues of tidying up/redrafting which should be taken up by the IWGGA for further work.**

#### RULE IX

9. No issues were reported.

**ISCGA: The subject will be dropped, and not discussed further.**

#### RULE X

10.1 *In the second para of X(a) should the underlined words be inserted "..... is necessarily removed to another port or place of refuge because repairs necessary to complete the voyage cannot be carried out at the first port of refuge"?*

10.1 A majority supported the inclusion of the additional wording but significant concerns were expressed by UK, ICS/BIMCO and others that this might be counter-productive. Further discussions would appear necessary to clarify views.

**ISCGA: The subject will be dropped, and not discussed further.**

10.2 *With regard to X(b) should express wording be introduced to say that the cost of discharge is not GA if the voyage is frustrated or voluntarily terminated, or if repairs are not carried out for some reason?*

- 10.2 Views on the need to clarify allowances under X(b) when repairs were not effected were mixed, with some respondents taking a neutral position.

Canada suggested an unrelated amendment to YARs 1994 X(b) and XIb (and the similar wording in YARs 2004) whereby the words "without any accident...etc.," should be deleted (see 11.4 below).

Netherlands suggested that the costs of re-stowage should be allowed as General Average.

**ISCGA: The subject raised by the question itself will be dropped, and not discussed further. It was, however, concluded that the point raised by Canada, also referring to the problems with 'discovered' and 'accident' (see also 11.4 below), and the point raised by the Netherlands should be taken up by the IWGGA for further work.**

#### RULE XI

- 11.1 *Wages and maintenance of crew are allowed in GA while detained at a port of refuge for the common safety or to effect repairs necessary for the safe prosecution of the voyage, under the YARs 1994 (XI(b)) but not in YARs 2004. Both sets of Rules allow wages during the deviation to a port of refuge, and some have suggested that no crew wages should be allowed in General Average at all. What should be the position under YARs 2016?*

- 11.1 The issue of allowance of crew wages while detained at a port of refuge was responded to as follows:-

Retain 1994 position:

Argentina, Belgium, Brazil, China, Croatia, Denmark, Finland, Italy, Netherlands, Norway, Switzerland, Ukraine, AAA (with a suggested clarifying amendment) AMD, ICS/BIMCO.

Retain 2004 position:

Canada, France, Japan, Slovenia, Spain, IUMI, Ireland.

UK and Germany were unable to reach a consensus.

**ISCGA: The wages and maintenance issue should be taken up by the IWGGA for further work.**

- 11.2 *In the "Trade Green" the judge decided that the term "port charges" relates only to the charges a vessel would ordinarily incur in entering a port.*

- 11.2 A variety of views were expressed as to whether clarifying amendments were needed following the "Trade Green" decision. Overall, clarification was felt by the majority to be desirable subject to suitable wording being found.

**ISCGA: Following a discussion about the Trade Green and noting that it was decided not to include a definitions section (see Section 1 – question 3), it was**



**decided that the port charges issue should be taken up by the IWGGA for further work, preferably in a subgroup dealing with Rules X and XI. There were also issues of tidying up/redrafting which should be taken up by the IWGGA for further work.**

11.3 *With regard to the phrase "until the ship shall or should have been made ready to proceed upon her voyage", is express wording needed to clarify the situation when a delay arises from a second accident or the condition of cargo?*

11.3 The majority considered that no change was necessary and/or the matter could be left to the discretion of adjusters.

On a separate point, IUMI suggested that consideration should be given to the lack of uniformity regarding allowance of detention expenses while salvage security is provided.

**ISCGA: The issue should be taken up by the IWGGA for further work, preferably in a subgroup dealing with Rules X and XI.**

11.4 *Rules X(b) and XI(b) contain the proviso excluding allowances "when damage is discovered at a port or place of loading or call without any accident or other extraordinary circumstances connected with such damage having taken place during the voyage."*

11.4 The majority considered that the proviso to X(b) and XI(b) regarding discovery of damage at a port of call was fulfilling its purpose.

Canada have recommended the deletion of these words, which Switzerland also consider to be "superfluous", in order to reduce a perceived abuse regarding doubtful "discovery" of damage.

**ISCGA: The issue should be taken up by the IWGGA for further work, preferably in a subgroup dealing with Rules X and XI.**

11.5 *The introduction of Rule XI(d) was the most significant feature of the 1994 Rules. Is there any need to change the overall basis of the compromise between property/liability insurers reflected in the XI(d), or clarify any wording?*

11.5 The majority considered that there was no need to change the overall basis of Rule XI(d) and there were no reported difficulties with its application or wording.

There was mixed support for clarifying wording relating to "actual escape or release" and "bunkers". AAA suggested an amended wording of XI(d)(iv) to make it more consistent with the approach taken in Rule Xb.

**ISCGA: The issue should be taken up by the IWGGA for further work, preferably in a subgroup dealing with Rules X and XI.**

RULE XII

12. No issues identified.

**ISCGA: The subject will be dropped, and not discussed further.**

RULE XIII

13. No issues were raised other than:-

Canada: Provisions relating to blasting and painting are redundant.

AMD: Modification of this rule should be considered.

**ISCGA: It was felt that there were issues of tidying up/redrafting which should be taken up by the IWGGA for further work.**

RULE XIV

14.1 *The 1994 and 2004 Rules deal with temporary repairs for the common safety and for sacrificial damage in the same way. The 2004 adopted a different approach for accidental damage which gives priority to Particular Average savings.*

14.1 Support for the two current versions of this Rule in relation to temporary repairs to accidental damage was largely in favour of the 2004 version.

Those supporting the 1994 version were:-

- Argentina
- China
- Netherlands
- Norway
- ICS/BIMCO

**ISCGA: It was felt that there were issues of tidying up/redrafting which should be taken up by the IWGGA for further work.**

14.2 *The House of Lords judgement in the "Bijela" was handed down only shortly before the Sydney Conference on 1994. Have you encountered any practical difficulties regarding the application of Rule XIV, there having been no reported litigation since 1994?*

14.2 It was not considered that any changes were necessary in the light of the "Bijela" decision.

**ISCGA: The subject will be dropped, and not discussed further.**

RULE XV

15. No issues noted.

**ISCGA: The subject will be dropped, and not discussed further.**

RULE XVI

16. *This Rule provides for cargo sacrifices to be determined "at the time of discharge". Should the relevant wording be changed to "at the time of delivery under the contract of carriage", or should both phrases be included, allowing the adjuster to decide the most equitable basis?*

16. The practical difficulties were noted by respondents who offered a variety of solutions, including specific amendments proposed by Japan, Switzerland and AAA (see also 17.)

**ISCGA: It was felt that there were issues of tidying up/redrafting ('commercial invoice') which should be taken up by the IWGGA for further work.**

RULE XVII

- 17.1 *Clause 15 of LOF 2011 LSSA Clauses expressly allows the Arbitrator to disregard low value cargo when "the cost of including such cargo in the process is likely to be disproportionate to its liability for salvage."*

*Adjusters have similarly excluded low value cargo when appropriate as a matter of good practice, but would it be useful to have an express sanction for doing so in the Rules?*

- 17.1 The majority favoured leaving the exclusion of low value cargo to the discretion of the adjuster.

**ISCGA: See Section 1 – question 10b. It was decided that the subject should be taken up by the IWGGA for further work. It was felt that there were issues of tidying up/redrafting ('commercial invoice') which should be taken up by the IWGGA for further work.**

- 17.2 *Claims for deductions from contributory values of cargo may be made because of loss of a seasonal market or (for example) losses caused by the need to purchase a replacement item for a time sensitive contract. Rules C refers to losses by delay but only in the context of making allowances, not the calculation of contributory values.*

- 17.2 The effect of loss of market (Christmas decorations arriving in February) on Contributory values was not responded to in any great detail.

AAA considered the existing rule provided sufficient room for discretion. AMD put forward a suggested wording if an express exclusion was felt to be necessary to put

the matter beyond doubt.

**ISCGA: It was felt that there were issues of tidying up/redrafting which should be taken up by the IWGGA for further work.**

RULE XVIII

18. No issues reported, although AMD referred to a possible lack of uniformity in the treatment of dry-dock dues.

**ISCGA: The subject will be dropped, and not discussed further.**

RULE XIX

19. No reported issues.

**ISCGA: The subject will be dropped, and not discussed further.**

RULE XX

20. *In the discussions at the Vancouver Conference (2004) it was argued strongly that payment of commission could no longer be justified under modern banking practices, and the 2004 Rules no longer provide for such allowances. Do you consider that the 2004 position should be maintained in 2016?*
20. The majority favoured removal of the allowance for Commission and it was suggested that this needed to be considered together with interest, as part of the overall picture regarding the cost of financing GA expenditure.

**ISCGA: It was decided that the issue of commission should be taken up by the IWGGA for further work.**

RULE XXI

21. *It appeared to be common ground at Vancouver that a fixed rate of interest was too inflexible over the life of a version of the YARs and that a variable rate, set annually by CMI. Is this still the case?*
21. There appeared to be a broad consensus in favour of adopting flexible interest rates on the 2004 model, but different views were expressed regarding the method/basis for choosing the flexible rate.

**ISCGA: It was decided that the issue of interest rates should be taken up by the IWGGA for further work, preferably in a subgroup dealing with financial issues such as currency (SDR) and interest rates.**

RULE XXII

22. *Due to the difficulty in setting up joint accounts, sometimes in a foreign currency, it has become the practice of adjusters to hold deposits in trust accounts in their own name. Should this practice be recognised by the YARs?*
22. There was general support for a revision of this rule in line with current banking realities, with various suggestions being made regarding ensuring funds were held in an acceptable manner.

**ISCGA: It was decided that the issue of joint accounts should be taken up by the IWGGA for further work, preferably in a subgroup dealing with financial issues such as currency (SDR) and interest rates.**

RULE XXIII

23. *The 2004 Rules introduced the time bar provision for the first time. While recognising possible difficulties in certain jurisdictions, do you consider these provisions should be retained and, if so, are there any areas needing improvement?*
23. The majority considered time bar provisions to be a useful addition, while acknowledging their limitations in certain jurisdictions.

IUMI have proposed a specific amendment to the 2004 wording.

**ISCGA: It was decided that the issue of time bar should be taken up by the IWGGA for further work.**