

# CMI HAMBURG

## **INTERNATIONAL WORKING GROUP ON GENERAL AVERAGE WORDINGS SUB-GROUP**

### INTRODUCTION

The Wordings Sub-Group is tasked with

- putting forward “tidying up” amendments along the lines considered in 2004
- the incorporation of any substantive rule changes that are agreed

Given that many significant possible changes remain to be discussed, the work of the Wordings Group is at an early stage.

For present purposes this paper therefore offers:

- a) A version of the 1994 Rules that incorporates the 2004 approach to paragraph numbering and arrangements and adopts the minor changes made for the sake of consistency. The terms “common maritime adventure”, “voyage” and “adventure” appear in various places in both the 1994 and 2004 Rules and may also be candidates for a more consistent approach.

The 2004 Rule XXIII regarding Time Bars is also included, as is part of the 2004 version of Rule XIV.

- b) A record of potential wording changes that have been noted in IWG/ISC discussions to date and are considered to be worthy of further study.

While most of the potential changes are made in the interests of clarity, some raise or relate to questions of principle that the IWG may wish to discuss at Hamburg if there is sufficient time.

R.R. Cornah (Co-rapporteur)  
11 June 2014

DRAFT TEMPLATE OF  
**YORK-ANTWERP RULES 2016**  
FOR DISCUSSION PURPOSES ONLY

**RULE OF INTERPRETATION**

1. In the adjustment of general average the following Rules shall apply to the exclusion of any Law and Practice inconsistent therewith.
2. Except as provided by the Rule Paramount and the numbered Rules, general average shall be adjusted according to the lettered Rules.

[Comment](#)

*No suggested changes.*

**RULE PARAMOUNT**

In no case shall there be any allowance for sacrifice or expenditure unless reasonably made or incurred.

[Comment](#)

*No suggested changes.*

**RULE A**

1. There is a general average act when, and only when, any extraordinary sacrifice or expenditure is intentionally and reasonably made or incurred for the common safety for the purpose of preserving from peril the property involved in a common maritime adventure.
2. General average sacrifices and expenditures shall be borne by the different contributing interests on the basis hereinafter provided.

[Comment](#)

*No suggested changes.*

## **RULE B**

1. There is a common maritime adventure when one or more vessels are towing or pushing another vessel or vessels, provided that they are all involved in commercial activities and not in a salvage operation.

When measures are taken to preserve the vessels and their cargoes, if any, from a common peril, these Rules shall apply.

2. A vessel is not in common peril with another vessel or vessels if by simply disconnecting from the other vessel or vessels she is in safety; but if the disconnection is itself a general average act the common maritime adventure continues.

### Comment

*The intention behind the introduction of Rule B remains widely supported but the following deficiencies have been noted:*

- (i) *The difficulty in interpretation of the final part of sub-paragraph 2 which is an extension of the Rhine Rules wording on which the new Rule B was modelled in 1994.*
- (ii) *The lack of guidance in the current YAR regarding the treatment of expenses involving a tug, barge and cargo once they have reached a port of refuge.*

*It is recognised that attempting to deal with all these issues might make the Rule too unwieldy, however there remains adequate time to explore the possibilities.*

## **RULE C**

1. Only such losses, damages or expenses which are the direct consequence of the general average act shall be allowed as general average.
2. In no case shall there be any allowance in general average for losses, damages or expenses incurred in respect of damage to the environment or in consequence of the escape or release of pollutant substances from the property involved in the common maritime adventure.
3. Demurrage, loss of market, and any loss or damage sustained or expense incurred by reason of delay, whether on the voyage or subsequently, and any indirect loss whatsoever, shall not be allowed as general average.

### Comment

*No suggested changes.*

## **RULE D**

Rights to contribution in general average shall not be affected, though the event which gave rise to the sacrifice or expenditure may have been due to the fault of one of the parties to the adventure, but this shall not prejudice any remedies or defences which may be open against or to that party in respect of such fault.

### Comment

*If it is felt appropriate to include express provision regarding the treatment of recoveries, Rule D or E are probably the most appropriate places. A draft wording dealing with recoveries has been submitted by the Rule X/XI and processes sub-group.*

## **RULE E**

1. The onus of proof is upon the party claiming in general average to show that the loss or expense claimed is properly allowable as general average.
2. All parties claiming in general average shall give notice in writing to the average adjuster of the loss or expense in respect of which they claim contribution within 12 months of the date of the termination of the common maritime adventure.
3. Failing such notification, or if within 12 months of a request for the same any of the parties shall fail to supply evidence in support of a notified claim, or particulars of value in respect of a contributory interest, the average adjuster shall be at liberty to estimate the extent of the allowance or the contributory value on the basis of the information available to him, which estimate may be challenged only on the ground that it is manifestly incorrect.

### Comment

*All parties appeared to remain of the view that the intentions behind Rule E were to be applauded if the process was not to be held back by parties unable or unwilling to provide proper documentation. Various concerns have been noted:*

- *Sub-paragraph 2 requires parties to give notice within 12 months without setting out the consequences if they do not.*
- *Sub-paragraph 3*

*The Rule X/XI and processes sub-group has proposed several possible amendments to Rule E to provide a more robust approach to avoiding delays.*

## **RULE F**

Any additional expense incurred in place of another expense, which would have been allowable as general average shall be deemed to be general average and so allowed without regard to the saving, if any, to other interests, but only up to the amount of the general average expense avoided.

### Comment

*It has been suggested that some kinds of substituted expense, particularly transshipment of cargo were of such clear commercial benefit to all parties that they should be allowed in their own right, without having to demonstrate GA savings.*

## **RULE G**

1. General average shall be adjusted as regards both loss and contribution upon the basis of values at the time and place when and where the adventure ends.
2. This rule shall not affect the determination of the place at which the average statement is to be made up.
3. When a ship is at any port or place in circumstances which would give rise to an allowance in general average under the provisions of Rules X and XI, and the cargo or part thereof is forwarded to destination by other means, rights and liabilities in general average shall, subject to cargo interests being notified if practicable, remain as nearly as possible the same as they would have been in the absence of such forwarding, as if the adventure had continued in the original ship for so long as justifiable under the contract of affreightment and the applicable law.
4. The proportion attaching to cargo of the allowances made in general average by reason of applying the third paragraph of this Rule shall not exceed the cost which would have been borne by the owners of cargo if the cargo had been forwarded at their expense.

### Comment

*The incorporation of the Non-Separation Agreement into the YARs in 1994 appears to remain uncontroversial but there is uncertainty as to both the actual and intended effect of sub-paragraph 4. The AAA sub-committee report noted there are differing views on whether an amendment to Rule G is required in order to give full effect to the decision in the “City of Columbo”. Before any clarifying amendments are considered, the underlying point of principle should be resolved, namely whether the “Bigham” cap should apply only to expenses allowable exclusively by reason of the NSA wording (e.g. wages etc. during repairs, removal under Rule X(a) second para), which is how Rule G now reads, or whether it should apply to both these expenses AND allowances such as costs of forwarding allowed under Rule F, and not dependant on the NSA wording.*

## **RULE I. JETTISON OF CARGO**

No jettison of cargo shall be allowed as general average, unless such cargo is carried in accordance with the recognised custom of the trade.

### Comment

*No suggested changes.*

## **RULE II. LOSS OR DAMAGE BY SACRIFICES FOR THE COMMON SAFETY**

Loss of or damage to the property involved in the common maritime adventure by or in consequence of a sacrifice made for the common safety, and by water which goes down a ship's hatches opened or other opening made for the purpose of making a jettison for the common safety, shall be allowed as general average.

### Comment

*No suggested changes.*

## **RULE III. EXTINGUISHING FIRE ON SHIPBOARD**

Damage done to a ship and cargo, or either of them, by water or otherwise, including damage by beaching or scuttling a burning ship, in extinguishing a fire on board the ship, shall be allowed as general average; except that no allowance shall be made for damage by smoke however caused or by heat of the fire.

### Comment

*No suggested changes.*

## **RULE IV. CUTTING AWAY WRECK**

Loss or damage sustained by cutting away wreck or parts of the ship which have been previously carried away or are effectively lost by accident shall not be allowed as general average.

### Comment

*No suggested changes.*

## **RULE V. VOLUNTARY STRANDING**

When a ship is intentionally run on shore for the common safety, whether or not she might have been driven on shore, the consequent loss or damage to the property involved in the common maritime adventure shall be allowed in general average.

### Comment

*No suggested changes.*

## **RULE VI. SALVAGE REMUNERATION**

- a. Expenditure incurred by the parties to the adventure in the nature of salvage, whether under contract or otherwise, shall be allowed in general average provided that the salvage operations were carried out for the purpose of preserving from peril the property involved in the common maritime adventure.

Expenditure allowed in general average shall include any salvage remuneration in which the skill and efforts of the salvors in preventing or minimising damage to the environment such as is referred to in Art. 13 paragraph 1(b) of the International Convention on Salvage, 1989 have been taken into account.

- b. Special compensation payable to a salvor by the shipowner under Art. 14 of the said Convention to the extent specified in paragraph 4 of that Article or under any other provision similar in substance shall not be allowed in general average.

### Comment

*Alternative wordings are presently under review.*

## **RULE VII. DAMAGE TO MACHINERY AND BOILERS**

Damage caused to any machinery and boilers of a ship which is ashore and in a position of peril, in endeavouring to refloat, shall be allowed in general average when shown to have arisen from an actual intention to float the ship for the common safety at the risk of such damage; but where a ship is afloat no loss or damage caused by working the propelling machinery and boilers shall in any circumstances be allowed as general average.

### Comment

*No suggested changes.*

## **RULE VIII. EXPENSES LIGHTENING A SHIP WHEN ASHORE AND CONSEQUENT DAMAGE**

When a ship is ashore and cargo and ship's fuel and stores or any of them are discharged as a general average act, the extra cost of lightening, lighter hire and re-shipping (if incurred), and any loss or damage to the property involved in the common maritime adventure in consequence thereof, shall be allowed as general average.

### Comment

*No suggested changes.*

## **RULE IX. CARGO, SHIP'S MATERIALS AND STORES USED FOR FUEL**

Cargo, ship's materials and stores, or any of them, necessarily used for fuel for the common safety at a time of peril, shall be allowed as general average, but when such an allowance is made for the cost of ship's materials and stores the general average shall be credited with the estimated cost of the fuel which would otherwise have been consumed in prosecuting the intended voyage.

### Comment

*This Rule has an increasingly archaic feel to it and it would be a good candidate for retirement if any a new Rule on a particular topic was felt to need a place. Until such time it is a harmless example of a broader principle of crediting expenses saved to prevent any party profiting from a GA allowance.*

## **RULE X. EXPENSES AT PORT OF REFUGE, ETC.**

- a. (i) When a ship shall have entered a port or place of refuge or shall have returned to her port or place of loading in consequence of accident, sacrifice or other extraordinary circumstances which render that necessary for the common safety, the expenses of entering such port or place shall be allowed as general average; and when she shall have sailed thence with her original cargo, or a part of it, the corresponding expenses of leaving such port or place consequent upon such entry or return shall likewise be allowed as general average.  
  
(ii) When a ship is at any port or place of refuge and is necessarily removed to another port or place of refuge because repairs cannot be carried out in the first port or place, the provisions of this Rule shall be applied to the second port or place of refuge as if it were a port or place of refuge and the cost of such removal including temporary repairs and towage shall be allowed as general average. The provisions of Rule XI shall be applied to the prolongation of the voyage occasioned by such removal.
- b. (i) The cost of handling on board or discharging cargo, fuel or stores whether at a port or place of loading, call or refuge, shall be allowed as general average, when



the handling or discharge was necessary for the common safety or to enable damage to the ship caused by sacrifice or accident to be repaired, if the repairs were necessary for the safe prosecution of the voyage, except in cases where the damage to the ship 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.

(ii) The cost of handling on board or discharging cargo, fuel or stores shall not be allowable as general average when incurred solely for the purpose of restowage due to shifting during the voyage, unless such restowage is necessary for the common safety.

### Comment

*When the wording in b.(ii) was introduced in 1974 it appears to have been common ground that wages, fuel and other detention expenses would continue to be allowed as GA even if the cost of restowage was not. See Lowndes para 10.43:*

*“Although there were no words in the York-Antwerp Rules 1950 to permit the allowance in general average of the cost of discharging or handling cargo except when necessary for the common safety, or to enable damage to the ship caused by sacrifice or accident to be repaired, if the repairs were necessary for the safe prosecution of the voyage, it is believed that in certain parts of the world, and notably on the West Coast of the United States, the Rule were construed on a less than strict basis and that the cost of restowing shifted cargoes was treated as general average.*

*To make the matter clear beyond doubt, express wording, as above, was introduced in 1974.*

*It may here be remarked that wages and maintenance of crew etc. during detention of a vessel to re-stow cargo which has shifted were customarily allowed as general average under the 1950 Rules and the framers of the 1974 Rules accordingly felt that no special provision on this subject was needed in r.XI(b) of the 1974 Rules. The matter was again raised in 1994 and reference may be made to para. 10.66.”*

*It is understood that adjusters generally continue to make such allowances and it might be considered desirable to provide express sanction for this approach in the Rules. This could be achieved (as in sub-para (c)) by adding:*

*“..... unless such stowage is necessary for the common safety. However the provisions of Rule XI shall be applied to the extra period of detention occasioned by such restowage.”*

- c. Whenever the cost of handling or discharging cargo, fuel or stores is allowable as general average, the costs of storage, including insurance if reasonably incurred, reloading and stowing of such cargo, fuel or stores shall likewise be allowed as general average. The provisions of Rule XI shall be applied to the extra period of detention occasioned by such reloading or restowing.
- d. When the ship is condemned or does not proceed on her original voyage, storage expenses shall be allowed as general average only up to the date of the ship's condemnation or of the abandonment of the voyage or up to the date of completion of discharge of cargo if the condemnation or abandonment takes place before that date.

## **RULE XI. WAGES AND MAINTENANCE OF CREW AND OTHER EXPENSES PUTTING IN TO AND AT A PORT OF REFUGE, ETC.**

- a. Wages and maintenance of master, officers and crew reasonably incurred and fuel and stores consumed during the prolongation of the voyage occasioned by a ship entering a port or place of refuge or returning to her port or place of loading shall be allowed as general average when the expenses of entering such port or place are allowable in general average in accordance with Rule X(a).
- b. (i) When a ship shall have entered or been detained in any port or place in consequence of accident, sacrifice or other extra-ordinary circumstances which render that necessary for the common safety, or to enable damage to the ship caused by sacrifice or accident to be repaired, if the repairs were necessary for the safe prosecution of the voyage, the wages and maintenance of the master, officers and crew reasonably incurred during the extra period of detention in such port or place until the ship shall or should have been made ready to proceed upon her voyage, shall be admitted in general average.

### Comment

*As a matter of clarification it has been suggested that the Rule should make it clearer that the initial entry or detention for the common safety does not itself mandate the allowance of detention expenses for an indefinite period. The following alternatives have been suggested:*

*“which render that entry and/or detention necessary for the common safety or to enable damage.....”*

*“which render that detention necessary for the common safety or to enable damage.....”*

*“which render additional detention necessary for the common safety or to enable damage.....”*

(ii) Fuel and stores consumed during the extra period of detention shall be admitted as general average, except such fuel and stores as are consumed in effecting repairs not allowable in general average.

(iii) Port charges incurred during the extra period of detention shall likewise be admitted as general average except such charges as are incurred solely by reason of repairs not allowable in general average.

### Comment

*It was considered inadvisable to attempt a comprehensive definition of “port charges” but the Rule X and XI sub group is considering amendments to replace the wording “during” with “as a consequence of” or “in connection with”.*

(iv) Provided that when damage to the ship is discovered at a port or place of loading or call without any accident or other extraordinary circumstance

connected with such damage having taken place during the voyage, then the wages and maintenance of master, officers and crew and fuel and stores consumed and port charges incurred during the extra detention for repairs to damages so discovered shall not be admissible as general average, even if the repairs are necessary for the safe-prosecution of the voyage.

(v) When the ship is condemned or does not proceed on her original voyage, the wages and maintenance of the master, officers and crew and fuel and stores consumed and port charges shall be admitted as general average only up to the date of the ship's condemnation or of the abandonment of the voyage or up to the date of completion of discharge of cargo if the condemnation or abandonment takes place before that date.

- c. For the purpose of this and the other Rules wages shall include all payments made to or for the benefit of the master, officers and crew, whether such payments be imposed by law upon the shipowners or be made under the terms of articles of employment.
- d. The cost of measures undertaken to prevent or minimise damage to the environment shall be allowed in general average when incurred in any or all of the following circumstances:
  - (i) as part of an operation performed for the common safety which, had it been undertaken by a party outside the common maritime adventure, would have entitled such party to a salvage reward;
  - (ii) as a condition of entry into or departure from any port or place in the circumstances prescribed in Rule X(a);
  - (iii) as a condition of remaining at any port or place in the circumstances prescribed in Rule XI(b), provided that when there is an actual escape or release of pollutant substances (\*) the cost of any additional measures required on that account to prevent or minimise pollution or environmental damage shall not be allowed as general average;

#### Comment

*It has been suggested that the words "from the property involved in the common maritime adventure" should be added at (\*) in order to mirror the wording in Rule C.2.*

(iv) necessarily in connection with the discharging, storing or reloading of cargo whenever the cost of those operations is allowable as general average.

#### Comment

*The wording of XI(d)(iv) departs from the similar wording in Rule X(b) by omitting reference to:*

- *handling on board*
- *fuel or stores*

*Research has indicated nothing in the various papers leading up to 1994 that suggests these omissions were deliberate. It has therefore been suggested that the wording of XI(d)(iv) should be brought into line by reading:*

*“(iv) necessarily in connection with the discharging, handling on board, storing or reloading of cargo fuel or stores whenever the cost of these operations is allowable as general average.”*

*An alternative suggestion uses the word “bunkers” in place of “fuel or stores”.*

## **RULE XII. DAMAGE TO CARGO IN DISCHARGING, ETC.**

Damage to or loss of cargo, fuel or stores sustained in consequence of their handling, discharging, storing, reloading and stowing shall be allowed as general average, when and only when the cost of those measures respectively is allowed as general average.

### Comment

*No suggested changes.*

## **RULE XIII. DEDUCTIONS FROM COST OF REPAIRS**

- a. Repairs to be allowed in general average shall not be subject to deductions in respect of "new for old" where old material or parts are replaced by new unless the ship is over fifteen years old in which case there shall be a deduction of one third. The deductions shall be regulated by the age of the ship from the 31st December of the year of completion of construction to the date of the general average act, except for insulation, life and similar boats, communications and navigational apparatus and equipment, machinery and boilers for which the deductions shall be regulated by the age of the particular parts to which they apply.
- b. The deductions shall be made only from the cost of the new material or parts when finished and ready to be installed in the ship. No deduction shall be made in respect of provisions, stores, anchors and chain cables. Drydock and slipway dues and costs of shifting the ship shall be allowed in full.
- c. The costs of cleaning, painting or coating of bottom shall not be allowed in general average unless the bottom has been painted or coated within the twelve months preceding the date of the general average act in which case one half of such costs shall be allowed.

### Comment

*It is understood that the general principle regarding deductions in respect of vessels over 15 years old should be retained. However, a question has arisen with regard to the last paragraph: is the 12 month period equitable in the context of modern bottom coatings that may last four years or more? A simple solution might be, on the basis*

*that routine dry-dock periods have at least doubled, to amend the period from 12 to 24 months.*

#### **RULE XIV. TEMPORARY REPAIRS**

- a. Where temporary repairs are effected to a ship at a port of loading, call or refuge, for the common safety, or of damage caused by general average sacrifice, the cost of such repairs shall be allowed as general average.
- b. Where temporary repairs of accidental damage are effected in order to enable the adventure to be completed, the cost of such repairs shall be allowed as general average without regard to the saving, if any, to other interests, but only up to the saving in expense which would have been incurred and allowed in general average if such repairs had not been effected there. Provided that, for the purposes of this paragraph only, the cost of temporary repairs falling for consideration shall be limited to the extent that the cost of temporary repairs effected at the port of loading, call or refuge, together with either the cost of permanent repairs eventually effected or, if unrepaired at the time of the adjustment, the reasonable depreciation in the value of the vessel at the completion of the voyage, exceeds the cost of permanent repairs had they been effected at the port of loading, call or refuge.
- c. No deductions "new for old" shall be made from the cost of temporary repairs allowable as general average.

#### Comment

*The wording shown above is from the 2004 rather than the 1994 Rules on the basis that there appears to be unanimous support for the principle of making temporary repairs of accidental damage a first charge on PA rather than GA.*

*However, the wording is considered to be somewhat convoluted and attempts have been made to provide a simpler expression of the equitable principle.*

*The AAA had put forward the following for consideration:*

*"a. Where temporary repairs are effected to a ship at a port of loading, call or refuge, for the common safety, or of damage caused by general average sacrifice, the cost of such repairs shall be allowed as general average.*

*b. Where temporary repairs of accidental damage are effected in order to enable the adventure to be completed, the cost of such repairs shall be allowed as general average without regard to the saving, if any, to other interests, but only up to the saving in expense which would have been incurred and allowed in general average if such repairs had not been effected there.*

*c. No allowance shall be made under paragraph (b) except to the extent that the sum of the costs of temporary and permanent repairs actually effected exceeds the estimated cost of effecting permanent repairs at the port of refuge.*

*To the extent that permanent repairs have not been completed at the time of the adjustment, the reasonable depreciation in the value of the vessel resulting therefrom (as at the time of*

*completing the voyage) shall be added to, or substituted for, the actual costs of permanent repairs included in the above calculation.*

*d. No deductions "new for old" shall be made from the cost of temporary repairs allowable as general average."*

## **RULE XV. LOSS OF FREIGHT**

Loss of freight arising from damage to or loss of cargo shall be allowed as general average, either when caused by a general average act, or when the damage to or loss of cargo is so allowed.

Deduction shall be made from the amount of gross freight lost, of the charges which the owner thereof would have incurred to earn such freight, but has, in consequence of the sacrifice, not incurred.

### Comment

*No suggested changes.*

## **RULE XVI. AMOUNT TO BE ALLOWED FOR CARGO LOST OR DAMAGED BY SACRIFICE.**

- a. The amount to be allowed as general average for damage to or loss of cargo sacrificed shall be the loss which has been sustained thereby based on the value at the time of discharge, ascertained from the commercial invoice rendered to the receiver or if there is no such invoice from the shipped value. The value at the time of discharge shall include the cost of insurance and freight except insofar as such freight is at the risk of interests other than the cargo.
- b. When cargo so damaged is sold and the amount of the damage has not been otherwise agreed, the loss to be allowed in general average shall be the difference between the net proceeds of sale and the net sound value as computed in the first paragraph of this Rule.

### Comment

*No suggested changes but see comments under Rule XVII regarding the commercial invoice as the basis of valuation.*

## **RULE XVII. CONTRIBUTORY VALUES**

- a. (i) The contribution to a general average shall be made upon the actual net values of the property at the termination of the adventure except that the value of cargo shall be the value at the time of discharge, ascertained from the commercial invoice rendered to the receiver or if there is no such invoice from the shipped value.

### Comment

*The AAA sub-committee highlighted again the problems of inland destinations that are typical with intermodal transport, and suggested the following addition in Rules XVI and XVII:*

*“Such commercial invoice shall be deemed to reflect the value at the time of discharge irrespective of the place of final delivery under the Contract of Carriage.”*

- (ii) The value of the cargo shall include the cost of insurance and freight unless and insofar as such freight is at the risk of interests other than the cargo, deducting therefrom any loss or damage suffered by the cargo prior to or at the time of discharge.

### Comment

*The Rules X/XI and processes sub-group has proposed wording that gives express sanction to the current practice of excluding low value cargo, either in Rule G or Rule XVII.*

- (iii) The value of the ship shall be assessed without taking into account the beneficial or detrimental effect of any demise or time charterparty to which the ship may be committed.
- b. To these values shall be added the amount allowed as general average for property sacrificed, if not already included, deduction being made from the freight and passage money at risk of such charges and crew's wages as would not have been incurred in earning the freight had the ship and cargo been totally lost at the date of the general average act and have not been allowed as general average; deduction being also made from the value of the property of all extra charges incurred in respect thereof subsequently to the general average act, except such charges as are allowed in general average or fall upon the ship by virtue of an award for special compensation under Art. 14 of the International Convention on Salvage, 1989 or under any other provision similar in substance.
- c. In the circumstances envisaged in the third paragraph of Rule G, the cargo and other property shall contribute on the basis of its value upon delivery at original destination unless sold or otherwise disposed of short of that destination, and the ship shall contribute upon its actual net value at the time of completion of discharge of cargo.

- d. Where cargo is sold short of destination, however, it shall contribute upon the actual net proceeds of sale, with the addition of any amount allowed as general average.

#### Comment

*It is not clear what purpose the word “however” is serving in this sub-paragraph.*

- e. Mails, passengers' luggage, personal effects and accompanied private motor vehicles shall not contribute to general average.

#### Comment

*Lowndes para 17.74 notes the following:*

*“If the doctrine that only goods put on board as merchandise are liable to contribute is accepted as the rule of English law, it follows that all the effects of a passenger are exempt, and the general practice in this country seems to have been to exempt them. If passengers' effects were to be held liable to contribution, the liability would be restricted to such effects as are stowed in the baggage hold, thus exempting the property which the passenger retains in his own care for use on the voyage, and which, in this sense, is attached to his person. Yet there are practical objections even to this limited responsibility. It must often be difficult, if not impossible, at the time of disembarkation to obtain a proper valuation of the effects of each passenger to fix the amount of his contribution, and to enforce payment or exact security for the claim; and after the passengers have left the ship and dispersed, a right of action only enforceable by a number of separate law-suits, most of them for trifling amounts, would be an illusory remedy. Thus the right to contribution from passengers would in most cases probably resolve itself into a claim for damages against the shipowner, for failing to enforce the right on behalf of the party whose property has been sacrificed.*

*It is submitted that the best solution is to ascertain whether the articles are: (1) carried as “goods” under a contract of affreightment; or (2) carried as incidental to a contract for the carriage of a passenger. In (1) the goods contribute and receive in the ordinary way; in (2) the articles do not contribute, but probably receive contribution if damaged by a general average act.”*

*LOF 2011 (box 2) exempts “the personal effects or baggage of passengers, master or crew”. This is further defined in Lloyds Standard Salvage and Arbitration Clauses paragraph 3.2 as follows:*

*““personal effects or baggage” as referred to in Box 2 of the Agreement means those which the passenger, Master and crew member have in their cabin or are otherwise in their possession, custody or control and shall include any private motor vehicle accompanying a passenger and any personal effects or baggage in or on such vehicle.”*

*Lowndes para 17.09 simply notes that the exception in the 1974 Rules regarding “passengers luggage not shipped under a bill of lading” was changed to exclude reference to bills of lading on “practical grounds”. It is assumed this is a reference to the difficulty of valuing a container of ordinary household goods belonging to a family that is emigrating. However, it is perhaps unhelpful to have LOF and GA somewhat out of step on this issue. Whilst salvors will generally ignore low value household possessions, they see no reason why a valuable Ferrari should escape contribution.*



## **RULE XVIII. DAMAGE TO SHIP**

The amount to be allowed as general average for damage or loss to the ship, her machinery and/or gear caused by a general average act shall be as follows:

- a. When repaired or replaced,

The actual reasonable cost of repairing or replacing such damage or loss, subject to deductions in accordance with Rule XIII;

- b. When not repaired or replaced,

The reasonable depreciation arising from such damage or loss, but not exceeding the estimated cost of repairs. But where the ship is an actual total loss or when the cost of repairs of the damage would exceed the value of the ship when repaired, the amount to be allowed as general average shall be the difference between the estimated sound value of the ship after deducting therefrom the estimated cost of repairing damage which is not general average and the value of the ship in her damaged state which may be measured by the net proceeds of sale, if any.

### Comment

*No suggested changes.*

## **RULE XIX. UNDECLARED OR WRONGFULLY DECLARED CARGO**

- a. Damage or loss caused to goods loaded without the knowledge of the Shipowner or his agent or to goods wilfully misdescribed at time of shipment shall not be allowed as general average, but such goods shall remain liable to contribute, if saved.
- b. Damage or loss caused to goods which have been wrongfully declared on shipment at a value which is lower than their real value shall be contributed for at the declared value, but such goods shall contribute upon their actual value.

### Comment

*No suggested changes.*

## **RULE XX. PROVISION OF FUNDS**

- a. A commission of 2 per cent. on general average disbursements, other than the wages and maintenance of master, officers and crew and fuel and stores not replaced during the voyage, shall be allowed in general average

- b. The capital loss sustained by the owners of goods sold for the purpose of raising funds to defray general average disbursements shall be allowed in general average.
- c. The cost of insuring general average disbursements shall also be admitted in general average.

Comment

*The provisions of Rules XX and XXI are the subject of extensive review.*

**RULE XXI. INTEREST ON LOSSES ALLOWED IN GENERAL AVERAGE**

- a. Interest shall be allowed on expenditure, sacrifices and allowances in general average until three months after the date of issue of the general average adjustment, due allowance being made for any payment on account by the contributory interests or from the general average deposit fund.
- b. Each year the Assembly of the Comité Maritime International shall decide the rate of interest which shall apply. This rate shall be used for calculating interest accruing during the following calendar year.

Comment

*No suggested changes.*

**RULE XXII. TREATMENT OF CASH DEPOSITS**

Where cash deposits have been collected in respect of cargo's liability for general average, salvage or special charges, such deposits shall be paid without any delay into a special account in the joint names of a representative nominated on behalf of the shipowner and a representative nominated on behalf of the depositors in a bank to be approved by both. 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, salvage or special charges payable by cargo in respect of which the deposits have been collected. Payments on account or refunds of deposits may be made if certified to in writing by the average adjuster. Such deposits and payments or refunds shall be without prejudice to the ultimate liability of the parties.

Comment

*The re-formulation of this Rule to reflect modern banking realities is being considered by the financial issues group, and a draft wording has been proposed.*

### **RULE XXIII. – TIME BAR FOR CONTRIBUTIONS TO GENERAL AVERAGE**

- a. Subject always to any mandatory rule on time limitation contained in any applicable law:
  - (i) Any rights to general average contribution including any rights to claim under general average bonds and guarantees, shall be extinguished unless an action is brought by the party claiming such contribution within a period of one year after the date upon which the general average adjustment was issued. However, in no case shall such an action be brought after six years from the date of termination of the common maritime adventure.
  - (ii) These periods may be extended if the parties so agree after the termination of the common maritime adventure.
- b. This rule shall not apply as between the parties to the general average and their respective insurers.

#### Comment

*No suggested changes.*