

Nom de la clause : Règles de York et d'Anvers

Objet de la Clause : Règlement et partages des dépenses et sacrifices d'avaries communes entre les armateurs et les chargeurs.

Numéro : **Date :** 1890

Pays d'origine : International **Emetteur :** International Law Association

Commentaires :

Le principe de l'avarie commune pose que, confrontées à un péril susceptible d'entraîner leur perte collective, les propriétés corps et cargaison engagées dans une même aventure maritime doivent supporter, à proportion de leurs valeurs finalement sauvées, les dépenses et les sacrifices exceptionnels raisonnablement encourus pour permettre leur salut.

Parmi les illustrations les plus évidentes de ce principe, sont à citer :

- la perte par jet à la mer d'une partie de la cargaison pour alléger un navire échoué et permettre ainsi son renflouement ;
- les dommages occasionnés au navire et à sa cargaison par l'eau déversée pour éteindre un incendie.

L'antiquité phénicienne avait déjà énoncé ce principe qui a été intégré, au fil des temps, par les législations des principales nations maritimes.

A l'exception de certains grands courants de navigation fluviale (Rhin, Danube, Parana...) son application est demeurée strictement limitée au seul domaine maritime.

L'ADOPTION DES REGLES D'YORK ET ANVERS

Dans la seconde moitié du 19^{ème} siècle, en conséquence du développement considérable du transport maritime et de son internationalisation de plus en plus prononcée, le besoin s'est fait jour, pour éviter d'insolubles conflits, de surmonter les divergences apparues dans les différentes législations et pratiques nationales susceptibles de pouvoir s'appliquer à un même voyage et donc à une même avarie commune.

C'est ainsi qu'est née l'idée de rédiger un code international de l'avarie commune qui a été concrétisé à l'occasion de Congrès réunissant juristes et praticiens tenus à YORK (1864) puis à ANVERS (1877).

L'insertion par les Armateurs dans les connaissements et les chartes-parties des Règles ainsi adoptées s'est très rapidement généralisée et à rendu quasi universelle leur application.

LA MISE A JOUR DES REGLES D'YORK & D'ANVERS

Pour tenir compte des évolutions constantes du transport maritime, de ses techniques et des marchandises qu'il concerne, les REGLES D'YORK & D'ANVERS, sur initiative de l'INTERNATIONAL LAW ASSOCIATION (I.L.A.) puis du COMITE MARITIME INTERNATIONAL (C.M.I.) ont été remaniées et complétées en 1890, 1924, 1950, 1974, 1990 et 1994.

La dernière mise à jour, notamment, a bénéficié d'un large consensus dans la mesure où elle a été adoptée à la Conférence du C.M.I. à SYDNEY en septembre 1994 après concertation approfondie avec, entre autres, la CONFERENCE DES NATIONS UNIES POUR LE COMMERCE ET LE DEVELOPPEMENT (C.N.U.C.E.D.), l'INTERNATIONAL UNION OF MARINE INSURERS (I.U.M.I.), l'ASSOCIATION INTERNATIONALE DE DISPACHEURS EUROPEENS (A.I.D.E.) ainsi que l'INTERNATIONAL GROUP OF P&I CLUBS.

L'AVARIE COMMUNE ET L'ASSURANCE

Les dommages et dépenses qui sont admis en avarie commune le sont parce qu'encourus pour permettre le salut commun, c'est à dire pour éviter la perte totale de l'ensemble des biens en risque dans l'aventure maritime.

Dés lors, il est justifié que l'assurance, tant corps que facultés, garantisse :

- non seulement le remboursement de ceux de ces dommages et dépenses supportés par les objets assurés eux-mêmes ;
- mais également la contribution des objets assurés à l'avarie commune et ce quand bien même ces objets, bénéficiant du sacrifice d'autres objets, parviennent totalement indemnes à destination.

De plus et selon l'imprimé du 30 juin 1983 (paragraphe 3 - article 6), les assureurs facultés français ont accepté - consacrant ainsi une pratique progressivement instaurée depuis une vingtaine d'années - de se substituer à l'assuré pour émettre les garanties d'avaries communes et d'assistance sans lesquelles les biens assurés ne peuvent être délivrés à leurs destinataires.

Compte tenu, en effet, de la complexité de leur établissement, les règlements d'avaries communes sont, le plus souvent, déposés plusieurs années après le sinistre rendant indispensable, pour sécuriser leur exécution ultérieure, la collection, à la fin du voyage, d'engagements sous forme de dépôt provisoire, de garantie personnelle d'assureurs à la solvabilité reconnue ou de garantie bancaire.

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YORK-ANTWERP RULES, 1890

RULE I - JETTISON OF DECK CARGO

No jettison of deck cargo shall be made good as general average.

Every structure not built in with the frame of the vessel shall be considered to be a part of the deck of the vessel.

RULE II - DAMAGE BY JETTISON AND SACRIFICE FOR THE COMMON SAFETY

Damage done to a ship and cargo, or either of them, by or in consequence of a sacrifice made for the common safety, and by water which goes down a ship's hatches or other opening made for the purpose of making a jettison for the common safety, shall be made good as general average.

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 safety, shall be made good as general average ; except that no compensation shall be made for damage to such portions of the skip and bulk cargo, or to such separate packages of cargo, as have been on fire.

RULE IV - CUTTING AWAY WRECK

Loss or damage caused by cutting away the wreck or remains of spars, or of other things which have previously been carried away by sea-peril, shall not be made good as general average.

RULE V - VOLUNTARY STRANDING

When a ship is intentionally run on shore, and the circumstances are such that if that course were not adopted she would inevitably sink, or drive on shore or on rocks, no loss or damage caused to the skip, cargo, and freight, or any of them, by such intentional running on shore shall be made good as general average. But in all other cases where a skip is intentionally run on shore for the common safety, the consequent loss or damage shall be allowed as general average.

RULE VI.-CARRYING - PRESS OF SAIL.---DAMAGE TO OR LOSS OF SAILS

Damage to or loss of sails and spars, or either of them, caused by forcing a ship off the ground or by driving her higher up the ground, for the common safety, shall be made good as general average ; but where a ship is afloat, no loss or damage caused to the ship, cargo, and freight, or any of them, by carrying a press of sail, shall be made good as general average.

RULE VII - DAMAGE TO ENGINES IN REFLOATING A SHIP

Damage caused to 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, where shown to have arisen from an actual intention to float-the skip for the common safety at the risk of such-damage.

RULE VIII - EXPENSES LIGHTENING A SHIP WHEN ASHORE,, AND CONSEQUENT DAMAGE

When a ship is ashore, and, in order to float her, cargo, bunker coals, and ship's stores, or any of them are discharged, the extra cost of lightening, lighter hire, and reshipping (if incurred), and the loss or damage sustained thereby, shall be admitted as general average.

RULE IX - CARGO, SHIP'S MATERIALS, AND STORES BURNT FOR FUEL

Cargo, ship's materials, and stores, or any of them necessarily burnt for fuel for the common safety at a time of peril, shall be admitted as general average, when and only when an ample supply of fuel had been provided ; but the estimated quantity of coals that would have been consumed, calculated at the price current at the ship's last port of departure at the date of her leaving shall be charged to the shipowner and credited to the general average.

RULE X - EXPENSES AT PORT OF REFUGE, ETC.

- (a) 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 admitted 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 admitted as general average.
- (b) The cost of discharging cargo from a ship, whether at a port or place of loading, call, or refuge, :shall be admitted as general average, when the discharge was necessary for the common safety or to enable damage to the ship caused by sacrifice or accident during the voyage, to be repaired, if the repairs were necessary for the safe prosecution of the voyage.
- (c) Whenever the colt of discharging cargo from a ship is admissible as general average, the cost of reloading and storing such cargo on board the said ship, together with all storage charges on such cargo, shall likewise be so admitted. But when the ship is condemned or does not proceed on her original voyage, no storage expenses incurred after the date of the ship's condemnation, or of the. abandonment of the voyage, shah be admitted as general average.
- (d) If a ship under average be in a port or place at which it is practicable to repair her, so as to enable her to carry on the whole cargo, and if, in order to save expenses, either she is towed thence to some other port or place of repair, or to her destination, or the cargo or a portion of it is transhipped by another ship, or otherwise forwarded, then the extra cost of such towage, transhipment, and forwarding, or any of them (up to the amount of the extra expense saved) shall be payable by the several parties to the adventure in proportion to the extraordinary expense saved.

RULE XI - WAGES AND MAINTENANCE OF CREW IN PORT OF REFUGE, ETC.

When a ship shall have entered or been detained in any port or place under the circumstances, or for the purpose of the repairs, mentioned in Rule X., the wages payable to the master, officers, and crew, together with the cost of maintenance of the came, 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 as general average. But when the ship is condemned, or does not proceed on her original voyage, the wages and maintenance of the master, officers, and crew incurred after the date of the ship's condemnation or of the abandonment of the voyage, shah. not be admitted as general average.

RULE XII - DAMAGE TO CARGO IN DISCHARGING, ETC.

Damage done to or loss of cargo necessarily caused in the act of discharging, storing, reloading, and stowing shall be made good as general average, when and only when the cost of those measures respectively is admitted as general average.

RULE XIII - DEDUCTIONS FROM COST OF REPAIRS

In adjusting claims for general average, repairs to be allowed in general average shall be subject to the following deductions in respect of "new for old," viz.-

In the case of **iron or steel ships**, from date of original register to the date of accident-

Up to one year old (A)

All repairs to be allowed in full, except painting or coating of bottom, from which one-third is to be deducted.

Between 1 and 3 years (B.)

One-third: to be deducted off repairs to and renewal of Woodwork of Hull, Masts and Spars, Furniture, Upholstery, Crockery, Metal and Glassware, also Sails, Rigging, Ropes, Sheets, and Hawsers (other than wire and chain), Awnings, Covers and painting.

One-sixth to be deducted off Wire Rigging, Wire Ropes and Wire Hawsers, Chain Cables and Chains, Donkey Engines, Steam Winches and connexions ; Steam Cranes and connexions ; other repairs in full.

Between 3 and 6 years (C)

Deductions as above under Clause B, except that one-sixth be deducted off Ironwork of Masts and Spars, and Machinery (inclusive of boilers and their mountings).

Between 6 and 10 years (D)

Deductions as above under Clause C, except that one-third be deducted off Ironwork of Masts and Spars, repairs to and renewal of all Machinery (inclusive of boilers and their mountings), and all Hawsers, Ropes, Sheets, and Rigging.

Between 10 and 15 years (E.)

One-third to be deducted off all repairs and renewals, except Ironwork of Hull and Cementing and Chain Cables, from which one-sixth to be deducted. Anchors to be allowed in full.

Over 15 years (F.)

One-third to be deducted off all repairs and renewals. Anchors to be allowed in full. One-sixth to be deducted off Chain Cables.

Generally (G.)

The deductions (except as to Provisions and Stores, Machinery, and Boilers) to be regulated by the age of the ship, and not the age of the particular part of her to which they apply. No painting bottom to be allowed if the bottom has not been painted within six months previous to the date of accident. No deduction to be made in respect of old material which is repaired without being replaced by new, and Provisions and Stores which have not been in use.

In the case of **wooden or composite ships**

When a ship is under one year old from date of original register, at the time of accident, no deduction new for old shall be made. After that period a deduction of one-third shall be made, with the following exceptions-

Anchors shall be allowed in full. Chain cables shall be subject to a deduction of one-sixth only.

No deduction shall be made in respect of provisions and stores which had not been in use.

Metal sheathing shall be dealt with, by allowing in full the cost of a weight equal to the gross weight of metal sheathing stripped off, minus the proceeds of the old metal. Nails, felt, and labour metalling are subject to a deduction of one-third.

In the case of **ships generally**-

In the case of all ships, the expense of straightening bent ironwork, including labour of taking out and replacing it, shall be allowed in full.

Graving dock dues, including expenses of removals, cartages, use of shears, stages, and graving dock materials, shall be allowed in full.

RULE XIV - TEMPORARY REPAIRS

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

RULE XV -Loss OF FREIGHT

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

RULE XVI - AMOUNT TO BE MADE GOOD FOR CARGO LOST OR DAMAGED BY SACRIFICE

The amount to be made good as general average for damage or loss of goods sacrificed shall be the loss which the owner of the goods has sustained thereby, based on the market values at the date of the arrival of the vessel or at the termination of the adventure.

RULE XVII - CONTRIBUTORY VALUES

The contribution to a general average shall be made upon the actual values of the property at the termination of the adventure, to which shall be added the amount made good as general average for property sacrificed; deduction being made from the shipowner's freight and passage-money at risk, of such port charges and crew's wages as would not have been incurred had the ship and cargo been totally lost at the date of the general average act or sacrifice, and have not been allowed as general average ; deduction being also made from the value of the property of all charges incurred in respect thereof subsequently to the general average act, except such charges as are allowed in general average.

Passengers' luggage and personal effects, not shipped under bill of lading, shall not contribute to general average.

RULE XVIII - ADJUSTMENT

Except as provided in the foregoing rules, the adjustment shall be drawn up in accordance with the law and practice that would have governed the adjustment had the contract of affreightment not contained a clause to pay general average according to these Rules.