

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

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

Numéro : **Date :** 1974

Pays d'origine : International **Emetteur :** Comité Maritime International

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 DISPATCHEURS 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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THE YORK-ANTWERP RULES 1974

Rule of interpretation.

Rule A.

Rule B.

Rule C.

Rule D.

Rule E.

Rule F.

Rule G.

Rule I. Jettison of cargo.

Rule II. Damage by jettison and sacrifice for the common safety.

Rule III. Extinguishing fire on shipboard.

Rule IV. Cutting away wreck.

Rule V. Voluntary stranding.

Rule VI. Salvage remuneration.

Rule VII. Damage to machinery and boilers.

Rule VIII. Expenses lightening a ship when ashore, and consequent damage.

Rule IX. Ship's material and stores burnt for fuel.

Rule X. Expenses at port of refuge etc.

Rule XI. Wages and maintenance of crew and other expenses bearing up for and in a port of refuge, etc.

Rule XII. Damage to cargo in discharging, etc.

Rule XIII. Deductions from cost of repairs.

Rule XIV. Temporary repairs.

Rule XV. Loss of freight.

Rule XVI. Amount to be made good for cargo lost or damaged by sacrifice.

Rule XVII. Contributory values.

Rule XVIII. Damage to ship.

Rule XIX. Undeclared or wrongfully declared cargo.

Rule XX. Provision of funds.

Rule XXI. Interest on losses made good in general average.

Rule XXII. Treatment of cash deposits.

The York-Antwerp Rules 1974

Rule of interpretation.

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

Rule A.

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.

Rule B.

General average sacrifices and expenses shall be borne by the different contributing interests on the basis hereinafter provided.

Rule C.

Only such losses, damages or expenses which are the direct consequence of the general average act shall be allowed as general average. Loss or damage sustained by the ship or cargo through delay, whether on the voyage or subsequently, such as demurrage, and any indirect loss whatsoever, such as loss of market, shall not be admitted as general average.

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.

Rule E.

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.

Rule F.

Any extra 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.

Rule G.

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. This rule shall not affect the determination of the place at which the average statement is to be made up.

Rule I. Jettison of cargo.

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

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 opened 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 ship, shall be made good as general average; except that no compensation shall be made for damage by smoke or heat however caused.

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 made good as general average.

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 shall be allowed in general average.

Rule VI. Salvage remuneration.

Expenditure incurred by the parties to the adventure on account of salvage, whether under contract or otherwise, shall be allowed in general average to the extent that the salvage operations were undertaken for the purpose of preserving from peril the property involved in the common maritime adventure.

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 made good as general average.

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 reshipping if incurred and the loss or damage sustained thereby, shall be admitted as general average.

Rule IX. Ship's material and stores burnt for fuel.

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 fuel 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 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 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.

When a ship is at any port or place of refuge and is necessarily removed to another port or place 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 as if it were a port or place of refuge and the cost of such removal including temporary repairs and towage shall be admitted as general average. The provisions of Rule XI shall be applied to the prolongation of the voyage occasioned by such removal.

(b) 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 admitted 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.

The cost of handling on board or discharging cargo, fuel or stores shall not be admissible 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.

(c) Whenever the cost of handling or discharging cargo, fuel or stores is admissible as general average, the costs of storage, including insurance if reasonably incurred, reloading and stowing of such cargo, fuel or stores shall likewise be admitted as general average.

But when the ship is condemned or does not proceed on her original voyage storage expenses 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.

Rule XI. Wages and maintenance of crew and other expenses bearing up for and in 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 admitted as general average when the expenses of entering such port or place are allowable in general average in accordance with Rule X(a).

(b) When a ship shall have entered or been detained in any port or place in consequence of accident, sacrifice or other extraordinary 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.

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 during the extra detention for repairs to damage so discovered shall not be admissible as general average, even if the repairs are necessary for the safe prosecution of the voyage.

When the ship is condemned or does not proceed on her original voyage, wages and maintenance of the master, officers and crew and fuel and stores consumed 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.

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.

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.

(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 or articles of employment.

(d) When overtime is paid to the master, officers or crew for maintenance of the ship or repairs, the cost of which is not allowable in general average, such overtime shall be allowed in general average only up to the saving in expense which would have been incurred and admitted as general average, had such overtime not been incurred.

Rule XII. Damage to cargo in discharging, etc.

Damage to or loss of cargo, fuel or stores caused in the act of handling, 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.

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 31 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.

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.

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.

Rule XIV. Temporary repairs.

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 admitted as general average.

Where temporary repairs of accidental damage are effected in order to enable the adventure to be completed, the cost of such repairs shall be admitted as general average without regard to the saving, if any, to other interest, 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.

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 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.

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.

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 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.

When cargo so damaged is sold and the amount of the damage has not been otherwise agreed, the loss to be made good 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.

Rule XVII. Contributory values.

The contribution to a general average shall be made upon the actual net value 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. 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. The value of the ship shall be assessed without taking into account the beneficial or detrimental effect of any demise or time charter-party to which the ship may be committed.

To these values shall be added the amount made good 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.

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

Passenger's luggage and personal effects not shipped under bill of lading shall not contribute in general average.

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 deduction 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.

Rule XIX. Undeclared or wrongfully declared cargo.

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.

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.

Rule XX. Provision of funds.

A commission of two per cent. of 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, but when the funds are not provided by any of the contributing interests, the necessary cost of obtaining the funds required by means of a bottomry bond or otherwise, or the loss sustained by owners of goods sold for the purpose, shall be allowed in general average.

The cost of insuring money advanced to pay for general average disbursements shall also be allowed in general average.

Rule XXI. Interest on losses made good in general average.

Interest shall be allowed on expenditure, sacrifices and allowances charged to general average at the rate of seven per cent per annum, until the date of the general average statement, due allowance being made for any interim reimbursement from the contributory interests or from the general average deposit fund.

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 to which the deposits have been collected. Payments on account of refund 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.