General Average Rules IVR and commentary

Edition 2006

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Foreword to the issue of the IVR General Average Rules Edition 2003

Part of the main tasks of IVR is pursuing legal unification in inland shipping. In order to apply uniform rules in General Average cases, already in 1956 the so-called "IVR Rhine Rules" were drawn up and recommended for international Rhine shipping. In the actual practice this has for decades led to the application of uniform rules in the interest of inland navigation and of insurers. With the realisation of the connection between Rhine and Danube, IVR has concentrated her activities on a rapprochement between East and West and pursuing European unification. In order to recommend an analogue application of the IVR Rhine Rules also in Middle- and East European countries, the IVR Board of Management decided, as proposed by the Average Committee, to change the name of the Rhine Rules into "IVR General Average Rules". Consequently, in the interest of all parties concerned application of these rules is recommended.

Foreword to the edition 2006

In view of possible conflicts with prevailing competition laws in the European Union it has been decided in 2004 to withdraw with immediate effect the directives and tariffs (e.g. for ship’s contributory values and salvage remunerations) as heretofore recommended by the IVR. The effects of this decision have been included in the 2006 edition of the General Average Rules IVR. Furthermore, Rule IX provides that the rate of interest shall be determined annually so as to remain in conformity with the market rate.

Rule I

General Average

Sacrifices and expenditure reasonably made and/or incurred, in extraordinary circumstances, for the purpose of saving a vessel and its cargo from a common peril are general average.

Distinction between sacrifices and expenditure

Rule I sets out the characteristics of general average and also makes a distinction, in the same way as all general average provisions, including the York-Antwerp Rules, between sacrifices and expenditure, that is to say between material damage on one hand and expenses incurred on the other.

Paragraph 78 of the German Inland Shipping Law (BSG) of 15 June 1895 restricts the domain of what can be admitted in general average under the heading of 'sacrifice' to damages caused to the vessel or her cargo. Other codes do not contain a similar restriction. If for example, a cargo which is on fire is discharged by the carrier onto his own quay and causes damage there, there is no reason not to admit these damages in general average. We should note that this question does not arise in respect to damages caused to the property of third parties. The indemnity owed to third parties is admitted in general average under the heading of 'expenditure' (see the 1st paragraph of Rule XX subsection d).

The constituent elements of general average

To qualify as general average the sacrifice or expenditure must satisfy the following conditions: It must be:

-reasonable

-intentional

-incurred in the presence of a common peril and in extraordinary circumstances, in order to save the vessel and her cargo.

Its reasonable character

To be admitted in general average expenses and sacrifices must have a reasonable character. It is a fundamental principle of law that nobody can ask another to bear the consequences of his own fault or of his own unreasonable acts. But the word 'reasonable' does not necessarily mean 'judicious'. It may well be that the measure taken, appears, with the benefit of hindsight, to have been ill-chosen, but that does not mean that it was unreasonable at the moment at which it was decided upon. It is necessary on this point to take account of what would be regarded as the normal behaviour of a diligent and prudent shipowner.

Intentional sacrifice

In order that a sacrifice may be allowed in general average it is necessary that it be made with the intention of preserving or saving the vessel and her cargo from a common peril. Such is the very essence of the general average act: the sacrifice must be resorted to intentionally and not suffered accidentally. It is for this reason that the damages sustained by a vessel as a result of grounding are excluded from general average whereas those damages proved to have been sustained intentionally in the course of refloating the vessel are admissible as such. It is often very difficult to distinguish accidental damage from intentional sacrifice. No one will deny that the breakage of a tow line sustained in the process of refloating a vessel is a loss voluntarily incurred. But, when during these same refloating operations the vessel grounds a second time or strikes an obstacle, the intentional character of this new occurrence is likely to be contested. In fact it is in the reasonable character of the measure adopted and whether its consequences were foreseeable by a diligent shipowner that one ought to seek the criteria for an intentional sacrifice giving rise to an allowance in general average.

Peril

The party making the sacrifice must have as his object in so doing the saving of the vessel and her cargo from a common peril. Those who framed the Rules have avoided giving a definition of a 'peril'. They were even unwilling to qualify it for fear of restricting the extent of its application and giving rise to inequitable results. The Rule demands

simply that the intentional act should have been performed in the presence of danger, but remains silent on the degree of danger which will justify such act. It is not necessary that the peril be imminent nor that it should threaten the vessel and her cargo with total loss. It is necessary that the situation encompasses appreciable and measurable risks. Everything here is left to common sense and the spirit of equity and wisdom of the adjuster. Experience shows that adjustments are rarely challenged on this point. The general average act may very well be based on a danger which is possible, eventual, or threatening. When the situation is such that the master in good faith believes that a peril exists for his vessel and her cargo, and he takes measures which he judges proper to deal with the situation, such measures constitute general average acts even though after the event it may be found that there was never in fact any danger. Such is the unanimous opinion of authors and tribunals which, as a matter of law, have recognised that it would be unjust to make an owner alone bear the consequences of the erroneous interpretation of the situation by a master who was anxious to do his duty in protecting the interest for which he was responsible by taking a measure judged by him to be reasonable.

Peril common to the vessel and her cargo

Rule I states that the danger from which the master seeks to save the vessel and her cargo must be a common danger, that is to say a peril which threatens the vessel and her cargo at the same time. If it does sometimes happen that the danger was more serious for one of these two interests than for the other, this circumstance has no effect on the general average character of the sacrifices made. It is only in the total absence of danger for one of the interests involved that it becomes impossible to regard the act as having a general average character. If such is the case, the measure taken to save from peril the particular interest concerned is and remains a particular charge for the exclusive account of the party for whose benefit it was incurred.

Extraordinary circumstances

The sacrifice must be made because of extraordinary circumstances. This essential condition excludes from general average all normal expenses, that is to say all acts which come under the heading of the normal operation of the vessel. These operations are normally included in the performance of the contract of affreightment and the owner of the vessel takes them into account in calculating his freight. Thus, when the completion of the voyage normally demands that, at an agreed place, a part of the cargo should be transhipped, such measure does not give rise to an extraordinary circumstance and such transhipment does not therefore constitute a general average act. On the other hand, if lighterage is resorted to in order to allow a grounded vessel to refloat, the expenses so incurred are allowable in general average. It is possible that an expense incurred in the presence of extraordinary circumstances may partly retain the character of a normal expense. This will be the case when, in the course of normal towage, the tug is used to deal with the consequences of an extraordinary circumstance giving rise to a common peril. In such circumstances, the cost of the normal operation must be deducted from the whole remuneration due to the tug in order to determine the balance which will be admissible in general average. Similarly, normal losses in transit cannot be allowed in general average.

Common safety

If it is necessary that the peril should be common to the vessel and her cargo, the measures adopted for attaining safety must also have this character. If then, in a case of grounding, the measures adopted for salvage seek only the discharge of the cargo, the vessel being otherwise considered irreparable, the expenses incurred do not have the character of general average, even when the subsequent salvage of the vessel would then become possible (see the commentary on Rule XIX). In a case of this kind, two wholly distinct measures have been taken: they must each be regarded as being for the account of the particular interest which they have preserved from danger.

Order of the master

If one compares these conditions with those which are set out in paragraph 78 of the German Inland Shipping Law (BSG), one notes that Rule I does not demand that the general average act be resorted to by the master himself or on his orders. Those who framed the Rules thought in effect that the restriction in the BSG was severe or even unjust. Practice also indicates that the text of the BSG has been very liberally interpreted. It is thus that one always presumes that the measures taken by the port or river authority, the Fire Service or surveyors are taken by the master himself. It would clearly be unjust to withdraw the right to recovery in general average from parties interested in the properties sacrificed on the basis that a third party more competent than the master actually took the measures required to save the vessel and her cargo. It is therefore for sound reasons that those who drafted the General Average Rules

abandoned this condition imposed by the BSG.

Beneficial result not essential
In order that an act may qualify as a general average act the second paragraph of article 78 of the BSG demands that it should itself have achieved a successful result and that, in consequence, the common adventure has been brought to a satisfactory conclusion. The General Average Rules do not require this.

Even if it is true that the act has not been crowned with success, as where the vessel and her cargo are lost and in the absence of any contributing interest no contribution can be demanded, the act retains its general average character. Not only would it be manifestly unjust to leave at the door of the shipowner the consequences of acts done by the master in good faith for the purpose of saving the vessel and her cargo, when the adventure is saved from peril not by his act but by some happy chance following upon his unfruitful attempt; such an idea would also be apt to discourage masters from taking measures the results of which were uncertain. If then for example the assistance lent to a grounded vessel is unavailing but the vessel is refloated by an unforeseen rise in the water level, the charges for assistance given must be regarded as general average.

Rule II
Substituted expenses

Extra expenses occasioned by the adoption of a measure resulting in savings in general average allowances shall be allowed in general average up to the amount of the expenses thereby saved.

Disbursements incurred as a result of the substituted measure shall be regarded as extra expenses after the deduction of such expenses as would have been incurred in the normal course of the voyage.

Rule II enshrines a principle which until now has only been expressly mentioned in the York-Antwerp-Rules (Rule F) and Swiss law, but which has nonetheless been applied in practice for a long time in respect of transport on the Rhine.

A principle of assimilation
An elementary principle of equity, capable of simple application, permits the allowance in general average properly so called of reasonable expenses incurred in the common interest but whose admission is not directly justified because they have not been directly incurred in order to save vessel and cargo from a common peril. In practice the master sometimes has a choice between two measures: the one likely to involve considerable expenses allowable as general average, while the other, not itself having the character of a general average act but involving nevertheless material expense for the master, is in fact much less onerous so far as the general average community is concerned.

Example
For example instead of completely discharging the cargo of a grounded vessel, the master refloats her, places her in the drydock, effects temporary repairs, continues his voyage and defers permanent repairs. In such a case it would be manifestly unjust to leave the master to bear the cost of temporary repairs. He has saved the considerable costs of discharge which would themselves have been allowable in general average (Rule XXI), and he must therefore be covered in respect of the charges he has incurred. This simple and equitable principle forms the basis of Rule II.

The limit of substituted expenses
The Rule clearly states that the charges admissible under the heading of substituted expenses are limited to the saving thereby realised to general average. If they exceed the total of the expenses avoided by the general average community, the excess must be borne by the party who has incurred them.

The nett charges
The second paragraph of the Rule gives a definition of 'nett charges' and explains that only 'extra' charges can be considered as substituted expenses. It is evident that the normal costs of the voyage cannot be allowed in general average either directly under Rule I or indirectly by the application of the principle of substituted expenses.

Restriction to expenses
The Rule mentions only expenses. Thus damages and losses which have been suffered with a view to avoiding general average allowances do not qualify under this heading. Similarly, in order to calculate the saving represented by the substituted measure, it is necessary to ignore the material damages which would have been incurred and allowed as general average. Thus if the master instead of repairing his engine in a port of refuge continues his voyage with the engine in a damaged state, this giving rise to extra damage, this extra damage will not be taken into consideration in general average. This restriction is certainly not particularly equitable, but is dictated by the requirement that the sphere of general average should not be extended to allow for hypothetical circumstances which, though they may well arise, are so particular that they ought not to be dealt with in the Rules.

Forwarding, etc
In maritime transport, certain substituted expenses are frequently incurred. The best examples are: temporary repairs, forwarding of cargo by another vessel, and towage to a port of destination of the damaged vessel. In all these cases it is principally the detention expenses at the port of refuge which are avoided by the measures taken. Among the expenses saved are, primarily, wages and maintenance of crew, and the costs of discharge, storage and reloading of cargo if repairs to the vessel necessitate such discharge. It is clear that the total of the expenses avoided, can be very considerable, and this allows the admission of all or a large part of the substituted expenses as general average. Now, in Rhine transportation, the charges admissible in general average, when a vessel enters a port of refuge, are more limited: Rule XXIV allows as general average only the charges of entering and leaving a port, the costs of towage, port charges, and the costs of watchmen, and excludes from general average the costs of the crew and the costs of storage necessary to allow repairs to the vessel. A temporary repair, a forwarding of cargo or a towage to destination cannot then, when the common danger has been overcome after arrival at the port of refuge, involve a considerable saving to general average interests, and the charges incurred can therefore be admitted under the heading of substituted expenses to only a very limited extent. However, and particularly when a bill of lading clause gives the carrier the right to treat the voyage as at an end after discharge of the cargo at the port of refuge allowing him to claim these costs of forwarding etc. in their totality from the cargo interests, it often happens that a division along the lines of general average is accepted by the parties as the most equitable course.

Rule III
Effect of fault

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

The drafting of this Rule is inspired by the text of Rule D of the York-Antwerp Rules. The principle it contains is equally enshrined in Paragraph 79 of the BSG, although that paragraph does not allow as general average anything which is for the credit of the party who has caused the danger.

Fault and general average
Rule III lays down that notwithstanding the fact that the danger has been provoked by one of the parties interested in the adventure, the sacrifices and expenses suffered or incurred, nonetheless give rise to a right to contribution in

general average. At first sight such a provision may tend to shock: thus, it may seem unjust to allow a master, whose vessel has grounded as a result of his own fault, to retain the benefit of allowance in general average. But one must not forget that general average has been introduced into maritime and fluvial law to indemnify the party who has made sacrifices for the common safety of the vessel and cargo without reference to whether those sacrifices had as their origin the fault of one of the interested parties.
For the time being it is convenient to bear in mind that the author of the fault, the master in the case in question, can usually invoke either a rule of law or a clause normally inserted in the contract of carriage to exonerate him from all responsibility. In such circumstances, if, by fault of the master, the cargo is totally lost, it would be illogical to charge to the account of the errant master expenses incurred to avoid a total loss which would not itself have been for his account. Thus, in a case in which the master, although responsible, is not, even so, legally obliged to pay the indemnities due from him, it would be unjust to leave damage caused for the common safety of all interests to the account of the damaged interest alone. It is therefore reasonable and equitable to permit the damaged party to have his loss made good in whole or in part by the general average community.

Recourse against the party at fault
It is, however, equally important not to discharge the author of the fault from a responsibility which he would normally bear. Rule III satisfies these two demands in that it stipulates on the one hand, that the origin of the danger does not influence the general average character of the measures taken for the common safety, and on the other hand, that the steps which can be taken against the author of the fault always remain open, in accordance with legal and conventional provisions inserted in the contract of carriage and within the limits of these provisions.

Rule IV
Exclusions

1. Losses or damages suffered or expenses incurred through delay, whether on the voyage or subsequently, such as demurrage, and any indirect loss whatever, such as loss on exchange, shall not be allowed as general average.
2. In no case shall losses, damages or expenses incurred in respect of damage to the environment, in particular the cost of removing such damage, be allowed as general average. However, costs incurred in preventing or minimizing damage to the environment shall be allowed as general average if incurred as a condition of a general average measure.

The causal connection
The general average act gives rise to a series of consequences connected one to another. The difficulty is to decide the point at which the chain of causation should stop. Generations of jurists have tried to define the juridical notion of causal connection, but the result of their work is still open to discussion. That being the case, the drafters of the Rhine Rules IVR 1979 presently called General Average Rules IVR have not bound themselves to a definition but have opted for the exclusion on the one hand of damages and losses suffered as a result of delay whether during the voyage or subsequently and, on the other hand, of all damage indirectly caused. (Compare Rule C of the York-Antwerp Rules.) Certainly it is clear that many problems have not been resolved and above all that the idea of indirect losses is not always easy to define in practice.

Delay
Delay can prejudice the interests of the parties in various ways, such as loss of markets or of freights, diminution in sale prices etc. It is in fact only a question of eventualities, and it is precisely because of the problematic and hypothetical character of these losses that Rule IV excludes them from general average. It is necessary to remember at this point that general average presupposes an actual ascertained loss.

Indirect loss

Rule IV would also cover the following example. When the vessel has to repair material damage itself admissible in general average, the cost of these repairs is allowed to the credit of the shipowner. But the allowance does not extend to loss incurred by the shipowner arising from the impossibility of employing his vessel during the repair period. Demurrage thus incurred is and remains for the account of the owner.

Rule IV also gives an example of indirect loss: loss on exchange, that is to say loss of a commercial kind originating from the immobilisation of the vessel resulting in delay. The main reason, which in itself justifies the exclusion of delay and all indirect loss such as demurrage, delay in delivery, loss on exchange, etc., resides in the fact that it is, in most cases, a very delicate matter to calculate the extent of the prejudice suffered. It is therefore the problematic character of such loss which prevents it being allowed in general average.

Damage to the environment

Following the change made in 1994 to Rule C of the York-Antwerp Rules an exclusion from general average of all environmental damage has also been introduced in a new second paragraph of Rule IV of the 1996 edition of the General Average Rules IVR. This exclusion has been introduced because there was a general feeling that continuing to allow environmental damage in general average would stretch the domain of general average too far. Moreover-, Hull- and Cargo-Insurers, who in the normal course of events provide cover for contributions to general average would be asked to pay claims through general average which they consider they never intended to pay. Under the old wording of Rule IV, however, all losses, damages or expenses, which are the direct consequence of a general average act are allowable in general average. Therefore an explicit exclusion of environmental damage from general average was necessary and has been placed in a new second paragraph of Rule IV. Special attention is drawn to the fact that by excluding losses, damages or expenses the Rule is also intended to exclude liabilities for environmental damage which may arise out of a general average act.

In the German text ”Wasserhaushaltschäden” (damages to waterways and water-economy) are mentioned separately. This was done because according to German legal concepts environmental damage (”Umweltschäden”) does not always necessarily include ”Wasserhaushaltschäden”. If, in order to enable a general average measure to be taken (e.g. the refloating of a vessel), certain actions have to be made in order to prevent or minimize damage to the environment the cost of such actions are allowable in general average. This rule - containing an exception to an exclusion -is in conformity with Rule XId of the York-Antwerp Rules 1994.

Rule V
Proof

The burden of proof that a loss or expense should be allowed in general average is upon the party claiming such allowance.

The burden of proof

This Rule, which reproduces almost exactly the first paragraph of Rule E of the York-Antwerp Rules 1994 is, in theory, equally superfluous. It has, however, been thought worthy of inclusion. It identifies the party on whom rests the burden of proof. This burden is borne by the party claiming a general average allowance. This Rule is certainly extremely useful to the average adjuster harried by those claiming allowances the grounds for which are not established. Rule XIII sets out the proper means to be employed by interested parties to support their claims for allowances.

Rule VI

Allowances-vessel

1. The extent of physical damages allowable in general average shall be determined on the basis of surveys as provided in Rule XIII.
2. From the sum allowable as general average the following shall be deducted in respect of 'new for old':
   - 1/5 th of the renewals to vessels, motors, machinery or boilers which have been in service from 1 to 5 years;
   - 1/4 th of the renewals to vessels, motors, machinery or boilers which have been in service from 6 to 10 years.
   - 1/3 rd of the renewals to vessels, motors, machinery or boilers which have been in service over 10 years.

     no deduction for anchors and anchor chains. no deduction shall be made from the costs of temporary repairs, or from renewals to vessels, motors, machinery or boilers which have been in service for less than one year at the date of the accident.
3. Towing and coupling lines shall be allowed at their nett cost.
4. The deductions shall be made only from the cost of the new material or parts when finished and ready to be installed in the vessel.
5. When a vessel is afloat no loss or damage caused by the use of one or more anchors shall be allowed in general average.

Paragraph 1

Survey report

The first paragraph of Rule VI recalls the principle, already contained in the BSG, according to which the amount of an allowance in general average in respect of material damage must be fixed on the basis of a survey report. In this respect, this Rule should be regarded as a application of Rule V. Thus, the only proof recognized as fixing the extent of material losses is the survey report. All other methods of proof are excluded, in particular oral evidence even when this is admitted by a particular national law.

Intervention of the average adjuster

In practice, however, the possibility exists of proving that the effective cost of repairs is not that arrived at by the surveyors in their report. It is then up to the average adjuster to gather all the information he can find in such a way as to form an opinion and make such rectifications as seem to him to be required: however, he cannot stray too far from the report which, according to the Rule, must form the basis of his calculations.

Paragraphs 2 and 3

Deductions: new for old

These paragraphs set out the deductions to be applied in order to take into account the difference between new and old values. Experience has in fact shown that it is often difficult to calculate exactly the increase in value or the economy actually realised.

Fixed percentage system

Experience has shown equally that it is a delicate matter to leave to surveyors the job of calculating the precise extent of the deductions to apply.

Anchors and anchor chains

Inspired by the solution adopted by those who framed the York-Antwerp Rules, the drafters of the Rhine Rules IVR 1979 presently called General Average Rules IVR have adopted a similar system of fixed percentage deductions.

As the life time of anchors is almost unlimited their renewal does not result in any improvement as far as the shipowner is concerned: thus the Rule does not provide for any deduction to be made. It is almost the same thing with the anchor chains and by parity of reasoning, as well as for simplicity, the Rule here follows Rule XIII of the York-Antwerp Rules, and not paragraph 85 of BSG or paragraph 701 of the German Commercial Code (HGB), by admitting the whole cost of renewal.

Towlines
In paragraph 3 the Rule follows the practice of surveyors who, in their reports, always show the nett cost of towlines: there is therefor no need to show a further percentage deduction.

Paragraph 4
Intrinsic value
The fourth paragraph of Rule VI deals with the question which, in the past, has presented some difficulty. It is there specified that the deduction to be applied to cover 'new for old' must be calculated on the basis of the intrinsic value of the items replaced, leaving out of account all incidental expenses such as, most importantly, the hire of a drydock, towage costs, the dismantling of engines and the fitting of plates.
All these costs, although necessary to allow the installation of the object being replaced, do not generally enhance the value of the repaired vessel.
The text defining this intrinsic value is that of Rule XIII of the York-Antwerp Rules.

Paragraph 5
Dropping the anchor
As explained in the note, under the sub-heading 'Extraordinary Circumstances', to Rule I, in order to constitute a general average act, such act must be performed in extraordinary circumstances. A normal measure taken in the operation of the vessel can therefore never be a general average act. In this respect the use of anchors poses a problem. Generally the dropping of an anchor is a normal act in the course of navigation, the anchor being there precisely in order to be dropped to stop the vessel or to hold her in a particular spot. On the other hand the sacrifice of an anchor for the purpose of refloating the vessel is certainly made under extraordinary circumstances. In order to put an end to all uncertainty on this point, the Rule lays down that the sacrifice of an anchor made by a vessel which is afloat can never be considered a general average act. In consequence neither the anchor itself, nor its chain, nor the losses caused to the hull or otherwise by dropping of the anchor can be allowed as general average when, at the time of dropping the anchor, the vessel was afloat.

Rule VII
Allowances – cargo

1. The amount to be made good as general average for damage to or loss of cargo sacrificed shall be the loss which the owner of the cargo has sustained thereby, based on the CIF value on the last day of discharge of the ship or at the termination of the adventure, where this ends at a place other than the original destination.
2. Where all or part of the 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 nett proceeds of sale and the nett value in sound condition as computed in the first paragraph of this Rule.

Paragraph 1
Elements of objectivity
The text of this Rule sets out a principle which is common to all laws dealing with general average. The concerned in cargo must be indemnified for the loss suffered as a result of the sacrifice of their goods. But this loss must be fixed

in as objective a manner as possible. The value employed must not be influenced by chance, whether fortunate or otherwise. It is equally essential that any element connected with the identity of the owner of the merchandise should be eliminated.

CIF value
In the original 1956 Rule the necessary objectivity was sought by adopting the market price of the goods as the basis for the calculation of the loss. In theory this is correct because it is the market price which was at the risk of the receiver of the goods. In practice, however, the application of this criterion has given rise to difficulties. On the one hand there may be no actual market properly so called, no 'exchange' at which the merchandise is traded, nor any quotation for all the merchandise, and on the other hand, if such basic information can be obtained, it is not always easy to interpret it correctly. There must also be deducted from the market price all those charges which the claimant of an allowance in general average would normally have been called upon to pay in order to obtain possession of his cargo and which he has in fact saved as a result of the sacrifice.
These charges are, for example: cost of discharge, truckage, customs duties, etc.
To avoid these difficulties the York-Antwerp Rules (Rules XVI and XVII) were amended in 1974 to the extent that the calculations must now be made taking as a basis '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'. In practice this Rule has been difficult to apply, the invoice value varying according to the particular buyer or the inclination of those not always willing to reveal it.
To avoid the uncertainty thus created and with the aim of achieving a value at the same time stable, insurable, objective, and, consequently the same for all interests, Rule VII takes as a basis the CIF value which, one hopes, is a well enough known idea to avoid most difficulties. In order to fix with precision the amount of the general average allowance, there must be deducted from the amount of the loss the depreciation whether quantitative or qualitative which would have affected a particular item in the normal course; thus the depreciation by reason of an event taking place during the course of the voyage after the general average act should be treated as affecting the value of goods partially or totally sacrificed at that time. The same applies to loss in transit, that is to say normal loss. Similarly, for example, when goods selected for sacrifice are discovered, at the moment of their jettison to save the adventure, to be already damaged, the allowance in general average will have to be calculated taking into account the value which these goods would have had if they had arrived at destination in their damaged state.

Paragraph 2
Sale of the goods
The second paragraph of Rule VII corresponds to the second part of Rule XVI of the York-Antwerp Rules. In case of a sale necessitated by damages which are the consequence of a measure taken for the common safety, the calculation of the loss suffered as a result of the sacrifice will be made by comparing the nett proceeds of the sale with the value which the goods would have had if they had not been damaged by the general average act. Here again it is not necessarily the value of the merchandise in sound condition which will be taken into consideration. It is possible that the goods have in fact been damaged otherwise than by the general average act; in such a case the nett proceeds must be compared to the value of the merchandise in its damaged state.

Rule VIII
Allowances – freight

The amount to be made good as general average for unpaid freight in respect of cargo sacrificed, shall be the gross freight lost.

Methods of payment of freight
It is necessary to recall a fundamental distinction between the methods of paying freight owed to the carrier.
According to the stipulation contained in the contract of carriage freight can be: -either earned in any event, in which

case the freight is owed whatever happens to the goods during the transit, -or payable on delivery, which is to say that the freight is only owed on the effective delivery of the merchandise.

Guaranteed freight
In the first case the allowance in respect of the cargo sacrificed, is based upon a value which includes the freight paid and not returnable, that is to say not dependent on the delivery of the cargo. In accordance with the Rule VII, this allowance will correspond to the loss suffered by the cargo interest, a perfectly equitable solution since he has paid the freight without actually receiving the goods which were destined for him and which have been sacrificed. Here there is clearly no reason to deduct the contingent expenses required to earn this freight because such freight is already earned in any event.

Freight payable on delivery
In the second case the shipowner has received no freight at the time the cargo was sacrificed. The sacrifice thus made, deprives the carrier of the corresponding freight. This loss is allowed in general average for the credit of the carrier. In theory it is not the total gross freight which would be allowed in general average but only the amount of the nett freight, that is to say the gross freight after deduction of charges which the carrier would normally have had to incur in order to receive the amount of this freight such as: pilotage charges, lock dues, discharge costs, classification costs, and the cost of counting and dividing packages. In practice the calculation of the deduction of disbursements which, in order to earn the freight, would have to have been incurred after the event which gives rise to the general average, proves almost impossible. Further, it leads only to the making of insignificant deductions. That is why, for the purpose of simplifying general average, the Rule allows the gross freight without any deduction.

Rule IX
Allowances – interest

Amounts allowable in general average shall bear interest., calculated from the date of their payment or from the moment when the party entitled thereto received or would have received the items sacrificed until three months after the date of adjustment.
Each year the Board of Directors of the IVR shall decide the rate of interest which shall apply.
This rate shall be based on the Euribor-rate and shall be used for calculating the interest accruing during the following calendar year.

Interest: its justification
If one allowed in general average only the amount of the losses, damages and expenses resulting from the general average act, the party who had borne the sacrifice would not be equitably indemnified. They have to wait in fact for the issue of the average adjustment and its approval before recovering the allowances for their credit. Now, it often happens that, for various reasons, the adjustment cannot be issued and put into effect until long after the end of the voyage. This circumstance deprives the interested parties of the use of material sums. It is therefore equitable to provide that all amounts allowed in general average, either in respect of proved damage or expenses incurred, will bear interest beginning from the date on which the interested party has in fact suffered the loss or incurred the charge, and going on till the moment at which he is indemnified for it.

The time at which interest begins and ends
Rule IX takes care to specify that, if it is question of expenses and charges incurred, the point in time at which interest begins to run is the date of payment of these charges and expenses but that in the case of physical loss or damage, interest begins to run from the moment at which the items sacrificed or damaged would have been placed at the disposal of the receiver. Interest ceases to run on the day on which the interested party is indemnified: Rule IX fixes this moment in conformity with the York Antwerp Rules 1994 at three months after the date of the adjustment.

The rate of interest
The rate of interest is decided annually by the Board of Directors of the IVR and will apply to the interest accruing during the following calendar year. That rate of interest shall be based on the Euribor-rate in order to be flexible and in conformity with the prevailing market rate.

Parties to whom interest is credited.
Interest allowed in general average is credited to the parties who have sustained the damages or incurred the expenses. It is thus added to the principal amount and the total of these two sums constitutes the global allowance to the credit of a party claiming. If the claimants have been indemnified for their loss by other parties to the general average before the date fixed for the termination of interest, the allowance for the interest must be shown to the credit of such other parties. If, for example, payments on account have been made by depositors from the joint-account, as specified in Rule XVII, interest must be credited to those depositors from the date when such payment was made.

Rule X
Allowances - survey costs, etc.

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

All costs necessitated by the adjustment of general average must be allowed in general average. They have been incurred in the interest of all parties: they must therefore be borne by those parties in proportion to their interests at risk.

Rule XI
Currencies

Disbursements shall be made good in the currency in which they were incurred. However, the carrier shall be compensated in his national currency, provided he has expressed such desire in the Average Bond.
Allowances to cargo shall be made in the currency in use at the place and at the moment of the termination of the adventure. Contributory values shall be calculated using rates of exchange at the termination of the adventure.

The principle
It is rare that everybody interested in a particular transportation on the Rhine is of the same nationality.
The problem of knowing in what currency losses and expenses should be reimbursed, arises in almost all adjustments. In order to resolve this delicate question, it is necessary to return to the fundamental principle underlying general average, according to which each interested party must be indemnified for his loss in such a way that, after deduction of his own contribution to the general average, he will be placed in the same financial position as if sacrifice or damage had not been suffered.
That is why Rule XI takes care to specify that, in principle, expenses should be allowed in the currency in which they have been incurred.
This results in adjustments drawn up in several currencies, considerably complicating the work of the average adjuster. Further, the practice has become established of allowing expenses in the national currency of the carrier,

applying the date of payment in order to effect the exchange. The Rule sanctions this practice, but on the condition that the carrier who wants to obtain compensation in his national currency should ask for it in the average bond. In practice, however, this condition is neglected and it has become normal usage to draw up adjustments in the national currency of the carrier without requiring any such formality. This applies even to allowances in respect of cargo, and here again the practice differs from Rule XI. If possible, and when the cargo interest is not of the same nationality as the carrier, the exchange is made at the rate ruling at the date on which the voyage is completed. It is certainly at that particular moment that the loss sustained is actually realised. The Rule advocates this same system for the calculation of contributory values, which also can be fixed only at the end of the voyage.

Rule XII
Contributory values

1. The contributory value of the vessel shall be based, in principle, on her value at the termination of the adventure and in the condition in which she is at that moment; in assessing this value, the commercial value shall only be taken into account by way of indication.
2. The contributory value of cargo shall be based, in principle, on its CIF value at the termination of the adventure and its condition at that time. The contributory value of the cargo sold during the voyage shall be its nett-proceeds of sale with the addition of any amount made good as general average.
3. From the values so determined shall be deducted all expenses subsequent to the event which gave rise to the general average, until the termination of the adventure as originally foreseen. Any special compensation which falls upon the ship by virtue of art. 14 of the International Convention on Salvage 1989 shall not be deducted from the value as referred to under para 1 above.
4. To the values so determined shall be added the amounts made good in general average for physical damage.
5. Mails, provisions, passengers luggage including checked luggage, and personal effects shall not contribute.
6. To the extent that the freight is at the risk of the carrier, it shall contribute upon its gross amount. Insofar as unpaid freight is allowed in general average it shall contribute upon the amount so allowed.

Contributory values
This long Rule has as its object the resolution of problems posed by the determination of contributory values, that is to say values which are attributed to the various interests called upon to contribute to the general average.
The drafters of the Rhine Rules IVR 1979 presently called General Average Rules IVR have implicitly agreed, in accordance with universal practice, that general average must be borne by the parties interested in the vessel, the cargo and the freight: these three elements are dealt with in the Rules.

The general principle
Rule XII provides the method of calculation which must be followed in order to determine the contributory value of these three interests. The basic principle is the following: the contributory value is the value of the particular interest at the time and the place at which the voyage ends, that is to say the value saved by the general average act. To obtain this value it is necessary to take into account a basic value as indicated in Paragraph 1,2 and 6 of Rule XII. But to maintain equity between parties who receive their goods and parties to whom an allowance in general average is made in place of the goods, it is necessary that a general average contribution falls as much on this allowance as on the interest saved. It is only in this way that the interest sacrificed but ’ made good’ can be placed in the same

position as the interest saved (paragraph 4).

Deductions to be made

The basic values of the three contributing interests do not correspond exactly to the amounts saved by the general average act.

If for example, freight is at the risk of the carrier, the receiver would not have paid freight in case of the loss of the merchandise and for him it is not therefore the CIF value which has been saved by the general average act but that value less the amount of the freight.

Another example presents itself when there have been two successive cases of general average. The contributory interests would not have had to pay a contribution to the second if they had been lost at the time of the first accident. To arrive at the contributory value for the first general average it is therefore necessary to deduct from the value of the interest at the end of the voyage its contribution to the second general average.

Thus the exact amount of the values actually saved, must be determined after deducting from the values at destination all the charges which, after the general average act, have contributed to preserving those values. It is this that underlies paragraph 3.

In conformity with Rule XVII of the York-Antwerp Rules 1994 the 1996 edition of the Rhine Rules IVR 1979 presently called General Average Rules IVR also contains the provision that any special compensation due to Salvors according to art. 14 of the International Convention on Salvage 1989 shall not be deducted from the value of the vessel. In the Commentary on para 4 of Rule XXIII it has been explained that such special compensation is not allowable in general average; if the amount of a special compensation would as ...”expenses subsequent to the event...” (as referred to in para 3 of Rule XII) be deducted from the value of the vessel, the proportion of general average falling on cargo would be increased and the object of the second sentence of para 4 of Rule XXIII would be frustrated.

The vessel

Experience has shown that it is not always easy to fix the contributory value. If parties do not arrive at an agreement on this point it is advisable to consult an independent and impartial expert. The market value does not constitute a basis for calculation which is necessarily any more exact. This value can in fact be greatly influenced by economic circumstances; it is notably very sensitive to freight rates. It can result in error if it is used as a mandatory guide to the contributory value. That is why Rule XII contents itself by indicating that the market value is only indicative and not determinant.

Cargo

So far as cargo is concerned, the second paragraph takes a position similar to that which we have just analysed in respect of the vessel. The contributory value is calculated on the basis of the real value of the cargo at the end of the voyage. As in Rule VII one has to take as a base of the CIF value at the end of the voyage. As the date of the end of the voyage one takes the date on which the discharge of the vessel is completed: for practical reasons one does not take the date of discharge of each of the particular consignments. The CIF value necessarily includes the amount of the freight. In Rhine navigation it is the practice that freight is guaranteed, that is to say that the freight is owed to the carrier even if the cargo is not delivered at destination. When the freight is due to him, the carrier is indemnified whatever the outcome of the adventure. It would therefore be unjust to make the carrier contribute on this freight which is not at his risk. The freight is at the risk of the receiver; it will therefore not be deducted from the CIF value and the receiver will pay his contribution in respect thereof pro rata.

Although it is very unusual in Rhine navigation, one recalls from Rule XVII of the York-Antwerp Rules that the contributory value of cargo sold short of destination is its actual nett proceeds of sale.

By the textual adoption of this stipulation of the York-Antwerp Rules, sight has been lost of the fact that the adding of the allowance in general average to the nett proceeds of sale gives rise to a double augmentation, seeing that the matter is already dealt with on the basis of paragraph 4 of Rule XII.

Freight

In the rare cases when freight is at the risk of the carrier, it must contribute to general average on the basis of its value. How be it the freight will form part of the charges to be deducted in order to fix the contributory value of the cargo. As an attempt at simplification, paragraph 6 provides that the freight contributes on its gross value, that is to say that one does not deduct the disbursements incurred by the carrier in order to earn the freight after the general average act. However, should the occasion arise, one must deduct contributions to subsequent general averages.

When there is a sacrifice of cargo on which the freight is at risk of the carrier, he will be indemnified in general average by the allowance of the gross freight (see Rule VIII). Harmony is thus achieved between Rules XII and VIII, by stipulating that the carrier will contribute on the amount of the allowance.

Exclusion
Paragraph 5 of Rule XII indicates that mail, provisions, passengers' luggage, and personal effects are not called upon to contribute.

Rule XIII
Surveys

1. In all cases giving rise to a demand for allowance in general average, the cause, nature and extent of the physical damages shall be ascertained in the following manner:
   a) as to cargo: by survey conducted as soon as possible after the delivery of damaged goods. The concerned in the vessel are to be notified in order to enable them to participate in the survey. Failing such notice, or in case no demand for such a survey has been made within eight days after delivery, the cargo shall, subject to proof to the contrary, be presumed to have been delivered in good condition.
   b) as to the vessel: by a survey by one or more surveyors as soon as possible after the accident and if possible before the commencement of a new voyage. The concerned in cargo are to be notified by a note in the Average Bond and may be represented at the survey.
2. In case of several surveyors attending and there being disagreement among them, another surveyor, whose decision shall be binding, shall be appointed by the President of the Average Committee of the IVR

The survey: element of proof
The principle formulated by Rule XIII is that already set out in the BSG (paragraph 85, paragraph 709 and paragraph 712 HGB), namely that any claim for allowance in general average must be justified on the basis of the survey report.
This report should not restrict itself to detailing sacrifices properly so-called, but must further indicate the nature, extent and cause of the losses. Thus, and by way of example, the surveyor in case of a fire will have to make a distinction between damages caused by the fire and damages which are the consequence of extinguishing measures. The Rule establishes a distinction between those damages suffered by cargo and those suffered by the vessel, but for both interests the prescribed system for survey is the same, namely that the survey must be done as soon as possible and that the two parties (hull and cargo) must have the opportunity of taking part and expressing themselves.

Cargo
Concerning cargo interests, we draw attention to the fact that they only have one opposite number: the owner of the vessel for whom it is easy to find an opportunity to take part in the survey.
The first paragraph of sub-section 1.a) of Rule XIII stipulates that the survey must be done as soon as possible after delivery of cargo. This obligation turns out to be considerably attenuated by the last paragraph of the same subsection which provides that the request for survey must be presented within eight days.
Thus this delay of eight days does not apply to the case in which the survey itself has not taken place during this period, but only to the case in which the receiver has not requested the survey. The sanction provided at the end of the paragraph therefore does not apply to the case on which the survey has not taken place within eight days but only to the case in which the receiver has not even taken the trouble to ask for a survey.

In fact the sanction for this omission is not very grave: the owner of cargo does not, as it appears, incur an actual loss of his rights, the merchandise being only presumed, in the absence of proof to the contrary, to have been delivered in good condition. In this connection we recall the principle according to which he who claims an allowance in general average must provide proof of it. Thus, whether there is a survey report or not, the claimant to the allowance always has the burden of proving his claim. But it is certain that the adjuster will be little inclined to make an allowance for an alleged loss which has not been the object of a survey report drawn up in accordance with the dispositions of Rule XIII, and he will, besides, be more demanding when the claimant has not respected the provisions of this Rule. Further, if the carrier has not been duly called to attend the survey, the burden of proof will still lie upon the cargo interest, and it is quite evident that a survey done without the knowledge of the carrier will have a probative value which is materially inferior to one carried out in his presence.

The vessel

Sub-section 1.b) of the Rule concerns surveys on the vessel.

Here again the survey must be done as soon as possible and even before the commencement of a new voyage. In this respect, the Rule takes account of the difficulties the carrier can face which result in conditions in which his being an individual party may be exploited. But it does emphasize that cargo must be informed of claims for general average allowances arising from damages suffered by the vessel.

The Rule specifies in this connection that a simple remark written on the average bond is sufficient, the owner not being expected to notify each of the receivers separately. If these latter so wish, they can attend the survey, and it is quite evident that, here again, a survey conducted entirely objectively has much greater probative value than one done unilaterally solely in the interest of the hull.

Disagreement between surveyors

Finally, in its last paragraph the Rule deals with the case, rare in practice, in which the surveyors appointed by the parties are unable to agree. It provides that a surveyorarbitrator appointed by the President of the Average Committee of IVR will decide in the last resort.

Rule XIV
The obligation to furnish required information

Parties to the general average shall provide the Average Adjuster with all information and documentation required by him for the preparation of the statement of general average within 6 months after he has requested them.

If they do not fulfill this obligation, the Average Adjuster will himself obtain the necessary information, the correctness of which shall be assumed subject to proof to the contrary.

Powers of the adjuster

The adjuster can only usefully perform his work to the extent that he has received all necessary documentation as well as all required information (see paragraph 87 BSG). In conformity with Rule E of the York-Antwerp Rules 1994 a period (6 months) within which information etc. is to be provided to the Average Adjuster has been included in the 1996 edition of Rhine Rules IVR 1979 presently called General Average Rules IVR.

Unfortunately practice shows that it is often difficult for him to procure both. To help the adjuster in the performance of his task, Rule XIV stipulates that if one of the interested parties or both at the same time fail in their obligation to provide the material required by the adjuster within the set period, the latter, can on his own authority, and indeed in the interest of those who have performed their obligations, procure for himself the information necessary by any available means. The Rule takes care to specify that it is up to the defaulting party to provide proof that the information thus used and taken into account by the adjuster is incorrect.

Rule XV
The drawing up of the statement of general average

The shipowner has the right and, if one of the interested parties so demands, the duty to have the adjustment drawn up by an Average Adjuster.

Designation of the adjuster
In Rhine practice, average adjustments are made either by a professional adjuster or, in simple cases or those not involving significant amounts, by the owner himself or by his insurance broker. Rule XV does not modify this practice. But it reserves the right to an interested party to demand the appointment of a qualified average adjuster. This disposition attempts to deal with adjustments which may be made by the shipowner himself whose technical and juridical capacities would not be sufficient to ensure the preparation of a valid and impartial adjustment. Rule XV guarantees, at the same time, the quality of the work and its impartiality.

Rule XVI
Contesting the statement of general average

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

Probative force of the adjustment
This Rule sanctions the Rhine practice by which all adjustments can be submitted for checking by IVR before their execution. Nevertheless Rule XVI takes care to state that such checking in no way excludes any judicial control exercised by tribunals. Thus a general average statement approved by IVR does not have the authority of a res judicata and, conversely, the refusal to endorse an adjustment by IVR does not prevent interested parties from having recourse to a judge or an arbitrator in order to obtain his agreement of the adjustment and an order for its execution.

Rule XVII
Treatment of cash deposits and guarantees

When cash deposits have been collected as security for cargo's liability to contribute to general average, such deposits shall be paid, without any delay, into a special account in the joint names of the Average Adjuster and the IVR, with a bank indicated in the average bond.
The sum so deposited, together with accrued interest, if any, shall be held as security for payment to the parties entitled thereto of the general average or special charges payable by cargo in respect of which this security has been collected.
Payments on account or refunds of deposits may be made with the written approval of the average adjuster and the IVR. Such deposits, payments or refunds shall be without prejudice to the ultimate liability of the parties.
Sums so deposited shall bear interest at the rate mentioned in Rule IX, which interest shall be made good in general average, any bank interest earned being credited to the general average.

Costs incurred in putting up security for settling under the average statement, or for fulfillment of obligations towards salvors and others shall likewise be allowed in general average.
Payments on account made on the basis of the security shall also bear interest at the rate mentioned in Rule IX, which interest shall be made good in general average.

The joint account
The Rule provides that deposits must, without delay, be remitted by the carrier to an 'ad hoc' joint account at a bank whose name is indicated in the average bond. This account must be opened in the names of the two impartial authorities which are involved in all such cases, that is to say in the names of the adjuster and of IVR.
Thus only these two authorities are entitled to withdraw sums and to audit the account after the acceptance of the adjustment.

Interest
The general average community for whose benefit the deposits are taken, must indemnify the depositors for the loss of interest suffered by them by crediting them with interest at the rate mentioned in Rule IX on the sums deposited. From this interest, however, will be deducted the bank interest which the joint account produces and which comes back to the depositor. A similarly judicious stipulation is lacking in the York-Antwerp Rules.

Payments on account
If payments on account are made in order to cover expenses incurred by the carrier and ultimately allowed as general average, the depositors are in fact paying these expenses. In consequence the interest mentioned in Rule IX is applicable to such payments on account: the last paragraph of Rule XVII stipulates this expressly.
Cash deposits remain the property of the depositor and, in consequence, must not be remitted to other parties interested in the general average unless their agreement has been obtained. On the other hand these deposits serve to guarantee the payment of contributions to general average and special charges owed by the depositor. Thus he must not be paid back the deposit without the consent of the party who has the right to these contributions.

Rule XVIII
Voluntary stranding

Damage caused by and expenses incurred due to voluntary stranding, even when this is a general average act, shall only be made good in general average when the vessel has in fact been refloated and recognized as reasonably reparable.

Rule XVIII reproduces the dispositions of paragraph 82, para 3 of the BSG. It deals with considerations of a practical kind and is inspired by the fear of fraud on the part of the carrier. When his vessel is lost as a result of an accidental grounding he might be tempted to claim this event as the consequence of a general average act, and could also be tempted to indemnify himself by casting ashore an old boat which had become practically valueless. To avoid this possibility the Rule allows in general average the consequences of a voluntary stranding only when that event does not result in the total loss of the vessel. Such a disposition can have disastrous consequences for the honest shipowner who, with the intention of saving his vessel and its cargo, runs her ashore, saves the cargo but finally loses his own property. He must himself bear the loss which remains a special charge on him. But when the pecuniary consequences of his sacrifice are less serious and do not consist of a total loss of the vessel, the owner will have his loss made good in general average: in this case he is unable to make any profit from grounding and is therefore not subject to temptation. Further, the rigour of this Rule can weigh as heavily on the cargo as on the ship: when cargo is lost following a voluntary stranding involving the loss of the vessel, the shipowner may have the chance of some

recovery, while the loss of the cargo sacrificed definitely remains a charge on its owner alone.
The Rule identifies a 'constructive total loss' with the total loss of the vessel: in a case in which the repair of the unit cannot be justified from an economic and financial point of view, the vessel is regarded as totally lost, so that, in such circumstances, the shipowner does not have the right to any allowance in general average. The Rule expresses a rigorous principle with numerous consequences. It is not found in the York-Antwerp Rules where, on the contrary, Rule V allows all consequences of a voluntary stranding in general average.

Rule XIX
Raising a sunken vessel

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

This Rule has also been inspired by the provisions of paragraph 82, para 3 of the BSG. It sets out an elementary principle and its theoretical value is without great importance: it stipulates that damages which have for their origin the fact that the vessel has grounded, without this event constituting in itself a general average act, are not admissible in general average, but that it is otherwise with sacrifices and charges incurred to refloat the vessel once it is aground. Indivisibility of salvage operations

Indivisibility of salvage operations
The Rule underlines what, however, is already stipulated in Rule I, namely: that the stranded vessel and her cargo must be saved in the course of ' one concerted operation'.
In practice it will often be difficult to apply this criterion. Generally, the operation to raise a vessel begins by the discharge of cargo and the refloating of the vessel only starts after the total discharge. This does not necessarily imply that such a salvage cannot be considered as a single operation. All the same, when there is no relationship or direct connection between the discharge of the cargo and the refloating of the vessel one must deny to the costs of such operations the character of general average. The cases in which a salvage operation cannot be considered as one and indivisible are, however, extremely rare.

Rule XX
Assistance by towage etc.

1. Where towage assistance is rendered to a stranded vessel, constituting a general average act, the remuneration paid to the assisting vessel shall be admitted in general average, but may include only the following items:
   a) indemnity due for proceeding to the place of the accident, remaining at that place, rendering services and returning therefrom.
   b) the value of equipment lost, and/or the cost of repairing damage suffered by the assisting party during the course of the actual refloating operations. Save in exceptional circumstances the refloating operations commence at the moment the towing rope is attached and terminate at the moment when the towing rope is or can be released.

   For example, the situation when the assisting vessel herself, before attaching or after releasing the towing rope, is in the zone of danger in direct connection with the rendering of assistance,

shall be considered as an exceptional circumstance.

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

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

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

Paragraph 1

By comparison with the Rules which precede it, Rule XX is of great practical importance, the act of refloating being the most common general average act in Rhine navigation. If, according to its title, the Rule deals with towage assistance in general, the first phrase nevertheless specifies that it only concerns assistance to a stranded vessel.

We should note first of all that, for this Rule to apply at all, it is necessary that the assistance should constitute a general average act as defined in Rule I.

These costs of assistance may not necessarily constitute the only loss that the shipowner has suffered in the common interest. Rule XX therefore provides for three other possibilities which can give rise to allowances in general average, namely:

Damage suffered by the assisting vessel

a) It often happens that the assisting vessel sustains damages which have their origin in the act of assistance. It is reasonable that its owner should be compensated for them.

But a difficulty presents itself in respect of those damages suffered by the assisting vessel other than during the refloating operation properly so called, whether before the attachment of the tow line or after it has been let go. It might, for example, seem unjust to make the assisting party bear the damage suffered by his vessel as a result of a grounding sustained during his approach to the stranded vessel. On the other hand if such a stranding takes place while the assisting vessel, en route towards a stranded vessel, is still some kilometres away, this event must remain the responsibility of the assisting vessel. The Rule tries to overcome these various difficulties by stipulating that the damages suffered by the assisting vessel, while it is in the 'danger zone', may be regarded as having been sustained during the assistance properly so called. This test is doubtless rather vague but it is difficult to arrive at a greater degree of precision. In fact, to apply this Rule correctly, it is necessary always to keep in mind its spirit which seeks to admit the allowance in general average only of those losses having a direct connection with the operation of towage assistance properly so called.

The loss of employment of the assisting vessel during the execution of repairs

b) The assisting party will still not be completely indemnified if he is reimbursed only for the cost of repairs. There is also the question of the loss of employment of the assisting vessel during the execution of these repairs. This is why the Rule stipulates that this loss, although indirect, still forms part of the costs of assistance allowed in general average.

The claims of third parties against the assisting party

c) Finally, it may be that the assisting party in his turn has to provide indemnities to third parties to whom he has caused damage during the course of the assistance he was lending to the stranded vessel. It goes without saying that the sums paid under this heading must themselves form part of the total costs of assistance allowed as general average. However, the Rule does not allow as general average any indemnity the assisting party has to pay in respect of personal injuries caused by him during the assistance. In practice he would therefore be reimbursed only for amounts paid by him in respect of damage caused to another vessel, including loss of earnings suffered by the vessel during the period required for its repair.

The actual salvage payment

The amounts allowed in general average can therefore include only the elements described above. However, Rule

XX only applies to the contractual relationship existing between the shipowner and the parties interested in the cargo: the party rendering assistance is not a party to any stipulations which such contract contains.
If therefore he does not intend to content himself with the indemnity calculated on the basis of the Rule XX, he can very well request and obtain a larger sum.

Recourse to a judge or an arbitrator
In the first paragraph of Rule XXIII a disposition has been inserted according to the terms of which indemnities fixed by a judicial or arbitrative decision will be allowed in full in general average.

Paragraph 2
Pushing
Navigation by pushing has developed to such a point that it is necessary to take account of it in refloating operations. The Rule is applicable by analogy in cases of assistance not by pulling but by pushing.

RuleXXI
Lighterage

1. When the storage ashore or transshipment of all or part of the cargo constitutes a general average act, there shall be allowed in general average only:
   a) expenses occasioned by the discharge, the period in lighters or on land and the reloading of the lightered cargo.
   b) the value of material lost and/or the cost of repairing the damage sustained by the lighters in the course of the lighterage.
   c) indemnity for demurrage corresponding exclusively with the period of immobilization of the lighter during the execution of replacement and/or repair work as referred to above.
   d) damage sustained by the assisted vessel during these operations.
   e) loss and damage sustained by the discharged cargo, in the course of the handling as well as during the storage on land or in the lighters.
   f) the premium for insurance, if any.
2. When the vessel is lightered in the normal course of the voyage, there will be no general average.

Recapitulation of general principles
Very often the act of lightering cargo constitutes a general average act. In accordance with Rule I it will fall into this category when lighterage is performed in extraordinary circumstances and with the aim of saving with one act of common salvage the vessel and her cargo from a common peril. In all other cases lighterage charges or refloating damage will be for the account of the party who has incurred the expense or suffered the damage.

Restrictive definition
The first paragraph of the Rule does not modify in any way the general rules applicable to general average and the conditions in which lighterage may be considered as a general average act. The Rule, however, (which has its origin in paragraph 82 sub-paragraph 2 of BSG) is not without interest: on the contrary. In its first paragraph it gives a restrictive definition of the losses which can be allowed as general average when the particular lighterage constitutes a general Average act. In theory the restrictive character of the Rule limits the scope of general average. This restriction, however, is not very important: it is difficult in practice to imagine a case in which an expense normally admissible in general average would not be admitted as such by a reason of the restrictive definition of Rule XXI. A single example comes to mind: in order to lighter her cargo a vessel must put into a port and remain there some time.

The port dues which are the consequence of the lighterage will not, however, be admitted in general average because they do not figure in the restrictive definition contained in Rule XXI.

Extension of the scope of general average
The Rule admits in general average the insurance premium paid to cover the risks run by the vessel or her cargo; such insurance being considered as a direct consequence of the lighterage (compare this with Rule Xc of the York-Antwerp Rules).
Thus, in the case in which fire occurs in the cargo during its storage ashore, the insurance premium will be admitted in general average, but the community of interests in the vessel and cargo will be credited with indemnities under this insurance only when the fire must be considered as the direct consequence of the lighterage, which will be rarely.
Restrictive character of the provisions of Rule XXI
It is necessary to bear in mind at this point that the expenses and sacrifices set out in Rule XXI do not necessarily have to have, in themselves, a general average character. Thus, the dispositions contained in Rule XXI take precedence over the Rules of principle I to V, in such a way that an expense or damage which in terms of these Rules would not have been admitted as general average, will nevertheless be allowed as general average if it is covered by the provisions of Rule XXI. Besides, Rule XXIII stipulates that it is necessary that the expense or damage included in the provisions of Rule XXI should be the direct consequence of lighterage in order to be allowed as general average, thus excluding the damages which arise during the storage ashore or in lighters and which would have no causal relationship with such storage or lighterage. By way of example, we might indicate that there should be no allowance in general average in respect of damages caused by fire in lightered cargo during its storage ashore for the reason that there is no causal connection between the lighterage and the fire. In the same way, the damages suffered by the lightered vessel or by the lighters as a result of a collision will only be allowed as general average when that collision is the direct consequence of the lighterage.

Rule XXII
Wintering

Only expenses of entering and leaving, towage costs, port dues, and the expenses for guarding the loaded vessel shall be allowed as general average when, by reason of ice, the vessel is constrained to seek refuge in an intermediate harbor. There shall also be allowed the expenses of lightering and damage occasioned by lightering when, in order to lighten the vessel, the cargo is discharged, in whole or in part, into lighters.

Ice
This Rule reflects in its first paragraph the dispositions of paragraph 82 sub-paragraph 5 of the BSG. The act of seeking a refuge is a general average act only when the master is constrained to do so by reason of ice. Although the expression ’ is constrained to do so’ does not fall precisely within the Rule of Principle I, no difference of substance should be implied from this difference of terminology: the act of seeking refuge is only general average if it otherwise falls within the terms of Rule I. It is necessary that the measure be decided upon ’ with the aim of saving vessel and cargo from a common peril’ but it is not necessary that in the case of ice this peril should be more serious than in other cases of general average.
From this point of view Rule XXII respects the general principles of general average. But on the other hand, it does extend the scope of its application by not demanding that the ice which constrains the master to seek refuge should be ’an extraordinary circumstance’. Even if the voyage has been undertaken in winter and even if at the time of concluding the contract of affreightment one would have to have foreseen atmospheric conditions hindering its normal performance, wintering must be considered as a general average act.

The notion of an intermediate harbour
The harbour where the master seeks refuge must be an intermediate harbour, that is to say a harbour the vessel would not normally enter. It may very well be the port of departure so long as the vessel has first left it and then returned, the voyage having already started. But it goes without saying that the port of destination can never have the character of an 'intermediate harbour' because it is already included in the vessel's normal itinerary.

The notion of refuge
It is necessay that the master should be seeking refuge: if therefore he cannot leave a harbour because of ice, this harbour does not become a port of wintering in the sense of Rule XXII.

Restrictive list of allowable expenses
The expenses to be allowed in general average in the case of wintering are restrictively enumerated in Rule XXII: they include principally charges for watchmen on a loaded vessel: but neither the wages and maintenance of the crew nor the charges for watchmen after the complete discharge of the vessel are allowable in general average.

Lighterage
It often happens that after having entered a port of wintering, or even in order to be able to get into it, the vessel must be lightered. In such a case, lighterage as well as the damages which result from it will be allowed in general average, but only when the discharge has been made into a lighter and not ashore.

Rule XXIII
Provisions applicable to Rules XX, XXI and XXII

1. Notwithstanding the restrictive provisions of the rules quoted above, indemnities which have been fixed by judicial decisions or at arbitration shall be allowed as general average.
2. All the provisions stated in these same Rules, as well as those stated in par. 1 of this Rule shall be applicable, without restriction, even when the assisting and the assisted ships belong to the same management.
3. The allowances provided for by these Rules are limited to losses and damages which are the direct consequences of assistance, lighterage, or towage.
4. The general average allowances shall also include any salvage remuneration in which the skill and efforts of the salvors in preventing or minimizing 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.
   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.

As has been noted in the Commentary on Rule XX, third parties to the contract of carriage cannot be bound by the General Average Rules IVR, these having the force of law only so far as parties to the particular contract are concerned.

Intervention of a judge or arbitrator
However, Rules XX, XXI and XXII limit the amount of certain allowances in relation to indemnities paid by the master to third parties. If such indemnities are greater than the amount for which the master can obtain reimbursement in general average, he takes the risk of this additional exposure. To smooth out this anomaly, Rule XXIII stipulates that in cases dealt with in the three preceding Rules, indemnities fixed by way of litigation or

arbitration are always admitted in their entirety in general average, even if they exceed the limits set by these Rules. It will naturally come to the same thing if the contributing interests reach an amicable agreement on the amount of the indemnity. If, for example, the charges for watchmen at the port at which the master has taken refuge by reason of ice (Rule XXII) are fixed by an arbitrator at a level higher than the tariff adopted by IVR, it will be the charges actually incurred, to the extent that they are awarded by the arbitrator, which are allowed as general average and not merely the figures of the tariff. Similarly, if, according to an arbitrative decision, the lighter in the case of Rule XXI c) receives an indemnity for demurrage corresponding to a period which is longer than that prescribed by the Rule, it is this indemnity which is allowed as general average.

"Sister-ship clause"
Paragraph 2 of Rule XXIII reflects a normal bill of lading clause, the "Sister-ship clause". It stipulates that the fact of a vessel having been assisted or lightered by a unit belonging to the same owner does not in any way alter the principle of allowance in general average of the remuneration due for assistance, lighterage, etc. This disposition is equitable: in fact there is no reason why the owner of the assisting vessel should be deprived of his right to remuneration by the sole fact that the vessel assisted also belongs to him. If this remuneration in its turn exceeds the limits imposed by the preceding Rules it will not be wholly admitted in general average except in cases where it has been fixed by decision of a judge or an arbitrator.

Indirect consequences
The third paragraph of Rule XXIII only reflects the principle set out by Rule IV: indirect losses are never allowed in general average.

Environmental aspects
Paragraph 4 has been added to take account of the International Convention on Salvage concluded in London in 1989, which according to Art. 1 a) also applies to inland navigation. Art. 13 paragraph 1 b) of this Convention identifies as one criterion for fixing the amount of salvage remuneration: "the skill and efforts of the salvors in preventing or minimizing damage to the environment". Art. 14 refers to special compensation for a salvor who, whether successfully or not, has carried out salvage operations in respect of a vessel which by itself or its cargo threatened damage to the environment, and has failed to earn a reward under Art. 13 at least equivalent to the special compensation assessable in accordance with this Article. A resolution adopted by the Conference of the International Maritime Organisation (IMO), which drafted this Convention calls for the special compensation referred to in Art. 14 of the Convention, payable by the Shipowner, not to be subject to general average. On the other hand, the salvage remuneration referred to in Art. 13, even if enhanced as a consequence of the "environmental efforts of the salvors", shoud be allowable in general average.
At the request of IMO, Rule VI of the York Antwerp Rules 1974 was accordingly amended in June 1990 and in view of the possible application of the Convention to inland navigation the Rhine Rules IVR 1979 presently called General Average Rules IVR have now been similarly adapted by adding a fourth paragraph to Rule XXIII.

INTERNATIONAL CONVENTION ON SALVAGE, 1989.
Article 13:
Criteria for fixing the reward
1) The reward shall be fixed with a view to encouraging salvage operations, taking into account the following criteria without regard to the order in which they are presented below:
a)the salved value of the vessel and other property;
b) the skill and efforts of the salvors in preventing or minimizing damage to the environment;
c) the measure of succes obtained by the salvor;
d) the nature and degree of the danger;
e) the skill and efforts of the salvors in salving the vessel, other property and life;
f) the time used and expenses and losses incurred by the salvors;
g) the risk of liability and other risks run by the salvors or their equipment;
h) the promptness of the services rendered;
i) the availability and use of vessels or other equipment intended for salvage operations;
j) the state of readiness and efficiency of the salvor's equipment and the value thereof.

2) Payment of a reward fixed according to paragraph 1 shall be made by all of the vessel and other property interests in proportion to their respective salved values. However, a State Party may in its national law provide that the payment of a reward has to be made by one of these interests, subject to a right of recourse of this interest against the other interests for their respective shares. Nothing in this article shall prevent any right of defence.

3) The rewards, exclusive of any interest and recoverable legal costs that may be payable thereon, shall not exceed the salved value of the vessel and other property.

Article 14:
Special compensation
1) If the salvor has carried out salvage operations in respect of a vessel which by itself or its cargo threatened damage to the environment and has failed to earn a reward under article 13 at least equivalent to the special compensation assessable in accordance with this article, he shall be entitled to special compensation from the owner of that vessel equivalent to his expenses as herein defined.
2) If, in the circumstances set out in paragraph 1, the salvor by his salvage operations has prevented or minimized damage to the environment, the special compensation payable by the owner to the salvor under paragraph 1 may be increased up to a maximum of 30 % of the expenses incurred by the salvor. However, the tribunal, if it deems it fair and just to do so and bearing in mind the relevant criteria set out in article 13, paragraph 1, may increase such special compensation further, but in no event shall the total increase be more than 100 % of the expenses incurred by the salvor.
3) Salvor's expenses for the purpose of paragraphs 1 and 2 means the out-of-pocket expenses reasonably incurred by the salvor in the salvage operation and a fair rate for equipment and personnel actually and reasonably used in the salvage operation, taking into consideration the criteria set out in article 13, paragraph 1 h), i) and j).
4) The total special compensation under this article shall be paid only if and to the extent that such compensation is greater than any reward recoverable by the salvor under article 13.
5) If the salvor has been negligent and has thereby failed to prevent or minimize damage to the environment, he may be deprived of the whole or part of any special compensation due under this article.
6) Nothing in this article shall affect any right of recourse on the part of the owner of the vessel.

Rule XXIV
Port of refuge

1. When, apart from the case mentioned by Rule XXII, the barge master performs a general average act by taking his vessel into a port and/or by remaining there, only the expenses of entering and leaving, towage costs, port dues and the expenses for guarding the loaded ship shall be allowed in general average.
2. However, when a vessel enters a port and/or remains there because of low water, this shall not justify any allowance in general average.

Restriction to general average
Rule XXIV reflects to a large extent the provisions of Paragraph 83 of BSG.
In Rhine navigation, it often happens that the master, following damage sustained by this vessel or her engines, feels obliged to enter a port to save the adventure from imminent loss. In doing this he is performing a textbook general average act. This is an example of one of the general average case-types in maritime navigation, where not only the costs of entering but also all the expenses incurred during the detention at the port of refuge, including wages and maintenance of the crew, are admitted as general average.
It is otherwise in Rhine navigation. It was feared that during a period of economic depression a master might be tempted to take refuge in a port and, during the period of crisis, effect long repairs there, charging to general average

his maintenance, his wages and those of his family engaged as crew on the vessel.
Rule XXIV therefore only admits as general average charges from which neither the master nor his family can draw any benefit. The wages and maintenance of the crew as well as the fuel consumed etc. are therefore not allowable.

Period of low water
Paragraph 2 of Rule XXIV further restricts the notion of a port of refuge. It envisages the case in which the master, as a result of low water, is obliged to enter a port of refuge or to remain there. This never constitutes a general average act even if the conditions prescribed by the Rules of principle are present. This rigorous disposition also finds its origin in the fear described above.
It happens quite often that on the Rhine the level of water can be so low that navigation is interrupted. Once and for all Rule XXIV stipulates that this circumstance does not justify the allowance in general average of charges for entering a port of refuge, the extraordinary character of such an operation not being sufficiently established.

Rule XXV
Convoys

1. For the purpose of this Rule, a convoy is considered to be a group of vessels coupled with each other in such a way that none of the vessels has any freedom of independent movement.
2. When measures are taken to preserve a vessel and/or some or all vessels of such convoy and their cargo from a common peril, Rules I to XXIV shall be applied accordingly. A vessel forming part of a convoy is not in common peril with another vessel of that convoy, if by a mere uncoupling of the connection with such other vessel she can be placed in safety.
3. If a common peril exists Rules I to XXIV shall be applied as much for the profit as to the charge of those concerned in the vessels of the convoy and their cargoes.
4. For the calculation of contributory values and allowances the vessels will be considered to be ’the vessel’ and the total cargo carried in those vessels will be considered to be ’the cargo’ in the sense these words bear in Rules I to XXIV.

Convoy
In the field of general average the development of transport by convoys has posed some interesting problems. In the first place one should know in what circumstances one ought to call several vessels joined together a ’convoy’. The criterion for this description is found in the loss of liberty of movement of each vessel. If none of the vessels navigating together can be moved without the others following this movement, they form parts of a convoy: if the connection between the vessels still permits individual movement one cannot consider such vessels as forming a convoy. In order that there may be general average two conditions must always be fulfilled, namely:
a) that the unit formed by one vessel and its cargo should be threatened by a common peril, and
b) that measures should have been taken with the object of securing the common safety of this unit of vesseland cargo from that peril.
When there is no common danger to the unit but the peril threatens only either the vessel or the cargo, or when the measures have not been taken for the whole unit but for one of its component parts alone, there is no general average and the sacrifice must remain for the account of the party for whose benefit it was made.
For the convoy and its cargo the question is much more complicated.
Can one say that the pushboat and the barges being pushed constitute ’the vessel’ or that the cargo loaded in the different barges is a ’cargo’ unit, or even that the pushboat, the barges and the totality of the cargo form a unit which one could call ’a vessel and its cargo’? Or is it necessary, on the contrary, to start from the idea that there are as many ’vessel/cargo’ units as there are loaded barges, and that the pushboat remains separate from the whole as, in any case, does a tug?
The ’vessel/cargo’ unit is already a juridical concept of exceptional character and in consequence, and a fortiori, a unit formed by several vessels and their cargoes would be even more exceptional.

In the circumstances it is impossible to decide in advance if one should speak in any particular case of a convoy as a separate unit formed by the pushboat, the barges and the totality of the cargo or if one ought to treat them as separate units. However, it is necessary to foresee the case in which there is a common danger to all or some of the units of a convoy and in such cases it will be manifestly unjust not to apply the concept of general average.

Let us take, for example, the case in which fire in a cargo of explosives in one of the barges threatens to destroy the cargo, the barges and the pushboat: would it not be unjust to oblige the cargo and the barge on which the fire started alone to bear the costs of extinguishing measures without making the other interests saved contribute.?

It is this which is foreseen in the second paragraph of Rule XXV. The great difficulty, however, resides in knowing if there has been a common peril and, if so, to what parts of the convoy the peril has been common: to all or only to some. The Rule tries to resolve this question of fact by stipulating that a part of the convoy which can be placed in a position of safety by a simple act of separation from the other parts of the convoy which are in peril is not itself in common danger with the rest of the convoy. If therefore, for example, a vessel forming part of a convoy strands and the other vessels of the convoy and the pushboat can easily detach themselves from it, there is no danger which is common to the stranded vessel and the other units of the convoy regardless of whether they have actually been detached. It comes to the same thing when all the vessels strand but the pushboat refloating itself can place itself in safety. Even if he does not take advantage of this possibility but immediately begins manoeuvres to 'refloat' other vessels in the convoy it remains outside their community.

There will therefore be a single general average for all units of a convoy or several of them in the sense of the first paragraph every time that:

a) a common danger threatens not only one barge and its cargo but all or several of the units forming the convoy and that
b) the measures taken have as their aim the common safety of these units.

However, by the insertion of such a Rule the proposed aim has not yet been achieved. The General Average Rules IVR, inserted in a contract by the stipulation 'general average to be adjusted according to the General Average Rules IVR' only bind the parties to that contract. No third party to the contract can obtain rights or sustain obligations under it. Now, contracts relating to the transport of goods in convoys are of two types: the contract for pushing entered into between the pushboat and barges, and contracts concluded with cargo interests for the transport of their merchandise, i.e. bills of lading. The insertion of a new General Average Rule in each of these types of contract will make it enforceable between the parties to such contracts, that is to say on the one hand between the owner of the pushboat and the owners of the barges and, on the other, between the owners of the barges and the owners of the cargo transported therein.

However, no contractual connection exists between all the parties interested. There is no contract between the owner of the pushboat and the owners of the cargo, nor between the owners of each of the barges, nor between each of the cargo owners, nor between the owners of the barges on one side and the owners of the cargo on the other.

And because these contractual relationships are absent, it is not possible to reach the desired end by the simple process of inserting a new General Average Rule in an already existing contract. To create a contractual connection between the parties described one would have to draw up a contract stipulating that when there is common danger or when measures have been taken for the common safety there will be general average and have this contract signed before the commencement of the voyage. A difficult and complicated procedure.

Fortunately the law (that is to say the laws all the Rhine States) has a simpler way of reaching the same end. It achieves this by making it possible to insert in a contract between A and B a stipulation in favor of C which either A or B is to fulfill. C is then able, basing his claim on the stipulation in the contract between A and B which is otherwise foreign to him, to enforce his rights against A or B.

The solution has been found along these lines. There should be introduced into each contract for pushing and into each bill of lading a stipulation, that in the circumstances indicated (that is to say common danger and common salvage) the parties to such contracts promise those who are not parties to the contract, that they (the parties) will contribute to the general average in which all are involved.

The simplest thing to do is to insert this stipulation in the General Average Rules IVR and then to insert these Rules themselves by the clause already in use: 'general average to adjusted according to General Average Rules IVR'. However, one cannot stop there. The application by analogy of the General Average Rules to the relationship between various interested parties in a convoy carries with it several difficulties which, in normal circumstances would be easier to resolve.

For the calculation of contributory values and the calculation of allowances one should treat the pushboat with the barges as the 'vessel' (Rule XXV-4) and the totality of the cargoes as the 'cargo' (Rule XXV-5).

Rule XXVI

Trucks, Containers, Pallets and similar articles of transport

1. Whenever, in the preceding rules, reference is made to “cargo” this should be understood to include, irrespective of their individual ownership, trucks, containers, pallets, and similar articles of transport which are or may be used to consolidate goods.
2. Allowances and contributory values in respect of the articles of transport mentioned in paragraph 1) shall be based upon their actual value on the last day of discharge from the vessel, or at the termination of the adventure in case this ends at a place other than the original destination, and not upon any CIF value as mentioned in Rules VVI and XII.
3. The provisions of Rule XIII shall apply to all damage surveys coming within the terms of Rule XIII 1. a), and involving the articles of transport mentioned in paragraph 1).

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1) Transport by “container” has now increased to such an extent that difficulties may arise in calculating damages and losses, as well as contributory values. There may be uncertainty whether containers belonging to Owner of the ship or to the Carrier fall within the description of “cargo”. To put an end to such uncertainty, the Rule states that in the interpretation of the General Average Rules, “containers”, irrespective of their individual ownership, are to be considered as “cargo”. They form, as it were, a fourth interest together with the ship, freight and traditional cargo. Trucks, Containers, Pallets and similar articles of transport
2) What applies to “containers” in this Rule applies equally to similar articles of transport such as pallets, etc. The text is framed in the same terms as Article 4, para. 5 (c) of the Hague-Visby Rules; such derivation confers the advantage of using the recognised terminology of internationally acknowledged rules.
3) Carriage of loaden trucks and trailers on “Ro Ro” vessels is becoming increasingly common on the Rhine, and it is desirable to lay down that rules relating to cargo also apply to such trucks and trailers.