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ECONOMIC COMMISSION FOR EUROPE

INLAND TRANSPORT COMMITTEE

Working Party on Inland Water Transport
(Forty-seventh session, 7-9 October 2003,
agenda item 8 (a))

**BUDAPEST CONVENTION ON THE CONTRACT FOR THE
CARRIAGE OF GOODS BY INLAND WATERWAY (CMNI)**

Note by the secretariat

At its forty-fourth session, the Working Party noted that the two additional protocols originally annexed to the draft CMNI Convention (see document ECE/TRANS/CMNI/CONF/2) had not finally been adopted by the Diplomatic Conference held in Budapest from 25 September to 3 October 2000. The Working Party decided to discuss whether the former additional protocols might not be adopted in the form of an SC.3 or Inland Transport Committee resolution (TRANS/SC.3/153, para. 28). Following its consideration of the matter, the Working Party at its forty-sixth session requested the secretariat to prepare a draft resolution calling for the implementation by Governments which so wished of the provisions of the two protocols formerly annexed to the draft CMNI Convention, as published under the symbol TRANS/SC.3/2001/3, subject to possible drafting corrections which might be made by the secretariat in accordance with the proposals contained in the documents received to date from member Governments (TRANS/SC.3/158, para. 38).

The secretariat reproduces below the text of the draft resolution of the Working Party on the subject. The drafting amendments by the secretariat appear in bold.

**PROTOCOLS FORMERLY ANNEXED TO THE DRAFT BUDAPEST
CONVENTION ON THE CONTRACT FOR THE CARRIAGE OF
GOODS BY INLAND WATERWAY (CMNI)**

Resolution No. ...

adopted by the Working Party on Inland Water Transport on ...

The Working Party on Inland Water Transport,

Recalling the text of the Budapest Convention on the Contract for the Carriage of Goods by Inland Waterway (CMNI) adopted by the Diplomatic Conference held in Budapest from 25 September to 3 October 2000 (published as ECE/TRANS/NONE/2002/4),

Further recalling the texts of the additional protocols to the Convention drafted by the Preparatory Committee of Government Experts established jointly by the Central Commission for the Navigation of the Rhine, the Danube Commission and the United Nations Economic Commission for Europe, contained in document ECE/TRANS/CMNI/CONF/2,

Being of the view that the provisions of these two protocols approved by the Preparatory Committee could be useful instruments for the Governments of States whose domestic legislation does not, for the time being, contain special provisions in this regard,

Believing that the implementation by those Governments of the provisions of the protocols may enable progress to be made in the pan-European harmonization of international private river law,

Bearing in mind the report of the Working Party on Inland Water Transport on its forty-seventh session (TRANS/SC.3/161, para. ...),

Invites member Governments which so wish to take account of the provisions of the two protocols, the texts of which are annexed to this resolution, with a view to supplementing or improving their domestic legislation. In so doing, Governments are requested to bear in mind that the texts of the two protocols were not subjected to the detailed consideration nor the final approval of the Diplomatic Conference, although a number of comments and proposals for their amendment were formulated, in particular, by the delegation of Germany (see document ECE/TRANS/CMNI/CONF/6),

Requests Governments to inform the Executive Secretary of the Economic Commission for Europe whether they accept this resolution,

Requests the Executive Secretary of the Economic Commission for Europe periodically to place the question of the implementation of this resolution on the agenda of the Working Party on Inland Water Transport.

PROTOCOL No. 1
CONCERNING LOADING AND DISCHARGE TIMES AND DEMURRAGE
IN INLAND WATER TRANSPORT

Article 1

Loading and discharge times

1. When the loading of the goods is the responsibility of the shipper or the discharge that of the consignee, they must, within the agreed or prescribed periods for loading and discharge, load or discharge the quantity of goods, of which the weight, dimensions or number have been defined, as agreed in the contract of carriage, or, where no such contractual provisions exist, in accordance with national regulations.
2. Where no contractual provisions or national regulations exist, the shipper or the consignee must load or discharge a minimum of 250 t of bulk goods or 125 t of packages per working day, in accordance with article 3, paragraphs 1 to 5.

Article 2

Points of loading and discharge

1. The carrier must present the vessel intended for the carriage of goods at the point of loading indicated by the shipper and, on arrival at the place of destination, at the point of discharge indicated by the consignee.
2. If the indication of the point of loading or discharge is not given in sufficient time before the place of loading or discharge is reached, or if the draught, the safety of the vessel or local regulations and installations do not permit the carrier to comply with the indications given, he may, in the absence of new guidelines and despite the request made to him in that regard, berth at any other suitable point of loading or discharge, taking the shipper's or the consignee's interests into consideration as far as possible.
3. The carrier shall not be required to present the vessel at different points of loading or discharge unless it has so been expressly agreed or when special circumstances relating to navigation or administrative measures require another point of loading or discharge to be designated.
4. In the case of paragraphs 2 and 3 **of this article**, the carrier is entitled to reimbursement of the additional expenses occasioned. The loading and discharge times as defined in article 1 shall not be affected by the modification of the point of loading or discharge.

Article 3

Beginning and end of the loading and discharge times

1. The loading and discharge times shall begin, in accordance with local custom, at the time of the working day indicated by the carrier in his notice to the shipper for loading or to the consignee for discharge of the vessel and, unless there are contractual provisions to the contrary, not earlier than 24 hours following the communication of the notice.
2. Notice of readiness for loading or discharge must be given during local working hours. Notice given later, or on a Sunday or a holiday, shall be considered as having been given on the next working day. The notice shall be effective even if the vessel has not yet reached the point of loading or discharge. Such notice shall nevertheless be deemed not to have been given and must be repeated when the vessel is not ready for loading or discharge at the start of the period indicated in the notice. In this case, the carrier must reimburse the resulting additional costs.
3. Notice of readiness for loading or discharge may be given in any form usual in the particular trade, including verbally. It shall become effective when received by the shipper or consignee or at the address indicated by them. If it is not possible to contact the shipper, consignee or designated recipient, the notice may also be transmitted to the port authorities with effect on arrival of the vessel or made public according to usual local practice. If the person to whom the notice is addressed refuses to acknowledge its receipt, the carrier shall have the right to have it registered by an official document at that person's expense.
4. If the prior notice has been waived, the loading and discharge time is to start as from the time when the vessel is presented as ready for loading or discharge.
5. If it is agreed that loading or discharge may also take place on a Sunday or a normal holiday, the loading and discharge time shall begin on that day.
6. Loading and discharge times end when the quantity of goods specified in article 1 has been loaded or discharged in its entirety.

Article 4

Loading and discharge times for parts of the cargo

1. For the loading or discharge of partial bulk or packaged cargoes, the prescribed loading and discharge time shall be proportional to the share of the full cargo represented by the partial cargo.
2. In such cases, the times shall not include the time required to travel from one port to another or from one point of loading or discharge to another or movement within a port or within a loading or discharge berth.

Article 5

Demurrage

1. If the shipper or consignee, when responsible for loading or discharge, is unable in the prescribed period, to load or discharge the minimum quantities specified in article 1, he shall pay demurrage according to the category and size of the vessel for any time in excess of the loading or discharge time.
2. If the amount of the demurrage to be calculated on the basis of days or hours of time exceeding the period is not agreed in the contract of carriage, it shall be established by national regulations or, in their absence, in accordance with local practice.
3. Demurrage is due continuously and without interruption for each day and each hour of excess time, including Sundays and normal holidays, as well as for days and hours during which loading or discharge is not possible on account of events or circumstances for which the carrier is not responsible.

Article 6

Waiting period

1. Unless the contract for carriage provides otherwise, after the expiry of the loading time or a consecutive waiting period stipulated in the contract of carriage, the carrier shall not be required to wait for the load to be made ready, even if loading is not incumbent on the shipper.
2. If by the expiry of the loading time or an agreed consecutive waiting period the shipper has delivered no goods, the carrier shall no longer be bound by the contract and shall be entitled to claim the demurrage and half¹ of the agreed freight.
3. If during the period referred to in paragraph 2 **of this article** only part of the cargo has been delivered, the carrier shall be entitled, if the shipper does not terminate the contract, to commence the voyage with an incomplete cargo and to demand the freight for the agreed full cargo and the reimbursement of the costs occasioned by the fact that the cargo is incomplete.

¹ The delegation of Germany to the Diplomatic Conference on the CMNI proposed the following wording for this paragraph (see document ECE/TRANS/CMNI/CONF/6):

“If by the expiry of the loading time or **if necessary** an agreed consecutive waiting period, the shipper has delivered no goods, the carrier **may terminate** the contract and claim the payment of either of the following amounts:

- (a) **one third of the agreed freight or**
- (b) **the demurrage and the reimbursement of the costs occasioned and the loss caused.”**

4. If the shipper terminates the contract in the case of paragraph 3 **of this article**, he shall bear the costs of discharging the goods and shall reimburse the carrier for the demurrage and half of the agreed freight for the full cargo.

5. In the case of articles 2, 3 and 4, earnings from the freight for other goods shall not be taken into account.

Article 7

Impediments to delivery

1. After the expiry of the loading time or any consecutive waiting period that may have been agreed, the carrier shall not be required to wait any longer to discharge or, if discharge is not incumbent on the shipper, to await receipt of the goods. The carrier shall then be permitted to discharge the goods himself, at the consignee's expense, and to store them according to local requirements in a warehouse or in some other safe form at the expense and risk of the consignee. The shipper shall pay the carrier the charges and expenses not paid by the consignee.

2. If the consignee cannot be determined, or if the consignee refuses to receive the goods, or if there is any other impediment to delivery, the carrier shall notify the shipper without delay and ask for instructions. If the circumstances render this impossible, or if the shipper delays in giving instructions, or if the instructions cannot be executed, the carrier may proceed in accordance with paragraph 1 **of this article**.

Article 8

National regulations

National regulations, under article 1 and article 5, paragraph 2, concerning the duration of loading and discharge times and the calculation of demurrage are laid down by the competent authorities² after hearing the parties concerned and taking account of the need for rapid transport operations and of the technological level.

² Note by the secretariat: It is proposed that these words should be deleted since the protocols are no longer part of the CMNI Convention.

PROTOCOL No. 2
CONCERNING THE CALCULATION OF FREIGHT AND THE
DISTRIBUTION OF SHIPPING CHARGES IN INLAND
WATER TRANSPORT

Article 1

Calculation of freight

1. Freight shall comprise only actual transport by vessel; the shipper shall bear the loading and stowing charges and the consignee the discharge costs, unless there are contractual provisions to the contrary.
2. When agreement is reached on the freight in terms of the dimensions, weight or quantity of the goods, the particulars contained in the transport document shall be deemed to be authentic, unless there is proof to the contrary.
3. For goods accepted for carriage, in the absence of an agreement, the freight to be paid shall be that prescribed by the national regulations or customs at the place of loading at the time of loading.

Article 2

Navigation charges

1. In the absence of express contractual provisions, the carrier shall bear the navigation charges, particularly harbour, lock, canal and bridge dues, pilotage and charges incurred in the ordinary course of the voyage for pushing and towing and, subject to article 4, paragraph 6, letter (a), lighterage.
2. The carrier may claim reimbursement of the following charges and expenses:
 - (a) Quayage, crantage and weighing dues, as well as harbour dues and taxes according to the quantity of goods;
 - (b) Customs dues, customs clearance dues, turnover taxes and goods insurance premiums, as well as:
 - (c) Charges for special measures taken at the request of the shipper or the consignee such as breaking-up of ice around the vessel, taking over or unloading of goods because of icy conditions, storms or floods, or at night or on Sundays or holidays;
 - (d) For the carriage of dangerous or polluting substances and wastes, charges for environmentally-friendly cleaning of vessel holds or the elimination of cargo residues in accordance with the administrative requirements.
3. The above provisions do not affect cases of general average.

Article 3

Low water

1. The agreed freight shall be increased by a low-water supplement for carriage on inland waterways where water levels fluctuate, unless account was taken of this when the freight was agreed.
2. The amount of the low-water freight supplements shall be established by agreement between the parties, or in the absence of agreement in accordance with commercial usage.

Article 4

Obstacles to navigation

1. The agreement on the establishment of the freight assumes free navigation without impediment.
2. The following events and situations are deemed to be obstacles to navigation:
 - (a) A situation which the carrier could not have prevented and the consequences of which he could not have averted, such as explosion, fire, war, mobilization, military operations, riots, terrorist activities, strikes, lockouts, blockades, or measures and actions by the administrative authorities;
 - (b) Barriers to and accidents in navigation, incidents or interruption of service in locks, canals or harbours, or stoppage of navigation;
 - (c) Natural phenomena such as floods, ice and danger of ice, and high and low water, which prevent navigation from proceeding.
3. If an obstacle to navigation under paragraph 2 **of this article** arises before the goods are loaded on board the vessel, both carrier and shipper may terminate the contract without damages being incurred. If the goods are loaded but the voyage has not commenced, loading and discharge charges and demurrage, if these operations have taken place outside the loading time, shall be the responsibility of the shipper.
4. When an obstacle to navigation under paragraph 2 **of this article** arises after the loading of the goods and the start of the voyage, the shipper or the consignee, if the shipper's right of disposal has been transferred to him, may terminate the contract, on the understanding that he must take over the costs of discharging the goods and preparing for the voyage and freight in proportion to the distance travelled.
5. If, instead of terminating the contract, the shipper or the consignee intends to wait until the obstacles to navigation have been removed, he must pay the carrier an amount of demurrage during the waiting period at least equal to the amount that would be due for exceeding the loading period, additional charges for the protection of goods and, if necessary, a low-water supplement, in accordance with article 3.

6. If, despite the obstacle to navigation, it is possible to continue and complete the voyage without danger for the vessel or the goods loaded, the shipper or the consignee may require the voyage to continue; in this case he must pay:

- (a) Lighterage and barge charges if the vessel requires to be lightened; and
- (b) Either the daily freight rates practised or usual at the time, taking account of the obstacle to navigation, or the freight supplements, such as low-water surcharge or demurrage, as the carrier may choose; and
- (c) All additional charges and expenses occasioned in respect of navigation without impediment.

7. The carrier may make the execution of the shipper's or the consignee's instructions subject to paragraphs 5 and 6 **of this article**, provided that he is guaranteed the additional charges and expenses due.

8. The carrier may declare that while an obstacle to navigation exists in accordance with paragraph 2 **of this article** he is no longer required to take delivery of the goods to be carried and to carry them or reship them, even if the shipper or the consignee, under paragraph 6 **of this article**, requires the voyage to continue. He may exercise his rights in accordance with paragraphs 3, 4, 5, and 6 **of this article**. If the carrier's declaration is made once the goods have been loaded and after the start of the voyage, he shall place the goods at the disposal of the shipper or the consignee and deliver them to the nearest place of discharge, using lighters as necessary; as from this time, the goods shall no longer be in his charge. Also in this case, the additional charges and expenses occasioned are the responsibility of the shipper or the consignee, subject to cases of general average.

Article 5

Shipper's right of termination

1. Before the start of the voyage, with the exception of the cases mentioned in article 4, paragraphs 3 and 4, the shipper may not terminate the contract for carriage unless he pays half³

³ The delegation of Germany to the Diplomatic Conference on the CMNI proposed that the text of the article should be replaced by the following (see document ECE/TRANS/CMNI/CONF/6):

“Without prejudice to article 3, paragraphs 3 and 4 **the shipper** may not terminate the contract of carriage unless **he pays the carrier according to the latter's choice**, the loading and **discharge** costs and

- (a) **One third of the agreed freight or**
- (b) **In addition to any demurrage charge, compensation equal to the amount of the costs incurred and the loss caused and, where the voyage has begun, freight in proportion to the distance travelled in relation to the voyage overall.**

If the termination takes place for reasons that the carrier must accept, the carrier's right in accordance with letter (b) of the first sentence becomes void.”

of the agreed freight and, if the goods have already been loaded on board, the loading and discharge costs and, if these operations have taken place outside the loading time, demurrage.

2. If the vessel is ready to start the voyage, the shipper may only exercise his right of termination under paragraph 1 **of this article** on condition that he pays, in addition to the charges and expenses mentioned in paragraph 1 **of this article**, the agreed freight in its entirety.

3. No account shall be taken of the freight due according to paragraphs 1 and 2 **of this article** for freight which the carrier receives for other goods.

4. The provisions concerning the payment of the freight under paragraphs 1 and 2 **of this article** shall also apply to contracts which concern several transport operations over a specific period.
