

# **CENTRAL COMMISSION FOR THE NAVIGATION OF THE RHINE**

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Diplomatic conference organised by the CCNR  
for the adoption of the 2012 Strasbourg Convention  
on the Limitation of Liability in Inland Navigation  
(CLNI 2012)  
(Strasbourg, 25-27 September 2012)

## **Minutes**

of the Diplomatic Conference held from 25 to 27 September 2012  
at the headquarters of the Central Commission for the Navigation of the Rhine  
2 Place de la République  
Palais du Rhin  
67000 Strasbourg

List of participants  
at the CLNI Diplomatic Conference  
25 - 27 September 2012

## **GERMANY**

Ms Beate Czerwenka  
Ministerial Councillor  
Federal Ministry of Justice

Mr Johann-Hinrich Ernst  
Senior Advisor to the Ambassador  
Deputy Permanent Representative of the Federal Republic of Germany to the  
Council of Europe

Ms Franziska Metzner  
Judge  
Federal Ministry of Justice

Mr Norman Gerhardt  
Federal Ministry of Transport, Housing and Urban Development

Ms Steffi Bliedung  
Federal Ministry of Foreign Affairs, Berlin

## **AUSTRIA**

Ms Verena Cap  
Federal Ministry of Justice

## **BELGIUM**

Mr Geert van Keer  
General Advisor at the Directorate General for Bilateral Affairs and Trans-frontier  
Cooperation at the National Ministry of Foreign Affairs

Mr Herman Verschueren  
General Adviser  
National Ministry of Mobility and Transport  
DG – Land Transport

## **BULGARIA**

Mr Kamen Kitchev  
Deputy Minister  
Ministry of Transport, Information Technologies and Communications

Ms Silvina Bakardzhieva  
Ministry of Transport, Information Technologies and Communications

## **FRANCE**

Ms Edwige Belliard  
President of the CCNR  
Director of Legal Affairs at the Ministry of Foreign Affairs

Mr Olivier Guyonvarch  
Head of Sub-Directorate for the Law of the Sea, River Law and the Poles at the  
Ministry of Foreign Affairs

Mr Didier Beaurain  
Head of the Office for River Regulations at the Ministry of Ecology, Sustainable  
Development, and Energy

Mr Dominique Bellenger  
Editor at the Sub-Directorate for the Law of the Sea, River Law and the Poles at  
the Ministry of Foreign Affairs

#

**LUXEMBOURG**

Mr Max Nilles  
Senior Government Attaché  
Ministry of Sustainable Development, and Infrastructures  
with responsibility for the Directorate of Air and River Transport  
Ministry of Transport

**NETHERLANDS**

Mr Gert Mensink  
Senior Political Advisor  
Directorate of Maritime Affairs  
Ministry of Infrastructures and the Environment

Mr René Lefeber  
Legal Counsel  
Directorate of Legal Affairs  
International Law Division  
Ministry of Foreign Affairs

Ms Kirsten Redeker  
Legislative Lawyer  
Directorate of Legislation and Legal Affairs  
Ministry of Security and Justice

**POLAND**

Ms Alicja Nowak  
Chief Expert  
Department of Maritime Transport and Shipping Safety  
Ministry of Transport, Construction and Maritime Economy

**SERBIA**

Ms Mladen Mijovic  
Head Consul at the Consulate of the Serbian Republic in Strasbourg

**SLOVAKIA**

Mr Drahoslav Stefanek  
Ambassador Extraordinary and Plenipotentiary  
Permanent Representative of the Slovak Republic  
to the Council of Europe

Ms Marta Dömökova  
Chief State Counsellor  
International Law Department  
Ministry of Foreign Affairs of the Slovak Republic

Ms Silvia Csöbökova  
Ministry of Transport, Construction and Regional Development of the Slovak  
Republic

Mr Matej Vanicek  
Ministry of Transport, Construction and Regional Development of the Slovak  
Republic  
Head of Department of Waterborne Transport, Maritime Office

## **SWITZERLAND**

Mr Reto Dürler  
Head of the Swiss Maritime Navigation Office  
Head of delegation

Mr Peter Reutlinger  
Swiss Rhine Ports  
Substitute head of delegation

Mr Yves Suter  
Swiss Maritime Navigation Office

## **Observers**

### **CZECH REPUBLIC**

Mr Vojtech Dabrowski  
Ministry of Transport

### **HUNGARY**

Mr Imre Matics  
Director of Department for Navigation  
Ministry of National Development

Ms Andrea Pasztor  
Legal Secretary at the Department for Navigation  
Ministry of National Development

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**EBU-UENF**

Mr Lubomir Fojtu  
Vice-President

Mr Jan Vogelaar  
Member of the Board of Directors

Ms Theresia Hacksteiner  
Secretary General

**ESO-OEB**

Mr Christian van Lancker  
President

**ETF**

Mr Nick Bramley  
National Secretary

**IVR**

Ms Theresia Hacksteiner  
Secretary General

**UECC**

Mr Ocke Hamann  
Lower Rhine Chamber of Industry and Trade

**CCNR SECRETARIAT**

Mr Hans van der Werf  
Secretary General

Ms Cécile Tournaye  
Legal Advisor

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## 1. Opening of the Conference by Ms Belliard, President of the CCNR

**Ms Belliard** opened the Conference by welcoming all the delegates and expressing her gratitude for their efforts. A special welcome was addressed to those delegations which had travelled a considerable distance and those which were not specifically involved in the work of the CCNR on a regular basis.

After recalling the aim of the present meeting – to draw up the legal framework for liability in inland navigation – she stressed the importance of the modernisation of the legal framework and of the limitation regime in inland navigation, even though the Civil Code in France, her own country, was in principle against any limitation of liability.

**Ms Belliard** said that this convention was important, in particular with regard to the eastern States, as well as, in general, for national and international shipping industry.

The **Secretary General, Mr van der Werf**, further explained that this Conference was a follow-up to the Conference held in 1988, at which the first version of the CLNI was adopted. He then gave a number of guidelines concerning practical aspects of the Conference and recalled the need to nominate a Chair and two Vice-Chairs.

## 2. Election of Chair and Vice-Chair of the Conference

The proposal of the **French delegation** to nominate **Ms Czerwenka** from the German delegation (as Chair) was fully approved by all delegations. Ms Czerwenka said that it was a major honour for her to be elected. **Mr van der Werf**, on behalf of all the participants, thanked Ms Czerwenka for accepting the nomination to chair the Conference.

The **Dutch delegation** pointed out that **Ms Nowak** was in charge of international cooperation at the Polish Ministry and also worked on inland navigation; there was therefore a link between her work and CCNR. The proposal of the Dutch delegation to nominate Ms Nowak (as Vice-Chair) was approved by the other delegations. Ms Nowak thanked everyone, and agreed to take on the task. **Mr van der Werf** thanked Ms Nowak for her willingness to accept.

The proposal of the **Serbian delegation** to nominate **Mr Bellenger** (as Vice-Chair) was agreed by the Conference. It was pointed out that he was also the head of the group of experts responsible for preparing the present revised convention. Mr Bellenger accepted.

**Mr van der Werf** thanked the participants for their willingness. After passing on some practical information and details of logistics, the Secretary General gave **Ms Czerwenka** the floor to chair the meeting.

## 3. Adoption of the agenda CLNI/CONF (12)a 8 rev. 1

The agenda was adopted without any amendments.

## 4. Adoption of the Rules of Procedure CLNI/CONF (12) 7

As two Vice-Chairs had been elected, **Mr van der Werf** and the **Dutch delegation** pointed out that it was necessary to adapt the text of the Rules of Procedure to take account of this. This was done, and the Rules of Procedure adopted.

## 5. Organisation of the work of the Conference

The **Chair** asked the delegations to submit all their powers to the CCNR.

**Mr van der Werf** suggested checking all the powers on Thursday morning before the signature of the Convention, since some powers had still not been received.

The **Chair** said that several documents with suggested amendments had been submitted, including a four-column text submitted by the **German delegation** with a view to assisting the Drafting Committee. She recalled that the Drafting Committee was a limited group set up specially to avoid any discrepancies between the languages of the text. She emphasised that the decision on any substantial amendments would be made by the Plenary.

The **Chair** suggested the composition of the Drafting Committee. There was no opposition from the delegates on the election of the Committee's members, and it was decided that it would be chaired by **Mr Lefeber** of the Dutch delegation.

All delegations were welcomed to report any errors found in the texts to the Drafting Committee. The **Chair** pointed out that the Drafting Committee would be working during the lunch breaks and after the Plenary meeting because it could not work in parallel.

It was explained that the CCNR would provide support for the Committee's work.

**Mr van der Werf** proposed the nomination of **Ms Tournaye** of the CCNR as Executive Secretary for the Conference. The **Chair** and the delegates agreed to this proposal.

**Mr van der Werf** reminded all present that the CCNR Secretariat was at the disposal of delegates wishing to submit a proposal or requiring any technical assistance.

## 6. Verification of powers

This item on the agenda was postponed because some powers had still to be verified and some delegations had not yet submitted the original of their powers.

## 7. Examination of the draft revised Convention on the Limitation of Liability in Inland Navigation (CLNI)

List of the documents available for the Conference:

CLNI/CONF (12) 1 – Draft revised Convention

CLNI/CONF (12) 2 – Table summarising differences between the current CLNI and the draft revised Convention

CLNI/CONF (12) 3 – Communication from the Dutch delegation

CLNI/CONF (12) 4 – Communication from IVR

CLNI/CONF (12) 5 – Communication from the French delegation

CLNI/CONF (12) 6 – Communication from the Hungarian delegation

CLNI/CONF (12) 9 – Proposal for declaration by the States Parties to the CLNI

CLNI/CONF (12) 10 Corr. – Communication from the Luxembourg delegation

CLNI/CONF (12) 11 – Proposal from the Chair of the group of experts

CLNI/CONF (12) 12 – Communication from the Serbian delegation

CLNI/CONF (12) 13 – Working paper from the German delegation

The **Chair** invited the delegations to go through the draft revised Convention and make comments and propose amendments article by article.



## PREAMBLE

The **Serbian delegation** disagreed with the proposal made by the **Hungarian delegation** (Communication from the Hungarian delegation CLNI/CONF (12) 6, point 2) to replace the term “law” by “rules”.

It was decided to maintain the text of the Preamble as it was, and to maintain the term “law”.

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The **Chair of the Drafting Committee** explained the amendments made to the Preamble of the Convention. He said that the Drafting Committee had to overcome the discrepancy of texts in Dutch, German and French and also to make some adjustments to make clear that it was merely attempting to unify certain rules, as the LLMC did. It had therefore copied the preamble of the LLMC, and added a phrase to make it clear that the current convention was a new, updated version of CLNI 1988 and not a completely new convention.

The Plenary accepted these editorial amendments.

## ARTICLE 1

The **Dutch delegation** recalled having submitted four proposals concerning Chapter 1, in particular Article 1, concerning the definition of the term “vessel owner”. It said that the definition of the term “small craft” could be dealt with by the Drafting Committee, but some other questions should be discussed in the Plenary.

### ARTICLE 1 (2) a)

In the opinion of the **Dutch delegation**, the term “vessel owner” should be used; the other delegations should ensure the proper translation into their national languages.

The **German delegation** was not sure whether the word “hirer” should be included in the definition of the vessel owner, as the term “charterer” was already in the text. It concluded that it was for the Drafting Committee to determine the proper translation.

The **Belgian delegation** expressed difficulties regarding the terms “exploitant du bateau” and “armateur/armateur-gérant” and wanted the Dutch and French versions to be harmonised.

Doubts were raised with regard to the use of the term “bevrachter”. The **Chair** pointed out that the term “charterer” was also used in the LLMC and would be understood as “bareboat charterer”. She therefore suggested replacing the terms “hirer” and “charterer” by the expression “bareboat charterer”. The Chair explained that the German term “Befrachter” would mean the person concluding a contract of carriage of goods with a carrier. A “Befrachter” would not necessarily need to have a vessel at its own disposal. The “Befrachter” would therefore only be entitled to global limitation of liability if it would also follow under the definition of “ship owner”.

The **Dutch delegation** said that the term “bareboat charterer” was not used in Dutch legislation, which used another word meaning “owner”. It therefore expressed its desire to avoid such a confusing definition in the current text and appealed to the Drafting Committee to find an appropriate solution to this problem.

The **Belgian delegation** said that the meaning of this term (“vessel owner”) was not necessarily the owner, but more broadly meant the person who equipped the vessel.

The **Chair** decided to postpone this item for later discussion.

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The **Chair of the Drafting Committee** said that the Committee was unable to agree on the definition of vessel owner and would like this to be discussed by the Plenary.

The **Chair** recalled that the **Dutch delegation** had expressed the wish to change the word “charterer” to “bevrachter”, and to change the word “reder” to “beheerder”. She then asked the Drafting Committee to explain what the problem was.

The **Chair of the Drafting Committee** explained that the problem was caused by the differences between the meanings of the terms as used in national legislation, in dictionaries, and in ordinary usage. As it appeared to be a substantive problem of the comprehension, it should be discussed in the Plenary.

The **Belgian delegation** pointed out that it was not opposed to the term “bevrachter”, but did not want to change the word “reder”. It suggested either deleting them altogether, or keeping them both, and suggested the following wording: “de scheepseigenaar betekent de eigenaar, huurder of bevrachter aan wie het gehele schip..., alsmede de exploitant.”

The **Belgian delegation** stressed the importance of translating the French term “armateur” correctly. The term “armateur gérant” should be replaced by “opérateur” or “exploitant”. According to the Belgian delegation, replacement by the term “exploitant” would be the best solution for the French and Dutch versions.

The **Chair** said she thought this was reasonable, and asked the French delegation for its opinion.

The **French delegation** agreed to the proposal to use the term “exploitant”.

The **Dutch delegation** said that the term “beheerder” had disappeared from this sentence. It agreed to the change if the term “bevrachter” was maintained without the addition of “aan wie het gehele schip ter beschikking gesteld wordt”.

The **Belgian delegation** disagreed to the deletion of the addition, because the term “bevrachter” also meant the agent who brought the parties together. However, it said that it could agree to the deletion of the words “of het gehele”.

The **Dutch delegation** agreed to this proposal.

The **Chair** wondered if the slot charterer was also to be included in the meaning of the vessel owner. If it was entitled to limit its liability, this raised the question of how to calculate the limitation amount.

The **EBU-UENF delegation** pointed out that this was what happened in practice, and there were never any problems. The whole vessel should be taken as the basis for calculation and then each slot charterer’s contribution determined.

The **Belgian delegation** pointed out that this was exactly the person it would not like to enable to limit its liability. The only person concerned was the one really in charge of the vessel, i.e. the one who paid the crew and the costs of the vessel.

The **Chair** said that it was important to begin by establishing the intention: who was to benefit from the limitation of its liability? In her opinion, the initial position was to grant the right to limit liability only to the owners or persons close to the owners, such as bareboat charterers. She also said that the persons who initiated the carriage of goods - the “commissionaire de transport” or freight forwarder - had nothing to do with the vessel owner.

The **Dutch delegation** agreed that the terms “het gehele” should be deleted as proposed in the Belgian definition.

The **Swiss delegation** was of the opinion that only the person who owned the vessel should be able to limit his liability.

The **German delegation** was not in favour of expanding the scope of this article.

The **Chair** asked if the other delegates would agree to the deleting of the words “het gehele”.

The **Luxembourg delegation** agreed with the deletion of “het gehele” and the inclusion of the term “exploitant”.

The **French, Austrian, Polish and Serbian delegations** also agreed.

The **Chair** concluded that this decision was therefore adopted.

The **Chair of the Drafting Committee** also said that the word “employment” (in the sentence “employment of the vessel”) had been replaced by the word “use” (“use of the vessel”).

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#### **ARTICLE 1 (2) (b)**

**IVR** (see document CLNI/CONF (12) 4) proposed adding the following phrase to the definition of “vessel”:

“A vessel is an inland navigation vessel within the meaning of this Convention if it is intended for navigation on inland waterways or if it is essentially used for that purpose.”

The **Austrian and German delegations** supported this proposal; the **Dutch delegation** did not.

The **Chair** summed up that the text would remain as it stood as there was no clear majority in support of changing it. The amendment proposed by IVR was therefore not adopted.

#### **ARTICLE 1 (2) (e)**

**IVR** (see document CLNI/CONF (12) 4) proposed changing the definition of “waterway” to read as follows:

“‘Navigable waterway’ shall mean navigable inland waterways, including lakes and coastal waters.”

The **French delegation** replied that navigable waterway should include lakes, but that coastal waters were not included in any current definition. Coastal waters were in fact covered by maritime law.

The **Serbian delegation** did not support the IVR proposal. It felt the term “waterway” should be more precise, and asked for the plural to be used, i.e. “lakes” instead of “lake”.

The **Dutch delegation** did not support the IVR proposal to include “coastal waters” in the definition of waterway, or the proposal to add the word “navigable” to “waterways”. It said that the only definition in plural in the Dutch version of the text was “inland waterways”, and suggested that the term should be in the plural in the other languages as well. It added that in the Dutch version of the text the word “lake” was also in the plural, and therefore agreed for the plural to be used.

The **Chair** summed up that the IVR proposal was not adopted. The term “lake” should be used in the plural, i.e. “lakes”, and the word “navigable” deleted from the expression “navigable inland waterway”, i.e. the term “inland waterway” should be used.

As there were no objections, it was agreed to submit this matter to the Drafting Committee.

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After examining the revised text of the draft Convention submitted by the Drafting Committee, the **Luxembourg delegation** pointed out that it had been agreed to use the word “lakes” in the plural.

The **Chair of the Drafting Committee** explained that the term “lake” should be in the plural if the term “waterway” was also in the plural. The Drafting Committee realised that in some languages (Dutch and French) this term was in the singular; it decided to use the singular throughout for the sake of uniformity.

The **Luxembourg delegation** then suggested using the phrase “any lake” or “tout lac”.

As there were no other comments, the **Chair** said that Article 1 was adopted as proposed by the Drafting Committee, including the change suggested by the **Luxembourg delegation** (“any lake”).

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### **ARTICLE 1 (3)**

The **Swiss delegation** said it had difficulty with the terms “act, neglect or default” in Article 1 (3). The word “act” more particularly should be substituted. It suggested using CLNI 1988 and/or the LLMC as a model to rephrase this article. The Swiss delegation proposed that the Drafting Committee should make the necessary changes in this respect.

The **Chair** felt this was an editorial remark, and pointed out that the wording used was taken from the LLMC.

The **Austrian delegation** said that it depended whether it was intentional to refer to strict liability or not, i.e. whether the word “act” meant “acting with fault” or included all acts regardless of whether there was fault. If the latter was meant, as the Austrian delegation believed, then the current text was correct. The Austrian delegation pointed out that in the current text in general there was no reference to any kind of liability, only to the limitation of liability.

The **Chair** suggested asking the Drafting Committee to look at this point again.

The **French delegation** pointed out that the text of CLNI 1988 was identical to the current text of the draft, and was exactly the same as in the LLMC.

The **Chair** suggested maintaining the current wording since it had worked well until now, as long as there was no misunderstanding. There was no objection to this.

### **ARTICLE 2 (1) a)**

For the sake of comprehensiveness, the **French delegation** proposed adding the words “weirs” after “navigable waterways”, since the word “locks” did not necessarily cover weirs (some locks do not include a weir) (see document CLNI/CONF (12) 5). The same word should also be added to the third line of the second paragraph of Article 6; this would not change the content, as it was only an editorial modification.

The **Serbian delegation** could not agree to this alteration, which would mean that if there were weirs in the waterways the convention could not be applied.

The **Chair** pointed out that this was not a substantive matter, as the article gave no more than a non-exhaustive list of examples. The provision was applicable in general to any damaged property.

The **Dutch, Luxembourg and Belgian** delegations supported the proposal by the French delegation.

The **Chair** concluded that, since no other delegations wished to oppose the French proposal, the proposal to include the term “weirs” was adopted.

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### **Additional paragraph to Article 2**

The **Hungarian delegation** (document CLNI/CONF (12) 6) proposed adding the following paragraph to Article 2:

“3. Claims are subject to the limits which are valid at the time when damage was caused”.

The **Dutch delegation** pointed out that this proposal dealt with the temporal scope of the Convention.

The **Chair** asked if the Dutch delegation wished to add an extra paragraph to Article 15 dealing with the temporal scope of the Convention.

The **Dutch delegation** replied that it was also possible to add it to Article 2.

The **German delegation** said that it had no objections to such an amendment, but that Article 20 would be more suited for the purpose. It pointed out that the Dutch proposal was not sufficiently clear, as the provision was applicable to all events; if it were to be subdivided to other small events, this was not coherent and might lead to confusion.

The **French delegation** agreed with the German delegation; this aspect should be in the section dealing with the limits of liability.

The **Austrian delegation** said that it agreed with the principle that the applicable law should be the law applicable at the time the event occurred, but said it could not agree to the Dutch proposal.

The **Dutch delegation** wondered why not. It then gave an example when the limits of the liability were modified after a collision between two vessels causing oil spill took place. It pointed out that it would be very strange if the claims of a third vessel could not be limited to the amounts applicable when oil spill took place.

The **Chair** asked whether the proposal could be included in the specific provisions for the applicability of the newly established limits of liability contained in Articles 20 and 21.

The **Hungarian delegation** said it would be preferable to avoid having the same rule in different places in the Convention.

The **Dutch delegation** said it was not essential to include a detailed rule in the Convention, but felt nevertheless that the rules on temporal scope should not be included in the chapter on amending the Convention.

The **Chair** wondered whether this was merely an editorial remark or not.

The **Dutch delegation** replied that it was not merely an editorial remark, as it was a question of legal interpretation within the Convention.

The **Chair** noted that both the Dutch and Hungarian delegations favoured a general prescription on applicability in time. She asked the other delegations for their opinions.

The **Serbian delegation** supported the Hungarian proposal to introduce another paragraph into Article 2.

The **Belgian delegation** also supported this proposal.

The **Swiss delegation** also agreed with introducing a separate paragraph for determining the moment of the applicability of the limits.

The **Chair** concluded that it was agreed that a separate prescription dealing with the applicability in time should be included. Whether such a rule should be included after Article 2 or Article 15 would be resolved by the Drafting Committee. By reason of this change, Articles 20 and 21 should be amended accordingly.

### **ARTICLE 3 (a)**

The **Dutch delegation** welcomed the purpose of the final meeting of the working group, which was to clarify the text in order to state clearly that the special compensation rendered possible by the 1989 International Convention on Salvage was also included in claims excepted from limitation. In the meantime it had become apparent that a direct, explicit reference to this Convention raised a number of objections. Nevertheless, the Dutch delegation considered that the wording adopted was sufficiently clear. It proposed that the revised CLNI should adopt the wording used in the 1999 International Convention on Arrest of Ships. This part of the sentence would then be drafted as follows in English: "including, if applicable, special compensation relating to salvage operations in respect of a ship which by itself or its cargo threatened damage to the environment". The Dutch delegation also proposed dividing the Article so that general average claims would be included in a separate sub-paragraph.

The **French delegation** recalled that it had supported the Dutch proposal. The French text also needed to be modified accordingly, but this was merely an editorial matter.

The **Luxembourg delegation** also supported the Dutch proposal, and specified that it would like to have "si applicable ou le cas échéant" in the French version. It also agreed to separate treatment into two paragraphs as suggested by the Dutch delegation.

The **Chair** noted that there seemed to be sufficient support for this proposal and asked the Drafting Committee to make the necessary changes in the text of the Convention.

The **Serbian delegation** said that it did not support the proposal to place claims for general average contributions in a separate paragraph.

The **Chair** said that the main purpose of the discussion (regarding correct wording) was about salvage and assistance and had nothing to do with general average; the proposal was merely for general average to be placed in its own sub-paragraph.

The **Serbian delegation** replied that it was not against the content of the text and that it understood very well why the text was worded in this way, but stressed that it could not support the idea that claims for general average contributions should be dealt with elsewhere.

The **Dutch delegation** explained that such a subdivision would make the text clearer and easier to read.

The **Chair** concluded that there was support for including the wording suggested by the Dutch delegation for Article 3 (a) (see document CLNI/CONF (12) 3) and that this should be done. She also suggested asking the Drafting Committee to discuss the issue of division into two paragraphs to separate assistance from general average.

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The **Chair of the Drafting Committee** reported that the Committee had divided paragraph (a) into two paragraphs, i.e. (a) and (b). The Committee also added: "if applicable, special compensation relating to", as discussed the previous day.

The **Luxembourg delegation** said that paragraph (a) was not totally comprehensible, and suggested including “the claims leading to/resulting in special compensation”.

The **Belgian delegation** said that the French text would need to be amended if Luxembourg’s proposal were adopted.

The **French delegation** suggested deleting “if applicable”.

The **Chair** said that the German version was perfect, and that she also found the English text perfectly acceptable.

The **Luxembourg delegation** accepted the French proposal, but noted that the French text had ceased to be comprehensible.

The **Belgian delegation** agreed with adjusting of the French text, but pointed out that the Dutch version would also need to be changed as a result.

The **Dutch delegation** suggested using the Dutch and English versions as the basis for the French and German versions. It refused to have the Dutch text changed just because the French text was unreadable, and agreed to having the French text changed without changing the Dutch text.

The **Dutch delegation** wondered why only part of the provision had been copied from the LLMC, and suggested either copying it in full or not at all. It wished to avoid the possibility of being able to claim compensation without the possibility of being able to limit liability.

After bilateral discussions during a coffee break, the **Chair** suggested that Article 3 (a) should be drafted in the following way: “aux créances du chef d'assistance ou de sauvetage, y compris, si applicable, l'indemnité spéciale concernant des opérations de sauvetage ou d'assistance...”. There were no objections.

#### **ARTICLE 3 (c) and (e)**

The **French delegation** said that as far as the French version was concerned the reference should be to a “bateau à propulsion nucléaire”.

The **Chair** asked what the difference was between the terms “bateau nucléaire” and “bateau à propulsion nucléaire”.

The **French delegation** replied that this was the term usually used.

It was agreed to replace “bateau nucléaire” by “bateau à propulsion nucléaire” in the French version.

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The **Chair of the Drafting Committee** reported that in Article 3 (c) the term “à propulsion” had been added to “bateau nucléaire” in the French text as requested, and in **Article 3 (e)** the word “volgens” had been changed into “overeenkomstig” in the Dutch version, solely for reasons of consistency, with no change in the meaning.

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#### **ARTICLE 4**

There was no proposal to amend Article 4.

## ARTICLE 5

There was no proposal to amend Article 5.

## ARTICLE 6 (1)

The **French delegation** considered that the first paragraph applied in fact to Article 7, the aim of which was to provide for higher ceilings but not for a different scheme of liability. Thus the provisions concerning push-tugs and tugs should also apply to Article 7. The wording in the first paragraph should therefore be: "The limits of liability for claims other than those mentioned in Article 8", deleting the words "[Article]s 7 and".

In line with the previous observation, the **French delegation** felt that the phrase "Notwithstanding Article 6" should be maintained in the first line of Article 7 as it linked Article 7, which contained a number of specific provisions concerning the transport of dangerous goods, to Article 6, which laid down a general framework.

The **Dutch delegation** disagreed with the French delegation, and proposed maintaining the current text.

The **German delegation** agreed with the Dutch delegation, pointing out that Article 7 already referred to Article 6. It suggested seeking a compromise and deleting "other than those mentioned in Articles 7 and 8" from Article 6 (1).

The **Swiss delegation** supported the German delegation's compromise. It found the wording clear and unambiguous if these words were deleted.

The **French and Dutch delegations** were asked if they agreed with this compromise.

The **French delegation** agreed to this compromise, subject to maintaining the words "notwithstanding Article 6" in Article 7.

The **Dutch delegation** also agreed that the expression "notwithstanding Article 6" should remain in Article 7. It also pointed out that the same remark applied to Article 8 and that the Drafting Committee should look into this.

The **Chair** summed up that the delegations seemed to agree that the reference to Articles 7 and 8 in the first sentence of Article 6 should be deleted. Also, Articles 7 and 8 should make it clear they were *lex specialis*, therefore the wording "notwithstanding" should be maintained. She then asked the Drafting Committee to include the suggested amendments.

During the discussion of Article 6 on general limits, the **Hungarian delegation** wondered what would happen if claims were larger than the limits provided for by the Convention.

The **Chair** replied that there would be a *pro rata* distribution for several claims if their total amount were above the limits of liability provided for by the Convention. Distribution would be carried out in a similar way as distribution in bankruptcy cases.

The **IVR**, referring to the arguments already presented in its first statement (document CLNI/EG (11) 4), called for the original limits in Article 6, paragraph 1 (a) of CLNI 1988 to be increased by a maximum of 50%.

The **Dutch delegation** did not support that amendment. It pointed out that negotiations had been going on for six years, and the economic situation in inland navigation was not good. Increasing the limits would naturally result in an increase in insurance premiums. The Dutch delegation said that it understood the industry's position. The present draft was, however, an acceptable compromise and should be maintained as it was.



The **Belgian delegation** supported the Dutch proposal.

The **Chair** noted that there seemed to be general agreement in favour of the Dutch proposal, with the French, German, Luxembourg and Austrian delegations all appearing to support the position of the Dutch delegation.

The **Chair** summed up that, as there was considerable support for the Dutch proposal, the IVR's proposal should be rejected and no amendment made to the article as it stood at present.

The **Polish delegation** pointed out that it supported the Czech Republic's position and therefore the IVR's proposal.

The **Serbian delegation** stated with regard to the first sentence of Article 6 discussed earlier that it did not support the Dutch proposal to delete the words "notwithstanding Article 6". It added that it did not support the Hungarian proposal with regards to Article 7, and therefore disagreed with a reduction in the limits of liability as suggested by the Hungarian delegation.

After bilateral consultations during the lunch break, the **Chair** reiterated that a number of delegations favoured lower limitation amounts, arguing that this would be justified for insurance reasons. The Chair suggested keeping the amounts unchanged nonetheless. This would, however, be done on the assumption that an increase of limits of liability would not necessarily lead to the same increase of insurance premiums, since insurance premiums should be calculated on the basis of real risks.

In response to the suggestion to exclude small craft from the scope of application of the Convention, the **Chair** said that document CLNI/CONF (12) 11 contained a proposal for an additional paragraph to Article 15 to enable the States at the time of signature, ratification, acceptance, approval or accession to exclude the application of the Convention to small crafts exclusively used in internal traffic for a maximum of eight years after its entry into force.

The **French delegation** said that it noted some differences between the definition of the small crafts in the French version of the proposal in document CLNI/CONF (12) 11 and the definition in the text of the Police Regulations for the Navigation of the Rhine, which it was suggested should be included in the Convention. It therefore wondered if it was better to leave out the definitions.

The **Chair** replied that she had also noticed some mistakes in the German version. The intention was that it should be the same definition as in the Police Regulations for the Navigation of the Rhine.. She pointed out that in her opinion it was not judicious to leave room for different interpretation by the States.

The **Dutch delegation** said it was not in favour of including a definition in this sense in the Convention. It pointed out that in any case non-commercial navigation was not concerned by the Convention. It was against allowing States the possibility of making a reservation in respect of a large part of their fleets. The text should definitely be improved. The Dutch delegation nevertheless agreed that vessels that were only used locally or nationally should be excluded from application of the text. It concluded in the end that it was prepared to agree to the possibility of a reservation, but only if the text was correctly drafted.

The **Hungarian delegation** suggested that the words "commercial use" (or "used for commercial navigational purposes") should also be included in the definition of small craft.

The **Chair** concluded that the proposal in document CLNI/CONF (12) 11 a to provide for an exemption clause for small craft in Article 15 was adopted and asked the Drafting Committee to look again at the drafting of the proposed provision.

The **Chair** then proposed moving on to the other part of Article 6. She referred to the communication provided by the **Hungarian delegation** (document CLNI/CONF (12) 5). The text of the Convention contained both the words "limits" and "amount", and she noted that this was confusing. "Limits" was a more appropriate expression, and should therefore be used. Indeed she felt that for the purposes of the Convention it was crucial to use the word "limits". She therefore suggested checking Article 6, Article 7, Article 8, Article 9, Article 12, Article 13, Article 18, Article 20, Article 21 and Article 22. The Drafting Committee was requested to look closely at the use of the words "limit" and "amount". She also pointed out that the Dutch delegation also had a small editorial problem with the text. The Drafting Committee was asked to solve this issue as well (document CLNI/CONF (12) 3: This concerned the Dutch-language version only, with the replacement of "des" by "van de".)

#### **ARTICLE 6 (2)**

The **French delegation** proposed (document CLNI/CONF (12) 5), for the sake of comprehensiveness, adding the word "weirs" after "navigable waterways", since the word "locks" did not necessarily cover weirs (some locks do not include a weir).

The **Chair** replied that this proposal had already been accepted, but it was natural to repeat it here during the discussion of Article 6. She then asked the Drafting Committee to make the necessary amendments in this respect.

#### **ARTICLE 6 (3)**

The **Chair** mentioned that the Dutch delegation had a textual proposal (CLNI/CONF (12) 3) with respect to the paragraph 3 Article 6. She recalled that it was an editorial proposal, which concerned the Dutch-language version only, involving the replacement of "voor" by "op" (two occurrences). She asked the Drafting Committee to look at the proposal.

#### **ARTICLE 7**

The **Chair** recalled that the reference to Articles 7 and 8 in Article 6 would be deleted as agreed that morning. She also pointed out that paragraphs (a) and (b) were only subject to some editorial remarks.

The **Dutch delegation** stressed that the present wording of Article 7 did not adequately express that a number of funds would be set up. It was likely to be confusing (document CLNI/CONF (12) 3)).

The **French delegation** recalled that it had made a proposal with regard to the wording of this article and that its proposal could probably satisfy the Dutch delegation. To deal with the concern expressed by the Dutch delegation, with the desire to state that a separate fund may be constituted for the damage provided for in Article 7, a sentence could be added at the end of the Article; this could read as follows: "A separate limitation fund may be constituted in accordance with Article 12 for damage caused by the transport of dangerous goods." (Cf. document CLNI/CONF (12) 5.)

The **Chair** said that the substantive matter of this question was not covered in Articles 6, 7 or 8. She noted that it was even possible to limit the liability without setting up a fund. She added that this was mentioned later in the Convention, whereas the current article was dealing only with limits.

The **Dutch delegation** agreed with the Chair; the question here was not the constitution of special funds, but there had been a French proposal in the past to meet the Dutch delegation's objection. It suggested coming back to this article again when discussing the setting up of a fund.

The Chair concluded that Article 7 remained unchanged and it was submitted to the Drafting Committee.

The **Serbian delegation** pointed out that it had substantive comments to make on this article, and asked whether the other delegations wished to discuss them before lunch.

The **Chair** noted that nobody wished to take the floor. As there was no majority in favour of amending Article 7, it was adopted as it stood.

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The **Chair of the Drafting Committee** reported that the Committee had decided not to delete the reference to Articles 7 and 8 in the first sentence of Article 6, contrary to what had been suggested by the Conference. After discussion, the Drafting Committee agreed that the old version was better. It therefore decided to maintain text as follows: “The limits of liability for claims other than those mentioned in Articles 7 and 8”. It also agreed that it was unnecessary to include in the text of Articles 7 and 8 that these articles dealt with the exceptions to Article 6.

The **Chair of the Drafting Committee** also pointed out that it had deleted the opening phrase “notwithstanding” in Article 7 and divided this article into two paragraphs.

The **Chair of the Drafting Committee** also pointed out that the Drafting Committee had found discrepancies between the languages with regard to the term “intended” in Article 6 (1) a) (i) (“vessel not intended for the carriage of cargo”). This issue had been resolved except for the French language: the meaning of the proposed wording “bateau destiné” and “bateau non affecté” appeared not to be the same. The French delegation preferred to refer to Plenary for a discussion on this issue.

The **French delegation** explained that it had no problem with the German and Dutch versions, but the English version appeared to be ambiguous. The English term “intended” seemed to imply that the initial assignment (intended use) of the vessel had been changed. It wondered whether the word “intended” should be modified in the English version, and probably replaced by the word “designed”, which would more correspond to the French word “destiné”. In this regard it also asked to replace the word “affecté” by “destiné” in the French text.

The **Austrian delegation** noted that in *Eurolex* the wording “intended for” was used.

The **French delegation** agreed on maintaining of the English term “intended for” if the words “to be used” were deleted.

The **Secretary** agreed with this suggestion.

The **Chair** concluded that in the English version of the text in the sentence “a vessel intended to be used for”, the words “to be used” should be deleted. In the French version the word “affecté” would be replaced by “destiné” (“pour un bateau non destiné”). The same changes should also be made in Article 6 (1) a) (ii). No objections were raised.

## ARTICLE 8

The **IVR** stated that it had taken notice of the working group’s proposal regarding the increase in the limits for passengers’ claims. It agreed with the proposal but suggested nevertheless that there should be global limits for vessels according to the specific number of passengers they were authorised to carry. It added that this would comply with the LLMC system. The global limits should be increased. It then asked the delegations to accept this proposal.

The **Dutch** delegation pointed out that this item had been discussed for a long time, several delegations having raised concern about increase of the limits. For bigger ships (with more than 200 passengers on board), the amount foreseen would be akin to unlimited liability (example of 200 passengers on board).

The **Chair** asked whether other delegations supported this proposal from IVR. As there was no further support for this proposal, Article 8 would remain unchanged.

## ARTICLE 9

The **Chair** recalled that the Dutch delegation had submitted a proposal regarding a number of minor changes to be made to the Dutch text (CLNI/CONF (12) 3). This concerned the Dutch-language version only, and involved replacing "aan de hand" by "op grond". As these were only editorial observations and there were no substantial remarks, it was decided to submit the text to the Drafting Committee.

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The **Chair of the Drafting Committee** reported that the Drafting Committee had included a reference to Article 10 in the opening of Article 9. In the Dutch version the term "opgrondvan" had been replaced by "op grond van" in paragraph 3.

This proposal was accepted by the conference.

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## ARTICLE 10

The **Chair** referred to the French delegation's proposal to make some editorial changes to the French text (CLNI/CONF (12) 5). According to the proposal, the French version should read as follows: "Les paragraphes 1 et 2 s'appliquent par analogie aux limites de responsabilité calculées selon l'article 7. Le paragraphe 2 s'applique toutefois en prenant pour base 400 unités de compte au lieu de 200 unités de compte." As there were no substantial comments on this article, the Chair invited the Drafting Committee to make the appropriate editorial amendments.

## ARTICLE 11

The **Chair** said that there was an editorial remark from the **Hungarian delegation**, and in the absence of substantial observations on the text Article 11 was sent to the Drafting Committee.

## ARTICLE 12

The **Chair** stated that in the absence of any proposal, the text remained unchanged, and sent it to the Drafting Committee.

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The **Chair of the Drafting Committee** reported that after lengthy discussion it appeared necessary to include the term "amount of the limits of liability" in Article 12 (1) despite the wish expressed by the Plenary to standardise the use of the words "limits" and "amount".

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## ARTICLE 13

The **Chair** concluded that in the absence of any remarks Article 13 was adopted as it stood.

## ARTICLE 14

The **Dutch delegation** explained its position as expressed in document CLNI/CONF (12) 3-, according to which the wording "entitled to make a claim" should be replaced by "having made a claim". It stressed that it was not able to accept alterations to the text that would have an impact on the Dutch system.

The **Dutch delegation** added that the combination of Articles 14 and 15 should be applied in the final analysis. If the current wording of Article 14 was maintained it would broaden the scope of application of Article 15. In this respect it pointed out that Articles 14 and 15 were interdependent.

The **Luxembourg delegation** said it agreed with the Dutch delegation on this point.

The **Chair** summed up that the Dutch delegation suggested retaining the wording of LLMC for Article 14 but not for Article 15.

The **Dutch delegation** remarked that its intention was not to refer to the LLMC but to maintain the text of the current CLNI. It added that in 1988 the problem had arisen because of the discrepancy between the English and German languages. This text had existed for 20 years and according to it any person who had made a claim against a fund was then barred from exercising any right in respect of such claim. The Dutch delegation stressed that its national legal system had adopted a different position and it did not wish to change it.

The **Chair** asked which effects the Dutch delegation would wish to attribute to the setting up a limitation fund. According to the wording of the current Article 13 (1) of CLNI 1988, only a person who had made a claim against the fund would be barred from exercising any right in respect of such a claim against any other assets of the ship-owner. Consequently, setting up a limitation fund would have no effect on creditors who did not make a claim against such a fund. In contrast, Article 14 (1) of the draft revised CLNI would also bar a claimant who did not claim against the fund from exercising any right in respect of any other assets of the ship-owner. Thus the draft revised CLNI would provide for effective protection of the ship-owner who would be entitled to limit liability under the CLNI.

The **IVR** mentioned that the whole purpose of the Convention was to canalize the limitation of liability on the owner. IVR therefore felt it was inappropriate to go outside the limitation fund and claim against the assets of the owner, and consequently objected to the Dutch proposal.

The **Chair** wondered if any States supported the Dutch proposal.

The **Dutch delegation** took the floor again to state that it could not accept any derogation from the well-established practice in its country. It added that, as this issue had been discussed at the ministerial level, it was not in a position to agree to anything different. The Dutch delegation was adamant that the Dutch text would have to be “wanneer overeenkomstig artikel 12 fonds is gevormd, is het een person die een vordering tegen het fonds in rechte geldend kan maken niet toegestaan...”

The **Belgian delegation** said that the Dutch proposal could be acceptable. But if the English text was changed into “person who can make a legal claim against the fund”, the French text “pouvant produire une créance” appeared to be less strong.

The **Chair** wondered why the word “legal” was used. She noted that the Dutch delegation had suggested revising the Dutch version on the basis of the German, English and French versions. The Chair therefore wondered whether this could be done by the Drafting Committee.

The **Dutch delegation** pointed out that if this issue was sent to the Drafting Committee, the discussion would be re-launched and there would then be a formal reason for other delegations to object. The Dutch delegation then said it would like to change the Dutch version to include the words “In rechte geldend kan maken”.

The **Chair** said that the Dutch version should be drafted in such a way for it to correspond with the other versions and the Drafting Committee could ensure harmonisation in the other language versions. Therefore only the Dutch version should be redrafted to ensure the exact and proper translation of the French, German and English versions. The Chair considered that this was an editorial question.

The **Dutch delegation** replied that it suggested using either “legally entitled to make a claim” or “to claim legally”. There was therefore no further need for the Drafting Committee to discuss the wording.

The **Chair** remarked that it was not that easy, as there was still no explanation of the use of the word “legally”.

The **Austrian delegation** pointed out that the question here was probably about a procedure: a claim to be made in a court, for example.

In response to a request from the **Belgian delegation**, the French delegation noted that the French wording “pouvant produire une créance” was in fact not strong enough in comparison to the proposed English wording. Therefore it suggested the following wording: “personne ayant la faculté de produire une créance” or “personne bénéficiant de la faculté de produire une créance”.

The **Belgian delegation** noted that it was desirable to agree on translation to match the Dutch wording as closely as possible. In this sense it felt the French wording “ayant la faculté de faire valoir la créance” was probably better.

The **French delegation** also agreed with this wording.

The **Chair** asked the Dutch delegation whether the suggested French wording matched the idea expressed in the Dutch language.

The **Dutch delegation** replied that it was not able to consider the French wording and that only a Dutch lawyer would be competent for that.

The **Chair** suggested leaving this discussion as the Dutch proposal had only been given orally and it was therefore rather difficult to assess it. She asked the delegations to prepare a draft text in all the languages for discussion the following morning.

The **Dutch delegation** disagreed with this proposal.

The **Chair** insisted.

Members of several delegations and representatives of the CCNR's Secretary General were then designated to prepare a room paper on the appropriate wording for this issue during the work of the Plenary.

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*Article 14 was further discussed on 26 September 2012 after examination of Room Paper No. 1.*

The **Chair** noted that a new draft for this article (Conf. Room Paper No. 1) was now available.

The **Dutch delegation** explained that a small group of people had used the German text to come up with new Dutch, English and French versions. Although the texts were not perfect they were exactly alike and therefore preferable to the previous text, which from a Dutch perspective might have been better, but was slightly different or could be interpreted differently in comparison with the German text.

The **Chair** asked the delegations to give their view on this new proposal from the Dutch delegation.

The **Swiss delegation** agreed on the proposal, but said that its government had asked to ensure that the texts were gender-neutral.

The **Austrian delegation** found the new wording much better than the previous one.

The **Chair** asked about the meaning of the word “effective”. She wondered whether it would be possible to use the phrase “assert a claim” or “bring a claim”. She then appealed to an English native speaker - preferably a lawyer – for an opinion on this.

The representative of the European Transport Worker's Federation (ETF) said he was an English native speaker. He said that, although to his mind legal English was not meant to be understood by an ordinary person, the wording of this article was quite clear to him.

The **Chair** said that the text should be written in a way that everybody could understand. She said that she was of the opinion that the current text should be changed.

The **German delegation** suggested using the text of paragraph 3.

The **Dutch delegation** disagreed.

The **Chair** pointed out that the French text was slightly different from the English text as the wording used merely meant "the possibility of making a claim."

The **Austrian delegation** suggested deleting the word "effective".

The **French delegation** suggested replacing "can make" by "entitled".

The **Chair** replied that she interpreted the Dutch proposal to mean that it should broaden the scope of the article, therefore the word "entitled" was not used, because it appeared not to be broad enough in comparison to "can make". She wondered whether the words "to assert a claim" would meet the delegations' concerns.

The **Dutch delegation** proposed changing the wording to "a person who can realize a claim" or "any person who can make a claim effective."

The **Chair** asked the English native speaker for his opinion on the term "realize".

The **ETF representative** disagreed with the use of the term "realize". He said that it would be better to look for a word which meant not only "any person who can make a claim" but also "an effective claim". He also noted that although it sounded strange it was nevertheless correct.

The **Chair** proposed looking at the third paragraph again. In this paragraph reference was made to the first paragraph and the idea behind this was that the parties could bring a claim.

The **Austrian delegation** pointed out that in German it would be called "a lawful claim", but that the current wording implied something else.

The **Chair** suggested that the Drafting Committee should provide a correct English translation.

The **Dutch delegation** disagreed. It pointed out that the Plenary had agreed that the Dutch delegation should submit a correct translation. An English native speaker was asked to check the correctness. He said the text was correct. The Dutch delegation said it did not understand why, under these circumstances, the text was not accepted.

The **Swiss delegation** noted that considering the time limit it would be problematic to send controversial texts to the Drafting Committee. It therefore suggested accepting the current text.

The **Chair** then asked other delegates to give their opinion.

The **Luxembourg delegation** said it preferred the wording "to bring a claim" without the word "effective."

The **Swiss delegation** said it preferred "entitled to make a claim".

The **Chair** said there might be disagreement on the content, since it was not clear whether the use of the word "effective" constituted a change of meaning or merely an editorial change.

The **Belgian delegation** said it supported the Dutch delegation.

The **French delegation** said it supported Germany and Luxembourg.

The **Austrian delegation** supported Germany.

**Slovakia** supported the Swiss delegation and was therefore in favour of the original text (“entitled to”).

The **Polish delegation** agreed with the Dutch proposal.

The **Bulgarian delegation** accepted the Dutch text.

The **Hungarian delegation** accepted the Dutch proposal.

The **Czech Republic delegation** supported Slovakia and therefore the Swiss proposal.

The **Chair** noted that the delegations’ positions were divided. Nevertheless, she suggested accepting the Dutch proposal on the basis that all the languages of the Convention were authentic and needed to be used in interpreting the text in question. As there were no objections, the Dutch proposal was adopted.

The **Dutch delegation** suggested asking the Drafting Committee to check Article 14, especially paragraphs (1) and (3), as the texts were not in accordance with each other, unlike the German version.

The **Chair** replied that the Dutch delegation insisted on maintaining this discrepancy and therefore, as this was previously expressly requested by the Dutch delegation, this article would not be changed and the Assembly would not ask the Drafting Committee to reopen the discussion on it.

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## ARTICLE 15

The **Dutch delegation** pointed out that the French delegation’s proposal (CLNI/CONF (12) 3: Article 15bis) aiming at clarifying the application in time was no longer included in the text. It added however that this aspect had been taken into account by adding the following words to Article 20 (3) and Article 21 (8): “The amended amounts shall however only apply to claims arising from an incident that occurred after the amendment entered into force.”

The **Dutch delegation** proposed clarifying the text by deleting this sentence and inserting it in Article 15 a), according to the initial proposal by the French delegation.

As for Article 15 (1), the **Dutch delegation** noted that the words added to the current version of the CLNI were causing confusion, particularly since the passage, manifestly inserted to provide clarification, was drafted in the conditional tense. The Dutch delegation proposed therefore reverting to the original wording. The first sentence would then read as follows: “This Convention shall apply to the limitation of the liability of the owner of a vessel or a salvor at the time of the incident giving rise to the claims when ...” The Dutch delegation said this return to the original text was more in keeping with Article 14, leaving no room for confusion.

With regard to Article 15 (2) b), the **Dutch delegation** noted that the title of the AGN did not take a capital letter after the word “Verdrag” and should be then written as follows: “Europees Verdrag inzake hoofdwaterwegen die van internationaal belang zijn (AGN)”.)

The **Dutch delegation** summed up by saying that it had two problems with Article 15. It suggested deleting the additions made earlier and dividing the Article into sub-paragraphs.

The **Chair** wondered if this was an editorial question.



The **Dutch delegation** replied that it was not an editorial issue as, if the three additions made earlier to this Article were deleted, the whole article would have to be redrafted for it to made clear.

The **Chair** pointed out that the draft text of the CLNI was a copy of the relevant article in the LLMC. She explained that its purpose was to prevent “forum shopping” by the owner of the vessel, by allowing the claimant to choose a court. As this issue was not dealt with in the current CLNI, the text had simply been copied from the LLMC into the current text. She then asked the Dutch delegation if it was against copying this part of the LLMC.

The **Dutch delegation** reaffirmed that it was not in favour of copying the LLMC text.

The **Chair** then asked the opinion of other delegations. She reminded them that the current text had been in the drafting stage for a long time.

The **Dutch delegation** added that in 2006 the delegations merely agreed that the current CLNI should be applicable throughout Europe. According to it, the initial intention was not to make any new changes to the Convention, but simply to allow other States to become party to the Convention. The German delegation then made proposals for amending the text. The expansion of the geographical applicability of the Convention was among the first changes introduced, although subsequently almost all the articles had been altered. The Dutch delegation considered it unnecessary to change the initial version of Article 15 of the CLNI and objected to incorporating the wording of the LLMC in this article.

The **Chair** asked the delegations for their opinions on the subject.

The **German delegation** rejected the Dutch proposal. It explained that the text in the draft CLNI was meant to prevent forum shopping and should be adopted.

The **Dutch delegation** said that its proposal would not allow forum shopping.

It said that it had only intended not to include new, unnecessary additions.

The **Austrian delegation** said that, if it understood the Dutch delegation correctly, the additional criteria were not important, because applicability already followed in accordance with Article 1.

The **Chair** concluded that the Austrian delegation supported the Dutch proposal. After a coffee break, the Chair summed up the outcome of the discussion with a number of delegations during the break. She said that as far as transpired from the discussion during the break, the Dutch delegation had obtained sufficient support. In the absence of any objections from the other delegations, it was decided to revert to the old wording of CLNI 1988 for the wording of the first paragraph Article 15. The Dutch proposal was therefore adopted.

#### **ARTICLE 15 (1) (a)**

The **Chair** recalled the Hungarian delegation’s proposal (CLNI/CONF (12) 6) to complete Article 15 paragraph (1) a) as follows: “(a) the vessel is on a waterway located on the territory of a Contracting State taking into consideration the excluded waterways according to paragraph 3”.

The **Dutch delegation** did not support this proposal. It pointed out that there was a main rule and then exceptions. It explained that Article 15 (3) described the exceptions, whereas (1) referred to the general rule.

The **Swiss delegation** said it felt it was logically not necessary to modify the current text as it might complicate it.

The **Luxembourg delegation** wondered about the reference in this article to the term “lakes”. It said that lakes should be included in the text, as the term “lakes” had been added to Article 1.

The **Chair** wondered whether the Luxembourg delegation was referring to the wrong version of the text. As waterways were already defined in the Convention (and this definition included lakes), it was not necessary to include lakes again in Article 15. She concluded that the article would not be amended.

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The **Dutch delegation** asked for the words “zulk een schip” to be replaced by “een dergelijk schip”.

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#### **ARTICLE 15 (2) b**

The **Chair** recalled that, in Dutch, the title of the AGN did not take a capital letter after the word "Verdrag" and should be written as follows (document CLNI/CONF (12) 3): “Europees Verdrag inzake hoofdwaterwegen die van internationaal belang zijn (AGN)”. She then asked the Drafting Committee to amend the text accordingly.

#### **ARTICLE 16**

The **Chair** said that there was no proposal for an amendment of this article. She then asked how long the Convention should be open for signature.

The **Dutch delegation** said it would be better to find a sufficient period of time that would enable the States to adopt the Convention, but not to allow too much time, as it was necessary to put some pressure on the States. The Dutch delegation suggested a two-year period.

The **Chair** noted that the other delegations agreed with this proposal, and it was decided to retain the dates of 27 September 2012 to 26 September 2014.

#### **ARTICLE 17 (1)**

The **French delegation** lifted its reservations concerning the wording of this paragraph (document CLNI/CONF (12) 5). In the third line of paragraph 1, it asked for the preposition “de” in the French version to be replaced by “à” (à compter à), and in the fourth line to state specifically that the Convention that was to be repealed was that of 1988. On reading the draft declaration to be adopted by the States parties to the present CLNI with a view to its repeal, the French delegation wondered, although it was not directly concerned, if it was sufficient to provide that the present Convention should be repealed by such legal means. While there would be no difficulty for the three States denouncing the Convention in advance, for the fourth State party it would mean the repeal of an agreement ratified by means of this ordinary informal declaration (which could also be seen as a way to amend the existing Convention which was questionable since there was no corresponding provision in the Convention). This might cause problems, perhaps not in international law but in national law, particularly with regard to the competences of the legislative power. Should consent to release from an agreement not be expressed in a form similar to that of consent to be bound by an agreement? (The French delegation was interested by the reference to a comment made by the International Law Commission on Article 54 of the Vienna Convention).

The **Chair** asked the Drafting Committee to look into the proposed amendments in this respect.

## **ARTICLE 17 (2)**

The **IVR** pointed out the need to avoid a situation of the old Convention being denounced by one State before the new Convention had entered into force. The legal vacuum that would be caused by such a situation should be avoided. In this regard it referred to its proposal in document CLNI/CONF (12) 4 for the following clarification to be made: "A State that ratifies, accepts, approves or accedes to this Convention and is a Contracting Party to the Strasbourg Convention on the limitation of liability of owners of inland navigation vessels (CLNI) shall be required to denounce the latter with effect from the date of entry into force referred to in paragraph 1".

The **Dutch delegation** suggested that when the new Convention was signed and ratified the old one should be denounced at the same time. It was important to prevent both the old and the new CLNI being applicable at the same time, and also to avoid a legal vacuum between the denunciation of the old CLNI and the adoption of the new Convention. It pointed out that this issue needed to be settled.

The **IVR** said that it did not understand why this could not be clarified in the Convention itself.

The **Swiss delegation** said it sympathised with the IVR's proposal, but the question remained as to who would be able to impose denunciation of the old Convention.

The **Luxembourg delegation** said that there was certainly a risk of co-existence of two conventions, but it was most likely impossible to avoid it, because if one State did not ratify the convention this would not prevent another State from ratifying it. It could be probably possible to organise this in a non-official way as on the official way it might not work.

The **Chair** said there were several problems. CLNI 2012 was to enter into force one year after the fourth ratification had been deposited. The same period of one year was provided in CLNI 1988 for its termination. The Chair said that if the countries respected the procedure and deposited their instruments of denunciation and ratification at the same time, there would be no problem of overlap. States parties would have to foresee that the old Convention would expire only when the new Convention entered into force. This would solve the problem of a potential overlap or gap.

The **Swiss delegation** said that it was premature to make modifications in such a delicate context, but it wished nevertheless to support the IVR's proposal, because the wording proposed "shall be required to denounce" did not specify the moment of this act.

The **Dutch delegation** agreed. It could be a good solution; it was a good proposal, and a good idea. Foreign States could perhaps agree that the paragraph was worded in such a way that the problem would not occur. It then mentioned that in this context the present Dutch text was wrong. The Dutch text should probably read: "shall denounce the latter".

The **French delegation** emphasised that if the text specified that the Convention entered into force at the moment it was adopted, this was an example of the French proverb of a snake biting its own tail. It noted that was therefore a problem from a logical point of view.

The **Luxembourg delegation** said that if a specific date was given there might be a problem, because it was impossible to know in advance which other States were willing to adopt the Convention.

The **Dutch delegation** suggested saying in a clear way in Article 17 (1) that CLNI 2012 could only enter into force if the old Convention had been denounced.

The **Belgian delegation** said it supported the position of the Swiss delegation.

The **Chair** concluded the IVR's proposal was not adopted and that the Article should not be amended.

The **IVR delegation** suggested deleting paragraph 2 from Article 17. In its opinion, this would clarify the situation.

The Swiss, Austrian, Dutch delegations agreed with the proposal to delete this paragraph

The **German delegation** did not object to this deletion of paragraph 2.

As there was no objection from the Assembly, the **Chair** concluded that this proposal was adopted.

### **ARTICLE 17 (3)**

The **Chair** noted that there was no proposal of amendments to this article, and it was therefore adopted as it stood.

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The **Chair of the Drafting Committee** reported that in the Dutch version the words “niet meer in werking is” had been replaced by “buiten werking treedt”.

In the French version (Article 17 (1)) the words “sera abrogé” had been replaced by “cessera d’être en vigueur”.

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### **ARTICLE 18 (1) (b)**

The **Chair** recalled the IVR’s proposal to delete part 1(b) of Article 18 (document CLNI/CONF (12) 4).

The **IVR** said that this was a crucial issue, as the main purpose of the Convention was to harmonise the law. Therefore it would be preferable to avoid a multiplication of the reservations States made to this Convention, and to limit the possibility of making reservations only when it was really necessary. A distinction should be drawn between the carriage of ordinary goods and the carriage of dangerous goods. The IVR suggested deleting paragraph 1 (b) of Article 18.

The **Dutch delegation** pointed out that this point had been discussed at length well before the present Conference, and it agreed with the IVR’s proposal.

The **Chair** pointed out that quite a number of countries had indicated in the past that they needed special conventions to cover specific damage such as physical, chemical or biological damage, and recalled the existence of the HNS convention.

The **German delegation** rejected the IVR’s proposal.

The **Dutch delegation** agreed that harmonisation of law at the international level was important. The Dutch delegation suggested deleting “domestic regulations” in the English version.

The **Chair** asked the delegations to consider the desirable degree of avoidance of the situation of non-harmonisation, as each reservation meant an absence of harmonisation. The Chair then observed that none of the delegations were in favour of the IVR’s proposal, as amended by the Netherlands. She therefore said that the proposal was not adopted.

The **Dutch delegation** expressed surprise, since there was no disagreement either.

The **Chair** pointed out that it was not possible to modify the Conference’s Rules of Procedure. As there was no other delegation in support of the proposal, the article should not be amended.

## **ARTICLE 19**

There was no proposal of amendments to this article, and it was therefore adopted as it stood.

## **ARTICLE 20 (1)**

The **Chair** said there were two proposals with regard to Article 20 (1).

It was decided to include the date 31 December 2017 in this article.

## **ARTICLE 20 (3)**

The **Dutch** proposal regarding paragraph 3 of Article 20 (document CLNI/CONF (12) 3) was the following: the sentence "The revised limits shall be binding on any State becoming a party to this Convention after adoption of the revision" failed to indicate a date for entry into force. The Dutch delegation therefore proposed amending the sentence as follows in all languages: "Any State that becomes a Party to this Convention after revised limits have been adopted shall be bound by them from the date indicated in the first sentence". The Dutch delegation also asked for the last sentence of paragraph 3 to be deleted if a general rule on temporal applicability were included in the Convention.

The **Chair** suggested sending this article to the Drafting Committee. She then invited the delegations to comment.

The **Secretary General** pointed out that a State joining the Convention when a new limit had been already accepted would have to accept the limit applicable at the moment when the State joined the Convention.

The **Austrian delegation** disagreed with the deletion of the last sentence of the paragraph 3. It felt the last sentence was important, because it meant that the first sentence would apply.

The **French delegation** agreed with the Austrian delegation.

The **Serbian delegation** said that the changes in Articles 20(3) and 21(8) appeared to be more explicit and unambiguous than the provision proposed by the Dutch delegation.

The **Chair** said that there were already a number of objections to the Dutch proposal.

The **Dutch delegation** pointed out that what the Secretary General had said had strengthened it in its position that things were not adequately resolved.

The **Chair** noted that the Dutch proposal regarding sentence 3 of paragraph 3 was not accepted.

Some editorial changes suggested by Hungary and France ("à moins qu'il ne dénonce" to be drafted in the singular) were adopted.

The **Chair** wondered if a provision on intertemporal application was necessary in the current Convention.

The **Dutch delegation** said that it was not necessary as was the case in the Montreal Convention. It therefore suggested deleting the last sentence of Article 20 (3) ("The amended amounts shall however only apply to claims arising out of an occurrence that took place after the amendment entered into force").

The **Austrian delegation** preferred to maintain the provision as it was, to make it clear from what moment the amounts were in force.

The **French delegation** agreed with Austria.

The **Dutch delegation** pointed out that if the Assembly decided to include a temporal provision in the Convention it should deal with this matter correctly and not as was happening now for the last sentence of Article 20 (3).

The **Chair** asked if the Dutch delegation was favouring a general rule on temporal scope instead of this sentence.

The **Dutch delegation** agreed and said that the last two sentences did not deal with the same issue. One dealt with binding a State but not with the moment when it was to be bound. It then noted that as the Montreal Convention's rule was being copied here the Assembly should stick to it in its entirety.

The **Secretary General** said that in the current text there was not any doubt about the question of at what moment in time the new limits of liability would apply for new States acceding to the Convention. On the other hand, he pointed out that it was dangerous to argue that as the Montreal Convention did not need the rule the present Convention did not need it either. He then said it would be best to maintain this provision.

The **Chair** asked the Austrian delegation again if it was insisting on maintaining this sentence.

The **Austrian delegation** replied that it believed this provision was useful but not essential.

The **Serbian delegation** noted that according to its Ministry the temporal scope was necessary in Article 20.

The **Chair** concluded that the last sentence of Article 20 (3) would be deleted and there would be no general rule on the intertemporal application of this convention. She then expressed the wish that the preparatory work should be published.

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#### **ARTICLE 20 (4)**

There was no proposal for an amendment.

#### **ARTICLE 21**

The **IVR** mentioned (document CLNI/CONF (12) 4) that the current Article 20 on the modification of the limits had been redrafted on the model of the Montreal Convention in order to simplify the review of the limits of liability. This would guarantee an adjustment for inflation and make Article 21 superfluous. It would therefore be unnecessary to convene a conference on the increase of the amounts of the limits as the rule on the modification of these limits (based on inflation) was already stipulated in the present Convention. The IVR therefore called for Article 21 to be deleted.

The **French delegation** said that unanimity should be required for the adoption of new limits in order to limit the possibility of revising the limits. It pointed out that it had already submitted this proposal previously but it had not been discussed for lack of time. The French delegation therefore asked if it was possible to discuss this proposal at the present Assembly, thereby waiving the Conference's Rules of Procedure.

The **Chair** regretted to learn that the proposal had not been considered previously for lack of time, but said that it was not possible to change the Conference's Rules of Procedure.

The **German delegation** supported the deletion of Article 21 because it was the old Article 20 of the CLNI, which had never been applied, or at least not during the last 20 years.

The **Swiss delegation** pointed out that it was not clear why a diplomatic conference should be convened to increase the amounts of the limits as the necessary procedure was already included in the present Convention. It concluded that this article was sufficient.

The **Dutch delegation** suggested maintaining Article 21, but changing “increase” to “modification of amount”. It also pointed that the 2/3 majority mentioned in this Article did not seem to be agreed upon by the majority of the participants.

The **Belgian delegation** was in favour of deleting the article, following the French delegation in this respect.

The **Serbian delegation** said it favoured the unanimity rule.

The **Austrian delegation** also favoured deleting Article 21.

The **Luxembourg delegation** said that it agreed with either deletion or the unanimity rule.

The **Czech Republic delegation** said that it also agreed with either deletion or the unanimity rule.

The **Polish delegation** also favoured deleting Article 21.

The **Dutch delegation** repeated that it was in favour of maintaining this article, although France supported a slight modification in it (unanimity rule). The other delegations favoured either deletion or the unanimity rule. It concluded that the most important here was to achieve a majority on the decision.

The **Chair** said she had the impression that the large majority was in favour of deleting Article 21.

The **Dutch delegation** said that the advantage of keeping this article was that a conference would need to be called to change the amounts. There would then be a concrete instruction on how to proceed with such a change. It would be better to keep this possibility as an addition safeguard.

The **Chair** concluded that Article 21 should be deleted. She then closed the meeting for the day.

## **ARTICLE 22**

The **Chair** said that the Dutch proposal with regard to this article (document CLNI/CONF (12) 3) was no longer relevant as it had been decided to delete Article 21. She also referred to the Hungarian proposal concerning the terminology used (“limits” and “amount”).

The **Dutch delegation** said that the first paragraph should include the mention the Secretary General was also the depositary. There were some discrepancies between the different draft versions of the CLNI in this respect; the delegation favoured the version in document CLNI/CONF (12) 13.

The **Chair** agreed with the Dutch delegation, adding that in the following paragraphs only the depositary was mentioned, rather than the Secretary General. She concluded that with this editorial remark the text would be sent to the Drafting Committee.

## **ARTICLE 23**

There were no comments on this article.

The **Swiss delegation** suggested reconsidering Article 18. It said that sub-paragraph (b) or at least the words “or national law” should be deleted.

The **Chair** pointed out that this matter had already been discussed. She asked however if any other delegations wished to reopen discussion on this article.

The **Dutch delegation** said that the Assembly had stopped discussion the previous day because no proposal had been made on the issue, and that the Assembly sympathised with the IVR proposal.

The **Hungarian delegation** agreed with renegotiating.

The **Belgian delegation** supported the Swiss delegation.

The **EBU-UENF delegation** also supported the proposal. It pointed out that it would like to prevent the applicability of national rules.

The **ETC delegation** supported EBU-UENF.

The **French delegation** was not willing to renegotiate. It stressed that last-minute changes were not a good idea.

The **Chair** concluded that there was not enough support to reopen the discussion. She said that the Drafting Committee would probably come back with this issue. She therefore closed the discussion on this article.

The **Swiss delegation** pointed out that as it was not clear who was entitled to vote (as there was still no information about powers), it was not possible to know whether there was enough support.

### **Declaration for signature**

The **Chair** then invited the delegates to discuss the declaration for signature of the convention.

The **Swiss delegation** pointed out that it was necessary to change the term “Bondsstaat” into “Confederatie”. It then asked to be mentioned last in the Final Act, following alphabetical order in French. The Swiss delegation also asked for the entire text to be made gender-neutral.

### **Verification of powers**

The **Secretary General** said that powers had been verified. The Secretary had received the originals of powers from Belgium, France, Germany, Luxembourg, Austria, the Netherlands, Switzerland, Poland, Slovakia and Bulgaria, and had received a copy from Serbia.

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