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INLAND TRANSPORT COMMITTEE

Ad hoc Meeting of Experts on the Convention on
Civil Liability for Damage caused during
Carriage of Dangerous Goods by Road,
Rail and Inland Navigation Vessels (CRTD)

REPORT OF THE AD HOC MEETING OF EXPERTS ON ITS THIRD SESSION

(7-9 July 2003)

CONTENTS

	<i>Paragraphs</i>
Attendance	1
Adoption of the agenda	2
Sixty-fifth session of the Inland Transport Committee	3 - 10
Relation of the CRTD to other international regimes on liability for damage caused during transport of dangerous goods	11 - 20
Main obstacles to the entry into force of the CRTD	21 - 40
(a) Limits of financial liability	21 - 32
(b) Definition of "carrier" (art. 1.8)	33 - 34
(c) Article 16	35 - 37
(d) Other CRTD articles that would need to be amended	38 - 40
Programme of work	41 - 45
Adoption of the report and its annex	46

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ATTENDANCE

1. The Ad hoc Meeting of Experts on the Convention on Civil Liability for Damage caused during Carriage of Dangerous Goods by Road, Rail and Inland Navigation Vessels (CRTD) held its third session from 7 to 9 July 2003 with Mr. Jan E. De Boer (Netherlands) as Chairman. Representatives of the following countries took part in its work: Czech Republic; Germany; Netherlands; Russian Federation; Switzerland. The following intergovernmental organization was also represented: Central Commission for the Navigation of the Rhine (CCNR) along with the following non-governmental organizations: European Conference of Fuel Distributors (CENCC); European Chemical Industry Council (CEFIC); International Rail Transport Committee (CIT); International Road Transport Union (IRU).

ADOPTION OF THE AGENDA

Document: TRANS/AC.8/5

2. The Ad hoc Meeting adopted the agenda of its third session as contained in document TRANS/AC.8/5, with the inversion of items 3 and 4.

SIXTY-FIFTH SESSION OF THE INLAND TRANSPORT COMMITTEE

Document: ECE/TRANS/152, paras.119-126

3. At its sixty-fifth session (18-20 February 2003) the Inland Transport Committee had noted the very low level of participation in the work of the Ad hoc Meeting of Experts on the CRTD, as a consequence of which its conclusions might not be sufficiently representative to permit the adoption by consensus of a revised text of the Convention at the next session of the Committee.

4. The Committee had urged its members to ensure better participation in the sessions of the Ad hoc Meeting of Experts scheduled for 2003. It had also decided to request the Bureau to examine the work of the Ad hoc Meeting, possibly to review its mandate, and, if necessary, to define new guidelines for its work and objectives in 2003.

5. At the request of the Bureau, the secretariat had sent a letter to member States asking them to designate a focal point for the CRTD Convention.

6. The secretariat had addresses for the following countries: Armenia, Austria, Czech Republic, Finland, France, Germany, Netherlands, Poland, Russian Federation, Switzerland and Turkey.

7. The Chairman of the Ad hoc Meeting would report to the Bureau on 10 July 2003 on the progress of work.

8. The representative of CCNR informed the Meeting that his organization had requested the secretariat to convene a meeting of experts from interested countries in Western Europe as well as in Central and Eastern Europe with a view to the continuation of work, with the aim of finalizing a European Convention on liability and compensation for damage in connection with the carriage of hazardous and noxious substances by inland waterway (CRDNI).

9. The CCNR secretariat had also been made responsible for seeking, in agreement with the delegations of the States concerned, methods and possibilities for establishing an additional fund for compensation for catastrophic damage in inland navigation.

10. A first meeting of government experts - to which UNECE and the Danube Commission were invited - would be held in Strasbourg from 28 to 30 October 2003.

RELATION OF THE CRTD TO OTHER INTERNATIONAL REGIMES ON LIABILITY FOR DAMAGE CAUSED DURING TRANSPORT OF DANGEROUS GOODS

Document: TRANS/AC.8/2003/4

11. The Meeting was informed that the CRTD did not overlap with other international instruments. For rail, contractual liability relating to damage to passengers or to goods was governed by the 1980 Convention concerning International Carriage by Rail (COTIF-CIV/CIM), as amended by the 1999 Protocol, which had not yet entered into force.

12. The 1999 Protocol to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (Basel Liability Convention) could concern the three transport modes but it expressly provided that it would not apply when the CRTD was in force and applicable to the damage caused by an incident occurring in the same portion of a transboundary movement.

13. For road transport, contractual liability was governed by the 1956 Convention on the Contract for the International Carriage of Goods by Road (CMR) while several international instruments existed for carriage by inland waterway:

- Strasbourg Convention on the Limitation of Liability of Owners of Inland Navigation Vessels, 1988 (CLNI);
- Budapest Convention on the Contract for the Carriage of Goods by Inland Waterways, 2001 (CMNI);
- International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992 (CLC);
- Protocol to Supplement the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992 (Fund Convention);
- International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996 (HNS Convention);
- International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (Bunker Oil Convention).

14. Mention could also be made of other (draft) international instruments concerning damage to the environment in general:

- Lugano Convention on Civil Liability for Damage Resulting from Activities Dangerous to the Environment, 1993 (Lugano Convention); and
- European Union draft Directive on environmental liability with regard to the prevention and remedying of environmental damage. The draft Directive provided that it would not duplicate the CRTD.

15. Of all the above-mentioned instruments, only the CRTD provided for a regime of objective liability for the carrier associated with a limitation of liability and only the CRTD made it mandatory for the carrier to have liability insurance, with the possibility of direct action against the insurer, for the damage caused by the carriage of the dangerous goods.

16. With reference to document TRANS/AC.8/2003/4, the representative of IRU pointed out that the 1960 Convention on Civil Liability in the field of Nuclear Energy and the 1963 Convention on Civil Liability for Nuclear Damage - both of which were in force - made provision for the exclusive liability of the operator of a nuclear installation, even in the event of the accident occurring during carriage.

17. He considered that the CRTD Convention should adopt the same solution. It would not be logical if the CRTD Convention (art. 4) did not apply to accidents caused during carriage when the operator of a nuclear installation was established in a country which had acceded to the Conventions of 1960 and 1963 although it applied to the same accidents during carriage when the operator of a nuclear installation was not established in a country which had acceded to the 1960 or the 1963 Convention.

18. The representative of IRU also stressed that the 1969 Convention on Civil Liability for Oil Pollution Damage (and the 1992 Protocol) and the Bunker Oil Convention of 2001 permitted vessel owners to limit their liability in tort. According to the former Convention, the owner of a vessel registered as not exceeding 5,000 tonnes could limit his liability to 3 million SDRs. According to the latter Convention, the owner of a vessel registered as not exceeding 500 tonnes had the right to limit his liability to 333,000 SDRs.

19. In his opinion, it would therefore be advisable to bring the CRTD into line with the 1969 Convention or the Bunker Oil Convention of 2001. In order to avoid any discrimination, the carrier should be authorized by the CRTD to reduce liability proportionally to 27,000 SDRs or 30,000 SDRs, per 44-tonne lorry or per wagon.

20. The representative of IRU was invited to submit a document for the next session comparing liability regimes in international instruments.

MAIN OBSTACLES TO THE ENTRY INTO FORCE OF THE CRTD

(a) Limits of financial liability

Document: TRANS/AC.8/2003/1

21. The main concern which emerged from the replies to the questionnaire circulated by the secretariat (TRANS/WP.15/2001/17 and -/Add.1 to 8) was that the level of the limits of liability was too high and that it should be revised downwards in order to ensure harmonization between the various countries.
22. The representative of the Netherlands said that his proposal took account of the interests of both victims and carriers and of the available capacity of the insurance companies.
23. For road hauliers, it was proposed that liability should be reduced from 8 million SDRs for death or bodily injury to 7 million SDRs and from 12 million SDRs for all other claims (material damage or damage to the environment) to 5 million SDRs. This level of compensation would be justified both for the limits of liability of road hauliers and for those of the mandatory insurance covering that liability, in view of the relatively high risks associated with road transport (accident of Los Alfaques).
24. For carriers by rail, it was proposed that liability should be reduced from 18 million SDRs for death or bodily injury to 12 million SDRs and 12 million SDRs for other claims (material damage or damage to the environment) to 8 million SDRs. This level of compensation would take account of accidents listed and the new situation of liberalization of the sector and should allow new private companies to bear the financial costs of the insurance.
25. For carriers using inland navigation vessels, liability would be reduced from 8 million SDRs for death or bodily injury to 4 million SDRs and from 7 million SDRs for other claims (material damage or damage to the environment) to 3 million SDRs.
26. The Meeting had already been informed that a sum of 10 million SDRs could easily be insured by the International Group of P&I Clubs; the premiums asked by the P&I Clubs for a Rhine navigation vessel carrying dangerous goods would range from 13,000 to 15,000 DM, with an increase of 30 to 50% in the event of the coverage of civil liability and compensation for damage related to the carriage of dangerous goods.
27. The representative of CCNR said that the draft CRDNI could not deal with compensation for catastrophic damage and that it was for that reason that the creation of a compensation fund was envisaged.
28. The representative of CIT said that she reserved her position concerning the amounts of compensation relating to rail transport.
29. She was asked to submit a document for the next session.
30. Although it was considered that the proposed amounts of compensation were a step in the right direction, some delegations were not in a position to take a final decision on them. It was decided to adopt article 9 leaving the amounts in square brackets (see annex).

31. The representative of IRU pointed out that on 26 January 1982 Spanish justice had cleared the road haulier in the Los Alfaques accident and on the contrary had held that the loader of the goods bore exclusive responsibility for the accident. This judgement would confirm the cogency of the wish expressed by overland transport operators that liability in tort should be devolved on the manufacturers of dangerous goods.

32. Since the representative of IRU was categorically opposed to liability being devolved on the carrier alone, he spoke out against the very idea of any amount of compensation to be borne by the carrier.

(b) Definition of “carrier” (art. 1.8)

Document: TRANS/AC.8/2003/2

33. OTIF and CIT had proposed that third party civil liability for damage caused during carriage of dangerous goods by road, rail and inland navigation vessels should be borne in the first instance by those who exercised economic control of the goods; where appropriate, liability should be borne by the producer of the dangerous goods who was most familiar with the potential dangers.

34. If the principle of devolving liability on the carrier were to be followed, OTIF and CIT had proposed that the definition of “carrier” for rail transport should be brought into line with that of article 1, paragraph 8 (a) of the CRTD. This move, which consisted in having the same definition of “carrier” for the three modes, was adopted (see annex).

(c) Article 16

Document: TRANS/AC.8/2003/3

35. In order to attenuate the economic consequences of the obligation for the carrier to have insurance in accordance with article 13 of the CRTD - in particular for some countries in transition - it was agreed to add a new paragraph 4 to article 16 in order to permit a period of transition during which a Contracting State could dispense the carrier from covering his liability by an insurance or other financial security for a maximum period of [6 years] after the Convention had entered into force for that State (see annex).

36. The length of this period was not conclusively decided and was left in square brackets.

37. Existing paragraph 4 of article 16 was deleted since it no longer was in keeping with the new situation of liberalization of the railway sector.

(d) Other CRTD articles that would need to be amended

Provisions concerning liability (arts. 5 to 8)

38. The representative of IRU considered that all the provisions concerning liability should be revised in order to exclude the devolution of liability on the carrier alone.

39. This proposal was not accepted.

40. It was recalled that the authors of the CRTD had strongly recommended a system for the attribution of liability to the carrier as the person controlling the movement of the goods, the person who could most easily be identified by the victims and the person who could take out an annual insurance. It was maintained that this devolution of liability would be the simplest way of ensuring third party compensation, while the carrier for his part would have the right to bring a recourse claim against any other person who could be held liable for the damage under the national law applicable (ECE/TRANS/84, para. 14).

PROGRAMME OF WORK

41. The Meeting requested the secretariat to prepare a consolidated version of the CRTD for the next session when a final reading would take place before the Convention was submitted to the Inland Transport Committee.

42. The representatives of Germany and the Netherlands expressed concern at the low rate of country attendance in the work on the CRTD.

43. The representative of the Netherlands hoped that countries would be able to make known their definitive positions regarding amendments to the CRTD at the next session.

44. The representative of CCNR considered that it would be useful to anticipate a version without provisions concerning inland navigation in the event of the acceptance of a draft CRDNI Convention.

45. The Ad hoc Meeting was informed that the date of its next session had been provisionally scheduled from 3 to 5 November 2003 and that the deadline for the submission of official documents was 22 August 2003.

ADOPTION OF THE REPORT AND ITS ANNEX

46. The Ad hoc Meeting adopted the report of its third session and its annex.

Annex

Amendments to the CRTD adopted by the Ad hoc Meeting of Experts on the Convention on Civil Liability for Damage caused during Carriage of Dangerous Goods by Road, Rail and Inland Navigation Vessels (CRTD)

Article 1

Amend paragraphs 2, 8 and 9 as follows:

“2. ‘*Road vehicle*’ means any motor vehicle, other than a vehicle belonging to or under the orders of the armed forces of a Contracting Party, intended for use on the road, being complete or incomplete, having at least four wheels and a maximum design speed exceeding 25 km/h, and its trailers, with the exception of vehicles which run on rails and of agricultural and forestry tractors and all mobile machinery.”

“8. ‘*Carrier*’ means:

the person who at the time of the incident controls the use of the vehicle on board which the dangerous goods are carried;

the person in whose name the vehicle is registered in a public register or, in the absence of such registration, the owner of the vehicle shall be presumed to control the use of the vehicle unless he proves that another person controls the use of the vehicle and he discloses the identity of that person or, if he is unable to disclose the identity of such person, he proves that such other person has taken control of the vehicle without his consent and in such circumstances that he could not reasonably have prevented such use.

Where the vehicle on board which the dangerous goods have been loaded is moved by another vehicle, the person who controls the use of that other vehicle shall be deemed to be the carrier.

“[9. ‘*Dangerous goods*’ means, with respect to carriage by road, rail or inland navigation vessel, any substance or article included in the list of dangerous substances contained in Part 3 of the European Agreement ... (ADR), the Regulations ... (RID) or the Regulations annexed to the European Agreement ... (ADN).]”

Article 4

Amend (c) as follows:

“[(c) to carriage of dangerous goods by road, rail or inland navigation vessel which complies with the conditions of section 1.1.3 of Annex A to the European Agreement ... (ADR), section 1.1.3 of the Regulations ... (RID) or the Regulations annexed to the European Agreement ... (ADN).]” (rest unchanged)

Article 9

Replace existing article 9 by:

“Article 9

1. The liability of the road carrier under this Convention for claims arising from any one incident shall be limited as follows:
 - (a) with respect to claims for loss of life or personal injury: [7] million units of account;
 - (b) with respect to any other claim: [5] million units of account.
2. The liability of the rail carrier under this Convention for claims arising from any one incident shall be limited as follows:
 - (a) with respect to claims for loss of life or personal injury: [12] million units of account;
 - (b) with respect to any other claim: [8] million units of account.
3. The liability of the carrier by inland navigation vessel under this Convention for claims arising from any one incident shall be limited as follows:
 - (a) with respect to claims for loss of life or personal injury: [4] million units of account;
 - (b) with respect to any other claim: [3] million units of account.
4. Where the sums provided for in paragraph 1 (a), paragraph 2 (a) and paragraph 3 (a) of this article are insufficient to pay the claims mentioned therein in full, the sums provided for in paragraph 1 (b), paragraph 2 (b) and paragraph 3 (b) shall be available for payment of the unpaid balance of claims under paragraph 1 (a), paragraph 2 (a) and paragraph 3 (a). Such unpaid balance shall rank rateably with claims mentioned under paragraph 1 (b), paragraph 2 (b) and paragraph 3 (b).”

Article 16

Delete the existing paragraph and insert a new paragraph 4 as follows:

- “4. A Contracting State may provide that the carrier shall be dispensed from the obligation to cover his liability by insurance or other financial security for a maximum period of [6] years after the Convention has entered into force for that State when it has definitively signed the Convention or when it has deposited an instrument of ratification, acceptance, approval or accession to the Convention.”
