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Ad hoc Meeting on the Convention on
Civil Liability for Damage caused during
Carriage of Dangerous Goods by Road,
Rail and Inland Navigation Vessels (CRTD)
(Third session, Geneva, 7-9 July 2003)

**RELATIONSHIP BETWEEN THE CRTD AND OTHER INTERNATIONAL
LIABILITY INSTRUMENTS**

Transmitted by the Government of the Netherlands

This document intends to examine the relationship between the CRTD and other international liability instruments, whether or not in force.

To that end the liability regime of relevant international instruments in the field of transport of dangerous goods will be briefly outlined and compared with the CRTD. The financial limits of liability will not be treated within this context.

1. Convention on Civil Liability for Damage Caused during Carriage of Dangerous Goods by Road, Rail and Inland Navigation Vessels, 1989 (CRTD)

This Convention has not yet entered into force.

In general the CRTD aims at harmonization of liability regimes in the field of transport of dangerous goods by road, rail or inland navigation vessel.

The Convention governs non-contractual liability for damage caused during carriage of dangerous goods. It provides for a regime of strict liability of the carrier combined with limitation of liability and obliges the carrier to maintain liability insurance. Direct action against the insurer is possible.

2. Inland navigation

The following other international instruments are relevant to inland navigation vessels:

Strasbourg Convention on the Limitation of Liability for Inland Navigation, 1988 (CLNI);

Protocol to Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, 1999 (Basel Liability Protocol);

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 (Bunkers Convention).

2.1 CLNI

The aim of the CLNI is harmonization of limitation of contractual and non-contractual liability of the shipowner and the salvor in the field of inland navigation, in particular on the Rhine and the Moselle.

A Contracting Party may exclude the application of the CLNI for damage caused by transport of dangerous goods, insofar as an international treaty or national legislation is applicable which excludes the limitation of liability or provides for higher limitations of liability than the CLNI.

Comparison with the CRTD:

Contrary to the CRTD, the CLNI does not regulate liability nor aims at harmonization thereof. Furthermore, the financial limits are based on damage caused by all goods and are therefore in general too low to cover damage caused by dangerous goods. Since the CRTD introduces higher limitations of liability, a Contracting Party to the CLNI may exclude the application of the CLNI for damage caused by transport of dangerous goods.

2.2 Basel Liability Protocol

This Protocol has not yet entered into force.

It governs liability for damage due to an incident occurring during a transboundary movement of hazardous wastes and other wastes and their disposal, including illegal traffic, from the point where the wastes are loaded on the means of transport in an area under the national jurisdiction of a State of export. A Contracting State may under specific conditions exclude the application of the Protocol which *de facto* will be applied as a general exclusion regarding OECD Member States.

The Protocol provides for a regime of strict liability for the notifier or exporter; compulsory insurance, bonds or other financial guarantees; direct action against any person providing insurance, bonds or other financial guarantees; and (minimum) financial limits for the liability. On top of the strict liability regime the Protocol provides for fault-based liability combined with no financial limit on liability.

Comparison with the CRTD:

Insofar as the CRTD is in force and applicable to the damage caused by an incident arising during the same portion of a transboundary movement, the Protocol explicitly states that it shall not apply.

2.3 CMNI

This Convention has not yet entered into force.

It governs contractual liability and is applicable to any contract of carriage according to which the port of loading or the place of taking over the goods and the port of discharge or the place of delivery of the goods are located in two different States of which at least one is a State Party to the Convention.

Comparison with the CRTD:

The CRTD explicitly excludes contractual liability, therefore there is no overlap between these two Conventions.

2.4 The 1992 CLC and the 1992 Fund Convention

These Conventions set up a two-tier system of compensation. The first tier results from the 1992 CLC which governs the liability of shipowners for oil pollution damage, excluding oil carried as fuel in ship's bunkers and damage resulting from fire or explosion. The Convention provides for a regime of strict liability of the shipowner. The shipowner is however in principle allowed to limit his liability to an amount linked to the tonnage of the ship. The Convention requires the shipowner to maintain liability insurance. Direct action against the insurer is possible.

The second tier of compensation results from the 1992 Fund Convention. The Fund set up under this Convention pays additional compensation, up to a certain maximum amount, to victims who have not been fully compensated by the shipowner or his insurer under the 1992 CLC.

Comparison with the CRTD:

A similar liability regime is established; strict liability, compulsory insurance and direct action against the insurer.

In the CLC the liability is channelled to the shipowner. The CRTD channels the liability to the carrier. However, the concept of carrier of road vehicles, railway carriages and inland navigation vessels in the CRTD is identical to the definition of shipowner in the CLC. The CLC and Fund Convention are only applicable to damage caused by seagoing ships, including inland navigation vessels that will be or have been seagoing. Therefore, a similar liability regime is essential.

2.5 HNS Convention

This Convention has not yet entered into force.

It governs non-contractual liability for damage arising from the carriage of hazardous and noxious substances by sea as cargo, excluding certain radioactive materials. Thus, it covers pollution and accidental damage not covered by the 1992 CLC, the 1992 Fund Convention and the Bunkers Convention.

The Convention provides for a regime of strict liability of the shipowner. The shipowner is however in principle allowed to limit his liability to an amount linked to the tonnage of the ship. Additional compensation may be available from the HNS Fund if the limits are not sufficient.

The Convention requires the shipowner to maintain liability insurance. Direct action against the insurer is possible.

Comparison with the CRTD:

A similar liability regime is established; strict liability, compulsory insurance and direct action against the insurer. In the HNS the liability is channelled through the shipowner. The CRTD channels the liability to the carrier. However, the concept of carrier of road vehicles, railway carriages and inland navigation vessels in the CRTD Convention is virtually identical to the definition of shipowner in the HNS Convention.

The Convention applies to seagoing vessels and seaborne crafts, including inland navigation vessels that will or have been seagoing. Therefore, a similar liability regime is essential.

2.6 Bunkers Convention

This Convention has not yet entered into force.

It governs liability for damage caused by pollution resulting from the escape or discharge of oil carried in bulk at sea by ships. Thus, it covers oil pollution damage not covered by the 1992 CLC and the 1992 Fund Convention.

The Convention provides for a regime of strict liability of the shipowner. The shipowner is however in principle allowed to limit his liability to an amount linked to the tonnage of the ship. The Convention requires the shipowner to maintain liability insurance or other financial security for ships above a certain tonnage. Direct action against the insurer or person providing financial security is possible.

Comparison with the CRTD:

A similar liability regime is established; strict liability, compulsory insurance and direct action against the insurer. In the Bunkers Convention the liability is channelled through the shipowner. The CRTD channels the liability through the carrier. However, contrary to owners of road vehicles, railway carriages and inland navigation vessels, the shipowner is in virtually every case identical to the carrier.

The Convention applies only to seagoing vessels and seaborne crafts, including inland navigation vessels that will or have been seagoing. Therefore, a similar liability regime is essential.

3. Rail

No international liability instrument is in force for non-contractual liability for damage arising out of carriage of dangerous goods by rail. Contractual liability relating to damage to passengers or to goods themselves is governed by the 1980 Convention on the International Transport by Rail (COTIF-CIV/ CIM), as amended by the 1999 Protocol. The latter is not yet in force.

Comparison with the CRTD:

The CRTD explicitly excludes contractual liability, therefore there is no overlap between the COTIF-CIV/liability regimes and the CRTD and the latter could fill the gap in the international liability regime for transport of dangerous goods by rail.

As regards the application of the Basel Liability Protocol to rail transportation the same applies as has been stated in relation to inland navigation, in particular that in so far as the CRTD is in force and applicable to the damage caused by an incident arising during the same portion of a transboundary movement by rail, the Protocol explicitly states that it shall not apply.

4. Road

No international liability instrument is in force for non-contractual liability for damage arising out of carriage of dangerous goods by road. Contractual liability is governed by the Convention on the Contract for the International Carriage of Goods by Road, 1956 (CMR).

Comparison with the CRTD:

The CRTD explicitly excludes contractual liability, therefore there is no overlap between the CMR and the CRTD and the latter could fill the gap in the international liability regime for transport of dangerous goods by road.

As regards the application of the Basel Liability Protocol to road transportation the same applies as has been stated in relation to inland navigation, in particular that in so far as the CRTD is in force and applicable to the damage caused by an incident arising during the same portion of a transboundary movement by road, the Protocol explicitly states that it shall not apply.

5. Other

Two other international (draft) instruments are applicable to environmental damage in general:

The Lugano Convention on Civil Liability for Damage Resulting from Activities Dangerous to the Environment, 1993 (Lugano Convention); and

The EU Draft Directive on environmental liability with regard to the prevention and remedying of environmental damage.

6. Lugano Convention

This Convention has not yet entered into force.

The Lugano Convention aims at ensuring adequate compensation for damage resulting from activities dangerous to the environment and also provides for means of prevention and reinstatement. However, damage arising from carriage is excluded from the field of application of this Convention. Thus, there is no overlap with the CRTD.

7. EU Draft Directive on environmental liability (draft of 28 June 2002)

The purpose of the Directive is to establish a framework, based on environmental liability, for the prevention and remedying of environmental damage. The Directive provides for unlimited liability of the operator and for obligations of the competent authorities of the Member States regarding preventive or remedial measures.

Comparison with the CRTD:

The CRTD covers a wider range of environmental damage, since in comparison with the EU Draft Directive the CRTD covers traditional damage as well.

The Directive shall not apply to environmental damage or to any imminent threat of such damage arising from an incident in respect of which liability or compensation falls within the scope of the CRTD, but only if the CRTD is in force in the Member State concerned.

There are several differences between the two instruments.

Firstly, regarding financial security it remains to be seen whether the EU regime will eventually provide for compulsory financial security, while the CRTD requires such financial security.

Secondly, the Directive foresees that the competent authority shall be entitled to initiate cost recovery proceedings against the operator who has caused the damage or the imminent threat of damage in relation to any measures taken in pursuance of the Directive before the expiry of a period of five years from the date on which the measures in question have been completed or the liable operator has been identified, whichever is later. Thus, if the damage only materializes 30 years after the event, which eventually caused it, occurred, the operator may still be held liable. The CRTD provides for a time-limit of three years from the date at which the person suffering the damage knew or ought reasonably to have known of the damage and the identity of the carrier. In no case, however, shall an action be brought after ten years from the date of the incident which caused the damage.

Lastly, the Directive provides for unlimited liability and the choice between proportional or joint and several liability is basically left to the Member States. The CRTD provides for limited, joint and several liability.

Since the Directive shall not apply to environmental damage which is regulated by the CRTD, an EU Member State may be State Party to the CRTD once the Directive is in force.

Conclusion

The CRTD provides for a harmonized non-contractual liability regime in the field of transport of dangerous goods by road, rail or inland navigation vessel. As far as transport by road and rail is concerned, such liability is not yet covered by existing international instruments, whether or not in force.

Regarding transport by inland navigation vessels two international instruments exist, although they have not yet entered into force. The CLNI provides for limitation of liability, but the application of this Convention can be excluded in favour of the CRTD. The Basel Liability Convention will not apply to damage covered by the CRTD.

The 1992 CLC, the 1992 Fund Convention, HNS and the Bunkers Convention are applicable to seagoing inland navigation vessels. The liability regime under the CRTD is, understandably and necessarily, similar to the regimes under these Conventions.

In the field of environmental liability the CRTD will be compatible with the EU Draft Directive on environmental liability. Since the scope of the CRTD will be excluded from this directive there will be no obstacle for EU Member States with regard to future ratification of the CRTD.
