



**Economic and Social
Council**

Distr.
GENERAL

TRANS/AC.8/8
14 November 2003

ENGLISH
Original: FRENCH

ECONOMIC COMMISSION FOR EUROPE

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 FOURTH SESSION**

(3-4 November 2003)

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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 fourth session from 3 to 4 November 2003 with Mr. Jan E. De Boer (Netherlands) as Chairman. Representatives of the following countries took part in its work: Czech Republic; France; Germany; Netherlands; Poland; Switzerland. The following intergovernmental organizations were represented: Central Commission for the Navigation of the Rhine (CCNR); Intergovernmental Organization for International Carriage by Rail (OTIF). The following non-governmental organization was also represented: International Road Transport Union (IRU).

ADOPTION OF THE AGENDA

Document: TRANS/AC.8/7

2. The Ad hoc Meeting adopted the agenda of its fourth session as contained in document TRANS/AC.8/7.

WORK OF THE LAST SESSION OF THE BUREAU OF THE INLAND TRANSPORT COMMITTEE

Document: TRANS/BUR.2003/3

3. The Meeting was informed that the Bureau of the Inland Transport Committee at its July session had requested the secretariat to send member States a letter about the revision of the CRTD, attaching a copy of the draft to be discussed at the current session of the Ad hoc Meeting of Experts.
4. The secretariat had sent the letter to member States requesting them to inform it by the end of October 2003 of the official position of their Governments regarding the principle of the adoption of a new Convention and to indicate whether their country would, in principle, envisage becoming a Contracting Party to the new Convention.
5. The Meeting took note of the replies to the letter submitted by Slovenia and Switzerland.
6. The representatives of the Czech Republic and Poland announced that their respective Governments were preparing a reply to the secretariat's letter.
7. The representatives of Germany and the Netherlands said that the official position of their respective countries concerning the CRTD had not changed.

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

Document: TRANS/AC.8/2003/6

8. The representative of IRU said that there were disparities between the maximum limits of liability to be found in the various conventions.
9. He considered that these limits, adapted proportionally to road vehicles, should be:
 - 19,000 SDRs if account was taken of the International Convention on Civil Liability for Oil Pollution Damage of 29 November 1969, amended by the Protocol of 27 November 1992;
 - 48,000 SDRs if account was taken of the Convention on Limitation of Liability for Maritime Claims of 19 November 1976, amended by the Protocol of 2 May 1996;
 - 48,000 SDRs if account was taken of the International Convention on Civil Liability for Bunker Oil Pollution Damage (Bunker Oil Convention) of 23 March 2001;
 - 159,000 SDRs if account was taken of the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea (HNS Convention) of 3 May 1996;
 - 216,000 SDRs if account was taken of the Strasbourg Convention on the Limitation of Liability of Owners of Inland Navigation Vessels (CLNI) of 4 November 1988.
10. He concluded that the limit of 12 million SDRs for road transport in the draft revised CRTD was far too high.
11. He further deplored the fact that in the CRTD Convention liability was devolved on the carrier (the owner of the means of transport) for damage caused both by the carrier and by the goods carried. He considered that systematically devolving liability on the carrier in the CRTD was contrary to existing international law (for example, the CMR Convention) and practice, established on the basis of the latter Convention. He recalled that under the CMR Convention, the carrier was exonerated from liability if loading and unloading operations were performed by the consignor or consignee regardless of whether these persons were at fault or not, or whether they had been negligent or not. Consequently, he did not find it acceptable that the carrier could be held liable for damage relating to loading or unloading operations performed by the consignor or the consignee where the carrier could not prove misconduct or negligence by the latter.
12. The representative of IRU also noted that the CRTD made provision for means of redress by the carrier against other participants such as the loader or the consignor, but he considered that in practice such means were deceptive and that a small transport company would have no means of bringing proceedings against the large oil or chemicals industry companies or providing the evidence required by the CRTD.

13. He opposed the extension of the carrier's liability to damage resulting from causes inherent in the goods and went on to say that he did not see what interest the CRTD would have for road transport since the actions and omissions of road hauliers were already covered by the Green Card system, and in certain countries this insurance covered unlimited liability on the part of the carrier.

14. On the basis of a communication from IRU (contained in document TRANS/AC.8/2003/6) and a further presentation by the representative of IRU, the Chairman identified four issues for consideration by the Meeting under this agenda item: scope of application, proportionality of limitations of liability, insurability and disruption of legal traditions.

Scope of application

15. The Meeting considered that the CRTD Convention both complemented and supplemented existing international transport liability conventions. In addition, the CRTD Convention provided a broader scope for application since it included loading and unloading periods.

16. It was also considered that the Convention both complemented and supplemented the Paris and Vienna Conventions on third party liability in the field of nuclear energy. Although these nuclear conventions provided for the liability of the operator of a nuclear installation and also for damage occurring outside the installation, e.g. during the transport of radioactive substances, this only applied to operations within the nuclear fuel cycle, insofar as the operator of a nuclear installation was considered to have full control over all the operations in the cycle.

17. The transport of radioactive material outside the nuclear fuel cycle, however (e.g. the transport of hospital equipment or damage caused not by radioactivity but by the corrosive or pollutant nature of the substances), would be covered under the CRTD Convention.

18. The Meeting concluded that compared with other international liability conventions there were no loopholes in the scope of the CRTD Convention. It was further concluded that these conventions were all based on the principle that liability devolved on the person having direct control over the goods carried.

Proportionality of limitations of liability

19. The representative of IRU pointed out that the volume and carrying capacity of the different means of transport used, which differed in each transport mode, should be taken into account in order to establish proportional levels of limitations of liability.

20. The Meeting concluded in this regard that the amount of the damages and therefore the amount of compensation to be paid for each transport mode might have no relation to the volume of the cargo actually carried. From a historical perspective, a reasonable level of limitations of liability had been an established feature for decades, and could be insured at a reasonable cost on the insurance market bearing in mind the existing capacity of that market.

21. This also explained the divergences between the proposed levels of liability, which were furthermore based on the principle of the extension of the carrier's liability as far as was possible in practice.

22. The level of limitation should not be taken as being linked to a specific tonnage of goods carried, but as related to the solvability of the type of carrier in question; this could be assessed in terms of the value, and therefore on the basis of the tonnage of the means of transport (according to this principle it was not possible to obtain more from sea or road transport than was entrusted to it), and the amount of damages to be expected.

23. As claims history showed, the average amount of damages might be different for each transport mode (interests of victims). That was another reason why the limitation of liability for carriage by road was of a different order from that of shipping, for example. Consequently, the amounts currently proposed in the revised CRTD Convention were set at different levels for each mode, also taking into account the insurability of these amounts at a reasonable cost.

Insurability

24. A third issue identified by the Chairman in the remarks of the representative of IRU was that it would not be possible to obtain coverage for a limitation of liability of 12 million SDRs for road transport on the current insurance market. The IRU representative had also pointed out that it would not currently be possible to obtain guarantees under the Green Card system for unlimited liability.

25. The Meeting was informed that it was currently possible to obtain insurance coverage in certain jurisdictions at levels negotiated more than 10 years ago of 6.5 million SDRs. Bearing in mind current general trends such as inflation indexing and the generally increased level of consumer protection in the context of other third party liability instruments, an increase to at least 12 million SDRs was deemed reasonable and therefore acceptable.

26. The Meeting further stressed that the Green Card system mentioned above was compatible with the CRTD Convention and that article 14 of the Convention explicitly referred to the system.

Disruption of legal traditions

27. With reference to the comments made by the representative of IRU that the CRTD Convention would needlessly disrupt legal traditions and in addition would be superfluous in that it served no purpose, the Meeting considered that the CRTD was established on the same bases as other international civil liability conventions which had been successfully and effectively implemented both in civil law and in common law jurisdictions.

28. Once again it was concluded that these conventions, all of which were based on the principle that liability for damage caused to third parties devolved on the person having direct control over the goods transported, guaranteed prompt and adequate compensation to victims of damage caused by the carriage of dangerous goods.

29. This principle applied without prejudice to the contractual liability of persons other than the carrier that might exist under other national or international instruments.

CONSIDERATION OF THE DRAFT OF THE NEW CRTD AND RELATED PROPOSALS

Documents: TRANS/AC.8/2003/5; TRANS/AC.8/2003/7

Title of the Convention

30. In the title of the Convention it was decided to replace “inland navigation vessels” by “inland waterway”.

Articles 1 and 4

31. The proposal submitted by the secretariat in document TRANS/AC.8/2003/7 was adopted (see annex).

32. With reference to the definition of “carrier”, the position of the International Rail Transport Committee (CIT) was that in view of the revision of the 1980 Convention concerning International Carriage by Rail (COTIF-CIV/CIM), as revised by the 1999 Protocol - which had not yet entered into force - it had not yet been decided whether the operator could be considered to be a carrier of dangerous goods.

Article 5

33. The representatives of OTIF and IRU and of CIT were not in favour of liability being devolved on the carrier alone.

34. For CIT, the grounds for exoneration from liability furnished by the CRTD were deceptive since it would be impossible to produce the proof specified in article 5, paragraph 4.

Article 9

35. The limits of liability of road hauliers had been reduced to 7 million SDRs for loss of life or personal injury and 5 million SDRs for all other claims (damage to property or the environment).

36. These limits were 12 million and 8 million SDRs, respectively, for rail carriers and 4 million and 3 million SDRs, respectively, for inland waterway carriers.

37. The representative of IRU referred again to the opposition of his organization and its members in some 50 countries to the very idea of any compensation by the carrier if the accident could be imputed to another participant in the transport operation or solely to the goods carried.

38. CIT considered that the amounts proposed were still high and would therefore prevent the arrival of newcomers on the rail transport market since, unlike other transport modes, railway companies were still subject to a transport obligation. The amounts were moreover different for the three transport modes and this would create unjustified discrimination. It would be equally discriminatory to keep the CRTD for two transport modes only (road and rail) if inland navigation were to have its own convention.

Article 16, paragraph 4

39. The Chairman said that the transitional period of six years placed in square brackets had been included to accommodate countries which could not apply the provisions of the Convention immediately.

Article 22

40. It was decided to put the dates contained in paragraphs 1 and 2 in square brackets.

ANY OTHER BUSINESS

Draft CRDNI

41. The representative of CCNR informed the Meeting that his organization had continued its work on finalizing a European Convention on liability and compensation for damage in connection with the carriage of hazardous and noxious substances by inland waterway (CRDNI) and had organized a first meeting of government experts (Strasbourg, 28-30 October 2003).

42. He added that the draft CRDNI resembled the CRTD on a number of points (objective liability, devolving of liability on the carrier, direct right of recourse, limits of liability, compulsory insurance), but differed from it on other points such as the person objectively liable (the vessel owner) and a number of other provisions, either derived from the HNS Convention or other modern instruments or incorporating provisions more favourable to the victims.

43. Unlike the CRTD, the draft CRDNI would possibly be supplemented by the establishment of an additional compensation fund for catastrophic damage in inland navigation (with a liability ceiling which could range from 25 to 50 million SDRs since the largest damages in inland navigation - Aventis - had been 26 million Deutsche marks).

44. When questioned as to how this fund would be financed, the representative of CCNR said that thought was being given to the matter, but that a contribution by consignors, loaders, producers or consignees of the goods could be envisaged. CCNR had set up a group of experts on the question.

45. He estimated that the fund would offset the low level of the limit of liability of the compulsory insurance and that a fund of this nature could usefully be planned for all transport modes.

46. In this regard, CIT's position was that the CRTD did not constitute a "valid" response to catastrophic accidents like those of recent years (for example, the accident to the vessel "Prestige"); such accidents should be the subject of another convention and should be handled through a compensation fund.

Follow-up

47. Since it had been decided to submit the full version of the CRTD to the Inland Transport Committee at its sixty-sixth session (17-19 February 2004), the Meeting raised the question of how **the Committee might wish to follow it up**, also in the light of the poor rate of participation in the work on the CRTD Convention.

48. The Committee might wish to decide whether the work currently being undertaken by CCNR on a regime dealing solely with liability in inland navigation (**draft CRDNI Convention**) **was likely to duplicate the CRTD Convention and should be dealt with by the Committee**. It was pointed out in this regard that because of skewing a unimodal regime for inland navigation would lead to lengthy discussion on each of the three modes.

49. It was reiterated that **UN/ECE member States were asked to adopt an official position**, as had been requested in a letter from the UN/ECE secretariat **concerning the principle of the adoption of a new convention**, and should be prepared to envisage becoming Contracting Parties to this new convention.

50. In order to initiate a well-informed discussion, **the Committee might perhaps wish to consider whether the CRTD Convention had added value** - guaranteeing prompt and adequate compensation in the event of damage resulting from the transport of dangerous goods by road, rail or inland navigation - and more particularly **whether UN/ECE member States considered that there was a need for a harmonized system of integral liability**. The initial aim of the CRTD Convention was to avoid lengthy and difficult judicial proceedings which in many cases had proved unsatisfactory.

51. Lastly, the Committee might perhaps wish to consider whether it might be useful **to adopt the revised CRTD by consensus, or to refer it to a Diplomatic Conference**, or to ascertain whether **more time was needed for a prudent consideration** or whether **the project should be abandoned**.

ADOPTION OF THE REPORT AND ITS ANNEX

52. The Ad hoc Meeting adopted the report of its fourth session and its annex.

Annex

**AMENDMENTS TO THE CRTD ADOPTED BY THE
AD HOC MEETING AT ITS FOURTH SESSION**

Title of the Convention

Replace “inland navigation vessels” by “inland waterway”.

Article 1

Amend paragraph 9 to read:

“9. Definition of ‘dangerous goods’

‘*Dangerous goods*’ means any substance or article meeting the definition of dangerous goods in ADR, RID or ADN, depending on the transport mode concerned;”

Add a new paragraph 10 to read as follows and renumber the following paragraphs accordingly:

“10. ‘ADR’ means the European Agreement concerning the International Carriage of Dangerous Goods by Road;

‘ADN’ means the European Agreement concerning the International Carriage of Dangerous Goods by Inland Waterways, or, prior to the entry into force of this Agreement, the annexed Regulations as updated in accordance with the resolution adopted on 25 May 2000 by the Diplomatic Conference for the adoption of ADN, in the most recent version published by the United Nations;*

‘RID’ means the Regulations concerning the International Carriage of Dangerous Goods by Rail.”**

Article 4 (c)

Amend article 4 (c) as follows:

“(c) to carriage of dangerous goods which, depending on the transport mode concerned, complies with the conditions of total or partial exemption of Section 1.1.3 of Annex A of ADR, RID or the Regulations annexed to ADN;”

Article 16, paragraph 4

Delete “, with respect to carriage by road and by inland navigation vessel,” (concerns the English text only).

Article 22, paragraphs 1 and 2

Put the dates in square brackets.

Notes

* *On the date of the adoption of this Convention, document ECE/TRANS/170, Vols. I and II.*

** *On the date of the adoption of this Convention, Annex 1 to Appendix B (Uniform Rules concerning the Contract for International Carriage of Goods by Rail) (CIM) of the Convention concerning International Carriage by Rail (COTIF).*
