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ECONOMIC COMMISSION FOR EUROPE

INLAND TRANSPORT COMMITTEE

Preparatory Committee Established Jointly
by CCNR, the Danube Commission and ECE
for the Drafting of the Convention on
the Contract for the Carriage of Goods
by Inland Waterway

DECISIONS TAKEN BY THE PREPARATORY COMMITTEE
(at its fifth session, Bucharest, 24-28 August 1998)

I. ATTENDANCE

1. The Preparatory Committee Established Jointly by CCNR, the Danube Commission and ECE for the Drafting of the Convention on the Contract for the Carriage of Goods by Inland Waterway held its fifth session from 24 to 28 August 1998 in Bucharest. Representatives of the following countries took part in its work: Austria, Bulgaria, Czech Republic, France, Germany, Hungary, Luxembourg, Netherlands, Republic of Moldova, Romania, Russian Federation, Slovak Republic and Switzerland.

II. CHAIRMAN

2. Mr. Alexandre Serban Cucu (Romania), who had been elected Chairman at the fourth session, took the Chair. He welcomed participants to the Preparatory Committee.

* Distributed by the Central Commission for the Navigation of the Rhine (CCNR) under the symbol CMNI/PC(98)14.

III. ADOPTION OF THE AGENDA

3. The Preparatory Committee adopted the provisional agenda prepared by the secretariat (TRANS/SC.3/AC.5/6-CMNI/PC(98)1). It was agreed that, in addition to the articles listed under item 3 (a), the Committee would also review articles 19 to 21* and those articles which had not yet been included in a second reading of the draft.

IV. FINAL ADOPTION OF THE DECISIONS TAKEN BY THE PREPARATORY COMMITTEE AT ITS FOURTH SESSION

4. Document TRANS/SC.3/AC.5/5-CMNI/PC(98)7 was adopted, subject to the reservations entered by the delegation of Germany concerning the German and English versions of article 17, paragraphs 1 and 2, article 20, paragraph 5 and article 21 as contained in paragraph 25. The delegation of the Netherlands also noted errors in the English version and expressed the hope that paragraph 28 of the report would make a reference to the Convention on the Limitation of Liability of Owners of Inland Navigation Vessels (CLNI).

5. The delegation of the Russian Federation said that he intended that his proposal put forward at the last meeting and supplemented by the Ukrainian proposal, that the maximum amount of liability of the carrier stipulated in article 21, paragraph 4, should not exceed 25 per cent of the amount of the freight, should be included in the report.

6. The delegation of the Netherlands expressed surprise that document TRANS/SC.3/AC.5/1998/17-CMNI/PC(98)8 did not reflect the decisions taken at earlier meetings, particularly those set out in document TRANS/SC.3/AC.5/1998/11-CMNI/PC(98)27 which did not appear in document TRANS/SC.3/AC.5/1998/17-CMNI/PC(98)8.

V. CONSIDERATION OF THE DRAFT CONVENTION ON THE CONTRACT FOR THE CARRIAGE OF GOODS BY INLAND WATERWAY AND ITS ANNEXES (PROTOCOLS 1 and 2)

Article 11: Nature and content

7. This article was the subject of a number of comments.

Paragraph 1

8. It was pointed out that there was a problem of consistency between the definition in article 1, paragraph 6, of "transport document" which also

* The numbering of the articles below refers to the numbering of the consolidated text submitted by the rapporteur (document TRANS/SC.3/AC.5/1998/17-CMNI/PC(98)8). This consolidated draft, which takes into account decisions and proposals by the government experts and also includes drafting proposals by the rapporteur, was adopted by the majority of delegations as a basis for work.

included any other document in use in trade and article 11, paragraph 1, which identified only the consignment note and the bill of lading as transport documents.

9. It was proposed that it should be stated that the carrier must draw up a transport document and that a bill of lading should only be issued if the shipper so requested. In view of the fact that certain transport operations were carried out without a transport document, it was agreed that it should be specified that the absence of documents did not affect the validity of the contract for carriage.

Paragraph 4

10. It was requested that the phrase "drawn up in the form of a consignment note or a bill of lading" should be deleted.

Paragraph 5

11. It was further requested that the original copy of the transport document should also be signed by the shipper.

Paragraph 6

12. It was proposed that in article 1, paragraph 6, the phrase "or of any other document in common use in the trade" should be deleted.

13. The delegation of Germany submitted the following new version of article 11 to the Committee, systematically revised and taking into account various requests and comments:

"1. The carrier shall prepare a transport document for each transport operation governed by this Convention; he shall draw up a bill of lading only if the shipper so requests. The lack of a transport document shall not affect the validity of the contract for carriage.

1 bis. Incorporate former paragraphs 5 and 6, replacing "consignee" in paragraph 5 by "shipper".

2. The transport document [, signed by the carrier, the steersman of the vessel or by an authorized person and the shipper,] shall be prima facie evidence, unless proved to the contrary, of the conclusion and content of the contract and of the reception of the goods by the carrier. It shall provide a basis for the presumption that the goods have been taken over with a view to the carriage described in the document.

3. When the transport document is a bill of lading, it alone shall be the determining factor in the relations between the carrier and the consignee. The conditions of the contract shall continue to determine the relations between carrier and shipper.

4. The transport document, in addition to its name, shall contain the following particulars:

"
"
"
"
"

5.-6. Become paragraph 1 bis.

14. The Committee agreed that this proposal would constitute a basis for the Committee's work at its next session.

Article 19: Amount of compensation

15. Several delegations (France, Germany and Austria) were in favour of deleting paragraph 5.

It was emphasized in particular that it was not acceptable for the full freight to be paid in the event of the total loss of the goods. The deletion of this paragraph would mean applying national law.

16. The delegations of Bulgaria and the Russian Federation considered that a provision of this nature was nevertheless useful and referred to the wording which the delegations of Belgium and the Ukraine had supported at the last meeting (document TRANS/SC.3/AC.5/5-CMNI/PC(98)7).

17. The Committee finally agreed to include in square brackets the version set out below proposed by the last-mentioned delegations as contained in document TRANS/SC.3/AC.5/5-CMNI/PC(98)7, amended by a reference to national regulations.

"[5. The provisions of this article shall not affect the carrier's right concerning the freight as provided by the contract for carriage or, failing this, by the applicable national regulations or practices]"

Article 20: Limitation of liability

18. Paragraph 1 was amended to read:

"1. Subject to article 21 and paragraph 3 of this article, and regardless of the action brought against him, the carrier shall under no circumstances be liable for amounts exceeding:

(a) 666.67 units of account for each package or other loading unit; or 2 units of account for each kilogram of gross weight of the goods lost or damaged, whichever is the higher;

(b) 20,000 units of account in the event of damage to a container (TEU) and its entire contents".

19. Paragraph 4 gave rise to an in-depth exchange of views. The following wording was proposed:

"4. The carrier and the shipper may agree on a maximum limit for liability in the event of damage due to a delay in delivery in accordance with article 5, which may not be less than 25 per cent of the freight alone or exceed three times the freight. However, the aggregate amount of compensation due, under paragraph 1 and the first sentence of this paragraph, may not exceed the limit which would be applicable under the first sentence of this paragraph in the event of the total loss of the goods for which liability is engaged".

20. The delegation of Bulgaria, supported by the delegation of the Russian Federation, was in favour of compensation for damage in accordance with the provisions stipulated in the contract for carriage provided that such compensation did not exceed 50 per cent of the value of the freight.

21. The delegation of Germany was in favour of a maximum limit and an additional provision, like that to be found in document TRANS/SC.3/AC.5/1998/17-CMNI/PC(98)8, article 20, paragraph 4, second half of the sentence, ("in the absence of such an arrangement the limit applied shall be three times the amount of the freight") making provision for the eventual absence of a contractual agreement. In such an eventuality, it considered that the limit should be three times the amount of the freight.

Following the discussion, the delegations of Bulgaria and the Russian Federation agreed as a compromise that the maximum limit should be the amount of the freight alone, and the following text was kept as paragraph 3 (former paragraph 3 becoming new paragraph 4):

"3. In the event of damage due to a delay in delivery in accordance with article 5, the carrier shall be liable only for the amount of the value of the freight. However, the aggregate amount of compensation due under paragraph 1 and the first sentence of this paragraph may not exceed the limit which would be applicable under paragraph 1 in the event of the total loss of the goods for which liability is engaged".

Article 21: Forfeiture of the right of limitation of liability

22. No consensus was reached in article 21, particularly with reference to the outcome of the variant proposed by the delegation of Switzerland (see the discussion in TRANS/SC.3/AC.5/5, paragraphs 27 to 30 - CMNI/PC(98)7). The text remains as it is.

Article 22: Judicial remedies

23. The French version of article 22 is based on the Hamburg Rules with regard to the nature of the contract on which the action is founded. The text should therefore read: "... whether the action is founded in contract, in tort, ...".

Article 23: Notice of damage

24. In paragraph 3 (b) the Committee kept the period of 7 consecutive days from the time when the goods were handed over.

25. The delegation of Switzerland proposed that paragraph 4 should be deleted. The delegation of Hungary proposed that paragraphs 3 and 4 should be combined.

26. The Committee finally kept the following wording proposed by the secretariat which made it clear that the calculation of the period began from the time when the consignee was able to provide proof that he had given notice.

"4. No compensation shall be payable for damage resulting from delay in delivery unless the consignee can prove that he gave notice of the damage to the carrier within 21 consecutive days following delivery".

Article 24: Limitation

27. Some delegations (in particular, those of Germany, Austria and France) expressed a wish for a reference to "lex contractus" in the third sentence of paragraph 2.

28. Following the discussion, the text of paragraph 2 was adopted, with the following amendment proposed by the delegation of France:

"2. ...

Suspension or interruption of the limitation shall also be governed by the law applicable to the contract".

Some delegations, however, entered a reservation pending internal consideration of this provision.

The delegation of Austria was in favour of deleting paragraph 4.

Article 25: Invalid clauses

Paragraph 1

29. Following an exchange of views, it was agreed, on the initiative of the delegation of Germany, to delete in paragraph 1 the text in the first set of brackets: "contained in a contract for carriage or a transport document". The brackets concerning periods for claims or limitations were removed and the text kept as it stood.

30. After the redrafting of paragraph [2] (Any clause derogating from the provisions to which the Convention does not permit exceptions shall be null and void), it was agreed, following a brief exchange of views, to delete the paragraph.

31. Paragraph [3] was deleted, since the provisions concerning the container had been included in article 20.

Paragraph 2 (a)

32. With reference to article 25, paragraph 2, the rapporteur recalled that the contractual clauses of exemption listed were part of the overall compromise which had emerged at the third session of the Committee between the positions of supporters and opponents of exemption from liability for a navigational error.

33. The delegations of Germany, Austria and France said, however, that they had not accepted the wording of paragraph 2 (a) as it stood.

34. The delegation of France in particular said that it could not accept the description of navigational errors as set out in paragraph (a).

35. The delegations of Romania and Hungary said that their national legislation did not make provision for the exemption of the carrier from liability for a navigational error.

36. The delegation of Hungary and the delegation of Austria considered, however, that in the interests of an overall compromise agreement could be reached within the notion of navigational error by separating gross negligence which included wilful misconduct from reckless conduct and minor negligence.

37. The delegation of Germany stressed that it should not be acceptable for a carrier to be absolved from gross negligence on the part of his servants.

38. The delegation of France proposed, with a view to a consensus, the following wording for paragraph 2 (a):

"2. ...

(a) By an act or omission by the steersman of the vessel, the pilot or any other person in the service of the vessel, pusher or tug during navigation or in the formation or dissolution of a pushed or towed convoy, unless the act or omission was the result of the intention to cause damage or of reckless conduct."

39. The delegation of the Netherlands considered that this wording went too far in relinquishing exemption from liability for navigational errors and was too far removed from a compromise which had been achieved with difficulty. It recalled that it was not completely certain that the possibility of exemption from liability offered to the carrier could materialize given the latter's economically weaker position vis-à-vis the shipper. As a result, it was not in a position to accept the French proposal.

40. The delegation of Germany noted that the delegation of France had put forward a proposal, in the interests of seeking a compromise, that it was able to support.

41. The delegations of Austria, Switzerland, the Russian Federation, Slovakia, the Czech Republic, the Republic of Moldova and Romania also said that they were in a position to accept this proposal.

42. The delegation of Bulgaria was able to accept both the French proposal and the text submitted by the rapporteur which, in its opinion, was very little different in substance.

43. In that a majority of delegations was to accept it, the delegation of Hungary felt equally able to accept the proposal supported by the delegation of the Netherlands or the French proposal; the latter, however, was closer to national law.

Paragraph 2 (b)

44. The delegation of Germany had difficulties with keeping this provision since it considered that the carrier should be responsible for the entire period during which the goods were in his care.

45. The delegation of the Netherlands said that it was firmly committed to keeping this provision.

Paragraphs 2 (c) and (d)

46. Contrary to the delegation of Germany which considered that these paragraphs should be deleted, insofar as they referred to situations which did not call in question the due diligence of the carrier, the delegation of Romania was of the opinion that they should be kept as they stood.

The delegation of the Netherlands was also in favour of keeping these paragraphs.

The delegation of Germany had difficulty in authorizing the exemption from liability of the carrier during the carriage of live animals and thought that this possibility should be drafted more restrictively.

Article 26: General average

47. The understanding was that the notion of general average was taken to be that understood and interpreted by all transport conventions, particularly those concerning shipping.

Article 27: Other conventions

48. The delegation of Germany raised the question of whether it had been the Committee's intention to include an article of this nature (nuclear).

The rapporteur was in agreement with the consideration of this point.

49. It was deemed preferable to delete paragraph 3 of the article but to add to paragraph 7 of article 1 (Definitions), specifying that the term "goods"

did not cover the luggage and vehicles of the persons carried. The heading was adapted to take account of the amended content (applicability of other conventions).

Article 28: Unit of account

50. The wording of this article was kept with the addition of "or 400,000 currency units per container", in order to take the limitation of liability for containers into account. It was agreed that this amount would be calculated at a later stage.

Article 29: Supplementary national provisions

51. The delegation of Austria said that it had difficulties with paragraphs 2 and 3 and thought that it would be appropriate to make use of the law of the State with which the contract had the closest links as stipulated by the Convention on the law applicable to contractual obligations.

52. The delegation of Germany for its part would prefer the deletion of article 29 in its entirety.

53. The delegation of the Netherlands considered that this article was important in that not all the States represented were members of the European Union and therefore parties to the Convention on the law applicable to contractual obligations. This provision was also useful if the law in this regard was to be harmonized.

54. The delegation of the Russian Federation supported the delegation of the Netherlands in particular because the provisions of this article might prove useful for vessels registered in other countries for economic reasons.

55. The delegations of Romania, France, Slovakia, Bulgaria, Switzerland and the Czech Republic were in favour of keeping article 29.

Article 30: Reservations concerning geographical scope

56. The Committee agreed to focus this article on declarations rather than reservations. The heading was accordingly amended (Article 30: Declaration concerning the scope of the Convention). Following a proposal by the delegation of the Russian Federation, the secretariat was asked to consider the possibility of combining articles 2 and 30.

Paragraphs 1 and 2

57. The delegation of Romania proposed that paragraph (a) should incorporate the wording of the Act of Mannheim and the Belgrade Convention on freedom of navigation.

58. In the opinion of the delegation of Germany a reservation clause was unnecessary.

All the delegations were in favour of a compromise to keep a paragraph along these lines in some form or other.

The delegation of the Russian Federation hoped, however, that a reference would be made to inland waterways of international importance. The delegation of Switzerland for its part considered that it was appropriate to refer not only to the river in question but also to the connecting waterways.

The delegation of Hungary suggested that it would be a good idea to take into account the evolution of statutes like the Belgrade Convention and to incorporate inland waterways governed by international law on a broader basis.

59. During the discussion of this issue, the rapporteur proposed the following wording of article 30.1, drafted in positive terms:

1. This Convention shall apply to the carriage of goods on the Rhine, the Moselle and the Danube and to waterways connecting them as well as to affluents of these rivers subject to the same international statutes (regime).

2. Any Contracting State may, on signing this Convention or depositing its instrument of ratification or accession, or at any subsequent time, declare that it will also apply this Convention to other inland waterways on its national territory.

60. The secretariat also submitted two proposals for variants of article 30.1:

1. This Convention shall apply to waterways subject [to the regime of the] [to the] revised Convention for the Navigation of the Rhine of 17 October 1868 or the Convention on the Canalization of the Moselle of 27 October 1956 or the Convention concerning the Regime for Navigation on the Danube of 18 August 1948 and their connecting waterways, and to waterways of international importance and their affluents.

2. Any Contracting State may, on signing this Convention or depositing its instrument of ratification or accession, or at any subsequent time, declare that it will also apply this Convention on other inland waterways on its national territory [a list of which is annexed].

Variant

Any Contracting State may, on signing this Convention or depositing its instrument of ratification or accession, or at any subsequent time, declare that it will not apply this Convention to waterways situated on its territory other than those subject to the regime of the revised Convention for the Navigation of the Rhine of 17 October 1868, the Convention on the Canalization of the Moselle of 27 October 1956 or the Convention concerning the Regime for Navigation on the Danube of 18 August 1948 and their connecting waterways and affluents subject to an equivalent international regime.

61. The ensuing discussion revealed that the majority of delegations intended to extend the territorial scope of the Convention as widely as possible and thus considered that it was unnecessary to refer to the Rhine, Moselle and Danube Conventions.

62. In order to permit this desire for extension to materialize, it was proposed that the scope of the Convention should be extended to all inland waterways; each State could declare that it would not apply the Convention to certain specific waterways on its territory or that it would apply the Convention to the waterways listed in an annex.

Although the delegation of Germany had expressed a preference for the rapporteur's proposal insofar as it ensured that inland waterways subject to an international regime would be included in the scope of the Convention, the following proposal, taken from the secretariat's second variant, was finally kept:

"This Convention shall apply to all inland waterways. Any Contracting State may, on signing this Convention or depositing its instrument of ratification or accession, or at any subsequent time, declare that it will not apply this Convention to certain inland waterways situated on its territory."

Article 31: Extension of the geographical scope

Paragraph (a)

64. The delegation of Romania proposed that this paragraph should be deleted.

The delegation of Hungary said that it would prefer to keep it.

It was decided to delete the words "in view of a reservation referred to in article 30, paragraph 1".

Paragraph (b)

65. The delegations of Germany, Switzerland and the Russian Federation were in favour of deleting this paragraph.

Article 32: Regional clauses concerning liability

66. This article would be considered once the text of article 25, paragraph 2 had been finalized.

Article 33: Additional protocols

Protocol No. 2

Article 4, paragraph 7

67. The delegation of Hungary referred to the discussion in Budapest in connection with this article and asked for the text to be kept; as a

compromise, it wished the following addition to be made: "provided that he (the carrier) is not in a position to exercise his right of lien on the goods [in his possession] or for other reasons".

Article 34: Signature, ratification, accession

Paragraph 1

68. The delegation of Germany, supported by the delegation of Austria, noted that it would not be appropriate to restrict the possibility of acceding to the Convention to the European States alone; the term "European" in paragraph 1 was therefore deleted.

The delegation of Germany drew attention to the fact that this clause should be drafted according to the model of recent conventions.

Paragraph 3

69. The delegation of the Russian Federation commented that the wording of paragraph 3 raised problems because ratification was not effected by the deposit of an instrument of ratification; it was therefore decided to revise this paragraph in the light of practice in recent conventions.

Article 35: Entry into force

70. A lengthy exchange of views took place on the number of States which had deposited their instruments of ratification required for the entry into force of the Convention.

71. Some delegations, and Bulgaria, the Czech Republic, the Russian Federation and Hungary in particular, preferred a larger number of ratifications, five States for example, while the delegation of Hungary pointed out that it would be desirable to make provision for an alternative requiring the ratification of three Rhine States and three Danube States.

72. The delegation of Bulgaria wondered if the Hungarian proposal was relevant in view of the deletion of the term "European" in article 34. Pointing out that it would be for the diplomatic conference to decide on the number of States required, the delegation of Hungary hoped that the alternatives for the number of States required for entry into force would receive further discussion at the next session.

Article 36: Denunciation

73. It was agreed that the text of paragraph 3 would stand, without the square brackets.

Article 37: Revision and amendments

Paragraph 1

74. Noting that no provision had been made for a revision procedure, the delegation of the Netherlands suggested that the addition should be made to

paragraph 37 of a procedure defined in article 38, paragraphs 2 to 5, also intended for the revision of the Convention itself and amendments to it. The delegation of the Russian Federation supported the delegation of the Netherlands. The delegation of Germany opposed this proposal.

75. On the proposal of the delegation of France, the following addition was included in paragraph 1:

"The revision Conference shall define by consensus its rules of procedure".

Article 38: Revision of the limitation amounts and unit of account

Paragraph 2

76. The words "in accordance with paragraph 1" were included after "a conference".

Paragraph 5

77. The period of six months was replaced by a period of 12 months.

Article 39: Depositary

Paragraph 2

78. The delegation of Germany pointed out that the reference to article 34, paragraph 1 for the distribution of certified true copies of the Convention went too far.

79. The delegation of France, considering that there was no need to distribute certified true copies to all States desirous of becoming Contracting Parties, proposed to indicate in paragraph 2 that the depositary would hand over certified true copies to States which had signed the Convention or acceded to it. Following a brief exchange of views, during which the delegation of Germany wished to enter a reservation concerning consideration of this question, it was decided to postpone discussion of the issue until the next session.

VI. CONTINUATION OF WORK

80. The Preparatory Committee requested the secretariat to establish a consolidated text of the Convention on the basis of the decisions taken at its third, fourth and fifth sessions.

81. The secretariat would also endeavour to distribute a reference document in four languages on the rapporteur's amendments to his document TRANS/SC.3/AC.5/1998/17-CMNI/PC(98)8 with particular reference to the consolidated version of articles 1 to 8 as contained in document TRANS/SC.3/AC.5/1998/11-CMNI/PC(97)9.

82. Two dates were put forward for the next and provisionally the last meeting, namely, the first week in February when the meeting would be held either in Strasbourg or at another venue at the invitation of a delegation, or from 26 to 30 April in Geneva.

83. The Committee requested its Executive Secretary to decide on a meeting date after contacting the delegations and taking into account the resources available.

84. Mr. Bour, Executive Secretary of the Preparatory Committee, thanked the Chairman and the delegation of Romania as a whole for the successful organization of the Committee's Bucharest meeting, to which the Central Commission had made a financial contribution by covering the costs of the interpretation.

VI. ADOPTION OF THE REPORT

85. The Preparatory Committee adopted the report of its fifth session on the basis of the draft prepared by the secretariat subject to consideration, following distribution by the Economic Commission for Europe, of the English and Russian versions.

Annex 1

ORGANIZING COMMITTEE

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