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INLAND TRANSPORT COMMITTEE

Working Party on Combined Transport

(Thirty-first session, 12 and 13 April 1999)

**POSSIBILITIES FOR RECONCILIATION AND HARMONIZATION
OF CIVIL LIABILITY REGIMES GOVERNING COMBINED TRANSPORT**

Report of an informal group of experts
(Frankfurt, 7 and 8 December 1998)

A. MANDATE

1. The programme of work of the ECE Working Party on Combined Transport contains, as a priority item, the analysis of possibilities for reconciliation and harmonization of civil liability regimes governing combined transport operations. This might include the organization of a hearing of all private sector and governmental parties involved.

2. At its twenty-ninth session, the Working Party stressed that, before any concrete work in this field could be initiated, all ECE member countries should conduct consultations at the national level on the problems encountered and on the feasibility and the approach to be taken to resolve difficulties arising from the differences and/or gaps in liability regimes governing the various transport modes (TRANS/WP.24/79, para. 31).

3. At its thirtieth session, the Working Party had noted that in only very few ECE member countries legislation has been adopted or is under preparation towards harmonization of modal requirements on civil liability. There still exist considerable differences between the legal rules covering the transport of goods by road, rail, inland waterways, air and sea. At the international level, work is under way concentrating on the international unification of civil liability rules for the transport of goods for individual transport modes. Within the ECE, the Central Commission for the Navigation of the Rhine (CCNR) and the Danube Commission (DC) an international legal regime is currently being prepared covering civil liability for inland waterways. The Intergovernmental Organization for International Carriage by Rail (OTIF) is revising the existing rules governing the transport of goods by rail (CIM). There also exist modal civil liability regimes for the transport of goods by road (CMR), by sea (Hague Rules, Hague Visby Rules, Hamburg Rules) and by air (Warsaw Convention). However, applicable international liability regimes governing transshipment operations and storage of loading units in combined transport, operations do not exist. The draft Convention on the Liability of International Terminal Operators, prepared by the International Institute for the Unification of Private Law of the United Nations (UNIDROIT) in the late seventies, has never entered into force

4. While a number of international private law liability regimes exist, such as the UIRR General Transport Conditions or the UNCTAD/ICC Rules for Multimodal Transport Documents issued in 1992, these rules do not have a statutory character and apply only insofar as the parties to a transport contract have accepted them. The provisions of these rules may be overridden by mandatory national law or international regimes applicable to unimodal transport operations. In this case, these provisions are not applicable. For combined transport, particular uncertainties could arise in difficulties determining the applicable modal liability regime and during transshipment or storage operations. The UNCTAD/ICC Rules stipulate that, if loss or damage cannot be attributed to a particular transport leg and its related liability regime, the basis liability of the transport operator applies.

5. The Working Party also noted that the United Nations Convention of International Multimodal Transport of Goods (MT Convention), adopted in 1980, was not likely to enter into force in the foreseeable future. Some delegations felt, however, that this Convention, reviewed and its substance adapted to modern transport requirements, could form the basis for an adequate international liability regime covering combined transport in Europe. With a view to deciding on possible concrete work in this field at the international level, the Working Party invited interested delegations to meet in December 1998 to identify problems encountered in this field by combined transport operators and to consider the feasibility and the approach to be taken to resolve possible difficulties arising from differences in modal liability regimes and/or gaps during combined transport operations. The results of this informal meeting should be transmitted to the forthcoming sessions of the Inland Transport Committee and the Working Party (TRANS/WP.24/81, 37-44).

B. ATTENDANCE

6. On the invitation of the German Federal Ministry of Transport and the German Study Group on Combined Transport (Studiengesellschaft für den Kombinierten Verkehr), the informal group of experts met at Frankfurt (Germany) on 7 and 8 December. The meeting was attended by Government experts from Belgium, Germany, Netherlands and the United Kingdom and by experts from the United Nations Conference on Trade and Development (UNCTAD), the International Federation of Freight Forwarders Associations (FIATA), the International Union of Road/Rail Transport Companies (UIIR), the German Bundesverband Güterverkehr und Logistik (BGL) and the ECE secretariat.

7. Written contributions were received from the Governments of Austria, Germany and Poland and from the International Road Transport Union (IRU).

C. CONCLUSIONS OF THE INFORMAL GROUP OF EXPERTS

8. The specific liability problems arising during combined transport operations relate to the fact that goods are carried on the basis of a single contract by various modes of transport for which different civil liability regimes apply. These modal civil liability regimes, such as the CMR, the CIM/COTIF regulations or the Hague Rules, differ quite substantially as they have been developed independently from each other. It does not seem to be realistic to assume that their provisions can be harmonized in the short- and medium-term future.

9. The experts realized that there exist a number of private contractual arrangements addressing some of the problems that could arise during the carriage of goods under different modal liability regimes. These were, for example, the UNCTAD/ICC Rules for Multimodal Transport Documents, the FIATA Bill of Lading (FBL) or the recently revised UIRR General Transport Conditions. The use of these commercial rules is, however, optional for the parties concerned and will only take effect to the extent that their provisions are not contrary to those of international conventions or national legislation applicable to transport contracts.

10. While such private contractual arrangements might often work to the satisfaction of the transport and freight forwarding industry as well as of traders, it is possible that some of their provisions may be contrary to national legislation and are thus null and void. Furthermore, these arrangements might not cover the total combined transport chain, including transshipment (handling) and temporary storage operations. According to the UNCTAD/ICC Rules, the

responsibility of the multimodal transport operator (MTO) covers, however, the total period from the time the MTO takes the cargo in his charge to the time of delivery.

11. It was felt that the absence of international regulations in this field covering the total transport chain was to the detriment of combined transport operators, as it tended to increase the risk of lengthy and costly legal procedures in case of loss, damage or delay of cargo and intermodal transport units (ITUs) and/or increased insurance premiums covering such risks. This militated against the use of combined transport.

12. The experts were of the view that the main objective of the activities of the ECE Working Party on Combined Transport (WP.24) was to promote combined transport services in Europe and to facilitate the transfer of, at least, a part of total goods transport from road to rail, inland water transport and short-sea shipping. From that perspective, it might be sufficient to address civil liability problems relating to inland transport only. However, since short-sea shipping is covered by maritime shipping liability schemes and with a view to avoiding a proliferation of different international legal instruments addressing civil liability issues in transport, the experts felt that all modes of transport, possibly also air transport, needed to be covered in one and the same international civil liability regime.

13. In order to close and address all potential liability gaps during combined transport operations and with a view to resolving problems that might arise from the use of several different civil liability regimes (burden of proof, level of compensation, etc.), the experts felt that the following approach should be further analysed and considered:

14. An independent international legal instrument on the basis of an international convention should be established, providing basic regulations concerning the contract of carriage of goods by road, rail, inland water, maritime and possibly air transport, including the transshipment (handling) and temporary storage of cargo and intermodal loading units (ITS). Its basic civil liability provisions might be modelled along the lines of the CMR Convention and would apply to the transport of goods by all modes of transport under a single contract. In case of damage, loss or delay in delivery of cargo, the provisions of the new international legal instrument would apply, unless one of the parties to the contract is able to prove that damage, loss or delay of the cargo occurred during transport by a particular mode of transport. In that case, the liability of the carrier would be determined by the law which would have been applicable to that part of the transport chain if a separate contract had been concluded .

15. Therefore, the proposed international legal instrument would not replace or modify, but complement the existing modal civil liability regimes and would allow for seamless and efficient civil liability coverage during all stages of a transport chain.

16. The basic logic behind this approach is as follows: In cases where damage, loss or delay cannot be localized, the new basic civil liability provisions would apply. In cases where damage, loss or delay can be localized, existing international or national civil liability regimes would continue to apply (A network approach).

17. Specific provisions in the existing commercial multimodal transport rules (see paragraph 9 above) could also be included into such an international legal instrument.

18. A similar approach covering multimodal transport contracts has been enshrined recently into the German Law on Freight, Freight Forwarding and Warehousing following lengthy discussions with all parties involved, i.e. governmental authorities and the transport and freight forwarding industry, and has met general consent.

19. It was felt by the experts that the establishment of such a neutral international legal instrument on civil liability covering combined transport operations would be preferable and might be more acceptable than the inclusion of, for example, lorry specific provisions into the existing rail liability regime (CIM). In this context, it was stressed that the present draft article 1, paragraph 3 of the revised CIM regime, providing for its application in case of multimodal transport contracts, governing international carriage of goods by rail as well as national carriage by road or inland water transport, runs counter to the current efforts to establish widely accepted uniform rules for multimodal transport operations covering all modes of transport.

20. The experts were of the view that such a new international legal instrument could be prepared within two years. Preparation and negotiation could be undertaken in the framework of the ECE, with the assistance of the UNCTAD secretariat which had accumulated considerable expertise in this field.

21. As neither the existing subsidiary bodies of the ECE Inland Transport Committee nor the ECE secretariat had, for the moment, the required legal expertise in this matter, the experts proposed to consider the setting-up of a special ad hoc expert group with a sunset clause expiring in the year 2001. The ECE secretariat should ensure that its staff servicing the expert group had the necessary legal expertise to support adequately these ambitious activities.

22. Alternatively, the ECE might invite the United Nations Commission for International Trade Law (UNCITRAL) or the International Institute for the Unification of Private Law of the United Nations (UNIDROIT) to undertake these activities.

23. The Inland Transport Committee and the Working Party on Combined Transport (WP.24) may wish to consider the above proposals and decide on concrete steps and procedures.
