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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 SECOND SESSION

(4-6 November 2002)

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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 second session from 4 to 4 November 2002 with Mr Jan E. De Boer (Netherlands) as Chairman. Representatives of the following countries took part in its work: Austria; Czech Republic; Germany; Netherlands; Poland. The following intergovernmental organizations were also represented: Intergovernmental Organization for International Carriage by Rail (OTIF) and the Central Commission for the Navigation of the Rhine (CCNR) along with the following non-governmental organizations: International Rail Transport Committee (CIT); International Road Transport Union (IRU).

ADOPTION OF THE AGENDA

Document: TRANS/AC.8/3

2. The Ad Hoc Meeting adopted the agenda of its second session as contained in document TRANS/AC.8/1 with a small change (consideration of article 1, 2.).

MANDATE OF THE AD HOC MEETING

3. The Chairman recalled the mandate that had been entrusted to the Ad hoc Meeting by the Inland Transport Committee, as contained in the report of the first session.

4. He recalled that the Meeting would be required to report to the Inland Transport Committee at its 2003 session on the progress made and the difficulties encountered.

RESULTS OF THE QUESTIONNAIRE RELATING TO THE CRTD

Documents: TRANS/WP.15/2001/17, and -/Add.1 to -/Add.8
TRANS/WP.15/167, annex 5

Informal documents: INF.24, INF.37 and INF.44

5. The main results of the questionnaire circulated by the secretariat to the member countries of UNECE were recalled

6. The main concern was that the level of limits of liability was too high and it should be revised downwards so that harmonization would be possible among the different countries.

7. In the case of unlimited liability without obligatory insurance, some representatives recommended that at least minimum levels of liability should be guaranteed by insurance contracts.

8. The difficulty of obtained reliable statistical data on the average level of damage arose in several countries. It was therefore recommended that the Contracting Parties to the Convention should be left some latitude in the choice of the amount of liability for the compulsory insurance.

9. It was also recommended that what had been decided in other international legal instruments, such as the HNS Convention, should be taken as a model.

MAIN OBSTACLES TO THE ENTRY INTO FORCE OF THE CRTD

(a) Scope of the CRTD

10. The Ad Hoc Meeting maintained its preference for the existing scope of the CRTD which covered the three inland transport modes (road, rail and inland navigation).

11. The representative of CCNR reported on the work of his organization and in particular the reflections and comments made during the hearing of 11 October 2002 and the meeting of government experts which had followed it.

12. Mention was made of a number of contradictions, including the fact that one of the basic objectives of the draft CRDNI Convention, namely compensation for catastrophic damage, could not be achieved because of the existence of the limitations of liability envisaged.

13. In addition, the separation between regimes for dangerous goods and for other goods raised difficulties since the latter could also lead to catastrophic damage.

14. The representative of CCNR said that several solutions were being studied: the creation of a “catastrophe fund” which would deal with damage exceeding the limits of the draft CRDNI Convention, or a new general civil liability convention for the transport of goods by inland waterway for which a “catastrophe fund” would also be constituted.

15. He said that CCNR would inform the Inland Transport Committee and would continue to participate in the work of UN/ECE and cooperate in the harmonization of an international system of civil liability for the transport of dangerous goods.

(b) Provisions relating to liability

16. The representative of IRU confirmed the position of his organization as expressed at the previous session (TRANS/AC.8/2, para. 14).

17. He said that the members of IRU were unanimous in rejecting the channelling of liability to carriers.

18. He was reminded that the provisions relating to liability (arts. 5 to 8) were based on the principle of objective liability and were essentially taken from the CLC Convention.

19. The carrier was exonerated from liability if he could prove that *“the consignor or any other person failed to meet his obligation to inform him of the dangerous nature of the goods, and that neither he nor his servants or agents knew or ought to have known of their nature”* (art. 5, 4 (c)).

20. According to the CRTD Explanatory Report (ECE/TRANS/84, para. 77), *“The authors of CRTD were fully aware of the fact that the introduction of a second liable person under the Convention could cause difficulties, not least in terms of the risk of double insurance, which would clearly be uneconomical.”*

(c) Limits of financial liability

21. The Ad hoc meeting considered draft amendments to articles 9 and 16 of the CRTD as proposed by the Chairman in co-operation with the secretariat in document TRANS/AC.8/2, annex 2. The meeting considered first the proposal to amend the provisions of current article 9, paragraph 1 of the CRTD which provides for a separate limit of liability for each transport mode and thereby doing justice to and striking the right balance of interests of both victims and carriers as well as in regard of the available insurance capacity.

Road

22. The liability of the road carrier is proposed to be reduced from 8 million SDRs for loss of life or personal injury and 12 million SDRs for other (property and environmental damage) claims to 7 million SDRs and 5 million SDRs respectively (present total of 30 million SDRs reduced to total of 12 million SDRs).

23. This proposed reduction is justifiable both as regards claims history in road transport where claims have amounted to significant costs for compensation beyond existing compulsory insurance schemes reaching up to 6.25 million SDRs some more than 10 years ago, as well as regards the inflation correction over these years which amounts to 25-30%. Given also the relatively high risks involved with road transport (Los Alfagues - incident), a level of in total 12 million SDRs seems justifiable for both the limits of liability of the road carrier as well as the limits of compulsory insurance to cover this liability, thereby creating a system for prompt and adequate compensation for damage to victims of incidents caused by dangerous goods during carriage by road.

Inland navigation

24. The liability of the carrier by inland navigation vessel shall be reduced from 8 million SDRs for loss of life or personal injury and 7 million SDRs for other (property and environmental damage) claims to respectively 4 million SDRs and 3 million SDRs (present total of 15 million SDRs reduced to total of 7 million SDRs). This reduction seems justifiable both in view of the claim history in inland navigation, where the highest claim for compensation reported in relation to the questionnaire amounted to 125,000 SDRs (TRANS/AC.8/2A para.24), as well as in regard to the available capacity present on the insurance market.

25. An amount of 10 million SDRs could easily be insured by the International Group of P&I Clubs, but however with some more difficulty by conventional or regular insurance institutions where the ceiling is the equivalent of approximately 10 million Deutsch marks (DM). The premiums claimed by the P&I Clubs for a Rhine vessel carrying dangerous goods would be between 13 and 15,000 DM with an increase of 30 to 50% in case of third party liability and compensation coverage for damage in connection with the carriage of hazardous and noxious substances (TRANS/AC.8/2 paras.19 and 20).

26. The proposal to reduce the level of liability and of compulsory insurance as regards inland navigation to a total of 7 millions of SDR envisages to meet concerns of both victims and insurance capacity, but also takes into account the relatively low limitation amounts that are at present in existence relating to the liability of the carrier by inland navigation vessel and which currently amounts to a level of 1.5 million of SDRs at a maximum.

Rail

27. The liability of the rail carrier is proposed to be reduced from 18 million SDRs from loss of life or personal injury and 12 million SDRs for other (property and environmental damage) claims to 12 million SDRs and 8 million SDRs respectively (present total of 30 millions SDRs reduced to total 20 million SDRs).

28. Recorded accidents have allegedly caused up to 4 million SDRs worth damage in the railway sector, thereby indicating the relatively high risks involved within this mode. Furthermore, the proposed level takes into account the new system of liberalization in the railway sector and envisages to enable new private companies to sustain financial costs relating to insurance arrangements which recordedly are available on the insurance market up to 20 million SDRs. Accordingly, the limit of liability and that of the compulsory insurance is proposed to be established, also for victims, at an appropriate level of 20 million SDRs.

29. Although the meeting was not in a position to adopt a final decision concerning the amounts of liability and compulsory insurance, the proposal was considered as going in the right direction. In order to have an informed consideration of this proposal, the delegations of Austria and the Netherlands agreed to produce a background document for the next session.

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

Definition of “carrier” (article1, 8 (b))

30. The representative of OTIF said that a revision of the definition of “carrier” was required in order to take account of the new situation in which the management of rail infrastructure was separate from transport services.

31. It would be possible, for example, to bring paragraph 8 (b) into line with 8 (a) to ensure greater harmonization between the various transport modes.

32. The representatives of OTIF and CIT would submit a joint proposal on this question for the next session.

Definition of “road vehicle” (article 1, § 2)

33. The Meeting of Experts adopted a new definition of “road vehicle” in article 1, paragraph 2, to bring it into line with the definition of “vehicle” in article 1 (a) of the ADR Agreement which had not yet entered into force (Protocol of amendment of 1993) (see annex).

Article 16

34. The delegations of the Netherlands, Poland and the Czech Republic would prepare a draft amendment to article 16 in collaboration with the secretariat.

PROGRAMME OF WORK

35. In accordance with the mandate entrusted to it, the Ad Hoc Meeting might wish to draw the attention of the Inland Transport Committee to the main difficulty preventing the entry into force of the CRTD, namely, the question of the limitation of financial liability.

36. The Ad Hoc Meeting might wish to request the Inland Transport Committee to appeal to member States for more participation in the work on the CRTD; this was an indispensable condition for the success of its work.

37. It would be useful for national delegations to understand the legal experts and the insurance experts, thus enabling them to have the necessary expertise for resolving the problems of limits of liability.

38. The Ad Hoc Meeting was informed that the dates of its forthcoming sessions had been provisionally scheduled for 19 to 21 May 2003 and 3 to 5 November 2003.

ANY OTHER BUSINESS

39. The meeting was informed on a proposal in the framework of the European Union for a Directive of the European Parliament and of the Council on **environmental liability** with regard to the prevention and remedying of environmental damage. The attention of the meeting was drawn to a specific provision in this proposal to avoid any overlap as regards scope of application with the CRTD. However, this provision might need more elaboration in order to avoid any further ambiguities.

40. The delegation of the Netherlands agreed to produce in co-operation with the secretariat a document on the relation of the CRTD to other international regimes on liability for damage caused during transport of dangerous goods.

ADOPTION OF THE REPORT AND ITS ANNEXES

41. The Ad Hoc Meeting adopted the report of its second session and its annexes.

Annex 1

AMENDMENTS TO THE CRTD PROPOSED 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

"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 25km/h, and its trailers, with the exception of vehicles which run on rails and of agricultural and forestry tractors and all mobile machinery."

"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

This Convention shall not apply:

...

(c) to carriage of dangerous goods by road, rail or inland navigation vessel which complies with the conditions of Section 1.1.3 of the European Agreement ... (ADR), the Regulations ... (RID) or the Regulations annexed to the European Agreement ... (ADN).

Annex 2

Texts in square brackets to be discussed at the next session:

Article 9

[Replace present 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

[Insert a new paragraph in article 16 (renumber the following paragraphs):

“4. A Contracting State may, with respect to carriage by road and by inland navigation vessel, 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 depositing an instrument of ratification, acceptance or approval of the Convention.”]
