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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)**
(Fourth session, 3-5 November 2003)

**COMPARISON OF CIVIL LIABILITY SYSTEMS
IN INTERNATIONAL INSTRUMENTS RELATING TO TRANSPORT**

Submitted by the International Road Transport Union (IRU)

Introduction

1. In its third session from 7 to 9 July 2003, the 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) invited the IRU to submit, for the next session, a document comparing liability systems in international instruments.
2. Among the international instruments having entered into force, the following were retained:
 - the Strasbourg Convention of 4.11.1988 on the limitation of liability in inland navigation (CLNI),
 - the International Convention of 29.11.1969 on civil liability for oil pollution damage, amended by the Protocol of 27.11.1992,
 - the Paris Convention of 29.07.1960 on third party liability in the field of nuclear energy,

- the Vienna Convention of 21.05.1963 on civil liability for nuclear damage,
 - the Convention of 19.11.1976 on limitation of liability for maritime claims, amended by the Protocol of 02.05.1996.
3. Among the international instruments which have not entered into force, the following were retained:
- the International Convention of 3.05.1996 on liability and compensation for damage in connection with the carriage of hazardous and noxious substances by sea (HNS Convention),
 - the International Convention of 23.03.2001 on civil liability for bunker oil pollution damage (Bunker Convention),
 - the Convention on Civil Liability for Damage caused during Carriage of Dangerous Goods by Road, Rail and Inland Navigation Vessels (CRTD Convention).
4. The objective of analysing the various above-mentioned instruments is to point out those persons held liable for damage and to compare liability ceilings.

Persons liable for damage

5. Concerning liability for damage caused during the transport of dangerous goods:

the Strasbourg Convention, the Convention of 19.11.76, the HNS Convention, the Bunker Convention and the CRTD Convention retain the carrier's liability (as the owner of the means of transport) for damage caused both by the carrier and by the goods carried.

The above-mentioned conventions all have a major shortcoming which severely penalises both the victims and persons entitled to compensation for damage. Indeed, the liability principle, which is focused solely on the carrier, excludes applying these conventions to accidents which may occur – both in multimodal or in single-mode transport – at the time when the goods are no longer under the custody of the initial carrier and have not yet been taken over by the successive carrier;

the Paris and Vienna Conventions retain the liability of the operator of the nuclear plant for any nuclear accident occurring both during transport and during the warehousing of such nuclear goods. These conventions do not contain the above-mentioned loophole;

the Convention of 4.11.1969, amended by the Protocol of 27.11.1992, recognises the liability of the party responsible for the damage. Consequently, the sea carrier (owner of a vessel) is only liable for any damage actually caused by the ship.

This Convention is based on the principle, dear to the legal tradition of UNECE countries, according to which each party is liable for its own actions or omissions.

Liability ceilings

6. Means of transport are not identical. For instance, a ship of 10,000 tonnes cannot be compared to a 44-tonne road vehicle. Hence, any comparison should be carefully weighted and one should take into account the volume and carrying capacity of the means of transport.
7. According to the Strasbourg Convention, the liability of inland waterway carriers per incident involving a ship assigned to goods transport amounts to SDR 200 per tonne of dead weight of the ship, plus SDR 700 for each kW of power of the propulsion engine. However, the global liability limit cannot be lower than SDR 300,000.

By comparison, the liability of road carriers for an incident involving a road vehicle with a 20-tonne payload and 300 kW power should amount to a maximum of SDR 216,000.

8. According to the Convention of 29.11.1969, amended by the Protocol of 27.11.1992, shipowners are entitled to limit their liability to a total amount of SDR 3,000,000 for any ship with a carrying capacity not exceeding 5000 tonnes. Given that a register tonne^{1/} = 2.831 m³, this liability amounts to SDR 3,000,000 for any ship with a carrying capacity not exceeding 14.155 m³ (5000 x 2,831 m³).

Proportionately, the liability of road carriers per incident involving a large semi-trailer (height 3m, width 2.30m, length 13.50m, capacity 90m³), should not exceed SDR 19,000.

9. According to the HNS Convention, shipowners are entitled to limit their liability to an amount of SDR 10,000,000 for any ship with a carrying capacity not exceeding 2000 tonnes (5662 m³).

Proportionately, the liability of road carriers per incident involving a large semi-trailer (capacity 90m³) should not exceed SDR 159,000.

10. According to the Convention of 19.11.1976, amended by the Protocol of 2.05.1996, shipowners are entitled to limit their liability to a total amount of SDR 3,000,000 for any ship with a carrying capacity not exceeding 2000 tonnes (5662 m³).

Proportionately, the liability of road carriers per incident involving a large semi-trailer (capacity 90m³) should not exceed SDR 48,000.

11. According to the Bunker Convention, shipowners are entitled to limit their liability as per the rules of the 1976 Convention on limitation of liability for maritime claims. Therefore, the limits are the same as those mentioned under item 10 above.

Proportionately, the liability of road carriers per incident involving a large semi-trailer (capacity 90m³) should not exceed SDR 48,000.

^{1/} *Sea transport, Technical, legal and commercial terms, United Nations, New York 1992, p. 267*

Conclusions

12. The liability ceilings following from the various conventions are dissimilar. If applied proportionately to road vehicles, they should amount to:
 - SDR 19,000 when taking into account the Convention of 29.11.1969, amended by the Protocol of 27.11.1992,
 - SDR 48,000 when taking into account the Convention of 19.11.1976, amended by the Protocol of 2.05.1996,
 - SDR 48,000 when taking into account the Bunker Convention of 23.03.2001,
 - SDR 159,000 when taking into account the HNS Convention,
 - SDR 216,000 when taking into account the Strasbourg Convention.
 13. By comparison with even the highest ceilings mentioned under item 12 above, that put forward by the Netherlands delegation for the CRTD, i.e. SDR 12,000,000 per road vehicle (doc. TRANS/AC.8/2003/1), seems eccentric.
 14. On this occasion, one cannot repeat often enough that the CRTD Convention is an excessive instrument in every respect. It is both superfluous and dangerous. It only provides a semblance of security and facility. It needlessly disrupts legal traditions with which one really cannot find fault.
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