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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 FIRST SESSION

(10-12 June 2002)

CONTENTS

	<u>Paragraphs</u>	<u>Page</u>
Attendance	1	2
Adoption of the agenda	2	2
Election of officers	3	2
Mandate of the Ad Hoc Meeting	4 - 6	2
Results of the questionnaire relating to the CRTD	7 - 27	3
Main obstacles to the entry into force of the CRTD	28 - 49	5
(a) Scope of the CRTD	28 - 29	5
(b) Limits of financial liability	30 - 42	6
(c) Other articles of the CRTD that would need to be amended	43 - 49	7
Programme of work	50 - 52	8
Adoption of the report and its annexes	53	8

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 first session from 10 to 12 June 2002. Representatives of the following countries took part in its work: Austria; Czech Republic; Germany; Netherlands; Poland; Portugal; Romania; Sweden. 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); Council of Bureaux; International Road Transport Union (IRU); European Barge Union (EBU); Rhine Ships Register (IVR).

ADOPTION OF THE AGENDA

Document: TRANS/AC.8/1

2. The Ad Hoc Meeting adopted the agenda of its first session as contained in document TRANS/AC.8/1.

ELECTION OF OFFICERS

3. The Ad Hoc Meeting elected Mr. Jan E. de Boer as Chairman of the Ad Hoc Meeting for the duration of the work on the revision of the CRTD.

MANDATE OF THE AD HOC MEETING

4. The Ad Hoc Meeting considered the mandate given it by the Inland Transport Committee:

- “(1) To consult experts in all the sectors concerned by the CRTD (for example, liability specialists, insurers, shippers and carriers) in order to determine how to eliminate obstacles, such as those relating to limits of liability and compulsory insurance, to the entry into force of the CRTD;
- (2) To propose, on the basis of these consultations and government proposals, amendments to the existing articles of the CRTD so as to facilitate their application to the various transport modes;
- (3) To report to the Inland Transport Committee at its 2003 session on the progress made and the difficulties encountered;
- (4) To submit to the Inland Transport Committee a revised text of the CRTD containing the aforementioned amendments with a view to the possible adoption of a new Convention at the 2004 session.”

5. The representative of IRU questioned the relevance of the second and fourth sections of the mandate, since article 29, paragraph 5 (a) of the CRTD stipulated that:

“No amendment of the limits of liability under this article may be considered less than five years from the date on which this Convention was opened for signature nor less than five years from the date of entry into force of a previous amendment under this article. No amendment under this article shall be considered before this Convention has entered into force.”

6. Several speakers pointed out that the Inland Transport Committee could propose the renegotiation of the Convention, if it deemed it appropriate, in accordance with the rules of international law. The work of the Ad Hoc Meeting was to propose amendments to the existing articles of the CRTD with a view to the possible adoption of a Convention at the 2004 session of the Inland Transport Committee.

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

7. The Ad Hoc Meeting reviewed the results of the questionnaire circulated by the secretariat to the UN/ECE member countries.

Question 1: What are the reasons that your country has not yet signed/ratified, approved, acceded to or accepted the Convention; what are considered to be the main obstacles for a possible decision to ratify, approve, accede to or accept the Convention?

8. The main concern emerging from the replies to this question was that the level of limits of liability was too high and that it should be revised downwards so that harmonization would be possible among the different countries.

9. Several delegations had established the link between the level of limits of liability and harmonization of competitive conditions in international transport where all insurance costs were expected to have repercussions on the consumers.

10. The need to increase the number of Contracting Parties (five) required for the entry into force of the CRTD was stressed (art. 23, para. 1).

11. The Ad Hoc Meeting also considered that the references to marginals of ADR should be revised in order to take account of the new format of the restructured ADR.

12. The representative of COB pointed out the changes in reinsurance systems after the events of 11 September 2001, particularly the suppression of unlimited coverage for third party liability.

13. In his opinion, a minimum coverage which would harmonize the systems could be appropriate in the case of the CRTD.

14. The representative of IRU stressed that the road transport industry considered the CRTD to be a superfluous instrument, the objectives of which could be achieved in the context of existing general insurances. He deplored the lack of interest in the CRTD and pointed out that the entire chain for the handling of dangerous goods, of which transport was only one link, must be taken into account. For that reason not everything should be concentrated on the sole liability of the carrier. The objective liability assigned to him would be unbalanced in relation to the other economic interests in play, as was also apparent from Belgium's reply to the questionnaire.

Question 2: Are the limits of liability regarding the different modes of transport considered to be appropriate, too low or too high? Would ratification be facilitated by amending the present limits? If so, at what level should the limits be set in order to facilitate acceptance of the Convention by your country?

15. Some replies to this question suggested securing at least minimum levels of liability by insurance contracts in the event of unlimited liability where there was no compulsory insurance.

16. The representative of CCNR drew attention to a draft his organization was preparing: the European Convention on liability and compensation for damage in connection with the carriage of hazardous and noxious substances by inland waterway (CRDNI).

17. He said that most of the interested organizations and professional categories and the Governments of countries of Central, Eastern and Western Europe had indicated agreement with the continuation of work on the basis of this draft convention. A meeting was scheduled next October which would be preceded by a hearing on a number of major topics (existence of specific features inherent in inland waterway transport, complementarity of inland navigation, problems of obligatory insurance from the point of view of the Rhine, etc.) so as to ascertain more precisely the definitive direction of the work along with that undertaken in the context of UN/ECE.

18. The question of insurance and limits of liability was still under discussion for inland navigation. The insurance companies consulted, however, tended to oppose compulsory insurance structured round direct recourse against the insurance company (non-enforceability by the insurer of certain means of defence of the owner).

19. According to these companies, the limit envisaged for the CRDNI (10 million SDRs) could easily be insured by the P and I Clubs, but with more difficulty by conventional insurance companies, where the ceiling was the equivalent of approximately 10 million deutsche marks (DM) (fixed insurance premiums).

20. The premiums claimed by the P and I Clubs for a Rhine vessel carrying dangerous goods would be between 13 and 15,000 DM and an increase of 30 to 50% should be anticipated in the event of third party coverage and compensation for damage in connection with the carriage of hazardous and noxious substances.

21. The representative of EBU and the International Rhine Vessel Register (IVR) said that EBU and IVR had been the originators of the CRDNI draft both because the CRTD was unable to enter into force and because inland navigation needed to take its inspiration from the relevant provisions of the HNS Convention.

22. She considered that the CRTD Convention was too ambitious in that it aimed not only at harmonizing various third party liability systems but also different transport modes.

23. The Ad Hoc Meeting admitted that differences existed among the various transport modes but it preferred to take these differences into account in the CRTD.

Question 3: Can you provide (statistical) information on the average height of damage (in SDRs) for the different modes, in your country, caused by accidents during transport of dangerous goods?

24. The difficulty was stressed of obtaining reliable statistical data concerning the average level of damage. It emerged from the replies to the questionnaire, however, that recorded accidents allegedly caused 4 million SDRs worth of damage in the railway sector, while in inland navigation the highest claim for compensation amounted to 125,000 SDRs. In road transport, on the contrary, the highest claim for compensation amounted to 6.25 million SDRs.

Question 4: Would the process of accession be facilitated by a lower level of compulsory insurance in comparison to the liability limits or even by complete abandonment of the compulsory insurance obligation? If so, what level should be appropriate?

25. The Chairman recalled the position of the informal group on the CRTD which had already met; it had recommended flexibility, leaving Contracting Parties to the Convention some latitude in the choice of the amount of liability for the compulsory insurance.

Question 5: Does the obligation to have a compulsory insurance certificate create difficulties for insurance institutions to (re)insure the limits of liability provided for in the Convention?

26. The compulsory insurance certificate could not correspond to the level established by the CRTD since the most important aspect in that regard was the level of liability covered by the CRTD.

Question 6: Are there any other concerns about (the level of) the limitation of liability?

27. The Ad Hoc Meeting recommended taking as a model what had been decided in other international legal instruments, such as the HNS Convention.

MAIN OBSTACLES TO THE ENTRY INTO FORCE OF THE CRTD

(a) Scope of the CRTD

28. The representative of CCNR spoke about his organization's work on drafting a specific convention for inland navigation.

29. The Ad Hoc Meeting preferred to keep the existing scope of the CRTD which covered the three inland transport modes (road, rail and inland navigation).

(b) Limits of financial liability

30. The Chairman recalled that the replies to the questionnaire had revealed that the limits of liability established by the CRTD were considered by the Governments to be too high.

31. He cited the example of the Netherlands, where the limits of liability established by the Convention for road transport seemed much too high, particularly for road transport and inland navigation. The limit of liability for road transport in the Netherlands was set at 12 million SDRs (i.e. 7.2 million SDRs for personal injury and 4.8 million SDRs for material damage) while the maximum amount of compulsory insurance was set at 6.25 million SDRs. That amount was substantially lower than the 30 million SDRs established by the CRTD.

32. The Chairman proposed that the provisions of article 9, paragraph 1, should be amended to provide for a limit of liability for each transport mode. The aim would be to reduce claims for loss of life or personal injury from 18 million units of account to 7, 12 and 4 million units of account for road, rail and inland waterway transport, respectively. All other claims would be reduced from 12 million units of account (the current amount) to 5, 8 and 3 million units of account for road, rail and inland waterway transport, respectively.

33. The representative of Sweden said that the current limits of liability of the CRTD were too low and that it would be advisable to increase them.

34. He considered that the limits of the Convention as it stood did not provide sufficient protection for the health of human beings and the environment and that this would be an obstacle to ratifications.

35. The representative of Germany said that his country was prepared to negotiate the limits of liability provided that they corresponded to realistic levels. The pursuit of realistic levels required close consultation with insurance experts from all of Europe.

36. The representative of CIT said that the limits were not fair since they limited liability to the carrier alone and did not take account of the new system of liberalization in the railway sector. As a result, they would discourage new private companies and give the advantage to State companies, since only the latter would be able to sustain financial costs of that nature.

37. The representative of IRU was in favour of a single limit of liability based on that proposed for inland waterways.

38. He considered that the CRTD was based on the notion that existing liability systems and related insurance policies were not in a position to provide adequate compensation for damage resulting from serious events. It emerged from the replies from Governments that compensation for damage in the context of existing liability systems and insurance policies continued to be adequate. Furthermore, the information sent in showed that the liability of transport operators was in principle over-insured.

39. According to the representative of IRU, it would be necessary to take account of the fact that the special liability for which the CRTD provided was in competition with the general liability for damage caused during carriage. The more liability was fragmented, the more difficult it was to evaluate and insure risks. That meant that if liability in the context of the transport of dangerous goods was not adequate, it was the entire third party liability resulting from transport operations that had to be regulated and not just a single aspect.

40. The representative of EBU/IVR considered that inland navigation was the most reliable transport mode and insisted that it was of no use to increase the limits of liability if the capacity of insurance companies did not so permit.

41. After all present had expressed their views on the proposal by the Chairman in collaboration with the secretariat concerning amendments to article 9 and article 16, the Ad Hoc Meeting decided to leave these proposals in square brackets and come back to them at the next session (see annex 2).

42. Delegations were invited to send the secretariat their contributions in that regard by 23 August 2002 so that they could be translated into the working languages.

(c) Other articles of the CRTD that would need to be amended

43. On the proposal of Portugal, the Ad Hoc Meeting accepted amendments to article 1 (para. 9) and article 4 (c) (see annex 1).

44. The proposal by Portugal concerning the definition of “carrier” remained in square brackets and would be discussed at the next session.

45. The discussion of this proposal demonstrated different approaches to the definition of “carrier” deriving from the difference in the objectives of ADR and those of the CRTD.

46. The representative of Portugal noted that the definition of “road vehicle” in article 1, paragraph 2, should be brought into line with the new definition of article 1 (a) of the ADR Agreement which had not yet entered into force (1993 Protocol of amendment).

Article 3, paragraph 1: Exclusion of contractual claims from the sphere of application

47. The representative of OTIF said that as things stood only claims arising out of the contract of carriage were excluded. It could be asked whether claims arising out of the contract of use of infrastructure should also be excluded. The contract of use of infrastructure was only of relevance in the railway sector. After the entry into force of the 1999 Protocol for the amendment of COTIF, the carrier’s liability vis-à-vis the infrastructure manager would be regulated by the “Uniform Rules concerning the Contract of Use of Infrastructure in International Rail Traffic (CUI)”, forming Appendix E to COTIF. In the road sector, however, damage to the road infrastructure would come under the CRTD.

48. She added that in the future, after the entry into force of the Protocol amending COTIF (Protocol 1999), the Regulations concerning the International Carriage of Dangerous Goods by Rail (RID) would form Appendix C to the Convention and would only contain some general provisions. The list of dangerous goods would appear in its annex which would be an integral part of it.

Articles 5, 4 (c); 5, 7 (b); 13 and 14

49. Amendments to the abovementioned articles would be discussed at the next session if the secretariat received pertinent proposals.

PROGRAMME OF WORK

50. The Ad Hoc Meeting was informed that the date of its next meeting had been provisionally scheduled for 4 to 6 November 2002.

51. The Chairman invited representatives to include insurance experts in their national delegations since this would permit access to the necessary expertise to resolve problems of limits of liability.

52. The representative of CCNR recalled CCNR's offer of cooperation and considered that the objective of finalizing the provisions of a Convention acceptable to a majority of countries could only be achieved if the work of revision was in the future effected by a more appropriate and adequate composition of delegations in terms of representation, with the inclusion in particular of legal experts from the Governments concerned. Under those conditions, CCNR would continue to take part in the work of the United Nations and to offer its cooperation, in particular by informing it of the results of the work it had conducted in the meantime on the basis of the draft CRDNI Convention.

ADOPTION OF THE REPORT AND ITS ANNEXES

53. The Ad Hoc Meeting adopted the report 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

“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 1

[Article 1

8. “Carrier” means the enterprise which performs the transport operation with or without a contract of carriage.]

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.”]
