

CENTRAL COMMISSION FOR THE NAVIGATION OF THE RHINE

CLNI/CONF (12) 5

19 July 2012

Or: fr fr/de/nl/en

Diplomatic conference organised by the CCNR
for the adoption of the Revised Strasbourg Convention
on the Limitation of Liability in Inland Navigation (CLNI)
(Strasbourg, 25-27 September 2012)

Examination of the draft revised Strasbourg Convention on the Limitation of Liability in Inland Navigation (CLNI 2012)

Communication from the French delegation

Article 1, paragraph 2b)

The French delegation feels that the terms “waterway” may be defined, as suggested by the Dutch delegation as “all inland stretches of water, including lakes” (with the word ‘lakes’ in the plural).

Article 2, paragraph 1a)

The French delegation proposes, for the sake of comprehensiveness, adding the word “weirs” after “navigable waterways”, since the word ‘locks’ does not necessarily cover weirs (some locks do not include a weir). The same word should be added to the third line of the second paragraph of Article 6.

Article 3, paragraph a)

The French delegation supports the drafting proposal put forward by the Dutch delegation which reads as follows: *“including, if applicable (the phrase “le cas échéant” would be preferable in the French version), special compensation relating to salvage operations in respect of a ship which by itself or its cargo threatened damage to the environment”*.

Article 3, paragraph c)

In the French version it would be better to refer to a “bateau à propulsion nucléaire”.

Article 6

The French delegation thinks that the first paragraph applies in fact to Article 7, the aim of which is to provide for higher ceilings but not for a different scheme of liability. Thus the provisions concerning push-tugs and tugs should also apply to Article 7. The wording in the first paragraph should therefore be: *“The limits of liability for claims other than those mentioned in Article 8 », deleting the words “in [Articles] 7 and”*.

Article 7

In line with the previous observation, the French delegation feels that the phrase “*Notwithstanding Article 6*” should be maintained in the first line as it makes the connection between Article 7, which contains a number of specific provisions concerning the transport of dangerous goods, and the previous Article, which lays down a general framework.

To deal with the concern expressed by the Netherlands, with the desire to state that a separate fund may be constituted for the damage provided for in Article 7, a sentence could be added at the end of the Article; this could read as follows: “*A separate limitation fund may be constituted in accordance with Article 12 for damage caused by the transport of dangerous goods.*”

Article 10, paragraph 3

This paragraph is illegible in the present French version. It might read as follows: “*Les paragraphes 1 et 2 s’appliquent par analogie aux limites de responsabilité calculées selon l’article 7. Le paragraphe 2 s’applique toutefois en prenant pour base 400 unités de compte au lieu de 200 unités de compte.*”

Article 14

The French delegation lifts its reservation concerning the replacement of the words “*ayant produit*” by “*pouvant produire*” (cf. footnote).

Article 15

In paragraph 1, the French delegation feels that confusion is caused by the reference to the applicable version of the Convention, which has no place in this provision as it is intended to define the geographical perimeter for application of the Convention. It is moreover a tautology since at any event there is no doubt that it is the version of the Convention in force at the time an incident occurs that must be applied.

If the intention of this sentence is to refer to the applicable limits when these have been amended, this is covered by the last sentence of paragraph 3 of Article 20 (and by an equivalent provision in Article 21).

The French delegation therefore agrees with the Dutch delegation on deleting the words “*in its version in force at the time of the incident giving rise to the claims*”.

Article 17, paragraph 1

The French delegation lifts its reservations concerning the wording of this paragraph.

In the third line of paragraph 1, to replace the preposition “à” in the French version by the word “de” (à compter *de*), and in the fourth line to state specifically that the Convention that is to be repealed is that of 1988.

On reading the draft declaration to be adopted by the States party to the present CLNI with a view to its repeal, the French delegation wonders, although it is not directly concerned, if it is sufficient to provide that the present Convention shall be repealed by such legal means. While there would be no difficulty for the three States denouncing the Convention in advance, for the fourth State it would mean the repeal of an agreement ratified by means of this ordinary informal declaration (which could also be seen as a way to amend the existing Convention that is questionable since there is no corresponding provision in the Convention). This might cause problems, perhaps not in international law but in national law, particularly with regard to the competences of the legislative power. Should consent to release from an agreement not be expressed in a form similar to that of consent to be bound by an agreement? (The French delegation is interested by the reference to a comment made by the International Law Commission on Article 54 of the Vienna Convention.)

Article 20

The French delegation agrees with the Dutch proposal to introduce the date of 31 (not 21) December 2017 for the first possible revision of the amounts of limitation.

In the second line of paragraph 3, the phrase “à *moins qu’il ne dénonce*” should be in the singular.

Article 21, paragraph 6

The French delegation recalls that it would like to see any change made under Article 21 to be adopted unanimously rather than by a two-thirds majority. Although a two-thirds majority is referred to in Article 20 of the present CLNI, the addition of a simplified revision procedure in accordance with the new Article 20 alters the issue and justifies requiring unanimity henceforth in Article 21. This proposal was not really discussed at the last meeting of the drafting committee.

Paragraph 6 would then read as follows: “*The decision to increase the amounts provided for in Articles 6 to 8 and 10 shall be made by the unanimous vote of those contracting Parties taking part in the vote.*”
