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Draft European Convention on Compulsory Insurance against Civil Liability in respect of Motor Vehicles

Report¹

Committee on Legal Affairs and Human Rights

Rapporteur: Mr Eduard WAHL, Germany

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A. Draft Opinion

The Assembly,

Having been consulted by the Committee of Ministers on the text of a draft European Convention on Compulsory Insurance against Civil Liability in respect of Motor Vehicles ([Document 835](#)) drawn up by a Committee of Experts of the Committee of Ministers in accordance with Recommendation 100 (1956) of the Assembly;

Noting that the Experts have omitted or weakened certain provisions of the draft Convention contained in Recommendation 100 (1956);

Noting that the Committee of Experts has found it necessary to add to the list of optional reservations;

Trusting that the Governments will make such reservations only in case of absolute necessity;

Recognising, however, that the experts have introduced a number of improvements into the draft Convention drawn up by the Assembly;

Considering that the draft Convention, in its present form, guarantees proper compensation to victims of accidents caused by motor vehicles and protects motorists against their liability to third parties injured by such vehicles,

Recommends to the Committee of Ministers that the Convention be submitted to Member Governments for signature as soon as possible.

B. Explanatory Memorandum

1.

The Convention drafted by the Experts closely follows the text prepared by the Legal Committee and appended to Recommendation 100, which is itself based on the Treaty on compulsory third-party insurance for motor vehicles signed in Brussels on 7th January 1955, by the Benelux Governments.

Like that Treaty and the text proposed by the Legal Committee, the Experts' draft is divided into two parts. The first part, entitled "European Convention" contains an undertaking to introduce a law governing compulsory third-party insurance. That law must comply with the "annexed provisions" which constitute the second part. These provisions, however, need not be reproduced word for word: it is enough for their substance to be embodied in municipal law. The annexed provisions merely represent minimum rules which can be broadened to provide greater protection for injured parties.

A comparison of the Convention drafted by the Experts with that prepared by the Legal Committee gives the following results:

2. The Convention

Preamble

The first four paragraphs are identical in both drafts². The Experts condensed the last paragraph, but without altering the substance.

Article 1

The first two paragraphs were re-worded so as to make it clear that only the substance, and not the actual text, need be embodied in municipal law. The meaning of the article remains the same.

The Experts added a third paragraph stipulating that the texts of the relevant legislation and regulations shall be communicated to other Parties.

Article 2

The Committee of Experts kept here only the optional derogations provided for in points 2, 3 (in part) and 4 of Article 2 of the draft in Recommendation 100.

Article 3

This article is new. It allows Governments, when signing or ratifying, to make certain reservations listed in Annex II to the Convention. Reservation No. 1 partly corresponds to the derogation referred to in point 2 of the former Article 2; reservation No. 2 is based on the derogation mentioned in point 1 of the old Article 2, but does not go so far; reservations Nos. 13 and 14 were covered by the derogation allowed by point 5 of the earlier Article 2, which, however, was far wider in scope. The other reservations were added by the Experts. A few of them, such as Nos. 3 and 7, seem at first sight to be justified; but most were brought in to take account of particular provisions in municipal laws which certain States are reluctant to abandon.

The fact must be faced that it would be extremely difficult to make the Convention acceptable to the Governments if they were not allowed to make such reservations, which, it may be noted, do not affect the basic principles of the Convention.

Article 4

Paragraph 1 corresponds to point 2 of Article 2 of the text proposed in Recommendation 100.

2. In the French version; there are slight differences in the second and third paragraphs of the English.

Paragraph 2 was added in order to ensure that the texts of legislation and regulations should be communicated to other Parties as provided also in paragraph 3 of the new Article 1.

Article 5

This Article is new. It deals with the case mentioned in point 3 of paragraph 1 of Article 4 of the annexed provisions in Recommendation 100. It would, in fact, be difficult for a convention to regulate the relationship between any claims that an injured party might have simultaneously upon a motor insurance company and upon social security institutions.

Article 6

Paragraph 1 corresponds to the old Article 3.

Paragraph 2 was added by the Experts.

Article 7

This article corresponds to the first paragraph of the former Article 4. It stipulates, *inter alia*, that a foreign authority or body can be sued in the courts of a country where damage has been caused by a visiting vehicle which belongs to the foreign State concerned.

The second paragraph of the Legal Committee's text was not retained by the Experts, but the article in its new form guarantees more effective protection for injured parties than did the earlier versions.

Article 5 of the text proposed in Recommendation 100 was not accepted by the Experts; they consider it unnecessary, since the Convention regulates not the relations between the injured party and the assured or the author of the damage, but those between the injured party and the insurer. But, in accordance with Article 2 of the annexed provisions, the insurer must be approved or the international insurance Bureau recognised by the Government of the country visited by the motor vehicle. In practice the Government will only approve or recognise an insurance undertaking which can be sued in that Government's territory. The question of the recognition and enforcement of foreign judgments is, therefore, unlikely to arise in connection with this Convention.

Article 8

This article reproduces the essence of the old Article 6.

Article 9

This Article deals with the establishment of a guarantee fund. It corresponds to and strengthens the former Article 7.

Article 10

Paragraph 1 replaces both the former Article 8 and the second sub-paragraph of paragraph 1 of Article 2 of the annexed provisions proposed in Recommendation 100. The new text is considerably weaker. It was apparently impossible to find a stricter rule acceptable to all the Governments.

Paragraph 2 was added by the Experts. It specifies the undertakings assumed and provides for control of the operations of insurers, the Guarantee Fund and the international insurance Bureau. These seem to be useful provisions.

The Committee of Experts did not adopt Article 8 (a) of the draft Convention in Recommendation 100. They decided in favour of direct claim by the injured party against the insurer, not only in respect of damage caused by foreign motor cars but also in other cases. The Committee thus took a stronger line than the Legal Committee in this matter.

Article 11

This article is new. Paragraph 2 replaces Article 12 of the annexed provisions proposed in Recommendation 100.

Article 12

This article corresponds to paragraph 1 of Article 9 of the old text.

Article 13

This article replaces paragraph 2 of Article 9 of the old text. It provides that new reservations can only be made with the express agreement of all the other Contracting Parties. This is a stricter stipulation than was proposed in Recommendation 100.

Article 14

This article corresponds to Article 10 of the old text.

The Article 11 contained in Recommendation 100 was not adopted by the Experts.

Articles 15 and 16

These articles correspond respectively to the former Articles 12 and 11 (a).

3. Annexed provisions

Article 1

This article underwent some slight emendation as regards trailers (first paragraph), the definition of injured parties (third paragraph) and the definition of international insurance Bureau (fourth paragraph).

Article 2

The first sub-paragraph of paragraph 1 is the same in both drafts³.

The second sub-paragraph of paragraph 1 of the earlier draft was not adopted by the Experts. They settled this question in Article 10 of the Convention. The third subparagraph of paragraph 1 of the former text thus became the second sub-paragraph of the new text.

Paragraph 2 of the Experts' draft corresponds to paragraph 2 of the earlier draft.

Article 3

The first part of paragraph 1 of the new text corresponds to the old text. Nevertheless, the Experts did not exclude compulsory insurance in the case of an unauthorised driver if he has been able to take control of the vehicle through the fault of the owner or person in charge, or if he is a person employed to drive the vehicle.

The second paragraph of the old text was slightly altered.

The third paragraph of the old text was not adopted as it contains a rule of international private law which, in the opinion of the Experts, should not be incorporated in this text.

Article 4

The new text corresponds to the old, except for point 3 of paragraph 1, which is covered by the new Article 5 of the Convention.

Article 5

3. In the French text; there are slight differences in the English.

The last phrase of the former text was slightly re-worded.

Article 6

The text proposed by the Experts is almost identical with that of Recommendation 100.

On the other hand, Article 7 of the earlier draft was not retained by the Experts, who considered that it was for municipal law to decide which courts have competence.

Article 7

Paragraphs 1 and 2 of this article correspond respectively to Article 8 and the third paragraph of Article 9 of the draft proposed in Recommendation 100 (with minor textual changes in the English).

The first and second paragraphs of the former Article 9 were not adopted by the Experts as the first paragraph contains a rule which already exists in the legislation of all countries and the second paragraph encountered certain objections.

Article 8

Paragraph 1 corresponds to the first paragraph of Article 10 of the old text. The period of limitation was, however, reduced to two years-.

The second paragraph of the old Article 10 was deleted by the Experts as being a matter of detail which could be settled by each country.

Paragraph 2 of the new text therefore corresponds to the third paragraph of the old text. The Experts, nevertheless, considered that a request should not interrupt, but merely suspend, the limitation.

Article 9

This text reproduces parts of Articles 11 and 13 of the old text, which were combined into a single article. Paragraph 1 applies to insurance contracts in force at the time but under which the insurer can plead avoidance on certain grounds.

Paragraph 2 applies to contracts whose existence is disputed.

Paragraph 3 was added by the Experts in order to save the insurer, when under no contractual obligation, from being obliged to pay compensation to an injured party when the latter may have recourse to another insurance.

Paragraph 4 is an amended form of the second sentence of Article 11 as contained in Recommendation 100.

Article 10

This article corresponds to the old Article 14.

4. Conclusions

1. It is true that there have been considerable additions to the list of optional reservations in the original Assembly draft. It must be acknowledged, however, that the Assembly prepared the draft Convention contained in Recommendation 100 on the basis of an agreement on the same subject concluded by the Benelux States, and the legal system in these three States is based on the principles of the French Civil Code. If the proposed Convention is also to be applied to other States whose legal system is not determined by the French Code, greater difficulties will arise, particularly when an injured party wishes to make a direct claim against an insurer. In most States outside the French legal tradition, direct claims of this sort against an insurer are either never allowed or allowed only in certain circumstances. In Germany, for instance, the injured party is entitled to make a direct claim where the insurer is declared bankrupt.

2. The whole matter is so complex that even in French law, where the practice of direct claims has been developed by the Courts, many problems remain unsolved. This is due to the fact that direct claims are considered to be independent of any claim the insured party may bring against his insurer on the basis of the insurance policy. The Experts should therefore be commended for their decision to delete paragraph 2 of Article 10 from the draft, so as to put no obstacle in the way of future legal development. On the other hand,

the Experts have accepted our proposal concerning direct claims by the injured party, since it is precisely in the context of compulsory insurance that the importance to the injured party of being compensated by the insurer outweighs all other considerations.

3. We must also draw attention to the very strong reservation on the subject of moral injury to be found in the draft Convention now submitted. In view of the divergence of opinion on this subject, even among the Continental States, we cannot but endorse the solution found by the Committee of Experts.

4. In my opinion, with which the Legal Committee concurred at its meeting of 15th September 1958, the draft Convention prepared by the Experts, although it does not retain all the features of the draft contained in Recommendation 100, is, on the whole, acceptable. As there seems to be no purpose in raising matters of detail, it is accordingly proposed that the draft Opinion at the beginning of this report should be adopted.

Appendix ANNEX II

The list of reservations was examined in conjunction with Article 3 of the draft Convention.

In accordance with the Protocol of Signature, cycles fitted with an auxiliary engine and trolley buses are to be regarded as motor vehicles.

The first draft Recommendation is designed to prevent cycles with an auxiliary engine from being exempted from compulsory insurance.

The second draft Recommendation contains a standard form for the certificate provided for in Article 7 of the Convention.