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**MEETING OF THE PARTIES TO THE CONVENTION ON
THE PROTECTION AND USE OF TRANSBOUNDARY
WATERCOURSES AND INTERNATIONAL LAKES**

**CONFERENCE OF THE PARTIES
TO THE CONVENTION ON THE TRANSBOUNDARY
EFFECTS OF INDUSTRIAL ACCIDENTS**

**REPORT OF THE JOINT SPECIAL SESSION
held at Geneva on 2-3 July 2001**

At their joint special session, the Parties to the Convention on the Protection and Use of Transboundary Watercourses and International Lakes and the Parties to the Convention on the Transboundary Effects of Industrial Accidents decided that an intergovernmental negotiation process should be entered into aimed at adopting a legally binding instrument on civil liability for transboundary damage caused by hazardous activities, within the scope of both Conventions. To this end, they established an open-ended intergovernmental Working Group.

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Introduction

1. The joint special session of the governing bodies of the UNECE Conventions on the Protection and Use of Transboundary Watercourses and International Lakes (Water Convention) and on the Transboundary Effects of Industrial Accidents (Industrial Accidents Convention) took place at Geneva from 2 to 3 July 2001.
2. It was attended by the following Parties to the Water Convention and/or the Industrial Accidents Convention: Albania, Armenia, Austria, Belgium, Bulgaria, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Italy, Kazakhstan, Latvia, Netherlands, Norway, Poland, Portugal, Republic of Moldova, Romania, Russian Federation, Slovakia, Slovenia, Spain, Sweden, Switzerland, Ukraine and the European Commission.
3. The following countries participated as observers: Canada, Turkey, United Kingdom and United States.
4. Representatives of the United Nations Environment Programme (UNEP), the Joint UNEP/OCHA Environment Unit, the International Strategy for Disaster Reduction (ISDR), and the Regional Office for Europe of the World Health Organization (WHO/EURO) also participated. The International Civil Defence Organization (ICDO) was represented.
5. Observers from the European Chemical Industry Council (CEFIC), Mama-86, the Regional Environmental Center for Central and Eastern Europe (REC) were also present..

I. OPENING OF THE JOINT SPECIAL SESSION

6. The joint special session was opened by Mr. Carel de Villeneuve, Chairperson of the Meeting of the Parties to the Water Convention.
7. Mr. Kaj Bärlund, Director of the UNECE Environment and Human Settlements Division, addressed the Meeting, outlined the background to the joint special session and stressed the importance of the task ahead. Mr. Ernst Berger, Chairperson of the Conference of the Parties to the Industrial Accidents Convention, briefed the Meeting on the discussions and decisions regarding responsibility and liability of the Parties to this Convention at their first meeting in November 2000.

II. ADOPTION OF THE AGENDA

8. The Meeting adopted the agenda as contained in document ECE/MP.WAT/6 – ECE/CP.TEIA/4.

III. PROCEDURAL MATTERS AND ELECTION OF OFFICERS

A. Rules of procedure

9. The Meeting decided to apply, mutatis mutandis, the rules of procedure of the Economic Commission for Europe on the understanding that decisions would be made by consensus among the Parties to either or both of the Conventions present at the meeting.

B. Officers

10. Mr. Jürgen Wettig, Vice-Chairperson of the Conference of the Parties to the Industrial Accidents Convention, speaking on behalf of the Bureaux of both governing bodies, put forward the candidacy of Ms. Phani Daskalopoulou-Livada (Greece) as Chairperson, and of Mr. Carel de Villeneuve (Netherlands) and Mr. Ernst Berger (Switzerland) as Vice-Chairpersons. The Meeting elected them unanimously.

C. Credentials

11. The Chairperson reported that the officers of the joint special session had examined the credentials submitted by the Parties to the Conventions. She informed the Meeting that 31 of the 34 Parties to both Conventions were represented and that their credentials were in order.

IV. BACKGROUND TO THE JOINT SPECIAL SESSION

12. The joint special session had been prepared by the Bureaux of both governing bodies at their joint meeting on 19-20 February 2001. Following the decisions of the Bureaux, the secretariat had invited the following experts to brief the Meeting on legal, technical and other issues linked to responsibility and liability for damage caused by hazardous activities within the scope of both Conventions:

(a) Mr. Attila Tanzi (Italy), who presented the main conclusions of the report on responsibility and liability in relation to accidental water pollution (MP.WAT/2001/1 – CP.TEIA/2001/1) finalized by the Working Group on Legal and Administrative Aspects, established under the Water Convention;

(b) Ms. Nathalie L.J.T. Horbach (Centre for Transboundary Damage and Compensation, Netherlands), who gave a lecture on international legal instruments on civil liability applicable to water-related incidents – coverage and possible gaps (see document MP.WAT/2001/1/Add.2 – CP.TEIA/2001/1/Add.2);

(c) Mr. Rainer Enderlein (secretary of the Water Convention), who presented the main issues raised by some UNECE member countries in the replies to a questionnaire on the Convention on Civil Liability for Damage Resulting from Activities Dangerous to the Environment (Lugano Convention), which had been circulated prior to the joint special session according to a decision of the Bureaux (see MP.WAT/2001/2– CP.TEIA/2001/2);

(d) Mr. Jürg Bally (Switzerland), who introduced and described an example of an instrument on liability and compensation prepared by the delegation of Switzerland (see MP.WAT/2001/3 – CP.TEIA/2001/3).

V. ESTABLISHMENT OF A REGIME ON CIVIL LIABILITY FOR DAMAGE CAUSED BY HAZARDOUS ACTIVITIES

13. The Meeting discussed the format and scope of a regime on civil liability for damage caused by hazardous activities within the scope of both Conventions as well as the mandate for the negotiation process, the procedures and a timetable. To this end, the Parties to both Conventions took a joint decision, which is annexed to this report.

14. After the adoption of this decision, the delegation of Italy stated that, in the spirit of compromise, it did not intend to impede the negotiations of a future instrument. Nevertheless, Italy's final position as to the acceptance of the instrument, drawn up within this framework, would be subject to the prior adoption of the European Union's framework directive on environmental liability

VI. CLOSING OF THE JOINT SPECIAL SESSION

15. The Meeting entrusted the secretariat, in consultation with the officers of this joint special session, to prepare and finalize its report. The Chairperson thanked all the delegations present for their important input in the discussions and the decision-making process and closed the joint special session.

Annex

**JOINT DECISION ADOPTED BY THE PARTIES TO THE UNECE
WATER CONVENTION AND THE UNECE INDUSTRIAL ACCIDENTS
CONVENTION AT THEIR JOINT SPECIAL SESSION ON 3 JULY 2001^{*/}**

1. The Joint Special Session of the Parties to the UNECE Convention on the Protection and Use of Transboundary Watercourses and International Lakes and the Convention on the Transboundary Effects of Industrial Accidents, in view of the shortcomings of the existing regimes on civil liability, due, in particular, to the lack of specificity, in certain cases, of relevant instruments as well as to the fact that most of them have not entered into force, decides that:
 - an intergovernmental negotiation process be entered into aimed at adopting a legally binding instrument on civil liability for transboundary damage caused by hazardous activities, within the scope of both Conventions;
 - to this end, an open-ended intergovernmental Working Group be established with a mandate to draw up the above mentioned legally binding instrument to be adopted at a future Joint Special Session, possibly within the framework of the Ministerial Conference "Environment for Europe", to be held in Kiev on 23-25 May 2003. The Joint Special Session mandates the Bureaus of the governing bodies of the two Conventions to prepare this future session.
2. The Working Group will hold its first meeting at Geneva on 21-23 November 2001. It will elect its own officers and work, mutatis mutandis, according to the UNECE rules of procedure.
3. The Joint Special Session invites all UNECE members, as well as observers, in particular interested NGOs, international organizations and other stakeholders, to participate in the work of the Working Group and to submit proposals and working documents to be considered. Such materials should be addressed to the UNECE secretariat.
4. The intergovernmental negotiation process will take into account developments in other fora, including the ongoing work within the European Community on liability. It will also take into account basic principles of liability regimes, in particular the principle of non-discrimination.

^{*/} This decision has not been formally edited.

5. The Joint Special Session also noted views expressed by some Parties that:
- the intergovernmental negotiation process should take into account the economic implications of a legally binding civil liability regime with special regard to the insurance market;
 - the instrument could be developed in such a way that its scope could be broadened at a later stage.