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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**

Intergovernmental Working Group on Civil Liability
(Fourth meeting, Geneva, 2-4 September 2002)

REPORT ON THE FOURTH MEETING

Prepared by the secretariat in consultation with the Chairperson and the Rapporteur

Introduction

1. The following Parties and non-Parties to the Conventions participated in the fourth meeting: Armenia, Austria, Azerbaijan, Belarus, Belgium, Croatia, Czech Republic, Denmark, Finland, France, Georgia, Germany, Greece, Hungary, Italy, Kazakhstan, Kyrgyzstan, Monaco, Netherlands, Poland, Portugal, Republic of Moldova, Romania, Russian Federation, Slovakia, Slovenia, Sweden, Switzerland, Turkey, Ukraine, United Kingdom, United States, Uzbekistan and European Community.

2. A representatives of the United Nations Environment Programme (UNEP) also participated.

3. Representatives from the following organizations and institutions also attended the meeting: Permanent Court of Arbitration (PCA), Comité Européen des Assurances (CEA), Regional Environmental Center for Central and Eastern Europe (REC), European ECO-Forum, Environmental Law Center (CPE) and the following insurance companies: Munich Re and Swiss Re.

I. PROCEDURES

4. Mrs. Phani DASKALOPOULOU-LIVADA (Greece), Chairperson, opened the meeting and welcomed the participants. Mrs. DASKALOPOULOU-LIVADA chaired the meeting on 2 and 3 September 2002 while Mr. Juerg Bally (Switzerland), one of the Vice-Chairmen, chaired the meeting on 4 September.

5. The Working Group adopted its agenda as set out in document MP.WAT/AC.3/2002/7 - CP.TEIA/AC.1/2002/7.

6. The Working Group also adopted the report of its third meeting (MP.WAT/AC.3/2002/6 – CP.TEIA/AC.1/2002/6), held on 6-8 May 2002, with three corrections to paragraphs 6 and 19, respectively, of this report . These read as follows (corrections underlined):

Paragraph 6 – The Working Group also adopted the report of its second meeting (MP.WAT/AC.3/2002/3 – CP.TEIA/AC.1/2002/3), held on 4-6 February 2002, with four corrections. These read as follows (corrections underlined):

(a) Paragraph 19: See paragraph 14 of this report;

(b) Paragraph 24: The Working Group agreed on the text of article 10 as contained in MP.WAT/AC.3/2002/4 - CP.TEIA/AC.1/2002/4, leaving open only the question of the time limit for bringing claims for compensation: five years or [three years];

(c) Paragraph 25: One delegation reserved its position as regards article 11, para. 2;

(d) Paragraph 27: The Working Group agreed on the text of article 12 as contained in MP.WAT/AC.3/2002/4 - CP.TEIA/AC.1/2002/4;

Paragraph 19 – The Working Group noted that with the agreement, in principle, on article 13bis, an amendment to the chapeau of article 7, paragraph 1, would also be needed (see the discussion under article 7).

II. FURTHER PREPARATION OF A LEGALLY BINDING INSTRUMENT ON CIVIL LIABILITY FOR TRANSBOUNDARY DAMAGE CAUSED BY HAZARDOUS ACTIVITIES, WITHIN THE SCOPE OF BOTH CONVENTIONS

A. Documentation for the fourth meeting

7. The Working Group had before it the revised text of the draft legally binding instrument on civil liability for transboundary damage caused by hazardous activities, within the scope of both Conventions (MP.WAT/AC.3/2002/8 – CP.TEIA/AC.1/2002/8) prepared by the Rapporteur with the assistance of the secretariat and in consultation with the Chairperson on the basis of the outcome of the third meeting.

8. The Working Group had also before it the following new working documents:

(a) Draft annex II on financial limits prepared by an extended meeting of the joint ad hoc expert group on water and industrial accidents (MP.WAT/AC.3/2002/9/Add.1 – CP.TEIA/AC.1/2002/9/Add.1);

(b) Draft annex III on arbitration (MP.WAT/AC.3/2002/10 – CP.TEIA/AC.1/2002/10), prepared by the secretariat;

(c) Position of the European ECO-Forum on article 11bis concerning access to information, public participation and access to justice (MP.WAT/AC.3/2002/WP.13 – CP.TEIA/AC.1/2002/WP.13);

(d) Proposals for amendments of the draft legally binding instrument on civil liability for transboundary damage caused by hazardous activities, within the scope of both Conventions (MP.WAT/AC.3/2002/WP.14 – CP.TEIA/AC.1/2002/WP.14), submitted by the delegation of Hungary;

(e) Comments to article 11 of the draft legally binding instrument on civil liability (MP.WAT/AC.3/2002/WP.15 – CP.TEIA/AC.1/2002/WP.15), submitted by Swiss Re; and

(f) PCA clarifications of proposals for article 13bis (MP.WAT/AC.3/2002/WP.16 – CP.TEIA/AC.1/2002/WP.16), submitted by the Permanent Court of Arbitration (PCA).

9. The Working Group noted that the working papers submitted for consideration at the first, second and third meetings would be reconsidered in the course of this or the forthcoming negotiation meetings.

B. General debate

10. Following a general debate on achievements and work to be undertaken, the Working Group agreed to focus its work on the second reading of the instrument and on the document containing the draft of annex II. It also reviewed the English, French and Russian versions of annex I, which was considered – as a working document in English only - by the Working Group at its third meeting. The outcome of this examination is reported hereunder in the sequence in which these articles and annexes appear in the Protocol.

11. The revised version of the main body of the Protocol will be issued as document MP.WAT/AC.3/2002/13 – CP.TEIA/AC.1/2002/13.

C. Examination of articles and annexes

Article 1 – Objective

12. The Working Group agreed on the text of this article.

Article 2 – Definitions

13. The Working Group agreed on the text of the following paragraphs: 1; 2 (b) (i to iv); and 2 (e) to (g).

14. The Working Group agreed on the amended text of paragraphs: 2 (a); 2 (b) (v); 2 (b)bis; and 2 (d). The amended texts of the above paragraphs are contained in MP.WAT/AC.3/2002/13 – CP.TEIA/AC.1/2002/13. It also, in principle, agreed on the text of paragraph 2 (c) – see footnote in the revised text of the draft legally binding instrument on the basis of the outcome of this meeting. Paragraph 2 (b) (vi) was deleted.

15. The Working Group also agreed in principle on the text of paragraph 2 (i), however decided to put brackets around the words “transportation via pipelines or” (para. 2 (i) (ii)).

Article 3 – Scope of application

16. The Working Group agreed on the text of paragraph 1. The secretariat introduced a minor editorial amendment by replacing “in the course of a hazardous activity” with “in a hazardous activity”. It also decided, on the request of the delegation of the Netherlands, to retain brackets around paragraph 2 until a final decision was made on the texts of article 8, para. 3, and article 15, para. 2.

Article 4 – Strict liability

17. The Working Group agreed on the text of the following paragraphs: 2 (a), (b), (d); and 3. It also agreed on the amended text of paragraph 1; 2; and 2(c). The new texts of the above paragraphs are contained in MP.WAT/AC.3/2002/13 – CP.TEIA/AC.1/2002/13.

Article 5 – Fault-based liability

18. The Working Group agreed on the text of this article with the addition of the word “applicable”. The new text of the above paragraph is contained in MP.WAT/AC.3/2002/13 – CP.TEIA/AC.1/2002/13.

Article 6 – Response measures

19. The Working Group agreed on new texts of paragraphs 1 and 2 of this article, as proposed by the Chair and the secretariat and contained in MP.WAT/AC.3/2002/13 – CP.TEIA/AC.1/2002/13.

Article 7 – Right of recourse

20. The Working Group agreed on a new text of paragraphs 1 and 2 of this article, however decided to retain brackets around the words “or arbitral tribunal established under article 13(bis)”. The new texts of these paragraphs are contained in MP.WAT/AC.3/2002/13 – CP.TEIA/AC.1/2002/13. The Group will decide whether to move this article to the procedural part of the Protocol at a later stage.

Article 8 – Implementation

21. The Working Group agreed, in principle, on the texts of paragraphs 1 and 2 of this article with a small addition referring to the secretariat to the latter “as provided for in article 19”. After a substantive discussion concerning paragraph 3 as well as article 3, para. 2, and article 15, para. 2, the Working Group agreed to retain brackets around the second sentence of paragraph 3 and to add an alternative sentence, suggested by the delegation of the Netherlands, also in brackets. On the request of the Hungarian delegation, a text for a new paragraph 4 concerning cooperation between public authorities of the Parties was also added in brackets. The delegations of Germany and Switzerland reserved their position on this article.

Article 9 – Financial limits

22. The Working Group tentatively agreed on the text of this article, pending the discussion of annex II.

Article 10 – Time limit of liability

23. After a detailed discussion concerning the time limit of liability, the Working Group decided to maintain two limits of ten and twenty years, both in brackets, as the limits of admissibility for bringing claims for compensation – paragraph 1. On the other hand, it reached agreement on the time limit of three years referred to in paragraph 2 of the same article. It also agreed on the text of paragraph 3 without changes.

Article 11 – Financial security

24. The Working Group decide to lift the brackets in paragraph 1 and agreed on the texts of both paragraphs of this article – see also footnote in the revised text of the draft legally binding instrument on the basis of the outcome of this meeting (MP.WAT/AC.3/2002/13 – CP.TEIA/AC.1/2002/13).

Article 11 bis - Access to information and access to justice accordingly

25. The Working Group thoroughly discussed the different proposals for the text of this article, some of them being quite extensive (see MP.WAT/AC.3/2002/WP.8 – CP.TEIA/AC.1/2002/WP.8, submitted by Germany and MP.WAT/AC.3/2002/WP.13 – CP.TEIA/AC.1/2002/WP.13, submitted by ECO-Forum). It also discussed how to treat the text of this article in order to maintain an equilibrium within the whole instrument. A working group on the matter, with Germany as a lead delegation, would commence work on an appropriate text at the beginning of the fifth meeting of the Working Group.

Article 12 – ~~State responsibility~~ International responsibility of States

26. The Working Group decided to amend the title of this article as above. With the same modification in the article itself, it agreed on its text.

Article 13 - Competent courts

27. The Working Group agreed on the text of this article.

28. The European Commission and the delegation of Denmark made a statement to the effect that articles 13, 14, and 17 are placed under general reservation pending the confirmation of the competence of the European Commission to negotiate on behalf of the 15 EU member States.

Article 13bis - Arbitration

29. The Working Group agreed on a new wording of this article as proposed by PCA with two modifications. The new text of this article is contained in MP.WAT/AC.3/2002/13 – CP.TEIA/AC.1/2002/13.

Article 14 - Related actions

30. The Working Group agreed on the text of the three paragraphs of this article. See also paragraph 28 of this report.

Article 15 - Applicable law

31. The Working Group was in agreement on text of paragraph 1 of this article. The delegation of Germany, however, reserved its position and strongly suggested the deletion of the word “procedure” from this paragraph.

32. An in-depth discussion took place concerning paragraph 2, in particular the issue that the victim should have the option to chose between the Protocol and domestic law and how this could be reflected in the instrument. In this context, article 3, para. 2, and article 8, para. 3, were also re-considered. As a result, the Working Group decided to retain the brackets around the entire text of paragraph 2. A small working group also drew up two alternative texts of this paragraph for consideration by delegations. This discussion, involving also the other two articles will continue at the Group’s fifth meeting.

Article 16 - Relation between the Protocol and the law of the competent court

33. The Working Group did not consider this article and will do so at its next meeting after having reached an agreement on the texts of article 3, para. 2, article 8, para. 3, and article 15, para. 2.

Article 17 - ~~Mutual recognition and enforcement of judgements~~ Mutual recognition and enforcement of judgements and arbitral awards

34. With the addition of the words “and arbitral awards” to the title and the text of this article – as above – the Working Group agreed on its text. See also paragraph 28 of this report.

Article 17bis - Rules concerning conflicts between international liability agreements

35. The Working Group agreed to amend the text of this article in order to achieve consistency with article 3 – scope of application. However, no decision was reached on the final text of the entire article and thus the Working Group decided to retain the brackets around the whole of article 17bis and return to this issue at its fifth meeting. The Chairman invited interested delegations, including Germany, Poland, Portugal, Sweden and the United Kingdom, to make a joint effort to draw up a proposal for the text of this article, in between meetings, and submit it for consideration by the Working Group at its next meeting in November.

Article 18 - Meeting of the Parties

36. The Working Group agreed on the text of this article.

Article 18bis - Compliance

37. The Working Group decided to delete this article. The delegation of Hungary expressed its desire to retain the text.

Article 19 – Secretariat and Article 19bis - Annexes

38. The Working Group agreed on the texts of these articles.

Article 20 - Amendments to the Protocol

39. The Working Group agreed on the text of this article. A decision was reached to delete the word “ordinary” from paragraph 2 and to lift the brackets around paragraph 4. As the previous paragraph 4 (d) was related not only to paragraph 4 but also to paragraph 3, the relevant text now constitutes the new paragraph 5 of this article. . The new text of this article is contained in MP.WAT/AC.3/2002/13 – CP.TEIA/AC.1/2002/13.

Annex I – Hazardous substances and their threshold quantities
for the purpose of defining hazardous activities

40. The Working Group noted the deletion of the two expressions “LD₅₀ ≤ 25” and “LD₅₀ ≤ 50” from the fourth line of the upper left and right cells of table 3, and that in tables 1 and 3 reference should be made to “LD₅₀ dermal in rats and rabbits”. The delegation of Poland reserved its position as regards annex I.

Annex II – Financial limits

41. Mr. Martin SCHIESS, Co-Chairman of the joint ad hoc expert group on water and industrial accidents established under the Water and Industrial Accidents Conventions, introduced the draft of annex II contained in MP.WAT/AC.3/2002/9/Add.1 – CP.TEIA/AC.1/2002/9/Add.1. The draft was prepared at an extended meeting of the joint expert group on 4 July 2002 in Geneva, which was also attended by legal experts and a representative of the insurance sector.

42. The Working Group held a preliminary exchange of views on the proposed content of annex II and decided to discuss it in detail at its next meeting after holding appropriate consultations in the capitals.

III. DATE AND VENUE OF FUTURE MEETINGS OF THE INTERGOVERNMENTAL WORKING GROUP

43. The Working Group reiterated that its fifth meeting would be held at Geneva on 11-13 November 2002 beginning on Monday, 11 November at 3 p.m. It also noted that the secretariat has made arrangements to convene the sixth meeting, if need be, in Geneva on 12-14 February 2003.

IV. CLOSING OF THE MEETING

44. Mr. Bally (Switzerland), the Vice-Chairperson, closed the meeting on 4 September 2002.