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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
(Fifth meeting, Geneva, 11-13 November 2002)

REPORT ON THE FIFTH 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, Belgium, Croatia, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Italy, Kazakhstan, Monaco, Netherlands, Norway, Poland, Portugal, Romania, Russian Federation, Slovenia, Sweden, Switzerland, Turkey, United Kingdom, United States, and European Community.

2. Representatives of the secretariat of the UNEP (Nairobi) and the secretariat of the Convention on Biological Diversity 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 insurance company Swiss Re.

I. PROCEDURES

4. Mrs. Phani DASKALOPOULOU-LIVADA (Greece), Chairperson, opened the meeting and welcomed the participants.
5. The Working Group adopted its agenda as set out in document MP.WAT/AC.3/2002/12 - CP.TEIA/AC.1/2002/12.
6. The Working Group also adopted the report of its fourth meeting (MP.WAT/AC.3/2002/11 – CP.TEIA/AC.1/2002/11), held on 2-4 September.

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 fifth 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.3/2002/13 – CP.TEIA/AC.1/2002/13) prepared by the Rapporteur with the assistance of the secretariat and in consultation with the Chairperson on the basis of the outcome of the fourth meeting.
8. The Working Group had also before it the following new working documents:
 - (a) Proposal for an amendment of article 2, paragraph 2 (b) (iii), submitted by the delegation of Austria (MP.WAT/AC.3/2002/WP.17 – CP.TEIA/AC.1/2002/WP.17);
 - (b) Proposal for a provision on contributory fault, submitted by the delegation of Denmark (MP.WAT/AC.3/2002/WP.18 – CP.TEIA/AC.1/2002/WP.18);
 - (c) Proposal regarding article 11bis on access to information and justice accordingly, prepared by the secretariat (MP.WAT/AC.3/2002/WP.19 – CP.TEIA/AC.1/2002/WP.19);

- (d) Proposal for a provision on access to information, submitted by the Environmental Law Centre, Poland (MP.WAT/AC.3/2002/WP.20 – CP.TEIA/AC.1/2002/WP.20);
- (e) Clarification of a proposal for article 8, paragraph 4, submitted by the delegation of Hungary (MP.WAT/AC.3/2002/WP.21 – CP.TEIA/AC.1/2002/WP.21);
- (f) Position of the Czech Republic on the draft of annex I to the draft legally binding instrument on civil liability for transboundary damage caused by hazardous activities (MP.WAT/AC.3/2002/WP.22 – CP.TEIA/AC.1/2002/WP.22); and
- (g) Preliminary comments by Belgium with regard to article 11 on financial security (MP.WAT/AC.3/2002/WP.23 – CP.TEIA/AC.1/2002/WP.23).

B. General debate

9. The Working Group agreed to resume the second reading of the instrument from where it had stopped at its fourth meeting, i.e. from Article 21 to the end, and the Preamble, as well as to review afterwards the entire text in its final reading and in particular the articles not yet agreed. The outcome is reported below.
10. The revised version of the main body of the Protocol will be issued as document MP.WAT/AC.3/2003/2 – CP.TEIA/AC.1/2003/2.

C. Examination of articles and annexes

11. The Working Group at its fifth meeting agreed on the text of the following articles: 1; 5; 6; 7; 9; 12; 13bis; 16; 18; 19; 19bis; 20; 21; 22; 23; 25; 25bis; 26; 27; and 28 as contained in MP.WAT/AC.3/2003/2 – CP.TEIA/AC.1/2003/2.
12. It was also in agreement with the text of articles 13; 14; and 17, however the European Commission reconfirmed its earlier statement to the effect that these articles 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. The delegation of the Russian Federation also placed a reservation concerning article 17.

Preamble

13. The Working Group decided to refer to the “relevant provisions” (and not to the “obligations”) of the Industrial Accidents and the Water Conventions. It also agreed to refer, in the present and not in the past tense, to both principles 13 and 16 of the Rio Declaration, but without mentioning the content of these principles. The Working Group decided to keep the reference to the polluter-pays principle, as in alternative 2 of MP.WAT/AC.3/2002/13 –

CP.TEIA/AC.1/2002/13. Finally, the Working group decided to delete paragraph 6 of MP.WAT/AC.3/2002/13 – CP.TEIA/AC.1/2002/13, already covered by paragraph 7.

Article 2 – Definitions

14. The Working Group agreed on the text of the following paragraphs: 1; 2 (b) (i to ii and iv to v); 2 (b)bis; and 2 (c) to (g).

15. The Working Group after a detailed discussion of a proposal for amending paragraph 2 (b) (iii), put forward by Austria, decided to revisit this paragraph again at its next meeting. It also decided to keep both alternative texts in brackets.

16. The Working Group also agreed on the text of paragraph 2 (i), however decided to maintain brackets around the words “transportation via pipelines or” (para. 2 (i) (ii)) and requested the secretariat to explore if the existing criteria contained in draft annex I are suitable to cover also the transportation of hazardous substances via pipelines.

Article 3 – Scope of application

17. The Working Group agreed on the text of paragraph 1. 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 articles 8, paragraph 3 and 15, paragraph 2, which will be considered as a package solution based on a text proposal put forward by the REC. This proposal will be contained in a working paper for the Group’s consideration at its next meeting.

Article 4 – Strict liability

18. The Working Group agreed on the existing three paragraphs of this article. However, the delegation of Denmark put forward a proposal to add one additional subparagraph to paragraph 2 of this article concerning a provision on contributory fault. Since no final decision was reached, this issue will be revisited at the next meeting

Article 8 – Implementation

19. The Working group agreed on the texts of paragraphs 1 and 2 of this article. Paragraphs 3 and 4 will be revisited at the next meeting (see para 17 of this report).

Article 10 – Time limit of liability

20. After a detailed discussion concerning the time limit of liability, the Working Group agreed on a compromise limit of fifteen years, however it decided to put this figure in brackets until the next meeting.

Article 11 – Financial security

21. In light of reservations of several delegations concerning this article and a working paper submitted by the delegation of Belgium on financial security, the Working Group agreed to continue its discussions at the next meeting.

22. On the request of the delegation of the Netherlands, the Working Group reiterated its earlier agreement on the definition of a hazardous activity for the purpose of this Protocol as contained in subparagraph 2 (b)bis of article 2.

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

23. The Working Group once more discussed the possible text for this article based on two working papers, one submitted by the secretariat (MP.WAT/AC.3/2002/WP.19 – CP.TEIA/AC.1/2002/WP.19) and the other by the Environmental Law Centre (MP.WAT/AC.3/2002/WP.20 – CP.TEIA/AC.1/2002/WP.20). The Working Group agreed that both proposals should be treated as being complementary to each other and decided that a uniform text would be prepared by the secretariat with the assistance of the Chairperson, the Environmental Law Centre and the delegation of Germany for consideration at the Group's next meeting.

Article 15 - Applicable law

24. The Working Group was in agreement on the text of paragraph 1 of this article. Paragraph 2 will be revisited at the next meeting (see para 17 of this report).

Article 17bis - ~~Rules concerning conflicts between international liability agreements~~
Relationship between bilateral, multilateral or regional agreements

25. The Working Group agreed to amend the title of this article as above. It also agreed to introduce brackets around the last part of the article (see MP.WAT/AC.3/2003/2 – CP.TEIA/AC.1/2003/2).

Article 24 – Ratification, acceptance, approval and accession

26. The Working Group was in agreement with paragraphs 3 and 4 of this article. It decided to lift the brackets around paragraphs 1 and 2. However, it also decided to add the following text in brackets with alternative solutions at the end of both paragraphs 1 and 2:

- “provided that the States and organizations concerned are: (i) Parties to both Conventions; (ii) Parties to one of the Conventions; (iii) Parties or Signatories to both Conventions; and (iv) Parties or Signatories to one of the Conventions”.

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

27. The Working Group, in principle agreed with the content of annex I.

Annex II – Financial limits

28. 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, gave background information on the preparation of the draft of annex II as 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.

29. The Working Group held an exchange of views on the proposed limits, and in view of reservations made by several delegations decided to revisit annex II at its next meeting. The delegation of the Netherlands requested the secretariat to prepare a note containing further justification of the limits set out in the present draft document. The secretariat stressed that any further work in this area would require a substantial input from UNECE member countries and that it would approach delegations with such a request. It would then be in a position to prepare a note based on the information received.

Annex III – Arbitration

30. The Working Group, in principle, agreed with the text of this annex as contained in MP.WAT/AC.3/2002/10 – CP.TEIA/AC.1/2002/10. However, it decided to revisit the annex in light of the following possible amendment to the last sentence of paragraph 2: to add the words “or had been” to read “...nor be or had been employed by any of them...”

31. The Working Group completed its consideration of the text of the draft protocol, including annexes I and III, on second reading.

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

32. The Working Group decided that its sixth meeting would be held at Geneva on 15-17 January 2003 beginning on Wednesday, 15 January at 10 a.m. It also noted that the secretariat has made arrangements to convene the seventh meeting, if need be, in Geneva on 12-14 February 2003.

IV. CLOSING OF THE MEETING

33. Mrs. DASKALOPOULOU-LIVADA, the Chairperson closed the meeting on 13 November 2002.