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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

REPORT ON THE SECOND MEETING^{*/}

Introduction

1. The second meeting of the Working Group was held in Geneva on 4-6 February 2002.
2. The following countries participated: Armenia, Austria, Belgium, Canada, Croatia, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Italy, Monaco, Netherlands, Norway, Poland, Portugal, Romania, Russian Federation, Slovenia, Spain, Sweden, Switzerland, Turkey, Ukraine, United Kingdom, United States, and Uzbekistan.

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

3. A representative of the United Nations Environment Programme (UNEP), Division of Environmental Policy Implementation, also participated.

4. Representatives from the following organizations and institutions also participated: Permanent Court of Arbitration, European Chemical Industry Council (CEFIC), Environmental Law Centre (IUCN), Comité Européen des Assurances (CEA), Regional Environmental Center for Central and Eastern Europe (REC), European ECO-Forum, and the following insurance companies: Munich Re and Swiss Re.

I. OPENING OF THE MEETING

5. The second meeting of the Working Group was opened by its Chairperson, Mrs. Phani DASKALOPOULOU-LIVADA (Greece), who welcomed all the participants.

6. Mr. Kaj Bärlund, Director of the UNECE Environment and Human Settlements Division addressed the meeting. He recalled the industrial accident at Baia Mare and others that occurred in the past two years as the background of the proposal, and later the decision, to draw up an instrument on civil liability. Mr. Bärlund stressed the importance of involving all the actors who will be responsible for implementing the instrument in the future. He also mentioned the support expressed by the European Ministers of Environment for this process and its completion before the fifth Ministerial Conference «Environment for Europe».

II. ADOPTION OF THE AGENDA

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

III. ADOPTION OF THE REPORT OF THE FIRST MEETING

8. The Working Group adopted the report of its first meeting (MP.WAT/AC.3/2001/2 – CP.TEIA/AC.1/2001/2), held on 21-23 November 2001, with four amendments. These read as follows (amendments/additions underlined):

(a) Para 5: Representatives from the following organizations and institutions also participated: European Chemical Industry Council (CEFIC), Regional Environmental Center for Central and Eastern Europe (REC) and Swiss Re – insurance company (SWISS RE).

(b) Para 20: Some delegations expressed the view that the phrase «any person shall be liable» (first sentence of this article) should be replaced by a reference to the owner or operator of the installation. Other delegations questioned whether the second sentence – taken from article 5 of the Basel Protocol - could be kept in its present wording.

(c) Para 30: The Working Group noted the decisive role of provisions on insurance and other guarantees for the purpose of the Protocol, and agreed in principle with the content of the two paragraphs of this article. However, some concern as regards direct claims was voiced.

(d) Para 33: The Working Group noted that the proposal by Hungary to provide for the settlement of disputes by arbitration could add value to the proposed regime which follows existing precedents, provided that it would be optional. The Working Group invited the delegation of Hungary to draft – with the assistance of Germany and Italy – some text for consideration at its second meeting. It was noted that paragraphs 13-17 would need further scrutiny in the light of already existing treaties on procedure.

III. ELECTION OF OFFICERS

9. Following the Rules of Procedure of the Economic Commission for Europe, the Working Group unanimously agreed to re-elect Mrs. Phani DASKALOPOULOU-LIVADA (Greece) as Chairperson, and Mr. Jürg BALLY (Switzerland), Mr. Attila TANZI (Italy) and Mr. Jürgen WETTIG (European Community) as Vice-Chairpersons. The Working Group also designated Mr. BALLY to further act as its Rapporteur.

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

10. The Working Group had before it a draft legally binding instrument on civil liability for transboundary damage caused by hazardous activities, within the scope of both Conventions (MP.WAT/AC.3/2002/2 – CP.TEIA/AC.1/2002/2) prepared by the Rapporteur on the basis of an example of such an instrument (MP.WAT/2001/3 – CP.TEIA/2001/3) and including comments made by delegations at the first meeting of the Working Group.

A. Working documents on civil liability

11. The Working Group had before it the following six working documents:

(a) The relationship between article 9 (3) of the Convention on Industrial Accidents and the forthcoming protocol on liability (MP.WAT/AC.3/2002/WP.1 – CP.TEIA/AC.1/2002/WP.1), submitted by the delegation of Norway;

(b) Proposals relating to the responsibility of States and the jurisdiction over disputes originating from water-related incidents caused by industrial accidents (MP.WAT/AC.3/2002/WP.2 – CP.TEIA/AC.1/2002/WP.2), submitted by the delegation of Hungary;

(c) Possible draft elements for provisions on «compliance» and «reporting» for 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.3 – CP.TEIA/AC.1/2002/WP.3), submitted by the Regional Environmental Center for Central and Eastern Europe (REC);

(d) Comments on 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.4 – CP.TEIA/AC.1/2002/WP.4), submitted by Swiss Re;

(e) Terminology (MP.WAT/AC.3/2002/WP.5 – CP.TEIA/AC.1/2002/WP.5), Note by the secretariat; and

(f) 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.6 – CP.TEIA/AC.1/2002/WP.6), submitted by the delegation of Hungary.

B. Other information available to the Working Group

12. In view of Working Group's discussion at its first meeting on whether the future instrument should provide for the settlement of disputes by arbitration, the secretariat invited a representative of the Permanent Court of Arbitration (PCA) to provide relevant information at this meeting. The Working Group had thus the opportunity to hear a presentation by Mr. Dane Ratliff, Assistant Legal Counsel of the PCA, on the Optional Rules for Arbitration of Disputes Relating to Natural Resources and/or the Environment. The Working Group welcomed the readiness of PCA to assist in the drafting of relevant articles for consideration by the Working Group.

C. General debate

13. The Working Group held a general debate on issues relevant to damage to the environment; compulsory versus voluntary insurance; and the availability of relevant insurance products. The Working Group agreed to come back to these questions when further discussing substantive articles of the draft protocol.

D. Scope of application – article 3 of the draft legally binding instrument on civil liability for transboundary damage caused by hazardous activities, within the scope of both Conventions

14. The Working Party decided that the protocol shall apply to damage due to an industrial accident occurring in the course of a hazardous activity that has caused transboundary effects on transboundary waters. The full text of article 3 is contained in the new version 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.3/2002/4 - CP.TEIA/AC.1/2002/4).

E. Other provisions of the draft legally binding instrument on civil liability for transboundary damage caused by hazardous activities, within the scope of both Conventions

15. The Working Group, at its second meeting examined and modified the text of the preamble and articles 1-5 and 8-12.

Preamble

16. The Working Group discussed possible elements for the preamble. A small drafting group prepared a draft containing several options regarding some of the paragraphs of the preamble to be further considered and agreed by the Working Group at its next meetings. The latest proposed text of the preamble is contained in MP.WAT/AC.3/2002/4 - CP.TEIA/AC.1/2002/4.

Article 1 – Objective

17. The Working Group agreed on the text of article 1 as contained in MP.WAT/AC.3/2002/4 - CP.TEIA/AC.1/2002/4.

Article 2 - Definitions

18. The Working Group discussed different options for some of the definitions and agreed that work on this article would be a continuous process that would continue in parallel with the drafting of the substantive articles of the instrument at its third and future meetings. The revised definitions that were agreed upon at this meeting - paragraph 1, sub-paragraphs 2(a), 2(b)(i - iv), 2 (b) bis, 2(e - g) - are contained in MP.WAT/AC.3/2002/4 - CP.TEIA/AC.1/2002/4. The delegation of the Netherlands agreed to compile information on «measures of reinstatement». The delegation of Canada provided a draft proposal for the term «response measures» to replace the terms «[preventive/mitigation] measures» in sub-paragraph 2(d).

Article 3- Scope of application

19. See paragraph 13 of this report.

Article 4 - Strict liability

20. Following a discussion on the channelling of liability as a result of which a decision was reached to channel it to the «operator», the Working Group agreed on the greatest part of the text of article 4. Some text passages were kept in brackets, as work on definitions was not yet completed. One delegation suggested that the wording « despite there being in place appropriate safety measures» should refer only to sub-paragraph 2d instead of the entire paragraph 2. The content of the second sentence of paragraph 3, proposed by the Chair, will also be reconsidered.

Article 5 - Fault-based liability

21. The Working Group agreed on the text of article 5 as contained in MP.WAT/AC.3/2002/4 - CP.TEIA/AC.1/2002/4. The delegation of the Russian Federation, not having the Russian language version of the newly suggested text of this article, reserved its position.

Article 8 – Implementation

22. The Working Group agreed on the text of article 8 as contained in MP.WAT/AC.3/2002/4 - CP.TEIA/AC.1/2002/4. Following a discussion on paragraph 3 of article 8, the delegation of the Netherlands noted that it will provide a proposal for an additional text concerning non-discrimination to be considered in relation to article 15. A proposal made by the delegation of Hungary concerning cooperation between Parties will be further considered together with article 18. The delegation of the

Russian delegation drew the attention of the secretariat to a language discrepancy regarding the expression «domicile» in the Russian text.

Article 9 - Financial limits

23. The Working Group agreed on the text of article 9 as contained in MP.WAT/AC.3/2002/4 - CP.TEIA/AC.1/2002/4 on the understanding that Annex II specifying the financial limits will be discussed at a later stage.

Article 10 - Time limit of liability

24. The Working Group agreed on the text of article 9 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].

Article 11 – Financial security (previously: Insurance and other guarantees)

25. The Working Group decided to rename article 11 to read «Financial security». It also discussed the content of this article and established a small drafting group to propose a new text comprising the concerns expressed by several delegations. The new text with different options, as proposed by the drafting group, is contained in MP.WAT/AC.3/2002/4 - CP.TEIA/AC.1/2002/4 and will be further discussed by the Working Group.

Article 11 bis [Access to information and access to justice accordingly]

26. The Working Group noted the proposal by Germany that this delegation will draft this article for consideration at the third meeting.

Article 12 - State responsibility

27. The Working Group agreed on the text of article 9 as contained in MP.WAT/AC.3/2002/4 - CP.TEIA/AC.1/2002/4.

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

28. The Working Group reiterated that its third meeting will be held at Geneva on 6-8 May 2002, starting on Monday at 3 p.m. and will finish on Wednesday at 6 p.m. It also maintained the earlier schedule for its fourth and fifth meetings: 2-4 September and 11-13 November 2002, respectively.

VII. CLOSING OF THE MEETING

29. The Chairperson closed the meeting on 8 February 2002.