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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
(Third meeting, Geneva, 6-8 May)

REPORT ON THE THIRD 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 third meeting: Armenia, Austria, 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, Spain, Sweden, Switzerland, Tajikistan, Turkey, Ukraine, United Kingdom, United States, Uzbekistan, Yugoslavia, and European Community.

2. Representatives of the secretariat of the Convention on Biological Diversity and the Permanent Court of Arbitration also participated.

3. Representatives from the following organizations and institutions also attended the meeting: European Chemical Industry Council (CEFIC), Comité Européen des Assurances (CEA), Regional Environmental Center for Central and Eastern Europe (REC), European ECO-Forum, and the insurance companies: Munich Re and 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.3/2002/5 - CP.TEIA/AC.1/2002/5.

6. The Working Group also adopted the report of its second meeting (MP.WAT/AC.3/2001/3 – CP.TEIA/AC.1/2001/3), held on 4-6 February 2002, with three 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 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.

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 third 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.3/2002/4 – CP.TEIA/AC.1/2002/4) prepared by the Rapporteur with the assistance of the secretariat and in consultation with the Chairperson on the basis of the outcome of the second meeting.
8. The Working Group had also before it the following new working documents:
- (a) Proposal for an annex on hazardous substances (MP.WAT/AC.3/2002/WP.7 – CP.TEIA/AC.1/2002/WP.7), submitted by the Chairpersons of the joint ad hoc group of experts on water and industrial accidents established under both Conventions;
 - (b) Proposals regarding access to information and justice (MP.WAT/AC.3/2002/WP.8 – CP.TEIA/AC.1/2002/WP.8), submitted by the delegation of Germany;
 - (c) PCA proposal for article 13bis (MP.WAT/AC.3/2002/WP.9 – CP.TEIA/AC.1/2002/WP.9), submitted by the Permanent Court of Arbitration (PCA);
 - (d) Background paper on defining measures for reinstatement (MP.WAT/AC.3/2002/WP.10 – CP.TEIA/AC.1/2002/WP.10), submitted by the delegation of the Netherlands;
 - (e) Proposal on the choice of law (MP.WAT/AC.3/2002/WP.11 – CP.TEIA/AC.1/2002/WP.11), submitted by the delegation of the Netherlands;
 - (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.12 – CP.TEIA/AC.1/2002/WP.12), submitted by the delegation of Hungary.
9. The Working Group noted that the working papers submitted for consideration at the first and second 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 examination of articles 13 to 28 and on the working papers of relevance to article 11bis, article 17bis, article 18bis and annex I. 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.3/2002/8 – CP.TEIA/AC.1/2002/8. Annexes I and III will be published as documents MP.WAT/AC.3/2002/9 – CP.TEIA/AC.1/2002/9 and MP.WAT/AC.3/2002/10 – CP.TEIA/AC.1/2002/10, respectively.

12. At the request by delegations, Mr. Kaj Bärlund, Director, UNECE Environment and Human Settlements Division, briefed the Working Group on behalf on the Executive Secretary about the availability of human and financial resources to carry out the secretariat functions for the Protocol. The Working Group took note of his information that resources are available to carry out these functions as laid down in paragraph 1 (a) and (b) of article 19 of document (MP.WAT/AC.3/2002/4 – CP.TEIA/AC.1/2002/4).

C. Examination of articles and annexes

Article 7 – Right of recourse

13. Following the discussion on article 13bis, the Working Group noted that, an agreement having been reached, in principle, on that article, an amendment to the chapeau of article 7, paragraph 1, would be needed. The Working Group accepted, in principle, the additional wording proposed by the Permanent Court of Arbitration, and inserted it in square brackets in the new text.

Article 8 – Implementation

14. After a substantive discussion and agreement on the wording of article 15, the Working Group agreed, in principle, on a revision of paragraph 3 of article 8. The proposed text was inserted in square brackets.

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

15. The Working Group started examining working paper MP.WAT/AC.3/2002/WP.8 – CP.TEIA/AC.1/2002/WP.8 regarding access to information and justice, submitted by Germany on 30 April 2002. It took note of the information by the secretary of the Aarhus Convention on the entry into force of this convention on 30 October 2001, the status of its ratification,

preparations for the first meeting of the Parties (Lucca, Italy, 21-23 October 2002), and other activities undertaken, including a study on the interrelationship between the Aarhus Convention and the other UNECE environmental conventions expected to be ready by July 2002.

16. The Working Group agreed to continue considering the proposed text at its next meetings. Some misgivings were expressed about the length of the article, taking into account that it does not refer to the main subject-matter of the Protocol

Article 13 - Competent courts

17. After extensive discussion on whether or not to keep such an article, the Working Group agreed on its wording and deleted the word “either” from paragraph 1. The Working Group noted, however, that there was still a need for harmonizing terminology (e.g. domicile, habitual residence, residence) in the entire document.

Article 13bis - Arbitration

18. The Working Group appreciated the assistance and clarifications provided by the Permanent Court of Arbitration (PCA), and agreed on the wording of paragraph 2 of this article. For the time being, it kept paragraph 1 of the PCA proposal in square brackets, and invited PCA to provide further clarifications at the fourth meeting.

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 8).

Article 14 - Related actions

20. Noting that in paragraph 2 “parties” should replace the word “Parties”, the Working Group agreed on the wording of this article.

Article 15 - Applicable law

21. The Working Group noted the proposal by the Netherlands (see working paper MP.WAT/AC.3/2002/WP.11 – CP.TEIA/AC.1/2002/WP.11) to confer on victims the right of choice of applicable law in addition to the right of choice of forum (see article 13), and agreed to amend paragraphs 1 and insert (in square brackets) a new paragraph 2.

22. The Working Group also noted the possible implications of the new wording of article 15 on the wording of article 8 (see the discussion under article 8).

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

23. After an in-depth exchange of views on the existing text, the Working Group established a small drafting group to draw up a revised text proposal, and agreed on the new text.

Article 17 - Mutual recognition and enforcement of judgements

24. Noting that the phrase “State of origin” is used in different contexts, the Working Group agreed to replace it by the phrase “State of origin of the judgement”, and agreed to keep the wording of other text passages.

Article 17bis - Rules concerning conflicts between international liability agreements

25. The Working Group considered an earlier text proposal by Germany, contained in working paper MP.WAT/AC.3/2001/WP.3 - CP.TEIA/AC.1/2001/WP.3 of 7 November 2001, agreed to insert this proposal in square brackets, and decided to further discuss it at its next meetings. If adopted, the phrase “liability and compensation for damage caused by an accident and by the transboundary pollution of a watercourse or lake” would be brought in line with the scope of the Protocol.

Article 18 - Meeting of the Parties

26. The Working Group - after an in-depth discussion regarding the dates of convening the first meeting of the Parties, the time period between ordinary meetings, and the convening of extra-ordinary meetings - agreed on a new text of this article.

Article 18bis - Compliance

27. The Working Group recalled its earlier invitation to REC to draft a text passage on compliance. After having examined the two alternative text proposals (see the earlier working paper MP.WAT/AC.3/2002/WP.3 - CP.TEIA/AC.1/2002/WP.3 of 31 January 2002), the Working Group agreed to insert part of alternative 1 in square brackets, and decided to further discuss this article at its next meetings.

28. The Working Group took note of the information by the secretariat that under the auspices of the ECE Committee on Environmental Policy “Guidelines for strengthening compliance with and implementation of multilateral environmental agreements (MEAs) in the ECE region” are being prepared for submission to the Kiev Ministerial Conference. The draft text would be made available by the secretariat at the Convention’s civil liability web site as background information so that delegations could examine this draft text when continuing work on this article.

Article 19 - Secretariat

29. The Working Group, noting the statement of the Division Director (see paragraph 12), agreed on the text of this article.

Article 19bis - Annexes

30. The Working Group agreed that annexes to the Protocol should constitute an integral part thereof.

Article 20 - Amendments to the Protocol

31. The Working Group agreed in principle on a revised text regarding amendments to the main body and annex III of the Protocol (paragraphs 1-3). It kept paragraph 4 in square brackets, as some delegations were of the opinion that the provisions for amendments should apply to the entire Protocol, whereas others favoured a simplified procedure for amending annexes I and II.

Article 21 -Right to vote

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

Article 22 - Settlement of disputes

33. The Working Group agreed on the text of this article. It requested the secretariat to prepare annex III, referred to in its paragraph 2 (b), on the basis of the texts on arbitration as contained in the Water and Industrial Accidents Conventions. For technical reasons, annex III will be issued as document MP.WAT/AC.3/2002/10 – CP.TEIA/AC.1/2002/10.

Article 23 - Signature

34. The Working Group took note of the various options proposed by delegations regarding the States and regional economic integration organizations that would be entitled to sign the Protocol. Some delegations were of the opinion that the Protocol should be open for signature by all UNECE member States and the European Community whether or not these are Parties to one or the other parent Convention(s). Other delegations proposed limiting the signing of the Protocol to Parties to both or at least one of the Conventions. Others suggested that the Signatories to both or at least one of the Conventions should also be entitled to sign.

35. The secretariat noted that the first option was chosen for the 1999 Protocol on Water and Health, and was also in line with the current stage of the negotiation process on protocols to the Aarhus and EIA Conventions that are also expected to be adopted at the Kiev Ministerial Conference.

36. The revised wording of article 23 contains these alternative suggestions.

Article 24 - Ratification, acceptance, approval and accession

37. Pending a decision at a later stage on the wording of article 23, the Working Group agreed to insert square brackets around paragraphs 1, 2 and 2bis of article 24. The delegation of the Netherlands reserved its position regarding both articles.

Article 25 - Entry into force

38. As previously agreed, the Working Group will – at a later stage - draft a text passage indicating that the Protocol shall apply to accidents occurring after its entry into force.

Article 25bis - Reservations

39. The Working Group agreed to insert an article on reservations, and entrusted the secretariat to draft this article in consultation with the Chairman and the Rapporteur.

Article 26 (Withdrawal), article 27 (Depositary) and article 28 (Authentic texts)

40. The Working Group agreed on the text of these articles.

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

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 working paper MP.WAT/AC.3/2002/WP.7 – CP.TEIA/AC.1/2002/WP.7 with the expert group's proposal regarding hazardous substances and their threshold quantities for the purpose of defining hazardous activities that could become annex I to the Protocol.

42. Having examined this proposal, the Working Group agreed on the content of annex I, which will be issued for further consideration as document MP.WAT/AC.3/2002/9 – CP.TEIA/AC.1/2002/9.

43. The Working Group noted that the current wording of this proposal was in line with the ongoing revision of the Council Directive 96/82/EC on the control of major accident hazards involving dangerous substances (Seveso Directive), and agreed to update this annex, if need be, in the light of further developments under the Seveso Directive's revision.

Annex II - Financial limits

44. The Working Group took note of the information by the secretariat that the joint ad hoc expert group on water and industrial accidents had also exchanged views on the possible content of annex II on financial limits, which should be further developed with the assistance of legal experts and representatives of the insurance sector. Some delegations and insurance companies expressed their readiness to participate in such an extended expert group meeting with the aim of preparing a working paper for consideration by the Working Group at its fourth meeting.¹

Annex III - Arbitration

45. The Working Group requested the secretariat to draft annex III on arbitration following the relevant annexes in the Water and Industrial Accidents Conventions. This annex will be issued as document MP.WAT/AC.3/2002/10 – CP.TEIA/AC.1/2002/10.

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

46. The Working Group reiterated that its fourth and fifth meetings would be held at Geneva on 2-4 September and 11-13 November 2002, respectively. 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

47. The Chairperson closed the meeting on 8 May 2002.

¹ Invitations to the meeting, which will take place in Geneva on 4-5 July 2002, have recently been circulated to the heads of delegations participating in the Working Group, the designated country experts for the joint ad hoc expert group, and the focal points under both Conventions.