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**ECONOMIC COMMISSION FOR EUROPE**

**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**  
(Sixth meeting, Geneva, 15-17 January 2003)

**REPORT ON THE SIXTH 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, Latvia, Monaco, Netherlands, Norway, Poland, Portugal, Republic of Moldova, Romania, Russian Federation, Slovakia, Switzerland, Turkey, Ukraine, United Kingdom, Uzbekistan, and European Community.
2. 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, Environmental Law Center (CPE) and the insurance company Swiss Re.

## I. PROCEDURES

3. Mrs. Phani DASKALOPOULOU-LIVADA (Greece), Chairperson, opened the meeting and welcomed the participants. Mr. Kaj Bärlund, Director of the UNECE Environment and Human Settlements Division, also addressed the Working Group. He highlighted the accomplishments of the negotiation process and the challenges still facing the Working Group and expressed his hope that compromises would be found in order to deal with them.

4. The Working Group re-elected the Chairperson as well as the Vice-Chairpersons.

5. The Working Group adopted its agenda as set out in document MP.WAT/AC.3/2003/1 - CP.TEIA/AC.1/2003/1.

6. It also adopted the report of its fifth meeting (MP.WAT/AC.3/2002/14 – CP.TEIA/AC.1/2002/14), held on 11-13 November 2002, with an amendment of paragraph 22, which should read as follows:

“22. On the request of the delegation of the Netherlands, the Working Group confirmed that the obligation to establish and maintain financial security in accordance with article 11, paragraph 1, will only be incumbent on operators who are capable of causing damage within the scope of the instrument. In this respect, the Working Group agreed that this obligation would normally not be incumbent on operators in downstream countries.”

## 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 sixth 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.3/2003/2 – CP.TEIA/AC.1/2003/2) prepared by the Rapporteur with the assistance of the secretariat and in consultation with the Chairperson on the basis of the outcome of the fifth meeting.

8. The Working Group had also before it the following new working documents:<sup>1/</sup>

(a) Proposal on how to treat the issue of pipelines in the Protocol, prepared by the secretariat in consultation with Mr. M. Schiess, Co-Chairman of the joint ad hoc expert group on water and industrial accidents (MP.WAT/AC.3/2003/WP.24 – CP.TEIA/AC.1/2003/WP.24);

(b) Clarifications on financial limits, prepared by the secretariat in consultation with Mr. Martin Schiess, Co-Chairman of the joint ad hoc expert group on water and industrial accidents (MP.WAT/AC.3/2003/WP.25 – CP.TEIA/AC.1/2003/WP.25);

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<sup>1/</sup> The working papers referred to in para. 8 are unofficial documents.

- (c) Proposal for article 11, paragraph 2, submitted by the delegation of the Netherlands (MP.WAT/AC.3/2003/WP.26 – CP.TEIA/AC.1/2003/WP.26);
- (d) REC proposal for “package” solution to articles 3, 8 and 15, submitted by the Regional Environmental Center for Central and Eastern Europe (REC) (MP.WAT/AC.3/2003/WP.27 – CP.TEIA/AC.1/2003/WP.27);
- (e) Clarification of access to information and justice (MP.WAT/AC.3/2003/WP.28 – CP.TEIA/AC.1/2003/WP.28);
- (f) Full powers for the signing of treaties deposited with the Secretary-General, clarifications provided by the secretariat (MP.WAT/AC.3/2003/WP.29 – CP.TEIA/AC.1/2003/WP.29);
- (g) Communications on UNECE Environmental Protocols, provided by the secretariat (MP.WAT/AC.3/2003/WP.30 – CP.TEIA/AC.1/2003/WP.30)
- (h) Revised proposal for a provision on contributory fault (MP.WAT/AC.3/2003/WP.31 – CP.TEIA/AC.1/2003/WP.31).

## **B. General debate**

- 9. The Working Group agreed to make an effort at resolving issues left open following the second reading of the instrument. The outcome is reported below.
- 10. The Working Group noted that editorial amendments proposed by the Treaty Section of the Office of Legal Affairs of the United Nations to articles 20, 23, and 24 will be incorporated in the revised version of the main body of the Protocol, which will be issued as document MP.WAT/AC.3/2003/5 – CP.TEIA/AC.1/2003/5. Annexes I, II, and III will be issued separately as document MP.WAT/AC.3/2003/6 – CP.TEIA/AC.1/2003/6.

## **C. Examination of articles and annexes**

- 11. The Working Group was in agreement with the text of articles 13 and 17, however the European Commission reconfirmed its earlier statement to the effect that these articles as well as article 14 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 2 – Definitions

- 12. The Working Group agreed on the text of the entire article as contained in MP.WAT/AC.3/2003/5 – CP.TEIA/AC.1/2003/5.
- 13. The Working Group, after a detailed discussion, decided to maintain the text of alternative 2 as subparagraph 2 (b) (iii).

14. The Working Group also agreed that “transportation via pipelines” should be covered by the instrument and thus decided on the text of subparagraph 2 (h). Due to necessary further work aimed at including proper thresholds, limits of liability and minimum securities for pipelines in annexes I and II, the Working Group also decided to add paragraph 1bis to article 25 – Entry into force (see below).

#### Article 3 – Scope of application

15. The Working Group, after an exhaustive joint discussion on paragraph 2 of article 3, paragraph 3 of article 8, and paragraph 2 of article 15, based on a compromise proposal put forward by the REC, was not able to reach a final conclusion and decided to maintain the brackets around the texts as contained in MP.WAT/AC.3/2003/5 – CP.TEIA/AC.1/2003/5.

#### Article 4 – Strict liability

16. The Working Group agreed on the text of the entire article as contained in MP.WAT/AC.3/2003/5 – CP.TEIA/AC.1/2003/5.

17. The Working Group agreed to:

- (a) Delete the last part of subparagraph 2 (d); and
- (b) Add subparagraph 2bis concerning a provision on contributory fault.

#### Article 8 – Implementation

18. The Working Group agreed on the text of the entire article, apart from paragraph 3, as contained in MP.WAT/AC.3/2003/5 – CP.TEIA/AC.1/2003/5 (see paragraph 15 above).

19. The Working Group decided to:

- (a) Delete the text of paragraph 4;
- (b) Add, in its place a new paragraph 4, concerning cooperation among Parties; and
- (c) Add a new paragraph 5, concerning the provision of access to information and access to justice instead of including a separate article – former article 11bis.

#### Article 9 – Financial limits

20. The Working Group decided to differentiate the financial limits and the minimum financial securities and thus decided to rename annex II and split it into two parts (see paragraph 30 below). In view of its decision, the Working Group agreed to amend paragraph 1 and add a new paragraph 1bis as contained in MP.WAT/AC.3/2003/5 – CP.TEIA/AC.1/2003/5

Article 10 – Time limit of liability

21. The Working Group agreed on a compromise time limit of fifteen years and thus decided to lift the previous brackets.

Article 11 – Financial security

22. In light of the discussion on financial limits (see paragraph 20 above), the Working Group amended the text of article 11 as contained in MP.WAT/AC.3/2003/5 – CP.TEIA/AC.1/2003/5.

~~Article 11bis – Access to information and access to justice accordingly~~

23. The Working Group decided to entirely delete article 11bis and insert a relevant provision as paragraph 5 of article 8 –Implementation (see paragraph 19 (c) above).

Article 14 – Lis pendens- related actions

24. The Working Group decided to rename this article as above. It also decided to replace the text with a new one as contained in MP.WAT/AC.3/2003/5 – CP.TEIA/AC.1/2003/5.

Article 15 - Applicable law

25. The Working Group decided to maintain the brackets around paragraph 2 (see also paragraph 15 above).

Article 17bis - Relationship between bilateral, multilateral or regional liability agreements

26. The Working Group was not able to reach a decision on a final text of this article and decided to maintain it in brackets.

Article 24 – Ratification, acceptance, approval and accession

27. The Working Group decided to open the ratification, acceptance, approval and accession to the instrument to countries, which are at least Parties to one of the Conventions and thus agreed to delete the brackets around the relevant option in paragraphs 1 and 2 and at the same time to delete the remaining options. The delegation of Germany reserved its position in this respect. On the request of the delegation of the Netherlands, its reservation was included as a footnote to this article in the revised version of the main body of the Protocol MP.WAT/AC.3/2003/5 – CP.TEIA/AC.1/2003/5.

28. The Working Group also agreed to lift the brackets from around paragraph 2bis.

Article 25 – Entry into force

29. In light of its decision to include transportation via pipelines in the scope of the instrument (see paragraph 14 above), the Working Group amended the text of article 25 by adding a new paragraph 1bis referring to the entry into force of the relevant subparagraph 2 (h)

(iii) of article 2 and also decided to modify paragraph 1 as contained in MP.WAT/AC.3/2003/5 – CP.TEIA/AC.1/2003/5.

Annex II – ~~Financial limits~~ Limits of liability and minimum limits of financial securities

30. In view of the discussion concerning financial limits and minimum securities (see paragraphs 20 and 22 above), the Working Group decided to rename annex II as above and split it into the following two parts: Part One – Limits of liability; and Part Two – Minimum limits of financial securities. It also decided to raise the amounts contained in part one and lower the amounts contained in part two as contained in MP.WAT/AC.3/2003/6 – CP.TEIA/AC.1/2003/6.

31. The Working Group also noted that the figures for the limits in annex II depend on the resolution of the outstanding issues relating to article 3, paragraph 2; article 8, paragraph 3; and article 15, paragraph 2. The current figures are based on the retention of Article 3(2). Taking into account damages resulting from the industrial accident at Sandoz in 1986 in the country where it occurred, it was suggested to increase the figures by 20% if paragraph 2 of article 3 would be deleted.

32. The delegation of the Russian Federation reserved its position on annex II.

Annex III – Arbitration

33. The Working Group decided to revisit the annex in the light of the following possible amendment to the last sentence of paragraph 2, proposed by Greece: to add the words “or had been” to read “...,nor be or had been employed by any of them,...”

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

34. The Working Group decided that its seventh meeting would be held at Geneva on 26-27 February 2003 beginning on Wednesday, 26 February at 10 a.m.

35. The Chairperson addressed potential donor countries with an appeal to explore the possibility of making a financial contribution to facilitate the participation of experts from countries in transition, which are eligible for such assistance, in the February meeting of the Working Group.

**IV. CLOSING OF THE MEETING**

36. Mrs. DASKALOPOULOU-LIVADA, the Chairperson closed the meeting on 17 January 2003.