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ECONOMIC COMMISSION FOR EUROPE

**CONFERENCE OF THE PARTIES
TO THE CONVENTION ON THE TRANSBOUNDARY
EFFECTS OF INDUSTRIAL ACCIDENTS**

First meeting, 22-24 November 2000
(Item 3 (a) of the provisional agenda)

RESPONSIBILITY AND LIABILITY
Note submitted by the Delegation of Switzerland */

Background

1. The question of responsibility and liability is regularly raised after a major accident with serious consequences for the public and the environment. This happened after the Schweizerhalle accident and, most recently, after the Baia Mare accident, to name only two examples of such unfortunate events.
2. The two UN/ECE Conventions on the Transboundary Effects of Industrial Accidents and on the Protection and Use of Transboundary Watercourses and International Lakes state, in their articles 13 and 7, respectively, that "Parties shall support appropriate international efforts to elaborate rules, criteria and procedures in the field of responsibility and liability".

*/ This note has been drawn up with the assistance of the UN/ECE secretariat.

3. After the Baia Mare accident and based on the initiative of the Government of Switzerland, an addition was made to the draft declaration of the Conference on Water Security in the 21st Century, which was held in the Hague, Netherlands, on 21-22 March 2000. Consequently, in the Ministerial Declaration of The Hague, the Ministers and Heads of Delegation to the Second World Water Forum committed themselves to “working together with stakeholders to increase the effectiveness of pollution control strategies based on polluter pays principles and to consider appropriate rules and procedures in the fields of liability and compensation for damage resulting from activities dangerous to water resources”.
4. At the second meeting of the Parties to the Convention on the Protection and Use of Transboundary Watercourses and International Lakes, which also took place in the Hague on 23-25 March 2000 immediately following the Second World Water Forum, Switzerland also proposed that a protocol on civil liability for damage resulting from activities dangerous to the environment should be negotiated under both UN/ECE conventions.
5. The discussion of the Swiss proposal in The Hague led to the decision (see ECE/MP.WAT/5, para. 32) to give a group of experts under the Working Group on Legal and Administrative Aspects 1/ a mandate to assess the existing rules on liability, identify gaps and draw up options for action within the UN/ECE framework for submission to the Bureau of the Meeting of the Parties to the Water Convention in early 2001. A preliminary report was prepared and submitted to the Conference of the Parties to the Industrial Accidents Convention by the Chairperson of the expert group on liability and industrial accidents (CP.TEIA/2000/14/Add.1) 2/.
6. The Parties to the Convention on the Protection and Use of Transboundary Watercourses and International Lakes also decided at their second meeting (see ECE/MP.WAT/5, para. 32) that the views of the Parties to the Industrial Accidents Convention on the issue of civil liability should be taken into account in the final report.
7. The preliminary report proposes five options in order to address civil liability:
 - Use legal instruments already in force;
 - Evaluate and, if appropriate, amend agreements already in force;
 - Promote the entry into force of existing international agreements, if appropriate;
 - Develop a new international agreement (treaty / protocol); or
 - Develop a code of conduct, guidelines or recommendations concerning liability.
8. The preliminary report also raises a number of questions as to the scope of the new instrument, should this be the preferred option. The questions relate to:
 - The effects of industrial accidents (environment vs. water pollution), their sources (only mining and manufacturing industries and transport via pipelines vs. hazardous activities defined by the Industrial Accidents Convention), the substances involved (including bacteria, viruses and genetically modified organisms or not); and

- The scope of application (transboundary accidents only vs. transboundary and domestic accidents).

Suggested action

9. Based on the five proposed options in the preliminary report, the Conference of the Parties is invited to:

- (a) Adopt option four in annex II to CP.TEIA/2000/14/Add.1 (develop a new international treaty or protocol), as it offers the best prospects for achieving the objectives of the Second World Water Forum in the field of civil liability in the near future;
- (b) Limit this legal instrument on civil liability to damage resulting from accidents which may occur in any hazardous activity in which one or more hazardous substances are present or may be present in quantities at or in excess of the threshold quantities listed in annex I to the Convention on the Transboundary Effects of Industrial Accidents, and which are capable of causing transboundary effects;
- (c) Develop this instrument as a protocol to both UN/ECE Conventions through an open-ended intergovernmental negotiation process involving expertise from both Conventions, preferably to be adopted at the fifth Ministerial Conference “Environment for Europe” in Kiev.

10. The Chairperson of the Conference of the Parties is invited to inform the Bureau of the Water Convention of the decision taken at this meeting.

Notes

1/ Established under the Meeting of the Parties to the UN/ECE Convention on the Protection and Use of Transboundary Watercourses and International Lakes.

2/ Two further background reports are expected to be drawn up and submitted to the Conference of the Parties.