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Conference of the Parties to the Convention on the Transboundary Effects of Industrial Accidents

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Item 7 (c) of the provisional agenda

Development of the Convention: other possible amendments to the Convention and guidance from the Conference of the Parties

Opening of the Convention on the Transboundary Effects of Industrial Accidents for accession by United Nations Member States beyond the Economic Commission for Europe region

Considerations and options with regard to a possible amendment

Note by the secretariat

Summary

At its seventh meeting (Stockholm, 14–16 November 2012), the Conference of the Parties to the Convention on the Transboundary Effects of Industrial Accidents requested the Working Group on the Development of the Convention to draft a revised annex I to the Convention and, to minimize the frequency of amendments, to evaluate a number of other areas for possible amendment, including the opening of the Convention for accession by Member States of the United Nations not members of the United Nations Economic Commission for Europe (ECE) (ECE/CP.TEIA/24, para. 66 (g)).

The Working Group on the Development of the Convention accordingly considered the issue and carried out a number of tasks. At its fourth meeting (Geneva, 28–29 April 2014), the Working Group decided that, due to the strategic nature of the topic, a thorough discussion should take place at the eighth meeting of the Conference of the Parties on the basis of a background document which it requested the secretariat to prepare (ECE/CP.TEIA/WG.1/2014/3, para. 42). Pursuant to that request, the secretariat prepared the present document.

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In addition to this document, delegates are invited to consider the document “Opening of the environmental instruments of the United Nations Economic Commission for Europe and their promotion beyond the region”, prepared by the ECE secretariat for the consideration of the Committee on Environmental Policy at its twentieth session (Geneva, 28–31 October 2014) (ECE/CEP/2014/6).

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Introduction

1. At its seventh meeting (Stockholm, 14–16 November 2012), the Conference of the Parties to the Convention on the Transboundary Effects of Industrial Accidents (Industrial Accidents Convention) requested the Working Group on the Development of the Convention to consider a possible amendment opening the Convention to Member States of the United Nations beyond the United Nations Economic Commission for Europe (ECE) region (ECE/TEIA/24, para. 66 (g)). The Working Group discussed the issue at its third and fourth meetings (Geneva, 3–4 September 2013 and 28–29 April 2014, respectively). At its fourth meeting, the Working Group agreed that, due to the strategic nature of the topic, a thorough discussion should take place at the eighth meeting of the Conference of the Parties. To facilitate that discussion, the Working Group requested the secretariat to prepare a background document on the topic (ECE/CP.TEIA/WG.1/2014/3, para. 42).

2. The Industrial Accidents Convention is one of the multilateral environmental agreements (MEAs) for which ECE provides the secretariat. The governing bodies of all the ECE MEAs, i.e., five conventions and their respective protocols, have at various times considered issues related to cooperation with regions beyond the ECE region and the possibility for United Nations Member States not members of ECE to accede to the respective MEAs.

3. In the light of these developments, at its nineteenth session in October 2013 the ECE Committee on Environmental Policy (CEP) requested the secretariat to prepare a document on the status of activities related to the opening of the ECE MEAs and other ECE environmental instruments to accession by States beyond the region for its consideration at its twentieth session in October 2014 (ECE/CEP/2013/2, paras. 24 and 116 (f) (v)).¹ The document (ECE/CEP/2014/6), prepared by the secretariat in consultation with the CEP Bureau, provides an overview of progress to date in this area, as well as highlighting a number of challenges. It provides a broad overview with regard to different ECE environmental policy instruments. The present document complements the document prepared for CEP, focusing in particular on issues of interest to the Industrial Accidents Convention.

I. Considerations with regard to opening the Convention for accession by Member States of the United Nations beyond the United Nations Economic Commission for Europe region

4. As stipulated in the preamble to the Industrial Accidents Convention, Parties took into account “the fact that the effects of industrial accidents may make themselves felt across borders, and may require cooperation among States”. To date, the Convention only relates to cooperation among States within the ECE region. Parties to the Convention are required to identify hazardous activities covered by annex I with a potential transboundary effect and to notify potentially affected Parties within the ECE region about them. At the same time, the effects of industrial accidents may also be felt in States neighbouring the region and beyond. Likewise, States within the ECE region may also be affected by accidents resulting from industrial activities in countries beyond the region.

¹ Available from: <http://www.unece.org/env/cep/2014sessionoctober.html>.

5. Against this background and in the light of the conclusions reached by the Working Group, the possibility of amending the Convention to allow for accession by United Nations Member States beyond the ECE region needs to be thoroughly considered. In the following paragraphs, several important considerations are highlighted, stressing possible benefits and challenges, taking into account the previous discussions in the framework of the third and fourth meetings of the Working Group.

A. Enhanced levels of industrial safety standards in a transboundary context and potential benefits for investment, trade and economic development

6. The potential effects of industrial accidents are not limited by borders between countries or regions. Numerous industrial accidents have occurred in the past entailing transboundary effects, whether within the ECE region or beyond. Within the ECE region, well-known examples of such accidents within the scope of the Convention have occurred in Schweizerhalle, Switzerland, in 1986² and in Baia Mare, Romania, in 2000.³ At the boundary of the ECE region, the 2005 Jilin, China, chemical plant accident affected the territory of the Russian Federation. The explosion at the chemical plant killed six, injured dozens of workers and left thousands of residents without water supply for 22 days. The blasts created an 80 kilometre-long toxic slick in a tributary of the Amur River, later polluting it.

7. Considering the possible transboundary effects of industrial accidents in neighbouring countries, it might be of interest to expand the coverage of the Convention to ensure that adequate standards of industrial safety are being implemented also beyond its borders. The advantage of such an approach would be the potential enhancement of the protection of people and the environment both inside and outside of the ECE region.

8. Furthermore, countries outside of the ECE region implementing the Industrial Accidents Convention would enhance their standards of industrial safety by taking “appropriate legislative, regulatory, administrative and financial measures for the prevention of, preparedness for and response to industrial accidents” (Convention, art. 3, para. 4). The implementation of the “general duty clause” to assure that operators bear the responsibility for industrial safety on-site, encourages industry to invest in safer technologies, human capacities and skills and administrative procedures. Such investments could eventually lead to the creation of a more stable policy and governance framework conducive to attracting investments, including foreign direct investments.⁴ Foreign investors, when taking investment decisions, might be reassured by the existence of

² The accident was a major environmental disaster caused by a fire and its subsequent extinguishing at the Sandoz agrochemical storehouse in Schweizerhalle, Switzerland, on 1 November 1986. It released toxic agrochemicals into the air and resulted in tons of pollutants entering the Rhine River, turning it red. The pollution reached the Netherlands. This accident was the trigger for the negotiation of the Industrial Accidents Convention.

³ The 2000 Baia Mare cyanide spill was a leak of cyanide near Baia Mare, Romania, into the Someş River by a gold mining company. The polluted waters eventually reached the Tisza River, a tributary of the Danube River, and then the Danube itself, killing large numbers of fish in Hungary and on the territory that was then the Federal Republic of Yugoslavia. The spill, called the worst environmental disaster in Europe since the Chernobyl disaster, contaminated the drinking supplies of over 2.5 million Hungarians.

⁴ This is likely to be dependent on other factors of the business environment as well as the political stability in the countries concerned

industrial safety standards comparable to the ones prevalent in their own or in other ECE countries.

9. Such developments are likely to benefit potential new Parties to the Convention beyond the ECE region, which may experience economic development due to enhanced investments. Those countries could generate a more stable and secure investment climate, inspired by improvements in industrial safety levels. In the longer term, further investments in industrial safety by countries beyond the ECE region implementing the Convention's provisions could enhance international investment and trade flows, with potential welfare gains across the regions, including for Parties within the ECE region.

10. Some of the above considerations, notably those related to the protection of human beings and the environment in the ECE region from the potential transboundary effects of industrial accidents, are valid in particular for countries that neighbour the region.⁵ At the same time, amending the Convention with a provision introducing the possibility for only countries neighbouring the ECE region to accede to the Convention is likely to create legal as well as practical issues in the future, as the boundaries of the region with potential Parties to the Convention are likely to shift over time. Furthermore, it would not give countries further outside the ECE region the possibility of benefiting from the Convention's framework.

B. Improved institutional, administrative and legal framework

11. The benefits that countries from outside the ECE region would receive from acceding to the Convention are to a large extent similar to the benefits that Parties within the ECE region experience. Through the implementation of the Convention, new Parties (and those engaging in pre-accession processes) will be invited to review their existing legal and institutional frameworks on industrial safety and to put in place more structured and effective frameworks to ensure it.

12. With improvements in the institutional framework, countries will be encouraged to develop their human and administrative capacities and to define national responsibilities of the different actors for industrial accident prevention, preparedness and response. Cooperation processes among institutions and between institutions, industry, civil society and the population will be reviewed and refined to ensure they are well-documented, up-to-date and effective.

13. Beyond the implementation of procedures and responsibilities at the national level, new Parties will also have to put in place processes of cooperation with neighbouring countries, in order to notify them of hazardous activities covered by the Convention and to be able to render mutual assistance in case of need. As such, regional cooperation among neighbouring States and potentially affected Parties can be strengthened, with benefits for other neighbouring countries that are Parties to the Convention, whether within the ECE region or beyond.

14. As outlined in section A above, investments in the institutional set-up, legislation, policies and cooperation procedures could eventually improve the investment climate and, in the longer term, create a level playing field among different Parties to the Convention

⁵ At present, the following States neighbour the ECE region (in alphabetical order): Afghanistan, China, Democratic People's Republic of Korea, Egypt, Iran, Iraq, Jordan, Lebanon, Mexico, Mongolia, Palestine and Syria.

(whether within or outside of the ECE region) due to comparable standards of industrial safety.

C. Implementation of international sustainable development commitments

15. The Convention could become a tool for States beyond the ECE region pursuing accession to facilitate the implementation of their international sustainable development commitments, such as those set out in the 1992 Rio Declaration on Environment and Development⁶ (Rio Declaration) and subsequent commitments.

16. In particular, Principles 2, 4, 18 and 19 of the Rio Declaration could be addressed through the implementation of the Industrial Accidents Convention. In accordance with Principle 2, States have, within their right to exploit their own resources according to development policies, the responsibility to ensure that activities are carried out without damage caused to the environment of other States. Principle 4 states that environmental protection must be an integral part of pursuing and achieving sustainable development. Principle 18 refers to the need for States to notify other States about emergency situations (whether natural or man-made disasters) with potential effects for other States. It also calls on the international community to be ready to support States experiencing disasters or other emergencies. Lastly, Principle 19 requires States to notify and provide relevant information to other potentially affected States regarding activities that may have a significant adverse transboundary environmental effect.

17. Therefore, the possibility to become Parties to the Industrial Accidents Convention would provide United Nations Member States beyond the ECE region with a framework conducive to an improved implementation of the Rio Declaration and other sustainable development commitments.

D. Enriched exchange of experiences and good practices

18. United Nations Member States from beyond the ECE region interested in accession to the Convention would benefit from the knowledge sharing and exchange platform that the Convention provides, through the intergovernmental meetings of its subsidiary bodies, as well as technical national or subregional workshops and seminars. Through the participation of countries from beyond the ECE region in activities under the Convention, ECE Parties could benefit from learning about other and different perspectives in attaining desirable levels of industrial safety. In this context, countries with a possible interest in accession could be not only developing countries but also developed countries, including Organization for Economic Cooperation and Development (OECD) countries beyond the ECE region. These countries could provide different experiences and allow for a wider exchange of information across different regions.

19. The Long-term Strategy for the Convention adopted in 2010 (ECE/TEIA/22, annex I) includes as an objective the consolidation and exchange of information and it recognizes that information exchange is crucial to further strengthen the implementation of the Convention. The involvement of a greater number of countries in activities under the Convention could enrich the exchange of experiences among Parties and other interested

⁶ *Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3–14 June 1992*, vol. I, *Resolutions Adopted by the Conference* (United Nations publication, Sales No. E.93.I.8 and corrigendum). Available from <http://www.unep.org/Documents.Multilingual/Default.asp?DocumentID=78&ArticleID=1163>.

countries and organizations. As such, it would widen the scope for the identification and collection of good practices. Such an enriched exchange of experiences could, for example, address new elements relating to industrial accident prevention or the siting of hazardous installations, etc.

20. The experience of other ECE MEAs, in particular the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention) and the Convention on the Protection and Use of Transboundary Watercourses and International Lakes (Water Convention), but also the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) and its Protocol on Pollutant Release and Transfer Registers (Protocol on PRTRs), demonstrates that there can be active contributions from non-ECE countries when meetings of the MEA bodies are open to participation from beyond the region. Participants in such open events valued the exchange of experiences with new perspectives from beyond the ECE region.

E. Raised awareness, outreach opportunities and new partnerships

21. The globalization of the Convention might also create an increased awareness at the ministerial and political level among the different Parties to the Convention about the benefits of its implementation. Furthermore, it might increase the visibility of the Convention among other communities — such as the ones dealing with environmental impact assessment in transboundary cases, or land-use planners — and among the public at large.

22. In the framework of the Convention, “strategic partnerships” are given high prominence in its Long-term Strategy and the biennial workplans, with the objective to enhance the Convention’s relevance through strategic partnerships. As such, opening the Convention might provide opportunities for identifying and engaging with new partners, including other international organizations and agencies within and outside the United Nations, non-for-profit organizations, national development cooperation agencies, industry and foundations, etc.

23. These developments could possibly translate into new funding opportunities, e.g., from ministries of foreign affairs or development cooperation agencies, or create new in-kind contributions through strategic partnerships.

24. The experience of other ECE MEAs in opening the accession process to non-ECE States has resulted in increasing awareness of the instruments among senior policymakers or decision makers, including at the ministerial level, and an increasing level of support. In some instances, e.g., in the case of the ECE Water Convention, this has translated into an increased interest and funding by ministries of foreign affairs. The experience of the Aarhus and Water Convention is indicative of increasing visibility at the global level: both Conventions have been asked to contribute to global discussions, for instance on the post-2015 development agenda.

F. Organizational and budgetary implications, including new financing opportunities

25. When considering the accession of United Nations Member States beyond the ECE region, organizational and budgetary implications need to be carefully evaluated.

26. Official meetings under the Convention are currently held in the three official ECE languages (English, French and Russian). Interpretation for official meetings and the translation of official documents in all three languages is provided through the United

Nations regular budget with a specific quota for ECE. With the accession of other United Nations Member States, it would be necessary to provide those services also in other United Nations official languages.

27. Opening the Convention for accession by United Nations Member States beyond the ECE region would also likely entail an increase in the participation of non-ECE region countries. This concerns not only new Parties to the Convention, but also countries interested in accession, which would likely want to become part of the established information-sharing platforms on industrial safety, as well as NGOs and other partners. A wider participation of countries needing financial support would have an impact on the Convention's budget. The Conference of the Parties would need to discuss possibilities and criteria for providing financial support to representatives from developing economies (interested in accession), in addition to the financial support presently provided to countries with economies in transition.

28. As mentioned above, for several other ECE MEAs, Parties from within the ECE region have provided finances to the secretariat specifically to enable the participation of representatives from developing countries. In addition, funding of participants from eligible countries can sometimes be provided and arranged for by partners (such as the Global Water Partnership for the Water Convention). Other sources of funding are global programmes or initiatives of national development cooperation agencies such as the Swiss Agency for Development and Cooperation (which recently provided significant financial support to the opening of the Water Convention). The Global Environment Facility (GEF), serving as the financial mechanism for several global MEAs,⁷ is another potential source to fund the participation of countries with economies in transition. The Water Convention started cooperation with the GEF — before the entry into force of the amendment opening that Convention beyond the ECE region — both at the project level in the ECE region and in supporting the Convention's opening and promotional activities. The secretariat of the Protocol on PRTRs is also cooperating with the United Nations Environment Programme (UNEP) on GEF-funded PRTR-related projects.

29. Presently, the Water Convention is receiving significant funding specifically for its opening from ministries of foreign affairs or development cooperation. Under the Espoo Convention, efforts are being made to increase the cooperation with international financial institutions with a view to their supporting the application of the Convention (and its Protocol on Strategic Environmental Assessment) beyond the ECE region, including through possible funding of legislative reforms and capacity-building activities.

30. Moreover, a higher number of interested countries and (potential) Parties would have an impact on the workplan for the implementation of the Convention: the number and scale of activities to be implemented in the framework of the workplan would likely increase, and would depend on the needs of Parties interested in accession, the availability of financial resources and the decisions taken and priorities set by the Conference of the Parties. Also, a decision on the possible enlargement of the scope of the Assistance Programme would need to be taken.

31. Furthermore, an increased number of activities would imply an increased workload for the secretariat. The secretariat would need to invest time and resources in engaging with

⁷ The GEF serves as the financial mechanism for the Convention on Biological Diversity, the United Nations Framework Convention on Climate Change, the Stockholm Convention on Persistent Organic Pollutants, the United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa and the new Minamata Convention on Mercury. In addition, the GEF supports the implementation of the Montreal Protocol on Substances That Deplete the Ozone Layer.

the countries interested in accession, including those from beyond the ECE region, providing information about the Convention, and supporting countries in their efforts to prepare for accession. Such activities would naturally be contingent on the availability of financial resources. Additional resources would further be required for the secretariat to support new Parties in their efforts to implement the Convention. The scale of the additional resource requirements would be in accordance with the number of new Parties.

32. In evaluating all of these considerations, the length of time needed for the entry into force of a potential amendment, once adopted by the Conference of the Parties, needs to be taken account. Furthermore, the amount of time needed by Parties at the national level to prepare for accession also needs consideration. The experience of Parties to the Convention and those interested in accession can be indicative of the time needed to engage policymakers at the national level and to put in place mechanisms that will enable countries to implement the Convention.

II. Activities related to industrial safety and transboundary aspects beyond the United Nations Economic Commission for Europe region

33. In the following section, a non-exhaustive overview of activities related to industrial safety and transboundary cooperation beyond the ECE region is provided. The information included in this document is provided at the request by the Bureau of the Industrial Accidents Convention at its June 2014 meeting, and follows consultations with the other United Nations regional commissions and global organizations such as UNEP.

A. Activities by the other United Nations regional commissions

34. ECE is the only United Nations regional commission hosting the secretariat of a Convention and a dedicated unit dealing with international accident prevention, preparedness and response and related transboundary aspects.

35. The other United Nations regional commissions engage in activities focused on industry more generally, such as, for instance, the Economic Commission for Africa within the framework of its Regional Integration and Trade programme.⁸ This programme, however, does not have a specific focus on industries' obligations with regard to accident prevention. The Economic and Social Commission for Western Asia is dealing with aspects related to environmental sustainability with regard to industrial facilities as part of its "Green Production Sectors" programme.⁹ The Economic and Social Commission for Asia and the Pacific (ESCAP), with its programme on Environment and Development, has a substantial focus on "green growth" and "green economy".

⁸ Available from <http://www.uneca.org/our-work/regional-integration-and-trade/pages/industrialisation-and-infrastructure>.

⁹ Available from <http://www.escwa.un.org/sites/gps/index.asp>

B. Global and regional activities under the umbrella of the United Nations Environment Programme¹⁰

36. Within UNEP, in the framework of its Strategic Approach to International Chemicals Management (SAICM) initiative, regional meetings between Australia, Canada, the European Union countries, Japan, New Zealand, Norway, Switzerland and the United States of America are being regularly organized. Countries commented at these meetings that the SAICM meetings represented the only international framework in which they could discuss topics related to chemicals management.

37. The same kind of regional meetings are organized in other regions under SAICM. During the SAICM Asia-Pacific regional meeting in 2014, countries discussed the following question: “What are the basic elements required at the national level to achieve sound chemicals management?” Among others, the following replies were given:

- (a) Awareness of chemical safety at many levels and among many stakeholders;
- (b) Sufficient political profile of the chemicals agenda and political will;
- (c) Effective coordination among government agencies and stakeholders;
- (d) Adequate legislation governing all aspects of chemicals management;
- (e) Prevention of accidents and chronic effects and preparedness for unexpected adverse events;
- (f) Risk mitigation;
- (g) Identification of harms and risks;
- (h) Harmonization of information about chemicals;
- (i) Adopt the Globally Harmonized System of Classification and Labelling of Chemicals for classification and labelling and build capacity on how to use it;
- (j) Effective enforcement.

38. These elements are very close to the provisions of the Industrial Accidents Convention. For example, there are clear linkages between “Prevention of accidents and chronic effects and preparedness for unexpected adverse events” with the Convention’s articles 6 (prevention), 8 (emergency preparedness) and 11 (response). “Identification of harms and risks” are linked to the need to identify which are the more hazardous installations in the country, as required by the Convention through article 4 (identification, consultation and advice).

39. UNEP is also coordinating the implementation of another global initiative — the Flexible Framework Initiative for Addressing Chemical Accident Prevention and Preparedness — with the aim to promote improved chemical accident prevention and preparedness, particularly in rapidly industrializing economies. Since the inception of the initiative in 2009 there have been activities in China, Sri Lanka, Tanzania and Thailand to build their capacity to protect against and prevent chemical accidents. The Convention has been cooperating with the initiative through participation in joint meetings and information exchange.

¹⁰ It is also worth noting that OECD is also increasingly including non-members, such as Brazil, India and China, in its activities.

C. Regional cooperation and initiatives aimed at enhancing industrial safety in a transboundary context

40. There are several subregional or bilateral agreements and national initiatives aimed at enhancing transboundary cooperation with regard to industrial safety; some of them also include a transboundary component. In 1994, Canada, the United States and Mexico created a Commission for Environmental Cooperation.¹¹ In 2008, the United States and Mexico also signed an agreement on cooperation in emergency management in the event of natural disasters and accidents. The same agreement was signed in 2009 between the United States and Canada.

41. Furthermore, regional or national non-governmental organizations or industrial associations have occasionally (some regularly) organized meetings and forums on topics related to industrial safety. One example is the Disaster Management Institute Bhopal,¹² whose aim is to provide training and consultancy services in the area of natural as well as man-made disaster management.

III. Considerations with regard to a global convention on the prevention of transboundary harm from hazardous activities and allocation of loss in the case of such harm by the United Nations International Law Commission and the General Assembly

42. United Nations Member States have discussed matters related to the prevention of industrial accidents and transboundary harm in the framework of the International Law Commission and the United Nations General Assembly.

43. Through resolution 3071 of 30 November 1973, the General Assembly recommended that the International Law Commission undertake a study of the topic “International liability for injurious consequences arising out of the performance of other activities”.¹³ This was decided in the framework of the work that the Commission was conducting on State responsibility. At that time, the International Law Commission decided to work on two separate segments concerning State responsibility: one dealing with responsibilities resulting from violations of international law and the other dealing with the prevention of and international liability for damage not involving breaches of international law.¹⁴ The latter segment will be discussed in the next paragraphs and was included in the programme of work of the Commission in 1978.

44. In 1997, the International Law Commission decided to split the segment dealing with the prevention of and international liability for damage not involving breaches of international law into two parts, one dealing with prevention and the other dealing with liability and to deal first with prevention aspects. In 2001 the Commission completed the

¹¹ Available from http://www.cec.org/Page.asp?PageID=1226&SiteNodeID=310&BL_ExpandID=87.

¹² See <http://www.dmibhopal.nic.in/>.

¹³ Other activities, as opposed to “other than acts giving rise to responsibility for internationally wrongful acts”.

¹⁴ See Luis Barrionuevo Arevalo, “The Work of the International Law Commission in the Field of International Environmental Law”, *Boston College Environmental Affairs Law Review*, vol. 32, No. 3 (January 2005), pp. 493–507. Available from <http://lawdigitalcommons.bc.edu/ealr/vol32/iss3/2>

draft articles on prevention¹⁵ and recommended to the General Assembly the elaboration of a convention on that basis.

45. The draft articles of 2001 apply to “activities not prohibited by international law which involve a risk of causing significant transboundary harm through their physical consequences” (article 1). Differently from the Industrial Accidents Convention, the term “transboundary harm” means “harm caused in the territory of, in other places under the jurisdiction or control of a State other than the State of Origin whether or not the States Convened share a common border” (article 2 (c)) and it would also be applicable to international waters and the seas.

46. The draft articles refer to several issues that are analogous to the Industrial Accidents Convention. These include the duty to: take all appropriate measures to prevent or minimize the risk of transboundary effects of hazardous accidents (analogous to article 6 of the Industrial Accidents Convention, on prevention); to provide information to the public (analogous to article 9 of the Convention, on information to and participation of the public); to notify States likely to be affected (analogous to article 4 of the Convention, on identification, consultation and advice); and to cooperate, consult and exchange information (analogous to articles 12, 15 and 16 of the Industrial Accidents Convention on mutual assistance, exchange of information and exchange of technology).

47. In 2001, at the fifty-sixth session of the General Assembly, Member States could not agree whether a convention should be elaborated. In addition the General Assembly requested the International Law Commission to restart the work on liability aspects (resolution 56/82) focusing on a legal regime for allocation of loss in case of transboundary harm arising out of hazardous activities. The regime was to be consistent with the “polluter pays” principle¹⁶ and with the recognition that the operator should bear the primary liability for the harm caused to people and the environment.

48. The Commission presented its outcome in 2006 in the form of “draft principles on the allocation of loss in the case of transboundary harm arising out of hazardous activities”.¹⁷ The scope of the draft principles was the same as for the draft articles. It is interesting to note the similarity between the draft principles and the Protocol on Civil Liability and Compensation for Damage Caused by the Transboundary Effects of Industrial Accidents on Transboundary Waters (Protocol on Civil Liability) negotiated under the Industrial Accidents and Water Conventions.

49. For the part on liability, the Commission did not call for the elaboration of a convention, but rather recommended that the General Assembly endorse the draft principles through a resolution with the aim that States would take national and international actions to implement them. This was accomplished through General Assembly resolution 61/36.

50. Following comments by different delegations that the “draft articles” (the part on prevention adopted in 2001) and the “draft principles” (the part on liability adopted in 2006) were connected with each other, and that there could not be a liability regime without prevention, the General Assembly decided to merge the two topics again.

51. At the General Assembly’s sixty-fifth session in 2010, once more no decision could be taken on whether to elaborate a convention. The General Assembly invited Governments to submit comments, in particular on the form that the two documents should take (i.e., the International Law Commission’s suggestion to elaborate a convention based on the articles

¹⁵ Available from http://legal.un.org/ilc/texts/9_7.htm

¹⁶ See Luis Barrionuevo Arevalo, “The Work of the International Law Commission”.

¹⁷ Available from http://legal.un.org/ilc/texts/9_10.htm

on prevention and to merely adopt the principles on allocation of loss in case of transboundary harm arising out of hazardous activities by a resolution).

52. The topic was most recently discussed in the General Assembly at its sixty-eighth session in 2013. Several delegations suggested that, irrespective of which form the two documents (the draft articles and the draft principles) would take, they would need to be combined into a single instrument. This was the view also held by States that were against the idea of a convention in principle.¹⁸

53. In 2010 Portugal expressed the hope that in the future there would be a single convention — combining the part on prevention and the one on liability — establishing adequately the responsibility of States on those two concepts. Portugal also expressed hope that, should that happen, a real system of compensation would be put in place. Similar positions were expressed by China and Viet Nam.

54. An assessment of delegates' declarations during sessions of the General Assembly and the International Law Commission shows that the countries that favoured the development of a global convention were not part of an international framework dealing with industrial safety and the prevention of transboundary effects — e.g., El Salvador, Libya, and Viet Nam. This, in itself, demonstrates the usefulness of mandatory provisions to prevent transboundary harm, but also the need to strengthen cooperation and undertake consultations.¹⁹

55. The United Kingdom of Great Britain and Northern Ireland and the United States indicated that there was no need to elaborate a convention on the two topics, since they were already covered by a number of other specific and regional instruments. The Russian Federation noted the value of the draft articles and principles, but also expressed the belief that it was too premature to discuss the drafting of a binding convention. Other delegations encouraged States to continue to use the articles and the principles as a guide for negotiating bilateral and multilateral agreements and developing domestic legislative and policy measures.

56. In conclusion, the views held by the majority of delegations indicated that it was premature to create a convention. As a preliminary step, it was suggested that the draft articles and draft principles should be combined into a single draft instrument to be further considered by States. It was also noted that the adoption of such a unified convention might take a significant amount of time.

57. Therefore the General Assembly adopted resolution 68/114 in 2013,²⁰ inviting Member States to submit further comments, in particular on the form of the respective articles and principles. The General Assembly also decided to include the issue on the provisional agenda of its seventy-first session in September 2016.

58. Given the continuous opposition from some Member States and the hesitance of others, it seems unlikely that there will be agreement among States to proceed with the drafting of a global convention in the near future.

¹⁸ I.e., Australia, Canada, India and New Zealand.

¹⁹ See A/C.6/65/SR.17.

²⁰ Available from <http://www.un.org/en/ga/68/resolutions.shtml>.

IV. Conclusions

59. The Conference of the Parties is invited to consider the possible opening of the Industrial Accidents Convention to United Nations Member States beyond the ECE region taking into account:

(a) The possible benefits and challenges that could derive from such a decision, as set out in the present document;

(b) Existing activities related to industrial safety and transboundary aspects beyond the ECE region;

(c) The deliberations of the International Law Commission and the General Assembly on the topics of prevention of transboundary harm from hazardous activities and allocation of loss in the case of such harm and the (meagre) prospects for the start of negotiations on a global convention on those topics.

60. The Parties to the Industrial Accidents Convention have the advantage of being able to take into account and learn from the experiences of the other ECE MEAs in deliberating on whether or not to open the Convention to accession by States outside the ECE region. At the national level, delegates to the eighth meeting of the Conference of the Parties are therefore invited to consult with their colleagues that act as focal or contact points for the other ECE MEAs concerning their experiences in this regard.

61. The experience of other ECE MEAs demonstrates several positive outcomes derived from the involvement of United Nations Member States from beyond the ECE region in their activities, in particular with regard to:

(a) Enhanced exchange of information, experiences and good practices;

(b) Increasing visibility of the MEA at the regional and global level, and political support including from ministries of foreign affairs;

(c) New partnerships with regional and global actors;

(d) Attracting new financing sources, not only to support efforts related to the opening and the participation of countries from other regions, but also benefiting the entire work programme.

62. Furthermore, benefits for both countries beyond and within the ECE region, and enhanced levels of industrial safety, could be expected from the implementation of the Convention beyond the ECE region, including:

(a) Improved and more structured institutional, administrative and legal frameworks related to industrial accident prevention, preparedness and response;

(b) Enhanced cooperation between national authorities, industry, civil society and the public;

(c) Establishment of cooperation between neighbouring countries and potentially affected Parties beyond the borders of the ECE region;

(d) Enhanced industrial safety standards, resulting in potential increases in foreign direct investment in countries implementing the Convention, resulting in trade and economic development gains;

(e) Last, but not least, the possibility of acceding to the Industrial Accidents Convention would provide countries from outside the ECE region with a tool to practically implement related international sustainable development commitments to which they have agreed, such as the Rio principles.

63. At the same time, there are challenges associated with the decision to open an MEA for accession by United Nations Member States beyond the ECE region. Such challenges most notably concern:

(a) The impact on the scope of the work programme, which would need to address awareness-raising on the Convention, as well as the needs and concerns of new Parties;

(b) Budgetary implications associated with the involvement of additional countries in the work, including the financing of the participation of delegates in meetings;

(c) An increased workload and resource needs for the secretariat.

64. The Industrial Accidents Convention is the only legal framework in which prevention, preparedness and response to industrial accidents in a transboundary context is addressed. At the same time, some of the global initiatives (for instance GEF) and organizations referred to in section I.F above may become partners should it be decided to open the Industrial Accidents Convention for global accession.

65. In the framework of the International Law Commission and the General Assembly, United Nations Member States have considered aspects related to the prevention of transboundary harm from hazardous activities and allocation of loss in the case of such harm. One part of these considerations touched upon elements covered by the Industrial Accidents Convention and another part addressed elements regulated by the Protocol on Civil Liability. Opinions of Member States on whether the draft principles and articles should be codified into a legally binding instrument differed. Due to the consistent opposition by several United Nations Member States with regard to the start of such negotiations, and the fact that consideration of the issue has consistently been deferred between sessions of the General Assembly, the prospects for beginning negotiations on a global convention appear to be rather meagre.

66. Independently from the discussion on the opening of the Convention, the Conference of the Parties is encouraged to consider other related actions. In particular, it may wish to mandate the secretariat, with the support of relevant bodies under the Convention, to promote the objectives and principles of the Convention in other regions through strengthening its outreach activities, as well as maintaining and/or creating new partnerships. More precisely, the Conference of the Parties may consider requesting the secretariat to:

(a) Approach the four other United Nations regional commissions and to identify relevant counterparts to promote awareness of the Convention, its experience and principles among interested countries members of the regional commissions;

(b) Establish a dialogue with the International Law Commission and the General Assembly to ensure, when relevant, the presence of representatives of the Convention at their meetings with the aim of raising awareness about the Convention and the Protocol on Civil Liability;

(c) Invite non-ECE countries to participate in key meetings and events organized under the Convention.
