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

Working Group on the Development of the Convention

Sixth meeting

Geneva, 30 November–2 December 2015

Report of the Working Group on the Development of the Convention on its sixth meeting

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Introduction

1. The sixth meeting of the Working Group on the Development of the Convention (Working Group on Development) under the Convention on the Transboundary Effects of Industrial Accidents (Industrial Accidents Convention) was held from 30 November to 2 December 2015 in Geneva, Switzerland. Mr. Chris Dijkens (Netherlands), Chair of the Working Group on Development, and Ms. Jasmina Karba (Slovenia), Chair of the Conference of the Parties, co-chaired the meeting.¹

2. The meeting was attended by representatives of the following United Nations Economic Commission for Europe (ECE) member States: Armenia, Azerbaijan, Belarus, Croatia, Czech Republic, France, Georgia, Germany, Kazakhstan, Lithuania, Luxembourg, Netherlands, Republic of Moldova, Russian Federation, Serbia, Slovenia, Sweden, Switzerland and United Kingdom of Great Britain and Northern Ireland. A representative of the European Union also participated in the meeting.

3. In addition, the meeting was attended by a legal expert providing advice to the negotiations (Mr. Jerzy Jendroška) and a consultant engaged by the European Investment Bank to develop a guidance document on safety and land-use planning (Mr. Lorenzo van Wijk), as well as the rapporteur of a small group of legal experts (Mr. Erol Mertcan, United Kingdom), established by the Working Group on Development at its fifth meeting (Geneva, 11–13 May 2015).

I. Opening of the meeting and adoption of the agenda

4. The Chair opened the sixth meeting of the Working Group.

5. The agenda for the meeting (ECE/CP.TEIA/WG.1/2015/6) was adopted without modification. The secretariat indicated that all presentations delivered during the meeting would be posted on the Convention's web page for the meeting.²

II. Terms of reference for the Working Group

6. The Chair recalled that the Bureau had been mandated by the Conference of the Parties at its eighth meeting (Geneva, 3–5 December 2014) to prepare revised terms of reference for the Working Group on Development for review and adoption by the Conference of the Parties at its ninth meeting (Slovenia, 28–30 November 2016). The secretariat then introduced the draft terms of reference for the Working Group, as elaborated by the Bureau and contained in ECE/CP.TEIA/WG.1/2015/8, highlighting the changes proposed.

7. The Working Group on Development took note of and agreed its revised terms of reference, as proposed by the Bureau. It also agreed the proposal by the secretariat to formally rename the Working Group as the “Working Group on Development”, in order to

¹ Due to the limited availability of the Chair of the Working Group on Development to attend the sixth meeting, the Bureau appointed the Chair of the Conference of the Parties to co-chair the Working Group's sixth meeting. Mr. Dijkens chaired the discussion under agenda items 1, 2 and 3, while Ms. Karba led the discussions on items 4, 5 and 6.

² Available from <http://www.unece.org/index.php?id=36738#/>.

streamline and harmonize references to the body, to bring them into line with current practice and to facilitate the preparation of official documents.

III. Accession by Member States of the United Nations from outside the United Nations Economic Commission for Europe region

8. The Chair noted that the Conference of the Parties at its eighth meeting had requested the Working Group to continue considering all aspects related to the opening of the Convention with regard to the potential benefits and challenges, including possible budgetary implications, and to present the outcome of its consideration to the Conference of the Parties at its ninth meeting. The Chair also noted that background information had already been presented previously to the Working Group and the Conference of the Parties. At the fifth meeting of the Working Group (Geneva, 11–13 May 2015), Parties had expressed general support for the opening of the Convention's membership, while also stressing the need to carefully consider the continued implementation of the Convention in the ECE region and related budgetary questions. To that end, the Working Group had requested the secretariat to outline approaches to address the budgetary implications.

9. In response to the Working Group's request, the secretariat presented possible approaches to address the budgetary implications of opening the Convention to accession by United Nations Member States from outside the region (see ECE/CP.TEIA/WG.1/2015/9). The Working Group considered the information provided and requested further information with regard to experience gained by other ECE multilateral environmental agreements. The secretariat provided the following information:

(a) Parties to the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention) had adopted an amendment opening that treaty in 2001 to global accession. Since then, several workshops in North Africa had been organized. Several States from outside the ECE region had also participated in the sessions of the Meeting of the Parties to the Convention. Activities under the Espoo Convention had also been carried out in North-East Asia with the Republic of Korea, which had financed the majority of the activities implemented;

(b) Under the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention), open to global accession since its adoption, member States had expressed their interest in creating similar conventions in other regions. The secretariat to the Aarhus Convention had been invited to provide advice to Latin American countries in view of negotiating a similar convention for that region;

(c) Parties to the Convention on Long-range Transboundary Air Pollution had decided not to open its membership to United Nations Member States outside the ECE region, but instead to engage in technical cooperation with other regions, in particular with North-East Asia;

(d) Parties to the Convention on the Protection and Use of Transboundary Watercourses and International Lakes (Water Convention) had invested more resources in promotional work towards the opening of that Convention to global accession than had been done under the other ECE multilateral environmental agreements. Significant financial contributions had been made for activities linked to the opening, some of which also benefitted other areas of the work programme. That might have raised the expectations of countries from outside of the region. The Water Convention had also received co-funding from organizations in other regions, and interest had been expressed by partners in

co-financing activities. The costs for promotional events had varied greatly, according to the region and kind of activity. In several instances delegates from outside the region had been able to cover the cost of their travel to meetings in Geneva, thanks to financial support from other donors.

10. Following its consideration of the possible budgetary implications and ways of addressing them, the Working Group on Development reconfirmed its support for the opening of the Convention, expressed at its fifth meeting, and decided to recommend to the Conference of the Parties that the Convention be opened to accession by States outside the region. The Working Group also agreed to address the issue of safeguards to address any adverse financial implications in the preamble of the draft decision amending the Convention, to be forwarded to the Conference of the Parties for adoption at its ninth meeting. It further suggested that the Conference of the Parties engage in a discussion on the approach and strategy with regard to the opening. The Working Group tasked the small group of legal experts, in cooperation with the secretariat, to prepare the draft decision amending the Convention, including with regard to its opening.

IV. Guidance by the Conference of the Parties

11. The Chair recalled the request by the Conference of the Parties at its eighth meeting for the Working Group to develop guidance on land-use planning, on clarifying the scope of mutual assistance and possibly also on a mechanism for the review of compliance, for review and adoption by the Conference of the Parties at its ninth or, alternatively, tenth meeting. The Working Group on Development reviewed the progress made, provided comments and agreed on the next steps.

A. Review of compliance

12. The Chair summarized the outcome of the discussion on the possible introduction of a compliance mechanism held at the Working Group's fifth meeting. The Chair of the Working Group on Implementation reported on that Group's further deliberations related to the introduction of a compliance mechanism during its twenty-eighth meeting (Geneva, 30 June–1 July 2015). The Working Group on Implementation intended to propose to the Conference of the Parties, through a decision on reporting obligations, a change in the reporting cycle from two to four years. That would provide the Working Group on Implementation with more time to establish contacts with the reporting countries, in line with the request by the Conference of the Parties at its eighth meeting (ECE/CP.TEIA/30, para. 30), and to engage in compliance-related functions, while not increasing the number of members in the Working Group. The Chair of the Working Group on Implementation also provided further information on the usefulness of introducing a compliance mechanism for the Convention (see ECE/CP.TEIA/WG.1/2015/10).

13. The Working Group on Development took note of the information provided and discussed the introduction of a compliance mechanism. It agreed that the Working Group on Implementation should continue monitoring and identifying deficiencies in the implementation of the Convention and should engage in providing support to Parties and committed countries, for instance, through recommendations for strengthening the implementation of the Convention, within the framework of its mandate. In that regard, it recommended that the terms of reference of the Working Group on Implementation be updated to ensure that it could support Parties and committed countries in strengthening their implementation of the Convention most effectively. The Working Group on Development further recommended that that could be achieved within the current review of the terms of reference of the Working Group on Implementation, agreed by the Conference

of the Parties at its eighth meeting.³ It also supported the proposal to change the reporting cycle from two to four years.

14. In addition, the Working Group on Development concluded that there was a need for additional analysis of the needs and benefits of introducing a compliance mechanism for the Convention, and recommended that such a discussion take place at a future meeting of the Conference of the Parties.

B. Safety and land-use planning

15. The secretariat reported on the intersessional work by the small group of experts on land-use planning, established by the Working Group at its fifth meeting. The group had provided comments electronically on the outline of the guidance document on safety and land-use planning.

16. The consultant engaged to develop the guidance document presented a revised outline, which incorporated the comments by the small group, including their suggestion to change the name of the document to reflect that it referred to land-use planning and related safety aspects with respect to industrial hazardous activities. A survey would be distributed to Parties and relevant stakeholders in December 2015 to elicit information on Parties' experiences, good practices and lessons learned concerning the implementation of the legal obligations for land-use planning, the siting of hazardous activities and related safety aspects under the Industrial Accidents Convention and the Protocol on Strategic Environmental Assessment (Protocol on SEA) to the Espoo Convention. The results of the survey would feed into and complement the guidance document, a first draft of which was planned to be made available to Parties for comments electronically in March 2016.

17. The draft guidance would then also be presented and discussed at the joint workshop on land-use planning, the siting of hazardous activities and related safety aspects to be organized under the Industrial Accidents Convention and the Protocol on SEA, in cooperation with the ECE Committee on Housing and Land-Management (Geneva, 13 April 2016). The workshop would be held in the framework of the seventh meeting of the Working Group on Development (Geneva, 12–14 April 2016) and the fifth meeting of the Working Group on Environmental Impact Assessment and Strategic Environmental Assessment under the Espoo Convention and its Protocol (Geneva, 11–15 April 2016). The final version of the guidance document should be ready by June 2016, to allow for its adoption by the Conference of the Parties to the Industrial Accidents Convention at its ninth meeting (Slovenia, 28–30 November 2016) and the Meeting of the Parties to the Protocol on SEA at its third session (May or June 2017).

18. The Working Group took note of the revised outline for the guidance document and the comments by the small group of experts. It also took note of and welcomed the next steps for preparing the guidance document, including the preparation of a survey and the above-mentioned joint workshop.

C. Scope of mutual assistance

19. The Chair summarized the outcome of the analysis of the scope of mutual assistance undertaken by the small group evaluating possible amendments to the Convention in the

³ The Conference of the Parties at its eighth meeting requested the Bureau to review the terms of reference of the Convention's subsidiary bodies, and to prepare revised terms of reference for review and adoption by the Conference of the Parties at its ninth meeting (ECE/CP.TEIA/30, para. 48).

biennium 2013–2014 (see ECE/CP.TEIA/WG.1/2015/12), which had concluded that the provisions in article 12 referred to any industrial accident, not only to industrial accidents with transboundary effects.

20. The secretariat reported to the Working Group on information provided by Mr. Gunnar Hem (Norway), a former member of the Working Group on Development, who had participated in the negotiations on the Convention, regarding the original intention of the negotiating countries related to the scope of mutual assistance. Mr. Hem had recalled that there had been differing opinions on the scope of the Convention during the negotiations. The main recommendation from the Meeting on the Protection of the Environment of the Conference on Security and Cooperation in Europe (Sofia, 16 October–3 November 1989) had been that ECE elaborate an international convention, code of practice or other appropriate legal instruments on the prevention and control of the transboundary effects of industrial accidents.⁴ Conversely, many delegations, in the light of serious accidents that had recently occurred, had recommended the creation of a broader convention on reciprocal assistance in case of any accident involving hazardous substances, and possibly also the establishment of global general principles for the prevention of, preparedness for and response to industrial accidents. The negotiations had resulted in a compromise reflected in article 2 on the Convention's scope, which deliberately did not limit international cooperation on mutual assistance, research and development and the exchange of technology to industrial accidents with transboundary consequences.

21. Parties continued their exchange of views on the scope of mutual assistance. The representative from the European Union introduced a proposal made available in advance of the meeting, setting out the understanding that article 12 referred only to industrial accidents with transboundary consequences and proposed that that be clarified either through a draft decision by the Conference of the Parties or an amendment. The proposed draft decision by the European Union acknowledged the extensive practice of providing assistance in disasters and humanitarian situations under other conventions and multilateral mechanisms, such as the United Nations Office for the Coordination of Humanitarian Affairs, and recalled the need to avoid administrative burdens and potential confusion by double regulation in the area of mutual assistance. Switzerland supported the position of the European Union. The Russian Federation agreed that article 12 referred to industrial accidents with transboundary effects only, stressing that the current text was sufficiently clear and did not need amendment.

22. The Working Group on Development reconfirmed its prior conclusion from its fourth meeting: that the scope of mutual assistance did not need clarification through an amendment to the Convention. It agreed that the scope of mutual assistance applied only to accidents with potential transboundary effects. It also agreed to recommend to the Conference of the Parties that there was no need to clarify the scope of mutual assistance through a separate decision. The Working Group on Development considered that it would be sufficient to have its discussion on the topic reflected in the present report.

V. Amendment to the Convention

23. The Chair recalled the Working Group's mandate from the Conference of the Parties to prepare a draft amendment to the Convention. The Working Group considered an updated proposal for amendments to articles 1, 9, 18 and 29, as well as related provisions and annexes. The basis for the discussion was a draft prepared by the secretariat and the

⁴ See report on the conclusions and recommendations of the meeting, available from: <http://www.osce.org/eea/14075>.

small group of legal experts, in consultation with the legal expert providing advice to the negotiations (see ECE/CP.TEIA/2015/13). It also considered proposals and comments submitted prior to the meeting by Parties regarding article 9.⁵ Members of the Working Group provided comments, agreed on changes to the draft amended text (see annex) and decided on the next steps.

A. Article 1

24. The Working Group discussed the draft text for amending the current definition of “effects” (art. 1, para. (c)) in the Convention. It welcomed the adjustments made by the secretariat to align the definition with the Protocol on SEA, as requested at its fifth meeting, and suggested further adjustments which would ensure closer alignment with the Protocol, such as substituting “biological diversity and its components”, the term employed in the Aarhus Convention, with “biodiversity”. Regarding the possible addition of “climate” to the definition of effects, the Working Group found that that would be likely to create confusion, due to the fact that the Industrial Accidents Convention did not per se deal with hazardous substances that could harm the climate. Parties considered it would be difficult to assess the effects of an industrial accident on the climate and concluded that introducing effects on the climate would thus not be relevant in that context.

25. The Working Group also discussed the need for introducing “natural sites” into the definition of “effects”, which some Parties understood as being already covered by the term “landscape”. Mr. Jendroška clarified that an impact on the landscape did not need to have an impact on natural sites and vice versa, and that the two terms were complementary, covering different aspects which the States negotiating the Protocol on SEA had wished to highlight. The secretariat recalled that the term “natural sites” had been introduced to ensure closer alignment with the Protocol on SEA, as requested by the Working Group at its previous meeting, and that the term was also used in the 1972 Convention concerning the Protection of the World Cultural and Natural Heritage. Parties expressed concern that a possible addition of the term “natural sites” would require the inclusion of another definition in the Convention, which was not wanted. The Working Group agreed on a revised definition of “effects” that achieved a degree of consistency with the Protocol on SEA, while not introducing effects on natural sites and the climate.

26. The Working Group also continued its discussion on clarifying the difference between the notions of “notification of hazardous activities” and “notification of an industrial accident”, which had led to confusion among ECE countries in the past. The Chair of the Working Group on Implementation presented that Group’s conclusions that the confusion would be best addressed through direct contacts with the reporting countries. Such an approach would also correspond to the request by the Conference of the Parties at its eighth meeting (ECE/CP.TEIA/30, para 30). On that basis, the Working Group on Development agreed not to introduce additional definitions in article 1, while amending the heading of article 4 of the Convention to add the term “notification”, for it to read “Identification, notification, consultation and advice”. That should improve clarity and visibility with regard to the notification requirement in article 4, as distinct from the industrial accident notifications in article 10.

⁵ The comments submitted by Parties prior to the sixth meeting of the Working Group are also available on the meeting web page (<http://www.unece.org/index.php?id=36738#/>), under the tab “Informal documents”.

B. Article 9

27. The Chair recalled that the Working Group at its fifth meeting had requested the small group of legal experts to prepare a revision of the draft amended text of article 9. The revised draft text of article 9 had been circulated to Parties during the week of 20 July 2015 and had subsequently been incorporated in the official background document containing the revised draft amendment (ECE/CP.TEIA/WG.1/2015/13, annex I). The background document also contained a proposal for a shortened text with reference to the Aarhus Convention, prepared by the secretariat in response to Parties' comments on the proposal by the small group of legal experts (*ibid.*, annex II). On that basis, the European Union had also prepared a proposal, which had been circulated to Parties and made available on the Convention's web page in advance of that meeting.

28. The rapporteur of the small group of legal experts presented the rationale and draft text of the proposal prepared by the group. It aimed to achieve alignment with the Aarhus Convention and the European Union Seveso III Directive,⁶ while at the same time being shorter and not reproducing the full text of the relevant provisions of those instruments. It also took into account the comments from Parties at the Working Group's last meeting, particularly with regard to information sharing and security. The secretariat presented the rationale for its proposal, namely to achieve a shortened text that contained references to the Aarhus Convention, an approach which had been mentioned by several Parties previously. The Working Group expressed its gratitude to the small group of legal experts and the secretariat for having prepared proposals that provided useful input to the debate. It also thanked the Russian Federation, the European Union and Switzerland for having provided comments on those proposals and for having proposed draft elements of text in advance of the meeting.

29. The Working Group agreed to base its deliberations on the proposal by the European Union, which best met the interests of Parties by providing a less detailed and descriptive amendment to article 9, proportionate to the Convention's objectives, while providing more flexibility with regard to the interpretation and implementation of the provisions. The Working Group discussed the proposed amendments to articles 9, 9 bis and 9 ter by providing comments and concrete text proposals.

1. Article 9 — Information to the public

30. Parties agreed to amend the draft text, as proposed by the European Union, to make information available to the public "in electronic databases" (art. 9, para. 1 (d)), in line with the requirement by the Aarhus Convention (art. 5, para. 3). The Working Group also considered the need to retain flexibility in ensuring that, in the event of an accident, information was provided to the public in the areas capable of being affected by that accident through such channels as the Parties deemed appropriate, in line with the provisions of the current article 9, paragraph 1. That requirement could be achieved by communicating that information either directly to the public in the areas capable of being affected — which would include the public of the Party of origin and the affected Party — or indirectly, through the competent authority of the affected Party (art. 9, para. 2). Belarus, the Russian Federation and Switzerland reported that they had procedures in place to inform the public of the affected Party in the case of an accident through the competent authority of the affected Party. Belarus and the Russian Federation also expressed concern

⁶ Directive 2012/18/EU of the European Parliament and of the Council of 4 July 2012 on the control of major-accident hazards involving dangerous substances, amending and subsequently repealing Council Directive 96/82/EC.

about providing information directly to the public capable of being affected in the affected Party, among others, due to limited information about who that public would be. The secretariat recalled that the predominant objective of the Convention was to protect human beings and the environment against industrial accidents and to mitigate the effects of such accidents. While numerous Parties cooperated with the authorities of neighbouring countries to ensure that they would inform the public of the affected Party, it was important to also consider situations in which such communication channels might not be established or functioning. The Working Group agreed that it would be important that the text provide sufficient options for Parties to choose how to provide information to the public of another country in case of an accident, either directly or through the competent authorities of the affected Party.

2. Article 9 bis — Public participation

31. Parties agreed to add “whenever possible and appropriate” to the requirement to ensure public consultation and participation in decision-making regarding the development or significant modification of off-site contingency plans referred to in article 8 (art. 9 bis, para. 2 (c)). Switzerland explained that, from a practical point of view, it would not be possible in all cases to involve the entire public concerned in the development of prevention measures, for example in the case of hazardous substances that could be released into the water or air and which could spread over hundreds of kilometres.

32. Parties also agreed not to include reference to the Aarhus Convention and its principles, as proposed by the European Union, preferring to directly present and include relevant principles in the draft amended text. On that basis, the small group of legal experts was requested to review the text of proposed articles 9 and 9 bis, with a view to replacing the reference to the principles of articles 5 and 6 of the Aarhus Convention with text reflecting selected key principles extracted from those articles. The small group was also requested to improve the legal clarity of the text proposed by the European Union for a new article 9 bis, paragraph 3, to make the meaning of the reference to the principles outlined in article 9 more explicit. The new text should be ready for the Working Group’s review at its seventh meeting.

33. Furthermore, Parties agreed not to introduce the term “the public concerned” in articles 9, 9 bis or 9 ter and in the definitions (art. 1), as proposed by the small group of legal experts. That term would encompass people in the vicinity of the industrial accident and all actors that had an interest, including those that might not be located in the region. Parties analysed the meaning of the term “the public in the area capable of being affected” used in the current article 9 of the Convention, concluding that it would be important to maintain the reference to the territory in the amended text. The Working Group thus agreed to retain the term “the public in the areas capable of being affected”, which encompassed the public in both the Party of origin and the affected Party.

3. Article 9 ter — Access to justice

34. Parties agreed to retain the text as reflected in article 9, paragraph 3, at present, while replacing “natural and legal persons” with “the public”.

C. Article 29

35. The secretariat presented the two options for amending article 29 with regard to the opening of the Convention to United Nations Member States beyond the ECE region. The Working Group agreed to amend paragraph 2 to add that, in addition to ECE member States referred to in article 27, the Convention “shall be open for accession by any other State that

is a member of the United Nations and by regional economic integration organizations constituted by sovereign States members of the United Nations”.

36. The secretariat also presented the rationale and draft text for amending article 29 with regard to the application of amendments to new Parties. Responding to a question posed by the Russian Federation, the legal expert explained that the objective of proposing a new paragraph 5 to article 29 was to avoid ambiguity and to facilitate the process for newly acceding Parties by specifying that new Parties would accede to the Convention as amended. The amendment, as proposed, was drawn from the standard clause of the Vienna Convention on the Law of the Treaties (art. 40, para. 5), with the addition of paragraph (b), which set out that it would apply also to amendments that had not yet entered into force. That would not affect the possibility for new Parties to express a different intention through a reservation, in accordance with the Vienna Convention (art. 19). In addition, the secretariat and the legal expert clarified that the reference to “ratification, acceptance or approval” captured different national procedures for signatories to ratify the Convention or for countries that had not previously signed the Convention to accede to it. That was standard language employed also by other treaties, including other ECE multilateral environmental agreements. It was also mentioned that the proposed additional paragraph 5 would by no means affect the rights of current Parties to the Convention to decide whether or not to ratify the amendment. The secretariat confirmed that the text, as proposed, in its English version referred to future ratification, acceptance or approval processes, which had not been correctly reflected in the Russian translation.

37. The Working Group agreed with the proposed amendment to paragraph 5 of article 29 to clarify that new Parties to the Convention would automatically ratify, accept or approve amendments that had been adopted, whether or not they were in force. It also requested the secretariat to correct the Russian translation of the proposed paragraph 5.

D. Related changes

38. The Chair recalled that the Conference of the Parties at its eighth meeting had requested the Working Group to consider also related provisions, articles and annexes of the Convention when preparing a draft amendment to articles 1, 9, 18 and 29. Due to numerous concerns raised at its fifth meeting, the Working Group had tasked the small group of legal experts with reviewing all related changes in order to achieve alignment with the entire draft amendment, while expressing its intention to keep those changes to a minimum.

39. The rapporteur of the small group presented the group’s proposal to reduce the number of the related changes. The Working Group discussed the remaining proposed changes to the preamble, article 8 and annex VIII, as contained in ECE/CP.TEIA/WG.1/2015/13, and agreed on the changes set out below.

1. Preamble

40. A representative from the European Union confirmed that there would be no objection to including a reference to the Protocol on SEA in the preamble, and suggested that the provisional brackets included at the last meeting could be deleted. The Russian Federation expressed concerns with regard to the mention of the Aarhus Convention, as it was not a Party to this instrument. It was clarified that the inclusion of a reference to other international instruments in the preamble would not imply any legal commitment to implement those instruments, and that there was no requirement for Parties to the Industrial Accidents Convention to be Parties to all instruments mentioned in the preamble. The legal expert recalled that the Russian Federation was also not a Party to the Espoo Convention, which was already mentioned in the preamble of the Industrial Accidents Convention. The

Working Group was unable to reach agreement and decided to continue the discussion at its next meeting.

2. Article 8

41. The European Union stressed the importance of involving personnel working on site in the preparation of contingency plans which would, among others, provide an additional source of information to improve the on-site contingency plans, increase awareness on site of the necessary behaviour in case of emergency and reduce the frequency of industrial accidents, including their transboundary effects. Switzerland expressed support for the inclusion of that obligation, reporting that it was already in its national law. The Russian Federation stated that it should be left up to the operator to consult personnel on site, if so desired, but that no obligation should be made requiring the operator to do so. Armenia and Belarus supported that view. Against that background, Parties discussed the possible inclusion of a sentence in paragraph 1 of article 8 stating that the plans “may” (rather than “shall”) be drawn up in consultation with the (relevant) personnel working on the industrial site.

42. The secretariat clarified that the consultation of personnel working on site was already an obligation under the 1993 International Labour Organization (ILO) Convention concerning the Prevention of Major Industrial Accidents (Convention No. 174), which the Russian Federation and other Parties to the Industrial Accidents Convention had ratified.⁷ The European Union expressed concerns with regard to the creation of two conflicting pieces of international law and proposed, in the spirit of increasing legal clarity, that an additional sentence not be added in paragraph 1 of article 8. Following a discussion, the Working Group agreed not to amend article 8 of the Convention.

3. Annex VIII

43. With regard to annex VIII to the Convention, Parties agreed to insert at the end of paragraph 5 “and measures to address the industrial accident”. They also agreed to add at the end of paragraph 9 the sentence: “This should include advice to cooperate with any instructions or requests from the emergency services.” Those changes would ensure alignment with annex V, part 2, paragraphs 1 and 3, of the Seveso III Directive.

VI. Review of decisions taken and closure of the meeting

44. The Working Group on Development agreed on the main decisions taken at the meeting and entrusted the secretariat to finalize the report after the meeting, in consultation with the Chairs.

45. The Chair thanked all participants for their active involvement in the discussions at the meeting. The Chair also thanked the secretariat for the meeting preparation and support, before closing the sixth meeting of the Working Group on Development.

⁷ According to article 20 of ILO Convention No. 174: “The workers and their representatives at a major hazard installation shall be consulted through appropriate cooperative mechanisms in order to ensure a safe system of work. In particular, the workers and their representatives shall: ... (c) be consulted in the preparation of, and have access to, the following documents: ... (ii) emergency plans and procedures”.

Annex

Draft amendment to the Convention agreed by the Working Group on Development at its fifth and sixth meetings

1. This annex contains a proposal for an amendment to the Convention, showing the changes made to a prior draft agreed at both the fifth and sixth meetings of the Working Group on Development. The text does not show changes vis-à-vis the Convention itself; rather changes are shown in comparison with the previous proposal, contained in document ECE/CP.TEIA/WG.1/2015/13 (for arts. 1 and 29 and annex VIII), as well as to the proposal submitted by the European Union in advance of the sixth meeting (for art. 9). Changes agreed at the Working Group's fifth meeting are presented without highlighting of any kind. New text agreed at the sixth meeting is indicated in boldface; text to be deleted is struck through. Text appearing in square brackets is suggested text which has not yet been agreed. Changes are only shown to the provisions of the Convention that are suggested for amendment, and not to the text introducing the amendment.

A. Article 1

3. The text in article 1, subparagraph (c), should read as follows:

(c) "Effects" means any direct or indirect, immediate or delayed adverse consequences caused by an industrial accident on, inter alia:

- (i) Human beings; **and biological diversity and its components**;
- (ii) Soil, water, air **and**, landscape ~~and climate~~;
- (iii) ~~Natural sites, m~~Material assets and cultural heritage, including historical monuments;
- (iv) The interaction between the factors in (i), (ii) and (iii).

4. In article 1, subparagraph (j), after "persons", insert: "and, in accordance with national legislation or practice, their associations, organizations or groups", to read as follows:

(j) "The public" means one or more natural or legal persons and, in accordance with national legislation or practice, their associations, organizations or groups.

5. The title of article 4 should read as follows:

Article 4

Identification, notification, consultation and advice

B. Article 9

6. The text in article 9 should read as follows:

Article 9 Information to the public

1. The Parties [of origin] shall ensure that adequate information is given to the public ~~{in the areas capable of being affected by an industrial accident arising out of a hazardous activity}~~~~{concerned}~~ according to ~~the relevant principles outlined in Article 5 of the Aarhus Convention [xxx]~~.^a This information shall:

- (a) Be transmitted through such channels as the Parties deem appropriate;
- (b) Include the elements contained in Annex VIII hereto;
- (c) Take into account matters set out in Annex V, paragraph 2, subparagraphs (1) to (9);
- (d) Without prejudice to Article 22 be easily accessible ~~and preferably also be made available online in electronic databases~~;
- (e) Be periodically reviewed and updated, as necessary.

2. In the event of an industrial accident or imminent threat thereof, the Parties shall provide without delay information to the public [**or the competent authorities of potentially affected countries**] ~~{in the areas capable of being affected}~~~~{concerned}~~, [including in affected Parties,] which enables the public to take measures to prevent or mitigate harm arising from the threat.

Article 9 bis Public consultation and participation in decision-making

1. The Party of origin shall, in accordance with the provisions of this Convention ~~and the principles outlined in Article 6 of the Aarhus Convention [xxx]~~,^b give the public ~~{in the areas capable of being affected}~~~~{concerned}~~ an early, adequate and effective opportunity to participate in relevant procedures with the aim of making known its views and concerns on prevention and preparedness measures.

2. Parties shall ensure consultation and participation as outlined in paragraph 1 at least in decision-making procedures concerning:

- (a) **The development or significant the modifications** of measures taken for the prevention of industrial accidents to reduce the risk of industrial accidents in accordance with Article 6;
- (b) Siting, in accordance with Article 7, including decisions on significant modification to existing hazardous activities;
- (c) The development or significant modification of off-site contingency plans referred to in Article 8, **whenever possible and appropriate**;

and shall ensure that the opportunity given to the public of the affected Party is equivalent to that given to the public of the Party of origin.

^a It was agreed here to include the relevant and significant principles of article 5 of the Aarhus Convention identified by the small group of legal experts. Text to come.

^b It was agreed here to include the relevant and significant principles of article 6 of the Aarhus Convention identified by the small group of legal experts. Text to come.

3. During the consultation, Parties shall provide at least the information outlined in article 9,~~(4)~~ in accordance with the principles outlined in Article 9 [xxx].^c

Article 9 ter
Access to justice

...

3. The Parties shall, in accordance with their legal systems and, if desired, on a reciprocal basis provide the public ~~concerned~~ ~~{being or capable of being adversely affected by the transboundary effects of an industrial accident}~~ in the territory of a Party, with access to, and treatment in the relevant administrative and judicial proceedings, including the possibilities of starting a legal action and appealing a decision affecting their rights, equivalent to those available to persons within their own jurisdiction.

C. Article 18

7. In article 18, paragraph 1, replace “a year” with “every two years”, to read as follows:

1. The representatives of the Parties shall constitute the Conference of the Parties of this Convention and hold their meetings on a regular basis. The first meeting of the Conference of the Parties shall be convened not later than one year after the date of the entry into force of this Convention. Thereafter, a meeting of the Conference of the Parties shall be held at least once every two years or at the written request of any Party, provided that, within six months of the request being communicated to them by the secretariat, it is supported by at least one third of the Parties.

D. Article 29

8. Article 29, paragraph 2, should read as follows:

2. This Convention shall be open for accession by the States and organizations referred to in article 27 ~~{as well as by any other State that is a Member of the United Nations}~~,⁴ as well as by any other State that is a Member of the United Nations, and by regional economic integration organizations constituted by sovereign States Members of the United Nations}.

9. Insert a new paragraph 5 at the end of article 29 to read as follows:

5. Any State or organization ~~{referred to in article 27}~~ that ratifies, accepts or approves this Convention, failing an expression of a different intention by that State or organization, shall be considered:

(a) A Party to the Convention as amended by any amendment that has entered into force;

(b) To have ratified, accepted or approved any amendment to the Convention that has been adopted but has not yet entered into force.

^c Small group of legal experts to make the meaning more explicit.

E. Related articles and annexes

1. Preamble

10. The sixth preambular paragraph should read as follows:

Conscious of the role played in this respect by the United Nations Economic Commission for Europe (ECE) and recalling, inter alia, the ECE Code of Conduct on Accidental Pollution of Transboundary Inland Waters and the Convention on Environmental Impact Assessment in a Transboundary Context ~~{and its Protocol on Strategic Environmental Assessment}~~, as well as the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters],

2. Article 8

11. Article 8, paragraph 2, should read as follows:

2. The Party of origin shall ensure for hazardous activities the preparation and implementation of on-site contingency plans, including suitable measures for response and other measures to prevent and minimize transboundary effects. ~~The plans shall be drawn up in consultation with the personnel working [on the industrial site.] [on site, including long term relevant subcontracted personnel.]~~ The Party of origin shall provide to the other Parties concerned the elements it has for the elaboration of contingency plans.

12. Article 8, paragraph 3, should read as follows:

3. Each Party shall ensure for hazardous activities the preparation and implementation of off-site contingency plans covering measures to be taken within its territory to prevent and minimize transboundary effects. In preparing these plans, ~~opportunities for the public shall be provided [in accordance with article 9 bis]~~ and account shall be taken of the conclusions of analysis and evaluation, in particular the matters set out in annex V, paragraph 2, subparagraphs (1) to (5). Parties concerned shall endeavour to make such plans compatible. Where appropriate, joint off-site contingency plans shall be drawn up in order to facilitate the adoption of adequate response measures.

3. Annex VIII

13. Annex VIII, paragraphs 5, 6, 7 and 9, should read as follows:

5. The general information relating to the nature of an industrial accident that could possibly occur in the hazardous activity, including its potential effects on the population and the environment and ~~control~~ measures to address the industrial accident;

6. Adequate information on how the **affected population**~~public concerned~~ will be warned and kept informed in the event of an industrial accident;

7. Adequate information on the actions the **affected population**~~public concerned~~ should take and on the behaviour they should adopt in the event of an industrial accident;

...

9. General information on the emergency services' off-site contingency plan, drawn up to cope with any off-site effects, including the transboundary effects of an

industrial accident. This should include advice to cooperate with any instructions or requests from the emergency services ~~at the time of the accident;~~
