

ECONOMIC COMMISSION FOR EUROPE

**MEETING OF THE PARTIES TO THE
CONVENTION ON THE PROTECTION
AND USE OF TRANSBOUNDARY
WATERCOURSES AND
INTERNATIONAL LAKES**

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

**Intergovernmental Working Group
on Civil Liability**

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Working paper*
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CHOICE OF LAW

(Submitted by the delegation of the Netherlands)

1. According to draft article 3(2) of the 'draft legally binding instrument on civil liability for transboundary damage caused by hazardous activities, within the scope of both conventions', the instrument will only apply to 'transboundary damage'. The instrument will provide for a minimum level of protection for foreign victims and this may be higher than the level of protection currently provided for in particular states.
2. If, however, the current level of protection of victims in a particular state is higher than the minimum level provided for in the proposed instrument, the application of the proposed instrument will result in less protection of foreign victims than they can currently avail themselves of. This may, furthermore, create a situation where domestic victims can avail themselves of a higher level of protection than foreign victims. Hence, the proposed instrument would result in the discriminatory treatment of domestic and foreign victims.
3. To remedy such undesirable effects of the proposed instrument, it is proposed to confer on victims the right of choice of applicable law in addition to the right of choice of forum (see already draft article 13).

* This document has not been formally edited.

4. To confer on victims the right of choice of applicable law, it is proposed to amend draft article 15 as follows:

“1. Subject to paragraph 2, all matters of substance or procedure regarding claims before the competent court which are not specifically regulated in the Protocol shall be governed by the law of that court, including any rules of such law relating to conflict of laws.

2. At the request of the person who has suffered the damage, all matters of substance and procedure regarding claims before the competent court shall be governed by the law of the Party where either:

- (a) The damage was suffered; or
- (b) The industrial accident has occurred; or
- (c) The defendant has his or her habitual residence or principal place of business.”

5. If the second paragraph of draft article 16 is retained, it will have to be amended as follows to align it with the proposed text of draft article 15:

“No claims for compensation for damage based on the strict liability under article 4 or the law of a Party referred to in article 15(2) shall be made otherwise than in accordance with this Protocol”.