

**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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**PROPOSAL FOR A PROVISION ON CONTRIBUTORY FAULT**

Submitted by the delegation of Denmark

Article 4 of the draft Protocol includes a number of exemptions from strict liability. Thus, paragraph 2 (d) states that no liability shall attach to the operator if the damage was "Wholly the result of the wrongful intentional conduct of a third party, including the person who have suffered the damage".

However, this provision does not cover the case where the damage was partly the result of an act of the person who suffered damage. Even if the damage was mainly caused by the person who suffered damage, the operator is, according to the current provisions of the draft Protocol, obliged to pay the full amount of compensation.

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\* This document has not been formally edited.

Therefore, a provision on contributory fault along the lines of the formulation below should be inserted, for example, as article 5bis:

"Compensation may be reduced or disallowed if the person who suffered damage, or a person for whom he is responsible under the domestic law, by his own fault, has caused or contributed to the damage having regard to all circumstances"

The above formulation is copied from article 9 of the Basel Protocol. A similar formulation is also found in article 9 of the Lugano Convention.