

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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REC proposal for "package" solution to articles 3, 8 and 15

At the end of the fifth meeting of the Working Group, the delegation of REC circulated a conference room paper, which is reproduced below as a working paper for the sixth meeting.

I. REPLACE Article 3, para. 2 with:

"The Protocol shall only apply to claims brought by claimants that have suffered damage outside the Party where the industrial accident has occurred."

II. Article 8, para 3:

1. DELETE the language in brackets in the first sentence.
2. REPLACE the second bracketed sentence with two alternatives, with the following new second sentence:

"Claims for damage suffered outside the Party where the industrial accident has occurred shall receive treatment no less favorable than claims for damage suffered in the Party where the industrial accident has occurred under the law applicable by the courts of that Party."

III. Article 15

DELETE paragraph 2.

EXPLANATORY NOTE

The proposal attempts to achieve three goals:

1. Defines the scope of the instrument to cover only "outside" claims (i.e., those of a transboundary character).
2. Ensures the equivalent treatment of claims whether brought by "outsiders" or "insiders," and regardless of the forum.
3. Eliminates the distinction between whether a victim is an "outsider" based in another Party or in a non-Party (see "Further Explanatory Note").

FURTHER EXPLANATORY NOTE

If there is still no agreement on point 3 above, it would be possible to proceed with the other elements of the compromise, by reintroducing the "party-specific" language in Article 3, para. 2 and Article 8, para. 3, first sentence. However, the REC feels strongly that distinguishing between Party and non-Party victims will result in a protocol that is impossible to apply in practice, and that sends the wrong signal about its purpose. The counter-argument has been raised that this protocol should avoid the problems of Lugano by creating an incentive for countries to join and that this is the mechanism for doing so (for "downstream" countries at least). However the argument is also made that upstream countries will join the regime for reasons of goodwill.

The REC feels that the way to ensure widespread acceptance of the Protocol is to ensure that the final text is finely balanced, offering benefits to both downstream and upstream countries, as well as all involved interest groups and the potential victims of industrial accidents, and that the final decision will be based on the political will of states to finally address a longstanding and recurring problem.