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Transboundary Effects of Industrial Accidents

Working Group on the Development of the Convention

Third meeting

Geneva, 3 and 4 September 2013
Items 2 and 3 of the provisional agenda

Amendment of annex I of the Convention

Amendment of the Convention

Background paper on possible amendments to the Convention

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 Convention to bring it into line with the United Nations Globally Harmonized System of Classification and Labelling of Chemicals (ST/SG/AC.10/30/Rev.4) and to maintain consistency with the corresponding European Union (EU) legislation (i.e., the Seveso III Directive).¹

The Conference of the Parties also requested the Working Group to evaluate the possible amendment of the Convention to address a number of other provisions and issues (ECE/CP.TEIA/24, para. 66). It was anticipated that the Conference of the Parties would then prioritize issues at its eighth meeting, in autumn 2014, with a view to adopting an amendment at its ninth meeting in autumn 2016.

¹ 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.

The present background document provides the Working Group with the necessary information as requested by the Conference of the Parties (ibid, para. 67 (a)).

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Introduction

1. Following the decision of the Conference of the Parties to the Convention on the Transboundary Effects of Industrial Accidents (Industrial Accidents Convention) at its seventh session (ECE/CP.TEIA/24, para. 67 (a)), the Convention secretariat prepared the present detailed background paper for submission to the third meeting of the Working Group on the Development of the Convention (Working Group on Development). It contains a proposed revision of annex I to the Convention as well as an evaluation of other possible amendments.

2. The Bureau decided at its meeting in January 2013 that two small groups should be established in order to assist the Working Group: one to draft a revised annex I; the other to evaluate other possible amendments. The results of the work of the two groups are reflected in this document to facilitate the Working Group's discussion.

3. Since the members of the Working Group have expressed diverging opinions on some texts of the draft detailed background paper, in some places different options have been proposed.

I. Revision of annex I

4. The majority of the members of the Working Group expressed the opinion that annex I to the Convention should be harmonized to the maximum possible extent with annex I of the European Union (EU) Seveso III Directive,² including Part II (named substances). The proposed revision of annex I is attached to this document.

II. Evaluation of other possible amendments to the Convention

5. This part identifies possible amendments, their purpose and implications in terms of implementation.

A. Revised and additional definitions (art. 1)

6. In the light of the practical application of the Convention, and in view of the definitions included in other United Nations Economic Commission for Europe (ECE) multilateral environmental agreements (MEAs) and EU legislation, a number of definitions could be amended or added. These changes may require amendments to national legislation, but not in all cases (e.g., the definition of the public could be aligned with a more widely used definition). These changes should not entail any costs besides those of enacting an amendment to the Convention to address these amended or added provisions, and such amendments should lead to greater legal certainty for authorities, operators and the public.

7. The definition of "the public" in article 1 (j) could be revised to align it with the definitions used in other MEAs (e.g., the Convention on the Protection and Use of Transboundary Watercourses and International Lakes (Water Convention) also envisages

² 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.

introducing the same definition in its text) and in EU law, as follows: at the end of article 1 (j), after “persons” insert “and, in accordance with national legislation or practice, their associations, organizations or groups”.

B. Revised scope (art. 2)

8. In the context of the work of the Joint Ad Hoc Expert Group on Water and Industrial Accidents under the Industrial Accidents and Water Conventions, Parties to the Convention have expressed their desire to apply the principles of the Industrial Accidents Convention to tailings management facilities and/or to pipelines. There is recognition by some States that legal instruments are needed in these areas, with substantial safety benefits. Members of the Working Group differ, however, on whether to include pipelines within the scope of the Convention; therefore two options are proposed (para. 11 below).

9. It is the understanding of many Parties that the Convention already applies to tailings management facilities. The revision of the scope to make this explicit should not entail any costs besides those of enacting a wider-ranging amendment, and should lead to greater legal certainty for authorities, operators and the public.

10. With respect to pipelines, examples of costs entailed might include, depending on the legal regime decided upon:

- (a) For authorities:
 - (i) Drawing up and implementing external emergency plans with measures to be taken in the vicinity of pipelines;
 - (ii) Setting up of a system of inspections or other control measures to ensure that pipeline operators meet requirements;
 - (iii) Ensuring that external and internal emergency plans are reviewed, tested and, where necessary, revised and updated at suitable intervals;
 - (iv) Providing the appropriate regulatory framework needed to control activities carried out by third parties in the vicinity of pipelines, including ensuring awareness of their responsibilities;
 - (v) Keeping an up-to-date record of the geographic position of pipelines;
 - (vi) Establishing a system for identifying the pipelines in the scope of the Convention (art. 4) and defining the framework for the demonstration of their safe performance (art. 6, para. 2, and annex V);
- (b) For operators:
 - (i) Designing, constructing and operating pipelines that meet, at a minimum, the recognized national and international codes, standards and guidelines and, where appropriate, internationally accepted company specifications;
 - (ii) Giving consideration to various aspects that could affect the safety of a pipeline, such as design and stress factors, quality of materials, wall thickness, depth of burial, external impact protection, corrosion, markings, route selection and monitoring;
 - (iii) Undertaking hazard/risk assessments for the purpose of article 4, as well as article 6, paragraph 2, and annex V, in order to choose among different options and to assess unusual circumstances;

- (iv) Drawing up and properly implementing a document establishing a pipeline management system;
- (v) Drawing up and implementing internal emergency plans and reviewing, testing, revising and updating them at suitable intervals.

11. The scope in article 2 might be revised to include tailings management facilities and/or pipelines, as follows:

(a) *Option A*: In article 2, paragraph 2 (c), after “with the exception of” insert “tailings management facilities that are classified as hazardous activities and” and, at the end of paragraph 2 (d), insert “(iii) pipelines;”;

(b) *Option B*: In article 2, paragraph 2 (c), after “with the exception of” insert “tailings management facilities that are classified as hazardous activities and”.

C. Provisions on land-use planning (art. 7)

12. The November 2010 joint seminar on land-use planning around hazardous industrial sites, held under the Convention and the ECE Committee on Housing and Land Management, highlighted the need to address industrial safety in land-use planning. This need has been addressed in the Seveso III Directive (art. 13 and, to a lesser degree, art. 14). Parties might consider taking a similar approach under the Convention, noting that EU member States evaluated such changes as worthwhile.

13. It is recommended that a legal expert on land-use planning be contracted to ensure consistency between the Industrial Accidents Convention and related international instruments — for example, the ECE Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention) and its Protocol on Strategic Environmental Assessment (Protocol on SEA). An approach that might be employed would be to insert new paragraphs to article 7 of the Convention, along the following lines:

2. Parties shall ensure that their land-use or other relevant policies and the procedures for implementing those policies take account of the need, in the long term:

(a) To maintain appropriate safety distances between hazardous activities and residential areas, buildings and areas of public use, recreational areas and, as far as possible, major transport routes;

(b) To protect areas of particular natural sensitivity or interest in the vicinity of hazardous activities, where appropriate through adequate safety distances or other relevant measures;

(c) In the case of existing hazardous activities, to take additional technical measures in accordance with article 3, paragraph 3, so as not to increase the risks to human health and the environment.

3. Parties shall ensure that all competent authorities and planning authorities responsible for decisions in this area set up appropriate consultation procedures to facilitate implementation of the policies established under paragraph 1 of this article. The procedures shall be designed to ensure that operators provide sufficient information on the risks arising from the hazardous activity and that technical advice on those risks is available, either on a case-by-case or on a generic basis, when decisions are taken.

D. Strengthened public participation (art. 9)

14. Most Parties to the Industrial Accidents Convention are also Party to the ECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention). The latter treaty's obligations to supply information to the public and to allow public participation in decision-making relating to the transboundary effects of industrial accidents might also be reflected in the Industrial Accidents Convention. A similar approach has been taken with the Seveso III Directive (arts. 13 and 14).

15. Strengthened rights for the public, in terms of information, public participation in decision-making and access to justice, in line with Aarhus Convention, require policy decisions and more complex development of legal texts. The EU member States evaluated such changes as worthwhile when amending the Seveso Directive. The following amendment to annex VIII, on information to the public pursuant to article 9, paragraph 1, could be employed:

(a) At the end of paragraph 3, insert "in simple terms";

(b) At the end of paragraph 5, insert "and control measures to address the industrial accident";

(c) At the end of paragraph 9, insert ". This should include advice to cooperate with any instructions or requests from the emergency services at the time of an accident".

16. In addition, to provide for more comprehensive public participation in relevant decision-making, further amendments would be necessary. It is recommended that a legal expert on public participation be contracted to ensure the consistency of the Industrial Accidents Convention with the Aarhus and Espoo Conventions, the Protocol on SEA and other relevant legislation, if applicable.

E. Revised scope of mutual assistance (art. 12)

17. The provisions on mutual assistance set out in article 12 and annex X might be considered of value for the provision of assistance even when no transboundary effect is possible; delays in deploying assistance sometimes occur pending resolution of issues such as conditions for entry, transit and liability, as covered by annex X. The provisions might even be considered of value in the event of other environmental or humanitarian emergencies, besides industrial accidents, where rapid agreement is also needed for the deployment of assistance.

F. Clarified frequency of meetings (art. 18, para. 1)

18. The Conference of the Parties has met every two years, whereas the Convention requires annual meetings, which Parties have considered unnecessary and onerous. The relevant provision could be amended in line with the Convention's Protocol, which allows the governing body to decide when to meet, or to reflect the current practice. The current practice of meeting every two years might, however, be revised by the Conference of the Parties, so the current practice might not form a suitable basis for the amendment. This change should not entail any costs besides those of enacting a wider-ranging amendment. The following amendments could be employed:

(a) Article 18, paragraph 1, replace "at least once a year" by "at dates to be determined by the Conference of the Parties";

(b) Article 26, paragraph 2, delete "annual".

G. Clarified or strengthened reporting obligations (art. 23)

19. Most Parties respect their obligations under article 23, but the obligation to report could be made clearer. Most Parties have obligations under the Aarhus Convention or related EU legislation to provide access to environmental information; these obligations, in the field of the transboundary effects of industrial accidents, might in part be satisfied by an explicit requirement in the Industrial Accidents Convention.

20. These changes should not entail any costs besides those of enacting a wider-ranging amendment and should lead to greater legal certainty and better governance. The following amendment could be employed:

(a) *Option A:* In article 23, after “Convention” insert “, at intervals and in a format determined by the Conference of the Parties” and, at the end of the article, insert a sentence reading “Reports on implementation shall be made available to the public, subject to the requirements of article 22.”;

(b) *Option B:* In article 23, at the end of the article, insert a sentence reading “Reports on implementation shall be made available to the public, subject to the requirements of article 22.”

21. The Conference of the Parties also requested the Working Group on Development to consider possible remedies for non-compliance with the reporting requirements. It is clear that there is an obligation to report and that a failure to report in the specified interval would constitute non-compliance. As to the remedies for non-compliance, these would best be addressed within an overall compliance mechanism (see next section), rather than linking them to one particular provision. This has been the approach taken under many other MEAs.

22. The Conference of the Parties at its first meeting decided that reporting past industrial accidents with transboundary effects would be mandatory for all Parties to the Convention. At the same time, a structure for the report profile was agreed (ECE/CP.TEIA/2, annex V, appendix III). This requirement might be integrated into the text of the Convention, with or without a detailed specification of the reporting. This could be done by inserting a new article after article 12, as follows:

Article 12 *bis*

Reporting industrial accidents

The Party of origin shall report on industrial accidents with transboundary effects within a reasonable time frame, subject to the requirements of article 22. The Conference of the Parties shall establish the necessary arrangements for reporting and for the sharing of lessons learned.

H. Provisions on the review of compliance (art. 23)

23. Unlike some other ECE MEAs, the Convention lacks a compliance procedure to review and bring about compliance with its provisions. The introduction of a compliance mechanism should not entail any costs domestically besides those of enacting a wider-ranging amendment. However, there are some costs associated with the operation of a compliance procedure at the international level, though such changes have been evaluated as worthwhile under the other ECE agreements, most recently for the Water Convention (November 2012). Article 23 could be amended to this purpose, by inserting new paragraphs at the end reading:

2. The Parties shall review the compliance of the Parties with the provisions of this Convention on the basis of, but not limited to, the reports referred to in paragraph 1 of this article. The Conference of the Parties [at their ... meeting] shall establish multilateral arrangements of a non-confrontational, non-judicial and consultative nature for reviewing compliance. These arrangements shall allow for appropriate public involvement.

3. The compliance procedure shall be available for application to any protocol adopted under this Convention.

I. Derogation (art. 26)

24. The Bureau, at its January 2013 meeting, suggested that the Working Group also consider the possible need for a derogation provision in the Convention. This suggestion was made in the light of an EU ad hoc expert meeting, held on 1 February 2013, in view of developing methodology to allow a timely and consistent implementation of article 4 of the Seveso III Directive, with regard to the assessment of potential requests to exclude a particular dangerous substance from the scope of the Directive (derogation).

25. A similar derogation mechanism to that set out in article 4 of the Seveso III Directive might be achieved through additions to article 26 of the Convention, possibly supported by a new annex providing the details. An alternative might be for the Conference of the Parties to adopt guidance on derogation and then to rely on the existing wording of annex I. The European Commission could be invited to advise on the costs and benefits of the EU approach. However, the members of the Working Group think that at this stage of the implementation of both the Convention and the Seveso III Directive it is too early to propose such an amendment.

J. Accession by other Member States of the United Nations (art. 29)

26. In the preamble to the Convention, Parties take into account the fact that the effects of industrial accidents may make themselves felt across borders, and require cooperation among States. To date, the Convention has only allowed this principle to be applied between ECE member States, whereas the effects of industrial accidents may also be felt in States neighbouring the region and beyond.

27. Opening the Convention to all Member States of the United Nations should lead to other countries benefitting from the Convention's provisions and to mutual benefits for those countries on the periphery of the ECE region. The change should not entail any substantial costs domestically besides those of enacting a wider-ranging amendment. If, however, the Conference of the Parties decides to invite other such States to benefit from the Assistance Programme, or to provide financial support to participants, this would likely entail costs for ECE member States. There might also be costs associated with, for example, the need for larger meeting rooms and the translation of documents, the processing of national implementation reports and the provision of interpretation in the official languages of the United Nations not currently included: Arabic, Chinese and Spanish. However, it is likely that new donor countries would also be interested in joining the Convention, perhaps offsetting some of these additional costs.

28. In 2003, Switzerland proposed an amendment to the Water Convention to allow all United Nations Member States to join that treaty. In doing so, Switzerland was guided by both legal considerations and the effects on the environment and promotion of peace (see box 1). The amendment was adopted in 2003 and entered into force on 6 February 2013.

29. The amendment to the Water Convention used wording also employed in an amendment to the Espoo Convention and in the original text of several other treaties, including the Protocol on Civil Liability and Compensation for Damage Caused by the Transboundary Effects of Industrial Accidents on Transboundary Waters (Protocol on Civil Liability) — a protocol to the Industrial Accidents and Water Conventions — which provides for approval by the governing body of accession by a State not a member of ECE. In a further refinement, the Meeting of the Parties to the Water Convention agreed in November 2012 to waive case-by-case approval by the governing body, deciding that any future request for accession by a Member of the United Nations not a member of ECE would be welcome and considered as approved. The Water Convention Bureau saw the need for approval as unfair, as no equivalent requirement exists for ECE member States, and unjustified (see box 2).

Box 1

Rationale for the opening up of the Water Convention

Switzerland was guided by two general considerations in proposing an amendment in order to enable States not members of ECE to accede to the Water Convention:

(a) *Legal aspects:* Switzerland wishes to harmonize the provisions regarding accession to ECE MEAs in order to promote consistency; the more so because the Water Convention is the parent Convention of the Protocol on Civil Liability, which already contains such a provision. Even if countries bordering the region are members of other United Nations regional commissions, only ECE has such legally binding environmental instruments;

(b) *Effects on the environment and promotion of peace:* The majority of ECE legally binding environmental instruments are of a transboundary nature. However, ECE countries share their environment with countries outside the region. Promoting peace through transboundary cooperation in the case of shared natural resources is also crucial. Within the framework of environmental protection, this would also make it possible to implement one of the objectives of the plan of implementation of the Johannesburg World Summit on Sustainable Development (elaboration by 2005 of plans for integrated water management on the basis of river basins). An extension of the countries able to accede to the Convention would make it possible to build capacities in other States with a view to harmonizing environmental law.

Source: adapted from MP.WAT/2003/4, annex, para. 3.

Box 2

Rationale for considering any future requests for accession to the Water Convention as approved

Deciding to consider any future requests for accession as approved is consistent with the fundamental cooperative character of the Convention, which speaks against a differentiation of the accession procedure for ECE and non-ECE member States. It also takes into account the due-diligence nature of its substantive obligations. The latter normative feature of the Convention, in combination with the widespread practice by Parties, militates in favour of such an approach in a twofold manner. On the one hand, the flexibly progressive nature of the substantive obligations of the Convention, together with its institutional mechanisms of support and assistance, have proven to act as an incentive and to be an effective catalyst for rapid increases in the compliance capacity of States which, at the time of their ratification, or accession, would seem to leave [room for improvement]. On the other hand, practice has also shown that the same normative flexibility inherent in the due-diligence nature of the substantive obligations of the Convention renders it extremely difficult to set absolute and, especially, objective parameters against which the Meeting of the Parties could undertake a procedure of approval of requests for accession in each specific case.

Source: ECE/MP.WAT/2012/L.6, para. 17.

30. The amendments to the Water and Espoo Conventions included a further condition that the governing body would not consider or approve any request for accession by a State not member of ECE until the amendment had entered into force for all the States and organizations that were Parties to that particular Convention on the date of adoption of the amendment. No such condition would need to be needed if it was agreed not to make approval by the governing body a requirement. In addition, this condition has proven problematic under the Water and Espoo Conventions because of the need for all Parties at the time of adoption of the amendment, without exception, to ratify the amendment before the governing body can consider approval of requests for accession.

31. Given these considerations, and to avoid such complexities, article 29 of the Convention could be simply modified by inserting a new paragraph following paragraph 2, reading:

3. Any other State, not referred to in paragraph 2, that is a Member of the United Nations may accede to the Convention.

K. Application of amendments to new Parties (art. 29)

32. To promote its even-handed application, States acceding to the Convention once an amendment has entered into force should also automatically accede to the amendment. This change should not entail any costs besides those of enacting a wider-ranging amendment, and would lead to greater legal certainty. To effect this amendment, at the end of article 29 a new paragraph could be inserted reading:

Any State or organization that ratifies, accepts or approves this Convention shall be deemed simultaneously to ratify, accept or approve the amendment to the Convention adopted prior to its ratification, acceptance, or approval at the (...) meeting of the Conference of the Parties.

L. Governance structure under the Convention

33. The Working Group was also mandated to review the structure of subsidiary bodies to the Conference of the Parties, their mandates and rules of procedure, and to make proposals to the Conference of the Parties at its eighth meeting (ECE/CP.TEIA/24, para. 66 (k)). The Industrial Accidents Convention is unusual in not having a standing subsidiary body that is open-ended (i.e., where all Parties are represented). The Working Group on Development is open-ended, but is only convened when the Conference of the Parties wishes an amendment to be drafted. The Working Group on Implementation is a closed group.

34. Besides the Bureau of the Conference of the Parties, the current bodies are as follows:

(a) The Working Group on Implementation has 10 members elected by the Conference of the Parties and is tasked with preparing the periodic review of implementation and overseeing the implementation of the Assistance Programme. This body must meet at least once in each period between the meetings of the Conference of the Parties and usually meets two or three times each year;

(b) The Working Group on Development has an open-ended composition and is open to representatives of all Parties. It is tasked with reviewing the text of the Convention, in particular annex I, and with the drafting amendments. It has met twice, in 2005 and in 2006;

(c) The Joint Ad Hoc Expert Group on Water and Industrial Accidents was established by the Parties to the Industrial Accidents and Water Conventions as a platform for cooperation on issues related to the prevention of accidental pollution of transboundary waters. The Expert Group has met once per year, on average, and typically comprises experts from about 10 countries.

35. The points of contact for notification and mutual assistance have come together every two or three years since 2003 to assess the effectiveness of the ECE Industrial Accident Notification System, in which they are registered, and to share experiences and information. The points of contact are organizations — typically crisis and emergency centres — that are therefore represented by experts from those organizations. This is not a subsidiary body.

36. In addition, short-lived task forces and small groups have been established to undertake specific tasks, generally as the result of decisions taken by the Bureau and the subsidiary bodies.

37. Under the other ECE MEAs, the following open-ended subsidiary bodies have been established:

(a) Under the Convention on Long-range Transboundary Air Pollution's Executive Body, which meets annually, there are three subsidiary bodies:

(i) The Working Group on Effects, which normally meets annually with about 20 Parties represented, among other participants;

(ii) The Working Group on Strategies and Review, which normally meets annually with about 35 Parties represented, among other participants;

(iii) The Steering Body for the Protocol on Long-term Financing of the Cooperative Programme for Monitoring and Evaluation of the Long-range Transmission of Air Pollutants in Europe, which normally meets annually with about 30 Parties represented, among other participants;

(b) Under the Espoo Convention and its Protocol on SEA, the governing bodies of which meet jointly every three years, there is one subsidiary: a working group that meets about three times between meetings of the governing bodies (i.e., annually on average), with between 30 and 35 States represented, among other participants;

(c) Under the Water Convention, there are two such bodies, plus one under the Convention's Protocol on Water and Health:

(i) The Working Group on Integrated Water Resources Management, which normally meets annually, with between 25 and 30 States represented, among other participants;

(ii) The Working Group on Monitoring and Assessment, which normally meets annually, with about 20 States represented, but which has begun to hold joint meetings with the Working Group on Integrated Water Resources Management;

(iii) The Working Group on Water and Health, which meets annually with about 25 States represented;

(d) Under the Aarhus Convention, the governing body of which meets every three years, there is one such body, plus one for the Convention's Protocol on Pollutant Release and Transfer Registers:

(i) The Working Group of the Parties to the Convention, which meets about once annually with some 35 States represented;

(ii) The Working Group of the Parties to the Protocol, which has met annually since 2011 with about 20 Parties represented.

38. The above list reveals that, except for the Air Convention, there is a trend towards a single open-ended working group per treaty (and the Espoo Convention and its Protocol even share a working group), with the body meeting annually.

39. For the Industrial Accidents Convention, the following scenario might be considered:

(a) The Conference of the Parties continues to meet every two years;

(b) A new open-ended working group ("on industrial accidents" or "of the Parties") meets annually. Taking the Working Group of the Parties to the Aarhus Convention as a model, this new working group might be established to:

(i) Oversee the implementation of the workplan and to prepare the meetings of the Conference of the Parties;

(ii) Oversee and direct the activities of subsidiary bodies established by the Conference of the Parties;

(iii) Keep under review the need for amending the Convention;

(iv) Make such proposals and recommendations to the Conference of the Parties as it considers necessary for the achievement of the purposes of the Convention;

(v) Undertake any other duties as requested by the Conference of the Parties;

(c) The Working Group on Implementation continues to meet and to maintain its membership of 10, but would no longer meet jointly with the Bureau;

(d) The Working Group on Development could continue to be convened, as necessary, or its tasks could well be taken on by the new working group (as per item (b) (iii) above) with a small group established under it for the purpose of drafting amendments;

(e) The Bureau continues, incorporating the chairs of the new working group and the existing Working Group(s), and it might be reduced in size to a maximum of eight members as it would no longer have the primary responsibility for overseeing implementation of the workplan. The Bureau would meet less frequently, but would meet back to back with meetings of the new working group. It would have an organizational, consensus-building and monitoring role, rather than one of implementation and strategy;

(f) The Joint Ad Hoc Expert Group on Water and Industrial Accidents could continue to meet as at present, and the points of contact could come together as necessary.

40. These changes should not entail any costs domestically. However, there might be additional costs associated with having an open-ended subsidiary body, including the costs of individual experts participating and of providing financial support to eligible experts, perhaps including representatives of non-governmental organizations.

41. No amendment to the Convention should be necessary; the Conference of the Parties could itself decide on changes to the governance structure. The benefit could be more participatory and transparent oversight of the implementation of the Convention's workplan, leading to higher rate of implementation of the workplan activities. The drawbacks are the addition of another layer of governance, thus creating a risk of having both overlaps in the responsibilities of the governing bodies as well as an additional financial burden for the Parties and the secretariat.

42. It was also suggested at the seventh meeting of the Conference of the Parties that its rules of procedure should be reviewed. Included in the review of the 2005 reform of ECE (E/ECE/1468, annex III) are guidelines on procedures and practices for ECE bodies. While these guidelines do not apply to the Conference of the Parties, as it is not a subsidiary body of ECE, they may be adapted to provide sound guidance for the Convention's subsidiary bodies, including:

(a) It should be ensured that the work is carried out in a way that is member-driven, participatory, consensus-oriented, transparent, responsive, effective, efficient, results-oriented and accountable;

(b) The existing practice of inviting, without a right to vote, other relevant stakeholders such as international organizations, private sector representatives, members of academia or representatives of civil society should be continued;

(c) Candidates for the bureau should be nominated by Parties based on the person's expertise, professionalism and expected support from the membership. The list of candidates for election should be made available to all Parties well in advance of the elections and preferably agreed upon;

(d) Bureau members should be elected by the respective body according to the relevant rules of procedure and following consultations among Parties. Elected bureau members should serve collectively in the interest of all member States. In the absence of rules of procedure for such body, the composition of the bureau should take into account expertise, with due regard to as wide a geographical representation as possible; the term of office should be up to two years. Bureau members including the Chair can be re-elected for an additional term;

(e) The bureau should be free to invite major stakeholders active in the area of the Convention to attend the meetings of the bureau and contribute to its work, without the right to vote;

(f) The key functions of the bureau should be:

(i) To monitor and ensure implementation of the workplan and of past decisions and recommendations during intersessional periods;

(ii) To ensure effective and transparent preparations of forthcoming sessions and, for that purpose, to collectively reach out to and consult with all Parties, and other stakeholders, as appropriate;

(iii) To ensure effective conduct of business during the sessions in full compliance with their respective rules of procedure, and to facilitate reaching agreement on decisions and recommendations;

(g) In addition to these tasks, the bureau should help the consensus-building process by means of transparent and inclusive consultations on draft outcomes, including draft decisions, conclusions and recommendations that might be proposed by representatives of Parties;

(h) The bureau does not adopt the conclusions, recommendations, decisions and meeting reports of the subsidiary bodies;

(i) In its activities, the bureau should coordinate with the secretariat on all relevant issues;

(j) Draft conclusions, recommendations and decisions are formally adopted by the body at the end of the session. Drafts should be projected on a screen, where possible, and read out by the Chair.

43. The Working Group might wish to consider proposing that some or all of the above elements, or other elements in the guidelines on procedures and practices for ECE bodies, be adopted by the Conference of the Parties.

III. Possible way forward

44. At its third meeting, the Working Group should also agree on a way forward for the revision of annex I to the Convention and the evaluation of other possible amendments to the Convention.

45. Regarding annex I, the Working Group might wish to discuss, among others:

(a) Whether or not to align the Convention one to one with the Seveso Directive;

(b) How to organize and split up the work of the Working Group until its next meeting in April 2014.

46. Regarding the evaluation of other possible amendments to the Convention, the Working Group might wish to discuss, among others, the following:

(a) Whether or not bigger amendments should be undertaken (e.g., opening up the Convention to all United Nations Member States, introducing an open-ended Working Group of the Parties, extending the scope of the Convention). Should bigger amendments be considered necessary, the Working Group might also wish to implement a couple of minor changes at the same time (e.g., correcting the frequency of meetings);

(b) If bigger amendments are to be implemented, how to organize and split up the work of the Working Group on Development until its next meeting in April 2014, including the revision of the rules of procedure;

(c) Whether or not to hire a consultant to support the work of the Working Group. The Bureau, when meeting in January 2013, expressed support for hiring a consultant to address particular legal aspects of the possible amendment of the Convention.

47. The Working Group might wish to agree on the date and venue of its next meeting, tentatively scheduled for 28 and 29 April 2014 in Geneva.

Annex

Proposed revision of annex I to the Convention

Hazardous substances for the purposes of defining hazardous activities¹

The quantities given below relate to each activity or group of activities.

Where a substance or preparation named in Part II also falls within one or more categories in Part I, the threshold quantity given in Part II shall be used.

For the identification of hazardous activities, Parties shall take into consideration the foreseeable possibility of aggravation of the hazards involved and the quantities of the hazardous substances and their proximity, whether under the charge of one or more operators.

Part I.

Categories of substances and mixtures not specifically named in Part II

<i>Category in accordance with the United Nations Globally Harmonized System (GHS) of Classification and Labelling of Chemicals</i>	<i>Threshold quantity (metric tons)</i>
1. Acute toxic, Category 1, all exposure routes ²	20
2. Acute toxic: Category 2, all exposure routes ³ Category 3, inhalation exposure route ⁴	200
3. Specific Target Organ Toxicity (STOT) — Single Exposure (SE) STOT, Category 1 ⁵	200
4. Explosive — unstable explosive or explosive, where the substance, mixture or article falls under Division 1.1, 1.2, 1.3, 1.5 [or 1.6] of Chapter 2.1.2 of the GHS criteria ^{6, 7}	50
[5. Explosive, where the substance, preparation or article falls under Division 1.4 of Chapter 2.1.2 of the GHS criteria ⁶]	200
6. Flammable gases, Category 1 or 2 ⁸	20
7. Flammable aerosols, Category 1 or 2, containing flammable gases Category 1 or 2 or flammable liquids Category 1 according to the criteria in Chapter 2.3.2 of GHS ⁹	500
8. Flammable aerosols, Category 1 or 2, not containing flammable gases Category 1 or 2 or flammable liquids Category 1 ¹⁰	50 000
9. Oxidizing gases, category 1 ¹¹	200

<i>Category in accordance with the United Nations Globally Harmonized System (GHS) of Classification and Labelling of Chemicals</i>	<i>Threshold quantity (metric tons)</i>
10. Flammable liquids: Flammable liquids, Category 1, or Flammable liquids, Category 2 or 3, maintained at a temperature above their boiling point ¹² , or Other liquids with a flash point ≤ 60 °C, maintained at a temperature above their boiling point ¹³	50
11. Flammable liquids: Flammable liquids, Category 2 or 3, where particular processing conditions, such as high pressure or high temperature, may create major-accident hazards ¹⁴ , or Other liquids with a flash point ≤ 60 °C where particular processing conditions, such as high pressure or high temperature, may create major-accident hazards	200
12. Flammable liquids, Categories 2 or 3, not covered by 10 and 11 ¹⁵	50 000
13. Self-reactive substances and mixtures and organic peroxides: Self-reactive substances and mixtures, Type A or B or Organic peroxides, Type A or B ¹⁶	50
14. Self-reactive substances and mixtures and organic peroxides: Self-reactive substances and mixtures, Type C, D, E or F or Organic peroxides, Type C, D, E, or F ¹⁷	200
15. Pyrophoric liquids and solids, Category 1	200
16. Oxidizing liquids and solids, Category 1, 2 or 3	200
17. Hazardous to the aquatic environment, Category Acute 1 or Chronic 1 ¹⁸	200
18. Hazardous to the aquatic environment, Category Chronic 2 ¹⁹	500
19. Substances and mixtures which react violently with water, such as acetyl chloride, alkali metals, titanium tetrachloride	500
20. Substances and mixtures which in contact with water emit flammable gases, Category 1 ²⁰	500
21. Substances and mixtures which in contact with water liberate toxic gas (substances and mixtures which in contact with water or damp air, evolve gases classified for acute toxicity in category 1, 2 or 3 in potentially dangerous amounts, such as aluminium phosphide, phosphorus pentasulphide)	200

Part II.

Named substances

<i>Substance</i>	<i>Threshold quantity (metric tons)</i>
1a. Ammonium nitrate ²¹	10 000
1b. Ammonium nitrate ²²	5 000
1c. Ammonium nitrate ²³	2 500
1d. Ammonium nitrate ²⁴	50
2a. Potassium nitrate ²⁵	10 000
2b. Potassium nitrate ²⁶	5 000

<i>Substance</i>	<i>Threshold quantity (metric tons)</i>
3. Arsenic pentoxide, arsenic (V) acid and/or salts	2
4. Arsenic trioxide, arsenious (III) acid and/or salts	0.1
5. Bromine	100
6. Chlorine	25
7. Nickel compounds in inhalable powder form: nickel monoxide, nickel dioxide, nickel sulphide, trinickel disulphide, dinickel trioxide	1
8. Fluorine	20
9. Formaldehyde (concentration $\geq 90\%$)	250
10. Hydrogen	50
11. Hydrogen chloride (liquefied gas)	250
12. Lead alkyls	50
13. Liquefied extremely flammable gases, Category 1 or 2 (including liquid petroleum gas) and natural gas ²⁷	200
14. Ethylene oxide	50
15. Methanol	5 000
16. 4, 4'-Methylene bis (2-chloraniline) and/or salts, in powder form	0.01
17. Methyl isocyanate	0.15
18. Oxygen	2 000
19. Toluene diisocyanate	100
20. Carbonyl dichloride (phosgene)	0.75
21. Arsine (arsenic trihydride)	1
22. Phosphine (phosphorus trihydride)	1
23. Sulphur dichloride	1
24. Sulphur trioxide	75
25. Polychlorodibenzofurans and polychlorodibenzodioxins (including tetrachlorodibenzodioxin (TCDD)), calculated in TCDD equivalent ²⁸	0.001
26. The following carcinogens or the mixtures containing the following carcinogens at concentrations above 5% by weight: 4-Aminobiphenyl and/or its salts, Benzotrichloride, Benzidine and/or salts, Bis (chloromethyl) ether, Chloromethyl methyl ether, 1,2-Dibromoethane, Diethyl sulphate, Dimethyl sulphate, Dimethylcarbamoyl chloride, 1,2-Dibromo-3-chloropropane, 1,2-Dimethylhydrazine, Dimethylnitrosamine, Hexamethylphosphorictriamide, Hydrazine, 2-Naphthylamine and/or salts, 4-Nitrodiphenyl, and 1,3 Propanesultone	2
27. Petroleum products and alternative fuels:	25 000
(a) Gasolines and naphthas;	
(b) Kerosenes (including jet fuels);	
(c) Gas oils (including diesel fuels, home heating oils and gas oil blending streams);	
(d) Heavy fuel oils;	
(e) Alternative fuels serving the same purposes and with similar properties as regards flammability and environmental hazards as the products referred to in points (a) to (d)	

<i>Substance</i>	<i>Threshold quantity (metric tons)</i>
28. Anhydrous ammonia	200
29. Boron trifluoride	20
30. Hydrogen sulphide	20
31. Piperidine	200
32. Bis(2-dimethylaminoethyl) (methyl)amin	200
33. 3-(2-Ethylhexyloxy)propylamin	200
34. Mixtures of sodium hypochlorite classified as Aquatic Acute Category 1 [H400] containing < than 5% active chlorine and not classified under any of the other hazard categories in Part 1 of annex I. ²⁹	500
35. Propylamine ³⁰	2 000
36. Tert-butyl acrylate ³⁰	500
37. 2-Methyl-3-butenenitrile ³⁰	2 000
38. Methyl acrylate ³⁰	2 000
39. 3-Methylpyridine ³⁰	2 000
40. 1-Bromo-3-chloropropane ³⁰	2 000

Notes

- ¹ Criteria according the United Nations Globally Harmonized System (GHS) of Classification and Labelling of Chemicals (ST/SG/AC.10/30/Rev.4). Parties should use the following criteria when classifying substances or preparations for the purposes of Part I of this annex, unless other legally binding criteria have been adopted in the national legislation. Mixtures and preparations shall be treated in the same way as the pure substance unless they no longer exhibit equivalent properties.
- ² According to the criteria in chapters 3.1.2 and 3.1.3 of GHS.
- ³ According to the criteria in chapters 3.1.2 and 3.1.3 of GHS.
- ⁴ Substances that fall within acute toxic Category 3 via the oral route shall fall under entry 2. Acute toxic in those cases where neither acute inhalation toxicity classification nor acute dermal toxicity classification can be derived, for example due to lack of conclusive inhalation and dermal toxicity data.
- ⁵ Substances that have produced significant toxicity in humans, or that, on the basis of evidence from studies in experimental animals can be presumed to have the potential to produce significant toxicity in humans following single exposure. Further guidance is given in figure 3.8.1. and table 3.8.1 of part 3 of GHS.
- ⁶ Explosives are classified in one of the six divisions above based on Test Series 2 to 8 in part I of the United Nations *Recommendations on the Transport of Dangerous Goods: Manual of Tests and Criteria* (Manual of Tests and Criteria). Also included in this definition are explosive or pyrotechnic substances or preparations contained in articles. In the case of articles containing explosive or pyrotechnic substances or preparations, if the quantity of the substance or preparation contained is known, that quantity shall be considered for the purposes of this Convention. If the quantity is not known, then, for the purposes of this Convention, the whole article shall be treated as explosive.
- ⁷ Testing for explosive properties of substances and mixtures is only necessary if the screening procedure according to appendix 6, part 3, of the Manual of Tests and Criteria identifies the substance or mixture as potentially having explosive properties.
- ⁸ According to the criteria in chapter 2.2.2 of GHS.
- ⁹ A flammable aerosol shall be classified in one of the two categories on the basis of its components, its chemical heat of combustion and, if applicable, the results of the foam test (for foam aerosols) and the ignition distance test and enclosed space test (for spray aerosols) in accordance with the Manual of Tests and Criteria, Part III, subsections 31.4, 31.5 and 31.6.
- ¹⁰ In order to use this entry, it must be documented that the aerosol dispenser does not contain flammable gas Category 1 or 2 nor flammable liquid Category 1.

- ¹¹ According to the criteria in chapter 2.4.2 of GHS.
- ¹² According to the criteria in chapter 2.4.2 of GHS.
- ¹³ Liquids with a flash point of $> 35^{\circ}\text{C}$ need not be classified in Category 3 if negative results have been obtained in sustained combustibility test L.2, in part III, section 32 of the Manual of Tests and Criteria. This is, however, not valid under elevated conditions such as high temperature or pressure, and therefore such liquids are included in this entry.
- ¹⁴ According to the criteria in chapter 2.4.2 of GHS.
- ¹⁵ According to the criteria in chapter 2.4.2 of GHS.
- ¹⁶ According to the criteria in chapters 2.8.2 and 2.15.2.2 of GHS.
- ¹⁷ According to the criteria in chapters 2.8.2 and 2.15.2.2 of GHS.
- ¹⁸ According to the criteria in chapter 4.1.2 of GHS.
- ¹⁹ According to the criteria in chapter 4.1.2 of GHS.
- ²⁰ According to the criteria in chapter 2.12.2 of GHS.
- ²¹ Ammonium nitrate (10,000): fertilizers capable of self-sustaining decomposition.
This applies to ammonium nitrate-based compound/composite fertilizers (compound/composite fertilizers containing ammonium nitrate with phosphate and/or potash), which are capable of self-sustaining decomposition according to the Trough Test (see Manual of Tests and Criteria, part III, subsection 38.2), and in which the nitrogen content as a result of ammonium nitrate is:
- (a) 15.75%–24.5% by weight (15.75% and 24.5% nitrogen content by weight as a result of ammonium nitrate correspond to 45% and 70% ammonium nitrate, respectively) and which either contain not $> 0.4\%$ total combustible/organic materials or fulfil the requirements of an appropriate test of resistance to detonation (e.g., 4-inch-steel-tube test);
 - (b) $\leq 15.75\%$ by weight and unrestricted combustible materials.
- ²² Ammonium nitrate (5,000): fertilizer grade.
This applies to straight ammonium nitrate-based fertilizers and to ammonium nitrate-based compound/composite fertilizers in which the nitrogen content as a result of ammonium nitrate is:
- (a) $> 24.5\%$ by weight, except for mixtures of straight ammonium nitrate-based fertilizers with dolomite, limestone and/or calcium carbonate with a purity of at least 90%;
 - (b) $> 15.75\%$ by weight for mixtures of ammonium nitrate and ammonium sulphate;
 - (c) $> 28\%$ (28% nitrogen content by weight as a result of straight ammonium nitrate corresponds to 80% ammonium nitrate) by weight for mixtures of ammonium nitrate-based fertilizers with dolomite, limestone and/or calcium carbonate with a purity of at least 90%;
 - (d) And which fulfil the requirements of an appropriate test of resistance to detonation (e.g., 4-inch-steel-tube test).
- ²³ Ammonium nitrate (2,500): technical grade.
This applies to:
- (a) Ammonium nitrate and mixtures of ammonium nitrate in which the nitrogen content as a result of ammonium nitrate is:
 - (i) 24.5%–28% by weight and which contain not $> 0.4\%$ combustible substances;
 - (ii) $> 28\%$ by weight, and which contain not $> 0.2\%$ combustible substances;
 - (b) Aqueous ammonium nitrate solutions in which the concentration of ammonium nitrate is $> 80\%$ by weight.
- ²⁴ Ammonium nitrate (50): “off-specs” material and fertilizers not fulfilling the requirements of an appropriate test of resistance to detonation (e.g., 4-inch-steel-tube test).
This applies to:
- (a) Material rejected during the manufacturing process and to ammonium nitrate and mixtures of ammonium nitrate, straight ammonium nitrate-based fertilizers and ammonium nitrate-based compound/composite fertilizers referred to in notes 12 and 13 that are being or have been returned from the final user to a manufacturer, temporary storage or reprocessing plant for reworking, recycling or treatment for safe use because they no longer comply with the specifications in notes 22 and 23;
 - (b) Fertilizers referred to in note 21 (a) and note 22 which do not fulfil the requirements of an appropriate test of resistance to detonation (e.g., 4-inch-steel-tube test).
- ²⁵ Potassium nitrate (10,000): composite potassium nitrate-based fertilizers (in prilled/granular form) which have the same properties as pure potassium nitrate.
- ²⁶ Potassium nitrate (5,000): composite potassium nitrate-based fertilizers (in crystalline form) which have the same hazardous properties as pure potassium nitrate.

²⁷ Upgraded biogas: for the purpose of the implementation of the Convention, upgraded biogas may be classified under entry 18 of Part 2 of annex I where it has been processed in accordance with applicable standards for purified and upgraded biogas ensuring a quality equivalent to that of natural gas, including the content of methane, and which has a maximum of 1% oxygen.

²⁸ Polychlorodibenzofurans and polychlorodibenzodioxins.

The quantities of polychlorodibenzofurans and polychlorodibenzodioxins are calculated using the following World Health Organization (WHO) human and mammalian toxic equivalency factors for dioxins and dioxin-like compounds (TEF) as re-evaluated in 2005:

<i>WHO 2005 TEF</i>			
2,3,7,8-TCDD	1	2,3,7,8-TCDF	0
1,2,3,7,8-PeCDD	1	2,3,4,7,8-PeCDF	0
		1,2,3,7,8-PeCDF	0
		1,2,3,6,7,8-HxCDF	0
1,2,3,4,6,7,8-HpCDD	0	2,3,4,6,7,8-HxCDF	0
OCDD	0	1,2,3,4,6,7,8-HpCDF	0
		1,2,3,4,7,8,9-HpCDF	0
		OCDF	0

Abbreviations: Hx = hexa, Hp = hepta, O = octa, P = penta, T = tetra.

Reference: Van den Berg et al, The 2005 World Health Organization Re-evaluation of Human and Mammalian Toxic Equivalency Factors for Dioxins and Dioxin-like Compounds, *Toxicological Sciences*, vol. 93, No. 2, pp. 223–241 (2006).

²⁹ Provided that the mixture in the absence of sodium hypochlorite would not be classified as aquatic acute, Category 1.

³⁰ In cases where this dangerous substance falls within the category flammable liquids or flammable gases, for the purposes of the Convention the lowest qualifying quantities shall apply.