



**Economic and Social
Council**

Distr.
GENERAL

ECE/MP.WAT/WG.4/2006/5
EUR/06/5059736/5

29 May 2006

ENGLISH ONLY

ECONOMIC COMMISSION FOR EUROPE

**WORLD HEALTH ORGANIZATION
REGIONAL OFFICE FOR EUROPE**

Meeting of the Parties to the Convention on the
Protection and Use of Transboundary Watercourses
and International Lakes

and

Meeting of the Signatories to the Protocol on Water
and Health to the Convention

Working Group on Water and Health

Sixth meeting
Geneva, 31 May – 2 June 2006
Item 4 (d) of the provisional agenda

**OPENING THE PROTOCOL FOR RATIFICATION, ACCEPTANCE, APPROVAL OR
ACCESSION TO COUNTRIES OUTSIDE THE UNECE REGION**

Note by the secretariat *

1. At its fifth meeting the Working Group discussed the advisability to amend the Protocol at the first meeting of the Parties to open it to countries outside the UNECE region. It requested the secretariat to prepare a paper outlining pros and cons, together with a draft text of such amendment.

* This document was submitted on the above date owing to a lack of human resources in the secretariat. This document has not been formally edited.

2. To this aim, the Working Group was invited to submit to the secretariat relevant information, in particular national preparatory documents prepared by Parties for the ratification process, papers on the comparative advantages of the Protocol, or explanations on what fostered/hampered the ratification process. Five countries (Armenia, Finland, Norway and Switzerland) provided information on these aspects.
3. The present document has been prepared by the UNECE secretariat. Annex I contains background information on the amendment to allow non-UNECE countries to become party to the Protocol, including information on what has been done under other UNECE Conventions and Protocols. It partly relies on the information provided by Parties, for the rest it reflects the opinion of the secretariat.
4. Annex II contains a draft decision by the Meeting of the Parties including the text of the amendment, based on Decision III/1 adopted by the Meeting of the Parties to the Water Convention in 2003.
5. The Working Group may wish to discuss and agree on the possibilities for amending the Protocol and on the possible text for a proposed amendment. It may also wish to invite a Party to submit the proposal in writing to the secretariat so that the secretariat can circulate it to all Parties at least 90 days before the first meeting of the Parties, in accordance with article 18.

Annex I

**BACKGROUND INFORMATION ON AMENDING THE PROTOCOL TO ALLOW
ACCESS TO COUNTRIES OUTSIDE THE UNECE REGION**

I. POSSIBLE MOTIVATIONS TO AMEND THE PROTOCOL

1. The will to strengthen international law to promote the protection of human health and well-being, through improving water management and through preventing, controlling and reducing water-related disease has been quoted as the main reason for ratification of the Protocol by Finland and Norway. This is certainly also a valid argument to extend the Protocol outside the UNECE region, considering that there are no equivalent legal frameworks at the global level.
2. The same wish to share with the rest of the world the UNECE legal regimes and experience has been the basis for opening several UNECE Conventions in the last years:
 - (i) The first UNECE environmental instrument to consider opening up to non-UNECE States was the 1998 Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters. Its text allows accession by Members of the United Nations. The Convention's 2003 Protocol on Pollutant Release and Transfer Registers (PRTR Protocol) goes a little further by allowing signature as well as accession by States that are Members of the United Nations. The Protocol is not yet in force;
 - (ii) Both the 2003 Protocol on Strategic Environmental Assessment (SEA Protocol), under the EIA Convention, and the 2003 Protocol on Civil Liability, under the Water Convention and the Industrial Accidents Convention, allow accession by Members of the United Nations. Approval by Parties is required. Neither protocol is yet in force;
 - (iii) The 1991 Convention on Environmental Impacts Assessment in a Transboundary Context (EIA Convention) adopted an amendment in 2001 that allows accession by Members of the United Nations. Such accession requires approval by Parties and can only take place after the amendment has entered into force for each of the Parties to the Convention that were Party to the Convention at the time of the adoption of the amendment. Additionally, a further amendment indicates that new Parties after the date of adoption of the amendment are automatically assumed to have adopted the amendment;
 - (iv) The 1992 Convention on the Protection and Use of Transboundary Watercourses and International Lakes (Water Convention) adopted, in 2003, a similar provision to that of the EIA Convention allowing Members of the United Nations to accede. Similarly also, the approval for accession cannot be considered until after the amendment has entered into force for each of the Parties to the Convention that were Party at the time

of the adoption of the amendment. There is an additional requirement for non-UNECE States to make a declaration when applying for accession noting the approval given by Parties to the Convention.

3. In the case of the Protocol there are some specific reasons that makes it particularly relevant to envisage its conversion into a global tool.

A. Link to other global treaties

4. The principles of the Protocol are closely related to the provisions of some key global human rights treaties: the International Covenant on Economic, Social and Cultural Rights¹, the Convention on the Elimination of All Forms of Discrimination against Women² and the Convention on the Rights of the Child³. The Protocol could therefore provide a legal framework for their practical implementation.

B. Link to the Millennium Development Goals (MDG)

5. The Protocol, once integrated into national legislation, can be a useful tool to help countries to reach the targets set by some of the MDGs: Goal 4 to reduce child mortality (lack of safe water and adequate sanitation has been recognized as a major cause of child mortality) and Goal 7 to ensure environmental sustainability (in particular target 10 - Halve the proportion of people without sustainable access to safe drinking-water and basic sanitation by 2015 - and target 11 - Achieve a significant improvement in the lives of at least 100 million slum dwellers by 2020).

6. Furthermore the Protocol offers a platform to go beyond target 10, since its final objective is to grant access to drinking water and sanitation to everybody.

¹ See also the General Comment No. 15 (2002) on the right to water of the Committee on Economic, Social and Cultural Rights, responsible for the monitoring of the International Covenant on Economic, Social and Cultural Rights, that recognized that the human right to water entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic use and that everyone should have the right to seek, receive and impart information concerning water issues (available at [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/a5458d1d1bbd713fc1256cc400389e94?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/a5458d1d1bbd713fc1256cc400389e94?Opendocument)).

² Art 14 (2): "States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas [...] and, in particular, shall ensure to such women the right: (h) to enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communication."

³ Art 24 (1): "State Parties recognize the right of the child to the enjoyment of the highest attainable standard of health". Art 24 (2): "States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures: [...] (c) To combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution"

C. Contribution to poverty reduction and promotion of a coordinated assistance strategy

7. Water and health play a central role to reduce poverty and foster socioeconomic development. The Protocol offers a framework to promote human health and well-being and sustainable management of water resources, and to establish/strengthen the needed cooperation among the different sectors involved. Furthermore lack of resources for interventions in these areas often hamper global and national efforts in low and middle-income countries. This calls for strategic planning of investments. The Protocol provisions on international cooperation and international support for national action could offer opportunities for the creation of a global forum where low and middle-income countries could review the effectiveness of their investments in the areas related to the Protocol and where donor countries could meet the needs of low and middle-income, on the basis of data on progress achieved required under the Protocol.

II. APPLICABILITY OF THE PROTOCOL OUTSIDE THE UNECE REGION

8. A remarkable feature of the Protocol is that it provides a framework and a strategy to promote the protection of human health and well-being, through improving water management and through preventing, controlling and reducing water-related disease, but it leaves to Parties to set their specific targets and target dates to achieve these objectives, according to their priorities, their means and enforcement capacities. The Protocol also requires that the targets be revised periodically to ensure continuous improvement. Therefore the Protocol should be suitable not only to a rather “advanced” region such as UNECE, but adaptable to other conditions in countries outside the region.

III. TIMELINESS OF THE AMENDMENT

9. During the discussion at the fifth meeting of the Working Group, some countries argued that amending the Protocol at the first meeting of the Parties seemed premature. However it should be noted that the experience with the EIA Convention and the Water Convention amendments suggests that this ratification process is rather slow (only five Parties ratified the EIA Convention’s amendment since 2001, and five the Water Convention’s amendment since 2003). Therefore Parties would in any case gain experience before the entry into force of the Protocol. Furthermore, postponing the amendment would prolong even more its entering into force as the number of ratifications needed would also increase.

IV. PROCEDURE FOR AMENDMENT

10. Article 18 of the Protocol defines the procedure for amending the Protocol:

Article 18
AMENDMENTS TO THE PROTOCOL

- 1. Any Party may propose amendments to this Protocol.*
 - 2. Proposals for amendments to this Protocol shall be considered at a meeting of the Parties.*
 - 3. The text of any proposed amendment to this Protocol shall be submitted in writing to the secretariat, which shall communicate it to all Parties at least ninety days before the meeting at which it is proposed for adoption.*
 - 4. An amendment to this Protocol shall be adopted by consensus of the representatives of the Parties present at the meeting. The adopted amendment shall be communicated by the secretariat to the Depositary, who shall circulate it to all Parties for their acceptance. The amendment shall enter into force for the Parties which have accepted it on the ninetieth day after the date on which two thirds of those Parties have deposited with the Depositary their instruments of acceptance of the amendment. The amendment shall enter into force for any other Party on the ninetieth day after the date on which that Party deposits its instrument of acceptance of the amendment.”*
11. Following the normal amendment procedure could, however, result in a split regime: If not all Parties to the instrument in question have ratified the amendment, a situation could arise in which two thirds of the Parties were Parties to a treaty open for non-UNECE member States, while the other Parties remained Parties to the original treaty. This situation has been addressed in two other UNECE Conventions, the EIA Convention and the Water Convention. The draft text of the amendment of the Protocol in Annex II takes into account this issue.

Annex II

**AMENDMENT TO THE PROTOCOL ON WATER AND HEALTH TO THE 1992
CONVENTION ON THE PROTECTION AND USE OF TRANSBOUNDARY
WATERCOURSES AND INTERNATIONAL LAKES**

The Meeting of the Parties,

Wishing to allow States situated outside the UNECE region to become Parties to the Protocol, as is already foreseen under the Water Convention and other UNECE environmental conventions (i.e. the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters and the Convention on Environmental Impact Assessment in a Transboundary Context) as well as under the Protocol on Civil Liability and Compensation for Damage Caused by the Transboundary Effects of Industrial Accidents on Transboundary Waters,

1. Adopts the following amendments to the Protocol:

(a) In article 22, after paragraph 2, insert a new paragraph reading

“3. Any other State, not referred to in paragraph 2, that is a Member of the United Nations may accede to the Protocol on Water and Health upon approval by the Meeting of the Parties. [In its instrument of accession, such a State shall make a declaration stating that approval for its accession to the Protocol had been obtained from the Meeting of the Parties and shall specify the date on which approval was received.]⁴ Any such request for accession by Members of the United Nations shall not be considered for approval by the Meeting of the Parties until this paragraph has entered into force for all the States and organizations that were Parties to the Protocol on [date of adoption of the amendment]”.

and renumber the remaining paragraphs accordingly;

[(b) In article 22, insert a new last paragraph reading

“7. 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 set out in decision [reference of amendment Decision] taken at the first meeting of the Parties.”⁵

(c) In article 23, paragraph 3, after “referred to in article 21” insert “or in paragraph 3 of article 22”;

⁴ This requirement only appears in the amendment to the Water Convention and not in the one to the EIA Convention.

⁵ This new paragraph has been introduced in the EIA Convention and would replace paragraph 3 below of the Water Convention’s amendment.

2. Calls upon Parties to the Protocol to deposit their instruments of acceptance of the amendment rapidly;
3. [Urges any State or organization that ratifies, accepts or approves the Protocol to simultaneously ratify, accept or approve the above amendment;]
4. Encourages States situated outside the UNECE region [, in particular those bordering it,] to accede to the Protocol and, to that end, to seek the approval of the Meeting of the Parties;
5. Invites interested United Nations Member States to take part in its meetings as observers and to participate in the activities under the Protocol's programme of work.