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#### Multilateral environmental agreements

## Opening of the environmental instruments of the United Nations Economic Commission for Europe and their promotion beyond the region

### Note by the secretariat

#### *Summary*

At its nineteenth session in October 2013, the United Nations Economic Commission for Europe (ECE) Committee on Environmental Policy (CEP) welcomed the progress achieved with regard to further ratifications of the ECE multilateral environmental agreements (MEAs) and their implementation, and praised the work of the MEAs. In that connection, CEP requested the secretariat to prepare for its consideration at its next session a report on the status of activities relating to the opening of the ECE MEAs and other environmental instruments under ECE to accession by States beyond the ECE region (ECE/CEP/2013/2, paras. 24 and 116 (f) (v)).

In accordance with that mandate, the present document provides an overview of progress to date in opening the ECE environmental instruments to participation and accession by States outside the ECE region, as well as the impact of their opening and the promotional activities outside the region, and identifies a number of challenges that have emerged. The document was prepared by the secretariat in consultation with the CEP Bureau.

CEP will be invited to consider the information provided, and in particular how it might address the lessons learned.

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## Introduction

1. The United Nations Economic Commission for Europe (ECE) provided the forum for the negotiation of five environmental conventions, which were subsequently supplemented by numerous protocols (see annex). The ECE secretariat provides the secretariat functions for the ECE environmental conventions and protocols — the multilateral environmental agreements (MEAs) that are the primary subject of this document — as defined in the texts of the respective MEAs.<sup>1</sup>

2. Until the early 1990s, the MEAs were negotiated by ECE member States as purely regional agreements, but some of the more recent MEAs provide for accession by non-ECE States. In addition, the governing bodies of some of the earlier MEAs later decided to amend them to allow for this possibility. Those decisions were largely taken on the basis of an understanding that the MEAs in question might be of interest to non-ECE States and that the MEAs might also be strengthened by a broader membership.

3. ECE is also home to several environmental policy instruments other than the MEAs. Notably, since 1993 the Environmental Performance Review (EPR) Programme, a voluntary programme, has been carried out in interested countries members of ECE that are not Organization for Economic Cooperation and Development (OECD) members.<sup>2</sup> In 2012–2013, for the first time, the ECE EPR Programme undertook a review of a non-ECE country, performing an EPR of Morocco upon the request of that country. The review was carried out in cooperation with the United Nations Economic Commission for Africa (ECA) and with the approval of the Committee on Environmental Policy (CEP).

4. The opening of ECE instruments and programmes is not limited to the ECE Environment Division: some other ECE subprogrammes have already included non-ECE countries as Parties or participants for many years, such as in the areas of transport, public-private partnerships and trade. In some cases, the inclusion of non-ECE countries was because the work was global from the start and is overseen by the Economic and Social Council (e.g., in the area of the transport of dangerous goods), whereas for others the transition has been approved by ECE or its Executive Committee (e.g., for the International Public-Private Partnership Centre of Excellence).

5. To date, and as illustrated in this document, the promotion and application of ECE environmental legal and policy instruments in countries beyond the ECE region has had a number of positive impacts, including:

- (a) A heightened awareness of ECE and its activities both in the ECE region and beyond, as well as increased political support for them;
- (b) Increased cooperation and partnerships with other organizations working within and beyond the ECE region;
- (c) Strengthened environmental policy, law and governance in non-ECE countries;
- (d) The further development of the policy tools;
- (e) The sharing of experience and knowledge between ECE and non-ECE countries, which can bring a new motivation for ECE countries;
- (f) Better cooperation between neighbouring ECE and non-ECE countries;

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<sup>1</sup> Exceptionally, ECE and the World Health Organization Regional Office for Europe jointly provide the secretariat for the Protocol on Water and Health.

<sup>2</sup> OECD has a similar EPR programme in place for its member States.

(g) Greater efficiency and effectiveness of the overall system of international environmental law due to the use of existing instruments — either directly or as models — and their lessons learned, thus reducing fragmentation and accelerating negotiation of new instruments, where MEAs provide a framework or a model for negotiation.

6. At the same time, the process towards the opening of ECE environmental instruments has raised a number of questions on matters such as governance, as discussed in chapter III below. In addition, the opening process has led both to an increased need for resources as well as to new funding opportunities, as noted in chapter IV. Resource demands are likely to increase further, so expectations need to be managed and arrangements put into place to limit the additional work to be managed and financed through ECE.

7. This paper presents the state of the art of the opening and promotion of ECE environmental legal and policy instruments beyond the ECE region. The focus is on the MEAs, but many of the observations apply equally to the EPR Programme.

## **I. Opening of the environmental instruments of the United Nations Economic Commission for Europe and their promotion beyond the region**

### **A. Multilateral environmental agreements**

8. The table below illustrates which ECE MEAs are presently open to membership by countries beyond the region. The Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention), the Protocol on Pollutant Release and Transfer Registers (Protocol on PRTRs), the Protocol on Strategic Environmental Assessment (Protocol on SEA) and the Protocol on Civil Liability and Compensation for Damage Caused by the Transboundary Effects of Industrial Accidents on Transboundary Waters (Protocol on Civil Liability; not in force) were drafted as open instruments, but the Aarhus Convention and the Protocol on Civil Liability each specify that the accession of States not members of ECE is subject to approval by the respective Meeting of the Parties (MOP). In order to guide interested States, the MOP to the Aarhus Convention decided upon procedural steps to be taken by such States wishing to accede (see ECE/MP.PP/2011/2/Add.1, decision IV/5).

9. The respective governing bodies of the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention) and the Convention on the Protection and Use of Transboundary Watercourses and International Lakes (Water Convention) adopted amendments in 2001 and 2003, respectively, to open them to accession or ratification by countries beyond the ECE region.

10. As early as the first session of the MOP to the Espoo Convention (Oslo, 18–20 May 1998), ECE ministers of the environment and the European Union (EU) Commissioner for the Environment invited Parties to the Espoo Convention to consider possibilities for allowing non-ECE member countries to become Parties (see ECE/MP.EIA/2, annex IX, para. 13). At the second session of the MOP, Parties adopted an amendment to allow States outside the region to become Parties to the Convention (ECE/MP.EIA/4, annex XIV (decision II/14)).

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**Availability of the ECE MEAs to countries beyond the ECE region**


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<i>Multilateral environmental agreement</i>	<i>Number of Parties (number beyond ECE region)</i>	<i>Initially adopted as open to non-ECE States</i>	<i>Amended to be open to non-ECE States, and status of amendment</i>	<i>Conditions for accession by non-ECE States</i>
Convention on Long-range Transboundary Air Pollution	51 (0)	No	No	Not applicable (N/A)
Espoo Convention	45 (0)	No	Yes (in force since 26 August 2014)	Blanket approval <sup>a</sup>
Protocol on SEA	26 (0)	Yes	N/A	No conditions
Water Convention	40 (0)	No	Yes (in force since 6 February 2013)	Blanket approval <sup>a</sup>
Protocol on Water and Health	26 (0)	No	No	N/A
Convention on the Transboundary Effects of Industrial Accidents	41 (0)	No	No	N/A
Protocol on Civil Liability (not in force)	1 (0)	Yes	N/A	Approval by MOP
Aarhus Convention	47 (0)	Yes	N/A	Approval by MOP
Protocol on PRTRs	33 (0)	Yes	N/A	No conditions

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<sup>a</sup> Requires that all Parties that adopted the amendment opening the instrument to have ratified it for it to come into force.

11. The MOP to the Water Convention, on adopting an amendment opening that instrument, gave their reasons for doing so, expressing “the firm belief that cooperation among riparian States on transboundary watercourses and international lakes contributes to peace and security and to sustainable water management, and is to everyone’s benefit”, and the desire “to promote river basin cooperation throughout the world and to share its experience with other regions in the world”, as well as the wish “to allow States situated outside the ... region to become Parties to the Convention, as is already foreseen under other [ECE] environmental conventions” (ECE/MP.WAT/14, annex (decision III/1)). In practice, the sharing of experience with other regions has been mutually beneficial, in particular with regard to groundwaters, water scarcity and community-level transboundary cooperation.

12. The amendment to the Water Convention entered into force on 6 February 2013. The amendment to the Espoo Convention will enter into force on 26 August 2014. The two amendments were similarly worded, giving the possibility to States Members of the United Nations not members of ECE to accede to the two instruments upon approval by the respective MOPs. However, in both cases accession by non-ECE countries is possible only once the amendment has entered into force for all States and organizations that were Parties to the instruments at the time of the amendment’s adoption. Hence, although the amendment to the Water Convention is in force since 2013, accession by non-ECE States is not yet possible because that condition has not been met: ratifications are missing from

three Parties to the Water Convention that were Parties in 2003 (when the amendment was adopted). Similarly, the Espoo Convention amendment lacks 15 ratifications.<sup>3</sup>

13. The Water Convention MOP decided at its sixth session (Rome, 28–30 November 2012) to waive the requirement for approval by the MOP. Decision VI/3 provides that, once all the Parties that adopted the amendment opening the Water Convention through decision III/1 have ratified it, “any future request for accession to the Convention by any Member of the United Nations not a member of ECE is welcome and, therefore, shall be considered as approved by the Meeting of the Parties” (i.e., providing blanket approval) (ECE/MP.WAT/37/Add.2, decision VI/3, para. 4).

14. At its sixth session (Geneva, 2–5 June 2014), the Espoo Convention MOP adopted a similar decision, waiving MOP approval for future accessions by non-ECE States and inviting non-ECE countries wishing to do so to unilaterally accept the provisional application of the Convention (ECE/MP.EIA/20/Add.3–ECE/MP.EIA/SEA/4/Add.3, decision VI/5–II/5, paras. 3 and 5).

15. Finally, certain MEAs did not originally provide for countries outside the region to accede, and no steps have been taken to date to open them: i.e., the Convention on Long-range Transboundary Air Pollution (Air Convention) and its protocols; the Protocol on Water and Health; and the Convention on the Transboundary Effects of Industrial Accidents (Industrial Accidents Convention). However, discussions on the possible opening of these instruments have taken place and some activities are implemented under them in cooperation with non-ECE countries.

16. The Executive Body for the Air Convention considered the issue in December 2006. While not wishing to amend the Convention, Parties agreed to continue efforts to attract participation from non-ECE delegations and experts at meetings in its framework, especially on issues such as hemispheric transport of air pollution. Parties also agreed to extend outreach activities to regions developing their own agreements on air pollution, including consideration of the possibilities for interregional collaboration, through, for example, memorandums of understanding or special events/seminars for non-ECE countries.

17. In that regard, in December 2013, the Bureau of the Air Convention recommended to focus on the implementation of the Long-term Strategy for the Convention (see ECE/EB.AIR/106/Add.1, decision 2010/18), while at the same time maintaining science cooperation with other regional networks within and beyond the ECE region. In accordance with that Strategy, the 2014–2015 workplan for the implementation of the Convention envisages outreach activities in order to maintain the visibility of the Convention on the international scene, to foster cooperation between regional agreements around the world and as a bridge between regional and global action. Cooperation with other regions and forums on intercontinental air pollution issues is also to be pursued. Among others, the Air Convention secretariat has cooperated and advised on projects under the North-East Asian Subregional Programme for Environmental Cooperation under the Economic and Social Commission for Asia and the Pacific on transboundary air pollution issues.

18. The Parties to the Industrial Accidents Convention have, in the framework of their Working Group on Development, considered possible amendments to the Convention, including with regard to accession by other Member States of the United Nations. The matter will be further discussed at the eighth meeting of the Conference of the Parties (Geneva, 3–5 December 2014).

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<sup>3</sup> Information on membership of ECE MEAs is correct as of 1 August 2014.

19. For the Protocol on Water and Health, the Parties considered that they needed first to achieve significant improvements within the ECE region, while also voicing concerns about the financial implications of opening the Protocol to other regions.

20. To date, no non-ECE State has acceded to an ECE MEA, though several have indicated that the process of accession to the Water Convention is under way. Some States have publicly declared their interest in accession to the Water Convention, as have also Mongolia, in the case of the Aarhus Convention, and, on an informal basis, the Republic of Korea, in the case of the Espoo Convention.

21. In the meantime, many meetings under the respective governing bodies and many activities under the respective programmes of work have been open to participants from non-ECE countries. For example, under the Espoo Convention, several activities have been organized or are planned outside the region, including subregional workshops and seminars on the Convention in the Mediterranean Sea area (Tunis, 20–21 April 2010; and Morocco, in the first half of 2015) and in Eastern Asia (Seoul, 13–15 June 2012). In addition, the budgets adopted by the Espoo and Water Convention MOPs include funding to support the participation of representatives of non-ECE countries in MOP sessions, workshops and task force and working group meetings.

22. The efforts to involve non-ECE countries in the work under the Water Convention have been the most determined and successful. Starting in 2011, about 50 non-ECE countries have participated in meetings and workshops to date, and 20 participated in the sixth session of the MOP in 2012. Most of the activities under the Water Convention are now open globally, including the global network of basins working on climate change adaptation, the thematic assessment of the water-food-energy-ecosystems nexus and an activity on assessing the benefits of transboundary cooperation. In some globally open events, non-ECE countries have outnumbered ECE member States. The programme of work for 2013–2015 includes a specific programme area on the opening of the Convention. In this framework, as decided by the Water Convention MOP, some events have been targeted exclusively at countries beyond the ECE region as a means of raising awareness and promoting accession to the treaty. Such events, for example for Latin America and for the Arab States, have been carried out in cooperation with the relevant regional commissions.

## **B. Environmental Performance Review Programme**

23. In October 2010, the Secretary of State for Water and Environment of Morocco requested ECE to conduct an EPR of Morocco. Although Morocco is not an ECE member State, CEP agreed to support the EPR of Morocco. A key requirement for agreeing to conduct an EPR in an interested country beyond the ECE region is that it is done in cooperation with the respective regional commission; the goal is to transfer knowledge on the EPR methodology so that other regional commissions can carry out their own EPR activities as soon as possible. Thus, the first EPR conducted by ECE outside its region was done in agreement and cooperation with the United Nations Economic Commission for Africa (ECA), of which Morocco is a member State, with support from the Subregional Office for North Africa (SRO-NA).

24. Morocco showed keen interest in working with the ECE EPR Programme and demonstrated a strong commitment to the development of country-specific recommendations. The EPR of Morocco also benefited from close cooperation with other organizations in the United Nations system. For instance, SRO-NA mobilized its resources for the development of the agriculture and energy chapters of the EPR and the Regional Office for Africa of the United Nations Environment Programme (UNEP) participated by providing two consultants dealing with biodiversity-related issues.

25. The collaboration on EPR preparation strengthened the cooperation between ECE and ECA, and was also beneficial to ECA by providing it with updated information on Morocco's environmental situation. Similarly, the EPR process conducted in Morocco will contribute to strengthening SRO-NA capacity on EPR and should enable ECA to initiate an EPR programme in its region.

26. The conduct of an EPR of Morocco also contributed to raising the profile of ECE and its EPR Programme beyond its own region. Prior to the nineteenth session of CEP in 2013, the EPR Expert Group, hosted by SRO-NA, held a meeting in Rabat to review the conclusions and recommendations of the draft EPR report of Morocco. The meeting was well appreciated and attended by, among others, representatives of Algeria and Libya, as well as the United Nations Economic and Social Commission for Western Asia (ESCWA). Following the meeting, CEP took note of the invitation of ESCWA to ECE to carry out an EPR of Tunisia in close cooperation with them. CEP invited the ECE secretariat to undertake such a review if the conditions for an ECE review beyond the region were met (see ECE/CEP/S/2011/2, annex II). The secretariat has also been approached by Mongolia, which signalled its interest in undergoing an EPR.

## **II. The impact to date of the opening and promotion of the environmental instruments**

### **A. Heightened awareness of the United Nations Economic Commission for Europe and its activities**

27. The participation of delegates from non-ECE countries, the holding of events outside the ECE region and the promotion of ECE environmental instruments in international events and in events outside the region all create an increased awareness of the effectiveness and impact of these instruments. In many instances, participation by ECE countries has so far been at a technical expert level, and awareness has been limited to the expert's department or solely her- or himself. Increasingly though, through the opening and promotion of these instruments, the senior decision-making or ministerial level are becoming interested in the MEAs. That interest results in increasing political support for the instruments and awareness in ministries of foreign affairs. That support and awareness may encourage funding by ministries of foreign affairs and of development cooperation. And it may lead to acceptance of the instruments as good practice or actual means of implementation in global discussions, for example in the post-2015 development agenda. As an example, the Water Convention secretariat was asked and received specific financing for leading the global thematic consultations on water resources management within the initial discussions on the post-2015 development agenda, mainly due to its global opening.

28. As another example, numerous ministers from non-ECE countries, as well as the United Nations Secretary-General, have referred to the Aarhus and Water Conventions in global discussions. At the United Nations Conference on Sustainable Development (Rio de Janeiro, 20–22 June 2012) the Aarhus Convention and its Protocol on PRTRs experienced unprecedented interest from the international community. The two instruments are regarded as providing a solid and comprehensive framework for Governments to engage the public effectively in setting and implementing the post-2015 development agenda and future sustainable development goals. Furthermore, the Aarhus Convention inspired the Latin America and the Caribbean region to consider developing a similar instrument on environmental rights, and the Protocol on PRTRs encouraged development of pollutant release and transfer register (PRTR) systems in many countries of that region and in Asia.

Several Parties are leading global promotion of the Convention and its Protocol. Through the Maastricht Declaration (2 July 2014),<sup>4</sup> Parties to both instruments reaffirmed their commitment to encourage replication of the achievements of the Aarhus Convention and its Protocol and to encourage accession by interested non-ECE States.

29. At the Budapest Water Summit in October 2013, the Secretary-General noted that the Water Convention would soon be available to all United Nations Member States and urged countries outside the region to join and further develop it. At the same Summit, the then Minister of Agriculture of Tunisia reconfirmed Tunisia's interest in joining the ECE Water Convention and Iraq, which also expressed interest at the time, is now in the process of acceding to it.<sup>5</sup>

30. This heightened awareness is not limited to countries outside the ECE region. Ministries of foreign affairs of ECE member States are also active in their political and sometimes financial support of the Water Convention. The European Union (EU) Foreign Affairs Council conclusions on water diplomacy at the global level, adopted on 22 July 2013, encouraged the promotion of international agreements on water cooperation. In particular, it noted that "The relevant [ECE] Convention (Helsinki 1992) and the United Nations Watercourses Convention (New York 1997) are important instruments to promote equitable, sustainable and integrated management of transboundary water resources. EU water diplomacy should develop systematic promotion of these and other relevant international agreements."<sup>6</sup> The EU External Action Service is now beginning those promotional efforts.

31. Also in this context, the current role and the further potential of the international financial institutions (IFIs) in promoting the application of the standards set out in the Espoo Convention and its Protocol on SEA in countries outside the ECE region should be noted. Representatives of IFIs regularly attend meetings under the Espoo Convention and report on their activities and good practices within and beyond the region. A seminar on the globalization of the Convention and the Protocol and the role of IFIs took place at the sixth session of the Espoo Convention MOP. The seminar was co-chaired by the European Investment Bank and brought together representatives of Governments from outside the ECE region, non-governmental organizations and a number of IFIs. Aside from providing insights into the environmental assessment practice and needs of non-ECE countries and the experience of IFIs in applying environmental assessments within and beyond the ECE region, the discussions demonstrated that countries of other regions share similar challenges in assessing and mitigating the environmental impacts of economic activities and that the IFIs can play a role in promoting the application of the treaties beyond the region through capacity-building activities.

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<sup>4</sup> The Declaration will be incorporated in the meeting report (ECE/MP.PP/2014/27/Add.1–ECE/MP.PRTR/2014/2/Add.1, forthcoming).

<sup>5</sup> At the Budapest Water Summit, the Ambassador of Iraq to Hungary, speaking on behalf of the Minister of Water Resources of Iraq, expressed Iraq's willingness to join the Water Convention, explaining that Iraq believed that the two global water conventions — the United Nations Convention on the Law of Non-Navigational Uses of International Watercourses and the ECE Water Convention — were complementary and could play an effective role in the region in supporting and strengthening the cooperation on sustainable water management. He further explained that the legal aspects of the Watercourses Convention could be perfectly supported by the institutional model developed by the ECE Convention over the past 20 years.

<sup>6</sup> See [http://www.eu-un.europa.eu/articles/en/article\\_13807\\_en.htm](http://www.eu-un.europa.eu/articles/en/article_13807_en.htm).

## B. Strengthened environmental policy and law in countries beyond the United Nations Economic Commission for Europe region

32. The environmental policy instruments of ECE are also being used in non-ECE countries. The most direct example is the EPR of Morocco. The EPR report included 60 recommendations, including on strengthening the status of the national environmental authority, adequate financing for and reporting on implementation of national strategic documents and the need to improve the environmental inspection system. Notably, the review included recommendations to Morocco to consider accession to the Aarhus Convention and its Protocol on PRTRs that were accepted by the country's Government.<sup>7</sup> The acceptance of a high number of the EPR recommendations by the Government of Morocco demonstrated the usefulness of expert advice for this non-ECE country. The secretariat has been informed that a number of recommendations have already been implemented by the country following the approval of the EPR of Morocco by CEP in October 2013.

33. ECE MEAs have also been used as a good practice example by non-ECE States, which may bring indirect benefits to ECE member States if they are neighbours. For example, the Protocol on Environmental Impact Assessment in a Transboundary Context (not yet adopted) to the Framework Convention for the Protection of the Marine Environment of the Caspian Sea (Teheran Convention) was inspired by the Espoo Convention and should, once adopted and in force, result in benefits for ECE member States from the application of transboundary environmental impact assessment (EIA) by the Islamic Republic of Iran.<sup>8</sup> Kazakhstan stated that the Water Convention was used as a model for its transboundary agreements with neighbouring countries — including China, a non-ECE State — as did several other non-ECE country basins on different continents. Moreover, in all countries where the ECE MEAs inspire national legislation the MEAs can result in enhanced environmental protection and multilateral cooperation.

34. The ECE MEAs are not only a reflection of international customary law, they also have an influence on its progressive development. That influence is strengthening in response to the opening of the treaties. The International Court of Justice, in its judgment on the *Pulp Mills on the River Uruguay (Argentina v. Uruguay)* case,<sup>9</sup> referred to the practice of undertaking an EIA where there is a risk that a proposed industrial activity may have a significant adverse impact in a transboundary context, “which in recent years has gained so much acceptance among States that it may now be taken as a requirement under general international law”<sup>10</sup> – and that practice was above all built up under the Espoo Convention. The Aarhus Convention secretariat is providing ongoing professional advice to the process of developing a similar MEA for the Latin American region, led by Chile with the support of the Economic Commission for Latin America and the Caribbean (ECLAC). Furthermore, the secretariat of the Protocol on PRTRs services the International PRTR

<sup>7</sup> See information paper No. 6, available from <http://www.unece.org/env/cep/2013sessionoctober.html>. The full EPR, published in May 2014, is available on the ECE website from <http://www.unece.org/index.php?id=35483>.

<sup>8</sup> Negotiations on the Protocol are still ongoing but are close to finalization. While full agreement has been reached on the body of the Protocol text, at the Fifth Meeting of the Conference of the Parties to the Teheran Convention (COP5) (Ashgabat, 28–30 May 2014), Parties did not reach consensus on the Protocol's annex I. Ministers at COP5 decided to finalize the arrangements for adoption and signature of the Protocol as soon as possible before COP6 (Baku, 2015).

<sup>9</sup> I.C.J. Reports 2010, p. 14, available from <http://www.icj-cij.org/docket/index.php?p1=3&p2=3&case=135>.

<sup>10</sup> *Ibid.*, p. 83.

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Coordinating Group in cooperation with OECD, UNEP and the United Nations Institute for Training and Research (UNITAR) to promote implementation of PRTRs globally.

### **C. The further development of the environmental instruments**

35. The exposure of the ECE environmental instruments to countries outside the ECE region is not intended to benefit only non-ECE countries. It leads also to the strengthening of the instruments themselves. For the MEAs that ultimately means broader and more diverse membership, enriching the instruments' legal implementation and practical application. For the EPRs, for example, the use of the tool outside the ECE region may increase the acceptability and authoritative nature of its recommendations. And the exchange of information among reviewed countries about environmental policies and experiences on environmental matters could promote cooperation beyond each regional commission's boundaries. It may also contribute to the further enhancement of the EPR methodology.

### **D. The sharing of experience and knowledge between countries of the United Nations Economic Commission for Europe region and those beyond**

36. Different regions, different countries and different parts of countries all have different experiences in using environmental instruments. For example, the requirement to carry out an environmental assessment is common to almost all Member States of the United Nations, but legal requirements and actual practice vary enormously. The Espoo Convention constitutes the only international instrument in force in that respect.

37. Several global workshops have been held under the ECE Water Convention with the active participation of and contributions from non-ECE countries. They have addressed climate change adaptation in transboundary basins and joint institutions for transboundary cooperation, among other issues. At these events, participants have greatly appreciated the worldwide exchange of experience. The experiences of non-ECE countries have often demonstrated new aspects and approaches — for example, in relation to drought management or the strong focus on community-level transboundary water management relations in Latin America — which are often absent in river basins in the ECE region.

38. A global round table on PRTRs (Geneva, 19 November 2013) together with annual meetings of the International PRTR Coordinating Group have attracted participation from non-ECE countries and provided a good opportunity for sharing experiences in establishing PRTRs.

39. The diversity of experiences and practices means that the exchange of information between ECE countries and non-ECE countries is enriching and beneficial for all.

## **III. Governance considerations**

40. The meetings under the ECE MEAs have been open to all ECE member States, with non-Parties contributing actively to discussions and often informing decisions. Non-ECE States have often been welcome to participate.

41. However, the respective rules of procedure of the governing bodies and the terms of reference of their bureaux and subsidiary bodies sometimes reflect the history of the MEAs as ECE instruments. For example, notification of an upcoming meeting of the governing

body might be sent automatically to all ECE member States, but only upon request to other States not Parties, according to the rules of procedure.<sup>11</sup> In another example, only ECE member States, not Party to an MEA, may be invited to contribute to meetings as observers.<sup>12</sup> In practice, however, many other countries are invited to MEA meetings and participate in a similar manner as observers. The rules of procedure of the various ECE environmental instruments may therefore need revision to provide an appropriate role for non-ECE States and Parties.

42. The work of the ECE secretariat is decided upon by the Economic Commission for Europe and, within the Environment subprogramme, by CEP. In its capacity as the overall governing body of ECE environmental activities, CEP approves the strategic framework and adopts the programme of work of the Environment subprogramme, including the MEAs, which are subsequently endorsed by the ECE Executive Committee. CEP also approves the biennial list of publications and considers the indicator-based performance of the Environment subprogramme, as well as provides inputs and takes decisions, as necessary, during ECE-wide processes such as the 2005 ECE reform and the 2013 review of the ECE reform. Furthermore, the CEP Chair reports on a yearly basis to the ECE Executive Committee on the main activities carried under the Environment subprogramme, including the MEAs.

43. At the same time, the MEA governing bodies also take decisions that define activities of the secretariat. This situation sometimes results in unclear and overlapping responsibilities for the secretariat. For example, it is the ECE Executive Committee that approves the establishment of trust funds required for the receipt of funds to support the implementation of workplans and programmes of work of the MEAs. In addition, the differing membership of ECE and of the MEAs — with no MEA having all ECE member States as Parties — as well as the sovereignty of the MEAs, has also sometimes led to ambiguity, in the absence of coordination and clear guidance. This situation will become more complex when non-ECE States are Parties to the MEAs, as, in accordance with its terms of reference and rules of procedure, the Commission can take “no action in respect to any country without the agreement of the Government of that country” (E/ECE/778/Rev.5, para. 1 and rule 40).<sup>13</sup>

#### **IV. Resource considerations**

44. If an MEA is open to accession by States beyond the ECE region, the level of participation in both meetings and in other activities under the respective workplan is likely to rise, leading to increased costs for the implementation of the workplan and for the secretariat. Wider participation also brings the expectation of non-ECE States that there is interpretation in meetings and translation of documents into non-ECE United Nations official languages — particularly Arabic and Spanish. The MEA secretariat will also have to interact with a growing number of governments and other stakeholders. This implies a need for more financial resources as membership grows. Both rich and poor countries may be expected to join an MEA or participate in its activities.

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<sup>11</sup> Rules of procedure for meetings of the Parties to the Aarhus Convention (ECE/MP.PP/2/Add.2).

<sup>12</sup> Decision on establishment of a subsidiary body to the meetings of the Parties to the Espoo Convention and its Protocol on SEA (ECE/MP.EIA/SEA/2, decision V/5-I/5), but also the rules of procedure of the Meeting of the Parties to the Espoo Convention (ECE/MP.EIA/2, decision I/1).

<sup>13</sup> Rule of procedure 4 states “The Commission shall invite any Member of the United Nations not a member of the Commission to participate in a consultative capacity in its consideration of any matter of particular concern to that Member.”

45. Some non-ECE countries, including developing countries, can fund participation of their experts themselves or can mobilize funding from other sources. In addition, funding of participants from eligible countries is sometimes provided and arranged by partners, such as the Global Water Partnership or the Global Environment Facility (GEF) in the case of the Water Convention. Nonetheless, membership in ECE MEAs will likely bring with it the expectation that similar criteria will be applied in determining whether to provide financial support as used earlier for ECE member States. Some ECE MEAs receive targeted extrabudgetary funding for travel of non-ECE country representatives to MEA meetings.

46. While the secretariat and conference services are provided by the United Nations regular budget, the ECE MEAs rely on extrabudgetary contributions for the implementation of their workplans and in some cases for supplementing the secretariat resources provided by the regular budget. With the exception of the Protocol on Long-term Financing of the Cooperative Programme for Monitoring and Evaluation of the Long-range Transmission of Air Pollutants in Europe (EMEP), which funds EMEP activities under the Air Convention, the extrabudgetary resources of the MEAs are entirely funded by voluntary contributions from Parties and others. Those contributions, again with very few exceptions, are without reference to a scale of assessments. With broadening membership, the governing bodies might examine the need for more sustainable funding mechanisms, a subject that is not addressed further in this document. Most of the ECE environmental policy instruments are largely dependent on limited regular budget resources.

47. Regular budget resources have, so far, been generally sufficient to service MEAs, though the servicing of additional subsidiary bodies such as implementation and compliance committees has required extrabudgetary resources, as has the addition of several protocols. Indeed, the ECE secretariat staff resources provided through the regular budget of the United Nations have remained unchanged, or been slightly reduced in the case of general service staff, since the 1990s. The opening and wider promotion of the ECE MEAs will increase the workload of the secretariat. The additional services that the secretariat will be asked to provide cannot be covered by the existing resources from the regular budget. At the same time, the creation of new regular budget posts cannot be expected in times of austerity and budget cuts at the United Nations.

48. There will therefore be a need to cover increased resources from extrabudgetary funding and to look into innovative forms of stable and sustainable funding. This will mean a continuing evolution in the way of funding ECE MEA secretariat costs, with a growing proportion of funds being extrabudgetary. The global opening of the various instruments provides a new opportunity and arguments for seeking additional resources on the basis of a model of full-cost recovery. The respective governing bodies, and their Parties, might seek to increase their extrabudgetary resources. The secretariat would need in time, therefore, to elaborate draft financial rules to be decided by the MEA governing bodies. The added workload for regular budget staff of managing extrabudgetary colleagues also needs to be addressed.

49. Another possibility is that the extra costs might be offset by the growing interest in and political support for those environmental instruments being opened for accession by, or being promoted in, non-ECE countries. The opening might lead to greater interest from ministries of foreign affairs and government departments responsible for development assistance. For example, the Water Convention is now receiving significant funding specifically for its opening and at least one quarter of its budget from ministries of foreign affairs or development cooperation; this would not have occurred without the opening of the Convention. Under the Espoo Convention, efforts are being made to increase cooperation with IFIs with a view to their supporting the application of the Convention (and its Protocol on SEA) beyond the ECE region, including through the possible funding of legislative reforms and capacity-building activities.

50. A third possibility is to streamline the secretariat functions to the obligatory core, while outsourcing projects and other non-core efforts supporting the implementation of MEAs by individual countries to other organizations or partners. This is, for example, the approach of the Aarhus Convention, as well as the thinking behind the establishment of the Water Convention's International Water Assessment Centre. Closely cooperating partners with available resources are obviously a necessity in order to move further in this direction.

51. Ultimately, a treaty that has broad membership around the globe, and is not limited to a region, might be supported in its implementation by global financing mechanisms such as GEF. GEF provides grants for projects related to biodiversity, climate change, international waters, land degradation, the ozone layer and persistent organic pollutants. It also serves as the financial mechanism for several global MEAs.<sup>14</sup> The Water Convention has started cooperation with GEF, both at the project level in the ECE region and in supporting the Convention's opening and promotional activities. The secretariat of the Protocol on PRTRs is also cooperating with UNEP on its GEF-funded PRTR-related projects (e.g., in Chile, Cambodia, Ecuador, Peru and Thailand).

## V. Globalization of the workplans and programmes of work

52. ECE provides the secretariat for the MEA governing bodies and their subsidiary bodies. The secretariat also provides significant support to the implementation of the biennial programme of work of the Environment subprogramme (including the ECE MEAs), as well as the periodic workplans and programmes of work adopted by the respective governing bodies. As membership of the MEAs grows, ECE may encounter limitations not only in terms of financing, but also in terms of expertise and knowledge to support workplan implementation beyond the ECE region. Mandates may need to be reviewed, partnerships forged and arrangements made with other actors to support workplan implementation in other regions.

53. In the case of the EPR Programme, cooperation with other regional commissions has been instrumental in working beyond the ECE region. For the Water Convention, partnerships have been sought — and realized — with other regional commissions, but also global organizations, such as GEF, the Global Water Partnership, the International Network of Basin Organizations, the International Union for Conservation of Nature and the United Nations Educational, Scientific and Cultural Organization (UNESCO). Similarly, for the Aarhus Convention and its Protocol on PRTRs, cooperation has been established with ECLAC, OECD, the Organization for Security and Cooperation in Europe, UNEP and UNITAR.

54. As noted above, GEF has in place an international waters programme with which the Water Convention has cooperated. The MOP to the Water Convention explicitly recognized its relationships with GEF and UNESCO and has sought to strengthen cooperation with these key organizations. These and other relationships have led to more effective activities and have unlocked new financing.

## VI. Lessons learned

55. The opening and promotion of the ECE environmental policy and legal instruments is clearly beneficial and has had positive impacts on environmental policies in ECE and

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<sup>14</sup> GEF serves as the financial mechanism for the Convention on Biological Diversity, the Minamata Convention on Mercury, the Stockholm Convention on Persistent Organic Pollutants, the United Nations Framework Convention on Climate Change and the United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa. In addition, it supports the implementation of the Montreal Protocol on Substances That Deplete the Ozone Layer.

other countries, strengthened multilateral cooperation and led to new opportunities for collaboration between intergovernmental organizations and for financing. The opening of the Water Convention is considered as strategic and has led to an increased political support for this policy instrument by countries, United Nations Headquarters in New York and others.

56. One practical lesson learned relates to the language used in amending some ECE treaties to open them to global accession: requiring all Parties that were Parties at the time of the adoption of the amendment to subsequently ratify it so that it can become operational is a high threshold, likely to delay the treaty's opening. Linked to the amendment, a governing body needs to consider carefully whether accession by non-ECE States will require its approval, which then creates a differentiation between ECE and non-ECE States.

57. Partnerships with other international organizations, United Nations agencies and regional commissions and others are important for the implementation of workplans, especially outside the ECE region. They are enriching and can also open up new opportunities for financing and synergy.

58. The early involvement of other regional commissions, and other partners, may smooth subsequent interactions. Regional commissions should be involved in the programming of activities in their respective regions. Interactions with other regional commissions may be made more efficient when organized by ECE, rather than by individual MEA bodies and secretariats.

59. The opening of the MEAs and their promotion in countries beyond the ECE region creates further demands from Parties on regular budget resources and needs for additional extrabudgetary resources, but also provides an argument for strengthening such resources. For example, the experience of the Aarhus Convention and its Protocol on PRTRs, which are open for global accession, demonstrated that the secretariat is not able to respond fully to the calls from interested non-ECE countries due to its limited capacity. Financing, in particular to ensure adequate secretariat staffing, is fundamental to the opening and promotion of the ECE environmental instruments.

60. Strong ownership by current Parties and especially governing bodies, as well as the bureaux, is crucial for the opening and promotion of these instruments. If there is sufficient political interest and financial support, the ECE environmental instruments can be opened and promoted effectively to bring wide benefits for governments, the environment and society at large.

## VII. Questions for discussion

61. CEP may wish to consider the following questions:

(a) How can the challenges of the promotion and opening of ECE environmental instruments, including resource constraints, be addressed and how might the benefits be enhanced?;

(b) What role can CEP play in supporting the promotion or opening of ECE environmental instruments?;

(c) Would governance structures need to be adapted once ECE MEAs have Parties from outside the region?;

(d) How might CEP strengthen cooperation with the corresponding bodies in the other regional commissions, as well as with IFIs and others, with respect to the promotion and opening of ECE environmental instruments?

## Annex

### **Multilateral environmental agreements for which the United Nations Economic Commission for Europe provides the secretariat**

#### **Convention on Long-range Transboundary Air Pollution (Geneva, 13 November 1979)**

Protocol on Long-term Financing of the Cooperative Programme for Monitoring and Evaluation of the Long-range Transmission of Air Pollutants in Europe (Geneva, 28 September 1984)

Protocol on the Reduction of Sulphur Emissions or their Transboundary Fluxes by at least 30 per cent (Helsinki, 8 July 1985)

Protocol concerning the Control of Emissions of Nitrogen Oxides or Their Transboundary Fluxes (Sofia, 31 October 1988)

Protocol concerning the Control of Emissions of Volatile Organic Compounds or Their Transboundary Fluxes (Geneva, 18 November 1991)

Protocol on Further Reduction of Sulphur Emissions (Oslo, 14 June 1994)

Protocol on Heavy Metals (Aarhus, 24 June 1998)

Protocol on Persistent Organic Pollutants (Aarhus, 24 June 1998)

Protocol to Abate Acidification, Eutrophication and Ground-level Ozone (Gothenburg, 30 November 1999)

Amendments to the text and to annexes I, II, III, IV, VI and VIII to the 1998 Protocol on Persistent Organic Pollutants (Geneva, 18 December 2009)

Amendments to annexes I and II to the 1998 Protocol on Persistent Organic Pollutants (Geneva, 18 December 2009)

Amendment of the text and annexes II to IX to the Protocol to the 1979 Convention on Long-range Transboundary Air Pollution to Abate Acidification, Eutrophication and Ground-level Ozone and the addition of new annexes X and XI (Geneva, 4 May 2012)

Amendments to the text of and annexes other than III and VII to the 1998 Protocol on Heavy Metals (Geneva, 13 December 2012)

#### **Convention on Environmental Impact Assessment in a Transboundary Context (Espoo, Finland, 25 February 1991)**

Amendment (Sofia, 27 February 2001)

Protocol on Strategic Environmental Assessment (Kyiv, 21 May 2003)

Amendment (Cavtat, 4 June 2004)

**Convention on the Protection and Use of Transboundary Watercourses and International Lakes (Helsinki, 17 March 1992)**

Protocol on Water and Health (London, 17 June 1999)<sup>15</sup>

Amendments to articles 25 and 26 (Madrid, 28 November 2003)

**Convention on the Transboundary Effects of Industrial Accidents (Helsinki, 17 March 1992)**

Protocol on Civil Liability and Compensation for Damage Caused by the Transboundary Effects of Industrial Accidents on Transboundary Waters to the 1992 Convention on the Protection and Use of Transboundary Watercourses and International Lakes and to the 1992 Convention on the Transboundary Effects of Industrial Accidents (Kyiv, 21 May 2003)

**Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus, Denmark, 25 June 1998)**

Protocol on Pollutant Release and Transfer Registers (Kyiv, 21 May 2003)

Amendment to the Convention on public participation in decisions on the deliberate release into the environment and placing on the market of genetically modified organisms (Almaty, 27 May 2005)

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<sup>15</sup> ECE and the World Health Organization Regional Office for Europe jointly provide the secretariat for the Protocol on Water and Health.