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From a regional towards a global instrument – the 2003 amendment to the UNECE Water Convention

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1. Introduction

The Meeting on the Protection of the Environment of the Conference on Security and Cooperation in Europe (Sofia, 16 October – 3 November 1989) proposed the United Nations Economic Commission for Europe (UNECE) to elaborate a framework convention on the protection and use of transboundary watercourses and international lakes.¹ On 17 March 1992, following two years of negotiations, the Senior Advisers to ECE Governments on Environmental and Water Problems at their fifth session in Helsinki, Finland,² adopted the Convention on the Protection and Use of Transboundary Watercourses and International Lakes,³ also known as Helsinki Convention or 1992 Water Convention.

The Water Convention entered into force on 6 October 1996 and quickly developed into a fully-fledged platform for transboundary water cooperation in the pan-European region. Its first decade of existence was marked by a number of breakthroughs. A body of new transboundary water agreements, based on and inspired by the Convention, were concluded not only among countries in Central and Eastern Europe and among newly independent States in the post-Soviet region, but also among Western European States.⁴

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¹ Report on conclusions and recommendations of the Meeting on the Protection of the Environment, Sofia 1989 - Vienna 1990, <http://www.osce.org/eea/14075>.

² Decision B(5) on the Convention on the Protection and Use of Transboundary Watercourses and International Lakes, in UNECE, Senior Advisers to ECE Governments on Environmental and Water Problems, Report of the Resumed Fifth Session, ECE/ENVWA/24/Add.1.

³ Convention on the Protection and Use of Transboundary Watercourses and International Lakes (adopted 17 March 1992, entered into force 6 October 1996) 1936 UNTS 269.

⁴ For example, Convention on Cooperation for the Protection and Sustainable Use of the Danube River, 29 June 1994, Aus.-Bulg.-Croatia-Czech.-F.R.G.-Hung.-Mold.-Rom.-Slovk.-Sloven.-Ukr., I.E.L. 994:49; Convention on the International Commission for the Protection of the Oder, 11 Apr. 1996, F.R.G.-Pol.-Czech-E.C., 1998 O.J. (C 316) 14 October 1998, 5; Agreements on the Protection of the Rivers Meuse and Scheldt, 26 Apr. 1994, Belg. (Brussels-capital, Flanders, Wallonia Regional Governments)-Fr.-Neth., (1995) 34 I.L.M. 851; Convention on the Protection of the Rhine, 12 Apr. 1999, F.R.G.-Fr.-Lux.-Neth.-Switz.-E.C., available at <http://www.iksr.org>; Agreement on the General Principles of Interaction in the Rational Use and Protection of Transboundary Water Bodies of the State Members of the Commonwealth of Independent States (11 September 1998, Moscow), in force 6 June 2002 <http://faolex.fao.org/docs/texts/mul-67001.doc>; Agreement between the Government of the Russian Federation and the Government of the Republic of Estonia Concerning Cooperation in the Protection and Rational Use of Transboundary Waters (20 August 1997, Moscow) <http://faolex.fao.org/docs/texts/bi32669.doc>; Agreement between the Government of Ukraine and the Government of the Russian Federation Concerning the Joint Utilization and Protection of

Cooperation and sharing of experience started between East and West on such issues as monitoring of transboundary waters, accidental pollution of transboundary waters, specificities of the management of transboundary lakes and transboundary groundwaters.⁵ Soft-law instruments developed under the auspices of the Convention pioneered a number of important areas in transboundary water cooperation in other fora.⁶ The Protocol on Water and Health to the Convention was negotiated under the auspices of two organisations – UNECE and the World Health Organization’s Regional Office for Europe – and adopted in 1999.⁷ Another protocol, on Civil Liability and Compensation for Damage Caused by the Transboundary Effects of Industrial Accidents on Transboundary Waters,⁸ was jointly developed under the Water Convention and the Convention on the Transboundary Effects of Industrial Accidents.⁹ These achievements became the *rationale* and the foundation for the efforts to transform the Water Convention from a regional into a global treaty.

2. Adoption of the 2003 Amendment

The Amendment to Articles 25 and 26, opening up the possibility of acceding to the Water Convention also to countries outside the UNECE region, was adopted at the third session of the Meeting of the Parties (MoP) (Madrid, 26-28 November 2003).

Transboundary Water Bodies (19 October 1992, Moscow, entered into force on the date of signature) <http://faolex.fao.org/docs/texts/bi-65504.doc>; Agreement between the Cabinet of Ministers of Ukraine and the Government of Belarus on Joint Management and Protection of Transboundary Water Bodies (16 October 2001, Kiev), entered into force on 28 February 2002 <http://faolex.fao.org/docs/texts/bi-65834.doc>; Agreement between the Government of the Russian Federation and the Government of Belarus on Cooperation in the Sphere of Protection and Rational Use of Transboundary Water Bodies (24 May 2002, Minsk), entered into force on 25 October 2002 <http://faolex.fao.org/docs/texts/bi-64962.doc>; Agreement between the Government of the Russian Federation and the Government of the Republic of Kazakhstan Concerning the Joint Utilization and Protection of Transboundary Water Bodies (27 August 1992, Orenburg, entered into force the same date, no longer in force) <http://faolex.fao.org/docs/texts/bi-66979.doc>. For analysis of agreements in the post-Soviet space see Vinogradov, S. (2007). Regime building for transboundary waters: the evolution of legal and institutional frameworks in the EECCA region. *Journal of Water Law*, 18(3), 77-94.

⁵ Pilot projects were implemented and several guidance documents were developed on the issue of transboundary monitoring. A joint ad hoc expert group on water and industrial accidents was established under the Water Convention and the Industrial Accidents Convention. The pilot programme on transboundary waters covered the transboundary lakes, i.e. Lake Peipsi (Estonia/Russian Federation) and Lake Pyhäjärvi (Finland/Russian Federation), transboundary groundwaters including the Aggtelek - Slovak Karst (Hungary-Slovakia) and part of the groundwaters in the Bug basin (Belarus-Poland), and the transboundary rivers of Bug, Latoritza/Uhz, Ipoly, Morava and Mures/Maros. UNECE, MoP to the Convention on the Protection and Use of Transboundary Watercourses and International Lakes, Report of the 3rd Meeting of the Parties, ECE/MP.WAT/15.

⁶ For example, the delegation of Germany at the third session of the MoP (Madrid, 26-28 November 2003) reported that the Convention’s Guidelines on Sustainable Flood Prevention (MP.WAT/2000/7, annex) had been the basis for the best practice document on flood prevention, protection and mitigation drawn up under the auspices of Water Directors of the European Union. See Report of the 3rd MoP (n 5).

⁷ Protocol on Water and Health to the 1992 Convention on the Protection and Use of Transboundary Watercourses and Lakes (17 June 1999, London). In force 4 August 2005. <http://www.unece.org/env/documents/2000/mp.wat.2001.1.e.pdf>.

⁸ Protocol on Civil Liability and Compensation for Damage Caused by the Transboundary Effects of Industrial Accidents on Transboundary Waters (21 May 2003, Kiev) <http://www.unece.org/env/civil-liability/protocol.html>. The Protocol has been ratified so far only by Hungary.

⁹ Convention on the Transboundary Effects of Industrial Accidents (17 March 1992, Helsinki) 31 ILM (1992) 1333.

The proposal to amend the Convention was initiated by the Government of Switzerland through a decision of the Federal Council on 20 August 2003¹⁰ and communicated to all Parties to the Convention through the UNECE Executive Secretary on 27 August 2003.¹¹ The original Swiss proposal included the Amendment to Article 25 only. The Amendment to Article 26 was added by the *ad hoc* group established during the MoP with the purpose to finalize the draft decision prepared by Switzerland.¹² This addition however contributed to consistency of the text only.¹³

The reasoning of the draft decision communicated in the original Swiss proposal largely focused on the benefits for transboundary water cooperation between UNECE countries and countries bordering the UNECE region.¹⁴ The MoP, when adopting the Amendment through decision III/1, shifted this focus to the benefits of cooperation among riparian States throughout the world, expressing its 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.¹⁵ Among other reasons for adopting the Amendment were a desire to promote river basin cooperation throughout the world and to share experience with other regions in the world,¹⁶ as well as to harmonize the provisions regarding (possible) global accession to UNECE environmental agreements.¹⁷

Although the original Swiss proposal included the requirement for any non-UNECE State that is a Member of the United Nations to receive the approval of its accession from the MoP, it did not intend to modify the conditions for the entry into force of the amendments for this specific Amendment. In other words, the Amendment as originally proposed by Switzerland, would have required the acceptance by two thirds of the Parties only, in conformity with Article 21, paragraph 4, of the Convention.

¹⁰ UNECE, Amendment to article 25 of the Convention (proposed text), MP.WAT/2003/4. See annex.

¹¹ Letter by the State Secretary Mr. Phillipe Roch of the Swiss Agency for Environment, Forests and Landscape to the Environment Ministers of the Parties to the Convention on the Protection and Use of Transboundary Watercourses and International Lakes, 10 October 2003.

<http://www.unece.org/fileadmin/DAM/env/water/meetings/3mop/letamendement.pdf>.

¹² See Report of the 3rd MoP (n 5).

¹³ Amendment to Article 26, paragraph 3, adds reference to non-UNECE countries to the description of the general conditions for the entry into force of the Convention for any new Party: "3. For each State or organization referred to in article 23 or in paragraph 3 of article 25 which ratifies, accepts or approves this Convention or accedes thereto after the deposit of the sixteenth instrument of ratification, acceptance, approval or accession, the Convention shall enter into force on the ninetieth day after the date of deposit by such State or organization of its instrument of ratification, acceptance, approval or accession." Emphasis added.

¹⁴ See Amendment to article 25 of the Convention (proposed text) (n 10).

¹⁵ UNECE, Amendment to articles 25 and 26 of the Convention (adopted at the Meeting of the Parties), ECE/MP.WAT/14.

¹⁶ *Ibid.*

¹⁷ Four UNECE instruments (1998 Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention), 2003 Protocol on Pollutant Release and Transfer Registers to the Aarhus Convention, 2003 Protocol on Strategic Environmental Assessment to the Espoo Convention and 2003 Protocol on Civil Liability and Compensation for Damage Caused by the Transboundary Effects of Industrial Accidents on Transboundary Waters to the Water Convention and Convention on the Transboundary Effects of Industrial Accidents (Protocol on Civil Liability)) were originally designed as open for global participation. The 1991 Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention) was amended in 2001 to allow for global participation. All these instruments are in force, except for the Protocol on Civil Liability. As of 15 May 2014, none of these instruments has Parties from outside the UNECE region.

On 10 October 2003, Switzerland circulated a letter to all Parties to the Convention. In this letter it informed the Parties of the outcomes of consultations undertaken by Switzerland and the secretariat with Parties to the Convention. The consultations had shown a general support to the proposed Amendment. However the consultations also revealed concerns over “the cumbersome and delicate situation which could arise at the entry into force of the amendment (article 21, para.4), in case there would be only the 23 necessary Parties for which the amendment is in force and the other Parties for which it is not.”¹⁸ During the MoP these concerns prevailed and the decision on the Amendment was modified to include the requirement that the MoP could only approve requests for accession from non-UNECE States once the Amendment enters into force for all countries and organizations which were Parties to the Convention at the time of its adoption in 2003.¹⁹ This formula was copied from an earlier amendment²⁰ to the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention)²¹ and in fact created an additional condition for operationalization of the Amendment to Articles 25 and 26 compared to the regular procedure for entry into force of an amendment as envisaged in the Convention. This additional condition was taken on board and included in the decision III/1 on Amendment to the Water Convention that the MoP adopted by consensus on 28 November 2003.²²

3. Towards the entry into force

Although the Parties had concerns that “[a] long period of time could be necessary to gather the ... instruments of acceptance needed for the entering into force of the amendment ...”,²³ only the subsequent history showed how difficult this was. By the next, fourth session of the MoP (Bonn, 20-22 November 2006), the Amendment had been ratified, approved or accepted only by six Parties.²⁴ By the fifth session (Geneva, 10-12 November 2009), 14 ratifications were reached.²⁵ At that time it became clear that a special effort was needed to make the Amendment enter into force.

For Switzerland, who had been elected as chair of the Convention in 2010-2012, for the Convention’s Bureau as well as the secretariat, the entry into force of the Amendment became the first priority. The fifth session of the MoP (Geneva, 10-12 November 2009) was attended by Afghanistan and Mongolia who voiced their expectation that entry into the force of the Amendment would help their countries to join the cooperative framework.²⁶

¹⁸ See letter (n 11).

¹⁹ Article 25, paragraph 3, of the Convention as amended therefore reads: “3. Any other State, not referred to in paragraph 2, that is a Member of the United Nations may accede to the Convention 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 Convention had been obtained from the MoP and shall specify the date on which approval was received. Any such request for accession by Members of the United Nations shall not be considered for approval by the MoP until this paragraph has entered into force for all the States and organizations that were Parties to the Convention on 28 November 2003.” See Amendment to articles 25 and 26 of the Convention (adopted at the Meeting of the Parties) (n 15).

²⁰ UNECE, MoP to the Convention on Environmental Impact Assessment in a Transboundary Context, Report of the 2nd meeting, ECE/MP.EIA/4, Annex XIV, Decision II/14.

²¹ Convention on Environmental Impact Assessment in a Transboundary Context (25 February 1991, Espoo) 30 ILM (1991) 1461. In force 10 September 1997.

²² See Report of the 3rd MoP (n 5).

²³ See letter (n 11).

²⁴ UNECE, MoP to the Convention on the Protection and Use of Transboundary Watercourses and International Lakes, Report of the 4th meeting, ECE/MP.WAT/19.

²⁵ UNECE, MoP to the Convention on the Protection and Use of Transboundary Watercourses and International Lakes, Report of the 5th meeting, ECE/MP.WAT/29.

²⁶ Ibid.

The MoP urged all Parties which had not yet ratified the Amendment, to do so by 2012, the year of its next session. To support this process, a document with arguments in favour of ratification was developed by Switzerland to assist the Convention's focal points in pushing the ratification of the Amendment through in their respective countries. The document emphasized the political significance of the entry into force of the Amendment.²⁷

From 2010 to 2012, a number of countries and national "champions", mostly from the Convention's Bureau and focal points, as well as partner organizations, focused their efforts on the ratification processes in their own countries and encouraged ratification by other States.²⁸ The secretariat also made special efforts in this regard. In this period from 2010-2012, many non-UNECE countries participated in and contributed to the various Convention's activities²⁹ which was the strongest motivating factor for making the Convention available for their possible accession. Eventually, these efforts led to the desired outcome. On 8 November 2012, just three weeks prior to the sixth session of the MoP (Rome, 28-30 November 2012), the necessary number of ratifications was reached and the Amendment was announced to enter into force on 6 February 2013.

4. Decision on accession by non-UNECE countries taken in Rome

The sixth session of the MoP (Rome, 28-30 November 2012) was attended by 20 countries from outside the UNECE region³⁰ and by a high number of international organizations and NGOs demonstrating the political importance of the entry into force of the Amendment. Even more significant was the fact that non-UNECE States were not simply attending but actively participating in the meeting. Following the Convention's tradition to decide all issues by consensus, no voting took place despite several difficult decisions on the agenda of the meeting, therefore creating a special cooperative atmosphere with no line between Parties and non-Parties. Two countries – Iraq and Tunisia – formally expressed their interest in joining the Water Convention.³¹

The debates on the draft decision on accession by non-UNECE States focused on two major issues: lifting the requirement of approval by the MoP of future requests for accession by non-UNECE States, and the need for ratification of the Amendment by the remaining 2003 Parties in conformity with the language of the Amendment.³² An *ad hoc* group was set up to revise and finalize the draft decision on accession by non-UNECE States.³³

²⁷ Opening the Convention beyond the region: why the amendments to articles 25 and 26 should enter into force soon. Note by Switzerland, ECE/MP.WAT/2009/1.

²⁸ Several letters were sent by the Convention's Bureau to encourage ratification by the remaining 2003 Parties. Also, some countries, e.g. Switzerland, Germany and France, through diplomatic channels encouraged ratification by other States.

²⁹ The examples of such participation include Second workshop on climate change adaptation in transboundary basins (Geneva, 12-13 April 2011), International conference "Europe-Asia transboundary water cooperation" (Geneva, 15-16 December 2011), Third workshop on water and climate change adaptation in transboundary basins (Geneva, 25-26 April 2012) and International roundtable on transboundary water management in the Southern Mediterranean region (Rome, 26-27 November 2012).

³⁰ Delegations from the following non-UNECE member States took part in the session: Afghanistan, Algeria, Bangladesh, Colombia, Democratic Republic of the Congo, Côte d'Ivoire, Egypt, Ghana, Honduras, Islamic Republic of Iran, Iraq, Jordan, Mauritania, Morocco, Namibia, Nicaragua, Thailand, Tunisia and Yemen. A representative of Palestine also attended the session. UNECE, MoP to the Convention on the Protection and Use of Transboundary Watercourses and International Lakes, Report of the 6th meeting, ECE/MP.WAT/37.

³¹ *Ibid.*

³² Draft decision on accession by non-United Nations Economic Commission for Europe countries, ECE/MP.WAT/2012/L.6.

³³ Report of the 6th meeting (n 30).

On the first issue, there was a widespread consensus that requiring from non-UNECE States to obtain the approval of their accession by the Convention's MoP was discriminatory, since countries from the UNECE region wishing to accede to the Convention were entitled to do so without any approval. An elegant solution was found: the MoP in Rome gave its 'blanket approval' for all future requests for accession by non-UNECE States, therefore relieving interested non-UNECE countries from the need to ask for approval.³⁴

On the second issue – the need for all the States and organizations that were Parties to the Convention on 28 November 2003 to become Parties to the Amendment before non-UNECE countries are able to accede – the MoP decided to maintain the original intention and language of the Amendment.³⁵ All delegations voiced their strong determination to see non-UNECE States among Parties to the Convention as soon as possible; however, many could not see a legally sound way of lifting the requirement of ratification by all 2003 Parties without 'making an amendment to the Amendment'. Instead, the MoP urged the remaining 2003 Parties to ratify the Amendment to articles 25 and 26 as soon as possible, and not later than by the end of 2013.³⁶ Six of them did so in 2013.³⁷ As of 31 May 2014, three States still need to ratify the Amendment.³⁸

The formula that the MoP could only consider requests for accession from non-UNECE States after all 2003 Parties have ratified the Amendment (Article 25, paragraph 3, as amended) was absent in the original Swiss proposal of 20 August 2013. It was introduced later in order to address the "cumbersome and delicate situation" which could arise at the entry into force of the amendment in case there would be some Parties for which the amendment is in force and the other Parties for which it is not. Looking back at this formula one can see its uselessness to address even the purpose it was meant to serve. The text of decision III/1 encouraged UNECE countries wishing to become Parties to the Convention to accede to the Amendment simultaneously with accession to the Convention; however it did not oblige them to do so. This paved the way for the situation that by the time non-UNECE countries are able to accede to the Convention following the entry into force of the Amendment for all 2003 Parties, there could be post-2003 Parties to the Convention from UNECE region that are not Parties to the Amendment. In reality, out of four countries that became Parties to the Convention in the period between 28 November 2003, the date of adoption of the Amendment, and 6 February 2013, the date of its entry into force,³⁹ two countries – Uzbekistan in 2007 and Turkmenistan in 2012 – became

³⁴ The relevant part of decision VI/3 reads: "4. *Decides* that, for the purposes of the amendment to article 25 of the Convention, adopted by decision III/1, 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. ..." Decisions and vision for the future of the Convention, ECE/MP.WAT/37/Add.2, decision VI/3.

³⁵ *Ibid.* The relevant part of decision VI/3 reads: 4. *Decides* that, for the purposes of the amendment to article 25 of the Convention, adopted by decision III/1, 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. This approval is subject to the entry into force, for all the States and organizations that were Parties to the Convention on 28 November 2003, of the amendments to articles 25 and 26. ...".

³⁶ Decisions and vision for the future of the Convention (n 34).

³⁷ See status of the Amendment at

https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXVII-5-b&chapter=27&lang=en.

³⁸ *Ibid.* As of 31 May 2014, Belgium, Kazakhstan and Ukraine still need to ratify the Amendment.

³⁹ This does not include Bulgaria which deposited its instrument of ratification of the Convention on 28 October 2003 and was not yet a Party to the Convention during the session of the MoP on 26-28 November 2003. Bulgaria approved the Amendment on 5 November 2012.

Parties to the Convention without simultaneously becoming Parties to the Amendment. Uzbekistan subsequently ratified the Amendment in 2011, but Turkmenistan has not yet done so.⁴⁰ If Turkmenistan does not ratify the Amendment in the nearest future, there will be a situation when non-UNECE countries will be able to accede to the amended Convention whose one Party is still a Party to the non-amended text.

5. 2003 Amendment: Some legal implications

Rights and obligations for new Parties

All countries joining the Water Convention, whether from the UNECE region or from outside, bear the same obligations and have the same rights. All 'new' Parties become part of the Convention's institutional mechanism in the same way and on the same equal footing as 'old' Parties. In other words, new Parties have the same rights to participate in decision making, to be elected to the bodies of the Convention, to lead the activities under the Convention, to receive assistance and so on.⁴¹ It is very important that the MoP in Rome by expressing the blanket approval to all future requests for accession from non-UNECE region prevented any potential discussions on the readiness of one or another State to be a Party to the Convention.

As with all other multilateral environmental agreements, accession to the Water Convention implies that a State becomes bound by the decisions of the MoP taken before the time of its accession. However, accession to the Water Convention does not imply accession to the Convention's protocols.⁴²

Relationship with the UN Watercourses Convention

The globalization of the Water Convention takes place along with the entry into force of the 1997 United Nations Convention on the Law of the Non-navigational Uses of International Watercourses (UN Watercourses Convention)⁴³ that will happen in August 2014. This obviously raises questions how the two global Conventions will co-exist.

Interestingly enough, in 2003 the existence of the UN Watercourses Convention was not raised as an argument against the adoption of the Amendment opening up the Water Convention for global membership. Three years before the adoption of the Amendment, in 2000, a comparative study of the two Conventions was performed under the former Task Force on Legal and Administrative Aspects of the Water Convention. The study concluded that, while both Conventions address the same subject matter, their respective provisions are mutually compatible.⁴⁴ By 2003, five Parties to the Water Convention (Finland,

⁴⁰ See status of the Amendment (n 37).

⁴¹ Global opening of the 1992 Water Convention, ECE/MP.WAT/43.

⁴² The Protocol on Water and Health is a regional treaty – only member States of the UNECE and/or of the World Health Organization Regional Office for Europe can join the Protocol. The Protocol on Civil Liability is open for ratification by States Parties to one or both of the two conventions: the Water Convention and the Convention on the Transboundary Effects of Industrial Accidents. Any other Member State of the United Nations may accede to the Protocol on Civil Liability, once in force, upon approval by the MoP to the Protocol. The Protocol on Civil Liability will enter into force once 16 States have ratified it.

⁴³ Convention on the Law of Non-Navigational Uses of International Watercourses, 21 May 1997, (1997) 36 I.L.M. 700.

⁴⁴ The Relationship between the UNECE Convention on the Protection and Use of Transboundary Watercourses and International Lakes and the 1997 United Nations Convention on the Law of the Non-Navigational Uses of International Watercourses, Geneva, 2000 (UN Doc. ECE/ENHS/NONE/00/02, GE 00-30528), available at www.unece.org/env/water/publications/documents/conventiontotal.pdf.

Hungary, Netherlands, Norway and Sweden) were Parties to the UN Watercourses Convention⁴⁵ demonstrating their conviction in the compatibility of obligations under both instruments. When the Amendment to the Water Convention was put forward, the UN Watercourses Convention was far from entering into force.⁴⁶ Last but not least, since the UN Watercourses Convention did not envisage the establishment of any institutional platform for cooperation based on a Meeting of the Parties, there were no fears of any institutional duplication that might arise from having these two Conventions operational at the global level.

The situation changed in 2011-2012 with the rapid increase in ratification rate of the UN Watercourses Convention. By the MoP in Rome (28-30 November 2012), only six ratifications were missing for the UN Watercourses Convention to enter into force.⁴⁷ Moreover discussions started on a possible institutional set up for the UN Watercourses Convention. By the MoP in Rome, many more Parties to the Water Convention (Denmark, Finland, France, Germany, Greece, Hungary, Italy, Luxembourg, Netherlands, Norway, Portugal, Spain, Sweden and Uzbekistan) were Parties also to the UN Watercourses Convention.⁴⁸ The issue of the relationship between two Conventions therefore became of primary importance for Parties to the Water Convention. During the session of the MoP, the United Nations Secretary-General in his opening statement and many countries and organizations called for ensuring synergies in the implementation of the two Conventions.⁴⁹

The MoP in Rome committed to promote synergies and coordination with the 1997 Watercourses Convention. In particular, it decided to share the experience collected under the Water Convention to support the implementation of the 1997 Watercourses Convention, to promote coordination between the Parties to the two Conventions and to offer an intergovernmental framework for discussion on the two Conventions.⁵⁰ Following this decision, synergies and coordination with the UN Watercourses Convention were discussed by the Water Convention's Working Group on Integrated Water Resources Management (Geneva, 25-26 September 2013).⁵¹ In course of 2013, joint presentations on the two Conventions were delivered at a number of national, regional and international meetings.⁵²

⁴⁵ See status of the UN Watercourses Convention at https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXVII-12&chapter=27&lang=en.

⁴⁶ On 28 November 2003 the UN Watercourses Convention had 12 ratifications out of required 35 ratifications.

⁴⁷ As of 30 November 2013. See status of the UN Watercourses Convention (n 45).

⁴⁸ See status of the UN Watercourses Convention (n 45).

⁴⁹ In his message to the sixth session of the MoP to the Water Convention, 28 November 2012, Mr. Ban Ki-moon, United Nations Secretary-General, noted "The globalization of the [Water] Convention should also go hand-in-hand with the expected entry into force of the United Nations Watercourses Convention. These two instruments are based on the same principles. They complement each other and should be implemented in a coherent manner."

⁵⁰ Report of the 6th meeting (n 30).

⁵¹ UNECE, Working Group on Integrated Water Resources Management, Report of the 8th meeting, ECE/MP.WAT/WG.1/2013/2, 52-54.

⁵² These include International Annual UN-Water Zaragoza Conference (8-10 January 2013), Zaragoza, Spain; 4th Annual International Law and Transboundary Freshwaters Workshop (10-14 June 2013), Dundee, United Kingdom; Workshop on transboundary water cooperation: Latin American and Pan-European regions: sharing experiences and learning from each other (11-12 June 2013), Buenos Aires, Argentina; Stockholm World Water Week (1-6 September 2013), Stockholm, Sweden; National seminar on international water law (12-13 September 2013), Issyk-Kul, Kyrgyz Republic; First Workshop "River Basin Commissions and Other Joint Bodies for Transboundary Water Cooperation: Legal and Institutional Aspects" (23-24 September 2013), Geneva, Switzerland; 7th GEF Biennial International Waters Conference (28-31 October 2013),

Contribution to further development of international water law

Until now, the Water Convention through its intergovernmental platform has been contributing to the international water law process through the development and codification of new norms, authoritative interpretation and further development of its principles and provisions, and practical support to implementation of the provisions of the Convention. Two Protocols to the Convention, a body of soft-law instruments (guidelines, recommendations, model provisions, etc.) and dozens of multilateral and bilateral transboundary water agreements developed on the basis of the Convention evidence the Convention's contribution to the international water law process. Moreover, the Convention was instrumental for the efforts of its Parties to implement their international commitments on water such as the water-related Millennium Development Goals.

The global opening of the Water Convention should further strengthen the contribution of the Convention to international water law and would undoubtedly impact on the scope and scale of such contribution. With the Convention to acquire global membership, future protocols and non-binding instruments would be based on a wider and more diverse experience from the various regions. Implementation of the Convention's Article 9, which provides for the obligation of Riparian Parties to conclude multilateral and bilateral agreements or arrangements and to establish joint bodies for transboundary water cooperation, would contribute to the coverage of a larger number of transboundary basins by agreements and joint management structures. Future case law of the recently established Implementation Committee under the Convention⁵³ would become an important source of international law. Developing synergies with the UN Watercourses Convention would provide even more opportunities for strengthening international water law through reinforcing implementation of both instruments. As global instrument, the Convention is also expected to support the reaching of the post-2015 Sustainable Development Goals.

6. 2003 Amendment: Practical experience

Even before the formal entry into force of the Amendment in 2013, numerous non-UNECE countries participated in and contributed to many activities under the Convention. This started in 2009, when Mongolia and Afghanistan participated in the fifth session of the MoP.⁵⁴ Such practice increased significantly after 2010. In total, by the end of 2013, more than 40 countries from outside the UNECE region have participated in meetings and activities of the Water Convention.

At the beginning, the main aim was to involve neighbouring States, mainly those from the Asian region, as well as Mediterranean countries. Following this *rationale*, the second workshop on climate change adaptation in transboundary basins (Geneva, 12-13 April 2011) saw the participation of several delegations from outside the UNECE region, especially but not only from the Mediterranean region and neighbouring Asian countries.⁵⁵

Bridgetown, Barbados; International Conference on Water Security and Peace (14-15 November 2013), Hague, Netherlands.

⁵³ The sixth session of the MoP (28-30 November 2012) adopted decision VI/1 on support to implementation and compliance. The decision established the Implementation Committee for the Water Convention. See Decisions and vision for the future of the Convention (n 34). More information is available at http://www.unece.org/env/water/implementation_committee.html

⁵⁴ See Report of the 5th meeting (n 25).

⁵⁵ See http://www.unece.org/env/water/meetings/transboundary_climate_adaptation_workshop.html.

Subsequently, in December 2011, an international conference on “Europe-Asia transboundary water cooperation” was organized in Geneva by UNECE and Switzerland, specifically for Central Asia and neighbouring countries. The conference attracted much higher interest from the concerned countries, including at ministerial level, than expected.⁵⁶ It allowed debating the current state, the progress achieved and the remaining challenges for cooperation on water in the basins of Europe and Asia and exchanging experiences and showcasing good practices of transboundary cooperation from those basins. All participating countries considered transboundary cooperation as key for socio-economic development as well as the preservation of transboundary ecosystems in the Europe - Asia region. The conference showed that significant cooperation is already ongoing between Central Asian UNECE countries and neighbouring non-UNECE countries. It was highlighted that the Water Convention, its Parties and its institutional framework, especially the experience gained under the Convention and the guidance material developed are valuable for improving transboundary cooperation in the Europe - Asia border region and for non-UNECE countries in general.

As of 2012, participation in the Convention’s meetings by countries from outside the UNECE region, i.e. not only the neighbouring countries, became usual practice. Areas of work which opened first for global participation were the activities on water and adaptation to climate change⁵⁷ and the second Assessment of transboundary rivers, lakes and groundwaters.⁵⁸ In addition to basins from UNECE region, the second Assessment included analytical information and data on several basins shared with non-UNECE countries. For this, experts from Afghanistan, China, the Islamic Republic of Iran and Mongolia contributed information and participated in the subregional workshops.

Following these trends, all countries neighbouring the UNECE region and all non-UNECE States which were Parties to the UN Watercourses Convention were invited to participate in the sixth session of the Water Convention’s MoP, held on 28-30 November 2012 in Rome. All together, 20 countries from outside the UNECE region participated in the meeting.⁵⁹ Four non-UNECE countries were present at the ministerial level. The second part of the high-level segment focused on the global opening of the Convention and included statements by the Minister of Water of Iraq and the Director of Water from the Ministry of Agriculture of Tunisia. Both announced the intention of their respective countries to accede to the Water Convention in the near future.

The participation by so many representatives from outside the UNECE region gave the meeting a different flavour and perspective. Subsequently, a new area of work on the opening of the Convention was included in the programme of work for 2013-2015, adopted by the MoP.⁶⁰ It foresees activities on building capacity on the Convention outside the UNECE region and promoting exchange of experience worldwide, e.g. through the organization of sub-regional workshops, discussion on synergies with the UN Watercourses Convention, as well as increased cooperation with the Global Environment Facility (GEF). Three countries volunteered to lead this area of work, namely France, Italy and Switzerland.

⁵⁶ See http://www.unece.org/euro_asia_conference.html.

⁵⁷ See http://www.unece.org/env/water/water_climate_activ.html.

⁵⁸ Second Assessment of Transboundary Rivers, Lakes and Groundwaters, ECE/MP.WAT/33.

⁵⁹ Report of the 6th meeting (n 30).

⁶⁰ Programme of work for 2013-2015, ECE/MP.WAT/37/Add.1.

Back-to-back with the session of the MoP, an International Roundtable on Transboundary Water Management in the Southern Mediterranean region was organized on 26 and 27 November 2012 in Rome. The Roundtable was jointly prepared by UNECE, the Union for the Mediterranean (UfM), the Global Water Partnership Mediterranean (GWP-Med), GEF International Waters Learning Exchange and Resource Network (IW:LEARN), and the Mediterranean Component of the EU Water Initiative (MED EUWI), with the support of Italy. This joint initiative demonstrated the value of the partnership approach in the activities devoted to the opening of the Water Convention.

During 2013, most events and meetings under the Convention were held as global meetings, e.g. the climate change workshop (25-26 June 2013), the first workshop on joint bodies (23-24 September 2013) and the eighth meeting of the Working Group on Integrated Water Resources Management (25-26 September 2013). Spanish interpretation was arranged for these meetings, in order to enable broader and more effective participation. In addition, on 11-12 June 2013 in Buenos Aires, Argentina, the Workshop on transboundary water cooperation “Latin American and Pan-European regions: sharing experiences and learning from each other” was jointly organized by UNECE, the Economic Commission for Latin America and the Caribbean (ECLAC), the United Nations Educational, Scientific and Cultural Organization (UNESCO), IW:LEARN, the International Union for Conservation of Nature (IUCN) and the University of Bologna Center in Buenos Aires. Almost all Latin American countries, as well as two Caribbean countries – Haiti and the Dominican Republic, participated.⁶¹ It was concluded that, although the countries of the region have a long history of working together to manage transboundary rivers and aquifers, and have several mechanisms for cooperation in place, the Water Convention would be a useful tool to enhance and channel cooperation across the region. At the same time, the Convention would greatly benefit from Latin American and Caribbean countries sharing their approaches and experiences and eventually joining the treaty. Several countries from Central America expressed their interest to examine in greater detail the benefits of the Convention.⁶²

Nowadays, the globalization of the Convention relies strongly on cooperation with numerous partners. These include the other UN regional commissions, UNESCO, the United Nations Environment Programme, the Global Water Partnership (GWP), IUCN, International Network of Basin Organizations, Worldwide Fund for Nature, Green Cross International and many others. These partners support the organization of joint events in cooperation with the Convention’s secretariat, and also include promotion of the Convention into their events and activities. For some, special partnership arrangements have been established, such as through the decisions on cooperation with the GEF and with UNESCO,⁶³ taken at the sixth session of the MoP, or through the exchange of letters as in the case of the GWP. In addition, cooperation with regional organizations from outside the region has been fostered, such as the African Ministerial Council on Water (AMCOW), the Southern African Development Community (SADC) and many others.

Since the global opening of the Convention is an enormous task with many dimensions, the Convention’s Bureau decided to develop a strategy for the opening of the Convention with a focus on strategic directions, communication messages, partnerships, and resource implications.

⁶¹ See http://www.unece.org/transboundary_water_cooperation_workshop_eclac.html.

⁶² UNECE, Draft Report of the Workshop on Transboundary Water Cooperation, WGIWRM/2013/Inf.5.

⁶³ See Decisions and vision for the future of the Convention (n 34).

7. Conclusions

The global opening of the Water Convention can be seen as major, if not the most important development of the Convention in the last decade. The benefits for both UNECE member States and non-UNECE countries are already evident – all of them appreciate the wider exchange of experience which takes place under the auspices of the Convention in the last few years, reflecting the multifaceted realities of transboundary water cooperation worldwide.

The process of transforming the Water Convention from a regional into a global treaty through the adoption of the Amendment to Articles 25 and 26 has not been easy and required significant efforts from its current Parties. However this process also strengthened their participation in and commitment to the Convention by bringing them together in front of a common goal.

Participation of non-UNECE countries in the activities under the Convention's institutional framework several years before the actual opening of the Convention allowed speeding up the process of the entry into force of the Amendment and demonstrated the various implications of operation of the Convention at the global level, including resource implications, the need for strategic approach and effective communication messages.

In the last years, the global opening resulted in high visibility of the Convention and tremendous increase of its political relevance. In turn, the process of global opening of the Convention contributed and is expected to further contribute to strengthening the profile of transboundary water cooperation and of international water law at the global level.