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INTERGOVERNMENTAL MEETING ON THE
INTERNATIONAL INSTRUMENT

First meeting,
Budapest, Hungary, 11-13 February 1998
Item 5 of the provisional agenda

**International Instrument on the Prevention, Control and Reduction of
Water-related Disease**

**FORMAT OF THE INTERNATIONAL INSTRUMENT ON THE PREVENTION, CONTROL AND
REDUCTION OF WATER-RELATED DISEASE**

Note prepared by the drafting group */

1. This note is intended to enable the Meeting to reach a decision on the format of the international instrument on the prevention, control and reduction of water-related disease, whether non-binding or binding.

*/ Pursuant to the decisions taken by the Parties to the Convention on the Protection and Use of Transboundary Watercourses and International Lakes at their first meeting (Helsinki, Finland, 2-4 July 1997) and by the European Environment and Health Committee at its sixth session (Berlin, Germany, 13-14 November 1997). This note has been produced without formal editing.

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2. The Meeting may wish to:

(a) Take note of the considerations by the drafting group of the comparative advantages of various formats of the international instrument and the means and ways of implementation (annex);

(b) Decide on whether the international instrument should be developed in a binding or a non-binding format;

(b) Decide on an appropriate follow-up mechanism, including arrangements for the interim implementation of the international instrument after its adoption at the Third Ministerial Conference on Environment and Health (London, 1999).

Annex

FORMAT OF THE INTERNATIONAL INSTRUMENT 1/

1. The aim of the international instrument on the prevention, control and reduction of water-related disease is to enhance the level of commitment to this important work, to improve the framework within which it is carried out and to further international cooperation in this field.

2. Supplies of safe drinking-water, proper sanitation and the effective management of water resources are fundamental to ensuring public health. Much of Europe needs to enhance all three of these vital services and also to improve performance in other aspects of the fight against water-related disease. Action in this field will be one of the most cost-effective means of improving public health and the protection of the environment across Europe. The added value in adopting the international instrument lies in the focus and consistency it can provide for the many strands of work already under way in this field, in the enhanced degree of commitment that it can bring and in the increased emphasis on joint and collective action that it can supply. The decision on the format of the international instrument needs to be taken on the basis of what will best serve these aims.

The issue for decision

3. The basic choice on the format of the international instrument is between:

(a) A non-binding international instrument in the form of a declaration, code of conduct, programme of action or other type of "soft-law" instrument;

(b) A legally binding international instrument, either in the form of a protocol to an existing convention or in the form of a free-standing convention.

4. Whatever the decision on the format of the international instrument, it should be appreciated that there will need to be some provision for follow-up mechanism if the initiative for it is to be fully fruitful. The international instrument cannot be simply a statement of rules or commitments. If it is to be successful, it must initiate or intensify processes, both at national level and internationally, to bring about improvements in water supply, sanitation and water resource management. Such processes need to be monitored

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Prepared by the drafting group at its second meeting (Budapest, 24-25 November 1997).

to see whether they are achieving the aims of the international instrument, so that corrective action can be taken if achievement falls short of intention.

5. Many examples from the field of non-binding international instruments show that a statement of an approach to a programme of improvement without some follow-up mechanism will tend to gather dust on the side-lines, rather than be at the heart of a continuing process of improvement. The 1985 Montreal Guidelines on Land-Based Sources of Marine Pollution are a good example of the way in which an excellent product can fail to maintain momentum over the long period needed for action, if there is no follow-up mechanism.

6. Since the question of the follow-up mechanism has no substantial bearing on the choice of the format, this note first reviews the factors that should be borne in mind in deciding on the format of the international instrument.

Relevant factors

7. The following seem to be the relevant factors which need to be evaluated in reaching a decision on whether to have a non-binding or binding international instrument:

(a) **Ease of negotiation:** Since Governments will not formally be bound by the wording of a non-binding instrument, its negotiation can be expected to be a lighter task compared with what is needed for a binding instrument. In particular, since the legal formalities of a binding instrument would not be needed, it might be easier to bring the negotiations to a speedier conclusion than with a binding instrument. This could be important in view of the short time available for negotiation between now and June 1999. **However**, many Governments pride themselves on implementing fully any commitments into which they enter, whether these are binding or not. Such Governments can be expected to be just as careful with their choice of wording in a non-binding instrument as in a binding instrument. The saving in time and effort from choosing the non-binding solution is likely to be less than might at first be expected;

(b) **Flexibility:** Since a non-binding instrument will not require the same formalities (e.g. ratification) as a binding instrument, it can in principle be amended or up-dated more easily. **However**, if the main feature of the instrument is initiating or intensifying a process, there is likely to be only a limited need to amend the instrument once the process is under way;

(c) **Degree of commitment:** Because a binding instrument has to go through a more elaborate approval process, normally involving tacit or express approval by Parliaments, it represents, and is seen to represent, a greater degree of commitment. Since one of the aims of the instrument is to develop a higher degree of political commitment to the prevention, control and reduction

of water-related disease, a binding instrument would thus appear to be more likely to deliver this aim. **However**, what matters is more the substance of whether the commitment exists rather than the form in which it is clothed;

(d) **Uniformity:** Since a binding instrument will be structured so as to set out a clear, consistent set of legal commitments, it can be expected to promote a greater degree of uniformity in the application of the commitments it creates. **However**, an instrument in this field is likely to promote uniformity in the approaches applied rather than in the precise results achieved;

(e) **Speed of application:** Since a non-binding instrument does not require ratification or approval, action under it is not subject to a period of uncertainty while the necessary steps are taken. Even for relatively straightforward instruments the time taken for ratification can be a number of years. **However**, there is an accepted practice for interim application of binding instruments pending their ratification or for taking action at national level consistent with the commitments in a binding instrument pending its ratification;

(f) **Compliance monitoring and dispute resolution:** Since a binding instrument must specify precisely the commitments of the Parties, it enables provisions to be included on verifying the extent to which Parties have complied with these requirements, and for resolving disputes over whether they have done so. **However**, such provisions may have a limited application in this particular instrument.

Follow-up mechanism

8. While it is essential to create some follow-up mechanism to support and develop the agreements embodied in the international instrument and to enable its aims to be better achieved, it seems equally essential to do so without creating a new demand for resources for this purpose. Financial resources and suitably qualified human resources are in short supply, and there will be no welcome for a proposal to divert more of them into supporting a new international instrument. This implies that any follow-up mechanism should be grafted onto an existing international instrument in this general field, so that the work is done more by revising priorities and relocating resources than by providing new resources.

9. If the decision is in favour of a non-binding international instrument, the only available existing institutions appear to be the Meeting of the Parties to the Convention on the Protection and Use of Transboundary Watercourses and International Lakes (the Convention on the Protection and Use of Transboundary Watercourses and International Lakes is hereinafter referred to as the Convention) or the periodic meetings of the Regional Committee of the World Health Organization's Regional Office for Europe (WHO/EURO). The

Third Ministerial Conference on Environment and Health (London, 1999) would therefore have to invite the Governments participating in one or other of these to:

(a) Agree to organise periodic meetings in continuation of one or other of those main meetings, for the purpose of reviewing progress on the activities connected with the international instrument to prevent, control and reduce water-related disease and to consult about any action needed as a result;

(b) Arrange for the secretariat of one or the other of those bodies to provide the necessary support, possibly with participation of the other body's secretariat.

10. If the decision is in favour of a binding international instrument, the only apparent solution is to integrate the work under the international instrument with that under the Convention. Such integration could be achieved either by a separate convention or by a protocol added to the Convention. From the point of view of drafting the international instrument either approach is feasible.

11. A protocol would signal clearly the link between the two instruments, but would be less appropriate if the intention is to emphasise the extension of work into a new field and the aim of involving new partners, such as WHO/EURO.

12. If there are formally separate conventions, there are a number of instances of collaboration between separate conventions, whereby the Parties (which may well be different) can work together in developing and applying their provisions. The Oslo Convention and the Paris Convention offer a recent good example of this. 2/ Such an arrangement could appropriately be initiated by a resolution adopted by the Third Ministerial Conference on Environment and Health, as part of its final act or summary record, setting out how the joint working should be organised. The main points to be covered by such a resolution appear to be:

(a) For the meetings of the Parties to the Convention and the international instrument to be held together, with arrangements for those Governments who are not Parties to one of the instruments to attend as

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The Oslo Convention on the Prevention of Marine Pollution by Dumping from Ships and Aircraft was adopted in 1972. The Paris Convention on the Prevention of Marine Pollution from Land-Based Sources was adopted in 1974. When the Conventions entered into force, a common Secretariat was established, and the practice developed of the two Commissions established by the Conventions meeting together, originally with back-to-back sessions for their separate tasks with a joint meeting for common interests, more recently as a joint meeting for all purposes.

observers during the items of business in respect of the instrument to which they are not a Party. The rules of procedure of both would need to make appropriate procedure for such meetings;

(b) For the Meeting of the Parties to the Convention and the Meeting/Conference of the Parties to the international instrument to be committed to setting up, wherever appropriate, joint working groups and other bodies to take forward the preparation of work during the intervals between meetings of the Parties;

(c) For the Executive Secretary of the United Nations Economic Commission for Europe to provide the secretariat services for the joint meetings, with appropriate participation in those related to the international instrument from the secretariats of WHO/EURO and the United Nations Environment Programme.

Conclusion

13. On this basis, the key questions for the intergovernmental meeting on the international instrument on the prevention, control and reduction of water-related disease are:

(a) Whether the international instrument should be developed in a binding or a non-binding format;

(b) How an appropriate follow-up mechanism can be developed.