



2019-IP11: Positive Developments on the London Convention's Export Amendment!

We have been reporting to you from the London Convention meetings (the global treaties that protect the marine environment) for over twelve years by attending and reporting by Information Papers and blogs. As a reminder, the CCS amendment was approved in 2006 and came into force in 2007 to allow CO₂ storage in sub-seabed formations. An amendment was approved in 2009 to allow export of CO₂ for geological storage. The detailed work on the guidance on transboundary CCS and export of CO₂ was completed in 2012 (see IEAGHG 2013-IP26 and 2014-IP19). However for this export amendment to come into force, two thirds of the now 51 Parties to the London Protocol need to ratify the amendment (ie 34). In terms of ratification progress, this has been extremely slow, with just Norway, UK, Netherlands, Iran, Finland and Estonia have ratified over the ten years since, whilst the number of Parties has grown by 14 over the same period. This means there is still a legal barrier to exporting CO₂ from one country to another for offshore storage projects.

In 2011 the IEA produced a Working Paper "CCS and the London Protocol: Options for Enabling Transboundary CO₂ Transfer", with IEAGHG input. These alternatives have more recently been presented and discussed at the 3rd Offshore CCS workshop in June 2018 (IEAGHG Report 2018-TR02) and at GHGT-14 session 11C.

The good news is that there is now a formal proposal from Norway and the Netherlands to use one of these alternatives, after extensive research and preparation, and this is being formally proposed to the 2019 London Convention meeting (7-11 October 2019) (known as LC41). This alternative is a 'Provisional Application' of the amendment between countries who choose to do so. I provide below the briefing points from the Norwegian government.

- Article 6 of the London Protocol prohibits cross border transport of carbon dioxide for the purpose of permanent geological storage below the seabed (CCS).
- CCS a necessary part of a suite of technologies needed if we want to reach our climate targets. The special report on the consequences of 1.5 degrees warming recently published by the IPCC underscores this yet again.
- Several CCS projects around the North Sea basin are moving forward, planning to receive carbon dioxide from other sources, including from abroad.
- The lack of acceptances of the 2009 amendment to article 6 of the London Protocol is a real barrier to this development.
- The Norwegian demonstration project for carbon dioxide capture, transport and storage has now entered into the last study phase before an investment decision may be taken. If everything goes according to plan, an investment decision is scheduled in 2020/2021.
- The project aims for transfer of technology, unlocking of investments and more CCS projects following the Norwegian one. Excess capacity in the storage site combined with a flexible transport solution is key. Both risks and costs will be much lower for subsequent projects who can connect to existing infrastructure and hence benefit from shared use.



- In order to get these positive effects, lifting the ban on transboundary transfer of carbon dioxide for sub-seabed geological storage of the London Protocol article 6 is essential.
- Up until now (august 2019), only six parties have accepted the amendment to article 6 from 2009. We continue to encourage further acceptances with an ultimate aim of getting the amendment to enter into force through the procedures provided for in the London Protocol.
- However, we are not very optimistic at the prospect of getting sufficient acceptances in place for the amendment to enter into force rapidly enough to follow the developments currently underway in the North Sea basin.
- It would be a shame if this impediment stopped necessary development of projects for climate mitigation and possibilities for future collaboration on handling large emission points. This would not be in line with the intentions of the London Protocol.
- The Netherlands and Norway have therefore been looking into the possibility of provisional application, in line with the Vienna Convention on the Law of the Treaties (VCLT) article 25. This article provides a remedy for time consuming national acceptance processes, where an issue is pressed for time. Deploying carbon capture and storage is a time pressing issue for climate mitigation and the export barrier in article 6 of the London Protocol is a real obstacle to this deployment.
- VCLT article 25, first paragraph, litra (b) allows for provisional application of "part of a treaty" where the "negotiating States have in some other manner so agreed".
- VCLT article 25, first paragraph, litra (b) states that provisional application of part of a treaty must be "agreed" between the negotiating States. The Netherlands and Norway therefore propose a resolution, which would have a two-folded purpose:
 - First, invite States to deposit with the depositary a declaration on provisional application of the 2009 amendment of the London Protocol pending its entry into force
 - Second, urge states to consider accepting the amendment to article 6 of the London Protocol
- Needless to say, once intention to use the 2009-amendment provisionally has been declared, an agreement amongst the negotiating states to allow for provisional application of the amendment in line with article 6.2, would not have any legal bearing on those States that choose not to be provisionally bound by the amendment.
- The form of a resolution allows for a transparent process where all parties to the London Protocol have the opportunity to participate in the discussions and forming of the proposal. We believe this gives a good basis for provisional application pending sufficient acceptances.



- Finally, it is important to underline that we will continue to work to increase the number of acceptances of the 2009-amendment. The final aim must be to get the amendment to enter into force formally.

Under the CCS agenda item in this LC41 meeting, IEAGHG will give our usual update on activities relating to offshore CCS, including the STEMM-CCS project and the 4th Offshore CCS workshop. These will be summarised and provided in IMO paper LC 41/INF.3. So there will be a lot of CCS information to support the discussions on the Norwegian and Netherlands proposal.

For more information, public information on the overall London Convention and Protocol is available at <http://www.imo.org/en/OurWork/Environment/LCLP/Pages/default.aspx> , and the Norwegian and Netherlands proposal is available as document LC41/6 under IMODOCs “Public Account” (once you set up an account). Alternatively email myself for a copy.

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