



**Convention on the Protection and Use of Transboundary Watercourses and International Lakes**

**MEETING OF THE PARTIES**

Sixth session  
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**Opening of the Convention**

MOP-6/2012/INF.7

**INFORMAL ADVICE ON THE DRAFT DECISION ON ACCESSION BY NON-UNITED NATIONS ECONOMIC COMMISSION FOR EUROPE COUNTRIES**

**Note by the Secretariat**

**Background**

1. Following the development of the document “Draft decision on accession by non-United Nations Economic Commission for Europe countries” (ECE/MP.WAT/2012/L.6), the Bureau of the Meeting of the Parties requested the secretariat to ask the opinion of the Treaty Section of the Office of Legal Affairs on the document.
2. Upon such request the secretariat approached the Treaty Section which kindly agreed to provide UNECE with an informal advice. This information document reflects the informal comments provided by the Treaty Section.

**Core decision and approval of future requests (paragraphs 1-3 and bracketed 4 of document ECE/MP.WAT/2012/L.6)**

3. Since the submission of the document “Draft decision on accession by non-United Nations Economic Commission for Europe countries” (ECE/MP.WAT/2012/L.6) on 26 September 2012, several more countries have deposited their instruments of acceptance of the amendment to articles 25 and 26 of the Convention, and the amendment will enter into force on 6 February 2013. A relevant paragraph expressing satisfaction for the entry into force of the amendment could therefore be introduced in the draft decision.
4. The approval by the Meeting of the Parties of any future request has not raised objections from the Treaty Section, provided that clarifying language be inserted to ensure compliance with the provisions, once in force, of amended article 25, paragraph 3. In order to provide prompt assistance to the Meeting of the Parties and without prejudice to any decision that may be taken by the Meeting, a non-paper with suggested clarifying language based on the text in document ECE/MP.WAT/2012/L.6 has been developed should the Meeting of the Parties wish to pursue with the approval.

**Additional module A**

5. Additional module A as reflected in the “Draft decision on accession by non-United Nations Economic Commission for Europe countries” (ECE/MP.WAT/2012/L.6) has been considered not viable by the Treaty

Section as the Meeting of the Parties does not have the capacity to grant any State a participation status which is not provided for in the Convention itself. Also the depositary who is guided by the provisions of the treaty cannot accept an instrument of accession in deposit contrary to the terms of the treaty. However, the possibility to invite interested non-ECE Member States to unilaterally accept the provisional application of the Convention could be considered as a possible alternative course of action. Such unilateral acceptance would mean that a non-ECE State eventually applies the Convention provisionally in accordance with its domestic law and not in accordance with the provisions of the Convention; it is therefore bound individually and cannot be considered as Party. After the entry into force of the amendment to article 25 and 26 for all States and organizations which were Parties to the Convention on 28 November 2003, the non-ECE State which has been applying the Convention provisionally would still need to deposit its instrument of accession in order to become a Party to the Convention. In order to provide prompt assistance to the Meeting of the Parties and without prejudice to any decision that may be taken by the Meeting, a non-paper with suggested language for a draft decision based on the text in document ECE/MP.WAT/2012/L.6 has been developed should the Meeting of the Parties wish to pursue this option.

#### **Additional module B**

6. Additional module B, as reflected in the “Draft decision on accession by non-United Nations Economic Commission for Europe countries” (ECE/MP.WAT/2012/L.6), has also been considered not viable by the Treaty Section, as the Meeting of the Parties cannot, even by unanimous decision, amend the provisions of the Convention.

7. To achieve the objectives of additional module B, the Treaty Section indicated that the Parties could consider concluding an Agreement that would amend article 25, paragraph 3, as amended, to remove additional requirements for participation of non-ECE countries and at the same time amend the entry into force requirements set out in article 21, paragraph 4, for this specific amendment.

8. Any amendment to the Convention must be submitted to the procedure of acceptance by two thirds of the Parties, and would enter into force only for those accepting the amendments, unless all Parties to the Convention agree otherwise; in other words, unless a new agreement is reached by all Parties to the Convention superseding the previous provisions. If an amendment of the amendment provisions on entry into force, i.e., of article 21, paragraph 4, were adopted, each Party to the Convention would have to accept that amendment. If the acceptance were effected in accordance with article 21 of the Convention by the submission to the depositary of instruments of acceptance by all the Parties to the Convention, it would take some time to reach the two-thirds requirement of the Convention.

9. For the new amendment to article 25 to enter into force for all and as soon as possible, the entry into force provisions in article 21, paragraph 4, of the Convention applicable to amendments to the Convention would have to be amended. A simplified entry into force procedure for the amendment of article 25 could be agreed upon: the entry into force for all by non-objection by any Party within a given time-limit (the objection by one single Party would prevent the entry into force of the amendment of the amendment).

10. Such an amendment to article 21, paragraph 4, would have to be in the form of an Agreement that would modify and supersede the provisions of article 21, paragraph 4, of the Convention, in relation to the new amendment to article 25, paragraph 3, on the participation by non-ECE countries, and would itself have a simplified provision for its entry into force (e.g., entry into force for all if no Party submits an objection to the depositary within 6 months of the circulation of the Agreement). In accordance with international law, such an Agreement has to be accepted by all Parties to the Convention. Adoption by unanimity at a Meeting of the Parties does not constitute the agreement and thus expression of consent to be bound of all the Parties is needed. Once the new amendment to article 25 were in force for all, new Parties would be bound by the Convention, as amended.

11. In order to provide prompt assistance to the Meeting of the Parties and without prejudice to any decision that may be taken by the Meeting, a non-paper with suggested language for a draft decision and draft agreement has been developed should the Meeting of the Parties wish to pursue this option.