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**MEETING OF THE PARTIES TO THE CONVENTION ON
THE PROTECTION AND USE OF TRANSBOUNDARY
WATERCOURSES AND INTERNATIONAL LAKES**

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Item 4 of the provisional agenda

**AMENDMENTS TO ARTICLES 25 AND 26 TO OPEN THE CONVENTION TO
COUNTRIES OUTSIDE THE REGION**

**OPENING THE CONVENTION BEYOND THE REGION: WHY THE AMENDMENTS
TO ARTICLES 25 AND 26 SHOULD ENTER INTO FORCE SOON**

Note by Switzerland

Summary

This document is devoted to fostering ratification of the amendments to articles 25 and 26 of the Convention on the Protection and Use of Transboundary Watercourses and International Lakes (Water Convention), adopted by the Meeting of the Parties at its third session in Madrid in November 2003. The entry into force of the amendments would open the Convention for accession to countries outside the United Nations Economic Commission for Europe region. The document addresses various issues among which political significance of the entry into force of the amendments and their potential role in promoting peace and achieving international commitments.

I. BACKGROUND AND PROPOSED ACTION BY THE MEETING OF THE PARTIES

1. At its third session (Madrid, 26–28 November 2003), the Meeting of the Parties to the Convention amended the Convention's articles 25 and 26 by decision III/1, taken on 28 November 2003 (ECE/MP.WAT/14), allowing the accession to the Convention, upon approval by the Meeting of the Parties, of any State that is not a member State of the United Nations Economic Commission for Europe (UNECE) but is a Member State of the United Nations.
2. The Government of Switzerland, which had initiated the adoption of the amendments, has prepared the present document in order to accelerate the ratification process and the entry into force of the amendments to articles 25 and 26. The document contains arguments that may be used by national focal points and other national representatives in the national ratification process of the amendments as well as in the next steps.
3. At its fourth meeting (Geneva, 8–9 July 2009), the Working Group on Integrated Water Resources Management discussed the need for an early entry into force of the amendments and requested the Government of Switzerland to submit this document to the Meeting of the Parties (see ECE/MP.WAT/WG.1/2009/2) for its consideration.
4. The Meeting of the Parties may wish:
 - (a) To urge Parties to ratify the amendments to articles 25 and 26 of the Convention as soon as possible, in order to make sure that the amendments are in force by the sixth session of the Meeting of the Parties in 2012;
 - (b) To prompt non-Parties that are in the process of ratifying, accepting or approving the Convention to simultaneously ratify, accept or approve the above amendments;
 - (c) To agree on ways and means to promote ratification of the amendments in UNECE countries;
 - (d) To support application of the Convention and its soft law tools in countries outside the region;
 - (e) To decide to include an item related to promotion of the ratification of the amendments in the next workplan for 2010–2012 (in programme areas I and VIII).

II. INTRODUCTION

5. The Convention is intended to strengthen national measures for the protection and ecologically sound management of transboundary ground and surface waters and to promote cooperation on their management and protection.
6. Currently, the Convention is open to ratification, acceptance, approval and accession by UNECE member States and the regional economic integration organizations. The Convention has two protocols: the 1999 Protocol on Water and Health and the 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 to the 1992 Convention on the Transboundary Effects of Industrial Accidents (the Protocol on Civil Liability). The latter, in its article 28, paragraph 3, allows the accession of States Members of the United Nations outside the UNECE region.

7. At their third session, the Meeting of the Parties amended the articles 25 and 26 of the Convention as follows:

(a) In article 25, after paragraph 2, insert a new paragraph reading:
“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 Meeting of the Parties 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 Meeting of the Parties until this paragraph has entered into force for all the States and organizations that were Parties to the Convention on 28 November 2003”;

(b) In article 26, paragraph 3, after “referred to in article 23” insert “or in paragraph 3 of article 25”.

8. The Convention is not the only UNECE legally binding instrument with such accession provisions. Other UNECE multilateral environmental agreements have similar provisions, e.g. the 1998 Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) and its 2003 Protocol on Pollutant Release and Transfer Registers. Similarly, the 1991 Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention) was amended in 2001, also to allow accession by countries outside the UNECE region. The 2003 Protocol on Strategic Environmental Assessment to the Espoo Convention also allows for accession by countries outside the UNECE region.

9. As of 10 August 2009, the amendments to articles 25 and 26 of the Water Convention have been ratified by 13 Parties to the Convention (see the list of countries in the annex). In addition, a number of Parties, for example Switzerland and Spain, are in the process of ratification. The amendments will enter into force with 23 ratifications. Nevertheless, the Meeting of the Parties will not consider requests for accession by countries outside the UNECE region until these amendments have entered into force for all the States and organizations that were Parties to the Convention on 28 November 2003. Once these amendments have entered into force, the Convention will acquire the entirely different character of a “global” treaty, potentially open for universal participation.

III. JUSTIFICATIONS FOR RATIFYING THE AMENDMENTS

10. As mentioned in the introductory paragraphs of decision III/1 amending the Convention (ECE/MP.WAT/14), the main motivations for the Meeting of the Parties have been the global

concerns for peace and security and sustainable water management, as well as the wish to promote river basin cooperation throughout the world and to share the Convention's experience with other regions in the world:

“The Meeting of the Parties,

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,

Desiring to promote river basin cooperation throughout the world and to share its experience with other regions in the world,”

11. The following sections elaborate on the many reasons why the amendments should enter into force. They provide the arguments that may be used at the national level for the ratification process.

A. Cooperation with neighbouring countries

12. The Convention regulates transboundary water management in the UNECE region. Nevertheless, many major river and lake basins are shared by UNECE and non-UNECE countries, e.g. the Amu Darya, shared by Uzbekistan, Kyrgyzstan, Tajikistan and Turkmenistan in the UNECE region with Afghanistan outside the UNECE region; the Tumen, shared by the Russian Federation with China and the Republic of Korea; and the Yenisey, shared by the Russian Federation with Mongolia. If all riparian countries were Parties to the Convention, it would help facilitate transboundary cooperation, since the Convention would require all riparian countries to conclude agreements and to fulfil the obligations on pollution prevention, water quality, etc. This would help to reduce uncertainty and improve sustainability in the shared basins.

B. Call for an international framework and sharing the vast experience of the region

13. Numerous countries and international forums such as the fifth World Water Forum have called for an international framework for the management of shared watercourses. The Water Convention provides such a sound legal and institutional framework for cooperation. Unlike with the 1997 United Nations Convention on the Law of the Non-Navigational Uses of International Watercourses, the Water Convention has been in force for 13 years, since 1996. The Water Convention has served as a model for transboundary cooperation arrangements throughout the region and has accumulated a wealth of experience. It provides a platform for sharing such experience. It has a Meeting of the Parties, a secretariat and a number of working groups, task forces and other subsidiary bodies, which are all responsible for the implementation of the Convention's workplan. It delivers authoritative expertise and advice on strategic and technical issues, and guidance on such matters as drafting new agreements and/or modifying existing ones, establishing joint bodies, dam safety, flood management, and pollution prevention and response. A draft Guide to implementing the Convention (ECE/MP.WAT/2009/L.2) has been developed, which in the long term is expected to become a useful handbook both for Parties and for non-UNECE countries wishing to accede to the Convention.

14. The Convention integrates new concepts and ideas into its work such as adaptation to climate change in the transboundary context and payments for ecosystem services. Finally, the Convention offers assistance through projects, workshops, seminars, capacity-building exercises, information exchange and joint action. It would be useful for both UNECE and non-UNECE countries to share this experience beyond the UNECE region

C. Cooperative management of natural resources and peace

15. The promotion of peace through transboundary cooperation in the case of shared natural resources is crucial, especially in view of the expected impacts of climate change on water resources management. The Water Convention supports cooperative management of natural resources. Conflict can be avoided by the collective and coordinated use and management of transboundary watercourses through riparian coordination, the key to the optimal use of resources by all the parties involved. This can translate into joint and assisted action at the institutional, technical, legal and administrative levels.

D. Political significance of the entry into force of the amendments

16. Six years have passed since the adoption of the amendments and they have still not entered into force. This has created confusion, caused misunderstanding and given a negative signal to non-UNECE countries, which have had difficulty understanding whether the Convention will ever actually be open for accession. It is difficult to promote the Convention outside the UNECE region as long as the amendments are not in force. This is particularly important considering that transboundary water cooperation was the theme of the World Water Day 2009 and will be the special focus during the World Water Week in 2009. It is therefore crucial to give a political sign at the fifth session of the Meeting of the Parties by increasing the rate of ratification of the amendments and by ensuring their entry into force prior to the sixth session of the Meeting of the Parties in November 2012.

17. Besides perceptions outside the region, it is also important for the UNECE member States that decisions by the Meeting of the Parties are complied with. The lack of ratification of the amendments and the non-fulfillment of decision III/1 could undermine the authority and credibility of the Meeting of the Parties and the effectiveness of its future decisions.

E. Contribution to the achievement of international commitments

18. The entry into force of the amendments would promote the achievements of several international commitments such as the Millennium Development Goals and the Johannesburg Plan of Implementation (e.g. para. 26, "Develop integrated water resources management and water efficiency plans by 2005, with support to developing countries, through actions at all levels to: (a) Develop and implement national/regional strategies, plans and programmes with regard to integrated river basin, watershed and groundwater management..."). The institutional set-up required of the Parties by the Convention, such as concluding bilateral or multilateral agreements, could promote permanent and effective transboundary cooperation worldwide.

F. Harmonization between the Convention and its Protocol on Civil Liability

19. It is important to harmonize the ratification provisions in the multilateral environmental agreements adopted under the auspices of UNECE, with a view to enhancing legal and policy coherence. Since the Protocol on Civil Liability allows ratification by Member States outside the UNECE region, it would be important for it and its parent convention (the Water Convention) to be aligned.

G. Interest in the Convention from States outside the region

20. Several non-UNECE member States that are Member States of the United Nations have shown interest in the Convention in recent years. The entry into force of the amendments would thus be welcomed by numerous countries and it can be expected that, in the medium term, a significant number of countries would indeed envisage ratification. In addition, representatives from numerous developing countries have shown interest in specific activities under the Convention such as the activities related to climate change adaptation. The current framework offers very little opportunity for involving representatives from non-UNECE member States in the activities under the Convention, and the entry into force of the amendments could greatly help in this regard.

IV. PROMOTION OF THE CONVENTION OUTSIDE THE REGION

21. Communication and promotion of the Convention is very important to increasing awareness of the Convention outside the UNECE region. For this reason, the programme of work for 2007–2009 (ECE/MP.WAT/19/Add.2) already contained activities on promotion and dissemination (item 1.1); it should also support compliance with decision III/1 on the amendments to the Convention and should promote the Convention's achievements outside the region. Activities in this regard should continue, as is also specified in the draft workplan for 2010–2012 (ECE/MP.WAT/2009/L.1). This could include presentations on the Convention and its achievements at high-level meetings in UNECE countries and at international meetings, regional workshops and production of promotion materials such as the recently produced brochures for the Convention and the Protocol on Water and Health. In addition, promoting participation of representatives from United Nations Member States outside the UNECE region, especially those sharing waters with the UNECE member States, in meetings under the Convention would help to increase awareness of the Convention, thereby serving to promote its opening up to non-UNECE countries.

Annex**RATIFICATION STATUS OF THE AMENDMENTS TO ARTICLES 25 AND 26 OF
THE CONVENTION ON THE PROTECTION AND USE OF TRANSBOUNDARY
WATERCOURSES AND INTERNATIONAL LAKES,
AS OF 10 AUGUST 2009**

Country	Ratification, acceptance, approval or accession
Croatia	31 July 2008
Czech Republic	29 January 2008
Estonia	11 June 2009
Finland	11 December 2007
France	27 July 2009
Hungary	20 June 2005
Latvia	9 March 2009
Luxembourg	10 May 2006
Netherlands	12 January 2006
Poland	31 January 2005
Republic of Moldova	6 February 2007
Romania	13 January 2006
Sweden	20 May 2004
