



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

Working Group on Integrated Water Resources Management
Fourth meeting, 8-9 July 2009
Agenda item 3

Opening the Convention to non-UNECE member states: why the amendments to articles 24 and 25 of the Convention on the Protection and Use of Transboundary Watercourses and International Lakes should enter into force soon

Note by the government of Switzerland

This note is intended to foster the ratification process with a view to the entry into force of the amendment to articles 25 and 26, adopted at the third meeting of the Parties in Madrid in 2003 and opening the Water Convention to UN member states which are not UNECE-members. The note contains arguments which may be used by national focal points in the national ratification process of the amendments as well as in the next steps. The Working Group is invited to discuss how to foster the ratification process of the amendments. In particular, the Working Group is requested to provide comments, possible additions and corrections to this document and to facilitate its use at the national level. The Working Group is also invited to request the Bureau, with the assistance of the secretariat to finalize the document and to submit it to the fifth Meeting of the Parties (Geneva, 10-12 November 2009).

A. The amendments to articles 25 and 26

1. The 1992 Convention on the Protection and Use of Transboundary Watercourses and International Lakes (Water Convention) is intended to strengthen national measures for the protection and ecologically sound management of transboundary surface waters and groundwaters and to promote cooperation on their management and protection.
2. Currently, the Convention is open to ratification, acceptance, approval and accession by Member States of the UNECE and the regional economic integration organizations. The Water 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 latter, in its article 28, para.3, allow the accession of Member States of the United Nations outside the UNECE region.
3. At the 3rd Meeting of the Parties to the Water Convention (26-28 November 2003, Madrid, Spain), the Parties amended the articles 25 and 26 of the Convention by decision III/1 taken on 28 November 2003, allowing the accession to the Convention of any State, which is not a member of the United Nations Economic Commission for Europe (UNECE) but Member of the United Nations upon approval by the Meeting of the Parties.
4. In article 25, after paragraph 2, a new paragraph is inserted, reading as follows:
“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”.

and the remaining paragraphs renumbered accordingly;

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

5. The Water Convention is not the only UNECE legally binding instrument with such accession provisions. Other environmental conventions of the UNECE have similar provisions like 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 accession by countries outside the UNECE region.

6. As of 24 June 2009, the amendments to articles 25 and 26 of the Water Convention have been ratified by 12 Parties to the Convention (see list of countries in the annex). In addition, a number of Parties such as Switzerland, France 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 Water Convention will acquire the entirely different character of a ‘global’ treaty potentially open for universal participation.

B. Justifications for ratifying the amendments

7. As mentioned in the introductory paragraphs of decision III/1 amending the Convention, 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,”

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

Cooperation with neighboring non-ECE countries

9. The Convention regulates transboundary water management in the UNECE region. Nevertheless, many major river and lake basins are shared by ECE and non-ECE countries, like the Amu Darya shared by Uzbekistan, Kyrgyzstan, Tajikistan, Turkmenistan of the UNECE region and Afghanistan outside UNECE, the river Tumen, between Kazakhstan, the Republic of Korea and China, as well as the river Yenisey between Mongolia and the Russian Federation, etc. If all riparian countries were Parties to the Convention transboundary cooperation would be facilitated since the Convention would require all riparian countries to conclude agreements and to fulfill the obligations on pollution prevention, water quality etc. This would help to reduce uncertainty and improve sustainability in the shared basins.

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

10. Numerous countries and international fora 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 and, contrary to the UN Watercourses Convention, has been in force for 13 years since 1996. It has served all along as a model for transboundary cooperation arrangements throughout the UNECE region and accumulated a wealth of experience. The Water Convention 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 groups, responsible for the implementation of the workplan. It delivers authoritative expertise and advice on strategic and technical issues, and guidance on such matters as drafting new agreements or modifying existing ones, establishing joint bodies, dam safety, flood management, and pollution prevention and response. A draft Guide on implementing the Convention has been developed which, in the long-term, is expected to become a useful handbook also for non-UNECE countries wishing to accede to the Convention.

11. 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 ECE- and non ECE-countries to share this experience beyond the ECE-region

Natural resources management and peace

12. The promotion of peace through transboundary cooperation in the case of shared natural resources is crucial especially in view of the climate change and water resources management. Conflicts can be avoided by the collective and coordinated use and management of transboundary watercourses through riparian coordination, key to optimal utilization for all parties involved. This can be translated into joint and assisted actions, both at the institutional, technical, legal and administrative levels.

Political significance of the entry into force of the Amendment

13. Six years have passed since the adoption of the amendment and it has still not entered into force. This creates confusion, causes misunderstandings and gives a negative signal to non-UNECE countries which have difficulties to understand whether the Convention will actually ever be opened for accession. It is difficult to promote the Convention outside the

UNECE region as long as the amendment is not in force. It is therefore important to give a political sign by the fifth Meeting of the Parties in November 2009 by increasing the rate of ratification of the amendment. This is particularly important considering that in 2009 the topic of the World Water Day and the special focus of the World Water Week was transboundary water cooperation.

14. Besides the perception outside the region, it is also important for the UNECE members 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 might undermine the authority and credibility of the Meeting of the Parties and the effectiveness of its future decisions.

Contribution to the achievement of international commitments

15. The entry into force of the amendments would promote the achievements of several international commitments such as the MDGs. It would allow to implement one of the objectives of the Johannesburg Plan of Implementation (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 cooperation worldwide.

Harmonization between the Water Convention and its Protocol on Civil Liability and Compensation for Damage Caused by the Transboundary Effects of Industrial Accidents on Transboundary Waters:

16. It is important to harmonize the ratification provisions in the multilateral environmental agreements adopted under the auspices of the UNECE with a view to enhance legal and policy coherence. Since the Protocol on Civil Liability and Compensation for Damage Caused by the Transboundary Effects of Industrial Accidents on Transboundary Waters allows ratification by Member States outside the UNECE region, it would be important that its mother convention, i.e. the Water Convention, is aligned.

Interest by non-ECE member states

17. Several non-UNECE member States, part of the United Nations, have during the last years shown interest in the Convention. The entry into force of the amendments would thus be welcome 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-ECE member states into the activities under the Convention, the entry into force of the amendment could greatly help in this regard.

C. Promotion of the Convention outside the ECE-region

18. Communication and promotion of the Convention is very important in order to increase awareness of the Convention outside the UNECE-region. For this reason, the workplan 2007-2009 already contained activities on promotion and dissemination (item 1.1) which should also support compliance with Decision III/1 on the amendment to the Water

29 June 2009

Convention and promote the Convention's achievements outside the UNECE region. Activities in this regard should continue, as also specified in the draft communication strategy for the Convention. This may include presentations on the Convention and its achievements at high-level meetings in UNECE countries and at international meetings, regional workshops, production of promotion material such as the recently produced brochures etc.

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 26 June 2009

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