



Main obligations under UNECE Water Convention An overview

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Main obligations under the Convention



- Protection of transboundary waters by preventing, controlling and reducing transboundary impacts
 - Reasonable and equitable use of transboundary waters
 - Obligation to cooperate through agreements and joint institutions
- => Overall objective of sustainability



Two categories of obligations

Part I. Obligations for all Parties

= > also benefit for national legislation

Part II. Obligations for riparian Parties

= > Convention does not replace basin agreements

A permanent framework

Part III. Institutional framework

Definitions and scope of the UNECE Water Convention





Definitions & scope of the resource

UNECE Water Convention (Art. 1 & 9)

Geographical scope

- “Transboundary waters” – any surface or ground waters which mark, cross or are located on boundaries between two or more States
- Not limited to water body but covering the catchment area (or recharge area for an aquifer)

Substantive scope

- Prevention, control & reduction of transboundary impact

Eligibility to participate

- Two categories : Parties (contracting Party) and riparian Parties (bordering same transboundary waters)



Existing arrangements

UNECE Water Convention (Art. 9(1))

- States *must* revise existing arrangements to 'eliminate contradictions' with UNECE Water Convention
- States *must* enter into watercourse-specific agreements where they do not exist

Substantive norms of the UNECE Water Convention





Substantive norms

UNECE Water Convention (Art. 2)

- **Equitable and reasonable utilization principle**

Equality of rights of all riparian States in the use of a shared water body

- **No significant harm**

Take all appropriate measures to prevent, control and reduce transboundary impact

- **Protection of ecosystems**

Conservation and, where necessary, restoration



Questions?

Procedural & institutional aspects of the UNECE Water Convention





Procedural norms

Duty to cooperate

Principle of cooperation, to be implemented on a permanent basis through bilateral and multilateral agreements

Vast scope of application: development of harmonized (common or coordinated) policies, programmes and strategies

Can be a gradual process (due diligence)

Based on mutual trust (good faith)



Procedural norms

UNECE Water Convention (Art. 3-16)

- Prior licensing & monitoring of wastewater discharges
- Best available technique (BAT) measures for nutrient inputs from industry and municipal sources
- Best environmental practice (BEP) measures for diffuse pollution sources
- Environmental impact assessment (EIA)
- Contingency planning
- Monitoring programmes
- Research and development
- Exchange of information
- Warning and alarm systems
- Mutual assistance
- Public information



Institutional aspects

UNECE Water Convention (Art. 9)

Bilateral and multilateral agreements

Enshrines general obligation to cooperate, providing the means and framework to implement this obligation

Obligation to enter into agreement or other arrangements

For riparian Parties with respect to other riparian Parties



Institutional aspects

UNECE Water Convention (Art. 9)

Joint institutions

Obligation to establish joint bodies (specificity of the Water Convention)

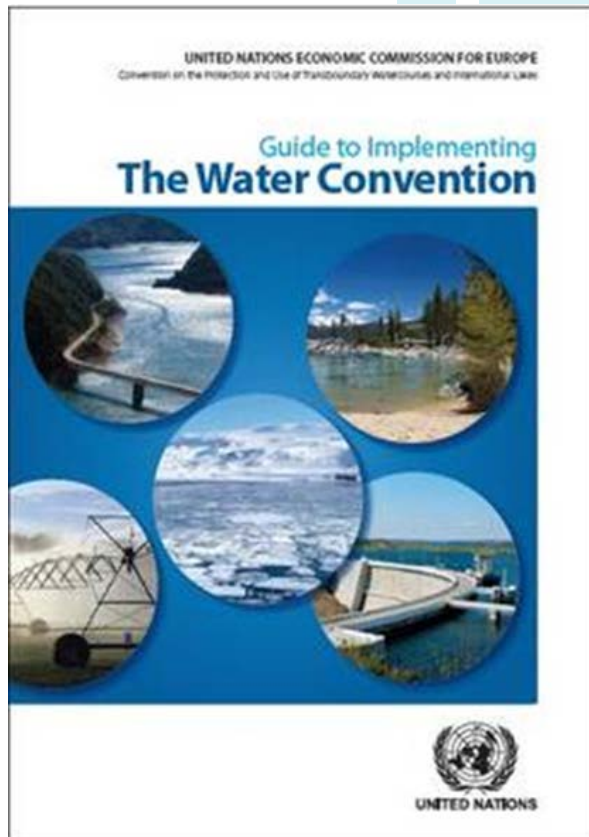
Detailed list of tasks to be performed by joint body → consistency and substantive compatibility

If existing agreements do not provide for the establishment of joint body, take steps to adjust instruments accordingly



Questions?

For more information:



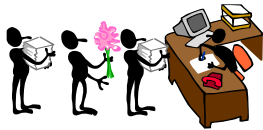
- Guide to Implementing the Convention published in 2013, soon also available in Arabic
- Guidance material on many different obligations
- Capacity-building activities
- Secretariat, different bodies and other Parties can answer questions

Institutional framework of the UNECE Water Convention



Institutional framework

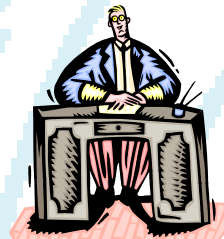
Meeting of the Parties



Implementation Committee



- Working Group on Monitoring and Assessment
- Legal Board
- International Water Assessment Centre



Bureau



- Task Force on Water and Climate
- Task Force on Water-Food-Ecosystems-Energy Nexus
- Joint ad hoc Expert Group on Water and Industrial Accidents

Working Group on Integrated Water Resources Management



Secretariat

The Implementation Committee

- **Dispute prevention**, not dispute settlement
- Practical case-oriented assistance
- 9 members in personal capacity, outstanding lawyers and water professionals
- Procedures (Advisory procedure, Committee initiative and others)
- Measures (national plan of implementation, transboundary water agreement, capacity building, facilitating technical assistance), may recommend stronger measures to Meeting of the Parties



Conclusion: Value of the UNECE Water Convention in managing transboundary waters

- 20 years of experience in facilitating transboundary water cooperation
- Intergovernmental platform – facilitating water conflict prevention and resolution:
 - Exchange of experience and assistance to implementation
 - Assistance to establish cooperation in difficult cases (frozen conflicts, post-war, no diplomatic relations, etc.)
 - Addressing emerging issues that involve conflict potential (dam failure, climate change)
 - Strong participation of non-Parties and other regions



More information

including guidelines, publications and information on activities under the Convention can be found at

www.unece.org/env/water

water.convention@unece.org

Dispute settlement mechanism





Settlement of disputes

UNECE Water Convention (Art. 22)

Obligation of peaceful settlement of dispute: seek a solution by negotiation or any other means of dispute settlement acceptable to parties to the dispute, to be conducted in good faith → flexible mechanism

Arbitration and adjudication not compulsory, but dispute prevention and assistance performed by the Meeting of the Parties

Existing arrangements

UNECE Water Convention (Art. 9(1))

- States *must* revise existing arrangements to 'eliminate contradictions' with UNECE Water Convention
- States *must* enter into watercourse-specific agreements where they do not exist

UN Watercourses Convention (Art. 3)

- UN Watercourses Convention does not affect existing agreements.
- However, States should consider harmonising those existing agreements with the Convention.
- States *may* enter into watercourse-specific agreements.



Scope of the resource

UNECE Water Convention (Art. 1(1))

- “Transboundary waters” – any surface or ground waters which mark, cross or are located on boundaries between two or more States.

UN Watercourses Convention (Art. 2(a))

- “Watercourse” - a system of surface and groundwaters constituting by virtue of their physical relationship a unitary whole and normally flowing into a common terminus.

Substantive norms

UNECE Water Convention (Art. 2)

- The Parties shall take *all appropriate measures* to prevent, control and reduce any transboundary impact.
 - Pollution prevention, reduction and control
 - Ecologically and rational water management
 - Conservation and, where necessary, restoration of ecosystems
 - Equitable and reasonable utilisation

UN Watercourses Convention (Art. 5-7 & 20)

- Equitable and reasonable utilisation and participation
- Relevant Factors (Art. 6)
- Take all appropriate measures not to cause significant harm
- Protection of ecosystems of an international watercourse



Procedural norms

UNECE Water Convention

- Prior licensing, and monitoring, of waste-water discharges
- BAT measures for nutrient inputs from industry and municipal sources
- BEP measures for diffuse pollution sources, eg agriculture
- EIA applied
- Contingency planning
- Monitoring programmes
- Research and development
- Exchange of information
- Warning and alarm systems
- Mutual assistance
- Public information

UN Watercourses Convention

- On the whole not as detailed but...
 - Duty to regularly exchange data and information (Art. 9)
 - Emergency and Harmful situations (Arts. 27 & 28)
 - Detailed procedures for planned measures (Part III)

Institutional aspects – watercourse level

UNECE Water Convention

- Article States *must* establish joint bodies
- Task of joint bodies include
 - Data collection and evaluation
 - Joint monitoring
 - Elaborating emission limits for waste water, and water-quality objectives
 - Action programmes for pollution reduction
 - Establish warning and alarm procedures
 - Forum for information exchange on existing and planned uses, and best available technology
 - Participate in implementation of EIAs

UN Watercourses Convention

- Art. 24(1) – States shall enter into consultations... which *may* include the establishment of a joint management mechanisms.
- Article (8)2) - States *may* consider the establishment of joint mechanisms or commissions...
- Strong emphasis on cooperation
 - Equitable participation (art. 5), duty to cooperate (art. 8), exchange of data and info (art 9), “where appropriate, joint”, prevent pollution (Art. 21), protect marine environment (Art. 23), regulation (Art. 25), harmful conditions (Art. 27) emergencies (Art. 28)

The equitable and Reasonable Utilization

Principle /1

Art. 5, 1997 NY UN Convention

1. Watercourse States shall in their respective territories utilize an international watercourse in an equitable and reasonable manner. In particular, an international watercourse shall be used and developed by watercourse States with a view to attaining optimal and sustainable utilization thereof and benefits therefrom, taking into account the interests of the watercourse States concerned, consistent with adequate protection of the watercourse.

2. Watercourse States shall *participate* in the use, development and protection of an international watercourse in an equitable and reasonable manner. Such participation includes both *the right to utilize* the watercourse and *the duty to cooperate in the protection and development* thereof, as provided in the present Convention.

The equitable and Reasonable Utilization

Principle /2

The 1992 UNECE Water Convention, Article 2 (2)(c) and (5) (c):

“[...] 2. The Parties shall, in particular, take all appropriate measures:

(c) To ensure that transboundary waters are used in a reasonable and equitable way, taking into particular account their transboundary character, in the case of activities which cause or are likely to cause transboundary impact; [...] 5. In taking the measures referred to in paragraphs 1 and 2 of this article,

the Parties shall be guided by the following principles:

(c) Water resources shall be managed so that the needs of the present generation are met without compromising the ability of future generations to meet their own needs”.

The Equitable and Reasonable Utilization Principle/3

Art. 6, 1997 NY UN Convention:

1. Utilization of an international watercourse in an equitable and reasonable manner within the meaning of article 5 requires taking into account all relevant factors and circumstances, including:

(a) Geographic, hydrographic, hydrological, climatic, ecological and other factors of a natural character;

(b) The social and economic needs of the watercourse States concerned;

(c) The population dependent on the watercourse in each watercourse State;

(d) The effects of the use or uses of the watercourses in one watercourse State on other watercourse States;

(e) Existing and potential uses of the watercourse;

(f) Conservation, protection, development and economy of use of the water resources of the watercourse and the costs of measures taken to that effect;

The Equitable and Reasonable Utilization Principle/4

(g) The availability of alternatives, of comparable value, to a particular planned or existing use.

2. In the application of article 5 or paragraph 1 of this article, watercourse States concerned shall, when the need arises, enter into consultations in a spirit of cooperation.

3. The weight to be given to each factor is to be determined by its importance in comparison with that of other relevant factors. In determining what is a reasonable and equitable use, all relevant factors are to be considered together and a conclusion reached on the basis of the whole.

The No-Harm Rule/1

Art. 7, 1997 NY UN Convention:

" 1. Watercourse States shall, in utilizing an international watercourse in their territories, take all appropriate measures to prevent the causing of significant harm to other watercourse States.

2. Where significant harm nevertheless is caused to another watercourse State, the States whose use causes such harm shall, in the absence of agreement to such use, take all appropriate measures, having due regard for the provisions of articles 5 and 6, in consultation with the affected State, to eliminate or mitigate such harm and, where appropriate, to discuss the question of compensation" .

No-harm Rule/2

The 1992 UNECE Water Convention, Art. 2 (1) :

"1. The Parties shall take all appropriate measures to prevent, control and reduce any transboundary impact."

The Guide: *"The obligation expressed in article 2 (1), applies to various forms of adverse effects to the environment in conformity with the definition of **transboundary impact** under article 1 (2), of the Convention. Such a definition is inevitably abstract, and situation specific, since it assumes that an impact that is significant in one case may not be so in another. Nonetheless, it represents one of the most detailed definitions to be found in a MEA of the significant transboundary harm to be prevented" (p. 30).*