



# Dispute resolution and the Implementation Committee

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# The situation that no specific treaty obligations exist

- *UN Charter, Article 2(3)*
- All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered.
- Chapter VI contains some more specific provisions concerning the settlement of disputes.
- The role of the SC under this Chapter remains, however, fairly limited.

# The situation that specific obligations exist regarding transboundary waters

- *UN Water Convention 1997 Article 33 Settlement of disputes*
- 1. In the event of a dispute between two or more parties concerning the interpretation or application of the present Convention, the parties concerned shall, in the absence of an applicable agreement between them, seek a settlement of the dispute by peaceful means in accordance with the following provisions.
- 2. If the parties concerned cannot reach agreement by negotiation requested by one of them, they may jointly seek the good offices of, or request mediation or conciliation by, a third party, or make use, as appropriate, of any joint watercourse institutions that may have been established by them or agree to submit the dispute to arbitration or to the International Court of Justice.
- 3. ... if after six months from the time of the request for negotiations ..., the parties concerned have not been able to settle their dispute through negotiation **or any other means...**, the dispute shall be submitted, at the request of any of the parties to the dispute, to impartial fact-finding ..., unless the parties otherwise agree.

# *UNECE Water Convention 1992*

- Article 22 *Settlement of disputes*
- 1. If a dispute arises between two or more Parties about the interpretation or application of this Convention, they shall seek a solution by negotiation or by any other means of dispute settlement acceptable to the parties to the dispute.
- 2. When signing, ratifying, accepting, approving or acceding to this Convention, or at any time thereafter, a Party may declare in writing to the Depositary that, for a dispute not resolved in accordance with paragraph 1 of this article, it accepts one or both of the following means of dispute settlement as compulsory in relation to any Party accepting the same obligation:
  - (a) Submission of the dispute to the International Court of Justice;
  - (b) Arbitration in accordance with the procedure set out in annex

# Legal basis for the Implementation Committee

Twenty years after the conclusion of the UNECE Water Convention and 16 years after its entry into force the Parties to the Convention adopted a Mechanism to support implementation and compliance and created the so-called Implementation Committee.

Decision VI/1 on support to implementation and compliance adopted at the sixth session of the Meeting of the Parties to the UNECE Water Convention (Rome, 28-30 November 2012)\*

\*ECE/MP.WAT/37/Add.2

# Objective, nature and principles

- The objective of the mechanism is to facilitate, promote and safeguard the implementation and application and compliance with the Convention.
- The mechanism is to be simple, non-confrontational, non-adversarial, transparent, supportive and cooperative in nature, building on the distinctive collaborative spirit of the Convention.

# Functions of the Committee

- Consider requests for advice
- Consider self-submission or Party-to-Party submission
- Consider undertaking a Committee initiative

Committee may also:

- Examine specific issues of implementation of and compliance with the Convention at the request of the Meeting of the Parties
- Take measures, including recommendations, as appropriate
- Carry out any other functions that may be assigned to it by the Meeting of the Parties, including examination of general issues of implementation and compliance that may be of interest to all Parties.

These functions will be carried out by the Committee according to the time and resources available to it.

# Procedures

- *Advisory procedure.*
- *Submission* by a Party that, despite its best endeavours, it is or will be unable to comply fully with the Convention (self-submission). A *submission* may also be brought before the Committee by a Party that is affected or may be affected by another Party's difficulties in implementing and/or complying with the Convention.
- *At the request of the Meeting of the Parties.*
- *Right to act on its own initiative.*
- It is remarkable that the Committee may also act on information received from the public.



# Measures to facilitate and support implementation and compliance / address non-compliance

The Committee may decide to:

(A) Provide advice and facilitate assistance, including:

- Suggesting or recommending that domestic regulatory regimes be set up or strengthened
- Assistance in establishing transboundary water cooperation agreements and arrangements for strengthening cooperation
- Facilitating technical and financial assistance, including information and technology transfer, and capacity-building
- Assistance in seeking support from specialized agencies and other competent bodies.

(B) Request and assist the Party(ties) concerned to develop an action plan to facilitate implementation and compliance

(C) Invite the Party concerned to submit progress reports to the Committee on its efforts to comply with its obligations

(D) Recommend to the Meeting of the Parties that it takes measures.

# Measures by the Meeting of the Parties

Meeting of the Parties, upon recommendation of the Committee, may decide to:

- Take all the above measures (those that can be taken by the Committee/listed on the previous slide)
- Recommend Parties to provide financial and technical assistance, training and other capacity-building measures and facilitate technology transfer
- Facilitate financial assistance and provide technical assistance, technology transfer, training and other capacity-building measures
- Issue a statement of concern
- Issue declarations of non-compliance
- Issue cautions
- Suspend the special rights and privileges accorded to the Party concerned
- Take other non-confrontational, non-judicial and consultative measures as may be appropriate.

# Composition and methods of work



- 9 members, who serve in their personal capacity
- Elected by the Meeting of the Parties among candidates nominated by the Parties, Signatories and NGO's
- Meets twice a year in open, public and transparent manner
- Committee reports to the Meeting of the Parties at each ordinary session

# RESPONSIBILITY IN CASE OF NON-COMPLIANCE WITH OBLIGATIONS

## The situation that no specific treaty obligations apply

- Liability under general public international law
- *Annex to UNGA Resolution 56/83 on Responsibility of States for internationally wrongful acts adopted 12 December 2001 (UN Doc. A/RES/56/83 of 12 January 2002)*
- Liability not under public international law
- *Rio Declaration on Environment and Development 1992, Principle 13*
- States shall develop national law regarding liability and compensation for the victims of pollution and other environmental damage. States shall also cooperate in an expeditious and more determined manner to develop further international law regarding liability and compensation for adverse effects of environmental damage caused by activities within their jurisdiction or control to areas beyond their jurisdiction.
- *Annex to UNGA Resolution 61/36 of 4 December 2006 containing principles on allocation of loss in the case of transboundary harm arising out of hazardous activities (UN Doc. A/RES/61/36 of 18 December 2006)*

# The situation that specific treaty obligations exist regarding transboundary waters

- *UN Water Convention 1997, Article 32 Non-discrimination:*
- Unless the watercourse States concerned have agreed otherwise for the protection of the interests of persons, natural or juridical, who have suffered or are under a serious threat of suffering significant transboundary harm as a result of activities related to an international watercourse, a watercourse State shall not discriminate on the basis of nationality or residence or place where the injury occurred, in granting to such persons, in accordance with its legal system, access to judicial or other procedures, or a right to claim compensation or other relief in respect of significant harm caused by such activities carried on in its territory.
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- *UNECE Water Convention 1992, Article 7 Responsibility and liability*
- The Parties shall support appropriate international efforts to elaborate rules, criteria and procedures in the field of responsibility and liability.
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- *Protocol on civil liability and compensation for damage caused by the transboundary effects of industrial accidents on transboundary waters :*  
Unfortunately, the protocol has not yet entered into force and it is doubtful whether it will ever enter into force as it has up till now only been ratified by one country (Hungary)

# More information

Visit the Implementation Committee's website:  
[www.unece.org/env/water/implementation\\_committee](http://www.unece.org/env/water/implementation_committee)

More information including guidelines, publications and information on activities under the UNECE Water Convention:

[www.unece.org/env/water](http://www.unece.org/env/water)  
[water.convention@unece.org](mailto:water.convention@unece.org)



# Advisory procedure I

## Section V

- Aimed at facilitating implementation and application of the Convention through the provision of advice by the Committee.
- Should not be regarded as alleging non-compliance.
- Who may request advice from the Committee:
  - a Party – about its difficulties in implementing the Convention
  - a Party, or Parties jointly – about its or their efforts to implement or apply the Convention vis-à-vis each other, other Parties and/or non-Parties.

# Advisory procedure II

## Section V

- Participation in the advisory procedure by the Parties that are not the requesting Parties and by the non-Parties is subject to their consent.
- If Parties or non-Parties potentially concerned choose not to participate, they will be kept informed of its progress.
- Within the advisory procedure, the Committee may suggest to the Party(ties) to take certain measures but it cannot recommend the Meeting of the Parties to take any measures.



# Submissions by Parties

## Section VI

- Self-submission: submission is brought before a Committee by a Party that concludes that, despite its best endeavours, it is or will be unable to comply fully with the Convention.
- Party-to-Party submission: submission by a Party(-ties) that is(are) affected by another Party's difficulties in implementing and/or complying with the Convention.

# Committee initiative

## Section VII

- The Committee, when it becomes aware of difficulties in the implementation or the possible non-compliance by a Party with the Convention, including from information received from the public, may request the Party concerned to provide the necessary information.
- In determining whether to take the initiative the Committee takes into account that:
  - Source of the information is known and not anonymous
  - Information is basis for a reasonable assumption of possible difficulties in implementation or possible non-compliance
  - Information relates to the implementation of the Convention
  - An appropriate amount of time and resources are available.

# Core rules of procedure

- Activities of the Implementation Committee are governed by its core rules of procedure until the adoption by the Meeting of the Parties of the rules of procedure, upon a proposal by the Committee.
- The Committee decided in December 2013 to review the possibility of developing a proposal for its rules of procedure at a later stage, taking into account the experience in the application of its core rules of procedure.

# Information gathering and consultation

## Section VIII

To perform its functions, the Committee may:

- Request further information on matters under its consideration
- Undertake, with the consent of the Party concerned, information gathering in its territory
- Gather any information it deems appropriate
- Invite the Parties and non-Parties concerned to attend its meetings
- Seek the services of experts and advisers
- Seek the advice of the Meeting of the Parties and other Convention's bodies.

The Committee will take into account all relevant information made available to it, including from the public, and may consider any other information it deems appropriate.