

UNECE

FREQUENTLY ASKED QUESTIONS ON THE 1992 WATER CONVENTION

with the Road map to facilitate accession processes



UNITED NATIONS

UNITED NATIONS ECONOMIC COMMISSION FOR EUROPE

FREQUENTLY ASKED QUESTIONS ON THE 1992 WATER CONVENTION

**WITH THE ROAD MAP TO FACILITATE
ACCESSION PROCESSES**



United Nations

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FOREWORD

Through the adoption of the 2030 Agenda for Sustainable Development and its 17 Sustainable Development Goals, the international community has committed to promoting peace, equality and sustainability. Cooperation on transboundary waters, which cover nearly half of the world's surface, is fundamental to the implementation of this transformative agenda. Transboundary waters not only unite populations across borders, they drive economic prosperity and sustain ecosystems.

Cooperation on transboundary waters brings numerous benefits. The 1992 Convention on the Protection and Use of Transboundary Watercourses and International Lakes (Water Convention), serviced by the United Nations Economic Commission for Europe (UNECE), has fostered cooperation at both political and technical levels and has achieved many concrete results, including improvements in water quality, better human health, the mitigation of the impacts of floods and droughts, and the conservation of ecosystems. It has thus contributed to regional integration and the prevention of conflicts across the pan-European region and beyond. Building on these successes, the Water Convention was opened to all United Nations Member States in 2016.

Pressure on water resources is increasing across the globe, including through climate change, pollution and the growing demands for water. A global Water Convention is crucial for fostering political will to cooperate, coordinating activities and interventions, galvanizing the commitments made by a broad range of actors, tracking progress, and monitoring hotspots. It provides a framework for bringing together development interventions and preventive diplomacy.

Accession to the Water Convention of the first countries from outside the UNECE region, namely Chad (2018), Senegal (2018) and Ghana (2020), and ongoing accession processes in many other countries are promising developments.

Another important asset to build upon is the entry into force in 2014 of the 1997 Convention on the Law of the Non-navigational Uses of International Watercourses.

Together, these Conventions can strengthen the rule of law in transboundary cooperation worldwide. That is why, the United Nations Secretary-General António Guterres has called upon Member States to join both Conventions and to strive for their full implementation. The United Nations system is committed to supporting governments in these efforts.

I am convinced that the *Frequently Asked Questions on the 1992 Water Convention* will become a powerful tool to support accession to the Water Convention and its implementation, thereby enlarging the community of States cooperating under its framework for the sustainable management of transboundary waters and the well-being of communities around the globe.



Olga Algayerova
Executive Secretary
United Nations
Economic Commission for Europe



Waterfalls in the National Park Krka, Croatia

PREFACE

The Convention on the Protection and Use of Transboundary Watercourses and International Lakes (Water Convention), for which the United Nations Economic Commission for Europe (UNECE) provides the secretariat, serves as a mechanism to strengthen national measures and international cooperation for the ecologically sound management and protection of transboundary surface waters and groundwaters.

Originally adopted as a regional treaty, the Water Convention became a global instrument in 2016. Many countries outside the pan-European region are now in the process of accession to the Convention. The Convention's programme of work for 2019–2021 provides strong support to capacity-building activities. Support is provided to countries interested in accession and includes legal and technical advice to help them understand the Convention's provisions and organize national workshops so as to build capacity for the implementation of the Convention and to discuss the benefits of accession.

This publication was prepared to support awareness-raising activities and to build up political support for the Water Convention in line with the strategic objectives of the 2018 Strategy for the implementation of the Convention at the global level. It is based on real questions and requests for clarification received by the Convention secretariat from countries in the accession process in the period 2013–2020. Combining legal theory with easy-to-understand explanations and examples, it covers a wide range of issues, from the principles and obligations of the Convention and the operation of its institutional structure to its added value at global, transboundary and national levels.

This publication was prepared by the secretariat in consultation with the Bureau and the Chair of the Implementation Committee under the Convention. It is based on the *Guide to Implementing the Water Convention* adopted at the fifth session of the Meeting of the Parties in 2009 with updates introduced in 2013, as well as other soft law instruments, tools and publications developed under the Water Convention. Whereas the *Guide to Implementing the Water Convention* constitutes a comprehensive commentary to the Convention's provisions, this publication provides more direct and hands-on answers to the questions that arose in the countries interested in accession.

This publication targets water experts and legal advisers in ministries in charge of water, as well as staff in relevant other ministries (e.g. environment, agriculture, energy, foreign affairs), presidential administrations, and national parliaments in countries interested in accession to the Water Convention. It can also be useful for current Parties to the Convention. Furthermore, it targets basin organizations and technical and financial partners working on the issues of international cooperation and transboundary water management around the world.



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The secretariat expresses its utmost gratitude to Finland, France, Germany, Hungary, the Netherlands, Sweden and Switzerland for their support to activities aimed at increasing capacity for the implementation of the Convention and at supporting national processes towards accession.

In the secretariat, Iulia Trombitcaia and Sonja Koeppel coordinated the development of the text. Komlan Sangbana developed the Road map to facilitate accession processes. Francesca Bernardini, Sara Datturi, Chantal Demilecamps, Diane Guerrier, Rémy Kinna, Annukka Lipponen, Hanna Plotnykova, Komlan Sangbana and Sarah Tiefenauer-Linardon provided inputs and comments. Mayola Lidome and Cammille Marcelo provided administrative support to the process.

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Dortmund-Ems Canal

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CHAPTER

1



ADDED VALUE AT GLOBAL, TRANSBOUNDARY AND NATIONAL SCALES



1.1 What is the relevance of the Water Convention for the achievement of the Sustainable Development Goals?

The Convention on the Protection and Use of Transboundary Watercourses and International Lakes (Water Convention) is an important tool to operationalize the achievement of the 2030 Agenda for Sustainable Development and its Sustainable Development Goals (SDGs), particularly with regard to water and transboundary water cooperation.

The Water Convention facilitates the achievement of Goal 6 (clean water and sanitation) through its integrated and intersectoral approach and its attention to the prevention and reduction of water pollution, the conservation and restoration of ecosystems, and water use efficiency. As sixty per cent of global freshwater flow comes from transboundary basins, the Convention provides the legal framework and cooperation mechanisms to ensure for the timely and sufficient availability of water of adequate quality for humans, economies and ecosystems. It directly supports the implementation of SDG target 6.5, which requests that all countries, “[b]y 2030, implement integrated water resources management at all levels, including through transboundary cooperation as appropriate”.

The work under the Water Convention is also relevant in supporting the achievement of other SDGs:

- Goal 2 (zero hunger), Goal 7 (affordable and clean energy) and Goal 15 (life on land) through, for instance, the Convention’s integrated approach to the development of sectoral policies and its activities on the water-food-energy-ecosystems nexus.
- Goal 3 (good health and well-being) through the Convention’s activities in cooperation with the Protocol on Water and Health.
- Target 11.5 (reducing the impact of disasters, particularly water-related disasters) and Goal 13 (climate action) through the Convention’s activities on water and climate change.
- Goal 16 (peace, justice and strong institutions) and Goal 17 (partnerships for the goals) through the Convention’s activities on integrated water resources management (IWRM) and partnerships for transboundary water cooperation.

In addition, UNECE together with UNESCO, are custodian agencies for SDG indicator 6.5.2 (Proportion of transboundary basin area with an operational arrangement for water cooperation), which measures the progress in transboundary water cooperation worldwide. As the reporting on SDG indicator 6.5.2 is closely linked with the reporting under the Convention, the Convention also offers a framework to discuss global progress on transboundary water cooperation and to identify common challenges and define responses.

Additional resources:

- *Progress on Transboundary Water Cooperation. Global baseline for SDG indicator 6.5.2 (2018).* UN-Water, UNECE, UNESCO.
Available at <https://www.unwater.org/publications/progress-on-transboundary-water-cooperation-652/>
- *Reporting under the Water Convention and SDG indicator 6.5.2.*
Available at http://www.unece.org/water/transboundary_water_cooperation_reporting.html



Back-to-back event, 8th session of the Meeting of the Parties (Nur-Sultan, Kazakhstan, 2018)

1.2 What are the advantages and benefits for countries to accede to the Water Convention?

By becoming a Party to the Water Convention, a country joins the international legal and institutional framework of the Convention that has already proven its effectiveness over the past two decades. This means that a country can use the instrument that has successfully facilitated the development of many transboundary water agreements and joint bodies and led to concrete results on the ground, including improved water quality, mitigation of the impacts of floods and droughts, improved joint planning in many areas (e.g. adaptation to climate change, management of dams and reservoirs, etc.), and better human and ecosystem health.

Overall, participation in the Convention—namely adherence to its rules and cooperation through the intergovernmental platform of the Convention—increases certainty and predictability in relations between riparian States and thus helps prevent potential tensions and differences, contributing to the maintenance of international and regional peace and security.

By becoming a Party, a State signals to other countries, international organizations, financial institutions and other actors its willingness to cooperate on the basis of the norms and standards of the Convention. Accordingly, such a State would enhance its respect by other actors in the international community for adhering to the rules and standards of the Convention.

A Party to the Water Convention benefits from the existing experience under the Convention, e.g. its guidance documents, activities and projects on the ground. The institutional mechanism of the Convention also provides support to the Parties in concluding specific transboundary water agreements and in setting up joint bodies or strengthening existing ones. This is particularly valuable in those basins where difficulties to conclude agreements exist.

Accession to the Water Convention can also facilitate the financing of water management and transboundary water cooperation, both from national sources as well as from international donors.

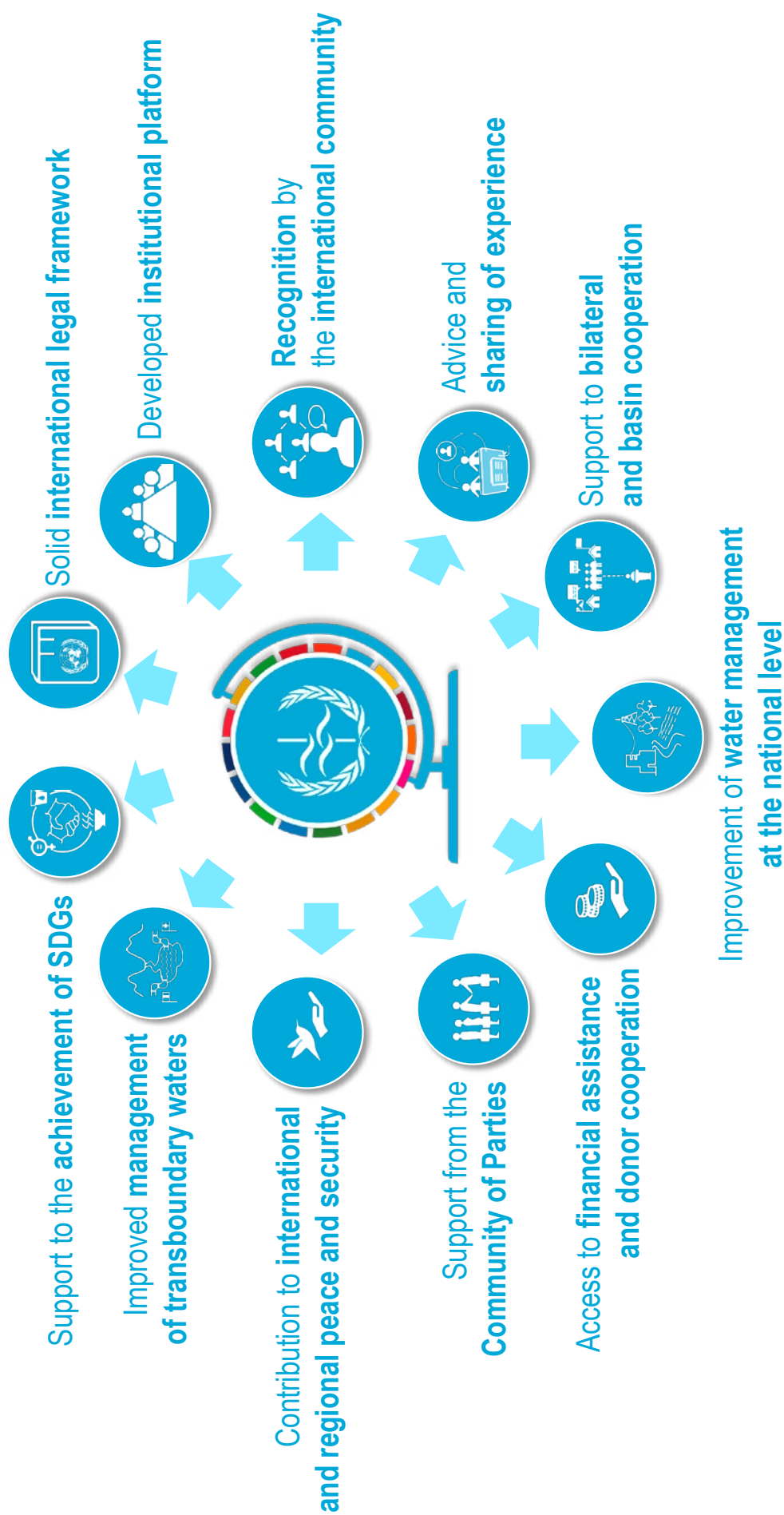
When becoming a Party, a country can participate in and contribute to the Water Convention's institutional structure and decision-making, fostering the implementation of the Convention and its further development. Parties can decide on the development of the Convention, be elected to the Convention's governing bodies and lead activities under the Convention. Parties can also participate in the development of the Convention's three-year programme of work so that it can better respond to their specific needs. Parties can also make use of the Convention's Implementation Committee that is available to assist in finding solutions to complicated water management issues and to help overcome difficulties in transboundary cooperation.

Furthermore, Parties to the Water Convention collectively decide on the development of the Convention's regime. They can initiate the negotiation of new legally binding instruments such as protocols or amendments to the Convention. They can elaborate new soft law instruments, such as guidelines or recommendations. They can establish new bodies within the Convention's institutional framework. In this way, Parties can directly influence the further development of the Convention and international water law.

Participation in and implementation of the obligations of the Water Convention also improves water resources management and water governance at the national level. The Convention's standards to be applied by all Parties, for example on the prevention, control and reduction of pollution at source, permitting, prior licensing of wastewater discharges, the application of biological treatment or equivalent processes to municipal wastewater, or the application of the ecosystem approach, can enhance national systems for water resources management and protection, especially if a Party develops an implementation plan and regularly reviews its efforts in implementing the Convention.

Last but not least, there may be additional advantages from accession for countries interested in one or an other area of work under the Convention. For example, a State suffering from frequent floods would benefit from the Convention's activities on transboundary flood management and on climate change adaptation. Figure 1 describes key benefits from participation in the Water Convention.

Figure 1: What does my country achieve by becoming a party to the Water Convention?



Additional resources:

- *The Global Opening of the 1992 Water Convention* (ECE/MP.WAT/43/Rev.1). Available at <https://www.unece.org/index.php?id=44054>
- *Guide to Implementing the Water Convention* (ECE/MP.WAT/39), paras. 21–42. Available at <https://www.unece.org/index.php?id=33657>

1.3 What is the added value of accession to the Water Convention for a country that already has agreements and good cooperation with its neighbours?

Cooperation is an evolving process. By becoming a Party to the Water Convention, countries that already have agreements and good cooperation with their neighbours can learn about approaches, tools and experiences from other transboundary basins, which can strengthen cooperation in the basins they share.

Through the regular reporting mechanism under the Convention, and in particular through the efforts of countries sharing transboundary basins to coordinate their responses during the preparation of reports, countries can review their national capacity and identify areas to further improve transboundary water cooperation, including the possible need to amend their existing agreements, as appropriate.

While the obligation to conclude specific agreements for transboundary basins is indeed one of the key obligations under the Water Convention, cooperation under the Convention is not limited to specific agreements and involves many other aspects and issues. Parties regularly discuss and address new and emerging issues and embark on new tasks such as the development of soft law tools or the preparation of innovative assessments that pave the way for new potential areas of work and cooperation. For example, already in 2006, Parties to the Water Convention began working on climate change adaptation in transboundary basins—an emerging area of work at that time. Since 2018, the financing of transboundary cooperation—another pressing common challenge—continues to be addressed in the framework of the Convention’s institutional platform. In other words, Parties that already have agreements and good cooperation with their neighbours have many more opportunities to work on issues that can reinforce transboundary water cooperation in the basins they share, even when it functions well.

1.4 What is the added value of accession to the Water Convention for a country whose neighbours are not Parties to the Water Convention?

Accession to the Water Convention demonstrates a country’s commitment to act in accordance with international water law and to advance transboundary water cooperation based on the principles, norms and standards of the Convention. Such a step sends a positive signal to neighbouring countries, the international community and to donors. Accession not only provides a country with the argumentation to strengthen cooperation in the transboundary basins it shares, it also sets an example to other countries in the shared basin and may help them decide on acceding to the Water Convention. For example, the Water Convention provided the reference for negotiating the 2001 Framework Agreement on the Sava River Basin at a time when only two of the four riparian countries were Parties to the Convention; a few years later, all four riparian countries of the Sava River Basin became Parties to the Convention.

Nevertheless, a Party to the Convention is not legally bound to implement the Convention in its relations with riparian countries that are not Parties to the Convention.

The immediate benefits of accession to the Water Convention for a country whose neighbours are not Parties lie in two key domains:

- The first category of benefits relates to the improvement of water resources management at the domestic level. Accession to the Convention presents an occasion to review and strengthen national water policies and practices, enhance intersectoral cooperation and stakeholder participation in water resources management, and introduce new preventive measures at the national level for the optimal utilization and protection of transboundary waters and related ecosystems. In other words, accession can prompt a re-boost of domestic water management and governance frameworks and thus improve the status of water bodies within the national borders and beyond. For example, accession to the Water Convention in 2012 prompted Turkmenistan to develop and adopt a new Water Code (2016) in which integrated water resources management and the basin approach were introduced.
- The second category of benefits results from the participation of Parties in the Convention's institutional structure, which includes access to advice and the sharing of experiences within the framework of the Convention's institutional platform. Such support may include assistance in establishing cooperation between Parties and non-Parties to the Convention.

1.5 What are the benefits of accession to the Water Convention for an upstream country?

The Water Convention encompasses the rights and obligations for both upstream and downstream countries and does not differentiate whether the country is upstream or downstream. The Convention is firmly based on the principles of equality and reciprocity. This is why Parties to the Convention are both upstream and downstream countries.

Upstream countries can be vulnerable to transboundary impacts (e.g. deterioration of spawning conditions upstream due to the operation of infrastructure or overfishing downstream). Cooperation between riparian countries in the form of bilateral or multilateral agreements and joint bodies, required under the Water Convention, allows upstream countries, as much as downstream ones, to address their issues of concern.

Through cooperation in the form of agreements and joint bodies, required under the Convention, both upstream and downstream countries can reduce economic costs by implementing joint measures and activities (e.g. climate change adaptation measures, joint flood management or joint management of water infrastructure like dams) and promote regional integration and improved access to the sea. They can access knowledge and expertise which is available in other riparian states. They can also benefit from participating in joint efforts of riparian states aimed at the development of basin management plans or basin-level programmes (on floods or protected area management) and tools (GIS mapping, climate change modelling, etc.). A good example of such cooperation is the 70-year-old cooperation of the riparian countries in the framework of the International Commission for the Protection of the Rhine (ICPR), which brought benefits to both upstream and downstream countries, including the restoration of fish migration upstream. Another example is the cooperation under the 2000 Agreement on the Use of Water Management Facilities of Intergovernmental Status on the Rivers Chu and Talas where both upstream Kyrgyzstan and downstream Kazakhstan enjoy benefits, with Kazakhstan financially contributing towards the maintenance of water infrastructure located in Kyrgyzstan and used by both countries.

In addition, transboundary water cooperation may bring indirect benefits to upstream countries in areas beyond the water sector, resulting in increased trade, investment, economic integration and access to technology.

Additional resources:

- *Policy Guidance Note on the Benefits of Transboundary Water Cooperation: Identification, Assessment and Communication* (ECE/MP.WAT/47). Available at <https://www.unece.org/index.php?id=41340>

1.6 Do downstream countries enjoy only rights and have no obligations under the Water Convention?

Downstream countries are bound by obligations of the Water Convention as much as upstream countries. This is so because many transboundary impacts from measures taken downstream can be transferred upstream (e.g. impacts related to fish migration, invasive species, poor management of sedimentation/siltation). Furthermore, only together can Parties progress towards the implementation of the core obligation of the Convention, which is to protect the environment influenced by their transboundary waters, including the marine environment.

The Water Convention is firmly based on the principles of equality and reciprocity and does not differentiate the rights and obligations of Riparian Parties based on whether they are located upstream or downstream. Its obligations, including holding consultations or informing of any critical situation that may have a transboundary impact, apply to both upstream and downstream countries. Downstream countries cannot distance themselves from the obligations set forth by the Convention on all Parties. For example, a downstream Riparian Party may not refuse to provide information upon request or exchange data with an upstream Riparian Party on the assumption of their irrelevance for the upstream Party.

Additional resources:

- *Guide to Implementing the Water Convention* (ECE/MP.WAT/39), paras. 290, 301, 319. Available at <https://www.unece.org/index.php?id=33657>

1.7 Would the Water Convention be useful to every country, taking into account regional specificities and each country's unique situation?

The Water Convention is a framework instrument designed on the understanding that every country and every basin is unique. Consequently, it stipulates general obligations of Parties and, at the same time, it affords flexibility so that Parties can best implement these obligations within their specific circumstances. In particular, the Convention requires Parties to develop basin-specific agreements, which should be adapted to local circumstances. Furthermore, many of the Convention's obligations are of a due diligence nature, meaning that measures to implement them should be commensurate to the capacity of the Party concerned and its level of economic development.

The "umbrella" nature of the Convention, manifested in its institutional framework, within which the Parties cooperate, exchange information, collectively provide technical and legal assistance and further develop the provisions of the Convention, allows individual countries to benefit from participation in this framework instrument according to their specific situations and needs.

The Water Convention is therefore useful to every country with shared transboundary waters that is looking for a cooperative framework to support its efforts in strengthening cooperation with its riparian neighbours and the advancement of transboundary water cooperation worldwide. Many basin-specific agreements mention the Water Convention in their preambular paragraphs as forming an important basis,

followed by provisions based on the text of the Convention but adapted to the specific circumstances in the basin concerned.

Additional resources:

- Tanzi, Atilla, Alexandros Kolliopoulos and Natalia Nikiforova (2015). Normative Features of the UNECE Water Convention. In: *The UNECE Convention on the Protection and Use of Transboundary Watercourses and International Lakes. Its Contribution to International Water Cooperation*. Leiden, The Netherlands: Brill | Nijhoff, pp. 116–129. Available at <http://www.unece.org/index.php?id=54654>

1.8 Does the Water Convention hinder economic development?

The Water Convention does not hinder economic development. In fact, the economic situation observed in many Parties to the Water Convention has gradually improved. For example, between 2006–2009, Albania, Azerbaijan, Belarus, Bulgaria and Kazakhstan (Parties to the Convention at the time) have improved their status from lower-middle-income economies to upper-middle-income economies, according to the World Bank classification for respective years¹. In addition, between 2006–2012, Croatia, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland and Slovak Republic (also Parties to the Convention at the time) have improved their status from upper-middle-income economies to high-income countries. While these positive trends are the result of many policies and multiple factors, which go well beyond the Water Convention, they do show that Parties to the Water Convention have seen their level of economic development increase.

Multilateral financial institutions and bilateral donors strongly value the participation of countries in multilateral agreements such as the Water Convention, and thus being a Party to the Water Convention facilitates investment in support of development projects. The existence of bilateral or multilateral agreements, as well as the creation of joint bodies for transboundary water cooperation in specific basins, are mechanisms that reduce tension and can facilitate agreement on development projects for which financing from financial institutions and bilateral donors may be requested. The World Bank's approach, governed by the Operational Policy (OP)/Bank Procedure (BP) 7.50: Projects on International Waterways (2001), recognizes that the cooperation and goodwill of riparian countries is essential for the efficient use and protection of the waterway. Participation in the Water Convention and compliance with its provisions serve as clear evidence of the willingness of riparian countries to cooperate and thus enhance the eligibility for international funding.

With regard to development-related infrastructure, the Water Convention provides clear and cooperative mechanisms in order to reach better informed decisions on the development of new infrastructure and to prevent related disputes and differences. The Convention builds on the key principles of international water law such as equitable and reasonable utilization, the prevention of significant harm, and the obligation of cooperation, which fully apply to the construction of new infrastructure and the operation and maintenance of existing ones. The obligation of Riparian Parties to hold consultations at the request of any Riparian Party regarding any issue covered by the provisions of the Convention includes, among others, consultations on infrastructure related planned measures.

The methodology for assessing benefits of transboundary water cooperation developed under the Water Convention enables interested countries to look into the wide range of economic, social and environmental benefits that have already been realized and that are potentially available in

¹ World Bank Country and Lending Groups. Available at <https://datahelpdesk.worldbank.org/knowledgebase/articles/906519-world-bank-country-and-lending-groups>

specific basins. Basin-specific assessments conducted in several regions have shown a wide range of benefits from transboundary water cooperation which are directly contributing to economic growth. These may include increases in joint investments, an expansion of the tourism sector, increases in energy security, agricultural productivity, regional trade and commerce, investments in research, and reduced costs of disaster prevention and preparedness.

See also the replies to the related questions:

Would the Water Convention be an efficient instrument for developing countries? [2.6]

Can a country accede to the Water Convention if it cannot implement all its requirements due to the lack of resources and capacity? [6.1]

Additional resources:

- *Guide to Implementing the Water Convention* (ECE/MP.WAT/39), paras. 36–37, 41–42. Available at <https://www.unece.org/index.php?id=33657>
- *Policy Guidance Note on the Benefits of Transboundary Water Cooperation: Identification, Assessment and Communication* (ECE/MP.WAT/47). Available at <https://www.unece.org/index.php?id=41340>
- *Identifying, assessing and communicating the benefits of transboundary water cooperation: Lessons learned and recommendations* (ECE/MP.WAT/NONE/11). Available at <https://www.unece.org/index.php?id=49807>

1.9 How can the Water Convention prevent conflicts and wars over transboundary waters?

The obligations of Riparian Parties to the Water Convention, particularly the duty to cooperate and the obligations to hold consultations, exchange information, conclude agreements and establish joint bodies, are essentially aimed at and instrumental in preventing conflicts and wars over transboundary waters because they determine the day-to-day cooperation of Riparian Parties by setting certain standards for their behaviour and communication. Countries that have concluded agreements and/or established joint bodies may have disagreements over the management of shared waters, but they are less likely to enter into conflict or a war over transboundary waters.

Riparian Parties that have not concluded agreements and/or established joint bodies may be assisted by the Convention's institutional framework in taking these steps, which will ultimately contribute towards strengthened cooperation frameworks in the basins concerned. Furthermore, joint activities often implemented by countries under the Convention's framework (e.g. projects to set up joint monitoring or to develop a joint vulnerability assessment for a basin) contribute to increasing trust and understanding among riparian countries.

Last but not least, Parties that are facing difficulties in the implementation of the Convention's provisions in a particular basin may address, unilaterally or jointly, the Implementation Committee under the Water Convention to ask for advice and assistance in improving the implementation of the Convention and in preventing potential conflicts at an early stage. An advisory procedure under the Implementation Committee is best tailored to accommodate such cases.

See also the reply to the related question:

What is the role of the Implementation Committee under the Water Convention? [6.5]

1.10 How can the Water Convention contribute to the resolution of latent conflicts over transboundary waters?

The Water Convention can contribute to the resolution of latent conflicts by supporting the riparian countries concerned in taking steps towards cooperation on the basis of the legal principles of the Convention. This can be done, for example, through a technical project in the framework of the Convention's programme of work to initiate steps towards cooperation. Such steps can take the form of meetings of technical experts or meetings devoted to a specific issue of common interest (e.g. flood protection). Organized under the aegis of the Convention, such meetings provide a neutral platform for dialogue between riparian countries. With time, they allow to build trust and a mutual understanding of the opportunities and benefits of cooperation.

In addition, the Implementation Committee under the Water Convention can be approached by Parties to the Convention to help resolve latent conflicts. Members of the Committee are outstanding lawyers and technical experts on water issues, and they can provide authoritative advice and mediation in complicated situations, including assistance in taking steps towards the negotiation of transboundary water agreements.

See also the reply to the related question:

What is the role of the Implementation Committee under the Water Convention? [6.5]

1.11 How does the Water Convention promote integrated water resources management?

The Water Convention offers an operational framework to implement integrated water resources management (IWRM) in practice at both national and transboundary level. The Convention promotes a holistic approach, which takes into account the complex interrelationship between the hydrological cycle, land, flora and fauna based on the understanding that water resources are an integral part of the ecosystem. Furthermore, the Convention promotes the basin approach through the obligation to enter into agreements and establish joint bodies.

Cooperation under the Water Convention requires the involvement of different sectors of the central administrations of the Parties and their relevant local authorities, other public and private stakeholders, and NGOs. Such cooperation ultimately enhances the national capacity for water management. The sustainable use of water resources, including the protection of ecosystems and the integration of climate change aspects in the water resources management and planning, are other aspects of the IWRM approach that are promoted under the Convention.

The programme of work of the Water Convention for 2019–2021 specifically supports the implementation of IWRM, with three important sub-areas of work. The first sub-area is to develop a handbook on transboundary water allocation as both a tool and a source of information for the equitable and sustainable allocation of water in a transboundary context. The second sub-area, on the water-food-energy-ecosystems nexus, supports intersectoral dialogue and assessments through the application of the nexus approach to foster transboundary cooperation. The third sub-area concerns the EU Water Initiative (EUWI) National Policy Dialogues (NPDs) implemented by UNECE and the Organisation for Economic Co-operation and Development (OECD) to provide expert and technical assistance in introducing IWRM in the countries of Eastern Europe, the Caucasus and Central Asia.

Additional resources:

- *Water Convention Programme of Work 2019–2021* (ECE/MP.WAT/NONE/14). Available at <https://www.unece.org/index.php?id=51910>
- *Methodology for assessing the water-food-energy-ecosystems nexus in transboundary basins and experiences from its application: synthesis* (ECE/MP.WAT/55). Available at <http://www.unece.org/index.php?id=49849>
- *A nexus approach to transboundary cooperation: The experience of the Water Convention* (ECE/MP.WAT/NONE/12). Available at <http://www.unece.org/index.php?id=49851>
- *Water Policy Reforms in Eastern Europe, the Caucasus and Central Asia. Achievements of the European Union Water Initiative, 2006–16.* Available at <http://www.unece.org/index.php?id=45388>
- *Implementation of the Basin Management Principle in Eastern Europe, the Caucasus and Central Asia. European Union Water Initiative National Policy Dialogues Progress Report 2016.* Available at <http://www.unece.org/index.php?id=44015>
- *Integrated Water Resources Management in Eastern Europe, the Caucasus and Central Asia. European Union Water Initiative National Policy Dialogues progress report 2013* (ECE/MP.WAT/44). Available at <http://www.unece.org/index.php?id=35306>

1.12 Does the Water Convention reflect customary international law? If yes, what is the benefit of accession?

The Water Convention is based on and fully in line with customary international law². Its three-pillar normative structure includes: i) the obligation to prevent, control and reduce significant transboundary impact (the so called “no-harm rule”); ii) the equitable and reasonable utilization principle; and iii) the principle of cooperation. These key principles are part of customary international law.

The Water Convention goes beyond customary international law by specifying and further developing these key obligations. For example, the principle of cooperation is further detailed through the Convention’s obligations to establish joint bodies for transboundary water cooperation, to hold consultations, to exchange information, to provide mutual assistance upon request, and so on. By acceding to the Convention, a country can benefit from this more elaborated framework of obligations and requirements.

Furthermore, the Water Convention provides added value to customary international law by providing an institutional framework and mechanisms, which assist Parties in developing and carrying out day-to-day transboundary cooperation. The institutional mechanism of the Water Convention is led by the Meeting of the Parties—its highest political authority—that meets every three years and adopts the programme of work for the next three-year period. It also establishes working or subsidiary bodies to support the implementation of the programme of work (e.g. the Working Group on Integrated Water Resources Management or the Task Force on Water and Climate). By acceding to the Water Convention, a country can benefit from tools, advice and assistance provided by the Convention’s intergovernmental platform that are not available to it through customary international law.

² Customary international law means “a general practice accepted as law”. It refers to international obligations arising from established international practices, as opposed to obligations arising from formal written treaties.

1.13 What is the relationship between the Water Convention and other multilateral environmental agreements?

While every multilateral environmental agreement (MEA) has its focus on a specific environmental issue (e.g. biodiversity or climate change) or tool (e.g. public participation or environmental assessment), many of them intervene on the management and protection of water resources. For this reason, the implementation of many MEAs supports the implementation of the Water Convention and *vice versa*, as shown by the following examples.

- Some World Heritage sites protected under the 1972 Convention concerning the Protection of the World Cultural and Natural Heritage (World Heritage Convention), especially those designated under natural or mixed criteria, contain transboundary waters and water-related ecosystems. The list of wetlands of international importance, designated as Ramsar sites under the 1971 Convention on Wetlands of International Importance especially as Waterfowl Habitat (Ramsar Convention), includes many transboundary wetlands. The status of a World Heritage site or a Ramsar site often results in the designation of the respective sites and transboundary waters within these sites as protected areas, while simultaneously implying additional protection mechanisms through the frameworks of the World Heritage Convention or the Ramsar Convention, respectively. At the same time, cooperation on transboundary waters through specific transboundary water agreements and joint bodies, as required by the Water Convention, ensures for operational mechanisms and enables more effective protection of World Heritage Convention or Ramsar Convention sites when such sites include transboundary waters.
- The three Rio Conventions: the 1992 Convention on Biological Diversity (CBD), the 1994 United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa (UNCCD), and the 1992 United Nations Framework Convention on Climate Change (UNFCCC) are relevant for the sustainable management and protection of water resources, including in a transboundary context. The instruments developed under these conventions, such as the Aichi Biodiversity Targets and the National Biodiversity Strategies and Action Plans (NBSAPs) under the CBD, the Land Degradation Neutrality (LDN) Target Setting Programme under the UNCCD, and several of the Nationally Determined Contributions (NDCs) and National Adaptation Plans (NAPs) in the framework of the UNFCCC include measures to support IWRM and the protection of water-related ecosystems. In turn, the implementation of the Water Convention contributes to the implementation of the Rio Conventions, for example when joint bodies for transboundary water cooperation participate in the development and implementation of NBSAPs, climate change adaptation measures or NDCs.



Viru bog, Estonia

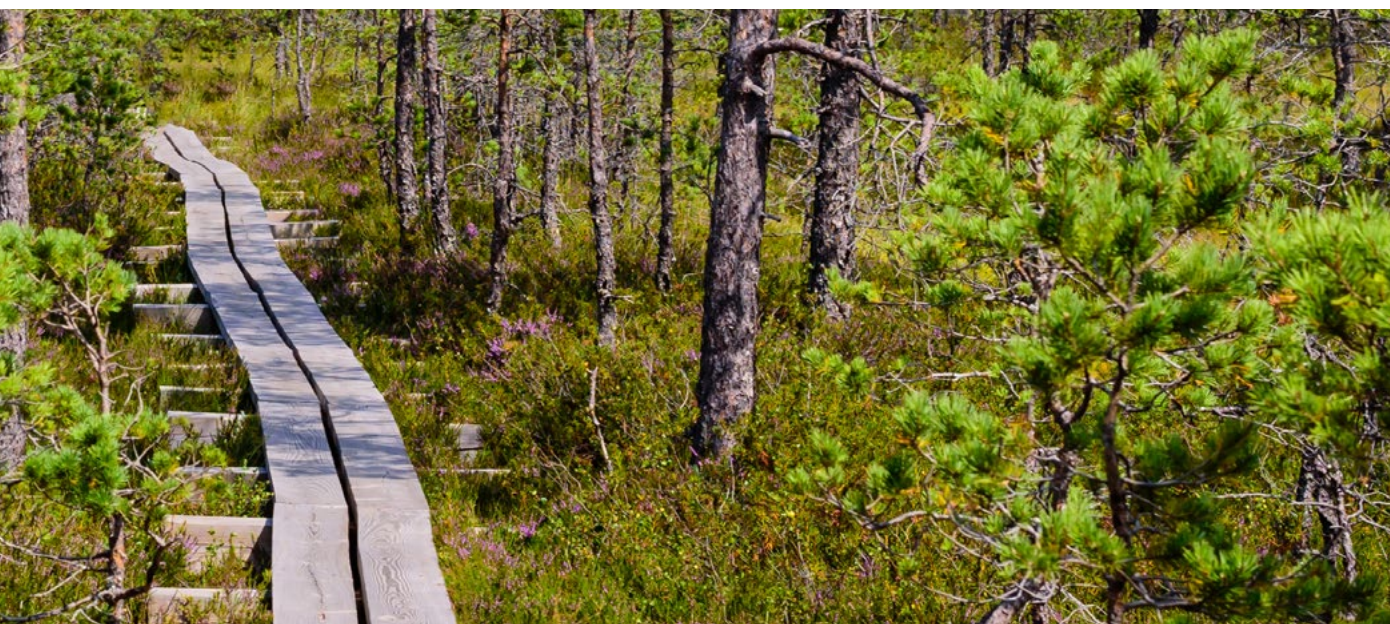
- Implementation of the Water Convention can benefit from the implementation of the 1991 Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention) that includes the procedures for conducting an environmental impact assessment (EIA), as well as the 1998 Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) that provides for the requirements regarding access to information and public participation in decision-making. In turn, participation of joint bodies for transboundary water cooperation in EIA, which is among the tasks of joint bodies under the Water Convention, enhances the quality of a transboundary EIA. Public participation in the activities of joint bodies for transboundary water cooperation or the development of river basin management plans directly contributes to the implementation of the Aarhus Convention.

In addition to synergies in the normative frameworks and related implementation efforts by States Parties to respective instruments, there are also many examples of practical cooperation in the activities implemented under the auspices of the Water Convention and other MEAs. For example, cooperation with the Ramsar Convention secretariat in the preparation of the 2011 Second Assessment of Transboundary Rivers, Lakes and Groundwaters under the Water Convention made possible the assessment of 25 wetlands of transboundary importance, highlighting the need for stronger coherence between water management and conservation efforts at the transboundary level.

Further exploring the synergies between the Water Convention and other MEAs and relying on such synergies in national policies and at transboundary, regional and global levels may bring added value to implementation efforts by enabling countries to move towards a more integrated approach, inherent for the 2030 Agenda for Sustainable Development.

Additional resources:

- Boisson de Chazournes, Laurence, Christina Leb and Mara Tignino, *The UNECE Water Convention and Multilateral Environmental Agreements*. In: Tanzi, Atilla *et al.*, eds. *The UNECE Convention on the Protection and Use of Transboundary Watercourses and International Lakes: Its Contribution to International Water Cooperation*. Leiden, NL: Brill | Nijhoff, 2015. pp. 60–72. at <https://archive-ouverte.unige.ch/unige:73697>
- *Second Assessment of Transboundary Rivers, Lakes and Groundwaters* (ECE/MP/WAT/33). Available at <https://www.unece.org/index.php?id=26343>



CHAPTER 2



GLOBAL APPLICATION



2.1 The Water Convention was originally drafted as a regional agreement. Why was a decision taken to open it to all United Nations Member States?

The Water Convention was amended in 2003 to allow accession by all United Nations Member States, i.e. not only those belonging to the UNECE region. Such a decision was taken by the Parties based on the Convention's successes in strengthening transboundary water cooperation at both political and technical levels in the region, and in response to the interest from countries outside the UNECE region in the Convention.

This decision was rooted in the advantages of opening the Convention to the whole world. By amending the Convention to enable accession by all United Nations Member States, its Parties wanted to broaden political support for transboundary water cooperation at the global level, share the experiences of the Convention, and learn from other regions of the world.

The Parties to the Convention also intended to offer the principles and provisions of the Convention and its intergovernmental platform worldwide. They believed that the implementation of the Water Convention at the global level would be crucial for international peace and the prevention of conflicts, as the situation of water resources is projected to aggravate in the coming decades. They saw the Water Convention as an effective and much needed intergovernmental platform, under the umbrella of the United Nations, capable of enhancing water security, preventing disputes over water, and facilitating conflict resolution.

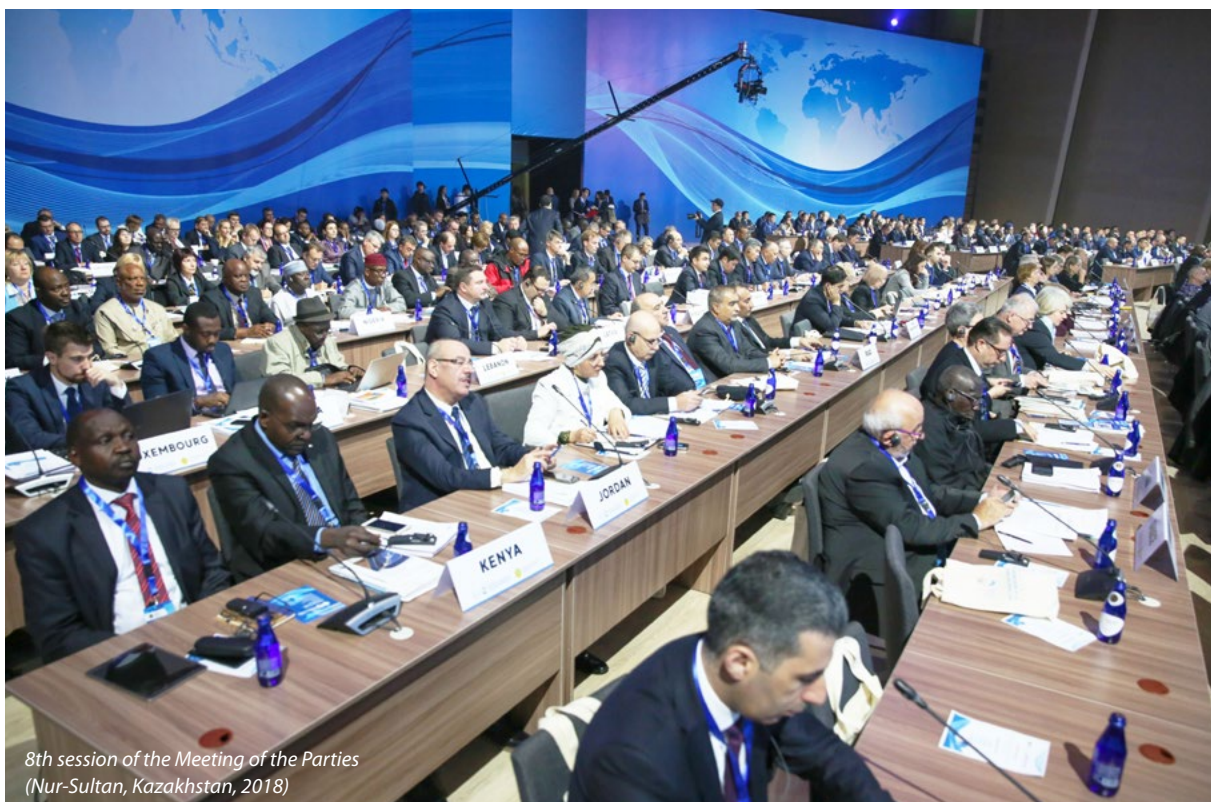
The process of the entry into force of the amendments has been accompanied by a growing interest in the Convention from countries from outside the UNECE region and largely driven by such interest. As of 2009, the active participation of countries from outside the UNECE region in the activities under the Convention demonstrated the wealth of valuable experience on transboundary water cooperation outside the region and further motivated Parties to the Convention to speed up the entry into force of the amendments. In the period 2009–2020, more than 120 countries worldwide have participated in meetings and activities under the Convention.

The amendments became operational as of 2016. As at mid-2020, the Convention has 44 Parties, including three from outside the UNECE region (Chad, Ghana³ and Senegal).

³ Ghana has deposited its instrument of accession on 22 June 2020. The Convention enters into force for Ghana on 20 September 2020.

Additional resources:

- Convention on the Protection and Use of Transboundary Watercourses and International Lakes as amended, along with decision VI/3 clarifying the accession procedure (ECE/MP.WAT/41).
Available at https://www.unece.org/fileadmin/DAM/env/water/publications/WAT_Text/ECE_MP.WAT_41.pdf
- United Nations Treaty Collection, Status of Treaties, Convention on the Protection and Use of Transboundary Watercourses and International Lakes.
Available at https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXVII-5&chapter=27&clang=_en
- Amendment to Articles 25 and 26 of the Convention, decision III/1 (ECE/MP.WAT/14).
Available at <https://www.unece.org/fileadmin/DAM/env/documents/2004/wat/ece.mp.wat.14.e.pdf>
- Video message by Sibylle Vermont, Switzerland, on the UNECE Water Convention and its global opening, 2013.
Available to view at https://www.youtube.com/watch?v=tJQM0WL_hHA
- Trombitcaia, Iulia and Sonia Koeppel, 2015. From a Regional towards a Global Instrument – The 2003 Amendment to the UNECE Water Convention. In: Tanzi, Atilla *et al.*, eds. *The UNECE Convention on the Protection and Use of Transboundary Watercourses and International Lakes. Its Contribution to International Water Cooperation*. Leiden, The Netherlands: Brill | Nijhoff, pp.15–31.
Available at <http://www.unece.org/index.php?id=54654>



2.2 What is UNECE?

Established in 1947, UNECE is one of five regional commissions of the United Nations. It is part of the United Nations Secretariat and it reports to the Economic and Social Council (ECOSOC).

While UNECE has 'Europe' in its title, its 56 member States span the continents of North America, Europe and Asia (including the countries of Central Asia). The UNECE region encompasses countries of all income categories ranging from low-income to high-income economies, according to the World Bank classification.⁴ The UNECE region includes water-rich and water-scarce countries, as well as peaceful and conflict-prone sub-regions, and it faces similar challenges in water management and transboundary water cooperation to other parts of the world.

Member States of the European Union (EU) are members of UNECE. However, UNECE and the EU are different international organizations.

2.3 Why is the Water Convention serviced by UNECE?

Since the 1960s, UNECE has been very active on the issues of water management and transboundary water and environmental cooperation, as demanded by its member States. In the early years, its Committee on Water Problems adopted a series of recommendations and declarations on water management issues, which set international benchmarks for water management and cooperation in the region and globally. UNECE was thus the most appropriate forum for the negotiation of a framework convention on transboundary waters when the Meeting on the Protection of the Environment of the Conference on Security and Co-operation in Europe (Sofia, 1989) recommended the development of such a convention. UNECE has also naturally become an obvious choice for implementing the functions of the secretariat for the Water Convention.

The Water Convention's secretariat arrangement is not unique. For similar historical reasons, UNECE also hosts the secretariat of many other global agreements and conventions, in particular on transport, for example, the 1954 Convention concerning Customs Facilities for Touring, the 1968 Convention on Road Traffic, and the 1968 Convention on Road Signs and Signals. In agriculture, UNECE standards are used internationally by governments, producers, exporters and importers. The United Nations Centre for Trade Facilitation and Electronic Business (UN/CEFACT) is another UNECE body with a broad remit, delivering globally-used trade facilitation recommendations and electronic business standards. UNECE also manages a global system for the classification of dangerous goods (chemicals, explosives) and a global convention on the rules governing their transport.

2.4 Why is the Water Convention relevant for countries that were not involved in the negotiations?

It is not unusual for countries not involved in the negotiations of a multilateral environmental agreement to later decide to become party to it. For example, as at mid-2020, 187 countries are Parties to the 1989 Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, but only 96 countries were represented at one or more of the sessions of the Ad Hoc Working Group of Legal and Technical Experts that negotiated the Convention (UNEP/IG.80/4). Accession by a country that did not participate in the negotiations is usually driven by the value of participation in a given treaty for the country.

⁴ World Bank Country and Lending Groups, available at <https://datahelpdesk.worldbank.org/knowledgebase/articles/906519-world-bank-country-and-lending-groups>

In the case of the Water Convention, the major arguments for the countries who were not involved in the negotiations but are considering accession to the Convention are the results achieved in the Convention's framework and the assistance the Convention provides to its Parties. Results demonstrating the effectiveness of the Convention include: i) the conclusion of numerous transboundary water agreements based on the regulatory template of the Convention; ii) practical support to the implementation of the provisions of the Convention; iii) the development of a body of soft law instruments (guidelines, recommendations, model provisions, etc.), which provide further guidance to the Parties in the interpretation and application of the Convention; and iv) the contribution of the Convention to the implementation by its Parties of the water-related Millennium Development Goals in the past, and the Sustainable Development Goals in recent years.

The Convention can thus be a relevant instrument for countries wishing to strengthen or develop cooperation in their shared transboundary basins, participate in further developing international water law, and contribute to the advancement of transboundary water cooperation worldwide, even if they were not involved in the negotiations. By becoming a Party to the Convention, countries can participate in its further development, including by: i) proposing amendments to and shaping the normative framework of the Convention; ii) suggesting decisions for adoption by the Meeting of the Parties; and iii) designing the 3-year programme of work under the Convention.

See also the replies to the related questions:

Would the Water Convention be useful to every country, taking into account regional specificities and each country's unique situation? [1.7]

Would the Water Convention be an efficient instrument for developing countries? [2.6]

2.5 Would the Water Convention be an efficient instrument for arid or semi-arid regions?

The UNECE region, for which the Water Convention was originally negotiated, is often considered a water abundant region. However, in reality, the UNECE region is very diversified in terms of water availability, with the impacts of climate change likely to change the situation with water availability in the future. Turkmenistan and Uzbekistan—both Parties to the Water Convention—are among those countries whose level of water stress (SDG indicator 6.4.2) exceeds 100 per cent, along with Bahrain, Egypt, Israel, Jordan, Kuwait, Libya, Oman, Pakistan, Qatar, Saudi Arabia, Syrian Arab Republic, United Arab Emirates and Yemen.⁵

For arid and semi-arid countries and regions where little water is available, and where such water is a shared resource, it is even more important for countries to cooperate in order to ensure sustainable, equitable and efficient use of water resources. The Water Convention is useful for such regions as it provides the framework for day-to-day cooperation, including through the exchange of information and data, consultations, early warning and alarm systems, mutual assistance, and other procedures.

Furthermore, arid and semi-arid countries and regions can benefit from a number of activities and tools under the Water Convention that specifically address water availability and water scarcity:

- **Water and climate change activities.** Since climate change may reduce the availability of water resources in the long term or make certain regions more prone to the occurrence of drought, Parties to the Water Convention work together to identify possible solutions. In 2006, they set up a dedicated Task Force on Water and Climate to help countries adapt to climate change, including floods, drought and water scarcity. Since then, activities have included exchanges of experience, capacity-building and projects on the ground, as well as the development of guidance documents, such as the 2009 *Guidance on Water and Adaptation to Climate Change* and the 2018 *Words into*

⁵ The level of water stress is determined as the ratio between total freshwater withdrawn by major economic sectors and total renewable freshwater resources, after taking into account environmental water requirements. See *Progress on Level of Water Stress. Global baseline for SDG indicator 6.4.2* (2018). FAO and UN-Water. Available at <https://www.unwater.org/publications/progress-on-level-of-water-stress-642/>

Action Guidelines: Implementation Guide for Addressing Water-related Disasters and Transboundary Cooperation, which is an official guide for implementing the Sendai Framework for Disaster Risk Reduction 2015–2030. A global network of basins working on climate change (some with a focus on water scarcity, others on floods) and regular global workshops help countries to develop and implement joint adaptation strategies and exchange experiences. The Convention's pilot projects on adaptation to climate change in transboundary basins strengthen the capacity of specific basins to adapt to climate change. For example, in the Chu-Talas River Basin—shared by Kazakhstan and Kyrgyzstan, both facing water scarcity challenges—the pilot project resulted in a transboundary climate change impact and vulnerability assessment, as well as proposals for adaptation measures with a focus on the transboundary level.

- **Aquifer-specific agreements.** Aquifers are especially important for arid countries. Since the Convention covers both surface water and groundwaters and requires the conclusion of specific transboundary water agreements, it can facilitate the development of aquifer-specific agreements in those regions with the provision of tailored assistance to this end, potentially on the basis of the 2012 *Model Provisions on Transboundary Groundwaters*, which were developed within the Convention's framework.
- **Nexus activities.** The work on the water-food-energy-ecosystems nexus in transboundary basins in the framework of the Convention can help arid and semi-arid countries and regions identify practical solutions for reconciling the different sectors' needs, having a direct impact on the efficiency of water use and thus reducing water stress.
- **Water use efficiency.** The Convention's focus on recycling, recovery and reuse as part of the concept of "best environmental practices" (Annex II of the Water Convention) promotes water use efficiency, which can be particularly relevant for arid and semi-arid countries and regions.

Additional resources:

- *Guidance on Water and Adaptation to Climate Change* (ECE/MP.WAT/30). Available at <https://www.unece.org/index.php?id=11658>
- *Water and Climate Change Adaptation in Transboundary Basins: Lessons Learned and Good Practices* (ECE/MP.WAT/45). Available at <https://www.unece.org/index.php?id=39417>
- *Words into Action Guidelines: Implementation Guide for Addressing Water-Related Disasters and Transboundary Cooperation* (ECE/MP.WAT/56). Available at <https://www.unece.org/index.php?id=50093>
- *Model Provisions on Transboundary Groundwaters* (ECE/MP.WAT/40). Available at <https://www.unece.org/index.php?id=35126>

2.6 Would the Water Convention be an efficient instrument for developing countries?

Shared water resources and the accompanying need to manage them jointly can become a driver of development and regional integration. A good example of this is the case of the Senegal River Basin.

The Water Convention can help developing countries develop their transboundary basins in a sustainable manner, preventing conflicts over shared resources.

The provisions of the Water Convention are to be implemented by developing countries taking into account their capacity. Owing to the due diligence nature of many of its obligations, the Convention allows for the different capacities and level of economic development of its Parties to be considered. As a result, developing countries are not expected to implement the Convention in the same way as developed countries. Instead, they could use the Convention's rules and tools as a means to achieve and accelerate their development objectives in transboundary water management by securing water-related investments. As at 2020, Parties to the Convention include several low-income and lower-middle income countries, according to the World Bank classification for the 2020 fiscal year.

See also the replies to the related questions:

Does the Water Convention hinder economic development? [1.8]

Can a country accede to the Water Convention if it cannot implement all its requirements due to the lack of resources and capacity? [6.1]

2.7 Are there any differences between the rights and obligations of Parties from the UNECE region and those of Parties from other regions of the world?

There are no differences in the rights and obligations of Parties from the UNECE region and those of Parties from other regions of the world. All Parties have the same rights, such as to participate in decision-making, to receive assistance, to be elected to the bodies of the Convention, and to lead the activities under the Convention. For example, as of 2019, Senegal—a Party to the Convention since 2018—co-chairs the Convention's Working Group on Monitoring and Assessment and is a member of the Convention's Bureau. All Parties can participate in the development of the Convention's programme of work so that it better responds to their specific needs.

2.8 Is the decision to open the Water Convention to all United Nations Member States extended to all its protocols?

The decision to open the Water Convention to all United Nations Member States refers to the Convention only. Accession to the 2003 Protocol on Civil Liability and Compensation for Damage Caused by the Transboundary Effects of Industrial Accidents on Transboundary Waters is open to all United Nations Member States.⁶ The 1999 Protocol on Water and Health is not open for accession by countries from regions other than the UNECE region. However all countries can use and benefit from the tools developed under the Protocol on Water and Health.

⁶ The 2003 Protocol has been signed by 24 countries but has not yet entered into force.



Lake Titicaca

CHAPTER

3



RELATIONSHIP WITH THE 1997 WATERCOURSES CONVENTION



3.1 To what extent do the norms and provisions of the 1992 Water Convention complement or contradict the norms and provisions of the 1997 United Nations Convention on the Law of the Non-navigational Uses of International Watercourses (1997 Watercourses Convention)?

The two global water Conventions are fully compatible and are not contradictory. In fact, the two Conventions are in many ways mutually complementary (figure 2), for example:

- The 1997 Watercourses Convention complements the 1992 Water Convention by:
 - Detailing the factors relevant to equitable and reasonable utilization (Article 6 of the 1997 Watercourses Convention).
 - Specifying the procedures for notification and consultations on planned measures (Part III of the 1997 Watercourses Convention).
 - Describing the consequences of the occurrence of transboundary impact (Article 7(2) of the 1997 Watercourses Convention).
- Conversely, the 1992 Water Convention complements the 1997 Watercourses Convention by:
 - Prescribing the content of specific agreements and tasks of joint bodies (Article 9 of the 1992 Water Convention).
 - Detailing the information subject to joint assessment and exchange (Articles 11 and 13 of the 1992 Water Convention).
 - Providing detailed guidance on water quality objectives and best available technology (Annexes I–III of the 1992 Water Convention).

There are however some differences between the two Conventions (figure 3):

- The 1992 Water Convention *obliges* Riparian Parties to enter into agreements and establish joint bodies for their shared waters, whereas the 1997 Watercourses Convention only *recommends* watercourse States to conclude specific agreements and cooperate through joint institutions. Nevertheless, both Conventions rely heavily on agreements and joint bodies for their successful implementation.

- The 1992 Water Convention provides for the obligation to adapt existing agreements where necessary to eliminate contradiction with the “basic principles” (i.e. fundamental provisions) of the Convention, but it does not require to revise existing agreements to reflect all the provisions of the Convention. The 1997 Watercourses Convention encourages harmonizing existing agreements with the “basic principles” of the Watercourses Convention.
- The 1992 Water Convention establishes an institutional mechanism to support its implementation, i.e. an intergovernmental platform based on the Meeting of the Parties and its subsidiary bodies, whereas the 1997 Watercourses Convention does not provide for such a cooperation mechanism.
- Whereas the 1997 Watercourses Convention leaves confined groundwaters outside its scope, the 1992 Water Convention covers all transboundary groundwaters, including confined aquifers.
- The 1992 Water Convention allows Riparian Parties to limit the exchange of information between them on the basis of intellectual property rights, whereas the 1997 Watercourses Convention does not allow for such a limitation.

These differences do not however imply that the implementation of one Convention would impede the implementation of the other. They can be reconciled by way of interpretation in order to reinforce and strengthen the implementation of both instruments. In fact, these differences are instead a strength, allowing both instruments to be seen as a full package of norms where the more detailed provisions in one instrument can inform the implementation of the other. That complementarity was recognized by the former United Nations Secretary-General Ban Ki-moon who stressed in 2012 that “[t]hese two instruments are based on the same principles. They complement each other and should be implemented in a coherent manner.” In 2018, the United Nations Secretary-General António Guterres called upon Member States “to join both Conventions and to strive for their full implementation”.

Figure 2: How are the two global water conventions complementary?

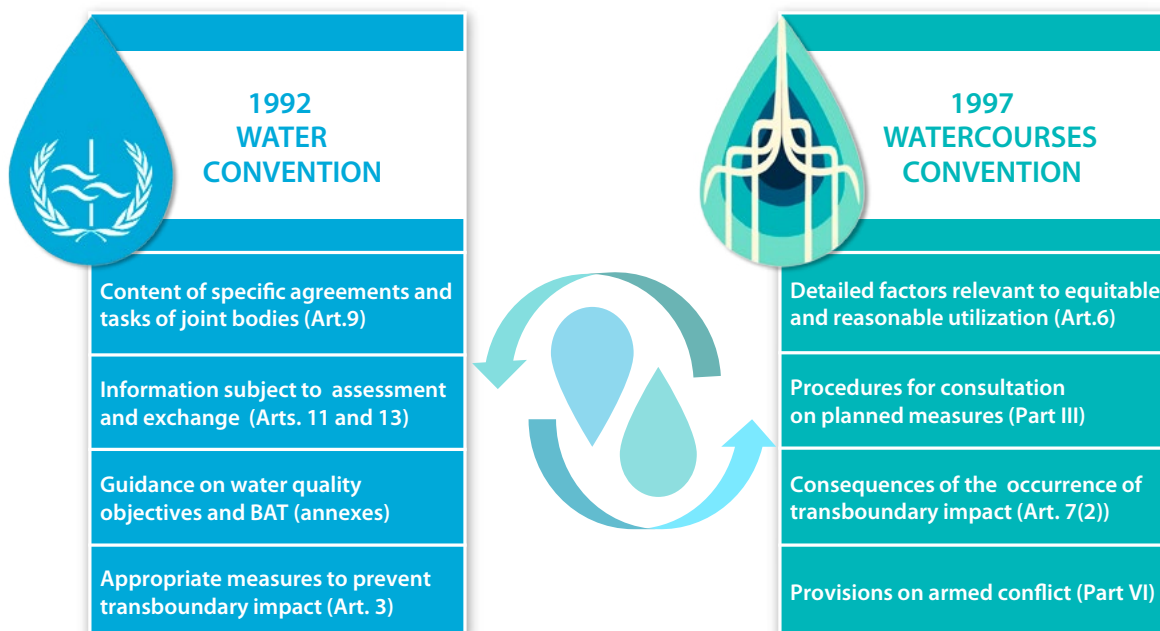


Figure 3: How are the two global water conventions different?

1992 WATER CONVENTION	≠	1997 WATERCOURSES CONVENTION
Obligation to enter into agreements and establish joint bodies (Art. 9)	FUTURE AGREEMENTS AND JOINT BODIES	Recommendation to enter into agreements and establish joint bodies (Arts. 8(2), 24)
Obligation to adapt in line with the basic principles of the Convention (Art. 9(1))	EXISTING AGREEMENTS	Recommendation to adapt (Art. 3(2))
Available (Arts. 17-19)	INSTITUTIONAL MECHANISM BASED ON THE MEETING OF THE PARTIES	Not available
All transboundary waters (Art. 1(1)), including confined groundwater	SCOPE	Surface water and connected groundwater (not confined groundwater) (Art. 2(a))

See also replies to the related questions:

Would a country with already existing bilateral or multilateral agreements or other arrangements need to revise them in order to become a Party to the Water Convention? [5.3]

Is it mandatory for Parties to the Water Convention to enter into bilateral or multilateral agreements to implement the Convention? [5.4]

What are the decision-making, working and subsidiary bodies under the Water Convention? [6.4]

Additional resources:

- *The Economic Commission for Europe Water Convention and the United Nations Watercourses Convention. An analysis of their harmonized contribution to international water law* (ECE/MP.WAT/42).
Available at <https://www.unece.org/index.php?id=39028>
- Rieu-Clarke, Alistair, Ruby Moynihan, Bjørn-Oliver Magsig (2012).
UN Watercourses Convention Online User's Guide.
Available at <https://www.unwatercoursesconvention.org>
- Message by UN Secretary-General António Guterres to the Meeting of the Parties to the Water Convention, Astana, 10 October 2018.
Available at https://www.unece.org/fileadmin/DAM/env/documents/2018/WAT/10Oct_10-12_8thMOP/High-Level_segment/4_UN_SG_Mr._Guterres.pdf
- Message by UN Secretary-General Ban Ki-moon to the Meeting of the Parties to the Water Convention, Rome, 28–30 November 2012.
Available at http://www.unece.org/fileadmin/DAM/env/water/mop_6_Rome/Presentations/Secretary_General_message.pdf
- Video message by UN Secretary-General Ban Ki-Moon about the importance of UN Water Conventions, 2015.
Available to view at <https://www.youtube.com/watch?v=o93JpsYCVVw>

- Video message by UN Deputy Secretary-General Jan Eliasson to the Seventh session of the Meeting of the Parties to the Water Convention, Budapest, 17–19 November 2015. Available to view at https://youtu.be/xf1vj_hRf1I
- Video of Prof. Attila Tanzi discussing the compatibility of the two Conventions for the UN Watercourses Convention Online User's Guide, 2013. Available to view at <https://www.youtube.com/watch?v=pTZnXpzVHlc&feature=youtu.be>

3.2 Can a country that is already Party to the 1997 Watercourses Convention accede to the 1992 Water Convention? What are the benefits for Parties to the 1997 Watercourses Convention to accede to the 1992 Water Convention?

According to the 1969 Vienna Convention on the Law of Treaties, two or more treaties on the same subject matter may be simultaneously applicable to the same Parties provided that there is mutual compatibility between their provisions. As the two global water Conventions are fully compatible, complement each other and are not contradictory, countries can accede to both instruments. In fact, many countries are already Parties to both Conventions (as at mid-2020, they are Chad, Denmark, Finland, France, Germany, Ghana, Greece, Hungary, Italy, Luxembourg, Montenegro, the Netherlands, Norway, Portugal, Spain, Sweden and Uzbekistan).

Key advantages of accession to the 1992 Water Convention for Parties to the 1997 Watercourses Convention are associated with the availability of the institutional mechanism under the 1992 Water Convention, which supports implementation. The Water Convention offers an intergovernmental platform that is centred around its Meeting of the Parties, as well as the tools and activities that support countries in implementing the Convention and that foster cooperation at the political and technical level. Such support may be instrumental in initiating the development of cooperation in specific basins. Other advantages may be derived from the differences between the two Conventions. For example, the mandatory nature of the obligation to enter into agreements and establish joint bodies under the Water Convention may be considered an advantage in a basin where cooperation of riparian countries has long suffered from an absence of a legal framework.

3.3 Which of the two global water Conventions is a better choice for a country that is not Party to either?

Building on the compatibility and complementarity of the two global water Conventions, the most strategic decision for a country that is not a Party to either Convention is to join both instruments, as recommended by two United Nations Secretaries-General, Ban Ki-Moon in 2012 and 2015, and António Guterres in 2018.

Being a Party to both Conventions allows a country to benefit from their strong legal frameworks. Differences between the two legal texts can be seen as useful complementary elements, as one Convention can enrich and help in the interpretation of the provisions of the other.

Another argument in favour of the 'two Conventions package' is that participation in both instruments provides a country with more opportunities to advance the development and application of international water law at the global level, and to influence the future development and synergetic implementation of the two instruments.

Additional resources:

- Message by the UN Secretary-General António Guterres to the Meeting of the Parties to the Water Convention, Astana, 10 October 2018.
Available at https://www.unece.org/fileadmin/DAM/env/documents/2018/WAT/10Oct_10-12_8thMOP/High-Level_segment/4_UN_SG_Mr._Guterres.pdf
- Message by the UN Secretary-General Ban Ki-moon to the Meeting of the Parties to the Water Convention, Rome, 28–30 November 2012.
Available at http://www.unece.org/fileadmin/DAM/env/water/mop_6_Rome/Presentations/Secretary_General_message.pdf
- Video message by UN Secretary-General Ban Ki-Moon about the importance of UN Water Conventions, 2015.
Available to view at <https://www.youtube.com/watch?v=o93JpsYCVVw>

3.4 What happens if one riparian country joins one global water Convention and the other riparian country joins the other global water Convention? Are they bound by any obligations towards each other?

When one riparian country joins one global water Convention and the other riparian country joins the other global water Convention, each riparian country would be bound only by the provisions of the Convention to which it is Party and not by the provisions of the other Convention. The notions of a “Watercourse State” under the 1997 Watercourses Convention and a “Riparian Party” under the 1992 Water Convention both aim to secure that the rights and obligations established by the respective Convention apply exclusively in relation to its Parties. A riparian country that is a Party to one global water Convention would therefore have no obligation towards the riparian country that joined the other global water Convention, and vice-versa. Only the principles of customary international law⁷ would be applicable in this case.

Although such a situation would mean an absence of legal obligations between riparian countries (other than those stemming from customary international law), it may be expected that common sense would lead the countries to cooperate as the rights and obligations of the two Conventions are essentially the same. Nevertheless, such a situation is an additional argument for countries considering becoming a Party to one or the other of the two global water Conventions to join both Conventions.

⁷ See footnote 2 for an explanation of customary international law.



CHAPTER 4

SCOPE



4.1 Which waters fall under the scope of the Water Convention?

The Water Convention applies to transboundary waters. According to the Convention (Article 1(1)), “transboundary waters” means any surface waters or ground waters which mark, cross or are located on boundaries between two or more States. With regard to groundwaters, the Convention applies to both confined and unconfined aquifers. Furthermore, the notion of transboundary waters under the Convention is not limited to a water body (e.g. a river, a lake or an aquifer), but covers the entire catchment area (Article 2(6)).

Additional resources:

- *Guide to Implementing the Water Convention* (ECE/MP.WAT/39), paras. 70–78.
Available at <https://www.unece.org/index.php?id=33657>

4.2 Why does the Water Convention use different terms such as “transboundary watercourses”, “international lakes” and “transboundary waters”?

“Transboundary watercourses” and “international lakes” appear in the title of the Convention, and “transboundary waters” is used throughout the Convention text. The use of the different terms might have been the result of a compromise reached during the negotiations of the Convention, though no definite answer to this question is known today.

From a legal and practical point of view, it is important that the Convention provides a clear definition of “transboundary waters” (Article 1(1)) when outlining its geographic scope of application, and that it consistently follows a holistic approach to the concept of environment. The Convention strongly promotes the concept of “catchment area” (Articles 1(2), 2(6) and 9(1)). The term “transboundary waters”, encompassing both transboundary surface and groundwaters whether confined or unconfined, has been most commonly used in the soft law instruments developed within the framework of the Convention over the past two decades.

As at mid-2020, no Party to the Convention has ever brought to the attention of the Meeting of the Parties of the Convention or its subsidiary bodies any practical difficulties with the terminology in question.

Additional resources:

- *Guide to Implementing the Water Convention* (ECE/MP.WAT/39), paras. 70–78.
Available at <https://www.unece.org/index.php?id=33657>

4.3 Does the Water Convention apply to groundwaters? If yes, which type of groundwaters?

Along with transboundary surface waters, the Water Convention applies to transboundary groundwaters, including both confined and unconfined aquifers. In accordance with the catchment area approach of the Convention, cooperation under the Convention should cover the entire recharge area of an aquifer, whether confined or unconfined. The scope of application of the Convention also covers groundwaters located exclusively within the territory of one State if they interact with transboundary surface waters (e.g. located in the discharge zone of those groundwaters). The non-binding Model Provisions on Transboundary Groundwaters adopted by the Parties in 2012 provide guidance to Parties in applying the Water Convention to transboundary aquifers.

Additional resources:

- *Guide to Implementing the Water Convention* (ECE/MP.WAT/39), paras. 70–75.
Available at <https://www.unece.org/index.php?id=33657>
- *Model Provisions on Transboundary Groundwaters* (ECE/MP.WAT/40).
Available at <https://www.unece.org/index.php?id=35126>

4.4 Does the Water Convention apply to seas or oceans?

Seas and oceans as such are generally excluded from the scope of the Water Convention. As detailed in the Convention's Article 1(1), "wherever transboundary waters flow directly into the sea, these transboundary waters end at a straight line across their respective mouths between points on the low-water line of their banks". However, the Convention recognizes the interlinkages between the management of freshwaters and oceans and seas. It therefore requires Parties to protect the environment that is influenced by their transboundary waters, including the marine environment (Article 2(6)). Furthermore, the Convention encourages cooperation between Riparian Parties and coastal States that are Parties to the Convention when coastal States are directly and significantly affected by transboundary impact deriving from transboundary waters shared by those Riparian Parties (Article 9(3)).

4.5 Does the Water Convention apply to wetlands that fall under the Ramsar Convention?

The Water Convention applies to transboundary waters. The Ramsar Convention applies to wetlands irrespective of their transboundary character. Not all wetlands covered by the Ramsar Convention are therefore covered by the Water Convention.

See also the reply to the related question:

What is the relationship between the Water Convention and other multilateral environmental agreements? [1.13]

4.6 Does the Water Convention address only water and environmental issues? If not, what other areas benefit from cooperation under the Water Convention?

The focus of the Water Convention is on cooperation in the field of transboundary waters. However, such cooperation has a direct impact on many other sectors such as agriculture, energy, industry, land management and health. Conversely, the Water Convention applies to any activity that may cause transboundary impact, which can potentially include activities in agriculture, energy, industry, transport and other sectors. Cooperation across sectors is therefore crucial for the implementation of the Convention. Cooperation frameworks set up according to the obligations of the Water Convention and the consultation procedures envisaged by the Convention provide for discussion of planned measures and development decisions, improving certainty and building investor confidence.

Although different sectors directly depend on the availability of water resources, planning in energy, agriculture, land management and water resources sectors often takes place in isolation, i.e. without adequate consideration of what the planned developments require or assume about other sectors. An inter-sectoral approach to managing the interlinked resources could thus enhance water, energy and food security. The work on the water-food-energy-ecosystems nexus in transboundary basins implemented in the framework of the Water Convention helps countries identify opportunities for additional and equitable sharing of benefits that come from stronger cooperation and integration across sectors and helps develop practical solutions for reconciling the different sectors' needs.

The work on the benefits of transboundary cooperation, also implemented in the framework of the Water Convention, helps countries increase cooperation by moving from 'sharing water' (i.e. allocating water resources among riparian States) to 'sharing the benefits of water' (i.e. managing water resources to achieve the maximum benefit). There is even greater scope for increasing cooperation by moving from 'sharing the benefits of water' to 'realizing the broader benefits of water cooperation', which include macroeconomic and security benefits beyond the water sector. The Water Convention assists countries in preparing benefits assessments to identify, assess and communicate the benefits of cooperation in specific transboundary basins.

Additional resources:

- *Methodology for assessing the water-food-energy-ecosystems nexus in transboundary basins and experiences from its application: synthesis* (ECE/MP.WAT/55). Available at <https://www.unece.org/index.php?id=49849>
- *A nexus approach to transboundary cooperation: The experience of the Water Convention* (ECE/MP.WAT/NONE/12). Available at <https://www.unece.org/index.php?id=49851>
- *Towards sustainable renewable energy investment and deployment: Trade-offs and opportunities with water resources and the environment* (ECE/ENERGY/127). Available at <https://www.unece.org/index.php?id=54348>
- *Policy Guidance Note on the Benefits of Transboundary Water Cooperation: Identification, Assessment and Communication* (ECE/MP.WAT/47). Available at <https://www.unece.org/index.php?id=41340>
- *Identifying, assessing and communicating the benefits of transboundary water cooperation: Lessons learned and recommendations* (ECE/MP.WAT/NONE/11). Available at <https://www.unece.org/index.php?id=49807>

4.7 Does the Water Convention regulate water quantity issues?

The Water Convention addresses all transboundary impacts, whether related to water quantity or water quality. Water quantity may cause transboundary impact within the meaning of the Convention (e.g. droughts, floods, effects on human health and safety) and it is therefore an area where Parties may have to take appropriate measures to prevent, control and reduce transboundary impact. The 'equitable and reasonable utilization principle', which is also a key principle of the Convention's normative structure, provides another cornerstone pillar on how water quantity issues should be tackled.

All the Convention's provisions (obligations to carry out joint monitoring and assessment, exchange data and information, including on planned measures, conduct environmental impact assessments, hold consultations, set up warning and alarm systems, or provide mutual assistance) apply to cooperation on water *quantity* issues in as much as they apply to cooperation on water *quality*.

Following a global workshop on water allocation in transboundary basins organized in 2017 under the Water Convention, Parties realized the need for additional guidance in this area. Between 2019–2021, a handbook on water allocation in a transboundary context is being developed under the Convention by a group of experts from all over the world. This soft law instrument aims to review the existing practices and to cover the key aspects for the equitable and sustainable allocation of water resources in transboundary basins, addressing both surface waters and groundwaters.

Additional resources:

- *Water allocation in a transboundary context.*
Available at <https://www.unece.org/environmental-policy/conventions/water/areas-of-work-of-the-convention/water-allocation-in-a-transboundary-context.html>



Rusty ship at the ship graveyard in former Aral Sea port town of Muynak, Uzbekistan

CHAPTER

5



PRINCIPLES AND OBLIGATIONS



5.1 What are the main obligations under the Water Convention?

The Water Convention has a three-pillar normative structure: i) the due diligence obligation to prevent, control and reduce significant transboundary impact (“no-harm rule”); ii) the equitable and reasonable utilization principle; and iii) the principle of cooperation as the catalyst for the realization of the two prior pillars.

The objectives of the Convention are to be achieved through a two-tiered approach, which reflects the two main categories of obligations. The first set of obligations, contained in Part I, is more general and applies to all Parties to the Convention. The second set of obligations, contained in Part II, is more specific and applies to Riparian Parties, i.e. Parties sharing the same transboundary waters. The second category includes obligations to conclude agreements or arrangements, establish joint bodies, hold consultations, exchange information, establish warning and alarm systems, and provide mutual assistance upon request.

In order to facilitate implementation of the obligations under the Convention, the *Guide to Implementing the Water Convention* has been developed by the Convention’s Legal Board and adopted by the Meeting of the Parties in 2009. The Guide includes explanations of the Convention’s requirements and examples of their practical application.

Additional resources:

- *Guide to Implementing the Water Convention* (ECE/MP.WAT/39). Available at <https://www.unece.org/index.php?id=33657>
- *The Water Convention: responding to global water challenges* (ECE/MP.WAT/52). Available at <https://www.unece.org/index.php?id=48970>

5.2 What are the obligations of a Party to the Water Convention vis-à-vis non-Parties?

Generally speaking, Parties to the Water Convention have no obligations towards non-Parties. More specifically, a Party to the Water Convention that shares transboundary waters with a non-Party has no obligations towards the non-Party by virtue of the Convention; however, customary international law⁸ is still applicable in this case.

⁸ See footnote 2 for an explanation of customary international law.

5.3 Would a country with already existing bilateral or multilateral agreements or other arrangements need to revise them in order to become a Party to the Water Convention?

The Water Convention requires Parties to “adapt existing [agreements], where necessary to eliminate the contradictions with *the basic principles* of this Convention”. This obligation is meant to ensure that existing agreements between Parties do not contravene the fundamental provisions of the Convention.

When existing agreements do not contradict the “basic principles” of the Convention, there is no need to revise them. The reference to basic principles clearly means that countries do not have to revise agreements to reflect every single provision of the Convention.

The experience of the current Parties to the Convention shows that in most cases a revision of existing agreements upon becoming a Party to the Convention is not required as the vast majority of agreements is anyway based on international water law. Nevertheless, accession to the Convention can provide an opportunity to review existing agreements and can prompt their update.

The obligation to adapt existing agreements exists only with respect to agreements concluded with other Riparian Parties, i.e. the Convention does not require a Party to adapt existing agreements concluded with States that are not Parties to the Convention.

Additional resources:

- *Guide to Implementing the Water Convention* (ECE/MP.WAT/39), paras. 241–242. Available at <https://www.unece.org/index.php?id=33657>

5.4 Is it mandatory for Parties to the Water Convention to enter into bilateral or multilateral agreements to implement the Convention?

The obligation of Riparian Parties, i.e. Parties sharing the same transboundary waters, to enter into agreements or other arrangements (Article 9) is a mandatory requirement under the Water Convention. The obligation to enter into agreements or other arrangements exists only for the Riparian Parties with respect to other Riparian Parties, i.e. the Convention does not create such an obligation for the Riparian Parties with respect to States that are not Parties to it.

At the same time, it is well understood that the legal and institutional basis for transboundary water cooperation of Parties to the Convention evolves gradually. Agreements on transboundary waters among Parties have commonly started from a narrow functional area (e.g. selected water uses) and limited geographical scope (e.g. boundary waters rather than entire catchment areas) and have progressively moved towards more comprehensive cooperation.

The Water Convention, as part of its programme of work, offers assistance to countries in facilitating the negotiations of transboundary water agreements. The Convention has already played a helpful and neutral role in initiating and facilitating such negotiations in several basins, for example, the Chu-Talas, the Dniester, the Drin and the Kura river basins. In addition, the Implementation Committee established under the Convention can provide assistance to facilitate the implementation of the obligation to enter into agreements or arrangements by the Parties.

Additional resources:

- *Guide to Implementing the Water Convention* (ECE/MP.WAT/39), paras. 235–239, 249–254. Available at <https://www.unece.org/index.php?id=33657>
- Libert, Bo (2015). The UNECE Water Convention and the development of transboundary cooperation in the Chu-Talas, Kura, Drin and Dniester River basins. *Water International*, Vol. 40, No. 1, pp. 168–182. Available at <https://doi.org/10.1080/02508060.2014.990202>

5.5 Are the tasks of joint bodies listed in the Water Convention mandatory for all joint bodies established by its Parties? Do joint bodies created under the Water Convention issue legally binding decisions or recommendations?

The Water Convention (Article 9(2)) provides for a non-exhaustive list of the tasks to be performed by a joint body created by Parties to the Convention sharing the same transboundary waters (Riparian Parties). This list reflects the core set of tasks any joint body should be responsible for performing. However, Riparian Parties remain free to adjust the priorities of their joint bodies according to their specific needs. This is in line with the framework character of the Convention, which allows Riparian Parties to tailor their institutional framework for cooperation to their specific needs in a given basin.

Furthermore, the list of tasks provided for in the Convention is “without prejudice to relevant existing agreements or arrangements”. This means that the list of tasks provided for in the Convention is complementary to the tasks of a joint body under existing agreements between Riparian Parties at the time of the entry into force of the Convention for the Riparian Parties concerned.

The Water Convention does not include any requirements with regard to the legal effect of decisions of the joint bodies created under the Convention. Such legal effect is to be determined by Riparian Parties in their agreements, which provide for the establishment of joint bodies. The Principles for Effective Joint Bodies for Transboundary Water Cooperation adopted by the Meeting of the Parties to the Convention in 2015 synthesize the lessons learned from the experience of joint bodies for transboundary water cooperation. The Principles emphasize that joint bodies should have an organizational structure and mechanisms that allow not only for developing and adopting decisions but also for implementing them.

Additional resources:

- *Guide to Implementing the Water Convention* (ECE/MP.WAT/39), paras. 256–268. Available at <https://www.unece.org/index.php?id=33657>
- *Principles for Effective Joint Bodies for Transboundary Water Cooperation* (ECE/MP.WAT/50). Available at <https://www.unece.org/index.php?id=48658>

5.6 Does the Water Convention apply when a planned activity upstream will disrupt or reduce the flow downstream?

The relevant provisions of the Water Convention applicable in such a case may include the notion of the transboundary impact (Article 1(2)), the obligation to prevent, control and reduce transboundary impact (Article 2(1)), the equitable and reasonable utilization principle (Article 2(2) (c) and 2(5)(c)), the principle of cooperation (Article 2(6)) and the obligation to hold consultations (Article 10). The exact determination of the obligations involved would depend on the specific circumstances of a case.

The Water Convention does not include detailed provisions on notification and consultations in the case of planned measures, but such consultations are encompassed in the general obligation to hold consultations between the Riparian Parties on issues covered by provisions of the Convention at the request of any such Party (Article 10). Guidance on planned measures can be found in the 1997 Watercourses Convention, which provides a detailed regulatory framework on notification procedures, including the issues of notification and reply, and the absence of a reply to notification.

Furthermore, many Parties to the Water Convention are also Parties to the 1991 Espoo Convention which provides a comprehensive framework and procedures to implement the obligation of States to undertake EIA in case of planned activities likely to have transboundary impact and to ensure participation in the process of the potentially affected Parties. The Espoo Convention can also provide legal guidance in the field for those Parties of the Water Convention that are not Parties to the Espoo Convention, insofar as its standards become customarily followed general practice. The relevance of the Espoo Convention has greatly increased in the past decade following the finding by the International Court of Justice (ICJ) in the *Pulp Mills* case (2010) that the carrying out of an EIA of the potential effects of a major project on an international watercourse is now a generally applicable requirement of customary international law.

Last but not least, the Implementation Committee established under the Water Convention can be asked to provide practical assistance to Parties aimed at settling any differences or disputes concerning planned measures.

See also reply to the related question:

What is the role of the Implementation Committee under the Water Convention? [6.5]

Additional resources:

- *Guide to Implementing the Water Convention* (ECE/MP.WAT/39), paras. 79–85, 91–98, 99–110, 136–148, 269–275.
Available at <https://www.unece.org/index.php?id=33657>
- *Convention on Environmental Impact Assessment in a Transboundary Context* (Espoo Convention), 1989 U.N.T.S. 309, 30 I.L.M. 800.
Available at https://www.unece.org/env/eia/about/eia_text.html
- Owen McIntyre, *The Water Convention and other UNECE Environmental Treaties* (2015). In: Tanzi, Atilla *et al.*, eds. *The UNECE Convention on the Protection and Use of Transboundary Watercourses and International Lakes - Its Contribution to International Water Cooperation*. Leiden, NL: Brill / Nijhoff. pp. 73–87.
Available at https://www.researchgate.net/publication/310385536_The_Water_Convention_and_Other_UNECE_Environmental_Treaties

5.7 Does the polluter-pays principle mean that a Party to the Water Convention has to provide compensation to its neighbours for the pollution of transboundary waters originating from its territory?

The polluter-pays principle does not mean that a Party to the Convention has to compensate its neighbours for pollution originating from its territory.

The polluter-pays principle is a regulatory tool for domestic public administrations to internalize the cost of pollution prevention, control and reduction in case of routinely conducted polluting activities, as well as the cost of controlling and reducing water pollution from an accidental discharge. The polluter-pays principle is applicable in the relationship between public authorities and polluters (companies or individuals). The principle has primarily a domestic nature, i.e. it regulates relationships within the territory of a Party rather than between Parties. It does not provide legal grounds to claims for the payment of compensation for water pollution between Parties. If Parties agree, they can include compensation mechanisms in their transboundary water agreements, but this would not be based on the polluter-pays principle as envisaged by the Convention.

Additional resources:

- *Guide to Implementing the Water Convention* (ECE/MP.WAT/39), paras. 122–135. Available at <https://www.unece.org/index.php?id=33657>

5.8 Is a Party to the Water Convention obliged to make sure that no pollution reaches transboundary waters?

The Water Convention does not include a blanket prohibition of any pollution of transboundary waters. The Convention includes the obligation to prevent, control and reduce transboundary impact (the so called “no-harm rule”). Transboundary impact is defined by the Convention as “significant adverse effect on the environment”, including on human health, climate, landscape, physical structures, cultural heritage or socioeconomic conditions. The threshold of the “significant adverse effect on the environment” to be prevented is to be assessed on a case-by-case basis. To this end, consultation and cooperation between the countries involved may be held upon request from one of the Riparian Parties. Such consultations will involve the interpretation and application of the “no-harm rule”, together with the equitable utilization principle, to the specific circumstances of each given case. Furthermore, the obligation to prevent, control and reduce transboundary impact under the Convention is a due diligence obligation, meaning that Parties are obliged to take “all appropriate measures” to prevent transboundary impact, i.e. implement measures that are proportionate to their capacity and level of economic development.

Additional resources:

- *Guide to Implementing the Water Convention* (ECE/MP.WAT/39), paras. 60–68, 79–83, 91–98. Available at <https://www.unece.org/index.php?id=33657>

5.9 Is a Party to the Water Convention obliged to build wastewater treatment plants to treat polluted transboundary waters?

The Water Convention does not include an obligation to build wastewater treatment plants as such. The Convention requires taking “appropriate measures” such as the application of the best available technology to reduce nutrient inputs from industrial and municipal sources (Article 3(1)(c) and 3(1)(f)). It also requests that “at least biological treatment or equivalent processes are applied to municipal waste water, where necessary in a step-by-step approach” (Article 3(1)(e)).

These provisions further specify the obligation to take all appropriate measures to prevent, control and reduce transboundary impact (Article 2(1)). While this obligation is aimed to prevent significant harm being caused to other riparian States, measures to treat polluted industrial and municipal wastewater clearly bring direct benefits to the domestic population.

Since the obligation to take all appropriate measures to prevent, control and reduce transboundary impact is a due diligence obligation, the conduct of each Party shall be proportional to the degree of risk of transboundary impact. The ‘appropriateness’ of the measures also means that the measures depend on the capacity of the Party concerned, i.e. on the level of its economic development, and technological and infrastructural capacity.

The “appropriate measures” are therefore to be determined on a case-by-case basis. Similarly, the notion of the “best available technology” takes into account not only technical availability but also the financial affordability of a specific technology for a Party. The Convention also recognizes that the economic implications of applying biological treatment to all municipal wastewater might require “a step-by-step approach”.

Hence, with regard to the question posed, in one case the “appropriate measures” to be taken could include the construction of a new wastewater treatment plant or the application of advanced wastewater treatment technology, while in another case they could include a refurbishment of existing wastewater treatment facilities, the deployment of alternative wastewater treatment systems or the introduction of policies and legislation to improve wastewater management.

Additional resources:

- *Guide to Implementing the Water Convention* (ECE/MP.WAT/39), paras. 91–98, 156–171, 181–189.
Available at <https://www.unece.org/index.php?id=33657>

5.10 Can a Party to the Water Convention limit the exchange of information only to some Parties and decide not to share information with all Parties?

The Water Convention includes a general obligation of its Parties to exchange information on issues covered by the provisions of the Convention (Article 6), and a specific obligation of Riparian Parties (i.e. Parties sharing the same transboundary waters) to exchange reasonably available data and provide information upon request (Article 13).

The general obligation to exchange information set out in Article 6 is supported by the Convention’s intergovernmental framework, namely the Meeting of the Parties and its subsidiary bodies, which provides for the exchange of information through several fora and activities. Exchange of information between Riparian Parties as set out in Article 13 should take place within the framework of the relevant agreements or other arrangements concluded by the respective Riparian Parties.

Under Article 6, information and data should be exchanged with *all* other Parties. Information and data exchange under Article 13 should take place with *all* other Riparian Parties (subject to data being “reasonably available” and other conditions set out in Article 13). The Convention allows Parties to protect information related to industrial and commercial secrecy, including intellectual property, or national security, subject to conditions set out in Article 8.

The exchange of information and data under Article 6 of the Convention in practice is fully demand- and needs driven. In other words, the Meeting of the Parties and its subsidiary bodies initiate the exchange of information on specific topics or issues requiring attention (e.g. as part of the reporting on the implementation of the Convention or in the framework of the preparation of a soft law instrument under the Convention). The exchange of information and data between the Riparian Parties under Article 13 of the Convention is also to some degree subject to the actual needs and areas of cooperation, and is likely to vary depending on the situation. Extensive guidance has been developed under the Convention to enable Parties to benefit most from harmonized approaches and good practices in the area of monitoring and exchange of information and data.

Additional resources:

- *Guide to Implementing the Water Convention* (ECE/MP.WAT/39), paras. 281–296. Available at <https://www.unece.org/index.php?id=33657>
- *Guidelines on Monitoring and Assessment of Transboundary Groundwaters*. UNECE, 2000. Available at https://www.unece.org/env/water/assessment_activ.html
- *Guidelines on Monitoring and Assessment of Transboundary Rivers*. UNECE, 2000. Available at https://www.unece.org/env/water/assessment_activ.html
- *Guidelines on Monitoring and Assessment of Transboundary and International Lakes*. UNECE, 2002. Available at https://www.unece.org/env/water/assessment_activ.html
- *Strategies for Monitoring and Assessment of Transboundary Rivers, Lakes and Groundwaters*. UNECE, 2006. Available at https://www.unece.org/env/water/assessment_activ.html
- Lipponen, Annukka and Lea Kauppi (2015). Monitoring and Assessment and the Duty of Cooperation under the Water Convention: Exchange of Information Among the Riparian Parties. In: Tanzi, Atilla *et al.*, eds. *The UNECE Convention on the Protection and Use of Transboundary Watercourses and International Lakes. Its Contribution to International Water Cooperation*. Leiden, The Netherlands: Brill | Nijhoff, pp. 249–267. Available at <http://www.unece.org/index.php?id=54654>

5.11 Is there an obligation for Parties to the Water Convention to settle their disputes only through the International Court of Justice or arbitration in accordance with the procedure set out in the Convention?

The Water Convention is fully in line with Article 33 of the United Nations Charter which provides for the obligation of States to settle their disputes peacefully, while ensuring the freedom of choice with respect to the means of dispute settlement.

Article 22(1) of the Water Convention provides that if a dispute arises between two or more Parties about the interpretation or application of the Convention, they shall seek a solution through negotiation or any other means of dispute settlement acceptable to them. Such other means are mediation, inquiry, conciliation, arbitration, judicial settlement or recourse to regional arrangements or agencies, or other peaceful means of the choice of the Parties, including good offices.

With respect to a dispute that could not be resolved in accordance with paragraph 1 of Article 22, paragraph 2 of the same article provides for an 'opt in' formula for compulsory arbitration or adjudication by the International Court of Justice. Arbitration and adjudication are therefore not compulsory under the Convention, and remain optional (i.e. a country has to 'opt in'). Several Parties to the Convention have submitted declarations opting for arbitration and/or adjudication.

In order to strengthen dispute prevention under the Convention, its Meeting of the Parties established an Implementation Committee in 2012 as part of the mechanism to support implementation and compliance. The mechanism to support implementation and compliance is without prejudice to Article 22 of the Convention on the settlement of disputes. This means that there is no requirement to apply any or exhaust all of the means of dispute settlement before bringing the matter to the attention of the Implementation Committee and, conversely, there is no requirement to address the Implementation Committee prior to invoking any of the means of dispute settlement indicated in Article 22 of the Convention.



Akosombo Hydroelectric Power Station on the Volta River in Ghana

See reply to the related question:

What is the role of the Implementation Committee under the Water Convention? [6.5]

Additional resources:

- *Guide to Implementing the Water Convention* (ECE/MP.WAT/39), paras. 353–365.
Available at <https://www.unece.org/index.php?id=33657>



CHAPTER

6



IMPLEMENTATION, OPERATION, CAPACITY AND COMPLIANCE



6.1 Can a country accede to the Water Convention if it cannot implement all its requirements due to the lack of resources and capacity?

The Water Convention takes into account the different levels of economic development and capacities of the countries. Its current Parties are at different stages of economic development and have varying capacities.

The general obligation of prevention, control and reduction of transboundary impact, as well as many other obligations of the Water Convention, are of a 'due diligence' nature and require Parties to take "all appropriate measures" when implementing them. Such measures should be proportionate to the economic, financial and other capacities of the Party concerned, as well as to the degree of risk of transboundary impact. Different legal, economic, operational, administrative and technical measures, in accordance with the Convention, are to be progressively put in place and implemented through a step-by-step approach in accordance with the resources and capacity of a Party.

A common way of setting the path to ensure the implementation of the Convention is to develop a plan for the implementation of the Convention. An implementation plan can demonstrate the Party's commitment to take all appropriate measures. Moreover, such a plan can help gather the needed internal resources for implementation and can help in approaching development partners for external funding. If needed, the Implementation Committee under the Water Convention can assist in developing such a plan.

The Convention's institutional framework provides assistance to support Parties in implementation, ranging from policy guidance to capacity-building, exchange of experiences and field projects.

See also replies to the related questions:

Would the Water Convention be an efficient instrument for developing countries? [2.6]

Is a Party to the Water Convention obliged to build wastewater treatment plants to treat polluted transboundary waters? [5.9]

Additional resources:

- *Guide to Implementing the Water Convention* (ECE/MP.WAT/39), paras. 60–67. Available at <https://www.unece.org/index.php?id=33657>

6.2 How can the Water Convention be implemented when countries have conflicts, border disputes or are at war with their neighbours? How can countries enter into bilateral or multilateral agreements to implement the Convention in such cases?

Implementation of the core obligation of cooperation and many other obligations under the Water Convention depends on the cooperative attitude of all the Riparian Parties concerned (i.e. Parties to the Convention sharing the same transboundary waters). It could therefore be limited in the case of war, conflicts or border disputes between Riparian Parties. However, a state of war or a lack of trust between the Riparian Parties does not absolve them from making every possible effort to fulfill their duty to cooperate. Parties should make efforts to implement such duty by adopting all measures, proportionate to their means, conditions and capacity, to make cooperation possible. Cooperation over transboundary waters in cases of war, conflicts or border disputes can be informal, unofficial or focused on certain aspects or technical issues only.

In order for a Party to comply with the obligation to enter into agreements or arrangements, it has to accept in good faith all contacts initiated by other Riparian Parties and aimed at concluding the agreements. A Party that has not entered into agreements or arrangements should be able to demonstrate that it had taken all measures to make cooperation possible, but that no agreement could be reached due to the attitude of other Riparian Parties.

6.3 What happens if a Party does not respect its obligations under the Water Convention? Are there any adverse legal consequences?

The Water Convention itself does not include rules or procedures on responsibility or liability. In case of a breach by a Party of its obligations under the Convention, the general rules and principles of international law, which govern the responsibility of States for internationally wrongful acts⁹, would apply.

In 2012 the Meeting of the Parties established a mechanism to support implementation and compliance within the Convention's institutional framework. An Implementation Committee was established as part of the mechanism. The mechanism is non-confrontational in nature and is designed to help Parties overcome difficulties with implementation rather than 'punish' them for non-compliance. The mechanism can facilitate a large number of supportive measures (e.g. assistance with establishing transboundary water cooperation agreements, facilitating technical and financial assistance, including information and technology transfer, and capacity-building). Nevertheless, upon recommendation by the Convention's Implementation Committee, the Meeting of the Parties to the Convention may decide on such measures as issuing a statement of concern, a declaration of non-compliance, or a caution or suspension of the special rights and privileges accorded to the Party concerned under the Convention. As at mid-2020, no such precedents have taken place.

Additional resources:

- Decision VI/1. Support to implementation and compliance (ECE/MP.WAT/37/Add.2).

⁹ The most authoritative development in this area is the 2001 Draft Articles on Responsibility of States for Internationally Wrongful Acts adopted by the International Law Commission (A/56/10). Available at https://legal.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf

6.4 What are the decision-making, working and subsidiary bodies under the Water Convention?

The Meeting of the Parties is the highest decision-making body under the Water Convention. It meets in regular sessions every three years and adopts the programme of work for the following three-year period. In between the sessions of the Meeting of the Parties, the decision-making is vested with the Bureau, an elected body comprising about 12 Parties to the Convention from the different geographic regions.

The Meeting of the Parties establishes working or subsidiary bodies to develop specific areas of work under the programme of work. These include the Working Group on Integrated Water Resources Management, the Working Group on Monitoring and Assessment, the Implementation Committee, the Legal Board, the Joint Ad Hoc Expert Group on Water and Industrial Accidents, the International Water Assessment Centre, and currently, the Task Force on Water and Climate and the Task Force on the Water-Food-Energy-Ecosystems Nexus.

Each body receives a clear mandate from the Meeting of the Parties and implements the activities in one or several areas of the programme of work. The exact set-up of the working bodies therefore changes depending on the programme of work of the Convention, thus ensuring flexibility and responsiveness to changing needs. The working bodies are the main venue for the exchange of experience and where cooperation develops in specific areas. The secretariat is responsible for servicing all meetings under the Convention and assisting the Convention bodies in implementing the programme of work.

Sessions of the Meetings of the Parties and meetings of the working or subsidiary bodies are attended not only by Parties to the Convention but also by non-Parties, international organizations, NGOs, academia, and the private sector. However, decision-making both at the Meeting of the Parties and at meetings of its working or subsidiary bodies involves Parties only. In practice, the decisions are commonly adopted by consensus, but this is often the result of prior intensive negotiations.

6.5 What is the role of the Implementation Committee under the Water Convention?

The role of the Implementation Committee is to facilitate dispute prevention and provide practical case-oriented assistance. Established in 2012, the Committee consists of nine members who act in a personal capacity (not as country representatives). These are outstanding lawyers and water professionals who are nominated by the Parties and are elected by the Meeting of the Parties. The Committee normally meets twice a year in an open and transparent manner.

Party or Parties jointly can ask the Committee to provide advice in the framework of an advisory procedure to assist their efforts to implement the Convention. This is a unique procedure that reflects the supportive and non-adversarial nature of the Committee and ensures tactful assistance at an early stage. The Committee can also receive self-submissions and Party-to-Party submissions regarding difficulties in implementing the Convention. It can also undertake a 'Committee initiative' when it becomes aware of possible difficulties in implementation and compliance by a Party.

The Committee can provide advice and facilitate assistance to individual Parties and groups of Parties. It can, for example, provide assistance in establishing transboundary water cooperation agreements, facilitate technical and financial assistance, and seek support from specialized agencies and other competent bodies.

Additional resources:

- Decision VI/1. Support to implementation and compliance (ECE/MP.WAT/37/Add.2). Available at https://www.unece.org/fileadmin/DAM/env/water/meetings/Implementation_Committee/1st_meeting/Documents/decisionVI_1_Eng.pdf
- Information on the Implementation Committee: background, materials and documents, list of meetings, composition. Available at https://www.unece.org/env/water/implementation_committee.html
- Video message by Prof. Attila Tanzi, Chair of the Implementation Committee, Dispute settlement in the UNECE Water Convention (2015). Available to view at <https://www.youtube.com/watch?v=-qIXlnsjWHA>

6.6 Do Parties have to submit national implementation reports under the Water Convention?

In 2015, a regular reporting mechanism was established under the Water Convention.

Parties have to submit reports every three years.

For Parties to the Convention, reporting under the Water Convention is combined with reporting under the SDG indicator 6.5.2 (Proportion of transboundary basin area with an operational arrangement for water cooperation) for which UNECE and UNESCO are the custodian agencies.

Additional resources:

- Decision VII/2. Reporting under the Convention (ECE/MP.WAT/49/Add.2), pp. 2–15. Available at https://www.unece.org/fileadmin/DAM/env/documents/2017/WAT/07July_5-6_12th_IWRM/Decision_VII_1_on_general_issues_of_implementation.pdf
- *Progress on transboundary water cooperation under the Water Convention. Report on Implementation of the Convention on the Protection and Use of Transboundary Watercourses and International Lakes* (ECE/MP.WAT/51). Available at <https://www.unece.org/index.php?id=49805>
- *Guide to reporting under the Water Convention and as a contribution to SDG indicator 6.5.2* (ECE/MP.WAT/60). Available at <https://www.unece.org/index.php?id=53745>
- Reporting under the Water Convention and SDG indicator 6.5.2. Available at http://www.unece.org/water/transboundary_water_cooperation_reporting.html

6.7 Do Parties have to make mandatory financial contributions to support the activities under the Water Convention?

The Water Convention does not impose any mandatory financial contributions. Parties contribute to the Convention's trust fund on a voluntary basis only. The trust fund supports the implementation of the Convention's programme of work. The secretariat reports to the Meeting of the Parties on the spending of funds.

The Meeting of the Parties calls on all Parties to contribute to the Convention's trust fund. Any contribution is valued and enables the implementation of the Convention's programme of work, thus helping to develop a stronger support system for the Parties.

Parties are also invited to make in-kind contributions to activities envisaged in the programme of work.

Additional resources:

- *Water Convention Programme of Work 2019–2021* (ECE/MP.WAT/NONE/14). Available at <https://www.unece.org/index.php?id=51910>

6.8 Which countries are eligible for financial support under the Water Convention?

The Water Convention's trust fund can be used to provide technical support to Parties and sometimes non-Parties, particularly to promote and implement the Convention through the organization of seminars and other training activities, studies and pilot projects.

The trust fund can also be used to support the participation of experts from developing countries and countries with economies in transition to attend workshops, seminars, symposia and other meetings organized within the framework of the Convention, subject to resources available for specific meetings or areas of activity under the Convention's programme of work.

While non-Parties can also benefit from the Convention's trust fund, priority is given to Parties and countries in the process of accession to the Convention.

CHAPTER

7



ACCESSION PREPARATION AND PROCESS



7.1 How should an accession process be organized?

There are no mandatory steps to be followed in the accession process to the Water Convention and there is no universal blueprint. However, some good practices have emerged that help to effectively organize the process. As a number of countries are in the process of accession, the Water Convention secretariat has prepared a Road map to facilitate accession processes to the Water Convention. The Road map is advisory in nature and is based on lessons learned from Parties having completed their accession processes. It describes in detail the following possible steps:

- Step 1: Preliminary discussion and expression of interest by the Ministry in charge of water.
This step may include:
 - Nomination of focal points and participation in activities under the Convention.
 - Discussion on the Convention, article by article, by technical and legal services in order to establish the steps required for compliance with the Convention's provisions.
 - Presentation on the Convention and discussion among relevant departments of the Ministry.
 - Sending a letter to the secretariat expressing the country's interest in accession.
- Step 2: Broader discussion involving relevant sectoral ministries and the Ministry of Foreign Affairs, as well as other relevant actors.

This step may include:

- Discussions in an informal or formal framework (by establishing an interministerial committee or a working group).
 - Preparation of a list of questions and topics related to the benefits and opportunities derived from accession to the Convention, to be discussed during a national workshop.
- Step 3: National workshop on the Convention.

The national workshop is an occasion to discuss the benefits of the Convention and the challenges of implementation among key actors (relevant sectoral ministries, Ministry of Foreign Affairs, Parliament, Office of the Prime Minister, basin organizations, civil society, etc.), as well as experts on the Water Convention (Water Convention secretariat, international experts), and technical and financial partners.

- Step 4: Undertaking the formal procedure for the ratification of treaties (for accession).

This procedure varies depending on the country, but requires close cooperation between the Ministry in charge of water, the Ministry of Foreign Affairs, the Office of the Prime Minister, Parliament, the Office of the President, and the Water Convention secretariat. It culminates with the deposit of the instrument of accession with the Treaty Section of the United Nations Secretariat in New York.

Additional resources:

- Road map to facilitate accession processes (Annex 2).

7.2 Who can provide help during the accession process?

The Water Convention secretariat, the Bureau, Parties to the Convention and Convention partners can provide assistance in the accession process. This includes replying to questions from countries seeking clarifications of the provisions of the Convention. If needed, and subject to the availability of resources, the secretariat can also co-organize and support a national workshop on the Convention. The secretariat can share Convention materials (the text of the Convention, publications, brochures, standard presentations, etc.) with the country preparing for accession. It can help the country preparing for accession in establishing contact with a country that has recently become a Party in order to share experience on the accession process and the first steps in the implementation of the Convention. Furthermore, assistance can be provided by the Convention's Implementation Committee (e.g. by replying to questions related to clarifications on the provisions of the Convention) and by the Parties to the Convention (e.g. through their participation in the national workshop on the Convention).

Should support from the Water Convention secretariat be required, an official letter expressing the country's interest in the Water Convention can be sent by the Minister in charge of water to the secretariat in order to facilitate such support.

In addition to the Water Convention secretariat, many international organizations support countries on their road to accession to the Convention. Support to the accession process is provided by other United Nations Regional Commissions, regional economic organizations, and many river basin organizations.

Additional resources:

- Road map to facilitate accession processes (Annex 2).

7.3 What should an accession instrument look like?

The accession instrument should make it clear that the country accedes to the Water Convention as amended.

The accession instrument of a State from outside the UNECE region should make reference to Decision VI/3 of the Meeting of the Parties to the Convention because, through this decision, the Meeting of the Parties in 2012 gave a blanket approval to any future request for accession by United Nations Member States that are not members of the UNECE.

The Water Convention secretariat can provide advice and share a template of an instrument of accession, if required.

The instrument of accession is to be deposited with the Treaty Section of the United Nations Secretariat in New York. It is recommended that this step be coordinated with the Water Convention secretariat.

Additional resources:

- Decision VI/3 Accession by non-United Nations Economic Commission for Europe countries (ECE/MP.WAT/37/Add.2), pp. 12–13.

7.4 Can a State intending to become a Party to the Water Convention formulate a reservation concerning some of the provisions of the Convention?

The Water Convention is silent on reservations. The general regime of the law of treaties and the 1969 Vienna Convention on the Law of Treaties would thus apply. A State may formulate a reservation when acceding to the Water Convention, but reservations that go against the object and purpose of the Convention would be inadmissible. As at mid-2020, only one Party has made a reservation at the time of ratification.

Additional resources:

- Vienna Convention on the Law of Treaties, 1155 U.N.T.S. 331, 8 I.L.M. 679.

7.5 How can a State intending to become a Party to the Water Convention prepare for the implementation of the Convention?

In order to prepare for the implementation of the Water Convention, a State in the process of accession is recommended to ensure: i) awareness of the Convention's obligations among the relevant institutions and stakeholders; ii) sufficient political attention to implementation; iii) technical, administrative and financial capacity; iv) coordination among relevant implementing authorities; and v) cooperation with prospective Riparian Parties. In particular, a State preparing for accession is encouraged to review its laws and regulations, and bilateral and multilateral agreements in order to identify any steps needed for the implementation of the Convention. It is also encouraged to adopt the necessary administrative measures and to ensure that sufficient human, financial and technical resources are available for implementation. Obviously, there is no need to enact laws, enter into agreements, or establish administrative measures or structures if the existing ones are responding to the Convention's requirements.

While it is recommended that all initial measures, in particular legal, administrative and financial ones, are in place at the national level upon accession to the Convention, measures taken to implement the Convention should be proportionate to the level of development and the economic, financial and other capacities of the State concerned.

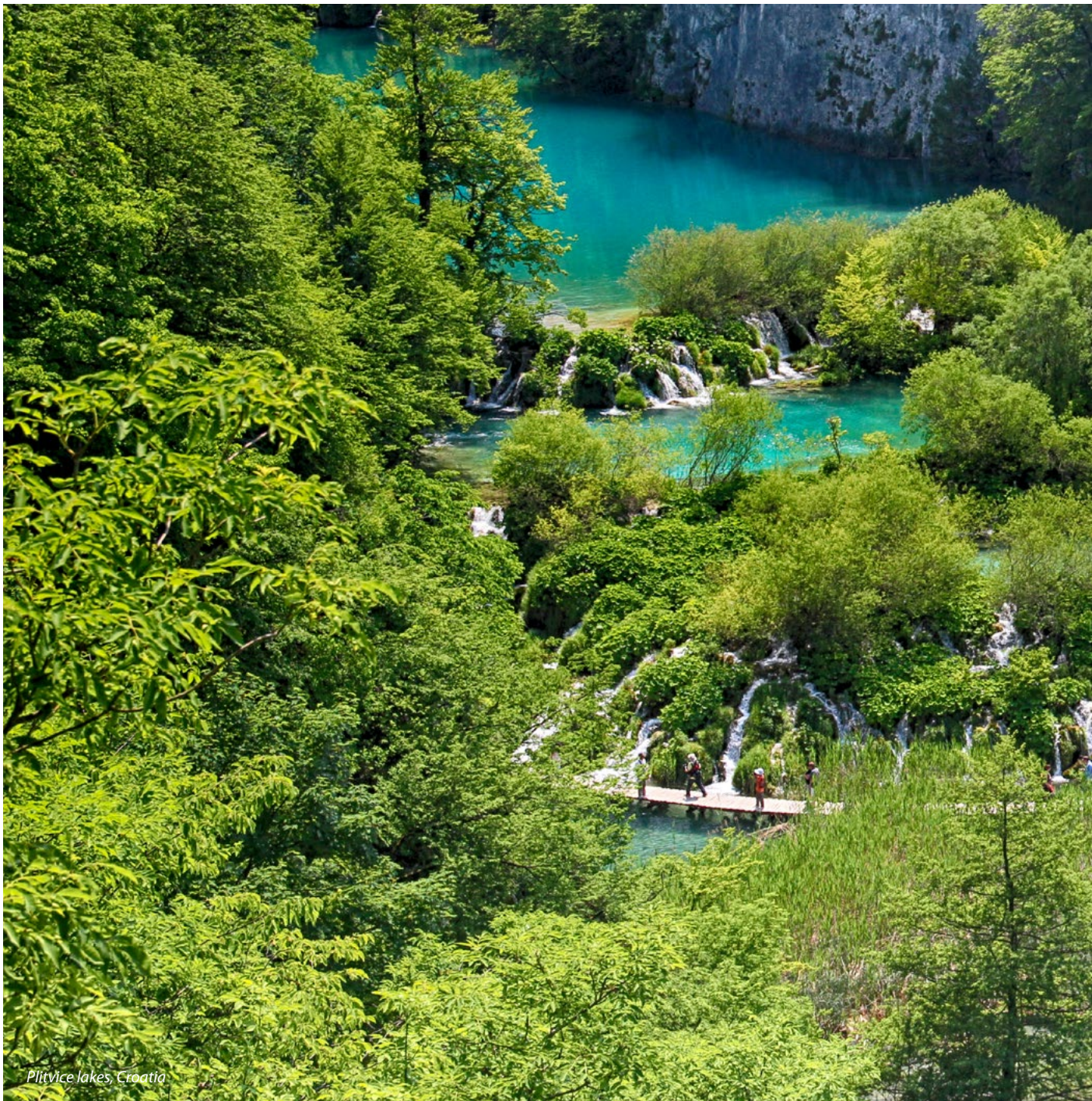
A good practice in preparing for the implementation of the Convention is to develop a plan for the implementation of the Convention, which would assess the needs and requirements for implementation and specify measures, a timeline and resources. Such a plan can facilitate the provision of technical support for the implementation of the Convention.

See the reply to the related question:

Can a country accede to the Water Convention if it cannot implement all its requirements due to the lack of resources and capacity? [6.1]

7.6 What are the consequences for a Party that decides to withdraw from the Water Convention?

There are no consequences to withdrawal provided for in the Water Convention. The general regime of the law of treaties and the 1969 Vienna Convention on the Law of Treaties would apply in this case.



Plitvice lakes, Croatia

Additional resources:

- Vienna Convention on the Law of Treaties, 1155 U.N.T.S. 331, 8 I.L.M. 679.



ANNEX 1



CONVENTION ON THE PROTECTION AND USE OF TRANSBOUNDARY WATERCOURSES AND INTERNATIONAL LAKES

AS AMENDED,

ALONG WITH DECISION VI/3 CLARIFYING THE ACCESSION PROCEDURE

**Note
on the Convention on the Protection and Use of Transboundary Watercourses
and International Lakes,
as amended**

The Convention on the Protection and Use of Transboundary Watercourses and International Lakes was adopted in Helsinki, Finland, on 17 March 1992, and entered into force on 6 October 1996. At the time, the Convention was only open to member States of the United Nations Economic Commission for Europe (ECE) and regional economic integration organizations constituted by such States.

On 28 November 2003, the Meeting of the Parties to the Convention adopted decision III/1, amending articles 25 and 26 of the Convention to allow all United Nations Member States to accede to the Convention. These amendments entered into force on 6 February 2013.

In addition, on 30 November 2012, the Meeting of the Parties adopted decision VI/3 on accession by non-United Nations Economic Commission for Europe countries. Through this decision, the Meeting of the Parties clarified that, for the purposes of article 25, paragraph 3, any future request for accession to the Convention by United Nations Member States not members of ECE would be considered to be approved by the Meeting of the Parties. At the time, this approval was subject to the entry into force, for all the States and organizations that were Parties to the Convention on 28 November 2003, of the amendments to articles 25 and 26. This requirement has been fulfilled on 1 March 2016, following the entry into force of the amendments to articles 25 and 26 for all States and organizations that were Parties to the Convention on 28 November 2003.

Decision VI/3

Accession by non-United Nations Economic Commission for Europe countries

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,

Reconfirming the conviction that the Convention on the Protection and Use of Transboundary Watercourses and International Lakes is an effective instrument to support cooperation also beyond the region of the United Nations Economic Commission for Europe (ECE),

Wishing to share the knowledge, practices and experience collected in the 20 years since the adoption of the Convention, and, at the same time, to benefit from the knowledge, practices and experience in other regions of the world,

Also wishing to collectively promote river basin cooperation throughout the world, including by offering a global intergovernmental platform for exchange and debate on transboundary water issues and for supporting the implementation of international water law,

Recalling its decision III/1 of 28 November 2003 to amend the Convention's articles 25 and 26, as well as the spirit of that decision,

Recognizing the increased interest in the Convention and its activities by many non-ECE countries and their wish to accede to the Convention,

Acknowledging the need for a procedure for accession by non-ECE countries not differing from the procedure for accession by ECE-countries,

Expressing the unanimous desire to enable the accession by non-ECE countries as soon as possible,

1. *Expresses its satisfaction* that the amendments to articles 25 and 26 adopted by decision III/1 will enter into force on 6 February 2013, in accordance with article 21, paragraph 4, of the Convention, for those States that have accepted them;

2. *Urges* all the States and organizations that were Parties to the Convention on 28 November 2003 that have not yet done so to ratify the amendments to articles 25 and 26 as soon as possible, and not later than by the end of 2013;

3. *Calls* for the strengthening of cooperation with non-ECE countries interested in acceding to the Convention, with a view to promoting the mutual exchange of experience as well as the application of the Convention beyond the ECE region;

4. *Decides* that, for the purposes of the amendment to article 25 of the Convention, adopted by decision III/1, any future request for accession to the Convention by any Member of the United Nations not a member of ECE is welcome and, therefore, shall be considered as approved by the Meeting of the Parties. This approval is subject to the entry into force, for all the States and organizations that were Parties to the Convention on 28 November 2003, of the amendments to articles 25 and 26. A State or organization referred to in article 23 of the Convention that becomes a Party to the Convention between the adoption of this decision and the entry into force of the amended article 25, paragraph 3, for all the States and organizations that were Parties to the Convention on 28 November 2003 shall be notified by the ECE secretariat of this decision and that the State or organization is deemed to have accepted it;

5. *Also decides*, accordingly, that reference to the present decision will have to be made by any Member State of the United Nations that is not referred to in article 23 of the Convention when submitting its instrument for accession;

6. *Requests* the secretariat to inform the United Nations Treaty Section about this procedure so that appropriate arrangements can be made, and to disseminate information on the procedure to interested Members of the United Nations that are not members of ECE.

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

PREAMBLE

The Parties to this Convention,

Mindful that the protection and use of transboundary watercourses and international lakes are important and urgent tasks, the effective accomplishment of which can only be ensured by enhanced cooperation,

Concerned over the existence and threats of adverse effects, in the short or long term, of changes in the conditions of transboundary watercourses and international lakes on the environment, economies and well-being of the member countries of the Economic Commission for Europe (ECE),

Emphasizing the need for strengthened national and international measures to prevent, control and reduce the release of hazardous substances into the aquatic environment and to abate eutrophication and acidification, as well as pollution of the marine environment, in particular coastal areas, from land-based sources,

Commending the efforts already undertaken by the ECE Governments to strengthen cooperation, on bilateral and multilateral levels, for the prevention, control and reduction of transboundary pollution, sustainable water management, conservation of water resources and environmental protection,

Recalling the pertinent provisions and principles of the Declaration of the Stockholm Conference on the Human Environment, the Final Act of the Conference on Security and Cooperation in Europe (CSCE), the Concluding Documents of the Madrid and Vienna Meetings of Representatives of the Participating States of the CSCE, and the Regional Strategy for Environmental Protection and Rational Use of Natural Resources in ECE Member Countries covering the Period up to the Year 2000 and Beyond,

Conscious of the role of the United Nations Economic Commission for Europe in promoting international cooperation for the prevention, control and reduction of transboundary water pollution and sustainable use of transboundary waters, and in this regard recalling the ECE Declaration of Policy on Prevention and Control of Water Pollution, including Transboundary Pollution; the ECE Declaration of Policy on the Rational Use of Water; the ECE Principles Regarding Cooperation in the Field of Transboundary Waters; the ECE Charter on Groundwater Management; and the Code of Conduct on Accidental Pollution of Transboundary Inland Waters,

Referring to decisions I (42) and I (44) adopted by the Economic Commission for Europe at its forty-second and forty-fourth sessions, respectively, and the outcome of the CSCE Meeting on the Protection of the Environment (Sofia, Bulgaria, 16 October – 3 November 1989),

Emphasizing that cooperation between member countries in regard to the protection and use of transboundary waters shall be implemented primarily through the elaboration of agreements between countries bordering the same waters, especially where no such agreements have yet been reached,

Have agreed as follows:

Article 1

DEFINITIONS

For the purposes of this Convention,

1. "Transboundary waters" means any surface or ground waters which mark, cross or are located on boundaries between two or more States; wherever transboundary waters flow directly into the sea, these transboundary waters end at a straight line across their respective mouths between points on the low-water line of their banks;
2. "Transboundary impact" means any significant adverse effect on the environment resulting from a change in the conditions of transboundary waters caused by a human activity, the physical origin of which is situated wholly or in part within an area under the jurisdiction of a Party, within an area under the jurisdiction of another Party. Such effects on the environment include effects on human health and safety, flora, fauna, soil, air, water, climate, landscape and historical monuments or other physical structures or the interaction among these factors; they also include effects on the cultural heritage or socio-economic conditions resulting from alterations to those factors;
3. "Party" means, unless the text otherwise indicates, a Contracting Party to this Convention;
4. "Riparian Parties" means the Parties bordering the same transboundary waters;
5. "Joint body" means any bilateral or multilateral commission or other appropriate institutional arrangements for cooperation between the Riparian Parties;
6. "Hazardous substances" means substances which are toxic, carcinogenic, mutagenic, teratogenic or bio-accumulative, especially when they are persistent;
7. "Best available technology" (the definition is contained in annex I to this Convention).

PART I**PROVISIONS RELATING TO ALL PARTIES***Article 2*

GENERAL PROVISIONS

1. The Parties shall take all appropriate measures to prevent, control and reduce any transboundary impact.
2. The Parties shall, in particular, take all appropriate measures:
 - (a) To prevent, control and reduce pollution of waters causing or likely to cause transboundary impact;
 - (b) To ensure that transboundary waters are used with the aim of ecologically sound and rational water management, conservation of water resources and environmental protection;
 - (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;
 - (d) To ensure conservation and, where necessary, restoration of ecosystems.
3. Measures for the prevention, control and reduction of water pollution shall be taken, where possible, at source.
4. These measures shall not directly or indirectly result in a transfer of pollution to other parts of the environment.

5. In taking the measures referred to in paragraphs 1 and 2 of this article, the Parties shall be guided by the following principles:

- (a) The precautionary principle, by virtue of which action to avoid the potential transboundary impact of the release of hazardous substances shall not be postponed on the ground that scientific research has not fully proved a causal link between those substances, on the one hand, and the potential transboundary impact, on the other hand;
- (b) The polluter-pays principle, by virtue of which costs of pollution prevention, control and reduction measures shall be borne by the polluter;
- (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.

6. The Riparian Parties shall cooperate on the basis of equality and reciprocity, in particular through bilateral and multilateral agreements, in order to develop harmonized policies, programmes and strategies covering the relevant catchment areas, or parts thereof, aimed at the prevention, control and reduction of transboundary impact and aimed at the protection of the environment of transboundary waters or the environment influenced by such waters, including the marine environment.

7. The application of this Convention shall not lead to the deterioration of environmental conditions nor lead to increased transboundary impact.

8. The provisions of this Convention shall not affect the right of Parties individually or jointly to adopt and implement more stringent measures than those set down in this Convention.

Article 3

PREVENTION, CONTROL AND REDUCTION

1. To prevent, control and reduce transboundary impact, the Parties shall develop, adopt, implement and, as far as possible, render compatible relevant legal, administrative, economic, financial and technical measures, in order to ensure, inter alia, that:

- (a) The emission of pollutants is prevented, controlled and reduced at source through the application of, inter alia, low- and non-waste technology;
- (b) Transboundary waters are protected against pollution from point sources through the prior licensing of waste-water discharges by the competent national authorities, and that the authorized discharges are monitored and controlled;
- (c) Limits for waste-water discharges stated in permits are based on the best available technology for discharges of hazardous substances;
- (d) Stricter requirements, even leading to prohibition in individual cases, are imposed when the quality of the receiving water or the ecosystem so requires;
- (e) At least biological treatment or equivalent processes are applied to municipal waste water, where necessary in a step-by-step approach;
- (f) Appropriate measures are taken, such as the application of the best available technology, in order to reduce nutrient inputs from industrial and municipal sources;
- (g) Appropriate measures and best environmental practices are developed and implemented for the reduction of inputs of nutrients and hazardous substances from diffuse sources, especially where the main sources are from agriculture (guidelines for developing best environmental practices are given in annex II to this Convention);
- (h) Environmental impact assessment and other means of assessment are applied;

- (i) Sustainable water-resources management, including the application of the ecosystems approach, is promoted;
- (j) Contingency planning is developed;
- (k) Additional specific measures are taken to prevent the pollution of groundwaters;
- (l) The risk of accidental pollution is minimized.

2. To this end, each Party shall set emission limits for discharges from point sources into surface waters based on the best available technology, which are specifically applicable to individual industrial sectors or industries from which hazardous substances derive. The appropriate measures mentioned in paragraph 1 of this article to prevent, control and reduce the input of hazardous substances from point and diffuse sources into waters, may, inter alia, include total or partial prohibition of the production or use of such substances. Existing lists of such industrial sectors or industries and of such hazardous substances in international conventions or regulations, which are applicable in the area covered by this Convention, shall be taken into account.

3. In addition, each Party shall define, where appropriate, water-quality objectives and adopt water-quality criteria for the purpose of preventing, controlling and reducing transboundary impact. General guidance for developing such objectives and criteria is given in annex III to this Convention. When necessary, the Parties shall endeavour to update this annex.

Article 4

MONITORING

The Parties shall establish programmes for monitoring the conditions of transboundary waters.

Article 5

RESEARCH AND DEVELOPMENT

The Parties shall cooperate in the conduct of research into and development of effective techniques for the prevention, control and reduction of transboundary impact. To this effect, the Parties shall, on a bilateral and/or multilateral basis, taking into account research activities pursued in relevant international forums, endeavour to initiate or intensify specific research programmes, where necessary, aimed, inter alia, at:

- (a) Methods for the assessment of the toxicity of hazardous substances and the noxiousness of pollutants;
- (b) Improved knowledge on the occurrence, distribution and environmental effects of pollutants and the processes involved;
- (c) The development and application of environmentally sound technologies, production and consumption patterns;
- (d) The phasing out and/or substitution of substances likely to have transboundary impact;
- (e) Environmentally sound methods of disposal of hazardous substances;
- (f) Special methods for improving the conditions of transboundary waters;
- (g) The development of environmentally sound water-construction works and water-regulation techniques;
- (h) The physical and financial assessment of damage resulting from transboundary impact.

The results of these research programmes shall be exchanged among the Parties in accordance with article 6 of this Convention.

Article 6

EXCHANGE OF INFORMATION

The Parties shall provide for the widest exchange of information, as early as possible, on issues covered by the provisions of this Convention.

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.

Article 8

PROTECTION OF INFORMATION

The provisions of this Convention shall not affect the rights or the obligations of Parties in accordance with their national legal systems and applicable supranational regulations to protect information related to industrial and commercial secrecy, including intellectual property, or national security.

PART II**PROVISIONS RELATING TO RIPARIAN PARTIES***Article 9*

BILATERAL AND MULTILATERAL COOPERATION

1. The Riparian Parties shall on the basis of equality and reciprocity enter into bilateral or multilateral agreements or other arrangements, where these do not yet exist, or adapt existing ones, where necessary to eliminate the contradictions with the basic principles of this Convention, in order to define their mutual relations and conduct regarding the prevention, control and reduction of transboundary impact. The Riparian Parties shall specify the catchment area, or part(s) thereof, subject to cooperation. These agreements or arrangements shall embrace relevant issues covered by this Convention, as well as any other issues on which the Riparian Parties may deem it necessary to cooperate.

2. The agreements or arrangements mentioned in paragraph 1 of this article shall provide for the establishment of joint bodies. The tasks of these joint bodies shall be, inter alia, and without prejudice to relevant existing agreements or arrangements, the following:

- (a) To collect, compile and evaluate data in order to identify pollution sources likely to cause transboundary impact;
- (b) To elaborate joint monitoring programmes concerning water quality and quantity;
- (c) To draw up inventories and exchange information on the pollution sources mentioned in paragraph 2 (a) of this article;
- (d) To elaborate emission limits for waste water and evaluate the effectiveness of control programmes;
- (e) To elaborate joint water-quality objectives and criteria having regard to the provisions of article 3, paragraph 3 of this Convention, and to propose relevant measures for maintaining and, where necessary, improving the existing water quality;
- (f) To develop concerted action programmes for the reduction of pollution loads from both point sources (e.g. municipal and industrial sources) and diffuse sources (particularly from agriculture);

- (g) To establish warning and alarm procedures;
- (h) To serve as a forum for the exchange of information on existing and planned uses of water and related installations that are likely to cause transboundary impact;
- (i) To promote cooperation and exchange of information on the best available technology in accordance with the provisions of article 13 of this Convention, as well as to encourage cooperation in scientific research programmes;
- (j) To participate in the implementation of environmental impact assessments relating to transboundary waters, in accordance with appropriate international regulations.

3. In cases where a coastal State, being Party to this Convention, is directly and significantly affected by transboundary impact, the Riparian Parties can, if they all so agree, invite that coastal State to be involved in an appropriate manner in the activities of multilateral joint bodies established by Parties riparian to such transboundary waters.

4. Joint bodies according to this Convention shall invite joint bodies, established by coastal States for the protection of the marine environment directly affected by transboundary impact, to cooperate in order to harmonize their work and to prevent, control and reduce the transboundary impact.

5. Where two or more joint bodies exist in the same catchment area, they shall endeavour to coordinate their activities in order to strengthen the prevention, control and reduction of transboundary impact within that catchment area.

Article 10

CONSULTATIONS

Consultations shall be held between the Riparian Parties on the basis of reciprocity, good faith and good-neighbourliness, at the request of any such Party. Such consultations shall aim at cooperation regarding the issues covered by the provisions of this Convention. Any such consultations shall be conducted through a joint body established under article 9 of this Convention, where one exists.

Article 11

JOINT MONITORING AND ASSESSMENT

1. In the framework of general cooperation mentioned in article 9 of this Convention, or specific arrangements, the Riparian Parties shall establish and implement joint programmes for monitoring the conditions of transboundary waters, including floods and ice drifts, as well as transboundary impact.

2. The Riparian Parties shall agree upon pollution parameters and pollutants whose discharges and concentration in transboundary waters shall be regularly monitored.

3. The Riparian Parties shall, at regular intervals, carry out joint or coordinated assessments of the conditions of transboundary waters and the effectiveness of measures taken for the prevention, control and reduction of transboundary impact. The results of these assessments shall be made available to the public in accordance with the provisions set out in article 16 of this Convention.

4. For these purposes, the Riparian Parties shall harmonize rules for the setting up and operation of monitoring programmes, measurement systems, devices, analytical techniques, data processing and evaluation procedures, and methods for the registration of pollutants discharged.

Article 12

COMMON RESEARCH AND DEVELOPMENT

In the framework of general cooperation mentioned in article 9 of this Convention, or specific arrangements, the Riparian Parties shall undertake specific research and development activities in

support of achieving and maintaining the water-quality objectives and criteria which they have agreed to set and adopt.

Article 13

EXCHANGE OF INFORMATION BETWEEN RIPARIAN PARTIES

1. The Riparian Parties shall, within the framework of relevant agreements or other arrangements according to article 9 of this Convention, exchange reasonably available data, *inter alia*, on:

- (a) Environmental conditions of transboundary waters;
- (b) Experience gained in the application and operation of best available technology and results of research and development;
- (c) Emission and monitoring data;
- (d) Measures taken and planned to be taken to prevent, control and reduce transboundary impact;
- (e) Permits or regulations for waste-water discharges issued by the competent authority or appropriate body.

2. In order to harmonize emission limits, the Riparian Parties shall undertake the exchange of information on their national regulations.

3. If a Riparian Party is requested by another Riparian Party to provide data or information that is not available, the former shall endeavour to comply with the request but may condition its compliance upon the payment, by the requesting Party, of reasonable charges for collecting and, where appropriate, processing such data or information.

4. For the purposes of the implementation of this Convention, the Riparian Parties shall facilitate the exchange of best available technology, particularly through the promotion of: the commercial exchange of available technology; direct industrial contacts and cooperation, including joint ventures; the exchange of information and experience; and the provision of technical assistance. The Riparian Parties shall also undertake joint training programmes and the organization of relevant seminars and meetings.

Article 14

WARNING AND ALARM SYSTEMS

The Riparian Parties shall without delay inform each other about any critical situation that may have transboundary impact. The Riparian Parties shall set up, where appropriate, and operate coordinated or joint communication, warning and alarm systems with the aim of obtaining and transmitting information. These systems shall operate on the basis of compatible data transmission and treatment procedures and facilities to be agreed upon by the Riparian Parties. The Riparian Parties shall inform each other about competent authorities or points of contact designated for this purpose.

Article 15

MUTUAL ASSISTANCE

1. If a critical situation should arise, the Riparian Parties shall provide mutual assistance upon request, following procedures to be established in accordance with paragraph 2 of this article.

2. The Riparian Parties shall elaborate and agree upon procedures for mutual assistance addressing, *inter alia*, the following issues:

- (a) The direction, control, coordination and supervision of assistance;
- (b) Local facilities and services to be rendered by the Party requesting assistance, including, where necessary, the facilitation of border-crossing formalities;

- (c) Arrangements for holding harmless, indemnifying and/or compensating the assisting Party and/or its personnel, as well as for transit through territories of third Parties, where necessary;
- (d) Methods of reimbursing assistance services.

Article 16

PUBLIC INFORMATION

1. The Riparian Parties shall ensure that information on the conditions of transboundary waters, measures taken or planned to be taken to prevent, control and reduce transboundary impact, and the effectiveness of those measures, is made available to the public. For this purpose, the Riparian Parties shall ensure that the following information is made available to the public:

- (a) Water-quality objectives;
- (b) Permits issued and the conditions required to be met;
- (c) Results of water and effluent sampling carried out for the purposes of monitoring and assessment, as well as results of checking compliance with the water-quality objectives or the permit conditions.

2. The Riparian Parties shall ensure that this information shall be available to the public at all reasonable times for inspection free of charge, and shall provide members of the public with reasonable facilities for obtaining from the Riparian Parties, on payment of reasonable charges, copies of such information.

PART III

INSTITUTIONAL AND FINAL PROVISIONS

Article 17

MEETING OF PARTIES

1. The first meeting of the Parties shall be convened no later than one year after the date of the entry into force of this Convention. Thereafter, ordinary meetings shall be held every three years, or at shorter intervals as laid down in the rules of procedure. The Parties shall hold an extraordinary meeting if they so decide in the course of an ordinary meeting or at the written request of any Party, provided that, within six months of it being communicated to all Parties, the said request is supported by at least one third of the Parties.

2. At their meetings, the Parties shall keep under continuous review the implementation of this Convention, and, with this purpose in mind, shall:

- (a) Review the policies for and methodological approaches to the protection and use of transboundary waters of the Parties with a view to further improving the protection and use of transboundary waters;
- (b) Exchange information regarding experience gained in concluding and implementing bilateral and multilateral agreements or other arrangements regarding the protection and use of transboundary waters to which one or more of the Parties are party;
- (c) Seek, where appropriate, the services of relevant ECE bodies as well as other competent international bodies and specific committees in all aspects pertinent to the achievement of the purposes of this Convention;
- (d) At their first meeting, consider and by consensus adopt rules of procedure for their meetings;
- (e) Consider and adopt proposals for amendments to this Convention;
- (f) Consider and undertake any additional action that may be required for the achievement of the purposes of this Convention.

Article 18

RIGHT TO VOTE

1. Except as provided for in paragraph 2 of this article, each Party to this Convention shall have one vote.
2. Regional economic integration organizations, in matters within their competence, shall exercise their right to vote with a number of votes equal to the number of their member States which are Parties to this Convention. Such organizations shall not exercise their right to vote if their member States exercise theirs, and vice versa.

Article 19

SECRETARIAT

The Executive Secretary of the Economic Commission for Europe shall carry out the following secretariat functions:

- (a) The convening and preparing of meetings of the Parties;
- (b) The transmission to the Parties of reports and other information received in accordance with the provisions of this Convention;
- (c) The performance of such other functions as may be determined by the Parties.

Article 20

ANNEXES

Annexes to this Convention shall constitute an integral part thereof.

Article 21

AMENDMENTS TO THE CONVENTION

1. Any Party may propose amendments to this Convention.
2. Proposals for amendments to this Convention shall be considered at a meeting of the Parties.
3. The text of any proposed amendment to this Convention shall be submitted in writing to the Executive Secretary of the Economic Commission for Europe, who shall communicate it to all Parties at least ninety days before the meeting at which it is proposed for adoption.
4. An amendment to the present Convention shall be adopted by consensus of the representatives of the Parties to this Convention present at a meeting of the Parties, and shall enter into force for the Parties to the Convention which have accepted it on the ninetieth day after the date on which two thirds of those Parties have deposited with the Depositary their instruments of acceptance of the amendment. The amendment shall enter into force for any other Party on the ninetieth day after the date on which that Party deposits its instrument of acceptance of the amendment.

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 IV.

3. If the parties to the dispute have accepted both means of dispute settlement referred to in paragraph 2 of this article, the dispute may be submitted only to the International Court of Justice, unless the parties agree otherwise.

Article 23

SIGNATURE

This Convention shall be open for signature at Helsinki from 17 to 18 March 1992 inclusive, and thereafter at United Nations Headquarters in New York until 18 September 1992, by States members of the Economic Commission for Europe as well as States having consultative status with the Economic Commission for Europe pursuant to paragraph 8 of Economic and Social Council resolution 36 (IV) of 28 March 1947, and by regional economic integration organizations constituted by sovereign States members of the Economic Commission for Europe to which their member States have transferred competence over matters governed by this Convention, including the competence to enter into treaties in respect of these matters.

Article 24

DEPOSITARY

The Secretary-General of the United Nations shall act as the Depositary of this Convention.

Article 25

RATIFICATION, ACCEPTANCE, APPROVAL AND ACCESSION

1. This Convention shall be subject to ratification, acceptance or approval by signatory States and regional economic integration organizations.

2. This Convention shall be open for accession by the States and organizations referred to in article 23.

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.

4. Any organization referred to in article 23 which becomes a Party to this Convention without any of its member States being a Party shall be bound by all the obligations under this Convention. In the case of such organizations, one or more of whose member States is a Party to this Convention, the organization and its member States shall decide on their respective responsibilities for the performance of their obligations under this Convention. In such cases, the organization and the member States shall not be entitled to exercise rights under this Convention concurrently.

5. In their instruments of ratification, acceptance, approval or accession, the regional economic integration organizations referred to in article 23 shall declare the extent of their competence with respect to the matters governed by this Convention. These organizations shall also inform the Depositary of any substantial modification to the extent of their competence.

Article 26

ENTRY INTO FORCE

1. This Convention shall enter into force on the ninetieth day after the date of deposit of the sixteenth instrument of ratification, acceptance, approval or accession.
2. For the purposes of paragraph 1 of this article, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by States members of such an organization.
3. For each State or organization referred to in article 23 or in paragraph 3 of article 25 which ratifies, accepts or approves this Convention or accedes thereto after the deposit of the sixteenth instrument of ratification, acceptance, approval or accession, the Convention shall enter into force on the ninetieth day after the date of deposit by such State or organization of its instrument of ratification, acceptance, approval or accession.

Article 27

WITHDRAWAL

At any time after three years from the date on which this Convention has come into force with respect to a Party, that Party may withdraw from the Convention by giving written notification to the Depositary. Any such withdrawal shall take effect on the ninetieth day after the date of its receipt by the Depositary.

Article 28

AUTHENTIC TEXTS

The original of this Convention, of which the English, French and Russian texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto, have signed this Convention.

DONE at Helsinki, this seventeenth day of March one thousand nine hundred and ninety-two.

ANNEXES

ANNEX I

DEFINITION OF THE TERM "BEST AVAILABLE TECHNOLOGY"

1. The term "best available technology" is taken to mean the latest stage of development of processes, facilities or methods of operation which indicate the practical suitability of a particular measure for limiting discharges, emissions and waste. In determining whether a set of processes, facilities and methods of operation constitute the best available technology in general or individual cases, special consideration is given to:

- (a) Comparable processes, facilities or methods of operation which have recently been successfully tried out;
- (b) Technological advances and changes in scientific knowledge and understanding;
- (c) The economic feasibility of such technology;
- (d) Time limits for installation in both new and existing plants;
- (e) The nature and volume of the discharges and effluents concerned;
- (f) Low- and non-waste technology.

2. It therefore follows that what is “best available technology” for a particular process will change with time in the light of technological advances, economic and social factors, as well as in the light of changes in scientific knowledge and understanding.

ANNEX II

GUIDELINES FOR DEVELOPING BEST ENVIRONMENTAL PRACTICES

1. In selecting for individual cases the most appropriate combination of measures which may constitute the best environmental practice, the following graduated range of measures should be considered:

- (a) Provision of information and education to the public and to users about the environmental consequences of the choice of particular activities and products, their use and ultimate disposal;
- (b) The development and application of codes of good environmental practice which cover all aspects of the product’s life;
- (c) Labels informing users of environmental risks related to a product, its use and ultimate disposal;
- (d) Collection and disposal systems available to the public;
- (e) Recycling, recovery and reuse;
- (f) Application of economic instruments to activities, products or groups of products;
- (g) A system of licensing, which involves a range of restrictions or a ban.

2. In determining what combination of measures constitute best environmental practices, in general or in individual cases, particular consideration should be given to:

- (a) The environmental hazard of:
 - (i) The product;
 - (ii) The product’s production;
 - (iii) The product’s use;
 - (iv) The product’s ultimate disposal;
- (b) Substitution by less polluting processes or substances;
- (c) Scale of use;
- (d) Potential environmental benefit or penalty of substitute materials or activities;
- (e) Advances and changes in scientific knowledge and understanding;
- (f) Time limits for implementation;
- (g) Social and economic implications.

3. It therefore follows that best environmental practices for a particular source will change with time in the light of technological advances, economic and social factors, as well as in the light of changes in scientific knowledge and understanding.

ANNEX III

GUIDELINES FOR DEVELOPING WATER-QUALITY OBJECTIVES AND CRITERIA

Water-quality objectives and criteria shall:

- (a) Take into account the aim of maintaining and, where necessary, improving the existing water quality;
- (b) Aim at the reduction of average pollution loads (in particular hazardous substances) to a certain degree within a certain period of time;
- (c) Take into account specific water-quality requirements (raw water for drinking-water purposes, irrigation, etc.);
- (d) Take into account specific requirements regarding sensitive and specially protected waters and their environment, e.g. lakes and groundwater resources;
- (e) Be based on the application of ecological classification methods and chemical indices for the medium- and long-term review of water-quality maintenance and improvement;
- (f) Take into account the degree to which objectives are reached and the additional protective measures, based on emission limits, which may be required in individual cases.

ANNEX IV

ARBITRATION

1. In the event of a dispute being submitted for arbitration pursuant to article 22, paragraph 2 of this Convention, a party or parties shall notify the secretariat of the subject-matter of arbitration and indicate, in particular, the articles of this Convention whose interpretation or application is at issue. The secretariat shall forward the information received to all Parties to this Convention.

2. The arbitral tribunal shall consist of three members. Both the claimant party or parties and the other party or parties to the dispute shall appoint an arbitrator, and the two arbitrators so appointed shall designate by common agreement the third arbitrator, who shall be the president of the arbitral tribunal. The latter shall not be a national of one of the parties to the dispute, nor have his or her usual place of residence in the territory of one of these parties, nor be employed by any of them, nor have dealt with the case in any other capacity.

3. If the president of the arbitral tribunal has not been designated within two months of the appointment of the second arbitrator, the Executive Secretary of the Economic Commission for Europe shall, at the request of either party to the dispute, designate the president within a further two-month period.

4. If one of the parties to the dispute does not appoint an arbitrator within two months of the receipt of the request, the other party may so inform the Executive Secretary of the Economic Commission for Europe, who shall designate the president of the arbitral tribunal within a further two-month period. Upon designation, the president of the arbitral tribunal shall request the party which has not appointed an arbitrator to do so within two months. If it fails to do so within that period, the president shall so inform the Executive Secretary of the Economic Commission for Europe, who shall make this appointment within a further two-month period.

5. The arbitral tribunal shall render its decision in accordance with international law and the provisions of this Convention.

6. Any arbitral tribunal constituted under the provisions set out in this annex shall draw up its own rules of procedure.

7. The decisions of the arbitral tribunal, both on procedure and on substance, shall be taken by majority vote of its members.

8. The tribunal may take all appropriate measures to establish the facts.

9. The parties to the dispute shall facilitate the work of the arbitral tribunal and, in particular, using all means at their disposal, shall:

- (a) Provide it with all relevant documents, facilities and information;
- (b) Enable it, where necessary, to call witnesses or experts and receive their evidence.

10. The parties and the arbitrators shall protect the confidentiality of any information they receive in confidence during the proceedings of the arbitral tribunal.

11. The arbitral tribunal may, at the request of one of the parties, recommend interim measures of protection.

12. If one of the parties to the dispute does not appear before the arbitral tribunal or fails to defend its case, the other party may request the tribunal to continue the proceedings and to render its final decision. Absence of a party or failure of a party to defend its case shall not constitute a bar to the proceedings.

13. The arbitral tribunal may hear and determine counter-claims arising directly out of the subject-matter of the dispute.

14. Unless the arbitral tribunal determines otherwise because of the particular circumstances of the case, the expenses of the tribunal, including the remuneration of its members, shall be borne by the parties to the dispute in equal shares. The tribunal shall keep a record of all its expenses, and shall furnish a final statement thereof to the parties.

15. Any Party to this Convention which has an interest of a legal nature in the subject-matter of the dispute, and which may be affected by a decision in the case, may intervene in the proceedings with the consent of the tribunal.

16. The arbitral tribunal shall render its award within five months of the date on which it is established, unless it finds it necessary to extend the time limit for a period which should not exceed five months.

17. The award of the arbitral tribunal shall be accompanied by a statement of reasons. It shall be final and binding upon all parties to the dispute. The award will be transmitted by the arbitral tribunal to the parties to the dispute and to the secretariat. The secretariat will forward the information received to all Parties to this Convention.

18. Any dispute which may arise between the parties concerning the interpretation or execution of the award may be submitted by either party to the arbitral tribunal which made the award or, if the latter cannot be seized thereof, to another tribunal constituted for this purpose in the same manner as the first.



Pedestrian bridge across the Dnieper River in Kyiv, Ukraine

ANNEX 2



ROAD MAP TO FACILITATE ACCESSION PROCESSES

The growing interest of some United Nations Member States in the Convention on the Protection and Use of Transboundary Watercourses and International Lakes (Water Convention) led to an increasing number of requests for clarification about the accession process to the Convention. This Road map, prepared by the Water Convention secretariat, aims to address these requests and to present the different steps of the accession process to the Water Convention. The Road map has a recommendatory character and is non-prescriptive in nature as each country has its own administrative organization and procedures that correspond to its domestic legal order. The different steps described in the Road map are drawn from good practices and the lessons learned from completed accession processes to the Water Convention.

For States outside the UNECE region, accession is based on articles 25 and 26 of the Convention as amended (with the amendments having entered into force on 6 February 2013), and takes place in accordance with Decision VI/3 of the Meeting of the Parties on the accession of non-UNECE member States. Through Decision VI/3, in 2012 the Meeting of the Parties gave a blanket approval to any future accession request by United Nations Member States that are not members of UNECE. In order to effectively become a Party, the State simply has to deposit its instrument of accession—established under the domestic legislation on the conclusion of international treaties—with the Secretary-General of the United Nations in New York. The accession instrument should make reference to Decision VI/3.

DESCRIPTION OF THE DIFFERENT STEPS

The accession process to the Water Convention usually includes four major steps (figure 4).

1) Preliminary discussion and expression of interest by the Ministry in charge of water

Related actions

- Nomination of focal points and participation in activities under the Water Convention to better understand the Convention, its activities, functioning and the working modalities of the Convention bodies.
- Organization of outreach and discussion sessions on the Water Convention among all relevant departments of the Ministry in charge of water to build ownership.
- Discussion of the Convention's provisions, article by article, by the technical and legal services of the Ministry in charge of water, and assessment of the compatibility of the Convention's provisions with the country's commitments and institutions both at national and international levels (Constitution, water laws, water codes/strategies, transboundary basin agreements). Questions seeking clarifications can be sent to the secretariat of the Convention.

- If support from the Convention's secretariat is required, an official letter expressing the country's interest in the Water Convention can be sent by the Minister in charge of water to the Secretary of the Convention. The letter should be sent through the Permanent Mission of the country to the United Nations in Geneva (establishing contact with the Ministry of Foreign Affairs). This letter does not aim to ask for any form of approval for accession, but only to officially notify the country's interest in initiating the accession process and to request support from the secretariat, if required. The request can therefore be sent at any moment in the accession process.

2) Broader consultation involving other actors in the discussion of the Convention (at the initiative of the Ministry in charge of water)

Related actions

- This discussion can occur through the organization of one or several meeting(s) in an informal or formal setting (e.g. by establishing an interministerial committee or a working group). It is recommended to involve the relevant sectoral ministries (e.g. environment, planning and land use, agriculture, energy, etc.), the Ministry of Foreign Affairs and any actor deemed relevant to the consultation process (the composition is at the discretion of the country according to domestic practice of dissemination and exchange).
- In particular, the discussion group should:
 - a. Discuss the relevant provisions of the Convention and the Convention's activities.
 - b. Begin discussing the benefits and opportunities of the country's potential accession.
 - c. Prepare a list of questions and topics related to the benefits, opportunities and challenges to be discussed during the national workshop (see step 3 below).
 - d. Develop a draft provisional agenda of the workshop based on the questions and topics identified during the process of analyzing the provisions of the Convention.

If needed, the secretariat of the Convention can contribute to the meeting(s) by sending Convention material, such as the text of the Convention, publications, brochures and standard presentations. The secretariat can help the country in the process of accession to establish contact with a country that has recently become a Party in order to share experience on the accession process and the first steps in implementing the Convention.

3) National workshop on the Water Convention

The Convention secretariat can provide financial support for the workshop, if required.

Related actions

- The workshop can effectively mobilize all major actors identified during the preliminary reflection process (relevant sectoral ministries, Ministry of Foreign Affairs, Parliament, the Office of the Prime Minister, basin organizations, civil society, media, etc.), as well as technical and financial partners. If appropriate, the workshop can also include representatives of one or more basin organization(s) to which the country is party. If deemed appropriate, other riparian countries can also be invited to the workshop.
- The workshop aims to:
 - a. Discuss questions and topics identified during the process of analyzing the provisions of the Convention.
 - b. Discuss the benefits of the country's potential accession with respect to its needs and expectations.

- c. Start a reflection on the implementation strategy for the Convention.
- d. Mobilize technical and financial partners to support the implementation of the Convention.
- e. Decide, in an interministerial and participatory manner, whether and how to move forward in the national accession process and to officially submit the proposal to relevant national bodies (e.g. Council of Ministers).

4) Official accession process in accordance with the national legislation on the ratification of treaties

Accession can be described as a means of expressing the State's consent to be bound by a treaty (Article 11, Vienna Convention on the Law of Treaties (1969)). For the purposes of the Water Convention, the process of formalization of accession at national level usually follows the national procedure for the ratification of international treaties.

The procedure for the ratification of treaties differs from one country to the other, but generally it includes the following steps (figure 5):

- Preparation of the Cabinet memo/ presentation note on the Convention/ justification for accession for the Council of Ministers by the Ministry in charge of water in close cooperation with the Ministry of Foreign Affairs and the Government's General Secretariat.
- Discussion of the draft ratification law in the Council of Ministers.
- If necessary, review of the constitutionality of the draft law on the ratification of the Water Convention (by the Constitutional Court or Supreme Court, depending on the country).
- Review and discussion in Parliament by the relevant Committee.
- Plenary discussion and adoption of the law ratifying the Water Convention by Parliament.
- Signature of the ratification instrument by the President of the country (end of the process at national level) and publication in the Official Journal.
- Deposit of the ratification instrument for acceding to the Water Convention with the United Nations Secretariat in New York (Treaty Section).

The Convention secretariat can share a template of such an instrument.

Actors to be involved

The process requires the active cooperation of the Ministry in charge of water with the following entities:

- Ministry of Foreign Affairs
- General Secretariat of the Government
- Parliament
- Office of the President of the country
- Secretariat of the Water Convention (during the preparation of the instrument and its deposit in New York)

Figure 4: Description of the accession process to the Water Convention

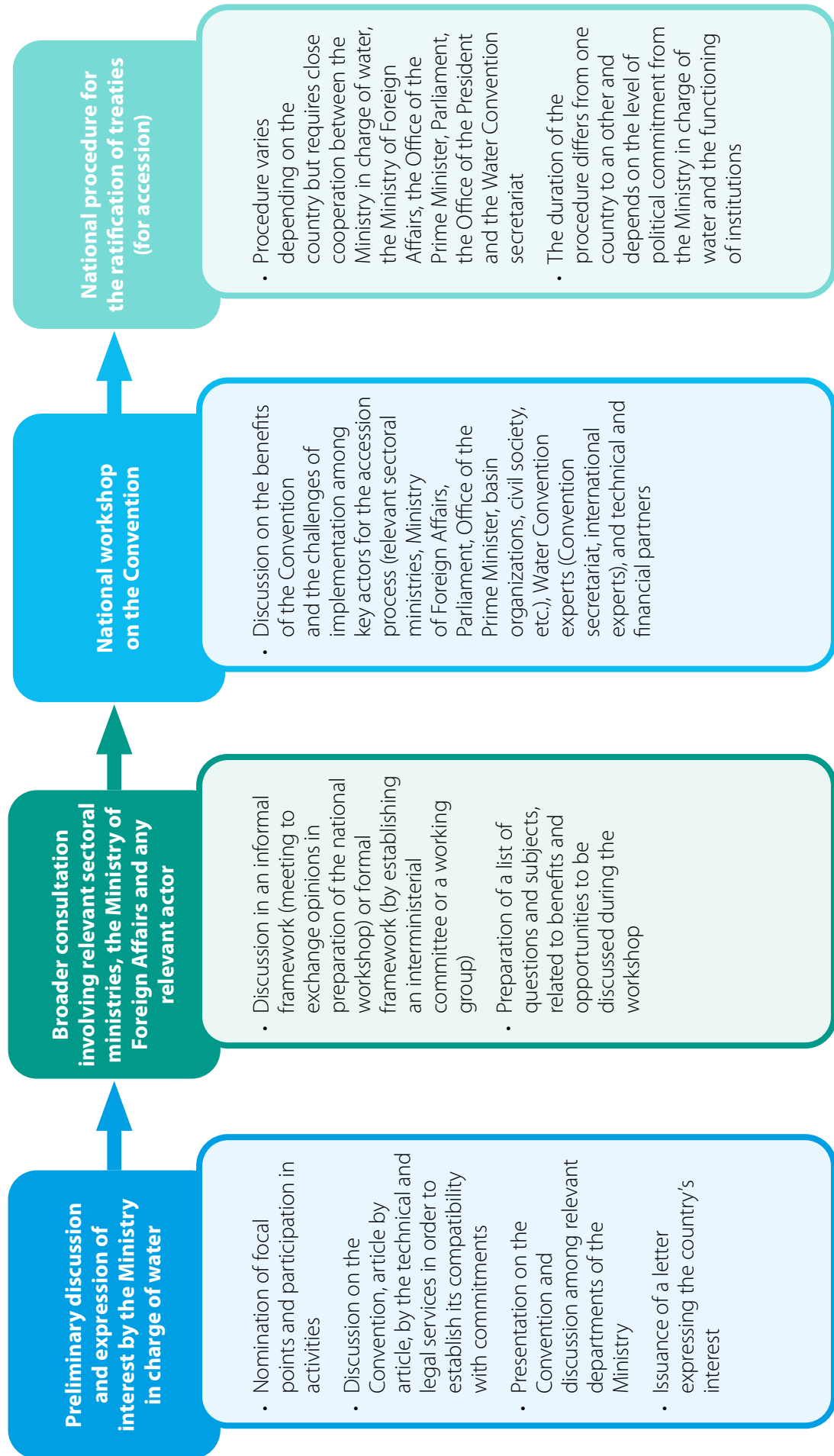
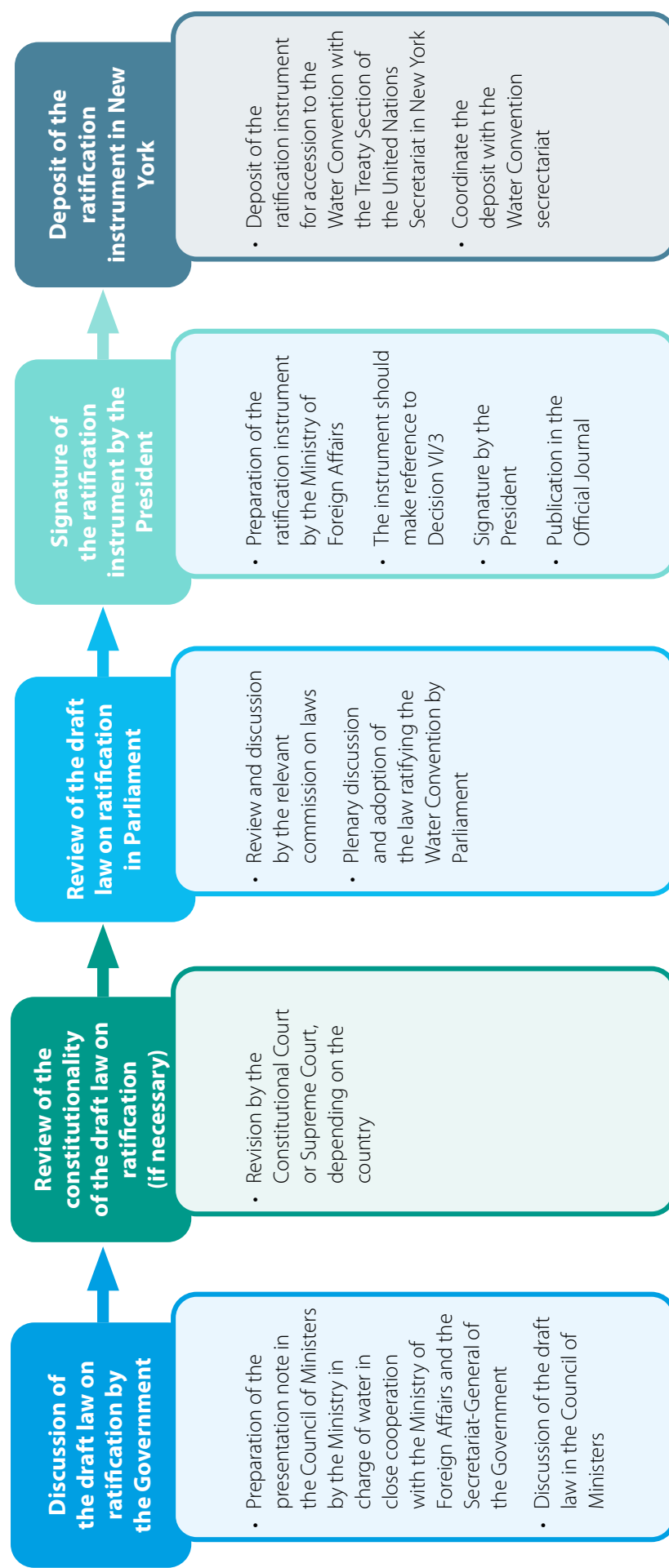


Figure 5: The standard procedure for the ratification of treaties (to be verified with the country's relevant ministries), commonly applicable to the process of accession to the Water Convention



FREQUENTLY ASKED QUESTIONS ON THE 1992 WATER CONVENTION

with the Road map to facilitate accession processes

The Convention on the Protection and Use of Transboundary Watercourses and International Lakes (Water Convention) was adopted in 1992 and entered into force in 1996. Designed as a regional instrument, the Water Convention was amended in 2003 to allow accession by countries outside the UNECE region. As of 2016, all United Nations Member States can accede to the Water Convention. As at mid-2020, the Water Convention has 44 Parties, including three Parties from outside the UNECE region, and many more countries are in the process of accession.

The Water Convention serves as a mechanism to strengthen international cooperation and national measures for the ecologically sound management and protection of transboundary surface waters and groundwaters. Furthermore, it provides an intergovernmental platform for the day-to-day development and advancement of transboundary cooperation.

This publication responds to the frequently asked questions about the Water Convention. It explains the obligations under the Water Convention and the way in which its institutional platform works, as well as the advantages for States to become Party to the Convention. It also addresses the relationship between the Water Convention and the 1997 United Nations Convention on the Law of the Non-navigational Uses of International Watercourses.

This publication is intended for countries interested in accession to the Water Convention, countries already Parties to this instrument, international partners, non-governmental organizations and academia. It aims to strengthen the understanding of the Water Convention, facilitate and inform the decision-making process on accession, and contribute to the effective implementation of the Convention and improved transboundary water cooperation worldwide.

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