Economic Commission for Europe
Meeting of the Parties to the Convention on the Protection and Use of Transboundary Watercourses and International Lakes
Implementation Committee
Twelfth meeting
Geneva, 4 and 5 February 2021

Report of the Implementation Committee on its twelfth meeting

I. Attendance and organizational matters

1. Due to the coronavirus disease (COVID-19) pandemic, the twelfth meeting of the Implementation Committee under the Convention on the Protection and Use of Transboundary Watercourses and International Lakes (Water Convention), originally scheduled to take place on 7 and 8 December 2020, was held on 4 and 5 February 2021.

2. The following members of the Implementation Committee took part in the meeting: Mr. Kari Kinnunen; Mr. Johan Lammers; Mr. Stephen McCaffrey; Mr. Martins Paparinskis; Ms. Anne Schulte-Wülwer-Leidig; Mr. Pedro Cunha Serra; Mr. Attila Tanzi (Chair); Mr. Ivan Zavadsky; and Ms. Dinara Ziganshina. All members attended through videoconference.

3. The Implementation Committee adopted its agenda as set out in document ECE/MP.WAT/IC/2020/3/Rev.1, with adjustments indicated in the provisional time schedule.¹

4. The Chair recalled that the Committee had approved the report of its eleventh meeting (ECE/MP.WAT/IC/2020/2) through electronic means in early October 2020.

II. Requests for advice, submissions and Committee initiatives

Advisory procedure WAT/IC/AP/1 (Montenegro and Albania) (closed)

5. The Committee decided to hold the discussions under the item in a closed session.

6. The Chair recalled that advisory procedure WAT/IC/AP/1 had been initiated by the Committee in response to a request from Montenegro related to that country’s concerns about the possible transboundary impact of the planned construction of additional small hydropower plants on the Cijevna/Cem River in Albania. The Chair recalled that Albania had

¹ Documents for the meeting are available on a dedicated web page of the Convention’s website (https://unece.org/environmental-policy/events/twelfth-meeting-implementation-committee).
subsequently accepted to participate in the advisory procedure by its letter of 31 January 2020.

7. The Chair also recalled that, at its eleventh meeting (Geneva, 31 August–2 September 2020), the Committee had held two separate information-gathering and consultation sessions with the delegations of Montenegro and Albania, respectively, and had subsequently decided to:

   (a) Send additional questions for clarification to the two countries to complement or clarify information received during the meeting;

   (b) Continue its involvement in the Cijevna/Cem River-related issues, following a two-track approach under which the Committee would:

       (i) Stay in contact with the countries to facilitate the exchange of information related to the Cijevna/Cem River basin;

       (ii) Assist the countries in setting up a joint monitoring and assessment framework for surface waters, groundwaters and ecosystems in the Cijevna/Cem River basin (ECE/MP.WAT/IC/2020/2, para. 14 (a) and (b)).

8. The Chair reported that he had sent letters to the countries on 15 September 2020 to transmit additional questions of the Committee. The replies had subsequently been received from Albania, on 22 October 2020, and from Montenegro, on 8 December 2020.

9. The Chair further recalled the preparatory meeting to the twelfth meeting of the Committee held on 24 November 2020 by videoconference and thanked all members for having subsequently provided written inputs to facilitate preparations for the twelfth meeting.

10. The Committee members discussed and agreed on the proposals to be discussed with the countries during the upcoming consultation sessions, in particular regarding potential steps to be taken by the countries in setting up a harmonized or mutually agreed monitoring and assessment framework and in facilitating the exchange of information.

11. The Committee then held two separate consultation sessions with the delegations of Montenegro and Albania, respectively. During those sessions, held through videoconference, the delegations reported that there had not been any major developments in bilateral cooperation since the previous written communications between the countries and the Committee. In December 2020, Albania had proposed to Montenegro the dates and agenda of the next meeting of the bilateral commission established under the intergovernmental Framework Agreement on Mutual Relations in the Field of Management of Transboundary Waters (2018) but the pandemic situation had negatively affected the process of consultations within Montenegro aimed at preparing that country’s reply to Albania. Consequently, no meeting of the bilateral commission had yet been scheduled.

12. During the separate consultation sessions with the delegations of Montenegro and Albania, the Committee presented the obligations of the two Parties under the Convention most relevant to the subject matter of advisory procedure WAT/IC/AP/1 and the related obligations under the 2018 Framework Agreement. It also consulted each delegation on the Committee’s proposals about potential steps to be taken by the countries in setting up a harmonized or mutually agreed monitoring and assessment framework and in facilitating the exchange of information, as well as the assistance that could be provided by the Committee in that respect.

13. During the separate consultation sessions, both countries expressed appreciation for and accepted the Committee’s proposals. With regard to the proposal of the Committee that the bilateral commission should establish a joint technical working group on “Monitoring and assessment”, Montenegro noted that it would be appropriate to gradually extend monitoring and assessment activities to other transboundary waters shared by the two countries. Albania emphasized the need to avoid duplication by the proposed joint technical

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2 Documents for the preparatory meeting for the twelfth meeting of the Implementation Committee are available on a dedicated web page of the Convention’s website (https://unece.org/environmental-policy/events/preparatory-meeting-twelfth-meeting-implementation-committee).
working group of the work of the Expert Working Group on Monitoring and Information Exchange established by the Drin Core Group – a joint body operating under the Memorandum of Understanding for the Management of the Extended Transboundary Drin Basin, concluded by the Drin riparians (Albania, Greece, Montenegro, North Macedonia and Kosovo)\(^3\) in 2011.

14. On the following day, the Committee held a joint consultation session with participation of both countries through videoconference. The Committee further discussed its proposals with both delegations. Albania reiterated the importance of avoiding overlaps with the work of the Expert Working Group on Monitoring and Information Exchange and recalled the ongoing efforts to establish a commission for the Drin River basin. The Committee recalled that the Expert Working Group on Monitoring and Information Exchange operated in a multilateral framework, bringing together five Drin riparians. The Committee also recalled that its mandate for the purposes of advisory procedure WAT/IC/AP/1 was limited to the Cijevna/Cem River basin. Accordingly, the Committee’s proposals had been anchored in the 2018 intergovernmental Framework Agreement. Therefore, the Committee emphasized the appropriateness of a step-by-step approach in gradually moving from less complex issues towards more comprehensive ones, once the necessary experience had been gained.

15. During joint consultations facilitated by the Committee, Montenegro and Albania agreed:

(a) That the existing bilateral commission established under the 2018 Framework Agreement should establish a joint technical working group on “Monitoring and assessment”, define the mandate of the joint technical working group based on pressures in the Cijevna/Cem River basin and ensure its regular meetings;

(b) To develop and implement an information-exchange protocol;

(c) To use the meetings of the bilateral commission to exchange information, including on existing and planned uses of water and related installations;

(d) To convene the next meeting of the bilateral commission in the third week of March 2021, with a view to setting up the joint technical working group;

(e) To ensure that the meetings of the bilateral commission were held regularly in the future.

16. The Committee stated that a member of the Committee, Mr. Cunha Serra, would be available to assist Montenegro and Albania, as appropriate, in the implementation of the technical aspects of the Committee’s advice, should such assistance be welcomed by the two countries. Other members of the Committee were available to assist, as appropriate, including with the development of the information-exchange protocol, should such assistance be requested by the countries.

17. The Committee summarized its legal and technical advice under advisory procedure WAT/IC/AP/1 as presented in the annex to the present document. The Committee requested the Chair to prepare letters to the countries summarizing the Committee’s advice and inviting countries to update the Committee on the developments in implementing the Committee’s advice at its next meeting.

**Submissions and Committee initiatives**

18. The Committee noted that no submissions had been received prior to the meeting and that no Committee initiatives had been undertaken by the Committee.

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\(^3\) References to Kosovo shall be understood to be in the context of Security Council resolution 1244 (1999).
III. Contribution of the Committee to activities under the Convention

19. The secretariat informed the Committee of progress achieved in the development of the handbook on water allocation in a transboundary context, expected to be launched at the ninth session of the Meeting of the Parties (Tallinn, 30 September–2 October 2021). The secretariat thanked two members of the Committee (Ms. Ziganshina and Mr. Cunha Serra) for their participation, in their personal capacities, in the work of the Expert Group on the Transboundary Allocation Handbook. The secretariat would approach some members of the Committee to get their opinion on selected parts of the handbook. The full draft of the handbook would be available for comments in April 2021. The Committee stressed the importance of addressing the topic of water allocation in the framework of the Convention, in particular with regard to explaining the link between water quality and water quantity in the management and protection of transboundary waters. The Committee also emphasized the importance of providing definitions of technical terms in the handbook.

20. The secretariat also briefed the Committee on the progress made in the elaboration of a checklist on the development of legal frameworks for transboundary water cooperation. The draft prepared by a small drafting group on the development of the checklist would be submitted to the Committee on 10 March 2021, for review by 21 March 2021, to allow for consideration of the comments made by the Committee at the third meeting of the drafting group (online, 25 March 2021). Ms. Ziganshina and Mr. Tanzi committed themselves to reviewing the draft on behalf of the Committee.

21. An update was provided by the secretariat on the status of reporting under the Convention in connection with the second reporting cycle (2020–2021). All Parties to the Convention had submitted their reports in the second reporting round. The secretariat recalled that, at its tenth meeting (Geneva, 2 and 3 December 2019), the Committee had requested that the main analysis of the reports in the second reporting cycle be done by the secretariat while the Committee could review and advise (ECE/MP.WAT/IC/2019/2, para. 13). The secretariat reported that it would make available to the Committee all national reports of the Parties by 15 March 2021. A draft progress report would be made available for comments in April 2021. The Committee could provide comments to the draft progress report. Furthermore, it could take into account the national reports and the draft progress report when preparing its own report to the ninth session of the Meeting of the Parties, along with the draft decision on implementation for potential adoption by the Meeting of the Parties.

IV. Promotion of the mechanism to facilitate and support implementation and compliance

22. Ms. Ziganshina informed the Committee of her participation, on behalf of the Committee, in two online events: the launch of the publication Frequently asked questions on the 1992 Water Convention with the Road map to facilitate accession processes, organized by the secretariat in cooperation with the Geneva Environment Network on 17 November 2020; and the webinar “International Water Law and Transboundary Cooperation”, organized by the Geneva Water Hub and DiploFoundation on 3 December 2020. Those events had made it possible to reach out to new audiences and raise awareness of the Convention and its Implementation Committee.

23. Mr. Paparinskis informed the Committee of the preparation of an academic event to promote the Water Convention and the Implementation Committee. The event, scheduled for 22 April 2021, would be hosted by University College London (United Kingdom of Great Britain and Northern Ireland) and co-organized with the University of Bologna (Italy) and the United Nations Economic Commission for Europe (ECE). He thanked Committee members for their availability to speak and asked them to disseminate the invitation within their networks.

4 United Nations publication, Sales No. E.20.II.E.34.
V. **Programme of work and calendar for the next meeting(s)**

24. The Chair recalled that the thirteenth meeting of the Committee had been scheduled to take place on 11 and 12 March 2021 and proposed to reschedule it to May 2021. The Committee agreed to hold its thirteenth meeting in Geneva, on 20 and 21 May 2021.

VI. **Presentation of the main decisions taken, modalities for preparation of the meeting report and closing of the session**

25. The Committee entrusted the secretariat to prepare and circulate the draft report on its twelfth meeting, which the Committee would subsequently approve through electronic communication means.
Annex

Legal and technical advice under advisory procedure WAT/IC/AP/1 (Montenegro and Albania)

I. Relevant obligations of the two countries under the Water Convention

Obligations under the Water Convention

The matter related to Cijevna/Cem River, which is the subject of advisory procedure WAT/IC/AP/1, is related to potential difficulties in implementing such key obligations under the Water Convention as the obligation to prevent, control and reduce transboundary impact (art. 2 (1)), the obligation of cooperation (art. 2 (6)), the obligation to conduct environmental impact assessments (art. 3 (1) (h)), obligations relating to monitoring (arts. 4 and 11), the obligation to exchange information (art. 6), the obligation of Riparian Parties to exchange information between one another (art. 13), and the obligation to exchange information on existing and planned uses of water and related installations through the joint body they have established, which, according to article 9 (2) (h), is to “serve as a forum” for that purpose. Many of the above-mentioned obligations of the Parties to the advisory procedure also follow from customary international law, on which the Water Convention is based and with which it is fully in line.

Based on the information provided by the Parties, and in the absence of sufficient monitoring information and data, the Committee is unable to confirm or deny the likelihood of cumulative transboundary impact of the planned construction of six additional small hydropower plants on the Cijevna/Cem River in Albania within the meaning of article 1 (2).

Nevertheless, the procedural obligations laid down in the Convention are instrumental in operationalizing its substantive obligations, beginning with its core obligation of cooperation (art. 2 (6)), irrespective of the likelihood of the occurrence of transboundary impact arising out of the situation currently under consideration by the Committee. The implementation of the procedural obligations can facilitate the implementation by the countries of the obligation to prevent, control and reduce transboundary impact (art. 2 (1)). Such procedural obligations under the Convention include, among other things, the establishment of joint bodies, conclusion of transboundary water agreements, holding of consultations, joint monitoring and assessment, and exchange of data and information.

In line with their obligation to enter into agreements and establish joint bodies (art. 9 (1) and (2)), in 2018, Albania and Montenegro concluded an intergovernmental Framework Agreement on Mutual Relations in the Field of Management of Transboundary Waters to replace a previous bilateral agreement of 2001. The Parties established a bilateral commission, which succeeded the bilateral commission under the 2001 agreement. The first and, to date, only meeting of the bilateral commission under the 2018 agreement took place in September 2019. The 2015 Principles for Effective Joint Bodies for Transboundary Water Cooperation, adopted by the seventh session of the Meeting of the Parties to the Water Convention (Budapest, 17–19 November 2015), emphasize the principle of regularity in the work of a joint body. Furthermore, “regular … formal communications between riparian countries in [the] form of meetings” are recognized as a criterion for an arrangement to be considered “operational” within the meaning of indicator 6.5.2 of the Sustainable Development Goals on transboundary water cooperation (ECE/MP.WAT/54/Add.2, decision VIII/1, annex I, para. 6 (b)). Conducting regular meetings of the bilateral commission would therefore be crucial to ensuring the fulfillment of its mandate and the implementation of the Framework Agreement, and would contribute to the implementation by Albania and Montenegro of their obligations under the Water Convention.

\(^1\) See ECE/MP.WAT/49.Add.2.
The obligation to hold consultations under the Water Convention (art. 10) refers to both the general duty of consultation at the request of any Riparian Party, as well as the obligation of a State to consult its neighbour(s) should it envisage activities likely to cause transboundary impact. The obligation of Riparian Parties to provide prior and timely notification on the activities likely to cause transboundary impact is not explicitly mentioned in the Water Convention but is encompassed under the broader obligation to hold consultations (art. 10). Furthermore, the Water Convention envisages joint bodies as main vehicles for consultations on planned measures, pointing to their task “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” (art. 9 (2) (h)).

In the matter related to the Cijevna/Cem River basin, Albania and Montenegro have had a few bilateral meetings to consult on the planned construction of additional small hydropower plants. These meetings included a technical meeting in February 2019 and the meeting of the bilateral commission in September 2019. Conducting further bilateral consultations would be crucial to ensuring the implementation of the obligation to hold consultations under the Water Convention and could pave the way for a better understanding of the situation by the Parties.

With regard to the provision of information on the planned construction of six additional small hydropower plants, in June 2019, Albania provided Montenegro with preliminary reports and decisions of environmental impact assessments for three hydropower plants (Vriela, Dobrinje and Murras) and, in October 2019, a map with the planned location of four hydropower plants. It is unclear whether any other information is available in Albania with regard to these and other planned hydropower plants. In turn, Albania reports that it requested Montenegro to provide information on planned developments in the Cijevna/Cem River basin. Exchange of all available information on planned developments between the countries is crucial to their implementation of their duty to cooperate and to the enhancement of cooperation in the Cijevna/Cem River basin in line with the obligations of the Water Convention.

With regard to the obligation to carry out joint monitoring and assessment, the Water Convention requires Riparian Parties to establish joint programmes for monitoring the conditions of transboundary waters and to carry out joint or coordinated assessments of the conditions of transboundary waters (art. 11 (1) and (3)). The term “joint” means that the basic elements of such monitoring and assessment programmes are to be agreed jointly, whereas the sampling, analysis and assessment of data can be, if not agreed otherwise, carried out at the national level on the basis of internationally agreed procedures.

In the matter related to the Cijevna/Cem River basin, the surface water and especially groundwater monitoring data are limited, and no continuous monitoring data are available, except for the data from one monitoring station (Trgaj) reinstalled by Montenegro in 2019. It is therefore advisable that Albania and Montenegro begin cooperation to gradually establish a joint or coordinated monitoring and assessment framework for surface waters, water ecosystems and groundwaters in the Cijevna/Cem River basin, as a prerequisite for gaining a proper understanding of the trends and pressures faced by their transboundary waters.

With regard to the obligation to exchange information and data, the Water Convention requires Riparian Parties to exchange reasonably available data within the framework of relevant agreements on a non-exhaustive list of data categories (art. 13 (1) and (2)) in order to lay down the foundations for cooperation between the riparians. The list of categories of information to be regularly exchanged includes: "measures taken and planned to be taken to prevent, control and reduce transboundary impact” (art. 13 (1) (d)). Such measures should not be confused with the obligation to inform and consult on planned measures, i.e. planned

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2 Guide to Implementing the Water Convention (United Nations publication, ECE/MP.WAT/39), paras. 270 and 271.
3 Ibid., paras. 278 and 279.
uses, projects, plans or activities that are likely to cause transboundary impact encompassed by the Convention’s obligation to hold consultations.4

In the matter related to the Cijevna/Cem River basin, Albania and Montenegro do not regularly exchange information and data and do not have any detailed procedures for this purpose. Developing such a practice and related procedures and engaging in such exchanges is a key aspect of the obligation of cooperation in line with the rationale and the provisions of the Water Convention.

Obligations under the intergovernmental Framework Agreement on Mutual Relations in the Field of Management of Transboundary Waters

The 2018 Framework Agreement places significant emphasis on the exchange of information and consultations (arts. 5, 10 and 14), monitoring and assessment (arts. 7 and 10) and the implementation of the European Union Water Framework Directive5 (arts. 4, 7 and 9). It provides a good framework for the activities of the bilateral commission in these areas. There are no protocols on data exchange or other protocols on the issue of operational procedures between the countries.

II. Potential steps to be taken by the countries in setting up a harmonized or mutually agreed monitoring and assessment framework

During consultations as part of the eleventh meeting of the Implementation Committee (31 August–2 September 2020), both countries recognized the lack of information and data as being among the key challenges for the assessment of any transboundary impact of small hydropower plants in the Cijevna/Cem River basin and showed their willingness to establish joint monitoring mechanisms and their readiness to accept international expertise to assist them to that end.6 In their replies to the additional questions of the Committee, both countries confirmed their interest in a joint monitoring programme.

The Committee advises the two countries to proceed with the establishment of joint monitoring mechanisms based on the existing bilateral cooperation framework and following a step-by-step approach:

Step 1: The existing Albanian-Montenegrin Transboundary Water Commission should establish a joint technical working group “Monitoring and assessment”.

The responsible ministries of Albania and Montenegro should each nominate three to five technical water experts on surface water and/or groundwater from national laboratories as members of this new technical working group (Note: in many European countries, surface water experts and groundwater experts are not the same experts).

Step 2: The Albanian-Montenegrin Transboundary Water Commission should define the mandate of the technical working group based on the pressures on the Cijevna/Cem River (for example, possible impacts of existing and planned hydropower plants, missing river continuity for migrating fish, pollution hot spots, etc.).

The joint or coordinated monitoring programme should be based on these pressures and should provide support to the elaboration of river management plans/policies. Bearing this principle in mind, it is possible to develop a monitoring programme that is as simple as possible and implementable. Basic elements to be jointly agreed as part of a joint monitoring

4 Ibid., para. 286.
6 See ECE/MP.WAT/IC/2020/2, para. 10 (e).
and assessment programme can be derived from the *Guide to Implementing the Water Convention.*

The timeframe for the fulfilment of the mandate of the technical working group should be quite tight, perhaps one or, maximum, two years. That means that the working group must have regular meetings (four to five times a year) and reporting for the commission. This is really important because regular meetings will enhance information sharing and development of working modalities in practice.

**Mandate proposal for the joint technical working group “Monitoring and assessment”:**

The terms of reference of the joint technical working group could include the following items and the Implementation Committee could provide advice during the process of establishing the group, as well as during the initial years of its operation:

- Establishing the transboundary monitoring network for surface water and groundwater and steering its joint operation.
- Maintaining the database of the transboundary monitoring network for surface water and groundwater, in particular the data on water quantity and quality collected in cooperation with national (hydrological) services. Collection of data on pressures is for consideration.
- Developing a common reporting format for the transboundary monitoring network for surface water and groundwater.
- Improving understanding and developing criteria for assessment of status and impacts, as well as the related trends.
- Reviewing and updating the monitoring methodologies and analytical procedures for the determinants monitored within the transboundary monitoring network for surface water and groundwater.
- Addressing the issues of quality assurance/quality control of monitoring results (International Organization for Standardization compatible).

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7 United Nations publication, ECE/MP.WAT/39, paras. 278 and 279:
278. The basic elements that should be jointly agreed for such joint monitoring and assessment programmes include:
(a) Objectives/needs to be achieved in terms of policy relevant information to be obtained;
(b) Identification of monitoring sites. The stations can be selected from the national monitoring network on the basis of joint stated criteria (e.g. location upstream/downstream of an international border, upstream of confluence of the main river with its tributaries, or main river with the sea, downstream of major pollution sources, upstream of important drinking water abstraction, existence of shared aquifers etc.);
(c) Selection of determinants for surface water, groundwater, suspended solids and sediments, if needed (qualitative and quantitative elements, physical, chemical, biological and hydro-morphological; ordinary used chemical determinants can be supplemented by others, e.g. selected priority substances relevant for the river basin);
(d) Sampling frequency;
(e) Sampling and analytical methods, control of laboratory performance (quality assurance/ quality control);
(f) Data management (quality and format of data, methods of collection, frequency and storage, technique of maintenance and exchange);
(g) Method of data assessment;
(h) Presentation and publishing of results;
(i) Analytical quality control and intercalibration.
279. On the basis of internationally agreed procedures sampling, analysis and assessment of data can be, if not agreed otherwise, carried out on the national level. Data harmonization and coordinated assessment/evaluation have to be implemented regularly. It should be noted that monitoring and assessment programmes should not only rely on information from measurements but other relevant data, such as data on emissions and releases, should also be taken into account.
• Preparing regular reports on the state of transboundary surface water and groundwater.

If welcomed by the two countries, a member from the Implementation Committee (Mr. Pedro Cunha Serra) could take part in the work of the joint technical working group in order to facilitate the development of the monitoring and assessment programme.

It is important to ensure synergies in the work of the joint technical working group with the work of other existing bodies, as appropriate.

**Step 3: Practical cooperation in the joint technical working group**

The members of the technical working group should meet regularly, for example four or five times/year.

The members should establish a joint or coordinated monitoring and assessment programme based on existing, enlarged and improved national monitoring programmes for the Cijevna/Cem River and its aquifers. Regular reporting by the technical working group to the Albanian-Montenegrin Transboundary Water Commission is crucial.

**III. Potential steps to be taken by the countries in facilitating the exchange of information**

The 2018 Framework Agreement on Mutual Relations in the Field of Management of Transboundary Waters, in particular its article 5, should serve as a basis for the exchange of information between the Parties, including on the surface water and groundwater flow of the Cijevna/Cem River and the development and impact of the planned new hydropower plants along the Cijevna/Cem River.

In their replies to the Committee, both Albania (22 October 2020) and Montenegro (8 December 2020) indicated information that they seek to obtain from the other Party.

The Committee advises the two countries to:

• Develop and implement an information-exchange protocol. Such a protocol could include the categories of information to be exchanged, with due account taken of the information identified in article 13 (1) and (2) of the Convention, the frequency and procedures for exchange.

• Use the meetings of the bilateral commission to exchange information, including on the existing and planned uses of water and related installations, in line with article 9 (2) (h) of the Convention.

**IV. Relevant guidance documents developed under the Water Convention**


Strategies for Monitoring and Assessment of Transboundary Rivers, Lakes and Groundwaters (United Nations publication, Sales No. E.06.II.E.15).


