



# Economic and Social Council

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## Economic Commission for Europe

Meeting of the Parties to the Convention on  
the Protection and Use of Transboundary  
Watercourses and International Lakes

### Implementation Committee

#### Fourteenth meeting

Geneva, 24 and 25 February 2022

## Report of the Implementation Committee on its fourteenth meeting

### I. Attendance and organizational matters

1. Due to the coronavirus disease (COVID-19) pandemic, the fourteenth meeting of the Implementation Committee under the Convention on the Protection and Use of Transboundary Watercourses and International Lakes (Water Convention) was held on 24 and 25 February 2022 through videoconference.
2. The following members of the Implementation Committee took part in the meeting: Ms. Jovanka Ignjatovic; Mr. Kari Kinnunen; Mr. Makane Moïse Mbengue; Mr. Martins Paparinskis; Mr. Pedro Cunha Serra; Mr. Attila Tanzi; Mr. Ivan Zavadsky; and Ms. Dinara Ziganshina.
3. In accordance with its core rules of procedure,<sup>1</sup> the Implementation Committee elected Mr. Tanzi as its Chair for the period 2022–2024 and Ms. Ziganshina as Vice-Chair.
4. The Implementation Committee adopted its agenda as set out in document ECE/MP.WAT/IC/2022/1, having agreed on an adjusted time frame.<sup>2</sup>
5. The Chair recalled that the Committee had approved the report of its thirteenth meeting (ECE/MP.WAT/IC/2021/3) through electronic means on 17 June 2021.

### II. Requests for advice, submissions and Committee initiative

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

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

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<sup>1</sup> ECE/MP.WAT/37/Add.2, decision VI/1, annex II, para. 7.

<sup>2</sup> Documents for the meeting are available on a dedicated web page of the Convention's website ([https://unece.org/environmental-policy/events/Fourteenth meeting of the Implementation Committee](https://unece.org/environmental-policy/events/Fourteenth%20meeting%20of%20the%20Implementation%20Committee)).



7. The Chair recalled that, at its twelfth meeting (Geneva, 4 and 5 February 2021), the Committee had held a joint consultation session with the participation of Montenegro and Albania and had provided them with its legal and technical advice under advisory procedure WAT/IC/AP/1.<sup>3</sup> On 20 May 2021, at its thirteenth meeting (Geneva, 20 and 21 May 2021), the Water Convention focal points from Montenegro and Albania had informed the Committee that the bilateral commission established under the intergovernmental Framework Agreement on Mutual Relations in the Field of Management of Transboundary Waters (2018), at its meeting on 15 April 2021, had decided that both countries should nominate experts to the joint technical working group tasked to put in place a monitoring and assessment regime and to report on its activities to the bilateral commission.<sup>4</sup>

8. On 24 February 2022, the Water Convention focal points from Montenegro and Albania briefed the Committee on progress made since the thirteenth meeting of the Committee:

(a) Both countries reported that the bilateral commission established under the 2018 Framework Agreement had met on 22 February 2022 in Podgorica and discussed cooperation in the Cijevna/Cem River basin and the establishment of the joint technical working group tasked with the collection of information and data and the development of monitoring and exchange of information to enable the analysis of the possible transboundary impact of small hydropower plants in the basin. It was agreed that the joint technical working group should have its first meeting as soon as possible;

(b) Albania also reported that, in the context of the Adaptation Fund/United Nations Development Programme project “Integrated climate-resilient transboundary flood risk management in the Drin River basin in the Western Balkans”, the bilateral commission had agreed that Montenegro should officially send Albania the technical project for an infrastructure intervention in the territory of Montenegro to enable Albania to review the document before approving the intervention;

(c) Furthermore, Albania reported that, during the bilateral commission’s meeting, the parties had agreed on the organization of a field visit in the territories of Albania and Montenegro in the Buna/Bojana River basin in order to view the embankments on both sides. In addition, the countries had discussed possibilities for applying for joint projects to strengthen water resources management in the Buna/Bojana River basin.

9. On 25 February 2022, in a joint session, the Committee:

(a) Expressed appreciation for the fact that the bilateral commission established under the 2018 Framework Agreement on Mutual Relations in the Field of Management of Transboundary Waters had met in Podgorica, on 22 February 2022, discussed cooperation over the Cijevna/Cem River and decided to establish a joint technical working group, following the legal and technical advice provided by the Committee in February 2021;<sup>5</sup>

(b) Stated that it found it reassuring that the Parties had resumed dialogue and committed to continuing cooperation;

(c) Emphasized the urgent need for the Parties to commence practical cooperation concerning the collection of data and information, joint or coordinated monitoring and data processing on a regular basis, and effective exchange of data and information, including on surface water and groundwater flow and the development and impact of the planned small hydropower plants along the Cijevna/Cem River;

(d) Called on the two Parties to:

(i) Finalize the establishment of the joint technical working group by the end of March 2022;

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<sup>3</sup> ECE/MP.WAT/IC/2021/1, paras. 14–17.

<sup>4</sup> ECE/MP.WAT/IC/2021/3, para. 7 (a).

<sup>5</sup> ECE/MP.WAT/IC/2021/1, annex, sect. II.

- (ii) Define the mandate (terms of references) of the joint technical working group, taking into account the proposal made by the Implementation Committee in its legal and technical advice;
- (iii) Organize the first meeting of the joint technical working group by the end of April 2022;
- (iv) Commence work to develop and implement an information exchange protocol without further delay.
- (e) Recalled the importance of a focused step-by-step approach with regard to the establishment of joint monitoring mechanisms as recommended by the Committee in its legal and technical advice, so as to ensure that a joint monitoring programme was immediately implementable, concentrating on the most important pressures on the Cijevna/Cem River and the most probable impacts of all (existing and planned) small hydropower plants;
- (f) Reiterated the availability of a member of the Implementation Committee (Mr. Cunha Serra) to provide assistance, including taking part in the work of the joint technical working group;
- (g) Invited the two Parties to inform the Committee about all the above-mentioned steps, share the composition and mandate (terms of references) of the joint technical working group with the Committee, and update the Committee on progress in the development of the information exchange protocol by 15 May 2022;
- (h) Recalled the need to hold meetings of the bilateral commission regularly and urged intensification of the work of the bilateral commission.

### III. Cooperation with other committees and organizations

10. The Implementation Committee held a discussion with Ms. Christina Leb (Senior Counsel, Environment and International Law Unit, World Bank) and Mr. Anders Jägerskog (Senior Water Resources Management Specialist, World Bank Water Global Practice) on specific matters of implementation of international water law with regard to financing transboundary water projects. Possible future collaboration to facilitate and support implementation of and compliance with the Convention in connection with World Bank activities was discussed, taking into account the power of the Committee to take measures to facilitate technical and financial assistance, including information and technology transfer,<sup>6</sup> and the increased interest in the Convention worldwide following its opening for participation by all States Members of the United Nations.

11. It was emphasized that the principles of international law, including those of international environmental law and international water law, informed World Bank operational policies. The World Bank attached great importance to riparians concluding legal arrangements in support of cooperative and sustainable management and development of shared water resources and assisted countries in making such arrangements and setting up basin organizations. The legal frameworks provided by the global water conventions, including the obligation to conclude transboundary water agreements or other arrangements provided for in the Water Convention, were helpful in moving such cooperation forward. Furthermore, interest in receiving funding for a specific project might serve as a strong trigger for riparians to enter into dialogue with the aim of strengthening legal frameworks for cooperation, thus paving the way for greater openness towards participation in and benefitting from the global water conventions in transboundary basins across the world.

12. The complementarity of efforts of the World Bank and the Committee to support awareness on and implementation of international water law was also emphasized. Where the World Bank assisted with setting up legal and institutional frameworks for cooperation in specific basins upon request by riparians, the Water Convention and its Implementation Committee could play an important role in enhancing cooperation by equipping countries with appropriate legal frameworks and tools, as well as through dedicated capacity-building.

<sup>6</sup> ECE/MP.WAT/37/Add.2, decision VI/1, annex I, paras. 22 (a) (iii) and 41 (a) (iii).

Such complementarity of efforts could be built upon to facilitate the initiation or strengthening of cooperation in transboundary basins. Soft law approaches were increasingly receiving support within the Committee and in the practice of the World Bank as they allowed for the building of cooperation over time through a step-by-step process. Participants expressed appreciation for the useful discussion and agreed to further explore ways of ensuring future collaboration.

13. In a dedicated session, the Implementation Committee discussed cooperation with the Compliance Committee under the Protocol on Water and Health, represented by Ms. Zsuzsanna Kocsis-Kupper (Vice-Chair). Participants updated each other on the first advisory procedure in the Convention's Implementation Committee and the most recent consultation process in the Protocol's Compliance Committee and discussed lessons learned from those procedures. It was emphasized that the facilitative approach to assisting countries with implementation of their obligations under the respective instruments, taken by both committees, was gaining prominence at the international level and should facilitate stronger awareness of the respective mechanisms to support implementation and compliance. The committees also exchanged experiences on their approaches to raising awareness about their respective mechanisms. They highlighted the usefulness of further exchanges of experience in the future.

#### **IV. Relevant outcomes of the ninth session of the Meeting of the Parties and potential contribution of the Implementation Committee to different activities under the Convention**

14. The secretariat provided a brief report on the outcomes of the ninth session of the Meeting of the Parties (Geneva, 29 September–1 October 2021) and presented the programme of work for 2022–2024 (ECE/MP.WAT/63/Add.1).<sup>7</sup> Certain activities and meetings under the programme of work were noted as being particularly relevant to the work of the Committee, in particular: activities on increasing capacity for implementation of the Convention and supporting national processes towards accession (programme area 1.1); update of Strategies for Monitoring and Assessment of Transboundary Rivers, Lakes and Groundwaters<sup>8</sup> (programme area 2); global workshops on different aspects of integrated water resources management (programme area 3.1); reporting on Sustainable Development Goal indicator 6.5.2 and under the Convention (programme area 6); and activities related to the thirtieth anniversary of the adoption of the Convention in 2022 (programme area 7.3). The secretariat invited the Implementation Committee to contribute its expertise to those activities.

15. Following an update provided by the secretariat on the outcomes of the second reporting exercise under the Convention and on Sustainable Development Goal indicator 6.5.2, held in 2020–2021, the Committee discussed its possible involvement in the third reporting exercise planned for 2023–2024. The Committee requested that the main analysis of the reports of the Parties in the third reporting round be carried out by the secretariat, while the Committee could review the draft of the Convention implementation report, as it had done in the second cycle. The Committee also expressed readiness to advise if any specific concerns or issues were brought to its attention by the secretariat in connection with the third reporting exercise.

16. At its eighth session (Nur-Sultan, 10–12 October 2018), the Meeting of the Parties to the Water Convention had adopted the Strategy for the implementation of the Convention at the global level (ECE/MP.WAT/54/Add.2), under which it had entrusted the Implementation Committee with the task of supporting the secretariat in answering questions from non-Parties interested in acceding to the Convention (action 2.2). In February 2022, the secretariat had approached the Committee with a request for support in answering questions received from several Latin American countries concerning the relationship between adjudication in the International Court of Justice and the possible implications of being a Party to the

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<sup>7</sup> Advance copy available at <https://unece.org/info/events/event/356707>.

<sup>8</sup> United Nations publication, ECE/MP.WAT/20.

Convention. At its fourteenth meeting, the Committee discussed its line of reply. The Committee finalized and subsequently approved its replies to the questions through electronic communication means (see annex to present document for Committee's replies).

## **V. Promotion of the mechanism to facilitate and support implementation and compliance**

17. The Committee members discussed possibilities for the promotion of the Convention and the mechanism to facilitate and support implementation of and compliance with the Convention through cooperation with partner organizations such as IHE Delft Institute for Water Education (Netherlands), the Global Environment Facility International Waters Learning Exchange and Resource Network and the African Society of International Law and decided to further explore those opportunities.

18. The Committee also decided to send a new letter to non-governmental organizations worldwide to inform them of its existence and functions and suggest providing relevant information to the Committee as part of the information-gathering function of the Committee. It requested the secretariat to prepare a draft letter.

## **VI. Programme of work and calendar for the next meetings**

19. The secretariat informed the Committee of the dates provisionally booked for its future meetings: 1 and 2 December 2022; 16 and 17 February 2023; and 21 and 22 September 2023.

20. The Committee discussed the possibility of holding a short, extraordinary meeting through videoconference, if needed at some point before its next scheduled meeting.

21. The Committee requested the secretariat to explore opportunities for arranging a shared space (e.g., Dropbox) for communication and sharing of files between the Committee members.

## **VII. Presentation of the main decisions made, modalities for preparation of the meeting report and closing of the session**

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

## Annex

### Replies of the Implementation Committee to questions on the Water Convention received from several Latin American countries

The Committee provides the replies to the questions referred to it by the secretariat being fully aware of the Latin American regional context. In particular, special regard has been given to the compulsory jurisdiction clause under article XXXI of the 1948 American Treaty on Pacific Settlement (Pact of Bogotá) and several cases before the International Court of Justice (ICJ) with participation of Latin American countries that involved transboundary water issues.

**Question 1:** If a transboundary water dispute between a Party to the 1992 Convention on the Protection and Use of Transboundary Watercourses and International Lakes (Water Convention) and a non-Party thereto were to be brought before ICJ by that non-Party, would the Water Convention be applicable? How could the status of a Party to the Water Convention be treated by ICJ in a transboundary water dispute between a Party and a non-Party? What could be the implications related to the status of a Party to the Water Convention in case of a dispute in ICJ?

**Reply:** Parties to the Water Convention have no treaty-based obligations towards non-Parties. More specifically, a Party to the Water Convention that shares transboundary waters with a non-Party has no obligations towards a non-Party by virtue of the Convention, although customary international water law is still applicable in such a case.

When only one of the riparians to a transboundary watercourse becomes a Party to the Water Convention, such status by itself does not create any international legal obligations that may be invoked by a non-Party or that may be applied by ICJ in the context of a dispute before it. ICJ case law shows that ICJ would not apply a treaty to which only one of the disputing States is a party. This approach is in line with the fundamental rule of the law of treaties codified in article 34 of the 1969 Vienna Convention on the Law of Treaties, which provides that a treaty does not create either rights or obligations for a third State without its consent.

ICJ would generally take into account an international treaty in a dispute involving a transboundary watercourse, when both disputing States are parties to said treaty. For instance, in *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)* and *Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica)*,<sup>1</sup> the Court referred to the 1971 Convention on Wetlands of International Importance especially as Waterfowl Habitat (Ramsar Convention) because both Costa Rica and Nicaragua were Parties thereto.

In circumstances where one or both of the disputing parties is/are not party to an international treaty, the Court is usually left with the possibility of referring to customary international law. This means that ICJ would refer to provisions of a treaty only if it considers that said provisions reflect customary international law. Such an approach was followed, for instance, in *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)*,<sup>2</sup> where the Court referred to the 1997 Convention on the Law of the Non-navigational Uses of International Watercourses (Watercourses Convention) because it considered that several of its provisions had a customary status, despite the fact that, at that time, none of the disputing parties were Parties to the Watercourses Convention.

Therefore, taking into account the fact that key principles and provisions of the Water Convention, including the obligation to prevent, control and reduce significant transboundary impact, the equitable and reasonable utilization principle and the principle of cooperation, are part of customary international law, ICJ could refer to such provisions of the Water

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<sup>1</sup> International Court of Justice (ICJ), Judgment, 16 December 2015, *ICJ Reports 2015*, p. 665.

<sup>2</sup> ICJ, Judgment, 25 September 1997, *ICJ reports 1997*, p. 7.

Convention to the extent that they reflect customary international law, even if none of or not all the disputing parties were Parties to the Water Convention.

In sum, in case of a dispute before ICJ, by having become a Party to the Water Convention, a country does not assume any additional obligations with respect to those of a non-Party to the Convention. The former country, by its participation in the Water Convention would only enhance its image as a champion of the rule of law and good practice in the field of water cooperation, in contrast to another disputing party that has not become a Party to the Convention.

On a more technical note, and elaborating further on the overall implications of participation in the Water Convention and adjudication in ICJ, decision VI/1 of the Meeting of the Parties to the Water Convention, which established the mechanism to support implementation and compliance under the Convention, provides that said mechanism is without prejudice to article 22 of the Convention on the settlement of disputes,<sup>3</sup> which includes an “opt in” formula for acceptance of such dispute settlement mechanisms as international arbitration and/or adjudication before ICJ. If one Party wishes to resort to the Implementation Committee, this will not prevent that Party from going before ICJ. In fact, the procedure before the Implementation Committee could provide elements of fact-finding that could later be useful in a dispute before ICJ. At the same time, should the procedure before the Implementation Committee prove to be useful, it could save the parties concerned the costs of adjudication before ICJ.

The mechanism to support implementation and compliance under the Water Convention, established by decision VI/1 of the Meeting of the Parties to the Water Convention, is evidentiary of the fact that the Convention does not impose any obligations on non-Parties. The mechanism enables participation of non-Parties in advisory procedures but makes such participation conditional upon their consent. The non-Parties considered to be potentially concerned by the advisory procedure and that choose not to participate in the advisory procedure are to be kept informed of its progress.

**Question 2:** There are numerous transboundary water agreements between countries not Parties to the Water Convention. However, having a transboundary water agreement with a joint body and dispute settlement provisions in place does not guarantee that such an agreement would work well. Are the mechanisms of the Convention better suited to preventing and dealing with disputes?

**Reply:** Having a transboundary water agreement with a joint body and dispute settlement provisions in place demonstrates the readiness of riparians to cooperation but indeed does not automatically resolve all issues. In fact, cooperation is an evolving process, where differences and disputes may still arise, and a transboundary water agreement may often only be a starting point.

By becoming a Party to the Water Convention and joining the Convention’s institutional platform, countries that already have water agreements in place and established cooperation with their neighbours can learn about approaches, tools<sup>4</sup> and experiences from other transboundary basins, which can strengthen cooperation in the basins they share. They can also benefit from activities under the programme of work of the Convention; for example, tailored assistance and support for developing joint or coordinated monitoring or information and data exchange or basin-level projects promoting transboundary cooperation in adaptation to climate change. Although non-Parties can also benefit from such assistance, priority is always given to Parties. Therefore, the Meeting of the Parties and its subsidiary bodies

<sup>3</sup> ECE/MP.WAT/37/Add.2, decision VI/1, annex I, para. 45.

<sup>4</sup> Examples of such tools include: the 2013 *Guide to Implementing the Water Convention* (ECE/MP.WAT/39) (which provides legal and practical commentary on provisions of the Water Convention); the 2018 *Principles for Effective Joint Bodies for Transboundary Water Cooperation under the Convention on the Protection and Use of Transboundary Watercourses and International Lakes* (ECE/MP.WAT/50); the 2015 *Policy Guidance Note on the Benefits of Transboundary Water Cooperation: Identification, Assessment and Communication* (ECE/MP.WAT/47); and the 2021 *Practical Guide for the Development of Agreements or Other Arrangements for Transboundary Water Cooperation* (ECE/MP.WAT/68).

perform certain assistance and dispute prevention functions when exchange of experience is organized at the global, regional and transboundary basin levels or when various activities to support transboundary water cooperation take place in specific basins.

As to dispute prevention, Parties to the Water Convention can benefit from the assistance of the Implementation Committee. A Party or Parties jointly can ask the Committee to provide advice in the framework of an advisory procedure to facilitate implementation and application of the Convention.<sup>5</sup> Such a procedure is not regarded as alleging non-compliance and aims at preventing potential conflicts at an early stage.<sup>6</sup> In addition to providing legal and/or technical advice, the Committee can facilitate a large number of supportive measures; for example, technical and financial assistance, including information and technology transfer, and capacity-building.<sup>7</sup> Other Committee procedures, such as submissions by Parties, may raise questions of implementation and compliance, but they are always to be conducted in conformity with the rationale of the Committee's mandate – i.e. “simple, non-confrontational, non-adversarial, transparent, supportive and cooperative in nature”<sup>8</sup> – geared towards implementation and compliance facilitation and dispute prevention.<sup>9</sup>

As to dispute settlement, the mechanisms contained in article 22 of the Water Convention implement the general principle enshrined in articles 2 (3) and 33 (1) of the Charter of the United Nations, which provide for the obligation of States to settle their disputes peacefully, while ensuring freedom of choice of the means of dispute settlement. Article 22 of the Water Convention allows the parties to a dispute over the interpretation or application of the Convention to agree on such peaceful means as may be appropriate to the circumstances and the nature of their dispute. If the parties do not agree on a specific means, article 22 (1) imposes an obligation to seek a solution through negotiation. Settlement of disputes by arbitration and adjudication is thus not compulsory under the Convention, reflecting the traditional approach of international law of dispute settlement and multilateral environmental agreements.

The Pact of Bogotá sets out a broad range of means of peaceful settlement of regional disputes, including diplomatic, political and adjudicative means. The Water Convention would helpfully supplement, for its Parties, this regional dispute settlement framework, without tension or contradiction between the approaches of the Convention and the Pact. Furthermore, in addition to the list of means of dispute settlement set out in its article 22, the Convention offers the assistance of the Implementation Committee as a means of dispute prevention.

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<sup>5</sup> Decision VI/1, annex I, sect. V.

<sup>6</sup> For a recent example, see advisory procedure WAT/IC/AP/1 (Montenegro and Albania).

<sup>7</sup> Decision VI/1, annex I, para. 22 (a) (iii).

<sup>8</sup> Decision VI/1, para. 5.

<sup>9</sup> *Ibid.*, annex I, sect. VI.