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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

#### Seventh session

Budapest, 17–19 November 2015

Item 4 (e) of the provisional agenda

**Review of past activities and discussion of future activities in the  
different areas of work: exchange of experience of joint bodies**

### **Draft principles for effective joint bodies for transboundary water cooperation**

**Submitted by the secretariat in cooperation with Germany and Finland**

#### *Summary*

At its sixth session (Rome, 28–30 November 2012), the Meeting of the Parties to the Convention on the Protection and Use of Transboundary Watercourses and International Lakes decided to hold two workshops in the period 2013–2015 to exchange experience of joint bodies for transboundary water cooperation worldwide and to develop recommendations (ECE/MP.WAT/37/Add.1, item 1.3). A first workshop, concentrating on legal and institutional aspect, was held in Geneva in September 2013 and a second, focusing on technical aspects, was held in Geneva in April 2014. The outcomes of the workshops were discussed in the framework of the ninth and tenth sessions of the Working Group on Integrated Water Resources Management (Geneva, 25–26 June 2014 and 24–25 June 2015, respectively).

The present document contains the recommendations in the form of draft principles for effective joint bodies for transboundary water cooperation, developed on the basis of the discussions at the workshops and their outcomes. It aims to synthesize valuable lessons from the collective experience of joint bodies worldwide, Parties to the Convention and other States, as well as other stakeholders. It further seeks to facilitate the establishment and work of joint bodies for transboundary water cooperation and ultimately to contribute to reaching a higher level of cooperation between riparian States.

The Working Group requested the secretariat to submit the draft principles to the Meeting of the Parties for possible adoption (see ECE/MP.WAT/WG.1/2014/2). The

Meeting of the Parties may wish to:

- (a) Recall that the establishment of joint bodies, such as river, lake and groundwater commissions, is a main obligation under the Convention and their role is key to implementing it and ensuring long-term transboundary water cooperation;
- (b) Commend the work already achieved by joint bodies worldwide to promote the sustainable management of transboundary waters;
- (c) Thank the two lead countries, Germany and Finland, for their leadership concerning work area on the exchange of experience of joint bodies;
- (d) Express its gratitude to all donors, partners and organizations that contributed to the organization of the two workshops;
- (e) Thank all Parties, other States, joint bodies and other organizations that provided expertise and lessons learned as part of the workshops and in the compilation of the draft principles;
- (f) Express its appreciation for the fact that the work in this area, with the active participation by joint bodies and countries from both within and outside the United Nations Economic Commission for Europe region, has concretely demonstrated the usefulness of the opening of the Convention for the exchange of good practice and experience and the promotion of sustainable management of transboundary waters worldwide;
- (g) Adopt the proposed draft principles;
- (h) Encourage countries sharing transboundary waters worldwide to make of use of the principles, in particular in establishing new joint bodies and in strengthening existing ones;
- (i) Request the secretariat to publish the principles for effective joint bodies as a brochure in the Arabic, English, French, Russian and Spanish languages, and to promote it alongside other publications and guidance material prepared under the Convention.

## I. Background and introduction

1. At its sixth session (Rome, 28–30 November 2012), the Meeting of the Parties to the United Nations Economic Commission for Europe (ECE) Convention on the Protection and Use of Transboundary Watercourses and International Lakes (Water Convention) decided that the Convention's work programme for 2013–2015 should contain activities on the exchange of experience of joint bodies, including the organization of two workshops to promote the exchange of experience and good practices of joint bodies worldwide and to develop recommendations (see ECE/MP.WAT/37/Add.1, item 1.3).

2. The first workshop, "River Basin Commissions and Other Joint Bodies for Transboundary Water Cooperation: Legal and Institutional Aspects" (23–24 September 2013), and the second workshop, "River Basin Commissions and Other Joint Bodies for Transboundary Water Cooperation: Technical Aspects" (9–10 April 2014), both held in Geneva, allowed for the exchange of experience on specific technical themes, notably intersectoral coordination, management of infrastructure, groundwater management, environmental protection, as well as on selected institutional issues, including financing and communication. The two workshops brought together important expertise on the work of joint bodies, making it opportune to take stock and define some elements of their good and efficient operation.

3. According to the definition of the Water Convention, a "joint body" means any bilateral or multilateral commission or other appropriate institutional arrangements for cooperation between the Riparian Parties. The existing joint commissions and other joint bodies for transboundary water cooperation differ from one another, for example, in terms of the scope of application, competence, functions, powers and organizational structure. Because of this diversity of institutional arrangements for transboundary water cooperation, it is challenging to draw general conclusions or make recommendations about their set-up or operation. Furthermore, the practice of existing joint bodies has been established in specific hydrological, political, economic, ecological/environmental and social contexts.

4. Nevertheless, the experience of joint bodies and the development of international law on the management of transboundary water resources can provide a basis for identifying certain principles of organization and activities that generally increase the efficiency of joint bodies and can contribute to reaching a mature level of cooperation between the riparian States.

5. Such principles, derived mostly from the pan-European experience through a workshop held in 2007 for countries in Eastern Europe, the Caucasus and Central Asia, were issued in the publication *River basin commissions and other institutions for transboundary water cooperation*.<sup>1</sup> That publication has been heavily drawn upon in drafting the present principles.

6. The principles for effective joint bodies, presented below, have been developed taking into account the discussions at the two Geneva workshops in 2013 and 2014 and the feedback provided after the workshops, as well as the comments received at and after the ninth and tenth meetings of the Working Group on Integrated Water Resources Management (Geneva, 25–26 June 2014 and 24–25 June 2015, respectively), in particular to ensure their global appropriateness and usefulness. The principles have thus been enriched in the light of the worldwide experience of existing joint bodies, Parties to the Convention and other States as well as other stakeholders. They aim to synthesize valuable

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<sup>1</sup> United Nations publication, Sales No. E.09.II.E.16. Available from <http://www.unece.org/index.php?id=11628>.

lessons from the collective experience of joint bodies for transboundary water cooperation, Parties to the Water Convention and other States, as well as other stakeholders.

## II. Principles for effective joint bodies

7. The principles of organization and activities set out below generally increase the efficiency of joint bodies for transboundary water cooperation and contribute to reaching a higher level of cooperation between riparian States. Despite the effort to make the principles general enough to be widely applicable, it is acknowledged that, due to the differences between such joint bodies related to their mandates and the scope of their work, as well as to the challenges that they address, not all the principles will be applicable or relevant in each case.

### A. Establishment, structure and functions

8. **Broad competence.** The broad competence of a joint body allows for addressing in a complex way, on the basis of an integrated water resources management (IWRM) approach, the entire spectrum of issues related to the sustainable development, management, use (including infrastructure) and protection of transboundary waters.

9. **Clear definition of the waters.** A clear definition of the waters subject to cooperation, in accordance with the basin approach, is crucial, as well as the participation of all basin countries in a joint body. The conclusion of bilateral agreements and the establishment of bilateral joint bodies for boundary or frontier waters (i.e., depending on the approach, from the section of the transboundary waters around the border to the whole transboundary basin) is important; however, it should not be regarded as a substitute for cooperation on the entire transboundary basin(s). Aquifers and other groundwater bodies should be considered in the scope of agreements, although drawing up a separate agreement on groundwaters, particularly where a given aquifer is unrelated to surface waters or cannot be easily assigned to a specific international river basin, is also an opportunity. Including coastal waters in the scope of agreements should be encouraged.

10. **Clearly defined tasks and powers.** Tasks and powers<sup>2</sup> for the joint body need to be clearly defined, and these need to be sufficient for effective activities related to the management, development, use and protection of transboundary waters. Tasks and powers sufficient to ensure the effective activities of a joint body will differ from case to case. The Water Convention lists the non-exhaustive core set of tasks of joint bodies, at the same time allowing Riparian Parties to tailor their institutional framework for cooperation to their specific needs.

11. **Adequate organizational structure.** An organizational structure that allows for developing and adopting decisions as well as implementing them is essential. This entails the existence of decision-making, executive and working (technical) bodies, including preferably a permanent organ (secretariat) to support the activities of a joint body. It also requires a clear definition of tasks and functions for each body in the organizational structure.

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<sup>2</sup> The functions of joint bodies, as described in *River basin commissions and other institutions for transboundary water cooperation* include: (a) a coordination and advisory function; (b) an executive function; and (c) a control of implementation and dispute settlement function. These can be further detailed in the tasks.

12. **Adequate representation of national authorities.** An adequately broad and comprehensive representation of national authorities in the joint body should be ensured, implying participation beyond the water management authorities to include representatives from the areas of environment, fishery, agriculture, transport, health and energy, hydrometeorology authorities and economy and finance ministries, as appropriate. An appropriate breadth of representation of authorities is linked to the actual water uses in the shared basin or aquifer and their relative importance. A balance may need to be struck between ensuring that the different interests and concerns are considered and maintaining the structure at a size and scope that allows it to operate effectively. If very broad participation in the joint body is not practical, opportunities for coordination, including regular consultations with non-represented State agencies should be provided.<sup>3</sup>

13. **Flexible agreement.** A certain flexibility of the agreement establishing the joint body is needed, making it possible to progressively develop cooperation, in terms of scope, mandate and the riparian States involved. When a basin-wide agreement by all riparian States cannot be reached, cooperation may start from an agreement and a joint body established by some of the riparian States, with a view to attracting all riparian States to participate in the future.

14. **Availability of support.** The availability of technical, informational, scientific and other support for the activities of joint bodies, through the appropriate design of the organizational structure, is critical. The establishment of subsidiary bodies like working groups or task forces on topics of relevance to the work of the joint body allows for flexibility in responding to thematic issues, including emerging ones, and for involving the necessary technical expertise. They are also potential forums for involving external expertise and for public participation.

15. **Regularity.** The principle of regularity in the work of a joint body implies a clearly agreed meeting schedule ensuring regular meetings on all levels.

16. **Availability of information.** A good information basis to support the activities of a joint body, including joint studies of the basin, is necessary. This refers to the availability of information on, among others, the quality and quantity status of waters, environmental and biodiversity conditions, economic and social conditions, and water uses and other pressures. A valuable part of this may be an analysis of the national authorities, organizations and institutions in each riparian State to identify their competences, functions and expertise contributing to IWRM, as well as to ensure the close cooperation of all the relevant national authorities with the joint body, which can be complemented with a stakeholder analysis.<sup>4</sup>

17. **Mandate to identify and assess benefits.** A mandate to identify and assess accurately the potential benefits of transboundary water cooperation, taking into account economic, social, environmental and geopolitical aspects, is beneficial.

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<sup>3</sup> The Global Environment Facility (GEF) has as a principle for its projects to establish an inter-agency committee for preparations of transboundary discussions. This could be an option to involve a broad or full inclusion of agencies. Too many actors in the actual commission may lead to an unfocused discussion.

<sup>4</sup> The Transboundary Diagnostic Analyses, promoted by GEF, which are science-based analyses of transboundary water-related concerns and opportunities that exist in multi-country water systems, can be mentioned as an example of a broad-based study of a transboundary basin or an aquifer. They are used to identify priorities for joint action, as well as the root causes and scope of the concerns or opportunities.

## B. Operation

### 1. Procedural considerations

18. **Accountability mechanisms.** Effective accountability mechanisms for the joint body should be in place to ensure the implementation of its activities and obligations.

19. **Mechanisms for cooperation and implementation.** Effective mechanisms for cooperation of the joint body with national authorities are necessary, as well as the availability of mechanisms to support implementation of decisions.<sup>5</sup>

20. **Clearly defined reporting lines and mechanisms.** Clearly defined reporting lines and mechanisms should be established.

21. **Public participation and stakeholder involvement.** Mechanisms for public participation and stakeholder involvement in the activities of the joint body are key. Appropriate tools for public participation and stakeholder involvement should be selected according to their purpose — i.e., to identify stakeholders and interested public, to notify, inform or consult the stakeholders and the public, or to take due account of their comments — reflecting also the specific context and the objectives. For a consistent provision of necessary funds to support public participation and stakeholder involvement, it is important to institutionalize the mechanisms for participation of stakeholders and public. Drawing on the ECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, the following criteria should be taken into account for effective public participation and stakeholder involvement: equity and inclusiveness; accountability and transparency; flexibility; effectiveness and responsiveness.

22. **Neutral facilitators and external expertise.** Neutral facilitators and external expertise are valuable in the process of initiating or restarting a dialogue and cooperation.<sup>6</sup>

23. **Coordination with other joint bodies.** Activities should be coordinated with other joint bodies in the same catchment area, as well as with relevant joint bodies established for the preservation of the marine environment.

24. **Exchange of information and data.** The joint body should function as a forum for the exchange of information and data, including on planned measures and activities, and for the harmonization of monitoring approaches.

### 2. Selected technical aspects

25. **Ensuring the consideration of groundwater issues.** A mechanism that ensures the involvement of groundwater expertise and the consideration of groundwater issues in the work of the joint body, whose scope includes integrated management of transboundary surface water and groundwater, is needed.

26. **Facilitation of impact monitoring and assessment.** Facilitation of the assessment of impacts (transboundary and intersectoral) from developments in the basin, and the agreement on such assessments between the riparians at the transboundary level, is crucial. The joint body should provide a framework for monitoring of the long-term impacts of

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<sup>5</sup> See footnote 3 on inter-agency committees above. An appropriate intersectoral scope also serves coordination.

<sup>6</sup> Advice and practical case-tailored assistance can be provided by the Water Convention's Implementation Committee in a facilitative, supportive and preventive manner, in accordance with the cooperative spirit of the Convention.

infrastructure projects and then, as appropriate, for signalling or even agreeing on the possible need for mitigation or compensation.

27. **Capacity to adapt to change.** It is essential that the joint body has the capacity or can provide the means to flexibly handle variations in water availability and water quality, allowing for adjustments to changes in flow resulting from climate variability and change, as well as to respond to extreme hydrological events.

28. **Early warning mechanisms.** Early warning mechanisms, e.g., alert systems in case of emergencies such as accidental pollution, extreme weather events, landslides, etc., should be in place.

### 3. Financial and human resources

29. **Adequate financial and human resources.** Adequate, stable and timely financial and human resources in the riparian States and in the secretariat of a joint body (where it exists) are necessary to support, in a sustainable manner, the joint body's organizational structure; to ensure the development, adoption and implementation of decisions and, as appropriate, to provide means for the implementation of joint programmes.

30. **Financial sustainability.** Financial sustainability of a joint body should be ensured by clearly defining the financial commitments of the Parties and by analysing possible additional funding mechanisms. As a priority, coverage of defined core costs and minimum functionality should be ensured. The financial contributions from member countries and their in-kind responsibilities, where applicable, should be clearly defined. As appropriate, the expectations need to be reflected in a corresponding mandate for fundraising. While some funding can be provided by external donors, especially in the beginning, it is important to ensure that the operation and basic functions of a joint body are eventually supported by the riparian States themselves. Involvement of the private sector and other innovative arrangements can be explored as complementary sources of funding, but caution should be exercised not to depend heavily on such sources.