

Water Convention

*SDG16: Role of Judiciary on
Promoting the Rule of Law in
Environmental Matters*

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Issues to be considered

- Introduction to the Water Convention
- Water Convention and obligations to the public
- Water Convention and injury to the public
- Cooperation with the Implementation Committee

Convention on the Protection and use of Transboundary Watercourses and International Lakes ('Water Convention')

UNECE, *Guide to Implementing the Water Convention* (UN 2013)
(*Guide to Implementation*)

Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters ('Aarhus Convention')

Evolution and background to the Water Convention

- United Nations Economic Commission for Europe (UNECE), established in 1946
- Committee on electric power started to work on water in 1950s
- 1950s also saw work on pollution in navigable waterways across Europe
- 1960s a UNECE Committee on Water Problems established
- Series of Recommendations, Declarations and Decisions from 1960s to 1990s
 - Long-term planning for water management
 - Desalination and groundwater recharge in coastal areas
 - Rational utilization of water and use of economic instruments
 - Prevention and control of water pollution
 - International cooperation on transboundary waters
 - Drinking water and sanitation



Central Asia: Kazakhstan, Kyrgyzstan, Uzbekistan, Tajikistan, Turkmenistan

Eastern Europe and Caucasus: Armenia, Azerbaijan, Belarus, Georgia, Republic of Moldova, Russian Federation, Ukraine

New EU Member States: Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Romania, Slovakia, Slovenia

Old EU Member States: Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, Netherlands, Portugal, Spain, Sweden, United Kingdom

South Eastern Europe: Albania, Bosnia and Herzegovina, Montenegro, Serbia, The former Yugoslav Republic of Macedonia (FYROM), Turkey

Non EU countries in advance economies: Andorra, Canada, Iceland, Israel, Liechtenstein, Monaco, Norway, San Marino, Switzerland, United States



Evolution and background to the Water Convention (2)

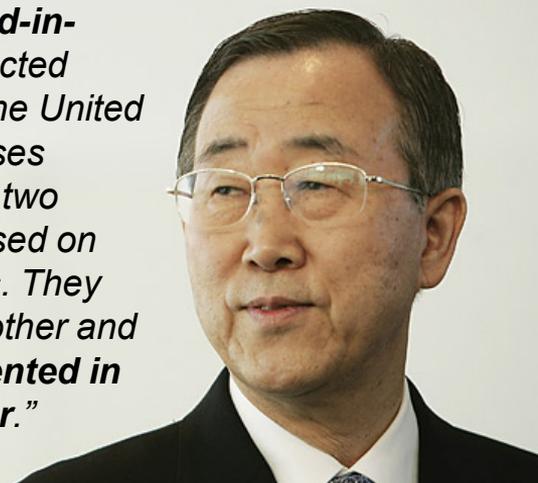
- Conference on Security and Co-operation in Europe, Sofia, Bulgaria, October-November 1989
 - Request to elaborate a framework convention on water
- Text drafted by UNECE Secretariat
- Negotiated by Senior Advisors to ECE Governments on Environmental and Water Problems
 - 5 special sessions between May 1990 and October 1991
 - 25 State representatives, as well as several international organisations participated
- 17 March 1992 Water Convention adopted and all states and regional economic organisations were encouraged to become parties
- Convention entered into force on 6 October 1996



Evolution and background to the Water Convention (4)

- Opening of the Water Convention to all UN Member States
 - Meeting of Parties decision (III/1), November 2003
 - Amendments entered into force, 6 February 2013
 - All UN Member States can accede to the Convention as of 1st March 2016
 - Chad and Senegal became the first African countries to join the Convention in 2018
 - Several countries working towards accession (Benin, Cameroon, Congo, Côte d'Ivoire, Central African Republic, Gambia, Ghana, Guinea, Iraq, Jordan, Mauritania, Mongolia, Niger, Nigeria, Uganda, Togo, Tunisia, Somalia, Suriname and Viet Nam)

*“The globalization of the [UNECE Water] Convention should also go **hand-in-hand** with the expected entry into force of the United Nations Watercourses Convention. These two instruments are based on the same principles. They complement each other and should be **implemented in a coherent manner.**”*



Purpose, scope and content of the Water Convention

- Purpose
 - Foster cooperation over transboundary waters in order to ensure that they are sustainably and equitably managed
- Three key principles of the Convention
 - Principle of prevention
 - Principle of equitable and reasonable utilization
 - Principle of cooperation



A sound legal framework

An active institutional framework

Activities and projects 'on the ground'

Scope of the Convention

- “Transboundary waters” (Art. 1(1))

- ‘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’

- “Transboundary impact” (Art. 1(2))

- ‘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 interactions among these factors; they also include effects on the cultural heritage or socio-economic conditions resulting from alternations to those factors’



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Content of the Water Convention

- Parties shall take all appropriate measures to prevent, control and reduce transboundary impact (Art. 2)
 - Prevent, control and reduce pollution of waters
 - Aim for ecologically sound and rational water management, conservation and environmental protection
 - Ensure transboundary waters are used in a reasonable and equitable way
 - Ensure conservation and, where necessary, restoration of ecosystems
- Take into account
 - Precautionary principle
 - Polluter pays principle
 - Inter-generational equity

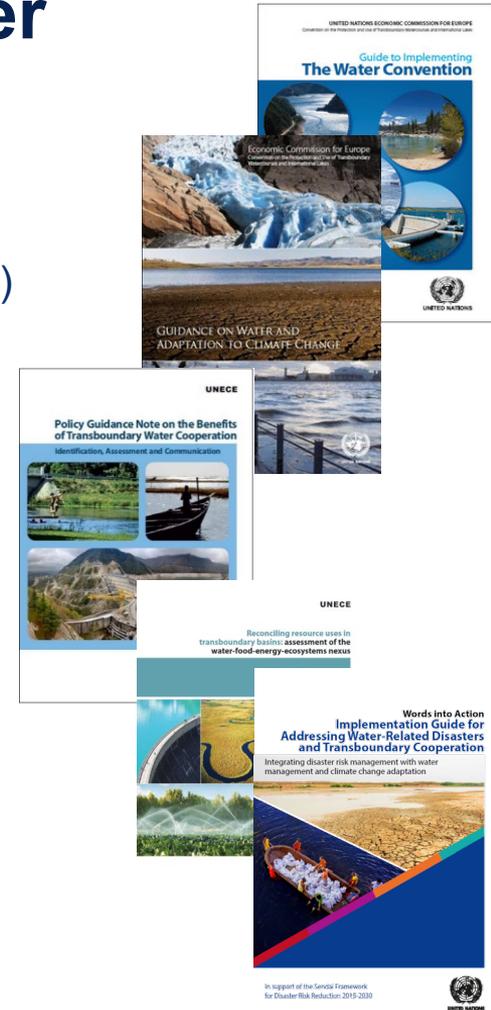


Content of the Water Convention (2)

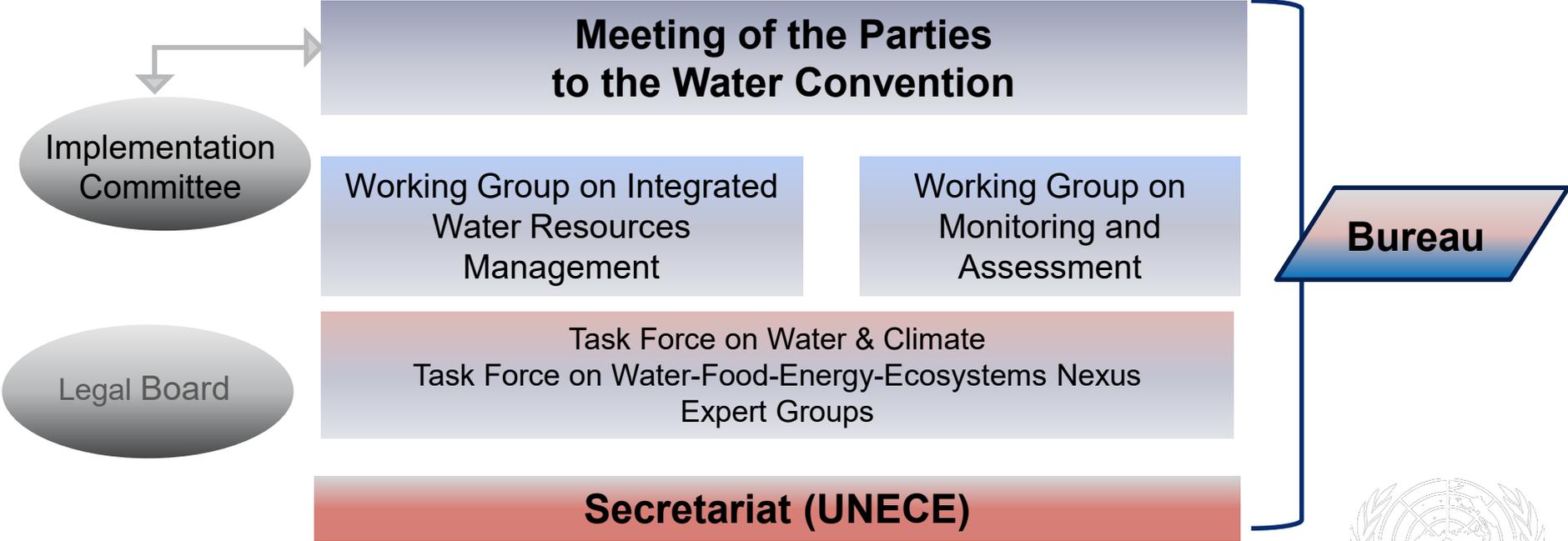
- **‘Appropriate measures’**
 - Legal, administrative, economic, financial and technical (Art. 3(1))
- **Riparian parties must establish**
 - agreements or other arrangements for their transboundary waters (Art. 9(1))
 - joint bodies (Art. 9(2))
- **Other provisions**
 - Consultations (Art. 10)
 - Joint monitoring and assessment (Art. 11)
 - Common research and development (Art. 12)
 - Exchange of information (Art. 13)
 - Warning and alarm systems and mutual assistance (Art. 14 and 15)
 - Public information (Art. 16)
 - Dispute settlement mechanisms (Art. 22)

Development of soft law under the Water Convention

- Water pollution by hazardous substances (1994)
- Licensing of wastewater discharges (1996)
- Monitoring & assessment of rivers & lakes (1996) and groundwaters (2000)
- Sustainable flood prevention (2000)
- Safety of pipelines (2006)
- Payments for ecosystem services (2007)
- Transboundary flood management (2007)
- Safety of tailing management facilities (2009)
- Water and adaptation to climate change (2009)
- Guide to Implementing the Water Convention (2013)
- Model provisions on transboundary groundwaters (2012)
- Policy guidance note on identifying, assessing and communicating the benefits of transboundary cooperation (2015)
- Words into action: Implementation Guide for Addressing Water-Related Disasters and Transboundary Cooperation (2018)



Institutional framework



Impacts on the ground

The Convention has inspired the development of bilateral and multilateral agreements on almost all transboundary waters in the pan-European region

Watercourse related agreements

-  Bilateral
-  Multilateral

Lake or specific water use agreements

-  Bilateral
-  Multilateral



Bilateral agreement covering all shared waters



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Role and Relevance of the Water Convention

- Solid international legal framework
- Developed institutional platform
- Recognition by the international community
- Developing the Convention's regime
- Advice and sharing of experience
- Support bilateral and basin cooperation
- Improve water management at national level
- Access financial assistance and donor cooperation
- Support community of Parties
- Contribution to international peace and security



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Water Convention and obligations to the public

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.

Water Convention and obligations to the public (2)

- Article 16
 - Article 11 ('Joint Monitoring and Assessment'), particularly Article (11)(3)
 - Article 8 ('Protection of Information')
 - *Guide to Implementation* [333]-[352]
 - Cf. Articles 4-5 of the Aarhus Convention
- Obligation
- Exception
- Specificity



Water Convention and injury to the public

- Obligations owed to the public relating to injury
 - Not explicitly addressed in the Water Convention
 - Cf. Convention on the Law of Non-navigational Uses of International Watercourses art 32 ('Non-discrimination'):

Article 32
Non-discrimination

Unless the watercourse States concerned have agreed otherwise for the protection of the interests of persons, natural or juridical, who have suffered or are under a serious threat of suffering significant transboundary harm as a result of activities related to an international watercourse, a watercourse State shall not discriminate on the basis of nationality or residence or place where the injury occurred, in granting to such persons, in accordance with its legal system, access to judicial or other procedures, or a right to claim compensation or other relief in respect of significant harm caused by such activities carried on in its territory.

Water Convention and injury to the public (2)

- Article 2(5)(b) of the Water Convention (the polluter-pays principle)
 - Protocol on Civil Liability and Compensation for Damage Caused by the Transboundary Effects of Industrial Accidents on Transboundary Waters (not in force)
 - Directive 2004/35/EC (Environmental Liability Directive)
- Compliance with Water Convention and injury to the public?
 - Possible tension between inter-State obligation of cessation and individual rights to property under domestic and international law



Implementation Committee (1): Decision VI/1

IV. Functions of the Committee

15. The Committee shall:

- (a) Consider any request for advice relating to specific issues concerning difficulties in implementation or application made in accordance with section V below;
- (b) Consider any submission relating to specific issues concerning difficulties in implementation and compliance made in accordance with section VI below;
- (c) Consider undertaking a Committee initiative in accordance with section VII below;
- (d) Examine, at the request of the Meeting of the Parties, specific issues of implementation of and compliance with the Convention;
- (e) Take measures, including recommendations, as appropriate, pursuant to section XI;
- (f) Carry out any other functions that may be assigned to it by the Meeting of the Parties, including examination of general issues of implementation and compliance that may be of interest to all Parties, and report to the Meeting of the Parties accordingly.

Implementation Committee (2): Cooperation

- Decision of the Eighth Session of the Meeting of the Parties on General Issues of Implementation, UN Doc ECE/MP.WAT/2018/8 Annex
 1. *Reiterates* that Parties are under a good faith obligation to cooperate with the Committee's information-gathering procedures;
 4. *Welcomes* the interaction between the Implementation Committee and non-governmental actors in relation to information gathering;
- Report of the Implementation Committee to the Meeting of the Parties and draft decision on implementation, UN Doc ECE/MP.WAT/2018/8 [18]-[23]



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