

# WHY DO WE NEED TRANSBOUNDARY WATER CONVENTIONS AT THE GLOBAL LEVEL?

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# CONTENT



- ▶ Evolution of the two Conventions
- ▶ Why do we need global frameworks?
- ▶ Comparison between the two Conventions
- ▶ Future steps
- ▶ Conclusions

# EVOLUTION AND CURRENT STATUS OF THE CONVENTIONS

# 1997 UN WATERCOURSES CONVENTION

- 1959 UN General Assembly call for 'preliminary studies on the legal problems relating to the utilisation and use of international rivers'
- 1970 – 1994 Text developed by International Law Commission, in collaboration with UN Member States
- 1996 - 1997 Convention negotiated by UN Member States in 6th Committee of UN General Assembly: highly deliberative process with upstream/downstream, north/south, developing/developing
- **1997 Convention on the Law of the Non-navigational Uses of International Watercourses adopted by UN General Assembly**
  - 103(+3) votes in favour
  - 3 votes against
  - 27 abstentions

# 1997 UN WATERCOURSES CONVENTION

- **Entry into force only in 2014**, following a ratification campaign by WWF, Green Cross, Dundee University, IUCN and others
- Why did it take so long? Lack of awareness, lack of champions etc.
- But:
- **Strongly recognized as evidence of international customary law**
- **Already influenced many agreements (2000 Revised Protocol on Shared Watercourses in SADC region, Albufeira Convention, etc.)**

# 1992 UNECE WATER CONVENTION

- ▶ Negotiated in 1990-1992 through an intergovernmental process under the auspices of UNECE, largely relying on ILC Draft Articles process
- ▶ Adopted on 17 March 1992, in force since 6 October 1996
- ▶ Protocol on Water and Health entered into force in 2005
- ▶ Protocol on Civil Liability since 2003 (not yet in force)
- ▶ UNECE Water Convention negotiated originally as regional instrument in the Pan-European region– but what is Europe?
  - **Not only European Union, but includes all ex-Soviet Union countries**
  - **Not a peaceful continent**
  - **Not a homogeneous continent in terms of economic development**
  - **Not a water-problem free continent**

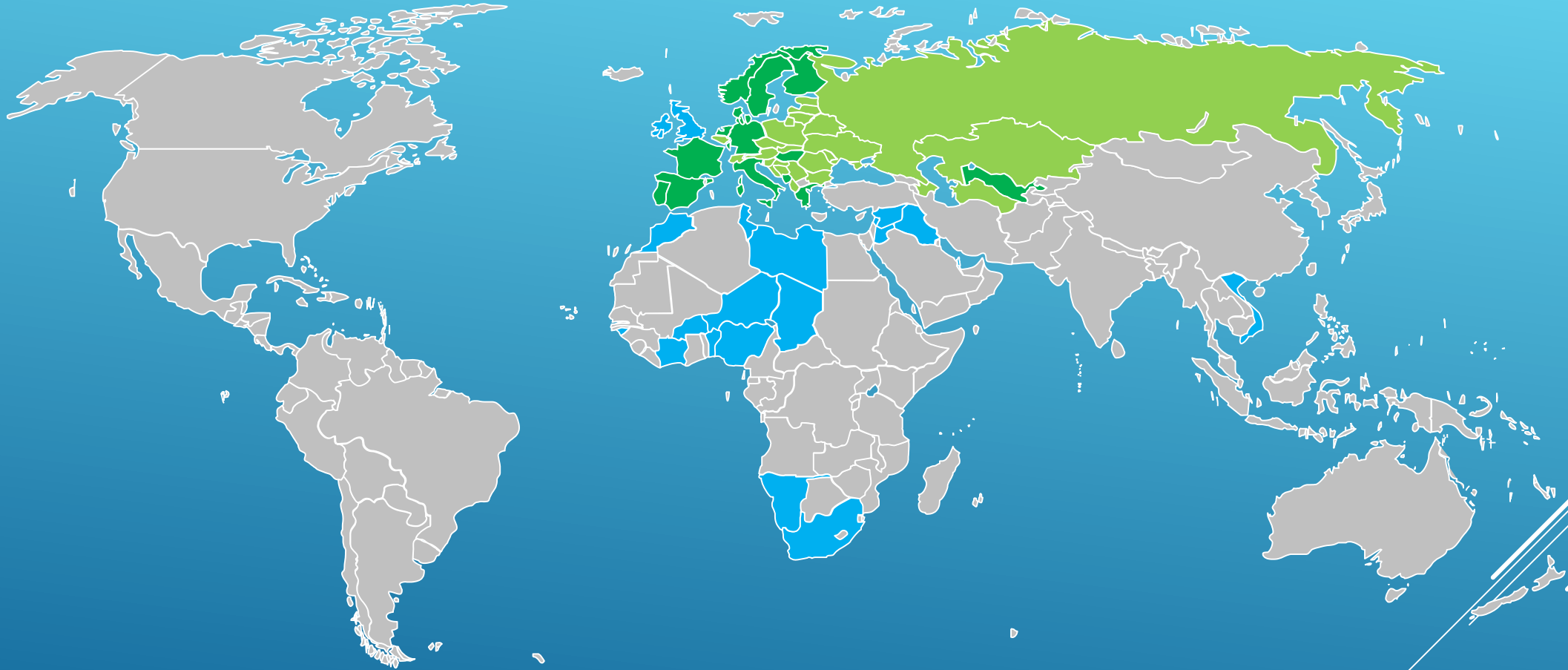
# GLOBAL OPENING OF THE WATER CONVENTION

- ▶ Opened up to all UN Member States through an amendment which entered into force in 2013
- ▶ Aims of the amendment:
  - apply the principles and provisions worldwide
  - share the experiences of the Convention
  - learn from other regions of the world
- ▶ More than 60 non-ECE countries already participated in Convention's activities and some announced their interest to ratify (Iraq, Tunisia,...)
- ▶ Amendment expected to be operational in late 2015 when all 2003 Parties have ratified the amendment

# CURRENT STATUS (JULY 2015)

- ▶ UNWC: 36 parties – in force since 17 August 2014
- ▶ UNECE Water Convention: 40 parties
- ▶ Both Conventions: 15 > 61 countries ratified at least one of them
- ▶ Amendment UNECE Water Convention: 37 (1 “ original” needed)
- ▶ Water & Health Protocol: 26
- ▶ RAMSAR: 168





Party to UNECE Water  
Convention (1992)

Party to UN Watercourses  
Convention (1997)

Party to both Conventions

# WHY DO WE NEED CONVENTIONS

# AT GLOBAL LEVEL?



# SUSTAINABLE DEVELOPMENT GOALS

- ▶ 6.5 by 2030 implement integrated water resources management at all levels, **including through transboundary cooperation as appropriate**
- ▶ 6.6 by 2020 protect and restore water-related ecosystems, including mountains, forests, wetlands, rivers, aquifers and lakes
- ▶ 6.a by 2030, expand international cooperation and capacity-building support to developing countries in water and sanitation related activities and programmes, including water harvesting, desalination, water efficiency, wastewater treatment, recycling and reuse technologies

# WATER AND ENVIRONMENTAL LAW AT DIFFERENT LEVELS





# STATUS OF GOVERNANCE OF TRANSBOUNDARY BASINS



- > 60% of transboundary basins **do not have agreements**
- 80% of existing agreements **are bilateral/don't necessarily involve all basin states**
- Many agreements **do not:**
  - ❖ Provide for **regular data-sharing/ notification**
  - ❖ Establish **water allocation & benefit-sharing criteria/processes**
  - ❖ Contain **dispute prevention/settlement rules**
  - ❖ Apply to **entire river basin / aquifer system, etc.**

# RELATION BETWEEN GLOBAL CONVENTIONS AND BASIN AGREEMENTS

- Conventions support several scenarios
    - Where no specific legal and institutional arrangement exists at the basin level
    - Where weak legal and institutional arrangements exist at the basin level
    - Where not all basin states are party to a basin agreement
  - Support ≠ replace
  - This consolidates, clarifies and develops customary international law
- 
- A decorative graphic consisting of several parallel white lines of varying thicknesses, slanted diagonally from the bottom right towards the top right, set against a blue background.



## WHY PROMOTE THE WATER CONVENTIONS?



UNEP

- ❖ Water sometimes the “missing link”
- ❖ Complement other treaties/ conventions
- ❖ Horizontal coordination, harmonization, inclusive
- ❖ Can support climate change adaptation
- ❖ Knowledge and information exchange
- ❖ Accountability & transparency: clear responsibilities and rights and incorporate other stakeholders



## WHY RATIFY THE GLOBAL CONVENTIONS?



- ❖ Foster a common language and shared understanding >> cooperation (systematic; interpretation)
- ❖ Harmonization even within countries / between basins with same riparians; can help to implement multiple agreements in a coordinated fashion
- ❖ Conventions can facilitate negotiations (agenda & procedure available)
- ❖ Contribute to MDGs and now SDGs
- ❖ Stimulate cooperation among countries and involvement of stakeholders at large





# CONVENTIONS AND HYDROPOWER



- ▶ potential for water to become a source of serious conflict within and between countries

Conventions offer:

- ▶ An effective system of notification, consultation and data exchange as basis for states to communicate, reconcile any competing interests over planned uses of an international watercourse in a mutual manner and dispute resolution tools and procedures;
- ▶ Provide an (additional) framework and incentives for investors to adhere to the Equator principles and the World Commission on Dams guidance; and
- ▶ Stimulate the use of assessment tools such as those provided for by the Hydropower Protocol: Hydropower Sustainability Assessment Protocol (2011): measure and guide sustainability in hydropower planning, implementation and operations

# WHY DID/ DO COUNTRIES ACCEDE TO THE CONVENTIONS?

- ▶ Water safety high priority
- ▶ You cannot do it alone – cooperation needed
- ▶ In line with international water law and other treaties
  - ▶ Makes for a complete set of laws at various levels on protection and enhancement of water quality, water quantity and the infrastructure for international watercourses
  - ▶ General obligation to protect and maintain the ecosystems of international water courses also in other treaties.
  - ▶ Solidarity, development cooperation
  - ▶ Risk mitigation/ prevention
  - ▶ Conflicts resolved > framework for the future, conflicts resolution mechanisms
  - ▶ To get everybody at the table
  - ▶ Common language/ understanding

## WHY DID/ DO COUNTRIES ACCEDE TO THE CONVENTIONS (2)?

- Strengthens 'transboundary water' profile at the global level, and fosters synergies with other global initiatives, eg climate change
- Permanent framework for the continuity and sustainability of transboundary cooperation over waters

### **Particularities of the UNECE Water Convention**

- An intergovernmental platform for sharing experiences and good practice
- Supports capacity building and strengthens implementation
- Develops a legal regime through protocols, soft law instruments, etc.

# TWO COMPLEMENTARY, GLOBALLY-OPEN WATER CONVENTIONS

*“... I encourage countries outside the UNECE region to **join** the Water Convention and **contribute** to its further development.”*

*“The globalization of the [UNECE Water] Convention should also go **hand-in-hand** with the [then] 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.**”*

*(UN Secretary-General, April 2015)*



# COMPARING THE CONVENTIONS – LEGAL PERSPECTIVE

- ▶ International Law Commission: ‘When several norms bear on a single issue they should, to the extent possible, be interpreted so as to give rise to a single set of compatible obligations’ (ILC Report on Fragmentation, 2006)
- ▶ ‘As a **package of norms** both conventions **reinforce** each other
- ▶ States have joined both conventions (15 so far)

# COMPARISON OF THE TWO CONVENTIONS





## COMPARING THE CONVENTIONS: SIMILARITIES – GREAT!



- ▶ Protection, preservation and management of international watercourses (UNWC & UNECE WC)
  - ▶ A ‘package of norms’ approach to substantive norms
    - equitable and reasonable utilization
    - due diligence obligation of no-harm
      - Principle of cooperation as catalyst for the implementation of the two substantive norms
  - ▶ Almost same provisions with regard to dispute settlement

# COMPARING THE CONVENTIONS: DIFFERENCES – EVEN BETTER!

*More detailed provisions in one instrument can inform the other*

- ▶ Appropriate measures to prevent harm
  - ▶ Detailed guidance under UNECE WC on appropriate measures (eg, Art 3, UNECE WC)
- ▶ Equitable and reasonable
  - ▶ List of factors (Art 6, UNWC) can guide implementation UNECE WC
- ▶ Exchange of information & planned measures
  - ▶ Obligation under both Conventions (Art 13 UNECE WC, Art 9, UNWC)
  - ▶ Generally more detailed under UNECE WC, although developed provisions on planned measures under Part III of the UNWC



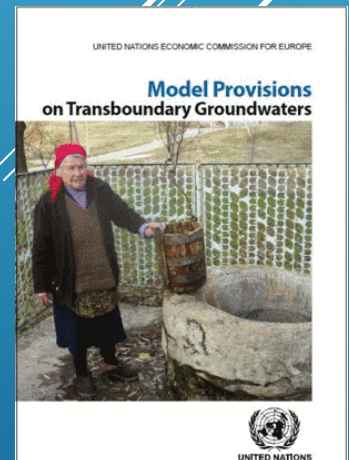


# COMPARING THE CONVENTIONS



Key differences between the two Conventions mainly concern context rather than content.

- ▶ Defining a watercourse
  - Surface water or groundwater under UNECE Water Convention
  - Surface water and connected groundwater under UN Watercourses Convention
- ▶ Entering into, or harmonising existing, watercourse agreements and joint arrangements
  - Obligation under the UNECE Water Convention
  - Recommendation under the UN Watercourses Convention



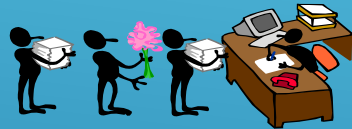
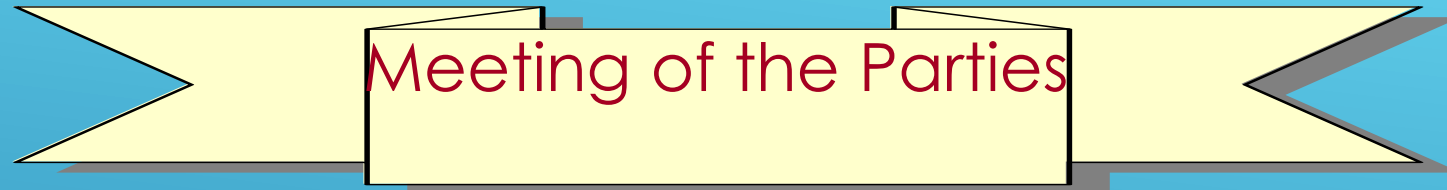
## ▶ Substantive norms

- Obligation to take all appropriate measures to prevent, control and reduce any transboundary impact under UNECE Water Convention
  - ▶ Equitable and reasonable utilisation
  - ▶ Conservation and restoration of ecosystems
- Obligation to utilise an international watercourse in an equitable and reasonable manner
  - ▶ Take all appropriate measures not to cause significant harm
  - ▶ Protect ecosystems of an international watercourse

# COMPARING PROCEDURES

- ▶ Generally more detailed in UNECE Water Convention
- ▶ But, more detail on notification and consultation in UN Watercourses Convention (cf. UNECE Espoo Convention)
  - e.g. Transboundary EIAs
- ▶ Explicit obligation (Art 9(j), UNECE WC)
- ▶ Implicit obligation (Art 7, UNWC)
  - Public information
- ▶ Explicit obligation (Art 16, UNECE WC)
- ▶ No provision under UNWC – implicit?

# INSTITUTIONAL ASPECTS - CONVENTION LEVEL UNECE WATER CONVENTION STRUCTURE



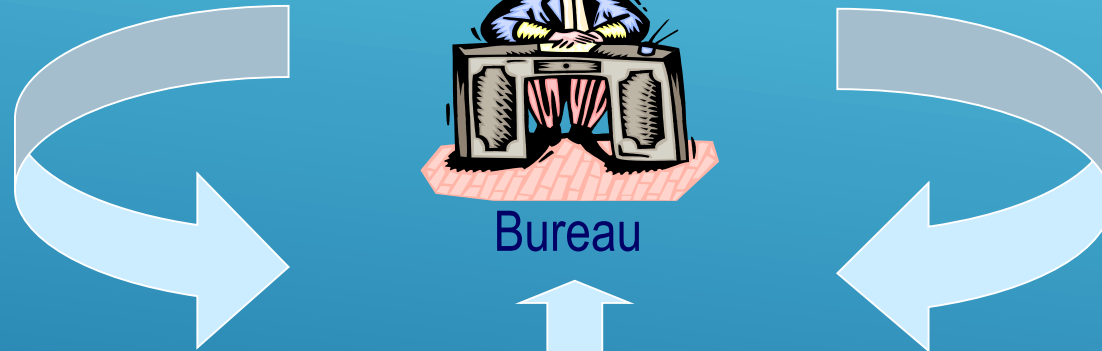
Implementation Committee



- Working Group on Monitoring and Assessment
- Legal Board
- International Water Assessment Centre



Bureau



Working Group on Integrated Water Resources Management



Secretariat

UNECE for the Water Convention and Protocol on Civil Liability  
UNECE jointly with WHO/Europe for Protocol on Water and Health



- Task Force on Water and Climate and global network of basins
- Task Force on the Water – Food – Energy - Ecosystems Nexus
- Joint Ad Hoc Expert Group on Water and Industrial Accidents

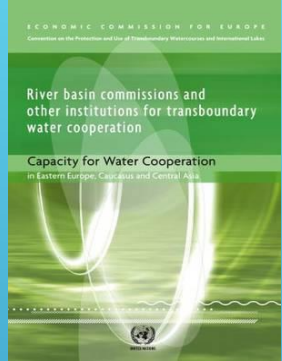
# UNECE WATER CONVENTION: PROGRAMME OF WORK FOR 2013-2015



Water-food-  
energy-ecosystems  
nexus

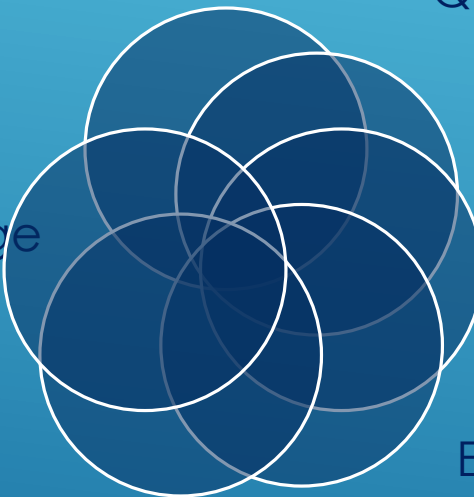
Support to  
implementation and  
accession

Quantifying the benefits  
of transboundary  
cooperation

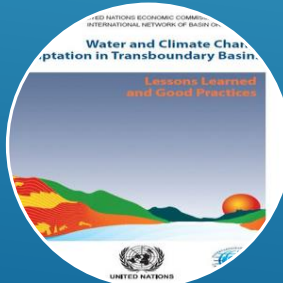


Adapting to climate change  
in transboundary basins

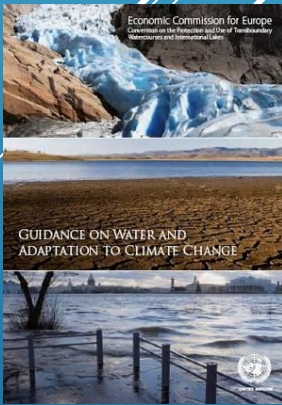
Opening of the  
Convention



Promotion of the  
Convention and  
establishment of strategic  
partnerships



EU Water Initiative  
and National  
Policy Dialogues



## FAQ: SETTLEMENT OF DISPUTES / CONFLICT RESOLUTION (ART. 33 UNWC AND ART. 22 AND ANNEX IV UNECEWC)

- ▶ ‘water dispute :‘any conflict of views or of interests, which takes the form of opposing claims between the states, concerning the use of a transboundary water resource (A ‘justiciable’ conflict)
- ▶ seek a solution by negotiation or by any other means of dispute settlement acceptable to the parties to the dispute;
- ▶ UNWC: Third Party Fact-finding
- ▶ UNECE Water Convention: Implementation Committee

# WATER CONVENTION'S NEW IMPLEMENTATION COMMITTEE

- ▶ Established in 2012 for dispute prevention and practical case-oriented assistance
- ▶ 9 members in personal capacity, outstanding lawyers and water professionals
- ▶ Procedures (advisory procedure, Committee)
- ▶ Measures (national plan of implementation, transboundary water agreement, capacity building, facilitating technical assistance), may recommend stronger measures to Meeting of the Parties





# WHAT'S NEXT?

# PROMOTION –

# IMPLEMENTATION ETC.




# JOINT PROMOTION

UNITED NATIONS ECONOMIC COMMISSION FOR EUROPE

## The Economic Commission for Europe Water Convention and the United Nations Watercourses Convention


An analysis of their harmonized contribution to international water law



UNITED NATIONS

UNITED NATIONS ECONOMIC COMMISSION FOR EUROPE

## The Global Opening of the 1992 Water Convention



UNITED NATIONS

UNECE  
United Nations Economic Commission for Europe

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Environmental Policy > Treaties > Water > Water Convention

### Water Convention

#### The UNECE Water Convention

**Helsinki, 17 March 1992**

The Convention on the Protection and Use of Transboundary Watercourses and International Lakes (Water Convention) is intended to strengthen national measures for the protection and ecologically sound management of transboundary surface waters and groundwaters.

The Convention obliges Parties to prevent, control and reduce transboundary impact, use transboundary waters in a reasonable and equitable way and ensure their sustainable management. Parties bordering the same transboundary waters shall cooperate by entering into specific agreements and establishing joint bodies. The Convention includes provisions on monitoring, research and development, consultations, warning and alarm systems, mutual assistance, and exchange of information, as well as access to information by the public.

Initially negotiated as a regional instrument, the Convention was amended in 2003 to allow accession by all the United Nations Member States. The amendments entered into force on 6 February 2013, turning the Convention into a global legal framework for transboundary water cooperation. It is expected that non-ECE countries will be able to join the Convention as of end of 2013.

**Protocol on Water and Health**  
**London, 17 June 1999**

The Protocol on Water and Health aims to protect human health and well being by better water management, including the protection of water ecosystems, and by preventing, controlling and reducing water-related diseases. It is the first international agreement of its kind adopted specifically to attain an adequate supply of safe drinking water and adequate sanitation for everyone, and effectively protect water used as a source of drinking water. Parties to the Protocol commit to set targets in relation to the entire water cycle.

**Protocol on Civil Liability**  
**Kiev, 21 May 2003**

The Protocol on Civil Liability provides for a comprehensive regime for civil liability and for adequate and prompt compensation for damage resulting from transboundary effects of industrial accidents on transboundary waters.

**Forthcoming Meetings**

Third session of the Meeting of the Parties to the Protocol on Water and Health (25 - 27 November 2013) Oslo, Norway

Implementation Committee of the Water Convention

UN WATERCOURSES CONVENTION

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UN WATERCOURSES CONVENTION

## User's Guide

Alestar Riou-Clarke  
Ruby Moynihan  
Eliott-Cover Magala



The UNECE Convention on the Protection and Use of Transboundary Watercourses and International Lakes

*Its Contribution to International Water Cooperation*

ATYLA TANAI, OWEN MCINTYRE, ALEXANDROS KOLLIPOPOULOS, ALESTAR RIOU-CLARKE, and RUBY KINNA (EDS.)

BRILL | NIEHOFF

WWF

Everything you need to know about the UN Watercourses Convention

Flavia Lourie  
Dr. Alestar Riou-Clarke  
Marie-Laure Vercambre



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Global Initiative

Find out more about the UNWC Global Initiative Symposium 2012 Proceedings

Welcome to the UNWC Online User's Guide

You can find all the information you need to know about the UN Watercourses Convention (UNWC) provisions, legal principles, and related documents on the site, or navigate through 'The Convention' menu. Our news section regularly keeps you updated with UNWC global water topics and events. You can also follow us on Facebook and Twitter.

"Water links us to our neighbour in a way more profound and complex than any other."

— John Thomson

Global Water Facts

87% 87% 82% 69% 60%

countries most dependent on water imports

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UNITED NATIONS ECONOMIC COMMISSION FOR EUROPE

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

## Guide to Implementing The Water Convention



UNITED NATIONS



# STRENGTHENING SYNERGIES BETWEEN THE CONVENTIONS



- Joint promotion, awareness raising, capacity development/ knowledge transfer, informal group on universalization of the conventions
- Guide to Implementing the UNECE Water Convention – references to ILC work and UN Watercourses Convention
- Connect with other water-related conventions
- Development of implementation responses to SDG targets



# WHAT'S NEXT?



- Informal exchange of view of UN WC Parties, 15 -16 September, Paris 2015 (by invitation only)- how to promote implementation to be discussed
- 7th session of the Meeting of the Parties to the UNECE Water Convention Budapest, 17-20 November 2015:
  - All UN WC Parties and others are invited
  - Decision on opening
  - Mandate and intergovernmental framework for discussion on two Conventions
- New programme of work for 2016-2018:
  - Will include an area of work on global opening and synergies with Watercourses Convention
  - Contains issues present in NY Convention and not explicit in UNECE Water Convention



# CONCLUSIONS



- High opportunity now due to increased political attention to transboundary issues in SDGs, Sendai framework etc.
- Still lack of awareness: need for additional capacity-building at regional and national level, but also focus on promoting implementation
- Need for champions going ahead with ratifications and motivating others (among them some African countries)
- Cooperation with partners such as ANBO, GWP, universities, AMCOW, regional bodies
- Important role of basins and RBOs
- Decision on accession (whether, which Convention(s) up to each country
- Parties to decide about institutional structure



**THANK YOU!**

**More information**

<http://unece.org/env/water>

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[Sonja.koeppel@unece.org](mailto:Sonja.koeppel@unece.org)

<http://www.unwatercoursesconvention.org>

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