

Promoting the Effectiveness of International Water Law in Support of Security and Peace

This summary report has been prepared by the Geneva Water Hub, as an input paper for the Global High-Level Panel on Water and Peace. The report provides a summary of a roundtable of senior experts convened by the Geneva Water Hub on 26 October 2016. The report was written by adelphi and commented on by the experts. The analysis, results and recommendations in this paper represent the opinion of the participants and are not necessarily representative of the position of any of the organizations.

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1. Summary

Cooperation over the world's 276 transboundary rivers and lakes has a long history and has brought about a large body of norms articulated in treaties and custom pertaining to internationally shared rivers, lakes and groundwater resources. Two global water conventions – the 1997 UN Convention on the Law of the Non-Navigational Uses of International Watercourses (UN Watercourses Convention) and the 1992 Convention on the Protection and Use of Transboundary Watercourses and International Lakes (UNECE Water Convention or Helsinki Convention) – consolidate the principles underpinning contemporary International Water Law (IWL).

To improve understanding of how the effectiveness of the two global water conventions could be supported, the Geneva Water Hub convened an expert roundtable on 26 October 2016. This report comprises information from the roundtable presentations and summarizes the discussions and main outcomes of the event. The primary target audience for this report is the Global High-Level Panel on Water and Peace.

The report follows the same structure as the event itself and begins with a brief background on the linkages between the two global water Conventions and how we could strengthen their reach and effectiveness. This is followed by a section that outlines potential instruments that could be employed to promote the principles of International Water Law (IWL) in the absence of formal ratification of the two Conventions and particularly focuses on the role of diplomacy as a tool that holds significant potential. A subsequent section explored options for expanding the reach of IWL with non-State actors through voluntary mechanisms.

The last part of the report is devoted to concluding remarks and an outline of the main recommendations made by the experts of the roundtable for consideration by the Global High-Level Panel for Water and Peace. These were summarized under seven headings:

- 1) **Enhance awareness of the features of IWL.** IWL is a multifaceted regime that has been produced by States' practice. It aims to facilitate discussion and cooperation amongst States, not to prescribe solutions. The two global Conventions consolidate, codify and clarify the broad range of customary norms that has evolved from State practice. Even States that are not party to either global water Conventions are subject to customary IWL.
- 2) **Raise confidence into IWL among State actors and emphasize its benefits.** IWL should not only be seen as a set of obligations, but as a practical tool that supports riparians in identifying solutions that will benefit everyone. IWL is much more than a set of specific rules of laws, but includes institutions, principles and practices and provides a common language that enables and fosters cooperation and the ensuing benefits.
- 3) **Develop supplemental instruments under universal, regional and basin agreements.** Guidelines, procedures or codes of conduct can help to ensure a common understanding of key IWL principles and norms and can help put different actors around the table.
- 4) **Promote the effective engagement of non-State actors,** such as civil society organizations, private sector or researchers, to ensure informed, legitimate and effective implementation of key IWL principles.
- 5) **Explore and promote instruments for ensuring more long-term planning and funding of cooperation measures.** Developing cooperative measures for the management of transboundary water resources is a long-term project and often takes decades to be realized whereas project funding is rarely available over such long periods.
- 6) **Ensure coordination between IWL requirements and financing regimes.** Water management activities, particularly the construction of water infrastructures, require large amounts of finance. The safeguard policies of financing institutions should thus explicitly align with IWL. Public international financial institutions may also consider additional incentives for transboundary projects to counteract a bias for national-level projects.
- 7) **Highlight the mutual relevance of the SDGs and IWL.** While IWL supports the SDGs, in particular SDG 6, the SDGs themselves could prove to be a driver for the objectives of IWL and promote the implementation of IWL principles.

2. Introduction

Cooperation over the world's 276 transboundary rivers and lakes has a long history. Since ancient times, societies have set up treaties to peacefully manage their interests around rivers and lakes that cross their territories. These agreements, and the norms and principles contained in them, are generally referred to as International Water Law (IWL).

Recent years have witnessed important developments within IWL, particularly regarding the main principles and rules that govern transboundary water resources (McCaffrey 2010). Most countries today agree upon the main principles of international water law, including the duty to cooperate, the principles of equitable and reasonable utilization and the duty not to cause significant damage. This status of consensus about guiding principles has largely been supported by the adoption and entering into force of the two global water Conventions that govern surface and (to some degree) groundwater water resources: the 1997 UN Convention on the Law of the Non-Navigational Uses of International Watercourses (UN Watercourses Convention) and the 1992 Convention on the Protection and Use of Transboundary Watercourses and International Lakes (UNECE Water Convention or Helsinki Convention). The principles embodied in these two water Conventions constitute the essence of long-running and extensive efforts to reconcile the divergent interests in water use and to codify customary law.

Adopted by the UN's General Assembly in 1997, the UN Watercourses Convention entered into force in 2014 and is directly binding for the 36 states that ratified it. On 1st March 2016, the UNECE Water Convention was opened to all UN Member States. While these developments should help expand the conventions' global reach, it may realistically take many more years and probably decades until most UN Member States have ratified these two global water Conventions. Indeed, there is a growing reluctance for countries to negotiate treaties and conventions dealing with water law, which are seen as a source of obligations and not as source of opportunity and benefits.

Furthermore, many misunderstandings and open questions persist (for example, how to deal with existing transboundary basin agreements and how to convince upstream countries to join) and the (shared) benefits of joining the legal frameworks need to be demonstrated. While 60 countries in total have ratified one or both conventions, 133 UN member States have not joined either of them. Considering that about two-thirds of the States in the world – especially large countries in major transboundary basins such as China, India, Brazil and Turkey – do not come within the purview of these instruments, their global reach is limited.

This begs the question of how to best extend the reach of the two global water Conventions and, even more importantly, how to ensure the effective implementation of the principles contained in them.

Therefore, additional efforts are needed by State and non-State actors to promote the two global treaties in an effective, coherent and mutually supportive way, particularly in water basins where not all riparians are signatories and where alternative, innovative arrangements might be needed. Expanding the reach of the water Conventions to every country and every basin, both in scale and in scope will greatly increase the effectiveness of the global water Conventions in support of security and peace.

It is in this context that the Geneva Water Hub (GWH) convened a roundtable talk to address the question of how to promote the two global water conventions and strengthen IWL.

3. Strengthening the Reach and Effectiveness of International Water Law with State Actors

The first session was introduced by two presentations and focused on the linkages among the two Conventions and the strengths and weaknesses surrounding the UNECE Water Convention.

The UN Watercourse Convention as well as the UNECE Water Convention contain a set of norms as to what States should and should not do – jointly as well as individually. Both Conventions clearly outline that riparians must consider the impacts that their actions may have on their riparian neighbours. At the same time, watercourse States may use water resources only in a way that does not compromise the legal rights of other riparians. The main requirement of IWL hence is the understanding that neither upstream nor downstream riparians can use a shared water resource without considering the influence their action may have on other States. As such, IWL aims to contribute to maintaining good inter-State relations and peace and stability.

To a large extent, the two global Conventions have not rewritten but codified already existing customary IWL, comprising what has developed as accepted international practice, particularly with regard to the three key IWL



principles of equitable and reasonable use, the obligation not to cause significant damage and the obligation to cooperate.

The UN Watercourse Convention was adopted by the UN General Assembly in 1997 and entered into force in 2014 after the required number of 35 states had ratified it. The UNECE Water Convention, originally adopted within the pan-European region, turned into a global convention in 2013. Having received the necessary number of ratifications, this instrument is now open to accession to all UN-member States. Both global legal frameworks for transboundary water cooperation are entirely compatible and complement each other. As a package of norms, they both aim to facilitate transboundary water cooperation and foster a common language and shared understanding.

However, some differences between both Conventions exist. While the UNECE Water Convention comprises an institutional infrastructure that helps its member countries to implement the principles of IWL, the UN Watercourse Convention lacks such a support instrument. The main strength of the UNECE Water Convention lays in its institutional framework to assist its members in complying with the provisions of the Convention. Two legally binding Protocols, i.e. the 1999 Protocol on Water and Health and the 2003 Protocol on Civil Liability and Compensation for Damage Caused by the Transboundary Effects of industrial Accidents on Transboundary Watercourses, have been adopted and complemented by a number of soft rules, guidelines and recommendations that assist the parties in interpreting and implementing the Convention and which hold them accountable. For example, the Helsinki Convention has developed specific guidance on monitoring and assessment in the transboundary context, on flood management and ecosystem services. Furthermore, an Implementation Committee has been established to assist countries that face difficulties in implementing the convention in a non-confrontational manner.

Despite these strengths of the UNECE Water Convention, only one third of the States have ratified one or two of the conventions to date. Several reasons account for this reluctance of accession: lack of political interest and will, limited funding that is concentrated on a small number of basins, little coordination amongst actors that support transboundary cooperation and a stronger political consideration of sectors other than water. Misunderstanding on the key provisions is also another reason for the limited ratification of both the UNECE Water Convention and the UN Watercourses Convention.

This raises the question as to what could be done to overcome these obstacles which, as the last presentation stressed, is the key issue the Global High-Level Panel on Water and Peace must address and find strong recommendations for.

Participants discussed whether there was a lack of awareness by State actors that the principles contained in the Conventions constitute present customary law and, as such, are binding for all States. They identified a shortage of legal knowledge amongst relevant State administrations and civil service actors as a key factor. Furthermore, the lack of international pressure can explain this existing lack of awareness.

It was however stressed that, despite the fact that most of the provisions of both Conventions constitute binding customary law also to non-signatories, ratification was nonetheless desirable in order to speed up the process of implementation as well as to increase trust among States.

Participants also discussed whether ratification of any of the global water Conventions was still necessary where bilateral cooperation is already in place. Respondents argued that both types of agreements should not be presented as a dichotomy. For example, many European countries had already engaged in bilateral cooperation when they joined the UNECE Water Convention. Whereas the global Conventions provide an overall framework, bilateral agreements are tailored to specific basin needs and requirements. In addition, the UNECE Water Convention provides a system of assistance that can be of use for countries to implement provisions of IWL at basin level. This role and the relevance of global legal Conventions are often not clear to actors at the national and regional level. Participants therefore recommended putting more effort into explaining this role of IWL and the two global conventions. The ultimate objective of IWL is to promote cooperation, and the two global Conventions are an important tool to achieve this objective.

The roundtable participants also discussed the need to assist countries in implementing the principles of IWL. Often, states are not afraid of IWL principles themselves but of losing their sovereignty over negotiation processes. For example, many Latin American countries do not see the benefit of acceding to the global Conventions for fear of infringements on their sovereign rights. It is therefore necessary to better communicate the actual role of IWL as well as the existing forms of assistance such as the institutional infrastructure provided by the UNECE Water Convention.

Implementing IWL is furthermore a long-term project, raising the question as to what this means for investment horizons in transboundary water cooperation. During the discussion, it became obvious that international donors and

other funders do not take real account of this so far as they often have narrow funding targets and evaluation criteria. Participants therefore recommended devoting more efforts to exploring options for more long-term funding. As a practical measure, it was suggested to develop global guidelines which connect financing to the implementation of the two global water Conventions, e.g. similar to the existing World Bank policy guidelines for transboundary projects. Furthermore, donors could consider pooling their resources to decrease risks of long-term funding support to specific basins. Moreover, participants stressed the need for the development of concrete indicators which would allow to measure implementation of IWL.

With regard to monitoring to assess progress in implementation of the Convention, participants also stressed the role of the SDGs – and in particular SDG 6.5 (“implement integrated water resources management at all levels, including through transboundary cooperation as appropriate”) – given the existing monitoring framework for assessing the implementation of Agenda 2030.

At the end of the first session, key issues which provide potential avenues for recommendations were summarized. Accordingly, it was suggested to:

- 1) **Increase awareness** of IWL and the consolidation of the customary nature of the two global Conventions,
- 2) Develop **supplemental (soft law) instruments** around key IWL principles, including practical guidelines and procedures,
- 3) Identify **models of long-term promotion of transboundary water cooperation** (including criteria/indicators for effective cooperation), and
- 4) Engage in more effective **cooperation with non-State actors**.

4. Expanding Transboundary Water Cooperation in the Absence of Formal Ratification

Population growth, socio-economic developments and climatic changes are continuously increasing the pressures on the world’s shared watercourses. Combined with a lack of proper institutions, such developments can contribute to instability and violence. For example, in the absence of institutional arrangements for transboundary cooperation and conflict resolution, unilateral action to construct water infrastructures, such as dams, can trigger dispute between riparians about potential or actual social and environmental impacts. To manage inter-State relations and to foster cooperation among them, the two global water Conventions set out principles for managing shared waters. However, less than one third of the UN member states have ratified one or both of these global Conventions. Therefore, the question arises of how to promote the reach of the two water Conventions and the water law principles, embedded in them.

In the introductory presentation to this second session, it was argued that a lack of political incentives and mutual trust are among the key reasons why States are reluctant to ratify the two conventions. Given that non-ratification is a symptom of this lack of incentives, it may not be very promising to try to pressure countries into signing the global Conventions. Instead, external actors need to aim at changing the incentive structure and convince States of the practical benefits of cooperation while alleviating political risks.

The presentation outlined three main instruments for pursuing this aim: capacity-building, setting financial incentives/conditionality and engaging in hydro-diplomacy. Regarding the first – capacity building – it was argued that this tool can be used to “normalize” exchange, discussion, and cooperative behaviour between States that have difficult or even conflictive relations. It furthermore serves as a default strategy as it can often be used even in basins that are highly conflictive and where other entry points for engagement seem to be foreclosed.

Second, considering that many of the current inter-State disputes within internationally shared river basins are about large-scale infrastructures (such as for hydropower development), it was argued that setting the right financial incentives and conditionalities could be an important lever to ensure State adherence to IWL principles. However, it was also recognized that such infrastructures are increasingly financed by multiple private actors whose lending conditionalities do not necessarily take principles of IWL into consideration. In such cases, some form of global guideline, for example oriented along the World Commission on Dams coupled with stronger donor coordination, could provide an entry point of engagement. Having major donors agree on specific funding conditionalities could facilitate communicating and insisting on certain principles.

Third, diplomatic engagement can help find practical solutions, particularly in basins where tensions between riparians over the use and management of water resources have already emerged. Such engagement could involve

technical support as well as the option to provide safe spaces for discussion and mediation. Outside actors can additionally facilitate cooperation by offering to monitor and guarantee certain provisions in agreements.

Overall, it was argued that it is rather unlikely for a significant number of States to join either of the international water Conventions soon. At the same time, ratification of the Conventions should not be an end in itself but a means to promote the implementation of the key IWL principles. To move towards this end, the outlined instruments could provide helpful tools. The role of hydro-diplomacy is a hitherto underutilized tool whose use should be considered more systematically.

In the subsequent discussion participants of the roundtable generally agreed that the ratification of the Conventions was indeed a tool to implement key water law principles and not an objective in itself. However, participants also stressed that the legitimacy of diplomatic activities was very likely to come from IWL itself as diplomatic engagement and discussions between different parties required the baseline values and norms that IWL provides. Nonetheless, in some instances it might be strategically wise not to use the Conventions as a reference framework because and where they might be perceived to favour one party over the other.

The roundtable participants furthermore discussed the option of linking funding for water infrastructure to global water Conventions and customary IWL. This would require stronger alignment of safeguard guidelines from International Funding Institutions (IFIs) – such as the World Bank’s Safeguards Policies – with IWL principles and could also include referencing these conventions within these. In addition, donor countries could put more emphasis on implementing IWL principles within their lending policies. This would however also require stronger coordination amongst donors.

Many States perceive IWL and the global water Conventions as a set of rules that they have to adhere to once they have signed any of the global water conventions. The experts at the roundtable stressed the importance of emphasizing that IWL does not foreclose basin specific negotiations and agreements. While IWL principles are a global framework that every country is bound to, application of principles is a case specific matter. IWL merely provides a common set of norms and thereby a “common language” that aims to facilitate cooperation over shared water resources.

Within the discussion it was argued that the SDG and the Agenda 2030 – as a soft law instrument – could be used to promote and strengthen IWL principles. SDG 6 contains the aim of promoting integrated water resources management and transboundary water cooperation. In addition to this, indicators have been developed to monitor implementation. This supplementary architecture provided by the SDGs and the Agenda 2030, it was argued, should be used to further promote and implement IWL. To promote coherence between the UNECE water Convention and the SDGs, reporting template to gather information on the implementation of this Convention was revised to include information to monitor progress on transboundary cooperation under SDG 6, target 6.5 in accordance with the global indicator 6.5.2.

Finally, participants highlighted the positive role that transboundary River Basin Organizations (RBOs) can play in promoting and implementing IWL. Although most RBOs have no executive powers – and as such cannot, for instance, decide about water allocation issues, – they nonetheless provide important platforms for negotiations and are significant for coordinating and implementing regional legal and policy processes. In this context, the case of the Organisation pour la mise en Valeur du Fleuve Sénégal (OMVS), which is promoting for the ratification amongst its member States in the Senegal River Basin, was highlighted.

At the end of this session, key issues which provide potential avenues for recommendations were summarized:

- 1) Highlight the relevance of the SDGs and the potential for mutual reinforcement of the SDGs and IWL
- 2) Highlight the role of customary law in the absence of ratification
- 3) Raise awareness about the benefits of cooperation
- 4) Highlight the role of IWL as a common language, as shared concepts, facilitating progress
- 5) Explore the options for involving key financial actors and donors
- 6) Explore the options for involving River Basin Organisations

5. Expanding the Reach of International Water Law with Non-State Actors through Voluntary Mechanisms

Session III focused on the role of non-State actors in promoting the implementation of IWL and the two global water Conventions. The introductory presentation focused on the example of non-State actor involvement in the

development of the Guidelines for Sustainable Hydropower in the Danube River Basin which was initiated by the regional RBO, the International Commission for the Protection of the Danube River (ICPDR).

The increasing significance of hydropower within Europe and the Danube River basin – spurred by the need to meet European climate as well as energy targets – raises the question of social and environmental impacts of hydropower infrastructures and possible ways to avoid and mitigate these. The Danube River Basin, which is one of the larger river basins of the world that is shared by 19 riparian countries, still holds significant hydropower potential. Roughly 300 larger hydropower plants (>10 MW capacity) and 8,000 smaller plants have already significantly modified the river system. Moreover, a number of countries (in particular the Balkan riparians) are planning to increase hydropower production and the construction of new plants. While hydropower is an important tool to decrease CO₂ emissions and a flexible source of renewable energy that can help to balance load differences (as opposed to other renewables like wind or solar energy), it often comes with social and environmental costs.

This prompted the ICPDR to initiate a process to draft guidelines for the development of new hydropower structures which involved all members to the ICPDR (including non-EU members which are not bound by the European Water Framework Directive (WFD)). The development included a broad participatory process and consultation with various stakeholder groups from civil society organizations, companies and public agencies. Most recently the Guiding Principles have been included in the Danube River Basin Management Plan.

For the inclusion of public participation process in the development of the Guidelines for Sustainable Hydropower, the ICPDR could draw on previous experience. ICPDR has, for example, formally institutionalized public participation in form of an observer status provided to representatives of different stakeholder groups such as NGOs, private industries and intergovernmental organizations at the level of ICPDR expert group and plenary meetings.

The discussion following the introductory presentation started with the question why the power sector in the case of the Danube River Basin considered it worthwhile to engage in a stakeholder dialogue. It was explained that the motivation from the private sector, was to demonstrate the various benefits that can be derived from hydropower and to present arguments from a private sector perspective. Furthermore, hydropower has historically been part of the public sector, which could, possibly, explain the still high responsibility felt within this sector for public interests.

It was subsequently argued that this case of “good practice” took place in a very specific context. The strong regulatory context of the European Union (EU) and particularly the Water Framework Directive (WFD), which requires States to actively engage all interested parties in the implementation of the WFD such as the development of river basin management plans. Although the EU, therefore, seems to provide a specific context that is not directly comparable to other regions of the world, there are examples of public participation in other world regions. Similar to the ICPDR other RBOs – such as in the Cubango-Okavango or Zambezi River Basins – provide different mechanisms for engaging with public stakeholders. Such examples could be taken up by the UNECE Water Convention and be promoted in more basins.

As existing instruments of IWL – in particular the 1923 Convention relating to the Development of Hydraulic Power Affecting more than One State – have not been successful (only very few States have ratified it) it was furthermore discussed whether it might be useful to increasingly rely on non-treaty regulatory tools, such as the codes of conducts to promote IWL principles relating to hydropower development. Such a code of conduct – either in form of self-regulation or provided by an intergovernmental organization – would outline basic principles for companies to comply with in the context of hydropower development.

In this context, it was also discussed to strengthen reliance on national regulations. Activities with potential transboundary impacts often have an impact at the national level as well. Linking transboundary hydropower activities with national law, for example human rights law, could therefore be an avenue to support IWL principles. Furthermore, some countries have already introduced transboundary aspects within national law and regulations. Participants argued that it could be worthwhile to explore how to introduce the transboundary relevance into national regulations (also beyond impacts of transboundary water infrastructures).

At the end of this session, key issues and potential which provide potential avenues for recommendations were summarized. It was suggested to:

- 1) Explore options for **regional best practice** engagement with non-State actors,
- 2) Emphasize the benefits of **stakeholder engagement** (e.g. increasing social and environmental concerns) and
- 3) Demonstrate the **supportive role of the water Conventions** for the promotion of stakeholders’ participation.

6. Expanding the Reach of International Water Law with Non-State Actors through Voluntary Mechanisms

At the end of the roundtable discussions, the experts summarized and discussed potential entry points and recommendations to be considered by the High-Level Panel for Water and Peace. These recommendations span across the following seven fields of action:

1) Enhance awareness of the nature of IWL

There is a great need to highlight the relevance of IWL principles and norms as they are often misunderstood and underestimated. IWL is a multifaceted regime that has been produced by States' practice. It aims to facilitate discussion and cooperation amongst States, not to prescribe solutions. The two global Conventions consolidate, codify and clarify the broad range of customary law that has evolved from State practice. Even States that are not party to either global water Conventions are subject to customary IWL.

2) Raise Confidence in IWL among State actors and emphasize its benefits

IWL should not only be seen as a set of obligations, but as a practical tool that supports riparians in identifying solutions that will benefit everyone. IWL is much more than a set of specific rules of law, but includes institutions, principles and practices and provides a common language that enables and fosters cooperation and the ensuing benefits.

In addition, IWL offer a range of useful tools, such as institutional frameworks, RBOs or bodies like the Implementation Committee of the UNECE Water Convention that provide riparians with the tools needed to initiate constructive dialogues around their shared water resources and to come to an agreement on how to manage them in an amicable manner.

3) Develop supplemental instruments under universal, regional and basin agreements

Developing instruments such as guidelines, procedures or codes of conduct can help to ensure a common understanding of key IWL principles and terms like "benefit-sharing" or "prior notification". Such supplemental instruments can also help to prevent fragmentation of different approaches that are emerging from various sources of law, such as IWL and International Environmental Law (IEL). Developing such tools can, therefore, assist to ensure that everyone follows similar approaches and principles.

4) Promote effective engagement of non-State actors

The inclusion of non-State actors, such as civil society organizations, the private sector and the scientific community, is crucial to ensure informed, legitimate and effective implementation of key IWL principles. In many cases different forms of guidelines and other informal sources of norms have been developed by these actors. To engage with these actors and ensure coordination amongst them, various mechanisms and institutions have been developed which should be strengthened and replicated and it should be recognized that non-State actors have a role to play in promoting and implementing IWL.

5) Promote long-term planning and funding of cooperation measures)

Developing cooperative measures for the management of international water resources is a long-term project and often takes decades to be realized. The emergence of the regime under the UNECE Water Convention, as outlined during the roundtable event, has demonstrated this. It is therefore necessary, to employ models and instruments for long-term planning and financing of cooperative initiatives to ensure their effectiveness. Furthermore, identifying criteria and indicators for effective cooperation and development need to be developed to better demonstrate to international donors and other partners that the implementation of IWL principles – in the sense of reaching a meaningful impact on the ground – are happening but time consuming. Such verification mechanisms can furthermore assist in measuring progress and ultimately also to assess the effectiveness of IWL principles.

6) Coordination of IWL requirements with financing regimes

Trying to coordinate the requirements of IWL with the requirements of financing is an important precondition to ensure the implementation of IWL. Current disputes between States in international watercourses often centre around large-scale infrastructure, such as the construction of dams for hydropower generation. These infrastructures often require large amounts of external financing, which is usually provided by international funding organizations like the World Bank and, increasingly, also from the private sector. Often these institutions have their own safeguard policies and conditionalities on public consultation and environmental and social standards – which sometimes might be in line with IWL but can also conflict with these principles. Therefore, the question arises of how to best coordinate between IWL and these supplemental standards. This question requires further exploration. A first step might consist in explicitly referencing IWL in such safeguard policies. Moreover, adherence to the principles of IWL might become a “soft conditionality” for other financial support, though such an approach would need to be coordinated among major donors. Finally, in view of the political risks of cooperation and the resulting incentive structures to focus on projects at the national level, public international financial institutions may consider additional incentives for transboundary projects (e.g., separate funding windows).

7) Highlight the mutual relevance of the SDG and IWL

Trying to coordinate the requirements of While IWL supports the SDGs, in particular SDG 6.5 “implement integrated water resources management at all levels, including through transboundary cooperation as appropriate”, the SDGs themselves could prove to be a driver for the objectives of IWL and help to promote the implementation of IWL principles. The relatively high political weight of the SDGs could and should be used to enforce the recognition and implementation of IWL.

7. Draft recommendations for consideration by the Panel

We can summarize and structure the different leads for recommendations that have been identified during the Roundtable as follows.

The Global High Level Panel on Water and Peace emphasizes that IWL principles, which are of customary nature, are key for international peace and security. In order to strengthen IWL awareness and effectiveness, the Panel recommends that:

- ❖ States should promote the benefits of IWL:
 - To support peace and security;
 - To underpin the human right to water and other human rights;
 - To fulfil the SDGs and the aims of the Agenda 2030;
 - To develop benefit-sharing agreements;
 - To protect the environment and the ecosystems;
 - To optimise water management

- ❖ States should abide to the principles of IWL and promote their respect:
 - By calling for the ratification of the Global Water Conventions and for the respect of the object and purpose of these Conventions;
 - By adopting agreements on shared water resources, in particular on transboundary aquifers;
 - By supporting the adoption of supplemental instruments such as guiding documents and codes of conduct by the private sector to protect water resources and human rights;
 - By strengthening joint mechanisms and commissions as well as River Basin Organisations;
 - By supporting mechanisms to prevent water conflicts such as the Implementation Committee of the UNECE Water Convention;
 - By using diplomatic and judicial means to solve water conflicts;
 - By using water diplomacy to promote IWL in their bilateral and multilateral relations
 - By using international organisations and multilateral development banks as vehicles for the implementation of IWL principles;
 - By engaging with non-State actors such as civil society organizations, the private sector and academic institutions;
 - By engaging in cooperative measures and confidence-building measures such as technical cooperation and capacity building activities;
 - By engaging in discussions on financial incentives to promote the principles of IWL;
 - By engaging in platforms with multiple stakeholders to further the discussion on these issues.

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Annex 1

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- 1) Convention on the Protection and Use of Transboundary Watercourses and International Lakes, United Nations Economic Commission for Europe (UNECE), Helsinki, 17 March 1992 (entered into force on 6 October 1996. As of 1st March 2016, countries outside the ECE region can accede to the Convention).
- 2) Convention on the Law of the Non-Navigational Uses of International Watercourses, United Nations General Assembly, New York, 21 May 1997 (entered into force on 17 August 2014).

Excerpts

Convention on the Protection and Use of Transboundary Watercourses and International Lakes (1992)

Article 1 – Definitions

For the purposes of this Convention,

- 1) "Transboundary waters" means 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;
- 2) "Transboundary impact" means 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 interaction among these factors; they also include effects on the cultural heritage or socio-economic conditions resulting from alterations to those factors.

Part I – Provisions of relating to all parties

Article 2 – General Provisions

1. The Parties shall take all appropriate measures to prevent, control and reduce any transboundary impact.
2. The Parties shall, in particular, take all appropriate measures:
 - (a) To prevent, control and reduce pollution of waters causing or likely to cause transboundary impact;
 - (b) To ensure that transboundary waters are used with the aim of ecologically sound and rational water management, conservation of water resources and environmental protection;
 - (c) To ensure that transboundary waters are used in a reasonable and equitable way, taking into particular account their transboundary character, in the case of activities which cause or are likely to cause transboundary impact;
 - (d) To ensure conservation and, where necessary, restoration of ecosystems.
5. In taking the measures referred to in paragraphs 1 and 2 of this article, the Parties shall be guided by the following principles:
 - (a) The precautionary principle, by virtue of which action to avoid the potential transboundary impact of the release of hazardous substances shall not be postponed on the ground that scientific research has not fully proved a causal link between those substances, on the one hand, and the potential transboundary impact, on the other hand;
 - (b) The polluter-pays principle, by virtue of which costs of pollution prevention, control and reduction measures shall be borne by the polluter;
 - (c) Water resources shall be managed so that the needs of the present generation are met without compromising the ability of future generations to meet their own needs.
6. The Riparian Parties shall cooperate on the basis of equality and reciprocity, in particular through bilateral and multilateral agreements, in order to develop harmonized policies, programmes and strategies covering the relevant catchment areas, or parts thereof, aimed at the prevention, control and reduction of transboundary impact and aimed

at the protection of the environment of transboundary waters or the environment influenced by such waters, including the marine environment.

Article 3 – Prevention, control and reduction

1. To prevent, control and reduce transboundary impact, the Parties shall develop, adopt, implement and, as far as possible, render compatible relevant legal, administrative, economic, financial and technical measures, in order to ensure, inter alia, that:

- (a) The emission of pollutants is prevented, controlled and reduced at source through the application of, inter alia, low- and non-waste technology;
- (b) Transboundary waters are protected against pollution from point sources through the prior licensing of waste-water discharges by the competent national authorities, and that the authorized discharges are monitored and controlled;
- (c) Limits for waste-water discharges stated in permits are based on the best available technology for discharges of hazardous substances;
- (d) Stricter requirements, even leading to prohibition in individual cases, are imposed when the quality of the receiving water or the ecosystem so requires;
- (e) At least biological treatment or equivalent processes are applied to municipal waste water, where necessary in a step-by-step approach;
- (f) Appropriate measures are taken, such as the application of the best available technology, in order to reduce nutrient inputs from industrial and municipal sources;
- (g) Appropriate measures and best environmental practices are developed and implemented for the reduction of inputs of nutrients and hazardous substances from diffuse sources, especially where the main sources are from agriculture (guidelines for developing best environmental practices are given in annex II to this Convention);
- (h) Environmental impact assessment and other means of assessment are applied;
- (i) Sustainable water-resources management, including the application of the ecosystems approach, is promoted;
- (j) Contingency planning is developed;
- (k) Additional specific measures are taken to prevent the pollution of groundwaters;
- (l) The risk of accidental pollution is minimized.

Part II – Provisions of relating to riparian parties

Article 9 – Bilateral and Multilateral Cooperation

1. The Riparian Parties shall on the basis of equality and reciprocity enter into bilateral or multilateral agreements or other arrangements, where these do not yet exist, or adapt existing ones, where necessary to eliminate the contradictions with the basic principles of this Convention, in order to define their mutual relations and conduct regarding the prevention, control and reduction of transboundary impact. The Riparian Parties shall specify the catchment area, or part(s) thereof, subject to cooperation. These agreements or arrangements shall embrace relevant issues covered by this Convention, as well as any other issues on which the Riparian Parties may deem it necessary to cooperate.

2. The agreements or arrangements mentioned in paragraph 1 of this article shall provide for the establishment of joint bodies. The tasks of these joint bodies shall be, inter alia, and without prejudice to relevant existing agreements or arrangements, the following:

- (a) To collect, compile and evaluate data in order to identify pollution sources likely to cause transboundary impact;
- (b) To elaborate joint monitoring programmes concerning water quality and quantity;
- (c) To draw up inventories and exchange information on the pollution sources mentioned in paragraph 2 (a) of this article;
- (d) To elaborate emission limits for waste water and evaluate the effectiveness of control programmes;

(e) To elaborate joint water-quality objectives and criteria having regard to the provisions of article 3, paragraph 3 of this Convention, and to propose relevant measures for maintaining and, where necessary, improving the existing water quality;

(f) To develop concerted action programmes for the reduction of pollution loads from both point sources (e.g. municipal and industrial sources) and diffuse sources (particularly from agriculture);

(g) To establish warning and alarm procedures;

(h) 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;

(i) To promote cooperation and exchange of information on the best available technology in accordance with the provisions of article 13 of this Convention, as well as to encourage cooperation in scientific research programmes;

(j) To participate in the implementation of environmental impact assessments relating to transboundary waters, in accordance with appropriate international regulations.

4. Joint bodies according to this Convention shall invite joint bodies, established by coastal States for the protection of the marine environment directly affected by transboundary impact, to cooperate in order to harmonize their work and to prevent, control and reduce the transboundary impact.

5. Where two or more joint bodies exist in the same catchment area, they shall endeavour to coordinate their activities in order to strengthen the prevention, control and reduction of transboundary impact within that catchment area.

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.

Part III – Institutional and final provisions

Article 17 – Meeting of Parties

1. The first meeting of the Parties shall be convened no later than one year after the date of the entry into force of this Convention. Thereafter, ordinary meetings shall be held every three years, or at shorter intervals as laid down in the rules of procedure. The Parties shall hold an extraordinary meeting if they so decide in the course of an ordinary meeting or at the written request of any Party, provided that, within six months of it being communicated to all Parties, the said request is supported by at least one third of the Parties.

2. At their meetings, the Parties shall keep under continuous review the implementation of this Convention, and, with this purpose in mind, shall:

(a) Review the policies for and methodological approaches to the protection and use of transboundary waters of the Parties with a view to further improving the protection and use of transboundary waters;

(b) Exchange information regarding experience gained in concluding and implementing bilateral and multilateral agreements or other arrangements regarding the protection and use of transboundary waters to which one or more of the Parties are party;

(c) Seek, where appropriate, the services of relevant ECE bodies as well as other competent international bodies and specific committees in all aspects pertinent to the achievement of the purposes of this Convention;



- (d) At their first meeting, consider and by consensus adopt rules of procedure for their meetings;
- (e) Consider and adopt proposals for amendments to this Convention;
- (f) Consider and undertake any additional action that may be required for the achievement of the purposes of this Convention.

Article 22 – Settlement of Disputes

1. If a dispute arises between two or more Parties about the interpretation or application of this Convention, they shall seek a solution by negotiation or by any other means of dispute settlement acceptable to the parties to the dispute.
2. When signing, ratifying, accepting, approving or acceding to this Convention, or at any time thereafter, a Party may declare in writing to the Depositary that, for a dispute not resolved in accordance with paragraph 1 of this article, it accepts one or both of the following means of dispute settlement as compulsory in relation to any Party accepting the same obligation:
 - (a) Submission of the dispute to the International Court of Justice;
 - (b) Arbitration in accordance with the procedure set out in annex IV.
3. If the parties to the dispute have accepted both means of dispute settlement referred to in paragraph 2 of this article, the dispute may be submitted only to the International Court of Justice, unless the parties agree otherwise.

Convention on the Law of the Non-Navigational Uses of International Watercourses (1997)

Part I – Introduction

Article 1 – Scope of the present Convention

1. The present Convention applies to uses of international watercourses and of their waters for purposes other than navigation and to measures of protection, preservation and management related to the uses of those watercourses and their waters.
2. The uses of international watercourses for navigation is not within the scope of the present Convention except insofar as other uses affect navigation or are affected by navigation.

Article 2 – Use of terms

For the purposes of the present Convention:

- (a) “Watercourse” means a system of surface waters and groundwaters constituting by virtue of their physical relationship a unitary whole and normally flowing into a common terminus;
- (b) “International watercourse” means a watercourse, parts of which are situated in different States.

Article 3 – Watercourse agreements

1. In the absence of an agreement to the contrary, nothing in the present Convention shall affect the rights or obligations of a watercourse State arising from agreements in force for it on the date on which it became a party to the present Convention.
2. Notwithstanding the provisions of paragraph 1, parties to agreements referred to in paragraph 1 may, where necessary, consider harmonizing such agreements with the basic principles of the present Convention.
3. Watercourse States may enter into one or more agreements, hereinafter referred to as “watercourse agreements”, which apply and adjust the provisions of the present Convention to the characteristics and uses of a particular international watercourse or part thereof.

Part II – General Principles

Article 5 – Equitable and reasonable utilization and participation



1. Watercourse States shall in their respective territories utilize an international watercourse in an equitable and reasonable manner. In particular, an international watercourse shall be used and developed by watercourse States with a view to attaining optimal and sustainable utilization thereof and benefits therefrom, taking into account the interests of the watercourse States concerned, consistent with adequate protection of the watercourse.

2. Watercourse States shall participate in the use, development and protection of an international watercourse in an equitable and reasonable manner. Such participation includes both the right to utilize the watercourse and the duty to cooperate in the protection and development thereof, as provided in the present Convention.

Article 6 – Factors relevant to equitable and reasonable utilization

1. Utilization of an international watercourse in an equitable and reasonable manner within the meaning of article 5 requires taking into account all relevant factors and circumstances, including:

- (a) Geographic, hydrographic, hydrological, climatic, ecological and other factors of a natural character;
- (b) The social and economic needs of the watercourse States concerned;
- (c) The population dependent on the watercourse in each watercourse State;
- (d) The effects of the use or uses of the watercourses in one watercourse State on other watercourse States;
- (e) Existing and potential uses of the watercourse;
- (f) Conservation, protection, development and economy of use of the water resources of the watercourse and the costs of measures taken to that effect;
- (g) The availability of alternatives, of comparable value, to a particular planned or existing use.

3. The weight to be given to each factor is to be determined by its importance in comparison with that of other relevant factors. In determining what is a reasonable and equitable use, all relevant factors are to be considered together and a conclusion reached on the basis of the whole.

Article 7 – Obligation not to cause significant harm

1. Watercourse States shall, in utilizing an international watercourse in their territories, take all appropriate measures to prevent the causing of significant harm to other watercourse States.

2. Where significant harm nevertheless is caused to another watercourse State, the States whose use causes such harm shall, in the absence of agreement to such use, take all appropriate measures, having due regard for the provisions of articles 5 and 6, in consultation with the affected State, to eliminate or mitigate such harm and, where appropriate, to discuss the question of compensation.

Article 8 – General obligation to cooperate

1. Watercourse States shall cooperate on the basis of sovereign equality, territorial integrity, mutual benefit and good faith in order to attain optimal utilization and adequate protection of an international watercourse.

2. In determining the manner of such cooperation, watercourse States may consider the establishment of joint mechanisms or commissions, as deemed necessary by them, to facilitate cooperation on relevant measures and procedures in the light of experience gained through cooperation in existing joint mechanisms and commissions in various regions.

Article 10 – Relationship between different kinds of uses

1. In the absence of agreement or custom to the contrary, no use of an international watercourse enjoys inherent priority over other uses.

2. In the event of a conflict between uses of an international watercourse, it shall be resolved with reference to articles 5 to 7, with special regard being given to the requirements of vital human needs.

Part III – Planned measures

Article 11 – Information concerning planned measures

Watercourse States shall exchange information and consult each other and, if necessary, negotiate on the possible effects of planned measures on the condition of an international watercourse.

Article 12 – Notification concerning planned measures with possible adverse effects

Before a watercourse State implements or permits the implementation of planned measures which may have a significant adverse effect upon other watercourse States, it shall provide those States with timely notification thereof. Such notification shall be accompanied by available technical data and information, including the results of any environmental impact assessment, in order to enable the notified States to evaluate the possible effects of the planned measures.

Part IV – Protection, preservation and management

Article 20 – Protection and preservation of ecosystems

Watercourse States shall, individually and, where appropriate, jointly, protect and preserve the ecosystems of international watercourses.

Article 24 – Management

1. Watercourse States shall, at the request of any of them, enter into consultations concerning the management of an international watercourse, which may include the establishment of a joint management mechanism.

Part VI – Miscellaneous provisions

Article 30 – Indirect procedures

In cases where there are serious obstacles to direct contacts between watercourse States, the States concerned shall fulfil their obligations of cooperation provided for in the present Convention, including exchange of data and information, notification, communication, consultations and negotiations, through any indirect procedure accepted by them.

Article 31 – Data and information vital to national defence or security

Nothing in the present Convention obliges a watercourse State to provide data or information vital to its national defence or security. Nevertheless, that State shall cooperate in good faith with the other watercourse States with a view to providing as much information as possible under the circumstances.

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.

Article 33 – Settlement of disputes

1. In the event of a dispute between two or more parties concerning the interpretation or application of the present Convention, the parties concerned shall, in the absence of an applicable agreement between them, seek a settlement of the dispute by peaceful means in accordance with the following provisions.

2. If the parties concerned cannot reach agreement by negotiation requested by one of them, they may jointly seek the good offices of, or request mediation or conciliation by, a third party, or make use, as appropriate, of any joint watercourse institutions that may have been established by them or agree to submit the dispute to arbitration or to the International Court of Justice.

3. Subject to the operation of paragraph 10, if after six months from the time of the request for negotiations referred to in paragraph 2, the parties concerned have not been able to settle their dispute through negotiation or any other

means referred to in paragraph 2, the dispute shall be submitted, at the request of any of the parties to the dispute, to impartial fact-finding in accordance with paragraphs 4 to 9, unless the parties otherwise agree.

4. A Fact-finding Commission shall be established, composed of one member nominated by each party concerned and in addition a member not having the nationality of any of the parties concerned chosen by the nominated members who shall serve as Chairman.

5. If the members nominated by the parties are unable to agree on a Chairman within three months of the request for the establishment of the Commission, any party concerned may request the Secretary-General of the United Nations to appoint the Chairman who shall not have the nationality of any of the parties to the dispute or of any riparian State of the watercourse concerned. If one of the parties fails to nominate a member within three months of the initial request pursuant to paragraph 3, any other party concerned may request the Secretary-General of the United Nations to appoint a person who shall not have the nationality of any of the parties to the dispute or of any riparian State of the watercourse concerned. The person so appointed shall constitute a single-member Commission.

6. The Commission shall determine its own procedure.

7. The parties concerned have the obligation to provide the Commission with such information as it may require and, on request, to permit the Commission to have access to their respective territory and to inspect any facilities, plant, equipment, construction or natural feature relevant for the purpose of its inquiry.

8. The Commission shall adopt its report by a majority vote, unless it is a single-member Commission, and shall submit that report to the parties concerned setting forth its findings and the reasons therefor and such recommendations as it deems appropriate for an equitable solution of the dispute, which the parties concerned shall consider in good faith.

9. The expenses of the Commission shall be borne equally by the parties concerned.

10. When ratifying, accepting, approving or acceding to the present Convention, or at any time thereafter, a party which is not a regional economic integration organization may declare in a written instrument submitted to the depositary that, in respect of any dispute not resolved in accordance with paragraph 2, it recognizes as compulsory ipso facto, and without special agreement in relation to any party accepting the same obligation:

(a) Submission of the dispute to the International Court of Justice; and/or

(b) Arbitration by an arbitral tribunal established and operating, unless the parties to the dispute otherwise agreed, in accordance with the procedure laid down in the annex to the present Convention.