

A cure or a curse? Entry into force of the UN Watercourses Convention and the Global Opening of the UNECE Water Convention

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1. Introduction

2014 will surely be seen as a landmark year in the evolution of the international water law. On the 17th August, 17 years on from its adoption, the Convention on the Law of the Non-Navigational Uses of International Watercourse (UN Watercourses Convention) finally entered into force.¹ While entry into force of this global framework instrument is significant in itself it is not the only major event to have taken place in recent times. In parallel to the growing momentum in support of the 1997 Watercourses Convention, the UN Economic Commission for Europe's (UNECE) Convention on the Protection and Use of Transboundary Watercourses and International Lakes (1992 UNECE Water Convention) is increasing in stature.² Under the auspices of the 1992 UNECE Water Convention there have been numerous efforts to share the experiences of that Convention with States outside the UNECE region.³ However, the most notable development has been the amendment that was adopted in 2003 to allow non-UNECE member States to

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¹ Convention on the Law of the Non-navigational Uses of International Watercourses (adopted 21 May 1997, entered into force 17 August 2014), UN doc A/RES/51/229 (8 July 1997) Annex. For an overview of the parties to the UN Watercourses Convention see <https://treaties.un.org/Pages/ViewDetails.aspx?src=UNTS&tabid=2&mtsg_no=XXVII-12&chapter=27&lang=en>.

² See UNECE, *The Global Opening of the 1992 Water Convention*, <http://www.unece.org/env/water/publications/ece_mp.wat_43.html>.

³ *ibid.*



become party to it.⁴ While already in force, the amendment will become operational when all States that are party to the Convention in 2003 approve, accept or accede to it. Currently, only Ukraine, Belgium and Kazakhstan are missing from the list – with the process of approving the amendment being at the final stages within all three countries.⁵ The 1992 UNECE Water Convention is therefore set to operate at the global level, alongside the 1997 UN Watercourses Convention, in the near future.

This is not however a time to sit back and rejoice. Out of a total of 263 international rivers and lakes, only 105 have some form of cooperative management arrangement pertaining to them.⁶ While the lack of specific treaty arrangements at the regional and bilateral levels is significant in itself, UN-Water further warn that:

‘(...) existing agreements are sometimes not sufficiently effective to promote integrated water resources management due to problems at the national and local levels such as inadequate water management structures and weak capacity in countries to implement the agreements as well as shortcomings in the agreements themselves (for example, inadequate integration of aspects such as the environment, the lack of enforcement mechanisms, limited – sectoral – scope and non-inclusion of important riparian States.’⁷

These alarming observations may be contrasted with the global importance of transboundary waters. Approximately 40 percent of the world’s population live in rivers, lakes and aquifers that cross sovereign borders, and 90 percent of the world’s population live in the 148 countries that share those waters.⁸ Moreover, 21 countries lie entirely within transboundary rivers, lakes and/or aquifers.⁹ Without effective agree-

⁴ UNECE, Amendment to arts 25 and 26 of the Convention, UN Doc. ECE/MP.WAT/14 (12 January 2004), <www.unece.org/fileadmin/DAM/env/documents/2004/wat/ece.mp.wat.14.e.pdf>.

⁵ For the full list of parties to the amendment, see <https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXVII-5-b&chapter=27&lang=en>.

⁶ UN-Water, *Transboundary Waters: Sharing Benefits, Sharing Responsibilities*, <www.unwater.org/publications/publications-detail/fi/c/206479>.

⁷ *ibid.*

⁸ *ibid.*

⁹ *ibid.*

ments that foster the equitable and sustainable management of these transboundary rivers, lakes and aquifers the international community will struggle to tackle major interrelated challenges, such as regional peace and security, sustainable development, climate change adaptation and poverty alleviation.

What then is the implication of having two global water conventions operating at the global level? Will we see a scenario where each convention competes over membership, and/or leads to further fragmentation? Alternatively, do both instruments complement each other in a manner that would justify their joint promotion, implementation and development? If the answer to the latter question is yes, then how might joint co-ordination be achieved?

2. *A similar evolutionary path?*

In addressing the aforementioned questions it is important to consider how both instruments evolved.

The origins of the UN Watercourses Convention date back to 1959, when the UN General Assembly requested that the UN Secretary-General prepare a report on the 'Legal Problems Relating to the Utilisation and Use of International Rivers'.¹⁰ The report was duly submitted to the General Assembly in 1963. Then, based on the findings of the report, the General Assembly requested the International Law Commission (ILC) to take up the study of the law of non-navigational uses of international watercourses.¹¹ From 1976 to 1994 the ILC worked on the topic within its plenary session, its drafting committee and special rapporteur reports. After numerous drafts and discussions with States, the ILC submitted the Draft Articles on the Law of the Non-navigational Uses of International Watercourse, upon second reading, in 1994.¹² The submission of these draft articles marked the culmination of a extensive exercise in which the ILC surveyed *inter alia* existing treaty practice, na-

¹⁰ Legal Problems Relating to the Utilisation of International Rivers, UNGA Res 1401(XIV) (21 November 1959).

¹¹ Progressive Development and Codification of the Rules of International Law Relating to International Watercourses, UNGA Res 2669(XXV) (4 January 1971).

¹² Draft Articles on the Law of the Non-navigational Uses of International Watercourses, UNGA Res 49/52 (9 December 1994).



tional legislation, decisions of courts and tribunals, work of governmental and non-governmental organisations and writings of publicists in order to come up with a set of Draft Articles that largely reflected customary international law in the field.

Having considered the 1994 Draft Articles of the ILC, the UN General Assembly took the decision to convene its sixth committee as a working group of the whole, open to all Members States in order to, 'elaborate a framework convention on the law of the non-navigational uses of international watercourses'.¹³ The sixth committee met between October and November 1996, and between March and April in 1997, before the UN Watercourses Convention was adopted on 21st May 1997.¹⁴ Upon its adoption a vote was taken within the UN General Assembly, which recorded 103 States in favour, 38 abstentions and three votes (Burundi, China and Turkey) against.¹⁵ A number of provisions proved contentious enough to preclude universal support of the Convention in 1997 within the voting record. For instance, Turkey questioned, *inter alia*, whether the level of detail relating to the notification and consultation of planned measures was necessary in a framework instrument; and the compulsory nature of certain dispute settlement mechanisms. China also raised concerns over the compulsory nature of the disputes settlement mechanisms, and questioned the absence of any express reference to territorial sovereignty within the final text.

While the Convention was therefore not without its controversy, it was born out of a process that engaged State practice and opinion from all over the world. It could even be maintained that, given the legitimate and extensive process that was conducted under the auspices of the UN, the Convention represented the optimal agreement amongst States. Not all States agreed with all provisions but a significant majority (103 States) recognised the value of the final instrument.

The UNECE Water Convention enjoyed a smoother gestation period. The decision to negotiate an overarching framework convention under the auspices of the UNECE was taken at the Meeting on the Protection of the Environment of the Conference on Security and Coopera-

¹³ *ibid.*

¹⁴ Convention on the Law of the Non-navigational Uses of International Watercourses, UNGA Res 51/229 (21 May 1997).

¹⁵ Voting Records of 99th Plenary Meeting, UN Doc. A/51/PV.99 (21 May 1997).



tion in Europe, Sofia, Bulgaria, in 1989.¹⁶ The UNECE 'Working Party on Water Problems', which was made up of delegates from various UNECE Member States and international organisations, then met in five special sessions from 1990 to 1991 before the Convention was adopted and opened for signature in March 1992 in Helsinki, Finland.¹⁷

At first glance it might be plausible to conclude that the relatively quick period in which the UNECE Water Convention was adopted was due to there being fewer like minded States involved in its negotiation. While this is no doubt true, it should be recognised that the States negotiating the UNECE Water Convention still represented a diverse range of transboundary contexts that encompassed Europe, North America and parts of Asia. Rather than similar social, economic, environmental and political contexts, it could be argued that the expedient nature of the negotiations of the UNECE Water Convention was more to do with a history of shared practice and common understandings. More specifically, States had spent over 30 years working on a body of non-binding instruments relating to water management.¹⁸ Much of the text of the UNECE Water Convention reflected the relevant content of these non-binding instruments. At the global level, no similar process can be found. Prior to the adoption of the UN Watercourses Convention very few global meetings relating to water had taken place.¹⁹

An overview of the negotiation process for both Conventions therefore shows some similarities and differences. The UN Watercourses Convention can claim to be a product of a global process that engaged with watercourses States from across the world; whereas the UNECE Water Convention was a product of a regional process. However, the regional nature of the UNECE Water Convention should not be overes-

¹⁶ Report on Conclusions and Recommendations of the Meeting on the Protection of the Environment of the Conference on Security and Cooperation in Europe, November 1999, <www.osce.org/eea/14075>.

¹⁷ UNECE Convention on the Protection and Use of Transboundary Watercourses and International Lakes (Helsinki adopted 17 March 1992, entered into force 6 October 1996).

¹⁸ See for example <www.unece.org/env/water/publications/pub.html>.

¹⁹ The 1977 UN Water Conference in Mar del Plata is identified as the first major global meeting on water, although transboundary water management was only partly covered in this and subsequent events. See Resolution of the UN Water Conference, in Report of the UN Water Conference, Mar Del Plata (14-25 March 1977) UN Doc E.77.IIA.12.

timated. As the study of the content of the Convention will show, there is considerable flexibility within the instrument to accommodate differing contexts.

The story post-adoption also differs between both Conventions. While it took over 17 years for the UN Watercourses Convention to enter into force; the UNECE Water Convention entered into force on 6 October 1994 – four years after its adoption. The reasons given above for the short-time period in which the UNECE Water Convention was negotiated also explains the relatively expedient entry into force of the instrument. Additionally, the task was made easier in the case of the UNECE Water Convention as only acceptance, accession, approval or ratification by 16 States was required for entry into force, whereas it was 35 State in case of the UN Watercourses Convention. However, a more telling reason behind the UN Watercourses Convention's slow entry into force was that it lacked a champion to promote its benefits amongst States.²⁰ While the UNECE Water Convention could be championed at numerous water-related meetings held under the auspices of the UNECE, the wider UN system did not have a discernable champion for transboundary water issues at the time of adoption of the UN Watercourses Convention. It was therefore eventually left to non-governmental organisations to extol the virtues of membership of the UN Watercourses Convention. Accordingly, a global campaign was initiated in 2006 by WWF to advance the entry into force of the Convention. A suite of activities took place under the campaign including organising awareness-raising events at international meetings, conducting training workshops amongst interests States, targeted research to examine the benefits of the Convention generally and within specific contexts, the publication of learning materials aimed at making the text of the Convention more accessible, and direct advocacy work with target States.²¹ These activities led to a steady increase in the membership of the Watercourses Convention.

An implication of the relatively expedient adoption of the UNECE Water Convention vis-à-vis the long process endured by the UN Water-

²⁰ A Rieu-Clarke and F Rocha Loures, 'Still not in force: Should States support the 1997 UN Watercourses Convention?' (2009) 18 *Rev Eur Community Intl Environmental L* 185.

²¹ *ibid.*



courses Convention is that the former instrument has already enjoyed 20 years experience in its implementation and further development. The membership of the Convention has increased to its present total of 40 UNECE States, as well as the European Union. Additionally, the Convention has developed two additional protocols on Water and Health and Civil Liability, as well as a significant body of non-binding instruments that support its implementation. An institutional structure comprising of the Meeting of the Parties, Secretariat, and several subsidiary bodies have provided an important means by which to advance such work. This experience has also demonstrated the tangible benefits of having a multi-basin framework instrument in place for transboundary waters – most particularly in relation to fostering a common understanding of transboundary water cooperation amongst UNECE States; and supporting implementation through technical and financial assistance.

The similarities and differences in the evolution of both Conventions are important to consider when asking if having two instruments operating at a global level is a curse or a cure. For both Conventions to be viewed as working in tandem, a means must be found by which to take advantage of the 20 years experience of the UNECE Water Convention, whilst at the same time recognising the global process, and engagement of States therein, that resulted in the UN Watercourses Convention. However, before addressing this issue in further detail it is also important to compare the content of both instruments.

3. How do the texts of both Conventions differ?

It should be noted at the outset, that it is perhaps the differences between the instruments that justify the need to have both instruments operating in tandem. In other word, if such differences are not in conflict then, as we will be shown below, they can provide a fuller package of norms relating to international watercourses.

One area where the Conventions differ, relates to existing and future watercourse agreements and institutions. When dealing with existing agreements, Article 3(1) of the UN Watercourses Convention stipulates that, ‘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'.²² Watercourse States are however obliged to, 'consider harmonising such agreements with the basic principles of the present Convention'.²³ The UNECE Water Convention appears more stringent in relation to existing agreements by *obliging* riparian parties to adapt existing 'bilateral or multilateral agreement or other arrangements ... where necessary to eliminate the contradictions with the basic principles of this Convention'.²⁴

A similar distinction can be found in relation to future agreements and joint institutions. Article 3(1) of the UN Watercourses Convention stipulates that, 'Watercourse States may enter into one or more agreements ... which apply and adjust the provision of the present Convention to the characteristics and uses of a particular international watercourse or parts thereof'.²⁵ Article 8(2) of UN Watercourses Convention then provides that, 'watercourse States may consider the establishment of joint mechanisms or commissions, as deemed necessary by them'.²⁶

The UNECE Water Convention appears more stringent. Article 9(1) of the UNECE Water Convention states that, 'the Riparian Parties shall on the basis of equality and reciprocity enter into bilateral or multilateral agreements or other arrangements, where they do not exist'.²⁷ The latter Convention then goes on to provide that those agreements 'shall provide for the establishment of joint bodies'.²⁸

While the way in which each Convention treats existing and future agreements and joint institutions might appear significant in reality the differences may not be so marked. On the one hand, it could be maintained that while there may not be an explicit requirement to adjust existing agreements, or enter into new agreements, under the UN Watercourses Convention, entering into such agreements along with any accompanying institutional arrangements, may be an implicit requirement in order to implement the key substantive and procedural norms of the Convention.

²² UN Watercourses Convention (n 1).

²³ Art 3(2), UN Watercourses Convention (n 1).

²⁴ Art 9(1), UNECE Water Convention (n 17).

²⁵ UN Watercourses Convention (n 1).

²⁶ See also art 24(1), UN Watercourses Convention (n 1).

²⁷ UNECE Water Convention (n. 17).

²⁸ Art 9(2), UNECE Water Convention (n 17).



On the other hand, it could be argued that the UNECE Water Convention offers a certain level of flexibility in what might constitute a ‘bilateral or multilateral ... arrangements’; or what could be described as a ‘joint body’. Additionally, experience would tend to suggest that rather than holding States to account for any failure to establish the necessary legal and institutional arrangements, the parties under the UNECE Water Convention are much more inclined to *support* the establishment of such arrangements through technical and financial assistance.²⁹

An area where there is perhaps a more pronounced distinction between both Conventions is in relation to use of terms. Under Article 2(a) the UN Watercourses Convention defines a ‘watercourse’ as, ‘a system of surface water *and* groundwaters’.³⁰ In contrast, the UNECE Water Convention defines ‘transboundary waters’ as, ‘any surface *or* groundwaters’.³¹ This is a notable distinction between both Conventions as it means that the Watercourses Convention only covers groundwater that is connected to surface water, whereas the UNECE Water Convention covers both connected and unconnected groundwater. The ILC’s Draft Articles on Transboundary Aquifers, which were adopted in 2008, offer a potential complement to the UN Watercourses Convention, although from a scientific standpoint more needs to be done to understand the dynamics between transboundary surface water and groundwater.³²

The substantive norms contained in both Conventions are broadly similar. Essentially, each Convention supports a triad of substantive norms and principles, namely equitable and reasonable utilisation, no significant harm and the protection of ecosystems. It is rather more in appearance than content that the substantive norms differ in each Convention.

The UN Watercourses Convention places all substantive provisions under the overarching requirement that States utilise their international watercourses in an equitable and reasonable manner.³³ A non-exhaustive list of relevant factors and circumstances that must be taken

²⁹ UNECE, *The Global Opening* (n 2).

³⁰ UN Watercourses Convention (n 1).

³¹ UNECE Water Convention (n 7).

³² The Law of Transboundary Aquifers, UNGA Res 63/124 (15 January 2009).

³³ Art 5, UN Watercourses Convention (n 1).

into account when determining what is equitable and reasonable is also set out in the Convention.³⁴ Under Article 7 of the Watercourses Convention States are also obligated to take all appropriate measures, 'not to cause significant harm' to other watercourse States.³⁵ However, Article 7 implies that some harm may be tolerated if deemed to be equitable and reasonable.³⁶ Along similar lines, Article 20 of the UN Watercourses Convention obliges states to protect the ecosystem of international watercourses.³⁷ While offered as a strict obligation, it might be argued that the protection of ecosystems is an implicit requirement of ensuring international watercourses are utilized in an equitable and reasonable manner.³⁸

Rather than start with the equitable and reasonable principle, the UNECE Water Convention places the duty to, 'take all appropriate measures to prevent, control and reduce any transboundary impact', at the forefront of its substantive provisions.³⁹ The Convention then goes on to require that States, 'take all appropriate measures' to *inter alia* 'prevent, control and reduce pollution of waters causing or likely to cause transboundary impact'; 'ensure that transboundary waters are used with the aim of ecologically sound and rational water management, conservation of water resources and environment protection'; 'ensure that transboundary waters are used in a reasonable and equitable way' and 'ensure conservation and where necessary, restoration of ecosystems'. Ecosystem protection, as well as equitable and reasonable utilization, are therefore subsumed under the requirements to take 'appropriate measures'.⁴⁰

While there is a difference in the presentation of substantive provisions under both Conventions it could therefore be argued that the package of norms remains the same. Moreover, the open textured nature of each of the three key substantive norms also accommodates a complementary reading of both instruments. For example, what might

³⁴ Art 6, UN Watercourses Convention (n 1).

³⁵ UN Watercourses Convention (n 1).

³⁶ See art 7(2), UN Watercourses Convention (n 1).

³⁷ UN Watercourses Convention (n 1).

³⁸ SC McCaffrey, *The Law of International Watercourses* (2nd ed, OUP 2007), 453-461.

³⁹ Art 2(1), UNECE Water Convention (n 17).

⁴⁰ Art 2(2), UNECE Water Convention (n 17).



be deemed ‘appropriate’ may vary considerably given differing contexts, or what constitutes ‘protection’ of ecosystems will require a balancing of economic, social and environmental interests that may vary on a case-by-case basis.

In terms of the procedural norms the UNECE Water Convention, on the whole, offers more detailed guidance. An array of procedural requirements that are deemed ‘appropriate’ to address transboundary impacts include measures on the prior licensing and monitoring of wastewater discharges; the use of best available technologies for nutrient inputs from industry and municipal sources; the use of best environmental practices for diffuse pollution sources, such as agriculture; environmental impact assessment; contingency planning; monitoring programs; research and development; exchange of information; warning and alarm systems; and mutual assistance and public information.⁴¹ By contrast, the UN Watercourses Convention only provides basic procedural provisions regarding data and information exchange, emergency events and harmful conditions.⁴² However, one exception to this observation related to notification and consultation on planned measures; where the UN Watercourses Convention goes a lot further than the UNECE Water Convention in setting out detailed requirements.⁴³

One aspect of the UNECE Water Convention that differs markedly from the UN Watercourses Convention is in its institutional framework. Part III of the UNECE Water Convention provides for a Meeting of the Parties and a Secretariat, which together with additional working groups and subsidiary bodies, have proved to be an important means by which to support the promotion, implementation and development of the Convention.⁴⁴ Whilst a similar provision was proposed by Special Rapporteur McCaffrey during the drafting of the text of the Watercourses Convention this found little support and was ultimately omitted from the final text of the Convention.

Finally, the provisions on dispute settlement might be compared between the two conventions. Here, both instruments encourage States to settle any dispute by negotiation or other diplomatic means, such as

⁴¹ Art 3, UNECE Water Convention (n 17).

⁴² See for example arts 9, 27 and 28, UN Watercourses Convention (n 1).

⁴³ Part III, UN Watercourses Convention (n. 1).

⁴⁴ UNECE Water Convention (n 17).

good offices, mediation and/or conciliation. Where such means fail, supplementary options exist under both instruments to settle the dispute by arbitration or adjudication.

A discernable difference is the provision on a 'fact-finding commission' that can be found in the UN Watercourses Convention.⁴⁵ Such a commission can be established upon the request of one of the parties concerned after six months from the initial request to negotiate.⁴⁶ While establishment of the commission is compulsory, any recommendations that it might make are not binding on the parties.⁴⁷

The UNECE Water Convention does not explicitly provide for a similar commission. However, the parties have recently established an implementation committee, which has a broad remit for overseeing implementation issues, and which could be asked to take on a similar *ad hoc* role as a third-party fact-finding commission.

While the above analysis only provides a snapshot of the relationship between both Conventions, any detailed comparative analysis of the UNECE Water Convention and the UN Watercourses Convention will conclude that both instruments are complementary.⁴⁸ However, it is important to note that while complementary the Conventions are not the same. In relation to their scope, substantive and procedural norms, institutional arrangements and dispute settlement mechanisms there are notable differences. As noted previously, these differences may be seen as a positive feature of the relationship. The UN Watercourses Convention can complement the UN ECE Water Convention by adding further detail on the factors that must be taken into account when determining what is equitable and reasonable, or the procedural steps relating to notification and consultation. Conversely, the UNECE Water Convention offers more detail on the measure that might be deemed appropriate when seeking to prevent transboundary impact.

Similarly, the institutional framework under the UNECE Water

⁴⁵ Art 33(3)-(9), UN Watercourses Convention (n 1).

⁴⁶ *ibid.*

⁴⁷ *ibid.*

⁴⁸ For a more detailed analysis see A Tanzi, *The Relationship between the 1992 UNECE Convention on the Protection and Use of Transboundary Watercourses and International Lakes and the 1997 UN Convention on the Law of the Non-navigational Uses of International Watercourses* (February 2000) <www.unece.org/fileadmin/DAM/env/water/publications/documents/conventiontotal.pdf>.



Convention vis-à-vis no such framework under the UN Watercourses Convention might also be seen as a positive feature. Having two similar institutional frameworks, i.e., meeting of parties, secretariats, working groups, etc., might have led to competition and overlaps in responsibilities at the global level. Now it will be possible to consider various options that might help promote both instruments in a mutually supportive way, whilst avoiding any competition.

4. *How can any synergies be promoted?*

The choice of institutional options for promoting both the UNECE Water Convention and the UN Watercourses Convention will constitute a vital mechanism by which to ensure that both instruments are promoted, implemented and developed in a coordinated manner. Various options might be envisaged.⁴⁹

One option might see responsibility for the promotion, implementation and development of the UN Watercourses Convention being subsumed into the institutional framework of the UNECE Water Convention. A joint secretariat could take responsibility for servicing both Conventions, and act as an important co-ordinating body between the programmes, working groups and so forth that take place under both instruments. Similarly a joint or parallel meeting of the parties would offer further synergies.

A second option that could be envisaged would be the establishment of two parallel institutional frameworks with separate but co-ordinated meetings of the parties, work programmes, working bodies, secretariats, and so forth. A benefit of such an approach would be that the new framework could be specifically tailored to the needs and interests of the parties to the UN Watercourses Convention, whilst also sharing membership with the UNECE Water Convention. Coordination could be fostered between both institutional frameworks through joint programmes or joint working groups. The overlap in membership

⁴⁹ For a more detailed discussion of various options see A Rieu-Clarke and R Kinna, 'Can Two Global UN Water Conventions Effectively Co-exist? Making the Case for a "Package Approach" to Support Institutional Co-ordination' (2014) 23 Rev Eur Comparative Intl Environmental L 15-31.

would also encourage a strong dialogue between both institutional arrangements. However, a potential risk in such a scenario might be the time it takes to establish a new institutional framework. Significant ‘downtime’ may be sacrificed while States negotiated the form that any institutional arrangement might take.

A third option might be to take the institutional arrangements that currently exist as a starting point. The contracting States to the UN Watercourses Convention could therefore favour informal arrangements for the promotion and implementation of that instrument. An advantage of this option would be that the time and resources required to secure a formal amendment to the UN Watercourses Convention would be avoided in the short term, allowing focus to remain on the promotion and education of other watercourse States on the benefits of both instruments, and securing their widespread support amongst the international community. The lack of formal arrangements for the UN Watercourses Convention would not preclude informal arrangements being put in place by individual or groups of parties, as well as NGOs to promote the adoption and implementation of the Convention in the short term. Through time, and if deemed necessary, such an informal platform could evolve into a more formal mechanism for implementing the UN Watercourses Convention.

5. Conclusion

The potential synergies between the UN Watercourses Convention and the UNECE Water Convention are plain to see. It is therefore imperative that both Conventions are promoted, implemented and developed in tandem. Such an approach will provide for a fuller package of norms at the global level, and also ensure that the legitimacy of both instruments is upheld.

It is possible to identify a series of options that could secure such co-ordination. These options are not far removed from what already happens within other treaty regimes. While having two *global* conventions covering the same topic area is perhaps unusual, there are numerous instances where synergies between complementary Conventions have been institutionalised. One example can be seen in the case of



three ‘Chemicals Conventions’, which have increasingly shared an institutional framework for their joint implementation and development.⁵⁰

In the case of the two Watercourses Conventions joint co-ordination is imperative. The current fragmented architecture for trans-boundary water management must be strengthened, and both Conventions can play an important role in supplementing what takes place at the regional and bi-lateral level, whilst also providing a voice for trans-boundary water issues on the global stage. An option must be found that allows the international community to capitalise on the 20 years of experience in the implementation of the UNECE Water Convention. Non-UNECE States should be able to take full advantage the detailed text and accompanying recommendations, guidelines and model provisions found under the UNECE Water Convention. Conversely, a package approach must allow for the complementary aspects of the UN Watercourses Convention to benefit the global community, and sufficient respect and recognition be given to the lengthy process by which UN member States negotiated the instrument.

⁵⁰ KN Scott, ‘International Environmental Governance: Managing Fragmentation through Institutional Coordination’ (2011) 12 Melbourne J Intl L (2011), 1.

