Comparing the 1992 UNECE Helsinki Water Convention with the 1997 UN New York Convention on international watercourse: harmonization over conflict

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1. *Introducing a comparative analysis*

The two Conventions under consideration have raised the question of their mutual compatibility ever since the adoption of the later one, given their basically identical material scope. From a systemic standpoint, the reason for elaborating the New York Convention (NYC) further to the Helsinki Convention (HC) could be found in the originally regional pan-European and most stringent normative standards of the latter Convention, while the former was meant to codify at the global level the minimum core standards of international water law. Given those features, combined with the prospect at the time of adoption of the NYC that it would not enter into force any time soon, if at all, would suggest that a comparative analysis of the two instruments would be useful from a merely customary international law perspective. In that respect, comparison between the two instruments would aim at assessing their mutual compatibility with a view to verifying the possibility of an harmonized process of consolidation of the general rules of the game. The above approach would be buttressed at that time by a *dictum* of the International Court of Justice (ICJ), in the *Gabcikovo-Nagymaros* case, relying on the authority of the NYC – only four months after its adoption, hence, long before the prospect of its entry into force – as evidentiary of the custom-

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ary equitable and reasonable utilisation principle, irrespective of the entry into force of that Convention.[1] While, the importance of analysis from a customary law angle international law remains intact, particularly for States that will not become parties to these Conventions, the recent entry into force of the NYC[2] – together with the entry into force of the 2003 amendments to the HC allowing for global participation[3] – renders all the more important that comparison be considered also from a treaty law point of view. This approach would be of practical assistance to states that would intend to ratify both Conventions in point, or even only one of them.

The relationship of compatibility that emerges from comparison under the customary law standpoint enhances synergic means of treaty interpretation, such as the one set out under Article 31(3)(c) of the Vienna Convention on the Law of Treaties whereby, '[t]here shall be taken into account, together with the context [...] any relevant rules of international law applicable in the relations between the parties'.

The basic coincidence between the two Conventions with regard to their scope is matched with minor differences as to their contents. Indeed, one may detect language suggesting that the primary focus of the HC is on water quality issues, while the NYC would be more concerned with problems of apportionment of water. However, it is arguable that the difference between the two instruments is more one of emphasis than one leading to incompatibility. This is corroborated by the physical interdependence between water quantity and water quality issues, whereby any regulation addressing either of the two aspects would inevitably affect the other one. The fact remains that the HC was conceived as a multilateral environmental agreement (MEA), while the NYC, not so – like none of the ILC outcomes, so far – being primarily geared towards the regulation of competing uses of international watercourses. Apart from an issue of labelling, the difference lies in the fact a MEA is conceived as

[1] *Case concerning the Gabcikovo-Nagymaros Project (Hungary v Slovakia)* (Merits) [1997] ICJ Rep 7, para 85.

[2] 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.

[3] UNECE, Amendment to arts 25 and 26 of the Convention, UN Doc. ECE/MP.WAT/14 (12 January 2004).

a normative instrument supplemented by the institutional support revolving around the Meeting of the Parties and geared towards assistance to compliance more than holding legally responsible non-complying parties – safe for the residual applicability of adjudicative means of dispute settlement, when available – whereas other multilateral treaties set out legal rules whose non-compliance may vindicated only through bilateral diplomatic or adjudicative means of dispute settlement, where available.

As shown below, the above did not prevent the NYC from significantly addressing issues concerning the protection of the environment. Indeed, Article 1(1), in enunciating its scope, expressly indicates 'measures of protection, preservation and management related to the uses of [the] watercourses and their waters' next to 'non-navigational uses'. This provision provides the basis for the structural linkage between the core principles of equitable utilization and no-harm (Articles 5-7), on the one hand, and water quality issues – also encompassed in Articles 5-7 and further specified in Part IV, on protection, preservation and management – on the other. That is also to say that Part IV of the NYC can be deemed to address also to questions of water quantity, i.e., apportionment, while, conversely, the rules on equitable utilization and no-harm also cover problems of water quality.

The present comment will start by addressing the respective scope of the two conventions. Consideration will follow of the substantive principles of international water law as codified in each convention: the equitable utilization principle and the no-harm rule. Attention will then focus on the different approaches followed by each of the instruments with respect to the general obligation of cooperation as the catalyst for the case-specific interpretation and application of the substantive principles. Finally, the comparison between the two conventions will be considered in relation to their shear treaty lay dimension, i.e. for the purposes of their applicability to states that become parties to both instruments. Such an analysis will show that the complementarity between the two conventions allows them to fall perfectly within the *harmonization principle* advocated by the International Law Commission (ILC) in its study on the issue of

'fragmentation' of international law. According to that study, 'when several norms bear on a single issue they should, to the extent possible, be interpreted so as to give rise to a single set of compatible obligations'.[4]

2. *Physical scope*

This section identifies the geographical, hydrological and geological entities falling within the reach of each convention, with special regard to a) the areas on which activities are carried out that are subject to the evaluation as to whether they are equitable and reasonable, or may cause transboundary impact; and b) those areas and physical entities that may be adversely affected by activities carried out outside them.

Article 2(a) of the NYC defines its hydrological and geographical scope with the term 'watercourse', intended as 'a system of surface waters and groundwaters constituting by virtue of their physical relationship a unitary whole and normally flowing into a common terminus'. This focus on the watercourse and its waters may seem at odds with the outright adoption of the ecosystemic approach by the HC under its Article 1(2). However, the watercourse system terminological approach under the NYC goes far beyond the traditional definition of watercourse limited to the main arm of the river, in that it encompasses all tributaries, lakes, aquifers and other hydrological components connected to a major internationally shared river.[5] More importantly, from a contextual interpretation of the term 'watercourse' in conjunction with other relevant provisions of the NYC, one may well argue that the drainage basin area falls within the purview of its rules, while the drainage basin area can come into play as the area on which the activity causing harm is carried out, or as the area affected by activities carried out in a neighbouring country.

[4] ILC, 'Report on its 58th Session' (1 May-9 Jun & 3 Jul-11 Aug 2006) UN Doc A/61/10 (2006) 408 (hereinafter Report on Fragmentation).

[5] As it encompasses 'a number of different components through which water flows, both on and under the surface of the land … [including] rivers, lakes, aquifers, glaciers, reservoirs and canals'. ILC, 'Draft Articles on the Law of the Non-Navigational Uses of International Watercourses and Commentaries thereto and Resolution on Transboundary Confined Groundwater' in ILC, 'Report on the Work of its 46th Session' (2 May-22 July 1994) UN Doc A/49/10 (1994) 90 (hereinafter 1994 ILC Report).

Under Article 20 of the NYC, in particular, states must protect and preserve the ecosystems of international watercourses; Article 5(2), on equitable utilization, refers Part IV when requiring states to utilize international watercourses in a manner 'consistent with their adequate protection'. Moreover, Article 7 incorporates a duty of prevention of significant transboundary harm resulting from the uses of an international watercourse. Such harm may include detrimental effects to the watercourse itself or to the larger river basin area. Along the same lines, Article 21(2) requires states to 'prevent, reduce and control the pollution of an international watercourse that may cause significant harm to other watercourse States or to their environment'.

The above corroborates the argument that the scope of both conventions under review goes beyond the concept of a 'watercourse' in that they also aim to prevent: *a*) harm to the water of a watercourse caused by activities that may take place outside the actual watercourse, provided a linkage of interdependence may be established between the aquatic ecosystem and the environment which is primarily affected, or on which the activity has been carried out; and *b*) transboundary harm caused by uses of the watercourse to elements of the environment different from the water of the watercourse.[6]

2.1. *Groundwater*

The inclusion of groundwater within the scope of the HC is beyond question. In Article 1(1), the Convention defines 'transboundary waters' as 'any surface or groundwaters which mark, cross or are located on boundaries between two or more States'. According to this definition – differently from the NYC, as we shall see below – the HC addresses fossil aquifers, in addition to groundwater interacting, directly or indirectly, with transboundary surface waters. Hence, the principles and provisions of the HC applicable to transboundary surface water also apply to groundwater systems, regardless of whether these are components of an international watercourse or not.

[6] Art 1(2) of the HC goes so far as to specify that '[s]uch 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'.

In turn, under Article 2(a) of the NYC, for groundwaters to be considered within its purview, they have to be connected with surface waters so as to constitute a 'unitary whole'.[7] Accordingly, unrelated groundwaters, even if intersected by a boundary, would fall beyond the reach of the Convention. Be that as it may, in 2002, the ILC started anew its study of this topic and brought it to completion in 2008 with the adoption of the Draft Articles on the Law of Transboundary Aquifers.[8]

The HC 6th MoP of 2012 adopted the *Model provisions on transboundary groundwaters* drawing special attention to the importance of cooperation on groundwater, hence, complementing the actual text of the HC.[9] Such a development marks an important instance of implementation of the 2008 ILC Draft Articles on the Law of Transboundary Aquifers in itself representing indirectly a soft-law development of the NYC.

3. *Substantive principles*

Articles 5-7 of the NYC, on the equitable utilization principle and the no-harm rule, are the result of a compromise to resolve a mostly symbolic and rhetorical debate on whether the former has priority over the latter, or vice-versa. The debate has continued at the academic level and, while some scholars argue that the NYC gives priority to equitable and reasonable utilization,[10] it is the view of the present writer that the great merit

[7] As per the ILC's commentary to draft art 2(b) of the 1994 ILC Draft Articles, '[i]t ... follows from the unity of the system that the term "watercourse" does not include "confined" groundwater, i.e., which is unrelated to any surface water'. 1994 ILC Report (n 5) 201.

[8] See ILC, 'Draft Articles on the Law of Transboundary Aquifers, with Commentaries' in ILC, 'Report on the Work of its 63rd Session' (5 May-6 June & 7 July-8 August 2008) UN Doc A/63/10 (2008) 19. While completing a second reading its draft articles, the ILC adopted a resolution inviting states to apply to groundwaters the same principles set forth in the articles. It also recommended 'States to consider entering into agreements with the other State or States in which the confined transboundary groundwater is located', and 'that, in the event of any dispute involving transboundary confined groundwater, the States concerned should consider resolving such a dispute in accordance with the provisions of article 33 of the draft articles, or in such manner as may be agreed upon'. 1994 ILC Report (n 5) 326.

[9] UN doc ECE/MP.WAT/WG.1/2012/L.3 (19 June 2012).

[10] See, amongst others, AE Utton, 'Which Rule Should Prevail in International Water Disputes: That of Reasonableness or that of No Harm?' (1996) 16 Natural Resources

of that Convention has been precisely that of having carefully crafted the provisions codifying the two principles so as to place them on an equal footing. This would produce the fundamental advantages from the legal and diplomatic viewpoint already stressed elsewhere.[11]

The HC may seem at first to have followed a different approach. Article 2(1), devoted to the 'General Provisions' of that Convention enunciates at the outset the no-harm rule providing that '[t]he Parties shall take all appropriate measures to prevent, control and reduce any transboundary impact', Article 2(2)(c) refers to the equitable utilization principle within the context of the harm prevention.

It is the view of the present writer that the above provisions of the HC, rather than establishing priority between rules, corroborate the idea of one complex substantive customary normative setting with respect to which both substantive principles in point are jointly integral part, being totally entangled with each other. This water law substantive normative setting appears to have been expressed in more concise terms in the HC than in the NYC. However, the former provides more stringent guidelines for states to adopt individually and to adapt concretely to a specific watercourse in cooperation with their co-riparians. Such guidelines are more extensive and more detailed than those set out in the NYC, giving clearer substance to the general principles at issue. On account of the integration of the two general principles in point into one normative setting, the concrete guidelines for the prevention of transboundary impact may well be taken to serve also for the determination on a case by case basis of the equitable and reasonable utilization of an international watercourse. To this end, the two conventions under review complement each other.

The no-harm rule is set out in terms of an obligation of due diligence[12] under both conventions. While Article 7 of the NYC does not expressly provide clues for the identification of 'all the appropriate measures' of

Journal 638; SP Subedi, 'Resolution of International Water Disputes: Challenges for the 21st Century' in Permanent Court of Arbitration International Bureau, *Resolution of International Water Disputes: Papers Emanating from the Sixth PCA International Law Seminar* (Kluwer Law International 2003) 33.

[11] A Tanzi, M Arcari, *The UN Convention on the Law of International Watercourses: A Framework for Sharing* (Kluwer Law International 2001) 172 ff.

[12] See generally, RP Barnidge, 'The Due Diligence Principle under International Law' (2006) 8 Intl Community L Rev 81-121.

prevention, the HC does so. This is one of the many cases in which the latter Convention can be said to supplement the former. The preparatory works of the NYC offer some ground for this interpretative approach. Indeed, the ILC had indicated to have deduced the due diligence obligation of prevention 'as an objective standard ... from treaties governing the utilization of international watercourses'.[13] This reasoning is furthered by the fact that the wording of Article 7(1) of the NYC largely coincides with that of Article 2(1) of the HC.

Accordingly, the concrete determination of 'all appropriate measures' to be taken in any given case, i.e., the due diligence standard only abstractly announced by Article 7(1) of the NYC, should be made in the light of the more specific guiding principles contained in the HC. To this end, special regard should be given to the ecostandards spelt out in the HC consisting of the 'best available technology'[14] and the 'best environmental practices',[15] as well as to the 'previous environmental impact assessment' and the 'precautionary principle'.

Here, again, a complementary role with respect to the NYC can be played by the HC. The latter spells out in Article 9 the obligation for coriparians to enter into 'agreements or arrangements' for the establishment of joint bodies whose various tasks include '[t]hat to elaborate joint water-quality objectives and criteria'. Its Appendix III provides a number of guidelines to that end. In its turn, Article 21(3) of the NYC requires watercourse states to 'consult with a view to arriving at mutually agreeable measures and methods to prevent, reduce and control pollution of an international watercourse, such as [s]etting joint water quality objectives and criteria'.

[13] See 1994 ILC Report (n 5) 237.

[14] See art 3(1)(f), which includes 'the application of the best available technology' among the '[a]ppropriate measures ... to reduce nutrient inputs from industrial and municipal sources' as a specification of the obligation of prevention, control and reduction. See also Annex I, on the definition of best available technology.

[15] See art 3(1)(g), which provides for the development and implementation of 'appropriate measures and best environmental practices ... for the reduction of inputs of nutrients and hazardous substances from diffuse sources, especially where the main sources are from agriculture'. See also Annex II, entitled 'Guidelines for Developing Best Environmental Practices'.

4. *Cooperation*

The main difference between the two conventions bears on the way each of them addresses the issue of cooperation. The HC supplements the general obligation of cooperation by *requiring* watercourse states to enter into agreements setting up joint bodies, and by providing a detailed set of functions and parameters for the operation of such bodies. Under the same Water Convention, cooperation is centred around the institutional setting of the MoP and its permanent subsidiary bodies which may assist parties in the implementation of the Convention. Neither of those features are present in the NYC. Article 8(2) of the latter simply indicates that 'watercourse States may *consider* the establishment of joint mechanisms or commissions' as a means of cooperation. The provision in point has thus no normative force. The same applies to Article 24 of the NYC, which refers to the possibility of establishing joint mechanisms for the management of an international watercourse.

The above does not prevent cooperation from being also an essential feature of the NYC. Here, again, cooperation is fully integrated within the equitable utilization principle and the no-harm rule, as codified under Articles 5-7. Cooperation is also reflected and specified in Article 9, on exchange of data and information; in Part III, on notification, consultation and negotiation concerning planned measures; in most of Part IV, on protection, preservation and management; in Part V, on harmful conditions and emergency situations; in Article 30, on indirect procedures; as well as in Article 33, on dispute settlement.

4.1. *Procedural obligations*

The NYC provides a more extensive set of procedural obligations than the HC, particularly on notification and consultation. This appears to be the case because such functions under the latter Convention are, to a large extent, expected to be performed by and within the joint water bodies which the Convention in question provides as compulsory.

5. *The applicability of the two conventions to states that are parties to both under treaty law*

It is arguable that the compatibility between the two conventions under review may operate in terms of mutual complementarity. Those provisions that, either in one, or the other, Convention, respectively, provide for more detailed rules, offer normative elements complementing the guideline and the prescriptive function of those in the other convention that are less stringent and/or detailed. It has been shown that, more often than not, it is the HC that offers more complementary guidance for the application and implementation of the NYC, with special regard to harm prevention standards, with the exception of some procedural rules, especially those on planned measure.

Based on the above conclusions, this section briefly considers how the two conventions would apply to states that become parties to both instruments. In that regard, the VCLT confirms that two or more treaties on the same subject matter may be applicable at the same time between the same parties to such treaties, provided there is mutual compatibility between their provisions.[16] This is so under Article 30(3)[17] on the application of successive treaties relating to the same subject matter, as well as under Article 59(1)(b)[18] on the termination or suspension of the operation of a treaty implied by the conclusion of a later treaty.

One would enquire about the legal situation for the future states parties to both conventions deriving from the few cases of difference between their respective provisions bearing on the same matter. One would

[16] See generally, E Rocounas, 'Engagements Parallèles et Contradictoires' (1987-VI) 206 Recueil des Cours de l'Académie de Droit International 9; W Czaplinsky, G Danilenko, 'Conflicts of Norms in International Law' (1990) 21 Netherlands Yb Intl L 29; JB Mus, 'Conflicts between Treaties in International Law' (1998) 45 Netherlands Intl L Rev 208; E Vranes, 'Lex Superior, Lex Specialis, Lex Posterior: Zur Rechtsnatur der "Konfliktlösungsregeln"' (2005) 65 ZAöRV 391. See also Report on Fragmentation (n 4).

[17] Art 30(3) reads: '[w]hen all the parties to the earlier treaty are parties also to the later treaty but the earlier treaty is not terminated or suspended in operation under article 59, the earlier treaty applies only to the extent that its provisions are compatible with those of the later treaty'.

[18] Para 1(b) reads: '[a] treaty shall be considered as terminated if all the parties to it conclude a later treaty relating to the same subject-matter and: ... the provisions of the later treaty are so far incompatible with those of the earlier one that the two treaties are not capable of being applied at the same time'.

argue that the more specific and articulated provisions of the earlier convention – usually those the HC – would not be derogated from the more general ones, or less stringent, contained in the later Convention, i.e. the NYC. Articles 30 and 59 of the Vienna Convention uphold the principle *lex posterior derogat priori* with regard to conflicting provisions contained in two treaties on the same subject matter as between the parties to both treaties. However, let alone the fact that, as repeatedly stated, there is no conflict between provisions on the same subject-matter of the two Convention, even where they differ, the case law of the ICJ gives prevalence to the principle of the *lex specialis* over that of the *lex posterior*. Moreover, Articles 30 and 59 of the VCLT leave the parties to international treaties free to regulate, on a case by case basis, the legal effects of such treaties between the parties with respect to pre-existing or future treaties on the same subject matter.

This contractual freedom has been exercised by the drafters of both conventions in a way that rules out plain derogation of the provisions of the earlier convention by the latter. This allows technically for complementary interpretation and application of the two conventions. Article 9(1) of the HC provides, not only for the possibility, but for the parties' obligation to enter into bilateral, or multilateral, watercourse agreements setting out more specific rules, without, however, deviating from the 'mother' convention. This provides for the applicability to the parties of the HC that become parties also to the NYC of the few rules contained in the latter that provide for more detailed or stringent standards. At the same time, by implication, the above HC provision rules out any derogatory effect on the rules of the HC of the less stringent or detailed rules contained in the NYC.

The above should be combined with the relevant rules on the issue contained in the NYC. The key provision is to be found in Article 3(1), according to which '[i]n 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'. This provision would clearly preserve the normative force of the HC for those of its parties that would ratify also the NYC. At the same time, reference to the admissibility of 'an agreement to the contrary' contained in Article 3(1) of the NYC, in combination with Article 9(1) of the HC, would ensure the application

to the parties to both conventions under consideration of those provisions of the NYC that would be more specific than those in the HC, but in line with its basic principles, such as the rules on notification and consultation.

6. *Concluding Remarks*

6.1. *On the normative complementarity between the two Conventions*

The relationship between most of the provisions of the two conventions under review is exemplary of what the ILC defined in its work on the fragmentation of international law a *relationship of interpretation* – as opposed to one *of conflict* – whereby 'one norm assists in the interpretation of another […] for example as an application, clarification, updating, or modification of the latter. In such situation, both norms are applied in conjunction'.[19]

A practical example and an authoritative intergovernmental confirmation of the above was given in 2009 with the adoption of the *Guide to Implementing the [Helsinki] Convention* in which the explanation of many of its provisions largely relied on the rules of the NYC.[20] In line with that and on the basis of the experience developed so far, the promotion of the HC – e.g. in Central Asia, or in Latin America – has been conducted within the framework of the minimum standards of international water law as evidenced also by the NYC.

In sum, research has shown that, where there is no full coincidence between the provisions of the two conventions under review, there is no conflict between them. Those of the HC are generally more stringent than those of the NYC. On the one hand, the HC sets out more precise guidelines and advanced standards of conduct for the prevention of transboundary impact. On the other, more guidance may be inferred from the NYC on the legal consequences of harm occurred despite appropriate due diligence measures having been taken. Also, concerning

[19] Report on Fragmentation (n 4) para 2.
[20] UN doc ECE/MP.WAT/2009/L.2 (31 August 2009).

the procedural rules on cooperation, the HC places special emphasis on the mandatory character of institutional cooperation, which is only hortatory under the NYC. This explains the greater level of detail in the procedural rules applicable at the bilateral level, as they have been codified in the latter convention.

From the standpoint of treaty law, it has been shown that, on the basis of Article 3(1) of the NYC, whatever the doubts as to the compatibility between specific provisions of the two conventions, the *lex posterior derogat priori* rule would not operate invalidating the HC, not even partly, due to subsequent ratification, acceptance, approval or accession to the NYC. It is only natural that a negotiation carried out at the universal level would yield to common denominators lower than those that may be agreed upon in a less heterogeneous regional context, such as that of the UNECE. At the same time, one should not underestimate the significant discrepancies existing at the time of the negotiation of the HC in the level of development in the pan-European region between Western European Countries and those with economies in transition.

It has been stressed above that the treaty law perspective of the relationship between the two conventions has gained special relevance now that the NYC has entered into force in coincidence with the entry into force of the amendments to the HC that would open accession to it by non-UNECE countries.

6.2. *On the different normative slants of the two instruments: a problem of appropriateness*

As already stressed in the introductory remarks, the HC was conceived from the outset as a MEA, proper, whereas the environmental slant in the NYC was far from undisputed during its *travaux*, even though its environmental law relevance is beyond doubt.

On the one hand, the NYC appears as a sound 'legal' text like most, if not all, of the instruments produced on the basis of the ILC work. Indeed, it is arguable that it consolidates the minimum standards of the customary international regulatory setting on international watercourses. This is corroborated by the ICJ referring to it as an authoritative piece of evidence of customary international law only four months after its adoption, hence, long before any prospect for its entry into force. The 'regular

legal' nature of this instrument renders it suitable for providing: *a*) a general framework for guidance for law-abiding states individually, or when negotiating water agreements; *b*) a basis for bilateral diplomatic claims in case of alleged breaches of its obligations; *c*) legal grounds for claims before international courts or arbitral tribunals.

On the other hand, the HC's main feature and added value with respect to a shear restatement of customary international water law lies in its being a stringent, but flexible, normative setting geared towards institutional cooperation, as well as technical, scientific, legal and administrative assistance within the framework of the MoP, its permanent subsidiary bodies – from the WG on IWRM – and the joint water bodies. That is a normative setting where conflicts of interests and differences are best handled through dispute-prevention and management within the above institutional framework, including within the newly established Implementation Committee.

6.3. *On the institutional support*

The idea has been recently voiced from various quarters of the establishment of an institutional setting that would support the NYC similarly to the one supporting the HC. One first obstacle standing in the way would lie on the substantive normative appropriateness of such an idea. Namely, considering that the NYC is not a MEA, characterized by detailed and, at the same time, flexible and evolving scientific ecostandards, water quality criteria, best practices etc., the tasks of the would-be institutional setting would be quite daunting. On the one hand, it would benefit little specific environmental regulatory basis and guidance emerging from the text of the NYC. On the other, it would be quite difficult to imagine states parties to the NYC being willing and happy to receive institutional assistance on the interpretation and application of rules, such as those on the factors for the equitable and reasonable utilization of a watercourse, for example, on 'the social and economic needs of the watercourse States concerned'.

In policy terms, against the aim of promoting the minimum standards of international water law and cooperation as codified in the NYC, an effort aimed at adding an institutional structure to the normative setting would risk to be perceived by a number of potential State parties as an

unacceptable diplomatic constraint, as it would be that of becoming accountable to the social scrutiny of a meeting of the Parties. The 'lightness' of Article 8(2) of the NYC, added at the last moments of the negotiations, inviting in most hortatory terms parties to cooperate through joint water bodies is no wonder. Those states who were prepared to perceive the advantages of institutional cooperation could promote bilateral or basin joint water bodies, or directly accede to the HC, though avoiding to provide a disincentive for others who might otherwise adhere to the minimum standards under the NYC.

Still on the institutional side, one would find it consistent with the above reasoning if, rather than considering prematurely the establishment of new global institutional settings, a middle ground formula between the global and regional dimensions could be pragmatically pursued towards a light institutional, non-political, assistance on a piecemeal basis. Such a formula could consist of gradually associating and sharing the experience and operative capacity of the UNECE on a regional basis with the other UN Regional Commissions. A similar process – at this stage alternative to the establishment of a meeting of the Parties which might offer the pros and cons of social accountability – could be supported and coordinated by a light secretariat, possibly coming from an existing international institution.