

# The Contribution of the UNECE Water Regime to Transboundary Cooperation in the Danube River Basin

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## 1 Introduction

The UNECE, which was established to support international cooperation on a broad spectrum of issues within the divergent political and economic contexts of Eastern and Western Europe, has addressed transboundary water cooperation in the Danube river basin since 1948 – just one year after the UNECE itself was established.<sup>1</sup> The Danube is Europe's most international river basin and second longest flowing nearly 3,000 kilometres through 10 countries and with a catchment area of 817,000 km<sup>2</sup> bringing the total number of basin states to 19.<sup>2</sup> The diverse legal, economic, social and environmental conditions in the countries through which the Danube flows provides a challenging context for the balancing of environmental protection and economic development. Priorities in highly industrialized and wealthier countries include issues such as maintaining existing hydropower facilities and flood control (Austria and Germany), whereas Romania, which is a very water scarce country, relies heavily on constant water flow for domestic supply.<sup>3</sup> Further downstream,

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1 See V. Legendijk, 'Divided Development: Post-war Ideas on River Utilization and Their Influence on the Development of the Danube', *The International History Review*. DOI: 10.1080/07075332.2013.859165.

2 Section 1.2, Danube River Basin District Management Plan (DRBP) (adopted 10 December 2009), <<http://www.icpdr.org/main/publications/danube-river-basin-management-plan>> accessed 1 March 2014.

3 Romania has only 1,700 m<sup>3</sup> /capita/year (ICPDR, Danube Facts and Figures: Romania (ICPDR, 2006) <<http://www.icpdr.org/main/>> accessed 12 February 2014. For general discussion on the trade-offs between different uses in the Danube see Schmeier S., *Governing International Watercourses: River Basin Organizations and the Sustainable Governance of Internationally Shared Rivers and Lakes* (Routledge, 2013) at 171.

■ As per BTS style, running title should not exceed 60 characters.

countries such as Ukraine utilize the water for waste disposal and industrial cooling which is an example of the problem of pollution in the Danube.<sup>4</sup> Managing the waters of the Danube thus presents a fascinating challenge of how seemingly incompatible uses must be balanced and prioritized to work towards achieving sustainable and equitable use and protection of this transboundary river. The governance framework for the Danube River Basin has evolved within a pan-European and European legal and policy framework which is already highly advanced in terms of regional cooperation and integration on water and water-related issues. This chapter explores the history of UNECE engagement in the Danube with a strong focus on the contribution of the UNECE water regime to basin cooperation in respect of non-navigational transboundary water issues.<sup>5</sup> The analysis focuses on the period since the inception of the UNECE, until the formation of the Convention on Cooperation for the Protection and Sustainable Use of the Danube River (DRPC),<sup>6</sup> and also includes some observation on subsequent contemporary cooperation. The European Union (EU) also plays a fundamental and dominant role in the Danube Basin. The extent of this role is beyond the scope of this short analysis. However, some observations are made regarding the contribution of EU water law to transboundary cooperation in the Danube.

## 2 The Contribution of the UNECE Water Regime to Basin Level Cooperation

This section introduces the UNECE Water Convention and other UNECE water-related hard and soft law instruments which together form the UNECE water regime.<sup>7</sup> Following this is a brief overview of how the international legal

4 N. Hagemann et al., 'The Role of Institutional and Legal Constraints on River Water Quality Monitoring in Ukraine', *Environmental Earth Sciences* (2014). DOI 10.1007/s12665-014-3307-5.

5 For an overview of legal instruments concerning cooperation over navigational water issues on the Danube see Anton F. Zeilinger, 'Danube River', *Max Planck Encyclopedia of Public International Law* (OUP, 2009).

6 Convention on Cooperation for the Protection and Sustainable Use of the Danube River Convention (adopted 29 June 1994, entered into force 22 October 1998) (Hereafter, 'Danube Convention').

7 The definition of a 'regime' employed in this chapter follows a combined international law and international relations literature approach to understanding regimes as 'sets of norms, decision-making procedures and organisations coalescing around functional issue-areas and dominated by particular modes of behaviour, assumptions and biases'. This definition is

duty to cooperate is implemented through the instruments of the internal UNECE water regime. This analysis separates the UNECE water regime into an internal and external dimension. The internal dimension is understood as ‘the rich body of soft law decisions, reports, recommendations and other instruments leading to the adoption of the UNECE Water Convention, the content of the Convention itself, as well as subsequent supplementary binding protocols, non-binding guidelines and recommendations’.<sup>8</sup> The key internal hard legal instruments include the Protocol on Water and Health<sup>9</sup> and the Protocol on Civil Liability and Compensation for Damage Caused by the Transboundary Effects of Industrial Accidents on Transboundary Waters.<sup>10</sup> The internal non-legally binding instruments are numerous and thematically diverse ranging from the recently adopted guidance documents on implementing the Water Convention (2013),<sup>11</sup> to instruments which address contemporary water management issues such as climate change adaptation (2009),<sup>12</sup> and earlier guidance on water quality and pollution<sup>13</sup> to name just a few. The external

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preferred for several reasons, including its acknowledgement of the role of both State and non-State actors as participants in regime development, but also its understanding of international legal regimes not as static but as dynamic, evolving legal processes. See S. Krasner, ‘Structural Causes and Regime Consequences: Regimes as Intervening Variables’, in S. Krasner (ed.), *International Regimes* (Cornell University Press, 1983), 1, at 3; M.A. Young, ‘Introduction: The Productive Friction between Regimes’, in M.A. Young (ed.), *Regime Interaction in International Law: Facing Fragmentation* (Cambridge University Press, 2012), 1, at 11. See R. Moynihan & B.-O. Magsig, ‘The Rising Role of Regional Approaches in International Water Law: Lessons from the UNECE Water Regime and Himalayan Asia for Strengthening Transboundary Water Cooperation’, 23(1) *Review of European Community & International Environmental Law* 43 (2014).

8 For detailed analysis of the regime and the internal and external dimensions, see Moynihan & Magsig (n 7), A. Tanzi, ‘Regional Integration and the Protection of the Environment: The UN/ECE Process on Water Law’, 10 *Italian Yearbook of International Law* 71 (2001).

9 Protocol on Water and Health to the Convention on the Protection and Use of Transboundary Watercourses and International Lakes (London, 17 June 1999; in force 4 August 2005).

10 Protocol on Civil Liability and Compensation for Damage Caused by the Transboundary Effects of Industrial Accidents on Transboundary Waters (Kiev, 21 May 2003; not yet in force).

11 UNECE, *Guide to Implementing the Water Convention* (UNECE, 2013).

12 UNECE, *Guidance on Water and Adaptation to Climate Change* (UN, 2009), found at <[http://www.unece.org/fileadmin/DAM/env/water/publications/documents/Guidance\\_water\\_climate.pdf](http://www.unece.org/fileadmin/DAM/env/water/publications/documents/Guidance_water_climate.pdf)> accessed 11 April 2014.

13 Guidance instruments include those on water quality monitoring and assessment (1996), water quality criteria and objectives (1996), licensing of waste-water discharges from

dimension of the UNECE water regime refers to the water-related UNECE instruments that have been adopted outside the scope of the UNECE Water Convention. The two instruments of particular interest in this regard include the Convention on Environmental Impact Assessment in a Transboundary Context<sup>14</sup> and the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters.<sup>15</sup> Assessing the 'normative and institutional relationship between the UNECE Water Convention and other UNECE environmental legal instruments is vital to understanding the potential role of the UNECE water regime as a whole, and thus to its transferability beyond the UNECE region'.<sup>16</sup> However a comprehensive assessment of this nature is beyond the scope of this short chapter which focuses on the internal dimension.

Turning back to the internal dimension of the UNECE Water Regime, the most important rule for cooperation found in the UNECE Water Convention which is relevant for basin level cooperation in the Danube is Article 9 of the Convention, which incorporates the general obligation of cooperation, by requiring co-riparians to enter into agreements and establish joint bodies.<sup>17</sup> Joint bodies are then tasked with a non-exhaustive list of functions.<sup>18</sup> Article 10 further requires that all consultations between riparian parties be conducted

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point sources (1996), water pollution from fertilizers and pesticides in agriculture (1995) and prevention of water pollution from hazardous substances (1994). These instruments can be found at <http://www.unece.org/env/water/publications/pub.html>.

14 Espoo, 25 February 1991; in force 10 September 1997.

15 Aarhus, 25 June 1998; in force 30 October 2001. The other instruments include; Protocol on Strategic Environmental Assessment (Kiev, 21 May 2003; in force 11 July 2010); Convention on the Transboundary Effects of Industrial Accidents (Helsinki, 17 March 1992; in force 19 April 2000); and the Protocol on Civil Liability and Compensation for Damage Caused by the Transboundary Effects of Industrial Accidents on Transboundary Waters (Kiev, 21 May 2003; not yet in force).

16 Moynihan & Magsig (n 7).

17 UNECE Water Convention, Articles 9.1–9.2.

18 Such functions include: (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; (d) To elaborate emission limits for waste water and evaluate the effectiveness of control programmes; (e) To elaborate joint water-quality objectives and criteria regulations...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

through a joint body established under Article 9. The way in which the Danubian countries translate this rule at the basin level is discussed further below.

Further essential provisions of the UNECE which support basin level cooperation include the institutional mechanisms established by Article 17 of the UNECE Water Convention – providing for the Meeting of the Parties (MOP) – and Article 19 – establishing the Secretariat.<sup>19</sup> The MOP is held every three years with a view to adopting a programme of work for the subsequent three-year period and reviewing the implementation of the Convention.<sup>20</sup> The MOP establishes numerous additional technical and advisory bodies to address a range of issues. Further bodies include the Working Group on Integrated Water Resources Management, the Working Group on Monitoring and Assessment, the Implementation Committee, the Legal Board, the Joint Bureau of the MOP, a Task Force on Water and Climate, a Joint Ad Hoc Expert Group on Water and Industrial Accidents and an International Water Assessment Centre.<sup>21</sup> ‘These bodies provide further institutional support for implementing the Convention’s rules on cooperation, and allow the regime to evolve to address newly arising basin, pan-regional and global challenges.’<sup>22</sup> An example of the direct interaction that such bodies have in the Danube River Basin is the UNECE Task Force on Water and Climate which includes the Danube River Basin as one of its pilot basins and works together with the International Commission for the Protection of the Danube River (ICPDR) to implement a climate adaptation strategy in this basin, which is discussed further below.

### 3 Evolution of Cooperation on the Danube – The Role of the UNECE

Cooperation in the Danube river basin has a long history, predating the UNECE by nearly 100 years with the Treaty of Paris establishing a legal regime

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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 the Convention, as well as to encourage cooperation in scientific research programmes; (j) to participate in the implementation of environmental impact assessment relating to transboundary water, in accordance with appropriate international regulations.

19 UNECE Water Convention, Articles 17 and 19.

20 Ibid., Article 17.1.

21 UNECE, ‘Areas of Work of the Convention’, found at <<http://www.unece.org/env/water.html>>.

22 Moynihan & Magsig (n 7).

concerning navigation in 1856.<sup>23</sup> The first century of cooperation between Danubian states continued to address mostly navigational issues which is not the focus of this chapter and is well documented elsewhere.<sup>24</sup> At the conclusion of the First World War – with the adoption of the Peace Treaties<sup>25</sup> – states broadened cooperation to address issues of water protection, use and development. The UNECE began to play a role in the Danube in 1948, just one year after the UNECE itself was established.<sup>26</sup> The UNECE's mandate at that time was to support European post-war recovery and part of its plans for reconstruction involved enabling the exploitation of resources in the Danube Basin.<sup>27</sup> To further these objectives, the UNECE explored the potential for coordinating inter-sectoral development in the basin covering issues such as agriculture, energy, flood control, navigation and afforestation.<sup>28</sup> However, the UNECE failed to gain major traction from central and eastern European Danube states at that time. This was partly due to the fact that bi-lateral cooperation was the preferred mode of cooperation and also because another powerful institution – the Soviet lead Council for Mutual Economic Assistance (CMEA) had a significant and sometimes competing influence on basin development.<sup>29</sup> Coordination between the CMEA and the UNECE was not particularly successful during these early Cold War years.<sup>30</sup> In light of the growing demand for electricity from hydropower, the UNECE did manage to drive forward a bi-lateral agreement on a tributary of the Danube, the Drava River, concerning the development of hydropower which was signed by Yugoslavia

23 General Treaty for the Re-establishment of the Peace between Austria, France, Great Britain, Prussia, Sardinia and Turkey and Russia (Signed 30 March 1856) 114 CTS 409, Articles 15–19.

24 Zeilinger (n 5).

25 Treaty of Peace between with Austria (Signed 10 September 1919), 7 LNTS 332, Articles 309 and 310; Treaty of Trianon between the Allied and Associated Powers and Hungary (Signed 4 June 1920) 6 LNTS 187.

26 See UNOG, 'Ad Hoc Committee on Industrial Development and Trade', document ID/8, 31 July 1948, Appendix H, 1–2 & 5–6; Legendijk (n 1).

27 UNOG, 'Ad Hoc Committee on Industrial Development and Trade', document ID/8, 31 July 1948, Appendix H, 1–2 & 5–6. For more discussion also on the various institutions and political powers wrangling for control over the Danube during this time period, see Legendijk (n 1), at 5.

28 See also Y. Berthelot and P. Rayment, 'Looking Back and Peering Forward – A Short History of the United Nations Economic Commission for Europe', 1947–2007 (2007) ECE/INF/2007/4.

29 Legendijk (n 1), at 10.

30 Ibid.

and Austria in 1954.<sup>31</sup> However, it was not until 1985 that multi-lateral cooperation in the Danube began to take shape when eight riparian countries signed the Bucharest Declaration on the Cooperation of the Danube Countries on Problems of the Danube Water Management.<sup>32</sup> The Bucharest Declaration was non-binding but acknowledged that the environmental quality of the river depended on the environment of the basin as a whole, and committed the countries to integrated water management, beginning with the establishment of a basin-wide unified monitoring network.<sup>33</sup> The tasks performed by the contracting parties in the framework of the Bucharest Declaration led to the negotiation and adoption of the 1994 Convention on Cooperation for the Protection and Sustainable Use of the Danube River (Danube River Protection Convention or DRPC)<sup>34</sup> and the content of the Bucharest Declaration was subsumed within Article 19 of the DRPC, which is discussed below. The Bucharest Declaration was signed against a backdrop of increasing cooperation between UNECE member states (also Danube riparians) who, over a 25 period beginning in 1966, produced numerous instruments concerning transboundary water use, development and protection. These instruments addressed a wide range of issues from water pollution,<sup>35</sup> to rational use of water<sup>36</sup> to principles of water cooperation.<sup>37</sup> The potential influence that such non-binding UNECE instruments might have had on the development of shared normative understandings of international water law deserves further research. For example it has been suggested that the period leading up to the adoption of both the Danube and UNECE Water Conventions could be characterised by a surge in

31 Convention between the Governments of the Federal People's Republic of Yugoslavia and the Federal Government of the Austrian Republic Concerning Water Economy Questions Relating to the Drava (adopted 25 May 1954, entered into force 15 January 1955), 1956 UNTS 128.

32 Bucharest 1985: Bucharest Declaration (Deklaration über die Zusammenarbeit der Donaustaaten in Fragen der Wasserwirtschaft der Donau, insbesondere zum Schutz des Donauwassers gegen Verschmutzung) (adopted on December 13 1985 by Bulgaria, Federal Republic of Germany, SFR Yugoslavia, Austria, Romania, Czechoslovakia, USSR and Hungary).

33 ICPDR, 'A Short History of the Danube'. Available at <<https://www.icpdr.org/main/icpdr/short-history-cooperation#main-column>> accessed 9 March 2014.

34 Convention on Cooperation for the Protection and Sustainable Use of the Danube River Convention (adopted 29 June 1994, entered into force 22 October 1998) (Hereafter, 'Danube Convention' or DRPC).

35 UNECE, 'Declaration of Policy on Water Pollution Control' (29 April 1966).

36 UNECE, 'Recommendations to ECE Governments on Economic Instruments for Rational Water Resources' (December 1980) ECE/ENVWA/2.

37 UNECE, 'Decision on Co-operation in the Field of Transboundary Waters' (December 1986) ECE/WATER/42.

the inclusion of procedural provisions within international water treaties<sup>38</sup> – and this is reflected in the content of both the UNECE and Danube treaties. The early (pre-UNECE Water Convention) instruments contributed to the development of procedural provisions both at pan-regional and basin level. For example provisions on joint bodies, exchange of information and settlement of disputes set down in the UNECE 1987 Principles regarding Co-operation in the Field of Transboundary Waters<sup>39</sup> influenced the development of the UNECE Water Convention and the DRPC.<sup>40</sup>

A significant breakthrough for cooperation on the Danube occurred in the context of the Conference of the Organisation for Security and Cooperation in Europe (CSCE) on the protection of the environment held in Sofia in 1989<sup>41</sup> where a recommendation was agreed upon ‘encouraging states to enter such specific (basin) agreements (e.g. the Danube, the Elbe) parallel to the elaboration of a framework convention’.<sup>42</sup> The framework Convention referred to would become the 1992 UNECE Water Convention. The decision to draft the Danube Convention was decided in the context of and alongside the decision to adopt the UNECE Water Convention and the UNECE Water Convention was to provide an overarching framework for a more detailed basin-level Danube Convention. Following the OSCE Conference, the countries of the Danube River basin and international institutions met in Sofia, in September 1991, to draw up an initiative to support and reinforce national actions for the restoration and protection of the Danube River – the Environmental Programme for the Danube River Basin (EPDRB).<sup>43</sup> The subsequent cooperation eventually led to the adoption of the Danube River Protection Convention. There are currently 15 contracting parties to the Danube Convention including the European Union.<sup>44</sup>

38 See Part IV DRBC and for comment, see Bošnjaković B., *Negotiations in the Context of International Water-Related Agreements* (UNESCO, 2003) at 24.

39 ECE/Water/42 (n37), paragraphs 2, 3, 4, 5, 6, 10 and 11.

40 See for example Part IV of the DRPC on Procedural and Final Clauses includes provisions dispute settlement and the operation of the Danube Conference of the Parties among other procedural provisions.

41 OSCE, ‘Report on Conclusions and Recommendations of the Meeting on the Protection of the Environment of the Conference on Security and Co-operation in Europe’ (5 November 1990) <<http://www.osce.org/eea/14075>> accessed 18 March 2014.

42 Ibid at 7.

43 ICPDR, ‘Short History of Cooperation’, <<http://www.icpdr.org/main/icpdr/short-history-cooperation>> accessed 19 March 2014.

44 The Contracting Parties to the DRPC as of March 2014 include Austria, Bosnia and Herzegovina, Bulgaria, Croatia, Czech Republic, Germany, Hungary, Moldova, Montenegro, Romania, Slovakia, Slovenia, Serbia, Ukraine and the European Union.

Although there are 19 countries situated in the Danube Basin, the DRPC only applies to countries with territories of more than 2000 km<sup>2</sup> in the Danube Basin (Article 1(a) DRPC). The next section explores how the UNECE influenced the final content of the Danube Convention.

#### 4 UNECE Water Convention and the Danube Convention

The Danube Convention was adopted in 1994 after the UNECE Water Convention was adopted (1992) but before the UNECE Convention entered into force (1996). The UNECE was very influential in the development of the DRPC as already discussed above and as acknowledged by the Preamble to the DRPC which commends efforts taken by the UNECE 'to promote bi-lateral and multi-lateral cooperation over prevention and control of transboundary pollution, sustainable water management, rational use and conservation of water resources'.<sup>45</sup> A selection of some key provisions of both instruments are analyzed below demonstrating the broad alignment of the DRPC with the UNECE Water Convention. A critical point to make here is that although the UNECE Water Convention contains prescriptive provisions, such as the mandatory requirement to set up joint institutional bodies at the basin level (Article 9), it is nevertheless a framework convention which leaves a broad margin of discretion for states to formulate more basin-specific and detailed obligations of what tasks such joint bodies should perform and more broadly which issues should be covered by basin level agreements. This chapter now briefly explores some examples of how the Danubian countries have chosen to use that discretion within the DRPC and transfer some of the principles and obligations stemming from the UNECE Water Convention into the DRPC.

Turning to substantive principles, the DRPC includes two prominent principles of international water law (also codified in the UNECE Water Convention). The DRPC includes as its fundamental objective, the principle of equitable and reasonable use. This principle is woven into Article 2(1) of the DRPC which states that the Convention's main objective is 'the sustainable and equitable water management, including the conservation, improvement and rational use of surface and ground waters. To achieve this objective, parties must 'control hazards originating from accidents involving substances hazardous to water, floods and ice-hazards of the Danube River. Parties shall also endeavor to contribute to reducing the pollution loads of the Black Sea from sources to catchment' (Article 2 (1)). This principle of equitable and

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45 Danube Convention, Preamble.

reasonable use is a fundamental principle of customary international water law which is also codified in Article 2(2)(c) UNECE Water Convention. In addition a second substantive rule of international water law, the no significant harm rule where ‘parties shall take all appropriate measures to prevent, control and reduce any transboundary impact’ (Article 2(1) UNECE Water Convention), is replicated in Article 5 of the DRPC.

Moving to rules on cooperation, Article 18 of the DRPC responds to the mandatory requirement of the Article 9(2) of the UNECE Water Convention by establishing a joint body for the management of the Danube Basin – the International Commission for the Protection of the Danube River (ICPDR). The ICPDR is responsible for the implementation of the objectives and principles of the DRPC. Decisions are adopted primarily by consensus; they are binding on all parties that have voted in the affirmative (Article 22(4)(5)(6)). Moving to other key provisions on cooperation, Articles 4 and 11 of the DRPC outlines the forms for cooperation as (a) consultation (on planned activities which are likely to cause transboundary impacts), and joint activities in the framework of the ICPDR and DRPC; and (b) exchange of information on bi- and multi-lateral agreements, legal regulations on measures, exchange of legal documents and other forms of information exchange. Following this, Part II of the DRPC sets out a whole host of provisions to achieve multi-lateral cooperation: from cooperation over joint monitoring programmes (Article 9) to obligations to enter consultations over planned activities (Article 11) and cooperation over emergency plans (Article 16). These provisions are aligned with the UNECE Water Conventions rules on cooperation and tasks that joint bodies should carry out (Articles 8 and 9). Finally, another key influence of the content of the UNECE Water Convention (Articles 2(5)(a) and (b)) can be seen in the inclusion by the DRPC of the polluter pays principle and the precautionary principle which together constitute the basis for ‘all measures aimed at the protection of the Danube’ (Article 2(4) DRPC).

## 5 Contemporary Contribution of UNECE Water Regime to the Danube

The UNECE Water Regime continues to play a significant role in strengthening transboundary water cooperation in the Danube through its various institutional mechanisms ranging from its various issue specific Task Forces, to its work as the strategic partner for support to the EU national policy dialogue processes on IWRM. Synergies between the UNECE and ICPDR are also enhanced by the fact that ICPDR country representatives are also heavily

involved with the institutional instruments of the UNECE Water Convention particularly the Conventions' Bureau.<sup>46</sup> Due to space restrictions, only two examples of this vast engagement follow. One example is the work of the UNECE Task Force on Climate Change which included the Danube River Basin in its Programme of Work which established pilot basins for climate change adaptation.<sup>47</sup> The Task Force aims to work in the Danube pilot basin to 'support the implementation of the guidance documents developed under the UNECE Convention, in particular: (i) the UNECE Guidance on Water and Adaptation to Climate Change, adopted at the fifth session of the Meeting of the Parties; and (ii) the UNECE Model Provisions on Transboundary Flood Risk Management, adopted at the fourth session of the Meeting of the Parties'.<sup>48</sup> The UNECE has supported the ICPDR in the development of its Strategy on Adaptation to Climate Change<sup>49</sup> which is also feeding into the development of the 2nd Danube River Basin Management Plan.<sup>50</sup> A second example is the contribution that the UNECE has made to the transboundary cooperation at the sub-basin level in the Danube, particularly in the Sava River which is the second largest sub-basin.<sup>51</sup> Article 5(c) of the Framework Agreement on the Sava River Basin (Sava Agreement)<sup>52</sup> specifically requires state parties to cooperate with the UNECE to achieve the objectives of the Sava Agreement. The UNECE Task Force on the Water-Food-Energy-Ecosystem Nexus also works together with the Sava River Basin Commission to promote inter-sectoral coordination on natural resources management and conduct a nexus assessment for the basin.<sup>53</sup> The two examples given demonstrate the contribution of the UNECE

46 For example in 2013 country representatives in Germany and Hungary were at the same time both members of their countries' ICPDR delegation as well as Bureau members of the UNECE Water Convention.

47 UNECE Draft Programme of Work for 2010–2012 (UN Doc. ECE/MP.WAT/29/Add.1, 14 June 2010), found at <<http://www.unece.org/environmental-policy/treaties/enenvironment-conventions/all/strategies-plans-and-programmes.html>> accessed 1 March 2014.

48 Ibid at 8.

49 ICPDR, 'Strategy on Adaptation to Climate Change', <<http://www.icpdr.org/main/activities-projects/climate-change-adaptation>> accessed 12 March 2014.

50 ICPDR, Interim Overview Significant Water Management Issues in DRBD' <<http://www.icpdr.org/main/SWMI-PP>> accessed 19 March 2014.

51 The Sava River basin is 95,719 m<sup>2</sup>. See ICPDR, 'ICPDR Annual Report 2007' <<https://www.icpdr.org/main/publications/annual-reports>> accessed 5 February 2014, 14.

52 The Framework Agreement on the Sava River Basin (adopted 03 December 2002, entered into force 03 December 2002) UNTS 2366.

53 UNECE Draft Programme of Work for 2013–2015 (UN Doc. ECE/MP.WAT/37/Add.1, 23 July 2013), found at <<http://www.unece.org/environmental-policy/treaties/enenvironment-conventions/all/strategies-plans-and-programmes.html>> accessed 1 March 2014; See also

water regime to addressing contemporary challenges such as climate adaptation and the water-energy-food nexus in the Danube basin. The institutional machinery of the UNECE water regime continues to provide a critical international platform for exchanging information and experience between the ICPDR and other joint transboundary bodies within the pan-European region.

## 6 The Role of EU Water Law in the Danube

The EU plays a fundamental role in the Danube Basin. The extent of this role is beyond the scope of this short Chapter, and is addressed on a more general basin level elsewhere in this collection with the conclusion that the UNECE Water Convention fills gaps in EU water law on several fronts.<sup>54</sup> These include its more extensive institutional machinery for transboundary cooperation, its more advanced provisions on quantitative issues and its more sophisticated rules on equitable and reasonable use and no significant harm.<sup>55</sup> There are also many examples of where the EU has incorporated norms stemming from the UNECE water regime into EU water law and vice versa. For example it was the UNECE water regime that first adopted an explicit ecosystem approach to water management which was later incorporated into Article 1 of the EUWFD. This section makes some brief observations about the role of EU water law in the Danube. All members of the Danube are either EU member states, candidates for EU membership or countries falling within the European Neighbourhood Policy.<sup>56</sup> These differences in status are rendered less significant by the remarkable decision of all contracting parties to the DRBC, regardless of their EU membership status, to implement the provisions of the EU WFD<sup>57</sup> throughout the basin.<sup>58</sup> In line with this decision the 'Danube and its tributaries, transitional waters, lakes, coastal waters and groundwater formed the Danube River Basin District'<sup>59</sup> (in accordance with Article 3 EUWFD).

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UNECE, 'Water Energy, Food, Ecosystem Nexus', <<http://www.unece.org/environmental-policy/treaties/water/areas-of-work-of-the-convention/envwaternexus.html>> accessed 1 March 2014.

54 See generally, Chapter 7.

55 Ibid.

56 Candidate countries must comply with all EU laws and policies (*acquis communautaire*) prior to becoming full members.

57 Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy.

58 Section 1.1, DRBP.

59 Section 1.1, DRBP.

And in accordance with Article 13(3) EU WFD which requires member states to produce a single river basin management plan, the DRPC countries adopted the first Danube River Basin Management Plan in 2009 and are in the process of adopting a second plan.<sup>60</sup> The engagement of the EU in the Danube is extensive and ranges from further interaction in the framework of the EU WFD to the participation of the EU itself in the ICPDR as a member of the ICPDR. In addition the EU is a major financial donor in the basin through its EU Structural and Cohesion Funds.<sup>61</sup> The distinctive and synergistic roles of the EU and the UNECE water regime in the Danube are complex to discern but this topic merits further research. Such research would also lead to clarification regarding the hurdles for transferral of the UNECE water regime to regions where water legislation is not already embedded in such a rich web of instruments addressing regional integration and cooperation on water and water-related issues. This in turn has implications for the significance of the impact of the opening up of the UNECE Convention to members beyond the UNECE region.

## 7 Conclusion

The UNECE was instrumental in the evolution of cooperation in the Danube, especially leading up to the adoption of the Danube Convention. Directly following its establishment, the UNECE's mandate in the late 1940s was to support European post-war recovery and part of its plans for reconstruction involved enabling the exploitation of resources in the Danube Basin. To further these objectives, the UNECE explored the potential for coordinating inter-sectoral development in the basin covering issues such as agriculture, energy, flood control, navigation and afforestation. However, the UNECE was only able to strongly influence transboundary cooperation in the Danube after the end of the Cold War, when it spearheaded the adoption of the central agreement for cooperation over the protection, use and development of the Danube River – the Danube Convention. The UNECE water regime continues to play a role through its sophisticated institutional machinery which has contributed to the modernization of international water law in the Danube. One example of this contribution is the work of the UNECE in the Danube on enhancing climate change adaptation. A second example is the cooperation between the UNECE, ICPDR and Sava Commission to address contemporary challenges of

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60 ICPDR, 'Interim Overview Significant Water Management Issues in DRBD' <<http://www.icpdr.org/main/SWMI-PP>> accessed 19 March 2014.

61 Schmeier (n 2) at 183.

cross-sectoral linkages between water, food, energy and ecosystems which are being piloted in the Sava basin. The EU also plays a dominant role in the Danube and further research is required to understand whether the role of the UNECE water regime is largely superseded by the more dominant role of the EU and other international organizations. However, early findings suggest the UNECE water regime retains relevance and fills gaps. Finally, this chapter is focused on the contribution of pan-European and European law to cooperation on the Danube, but the interaction goes both ways and further research is needed to understand how the DRPC and ICPDR have also contributed to the development of international, pan-European and European water law.