

The Advisory Procedure in Non-Compliance Procedures

Lessons from the UNECE Water Convention

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5.1 Introduction

The advisory function of international judicial bodies remains an important judicial tool to elucidate the scope and content of international obligations. Today, many international judicial bodies are entrusted with an advisory function under different architectures.¹ As is well known, advisory opinions are not binding but do entail legal effects in the interpretation and application of law.² Recently, the advisory function is likewise permeating some compliance mechanisms established by multilateral environmental agreements (hereinafter referred to as 'MEAs'). This chapter examines the novelty of the advisory procedure envisaged in the mandate of non-judicial bodies as a new development in the implementation and compliance of MEAs.

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¹ For a comparative study on the advisory jurisdiction, see A Sandoval Bernal, *La Jurisdicción Consultiva de las Cortes Internacionales* (Tirant lo Blanch 2019); M Runavot, *La compétence consultative des juridictions internationales: Reflet des vicissitudes de la fonction judiciaire internationale* (LGDJ 2009).

² See *Delimitation of the Maritime Boundary in the Indian Ocean (Mauritius/Maldives)*, Preliminary Objections, Judgment, ITLOS Reports 2020–2021, 17, para 203; S Rosenne, *The International Court of Justice: An Essay in Political and Legal Theory* (A.W. Sijthoff 1957) 492–93; L Boisson de Chazournes, 'Advisory Opinions and the Furtherance of the Common Interest of Mankind' in L Boisson de Chazournes, C Romano and R Mackenzie (eds), *International Organizations and International Dispute Settlement: Trends and Prospects* (Transnational Publishers 2002) 107.

Since the second half of the twentieth century, many MEAs have created an institutional framework to foster compliance with the agreement in question.³ Particularly, MEAs usually provide for the establishment of compliance or implementation committees (hereinafter referred to as 'CCs') aimed at facilitating and monitoring compliance with the agreement in question.⁴ Such compliance review bodies are mandated to carry out procedures that are mostly non-adversarial and non-punitive in nature. Yet the outcome of these procedures may in some cases entail the adoption of sanctions for Parties found to be in non-compliance, directly by said bodies, or by the Meeting of the Parties (hereinafter referred to as 'MoP' or 'CoP') on the recommendation of CCs. Few MEAs add a so-called 'advisory procedure' to these procedures. This chapter argues that an advisory procedure fosters effective implementation by offering tailored technical and legal advice to States, attending to their particular circumstances, without confrontation and intrusive sanctions. Drawing on the advisory procedure of the UNECE Convention on the Protection and Use of Transboundary Watercourses and International Lakes (hereinafter referred to as 'UNECE Water Convention'), this chapter identifies areas of opportunity for enhancing implementation and compliance with current and future MEAs.

This chapter will be organized as follows. First, it will give a brief overview of the nature of non-compliance mechanisms (hereinafter referred to as 'NCMs'). Second, it will examine the advisory procedure specifically provided for the Implementation Committee of the UNECE Water Convention (hereinafter referred to as 'IC'). Third, it will identify areas of opportunity for adoption of a similar advisory procedure to help improve the implementation of other existing and future multilateral agreements.

5.2 Non-Compliance Procedures in a Nutshell

As anticipated, many MEAs envisage the possibility of establishing CCs managed by the CoP/MoP or by specialized subsidiary bodies. Their

³ See n 11–14, 17–19, 21–24.

⁴ See UNEP, *Compliance Mechanism under Selected Multilateral Environmental Agreements* (UNEP 2007); T Treves, L Pineschi, A Tanzi, et al. (eds), *Non-Compliance Procedures and Mechanisms and the Effectiveness of International Environmental Agreements* (TMC Asser Press 2009); M Fitzmaurice, *Environmental Compliance Control* (Max Planck Encyclopedia of Public International Law 2021).

main objective is to foster the implementation of and compliance with an MEA, and prevent environmental damage.⁵ According to the United Nations Environment Programme (UNEP), 'compliance' is the fulfilment by the contracting Parties of their obligations under a MEA, whereas 'implementation' refers to the measures that contracting Parties adopt to meet their obligations.⁶ In this context, CCs have particular common features that may attract the interests of Parties as a venue to tackle their implementation issues. The first is their non-judicial and non-confrontational nature. Second, these mechanisms aim at facilitating compliance rather than stigmatizing the concerned Party with measures or sanctions. A third common feature is the relevance of the duty of Parties and the treaty bodies to co-operate as a cornerstone of these mechanisms.⁷

Compliance or implementation committees' procedures can be seen as a public interest process where great attention is paid to due process and independence as a guarantee of legitimacy.⁸ Further, the options to trigger a non-compliance procedure reflect the Parties' common interest in protecting the object of an MEA (watercourses, public participation, ozone layer, climate action, etc.).⁹ The only precondition for triggering a compliance procedure is being a Party to the treaty and complying with the procedural requirements established to that end. Commonly, non-compliance procedures can be triggered by States and by particular bodies (e.g., CoP/MoP, implementation bodies). However, a few compliance mechanisms allow for broad public participation. For example,

⁵ J Viñuales and P Marie Dupuy, *International Environmental Law* (2nd ed., Cambridge University Press 2018) 343–51; M Fitzmaurice, *Environmental Compliance Control* (Max Planck Encyclopedia of Public International Law 2021) paras 52–55; P Sands, J Peel, A Fabra and R Mackenzie, *Principles of International Environmental Law* (4th ed., Cambridge University Press 2018) 172–78; A Boyle, C Redgwell and P Birnie, *International Law and the Environment* (4th ed., Oxford University Press 2021) 254–60.

⁶ UNEP, *Manual on Compliance with and Enforcement of Multilateral Environmental Agreements* (UNEP 2006) 59.

⁷ A Tanzi and C Pitea, 'Non-Compliance Mechanisms: Lessons Learned and the Way Forward' in T Treves, L Pineschi, A Tanzi, et al. (eds), *Non-Compliance Procedures* (n 5) 569–70; Viñuales and Dupuy (n 6) 343–44.

⁸ Cf. A Boyle, C Redgwell and P Birnie, *International Law and the Environment* (4th ed., Oxford University Press 2021) 255; M Doelle, 'Non-Compliance Procedures' in L Rajamani and J Peel (eds), *The Oxford Handbook of International Environmental Law* (Oxford University Press 2021) 982.

⁹ On this point, see J Brunnée, 'International Environmental Law and Community Interests' in E Benvenuti, G Nolte and K Yalin-Mor (eds) *Community Interests across International Law* (Oxford University Press 2018) 172–74; Viñuales and Dupuy (n 6) 347.

in the mechanisms established by the UNECE Aarhus Convention,¹⁰ the Escazú Agreement¹¹ the UNECE Water Convention¹² or the Protocol on Water, and Health¹³ members of the public can actively participate in non-compliance procedures, either by triggering a procedure or by submitting information. Some authors also consider CCs an effective alternative to a judicial dispute settlement mechanism, which could entail a long process before a judgment or award is rendered.¹⁴ Moreover, the outcome of these mechanisms does not result in *res judicata*, which makes them a less intrusive procedure in terms of state sovereignty.¹⁵

One of the very first NCMs to appear was that of the 1987 Montreal Protocol on Substances That Deplete the Ozone Layer.¹⁶ Article 8 provided for the Parties to consider and approve mechanisms for determining non-compliance, which led to the establishment of the Implementation Committee in 1992.¹⁷ A Party to the Protocol can trigger a procedure with respect to its non-compliance, or with respect to another Party. The Secretariat can also trigger the procedure. The Committee can adopt facilitative measures such as providing financial and technical assistance to foster the compliance of the concerned Party. However, the Committee can also adopt measures such as declarations of non-compliance, cautions and even the suspension of rights and prerogatives.¹⁸

¹⁰ The Aarhus Convention enables NGOs to initiate a procedure against a Party. See UNECE, *Decision 1/7: Review of Compliance*, UN Doc ECE/MP.PP/2/Add.8, 2 April 2014, para 18.

¹¹ ECLAC, *Decision I/3: Rules Relating to the Structure and Functions of the Committee to Support Implementation and Compliance*, Doc 22-00344, 22 April 2022, Rule V(1).

¹² The Water Convention enables members of the public to submit information concerning the non-compliance of a Party. See UNECE, *Support to Implementation and Compliance, Decision VI/1*, UN Doc ECE/MP.WAT/37/Add.2, 2012, para 28.

¹³ UNECE, *Annex to Decision I/2: Review of Compliance*, UN Doc ECE/MP.WH/2/Add.3, 3 July 2007, para 16.

¹⁴ E Milano, 'The Outcomes of the Procedure and Their Legal Effects' in T Treves, L Pineschi, A Tanzi, et al. (eds), *Non-Compliance Procedures* (n 5) 413.

¹⁵ G Ulfstein, T Marauhn and A Zimmermann (eds), *Making Treaties Work: Human Rights, Environment and Arms Control* (Cambridge University Press 2007) 10.

¹⁶ Montreal Protocol on Substances That Deplete the Ozone Layer, signed 25 November 1992, entered into force 14 June 1994, 1785 UNTS 517, 3.

¹⁷ UNEP, *Decision IV/5*, 4th Meeting of the Parties to the Montreal Protocol on Substances That Deplete the Ozone Layer (1992).

¹⁸ For a detailed overview of the Implementation Committee of the Montreal Protocol, see O Yoshida, *The International Regime for the Protection of the Stratospheric Ozone Layer* (Brill 2018) 209–85; E Barratt-Brown, 'Building a Monitoring and Compliance Regime

While the Implementation Committee of the Montreal Protocol stands as the model from which later NCMs were established,¹⁹ one may refer also to the latest generation of such mechanisms provided for in the 2015 Paris Agreement,²⁰ the 2013 Minamata Convention²¹ and the 2018 Escazú Agreement.²² The institutional and functional architecture of CCs under these agreements follows that of the Montreal Protocol, with some procedural adjustments concerning the actors entitled to initiate a procedure, or pertaining to the outcome of the procedure. For example, one may note the twofold CC established under the Kyoto Protocol, which comprises a facilitative and an enforcement branch. In certain circumstances, the outcome of the Kyoto Protocol procedures can result in binding recommendations.²³

This chapter proposes the following taxonomy of functions ascribed to CCs among MEAs:

- **Reporting/Monitoring procedure.** This function is a traditional implementation technique used across MEAs and draws on the obligation of States to periodically report on the measures they have adopted to implement their obligations under the MEA in question.²⁴ Periodic reports enable the CoP or the CCs to foresee a State's difficulties in

under the Montreal Protocol' (1991) 16(2) *Yale Journal of International Law* 519–70; M Koskenniemi, 'Breach of Treaty or Non-Compliance? Reflections on the Enforcement of the Montreal Protocol' (1992) 3(1) *Yearbook of International Environmental Law* 123–62.

¹⁹ Viñuales and Dupuy (n 6) 334, M Fitzmaurice, *Environmental Compliance Control* (Max Planck Encyclopedia of Public International Law 2021) para 56.

²⁰ UNFCCC, *Modalities and Procedures for the Effective Operation of the Committee to Facilitate Implementation and Promote Compliance Referred to in Article 15, paragraph 2, of the Paris Agreement*, Decision 20/CMA.1, UN Doc FCCC/PA/CMA/2018/3/Add.2, 19 March 2019. See C Voigt, 'The Compliance and Implementation Mechanism of the Paris Agreement' (2016) 25(2) *Review of European, Comparative and International Environmental Law* 1–13.

²¹ See UNEP, *MC-2/4: Rules of Procedure for the Implementation and Compliance Committee of the Minamata Convention on Mercury*, UN Doc UNEP/MC/COP.2/Dec.4, 6 December 2018. For an overview on this Committee, see J Templeton and P Köhler, 'Implementation and Compliance under the Minamata Convention on Mercury' (2014) 23(2) *Review of European, Comparative and International Environmental Law* 211–20.

²² ECLAC, *Decision I/3: Rules Relating to the Structure and Functions of the Committee to Support Implementation and Compliance*, Doc 22-00344, 22 April 2022.

²³ UNFCCC, *Procedures and Mechanisms Relating to Compliance under the Kyoto Protocol*, Decision 27/CMP.1, Doc FCCC/KP/CMP/2005/8/Add.3, 9–10 December 2005, 94–96.

²⁴ UNEP, *Compliance Mechanism under Selected Multilateral Environmental Agreements* (UNEP 2007) 9–10; Viñuales and Dupuy (n 6) 294–96.

complying with certain obligations of the MEA. In these cases, the CoP or the CC of an MEA may ask the Party concerned for additional information and decide whether to trigger a non-compliance procedure. Moreover, if a Party fails to comply with the obligation to report, the CC may trigger a non-compliance procedure.

- **Triggered by the Committee.** The CC can initiate *motu proprio* a compliance procedure against a member State when the Committee has knowledge that the Party is failing to comply with its obligations under an MEA. As a basis for its decisions, the Committee can rely on the national reports submitted by the Parties under a monitoring procedure, or on information submitted by bodies of an MEA or by members of the public.
- **Submission procedures.** This procedure enables the mechanism to analyze particular non-compliance situations submitted by a Party with regard to its own performance (self-triggering); by a Party with regard to the performance of another Party; by the CoP; or by members of the public.²⁵ The outcome of a submission procedure generally entails facilitative measures such as technical and financial assistance to enhance compliance by the Party concerned. In a few cases, MEAs allow punitive measures, such as the suspension of rights and prerogatives.²⁶ The case law produced under this procedure is significant within the Aarhus Convention, mainly triggered by individuals and non-governmental organizations.²⁷ Similarly the case law of the Montreal Protocol,²⁸ the Espoo Convention²⁹ or the Kyoto Protocol.³⁰

²⁵ Particularly, the mechanisms of the Aarhus Convention and the Escazú Agreement provide for this option.

²⁶ For example, the mechanisms of the UNECE Aarhus Convention, Espoo Convention and Water Convention include the suspension of rights and prerogatives as a measure in response to non-compliance.

²⁷ See UNECE, *Compilation of Findings of the Aarhus Convention Compliance Committee adopted 18 February 2005 to date*, 5 February 2021.

²⁸ See UNEP, *Implementation Committee Recommendations*, Implementation Committee of the Montreal Protocol, available at <https://ozone.unep.org/list-of-implementation-committee-recommendations>.

²⁹ UNECE, *Submissions Overview: Implementation Committee of the Espoo Convention*, available at <https://unece.org/submissions-overview>; UNECE, *Opinions of the Implementation Committee of the Espoo Convention (2001–2020)*, (2020). Available at https://unece.org/sites/default/files/2021-02/Implementation%20Committee%20opinions%20to%202020_MOP-8_2020.pdf.

³⁰ UNFCCC, *Compliance under the Kyoto Protocol*, available at <https://unfccc.int/process/the-kyoto-protocol/compliance-under-the-kyoto-protocol>.

- **Advisory procedure.** The advisory procedure enables a CC to deliver legal and technical advice upon the request of a CC Party, the CoP or other organs of an MEA. The ultimate goal of this procedure is to facilitate the compliance with and implementation of an MEA. Thus, the procedure results in advice with recommendations for the Party, or Parties, concerned, but without measures stigmatizing any Party, as may be perceived in a submission procedure.

This chapter will focus on examining the advisory procedure as one of the most recent procedures formally established as a means to provide facilitative assistance to the Parties of an MEA. The chapter looks particularly at the advisory procedure under the UNECE Water Convention, examining the architecture of this procedure and analyzing the potential benefits of employing similar procedures as part of implementation and compliance procedures across MEAs more widely.

5.3 Advisory Opinions in the UNECE Water Convention

5.3.1 *General Overview of the Water Convention's Compliance and Implementation Machinery*

The UNECE Water Convention was adopted in 1992 and entered into force in 1996.³¹ The main objective of the UNECE Water Convention is promotion of the sustainable management of transboundary waters, surface waters and ground waters. In order to help achieve that aim, the Convention sets out substantive and procedural obligations based on the principle of prevention, the obligation to co-operate, the principle of reasonable and equitable use and the no harm principle.³² Moreover, this treaty includes a series of principles to be considered by the Parties when adopting measures to comply with and implement its obligations, namely, the precautionary principle, the polluter-pays principle and the

³¹ UNECE Convention on the Protection and Use of Transboundary Watercourses and International Lakes, signed 17 March 1992, entered into force 6 October 1996, 1936 UNTS 269 (hereinafter referred to as 'UNECE Water Convention').

³² UNECE Water Convention, Articles 2 to 6; A Tanzi, A Kolliopoulos and N Nikiforova, 'Normative Features of the UNECE Water Convention' in A Tanzi, O McIntyre, A Kolliopoulos, A Rieu-Clarke et al. (eds) *The UNECE Convention on the Protection and Use of Transboundary Watercourses and International Lakes* (Brill Nijhoff 2015) 11.6; L Boisson de Chazournes, *Fresh Water in International Law* (Oxford University Press 2013) 33–37.

principle of inter-generational equity.³³ Initially, this treaty remained a regional instrument for the European region. However, following a proposal by Switzerland, the Meeting of States Parties to the Convention adopted *Decision III/1*, allowing all United Nations member States to accede to the Convention.³⁴ Following this amendment, a number of countries from the African³⁵ regions acceded.

As to implementation and compliance, Article 17(2)(f) of the UNECE Water Convention enabled the MoP to create an Implementation Committee, which was established in 2012 with the adoption of *Decision VI/1* of the MoP.³⁶ The IC aims at facilitating, promoting and safeguarding the implementation and application of and compliance with the UNECE Water Convention.³⁷ The nature of the mechanism is non-confrontational, non-adversarial, transparent, supportive and co-operative.³⁸ The IC has an interdisciplinary composition of nine members with legal and scientific expertise.³⁹

The IC is entrusted with a submission procedure, a procedure triggered by the IC to request further information and an advisory procedure. The submission procedure⁴⁰ can be triggered by any Party to the Convention with regard to its own issues of non-compliance (self-referral), by a Party with regard to issues of another Party or by the IC initiative in the absence of submissions. The procedure triggered by the IC *motu proprio* operates when the IC is aware of difficulties in the implementation of or non-compliance with the Convention.⁴¹ In making a determination on whether to trigger a procedure, the IC should consider the source, content and relevance of the information submitted to it, including information submitted by the public.⁴² This factor may be regarded as an indirect

³³ *UNECE Water Convention*, Article 2(5). Although the intergenerational equity principle is not expressly included, the elements of this obligation are referred to in Article 2(5)(c) of the Convention.

³⁴ UNECE, *Decision III/1: Amendment to the Water Convention*, adopted on 28 November 2003, UN Doc ECE/MP.WAT/14, Annex; for an overview of this amendment, see I Trombitcaia and S Koppel, 'From a Regional towards a Global Instrument: The 2003 Amendment to the UNECE Water Convention' in A Tanzi et al (eds) *UNECE Convention* (n 33) 15–31.

³⁵ Cameroon, Gambia, Namibia, Nigeria, Chad, Ghana, Guinea-Bissau, Senegal and Togo.

³⁶ UNECE (n 13).

³⁷ *Ibid.*, para 1.

³⁸ *Ibid.*, para 2.

³⁹ *Ibid.*, paras 3 and 4.

⁴⁰ *Ibid.*, paras 24–27.

⁴¹ *Ibid.*, paras 28–29.

⁴² *Ibid.*, paras 28 and 29.

substitute for procedures allowing for submissions, or referrals, from the public as in the Aarhus Convention or the Protocol on Water and Health.⁴³ The advisory procedure will be explained in a further section.

The outcome of a submission procedure is the adoption of facilitative measures aimed at supporting implementation of and compliance with the obligations in the Convention. In this regard, the IC can adopt one or more of the following measures:

- I. Provide advice and facilitate assistance to the concerned Parties, including:
 - (i) Suggesting or recommending that domestic regulatory regimes be set up or strengthened, and relevant domestic resources be mobilized as appropriate;
 - (ii) Assistance in establishing transboundary water cooperation agreements;
 - (iii) Facilitating technical and financial assistance;
 - (iv) Assistance in seeking support from specialized agencies and other competent bodies, as appropriate.
- II. Request and assist the concerned Parties in elaborating an action plan to facilitate implementation and compliance, within a time frame agreed by the Parties and the Committee;
- III. Request the submission of progress reports.⁴⁴

Furthermore, the IC can recommend the MoP adopt one or more of the above-mentioned measures or take other restrictive measures, including: issuing a statement of concern; issuing a declaration of non-compliance; issuing cautions; or the suspension of rights and privileges accorded to the Party concerned.⁴⁵ For this purpose, the MoP should consider the cause, type, degree and frequency of the Party's difficulties with implementation and/or non-compliance.

5.3.2 Comparing the Water Convention's Advisory Procedure with Implementation and Compliance Procedures in Other MEAs

As mentioned, the architecture of the NCM of the UNECE Water Convention follows the same pattern as the Montreal Protocol.

⁴³ UNECE, *Annex to Decision I/2 Review of Compliance*, UN Doc ECE/MP.WH/2/Add.3, 3 July 2007, para 16.

⁴⁴ UNECE (n 37) para 41.

⁴⁵ *Ibid.*, para 42.

However, the IC of the Water Convention has an advisory function, which is unusual when compared with the more standard procedures employed by other NCMs. The advisory function is implicitly included in many implementation mechanisms. For instance, CCs operating under the Nagoya Protocol,⁴⁶ the Cartagena Protocol⁴⁷ and the London Protocol⁴⁸ among others, deliver advice and recommendations, but only as a measure following a non-compliance procedure.

Other CCs can deliver advice as a separate procedure. For example,⁴⁹ the CC of the Protocol on Water and Health has a consultation process to facilitate and support implementation by issuing technical, scientific and legal advice.⁵⁰ This procedure only operates if a Party requests it or if the CC proposes it. The case of the compliance mechanism of the Aarhus Convention is distinct. The Convention and *Decision 1/7* (which establishes the Structure and Functions of the CC) did not include *ab initio* an advisory function for the CC.⁵¹ Yet following a request for advice filed by Belarus, the MoP and the CC delineated such an advisory function. First, the Secretariat prepared a draft response which was circulated for the consideration of the CC and the Party concerned.⁵² Afterwards, the CC adopted its recommendation *ACCC/A/2014/1 with respect to Belarus*.⁵³ In a second request for advice by Kazakhstan, the CC, without the support of the Secretariat, set out more clearly that its advisory function was founded in accordance with paragraphs 14, 36(a) and 37(a) of the

⁴⁶ CBD, *Cooperative Procedures and Institutional Mechanisms to Promote Compliance with the Nagoya Protocol and to Address Cases of Non-Compliance*, Decision NP-1/4, UNEP/CBD/NP/COP-MOP/DEC/1/4, 20 October 2014, Section F(2)(a).

⁴⁷ CBD, *Establishment of Procedures and Mechanisms on Compliance under the Cartagena Protocol on Biosafety*, Decision BS-1/7, 2004, Section VI(1)(a).

⁴⁸ IMO, *Revised 2017 Compliance Procedures and Mechanisms Pursuant to Article 11 of the 1996 Protocol to the London Convention 1972*, Doc LC 39/16/Add.1, 2017, Section 5.1.1.

⁴⁹ Other examples include the Facilitative Branch of the Kyoto Protocol, which provides advice to the Parties.

⁵⁰ UNECE, *Annex: Consultation Process of the Compliance Committee under the Protocol on Water and Health*, as amended by the Committee at its tenth meeting, UN Doc ECE/MP.WH/C.1/2014/2, 17 December 2014, para 1.

⁵¹ UNECE, *Decision 1/7: Review of Compliance*, MoP of the Aarhus Convention, UN Doc ECE/MP.PP/2/Add.8, 2 April 2004.

⁵² See the procedure proposed by the MoP: UNECE, *Report of the Fifth Session of the MoP*, UN Doc ECE/MP.PP/2014/2, 11 October 2014, para 53.

⁵³ UNECE, *Recommendations with Regard to Request for Advice ACCC/A/2014/1 by Belarus*, Compliance Committee of the Aarhus Convention, UN Doc ECE/MP.PP/C.1/2017/11, 18 June 2017, para 3.

annex to *Decision I/7*.⁵⁴ In both decisions, the outcome of the request for advice entailed recommendations with regard to the meaning and scope of particular terminology in the Convention, as well as a recommendation for the requesting Party to pursue certain measures at the domestic level. A third request for advice was filed by Ukraine and is pending.⁵⁵ What is uncertain in this new procedure is whether the requesting Party can become the object of measures by the CoP should it fail to implement the recommendations of the CC, and whether it remains potentially subject to a submission procedure in respect of the concerns addressed through the advisory function.

The UNECE Water Convention advisory procedure derives from the constitutive Decision by the MoP, which provides explicitly for it and underscores that the advisory procedure ‘shall not be regarded as alleging non-compliance’.⁵⁶ Therefore, as will be explained in detail, the outcome of the advisory procedure is legal and technical advice without the possibility that the Committee might suggest the MoP take action in respect of relevant concerns.⁵⁷ Another noteworthy aspect of the Convention’s advisory procedures is the clarity of the process regarding who can request an advisory opinion and the effects of an advisory opinion for the requesting entity. The scope of the advisory procedure embraces two situations. First, when a Party seeks advice on its difficulties in implementing the UNECE Water Convention. Second, when a Party or Parties seek advice on how to implement the Convention with respect to another Party and/or with non-Parties to the Convention. Thus, the advisory procedure has a facilitative and preventive dimension inasmuch as it seeks for the Parties to identify potential issues of non-compliance, request guidance to resolve them and, at the same time, prevent further disputes with other Parties or non-Parties with a legal interest.

The advisory procedure produces advice tailored to the needs of the requesting Party for the purposes of implementing the Water

⁵⁴ UNECE, *Recommendations with Regard to Request for Advice ACCC/A/2020/2 by Kazakhstan*, Compliance Committee of the Aarhus Convention, UN Doc. ECE/MP.PP/C.1/2021/6, 1 July 2020, para 14.

⁵⁵ UNECE, *Request for Advice by Ukraine ACCC/A/2022/3*, Letter of the Secretary of the CC of 21 July 2022.

⁵⁶ UNECE (n 37) para 18.

⁵⁷ This feature is also present in the advisory procedure/consultative process of the Protocol on Water and Health and the Facilitative Branch of the Kyoto Protocol.

Convention. According to its constitutive Decision, the Committee may include *inter alia* the following in its advisory opinion:

- Advice and assistance to an individual Party or group of Parties to facilitate the implementation of the Water Convention. The Committee can particularly recommend the enhancement of domestic regulatory regimes; provide assistance in establishing transboundary water co-operation agreements; facilitate technical and financial support, including information and technology transfer and capacity building; or provide assistance to seek support from specialized agencies;
- Requesting and assisting the Party or Parties concerned to develop an action plan to facilitate implementation, within a timeframe agreed between the IC and the Parties;
- Inviting the Party concerned to submit progress reports on the efforts that it is making to implement the Convention.⁵⁸

These suggestions are similar to the facilitative measures that the IC can adopt in the context of a submission procedure. However, it is not contemplated that, in the context of the advisory procedure, the Committee would recommend to the MoP the adoption of measures such as issuing statements of concern or a declaration of non-compliance, cautions or the suspension of rights and privileges. Therefore, an advisory opinion seems to be a way for States to seek guidance in the implementation of the Convention without being subject to such measures. Nevertheless, nothing prevents the Committee using the information derived from an advisory procedure to act *motu proprio* with regard to the same State, or States concerned, under a more stringent procedure.

In terms of standing, the advisory procedure is open to States Parties to the Water Convention, with regard to their own actions or those of other Parties, and to non-States Parties. In the case of non-States Parties, their participation in the advisory procedure is subject to their consent.⁵⁹ The opening of the Water Convention to all UN member States in 2003 has enabled the IC to expand its functions to regions beyond Europe. For example, if Ghana,⁶⁰ which recently acceded to the Water Convention, decides to request advice from the Committee on activities

⁵⁸ UNECE (n 37) para 22.

⁵⁹ *Ibid.*, para 19–20.

⁶⁰ Ghana acceded to the Water Convention on 22 June 2020.

conducted on the Black Volta River, the Committee could consider inviting Burkina Faso or Côte d'Ivoire to participate in the advisory procedure as riparian States. However, since the latter two States are non-Parties to the Water Convention, their consent to participation is essential. In fact, the Committee is obliged to explain the advisory procedure to those Parties and suggest their participation.⁶¹

Finally, public participation is possible within the functions of the IC and other mechanisms in at least in two ways. First, members of the public can transmit information to the Committee on a Party's non-compliance, on the basis of which the Committee may initiate *motu proprio* a procedure against the concerned Party.⁶² Second, during the advisory and submission procedures the Committee shall take into account the information submitted by the public.⁶³

5.3.3 *An Example of the Water Convention's Advisory Procedure: The Cijevna/Cem River Advisory Procedure (WAT/IC/AP/1 – Montenegro and Albania)*

The Cijevna/Cem River advisory procedure provides a good example of the effectiveness of the Water Convention advisory procedure. On 22 November 2019, Montenegro filed a letter to the Secretariat of the UNECE Water Convention, afterwards circulated to the IC of the UNECE Water Convention. In its letter, Montenegro expressly requested the involvement of the IC in relation to the construction of small hydro-power plants on the Cijevna/Cem River in Albania.⁶⁴ Montenegro was not clear as to the procedure under which it was approaching the IC, which appeared to fall somewhere between a submission and a request for the advisory procedure. The IC analyzed Montenegro's letter and considered it a request for the exercise of its advisory function. Yet it also left open the possibility of initiation at a later stage of a *motu proprio* procedure.⁶⁵ In accordance with the established process, the IC invited

⁶¹ UNECE (n 37) para 23.

⁶² *Ibid.*, paras 28 and 29.

⁶³ *Ibid.*, para 31.

⁶⁴ UNECE, *Report of the Preparatory Meeting for the Eleventh Meeting of the Implementation Committee*, UN Doc. ECE/MP.WAT/IC/2020/2, 13 October 2020, para 6.

⁶⁵ UNECE, *Report of the Implementation Committee on Its Tenth Meeting*, UN Doc ECE/MP.WAT/IC/2019/2, 27 May 2020, paras 7–8.

Albania to participate in the advisory procedure. Albania agreed to do so on 31 January 2020.⁶⁶

The situation at Cijevna/Cem River is also the object of a submission procedure before the Implementation Committee of the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention). Montenegro instituted proceedings under the Espoo Convention on 11 September 2019,⁶⁷ and Albania replied on 30 December 2019, asserting compliance with its obligations under this treaty.⁶⁸ At the moment of writing this chapter, the procedure is ongoing and has not yet led to an outcome. In this context, an interesting preliminary aspect of the procedure is the co-ordination between the implementation committees of the UNECE Water Convention and the Espoo Convention,⁶⁹ who agreed on sharing information related to the matter through their secretariats.⁷⁰ A similar situation is less likely to occur among judicial and arbitral bodies.

The Committee held several information-gathering and consultation sessions with Albania and Montenegro. The Committee decided to adopt a two-track approach: to facilitate the exchange of information between both countries and to assist in the establishment of a joint monitoring and assessment framework for surface waters, groundwater and ecosystems in the Cijevna/Cem River.⁷¹ During the process, Albania proposed the existing bilateral commission established under the 2018 Framework Agreement on Mutual Relations in the Field of Management of Transboundary Waters as a forum for consultations with Montenegro. The Committee proposed a joint technical working group within the framework of this bilateral commission. Albania underscored the importance of avoiding duplication with the existent mechanisms, such as the efforts adopted in the framework of the mechanism governing the Drin River basin.⁷² The Committee clarified the scope of the

⁶⁶ UNECE (n 65) para 7.

⁶⁷ UNECE, *EIA/IC/S/7 Albania*, Submission by Montenegro to the Implementation Committee of the Espoo Convention, 11 September 2019.

⁶⁸ UNECE, *EIA/IC/S/7 Albania*, Response from Albania, 30 December 2019.

⁶⁹ UNECE (n 66) para 7 to 10.

⁷⁰ UNECE (n 65) para 11.

⁷¹ See UNECE, *Report of the Implementation Committee on its Twelfth Meeting*, UN Doc ECE/MP.WAT/IC/2021/1, 18 March 2021, para 7.

⁷² Adopted by the riparian states Albania, Greece, Montenegro, North Macedonia and Kosovo.

advisory procedure as limited to the Cijevna/Cem River and not the Drin River.⁷³

The Committee delivered its legal and technical advice in March 2021.⁷⁴ The Committee held that due to the absence of sufficient monitoring information and data, it was unable to confirm or deny the likelihood of a cumulative transboundary impact caused by the planned construction.⁷⁵ However, the Committee elaborated on the potential difficulty of implementing certain obligations of the Water Convention. In this regard, the Committee recognized that the Convention's procedural obligations are instrumental in operationalizing substantive obligations such as the obligations to prevent, control and reduce transboundary impact. The Committee examined the matter of the Cijevna/Cem River in the context of the procedural obligations of establishing joint bodies, concluding transboundary water agreements, holding consultations, joint monitoring and assessment and exchanging data and information.

Particularly, the Committee advised Albania and Montenegro to enhance their efforts in implementing the obligation of carrying out joint monitoring and assessment by establishing a joint or co-ordinated monitoring and assessment framework. Similarly, the Committee advised the Parties on developing a practice of exchanging information and data, and procedures in pursuit of that aim.⁷⁶ Albania and Montenegro engaged in a joint effort to implement the Committee's advice. In particular, both countries are working on establishing the joint technical working group for monitoring and assessment of the Cijevna/Cem River. The Parties submitted to the IC a first briefing on the implementation on 20 May 2021.⁷⁷ The IC continues to assist Albania and Montenegro.

5.3.4 *Contributions of the Advisory Procedure to the Implementation of MEAs*

This section of the chapter will elaborate on three valuable dimensions of the Water Convention's advisory procedure. First, the role of the

⁷³ UNECE (n 72) paras 11–14.

⁷⁴ For the summary of the legal and technical advice provided by the Committee, see UNECE, *Annex to the Report of the Implementation Committee on its Twelfth Meeting*, UN Doc ECE/MP.WAT/IC/2021/1, 18 March 2021.

⁷⁵ UNECE (n 75) 6.

⁷⁶ *Ibid.*, 6–8.

⁷⁷ See UNECE, *Report of the Implementation Committee on Its Thirteenth Meeting*, UN Doc ECE/MP.WAT/IC/2021/3, 21 July 2021, para 7.

advisory procedure in water diplomacy and the prevention of further disputes. Second, the importance of having a tailored legal and technical advisory opinion to assist in the implementation of an MEA. Third, the areas of opportunity where the advisory procedure may enhance the implementation of current and future MEAs.

5.3.4.1 The Conciliatory Role of the Advisory Procedure in the Context of Water Diplomacy

Water diplomacy mainly hinges on co-operation agreements such as the recent co-operation framework on the Senegal–Mauritanian Aquifer Basin.⁷⁸ In the absence of co-operation agreements and the will to implement them, States may engage in long-lasting and costly disputes such as the dispute relating to the Gabčíkovo–Nagyymaros Project or the ‘Dispute over the Status and Use of the Waters of the Silala’,⁷⁹ both before the ICJ. In this context, the first remarkable feature of the advisory procedure is its role in fostering water diplomacy to help prevent long-lasting and costly disputes.

In particular, the advisory procedure provides alternative ways forward to two or more States with competing interests in a shared resource. This feature is not present in other non-compliance procedures, and it is unique because its main objective is to explore potential solutions with the concerned Parties and non-Parties, without triggering a confrontational judicial or quasi-judicial procedure. This may prove to be attractive to States. Arguably, the advisory procedure offers a cheaper way forward than recourse to judicial or arbitral proceedings. One could assert that the advisory procedure is a conciliatory way to prevent a dispute, and to prevent environmental damage⁸⁰ or, as expressed by some former judges, it is a form of ‘advisory arbitration’.⁸¹ Indeed, the engagement of the IC

⁷⁸ UNECE, *The Gambia, Guinea Bissau, Mauritania and Senegal Commit to Cooperate on Shared Groundwater as Foundation for Regional Stability, Sustainable Development and Climate Adaptation*, Press Release, 29 September 2021.

⁷⁹ Currently under deliberation. ICJ, ‘Dispute over the Status and Use of the Waters of the Silala (Chile v. Bolivia) – Conclusion of the Public Hearing’, Press Release 2022/13, 14 April 2022.

⁸⁰ For some considerations on conciliation and NCMs, see M Fitzmaurice, ‘The Potential of Inter-State Conciliation within the Framework of Environmental Treaties’ in C Tomuschat and M Kohen, *Flexibility in International Dispute Settlement: Conciliation Revisited* (Brill Nijhoff 2020) 95–110.

⁸¹ Judges Lapradelle and Negulesco coined the term: ‘The procedure which allows States to apply to the Court through the Council for an opinion constitutes a new dispute settlement mechanism. This mechanism differs from the opinion properly provided for

in facilitating a solution among the Parties makes of the advisory procedure a new development among non-compliance procedures. The Cijevna/Cem River advisory procedure is a clear example of this. The Parties consented to participating in the procedure and are currently working together to prevent environmental damage in this watercourse.

If the Parties fail to reach an agreement through the advisory procedure, they may resort to other means of dispute settlement. Most MEAs are clear in recognizing the independence of the non-compliance procedure from dispute settlement processes.⁸² For example, the UNECE Water Convention recognizes that the procedure to facilitate and support implementation and compliance shall be without prejudice to Article 22 of the Convention on the settlement of disputes.⁸³ The next question is whether the advisory opinion rendered by the IC has any value in a further judicial or non-judicial proceeding. To contextualize this point, let us go back to the Cijevna/Cem River advisory procedure, where the IC was unable to confirm or deny the likelihood of cumulative transboundary impact caused by the planned hydropower plants.⁸⁴ What would have been the legal consequence of a determination confirming cumulative environmental impact? A first point to remember is that non-compliance procedures, even if some of them entail sanctions, are not judicial processes. Therefore, the principle of *res judicata* cannot be invoked as a basis to request a tribunal not to exercise its jurisdiction over a dispute.⁸⁵ However, the findings of the IC can assist a judicial/arbitral organ in adopting an interpretation of the treaty and may

in Article 14 of the Covenant, in that it is similar to arbitration, but has certain features peculiar to it. It could be called advisory arbitration.' MA Lapradelle and D Negulesco, 'Rapport sur la nature Juridique des Avis Consultatifs de la Cour Permanente de Justice Internationale - leur valeur et leur portée positive en droit International' (1928) 34 *Annuaire Institut de Droit International* 453.

⁸² See T Treves, 'The Settlement of Disputes and Non-Compliance Procedures' in T Treves, L Pineschi, A Tanzi et al. (eds), *Non-Compliance Procedures* (n 5) 505–11.

⁸³ UNECE (n 13) para 45.

⁸⁴ UNECE (n 75) 6.

⁸⁵ For a punctual discussion on the interlinkage between NCMs and dispute settlement, see P Sands, 'Non-Compliance and Dispute Settlement' in R Wolfrum, P-T Stoll and U Beyerlin (eds) *Ensuring Compliance with Multilateral Environmental Agreements: A Dialogue between Practitioners and Academia* (Brill 2006) 356–58; T Treves, 'The Settlement of Disputes and Non-Compliance Procedures' in T Treves, L Pineschi, A Tanzi, et al. (eds), *Non-Compliance Procedures* (n 5) 505–11.

provide elements of fact-finding.⁸⁶ For example in the *Diallo* case, the ICJ ascribed great weight to the interpretation of the International Covenant on Civil and Political Rights (ICCPR) adopted by the Human Rights Committee, as an independent body that was established specifically to supervise the application of the ICCPR.⁸⁷ Yet the facilitative nature of the advisory procedure differs from the advisory function of a judicial body. The goal of judicial advisory proceedings is delivering an authoritative statement of law on a legal question requested by an entity (international organizations, States or NGOs⁸⁸) for the fulfilment of its obligations and/or functions. An advisory opinion constitutes a source of international law and entails legal effects for the requesting entity and the legal system.⁸⁹

5.3.4.2 Tailored Technical and Legal Advice

One of the most crucial roles of a CC is identifying the main reasons why a Party is failing to implement its obligations under an MEA. The reasons for non-compliance can go beyond a problem with political will. Instead, a Party might be in the position of lacking the technical and financial capacity to implement its obligations. For these reasons, States need an IC from which they can request technical and legal advice without being accused of non-compliance by another Party, the public or the CC. Submission, reviewing and self-trigger procedures generate a certain level of stigmatization against the concerned Party, which may help tackle the absence of political will to implement an MEA. However, despite the recommendations that may follow these procedures, States may be reluctant to implement them because of their confrontational and punitive nature.⁹⁰ As underscored by Judge Buergethal, ‘it is easier for

⁸⁶ See the replies of the IC to questions received from Latin American countries: UNECE, *Annex to the Report of the Implementation Committee on its Fourteenth Meeting*, UN Doc ECE/MP.WAT/IC/2022/2, 24 May 2022, 7.

⁸⁷ *Ahmadou Sadio Diallo (Republic of Guinea v Democratic Republic of the Congo)*, Merits, Judgment, ICJ Reports 2010, 639, para 66.

⁸⁸ Only possible at the African Court of Human and People’s Rights. *Protocol to the African Charter on Human and People’s Rights on the Establishment of an African Court on Human and People’s Rights*, 10 June 1998, Article 4(1).

⁸⁹ See *Delimitation of the Maritime Boundary in the Indian Ocean (Mauritius/Maldives)*, Preliminary Objections, Judgment, ITLOS Reports 2020–2021, 17, paras 203–5.

⁹⁰ See F Romanin Jacur, ‘Triggering Non-Compliance Procedures’ in T Treves, L Pineschi, A Tanzi, et al. (eds), *Non-Compliance Procedures* (n 5) 375–77.

governments to comply with advisory opinions because such rulings do not stigmatize them'.⁹¹

In this context, the advisory procedure, as envisaged in the UNECE Water Convention, goes beyond the traditional role of ICs by offering a procedure to those Parties with the political will to implement an MEA but with a lack of capacity to do so. Under the advisory procedure, a Party can have recourse to the IC to expose its situation and to request financial, technical or legal advice. On this point, the IC has underscored the benefit of the Committee's interdisciplinary composition.⁹² As explained, the outcome of an advisory procedure entails recommendations aimed at enhancing domestic regulatory regimes or facilitating technical and financial support for the requesting Party. Furthermore, the IC can bring to the attention of the CoPs/MoPs the financial and technical difficulties of a Party with the aim of seeking support among other Parties.

5.3.4.3 Assessing the Utility of Employing an Advisory Procedure in other MEAs

As discussed, the advisory procedure has emerged within an IC of an MEA governing the management of international watercourses and lakes. Yet, this procedure can be easily adapted for use under other MEAs addressing the management of common/shared resources or addressing a common concern. The inclusion of a similar procedure in other compliance mechanisms could foster a more active engagement in the implementation of the related treaties and ensure the prevention of environmental damage and health risks. This improvement could be made in existing compliance mechanisms among MEAs by vesting in them the power to conduct an advisory procedure. For example, the CC of the Protocol on Water and Health adopted in 2014 a consultation process to facilitate and support implementation by issuing technical, scientific and legal advice.⁹³ Like the advisory procedure of the Water Convention, the consultation process is not a compliance review

⁹¹ T Buergenthal, 'The Inter-American Court of Human Rights' (1982) 76(2) *The American Journal of International Law* 245. See also *Interpretation of Peace Treaties*, Advisory Opinion, ICJ Reports (1950) 65, para 71.

⁹² UNECE, *Report of the Implementation Committee to the MoP and Draft Decision on General Issues of Implementation*, UN Doc ECE/MP.WAT/2021/5, 6 July 2021, paras 13–31.

⁹³ UNECE (n 51) para 1.

procedure and, thus, it doesn't establish whether a Party is non-compliant.⁹⁴ The consultation is requested by a Party or by invitation from the CC.⁹⁵ To date, the CC of the Protocol on Water and Health has dealt with seven consultation processes.

The second pathway of opportunity for introducing an advisory procedure is in the context of negotiations on compliance mechanisms of new multilateral treaties. This chapter underscores three of them:

- **BBNJ Agreement.**⁹⁶ The draft text of the international legally binding Instrument on the Conservation and Sustainable Use of Marine Biological Diversity of Areas Beyond National Jurisdiction (BBNJ), would establish in Article 53 ter an Implementation and Compliance Committee to facilitate and review the implementation of the agreement. The modalities and procedures would be adopted during the first CoP.⁹⁷ In this scenario, the advisory procedure could be a function considered by the CoP when establishing the Implementation and Compliance Committee. It should be noted that the draft text includes a proposal for the CoP to request advisory opinions from the International Tribunal for the Law of the Sea.⁹⁸ Establishing advisory procedures to be conducted, respectively, by a non-compliance body and a judicial body may complement authoritative statements of law with tailored facilitative advice for implementing the treaty.
- **Plastic pollution Treaty.** In March 2022, the United Nations Environment Assembly (UNEA) decided to convene an intergovernmental negotiating committee to develop a binding instrument on plastic pollution.⁹⁹ Despite its early stage of development, it is probable that the Intergovernmental Negotiating Committee (INC) will be considering the appropriate mechanisms to address compliance with the

⁹⁴ Ibid., para 4.

⁹⁵ Ibid., para 5.

⁹⁶ International legally binding instrument under the United Nations Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biological Diversity of Areas Beyond National Jurisdiction, UNGA Res 72/249, 24 December 2017, UN Doc A/RES/72/249.

⁹⁷ UN, *Revised Draft Text of an Agreement under the United Nations Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biological Diversity of Areas Beyond National Jurisdiction*, UN Doc A/CONF.232/2022/5, Articles 53 and 53 ter.

⁹⁸ Ibid., Article 55 ter.

⁹⁹ UNEA, *End Plastic Pollution: Towards an International Legally Binding Instrument*, UNEP/EA.5/L.23/Rev.1, 2 March 2022, Operative 1 and 3.

treaty.¹⁰⁰ Stakeholders have expressed the importance of adopting an instrument that takes into account countries' different capacities, as well as their need for financial and technical assistance.¹⁰¹ In this context, the INC might draw on the advisory procedure under the Water Convention.

- **Pandemic Treaty.** In December 2021, the World Health Organization agreed on establishing an intergovernmental negotiating body to negotiate a binding instrument to strengthen pandemic prevention, preparedness and response.¹⁰² Given the preventive nature of the upcoming instrument, an IC or similar body will be useful to implement the treaty.¹⁰³

In sum, the advisory procedure established in the UNECE Water Convention and other MEAs constitutes a truly facilitative non-compliance procedure capable of offering advice to tackle technical and financial implementation issues, to prevent environmental damage and to help prevent further disputes. The advisory procedure could prove to be an efficient tool in the implementation of multilateral treaties addressing common concerns or the management of shared resources.

5.4 Conclusions

This chapter has explored the potential of the advisory procedure in CCs by drawing on the advisory procedure employed by the IC of the UNECE Water Convention and recent experience with this procedure. The chapter has highlighted the benefits of non-confrontational and non-punitive NCMs and procedures. While most of these procedures can be useful to address the lack of political will to implement MEAs, it is true that they may be more limited in their contribution to addressing other

¹⁰⁰ UNEA (n 100) para 3(p); UNEP, *Note by the Secretariat*, UNEP/PP/INC.1/5, 14 October 2022, para 22.

¹⁰¹ UNEP-IISD, 'Marine Litter and Plastic Pollution Bulletin', *Earth Negotiations Bulletin*, September 2021, 4; Ministerial Calls for Global Agreement on Marine Litter, Plastic Pollution, International Institute for Sustainable Development, 7 September 2021.

¹⁰² WHO, *The World Together: Establishment of an Intergovernmental Negotiating Body to Strengthen Pandemic Prevention, Preparedness and Response*, World Health Assembly, Second Special Session, Doc SSA2(5), 1 December 2021.

¹⁰³ H Nikogosian, *A Guide to a Pandemic Treaty: Things You Must Know to Help You Make a Decision on a Pandemic Treaty* (The Graduate Institute of International and Development Studies – Global Health Centre 2021) 23–24; See Chapter 2, this volume.

compliance issues, such as lack of capacity or the emergence of a dispute. The chapter draws the following conclusions on the advisory procedure:

- (1) The tailored and technical advice offered through an advisory procedure stands out as one of the unique features of the advisory procedure as compared with the outcome of a submission, reporting or self-triggered procedure. This feature may prove to be attractive for States willing to implement an MEA but struggling to do so for technical or financial reasons. Moreover, the interdisciplinary composition of non-compliance bodies enables the production of advisory opinions with technical and legal recommendations, tailored to the specific needs of the requesting Party.
- (2) The advisory procedure offers a conciliatory avenue for the prevention of potentially long-standing and costly disputes before judicial or arbitral bodies. Relying on the principle of cooperation, the concerned States can request an advisory opinion from the IC to obtain guidance on how to implement treaty obligations in respect to a particular project or a situation that may entail environmental harm. On the one hand, the advisory procedure seeks to prevent a dispute, and on the other, it offers alternatives to prevent further damage.
- (3) The non-inquisitorial nature of the advisory procedure fosters a more facilitative approach across MEAs. Bearing this in mind, existing CCs should consider the establishment of an advisory procedure, adopting a similar architecture to that in the UNECE Water Convention. Furthermore, the advisory procedure could be considered for inclusion in designing compliance and implementation mechanisms in the course of the negotiation of new treaties such as the BBNJ Agreement, the Plastic Pollution Treaty or a new treaty on pandemic preparedness and response.