

Status of current international agreements on transboundary waters

Dr Mara Tignino

Senior Lecturer and Coordinator
Platform for International Water Law/Geneva Water Hub

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Outline

- I. 1997 Convention on the Law of the Non-Navigational Uses of International Watercourses (UN Watercourses Convention)
- II. 1992 Convention on the Protection and Use of International Watercourses and International Lakes (UN Economic Commission for Europe (UNECE), UNECE Water Convention)
- III. 2008 International Law Commission's (ILC) Draft Articles on the Law of Transboundary Aquifers (ILC Draft Articles)

Section I



UN Watercourses Convention

Main features of the UN Watercourses Convention

- A multilateral convention of global scope
- A framework-convention

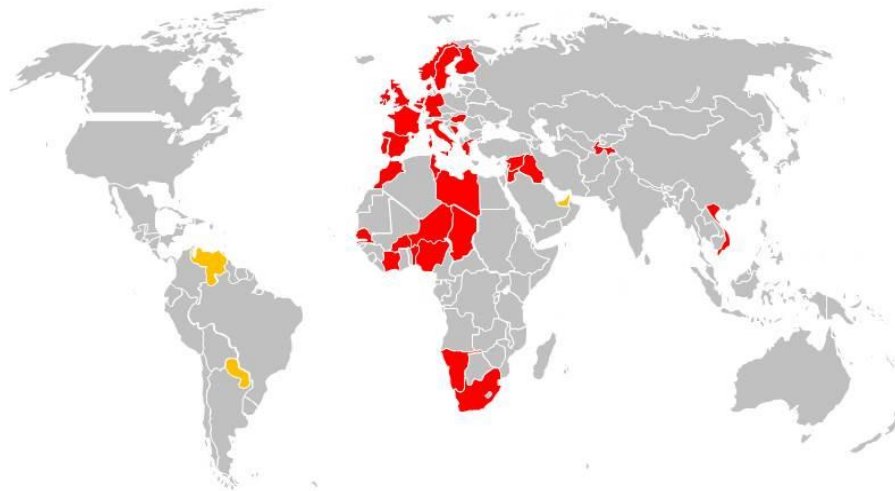
“Expressing the conviction that a framework convention will ensure the utilization, development, conservation, management and protection of international watercourses and the promotion of the optimal and sustainable utilization thereof for present and future generations”

Preamble of the UN Watercourses Convention

Parties and Signatories to the UN Watercourses Convention

36 PARTIES

16 SIGNATORIES



- Comprehensive list of principles applicable to the management and protection of water resources
- Codification of principles of customary law:
 - Equitable and reasonable utilization
 - Obligation not to cause a significant damage

Equitable and reasonable use

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

Art.5 of the UN Watercourses Convention

Factors relevant to equitable and reasonable utilization

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

- (a) Geographic, hydrographic, hydrological, climatic, ecological and other factors of a natural character;
- (b) The social and economic needs of the watercourse States concerned;
- (c) The population dependent on the watercourse in each watercourse State”

Art.6 of the UN Watercourses Convention

No priority between uses

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

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

Art.10 of the UN Watercourses Convention

Obligation not to cause significant harm

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

Art.7 of the UN Watercourses Convention

Duty to cooperate

- To establish joint mechanisms or commissions (arts.8 and 24)
- To collect and share information (art.9)
- Notification and consultation concerning planned measures (arts.11-19)

Protection of the environment

“Watercourse States shall, individually and, where appropriate, jointly, protect and preserve the ecosystems of international watercourses” (art. 20 of the UN Watercourses Convention)

- Prevention, reduction and control of pollution (art.21)
- Introduction of alien or new species (art.22)
- Protection and preservation of the marine environment (art.23)

Settlement of water disputes

“In the event of a dispute between two or more parties concerning the interpretation or application of the present Convention, the parties concerned shall, in the absence of an applicable agreement between them, seek a settlement of the dispute by peaceful means in accordance with the following provisions. If the parties concerned cannot reach agreement by negotiation requested by one of them, they may jointly seek the good offices of, or request mediation or conciliation by, a third party, or make use, as appropriate, of any joint watercourse institutions that may have been established by them or agree to submit the dispute to arbitration or to the International Court of Justice”

Art. 33 of the UN Watercourses Convention

Public participation and human needs

- Principle of non-discrimination

“A watercourse State shall not discriminate on the basis of nationality or residence or place where the injury occurred, in granting to such persons (...) access to judicial or other procedures, or a right to claim compensation or other relief in respect of significant harm caused by such activities carried on in its territory” Art. 32 of the UN Watercourses Convention

- Human needs

Satisfying basic human needs is a priority

Art. 10 of the UN Watercourses Convention

Significance of the entry into force

- The entry into force of the 1997 Convention plays a role in the recognition of the customary nature of the principles of international water law
- The Convention provides a legal framework to share the benefits of international watercourse uses
- Frame of reference for the negotiation of future agreements on shared water resources
- Contributes to building a mutual trust between States
- Can help correcting the asymmetrical relationships of riparian States

Section II

UNECE Water Convention



Origins of the UNECE Water Convention

- The Convention was adopted under the aegis of UNECE: UN regional economic organisation (56 Member States (Central Asia, North America, Israel))
- In the 1980s, the activities of the UNECE increasingly dealt with questions of transboundary pollution (for example the ECE Declaration of policy on prevention and control of water pollution (1980))

Historical context

- Dissolution of the USSR at the end of the Cold War
- Willingness to strengthen the cooperation between Western and Eastern Europe through shared water resources
- The UNECE Water Convention was adopted in Helsinki, on 17 March 1992 and entered into force on 6 October 1996 (41 Member States)

- Amendments to Arts 25 and 26 (2003): the UNECE Water Convention is open for signature to all Member States of the United Nations
- The amendments entered into force in September 2015: global scope of the UNECE Water Convention
- The UNECE Water Convention is a framework agreement and is complemented by annexes and protocols

Goals of the Convention

The protection of the aquatic ecosystems may take different forms:

- Preventing, reducing and controlling pollution (art.2 (a))
- Conservation and protection of the environment of water resources (art. 2 (b))
- Reasonable and equitable use of transboundary water resources (art. 2 (c))
- Rehabilitation of aquatic ecosystems (art. 2 (d))

Principles applicable to all Parties

Precautionary principle

“The precautionary principle, by virtue of which action to avoid the potential transboundary impact of the release of hazardous substances shall not be postponed on the ground that scientific research has not fully proved a causal link between those substances, on the one hand, and the potential transboundary impact, on the other hand”

Art.2. 5 (a) of the UNECE Water Convention

Polluter-pays principle

“The polluter-pays principle, by virtue of which costs of pollution prevention, control and reduction measures shall be borne by the polluter”

Art.2.5 (b) of the UNECE Water Convention

Principle of sustainable development

“Water resources shall be managed so that the needs of the present generation are met without compromising the ability of future generations to meet their own needs”

Art.2.5 (c) of the UNECE Water Convention

Obligations applicable to riparian Parties

“The riparian Parties shall on the basis of equality and reciprocity enter into bilateral or multilateral agreements or other arrangements, where these do not yet exist, or adapt existing ones, where necessary to eliminate the contradictions with the basic principles of this Convention”

Art. 9.1 of the UNECE Water Convention

“The agreements or arrangements mentioned in paragraph 1 of this article shall provide for the establishment of joint bodies. The tasks of these joint bodies include:

“to collect, compile and evaluate data in order to identify pollution sources likely to cause transboundary impact; [...] to elaborate concerted programmes to monitor water quality; to establish warning and alarm procedures; to serve as a forum for the exchange of information”

Art.9.2 of the UNECE Water Convention

Institutional framework

- The Meeting of the Parties (MoP): meet every three years
- The MoP can adopt amendments to the Convention
- The MoP can establish subsidiary organs such as the Implementation Committee, the Working Group on Integrated Water Resources Management and the Task Force on Water and Climate Change

Comparing the UN Watercourses Convention and the UNECE Water Convention

- The 1992 and the 1997 Conventions both set out principles and rules on the use, management and protection of shared water resources
- They are both framework Conventions
- They both provide a normative framework to guide the development of regional and sub-regional agreements that take into account the specificities of each basin or sub-basin

- Both Conventions give importance to the principle of equitable and reasonable utilization of international watercourses and to the obligation not to cause significant harm
- Contrary to the 1997 Convention, the 1992 Convention covers groundwaters that are not connected with surface waters
- Specificities of the 1992 Convention on environmental protection and cooperation duties
- The 1992 Convention establishes more precise and stricter norms aiming at avoiding transboundary harm and at institutionalizing water management

Section III

ILC Draft Articles on the Law of Transboundary Aquifers



- The term aquifer is defined as “permeable water-bearing geological formation underlain by a less permeable layer and the water contained in the saturated zone of the formation”

Art.2 (a) of the ILC Draft Articles

- Transboundary aquifer means “an aquifer or aquifer system, parts of which are situated in different States”

Art.2 (c) of the ILC Draft Articles

Sovereignty of aquifer States and the duty not to harm the environment in other States

“Each aquifer State has sovereignty over the portion of a transboundary aquifer or aquifer system located within its territory. It shall exercise its sovereignty in accordance with international law and the present draft articles”

Art.3 of the ILC Draft Articles

- State sovereignty is limited by the rules of international law that apply to shared natural resources

Vital human needs

“In determining what is equitable and reasonable utilization, all relevant factors are to be considered together and a conclusion reached on the basis of all the factors. However, in weighing different kinds of utilization of a transboundary aquifer or aquifer system, special regard shall be given to vital human needs”

Art.5.2 of the ILC Draft Articles

“Where an emergency poses a threat to vital human needs, aquifer States may take measures that are strictly necessary to meet such needs”

Art.17.3 of the ILC Draft Article

Significance of the ILC Draft Articles

- The UN General Assembly considered the ILC Draft Articles in 2008, 2011 and 2013 and commended the Draft Articles to the attention of States “as guidance for the adoption of regional agreements or arrangements for the proper management of transboundary aquifers”
Resolution 68/118, 16 December 2013
- ILC Draft Articles are an important reference document for the conclusion of agreements on transboundary groundwaters (i.e. Guarani Aquifer Agreement of 2010 between Argentina, Brazil, Paraguay and Uruguay)

Final remarks

➔ Principles and rules of international law govern the uses and management of water resources at the universal, regional and basin levels

➔ Universal instruments share common principles and are complementary

➔ Institutional frameworks play a fundamental to ensure a sound and effective management of water resources

Thanks!

Platform for International Water Law

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Geneva Water Hub

www.genevawaterhub.org

mara.tignino@unige.ch

