

**First workshop “River Basin Commissions and Other Joint Bodies
for Transboundary Water Cooperation: Legal and Institutional Aspects”
Geneva, 23-24 September 2013**

CONCLUSIONS¹

The value of global multilateral legal frameworks

The entry into force of the United Nations Convention on the Law of Non-Navigational Uses of International Watercourses (New York, 1997) and the global opening of the 1992 United Nations Economic Commission for Europe (UNECE) Convention on the Protection and Use of Transboundary Watercourses and International Lakes (Helsinki, 1992) constitute a real opportunity for governments, basin organizations, water users and communities. Taken together, these instruments bring more certainty and security in terms of the rights and duties of States with regard to the management and protection of transboundary waters. They also provide a greater incentive to cooperation at multiple levels. The 2008 Draft Articles on the Law of Transboundary Aquifers complement this picture by revitalizing attention to the issue of transboundary groundwater.

It is crucial to use this momentum to build on the complementarities of the two Conventions, develop synergies and establish a system of effective coordination with the end result of a truly global transboundary water regime. Such a regime should provide a platform for communication, discussion and support to the implementation of transboundary cooperation, ultimately facilitating international water governance.

Need for multi-level governance of shared waters

While the management of shared water resources takes place under the authority of sovereign States, effective transboundary water agreements need some kind of consent of water users since water is a resource used by everyone and managed at multiple levels. This implies that many kinds of agreements are needed if governance of transboundary water issues is to be effective.

Agreements can have the form of treaties and conventions. However, there can also be other types of agreements between stakeholders and institutions across borders, working at national, subnational and local levels. These other types of agreements are also an expression of the willingness to cooperate through the establishment of rules of conduct. They are instruments for linking communities across borders. Other types of agreements are emerging not only to complement treaties and conventions but also to allow for a horizontal distribution of powers and responsibilities and horizontal implementation.

Wealth of experience available

Enormous experience is available with regard to the formal cooperation agreements in all parts of the world. The UNECE Water Convention, the Southern African Development Community (SADC) Revised Protocol on Shared Watercourses (2000) and other instruments have been crucial in supporting transboundary water cooperation.

¹ These Conclusions were prepared by the UNECE Water Convention secretariat in consultation with the lead countries – Germany and Finland – to summarize discussions during the workshop. All presentations from the workshop can be consulted at www.unece.org/env/water/workshop_joint_bodies_2013.html.



For example, the UNECE Water Convention served as a model for several existing agreements (Danube and Sava Rivers, Kazakh-Russian rivers, Lake Peipsi, etc. and also the EU Water Framework Directive) and helped in establishing agreements and joint bodies, e.g. on the Chu-Talas and Dniester Rivers.

There is also an emerging experience of supporting other types of agreements. Such practice promoted by International Union for Conservation of Nature (IUCN) in South and Central America demonstrates how a diversity of agreements, both binding and non-binding, helps to strengthen the dialogue between different stakeholders towards building consensus on the need for joint action to manage the basin in a concerted manner.

Cooperation as evolutionary process

Establishing good cooperation requires time to build trust and gradually to expand the scope of cooperation. The example of cooperation on the Rhine shows the evolution of substantive scope of cooperation as well as of its geographical scope under the International Commission for the Protection of the Rhine (ICPR) to involve also non-convention countries in cooperation. Time was required not only to build trust and mutual understanding but also to convince society of the danger of increasing water pollution, which prompted cooperation, and to integrate all relevant policy fields and sectors into the cooperation.

While accidents or disasters often serve as turning points for cooperation (e.g. 1986 Sandoz Accident or 1993 and 1995 floods on the Rhine), countries should aim at continuously expanding and improving existing cooperation, moving from short-term priorities to long-term vision and goals. In another example – that of the International Commission for the basin Congo-Oubangui-Sangha (CICOS) – the scope of the Commission was enlarged in a relatively short period from regulation of navigation transport and navigation safety (1999 Agreement) to integrated water resources management (2007 Addition), including integration of water use in the regional planning, optimization of water allocation among uses, provision of opinion on projects, etc. Demonstrated benefits of enlarged cooperation, also in view of emerging challenges such as climate change, has been a major incentive for increased cooperation.

Efforts to establish new agreements and joint bodies

The process of establishing a transboundary agreement and a new joint body differs from case to case. Yet, past experience allows the identification of the following useful approaches and techniques:

- *Starting cooperation at a technical level (e.g. on the issue of floods or water infrastructure) and gradually moving to the political level;*
- *Raising awareness about and focusing on the common benefits from cooperation in a basin to secure buy-in from individual riparian States;*
- *Looking “beyond water”, i.e. coordination and communication with stakeholders from other sectors in order to identify additional benefits;*
- *Involving stakeholders – as future beneficiaries of the improved cooperation in a basin – in the establishment of cooperation, through structured and inclusive stakeholder consultations;*
- *Involving a neutral third party to convene or support the dialogue and negotiations;*
- *Relying on framework instruments (e.g. UNECE Water Convention, EU Water Framework Directive, SADC Protocol, etc.) and support available from respective institutional platforms;*

- *Getting financial and political support to the process by international (possibly, regional) organizations and donors;*
- *Identifying champions among national authorities and stakeholders;*
- *Conducting joint fact-finding missions, assessments or situation analyses as tools to agree on a common vision and to build trust.*

Past experience also shows the usefulness of the following process-wise characteristics that contribute to the success of efforts to establish a transboundary agreement and a joint body:

- *Building a cooperative culture of communication in a basin and an open and positive atmosphere;*
- *Building up the political will towards cooperation, including recognition at political level of the transboundary nature of shared water resources, as well as ensuring ownership and mutual respect in the negotiation process;*
- *Finding the right balance between bottom-up (stakeholder driven) and top-down (government-driven) approaches;*
- *Seeing the process in a long-term perspective and relying on political windows of opportunity.*

The example of the Drin process, which started in 2006 and led to the signing of the Memorandum of Understanding for the management of the Drin Basin (2011) and the institutionalization of the Drin Core Group, shows the role of country ownership, structured stakeholder engagement and neutral third party involvement in the establishment of the legal and institutional setting for cooperation. The example of the Zambezi Watercourse Commission demonstrates the role of a framework agreement (SADC Protocol and SADC Regional Agenda for Integration and Poverty Alleviation) in fostering cooperation. It also shows that good water management practices at the national level can positively influence those at the international or basin level.

The emerging cooperation on hydrology and environment between Afghanistan and Tajikistan in the upper Amudarya River Basin demonstrates the tremendous challenges to building cooperation between States that have recently suffered a civil war or continue to suffer instability. Here, expert cooperation in the priority areas (energy, trade, border control, environment) led to an intergovernmental agreement (2010) on water cooperation to serve as a framework for basic cooperation steps facilitated by international partner organizations (field visits, training courses, new hydroposts, work of task forces, work on a joint information atlas of cooperation).

Third party involvement

Third parties can give an invaluable input to the efforts of riparian States aimed at the negotiation of new agreements and the establishment of joint institutions. They can provide political, technical, financial or capacity-development support. They can provide a platform for discussions, and offer good offices or mediation. It is important though that the engagement of third parties is welcomed by the riparians. In some cases, international organizations acting as third parties have been able to provide political backing for highlighting environmental aspects that were not always a priority for the negotiating governments.

Financial support to establish cooperation

Some international financial institutions and bilateral donors provide targeted financial and capacity-development support to the establishment of new joint bodies for transboundary water cooperation. Some bilateral donors also provide support to existing institutions and work on the strengthening of their capacity. The important factors for the donors include political stability and complementarity of interventions in the water sector with other initiatives (in the areas of agriculture, forestry, entrepreneurship development, etc.). Long-term commitment by donors relies on the commitment of and delivery by riparian countries involved.

At the same time, successes in the establishment of cooperation and new joint institutions for transboundary water cooperation have often been possible with rather limited financial support.

Combining bilateral and basin-wide cooperation

In basins covering more than two States, where cooperation exists only at the bilateral level, the successes of that cooperation can be built upon and expanded gradually until cooperation becomes basin-wide and is then able to overcome the limitations imposed by a restricted geographical scope, i.e. a basin-approach can then be applied. In some areas however (e.g. currently in Central Asia) one can see the opposite trend: a slowdown in the regional basin-wide cooperation and the trend to activate and strengthen bilateral cooperation, along with a tendency to deepen technical cooperation in specific areas and on small river basins.

Bringing all riparians into cooperation

It is not always easy to achieve from the very beginning the involvement of all basin countries in cooperation in the framework of a joint body. The deeds, i.e. the achievements of a joint body, are the most convincing argument for hesitating States to get involved. It is also important to identify and emphasize the various benefits for hesitating States to cooperate in a joint body. Highlighting the international status of the joint body, its authority and image at the international level can also facilitate the engagement of States that are hesitating.

Imbalanced power relationships (such as the existence of a clearly dominant State in a basin) sometimes seem an impossible barrier to the establishment of basin-wide cooperation. At the same time, international attention can be one of the ways to address such situations, while non-political projects and interventions could be helpful to demonstrate the benefits of cooperation.

A single priority (e.g. navigation or hydropower development) of one or several riparian States can often spur transboundary water cooperation. In such cases, involving all sectors and stakeholders can be helpful to overcome one-sided approaches by providing a broader perspective for discussions and negotiations.

Joint bodies for transboundary groundwater

With exception of the Commission for the Franco-Swiss Genevese Aquifer, there are no joint institutions in charge of the management and protection of transboundary aquifers, and very few agreements cover the management of specific transboundary aquifers. This is a clear gap that needs to be filled through targeted efforts to encourage the application of international water law by countries sharing transboundary aquifers (e.g. in North Africa). Also, efforts need to intensify for integrating groundwater management and protection in the work of existing joint institutions that have both surface water and groundwater in their mandate but tend to prioritize surface water in their daily activities.

Effective organizational structure

The principles of effective organizational structure of a joint body include a clearly defined mandate and powers of such body, proper representation in a joint body (that reflects the interests of various water users and stakeholders) and clearly determined lines of decision-making and reporting. Transparency and trust are keys to effective operation of a joint body. Financial sustainability and clear rules of financing and financial reporting are crucial for efficiency and credibility.

It is important that the mandate of a joint body is clearly defined by riparian States and is realistic. Ensuring evidence-based flexibility of the mandate is important to allow the joint body to address new issues. In many joint bodies, one can see a trend of broadening the mandate towards integrated water resources management through a step-by-step approach (e.g. to include groundwater management).

Organizational structures of joint bodies vary considerably. While a permanent secretariat is not an obligatory element of an organizational structure of a joint body, a permanent secretariat ensures continuity, effectiveness, harmonization of approaches and institutional memory. Having a permanent secretariat is particularly important for multilateral joint bodies. At the same time, a permanent secretariat requires resources. When riparian States decide not to have a permanent secretariat for their joint body, national authorities should be strongly committed to perform the necessary secretariat functions for the joint body.

Stable financing

There are different ways of organizing the financing a joint body. Common challenges include ensuring stable financing for core operations of a joint body, for implementation of joint programmes and activities, as well as for implementation of a joint body's decisions at the national level. While some funding can be provided by external donors, especially in the beginning, it is important to ensure that operation and basic functions of a joint body are supported by riparian States themselves.

Allocating financial commitments between riparian States is a challenge in many basins. While the size of territorial shares in a basin has a certain role to play in determining the size of contributions, it is not the only guiding factor. For examples, in the ICPDR, the general territorial approach is applied with nuances, with equal bigger shares fixed for the three large riparian States and equal smaller shares fixed for the small riparians. In CICOS the concept of "effective size" is applied.

Funding from the private sector for some activities of a joint body (e.g. awareness raising) is practised in some joint bodies (e.g. the International Commission for the Protection of the Danube River (ICPDR)). However, there is not yet sufficient practice in this area. In France, in 2005, the legislation established a framework for decentralized cooperation in water and sanitation covering six French basin agencies; it allows local authorities to dedicate up to 1% of their water and sanitation budgets to international development programmes.

Public participation

Public participation in a joint body's activities ensures better acceptance of decisions and contributes to their quality and effective implementation. While national legislation and international agreements (such as the Aarhus Convention) often include provisions on public participation, it is important that a joint body clarifies the mechanisms through which such provisions can be applied in the context of transboundary cooperation within the joint body. This can be done by adopting special rules on access to documents, public participation, observer status, etc. It is important that public participation is an integral part of the joint body's functioning, not a formality.

In some joint bodies, international and national non-governmental organizations (along with intergovernmental organizations) can receive the status of observers in order to participate in the activities of a joint body. For example, in ICPDR, 22 non-governmental and intergovernmental organizations have the status of observers. Observers can be present in all sessions of this joint body and can participate in the work of the expert groups. They provide an important input into the work of such groups, which usually are consensus oriented. In addition, a special expert group on public participation works to enhance the opportunities for stakeholder participation and inputs from the public into transboundary water cooperation under ICPDR.

In another example, in Permanent Okavango River Basin Water Commission (OKACOM), an Access to Information Policy has been developed to ensure that the Commission is transparent and accountable in its operations, providing its stakeholders and the public with reliable and timely information. A Stakeholder Integration Strategy was developed to outline the ways for engaging stakeholders in OKACOM activities. Many joint bodies maintain websites where a lot of useful information is accessible to the public.

Involving the public and stakeholders in rural and remote areas can often be a particular challenge. Special efforts should therefore be made to reach out to such stakeholders, possibly to involve them in developing a shared vision for the basin (as this was done in the Niger River Basin). Existing structures, e.g. water user associations or farmers associations, can be used as a medium in this process. Specific initiatives (e.g. the Blue Passport Initiative) can be launched to promote ownership among the local population. Involving young generations (e.g. as in the International Commission for the Protection of the Oder through competitions and information material to educate children and youth) helps to bring up new generations of informed basin stakeholders.

Clear reporting procedures

Reporting obligations play the key role in assessment and facilitation of the effectiveness of a joint body. Different reporting lines can exist. Participating countries can report to the joint body on the implementation of the agreement, including the implementation of measures decided by the joint body. The secretariat may provide a report on its work to the joint body. Reports on the implementation of work programmes, including both substantive and financial aspects, can be provided to the highest decision-making authority within the joint body. The joint body can publish regular reports on its activities for the public in riparian States.

While specific reporting requirements differ in each case, it is important that the reporting lines are clear and that reporting helps identify and address difficulties in implementation. Some European joint bodies that serve as coordinating structures for the implementation of the EU Water Framework Directive provide reporting directly to the EU, which saves resources of EU member States and allows the avoidance of duplication of efforts. It is important that reporting is not a formality but further strengthens the joint body.

Proper internal management

Proper management of a joint body and of its secretariat helps to ensure efficient work of the joint institution. Proper management contributes to the positive image and reputation of the organization and eventually facilitates financial resources from external and internal sources. While the experience differs from one joint body to another, joint bodies typically have a number of rules and documents covering their internal management. For example in the International Sava River Basin Commission, these include Rules of Procedure; Staff Regulations of the Secretariat; Main Functions, Structure of the Secretariat and Job Description; Financial Rules; Rules of Procurement Procedures; and Detailed Financial Regulations and Procedures. Financial rules cover issues such as budget, appropriations, authority and responsibility, audit, salaries and fees. Rules of Procurement Procedures cover carrying out the procedures, provisions on tender documents, time limits, evaluation and award and post-award requirements.

Joint monitoring and open data exchange

Joint monitoring and the open exchange of data in the framework of a joint body increase trust between participating States and are the starting point for the work of joint institutions. The experience of both Finnish-Russian and Russian-Estonian transboundary water commissions shows the gradual approach to the development of joint monitoring. This experience also demonstrates clear improvement, with time, of the comparability of data received on both sides. Moreover, these examples show how actions in the area of joint monitoring and data exchange lead to concrete measures in other areas and to intensification of cooperation. It is important that the outcomes of joint monitoring and data exchange not only serve to inform the activities and decisions of the joint body, but are also accessible to the public and stakeholders in the basin. The comprehensive joint river surveys practiced under ICPDR provide useful example and can be replicated, in full or in some elements, for data collection and stakeholder involvement in other basins.

Consultations

Consultations are the daily mechanism for the work of a joint body for transboundary water cooperation. Consultations on planned measures (i.e. measures planned in the territory of one country that may have a significant effect on the territory of another country, e.g. flow regulation works) represent one of the most common types of consultations in the framework of joint bodies.

The Espoo Convention provides for procedures for consultations on planned measures with regard to certain types of projects and activities. However, many joint bodies often apply consultations to a wider range of planned activities (flood protection planning and measures, sewerage system development, construction of bridges or fish passes, etc.) The example of Hungary's cooperation on planned measures with its seven neighbouring States shows that procedures for consultations on planned measures are applied not only to planned projects with potential transboundary impact, but also to planned projects of common interest in order to prevent or resolve transboundary problems (such as joint flood defence projects or joint waste elimination projects). Consultations on river basin management plans often involve discussions on planned measures.

The Hungarian experience also demonstrates that consultations on planned measures may take a variety of forms and be undertaken at various levels depending on the issues involved: the issue may be discussed by a sub-committee or a working group, or by the joint body at the highest political level; regional or local authorities may be involved in line with national procedures; Espoo Convention procedures may be followed and public hearings held; the matter may be brought to a ministerial level if needed; and so on. Consultations take time and reaching an agreement is not always easy. Identifying joint interests facilitates the finding of mutually acceptable solutions. In any case, joint bodies, including bilateral commissions, represent the proper frameworks for consultation, joint planning and monitoring.

Conflict prevention

Joint bodies play a strong role in preventing differences and disputes over shared water resources. The example of the institutions under the umbrella of the International Fund for Saving the Aral Sea shows their enormous role in deciding upon and implementing water allocation, in information exchange and in coordinating broader international cooperation efforts (e.g. the development of the Third Aral Sea Basin Programme), with the ultimate achievement of having prevented open conflict over shared water resources. At the same time, such problems as a lack of interagency coordination and transparency, non-involvement of the energy sector and lack of attention to long-term issues show the areas where these joint institutions can be improved to be better positioned to respond to the challenges in Central Asia in the future.

A 2013 report of the Strategic Foresight Group identifies a strong correlation between the degree of cooperation in water and the general atmosphere of peace and friendship between countries. It suggests that countries that cooperate over water do not go to war. These findings are an inspiring argument to advocate for transboundary water cooperation in those transboundary basins that currently do not have any cooperation frameworks and to support further improvement of transboundary water cooperation in other basins.

Ownership and implementation at national level

While joint bodies can be characterized by various degrees of centralization or decentralization, it is important that they enjoy strong ownership by participating riparian States. This is especially important for cooperation efforts initially supported by third parties. Implementation driven by riparian countries, and supported by staff and financing from riparian countries, are important for the long-term sustainability of efforts. The recent process of step-by-step decentralization of the Mekong River Commission, building on a knowledge base established in riparian countries and their commitment to achieve financial autonomy by 2030, provides important experience for other basins and for international organizations supporting the development of transboundary water cooperation.

To ensure ownership by riparian countries and acceptance and implementation of the joint body's decisions at the national level, a joint body has to be an integral part of the water governance system of riparian States and should be well integrated into the water governance mechanisms of the region. Countries should be represented in a joint body at a sufficiently high political level. Specific mechanisms should be in place to ensure implementation of joint body's decisions at the country level (e.g. designation of national focal points or branches of a joint body; adoption of national implementation plans; allocation of resources for implementation at national level; monitoring of implementation of the joint body's decisions through reporting; etc.).

Readiness to respond to evolving needs

Having a functional agreement and a joint institution implies their responsiveness to evolving needs and their flexibility to deal with emerging issues. In those basins where agreements and joint institutions are already in place, a healthy trend is the evolution of the needs in cooperation that leads to the eventual expansion and deepening of cooperation. For existing, developed joint bodies, more advanced tasks become a priority (like comprehensive warning, alarm and forecasting systems, joint adaptation to climate change, etc.). It is therefore important that existing agreements and institutions are not static and are ready to reform.

Reaching some level of maturity, joint bodies may consider sharing their experience with countries and stakeholders in other basins to support efforts aimed at the establishment of agreements and joint institutions.
