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Side event

Two Conventions to support
transboundary water cooperation:
where do we stand?

25 July 2014, 9th meeting of the Working Group on IWRM



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Complementarity of the two global transboundary water conventions

A catalyst for cooperation on shared
waters

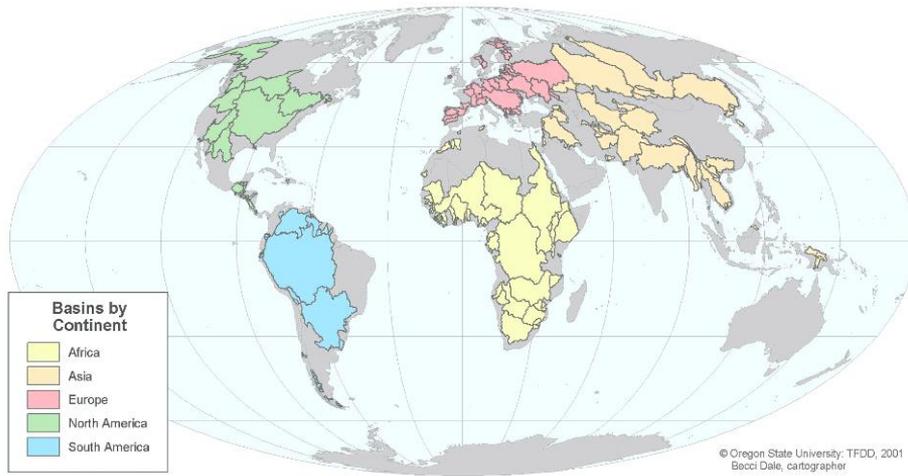
Chantal Demilecamps, UNECE



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What is the need for global framework instruments?





Significant reliance upon
transboundary waters
Fragmented system of
legal arrangements



- Supports several scenarios
 - Where no specific legal and institutional arrangement exists at the basin level
 - Where weak legal and institutional arrangements exist at the basin level
 - Where not all basin States are party to a basin agreement
- Consolidates, clarifies and develops customary international law
- Permanent framework for the continuity and sustainability of transboundary cooperation over waters



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Evolution and current status

Three framework multilateral instruments

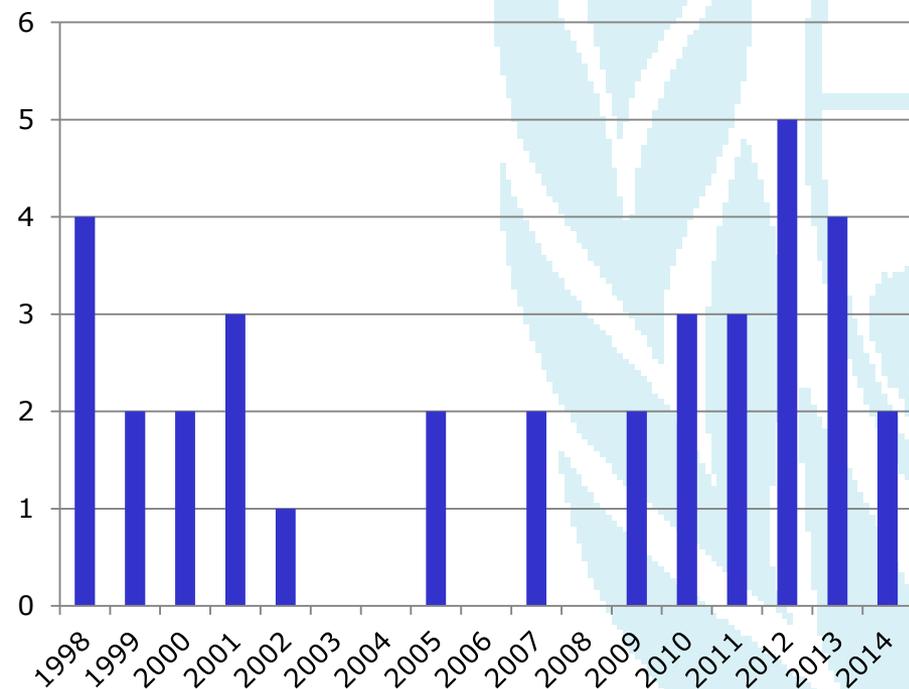
- 1997 Convention on the Law of the Non-navigational Uses of International Watercourses (UN Watercourses Convention, New York Convention): very soon in force!
- 1992 Convention on the Protection and Use of Transboundary Watercourses and International Lakes (UNECE Water Convention, or Helsinki Convention): now going global
- Draft Articles on the Law of Transboundary Aquifers

Principles of international water law:

- Equitable and reasonable utilization
- No-harm
- Cooperation principle

1997 New York Watercourses Convention

- 1997 Convention on the Law of the Non-navigational Uses of International Watercourses adopted by UN General Assembly in New York on the basis of 1994 International Law Commission (ILC) Draft Articles
- Global framework multilateral agreement, recognized as evidence of international customary law



Already influenced many agreements (SADC, Albufeira Convention, etc.)

■ Parties

35 Parties (Vietnam latest, on 19 May 2014)

Will enter into force on 17 August 2014

1992 UNECE Water Convention

- Negotiated in 1990-1992 through an intergovernmental process under the auspices of UNECE, largely relying on ILC Draft Articles process
- Negotiated originally as regional instrument
- Adopted on 17 March 1992, in force since 6 October 1996
- 38 Parties and the EU
- Protocol on Water and Health adopted in 1999, entered into force in 2005 and Protocol on Civil Liability adopted in 2003
- Became a global instrument in 2013, with the opening of the Water Convention to all UN Member States

2003 Amendment

- **Aims:**
 - Apply the principles and provisions worldwide
 - Share experiences of Helsinki Water Convention
 - Learn from other regions of the world
- Amendments entered into force 6 February 2013
- Possibility all UN Member States to accede from late 2014 when all 2003 Parties ratify the amendments
- More than 50 non-UNECE countries already participated in Convention's activities
- Many countries expressed interest in acceding to the Helsinki Water Convention



Two global transboundary water conventions: contradictory or complementary?



Comparing the Conventions

Similarities

- Same objective: Protection, preservation and management of international watercourses (UN Watercourses & UNECE Water Conventions)
- A 'package of norms' approach to substantive norms
 - equitable and reasonable utilization
 - due diligence obligation of no-harm
- Principle of cooperation as catalyst for the implementation of the two substantive norms
- Almost same provisions with regard to dispute settlement

Comparing the Conventions

Differences

UNECE Water Convention	UN Watercourses Convention
<i>Scope of Transboundary Waters</i>	
Surface water <i>or</i> groundwater (Art 1(1))	Surface water <i>and connected</i> groundwater (Art 2(a))
<i>Existing watercourse agreements</i>	
Obligation to harmonise (Art 9(1))	Recommendation to harmonise (Art 3(1))
<i>Future agreements and joint bodies</i>	
Obligation to create (Art 9(1)&(2))	Recommendation to create (Art 8(2) & 24)

Comparing the Conventions

Differences

UNECE Water Convention

UN Watercourses Convention

Transboundary EIAs and public information

Explicit obligation (Art 9(j) and Art 16)

Implicit obligation (Art 7)/
no provision

Exchange of information & planned measures

Obligation
Very detailed

Obligation
Not as detailed, although
provisions on planned
measures under Part III

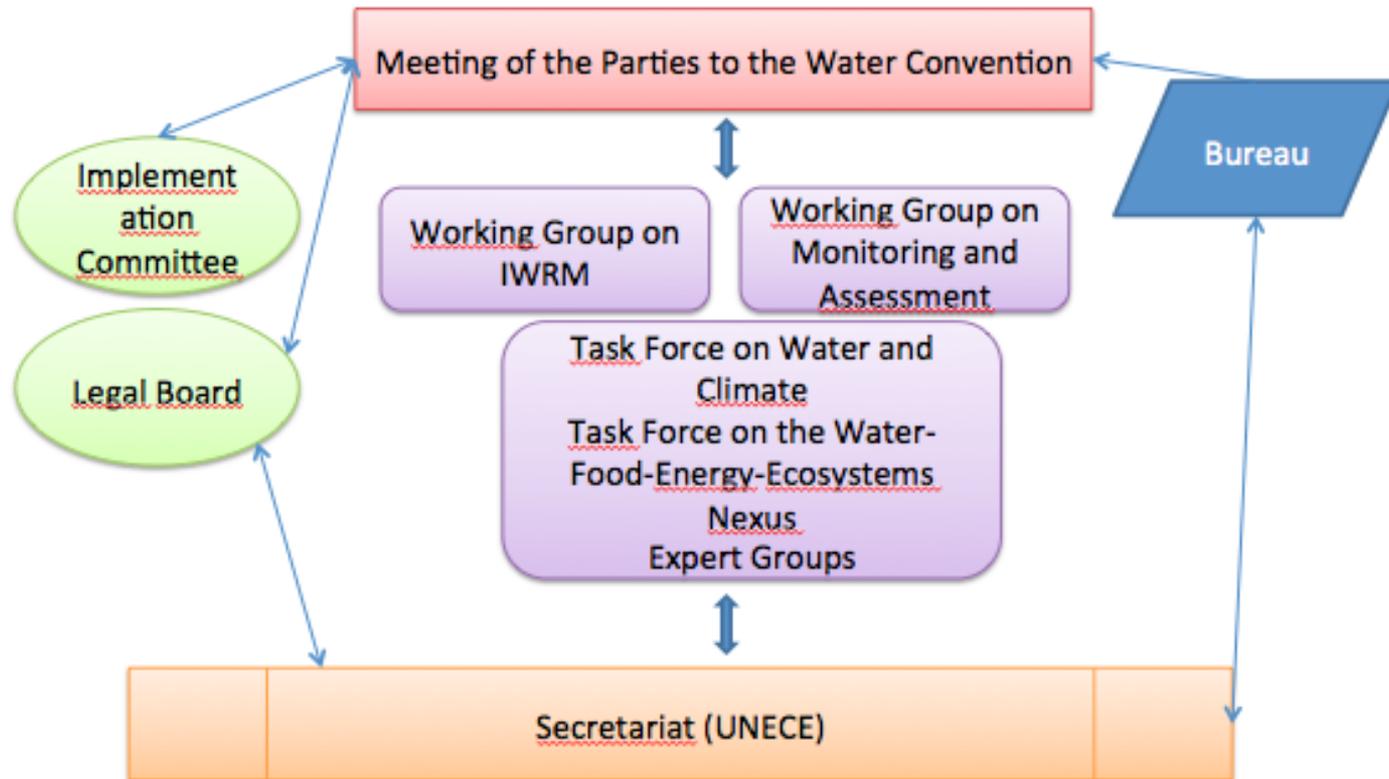
Comparing the Conventions

More detailed provisions in one instrument can inform the other

- Appropriate measures to prevent harm
 - Detailed guidance under UNECE Water Convention on appropriate measures (eg. Art 3)
- Equitable and reasonable
 - List of factors (Art 6, UN Watercourses Convention) can guide implementation UNECE Water Convention

Institutional aspects

UNECE Water Convention institutional framework
(can oversee implementation of work programme)



- No institutional framework foreseen under UN Watercourses Convention
- How can joint implementation be fostered?

Comparing the Conventions: conclusions

Two Conventions **reinforce** each other:

“The globalisation of the [Helsinki Water] Convention should also go hand-in-hand with the expected entry into force of the United Nations Watercourses Convention. These two instruments are based on the same principles. They complement each other **and should be implemented in a coherent manner**”

UN Secretary-General, Ban Ki-Moon, 28 Nov. 2012

Relationship of **interpretation**:

“When several norms bear on a single issue they should, to the extent possible, be interpreted so as to give rise to a single set of compatible obligations”

ILC Report on Fragmentation, 2006

14 countries have ratified both Conventions

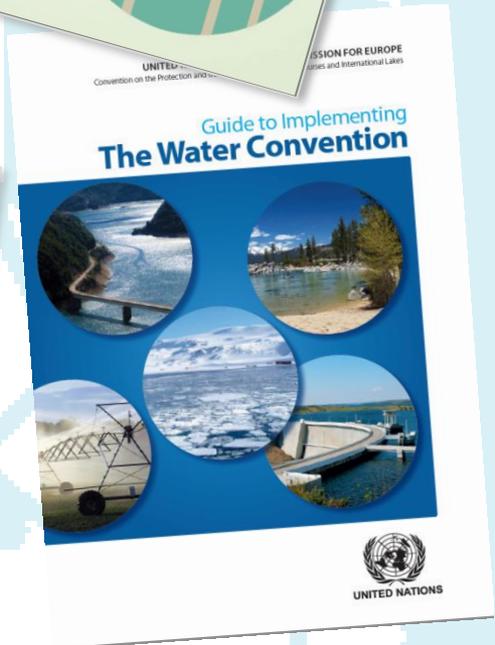
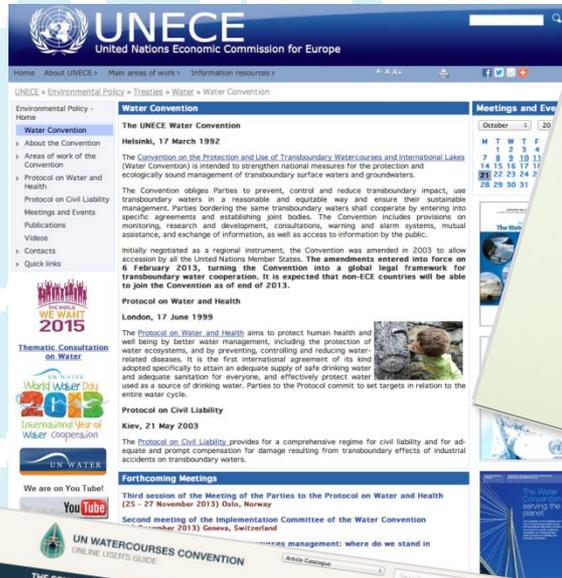
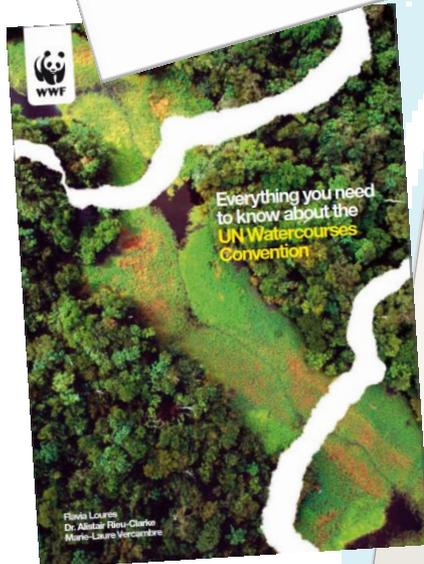
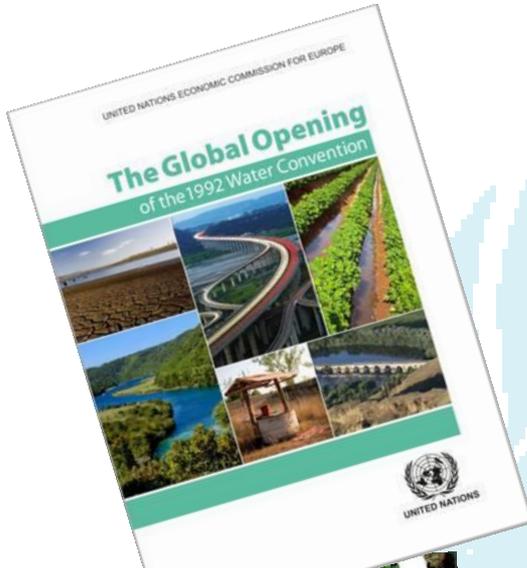


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Tools for promotion and implementation



Promotion



Implementation – UNECE Water Convention

- 20 years of experience in supporting transboundary water cooperation
 - Capacity to adapt to changing conditions and to respond to countries' demands → programme of work adopted by Parties
 - Continuity of efforts that ensured sustained progress and long-term results
 - Strong drive and ownership by Parties and the close involvement of non-Parties
 - Capacity to build trust
 - Concrete deliverables → projects on the ground and support to implementation through soft law development
- Significant diversity within UNECE region
 - Water challenges
 - Growing problem of water scarcity
 - Extreme events
 - Political landscape
 - Economic and social conditions

Conclusions

- Imminent entry into force of UN Watercourses Convention and global opening of UNECE Water Convention provide a great opportunity for fostering transboundary cooperation worldwide
- The two Conventions are entirely compatible and complementary- ratify and implement both!
- Institutional structure and experience of UNECE Water Convention can also help Parties to the New York Convention



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More information

www.unece.org/env/water

water.convention@unece.org

www.unwatercoursesconvention.org



Discussion

“Where do we stand?”

1. What is your national perspective on the Conventions?
2. Which steps have been taken so far in your country about studying / acceding to the Conventions?
 - How have the Conventions been promoted in your country?
 - Have you organized a national consultation on possible accession?

Existing arrangements

UNECE Water Convention (Art. 9(1))

- States *must* revise existing arrangements to 'eliminate contradictions' with UNECE Water Convention
- States *must* enter into watercourse-specific agreements where they do not exist

UN Watercourses Convention (Art. 3)

- UN Watercourses Convention does not affect existing agreements.
- However, States should consider harmonising those existing agreements with the Convention.
- States *may* enter into watercourse-specific agreements.

Scope of the resource

UNECE Water Convention (Art. 1(1))

- “Transboundary waters” – any surface or ground waters which mark, cross or are located on boundaries between two or more States.

UN Watercourses Convention (Art. 2(a))

- “Watercourse” – a system of surface and groundwaters constituting by virtue of their physical relationship a unitary whole and normally flowing into a common terminus.

Substantive norms

UNECE Water Convention (Art. 2)

- The Parties shall take *all appropriate measures* to prevent, control and reduce any transboundary impact.
 - Pollution prevention, reduction and control
 - Ecologically and rational water management
 - Conservation and, where necessary, restoration of ecosystems
 - Equitable and reasonable utilisation

UN Watercourses Convention (Art. 5-7 & 20)

- Equitable and reasonable utilisation and participation
- Relevant Factors (Art. 6)
- Take all appropriate measures not to cause significant harm
- Protection of ecosystems of an international watercourse

Procedural norms

UNECE Water Convention

- Prior licensing, and monitoring, of waste-water discharges
- BAT measures for nutrient inputs from industry and municipal sources
- BEP measures for diffuse pollution sources, eg agriculture
- EIA applied
- Contingency planning
- Monitoring programmes
- Research and development
- Exchange of information
- Warning and alarm systems
- Mutual assistance
- Public information

UN Watercourses Convention

- On the whole not as detailed but...
 - Duty to regularly exchange data and information (Art. 9)
 - Emergency and Harmful situations (Arts. 27 & 28)
 - Detailed procedures for planned measures (Part III)

Institutional aspects – watercourse level

UNECE Water Convention

- Article States *must* establish joint bodies
- Task of joint bodies include
 - Data collection and evaluation
 - Joint monitoring
 - Elaborating emission limits for waste water, and water-quality objectives
 - Action programmes for pollution reduction
 - Establish warning and alarm procedures
 - Forum for information exchange on existing and planned uses, and best available technology
 - Participate in implementation of EIAs

UN Watercourses Convention

- Art. 24(1) – States shall enter into consultations... which *may* include the establishment of a joint management mechanisms.
- Article (8)2) - States *may* consider the establishment of joint mechanisms or commissions...
- Strong emphasis on cooperation
 - Equitable participation (art. 5), duty to cooperate (art. 8), exchange of data and info (art 9), “where appropriate, joint”, prevent pollution (Art. 21), protect marine environment (Art. 23), regulation (Art. 25), harmful conditions (Art. 27) emergencies (Art. 28)