



The different designs of legal frameworks for transboundary waters in international water law practice

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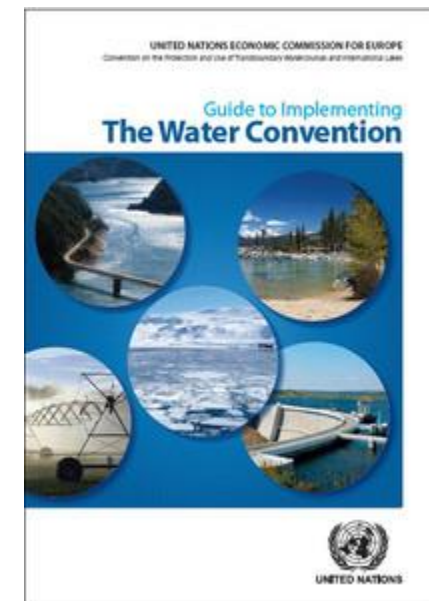


What's the point?

- **Why are legal frameworks important?**
 - Significant political and technical capital to draft, negotiate, adopt and implement
 - Legal frameworks have the potential to offer
 - **Predictability**
 - **Transparency**
 - *N.b. Predictability does not necessarily equal inflexibility!*

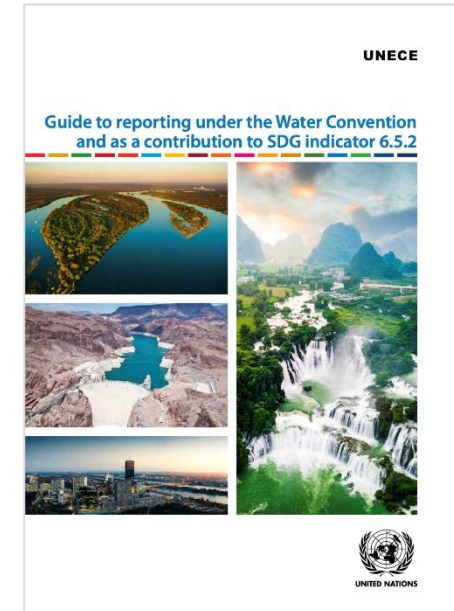
What does international law require?

- General duty to cooperate in good faith
 - 1957 Lake Lanoux Arbitration (France v. Spain), Art. 8, Watercourses Convention; Art. 10, Water Convention
- Watercourses Convention *encourages* parties to enter into watercourse agreements
 - E.g. Arts. 3 and 4
- Water Convention *requires* parties to enter into ‘bilateral or multilateral agreements or other arrangements’ (Art. 9(1))



The Sustainable Development Goals (SDGs)

- SDG target 6.5
 - *By 2030, implement integrated water resources management at all levels, including through transboundary cooperation as appropriate*
- SDG indicator 6.5.2
 - *Proportion of transboundary basin area with **an operational arrangement for water cooperation***
- 59% of transboundary basin area has operational arrangements in place (based on reporting in 2017 from 61 countries)



Does one size fit all?

- Key elements are important for effective implementation
 - **Scope**
 - clarity on geographic and functional scope
 - **Substantive norms**
 - determine *who* gets *what* water (or benefit(s) thereof) *when*
 - **Procedural and institutional mechanisms**
 - ensure substantive norms are implemented
 - **Dispute settlement**
 - Safeguard longevity and integrity

But no one size fits all

<p>Framework convention</p>	<p>Framework conventions tend to set out the main substantive and procedural rules and principles for governing a particular river, lake or aquifer system. This type of agreement also tends to establish joint institutional arrangements, such as a River Basin Commission.</p>	<p>2010 Guarani Aquifer Agreement 1970 Treaty on the Rio de la Plata Basin 1995 Agreement on the Cooperation for the Sustainable Development of the Mekong River Basin 1994 Convention on Cooperation for the Protection and Sustainable Use of the Danube River 1998 Convention on the Protection of the Rhine 2000 Agreement for the Establishment of the Orange-Senqu Commission 2003 Convention on the Sustainable Management of Lake Tanganyika</p>
<p>Bilateral treaty</p>	<p>Countries sharing several transboundary waters tend to adopt bilateral treaties. These treaties tend to set out general rules and principles covering all transboundary waters, and may establish joint institutional arrangements such as intergovernmental commissions or working groups. By covering all transboundary waters, groundwater is indirectly included.</p>	<p>2017 Agreement between Uzbekistan and Turkmenistan on Cooperation in the Field of Water Management 2017 Agreement between Poland and the Czech Republic on Cooperation on Transboundary Rivers in the Field of Water Management 1990 Agreement between Botswana and Namibia on the Establishment of a Joint Water Commission</p>
<p>Protocols</p>	<p>Protocols tend to be concluded on the basis of more general founding agreements.</p>	<p>2012 Great Lakes Water Quality Protocol 2003 Protocol for Sustainable Development of Lake Victoria Basin</p>



But no one size fits all

Memorandum of Understanding (MoU)	MoUs tend to include broader principles of cooperation and are often adopted at the interministerial level. MoUs may or may not be legally binding.	2011 MoU for the Management of the Extended Transboundary Drin Basin 2015 MoU between Kenya and Tanzania for Joint Water Resources Management of the Transboundary Mara River Basin
Joint Declaration	Joint declarations may cover one basin or several basins. Declarations tend to include broader principles of cooperation and are often adopted at the interministerial, rather than interstate, level. Joint declarations may or may not be legally binding.	2010 Joint Declaration on Understanding and Cooperation in the Field of Use of Water Resources on the Respective Territories of the Shared River Basins between Bulgaria and Greece
Exchange of Letters	Exchanges of letters tend to set out specific commitments that may have been agreed at a particular meeting, or reflect an update of an existing agreement or arrangement.	2002 & 2009 Exchange of letters between the Ministers of Germany, the Netherlands, Lower-Saxony, and Nordrhein-Westfalen (implementing the EU Water Framework Directive and the Floods Directive)
Minutes	Minutes tend to be records of commitments agreed at a particular meeting. They may assist in the interpretation of a treaty arrangement.	1980 Minutes of the Joint Iraqi-Turkish Committee for Economic and Technical Cooperation 1922-2017 International Boundary and Water Commission between US and Mexico has adopted 323 Minutes 2002 Minutes adopted by Algeria, Libya and Tunisia on the North-Western Sahara Aquifer System through the establishment of a Consultation Mechanism



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Thank you for your attention!

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