

1992 UNECE Convention on the Protection and Use of Transboundary Watercourses and International Lakes and 1997 Convention on the Law of the Non-navigational Uses of International Watercourses – similarities and differences

Professor Alistair Rieu-Clarke

Workshop on General Principles of Transboundary Water Cooperation

3-4 October, 2016

Campeche, Mexico

General points to consider

- International law makes a presumption that where two conventions cover the same topic they should be interpreted in a complementary manner
- There are similarities and differences between the two water conventions
- The differences are perhaps more interesting as they relate to how much detail is included
- Where one instrument is less detailed on a particular topic, the other instrument, if more detailed, can help support interpretation and implementation
- See the following examples...

Purpose of the Framework Conventions

UNECE Water Convention

‘Mindful that the protection and use of transboundary watercourses and international lakes are important and urgent tasks, the effective accomplishment of which can only be ensured by cooperation’

‘Cooperation... shall be implemented primarily through elaboration of agreements between countries bordering the same waters, especially where no such agreement have yet been reached.’

UN Watercourses 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’

Definitions and scope

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

Encompasses groundwater *not* connected to surface water

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

- Article 2 – Parties take *all appropriate* measures to prevent, control and reduce any transboundary impact
 - Due diligence obligation
 - What is appropriate within the particular country context?
 - What is appropriate given the level of risk?
 - Appropriate measures must
 - Ensure equitable and reasonable utilisation
 - Protect ecosystems
 - Prevent, control and reduce pollution

Substantive norms – UN Water Convention

- Article 5 – Watercourse States must use, develop and protect international watercourses in an equitable and reasonable manner
- Article 6 – Watercourse States must account for all relevant factors when determining what is equitable and reasonable
- Article 7 – Watercourse States must take *all appropriate measures* to prevent the causing of significant harm
 - BUT, where harm does occur, States must have due regard to articles 5 and 6 (ie., equitable and reasonable utilisation)
- Article 20 – Watercourse States must protect the ecosystems of an international watercourse

Substantive norms continued

- Both instruments offer the same ‘package’ of substantive norms
- Key substantive norms presented differently in both conventions but seek the same outcome
- UNECE Water Convention
 - Much more detail on what measures are ‘appropriate’ to prevent transboundary impact
 - Although still significant flexibility depending on ‘local’ context
- UN Watercourses Convention
 - Much more detail concerning what factors to take into account when determining what is equitable and reasonable

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)

Procedural norms continued

- Both instruments place significant emphasis on process as the driver for ensuring that waters are governed in an equitable and reasonable manner
- UNECE Water Convention tends to be more detailed except concerning notification and consultation regarding planned measures

Existing and future water agreements

UNECE Water Convention (Art. 9(1))

- States *must* revise existing arrangements to 'eliminate contradictions' with **the basic principles of the** UNECE Water Convention
 - Does not require 'cut & paste'!
- 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

Institutional aspects – between rinarian states

UNECE Water Convention (Art. 9(2))

- Article States *must* establish joint bodies
- Task of joint bodies set out
 - 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)

Institutional aspects – convention level

- The UNECE Water Convention enjoys an institutional framework that supports its implementation and development
- Proven to be very effective with 20+ years experience
- No formal framework supports the UN Watercourses Convention
 - Relies on informal ‘champions’
 - Informal meetings of states



General conclusions

- Considerable synergies exist between the two instruments
- There are significant gains to be made in recognizing both conventions as mutually reinforcing and promoting them as a 'package' of norms
- Critical to make the most of those synergies in order to enhance transboundary water cooperation

'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 November 2013)

For further information

www.unece.org/env/water.html

www.unwatercoursesconvention.org

[wwf.panda.org/what we do/how we work/policy/conventions/water conventions/](http://wwf.panda.org/what_we_do/how_we_work/policy/conventions/water_conventions/)

Email: alistair.rieu-clarke@northumbria.ac.uk

