

# FIRST WORKSHOP “RIVER BASIN COMMISSIONS AND OTHER JOINT BODIES FOR TRANSBOUNDARY WATER COOPERATION: LEGAL AND INSTITUTIONAL ASPECTS”

Monday, 23rd Sep 2013, 10:30-10:45

## Strengthening Legal Frameworks for Transboundary Water Cooperation at the Global Level: What value for cooperation in Transboundary Basins?

### Dr. Alejandro Iza

Director, IUCN – Environmental Law Centre

Head, IUCN Environmental Law Programme

Today, water cooperation experts from around the world and from different institutional backgrounds will discuss in this workshop a number of issues relating to international legal frameworks for water cooperation.

In such a context, I would like to start with some considerations on the evolving status of the legal architecture for transboundary cooperation, in particular, with the inter-relationships between the UN Watercourses Convention (UNWC), the UNECE Water Convention, and the ILC Draft Articles for Shared Groundwaters.

In a nutshell what I would like to convey is the same we have been conveying with and through our partners institutions at different international settings and fora: after reviewing the current state of international water law, one can only conclude that the coming into force of the UN Watercourses Convention and the “globalization” of the UNECE Water Convention, constitute a real opportunity for governments, Basin organisations, practitioners, users and communities, as this instruments will deliver certainty and security in terms of the rights and duties of States in international watercourses and transboundary lakes and thus provide an incentive to cooperation at multiple levels. Let me elaborate on this.

### The Global Instruments

This moment is an opportunity for international water law as three global instruments are shaping the way that States interact among themselves *vis a vis* shared waters.

The UN Watercourses Convention will hopefully be ratified and enter into force presumably by 2014 while the UNECE Water Convention has been amended so that all UN members will be able to become a party to it by the end of 2013. Finally, the adoption of the Draft Articles on Transboundary Aquifers has revitalized attention on the much important issue of international groundwaters.

Special attention should be given to the UN Watercourses Convention and the UNECE Water Convention and the interaction between the two instruments.

# **FIRST WORKSHOP “RIVER BASIN COMMISSIONS AND OTHER JOINT BODIES FOR TRANSBOUNDARY WATER COOPERATION: LEGAL AND INSTITUTIONAL ASPECTS”**

**Monday, 23rd Sep 2013, 10:30-10:45**

The articulation of the operability between the UNWC and the UNECE will have significant implications for governance arrangements of shared waters and, specifically, for transboundary cooperation.

The UN Watercourses Convention lacks a governance mechanism in the form of an institution overseeing its implementation, yet it possesses global legitimacy and international support.

As the UNECE Water Convention has been in force for almost twenty years, it has an established institutional structure and a wealth of knowledge and experience behind it. Though, as the UNECE was originally a regional treaty, some argue that it does not have the global vision of the UNWC.

Thus at first glance, the two conventions appear to complement each other. Yet the question is:

- How to maximize this interconnection?
- How could the relationship develop synergies and avoid overlaps and tensions? and
- How to establish a system of effective coordination?

The end result would be a truly global transboundary water regime, supporting international water governance while promoting cooperation.

However, the issue of how to best implement the UNWC with the UNECE remains to be answered.

Our partners (WWF, Dundee University, Green Cross International) refer to three approaches to developing an international legal and institutional framework for the interoperability of the two conventions.

The first option is to create a formal institutional framework for the UNWC and then have the UNECE secretariat service the UNWC contracting parties. This would ensure complementary and effective coordination between the conventions, avoiding duplication, and maximizing efficiency. Yet it would require time and effort to create this merged framework as well as political agreement.

The second option to be considered is to create an institutional body for the UNWC that is distinct from the UNECE's current secretariat. This is an approach through which the UNWC will develop independently. It would be more attractive to non-UNECE members, and could choose a strategic city for its headquarters. This would be the most expensive of all the options and would also most likely lead to duplication of efforts between the two conventions.

The final option is a “non-secretariat scenario”. The UNWC would come into force but no institutional body would be established. This is a continuation of the status quo and it would allow for some perspective before deciding to create an institutional framework for the UNWC after all. The lack of an established body may weaken the UNWC and coordination between the UNWC and UNECE would be more difficult.

These are the three main options and each deserve due consideration. Notwithstanding this “uncertainty”, the recent progress of the UNWC and UNECE presents a unique opportunity to strengthen international water law. Without any doubts, the establishment of a global regime for governing shared waters will further and solidify international cooperation.

# FIRST WORKSHOP “RIVER BASIN COMMISSIONS AND OTHER JOINT BODIES FOR TRANSBOUNDARY WATER COOPERATION: LEGAL AND INSTITUTIONAL ASPECTS”

Monday, 23rd Sep 2013, 10:30-10:45

The main challenge ahead will be then to ensure how the international water diplomacy unfolds in such a way that it provides meaningful results to local water security.

## Multi – level governance of shared waters

These “global instruments” are not the only types of agreements that shape the governance framework for transboundary waters.

Agreements can be treaties and conventions (as signed and ratified by two or more States). However they can be other types of agreements between stakeholders and or institutions across borders working at the national, subnational and local level.

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 around water cooperation.

But to be clear: We are not proposing that one type of agreement is better than the other. Our approach is to see them as complementary and not mutually exclusive. Modern treaties on transboundary waters (and most notably the UNWC – the UNECE Convention and the draft articles) encourage the efficient use and development of water resources, promote equitable distribution and facilitate partnerships and cooperation between countries.

They serve as guidance, as a framework, for development of more specific agreements (which can be from the basin level to more local levels), and which in an ideal case they complement each other, both on substance as well as in terms of implementation (institutional mechanisms).

And it is this approach made of a wide variety of agreements what lays down the basis of multi-level governance.

Global conventions, as well as basin treaties, negotiated and agreed through traditional diplomatic methods between states and their subsequent implementation are the main legal pillars of transboundary water governance.

Treaties provide security to signatories through a written document that can be referred to in cases of conflicts in terms of application or interpretation. Treaties serve as the basis for collective action and are an effective tool to consolidate commitments.

Nevertheless, as inclusive and broad as governance is in the context of water, intellectual boundaries are shifting and non-traditional actors are getting more prominent and “other types of agreements” are emerging not only to complement treaties and conventions but also to allow for an horizontal power distribution and implementation.

This is what in the context of IUCN we refer as linking communities across borders.

These “other types of agreements” influence actors and can serve as a guide to decision makers in other areas.

# FIRST WORKSHOP “RIVER BASIN COMMISSIONS AND OTHER JOINT BODIES FOR TRANSBOUNDARY WATER COOPERATION: LEGAL AND INSTITUTIONAL ASPECTS”

Monday, 23rd Sep 2013, 10:30-10:45

They can be binding or non-binding, depending on what the Parties have decided. Their strength lies in that they serve as a mechanism to influence behavioral and normative change and reflect standards that other States and stakeholders aspire to.

Typical examples of these “other types of agreements” are ministerial declarations and codes of conduct; which can incorporate a wider spectrum of stakeholders into water negotiations, including non-traditional ones such as farmer organizations, women groups and other civil society representatives.

The underlying argument in favor of these types of agreements is that the more stakeholders that get involved, the greater the ranges of solutions that can emerge which adequately address stakeholders needs and concerns.

Given their nature, these types of agreements can be more adaptable to changing circumstances, and their implementation on the ground is inspired on the principles of the global conventions.

## Multi-level water governance in practice

One example of multi-level governance arrangement in practice has been supported by IUCN in South America, more precisely in the Andean region.

IUCN has been working in 4 different transboundary basins, where interaction between governance levels can be seen in practice.

Ecuador, Peru, and Bolivia have several formal agreements in place on the Zarumilla Basin, Catamayo-Chira Basin, Lake Titicaca and the Amazon Basin.

In 1996, Lake Titicaca established a basin authority jointly managed between Bolivia and Peru. In 2011, Ecuador and Peru set up an IWRM Binational Commission for the Zarumilla river, and in 2012, Ecuador and Peru signed a joint Presidential Declaration calling for a binational commission on the Catamayo-Chira and Puyango-Tumbes basins. Additionally in a regional setting, the Andean Community began to implement the Andean IWRM strategy, focusing on transboundary issues.

From the Andean region we have learned that, although these agreements operate at different levels, they serve to strengthen the dialogues and the establishment of an institutional setting that catalyses further cooperation between the countries.

Another example comes from Central America where we are working in a number of basins such as the Goascorán, which is shared between El Salvador and Honduras.

In this case, a diversity of agreements, both binding and non-binding have helped to strengthen the dialogues between different stakeholders towards building consensus about the need of joint action to manage the basin in a concerted manner.

A Framework Agreement signed by both riparians with the European Union for the implementation of a Transboundary Development Program established a Binational Management Group in 2006. In a local

# FIRST WORKSHOP “RIVER BASIN COMMISSIONS AND OTHER JOINT BODIES FOR TRANSBOUNDARY WATER COOPERATION: LEGAL AND INSTITUTIONAL ASPECTS”

Monday, 23rd Sep 2013, 10:30-10:45

and less formal setting, agreements between mayors of border municipalities support cooperation in terms of the basin’s environmental management.

These agreements have in turn stimulated both riparians interests in considering the principles and institutions of the global conventions mentioned before.

From the Goascorán Basin we have learned that in transboundary waters, bottom-up strategies of linking communities across borders can catalyse change, particularly when negotiations at the highest diplomatic level do not move fast and seem stalled.

## Conclusion

The recent developments in the global water diplomacy field around the UNWC and UNECE conventions offer a unique opportunity to strengthen and unify international water law. The establishment of a global transboundary water regime will -without any doubts- further international cooperation.

However, it is essential to keep in mind that while water diplomacy takes place under the authority of sovereign States, since water is a resource used by everyone and managed at multiple scales, effective agreements need the consent of water users.

This implies that many kinds of agreements are needed if governance of transboundary water governance is supposed to be effective.

These “other types of agreements” are often very practical and focused on concrete actions around specific problem solving or development priorities. They can be developed in ways that build on a framework agreed at the “treaty level or inspired on the principles and guidance of global treaties and conventions” but not necessarily, they can result of the different dynamics, particularly the communal/community ones.

They might also set in place practical building blocks that augment and improve the potential for States to secure high-level negotiations.

Working across such a spectrum of agreements, as opposed to fragmentation, progressively builds a practical operational roadmap for change and improvement in water governance capacities that should be closely articulated in a State, between States, within a region and inside a basin.

For building effective governance arrangements for shared waters we do not only need an agreement but a link of the communities through dialogues, demonstration and learning on how cooperation manifests itself and is implemented.

Water diplomacy requires that demonstration on the ground is constantly fed by dialogues across sectors and at multiple levels and this requires leaders or “actors of change” to mobilise cooperation