The global legal frameworks for transboundary cooperation on surface and groundwaters, their interrelations and implementation

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Why the need for global framework instruments?

- 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

- Support ≠ replace
- Fosters harmonisation between basins and regions
- Consolidates, clarifies and develops customary international law
- Strengthen implementation, e.g. through a platform for sharing experiences and good practice
- Strengthens ‘transboundary water’ profile at the global level, and fosters synergies with other global initiatives, e.g. climate change
Three framework multilateral instruments

- 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
1997 UN Watercourses Convention

- Adopted by UN General Assembly in 1997 on the basis of 1994 ILC Draft Articles – 3 decades, all continents
- Voted in favor by 106 States
- Global framework multilateral agreement
- Recognized as evidence of international customary law
- Already influenced many agreements (SADC, Albufeira Convention, etc.)
- **Will enter into force on 17 August 2014**
- Ratified (35): Benin, Burkina Faso, Chad, Côte d’Ivoire, Denmark, Finland, France, Germany, Greece, Guinea-Bissau, Hungary, Iraq, Ireland, Italy, Jordan, Lebanon, Libya, Luxemburg, Montenegro, Morocco, Namibia, Netherlands, Niger, Nigeria, Norway, Portugal, Qatar, South Africa, Spain, Sweden, Syrian Arab Republic, Tunisia, United Kingdom, Uzbekistan, Viet Nam

* in blue – also Parties to UNECE Water Convention
1992 UNECE Water Convention

- Negotiated in 1990-1992 through an intergovernmental process under UNECE, largely relying on ILC Draft Articles process
- Negotiated as regional instrument, but opened up to all UN Member States through an amendment in 2013 => becomes a global instrument, accession for African and all UN Member States possible from late 2014
- Aims of the global opening:
  - apply the principles and provisions worldwide
  - share the experiences of the Convention
  - learn from other regions of the world
- More than 50 non-ECE countries already participated in Convention’s activities and many announced their interest to ratify (Iraq, Tunisia, Jordan..)
Comparing the Conventions: Similarities

- Protection, preservation and management of international watercourses (UNWC & UNECE WC)
- 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

Two Conventions provide a stronger package of norms

- Existing watercourse agreements
  - **Obligation** to harmonise (Art 9(1), UNECE WC)
  - **Recommendation** to harmonise (Art 3(1), UNWC)
- Future agreements and joint bodies
  - **Obligation** to create (Art 9(1)&(2), UNECE WC)
  - **Recommendation** to create (Art 8(2) & 24), UNWC)
- Scope of Transboundary Waters
  - Surface water *or* groundwater (Art 1(1), UNECE WC)
  - Surface water *and connected* groundwater (Art 2(a), UNWC)
  - Nb: 2008 ILC Draft Articles on Transboundary Aquifers
- Transboundary EIAs and public information
  - Explicit obligation (Art 9(j) and Art 16, UNECE WC)
  - Implicit obligation (Art 7, UNWC)/ no provision
Comparing the Conventions: Differences

More detailed provisions in one instrument can inform the other

- Appropriate measures to prevent harm
  - Detailed guidance under UNECE WC on appropriate measures (e.g., Art 3, UNECE WC)

- Equitable and reasonable
  - List of factors (Art 6, UNWC) can guide implementation UNECE WC

- Exchange of information & planned measures
  - Obligation under both Conventions (Art 13 UNECE WC, Art 9, UNWC)
  - Generally more detailed under UNECE WC, although developed provisions on planned measures under Part III of the UNWC
Comparing the Conventions

- UNECE WC Institutional Framework

- No formal structure under UNWC
- How can joint implementation be fostered?
Comparing the Conventions – conclusions

• 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)
  – ‘The globalisation of the [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 November 2012)

• As a package of norms both conventions reinforce each other

• States have joined both conventions (14 so far)
Implementation – UNECE Water Convention

• 20 years of experience in supporting transboundary water cooperation
  • Capacity to adapt to changing conditions and to respond to countries demand
  • 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

• Significant diversity within UNECE region
  • Water challenges
    – Growing problem of water scarcity
    – Extreme events
  • Political landscape
  • Economic and social conditions
UNECE Water Convention
Work programme 2013-2015:

Area 1: Support to implementation
Area 2: EU Water Initiative National Policy Dialogues
Area 3: Quantifying the benefits of transboundary cooperation
Area 4: Adapting to climate change in transboundary basins
  - global network of basins working on cc
  - Collection of good practices & lessons learnt
  - regular workshops
Area 5: Water- food-energy-ecosystems nexus
Area 6: Opening of the Convention
Area 7: Promotion of the Convention and establishment of strategic partnerships
Support to implementation through soft law development

- Water pollution by hazardous substances (1994)
- Licensing of wastewater discharges (1996)
- Sustainable flood prevention (2000)
- Safety of pipelines (2006)
- Payments for ecosystem services (2007)
- Transboundary flood management (2007)
- Safety of tailing management facilities (2009)
- Water and adaptation to climate change (2009)
- Guide to Implementing the Water Convention (2009)
- Transboundary groundwaters (2012)...
- Guide to Implementing the UN Watercourses Convention (2013)
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.
Thank you!

More information
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