International Water Law: the policy / political dimensions: sense or no(n)-sense?

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International law on Water

- > 62 countries are party to one or both (aprox. 30%) – aprox. 20 countries considering
- The UNECE-WHO/Europe Protocol on Water and Health: protect human health and well being by better water management and by preventing, controlling and reducing water-related diseases; sound framework for implementation of the human rights to safe water and sanitation. (1999 London- 26 parties).
Status of Governance of Transboundary Basins

- > 60% of transboundary basins do not have agreements

- 80% of existing agreements are bilateral/don’t necessarily involve all basin states

- Many agreements *do not*:
  - Provide for regular data-sharing/notification
  - Establish water allocation & benefit-sharing criteria/processes
  - Contain dispute prevention/settlement rules
  - Apply to entire river basin / aquifer system, etc.
The principles

• "doctrine of absolute sovereignty" initially claimed by an upstream riparian: a state has absolute rights to water flowing through its territory - never implemented in any water treaty- or invoked as a sources for judgment in any international water legal ruling, and was explicitly rejected by the international tribunal over the Lac Lanoux case in 1957. This Harmon Doctrine is wildly over-emphasized as a principle of international law.

• The down-stream extreme claim often depends on climate. In a humid watershed, the extreme principle advanced is "the doctrine of absolute riverain integrity," every riparian is entitled to the natural flow of a river system crossing its borders. This principle never really reached acceptance in the international setting.

• These conflicting doctrines of hydrography and chronology clash along many international rivers, with positions usually defined by relative riparian positions. Down-stream riparians, such as Iraq and Egypt, often receive less rainfall than their up-stream neighbors and therefore have depended on river-water for much longer historically.
The principles

• modern "rights-based" disputes often take the form of upstream riparians such as Ethiopia and Turkey and Guatemala arguing in favor of the doctrine of absolute sovereignty, with downstream riparians taking the position of historic rights (Egypt).

• Both conventions: "doctrine of limited territorial sovereignty" reflects rights to reasonably use the waters of an international waterway, yet with the acknowledgment that one should not cause harm to any other riparian states.

• Both main principles are in the conventions: "reasonable and equitable use," and the obligation not to cause "significant harm" (slightly more emphasized in ECEWC).
(other) International law on Water

- UNECE WC Protocol on Civil Liability and Compensation (not in force)
  Agreed by consensus.
Related conventions and agreements:

Improving the governance of transboundary water resources, at all levels (examples)

UN Watercourses convention, convention on biodiversity, RamsAR convention, UN Convention on desertification
SADC Protocol, EU WFD & UNECE Water Convention (initially), Espoo (Initially) & Aarhus
Rhine, Danube, Dniester, Niger, Nile, Mekong, Colorado river, Amazon Cooperation Treaty (ACT), La Plata sub: Congo, Sava, (Colorado river compact between federal states)
Rights to safe water & sanitation
RELATION BETWEEN GLOBAL CONVENTIONS AND BASIN AGREEMENTS

• Conventions support 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

• This consolidates, clarifies and develops customary international law
How do conventions connect to SDG targets

• 6.5 By 2030, implement integrated water resources management at all levels, including through transboundary cooperation as appropriate

• 6.6 By 2020, protect and restore water-related ecosystems, including mountains, forests, wetlands, rivers, aquifers and lakes

• 11.5 By 2030, significantly reduce the number of deaths and the number of people affected and substantially decrease the direct economic losses relative to global gross domestic product caused by disasters, including water-related disasters, with a focus on protecting the poor and people in vulnerable situations
Potential conflict

• Development related Disputes (state and non-state actors): where water resources or water systems are a major source of contention and dispute in the context of economic and social development (water stress)

• Control of Water Resources (state and non-state actors): where water supplies, hydropower or access to water is at the root of tensions

• Political Tool (state and non-state actors): where water resources, or water systems themselves, are used by a nation, state, or non-state actor for a political goal

• Military Target (state actors): where water resource systems are targets of military actions by nations or states.

• Terrorism (non-state actors): where water resources, or water systems, are either targets or tools of violence or coercion by non-state actors.
Water stress

Global Water Stress: 2030
(Based on OECD Environmental Outlook, 2008)

- No Water Stress
- Low Water Stress
- Moderate Water Stress
- Severe Water Stress
- Economic Water Stress (based on U.S. FAO, 2007)

Photo source: OECD

WHY THE WATER CRISIS IS GRaver THAN WE THINK- by NISARG GOHil
Do we need more global legislation?

• Rivers and lakes do not respect political or administrative boundaries – indeed, they are often the basis of conflict
• National legislation is non-existent, outdated and does not cover shared water(s)
• Mechanisms needed to prevent water from being held, diverted, or polluted by one country to the disadvantage of others
• Harmonization even within countries / between basins with same riparians; States struggle to implement multiple agreements in a coordinated fashion
• Need for procedures or frameworks for considering claims or resolving disputes over transboundary water resources (Three quarters of the world’s countries face potential disputes with neighbours over shared rivers, lakes, wetlands or aquifers)
WHY

Water is “Local” – yes – but guidance and common frameworks needed at regional and global level:

- we are all in the hydrological cycle
- global water-related impacts (migration), waste (water) and e.g. virtual water – “Water” the “missing link”
- Facilitate negotiations (agenda & procedures available) and Foster a common language and shared understanding >> cooperation (systematic; interpretation)
- No good (technical) work can be done sustainably on environment and eco systems without good water management and enabling legal frameworks
- Contribute to and guidance for SDGs especially goal 6.5 and 6.6 implementation
- Can support climate change adaptation
WHY promote (and accede to) the (Fresh) water conventions?

❖ Stimulate cooperation among countries and involvement of stakeholders at large

❖ Fix gaps in existing water agreements e.g. notification and conflict resolution (examples, Mekong, GERD dam etc.) or lay foundation for one

❖ Complement other treaties/ conventions (general obligation to protect and maintain the ecosystems of international watercourses also in other treaties)

❖ complete set of laws at various levels on protection and enhancement of water quality, water quantity and the infrastructure for international watercourses

❖ Knowledge and information exchange

❖ Accountability & transparency: clear responsibilities and rights and incorporate other stakeholders
Conventions and Hydropower

- potential for water to become a source of serious conflict within and between countries

Conventions offer:

- An effective system of notification, consultation and data exchange as basis for states to communicate, reconcile any competing interests over planned uses of an international watercourse in a mutual manner and a dispute resolution tools and procedures;

- Provide an (additional) framework and incentives for investors to adhere to the Equator principles and the World Commission on Dams guidance; and

- Stimulate the use of assessment tools such as those provided for by the Hydropower Protocol: Hydropower Sustainability Assessment Protocol (2011): measure and guide sustainability in hydropower planning, implementation and operations
Why did/ do countries accede to the conventions?

• Water security high priority
• You cannot do it alone – cooperation needed
• Strengthens ‘transboundary water’ profile at the global level, and fosters synergies with other global initiatives, e.g. climate change adaptation
• assists with reaching SDG targets
• Permanent framework for the continuity and sustainability of cooperation
• Sets the agenda
Why did/ DO countries accede to the conventions?

• In line with international water law and other treaties
• Makes for a complete set of laws at various levels on protection and enhancement of water quality, water quantity and the infrastructure for international watercourses
• General obligation to protect and maintain the ecosystems of international water courses also in other treaties.
• Solidarity, development cooperation
• Risk mitigation/ prevention (for business, migration, floods, etc)
• Conflicts resolved > framework for the future, conflicts resolution mechanisms
• To get everybody at the table; Common language/ understanding
Resources:

- http://www.panda.org/unwc
- http://www.unwatercoursesconvention.org/
- http://www.transboundarywaters.orst.edu/database/
Resources

- http://www.internationalwaterlaw.org/blog/category/un-watercourses-convention/
- http://www.siwi.org/knowledge-services/transboundary-water-management/
- http://www.thehagueinstituteforglobaljustice.org
- http://www.unitar.org/event/introduction-water-diplomacy
Resources

- http://www2.worldwater.org/conflict.html
- http://www.ramsar.org/cda/en/ramsar-home/main/ramsar/1_4000_0 (RAMSAR)
- http://www.transboundarywaters.orst.edu/database/