



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, eg climate change



Three framework multilateral instruments

- 1997 Convention on the Law of the Non-navigational Uses of International Watercourses (UN Watercourses Convention, or New York Convention): very soon in force!
- 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
- Adopted in 1992, in force since 1996, now 39 Parties
- 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



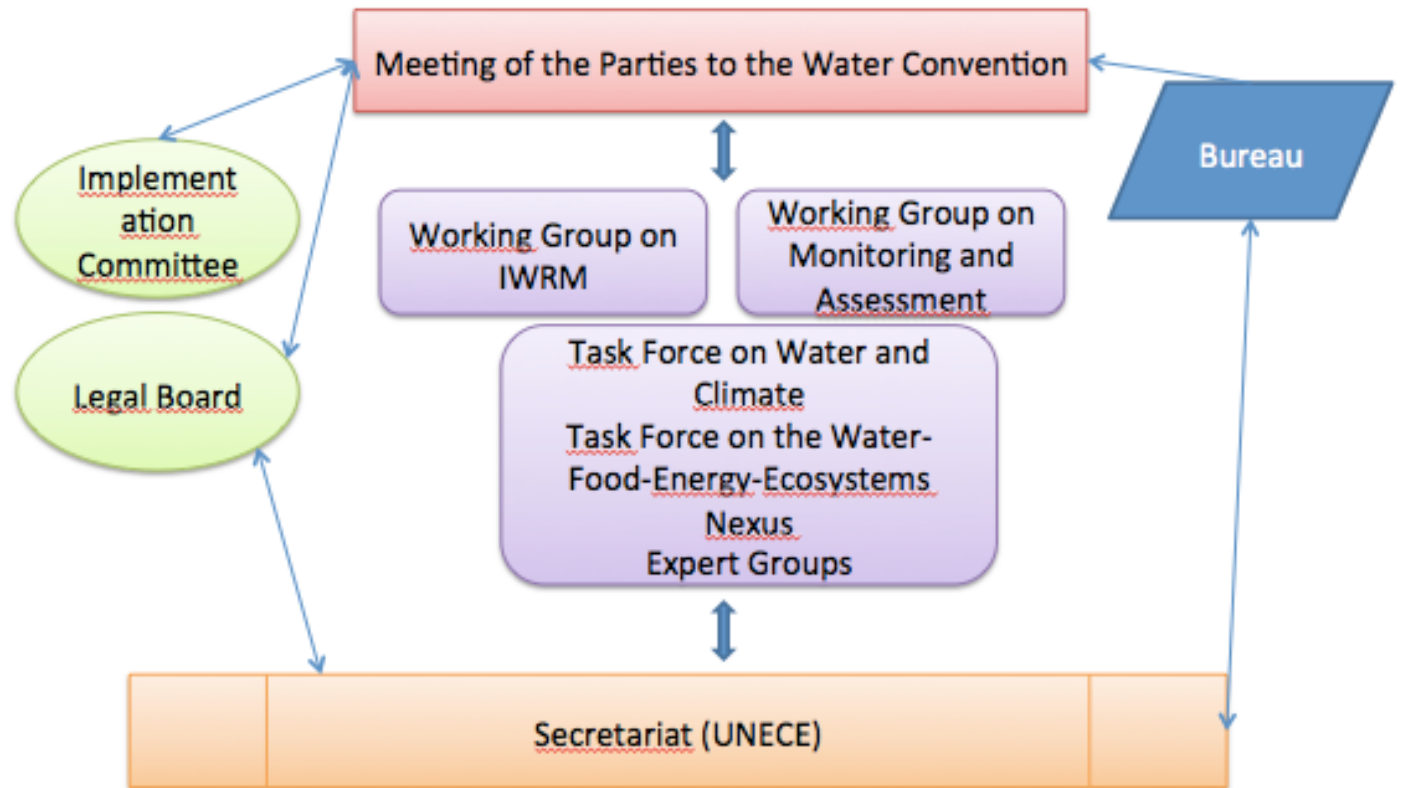
Comparing the Conventions: Differences

*More detailed provisions in one instrument
can inform the other*

- Appropriate measures to prevent harm
 - Detailed guidance under UNECE WC on appropriate measures (eg, 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)
- Monitoring & assessment of rivers & lakes (1996) and groundwaters (2000)
- 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

<http://unece.org/env/water>

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