

Legal frameworks and institutional arrangements



Contributing to water cooperation

Despite the complexity of water problems and the many interests at stake, records show that water disputes can be handled diplomatically. A growing number of treaties, protocols, **conventions and institutional arrangements** have been created on the use, development and protection of shared freshwaters and related ecosystems. These frameworks and arrangements increasingly help crystallize mechanisms for the prevention and peaceful resolution of disputes over water resources. (Rio+20 2012)

Case study reviews indicate that successful achievement of cooperative solutions is facilitated by:

- legal frameworks in place
- relatively good neighbourly relations between the parties
- creation of joint institutions to address the problems
- agreement on dispute settlement mechanisms
- absence of significant adverse impact on the quantity or quality of waters flowing into the neighbouring country.

(Source: UNW-DPAC 2012)

Quick facts

Since 805 AD more than 3,600 treaties related to international water resources have been drawn up. (FAO 1984)

158 of the world's 263 international river basins and transboundary aquifer systems, lack any type of cooperative management framework (UN-Water 2008)

Legal frameworks

Global rules and principles

- **UN Convention on the Law of the Non-navigational Uses of International Watercourses.** This framework convention was adopted by the UN General Assembly in May 1997. It reconfirmed three key principles to guide the conduct of nations regarding shared watercourses: "equitable and reasonable use", the obligation to prevent significant harm to neighbours, and the obligation of cooperation. It also included the mechanism of prior notification of and consultations on planned measures. 29 nations are parties to the Convention; 6 more ratifications are required for it to enter into force.
- **UN General Assembly Resolution on the Law of Transboundary Aquifers.** This resolution was adopted by the UN General Assembly in December 2011. It calls for cooperation among States to prevent, reduce and control pollution of shared aquifers and could offer the basis for a future binding legal instrument on transboundary aquifers.

Implementation

Implementation of existing agreements still forms a challenge. Water legislation and policies are often underdeveloped and weak; many treaties lack clear and tangible provisions. Appropriate enforcement mechanisms and monitoring provisions are usually not incorporated (WWF 2012). Implementation of treaties can also be hampered by lack of political will, inadequate water management structures and weak implementation capacities at national levels (Sources: Salman 2007, UNW-DPC 2009).



Regional and bilateral

Many multilateral and bilateral transboundary agreements have been established, providing for joint water management of shared waters.

Convention on the Protection and Use of Transboundary Watercourses and International Lakes (the Water Convention), adopted by UNECE in 1992, promotes cooperation on transboundary surface and ground waters and strengthens their protection and sustainable management. The Convention is intended to strengthen local, national and international measures for the protection and ecologically sound management of transboundary surface waters and ground waters. The Water Convention obliges riparian states to enter into agreements and to establish joint bodies.

Quick facts

In the UNECE region there are currently 165 specific agreements on transboundary rivers, lakes and groundwaters in force between or with participation of UNECE countries. (UNECE 2011)

The river that flows through the largest amount of countries is the Danube, which travels within the territory of 18 nations.

UNECE Water Convention goes global

The Water Convention started as a regional convention. It was negotiated by the Member States of the United Nations Economic Commission for Europe (UNECE) and adopted in Helsinki on 17 March 1992. 38 countries and the European Union (EU) countries are now Parties to the Convention. The three 'pillars' of the Convention are the obligation of equitable and reasonable utilization of transboundary waters, the obligation to prevent, control and reduce significant transboundary impact, and the obligation to cooperate through specific agreements and joint bodies. The Convention's highest authority is the Meeting of the Parties. It enhances cooperation under the Convention through the development of protocols, guidance documents, regular assessments, as well as projects and activities on the ground.

In 2003, the Parties amended the Convention to make it possible for any UN Member State to accede to this instrument. This amendment was proposed to promote transboundary water cooperation worldwide, to share the Convention's experience, and to benefit from experiences in other regions. The amendment enters into force in February 2013, turning the Water Convention into a global instrument. This "going global" of the Convention will be a major contribution to the International Year of Water Cooperation.

Examples of regional non-UN agreements include:

- **European Union Water Framework Directive** (2000) established a legal framework to protect and restore clean water across Europe and ensure its long-term, sustainable use. River basins are recognized as the main level for water management.
- **SADC Revised Protocol on Shared Water courses** was set up by the members of the South African Development Community (SADC) in 2000. It sets the framework for utilization of watercourses shared by two or more SADC member states.



Institutional arrangements

Promoting water cooperation

Adequate institutional structures at the transboundary, national, and regional levels can play a crucial role in **balancing competing interests** over water resources and enabling sustainable water cooperation. The institutionalization of cooperation can help to **build trust** and numerous joint governance institutions have provided solutions for the challenges in shared waters. Research demonstrates that where institutional capacity for dialogue and the management of disputes is present, **conflict is less likely**. (Sources: UN-Water 2008, WB 2012, Jägerskog 2012)

Quick facts

41% of the world's transboundary basins are covered by some form of cooperative institutional arrangement. (Gerlak 2007)

Where international water institutions exist relations among riparian states are generally more cooperative than in basins without treaties or other cooperative management mechanisms. (OSU 2011)

Transboundary

At the transboundary level, joint bodies such as river, lake and aquifer commissions are important to sustain cooperation between states and foster sustainable water management in a transboundary context. Political and financial support by governments and the involvement of a variety of stakeholders contribute to their success.

Water cooperation in times of warfare

Legal agreements and institutional arrangements on water sharing have been negotiated and maintained even as conflicts have persisted over other issues. Cambodia, Laos, Thailand and Vietnam, have been able to cooperate since 1957 within the framework of the Mekong Committee, and they had technical exchanges throughout the Vietnam War. The Indus River Commission survived two wars between India and Pakistan.

Transboundary institutional arrangements: some examples

Senegal River Basin Development Organisation (OMVS)

The OMVS was founded in 1972 by its member states Mali, Mauritania, and Senegal (Guinea has an observer status). It is tasked with implementing the Senegal River Convention; promoting and coordinating development studies; and carrying out all technical and economic functions conferred to it by the member states. In 2002 its members adopted a Water Charter with a shared vision to manage the river sustainably (GEF 2011).

Nile Basin Initiative (NBI)

The NBI was launched in February 1999 by the water ministers of the countries that share the river: Egypt, Sudan, Ethiopia, Uganda, Kenya, Tanzania, Burundi, Rwanda, Democratic Republic of Congo, and Eritrea (the latter is observer). The NBI seeks to develop the river in a cooperative manner, share socio-economic benefits, and promote regional peace and security. It provides an institutional mechanism, a shared vision, and a set of policy guidelines to provide a basin wide framework for cooperative action (GEF 2011).

Mekong River Commission (MRC)

The MRC was established in 1995 by the Mekong Agreement and succeeds the Mekong Committee, founded by the UN in 1957. The MRC is an inter-governmental agency formed by Thailand, Cambodia, Vietnam, and Laos to coordinate water resources development in relation to the related natural resources and environmental protection in the Lower Mekong River Basin (LMRB). The two upper states of the Mekong River Basin, China and Myanmar, are dialogue partners. The MRC consist of three permanent bodies: a Council, Joint Committee, and a Secretariat. It engages a range of stakeholders into its programme work and strategic planning (UN-Water 2008, GEF 2011, MRC).



National

Managing water effectively and sustainably requires that all the stakeholders of a common water resource cooperate in jointly managing, protecting, and developing it.

National and regional bodies, such as water authorities and river basin organizations (RBOs) can manage the various differences and other issues that may arise between countries, cities or sectors.

No blue print

Institutions are set up to respond to certain demands which are specific to the basin; cooperative mechanisms that work well in one basin may not work well in others. Any arrangement must be tailored to a given basin's characteristics and reflect its environmental, hydrological, political, economic, social and cultural circumstances.(UN-Water 2008, UNW-DPC 2009)

Local

Stakeholder engagement and public participation are key to the coordination of various actors and interests at the local and river basin level. This can be facilitated by stakeholder platforms: forums in which different stakeholders have the space to articulate their concerns and come to negotiated settlements. Furthermore, rural and **irrigation cooperatives, water commissions and water juries** can play a role in local water management and resolving disputes between local stakeholders. **Water Users Associations (WUA)** are key where official monitoring and data collection are weak.

Cities

The EU-funded SWITCH (Sustainable Water Management Improves Tomorrows Cities Health) research programme set out to achieve a more sustainable integrated urban water management in the 'City of the Future'. It brought stakeholders from a range of institutions together in multi-stakeholder platforms ('learning alliances') at neighbourhood, city and in some cases national and global levels. The stakeholders jointly discussed problems and developed and tested ideas for improved integrated urban water management. SWITCH was carried out in 2006-2011 by a consortium of 33 partners from 15 countries, coordinated by the UNESCO-IHE Institute for Water Education. (Butterworth ed. 2011)

Conditions for successful transboundary agreements

Experts often name the following important elements of successful transboundary agreements:

- Clear rights and obligations and well-developed procedures for cooperation
- Institutional arrangements
- Requirements and measures for management and protection of water resources and related ecosystems
- Measures for enforcement
- Take into account water quantity and quality, hydrological events, changing basin dynamics and societal values as well as all potential impacts of climate change.
- Dispute prevention and resolution mechanisms, including with regard to unilateral water development plans
- Clear yet flexible means to share the benefits of water, water allocations and water-quality standards.
- Provisions for joint monitoring, information exchange and public participation as well as mutual assistance in case of extreme events.
- Ways to address risk and uncertainty, for example related to climate change.



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