

UNITED NATIONS CONFERENCE ON SUSTAINABLE DEVELOPMENT (RIO+20)

Rio de Janeiro, Brasil, 20-22 June 2012

POLICY BRIEF: TRANSBOUNDARY WATERS, CLIMATE CHANGE AND GOOD GOVERNANCE

This brief aims to provide input into discussions ahead of and during Rio+20. We urge governments and the international community at large to acknowledge the transboundary and global dimensions of climate change in relation to water; and, accordingly, to strengthen international law as a key tool supporting and facilitating transboundary water cooperation:

- Freshwater ecosystems provide numerous environmental, social and economic benefits, and are a crucial element of the green economy and vital for sustainable development. These ecosystems, and the services they provide, are extremely vulnerable to climate change and variability, as well as to development pressures – including population growth, rapid urbanization, and rising water demand for food and energy production –, which often lead to water pollution and overexploitation.
- In particular, climate change impacts on water resources magnify the existing global water crisis, including by increasing the frequency and intensity of water-related natural disasters in many parts of the world; and threaten international peace and security through such impacts' influence on key drivers of conflict, such as mass migration, energy and food insecurity, and competition over dwindling resources.
- In the world's 276 transboundary basins, such challenges are even more daunting. In those basins, climate change will continue to affect freshwater and related natural resources, and have significant impacts on the full enjoyment of vital human needs related to freshwater. This requires closer levels of interstate coordination, dialogue and information exchange between states as a basis for the achievement of internationally agreed environmental and development goals.
- The effects of climate change vary among and within countries. Thus, adaptation to climate change has been considered primarily at the local level. However, climate change has impacts on global natural, social, economic and political systems, thereby requiring a global response.
- National policies to adapt to and mitigate climate change, if poorly planned and unsustainably developed and operated, may have unforeseen or unintended consequences on water resources. Yet, cooperation between states can ensure that responses to climate change do not lead to negative externalities across international borders.

We thus see Rio+20 as a key opportunity in the process of building a reliable and yet sufficiently flexible legal and institutional regime to govern transboundary waters through integrated and coherent global, regional, basin and sub-basin agreements and institutions.

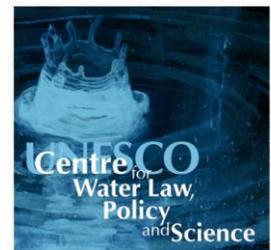
In particular, we invite countries to join and effectively implement the *UN Convention on the Law of the Non-Navigational Uses of International Watercourses (UNWC)*.

The UNWC offers legal stability and consistency for preventing and dealing with water-related disputes in a peaceful and equitable manner. In a changing climate, the Convention also serves as a flexible instrument to support mutually beneficial interstate cooperation and cross-border adaptive freshwater management and protection, as well as to contribute to the achievement of key policy goals and other environmental agreements.

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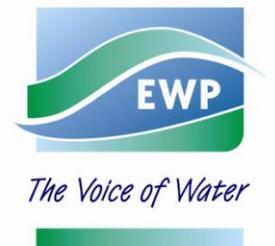
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LINKAGES WITH THE RIO+20 GOAL AND THEMES:

The goal of Rio+20 is to *secure a renewed political commitment to sustainable development*. In pursuit of this goal, the conference and its preparatory process will assess progress and identify implementation gaps in prior commitments; and address new and emerging challenges. The themes identified to frame the goals above are a) a green economy in the context of sustainable development and poverty eradication; and b) the institutional framework for sustainable development.

Implementation Progress and Gaps: Institutional Framework

Transboundary water issues, such as climate change and water scarcity, have cross-cutting implications for the aims of Rio+20. With respect to **progress and implementation gaps in the institutional framework for sustainable development**, states have adopted numerous multilateral environmental agreements (MEAs) since Rio-92. However, governments have not always followed through with their ratification and effective implementation.

In this sense, reminding countries of prior treaty commitments and encouraging them to effectively implement them is a practical recommendation for giving full effect to ready-made legal solutions.

Notably, the UNWC is the only MEA adopted during or as a follow-up to Rio-92 that has not yet entered into force.¹ This is especially troubling as consensus grows in the international community that the water crisis is fundamentally a crisis of governance, at *all* levels.

The imminent entry into force of the convention, with only 11 ratifications pending, offers a concrete outcome to work toward in the context of Rio+20; and success can be easily measured and promoted. Broad-based support for the convention is a relatively uncontroversial step for reforming and strengthening the institutional framework for the sound management of transboundary waters.

Water in general and transboundary water cooperation in particular have close ties with several MEAs and the sustainability goals pursued thereunder. Entry into force of the UNWC is vital for enabling its integration with existing water-related MEAs, thereby facilitating their implementation.²

Having in place an effective UNWC will enable the establishment of stronger linkages with those agreements, as well as the promotion of the convention's aims, principles and procedures to a wider audience, as a contribution to improving the institutional framework for sustainable development:

¹ Apart from the convention, there are amendments and protocols to existing MEAs that are not yet in force: Amendments to the Protocol on Persistent Organic Pollutants and its Annexes I-IV, VI and VIII; Amendment to the Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, and its Protocol on Liability and Compensation for Damage Resulting from Transboundary Movements of Hazardous Wastes and their Disposal; Sofia and Cavtat amendments to the Convention on Environmental Impact Assessment in a Transboundary Context; Amendments to Articles 25-26 of the Convention on the Protection and Use of Transboundary Watercourses and International Lakes; Amendment to Annex B of the Kyoto Protocol to the Convention on Climate Change; Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity; Nagoya-Kuala Lumpur Supplementary Protocol on Liability and Redress to the Cartagena Protocol on Biosafety; Amendment to the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters; and Protocol on Civil Liability and Compensation for Damage Caused by the Transboundary Effects of Industrial Accidents on Transboundary Waters.

² See F. Loures et al., *Everything You Need to Know About the UN Watercourses Convention*, July 2010.

RELATIONSHIP WITH OTHER MEAS

Convention on Biological Diversity (CBD):

The CBD has called for the widespread ratification and implementation of the UNWC as a means to help protect biodiversity within or dependent upon transboundary waters.

Ramsar Convention on Wetlands:

Wetlands are often transboundary themselves or physically linked to international water systems. The Ramsar Convention has thus recognized the importance of transboundary water cooperation, but still lacks the binding rules and procedures to govern how such cooperation is to take place.

Convention on Climate Change (UNFCCC):

The UNWC enables transboundary climate change adaptation through its provisions on cooperative management and dispute resolution. These provisions can supplement the UNFCCC in supporting countries adjust to the effects of climate change on water resources.

Convention to Combat Desertification (UNCCD):

The UNWC's principles and procedures are applicable to drought and desertification that might affect transboundary waters. These provisions can aid states in the implementation of the UNCCD.

Convention on the Conservation of Migratory Species of Wild Animals (CMS):

The UNWC's duties pertaining to the protection of aquatic ecosystems complements the CMS's goal to conserve migratory species and their habitats, throughout their range and on a global scale.

Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (Basel Convention), Rotterdam Convention on the Prior Informed Consent Procedure for certain hazardous Chemicals and Pesticides in international trade (Rotterdam Convention), Stockholm Convention on Persistent Organic Pollutants (POPs):

Future collaboration between the UNWC and the 'Chemical' Conventions would focus on synergies in the implementation of the former's provisions on pollution prevention, control and reduction and the activities under the latter treaties to ensure the safe handling and transport of dangerous substances capable of harming the ecosystems of international watercourses.

EMERGING CHALLENGES: GREEN ECONOMY

The "green economy" theme allows for several linkages with the UNWC, particularly in the context of emerging challenges like climate change. The economic role of water cannot be overstated. Irrigated agriculture needs a reliable source of clean water, while inland fisheries and other services provided by freshwater ecosystems are sensitive to changes in water quantity and quality. Clean water, both for drinking and sanitation, is necessary for good health, which, in turn, is vital for productive economies. Industry also uses abundant water supplies – ensuring that water is available and used efficiently helps industry and thus the economy.

Transboundary waters, in particular, are a vital source of freshwater and related ecosystem services for 40% of the world's population in 145 countries.

Climate change will affect all freshwater resources, but transboundary waters are particularly vulnerable. It is through water – its distribution and seasonal and annual variability – that people will feel the impacts of climate change most strongly. Direct effects include rising temperatures and shifting precipitation patterns, leading to impacts on water temperature, water volume, and flow timing. This, in turn, will result in scarcity or excess water in almost every country, with more frequent, widespread and intense droughts and floods. In addition, through escalating water shortages and water-related disasters, and associated social and economic disruptions, climate change is expected to contribute to mass migrations; cross-border tensions and conflicts over dwindling resources; and more weakened and failed states and expanded ungoverned spaces – all this demanding new and additional resources for relief, rescue and reconstruction efforts.

Where rivers, lakes and aquifers are internationally shared, water-related challenges are compounded. The efforts to ensure a “green economy” in a scenario of rapid climatic and other global changes will require closer levels of cooperation between neighboring states. International law, and the UNWC in particular, can facilitate this cooperation and thus help protect international watercourses and foster their sustainable use in the context of a strong governance regime.

Transboundary waters often lack adequate legal protection from pollution and over-exploitation. Even where agreements exist, they may omit basin states or address only some aspects of water management. The UNWC sets out a framework for transboundary water management by codifying, clarifying and progressively developing international water law.

The convention requires states to protect and preserve the ecosystems of international watercourses. As the UN Secretary-General has noted, ecosystems provide services that are “critically important not only to resident communities but to broader national economies.... Programmes and projects that aim to restore and enhance natural capital will have direct impacts on livelihoods and poverty.”³ Legal systems play an important role in regulating and protecting ecosystem services and ensuring that decisions regarding them are made through a participatory, equitable, transparent and legitimate process. Implementation of those decisions also requires effective legal and institutional arrangements that provide states with incentives to cooperate, engage in dialogue, and comply with their international obligations. The UNWC is one such arrangement.

From an institutional perspective, river basin organizations (RBOs) are key actors in implementing and developing watercourse agreements. Through their network and experiences, RBOs support states in the cooperation process and the implementation of international obligations and commitments, such as those embedded in the UNWC. Accordingly, the UNWC encourages the creation of such organizations.

The UNWC’s role in fostering the sustainable development, management and protection of international watercourses should thus be central to any green economy discussion. Particularly relevant in the context of a green economy and climate change are the convention’s following provisions:

³ Report of the Secretary-General, *Objective and Themes of the United Nations Conference on Sustainable Development* (22 Dec. 2010) UN Doc. A /CONF.216/PC/7 at para. 66.

- *Equitable and reasonable utilization* (Articles 5-6): This principle requires states to take into account a variety of factors in the development and management of international watercourses. No water use has inherent priority over any other, and states have to balance and share equitably the associated costs and benefits among all riparians. Equitable and reasonable utilization encompasses sustainability considerations: the long-term conservation of water, along with economic and social concerns.
- *Harm prevention* (Article 7): This due-diligence duty requires states to consider the implications of their actions on an entire watercourse, and contributes to better water management and ecosystem protection, within the framework of equitable and reasonable use and participation.
- *Data-sharing* (Article 9): The convention requires states to exchange information on a range of topics, including meteorological data and related forecasts. This is particularly relevant in the context of climate change and variability, so states can make informed decisions on the management, protection and development of international watercourses.
- *Procedural rules for planned measures* (Articles 11-19): The convention requires states to consult, negotiate, and exchange data with potentially affected countries before implementing a measure that could have adverse transboundary impacts. The convention thus ensures that states take a broader look at the potential impacts from their projects and creates a platform for the identification of win-win solutions that benefit equitably all co-riparians.
- *Ecosystem protection* (Articles 20-23): The convention requires states to protect and preserve the ecosystems of international watercourses and the connected marine environment, including estuaries. It also requires states to take measures to prevent, reduce and control water pollution.
- *Cooperative management* (Articles 24-25): The convention requires states to respond to their neighbors' request for consultations on water management issues. The convention also encourages the establishment of joint bodies to manage international watercourses. These provisions promote informed decision-making on watercourse management and development and build trust between riparian states.
- *Harmful conditions, emergencies* (Articles 27-28): With respect to climate variability and other harmful conditions and emergencies, the convention creates a framework for states to deal cooperatively with such issues, including floods and droughts.
- *Dispute settlement* (Article 33): While the above measures aim to preempt disputes, in the event they do arise, the detailed procedures outlined in the convention provide a transparent and cooperative method to address problems. This structure fosters collaborative governance and management.

ANNEX – BASIS FOR ACTION

Calls on states to recognize and act on the linkages among transboundary waters, climate change and good governance:

- **Stockholm Message from the 2009 World Water Week to COP-15:** “Water is a key medium through which climate change impacts will be felt. Managing the resource effectively, including through well-conceived IWRM approaches and at a transboundary level, is central to successful adaptation planning and implementation, and to building the resilience of communities, countries and regions.”
- **UNECE Guidance on Water and Adaptation to Climate Change:** The Guidance focuses on the specific problems and requirements of transboundary basins, and aims to assist states in preventing, controlling and reducing transboundary impacts of national adaptation measures.

- **UN Secretary General's Report on Climate Change and its Possible Security Implications:** Multilateral approaches, including existing and new frameworks for cooperation, are necessary for tackling the transboundary effects of climate change, especially with respect to the management of transboundary waters.

Calls on states to join and implement the UNWC:

- **UNSGAB's Hashimoto Action Plans I and II**, which call on states to join the UNWC as a means to support transboundary integrated river basin management, and thus enable sustained and environmentally sound progress on improving access to water and sanitation;
- **CBD Decisions VIII/27 and IX/19**, urging states to ratify the UNWC as a means to help protect biodiversity in international watercourses;
- **2011 Statement of the InterAction Council**, with a recommendation supporting the widespread ratification of the UNWC;
- **UN Secretary-General**, in his capacity as depositary, ahead of the 2007, 2008, 2009, 2010 and 2011 United Nations Treaty Events;
- **2007 Call for Action on the Ratification of the UN Watercourses Convention by West African States** (Dakar, Senegal);
- **2008 Antigua Declaration on the 1997 United Nations Convention on the Law of Non-Navigational Uses of International Watercourses**;
- **2008 Mediterranean Civil Society Statement to the Euro-Mediterranean Ministerial Conference on Water**;
- **2009 Bangkok Plan of Action for Strengthened Transboundary Freshwater Governance**, adopted by the ministerial segment of UNEP's *High Level Ministerial Conference on Strengthening Transboundary Freshwater Governance*;
- **2010 OSU Declaration**, Interim Guinea Current Commission, during the 2nd Meeting of the Committee of West and Central African Ministers of the Guinea Current Large Marine Ecosystem Project;
- **2011 Bamako Declaration**, during the Solidarity for Water in Niger Basin Countries Forum;
- **2011 Declaration of the UN DPI/NGO Conference**, with the purpose of informing the Rio+20 preparatory process;
- **2011 Bangkok Declaration of African Basin Organizations**: outcome document of the African Basin Organizations Consultative Meeting organized by UNEP and AMCOW.