

UNITED NATIONS CONFERENCE ON SUSTAINABLE DEVELOPMENT (RIO+20)

Rio de Janeiro, Brasil, 4-6 June 2012

POLICY BRIEF: “TRANSBOUNDARY WATERS, CLIMATE CHANGE AND GOOD GOVERNANCE”

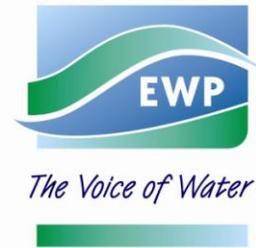
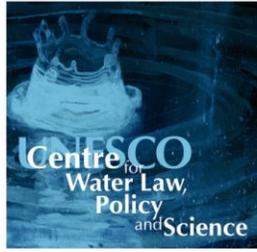
This brief aims to provide input into discussions ahead of and during Rio+20. We urge governments and the international community at large to acknowledge the transboundary and global dimensions of climate change in relation to water and the role of international law in supporting transboundary water cooperation:

- Freshwater ecosystems provide numerous benefits to local and national economies, and are a crucial element of the green economy. These ecosystems, and the services they provide, are extremely vulnerable to climate change impacts and development pressures, but often lack recognition in watercourse agreements.
- In the world’s 276 transboundary basins, climate change will continue to affect freshwater and related natural resources that are shared by two or more countries, requiring closer levels of interstate coordination, dialogue and information exchange.
- 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.
- Water availability and water quality are essential for sustainable development and a green economy. Yet, the world’s freshwater resources face numerous threats, including global population growth, increased urbanization, pollution, overexploitation, desertification and climate change. These threats, combined with national policies to mitigate climate change impacts such as storing more water, building more dams for hydropower and expanding biofuel production, increase the potential for conflict across international borders.
- Climate change impacts on water resources magnify the existing global water crisis – increasing the frequency and intensity of natural disasters in many parts of the world – and threatening international peace and security through their influence on key drivers of conflict, including mass migration, energy and food insecurity and competition over dwindling resources.

This calls for a reliable and yet sufficiently flexible legal and institutional framework to govern transboundary waters at various levels through global, regional, basin and sub-basin agreements and institutions that supplement and reinforce one another.

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) as a global framework guiding and supporting transboundary water cooperation, including in the context of climate change.

The Convention offers legal stability and consistency for preventing and dealing with water-related disputes, while providing a flexible instrument in support of interstate cooperation and which can facilitate adaptive water management in response to ever-changing conditions like the effects of climate change.



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) green economy in the context of sustainable development and poverty eradication; and b) institutional framework for sustainable development.

Implementation Progress and Gaps: Institutional Framework

Transboundary water issues like 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 ratification and effective implementation.

Given the proliferation of treaties in the 1990s, countries are wary of undertaking new international legal obligations. Instead, there is general agreement that Rio+20 should work within the current legal and institutional framework. In this sense, reminding countries of prior treaty commitments and encouraging them to join and effectively implement them is a practical solution.

- The UN Watercourses Convention 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 water rises in the international political agenda as fundamentally a problem of governance, at *all* levels.
- Ratification of the convention provides supporters with a concrete outcome to work toward; 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 UN Watercourses Convention is vital for enabling its integration with existing water-related MEAs, thereby facilitating their implementation.²

Having in place an effective UN Watercourses Convention 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.

Convention on Biological Diversity: The CBD has called for the widespread ratification and implementation of the UN Watercourses Convention as a means to help protect biodiversity within or dependent upon transboundary waters.

Ramsar Convention: 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: The UN Watercourses Convention 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 UN Watercourses Convention'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.

Emerging Challenges: Green Economy

The “green economy” theme allows for several linkages with the UN Watercourses Convention, 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 ecosystem services 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 necessary for productive economies. Industry also uses abundant supplies of water – 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. Where water resources are internationally shared, effective responses to climate change and other efforts to ensure a “green economy” will require closer levels of cooperation between neighboring states. International law, and the UN Watercourses Convention in particular, can facilitate this cooperation and thus help protect international watercourses and foster their sustainable use in the context of a strong governance systems.

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

The convention also incorporates the concept of ecosystems, requiring states to protect and preserve them. 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 the incentive to cooperate and comply. The UN Watercourses Convention is one such arrangement.

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.

The UN Watercourses Convention's role in protecting freshwater resources and encouraging their equitable use should thus be a part of any green economy discussion. Particularly relevant in the context of a green economy and climate change are the convention's following provisions:

- *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 use has inherent priority over any other, and states have to balance the costs and benefits to 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 of prevention of significant transboundary harm requires states to consider the implications of their actions on an entire watercourse, and contributes to better water management and ecosystem protection.
- *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. States can then make informed decisions on the management and development of shared 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 and control water pollution. By protecting ecosystems, and thus the services they provide, the convention will have direct impacts on livelihoods and poverty.
- *Cooperative management* (Articles 24-25): This procedural mechanism allows any watercourse state to request consultations with another co-riparian state. The convention also encourages the formation of joint bodies to manage international watercourses. These provisions not only promote informed decision-making on watercourse management and development, but also build trust between riparian states.
- *Harmful conditions, emergencies* (Articles 27-28): By encouraging joint measures to prevent or address harmful conditions and emergencies, the convention promotes the protection of shared watercourses from pollution, natural and human-induced catastrophes, and other adverse events. These provisions also encourage joint action, including in the planning, design and execution of flood and drought control measures.
- *Dispute settlement* (Article 33): While the above measures hope 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 – Additional Information

1. Basis for Action:

1.1 *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 aims to put special emphasis on the specific problems and requirements of transboundary basins, with the objective of preventing, controlling and reducing transboundary impacts of national adaptation measures and thereby preventing and resolving possible conflicts related to the impact of climate change on water resources.”
- **UN Secretary General’s Report on Climate Change and its Possible Security Implications:** “Safely managing the multiple transboundary effects of climate change will require multilateral approaches. These will include adherence to and observance of existing frameworks, and new modes and frameworks for international cooperation as necessary. A number of areas...could require multilateral responses..., including the question of...reinforcing cooperative mechanisms to deal with changed international resource availability, as with the management of transboundary waters.”

1.2 *Calls on states to join and implement the UN Watercourses Convention:*

- **UNSGAB’s Hashimoto Action Plans I and II**, which calls on states to join the UN Watercourses Convention, 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;
- **Convention on Biological Diversity, Decisions VIII/27 and IX/19**, urging states to ratify the UN Watercourses Convention as a means to help protect biodiversity in international watercourses;
- **2011 Statement of the InterAction Council**, which includes a recommendation supporting the widespread ratification of the UN Watercourses Convention;
- **UN Secretary-General**, in his capacity as depositary, ahead of the 2007, 2008, 2009 and 2010 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;**
- **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.