Introduction to the SADC Revised Protocol on Shared Watercourses

In Southern Africa, the Southern African Development Community Revised Protocol on Shared Watercourses (SADC Revised Protocol) entered into force in 2003. Replacing the original Protocol of 1995, its stated purpose is “to foster closer cooperation for judicious, sustainable and co-ordinated management, protection and utilisation of shared watercourses and advance the SADC agenda of regional integration and poverty alleviation” (Art 2).

It was specifically revised in order to bring certain provisions in-line with the UN Watercourses Convention (adopted in 1997) and therefore both agreements mirror one other verbatim in many parts of the text. This has important ramifications for compatibility and integration between the UNWC and the SADC Revised Protocol in their implementation. Crucially, of those States that are party to the SADC Revised Protocol, so far South Africa and Namibia have also ratified the Convention.

The countries and river basins of the SADC region

Similarities

Considering that the original Protocol was largely revised to bring it into line with the Convention, both legal instruments exhibit many substantive as well as procedural similarities.

Firstly, both of these legal instruments allow for and encourage the formation of specific basin agreements and associated institutions for the purposes of improving governance and effective transboundary water management.

Similarly, both instruments encourage harmonisation of existing and future basin agreements with their respective principles and procedural rules. However, the SADC Revised Protocol is clearly limited to SADC nations but it can aid broader harmonisation via water agreements between SADC and non-SADC States.

Lastly, the SADC Revised Protocol and the UN Watercourses Convention set out separate dispute resolution provisions that together could be seen as mutually supportive in a regional context. In this regard, upon the Convention’s entry into force, the Revised Protocol could be used for SADC member States and the Convention’s provisions could potentially be used for disputes between SADC and non-SADC nations, depending if either State was a party to the Convention.

Differences between both legal instruments

To a large extent the SADC Revised Protocol sets forth the same principles and substantive rules as the UN Watercourses Convention, but the Convention is more detailed on certain substantive and procedural issues and vice versa. Hence, the Convention could be used to support the interpretation of the SADC Revised Protocol where it lacks the detail of the former instrument, such as procedures for a fact-finding commission to any dispute settlement failing negotiation (Art 33).

The same could be said for the SADC Revised Protocol supporting the Convention as regards establishing regional agreements and institutions in the SADC, along with prioritising dispute resolution in a regional context where required. However, the SADC Revised Protocol’s procedural requirement for SADC States to submit a dispute that cannot be resolved via peaceful negotiations directly to the SADC Tribunal for final and binding adjudication could be seen to conflict with the Convention’s reference to International Court of Justice in such situations. Ultimately, any conflict in the practical application of these procedures will depend upon such a scenario arising.

Notably, the SADC Revised Protocol also places specific emphasis on prioritising the regional integration and poverty alleviation of States when balancing competing uses of a watercourse (Art 2).

Finally, the main difference between the Convention and the SADC Revised Protocol concerns the relationship between the rule of no significant harm (NSH) and the principle of equitable and reasonable utilisation (ERU). The Convention is widely perceived to prioritise ERU over NSH as Article 7 concerning NSH obligates States to consider ERU whenever harm occurs to another State. Conversely, the related NSH obligation in the SADC Revised Protocol does not specifically refer to the principle of ERU whereby some argue that this instrument prioritises the duty of NSH. This distinction may have practical implications for the interpretation of laws regarding planned measures (see Fact Sheet #6) and disputes concerning allegations of significant harm being caused by another State (see Fact Sheet #5). However, these are merely perceptions at present that are yet to be tested or confirmed.

Map of key river basins in Africa and related watercourse agreements

![Map of key river basins in Africa and related watercourse agreements](https://example.com/map.png)


**ADDITIONAL RESOURCES**

**FURTHER READING**