

GLOBAL UN WATER CONVENTIONS: OPTIONS FOR COORDINATED IMPLEMENTATION

Discussion Paper¹

Remy Kinna*, Alistair Rieu-Clarke*, Flavia Rocha Loures**

This discussion paper considers the relationship between the UN Convention on the Law of the Non-Navigational Uses of International Watercourses (UNWC) and the UNECE Convention on the Protection and Use of Transboundary Watercourses and International Lakes (UNECE Water Convention), and the options for ensuring their coordinated implementation in the future. Such a discussion is important given the *prospects of both conventions existing as global treaties in force on the same subject matter* of transboundary water cooperation.

- The UNWC is open to accession by all countries and, as of March 2013, counts 30 contracting states – 5 short of the number required for entry into force. The UNWC was adopted following an extensive process whereby *all* UN member states were invited to provide comments on its draft text; and permitted to negotiate on that text within the UN General Assembly (UNGA). A vote – open to all UN member states – was taken upon adoption of the Convention, with 106 states voting in favour of the text to 3 votes against. From the beginning, the UNWC was drafted and negotiated at the global level and designed to become a universal instrument. The UNWC lacks provisions on governance mechanisms and there is no body mandated to oversee its implementation.
- The UNECE Water Convention has 39 parties covering almost the entire UNECE region². It was negotiated through an intergovernmental process under the auspices of UNECE and was adopted as a regional treaty. In force since 1996, the Convention offers a fully developed institutional structure to support implementation, and a wealth of knowledge and experience that would be useful for countries beyond the UNECE region. The Convention has been amended to become global, and would thus operate at the same level as the UNWC. It is expected that all UN member states will be able to join the Convention as of the end of 2013.

In terms of their respective texts, the UNECE Water Convention has generally more detailed requirements than the UNWC. Yet, certain provisions in the latter supplement the former, e.g., those on planned measures and the factors relevant to equitable and reasonable use. Taken as a package, the two Conventions are therefore mutually reinforcing. Wherever possible, countries considering accession to one or both of these global water Conventions should look at the two instruments side-by-side.

In this context, we invite those reviewing this discussion paper to consider some key questions:

1. *How best to build on synergies, ensure coordination, and avoid duplication in the implementation of both Conventions?*
2. *How can states capitalise on both the global legitimacy of the UNWC and vast experience under the UNECE Water Convention towards progressively building an effective, legally mandated, and truly global transboundary water regime?*
3. *How might an institutional framework (formal or informal) address existing water law fragmentation at different scales, and what are the legal (substantive and procedural) practicalities that must be dealt with to ensure its formation?*
4. *What steps would be needed to ensure that the respective parties to these Conventions receive the political, technical and financial support necessary to facilitate effective implementation?*

¹ This document draws from a larger report that will consider institutional options for supporting the future implementation of the UN Watercourses Convention upon entry into force. The report is being prepared by CWLPS, in collaboration with WWF, as part of the *UN Watercourses Convention Global Initiative*. Once a first draft is completed, the report will be circulated among key stakeholders for feedback. In the meantime, we welcome comments on this document. For more information, or to provide feedback, please contact Dr Alistair Rieu-Clarke, at a.rieuclarke@dundee.ac.uk or on +44-1382-386471.

* IHP-HELP Centre for Water Law, Policy & Science under the auspices of UNESCO, University of Dundee, Scotland, UK.

** WWF, Washington DC, US.

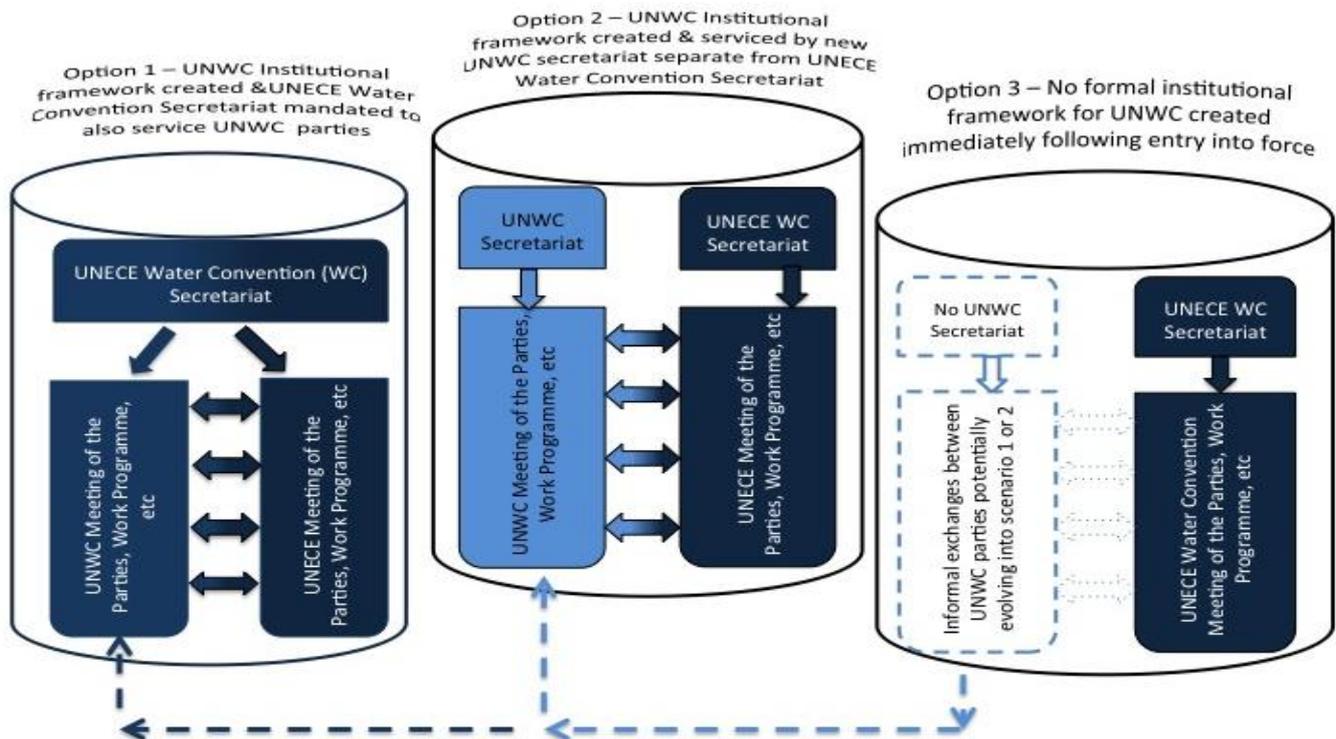
² The UNECE brings together 56 countries located in the European Union, non-EU Western and Eastern Europe, South-East Europe and Commonwealth of Independent States (CIS) and North America.

The adoption of the UNWC as a global framework and the decision to open up the UNECE Water Convention offer a unique opportunity to establish a *truly global transboundary water regime*. At the same time, the imminent entry into force of the UNWC and the opening of the UNECE Water Convention call for a careful analysis of how to:

- a) Ensure that the two global transboundary water Conventions are implemented in a mutually reinforcing manner, so as to avoid duplication, exploit synergies, maximise the efficient use of resources, and promote the coherent development of international water law; and
- b) Capitalise on the global legitimacy of the UNWC and the 20 years of experience under the UNECE Water Convention towards progressively building a legally mandated, effective and truly global transboundary water regime.

This discussion paper aims to support such an analysis by exploring three basic options for coordinating the UNWC's implementation process with activities carried out under the UNECE Water Convention. The three options, which are discussed in detail below, are as follows:

- **Option 1 – A formal institutional framework for the UNWC is created and the UNECE Water Convention secretariat is mandated to also service the UNWC parties.**
- **Option 2 – A formal institutional framework for the UNWC is created and serviced by a new UNWC secretariat, separate from the UNECE Water Convention secretariat.**
- **Options 3 – No formal institutional framework for the UNWC is created immediately following its entry into force.**



The discussion paper does not seek to favour one particular option over another. Rather, in presenting these three options, the paper aims to tease out the most salient strengths, weaknesses, opportunities and threats of each. This, in turn, might assist the reader in formulating his or her own opinion as to the most preferred option.

The paper also accepts that a full spectrum of different institutional arrangements could unfold for the future implementation of the UNWC and its coordination with the UNECE Water Convention. However, it is envisaged that, by focusing on the three options noted above, the paper captures the most salient positive or negative aspects of any potential option.

OPTION 1: A FORMAL INSTITUTIONAL FRAMEWORK FOR THE UNWC IS CREATED AND THE UNECE WATER CONVENTION SECRETARIAT IS MANDATED TO ALSO SERVICE THE UNWC PARTIES

Under Option 1, a Meeting of the Parties (MoP) to the UNWC would be established, and would take place back-to-back with the MoP to the UNECE Water Convention. **The mandate of the UNECE Water Convention secretariat would be extended to support the institutional frameworks of both Conventions in a separate, but coordinated manner.** Work programmes under each Convention could include common objectives, joint activities and joint implementation bodies. Parties to the UNWC would **not** be bound by the obligations under the UNECE Water Convention, unless they joined the latter, and vice-versa.

Strengths and Opportunities:

- a) Having the same secretariat service both Conventions is likely to be the most effective means by which to ensure that both instruments develop in a complementary and mutually reinforcing manner. Compared to options 2 and 3, therefore, a shared secretariat would be best placed to coordinate the respective implementation processes, and avoid further legal fragmentation in the field. This option would therefore enable the coherent development of international water law.
- b) A shared secretariat would also offer the most effective and efficient means by which to develop a common strategy for promoting new membership to both Conventions. Such coordination is crucial given that the lack of a common strategy could lead to states receiving mixed messages on the advantages and disadvantages of both instruments, or feeling overwhelmed with the prospects of joining a second global water treaty. Such mixed messages could jeopardise new membership to one or both Conventions.
- c) This option would create a clear entry point and “one-stop shop” for transboundary issues at the global level, and the technical or legal assistance required.
- d) Economic efficiencies are likely to be greater than for option 2, given that it would require less resources and time compared to establishing a completely new secretariat and separate activities for the UNWC.

Weaknesses and threats:

- a) Unless managed carefully, a secretariat based in Geneva may be perceived as being less favourable by some countries. However, the presence in Geneva of the permanent missions of practically all UN Member States would make it easier for developing countries and other states to engage in implementation activities and participate in meetings. In addition, the benefits from various water-related UN and associated offices being located in and around Geneva could prove compelling.
- b) This option would require both a formal decision among the parties to the UNECE Water Convention to expand the mandate of their secretariat *and* an amendment to the UNWC incorporating provisions on governance mechanisms. Both decisions could take considerable time and resources to secure.³

³ The full report noted in footnote 1 will investigate analogous processes for institutional coordination, including the time and resources (financial and political) potentially required to effectuate such amendments.

OPTION 2: A FORMAL INSTITUTIONAL FRAMEWORK FOR THE UNWC IS CREATED AND SERVICED BY A NEW UNWC SECRETARIAT SEPARATE FROM THE UNECE WATER CONVENTION SECRETARIAT

Under Option 2, an institutional framework is created for **the UNWC and serviced by its own secretariat** separate from the UNECE Water Convention secretariat. This new structure could be established as an entirely new body, or hosted within an existing institution. The existence of separate secretariats for each Convention would not preclude the possibility of joint implementation activities, provided there was close coordination between the two bodies and the parties to each convention.

Strengths and opportunities:

- a) If hosted by an existing global organisation active in (transboundary) water issues, the UNWC could provide that organisation with a strong *legal* mandate to further its aims and objectives. Particularly if hosted by UNEP, the UNWC's implementation could draw upon that programme's experience in the implementation of MEAs and their effective coordination, including towards fostering synergies between the Rio Conventions on water-related issues.
- b) The current lack of provisions in the UNWC offers an opportunity to create entirely new governance mechanisms for the 21st century.
- c) As opposed to Option 1, establishing an entirely new UNWC institutional framework would not require any further changes to the UNECE Water Convention institutional framework.
- d) The UNWC secretariat could be located in a developing country and/or in a region where there is a strong need to enhance transboundary water arrangements. This could give added impetus to strengthen transboundary water cooperation in that country or region.
- e) Non-UNECE states could be more attracted to the UNWC with its institutional home being a global body, rather than a structure associated with the UNECE, which is a regional institution within the UN system.

Weaknesses and threats:

- a) The establishment of a formal secretariat and MoP would require all its parties to agree on the adoption of an amendment. The process for adopting and bringing into force such an amendment could require significant time and resources.⁴
- b) If such a secretariat were to be hosted under an existing organization, this would require a decision by the governing body of the organisation in question. This study has not assessed if and to what extent such a decision would be feasible within potential hosts. In general, the time and resources required to secure a positive decision would vary between different institutions. Where the governing body of a potential host is made up of states, considerable effort would likely be required to build widespread or, if required, unanimous support among its members for such an organization to service the UNWC parties.
- c) Irrespective of whether a new formal institutional framework is independent or hosted by an existing institution, creating two parallel regimes is likely to result in the highest start-up and running costs out of all the three options.
- d) Separate secretariats would increase the effort, time and resources required to coordinate between the UNWC and UNECE Water Convention. Therefore, achieving effective coordination would pose a greater challenge under Option 2 than under Option 1.
- e) Demonstrating the benefits of an institutional framework and securing buy-in from states for this option would require time and resources. It might be easier to demonstrate the benefits of two institutional frameworks serviced by a unified secretariat, as envisaged in Option 1, given that the UNECE Water Convention regime is already established. Similarly, a less formal arrangement, as described in Option 3 below, might prove more feasible.

⁴ See footnote 3.

OPTION 3: NO FORMAL INSTITUTIONAL FRAMEWORK FOR THE UNWC IS CREATED IMMEDIATELY FOLLOWING ITS ENTRY INTO FORCE

In Option 3, the contracting states to the UNWC would decide not to immediately establish a formal institutional framework to support its implementation. Such a decision would be without prejudice to any informal arrangements being established to create an institutional ‘home’ for the Convention. Such information arrangements could allow for some coordination amongst the UNWC parties, as well as between both Conventions.

Strengths and opportunities:

- a) No formal institutional framework to support the implementation of the UNWC coincides with the current situation. This option might therefore be the most acceptable to those parties that ratified the Convention on the basis of there being no formal mechanism in place and thus no need for financial commitments to support such a mechanism.
- b) Informal arrangements – supported by individual or groups of Parties, as well as sympathetic inter-governmental and non-governmental institutions – could be put in place to support the implementation and development of the UNWC in the absence of a formal institutional framework. Such an arrangement could build upon and strengthen the activities undertaken through the UNWC Global Initiative, e.g., training and awareness-raising workshops, the 2012 UNWC global symposium, tools such as the user’s guide and its website, and country and regional assessments.
- c) Costs of this option would be relatively low and non-structural, while at the same time providing support for the UNWC’s expansion and implementation.
- d) This option would accommodate proposals that have already materialised, such as the offer by the French Government, at the 6th World Water Forum, to host a meeting of the parties to the UNWC upon its entry into force.
- e) Through time, and if deemed necessary, such an informal platform could evolve into a more sophisticated mechanism for implementation and coordination, as envisaged in Options 1 or 2. A precedent for this can be seen in the evolution of the Ramsar Convention, from the adoption of the original text to the 1982 Protocol and ultimately the 1987 Regina Amendments.⁵
- f) The UNWC would remain an authoritative statement of existing and emerging customary international law, and would likely continue to influence state practice, especially if it progressively gained widespread endorsement.
- g) If the UNECE Water Convention attained a significant number of ratifications from outside the UNECE region, and complementary informal activities to promote the UNWC were effective, a global transboundary water regime could still be formed under Option 3, while avoiding the added (structural) resources required in Options 1 and 2.

Weaknesses and threats:

- a) Parties to the UNWC would not benefit from having in place a formal institutional framework to expand its base. The absence of an institutional “home” for the UNWC could therefore be seen as a barrier to accelerating its ratification process.
- b) The lack of a mandated structure to oversee the UNWC could have an impact on its parties, by making it harder to mobilise potential donors and partners around implementation. Entry into force of the UNWC as such creates a unique window of opportunity to address this risk.
- c) It may be harder to coordinate activities between the UNECE Water Convention and UNWC when there is no formal institutional framework for the latter instrument.

⁵ Such analogous institutional developments will be explored in detail within the full report.

Additional points to consider with respect to all three options:

Under all three options, two Conventions remain. States that join both Conventions would be expected to engage in two implementation processes, each potentially with its own bodies, meetings and work programmes. To ensure that the benefits of having both Conventions operating at the global level are realised, it is crucial that, for whatever option, effort is put into developing suitable coordination mechanisms that maximise synergies and avoid duplication, such as back-to-back or joint meetings, shared work tasks and joint implementation bodies. *Specifically, effective coordination would:*

- **Allow the UNWC parties to capitalise on 20 years' experience in the implementation of the UNECE Water Convention**, by ensuring that: a) the detailed text and accompanying recommendations, guidelines and model provisions of the latter help inform the interpretation and application of the more general provisions of the former; and b) the experience in setting and maintaining an institutional framework under the latter guides decision-making in this regard under the former.
- **Provide parties to the UNECE Water Convention with the opportunity to exchange experiences with the parties to the UNWC**, particularly in areas where the latter instrument is more detailed, or where UNWC parties were not also parties to the UNECE Water Convention.
- **Enable both Conventions to operate at the global level whilst providing states with some flexibility**. For example, some states may be more willing to join the UNWC as its provisions more closely reflect their existing treaty practice. Similarly, a state that may have recently become a party to either Convention might initially wish to avoid undertaking a further, potentially lengthy, process of accession to another global water convention.

Ineffective coordination between the two instruments, which deal essentially with the same issues, could lead to confusion amongst states concerning the value of either regime, or why they should join both or choose between the two. Without a common strategy and message amongst those institutions promoting both of these Conventions as complementary and mutually reinforcing, such confusion could hamper efforts to attract additional parties to either Convention. Weak coordination could also lead to greater legal fragmentation and competition over resources, political attention and mandates.

All three options envisage either or both Conventions operating at a truly global level. However, it is not possible to predict at present whether the UNWC and/or the UNECE Water Convention will eventually enjoy universal ratification by states. Regarding this issue, some vital points to consider are that:

- As mentioned above, the UNWC carries considerable global legitimacy that stems from the open and global process leading up to its adoption. Despite this, the Convention has yet to enter into force. The acceleration in its ratification process over the last few years, however, sends a strong signal that the Convention will soon enter into force, which in itself could trigger renewed interest among states and additional ratifications over the coming years.
- As originally negotiated, the UNECE Water Convention was designed to address transboundary water issues within the UNECE region, and its current membership is dominated by European states. Non-UNECE states would have to be convinced that the Convention can benefit them. In this regard, the existing legal and institutional *framework* of the UNECE Water Convention is potentially flexible enough to prove relevant across the world's transboundary waters. Since 2009, non-UNECE members have participated in activities under that Convention; and such activities could be expanded further as more states joined the regime. Parties to the UNECE Water Convention have engaged with other MEAs and global partners (e.g., UNFCCC, UN-Water, GEF and UNESCO). The UNECE has experience in servicing global processes, e.g., in the field of trade and transport, with an active involvement of countries throughout the world.

Regardless of which option is chosen – and in order to secure global membership of both Conventions and effective coordination – it may prove important to identify regional hubs, e.g., existing basin commissions or regional institutions that could take responsibility for promoting and implementing both Conventions in a coordinated manner.