5 reasons why EU should ratify and or become a party to the UN Watercourses Convention

In 1997, more than 100 nations adopted the United Nations Convention on the Law of the Non-Navigational Uses of International Watercourses (UN Watercourses Convention) an overarching global legal framework that establishes basic standards and rules for cooperation between states on the use, management, and protection of international watercourses. The Convention counts today 19 Contracting States – 16 short of the number required for entry into force.

No EU Member State voted against the convention in 1997. Denmark, Finland, Germany, Greece, Hungary, Italy, Latvia, The Netherlands, Portugal, Spain, Sweden, and the United Kingdom co-sponsored its adoption. So far, Finland, Germany, Greece, Hungary, The Netherlands, Portugal, Spain and Sweden are contracting states, several other Member States (including France and Luxembourg) have triggered ratification processes.

We believe that coordinated/joined EU effort to ratify the Convention will secure the speedy entry into force of the Convention, as a global policy framework and enable the countries to strengthen policy and institutional capacity by relying on the multi-level legal governance of their transboundary watersheds. Following the successful regional example of the EU Water Framework Directive and the UNECE Water Convention, the UN Watercourses Convention can address governance deficiencies at various levels, set basic uniform standards across neighboring regions, supplement achievement of key policy goals and international agreements and bring all relevant stakeholders together. (Also note that the Convention made an explicit provision for regional economic bodies to join.)

Here is why we believe the EU should ratify the UN Watercourses Convention:

1. It will improve transboundary water cooperation

The worlds 263 international watercourses contain key freshwater supplies and sustain rich ecosystems in 145 countries, but many of them are being significantly degraded through poor and uncoordinated management. In addition, most of them lack adequate legal protection, either because no agreements are in place, the existing agreements are inadequate in content or scope, or because not all states within a basin are involved. In Africa, specifically, treaties providing for equitable water use and/or environmental protection are absent or inadequate in most international watercourses. In most international rivers, lakes and aquifers around the world, including in Africa, either no cooperative frameworks are in place; or existing treaties fail to involve all states within the system or do not address key water management issues, such as climate change adaptation, integrated river basin management, and transboundary pollution.

How do we ensure the sustainable management of international watercourses in such a scenario? An effective UN Watercourses Convention, supplemented by regional treaties in this field, is necessary to integrate the water governance structure of transboundary
waters, so that we have enabling frameworks at different levels that are mutually supportive.

When in force, the UN Watercourses Convention will codify and clarify international water law, thereby leveling the playing field among states and, where necessary, strengthening the ability of weaker countries and vulnerable stakeholders within the basin to voice their interests and concerns. At the moment numerous countries and treaties refer to the principles of the Convention, but no mechanism is in place to enhance governance or give stakeholders a possibility to influence the process. The Convention will also provide a basis for negotiation of regional and bilateral agreements and help avoid conflicts over water resources, minimize degradation of the rivers by promoting cooperation in the sustainable use of the entire watercourses, and – through principle of equity – accounting for the special situation and needs of developing countries.

In addition, improvement of the transboundary water cooperation worldwide, can prevent disruptions in food production and, in the long-term, help secure European imports of water-intensive foods such as sugar, coffee, maize and beef (e.g. UK is 62% dependent on “virtual water” from elsewhere, including from poorly governed transboundary basins. according to WWF analysis, based on the water footprint of agricultural products).

The catering industry in Sweden and Finland found that by using other cooking methods and using local produce, they could bring down the use of water with 2/3. At the moment Finland – one of the water richest countries in the world - imports the same amount of water “virtually” as the UK bringing in food from abroad). By contributing to sustainable international river basin management, the Convention may significantly prevent disruption in food production and at the same time bring down the amounts of water spilled / used, resulting in a greater assurance of supply of these foods to the EU.

- Basins not covered at all: Ouémé (3 countries), Cavally (3 countries), and Moa (3 countries) – note: most states are parties to two or more different watercourse agreements;
- Incomplete agreements:
  - Niger: 1987 Convention doesn’t provide for water allocation/data-sharing:
  - Gambia: The Convention creating a joint body establishes a mandate for the Permanent Water Commission to allocate water rights only in regards to agricultural, industrial and transportation water uses, ignoring that allocation decisions should also take into account environmental flows necessary for maintaining in-stream water uses, in addition to other types of water utilization.
  - Senegal: The recent Senegal Charter doesn’t contain a general obligation on significant transboundary harm prevention & doesn’t codify and detail a data-sharing obligation;
- Lake Chad: no fact-finding procedures; No data-sharing/water allocation
- Volta: the recent convention does not address emergency situations and harmful conditions
- Senegal: The recent Senegal Charter doesn’t contain a general obligation on significant transboundary harm prevention & doesn’t codify and detail a data-sharing obligation;
The UN Watercourses Convention requires interstate cooperation and offers policy and legal guidance for states to engage in transboundary integrated river basin management. The convention’s entry into force and implementation will advance EU water and development cooperation policies:

a) The EU 1998 Guidelines on Water Resources Development Cooperation refer to the UN Watercourses Convention as a key framework for transboundary IRBM.

b) The EU 2002 Communication on Water Management in Developing Countries identifies transboundary water development cooperation as a priority area.

c) The EU Water Initiative lacks a widely accepted and effective legal and policy framework to support and coordinate implementing and monitoring activities in a transboundary context.

**How the UN Convention can help with better governance:**

The Convention requires states to use watercourses in an equitable and reasonable manner consistent with their protection, while paying special regard to vital human needs and to the interests of the other watercourse states.

In particular the Convention requires states *inter alia* to:

- implement and/or adjust the Convention to their specific circumstances and needs
- participate in the development and protection of the watercourses, for example, through regular exchange of information
- take all appropriate measures, when utilizing a watercourse, to avoid causing significant harm to other states and act diligently to eliminate or mitigate such harm if it nevertheless occurs
• follow a procedure of consultation, negotiation and data exchange before implementing any measures that could have a significant adverse effect
• consult over the establishment of joint management mechanisms such as basin organizations, management plans or standards
• seek the peaceful settlement of the disputes

The Convention does not set “targets” for equitable use.

Illustration: Amazon

The only agreement governing the Amazon basin (ACT: Amazon cooperation treaty 1978/ revised 1998) lacks effective rules dealing with dispute settlement. The UN Watercourses Convention has a number of provisions to seek the peaceful settlement of disputes (articles 33) and when in force could be applied to supplement the existing agreement.

Illustration: Volta River Basin

In the Volta River Basin, Ghana accused Burkina Faso in 2007 of aggravating floods downstream by opening the flood gates of a dam located in the upper stretches of the river. The Volta Basin Convention is a significant step taken by the states, however, that agreement has little to offer to prevent a similar situation from happening again or to clarify rights and duties of the watercourse states involved in similar accidents in the future. The UN Convention deals in more detail with harmful conditions and emergencies, and could be applied to supplement the Volta Basin Convention in regards to those issues (see articles 27-28).

Illustration: Rio de la Plata River Basin

Paraguay shares several important rivers with its neighbors: Argentina, Brazil and Bolivia. Yet, as a country, and together with all the local communities in the region, it is currently at the losing end of powerful interests that want to dam and widen the rivers in Rio de la Plata Basin. Paraguay has signed the UN Convention and local campaigners SOBREVIVENCIA believe that it will eventually give Paraguay “a better position to negotiate fair and equitable agreements with neighboring countries, towards sustainable management of the rivers in the Rio de la Plata basin”.

We understand that some of the states are unlikely to become a contracting party to the Convention but when in force, the Convention can foster consensus-building and dialogue among states sharing water resources, by providing a globally endorsed platform to facilitate the promotion, coordination and monitoring of transboundary water management. The Convention will not supersede bi-lateral or multilateral existing treaties, but will provide a framework addressing basic substantive and procedural matters, leaving the details to watercourse states themselves to negotiate and agree upon.
It may lead to re-negotiation of the regional treaties, especially concerning volumetric provisions of the water-sharing in the basin, which is likely to be affected by the changing climate. The provisions of the Convention reflect a compromising language that takes into account the interests and concerns of all riparian states. The Convention calls for cooperation on the basis of sovereign equality, territorial integrity, and mutual benefit in order to attain optimal utilization of the international watercourse for the present and future generations, thus laying the general framework for mutually beneficial utilization by all the riparians. It is indeed quite unfortunate that after close to 27 years of preparatory work, and 13 years after its adoption, most states are not ready to commit themselves to a binding legal obligation despite the fact that the principles of the Convention are broadly accepted, the provisions of the Convention have been reflected in a number of multilateral and bilateral water treaties, and there are many examples where states are cooperating in the management of transboundary waters when doing so offers economic and political advantages over unilateral development.

Unfortunately, a number of different, and sometimes inaccurate perceptions and interpretations of the provisions of the Convention can still be observed. One of those is that the Convention allows members of regional economic integration organizations, which are not riparians to a certain watercourse, to become riparians simply because such organisation has become a member. This is based on inaccurate interpretation of the Convention and there is nothing in the language of those paragraphs that would allow such an interpretation. The actual language of the Convention states:

“All nations agree that only riparian nations—nations across which, or along which, a river flows—have any legal right, apart from an agreement, to use the water of a river”

The mere fact that the organization has become a party to the Convention would in no way mean that the other members of the organization would become riparians to the watercourse in question. According to Prof. McCaffrey, the term regional economic integration organization was added to the Convention by the Working Group to allow participation, in particular, of the European Union.

2. It will advance the achievement of the Millennium Development Goals

“Water” is recognized as a crosscutting issue when it comes to sustainable development. Both the recommendations from CSD 13 and CSD 17, building on the WSSD / J’burg Platform for Action 2002, recognize this fact explicitly.

It has been widely agreed also, that meeting the MDG targets on water & sanitation is cross-cutting and pivotal to reaching the other MDGs. Moreover, the EU by ratifying the Convention and thus giving a clear signal of international cooperation on water & sanitation and partner in the process, will bring closer the partnership for development as envisioned in MDG8.
Coordination and cooperation among states within transboundary watersheds, on the basis of sound governance mechanisms, are vital for the promotion of human health and well-being, freshwater conservation, food and energy security, and global peace and political stability - all objectives embedded in the Millennium Development Goals (MDGs).

The Convention, when in force, would support implementation of the EU development cooperation policies and provide / support (criteria for) funding for transboundary IWRM priorities. It will help prioritize the need to tackle transboundary water issues as an international development objective, taking into account the needs and special circumstances of developing countries, in line with the 2008 European Commission Programming on Water and Sanitation. In addition, it will provide a catalyzing bridge between donor and recipient states for the sharing of relevant knowledge and experience.

How the UN Convention can help:

The Convention requires states *inter alia* to:

- jointly or individually protect and preserve the ecosystems and manage them in a manner that safeguards them and the services they provide thus supporting livelihoods and water uses
- prevent, reduce and control pollution
- cooperate and settle the disputes thus promoting international peace and security, the pre-requisite to reaching the MDGs
- the Convention requires states to allocate water among them in a fair and reasonable manner, taking into account wider social needs. Any form of water use which might significantly harm human health and safety would be a violation of the Convention

UN Hashimoto Action Plan II urges states to become parties to the Convention in order to improve transboundary IWRM and help advance the MDGs

“Sustainable management of water at the basin level often requires both an IWRM approach and transboundary cooperation. While there are numerous regional and basin-level legal agreements on transboundary waters, there are also many cases where no cooperative agreements exist. An imperative need exists for an overarching layer of international water law provided by the UN convention on transboundary water management.”

3. I will advance efforts to adapt to climate change

In the absence of appropriate joint management frameworks and solid institutions, it is questionable whether states will succeed in addressing the challenge of cooperative water management solely through interstate efforts at the basin level. Climate change will make things worse, resulting in severe impacts on already stressed water resources and aggravating
the risks for interstate conflicts, economic and political disruption, and mass migration. Co-
riparian states can manage the water related risks by pooling their resources to enhance
information and early warning systems on their changing hydrologic variability and by
fostering system-wide river basin management. Climate change raises the stakes of non-
cooperation, encouraging nation states not only to capture additional economic benefits, but
also to manage better their growing common risks. Effective cooperation in transboundary
basin management could become singularly effective risk management strategy. The
Convention will support the implementation of transboundary climate change adaptation
agreements.

Existing agreements, such as those that consider fixed volumetric criteria to apportion water
flows, are likely to become inadequate and even a potential source of conflict as climate
change affects long term water availability. Further, as the limits of exploitation of more and
more of the world’s rivers are being reached, conflicts over water are growing. In this
environment the overarching and flexible framework provided by the Convention will be
essential for facilitating climate change adaptation in negotiations between riparian states.

How the UN Convention can help:

- the Convention recognizes that climatic factors and variability are important in the
  achievement of the equitable and reasonable balance among states
- it requires states to prevent and mitigate the effects of droughts and desertification
- the Convention as a global legal instrument specifically designed to govern relations
  between watercourse states will support cooperation between states towards
  responding to environmental disasters, such as droughts and floods, and adapting
  their water sharing and management strategies to the effects of climate change
- the Convention can help ensure that any measures governments may take under
  UNFCC, such as hydropower development and water storage, neither harm the
  ecosystems nor disregard the health and livelihoods of dependant communities.

Illustration:

The Ganges-Brahmaputra-Meghna Basin, shared by Bangladesh, Bhutan, China, India,
and Nepal, is characterised by the world’s highest mountains, greatest foodplains, and
largest basin population, with over 500 million people, many of whom are very poor.
Added to these superlatives are: a unique monsoonal climate, with 50 percent of
precipitation in 15 days and 90 percent of runoff in 4 months; extreme pollution (with
consequent ecosystem damage and biodiversity loss); and very limited existing
transboundary cooperation. Climate models suggest that monsoon intensity could
increase and glaciers retreat, while populations, cities, industries and economies continue
to grow rapidly. The risks faced by the basin’s populations today are already high: 70
Future risks are undoubtedly high and could potentially be mitigated through cooperation. The Convention, when in force, would encourage cooperative engagement at the level playing field, potentially turning the basin bullies into basin leaders. Experience suggests that inviting powerful states to being part of the solution rather than part of a problem can work.

4. It will supplement international agreements on biodiversity and wetlands

Cooperation between states is essential to protect the wider ecosystems. The UN Watercourses Convention offers the necessary legal framework for this collaboration to take place – something the Convention on Biological Diversity (CBD) has called for, but alone cannot provide. In many respects the UN Watercourses Convention supplements the CBD and establishes detailed procedures to implement CBD requirements such as exchange of relevant information, notification on major measures, transboundary pollution. In addition, UN Watercourses Convention can support implementation of the Ramsar Convention on Wetlands by providing key standards, obligation and procedures for preventing disputes and fostering cooperation on the development and conservation of international watercourses and their ecosystems including wetlands.

How the UN Convention can help:

- The Convention recognizes freshwater flows needed to protect ecosystems as being just as important as other forms of water use while allocating water
- integrates the management of water quality and quantity
- requires states to act diligently in the protection and preservation of the ecosystems

2006 Decision VII/27 of the 8th Conference of the Parties to the Convention on Biodiversity reiterated at 9th Conference of the Parties in 2009 by Decision IX/19


5. EU can demonstrate global leadership and catalyze a lasting legacy in a world

The ultimate goal of international law is to maintain regional peace and security, and the convention’s entry into force would represent an important step in the development of the law governing international watercourses, complementing other relevant pieces of legislation and international agreements.
EU has played a key role in the ratification processes of several multilateral agreements, recognizing the tremendous importance of international law for governing global environmental goods and internationally shared natural resources. The UN Watercourses Convention gives the EU a renewed opportunity to show leadership in the sound management of the world’s precious freshwater resources.

In this sense, coordinated ratification of the Convention at the EU level and/or the EU becoming a party as a regional body would facilitate and accelerate accession by individual Member States; send a strong political signal to partner states in trade and development cooperation that entry into force is imminent and that the Union – a major donor and policy leader in the water sector – recognizes the convention’s vital importance for the management of the world’s transboundary river basins; and place water, in general, and transboundary issues, in particular, higher up in the international political agenda.

The law/treaty will have a positive impact on the global international water protection
ANNEX FAQs

1. Does the UN Watercourses Convention conflict with the EU Water Directive Framework or with the UNECE Water Convention in any way? The UN Watercourses Convention 1997 is in harmony with both European instruments (the principles were used for the WFD). The WFD and the UNECE Water Convention are stricter and more detailed and so accession would neither require regulatory reforms, nor create new obligations.

2. Are there any additional costs for EU Member States involved? At present, since Member States are already subject to stricter standards under existing EU legal instruments, accession to the UN Watercourses Convention would not entail additional costs, either for States or citizens/users. The ratification process itself requires time and input from Ministerial/European Commission services.

3. How can EU and other European States benefit from the ratification and entry into force of the UN Watercourses Convention? An effective and widely ratified convention is necessary for:
   - Ensuring the successful codification, clarification and progressive development of international law in the field, which is what motivated the convention’s adoption;
   - Boosting and facilitating the adoption and implementation of transboundary water treaties at all levels and of relevant multilateral environmental agreements, in line with EU foreign policy;
   - Better enabling the pursuance of the Millennium Development Goals, at the core of the European Consensus, including by helping to advance commitments under the EU Water Initiative;
   - Fostering consensus-building and dialogue among states sharing water resources, and providing a catalyzing bridge between donor and recipient states for knowledge and experience exchange;
   - Contributing to water and food security worldwide and, in the long-term, helping to secure European imports of water-intensive food;

4. Which European States have ratified the Convention? Finland, France, Germany, Greece, Netherlands, Norway, Spain, Sweden, Hungary and Portugal.

5. Which European States are in the process of or “debating” ratifying the convention? Austria, Czech Republic, Denmark, Estonia, Italy, Luxembourg, Poland, Slovenia and the UK.

6. What are the possible reasons slowing down the ratification process? The convention has been overshadowed by other environmental issues such as the ratification process of the Kyoto Protocol and the implementation of the EU Water Framework Directive in Europe. The convention has also lacked a champion to promote additional ratifications and monitor the process for its entry into force. In some developing
countries, poor capacity to assess implications from ratification or simply to implement the necessary steps of the ratification process has posed a challenge.

Finally, as described by World Bank Legal Counsel, Dr Salman, a review of the various statements made by the different delegations and discussions with various government officials from different countries, reveal a number of different, and sometimes inaccurate perceptions and interpretations of the provisions of the Convention. Those interpretations and misconceptions have no doubt contributed to the slow pace of the signing, ratification of, and accession to the Convention. The key misconceptions include

- The Convention favours lower riparian states because of its specific obligation not to cause harm and provides downstream riparians with veto power over projects and programmes of the upstream riparians
- Convention will affect the rights or obligations of watercourse states arising from agreements that are in force
- Dispute settlement provisions of the Convention are too weak (but stronger than in the WFD and the UBECE Convention).
- The convention allows members of regional economic integration organisations, which are not riparians to a certain watercourse, to become riparians simply because such organisation have become a member

Unfortunately, as shown by Dr Salma, these concerns are based largely on inaccurate interpretations of and misconceptions about the Convention.


8. Would entry into force of the amendments to the UNECE Water Convention, which would expand that convention’s geographic scope, preclude the need for an effective UN Watercourses Convention, or vice-versa? The amendments give any state outside the UNECE region, but which is a member of the United Nations, access to the Convention upon approval by the Meeting of the Parties. The amendments have been accepted by 14 Parties. They will enter into force with 23 ratifications. However, any such requests for accession by non-UNECE members will not be considered for approval by the Meeting of the Parties until the amendments have entered into force for all the 34 states and organizations that were Parties to the Convention on 28 November 2003, when such amendments were adopted.

As recognized by parties to the UNECE Water Convention, both instruments would supplement each other and each has a key role to play in improving the legal governance of transboundary waters. In that sense, Finland, Hungary, The Netherlands, Sweden and Spain are contracting states to the UN Watercourses Convention and have already completed ratification of the amendments to the UNECE Water Convention.
Czech Republic, France, and Luxembourg have also accepted those amendments and are now working on the ratification of the UN Watercourses Convention.

9. Are existing regional and river basin agreements/arrangements not sufficient to ensure the sustainable use, protection and management of the world’s transboundary waters? Cooperative management frameworks exist for only about 40% of the world’s international watercourses. Where agreements exist, 80% involve only two countries, even though other states may also be part of the watercourse in question. Many states are parties to several watercourse agreements, often not in harmony with one another, and struggle to promote their coherent and effective implementation. Many agreements have significant gaps or failings, e.g., fail to apply to the entire river system; lack provisions on information exchange and the maintenance of environmental flows; do not give special regard to vital human needs; or do not include dispute prevention and settlement mechanisms.

10. The UN Watercourses Convention dates back to 1997. Is it still up-to-date? The convention contains language that is sufficiently flexible to adjust to evolving circumstances. At the same time, the convention does contain provisions dealing with modern water management challenges, such as the need for a flexible water allocation system, clear obligations in the case of emergencies, protection of aquatic ecosystems, the need to involve all basin states in pertinent discussions, etc. Even where the convention presents gaps – e.g., specific reference to climate change adaptation or lack of provisions dealing specifically with groundwater (the Convention deals with groundwater with an open connection to e.g. a river) – these could be improved through dialogue among parties and the adoption of the necessary protocols, amendments, and specific watercourse agreements. However, entry into force is necessary for states to widely recognize the Convention as an adequate framework for the development of global treaty law in the field.

11. Does the Convention set norms or targets for water amounts? No, the Convention does not touch existing treaties. Ratification of the 1997 UN Watercourses Convention would not impose any additional obligations in terms of international watercourses; and would only bolster existing legal entitlement.

12. what does equitable share imply:
All nations agree that only riparian nations—nations across which, or along which, a river flows—have any legal right, apart from an agreement, to use the water of a river. What amounts to an "equitable" share of the waters of an international water basin often is not clear. Some have argued that "equitable" sharing must mean equal sharing. The merest perusal of the standards for equitable utilization demonstrates that while equal access is guaranteed, equal shares are not. The standards are found in Article 6 of the UN Convention, which contains a long list of relevant factors:

• The geographic, hydrographic, hydrologic, climatic, ecological, and other factors of a natural character;
• The social and economic needs of the watercourse nations concerned;
• The effects of the use or uses of the watercourse in one watercourse nation on other watercourse nations;
• The existing and potential uses of the watercourse;
• The conservation, protection, development and economy of use of the water resources of the watercourse and the costs of measures taken to that effect; and
• The availability of alternatives, or corresponding value, to a particular planned or existing use.

Non-lawyers, particularly engineers and hydrologists, sometimes see in this list of factors a poorly stated equation. By this view, if one simply fills in numerical values for each factor, one could somehow calculate each watercourse nation’s share of the water without reference to political or other non-quantitative variables. However, the UN Convention is a legal document that ultimately is addressed to judges. Judges make judgments, and in English at least, the word “judgment” carries a strong connotation that the result is not dictated in any immediate sense by the factual and other inputs that the judge relies upon in exercising judgment. In short, any attempt to treat the list of relevant factors as an equation simply misses the point entirely.

Thus, even when each interested nation always agrees to the rule of equitable utilization, nations would still dispute what should be the common standard for sharing and the proper application of the agreed standard. The rule of equitable utilization is simply too general and too vague to be applied without the interested nations filling in the details in what remains merely an obligation of fairness. Yet without a legal resolution of disputes over water, the disputes can only lead back to the law of the vendetta.

Most disputes over international river systems thus have eventually led to a treaty based on equitable utilization, and several hundred such treaties now have entered into force regarding internationally shared waters.

11. For more information:
http://www.panda.org/what_we_do/how_we_work/policy/conventions/water_convention
http://www.unece.org/env/water/status/amend.htm

The Amazon Cooperation Treaty (ACT) was signed on 3 July 1978 and amended in 1998. ACTO was created in 1995 to strengthen the implementation of the Treaty. The Permanent Secretariat was later established in Brasilia in 2002.

See also: “equitable utilization, the law of...”; Ibrahim Kaya, 2003