Regional Brief: The UN Watercourses Convention Global Initiative for East Africa

Regional Workshop

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1. Introduction

Population pressure, urban migration, climate change and an increase in resource consumption have resulted in a looming water crises and affecting the quantity and quality of both surface and ground water resources. (*Global Environmental Outlook*) Despite the success of the Millennium Development Goal (MDG)’s, in meeting the target of halving the proportion of people without access to improved sources of water, there are 783 million or eleven per cent of the global population that have no access to an improved source of drinking water. (*End Poverty, 2015 Millennium Development Goals*) Over 40 per cent of people with no access to improved sources of drinking water lived in Sub-Saharan Africa, and will continue to be so in 2015. In terms of sanitation 2.5 billion people lacked access to improved sanitation facilities lived in developing countries; Africa being the most affected Continent. These challenges are compounded by other factors; among, them that hundreds of millions rely on shared watercourses, rivers, lakes and aquifers to sustain their livelihoods, preserve their environment, and generate their economic growth. There are more than 263 international watercourses and tarns-boundary aquifers covering half of the earth’s land mass, usually becoming a source of friction among States. (*Trans-boundary Fresh Water Data Base*)

2. Conflict and cooperation

Cooperation over trans-boundary water resources is a recent phenomenon. The use of water resources that flow of a state’s boundary affecting the availability to downstream has been a potential cause for water disputes between riparian states. No Continent has more exposure to such phenomenon than Africa, with its shared water resources accounting 85 per cent of its total water potential. (*Niasse, 2006*) Examples are abounding from one corner of the
Continent to the other. In West Africa, which has 28 river basins, 25 are shared by 17 countries of the sub-region. (Niasse, 2006) In major rivers such as the Niger, Senegal, and Volta the decline of rainfall has resulted in 40-60 per cent decrease of average discharge, leading to tensions between countries, such as Nigeria and the upstream Niger and Mali over dam construction on the Niger River. (Niasse, 2006) There are tensions in Southern Africa, where 11 rivers are shared among SADC member states, exacerbated by climate variability, extreme temperatures, and erratic rain fall and high evaporation.

The Nile, another major river, drains from East and Central Africa to Northern African, and is shared by eleven the countries almost all dependent on its waters for their livelihoods. With a background of major challenges, such as, political instability; conflict; rapid population growth; environmental degradation; and lack of economic integration cooperation over the Nile has not been realized for a long time; most importantly, as a result of colonial treaties. The absence of a basin-wide legal and institutional arrangement for replacing centuries old dominance of controversial water use has led to a process of the Nile Basin Initiative (NBI), and the parallel effort to establish a permanent legal and institutional framework arrangement, known as the Nile River Basin Cooperative Framework Agreement (CFA); and the future establishment of a Nile River Basin Commission (NRBC). The unique attribute of the CFA is that it was entirely influenced by the UN Watercourses Convention, the principles of which are part of customary international law.

3. **International Water law**

International water law is one of the branches of international public law governing the relationships between states, and has emerged as a relatively autonomous body of international law; with substantive and procedural rules governing the use of trans-boundary watercourses. (Wouters 2003) For a long time, the development of international water law
operated through fragmented treaties, ‘binding on the states parties and establish their respective rights and obligations, together with the rules of the game that govern their relations.’ (Vinogradov et al 2003) The first attempt towards the codification of principles and regulations for non-navigational uses of international waters was enunciated by a number of declaration and resolutions by the Institute of International Law (IIL). The 1911 Declaration of Madrid on International Regulations regarding the Use of International Watercourses for Purposes Other than Navigation’ provided for the prohibition of alterations of contiguous rivers and streams without the consent of the riparian party; the restriction of any utilization of water in a manner that seriously interferes with the utilization by other States or persons; and its recommendation of a permanent joint commission. (Year Book of International Law Commission 1976) The 1961 ‘Resolution of the Use of International Non-Maritime Waters of Salzburg’ stipulated prior notice principles; while the 1971 ‘Athens Resolution on the Pollution of Rivers and Lakes and International Law of 12 September 1979’ provided the no-harm rule in relation to pollution of international rivers and lakes. (Year Book of International Law Commission 1976) The most significant development came with the adoption of the 1966 Helsinki rules by the International Law Association (ILA). (Helsinki Rules on the Use of Waters of International Rivers) The Helsinki Rules provided a number of principles of customary international law, and had an influence on the later work of the International Law Commission (ILC) on the law of non-navigational uses of international watercourses.

4. The UN Water Convention (UNWC)

Following Bolivia’s request in 1959 to the General Assembly, and after a long delay, the International Law Commission (ILC) took up the consideration of the codification of the rules relating to the utilization and use of international rivers. The UNWC was adopted by the
General Assembly on 21 May 1997 in a majority vote of 103; with three countries; namely, Burundi, China and Turkey voting against; and another twenty-seven abstentions. The adoption of the convention by the majority of States confirmed the strong endorsement of the work of the ILC and the GA on the law of non-navigational uses of international watercourses and its solidification as a universal convention. (Abseno, M. 2010)

The UN Convention has seven parts comprising 37 articles, and additional 14 articles pertaining to arbitration as appended to the Convention. Some of the most important provisions are the definition of the term ‘watercourse’; the principle of equitable and reasonable utilization; the obligation not to cause significant harm; data and information exchange, and the principle of notification on planned measures. (UN Watercourses Convention 1997)

5. The contributions of the Nile Basin States in the work of the UNWC

The debates on the work of the ILC and the Working Group (WG-Legal) of the General Assembly of the United Nations had involved a large number of States, among them, many Nile Basin countries. The Nile Basin’s countries’ active participation in the ILC and the Sixth Committee’s post adoption debates can be observed from the travaux préparatoires on the work of the ILC and the GA. A number of important statements regarding the elaboration of specific articles, such as the relationship with existing agreements; equitable utilization and participation; planned measures in the travaux préparatoires are attributed to the Nile Basin States, such as, Ethiopia, Egypt, Sudan and Tanzania.

The lack of uniform position by the Nile Basin States in reaction to the adoption of the convention had partly denoted the geographical interests both as upper and lowers riparian States. The Nile Basin States that participated in the General Assembly debates were
Burundi, Egypt, Ethiopia, Kenya, Rwanda, Sudan, and Tanzania. The two countries which voted in favour of the Convention were Kenya and Sudan. The majority of the Nile Basin States, namely; Egypt, Ethiopia, Rwanda and Tanzania abstained. There were various reasons the countries have cited for their abstentions. For example, Egypt stated its reservation on the grounds that, ‘the Convention did not prejudice the legal weight of international law; its framework should not affect bilateral or regional agreements or established laws.’

Tanzania contended that: ‘the draft was the product of a dead-line and expressed its concern with regard to the language of the drafting of articles 5, 6 and 7; in particular, the reference to a sentence ‘to take into account the interests of the watercourse States concerned’.

Ethiopia’s main concern was with regard to existing agreements, which contended that: ‘the element in Article 3 on adjusting application of the Convention's provisions to the characteristics of a particular watercourse could undermine the Convention.’

The only Nile Basin country that voted against the convention was Burundi.

The absence of votes in favour of the convention must not be construed as a negative position by the Nile Basin states. On the contrary, statements Ethiopia, Egypt and Tanzania and others afterwards indicated support to the Convention. Positions with regard to a number of issues at the time have changed since; in particular, with advent of the CFA, which entirely adopted verbatim, the principles of the convention.

6. Entry into force: the Global Initiative for ratification

It is almost 16 years since the UNWCC was adopted by the General Assembly of the United Nations. However, to date, the Convention did not obtain the required number for its entry
into force. According to Salman-Salman the reasons for slow pace of signing, ratification of and accession to the Convention can be related to ‘a number of inaccurate perceptions and interpretations of the provisions of the Convention.’ (Salman, S. 2007)

7. The UNWC Global Initiative

Following the launching of global initiative by WWF to promote the UN Watercourses Convention and accelerate its ratification process in 2006, the mobilization of governments and other stakeholders to raise awareness and to build capacity is pursued in earnest. More and more countries have started extending their support; while a number of them have expressed their readiness to be party to the Convention. Accordingly, in the last 3 yearly nearly 10 states have become party to the Convention; bringing the number of countries party to the convention to 29; which leaves 6 countries short of the number required for entry into force. The trend shows acceleration towards sufficient number of states becoming parties and the Convention becoming the only legally binding international instrument to regulate the use of international watercourses. (See Table below)

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### 8. The ratification of the Convention from the Nile Basin perspective

The Convention has made inroads in to a number of regional watercourse agreements following its adoption and way before gathering support for its entry in to force. Examples of regional agreements that incorporate the UNWC principles include, the revised SADC Protocol on Shared Watercourses; where, one of the Nile Basin States, Tanzania, is a party to it. (SADC Revised Protocol 2000) The Protocol for Sustainable Development of Lake Victoria Basin, where five of the Nile Victoria Lake Basin countries; namely, Burundi, Kenya, Rwanda, Tanzania and Uganda are parties, had also taken up a number of basic principles codified under the UNWCC. (The Protocol for Sustainable Development of Lake Victoria Basin 2003)

The Nile Basin countries have made immense contribution towards the work of the ILC and the Sixth Committee debates; without which the elaboration of the text of the Convention
would have become more complicated for the Nile Basin States in the negotiation of the CFA. Accordingly, the CFA has become a perfect model for influence of the UNWC.

The question of ratification of the Convention by Nile countries is part of the global initiative for all governments to join and implement a call for the entry into force of the UN Watercourses Convention. (Abseno, M, ‘Ethiopia’, in Loures, F. & Rieu-Clarke, A., the UN Watercourses Convention in Force: Strengthening Transboundary Water Management)

Envisaged from the perspective of the value of the entry into force, the advantages of ratification of the Convention can strengthen the implementation of commitments under the CFA. The ratification of an international instrument by the Nile countries can also enhance their global status as individual nation as well as basin-wide block. The ratification and entry into force of the convention can further help fill the gaps the CFA might have failed to address.

By ratifying the convention for its entry, the Nile Basin countries contribute to its global recognition and the progressive development and codification of international water law. (UN Watercourses Convention, WWF Global)

The ratification can also open a chance towards clearer understanding of the Convention through awareness creation and capacity building and its implementation in light of the current developments in the Nile.

9. The UN Watercourses Convention: Global Initiative for East Africa

The UN Watercourses Convention Global Initiative was launched in 2006 by WWF with the aim to create a stronger system of international water law emerging from the convention’s entry into force and its effective implementation. It is to achieve this goal that the East Africa project is being launched in Tanzania and Ethiopia as part of the implementation of the global
initiative. Lead by WWF, the programme is supported by the Nile Basin Discourse (NBD) as implementing agency; in collaboration with the Centre for Water Law, Policy and Science (CWLPS) and ministries of water in Ethiopia and Tanzania. The programme is advised and coordinated by a consultant responsible for the production of key manuals, training and assessment.

The project is part of advancing the campaign for widespread ratification, and the creation of enabling environment for its future implementation in East Africa. This objective was promoted by organizing national consultative workshops and national training workshops in Ethiopia and Tanzania engaging government officials, academics, private sector and NGOs and civil society groups and other stakeholders towards developing better awareness and understanding of the UNWC.

10. The regional meeting

The aim of the regional level meeting is to engage stakeholders, on policy and decision making level in regional dialogues and mobilize institutions that might have an interest in the Convention. The activity will be carried out by organising a regional meeting intended to raise awareness and knowledge of the Convention. The expectation from the regional meeting is to generate momentum and build a knowledge base for the widespread ratification of the Convention in the region. Considering that no Eastern African country, including the Nile Basin has become a contracting state yet, the aim is to pursue consensus on the advantages of the ratification and entry into force of the Convention.
References


9. Oregon University Trans-boundary Fresh Water Data Base at www.transboundarywaters.orst.edu/database/


