



The UN Watercourses Convention Comes of Age

KEY POLICY MESSAGES

- The UN Watercourses Convention has undoubtedly influenced the development of several watercourse treaties since its adoption 17 years ago. Now in force, this global framework instrument is well placed to play an increasingly vital role as a catalyst for equitable and sustainable transboundary water cooperation.
- Significant developments in knowledge and understanding of international law mean that interpretation and implementation of the UN Watercourses Convention is now greatly enhanced.
- The UN Watercourses Convention does not replace treaty arrangements, but rather, provides an important supplement to existing watercourse-specific arrangements in many parts of the world.
- Complementarity between the UN Watercourses Convention and the UNECE Water Convention highlights the importance of a combined approach to promote and implement these frameworks in order to address global water challenges.

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POLICY RECOMMENDATION

The UN Watercourses Convention, in combination with the UNECE Water Convention, presents an important and authoritative instrument for transboundary relations. Accordingly, member States at global, regional and national levels need to strengthen implementation, while others should give serious consideration to joining both instruments.

With Vietnam as the 35th contracting State to the Convention on the Law of the Non-navigational Uses of International Watercourses (UNWC), this established legal instrument enters into force. Accordingly, policy makers within government and inter-governmental organisations need to know how the Convention's entry into force may support future transboundary relations. This overarching question might be addressed from a general standpoint, namely, what is the function and benefit of key legal norms outlined by the Convention? Alternatively, the question may be targeted at specific countries, international watercourses, or regions. For instance, does this global instrument add value to treaty arrangements already operational in the Indus and Nile river basins, or, for example, how does the Convention compare to China's existing treaty practice with neighbouring watercourse States?

THE UNWC ALREADY SHAPES TRANSBOUNDARY WATER COOPERATION

Even before its entry into force, the UNWC shaped transboundary water cooperation (Salman, 2007). An analysis of 216 treaties concerning international watercourses reveals the influence that the UNWC has exerted on treaties adopted in the last two decades, and points to its continued effect on negotiations. The UNWC therefore has long assumed the role of *éminence grise* directing cooperative transboundary water resources management (Leb).

THE UNWC CAN MEET TODAY'S CHALLENGES

Is an instrument that was developed from the 1970s to 1990s, adopted in 1997, and not ratified until 2014, properly equipped to meet today's challenges over the use, development and protection of international watercourses? The answer is an emphatic 'yes'. Indeed, the framework nature of the agreement has provided the UNWC with sufficient flexibility for it to be reinterpreted to meet existing and future challenges.

A number of studies show how over the past 17 years we have reached a better understanding of how key provisions of the UNWC might be interpreted and applied (e.g. McIntyre, Lee, Cinelli); and we have developed better tools for applying and/or adjusting its provisions (Lankford). For example, in res-

ponse to criticism of the ambiguous nature of an underlying principle of the Convention, dictating equitable and reasonable use of international watercourses, McIntyre points to extensive work undertaken by academics and practitioners, both inside and outside the water sector, that provides the principle with meaning and gives it considerable weight.



LINKS

To find out more, check out these online resources:

- The IWRA webinar «Why does the UN Watercourses Convention entry into force matter?» held on 14 July 2014. iwra.org/index.php?mainpage=223&page=264&subpage=
- The UNWC Online User's Guide developed by the Centre for Water Law, Policy & Science under the auspices of UNESCO, University of Dundee. www.unwatercoursesconvention.org
- Essays on the UNWC written by top international experts on the blog of the International Water Law Project. www.internationalwaterlaw.org/blog

■ Staff of the Ministry of Water and Energy of Ethiopia, Millennium Bridge across the Nile Gorge, Ethiopia
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■ the Rhine at Wageningen
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Similarly, Lee has demonstrated how rules and principles from other treaty frameworks, such as the Biodiversity Convention and the Ramsar Convention, can help inform the implementation of the UNWC, such as for Article 20 of the UNWC on the protection of ecosystems. Furthermore, Cinelli shows us how developments in the international law of human rights can support the interpretation of the UNWC. Finally, by the novel use of stakeholder role-play exercises in the Limpopo and Zambezi basins, Lankford demonstrates how equitable allocations can be determined through adjusting and applying relevant factors from Article 6 of the UNWC.

THE UNWC STRENGTHENS DISPUTE SETTLEMENT MECHANISMS

The UNWC's entry into force means that its innovative dispute settlement mechanism becomes operational. Most notably, Article 33, when combined with the UNWC's procedural provisions on cooperation, offers a comprehensive and integrated toolbox for the prevention, management and settlement of water disputes (Tanzi & Milano). Flexibility and third-party assistance is at the heart of UNWC's 'integrated' approach. Tanzi & Milano's recent analysis stresses the importance of such third-party interventions, which include fact-finding commissions, extra-ju-

dicial means (consultation or negotiation), the World Bank, the Permanent Court of Arbitration, and adjudication through the International Court of Justice. Member States are provided with adequate flexibility in the application of Article 33 through provision of choice; those who are more prepared to submit their conduct to third parties may do so under Article 33, while those less willing are permitted to rely on extra-judicial means to resolve their disputes (Tanzi & Milano). Ultimately, a key requirement of the UNWC and general international law is that all States must settle their disputes in good faith and by peaceful means. How they do so is left open.

THE UNWC COMPLEMENTS SPECIFIC WATERCOURSE ARRANGEMENTS

A key objective of the UNWC is to operate as a framework instrument with sufficient flexibility to:

- provide fundamental rules and principles for sharing watercourses where no specific treaty arrangements are in place at a basin level;
- supplement specific treaty arrangements in watercourses where not all watercourse States are party to that treaty; and
- supplement specific treaty arrangements that only partially cover the rules and principles contained in the UNWC.

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Three recent studies demonstrate the supplementary role that the UNWC offers. Abseno highlights critical complementarities between the Nile Cooperative Framework Agreement and the UNWC, emphasising how the work of the International Law Commission and UN General Assembly in developing the text of the UNWC has influenced, and will continue to influence, interpretation and implementation of the Nile's legal regimes. Sarfaz offers a similar viewpoint for the Indus Basin, suggesting the UNWC offers an important means by which to update the 1960 Indus Waters Treaty, particularly in key areas relating to environmental standards and climate change adaptation. Finally, and perhaps surprisingly, the UNWC complements China's treaty practice. China voted against the UNWC when it was adopted in 1997, but does, in fact, sign and implement other treaties on the development and management of its shared watercourses. Arguably, similarities between this growing body of China treaty practice and the UNWC are more prevalent than any outstanding differences (Chen *et. al.*).

WHAT IF THERE ARE TWO GLOBAL WATER CONVENTIONS?

An important factor to bear in mind, when considering the future of the UNWC, is recognition of its important relationship with the United Nations Economic Commission for Europe (UNECE) Water Convention. Originally developed as a regional instrument, the UNECE Water Convention will soon open to states that are not members of UNECE, effectively providing the international community with two global legal instruments on the same subject matter. Recent analysis indicates that, far from being faced with an awkward choice, states would benefit significantly from adopting both instruments in combination, due to the considerable complementarity between them in scope, definitions, and substantive norms (Rieu-Clarke & Kinna, 2014). Integrated promotion and co-ordinated implementation of the UNWC and UNECE Water Convention would provide a powerful first step towards strengthening the current fragmented architecture governing transboundary watercourses.



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FOR FURTHER INFORMATION

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