

WILL 2013 BE SEEN AS THE INTERNATIONAL YEAR OF WATER LAW COOPERATION?

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2013 – the UN Year of Water Cooperation – is a big year for international water law. The UN Watercourses Convention, adopted by the UN General Assembly in 1997, may well enter into force before 2014 – only five additional ratifications are required. In addition, the amendment to the UNECE Helsinki Convention, which would allow non-UNECE States to join, is likely to become operational by the end of the year. Last but not least, this year sees States debate the fate of the 2008 Draft Articles on Transboundary Aquifers within the UN General Assembly.

This growing momentum in the advancement of legal instruments designed to facilitate equitable and sustainable water cooperation raises two central questions: Firstly, what is the added value of these legal instruments; and secondly, how compatible are they?

The value added of global water law instruments can be seen from both a legal and political perspective. From a legal standpoint, many of the rules and principles embodied in the Watercourses Convention, the Helsinki Convention and the Draft Articles are part of customary international law and therefore already binding upon States, e.g. the principle of equitable and reasonable use, or the duty to notify of planned measures.

However, codifying these existing legal norms within global texts can add greater detail and clarity. For instance, while it might be accepted that there is a general customary international law obligation to notify other States of a unilateral planned measure on an international watercourse, the Watercourses Convention complements this general obligation by providing more detail. Part III of the Convention therefore sets out when and who should be notified, and provides a detailed process by which to deal with any negotiations, consultations and, if necessary, disagreements amongst States. By providing such clarity and detail, the likelihood of misinterpretations, differing expectations and political tensions amongst States sharing rivers, lakes and aquifers are lessened.

Additionally from a legal standpoint, widespread formal State endorsement of these global legal instruments, e.g. through ratification, would strengthen the status of emerging rules and principles of customary international law. Principles such as the obligation to protect the ecosystems of international watercourses would therefore become part of customary international law. This is significant because customary international law is binding on all States, whereas a State must explicitly consent to be bound by legal agreements (Conventions, Treaties, etc).

From a political standpoint, widespread support for these legal instruments sends a clear message that international law

requires States to cooperate over international rivers, lakes and aquifers. There would be less scope to question the status or exact content of particular rules and principles, which in turn would promote equity, security and predictability in transboundary water cooperation. Moreover, entry into force would raise the profile of these global instruments, and would likely lead to additional State ratifications. This is particularly crucial given that awareness raising has been identified as a central factor impeding the ratification process for the Watercourses Convention. Widespread formal support for these instruments would also strengthen the mandate of UN institutions to promote equitable and sustainable water cooperation based on sound rules and principles of international law.

Of course, the value of bilateral and multilateral agreements pertaining to particular rivers, lakes and aquifers must not be undermined. Global agreements should play a supplementary role to any arrangements within a particular international river, lake or aquifer. The successful record in the implementation of the Helsinki Convention – covering multiple basins across the UNECE region – demonstrates that there is much to be gained by ‘upscaling’ this framework approach to the global level. Such a supplementary role has greatest value in three scenarios, namely where no basin agreement exists; where not all states are party

to a basin-wide agreement; or where an existing agreement only partially covers matters addressed in these global instruments. These three scenarios are commonplace across the world. For instance, 153 of the 263 international river basins in the world lack any type of cooperative management mechanism. Similarly, UN-Water caution that: "Existing agreements are sometimes not sufficiently effective to promote integrated water resources management due to ... shortcomings in the agreements themselves (for example, inadequate integration of aspects such as the environment, the lack of enforcement mechanisms, limited – sectoral – scope and non-inclusion of important riparian States)."

While there is therefore a need to strengthen the legal architecture (UN Water, 2008) for transboundary resources, and global legal instruments might play a role both in legal and political terms, why do we need three instruments?

In comparing the Watercourses Convention, the Helsinki Convention and the Draft Articles it appears that – although there are differences within the text – there is tremendous merit in treating these three instruments as a mutually reinforcing package. For example, the Helsinki Convention has generally more detailed requirements than the Watercourses Convention. Yet, certain provisions in the latter supplement the former, e.g., those on planned measures and the factors relevant to equitable and reasonable use.

Additionally, effective implementation of each one of these instruments is strongly contingent on the other two instruments. Unilateral approaches to the promotion and implementation of the Watercourses Convention, Helsinki Convention or the Draft Articles are likely to lead at best to duplication of effort, and at worst to confusion amongst States potentially considering ratification. The risk of con-

fusion is that States may be reluctant to support any of the three instruments. A coordinated strategy is therefore needed to promote the benefits of the three instruments as a mutually reinforcing package; which in turn has the greatest potential to help address the current shortcomings in the legal architecture for transboundary waters. Such a coordinated strategy requires joint awareness raising efforts, e.g. national, regional and global workshops, training and promotional materials, and so forth amongst those with a remit to support the promotion and implementation of international water laws. If such a coordinated effort can be garnered, 2013 might well be seen as a monumental year for international water law cooperation. A new interactive learning website for the UN Watercourses Convention has been launched recently, which includes easy online navigation, video commentary, fact sheets, quizzes, maps and FAQs,

www.unwatercoursesconvention.org ■

FURTHER READING

- ▶ Loures, F. & Rieu-Clark A. (eds.) *The UN Watercourses Convention in Force Strengthening International Law for Transboundary Water Management*. Routledge press. (In press)
- ▶ Rieu-Clarke, A., Moynihan, R., & Magsig, B. (2012). *UN Watercourses Convention – User's Guide*. University of Dundee. ISBN, 978-0.
- ▶ Stephan, R. M. (2009). *Transboundary aquifers: Managing a vital resource: The UNILC draft articles on the law of transboundary aquifers*. Available at www.hydrology.nl/images/docs/ihp/ILC_transboundary_aquifers_182431E.pdf
- ▶ UNECE (2012). *The Water Convention: Serving the planet*. United Nations. Available at www.unece.org/fileadmin/DAM/env/water/publications/brochure/Brochures_Leaflets/A4_trifold_en_web.pdf
- ▶ UN-Water (2008). *Transboundary Waters: Sharing Benefits, Sharing Responsibilities*. Available at: www.unwater.org/downloads/UNW_TRANSBOUNDARY.pdf

