



WORKSHOP ON TRANSBOUNDARY WATER COOPERATION

LATIN AMERICAN AND PAN-EUROPEAN REGIONS: SHARING EXPERIENCES AND LEARNING FROM EACH OTHER

11–12 June 2013
Buenos Aires, Argentina

REPORT

Introduction

The workshop on transboundary water cooperation “Latin American and Pan-European Regions: Sharing Experiences and Learning from Each Other”¹ was held in Buenos Aires, from 11 to 12 June 2013. 89 participants representing all Latin American countries, with one exception, and two Caribbean countries – Haiti and the Dominican Republic – as well as several international experts met in Buenos Aires to discuss transboundary water cooperation and the benefits of exchanging experiences between the regions. The workshop was organized by the United Nations Economic Commission for Europe (UNECE), the United Nations Educational, Scientific and Cultural Organization (UNESCO), the Economic Commission for Latin America and the Caribbean (ECLAC), the Global Environment Facility (GEF) International Waters Learning Exchange and Resource Network (IW:LEARN), the International Union for Conservation of Nature (IUCN) and the University of Bologna, Representation in Argentina, Campus in Buenos Aires, with the financial support of France and Switzerland. The strong participation from the region demonstrated the interest in and importance of the workshop’s topic.

The workshop was an integral part of the programme of work for 2013–2015 of the UNECE Convention on the Protection and Use of Transboundary Watercourses and International Lakes (UNECE Water Convention), of phase VII of the International Hydrological Programme (IHP) of UNESCO as well as of the programme of work of CEPAL.

Objectives

Organized within the framework of the United Nations International Year of Water Cooperation (2013), the objective of the workshop was to highlight the benefits of transboundary water cooperation in terms of economic and social development, growth and protection of the environment, as well as to provide a platform for the exchange of

¹See http://www.unece.org/transboundary_water_cooperation_workshop_eclac.html

information, sharing of lessons learned and showcasing of good practices in the field of transboundary water cooperation in both the Latin American and Caribbean and Pan-European regions.

The meeting also aimed at encouraging participants to work together to discuss the following topics:

- The current state of water cooperation, progress achieved, including through GEF projects, and the prevailing challenges for cooperation on transboundary waters in Latin America and the Caribbean as well as in the UNECE region, including in relation to climate variability and change;
- International legal instruments on water, in particular the UNECE Water Convention and its institutional framework, by presenting practical experiences of their application as well as discussing potential benefits for the Latin American and Caribbean countries to accede to this international framework;
- Identification of the potential areas and next steps to improve cooperation within and between Latin America and the Caribbean and the UNECE region, including in the framework of activities carried out under the UNECE Water Convention and other organizing partners.

Summary of proceedings

The interactive format of the workshop, where presentations were followed by plenary and group discussions, allowed the participants – lawyers, diplomats and technical experts – to exchange experiences between the regions on various topics including adaptation to climate change and reconciling different water uses in transboundary river basins. There were particularly intense discussions on the global legal frameworks for transboundary water cooperation, namely the UNECE Water Convention and the United Nations Convention on the Law of the Non-navigational Uses of International Watercourses (UN Watercourses Convention). The workshop provided a forum to build awareness of the UNECE Water Convention as a solid legal framework, with the flexibility to adapt to different political, socio-economic and regional circumstances.

Opening remarks were made by His Excellency Mr. Guido Walter La Tella, Ambassador of Italy to Argentina; Ms. Irina Bokova, Director General, UNESCO (video message); Mr. Sven Alkalaj, Executive Secretary, UNECE (video message); Ms. Alicia Bárcena, Executive Secretary, ECLAC (video message); and Ms. Julia Marton-Lefèvre, Director General, IUCN (video message). The speakers highlighted the importance of the event and emphasized the crucial role that transboundary water cooperation plays for sustainable socioeconomic development, peace and water and environmental protection.

Opening panel: Transboundary water cooperation: benefits, challenges and the situation in the Latin American and Caribbean region

Following welcoming remarks by Mr. Massimo Cozzone, Chair of the Bureau of the UNECE Water Convention, and the introduction to the objectives and format of the workshop by Mr. Nicholas Bonvoisin, Secretary to the UNECE Water Convention, representatives of the co-organizing agencies presented their activities in the area of transboundary waters in the Latin American and the Caribbean region. Ms. Zelmira May,

UNESCO-IHP, recalled the importance of cooperation between different organizations with common objectives regarding transboundary water management, an example of which is the International Shared Aquifer Resources Management (ISARM) Americas initiative, carried out in cooperation with the Organization of American States (OAS). Other partners working together with UNESCO to promote transboundary water cooperation in the region include ECLAC, IUCN and GEF IW:LEARN. Ms. Caridad Canales, ECLAC, highlighted ECLAC's work in the area of water resources management, regulation and development of drinking water and sanitation services, and transboundary water cooperation stressing the tradition of cooperation existing in the region, which is reflected in transboundary agreements but also in the willingness to cooperate shown by the countries. It was also emphasized that joining the existing legal frameworks such as the UNECE Water Convention represented an opportunity for strengthening these achievements. Mr. Mish Hamid, GEF IW:LEARN, highlighted the crucial role which GEF plays in promoting water cooperation by providing financial support in partnership with international institutions, civil society organizations and the private sector. Mr. Alejandro Iza, IUCN, underlined that a successful and effective cooperation in transboundary river basins requires connecting the three dimensions – political, legal and institutional – operating at local, national and regional levels. Ms. Anna Galetti, University of Bologna, informed the participants about the mission and the activities of the University Campus in Argentina and highlighted the long-standing cooperation between the University and the UNECE Water Convention.

Session 1: Making use of international legal instruments on water for advancing cooperation

The first session started with the presentation on the sources and principles of the international water law by Ms. Lilian del Castillo Laborde, Professor, University of Buenos Aires School of Law. The speaker explained the principle of equitable and reasonable use, the obligation not to cause significant harm and the principle of cooperation. She emphasized the flexibility of these principles which makes them useful to deal with emerging and future challenges, such as transboundary groundwater and water security. Moreover, the speaker referred to the crucial role played by soft law in international water law due to its ability to influence the development of international agreements.

Mr. Attila Tanzi, Full Professor of International Law, University of Bologna, highlighted the perfect compatibility and mutual complementarity of the UNECE Water Convention and the UN Watercourses Convention. He explained that, while the UNECE Water Convention is a multilateral environmental agreement with an ecosystem approach and the prevailing principle of prevention that obliges Parties to cooperate through the establishment of joint bodies, the UN Watercourses Convention stresses the principle of equitable use while recommending the establishment of institutions for transboundary cooperation. With regard to the concurrent interpretation and implementation of the two conventions, Mr. Tanzi mentioned the principle of harmonization according to which when several norms bear on a single issue they should, to the extent possible, be interpreted so as to give rise to a single set of compatible obligations.² Thus, the UNECE

²“Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law”, Report of the Study Group of the United Nations International Law Commission, 2006.

Water Convention and the UN Watercourses Convention should be interpreted and implemented jointly.

In his second presentation the speaker explained the application of the UNECE Water Convention to transboundary groundwater with a particular emphasis on Model Provisions on Transboundary Groundwaters (adopted in 2012). These Model Provisions, developed in the framework of the Convention by the legal and technical experts, may be used by its Parties and other States when entering into or reviewing bilateral or multilateral agreements or arrangements on transboundary groundwaters. Mr. Tanzi also presented the 2008 draft Articles on the Law of Transboundary Aquifers of the United Nations International Law Commission (ILC Draft Articles).

Mr. Nicholas Bonvoisin, Secretary to the UNECE Water Convention, introduced the Convention highlighting its potential for promoting transboundary water cooperation worldwide. He also clarified that the geographical scope of the Convention was never limited to the European Union (EU). The Convention has also been successfully implemented in the countries of Eastern Europe, the Caucasus and Central Asia with very diverse social, economic and cultural characteristics. The recent opening of the Convention to all United Nations Member States may be a historic opportunity for strengthening transboundary water cooperation in the Latin American and Caribbean countries. The presenter also explained the main obligations under the Convention, which include: protection of transboundary waters by preventing, controlling and reducing transboundary impacts; ensuring reasonable and equitable use of transboundary waters; and cooperating through agreements and joint institutions. The sustainability of resources is the overarching objective. This framework enshrines general obligations applying to all Parties to the Convention and more specific obligations that must be implemented by Riparian Parties (sharing a transboundary water). In response to questions of the audience it was explained that different tools are available for supporting the Convention's implementation, such as the recently established Implementation Committee, the Guide to Implementing the Convention (2009) and various thematic guidelines. The speaker concluded with the presentation of the new and ambitious programme of work of the Convention for 2013–2015.

The subsequent discussion showed the interest of some Latin American and Caribbean countries' representatives in benefiting from an institutional structure such as the UNECE Water Convention's as well as of the wealth of experience built up over the past 20 years in its framework. Special attention was drawn to the area of groundwater since the UNECE Water Convention applies to all types of groundwater while the UN Watercourses Convention does not apply to confined aquifers. The participants viewed potential accession to the UNECE Water Convention as a possibility for attracting political attention to transboundary water management. Finally, according to some countries, joining the Convention could facilitate rising international funding for transboundary water management.

Setting the scene in the Latin American and Caribbean region

Mr. Liber Martin, Professor, National University of Cuyo, analyzed the situation of transboundary water cooperation in the Latin American and Caribbean region highlighting the long-standing and rich experience that has been reflected in more than thirty specific

treaties, relevant case law and the continuous application of these instruments in practice. Among the future regional challenges he mentioned the adoption of a general legal framework for cooperation, integration of environmental aspects in policies, the need for comprehensive legislation related to surface and ground water, strengthening the implementation of the integrated water resources management (IWRM) principles, the development and implementation of basin-wide climate change adaptation strategies, strengthening institutional capacity and dispute settlement mechanisms. The presenter also weighed the strengths of the UNECE Water Convention against some legal loopholes or weaknesses of regional water law and therefore considered that joining the Convention, with due attention to the regional specificities and to the political and economic context, could bring significant benefits.

Session 2: Jointly adapting water management to climate change and variability in transboundary basins

The session started with a presentation by Ms. Nataliya Nikiforova, UNECE, who underlined the importance of transboundary water cooperation in climate change adaptation, which enables more effective and helps to prevent the possible negative impacts of unilateral adaptation measures. She also briefed the audience on the lessons learned in the framework of the UNECE Water Convention's activities related to climate change adaptation in transboundary basins. Following a brief analysis of climate change impacts in the Latin American and Caribbean region, she presented the relevant tools and activities of the Convention, such as the Guidance on Water and Adaptation to Climate Change (2009), the global platform for exchanging experiences on water and climate change adaptation in transboundary basins and the global network of basins. All interested countries were invited to participate in the Convention's activities related to climate change adaptation which are open to both Parties and other States.

The session was followed by a presentation by Ms. Rocío Córdoba, IUCN, on experiences and specific projects in the area of adaptation to climate change in Central America. Ms. Córdoba highlighted that, while significant progress has been achieved under the different projects, the main challenges were the difficulty to connect local decision makers with the national and international ones, the need to ensure long-term cooperation processes and the need to implement a multi-stakeholder approach for good governance.

Ms. Maria Apostolova, Deputy Project Coordinator, Amazon Cooperation Treaty Organization, presented the experiences of the Amazon River Basin in climate change adaptation, referring to the usefulness of developing a strategic action plan that would integrate science and public policies, ensure the inclusion of climate variability and change in public policies, include risk inventory and cost analysis and provide for civil society participation.

A successful example of transboundary cooperation in the area of water and climate change adaptation was presented by Mr. Roberto Salmón, Director General, Mexican Commissioner, Mexican Section of the International Boundary and Water Commission between Mexico and the United States of America – the body that is responsible for applying the water treaties between Mexico and the United States of America and for settling differences that may arise in their application. Participants were particularly interested by the Commission's operating model since its decisions are recorded in the form of minutes and, following approval by the Mexican and United States governments,

enter into force as binding international agreements, without approval by Congress. Such a procedure can provide the needed flexibility of legal frameworks for climate change adaptation.

As an example of jointly adapting water management to climate change in a transboundary basin, the development of a transboundary vulnerability assessment and adaptation strategy in the Dniester River basin was presented by Mr. Ilya Trombitsky, Eco-Tiras, the Republic of Moldova. He presented the lessons learned of the project such as the importance of carrying out a thorough baseline study to identify completed or ongoing projects, as well as the relevant partners to be involved, coordinating between different governance levels (local – national - transboundary); connecting scientific research with policy making (e.g. creation of a working group); involving local stakeholders; establishing a group for joint assessment of problems and priorities, developing solutions and joint scenarios, as well as undertaking modelling and vulnerability assessments at the transboundary level. The culmination of the Dniester cooperation process was the signature of the Treaty on Cooperation in the Field of Protection and Sustainable Development of the Dniester River Basin by the ministers of environment of the Republic of Moldova and Ukraine at the sixth session of the Meeting of the Parties to the UNECE Water Convention (Rome, November 2012).

During the group discussions, the lack of data and information exchange in the Latin American and Caribbean region was highlighted as one of the main challenges. Participants agreed that climate variability and change can act as catalysts for transboundary water cooperation. On the other hand, transboundary cooperation was considered crucial for an effective adaptation to climate change, including the need to exchange information, carry out consultations, joint diagnostics and cost analysis, as well as the development of contingency plans. Participants highlighted the relevance of strengthening institutional capacity as well as of applying a multisectoral and multilevel approach when developing transboundary adaptation strategies.

Session 3: Reconciling different interests and uses in transboundary basins, their requirements and compatibility for good water governance

The third session was devoted to the experiences of institutional cooperation in European and Latin American and Caribbean basins. The presentation by Mr. Ben van de Wetering, Secretary General, International Commission for the Protection of the Rhine, highlighted the important elements for developing a fruitful transboundary cooperation and served as an introduction to the session. Participants were interested in seeing how an accident (specifically the Sandoz accident of 1986 and the floods of 1993 and 1995) can trigger the cooperation process or bring fundamental policy changes. The lesson learned was the need to find a positive approach even when catastrophic events have occurred, as well as to start cooperation with a common denominator, not with points of disagreements.

The experience of the International Commission for the Protection of the Danube River (ICPDR), presented by Ms. Maria Galambos, Chief Adviser, Department of International Relations, Ministry of Rural Development, Hungary, with its 15 Contracting Parties, including EU Member States, countries outside the EU, and the EU itself, demonstrated that heterogeneity and complexity were not obstacles to the development of transboundary water cooperation. ICPDR activities currently focus on the development and implementation of comprehensive river basin management plans in line with the EU Water

Framework Directive, a risk spot inventory, an accident emergency warning system, a sustainable flood protection programme, groundwater management and integrated environmental policy.

Transboundary water cooperation between Finland and the Russian Federation, as presented by Ms. Minna Hanski, Ministerial Adviser, Ministry of Agriculture and Forestry of Finland, focused on reconciling interests of flood protection and energy production. The presentation demonstrated that successful joint integrated transboundary water resources management can be achieved even in differing political and social contexts and transcend historic and political transformations. It also emphasized the benefits of a pragmatic and clear focus on finding joint management interests and promoting reasonable and equitable use of the shared natural resource.

The three speakers highlighted the influence of the UNECE Water Convention and the added value of the activities carried out in its framework for advancing transboundary water cooperation in their basins.

Mr. Holger Treidel, UNESCO-IHP, presented the project “Protection and Sustainable Use of the Dinaric Karst Transboundary Aquifer System” (DIKTAS) between Croatia, Bosnia and Herzegovina, Montenegro and Albania, explaining that, while not being a large project in terms of financial resources employed, the project could be considered as complex with regards to its objective –transboundary karst groundwater aquifer management–which is one of the most complex water resources systems globally. Moreover, the participating countries were exhibiting many political, economic, ethnic and overall developmental differences. The successful running of the project was strengthened by the involvement of major governmental stakeholders in its preparation and inception phases, resulting in unconditional country support.

The second part of the session focused on the institutional and managerial frameworks for transboundary water cooperation in Latin America and the Caribbean, starting with the project ISARM Americas presented by Ms. Ofelia Tujchneider, National University El Litoral, Santa Fe, Argentina. The objective of the project was to collect data to develop an Inventory of Transboundary aquifers in Latin America as well as to select priority case studies for the implementation of pilot projects. Up to December 2012 the project had allowed the identification of 73 transboundary aquifers. The project had shown the importance of data and information exchange, as well as of the development of appropriate legal tools and institutional cooperation agreements.

The experience of the La Plata River Basin, presented by Mr. José Luis Genta, Secretary General, Intergovernmental Committee of Coordination of La Plata River Basin, demonstrated the complexity of cooperation in a transboundary river basin covering five countries with a total area of 3,100,000 km², having a solid legal and institutional structure for cooperation. In response to a question regarding the impacts of hydropower development in La Plata River Basin, the speaker considered this type of energy as crucial for the sustainable development of the region provided that it is complemented by close cooperation between the countries to ensure regular information exchange and joint monitoring.

Mr. Oscar Everardo Chicas Rodríguez, Director General Sovereignty and Territorial Integrity, Ministry of Foreign Affairs, El Salvador, made a presentation regarding the cooperation between Honduras and El Salvador in the Goascorán River Basin where the BRIDGE (Building River Dialogue and Governance) Project of IUCN allowed the revitalization of cooperative management through expanding stakeholder involvement. It was stressed that continuity, follow up and sustainability of the projects should be foreseen at the planning stage.

A presentation on the Guarani Aquifer System, made by Mr. Jorge Santa Cruz, former technical coordinator of the related GEF project, referred to the application of the ILC Draft Articles to transboundary groundwater legislation. He emphasized the complexity of the application of the principle of equitable and reasonable use and the obligation not to cause significant harm to the use of transboundary groundwaters at the local level.

Mr. Belizaire Dwinel, Director, National Observatory on the Environment and Vulnerability, Haiti, presented transboundary cooperation in the Artibonite River Basin, which is the crucial basin for the socioeconomic development of Haiti and the Dominican Republic. The current challenge is to find a balance between different present and future water uses such as agricultural expansion in Haiti, hydropower and irrigation in the Dominican Republic and the domestic water use in the context of population growth.

The discussions highlighted the need to rely on institutional structures to implement international agreements. In this regard sustainable funding was seen as crucial for institutional strengthening and project implementation.

Session 4: Fostering transboundary water cooperation in Latin America and the Caribbean and UNECE region and between them

Ms. Ximena Fuentes highlighted the importance of establishing multilevel transboundary water cooperation comparing in this regard the provisions of the UNECE Water Convention and the UN Watercourses Convention. While neither of these legal instruments specifically refers to multilevel cooperation, article 9 of the UNECE Water Convention stipulates the obligation to cooperate through the establishment of joint bodies for the management of transboundary water resources. These joint bodies are the ones that, according to the presenter, could channel and coordinate multilevel cooperation. The UN Watercourses Convention in its article 8, on the contrary, establishes only the general obligation to cooperate but does not oblige the riparian states to establish joint bodies.

Mr. Massimo Cozzone outlined the opportunities and the potential that the UNECE Water Convention presents for improving transboundary water cooperation including serving as a catalyst of cooperation, providing support to implementation through assistance and capacity-building activities and being a model for many agreements in the Pan-European region (Danube, Sava, Bug, Kazakh-Russian cooperation, Lake Peipsi, the EU Water Framework Directive). The presenter emphasized the Convention's flexible and continuously evolving framework, its ability to respond to new challenges, the strong ownership of Parties and active involvement of other States, the good cooperation with the United Nations agencies and other organizations working on transboundary waters, as well as the cooperative spirit between all involved stakeholders. The speaker underlined that States that are not party to the UNECE Water Convention can participate in nearly all activities in the framework of the new programme of work of the Convention for 2013–

2015. The following areas of work, among others, could be of interest to the Latin American and Caribbean countries: adaptation to climate change in transboundary basins, identifying, quantifying and communicating the benefits of transboundary water cooperation; and the thematic assessment of the water-food-energy-ecosystems nexus. The Chair of the Bureau of the UNECE Water Convention also took the opportunity to invite the Latin American and Caribbean States to consider accession to the Convention, which will be possible once the practical application of the amendment to articles 25 and 26 of the Convention becomes effective. It was highlighted that, in case of strong interest in accession, the Bureau and the secretariat could provide support to build capacity on the Convention at the national level and assist in preparing for accession.

Conclusions

- The group discussion taking place after the last session showed general agreement regarding the importance of the event for showcasing and promoting transboundary water cooperation in Latin America and the Caribbean. According to the participants, while the region has an important tradition of cooperation, which is evidenced in a number of transboundary agreements, specific treaties and the relevant case law, challenges still remain.
- Among the main challenges mentioned by the participants were the mobilization of political will and commitment to address transboundary water issues, paying special attention to the transboundary groundwaters management, ensuring a multilevel, inclusive approach for water cooperation and building trust for a more effective information exchange among the riparian states.
- The UNECE Water Convention, as a flexible framework agreement, successfully implemented in very diverse and not exclusively European countries, was seen as a useful tool to advance regional cooperation, while the Convention and its Parties would benefit from the Latin American and the Caribbean countries sharing their approaches and experiences and eventually joining the treaty.
- It was agreed that the benefits of using the Convention to provide an overarching framework for transboundary water cooperation in the region need to be explored in greater detail on future occasions to pave the way for those countries that, as for example some countries in Central America, showed particular interest in acceding to the Convention.
- It was emphasized that UNECE will rely on its partners active in the region – including ECLAC, UNESCO, the United Nations Environment Programme, the United Nations Development Programme, IUCN, GEF IW:LEARN and the Global Water Partnership – to play a leading role in supporting countries in the improvement of transboundary water cooperation and, possibly, on their path to joining the UNECE Water Convention.