



UNECE

Complementarity of the two global transboundary water conventions

A catalyst for cooperation on shared waters

Nicholas Bonvoisin, UN Economic Commission for Europe

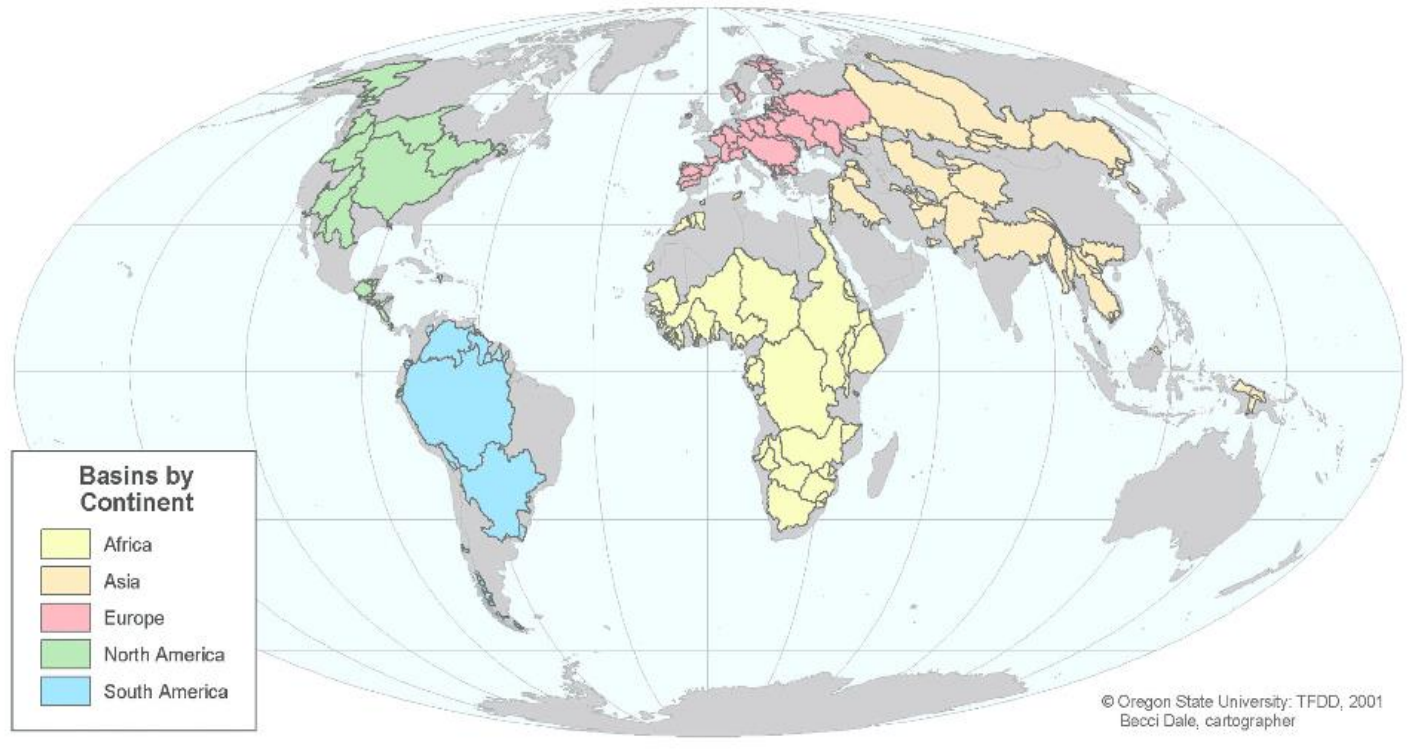




UNECE

What is the need for global
framework instruments?





- Significant reliance upon transboundary waters
- Fragmented system of legal arrangements



- Supports several scenarios
 - Where no specific legal and institutional arrangement exists at the basin level
 - Where weak legal and institutional arrangements exist at the basin level
 - Where not all basin States are party to a basin agreement
- Consolidates, clarifies and develops customary international law
- Permanent framework for the continuity and sustainability of transboundary cooperation over waters



UNECE

Evolution and current status



1997 New York Watercourses Convention

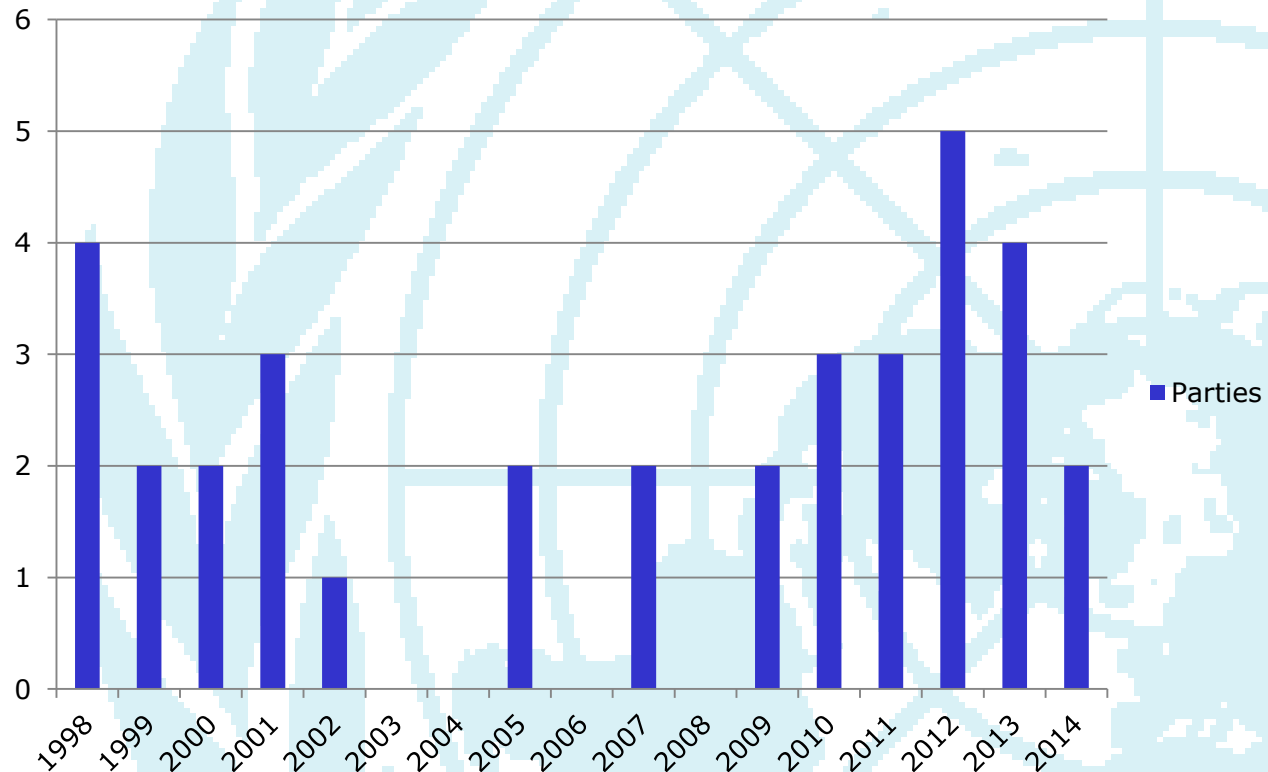
1959 UN General Assembly call for 'preliminary studies on the legal problems relating to the utilization and use of international rivers'

1970 - 1994 Text developed by International Law Commission (ILC), in collaboration with UN Member States

1996 - 1997 Convention negotiated by UN Member States in 6th Committee of UN General Assembly

1997 Convention on the Law of the Non-navigational Uses of International Watercourses adopted by UN General Assembly in New York

1997 New York Watercourses Convention



- 35 Parties (Viet Nam latest, on 19 May 2014)
- Will enter into force in August 2014
- 8 countries LAS countries have already ratified it



1992 Helsinki Water Convention

- Negotiated in 1990-1992 through an intergovernmental process under the auspices of UNECE, largely relying on ILC Draft Articles process
- Negotiated originally as regional instrument
- Adopted on 17 March 1992, in force since 6 October 1996
- Protocol on Water and Health adopted in 1999, entered into force in 2005 and Protocol on Civil Liability adopted in 2003
- Became a global instrument in 2013, with the opening of the Water Convention to all UN Member States

2003 Amendment

- Aims:
 - Apply the principles and provisions worldwide
 - Share experiences of Helsinki Water Convention
 - Learn from other regions of the world
- Amendments entered into force 6 February 2013
- Possibility all UN Member States to accede from late 2014 when all 2003 Parties ratify the amendments
- More than 50 non-UNECE countries already participated in Convention's activities (8 LAS countries on a regular basis)
- Many countries expressed interest in acceding to the Helsinki Water Convention, in particular Iraq, Jordan, Lebanon and Tunisia



Two global transboundary water conventions – contradictory or complementary?





Comparing the Conventions: Similarities – great!

- Same objective: Protection, preservation and management of international watercourses (New York & Helsinki Conventions)
- A 'package of norms' approach to substantive norms
 - equitable and reasonable utilization
 - due diligence obligation of no-harm
- Principle of cooperation as catalyst for the implementation of the two substantive norms
- Almost same provisions with regard to dispute settlement



Comparing the Conventions: Differences – even better!

Two Conventions provide a stronger package of norms

- Scope of transboundary waters
 - Surface water **or** groundwater (Helsinki Convention)
 - Surface water **and connected** groundwater (New York Convention)
 - NB: 2008 ILC Draft Articles on Transboundary Aquifers
- Existing watercourse agreements
 - **Obligation** to harmonize (Helsinki)
 - **Recommendation** to harmonize (New York)
- Future watercourse agreements and joint institutions
 - **Obligation** to create (Helsinki)
 - **Recommendation** to create (New York)



Comparing the Conventions: Differences – even better!

Two Conventions provide a stronger package of norms

- Transboundary EIAs
 - Explicit obligation (Helsinki)
 - Implicit obligation (New York)
- Public information
 - Explicit obligation (Helsinki)
 - No provision under New York Convention – perhaps implicit?



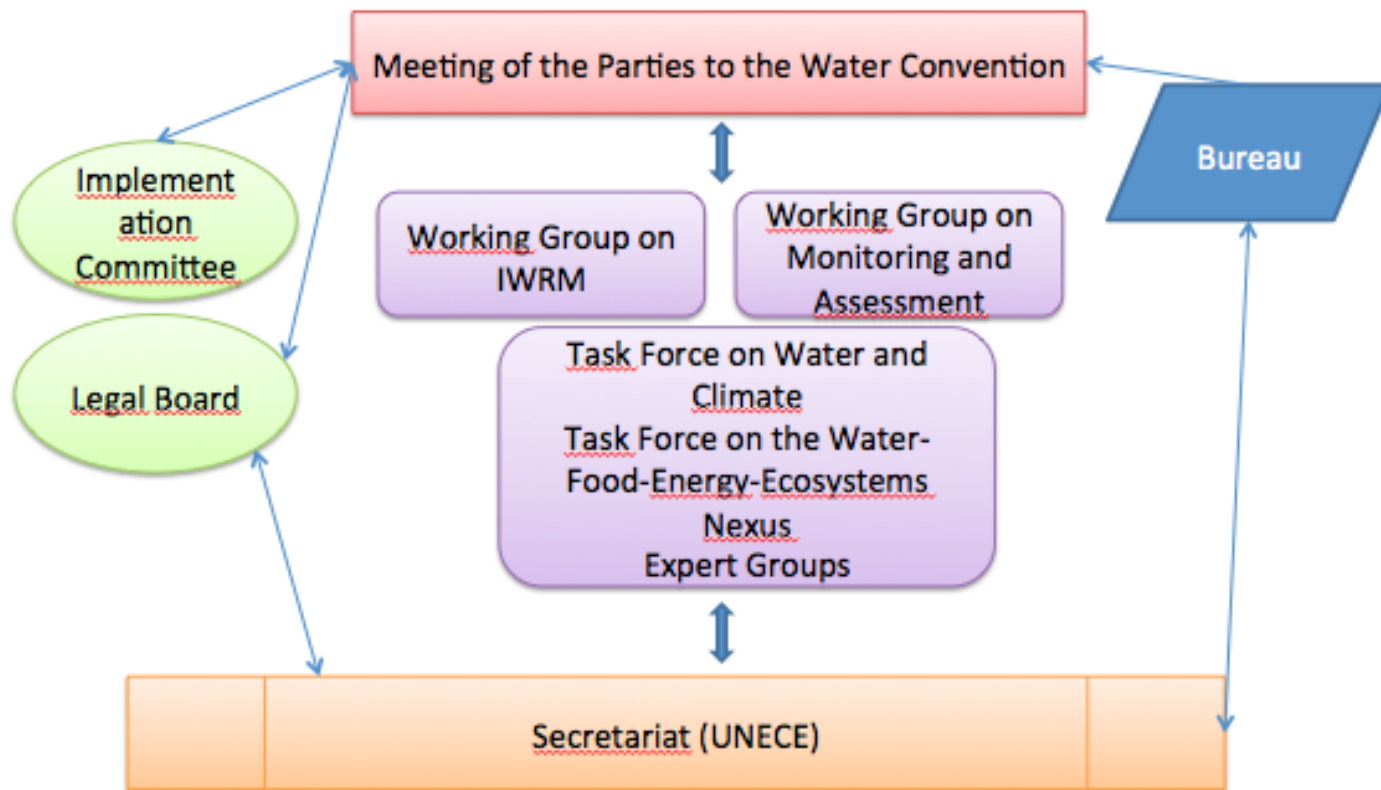
Comparing the Conventions: Differences – even better!

*More detailed provisions in one instrument
can inform the other*

- Appropriate measures to prevent harm
 - Detailed guidance under Helsinki Convention on appropriate measures (Helsinki)
- Equitable and reasonable
 - List of factors (New York) can guide the implementation of Helsinki Convention
- Exchange of information & planned measures
 - Obligation under both Conventions
 - Generally more detailed under Helsinki Convention, although developed provisions on planned measures under New York Convention

Comparing the Conventions

Helsinki Convention institutional framework
(can oversee implementation of work programme)



- No institutional framework foreseen under New York Convention
- How can joint implementation be fostered?



Comparing the Conventions – conclusions

Two Conventions **reinforce** each other:

“The globalisation of the [Helsinki Water] Convention should also go hand-in-hand with the expected entry into force of the United Nations Watercourses Convention. These two instruments are based on the same principles. They complement each other **and should be implemented in a coherent manner**”

*UN Secretary-General, Ban Ki-Moon,
28 November 2012*

14 States have joined both Conventions

Comparing the Conventions – conclusions

Relationship of interpretation:

“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”

ILC Report on Fragmentation, 2006



UNECE

Tools for promotion and implementation





Implementation – Helsinki Water Convention

- 20 years of experience in supporting transboundary water cooperation
 - Capacity to adapt to changing conditions and to respond to countries' demands
 - Continuity of efforts that ensured sustained progress and long-term results
 - Strong drive and ownership by Parties and the close involvement of non-Parties
 - Capacity to build trust
 - Concrete deliverables
- Significant diversity within UNECE region
 - Water challenges
 - Growing problem of water scarcity
 - Extreme events
 - Political landscape
 - Economic and social conditions



Support to implementation through soft law development

- Water pollution by hazardous substances (1994)
- Water pollution from fertilizers, pesticides (1995)
- Licensing of wastewater discharges (1996)
- Monitoring & assessment of rivers & lakes (1996)
- Monitoring & assessment of transboundary groundwaters (2000)
- Sustainable flood prevention (2000)
- Safety of pipelines (2006)
- Payments for ecosystem services (2007)
- Transboundary flood management (2007)
- Safety of tailing management facilities (2009)
- Water and adaptation to climate change (2009)
- Guide to Implementing Water Convention (2009)
- Transboundary groundwaters (2012)...



Thank you!

More information

www.unece.org/env/water

water.convention@unece.org

www.unwatercoursesconvention.org