

The UN Watercourses Convention and the UNECE Water Convention: similarities and differences

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Relation between the two Conventions

- Interest by countries such as Tunisia, Parties to UN Watercourses Convention, in UNECE Water Convention is laudable
- 1969 Vienna Convention on the Law of Treaties between States , Articles 30 and 41. Article 30 concerns the application of successive treaties relating to the same subject-matter and Article 41 relates to agreements to modify multilateral treaties between certain of the Parties alone.

Complications arising

- Some countries are Parties to the UNECE Convention but not the UN Watercourses Convention, some Parties to the UN Watercourses Convention but not to the UNECE Convention, and some are Parties to both the UNECE Convention *and* the UN Watercourses Convention.
- Complications may also arise between parties to either the UN Convention or the UNECE Convention or to both conventions on the one hand and other countries with which they share an international watercourse but which are not a party to any of the conventions on the other hand.
- Article 30 as well as Article 41 make their operation, however, dependent on the question whether the treaties concerned contain any provisions on how to deal with the relationship between the earlier and the later treaty.

- *Article 3 Watercourse agreements*
- 1. In the absence of an agreement to the contrary, nothing in the present Convention shall affect the rights or obligations of a watercourse State arising from agreements in force for it on the date on which it became a party to the present Convention.
- 2. Notwithstanding the provisions of paragraph 1, parties to agreements referred to in paragraph 1 may, where necessary, consider harmonizing such agreements with the basic principles of the present Convention.
- 3. Watercourse States may enter into one or more agreements, hereinafter referred to as “watercourse agreements”, which apply and adjust the provisions of the present Convention to the characteristics and uses of a particular international watercourse or part thereof.
- 4. Where a watercourse agreement is concluded between two or more watercourse States, it shall define the waters to which it applies. Such an agreement may be entered into with respect to an entire international watercourse or any part thereof or a particular project, programme or use except insofar as the agreement adversely affects, to a significant extent, the use by one or more other watercourse States of the waters of the watercourse, without their express consent.
- 5. Where a watercourse State considers that adjustment and application of the provisions of the present Convention is required because of the characteristics and uses of a particular international watercourse, watercourse States shall consult with a view to negotiating in good faith for the purpose of concluding a watercourse agreement or agreements.
- 6. Where some but not all watercourse States to a particular international watercourse are parties to an agreement, nothing in such agreement shall affect the rights or obligations under the present Convention of watercourse States that are not parties to such an agreement.

Article 4 Parties to watercourse agreements



- 1. Every watercourse State is entitled to participate in the negotiation of and to become a party to any watercourse agreement that applies to the entire international watercourse, as well as to participate in any relevant consultations.
- 2. A watercourse State whose use of an international watercourse may be affected to a significant extent by the implementation of a proposed watercourse agreement that applies only to a part of the watercourse or to a particular project, programme or use is entitled to participate in consultations on such an agreement and, where appropriate, in the negotiation thereof in good faith with a view to becoming a party thereto, to the extent that its use is thereby affected.

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)
 - ‘The globalisation of the [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)
- As a **package of norms** both conventions **reinforce** each other
- States have joined both conventions (14 so far)

Similarities and differences in content

- *The general nature of the UNECE Convention and the UN Convention*
- *Terminology and scope*
- *Substantive principles and obligations*
- *Cooperation*
- *Exchange of information*
- *Planned measures*
- *Harmful conditions and emergency situations*
- *Non-discrimination*
- *Responsibility and liability*
- *Peaceful settlement of disputes*

Conclusion

- The two conventions are fully compatible and complementary
- UNECE Convention Parties should therefore consider to become Parties to the UN Watercourses Convention and UN Convention Parties should consider to become parties to the UNECE Convention
- This would contribute to the establishment of one enhanced global legal regime for the utilization and cooperation with regards to the waters of international watercourses.

Thank you!

More information

<http://unece.org/env/water>

<http://www.unwatercoursesconvention.org>

Convention des NU sur les cours d'eau de 1997

- 1959 Appel de l'Assemblée Générale de l'ONU pour « des études préliminaires sur les problèmes juridiques relatifs à l'exploitation et l'utilisation des cours d'eau internationaux »
- 1970 – 1994 Texte élaboré par la Commission du droit international, en collaboration avec les Etats membres de l'ONU
- 1996 - 1997 Convention négociée par les Etats membres de l'ONU lors du 6e Comité de l'Assemblée Générale de l'ONU
- 1997 Convention sur le droit relatif aux utilisations des cours d'eau internationaux adoptée par l'Assemblée Générale de l'ONU
- **Entrée en vigueur seulement en 2014, mais: reconnue comme élément fondamental du droit international coutumier**
- A déjà influencé de nombreux accords (2000 Protocole (révisé) sur les réseaux hydrographiques partagés de la région de la SADC, etc.)

Deux Conventions sur l'eau complémentaires, ouvertes mondialement

- “... J'encourage les pays n'appartenant pas à la région de la CEE-ONU à adhérer à la Convention sur l'eau et à contribuer à son développement.”
- “ La mondialisation de la Convention [sur l'eau de la CEE-ONU] devrait aller de pair avec l'entrée en vigueur de la Convention sur les cours d'eau des Nations Unies. Ces deux instruments sont fondés sur les mêmes principes. Ils se complètent et devraient être appliqués de manière cohérente.”

(Secrétaire général des NU, avril 2015)

- **Pourquoi adhérer aux deux Conventions?**
- Elles représentent un ensemble, vous obtenez le meilleur des deux
- Eviter la fragmentation du droit international de l'eau



Comparaison des Conventions: Similitudes

- Protection, préservation et gestion des cours d'eau internationaux (UN-1997 & CEE-ONU-1992)
- Une approche par un 'ensemble de règles' pour des normes substantielles
 - utilisation équitable et raisonnable
 - pas de dommages, obligation de diligence
- Principe de coopération agissant comme catalyseur pour la mise en œuvre des deux normes substantielles
- Des dispositions presque identiques en matière de règlement des différends

Comparaison des Conventions : Différences

Les deux Conventions prévoient un ensemble complet de normes

- Accords futurs et organes communs
 - **Obligation** de créer (Art 9(1)&(2), CEE-ONU 1992)
 - **Recommandation** de créer (Art 8(2) & 24), ONU 1997)

- Portée des eaux transfrontières
 - Eaux de surface **ou** souterraines (Art 1(1), CEE-ONU 1992)
 - Eaux de surface et les eaux souterraines **reliées** (Art 2(a), ONU 1997)
 - Nb: 2008 Projet d'articles sur les aquifères transfrontières

- Evaluation des impacts transfrontières et information du public
 - Obligation explicite (Art 9(j) et Art 16, CEE-ONU 1992)
 - Obligation implicite (Art 7, ONU 1997) / pas de disposition

Comparaison des Conventions : Différences

Des dispositions plus détaillées d'un instrument peuvent compléter l'autre

- Mesures appropriées pour ne pas causer de dommages
 - Orientation détaillée au titre de la CEE-ONU 1992 sur les mesures appropriées (par ex., Art 3, CEE-ONU 1992)
- Equitable et raisonnable
 - Liste des facteurs (Art 6, ONU 1997) pouvant guider la mise en œuvre de la CEE-ONU 1992
- Echange d'informations et mesures projetées
 - Obligation au titre des deux Conventions (Art 13 CEE-ONU 1992, Art 9, ONU 1997)
 - Généralement plus détaillé au titre de la CEE-ONU 1992, bien que les provisions sur les mesures projetées soient développées au titre de la Partie III de la Convention ONU 1997