



# **Why 2 UN global Water Conventions? Similarities, differences & complementarities of both global legal frameworks for consideration by Gambia”**

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# Momentum for UN Global Water Conventions: Time to act now!

*“The global opening of the Water Convention, the accession of the first countries from outside the UNECE region -- namely Chad and Senegal -- and the momentum in support of the Convention are promising developments. Along with the Convention on the Law of the Non-Navigational Uses of International Watercourses, the world has the ability to strengthen the rule of law in transboundary cooperation worldwide. **I call on Member States to join both Conventions and to strive for their full implementation.**”*

## *SAMPLE PERSPECTIVE FROM GHANA*

*“The two key global conventions on water (1992 Water Convention and 1997 Watercourses Convention) which are open to all United Nations Member States now serve as the mechanism that member States of the Volta Basin Authority are being called upon to accede to in order to strengthen our international cooperation and national measures for the sound utilization, management and development of transboundary surface waters and groundwater resources.”*

**Remarks by H.E. Cecilia Abena Dapaah, Minister for Sanitation and Water Resources of Ghana, Accra, 10 May 2019**



# Why the need for global framework instruments?

## Global Agreements

1997 Watercourses  
Convention

1992 Water Convention

*ILC Draft Articles on  
Transboundary Aquifers*

## Regional

*Ecowas Draft Directive*

*EU Framework Directive*

## Basin & Sub-Basin (Examples)

Senegal River Water Charter

Gambia River Water Charter

## National & Sub National (Examples)

Colorado River Drought  
Contingency Plan

- Codify legal foundations for international water law & supports basic fundamental principles and procedures for shared waters in situations where:
  - no specific legal and institutional arrangement exists at the basin level, i.e. in more than 60% of all basins
  - weak legal and institutional arrangements exist at the basin level, e.g. many agreements do not provide for regular data-sharing, contain dispute settlement provisions etc.
  - not all basin states are party to a basin agreement, i.e. in more than 80% of basins



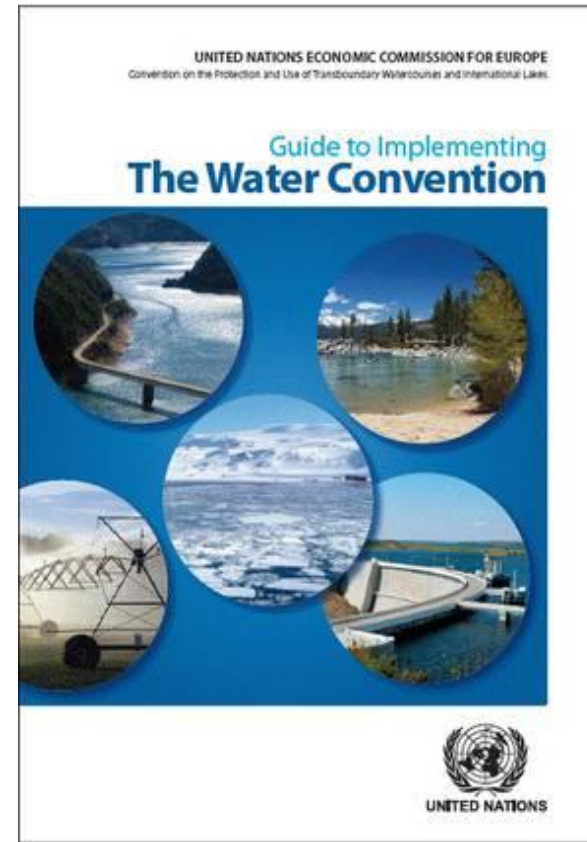
# Why the need for global framework instruments?

- Support ≠ replace
  - Both do not substitute existing obligations; **instead clarify, reinforce or fill gaps at different levels**
- Fosters harmonisation of laws and applying principles between countries, basins & regions
- Consolidates, clarifies & develops customary international law that applies in any case
- Strengthen implementation, e.g. via a platform for sharing experiences and good practice
- Strengthens profile of ‘transboundary water cooperation’ at the global level, and fosters synergies with other global initiatives, eg climate change



# The United Nations global water conventions: in support of transboundary water cooperation

- **1997** Convention on the Law of the Non-navigational Uses of International Watercourses (Watercourses Convention)
  - *Entry into force in 2014*
- **1992** Convention on the Protection and Use of Transboundary Watercourses and International Lakes (Water Convention)
  - *Global opening in 2016*



# The New York Convention on the Law of the Non-navigational Uses of International Watercourses



## □ History New York Convention

- 1970 - 1994 Text prepared by the International Law Commission in collaboration with UN Member States
- 1996 - 1997 Convention negotiated by UN Member States at the 6th Committee of the UN General Assembly
- 1997 Convention on the Law of the Uses of International Watercourses adopted by the UN General Assembly
- **Entered into force only in 2014, but: recognized as a fundamental element of customary international law**
- 37 Parties
- Has already influenced many agreements (2000 Protocol (revised) on Shared Water Systems in the SADC Region)

# Convention on the Protection and Use of Transboundary Watercourses and International Lakes



## ❑ History of the Water Convention

- Negotiated in 1990-1992 through an intergovernmental process under the auspices of the UNECE, based largely on the ILC Draft Articles process
- 1996: Entry into force of the Convention
- 2003: Adoption of amendments allowing accession to the Convention by all UN Member States
- 2012: Decision of the Meeting of the Parties giving general approval for all future applications for accession to the Convention
- 2013: Entry into force of the 2003 amendments
- **1 March 2016: Operationalization of amendments: All UN Member States can accede to the Convention**

# Synergies between the two Global UN Water Conventions



**Both instruments are framework instruments:** aim to clarify, support & reinforce existing/future agreements, NOT replace them. Respects the right of states to agree treaties over shared waters.

Both derive from extensive consultations with diverse groups of nations to develop basic principles & standards that can be applied as a global baseline and elaborated in all contexts

**Similarity is good, differences are even better!** Variations between them are complementary by making up for gaps, generalities or weaknesses in one another

**International law equipped to address differences:** different provisions dealing with the same subject matter should, as far as possible, be interpreted in a complementary manner

Numerous research & guidance documents exist dealing with both Conventions, overwhelming in support of their mutually reinforcing implementation (2 guides on implementation).



# Synergies between the Water Conventions: Definitions & Scope

## Definition of a “Watercourse”/ “Transboundary Waters”

### 1992 Water Convention, Article 1 (1)

- “Transboundary Waters” - any surface *or* ground waters which mark, cross or are located on boundaries between two or more States
- **Scope:** Surface water ***or*** groundwater

### 1997 Watercourses Convention, Article 2 (a)

- “Watercourse” – a system of surface *and* groundwaters constituting by virtue of their physical relationship a unitary whole and normally flowing into a common terminus
- **Scope:** Surface water ***and connected*** groundwater



# Synergies - substantive norms

## 1992 Water Convention

- Equitable and reasonable utilisation (Art 2(c))
- Obligation to take all appropriate measures to prevent, control and reduce any transboundary impact (Art 2)
- Conservation and restoration of ecosystems (Art 2 (d))

## 1997 Watercourses Convention

- Obligation to utilise an international watercourse in an equitable and reasonable manner (Art 5)
- Take all appropriate measures not to cause significant harm (Art 7)
- Protect ecosystems of an international watercourse (Art 20)

# Synergies & slight differences– cooperative arrangements

## Entering into transboundary agreements

- ✓ Obligation under the 1992 Water Convention (Art 9)  
But flexibility in terms of the nature of the instrument (Agreement or arrangement)
- Recommendation under the 1997 Watercourses Convention (Art 3)  
But key to effective implementation

## Establishing joint institutions for transboundary water management

- ✓ Obligation under 1992 Water Convention (Art 9)  
But flexibility in terms of the types of 'Joint Bodies' established
- Recommendation under 1997 Watercourses Convention (Art 8(2) & 24))  
But key to effective implementation

# Synergies – procedural aspects of both Conventions

## 1992 Water Convention

*(generally more detailed)*

- Prior licensing & monitoring of waste water discharges (Art 3(1)(b))
  - EIA applied (Art 3(1)(h) & Art 9(2)(j))
  - Contingency planning development (Art 3(1)(j))
- Joint monitoring and assessment (Art 4, 9(2)(b) & Art. 11)
- Exchange of information (Art 6, 9(2)(c), 9(2)(h), 9(2)(i), Art. 13)
- Concerted action programme for reduction of pollution (Art 9(2)(f))
  - Early warning and alarm procedures (Art 9(2)(g)& Art 14)
    - Consultations (Art 10)
  - General but guidance in UNWC
    - Mutual assistance (Art 15)
    - Public information (Art 16)

## 1997 Watercourses Convention

- Regular exchange of data and information (Art 9)
- Notification and consultation (Art 11-19)

*Detailed procedure for when to notify and consult on planned measures*

- Prevention of harmful conditions (Art 27)
- Emergency situations (Art. 28)
- Article 7 Obligation to take all appropriate measures to prevent significant harm
  - What measures are ‘appropriate’
  - Guidance in 1992 Water Convention

<b>LEGAL PRINCIPLE</b>	<b>1997 Watercourses Convention</b>	<b>1992 Water Convention</b>	<b>Draft Ecowas Directive</b>
<b>Equitable &amp; Reasonable Utilisation</b>	Arts.5, 6	Art.2§2 (c)	Art. 9-11
<b>Prevention of transboundary harm</b>	Art.7	Art. 2§1	Art. 16
<b>Cooperation</b>	Art.8	Art. 2§6	Art. 6
<b>Environment/Ecosystems</b>	Arts. 20-23	Art. 2 (d)	Arts. 27-35
<b>Notification/Consult/negotiate</b>	Art.11-19	Art.10	Art. 45-51
<b>Exchange information &amp; data</b>	Art. 8	(Art 6, 9(2)(c), 9(2)(h), 9(2)(i), Art. 13)	Art. 52
<b>Dispute Settlement</b>	Arts.30-33	Art.22	***

Alignment with African Agreements



# Many benefits of acceding to the UN global water conventions

## **SPECIFIC BENEFITS include:**

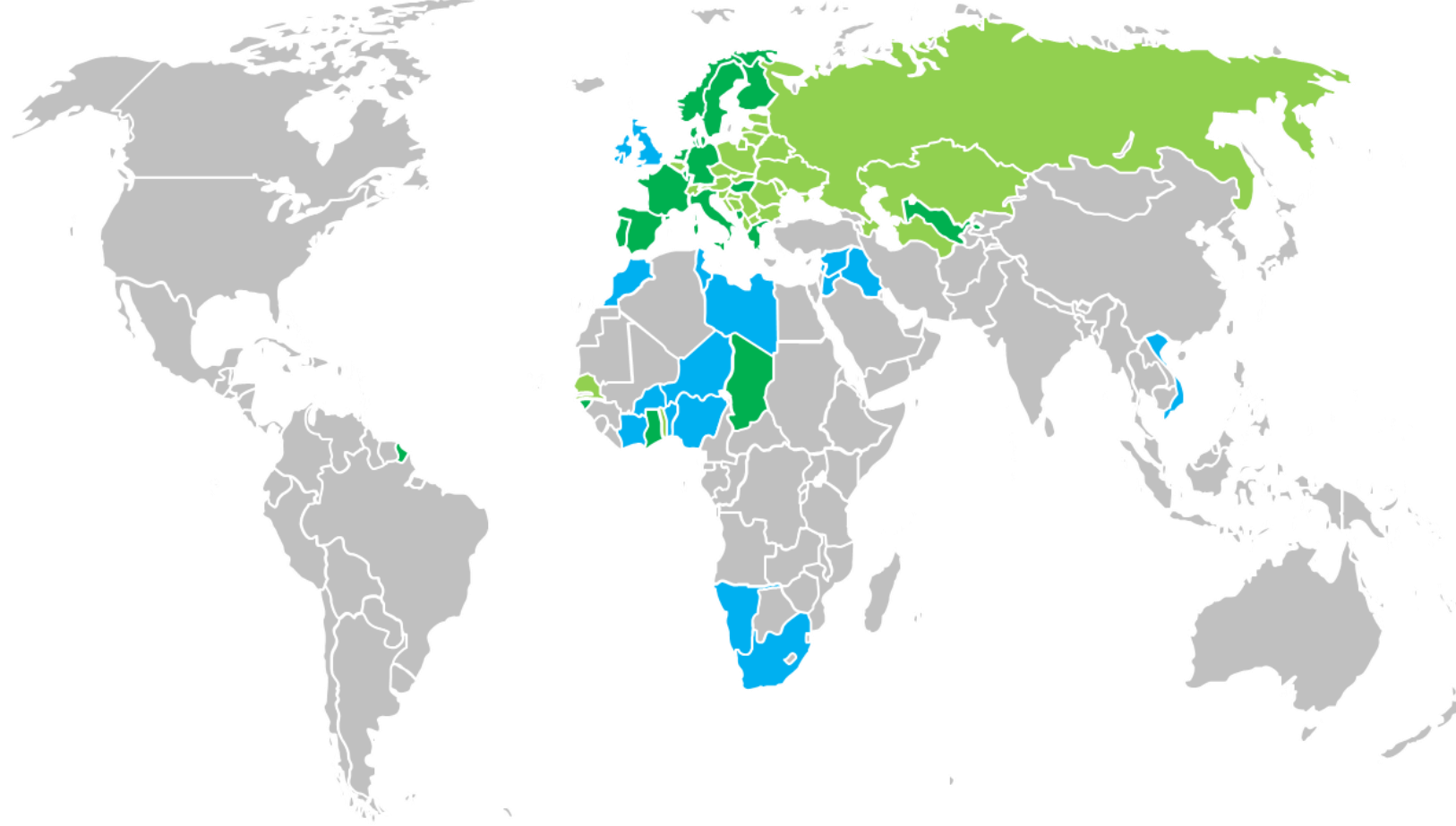
- 1) Having a legal binding framework by which a state can conduct its activities related to transboundary rivers, lakes and aquifers which provides for predictability and transparency.
- 2) Legal frameworks **help** create an enabling stable environment for encouraging investments.

## **ADDITIONAL BENEFITS** of acceding to both, **irrespective of whether neighbours are parties:**

- 1) Being a Party sends a clear signal to non-Parties of the type of legal commitments that a country is willing enter into.
- 2) Recognition by countries and the international community of a country's long-term commitment to transboundary water cooperation.
- 3) Stronger water management at the national level linking to transboundary management.
- 4) Accession process offers a means by which to strengthen national awareness and capacity on transboundary water issues amongst key stakeholders across sectors.



# Accession to UN global water conventions



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Party to Water Convention (1992) – 46

Party to Watercourses Convention (1997) – 37

Party to both Conventions – 18



**UNECE**



**WATER CONVENTION**



# THANK YOU

**Water Convention:**

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