



# ***Why 2 UN global Water Conventions? Key provisions, similarities, differences & complementarities of both global legal frameworks for consideration by Tanzania***

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



Ms. Amina J. Mohammed

Deputy Secretary General of the United Nations  
Chair of the United Nations Sustainable Development Group

Africa Water Week, 19 November 2021

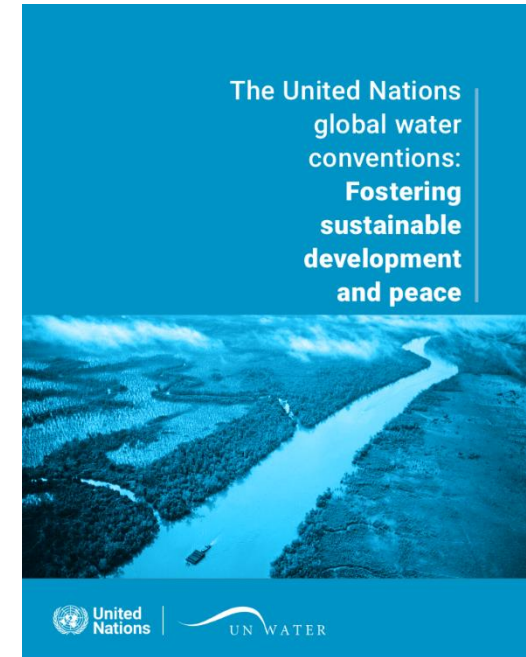


“The world will not achieve the sustainable development goals without urgent progress on access to water, sanitation and hygiene services [...]

I see 3 priorities for action.

First, we must promote water security for all. This includes transboundary water cooperation, which can help build peace and prevent conflicts.

To achieve this, **I encourage all governments to accede, implement and comply with the 2 UN global water conventions.**”



WATER  
CONVENTION

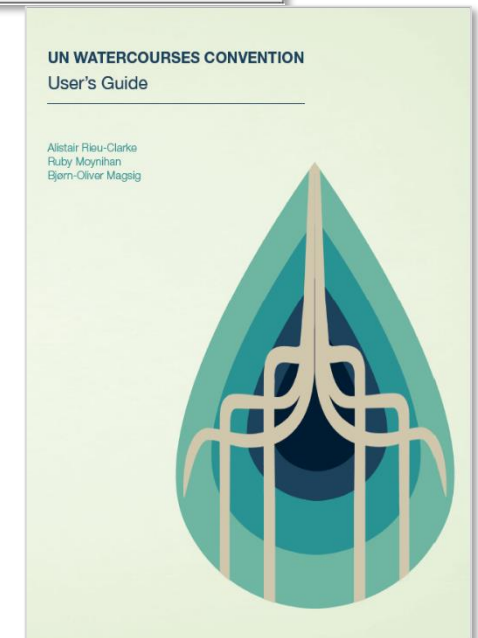
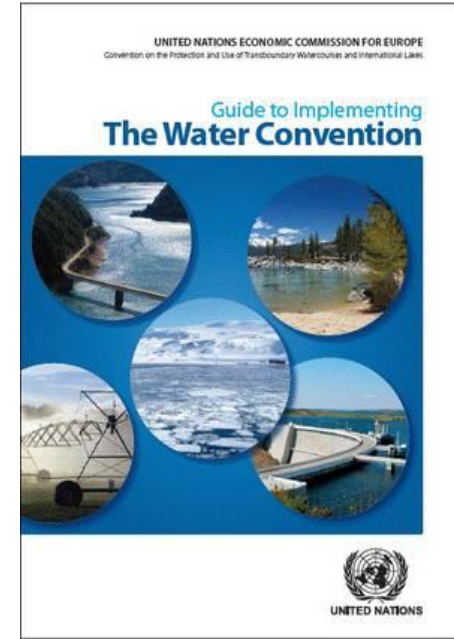
# The United Nations global water conventions: in support of transboundary water cooperation

- **1992** Convention on the Protection and Use of Transboundary Watercourses and International Lakes (**Water Convention**)

- *Global opening in 2016*

- **1997** Convention on the Law of the Non-navigational Uses of International Watercourses (**Watercourses Convention**)

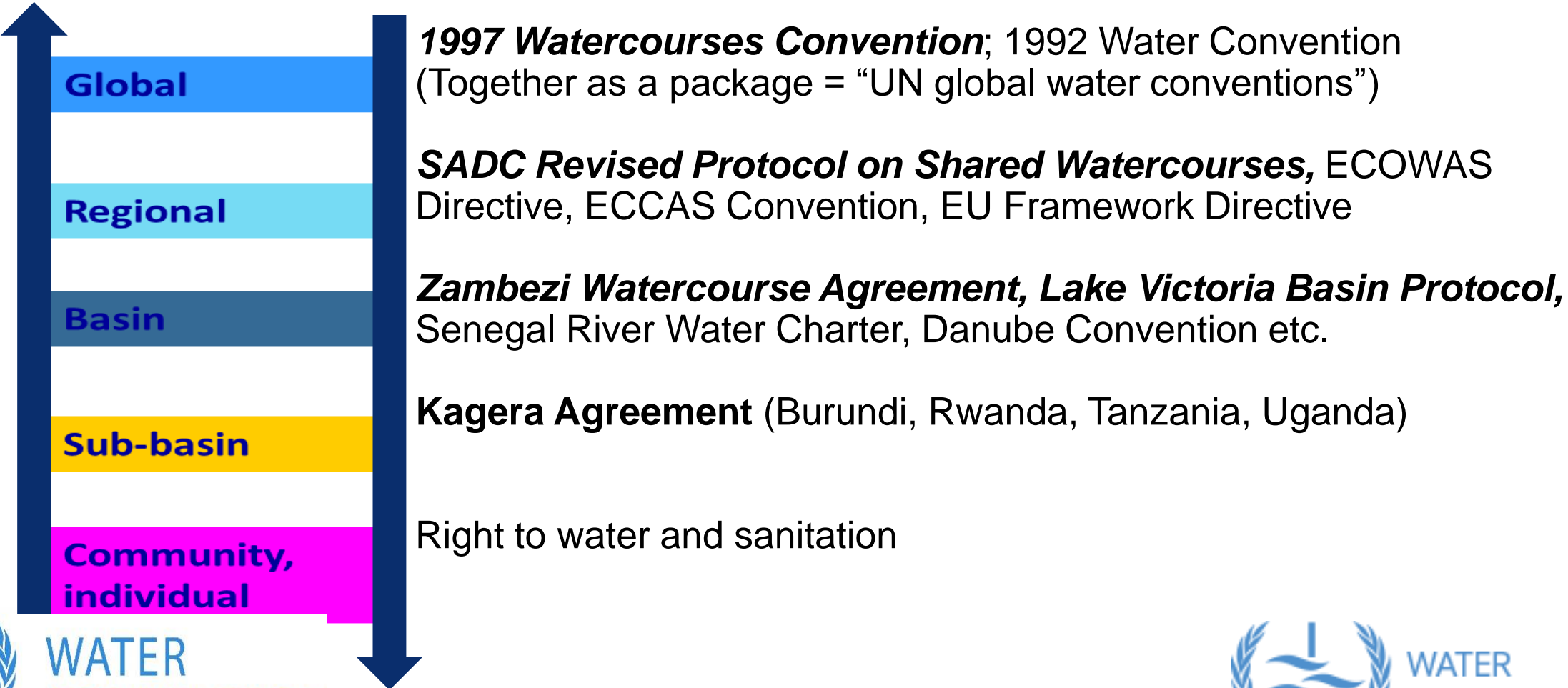
- *Entry into force in 2014*





# International water law: collective solutions to the problems of shared water management

A multilevel, integrated architecture of laws => different solutions for different scales & contexts



# Global legal framework for shared rivers, lakes & aquifers

1. Not all basin states and/or river sections (mainstream v. tributaries) and/or uses are included in agreements

2. Weak and/or lack of governance institutions and/or mechanisms to implement the agreement & resolve disputes



3. Key legal principles and/or processes are missing and/or weak in agreement



**OVERALL LEGAL ARCHITECTURE  
= FRAGMENTED, WITH KEY GAPS**



# Why the need for global framework instruments? (2)

- Codify legal foundations for international water law & supports basic fundamental principles and procedures for shared waters
- 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

# Water Convention: from global vision to global application

**Originally operated at a regional level, it has been global since 2016**

## □ 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
- **1 March 2016: Operationalization of amendments: All UN Member States can accede to the Convention**

## *Why the global amendment?*

- Decision based on Convention's successes in strengthening TWC and in response to the interest from countries outside UNECE region
- Broaden political support for transboundary cooperation
- Apply principles and provisions worldwide
- Share experiences of Convention
- Learn from other regions
- Jointly develop solutions to common challenges



# Watercourses Convention: global framework, without an institution



## Evolution & Status

- Negotiated, developed as a global framework
  - Adopted on 27 May 1997 by UN General Assembly
  - **Entered into force on 17 August 2014**
- Push for ratifications in the 2000s led to entry into force
  - Workshops, training & advocacy on UNWC role/utility
  - More TB water issues globally = heightened awareness

### UNWC: A LONG TIME IN THE MAKING

“Following 20 years work, and 15 reports by eminent international jurists, acting as Special Rapporteurs, the [Draft Articles on the Law of the Non-navigational Uses of International Watercourses](#) (1994 ILC Draft Articles) were adopted.”

### CODIFICATION OF CUSTOMARY LAW

The UNWC was developed, negotiated & adopted as a framework agreement under the mandate of the UN General Assembly. It is broadly recognised as a codification of customary international law on international watercourses.



# Synergies – compatibility – complementarity

❑ Principle of harmonization (interpretative approach under IL)

***International custom on treaty law as codified by the 1969 Vienna Convention on the Law of Treaties confirms that two or more treaties in the same subject matter may be applicable at the same time between the same parties, provided there is mutual compatibility between their provisions***

(ref. Art. 30 (Application of successive treaties relating to the same subject matter) particularly paragraph 3; and art. 59 (Termination or suspension of the operation of a treaty implied by the conclusion of a later treaty), particularly paragraph 1 (b))

▪ **“It is a generally accepted principle that 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”** ( Study Group on the fragmentation of International Law)

**= criteria of application of the harmonization interpretative approach: compatibility, complementary**

# The Water Convention obligations

## Fundamental Obligations (customary int. Law)

- Obligation to take all appropriate measures to prevent, control and reduce any transboundary impact (art. 2 § 1)
- Equitable and reasonable utilization (Art 2§2 (c))
- Obligation to cooperate (art. 2 § 6 )

## Obligations for *all Parties* (Part I)

= apply to all states

- Licensing of waste-water discharges and monitoring of authorized discharges
- Setting emission limits based on BAT
- Application of best environmental practices
- Minimization of the risk of accidental pollution
- Application of EIA and other assessments
- Exchange of information

## Obligations for *Riparian Parties* (Part II)

= only applies between states sharing a transboundary watercourse or international lake

- **Conclusion of bilateral and multilateral agreements and creation of joint bodies**
- Joint monitoring and assessment
- Common research and development
- Exchange of information between Riparian Parties
- Consultation
- Warning and alarm systems
- Mutual assistance
- Public information

# 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)
- Obligation to cooperate (Art. 2 § 6)
- Conservation and restoration of ecosystems (Art 2 (d))

## 1997 Watercourses Convention

- Obligation to utilize an international watercourse in an equitable and reasonable manner (Art 5)
- Take all appropriate measures not to cause significant harm (Art 7)
- Obligation to cooperate (Art.8)
- 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

# Synergies – compatibility – complementarity

- ❑ They are compatible, not contradictory, and in many ways complementary (1969 Vienna Convention on the Law of Treaties - provisions related to treaties on the same matter subject)
- ❑ 1997 Watercourses Convention complements the 1992 Water Convention
  - by detailing the factors relevant to equitable and reasonable utilization (article 6).
  - Specifying the procedures for notification and consultation on planned measures (Part III)
- ❑ Conversely, the 1992 Water Convention complements the 1997 Watercourses Convention
  - By prescribing the content of specific agreements and tasks of joint bodies (article 9)
  - Detailing the information subject to joint assessment and exchanges (articles 11 and 13)
- ❑ Differences between the two conventions on the same subject matter are of greater or lesser stringency or detail rather than a matter of conflicting prescriptions (They can reconcile by way of interpretation).
  - 1997 Watercourses Convention leaves confined groundwater outside its scope, 1992 Water Convention covers all transboundary groundwater, including confined aquifers.
  - The differences are rather a strength since the more detailed provisions in one instrument can inform the implementation of the other



# Legal alignment & synergies: Scope, Substantive & Procedural Provisions

<b>LEGAL PRINCIPLES</b> <b>(3 Core Principles of International Water Law Highlighted Below)</b>	<b>1997 Watercourses Convention</b>	<b>1992 Water Convention</b>	<b>SADC Revised Protocol on Shared Watercourses 2000</b>
<b>Equitable &amp; Reasonable Utilisation</b>	<b>Arts.5, 6</b>	<b>Art.2(2) (c)</b>	<b>Art. 3 (7) (8)</b>
<b>Prevention of transboundary harm</b>	<b>Art.7</b>	<b>Art. 2(1)</b>	<b>Art. 3 (10)</b>
<b>Cooperation</b>	<b>Art.8</b>	<b>Art. 2(6)</b>	<b>Art. 3 (5)</b>
<b>Environment/Ecosystems</b>	Arts. 20-23	Art. 2 (d)	Art. 3
<b>Notification/Consult/negotiate</b>	Art.11-19	Art.10	Art. 4
<b>Exchange information &amp; data</b>	Art. 8	Arts 6, 9(2)(c), 9(2)(h), 9(2)(i), Art. 13)	Art. 3 (6)
<b>Dispute Settlement</b>	Arts.30-33	Art.22	Art. 7 (Spec.)



# Legal alignment & synergies: Scope, Substantive & Procedural Provisions

<b>LEGAL PRINCIPLES</b> <b>(3 Core Principles of International Water Law Highlighted Below)</b>	<b>1997 Watercourses Convention</b>	<b>1992 Water Convention</b>	<b>CFA</b>	<b>LVBC Protocol</b>
<b>Equitable &amp; Reasonable Utilisation</b>	<b>Arts.5, 6</b>	<b>Art.2(2) (c)</b>	<b>Art. 3 § 4</b>	<b>Art. 4 § 2 (a), 5</b>
<b>Prevention of transboundary harm</b>	<b>Art.7</b>	<b>Art. 2(1)</b>	<b>Art. 3 § 5</b>	<b>Art. 4 § 2 (c), 15</b>
<b>Cooperation</b>	<b>Art.8</b>	<b>Art. 2(6)</b>	<b>Art. 3 § 1</b>	<b>Art. 4 § 2 (d)</b>
<b>Environment/Ecosystems</b>	<b>Arts. 20-23</b>	<b>Art. 2 (d)</b>	<b>Art. 3 § 7</b>	<b>Art. 4 § 2 (j), 6</b>
<b>Notification/Consult/negotiate</b>	<b>Art.11-19</b>	<b>Art.10</b>	<b>Art. 3 § 8</b>	<b>Art. 4 § 2 (d), 13</b>
<b>Exchange information &amp; data</b>	<b>Art. 8</b>	<b>Arts 6, 9(2)(c), 9(2)(h), 9(2)(i), Art. 13)</b>	<b>Art. 3 § 10</b>	<b>Art. 24</b>
<b>Dispute Settlement</b>	<b>Arts.30-33</b>	<b>Art.22</b>	<b>Art. 34</b>	<b>Art. 46</b>

# Many benefits of acceding to the UN global water conventions

## **SPECIFIC BENEFITS include:**

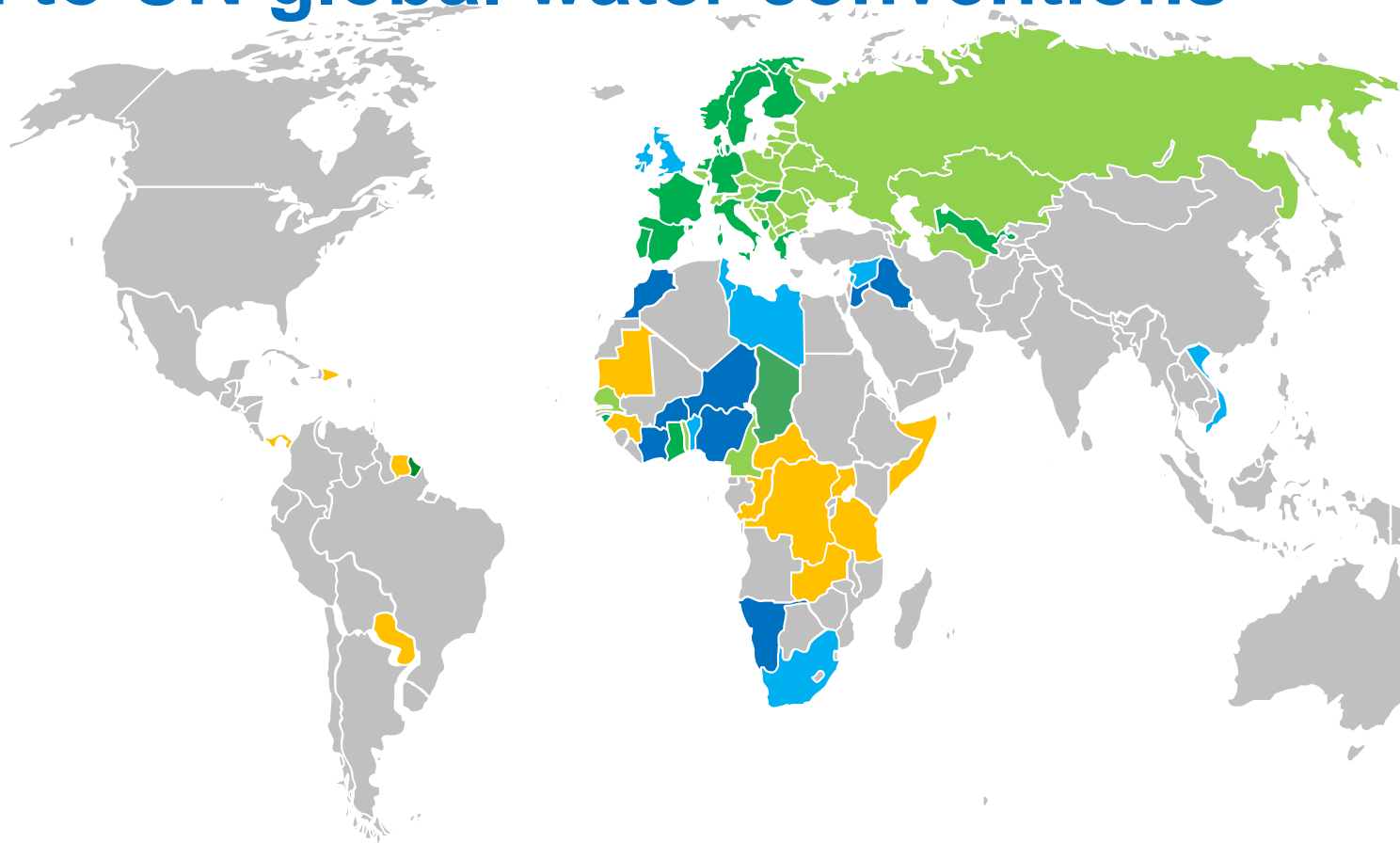
- 1) Having a legal binding framework by which a state can conduct its activities related to transboundary rivers, lakes and aquifers which provides for predictability and transparency.
- 2) Legal frameworks **help** create an enabling stable environment for encouraging investments.

## **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



*“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.**”*

 Party to the Water Convention (1992) - **47**

Party to the Watercourses Convention (1997) - **37**

Party to both Conventions - **18**

Party to the Watercourse Convention - in process of accession to 1992 WC - **8**

Countries in the process of accession to the 1992 WC - **12**



# THANK YOU

**Water Convention:**

<https://www.unece.org/env/water/>

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