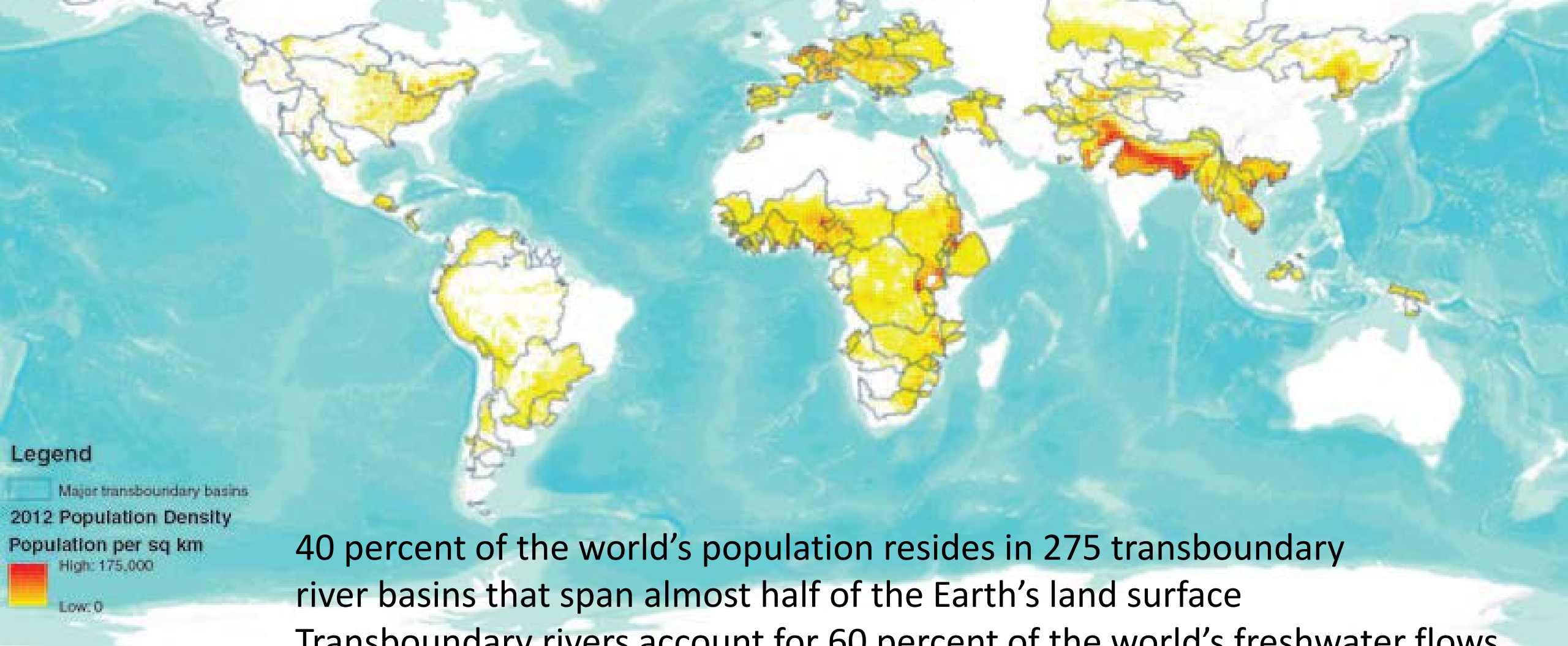


Why 2 UN global water conventions?

Key provisions, similarities, differences & complementarities of both global legal frameworks for consideration by Botswana

Water resources are essentially transboundary



40 percent of the world's population resides in 275 transboundary river basins that span almost half of the Earth's land surface
Transboundary rivers account for 60 percent of the world's freshwater flows
SDG 6.5: Implement integrated water resources management at all levels, including through transboundary cooperation, as appropriate

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 mechanisms to implement the agreement & resolve disputes



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



OVERALL LEGAL ARCHITECTURE IS FRAGMENTED, WITH KEY GAPS



UNECE



Why is transboundary water cooperation a global issue in need of accelerated action?

1) **Water is critical to progressing the Sustainable Development Goals (SDGs)** and is considered to be one of the most pressing challenges facing the world (World Economic Forum 2019).

2) Managing transboundary rivers, lakes and aquifers in an equitable and sustainable manner is **key to addressing the water crises and advancing the 2030 Agenda.**

3) **Even where populations are not directly situated within transboundary river and lake basins, or aquifer systems, they are often reliant upon the goods and services produced therein** or have an interest in ensuring for their equitable, sustainable and peaceful management.

4) Through initiatives such as the Global High-level Panel on Water and Peace and debates within the Security Council, **transboundary water cooperation is increasingly being recognised as a driver of peace and conflict prevention**, and as a valuable tool of preventative diplomacy.

Why is transboundary water cooperation a global issue in need of accelerated action? (Continued)

5) As water and climate change know no borders, **transboundary cooperation in adaptation to climate change is necessary** to enable the sharing of the costs and benefits of adaptation measures, and **prevent the possible negative effects of unilateral adaptation measures.**

6) The **management of groundwater** poses a particular dilemma, linked to the unique characteristics of this **'hidden' resource.**

7) **Cooperative arrangements** concerning transboundary rivers, lakes and aquifers are **often lacking or too weak to deal with growing water-related challenges**, to offer an enabling environment for IWRM, and to reap the shared benefits that transboundary cooperation can offer.

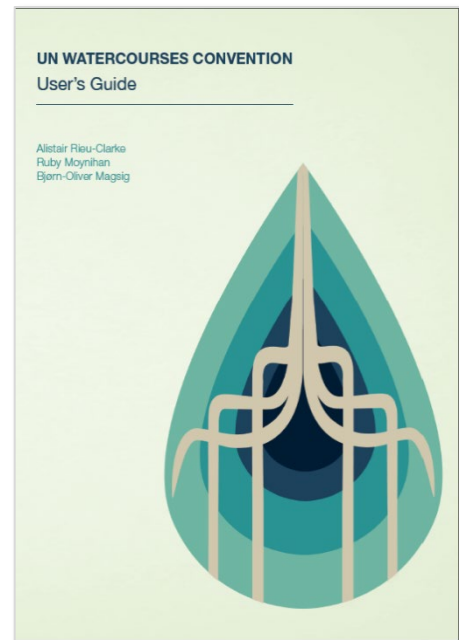
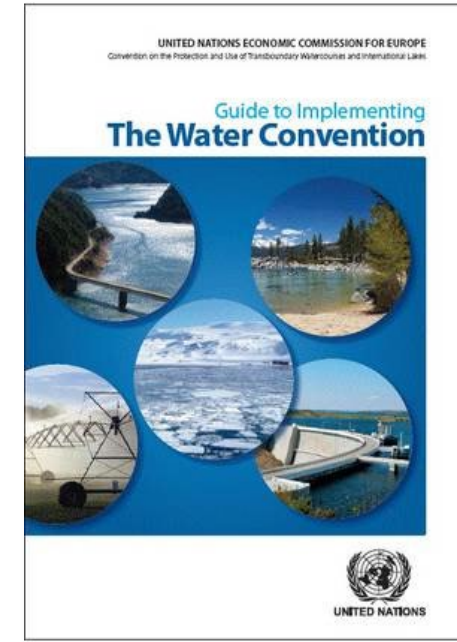
8) The UN global water conventions represent **powerful tools to promote and advance transboundary water cooperation.**

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

Global opening in 2016

Parties: 52 (20 more currently in accession process)

Parties in Southern Africa: Namibia (others in process)



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

Entry into force in 2014

Parties: 38

Parties in Southern Africa: Namibia, South Africa (others in process)

Why are the UN global water conventions needed?

Instruments of preventive diplomacy and confidence-building between riparian states

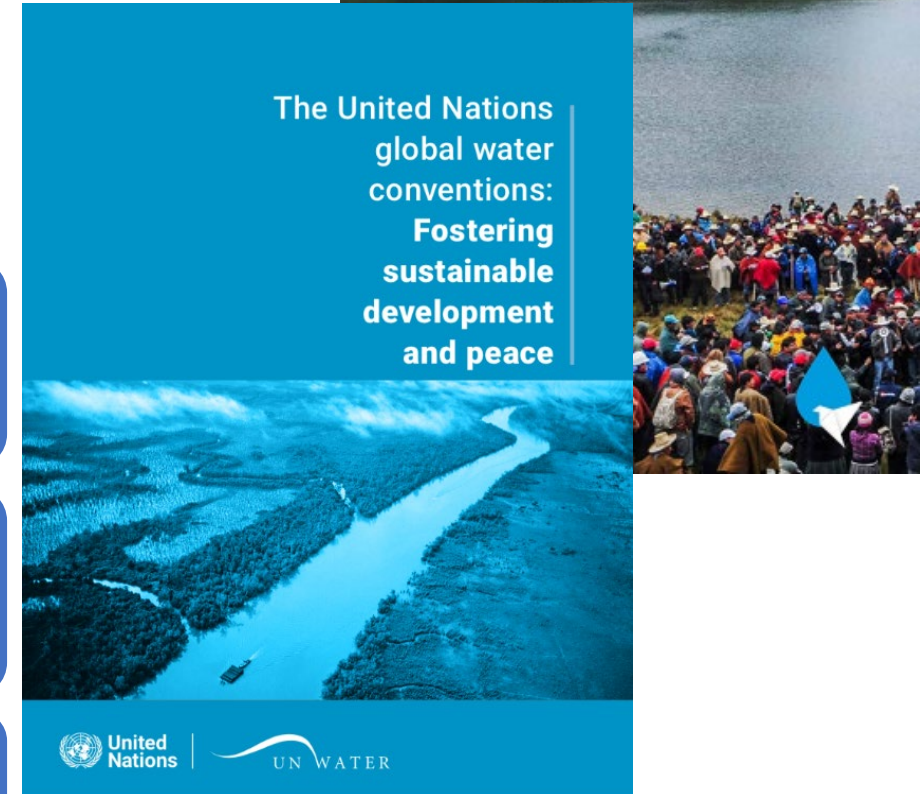
Support transboundary cooperation when it is not established:

- *No specific legal / institutional mechanism at basin level, i.e. more than 60% of basins*
- *Weak existing legal and institutional arrangements at the basin level, eg. many agreements do not provide for data sharing, provision for dispute resolution*
- *Not all basin states are party to the basin agreement, i.e. more than 80% of basins*

Promote the gradual improvement of cooperation when it is established and strengthen implementation, for example, through a platform to share experiences and good practices

Support ≠ replace existing treaties and where basin agreements are to be created the Conventions can facilitate negotiations and cooperation

Strengthen the profile of 'transboundary waters' at national and international political level, and foster synergies with other global initiatives, for example for climate change



WATER
CONVENTION

Integrated legal frameworks for transboundary water cooperation



- 1997 Watercourses Convention
- 1992 UN Water

Main objective =
Foster cooperation over transboundary waters in order to ensure that they are sustainably and equitably managed

- SADC Revised Protocol on Shared Watercourses
- EU Water Framework Directive
- ECOWAS Directive
- ECCAS Convention

- Okavango-Cubango River Agreement
- Orange-Senqu River Agreement
- Zambezi River Agreement
- Limpopo River Agreement

- Lesotho-Botswana Water Transfer Agreement
- Sava Agreement
- International Boundary Waters Treaty
- Treaty of the River Plate Basin
- Mekong River Agreement

- Human Right to Water and Sanitation

Legal alignment & synergies: Scope, Substantive & Procedural Provisions

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

1997 Watercourses Convention

- Convention on the Law of the Non-Navigational Uses of International Watercourses (**1997 Watercourses Convention**), adopted in May 1997
- Long development since 1970 by International Law Commission & state engagement via UNGA
- Codifies customary international law
- Adopted by UNGA (103 votes in favour, 26 abstentions, 3 against)
- Entry into force 17 August 2014
- Currently, as of October 2023, counts 38 Parties



Watercourses Convention Key Principles

Principle of equitable and reasonable utilization

Principle of no harm

Principle of cooperation

1992 Water Convention

- Convention on the Protection and Use of Transboundary Watercourses and International Lakes (**1992 Water Convention**), adopted in March 1992
- Negotiated in 1990-1992 via intergovernmental process under auspices of UNECE
- Entry into force 1996
- 2003 Amendment to allow States outside UNECE region became operational 1st March 2016
 - Global operation
- As at October 2022, 52 Parties to the Water Convention

Water Convention Key Principles

Principle of prevention

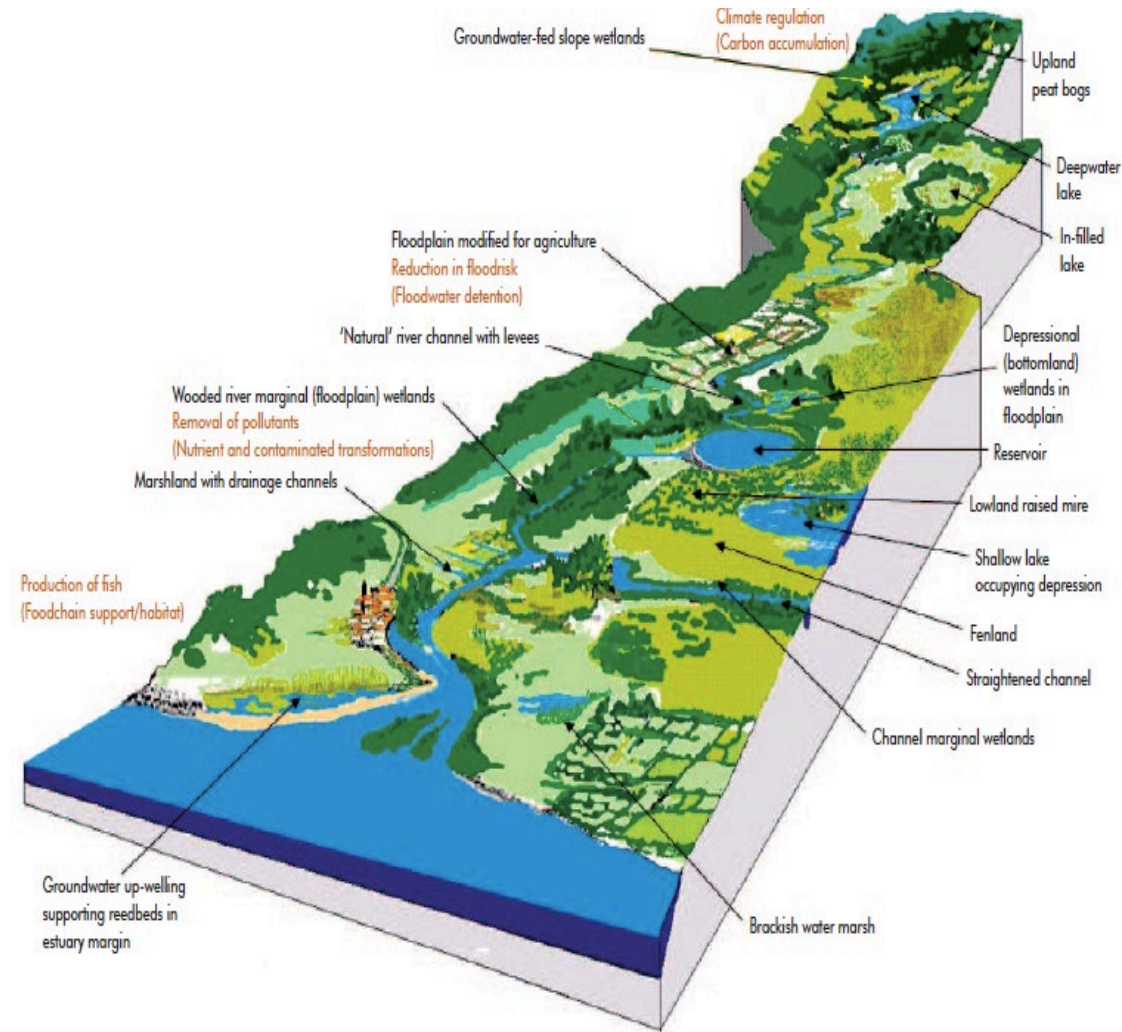
Principle of equitable and reasonable utilization

Principle of cooperation



Scope of Application of the Water Convention

- "Transboundary waters": all surface and underground waters which mark the borders between two or more States, cross them or are located on these borders (Art1 (1))
- Transboundary impacts included: harm to human health and safety, flora, fauna, soil, air, water, climate, landscape and historical or other monuments constructions, or interaction of several of these factors; it may also be an attack on cultural heritage or socio-economic conditions resulting from changes in these factors
- The Riparian Parties shall cooperate [...] with a view to developing harmonized policies, programs and strategies applicable to all or part of the hydrographic basins concerned (Art 2 (6))



The Water Convention obligations

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 – scope & substantive norms

1992 Water Convention

- Scope: Surface water or groundwater (Art 1(1))
- 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

- Scope: Surface water and connected groundwater (Art 2(a))
- 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)




HOW ARE THE TWO GLOBAL WATER CONVENTIONS COMPLEMENTARY?



**1992
WATER
CONVENTION**



- Content of specific agreements and tasks of joint bodies (Art.9)
- Information subject to assessment and exchange (Arts. 11 and 13)
- Guidance on water quality objectives and BAT (annexes)
- Appropriate measures to prevent transboundary impact (Art. 3)



**1997
WATERCOURSES
CONVENTION**

- Detailed factors relevant to equitable and reasonable utilization (Art.6)
- Procedures for consultation on planned measures (Part III)
- Consequences of the occurrence of transboundary impact (Art. 7(2))
- Provisions on armed conflict (Part VI)

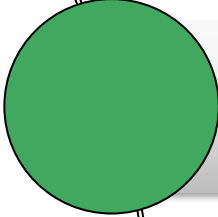
Figure 3: How are the two global water conventions different?

 <p>1992 WATER CONVENTION</p>	<p>≠</p>	 <p>1997 WATERCOURSES CONVENTION</p>
<p>Obligation to enter into agreements and establish joint bodies (Art. 9)</p>	<p>FUTURE AGREEMENTS AND JOINT BODIES</p>	<p>Recommendation to enter into agreements and establish joint bodies (Arts. 8(2), 24)</p>
<p>Obligation to adapt in line with the basic principles of the Convention (Art. 9(1))</p>	<p>EXISTING AGREEMENTS</p>	<p>Recommendation to adapt (Art. 3(2))</p>
<p>Available (Arts. 17-19)</p>	<p>INSTITUTIONAL MECHANISM BASED ON THE MEETING OF THE PARTIES</p>	<p>Not available</p>
<p>All transboundary waters (Art. 1(1)), including confined groundwater</p>	<p>SCOPE</p>	<p>Surface water and connected groundwater (not confined groundwater) (Art. 2(a))</p>

Global Water Conventions: complementarities & differences



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 eg planned measures



International law equipped to address their 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).



Many benefits of acceding to 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 **sues amongst key stakeholders across sectors.**



Momentum for UN Global Water Conventions: Time now to act

President of the 77th Session of the UN General Assembly, H.E. Csaba Kőrösi

“We can live up to the promise of a sustainable water future by implementing inclusive, comprehensive transboundary agreements **on the basis of the UN Water Convention to support countries of all continents**” (2023, UN Water Conference)



“
I urge all Member States to join and implement the **United Nations Water Convention.**”

UN Secretary-General António Guterres
at United Nations Water Conference, New York/ March 2023

A circular inset image showing UN Secretary-General António Guterres speaking at a podium. He is wearing a dark suit and a red tie. The podium has the UN logo on it. The background is a dark green wall.

Amina J. Mohammed, Deputy Secretary General of the UN

«The world will not achieve the SDGs without urgent progress on access to water, sanitation and hygiene services [...] 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.**» (2021, Africa Water Week)



MORE INFORMATION

Water Convention Secretariat –
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RESOURCES www.unece.org/env/water/publications/pub.html



www.unwatercoursesconvention.org/



WATER
CONVENTION

