



“People and Wetlands: The Vital Link”
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**Technical Session V:
The framework for regional and international cooperation regarding wetlands
Paper 2**

International cooperation through river basin commissions

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Background

1. The “Academie de l'eau,” with the participation of the water agencies (“Agences de l'Eau”) for Rhin-Meuse, Rhône-Méditerranée-Corse and Seine-Normandie, initiated discussion of the management of shared water in cooperation with the International Water Office (I.W.O.), the permanent technical secretariat for the International Network of Basin Organizations (I.N.B.O.). This paper is based in large part on the conclusions of the International Conference on Water and Sustainable Development, held in Paris, France in March 1998. The conference recommended that high priority be given to addressing the problems created by the sharing among several countries of rivers, lakes and underground water.

From international rivers to shared resources

2. A water resource can be considered to be ‘international’ as the result of:
 - i. its geography, if it flows through two or more countries, or
 - ii. from a lack of full national sovereignty over a water resource, for example in the case of a river used for navigation.
3. According to the United Nations, the number of rivers shared by several countries was approximately 245, before the break-up of the former Soviet Union and Yugoslavia. Of these river basins, 70 are in Africa, 55 in Europe, 40 in Asia, 33 in South America, 24 in Central America, 15 in North Africa and 6 in the Middle East.
4. Arising from its use for navigation, the linear idea of the transborder river was extended first to drainage basins and then to underground water supplying basins.

5. More than forty per cent of continental freshwater resources are shared, justifying the interest of international organizations in their management. The declaration of the International Conference on Water and Sustainable Development, held in Paris, France in March 1998 emphasized that “*a common vision of riverine countries is needed for the efficient management and effective protection of transborder water resources.*” The conference’s priority action programme states that it is desirable to:
 - i. facilitate the exchange of accurate and harmonized information among riverine countries;
 - ii. promote consultation at all levels, especially within pertinent international institutions and mechanisms;
 - iii. define medium-range priority action programmes of common interest to improve water management and decrease pollution.

General texts establish the principles

6. The lack of a body of international law governing water resources is a major challenge to the efforts for achieving cooperative management of shared water resources. Nonetheless, there are many agreements, conventions and multilateral treaties covering navigation, hydroelectricity, water quality and the general sharing of resources; specifically underground water and the overall management of water.
7. In this context the Convention on Wetlands (Ramsar, Iran, 1971), through Article 5 of its text, also provides a framework for transboundary cooperation for the sustainable use of wetlands and water resources. Article 5 of the Ramsar Convention states that “*the Contracting Parties shall consult each other about implementing obligations arising from the Convention especially in the case of wetlands extending over the territories of more than one Contracting Party or where the water system is shared by Contracting Parties. They shall at the same time endeavour to coordinate and support present and future policies and regulations concerning the conservation of wetlands and their flora and fauna.*” At this Conference of the Contracting Parties, and in this Technical Session itself, the signatories of the Ramsar Convention will consider and deliberate on “Guidelines for International Cooperation under the Convention” (Ramsar COP7 DOC. 15.20), of which a major component addresses how best to achieve cooperative management of shared wetlands and river basins.
8. These agreements, conventions and treaties constitute a mosaic of texts revealing differing orientations and basic principles of jurisprudence that will be strengthened in the near future in the light of increasing concerns over water quantity and quality. These concerns arise primarily from the impacts of population growth, irrigation and flooding.
9. Many case studies point to voluntary restrictions of a country’s sovereignty over a river when it is considered to be an international river and a shared resource. The first principle that comes to light is that of “*equitable and reasonable use.*” This requires that whenever a country uses the water of a shared water resource that it not deprive other riverine countries of their right to equitable and reasonable use. This rule is referred to as the ‘non-harmful use of a

resource'. It is universally recognized (Principles 21 and 22 of the 1972 Stockholm Declaration on the Environment).

- 10.. Two important conventions for the protection of freshwater have also been established namely:
 - i. the Helsinki Convention for the protection and use of transborder waterways and international lakes. This convention sets out general principles to be included in treaties binding riverine countries of a water resource to use the best available technologies and the best environment-friendly technologies; and.
 - ii. the New York Convention on the law governing the utilization of international waterways for purposes other than navigation.

Much remains to be done

11. While recognizing that considerable progress has been made during the past ten years to codify principles and rules, thanks to an awareness of the United Nations and the signing of the Helsinki and New York conventions, it is quite obvious that there still is much to do. Some countries, however, are still reluctant to discuss this issue. The refusal of several countries to participate in discussions of a draft of an innovative international convention on the international law of shared rivers at a very recent conference in Lebanon is tangible proof of this reluctance.

Proposals for creating effective structures for the management of shared water resources

12. International commissions for shared streams and rivers are organizations with a juridical status created by several riverine countries to facilitate consultation and broad co-ordination in order to use and manage common water resources better.
13. Tight "legal guidelines" have been developed by the United National during the past twenty years as a result of the work of these commissions to assist countries seeking to establish similar multi-state arrangements. They provide, however, only a safeguard. By establishing norms, they do encourage countries to agree and "*to act reasonably and equitably.*" In point of fact, any country that does not respect these guidelines can be held responsible following a complaint by a country felt to have been harmed by the actions of the other country.
14. The actions called for, and the means to be used, are quite different when it is a question of proposing :
 - i. new legal norms and means of reconciliation that must be in accordance with the United Nations guidelines
 - ii. the constitution of commissions or the improving of the functioning of international institutions and donors.

In the first case, it is a question of long-term actions because five to ten years are needed for a new convention to become effective. In the second case, proposals for improving the functioning of commissions or financing by donors can produce results much more quickly.

15. The following paragraphs contain proposals for improvement concerning:
 - i. the legal basis and an appeals process for resolving conflicts before the International Court of Justice;
 - ii. a proposal for establishing river commissions based on current orientations and for creating an international forum of basin commissions tied to the I.N.D.B.O.; and
 - iii. a proposal concerning international institutions and donors.

Additions to be made to the International Law of Water

16. The principle of full territorial sovereignty, according to which a state has the full right to use the water within its territory as it sees fit, is no longer admitted. Notions of “*common interests*” of riverine countries and “*limited territorial sovereignty*” over shared water resources are now recognized, in order to provide all riverine countries with a reasonable and equitable share of water.
17. The Helsinki and New York Conventions set forth and developed these principles. They also emphasized the means to be used for their application, especially the principle of “*polluter-payer*” and that of “*rights to be protected for future generations*,” both of which support the idea of sustainable development. They also took into account the notions of the “*hydrographic basin*” as a management unit, of preventing pollution at the source, and of prior authorization for discharging waste based on only the most advanced technologies.

The need to expand current international regulations

18. In spite of this broad range of management principles, there are large gaps that should be filled. These gaps include:
 - i. the need to provide clean water for everyone and especially for the least fortunate,
 - ii. the need for the integrated management of water resources with careful planning to balance supply and demand,
 - iii. the need to develop a network of accurate measurements and the exchange of data among riverine states,
 - iv. the importance of reinforcing the capacity of governments to cooperate more fairly and efficiently with associates, especially international partners, the private sector and local governments,
 - v. the promotion of the training of specialists and personnel for public information,
 - vi. the importance of support for incorporating these principles in national legislation.
19. It should also be pointed out that no plan exists for mobilizing funds required for implementing effective policies.

Creation of an International Water Tribunal

20. At the present time, litigation between riverine countries is judged by the International Court of Justice or a few tribunals and courts established by associated countries or federations.
21. The creation of a tribunal specialized in water, under the auspices of the United Nations and perhaps as an adjunct of the International Court of Justice, would complete the panoply of norms concerning water in general and more specifically those concerning shared water, taking into account the body of law of judicial decisions stemming from these cases.

A charter for International River Commissions

22. At the present time, the creation of international drainage basin commissions depends on the rules of international law, which must be respected, and on the experience provided by existing commissions. The commissions have, however, very limited knowledge of successful or failed experiences.
23. This is why, at a time when the international community seeks to create this type of commission, and as was emphasized at the Paris Conference on Water and Sustainable Development in March 1998, it is necessary to build up a code or charter of rules and options based on the experience of existing commissions. Countries deciding to reach agreement on cooperating in the management of their shared water resources will have at their disposal a foundation that can be adapted to the the specific conditions of the drainage basin in question.
24. This is what is described in the following paragraphs, emphasizing several pre-conditions to be implemented, in order to translate a desire to cooperate into effective action.

Prior consultation

25. Countries sharing a drainage basin should establish frequent specific contacts in order to exchange information on the water resource and its management. A gradual approach is usually preferable. Contacts should first be at the technical level and be made through water and other relevant agencies by holding informal meetings in order to develop mutual confidence. These contacts and meetings of specialists can be held on a rotating basis in each of the countries in a drainage basin, reaching out to local populations affected by projects and for discussion of several simple topics:
 - i. A network for measuring the water quality and quantity, as well as rainfall.
 - ii. An analysis of information on the quantity and type of water used for various purposes and waste discharge, as well as purification techniques and means.
 - iii. Exchanges of information on the protection of watertables, wetlands, floodplains, riparian and catchment zones.
 - iv. Presentation of information on constructions for regulating flow for navigation and flood prevention and the likely impacts of these.

26. After this initial phase, exchanges can seek to prepare a technical report on the drainage basin, describing the water cycle in light of the needs of the local inhabitants in each part of the basin, making it possible to point out local problems in all parts of the basin, as well as existing or potential problems in parts of the drainage basin belonging to each of the riverine countries.
27. The discussion can be expanded to include all the parties and be enlarged to include a global approach to the problems affecting local populations and agriculture, including the protection of the fauna and flora. There should be:
 - i. an exchange of information on wetlands and their conservation as well as on measures taken for the protection of the environment,
 - ii. an analysis of the planning required for the management of the resource, including balancing of supply and demand and reduction of demand (water savings and recycling),
 - iii. a study of the effect of upstream and downriver activities,
 - iv. a comparison of the resources used for training technicians, water users and the public,
 - v. presentation of management techniques used in the associated countries for water supply and drainage, planning, irrigation, flood control, water legislation (water police, authorization for use and waste discharge) and mechanisms for financing constructions.
28. Management of transborder freshwater is possible only if the affected countries accept limitations to their sovereignty over that water resource. This requires a convention or treaty to define this limitation. This is, of course, the obstacle which can hinder the development of a partnership between riverine countries.
29. After these points have been studied and a consensus has been reached by the partner countries at the political level, the formation of management commission can be considered. This will require reaching agreement on objectives, means to be used and operating methods as well as recourse available in the event of disagreement (for example, intervention requested and agreed upon of international or regional organizations on request and by mutual agreement).

Pre-conditions for river basin commissions

30. The initial stage begins with the desire of at least one of the riverine countries to reach agreement with other riverine countries.
 - i. either because the studies called for in the previous paragraph have shown that there are problems affecting or potentially threatening a water resource that can be solved only through concerted action; or
 - ii. because it is determined that adverse effects (pollution, temporary water scarcity, etc.) are caused by activities in a country that is not respecting international law.
31. Agreement should be reached on an outline giving the details of programmes, studies to be made, exchanges of technical information and division of tasks into those to be carried out jointly and those remaining in the competence of each country.

32. **The convention or protocol should include the following points:** the purpose of the cooperation, especially if it covers only specific problems (navigation, electricity generation, division of available water, anti-flood constructions and pollution control) or if the purpose is the overall management of water resources in the basin.
33. In order to **fulfil the objectives of** joint programmes, provision should be made for:
- i. studies and the exchange of information
 - ii. construction and management of installations where essential (dams and water purification plants)
 - iii. the training of personnel, users and associations
 - iv. public information
34. **Fiscal and financial arrangements** for fulfilling objectives should be discussed even if, in almost all cases, they concern the internal administration in individual countries and should remain within national jurisdiction. Fiscal and financial policy have a strong impact on objectives, especially in the case of:
- i. the policy of polluter-payer or user-payer,
 - ii. the setting of tariffs for use, consumption and to influence demand,
 - iii. the taxing of the use of pollutants such as fertilizers or pesticides.
35. **Defining signatories to the convention and the role of the commission** is for each country in the water basin to decide with possible participation of associated international bodies. The aspects to be defined include:
- i. division among signatories of financial support for operations,
 - ii. definition of participation of users in the discussions and decisions,
 - iii. the legal status of the commission, giving it a status in relation to the signatories and the host country of the future permanent secretariat,
 - iv. resolution of conflicts arising among signatories. These should be investigated by a special office specifically created by the commission.

Creation of a Forum of International Drainage Basin Commissions

36. National river basin commissions have been formed in many countries and these are quickly joining the International Network of Drainage Basin Organizations (I.N.D.B.O.) in order to facilitate communication and to benefit from the experiences of others. It seems that the creation of a Forum of International of Drainage Basin Commissions (F.I.D.B.C.) would be quite desirable and useful as well.
37. In fact, the long established commissions, which have acquired valuable knowledge, are being requested to aid or advise new commissions or those encountering difficulties or problems.

Recommendations for international and regional institutions

38. These institutions have three additional roles to play in supporting the management of international river basins beyond their usual functions:
 - i. provide neutral experiences to aid in resolving difficulties,
 - ii. contribute to promoting the harmonization of the commission's networks of measurements and the training of technicians and users,
 - iii. assist the less-developed countries to reach the level of performance of the more developed countries through external aid.
39. The first role is that traditionally played by the World Bank and other United Nations agencies such as FAO, WHO, WMO, UNEP and UNDP. They can intervene at the request of the countries concerned. This is facilitated if the World Bank, the leader of the international organizations, is one of the signatories of the agreement. It can contribute to ensure that the programme is useful and efficient.
40. The second role is linked to the financial aid that these organizations can provide or mobilise to assist countries, or the commission, for programme implementation. They can decide to use part of their aid for training or harmonizing measurements.
41. The third role is very important because through favorable interest rates they can help to ensure that the work required for the programme is carried out at the same rate in rich and poor countries, which is essential for preventing the effectiveness of a joint programme being compromised by delays in some parties in a basin.
42. When evaluating requests for assistance, donors must ensure that the programme for which assistance is requested takes into full account the rules of international law. They act as important safeguards to prevent future conflicts.
43. The financial organizations of the United Nations could contribute by lowering interest rates and increasing the amount of aid for this type of programme in developing countries.
44. Regional organizations such as the Asian Development Bank, the Inter-American Development Bank (IADB), or the European Bank for Reconstruction and Development (BERD) can play similar roles.