



TRANSBOUNDARY CONFLICT AND COOPERATION: LEGAL AND INSTITUTIONAL MECHANISMS

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Excerpts from slides prepared for Water, Peace and Security tailor-made capacity development activities in Iraq. Please attribute authors when using materials.

Content

- Conflict and cooperation over transboundary water resources
- International water law
- International institutions
- Linkages between international/transboundary and national water challenges

Conflicts around shared water resources

- Disputes can occur between riparian states to shared watercourses due to
 - Incompatibility of interests in use/protection of resources and competition over resources
 - Links to broader geopolitical developments and power asymmetries
 - Unilateral project developments/fears for transboundary harm
- Various examples show how conflicts can arise and escalate
 - Aral Sea Basin/Rogun
 - Rhine River and Haringvliet Sluice
 - Nile River/Grand Ethiopian Renaissance Dam and CFA
- Conflict can take very different forms
 - Confrontational statements by politicians
 - Deterioration of political/diplomatic or economic relations
 - Exchange of violence

Asia's Water Politics Near the Boiling Point

U.S. intelligence sees global water conflict risks rising

Water scarcity a contributing cause of wars, terrorism in Middle East, North Africa

Water wars in Central Asia Dammed if they do
Spats over control of water roil an already unstable region

Are India and Pakistan set for water wars?

Will Central Asia Water Wars Derail China's Silk Road?

China needs to be wary of a looming water crisis in Central Asia.

Water Wars? Think Again: Conflict Over Freshwater Structural Rather Than Strategic

But: Cooperation prevails

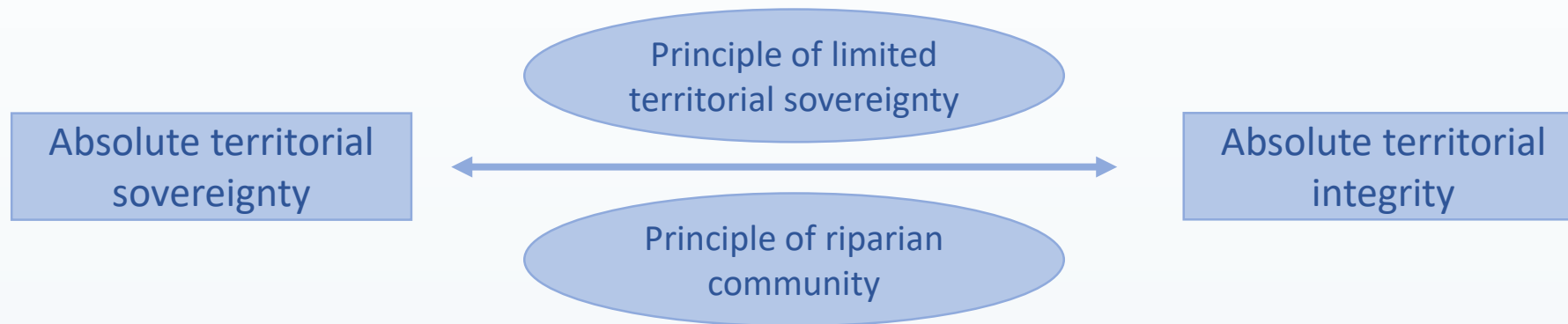
- In spite of the risk of conflict, all historic evidence shows that cooperation prevails as countries find it more beneficial to cooperate than to engage in conflict
- The majority of all events is cooperative in nature, if conflict occurs, it is usually of limited intensity
- Conflicts typically occur around questions of water allocation and infrastructure and can often be prevented/mitigated

HOWEVER:

- Conflicts can have negative repercussions for water resources, communities and entire countries and regions
- Therefore need to prevent and mitigate conflict and foster cooperation through various mechanisms

Principles of international water law

- **Principle of absolute territorial sovereignty** (Harmon Doctrine): state can use water resources on its territory according to its own interests and preferences; no other actor can challenge its sovereignty over territory and resources
- **Principle of absolute territorial integrity**: state has right to water resources in an untouched manner when they enter its territory
- **Compromise**: principle of limited territorial sovereignty and commitment to riparian community/community of interest

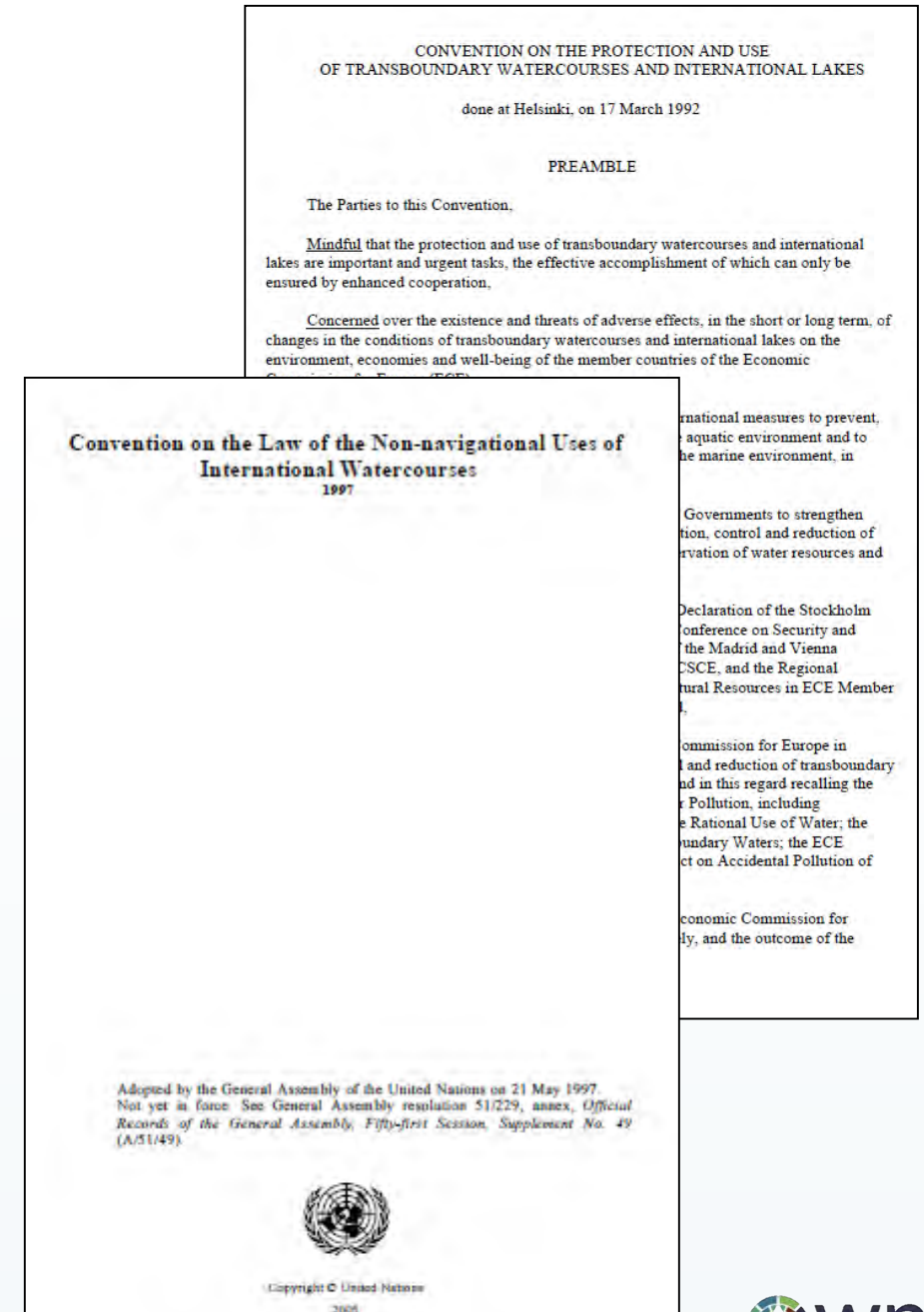


Principles of international water law

- Key principles of international water law are
 - Equitable and reasonable utilization
 - No significant harm
 - Cooperation
 - Data and information exchange
 - Prior notification and consultation
 - Accident prevention and warning
 - ...
- These principles are interdependent and can only be understood and interpreted in the context of the overall legal regime and with a focus on the specific situation in the basin

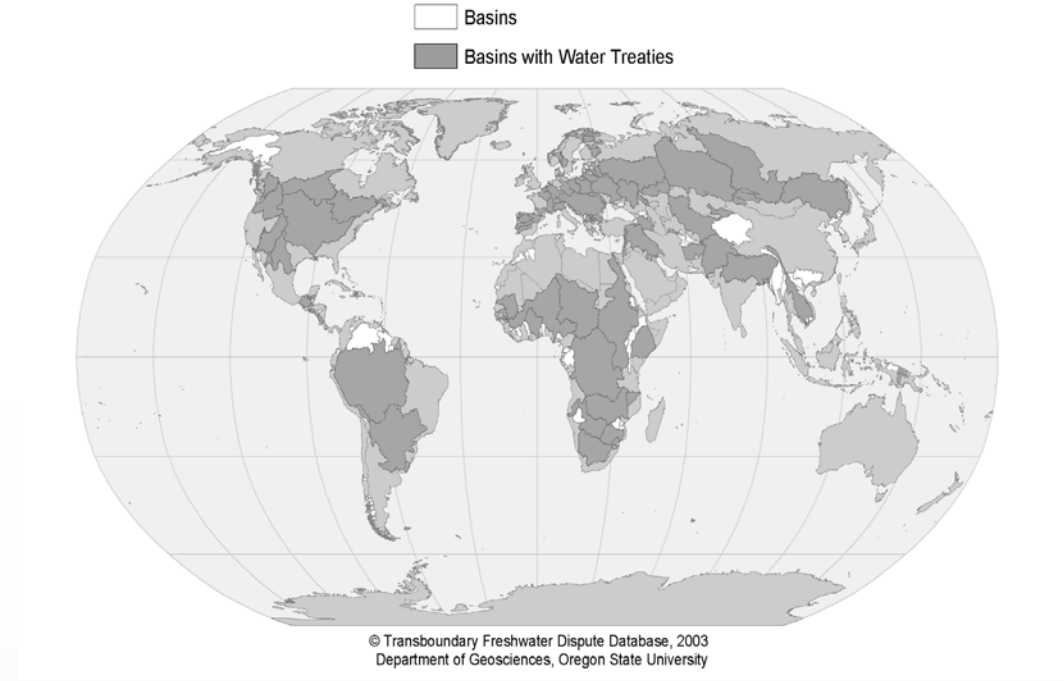
Global instruments

- There are now 2 global water conventions
 - 1992 Convention on the Protection and Use of Transboundary Watercourses and International Lakes (UNECE Water Convention/Helsinki Convention)
 - 1997 UN Convention on the Non-Navigational Uses of International Watercourses (UN Watercourses Convention/New York Convention)
- Other relevant international instruments are
 - 2008 ILC Draft Articles on the Law of Transboundary Aquifers
 - 1971 Ramsar Convention



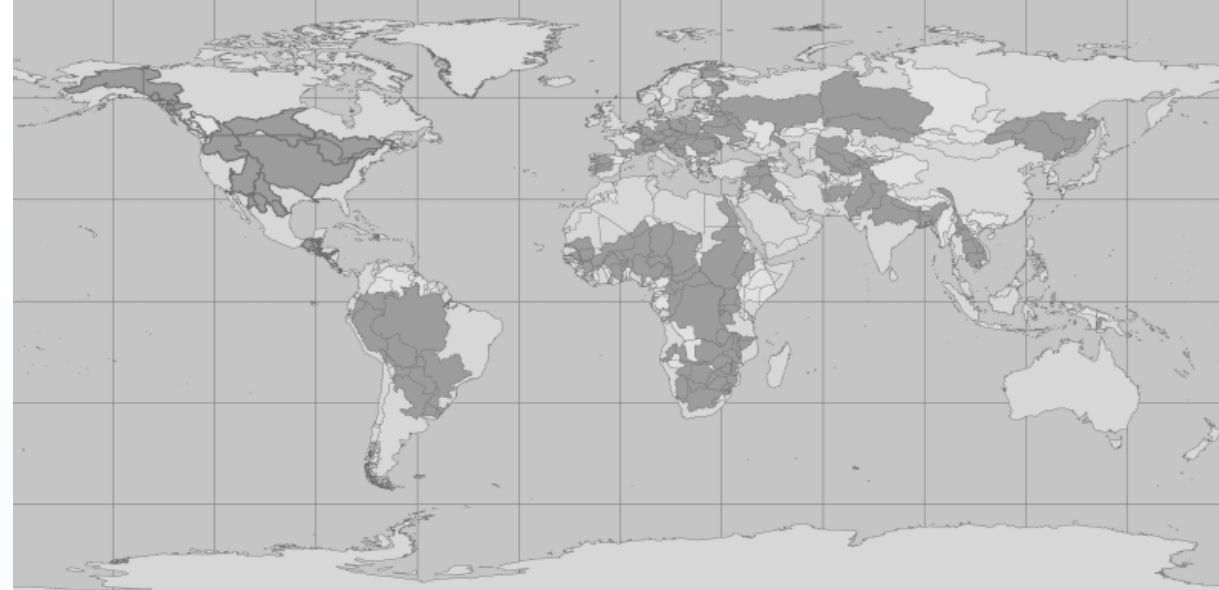
Basin treaties

- Are international agreements between riparian states
- Institutionalize cooperation by making it more long term and binding
- Focus on issues relating to development, use or protection of shared watercourse
- Codify riparian states' commitment to cooperation and determine objectives of cooperation (vision for basin)
- Codify principles, rules, rights and obligation of countries in use/protection of water and their implementation
- Establish cooperation mechanisms, dispute-resolution mechanisms, etc.



Basin organizations

- Institutionalize cooperation further by establishing long term platforms for exchange, negotiation and cooperation
- Fulfill various functions, including
 - Provision of negotiation forums
 - Support to joint decision-making
 - Data gathering, exchange, management
 - Basin monitoring and assessment
 - Early warning
 - Implementation of notification processes
 - Implementation of joint activities and projects
 - Provision of dispute-resolution support



Dispute-resolution in shared watercourses

- Disputes can occur any time, even with institutionalized cooperation in place
- In order to ensure that disputes do not escalate and have repercussions on regional relations and peace, need dispute-resolution mechanisms
- Dispute resolution can be
 - Political
 - Judicial
- Dispute-resolution can be done through
 - formalized mechanisms (negotiations, track 1-diplomacy, adjudication, arbitration)
 - informal mechanisms (track 2-diplomacy, joint fact finding, public diplomacy)
- Dispute-resolution can involve disputing parties as well as 3rd parties from within and beyond the basin (international/regional organizations, other governments, NGOs, international courts)

Conclusions

- Conflicts between riparian states of a shared watercourse occur when interests in use, development or protection of shared resources diverge
- International water treaties can codify riparian states' commitments to cooperation, general aims of cooperation and rules and obligations of states
- Basin organizations institutionalize cooperation further and ensure long term cooperation and benefits
- Even without formalized institutions in place, cooperation is possible through data sharing, joint projects, conflict prevention, civil society cooperation, etc.