

# A STRATEGIC GUIDE FOR THE CONSTITUTION OF AN INTERNATIONAL INTER-STATE COMMISSION FOR SHARED WATER<sup>1</sup>

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## 1.1. INTRODUCTION

The international character of a waterway is determined by either geography (if it flows through two or more countries), or by arbitration (if the riparian State does not consider itself to be in full possession of its sovereign national powers from a navigational point of view). According to the United Nations, there are 245 rivers shared between several countries including some of the most productive. If we also consider shared lakes and the concept of a river basin rather than a river per se, 40% of all continental freshwater resources are shared. Transboundary rivers have historically been very important for development through navigation, agriculture, fisheries and power production. This therefore justifies the interest that international organisations have in water resources management. However, population growth, economic development, and changing regional values have intensified competition over water resources worldwide, leading to predictions of increasing future conflicts over shared water supplies. Of particular concern to the international community is the potential for conflict within the world's 263 international basins. To mitigate the likelihood of conflict as well as to resolve existing disputes, the international community has devised principles for international watercourse management. These advocate that a shared vision for the riparian countries is important for the effective development, management and protection of transboundary water resources.

To this end, it is particularly desirable to:

- promote the exchange of reliable and comparable information between the riparian countries,
- develop dialogue on all levels, including at the level of the relevant international institutions and arrangements whenever possible,
- define multi-year priority action programmes of common interest to be implemented in order to improve water management and pollution control.

Given that water is an *asset* that plays a vital role in satisfying basic human needs, and that fresh water is a *fragile resource* whose renewal is easily disrupted by humans and human activities, it appears that managing the water cycle requires an *integrated approach* rather than a sector-based approach. The management and development of water resources must therefore involve decision-makers, technicians, end users and planners at all levels. The complete water cycle, fed by rainfall that supplies the surface and ground water, should be considered within which withdrawals and rejects made by all users interact on the resources, in terms of quantity and quality, depending on their location within the territory. The close links between water and the environment should also be taken into account.

These facts mean that the *hydrographic basin* is the best level at which to establish a water programme. As a result, it is a good idea for countries that share water resources in a basin to

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*exchange information* in order to ensure that this precious asset is correctly managed, to confer and, when the time comes, to work together within the framework of an "*International Basin Commission*".

In order to cement these relations and commit themselves to an *efficient management* of their water resources, these States can make use of the articles proposed below, which outline the means and resources that need to be implemented.

## **1.2. PRELIMINARY ACTIONS**

These are carried out by the respective countries and are aimed at levelling the ground to facilitate better and more fruitful discussions during the commission constitution phase. The actions that may be undertaken by each country include:

1. Establish measurement networks to carry out an inventory of the water resources systems in its own part of the basin that cover rainwater, surface water and groundwater. It must also establish a list of withdrawals and discharges comprising, at least for the most important, both quantitative and qualitative measurements.
2. Establish a mechanism for economising water use in the various sectors. It is usually better to take action on the demand side rather than the supply side.
3. Establish a mechanism for controlling pollution of the water resources in the basin.
4. Establish a mechanism for authorisation of water withdrawals and wastewater discharges.
5. Establish a mechanism for financing the commission's work. There are many ways of achieving this but The means of financing: The means of financing may come from:
  - Income from the price of water and sanitation and water rates based on the principle "water pays for water", via self-financing and loans.
  - Fees earmarked for projects by applying the principles of "polluter-payer" or "user-payer". This has a double impact; it provides indispensable financial resources in a very capitalistic sector and it encourages polluters to provide adequate clean up measures and water consumers to reduce their requirements by cutting down losses and wastage.
  - Subsidies (or loans at reduced rates) from the State (or local authorities), from income arising from taxes and levies on pollution and water wastage. This has the same dual effect as the measures described in the previous paragraph.
  - Financial assistance from outside the countries concerned (public aid for development and multilateral or other financial backers), donations and loans at reduced and rates and favoured pay back periods from International or Regional Authorities or partner countries.The use of one or another of these will affect the economic management of water and whenever possible, resources coming from water itself, which encourage economising water and clean up measures, should be favoured.
6. Involving citizens in the work and providing them with preliminary training in the problems associated with water Some of the principles that stand out include;
  - ensuring that local water managers and technicians receive training in consensus building and listening to the needs of end users.

- including, in this training, not only technical aspects, but also training in health and safety and provide a better understanding of the natural water cycle and the various means that allow water to be used in an appropriate manner.
- undertaking to provide the various populations (downstream as well as upstream), with a better awareness of the general interest of water as a public asset as well as the importance of preserving water quality and the environment and how these issues link up to health considerations.
- adopting a participatory approach in the training, and place special emphasis on local skills and capabilities in all training and education programmes. The means put in place should mainly be based on the existing education systems in each country, which should as a result be reinforced.

### **1.3. PRELIMINARY DIALOGUE**

It is desirable that countries sharing a common basin establish unofficial contacts to exchange information on water and its management. Initial contacts should be at a technical level and established through their respective water administrations. They can take the form of invitations by one administration to another for some technical meetings in order to compare the data available on the basin, the management method and the technical work carried out. They should be held alternately in each country of the basin.

The topics that could be analysed are as follows :

- Measurement networks for the quantity and quality of surface and ground water, for precipitation, with a description of the measurement techniques and station density. The corresponding studies could result in systematic data exchanges and an assessment of water resources in the basin.
- Analysis of data on water abstractions for different uses and discharges, in quantity and quality, as well as the treatment facilities and techniques used.
- Presentation of data on works completed for flow control, such as dams, and for protection against flooding (works on the river bed, embankments, etc.), as well as for navigation. Analogous exchanges on the protection of aquifers and wells.
- Exchange of knowledge on wetland areas and their conservation and on the measures that have been taken for environmental protection.
- Analysis of the works planned for the management of the resource: appropriateness of supply and demand, and demand management (water saving, reuse, etc.).
- Comparison of means dedicated to the training of technicians, users and the general public.
- Finally, presentation of the management methods employed in the countries concerned.

These exchanges could lead to the preparation of a monograph on the Basin, which describes the water cycle in relation to the requirements of its inhabitants and their activities, showing local problems in each part of the basin and those, either existing or susceptible to appear between the areas of the basin belonging to each of the riparian countries.

#### **1.4. THE COMMISSION CONSTITUTION PHASE**

This indispensable preliminary dialogue phase is in no sense a waste of time. Quite the contrary, it allows the different national bodies to get to know each other better and, at the same time, to understand the problems affecting the basin as a whole. This highlights the necessity of organising a forum for permanent dialogue between the States, resulting in the constitution of a Commission :

- either because studies mentioned in the previous paragraph showed that some problems which disrupt (or could disrupt) its water resources can only be solved jointly,
- or because it notes that disruptions such as pollution, shortage of water at certain times, etc. are caused by activities from another State which is not respecting International Law, meaning a declared or potential litigation.

#### **The organisation of a preparatory conference and its agenda**

A conference of this type should bring together representatives from all of the States concerned at the invitation of at least one of these countries, in the presence of delegates from the United Nations, friendly countries, international or regional institutions and any financial backers that could provide useful support.

The agenda of such a conference, which should be prepared with the technical services, could be as follows:

- Presentation of the inter-state problems disrupting the water cycle in the Basin;
- Propositions to deal with these problems, showing the necessity of and benefits from a close co-operation between the riparian countries;
- Proposed framework for such a co-operation concerning the objectives of actions, the studies that need to be carried out, the technical information exchanges, the share out of tasks between those earmarked for joint action (or that need to be co-ordinated closely) and those under the responsibility of each State ;
- Draft Convention or Protocol setting up the international basin or river Commission, as a working, meeting and exchange instrument.

**In the most difficult cases**, as demonstrated by the example of the Nile, this preparatory conference may be held in successive years in the capitals of the countries concerned in order to finally reach a consensus agreement on the work that has to be done and how the costs and resulting benefits provided can be shared out in an equitable manner. Another solution is to set up an “**Inter-State Study Commission**”, as was the case for the Mekong. This can then be transformed definitively into an International Basin Commission.

**Whatever the case, the conference, once it has enabled a solution to be found that is acceptable to everyone in the preparatory Commission should stress the necessity for each country that shares the water from a single basin to take action, while keeping to the principles set out in *International Law*, namely :**

- The use of water by one country must not adversely affect the interests of the other countries
- Rights must not be abused
- States sharing a single basin must favour “good neighbour” solutions

- The internal “water laws” of each State must be formulated and implemented in a manner that does not lead to conflicts

These rules, which were, in particular, set out by the *Helsinki and New York Conventions*, are valid for all water uses, whether withdrawals or discharges, and thus concern both the quantitative and qualitative aspects of the resource. They reflect the principles that are valid between upstream and downstream areas within a single country as well as the principles of reasonable and moderate use of water.

### **Objectives of the proposed International Basin Commission**

As pointed out above, these objectives may be limited in the first instance to studies whose purpose is to clarify what needs to be done first. They can only involve specific problems, for example navigation, electricity generation, dealing with low water levels and evening out flow rates, combating floods, controlling pollution, fishing, etc. Obviously, these limited objectives can always be extended at a later stage.

In fact, it is a good idea to set progressive objectives, beginning with the easiest and then moving on to more ambitious objectives and aim for overall management of the water resources in the basin, in other words the preparation of a water use plan.

### **The means that must be put in place in order to attain the chosen objectives**

□ *The attainment of these objectives depends on multiple actions in the field :*

- studies and exchanges of information;
- construction works (dams, embankments, treatment plants, etc.) ;
- the management of these works, which all have some impact on the water cycle, in terms of quantity and quality;
- training of operators, users, associations, etc.
- informing the public.

□ *The attainment of the objectives also depends on fiscal or financial arrangements*

They have a strong impact on the objectives. This is the case of :

- the policy of polluter-payer or user-payer;
- the withdrawal and consumption tariffs that influence demand;
- or any possible taxes on non-point pollution sources such as fertilisers or pesticides.

This must be evoked even though, in the almost all cases, the arrangements concern the administrative organisation of each State and must remain under its responsibility.

## **1.5. THE ORGANISATION OF THE COMMISSION**

The organisation of the Commission must be clearly set out in the founding Convention, which is signed by the representatives of the Riparian States and, if appropriate, a representative of an associated international authority.

It must comprise, as a minimum requirement, the following bodies:

- an *Assembly*, composed of members appointed by the States and associated authorities, which elects its President (who may, if appropriate, alternate between the members of each State),
- a *Board of Trustees*
- an *Authority* responsible for settling any disputes that may arise
- various *Working Groups*, which meet periodically in places chosen by the Assembly (or set out in the Convention),
- *A permanent secretariat.*

The Convention sets out the role of each component of the structure and the arrangements for decision making or passing recommendations (unanimity, qualified majority, etc.), the schedule of meetings of the non-permanent organisms (Council, workshop and litigation authority) and places of meetings, as well as the seat of the permanent Secretariat.

Associated bodies may also be set up, such as “*National Committees*” that assist the working groups, and a “*Council Group*” that groups together delegates from other friendly commissions.

### **The participation of end users in discussions and decision making**

This involvement is desirable, since not only is it necessary to ensure that there is a consensus between all of the States involved, but also to ensure that the works carried out correspond to the desires of the end users in each country who, in the final analysis, will have to bear the cost directly (through the price of water and services) and indirectly through taxes.

Although these end users cannot themselves be signatories to the Convention or indeed vote at Assemblies, it is a good idea to provide for their participation at these assemblies and in working groups.

These end users could be nominated by Associations presented by each State, as a function of the posts provided for in the make up of these various bodies.

### **The financing required for running the Commission**

The apportionment of running costs between the signatory parties should be set out in the Convention, with the total costs coming under the jurisdiction of the Assembly, on the Permanent Secretariat’s recommendation. The Assembly thus sets the budget for joint works and how costs should be apportioned between the parties concerned, both in terms of investment costs and in terms of the running and maintenance costs for the installations.

### **Membership of the International Organisations**

It is proposed that the Commission thus constituted should join international organisations like the International Basin Commission Entente (I.B.C.E.), possibly affiliated to the R.I.O.B. (International Network of Basin Organisations).

## **1.6. LEGAL STATUS OF THE COMMISSION**

The legal status provided for the Commission must give it the moral personality vis-a-vis of the majority States and the one of the seat of its permanent Secretariat. It must have the capacity to stand in justice and to seize all specialised jurisdictions. Similarly, the legal statute of eventual works realised must be specified.

Joint works are individually declared as the shared and indivisible property of the member states, In the case of works jointly owned by the Parties, the State in which the all or part of the structure is located must not put any obstacle in the way of their construction, nor obstruct in any way the rights of use, legal enjoyment, and administration of the other States that are joint owners of the works.

## **1.7. SETTLEMENT OF DISPUTES THAT MAY ARISE BETWEEN SIGNATORY STATES**

Each state has the right to put any dispute concerning it before the Commission or to put before it any disputes presented by more than 10 000 of its inhabitants.

These disputes may be put, in the first instance, before the authority created for this very purpose by the Commission before being put, if necessary and if they cannot be settled otherwise, before a Tribunal that is stipulated in the Convention (either a regional Court, or the International Court of Justice).

## **1.8. AMENDMENTS TO THE CONVENTION**

Any party may propose amendments to the Convention, which will be examined when the parties meet.

The text of any proposed amendment is communicated, in writing, to all of the parties concerned ninety days before the meeting at which the amendment will be proposed to be carried. Any amendment must be passed by the representatives of the parties at the Convention.

It will come into force on the 90th day after the amendment is passed.

## **1.9. RATIFICATION**

The proposed Convention must be ratified by the States concerned and by the international or regional organisations that are signatories to this convention.