

Institutional and Legal framework for Sustainable Management and Development of Transboundary Water Resources

Introduction

Transboundary water resources are shared water resources. These water resources belong to all the Basin States. The management and development of transboundary water resources to day worldwide faces a number of challenges. Despite of these seemingly formidable challenges, most of the tranboundary waters still hold tremendous opportunities for growth.

Cooperation

- Cooperative management and development could bring a vast range of benefits including increased hydropower and food production; better access to water for domestic use; improved management of watersheds and reduced environmental degradation; reduced pollution and more control over damage from floods and droughts. The basin States today are not sure of their water security due to uncoordinated development going on these basin States. These are the result of non-cooperation by the basin States. Today the use and management of shared water resources requires cooperation of all the Basin States. Cooperation is not a choice but a must.

Why Cooperation? Example Nile

- **Growing number of water resources infrastructures being planned and implemented across the Nile....** Coordinated operation is a must to minimize, avoid or mitigate risks; avoid conflicts; optimize operation and returns, etc.



EVOLUTION OF THE NILE COOPERATION

HYDROMET: 1967 - 1992

- Members: Burundi, Egypt, Kenya, Rwanda, Sudan, Tanzania, Uganda; Ethiopia and DRC as observers (after 1971 and 1977, respectively)
- Focus: hydrometeorological survey in the lakes region

UNDUGU: 1983 – 1992 (run in parallel to Hydromet)

- Members: Egypt, DRC, Sudan, Uganda, Burundi, Rwanda; Ethiopia and Kenya as observers
- Focus: establishment of Nile Basin Economic Community

.....Evolution of the Nile Cooperation

TECCONILE: 1993 - 1999

- Members: Egypt, Sudan, Rwanda, Tanzania, Uganda, and DR Congo
- Focus: technical cooperation (environmental and water quality); started the Nile 2002 conferences, a huge success in bringing basin countries together.

NILE BASIN INITIATIVE (NBI): 1999 - To date

- All Basin States are Members, Eritrea participates as observer

MEMBER STATES



Burundi



DR Congo



Egypt



Ethiopia



Kenya



Rwanda



South Sudan



The Sudan



Tanzania



Uganda

Shared Vision Objective: to achieve sustainable socio-economic development through the equitable utilization of, and benefit from, the common Nile Basin water resources

Water Security

- The water security of the basin states revolves around three key issues, namely the water resources *availability*, its *accessibility* and addressing any *conflicts* that might arise. In order to understand the functioning of the watercourses (the shared water resources), one needs to know the sources of basin's fresh water resources and its current uses, existing water allocations based the consequent legal rules governing use.

Development and Management of the Basin Water Resources

- **Availability of Water Resources**
- In order to ensure the availability of the shared water resources the basin States must agree to cooperate in the management of the basin's water resources. The principles of cooperation in the management of shared water resources are well documented in the 1997 UN Watercourses Convention and a number Basin Agreements, Memorandum of Understanding and the protocols such as that for the management of Lake Victoria basin under the EAC Treaty and SADC.
- Example: The MOU for the management of Lakes Chala and Jipe and River Umba Basins Ecosystem provides that the Partner States of Kenya and Tanzania shall cooperate in the management of the water resources of Lakes Chala and Jipe and River Umba Basins in the following principles:

Principles that ensure sustainable development and peaceful coexistence

- *the principle of equitable and reasonable utilization of water resources:*
- *the principle of sustainable development:*
- *the principle of prevention to cause harm to other members states:* In this principle partner States shall individually and jointly take all appropriate measures to prevent environmental harm rather than attempting to repair it after it has occurred;
- *the principle of prior notification concerning planned measures:*
- *the principle of Environmental Impact Assessment and Audit*
- *the precautionary principle:*
- *the 'polluter pays' principle*
- the principle of prevention, minimization and control of pollution
- the principle of the protection and preservation of the ecosystems of international watercourses
- the principle of subsidiarity

The above principles therefore, restore the following Rights and Obligations on the basin States in cooperation in the management and Development of the shared water resources: -

- Promote the proper joint sustainable management and equitable utilization of water resources of the Basin;
- Causing No significant harm
- Build capacity of existing institutions and develop additional institutions dedicated to contribute to the purposes of this MoU;
- Provide a forum for discussion of various initiatives, issues and impacts concerning water resources and the environment in the Basins;
- Conduct research concerning the integrated and sustainable use of water resources of the Basin;
- Ensure joint monitoring of both quality and quantity and other such parameters of the Transboundary water resources as well as environmental changes as a result of any infrastructure development and natural resource use within the Basin;
- formulate joint plans, programs and projects, and undertake joint financial management and allocate funds to activities of the framework, or to such activities of the basin states as it may determine to be in furtherance of the purposes of this MoU; and
- ensure proper land use and management practices commensurate with the eventual sustainable utilisation of the Basin resource

Accessibility of the Water Resources

Taking the case of the Nile River basin:

Reading the 1959 Nile Agreement between Egypt and Sudan a number of Scholars do concludes that all the 84 billion cubic metres of the Nile River flow has been developed by the two lower basin states of Egypt and Sudan; In such a case a Basin legal Framework with clear rights and obligations binding all the basin States is necessary:

The balancing of the principle of equitable utilization and causing no significant harm are the required rights and obligation.

Use of science e.g Nile Basin-Decision Support System as a tool to balance the existing use and the potential use would guide the implementation of the Policy.

NB DSS has revealed that there is over 20BCM of the Nile River flows that goes to waste and can still be developed.

Article 5 of the 1997 UN Watercourses Convention and Article 4 of the CFA 2010 on the same equitable Utilization of the shared water resources and Article 5 of the CFA 2010 and article 7 of the 1997 UN Watercourses Convention on causing no significant harm should form the basic legal frame.

The implementation of the same would require giving information on the planned measures accompanied with EIA.

Managing Any Conflict that Might Arise

- The 1997 UN Watercourses Convention calls upon the basin states to seek settlement of the dispute by peaceful means through negotiation, or use of good offices if the negotiation fails. The basin States could also request for mediation or reconciliation by a third party or make use of a watercourse basin commission established by the basin states.
- In the Nile River Basin it has been demonstrated that the proposed Nile River Basin Commission will act as forum for conflict resolution and clearing house for use and development of the shared basin water resources with Arbitration being the preferred means of dispute settlements.
- The similar River Basin Commission has proved to be very useful in the Okavango River Basin.
- Article 33 of the 1997 UN Watercourses Convention; Article 34 of the CFA 2010 provides the same
- Article 15 of the CFA 2010 Provides for the establishment of the Nile River Basin Commission
- A joint River Commission is key and mandatory in the management and regulating the use of the shared water resources to ensure equity and peaceful coexistence

Institutional set Up

- In the absence of a legally established basin Organisation, the Basin States have been revolving around Technical Cooperation, Committees or initiatives inform of projects, through MOUs, protocols or Declarations. These arrangements are not permanent and not binding on the basin States and therefore have ben seen as gentlemen agreements and basin States can join at will and leave at will while the basin as permanent and must be managed continously. A good example is the Nile basin revolving in cooperation.

Conclusion

- Finally all the basin states must agree and have a basin agreement with clear rules, norms and principle and a permanent Basin Organisation with respected mandate by all the basin States for the sustainable development and management of the shared water resources in an equitable and reasonable utilization in cooperation and joint planning.