



## **Earth Dialogues**

International Conference

**Puerto Madryn**  
Argentina  
October 22-24, 2018

## **National Sovereignty and International Watercourses**

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## **DIAPO 2**

The need to anticipate conflicts over shared water resources and to find international, legal and political mechanisms to assist in resolving them is becoming urgent. Although armed, inter-state conflicts over water are rare, it must be remembered that these are not the only types of conflicts facing societies in regions of increasing water stress. Internal conflicts between different ethnic groups, regions, users and even small communities can and do arise over water. Both types of dispute are relevant to the emotive question of national sovereignty, which has both inter-state and domestic manifestations. The question of who has the right, or entitlement, to how much water for what and when can be asked at the level of riparian states and between different groups of people sharing a pump or stream. For billions of people the daily source of drinking water is an international watercourse, and these same people and the natural environment, which sustains them, should be the prime consideration in any debate on the question of who has sovereignty over such waters.

**DIAPO 3** The threat of a global crisis caused by the continued widespread over-exploitation and pollution of water requires that a consensus be reached regarding the delicate balance between national sovereignty and the management of the nearly 300 basins, which are shared by two or more States. **DIAPO 4.** Most of the world's largest and most vital freshwater sources are transboundary.

This is clearly a matter which goes well beyond international law to considerations of social security, human rights, political and public will, minorities, gender, culture and the environment, and calls for a change in the way we value and treat water.

It is dangerous to be too dismissive over the risks of future inter-state conflict over shared waters. If we continue with our current behavior pattern, at least 60 countries will face severe water stress within the next 25 years. Unless a comprehensive set of principles on how to share this precious resource is developed now, certain states may be forced to resort to desperate measures to secure enough water for their survival.

**DIAPO 5.** An excellent start would be the adoption of good water laws and priorities at the national level, but states who face a thirsty future need also to look to their neighbors and develop agreements on protecting and fairly apportioning common watercourses and jointly developing ways to use their water more efficiently in order to pre-empt the crisis. A spirit of solidarity is required between up-stream and down-stream states, as well as the development of cross-border systems of compensation and trade-offs, whether to deal with problems of scarcity, flooding or pollution. The ratification of the UN Convention on the Non-Navigational Uses of International Watercourses would be a gesture of good will on the part of states, and could serve to remove the misplaced feelings of suspicion and insecurity which hinder the establishment of regional, basin level

agreements. This should be seen as creating a system of effective interdependence rather than restricted sovereignty.

### ***Sovereignty over water DIAPO 6***

Both water and sovereignty are issues, which must be tackled in conjunction with other factors, and from more than one angle. Water is essential to sustain and develop the region, the state, the community, the individual and the environment, and thus the exercise of sovereignty over water must also be considered on all these levels. Sovereignty is a highly emotive term which can be deconstructed into domestic or “internal sovereignty” - the relationship between the Representatives of a State and its population - and “external sovereignty” - the relationship of the State itself towards other states. When considering the question of transboundary watercourses, both internal and external manifestations of sovereignty are relevant. For millions of people the local source of water also happens to be an international waterway. These communities should therefore be assured access to, and given a role in the management of, this water by the authorities in their own State. At the same time, these State authorities have a responsibility to maintain an acceptable level of water quality and quantity for those further downstream, and not to develop in such a way that states further upstream will be hindered in their future water-utilisation plans.

In the case of international basins, “all involved” includes people and ecosystems in other states, and, by extension, the exercise of sovereignty over these watercourses should therefore take them equally into account. This calls for a high level of regional understanding and cooperation both between and within states.

One of the most important characteristics of an independent state is the ability to enter into international relations; the management of international basins is an obvious area where cooperation between states and peoples is essential.

### ***Interdependencies in the water cycle DIAPO 7***

The effective administration of international watercourses also demands that attention be given to all the aspects and interdependencies within the hydraulic cycle. Aquatic ecosystems cannot be managed in isolation from practices on land, such as deforestation and irrigation, or from social and economic developments, such as increased urbanization and industrialization.

**DIAPO 8.** Appreciation of the relationship between water and other environmental and meteorological changes is also crucial. The quality and quantity of water in a region is both affected by and can cause climate changes, and is crucial to preserving the health and biodiversity of other natural features, particularly forests and wetlands.

**DIAPO 9.** Thus planning water policies is a very complex matter involving a myriad of components, and projections for the future must consider the possible effects of changes in population, temperature, rainfall, vegetation, land-use, etc.

### ***Water in time and space DIAPO 10***

Water is a finite resource, more or less the same amount of which has been available throughout time. Its existence in a particular form in a particular region should be respected as a permanent feature of the landscape, along with the people and the

natural environment; and it is therefore the needs of *people* and *nature*, which must be given precedence.

This is also the only way in which the interests and entitlements of both present and future generations can be preserved. The irreversible lowering of water-tables in many regions, caused by the over-exploitation of groundwater, effectively represents the permanent loss of water for future inhabitants of a region.

Global climate change and its water stress consequence will have, on medium and long-term, a dramatic influence on availability of this crucial and vital natural resource.

Spatially, international basins pay no attention to political boundaries and therefore need to be seen in a broader perspective. Even where a river actually forms the border between two states, this is usually not the best way to view it. The river should instead be seen as a central, unifying feature at the heart of a region, not a dividing line. Governments are temporary, and, as we have witnessed repeatedly, state boundaries are also far from fixed.

A sustainable water vision requires the adoption of a more long-term, ecosystemic outlook and the making of decisions by representatives of stakeholders from all basin states to better reflect the nature of water itself.

### ***The multifaceted value of water DIAPO 11***

The value of water comes in various forms and is heavily influenced by cultural and geographical factors. The sharing of water was one of the first elements in the progress towards communal living, and rivers have always had great cultural and spiritual significance.

The historic value of transboundary water systems, as part of a people or a region's cultural heritage, cannot be ignored when devising means of exploiting or sharing them. In some cases, water is seen as collective property, which should never be paid for or treated as an economic good, in others the "commodification" of water has been advanced.

Wide-spread participation in water management, and recognition of the value of local knowledge and customs, would ensure a system which is more in tune with a people's actual needs and beliefs, and help to prevent the tensions which can arise when different members of a community are not adequately represented in the water policies which effect them.

Water is also essential to the maintenance of food security. It is necessary to strike a balance between the right of everyone to a reasonable amount of water to ensure a liveable environment, the need for water to be used efficiently, and the use of water for enterprise, particularly energy generation, and agriculture. Such a balance must also be reached in the context of the local culture(s) without losing sight of the inherent non-economic values of water.

The pricing of water is therefore a difficult concept to grasp. Transboundary watercourses are the communal property of a region, which everyone in a basin should have access to, but it is also necessary to ensure that water is used efficiently and responsibly. A solution is the appropriate pricing of water services for all users (domestic, agricultural, industrial) of the shared resource, in order to prevent unnecessary waste from exacerbating scarcity problems while maintaining the notion of water's special relationship with people.

### ***Rights to water DIAPO 12***

Water is essential to achieving the “right to a standard of living adequate for the health and well-being of himself and his family” (*Universal Declaration of Human Rights*, Article 25), and therefore it must be made available to everybody regardless of financial status. These goals are also underlying the Rights to Safe-Drinking Water and Sanitation, which were recognized as human rights by the United Nations General Assembly in 2010 (resolution 64/292), and other subsequent UN resolutions. In recognition of the absolute need for water for survival, governments should regard the quantity of clean water necessary to ensure a decent standard of living for all people as sacred. An adequate supply of water must also be reserved for the preservation and natural regeneration of the environment. No water should be allocated for other purposes before these essential functions are fulfilled.

Pertaining to international watercourses, no state should utilize the resources of a shared watercourse in such a way that fellow basin states are subsequently unable to achieve the above-mentioned basic levels of water and environmental security. This is the most fundamental respect in which the sovereignty of states over transboundary watercourses is interdependent with the needs of their neighbours.

Public participation in water administration and allocation is so crucial that it can also be regarded as an emerging human right. People must be informed and empowered in water issues and management decisions as a key component in the process towards more transparent, just and stable societies.

### ***Cooperation over water DIAPO 13***

Basin-wide cooperation is the optimal solution to the problem of managing international basins and, as a means of moving towards this goal, any progress towards states and peoples working together to achieve more effective water policy should be encouraged. There are examples of regional regimes, which are trying to develop an integrated, functioning basin-wide cooperative scheme for the management of an international watercourse, and have achieved some success.

There is a multitude of possible approaches to regional cooperation. One is the idea of “*cooperation as allocation*”, where states recognize the need to cooperate on some levels to maintain order, usually for water sharing purposes.

Another type of cooperation can be identified as “*cooperation as salvation*”, indicating the necessity of some states to cooperate over water in order to avoid absolute disaster, either in the form of violent conflict or environmental destruction.

A third variation is “*cooperation as opportunity*”, highlighting the ways in which cooperation over shared watercourses not only provides concrete mutual benefits for states involved, but can also encourage cooperative action on other regional matters.

It is important that incentives to cooperation be identified and provided. These can be in the form of financial aid, but also through the provision of a forum for discussion, increased information sharing and the fortification of state infrastructure.

### ***Framework for the integrated management of international watercourses DIAPO 14***

The management of international water has implications at the global, regional and local levels, and therefore needs a framework that reflects this. A universally agreed

legal instrument, i.e. *the UN Convention on the Law of Non-Navigational Uses of International Watercourses* (more commonly called the UN Watercourses Convention), was adopted by the UN General Assembly in 1997 and entered into force on 17 August 2014. To this day it has been ratified by 36 states. This UN Convention is useful in providing guidelines, principles and a certain degree of stability to the process of creating workable regional agreements.

Another relevant development is the opening of the UNECE Water Convention (UN Economic Commission for Europe) to non-UNECE countries in 2016. Both conventions transcribed customary law and aim to ensure the sustainable use of transboundary water resources by facilitating cooperation. The UNECE was ratified by almost all countries of the UNECE Region. Chad and Senegal, both parties to the UN Watercourses Convention, acceded to it as well since 2016. The UN Watercourses Convention's 36 State parties are European (16), African (12), from the Middle-East (6), Central-Asia and Asia (Uzbekistan and Vietnam).

The two conventions slightly differ on substance, and with regards to requirements and the established mechanisms. However, the United Nations Secretary-General (Ban Ki-Moon) and many countries and organizations have already called for the establishment of synergies in the implementation of the two Conventions<sup>1</sup>.

Within this framework there is a definite need for greater coordination between states, between water-users, and between institutions. International and regional bodies have an important role to play in the establishment and maintenance of international basin cooperation, from providing expertise and facilities to financing projects.

The UN and its Specialized Agencies, Regional Banks and other organizations also need to cooperate and coordinate their efforts to maximize effectiveness. The adoption of a Sustainable Development Goal fully dedicated to water (SDG6) in 2015 is an extremely welcome and relevant development. The "Goal" aims to ensure availability and sustainable management of water and sanitation for all, and for this, comprehensively addresses water management and aquatic ecosystems. One of the SDG's targets specifically calls for "integrated water resources management to be implemented at all levels by 2030, including through transboundary cooperation." The 2030 Agenda has been adopted by all UN Member States.

### ***Water for peace DIAPO 15***

Water is connected to security on many levels, from that of the nation and its position in relation to others, to the human security achieved through reliable access to clean water, food, sanitation and therefore a tolerable standard of living.

A vital ingredient in basin management is the availability of forums for the airing and resolution of disputes. The increasing recognition of the interdependence of people between and within states in itself constitutes a step towards conflict prevention.

Tensions over water frequently arise at the internal level; whether originating between groups of people inside a state who are marginalized or discriminated against, or as a result of wide-spread dissatisfaction with the quality of water services, such tensions can result in the loss of confidence in the Government in question and contribute towards instability.

Environmental degradation and resource depletion is likely to become an increasingly common cause of tension as populations grow, and hardships are heightened by desertification, famine, and pollution and, of course, water problems. These problems can arise as a result of scarcity, contamination, floods, or, perhaps most often, poor management and inequitable distribution. The integration of the protection of the environment, including the aquatic and terrestrial features of a basin, provides the best chance of preserving the delicate balance between the needs of Humankind and the needs of Nature and therefore maintaining social security in many sensitive regions.

### ***Principles and Proposals DIAPO 16***

#### Water Sharing Principles:

- Everybody should have access to his or her basic entitlement to clean water - which is a human right.
- Water has many values: cultural, environmental, economic, aesthetic.
- Water involves ethical as well as technical questions.
- The cultural diversity of peoples in a basin should be accepted and safeguarded.
- Stakeholder participation at all levels must be recognized as essential.
- Information sharing and transparency are a necessary condition of joint water management.
- Water is a limited resource.
- Water must be used efficiently.
- User-pays; Polluter-pays.
- Water demand management should be promoted as a potential and sustainable means of increasing water supply.
- Irreversible contamination, depletion and destruction of watercourses must be absolutely avoided. This applies particularly to transboundary groundwaters.

#### Proposals:

##### At the international level:

- Further acknowledgement of the Human Rights to Safe-Drinking Water and Sanitation and their criteria.
- The fulfilment of SDG6 on water by 2030.
- The implementation of the UN Watercourses Convention and UNECE Water Convention (or at least one of them)
- The increased use of subtle diplomatic dispute settlement mechanisms.
- The strengthening of the role of international organizations.
- International funding institutions should continue to become more responsible regarding the environmental and social consequences of projects.
- The inclusion of certain, or certain sections of, international watercourses in UNESCO's list of World Heritage Sites.
- The "sanctuarisation" of international watercourses for their protection in times of war.

##### At the International River Basin Level:

- The promotion of a climate of confidence and favorable political will.

- Acceptance on the part of States that national sovereignty is limited by the respect for the sovereignty and rights of others.
- The creation of integrated River Basin Authorities, with the necessary expertise, authority and funding, to oversee the interests of all states, peoples and ecosystems in the basin.
- Regional commitment to and respect for the various needs of all cultures and peoples in the basin.
- The opening up of communications between states, including all stakeholders.
- Active dedication to improving the status of women in water-related negotiations. Increased representation of women in all regional water committees.
- Negotiations to address the best means of achieving regional food security, as opposed to national food self-sufficiency.
- The promotion of economic cooperation to encourage the more efficient use of water, and more interdependence and cooperation between the states in a basin.

#### At the National Level:

- The ratification of the UN Watercourses Convention and UNECE Water Convention by all riparian countries of shared river basins.
- The adoption of National "Clean Water Acts".
- The review of existing water laws following the principle of the basin as the unit of administration and protection, and the desire for more local-level and public participation.
- The decentralisation of water policy making in order to involve as many concerned people as possible.
- The establishment of high-level Government representation dedicated to water issues.
- Acceptance of governmental responsibility for the supply of basic human and environmental water needs.
- Forward planning should be based on assessments of present and future water resources and trends, taking projections of climatic and demographic changes into account.

#### At the Local Level:

- More representative, localized water policy to be pursued as an element in democracy building.
- The balancing of public participation and private sector influence.
- Strengthening of the link between education, awareness, confidence building and water.

These proposals are all inter-related and mutually reinforcing.

The most important change, which needs to be made, is the reversal of the "ours" and "theirs" mentality which plagues water relations between neighboring people, farmers, industries and states. The focus should shift from discussions of how to allocate shared water, which engenders irreconcilable arguments at the riparian state level, towards investigations of ways in which everyone's lives and opportunities can be enhanced through cooperation.