

Dialogue

The UN Watercourses Convention: A window of opportunity for cooperation

(11 April 2018, Nay Pyi Taw, Myanmar)

About the workshop and its objectives:

Globally, there are more than 280 transboundary rivers. These are of special significance as half of the world's population depend on these rivers to meet their daily water needs (UN-Water, 2012) and for the ecosystem services they provide.

However, the governance of Transboundary River is challenging as the river cross international borders and requires a clear legal and institutional framework or agreement between the riparian's for its sustainable governance.

Globally it is estimated that 60% of the transboundary river basin lack a basin wide governance framework. In cases where framework exists, such as the Mekong River Agreement, there is a need to update them to define a clear dispute resolution mechanism or include modern principles of transboundary water management, such as the principle of no significant harm, transparency and information exchange.

The *United Nations (UN) Convention on the law of the Non-navigational Uses of International Watercourses (UNWC), 1997* presents an opportunity for countries sharing river basin by providing a clear legal framework. By setting rules and standards, the UNWC, 1997 can strengthen water governance, enforce globally accepted legal and institutional principles and can facilitate cooperation among different stakeholders by providing clear mechanism to build consensus and reach agreements on the governance of transboundary rivers.

The dialogue on “*UNWC (1997) as a tool for cooperative transboundary water governance and sustainable basin management*” will be facilitated by IUCN under the BRIDGE programme in partnership with National Water Resource Committee (NWRC) of Myanmar. The objective of the dialogue is to bring together relevant stakeholders from Myanmar working on/or having influence on water governance, to:

- review the principles and provisions of UNWC (1997) and assesses its implications for the management of the transboundary rivers in Myanmar
- discuss and identify the advantages of UNWC (1997) ratification by Myanmar.
- better define how the BRIDGE programme can support Myanmar and gather inputs for the designing of BRIDGE Mekong Phase IV (2019 – 2021).

Tentative Agenda (3 April)

Time	Day 1, Wednesday, 11 April
8:30 - 9:00	Registration
9:00 – 9:15	Opening remarks from NWRC and IUCN (highlighting objective of the workshop and NWRC/IUCN partnership)
9:15-9:30	BRIDGE Programme: activities and results (IUCN)
9:30-09:45	Participants introduction

09:45-10:45	The UN Watercourses Convention (First part) Dr Alejandro Iza , Director of the IUCN Environmental Law Centre, Bonn, Germany
10:45-11:00	Coffee break and group photo
11:00-12:15	The UN Watercourses Convention (Second part)
12:00-13:00	Lunch
13:00-13:45	UN Watercourses Convention ratification by Viet Nam: Sharing of experiences (by Dr. Tran Duc Cuong , Deputy Secretary General Vietnam National Mekong Committee)
13:45 – 14:00	Screening of the movie “Key stakeholders’ perspectives on International Water Law in the Mekong”
14:00 – 15:00	Facilitated discussion: Reflections on the potential benefits derived from the adoption of the UN Watercourses Convention in Myanmar (First part)
15:00-15:20	<i>Coffee break</i>
15:20-17:00	Facilitated discussion: Reflections on the potential benefits derived from the adoption of the UN Watercourses Convention in Myanmar (Second part)

About the BRIDGE Programme:

BRIDGE (Building River Dialogue and Governance) is a programme facilitated by International Union for Conservation of Nature (IUCN). It is operational in more than 15 transboundary river basins across Asia, Africa, Mesoamerica and South America. The goal of the BRIDGE programme is to enhance cooperation among riparian countries by applying water diplomacy at multiple levels.

Since its inception, in 2011 the programme has facilitated information sharing on Integrated Water Resources Management (IWRM) and produced crucial knowledge and case studies to support technical discussions at regional/basin scale for the cooperative governance of transboundary rivers.

WHY MYANMAR WOULD BENEFIT FROM RATIFYING THE UN WATERCOURSES CONVENTION

Myanmar is endowed with abundant water resources. At least 90% of its territory is comprised within major river basins, five of which are transboundary. These transboundary river basins span Myanmar's bordering and non-bordering countries:

River	Total area of river basin (km ²)	Riparian countries	% of river basin area in Myanmar
Ayeyarwady	404,200	Myanmar, China, India	91.2
Kaladan	30,500	Myanmar, India	74.9
Pakchan	3,900	Myanmar, Thailand	49.1
Salween	244,000	China, Myanmar, Thailand	43.8
Mekong	787,800	Laos, Thailand, China, Cambodia, Vietnam, Myanmar	3.51

With the exception of the Mekong, Myanmar has a large share of all of its transboundary river basins. Consequently, its active role in promoting good water governance is important for both its own interests and those of its neighbors.

Considering the important role that it plays in managing these river basins, Myanmar should consider ratifying the Convention on the Law of the Non-Navigational Uses of International Watercourses, known as the UN Watercourses Convention or simply the UNWC.

The UNWC was approved by the UN General Assembly in 1997. Since its entry into force in 2014, the UNWC constitutes the global framework (or legal "gold standard") to ensure the protection, preservation and management of shared waters and the promotion of cooperation.

Key elements of the UNWC

- The UNWC in its text adopts the concept of "international watercourses" as a **holistic approach** to include both surface and groundwater;
- The UNWC includes **substantive rules** referring to the rights and duties of transboundary basin States. These rules are contained under the UNWC as the equitable and reasonable utilization, the obligation not to cause significant harm, protection and preservation of ecosystems and cooperation. The text includes a list of relevant factors and circumstances to further define the rules.
- The UNWC includes **procedural rules**, as practical means to implement the substantive rules. These rules also establish the operational framework for the management of transboundary water resources. The main rules in this sense are the regular exchange of data and information and notification, consultation and negotiation.
- The UNWC incorporates provisions relating to the **institutional set up for management of shared waters**. Institutions serve as platforms for dialogue among riparian countries, as well as mechanisms to coordinate exchange of data and information, and prevent and resolve controversies on interpretation or implementation of agreements.
- The UNWC incorporates a clear and comprehensive set of procedures for the **resolution of disputes** deriving from its interpretation and application. In cases in which States have not been able to resolve their differences by means of negotiation, the UNWC gives the possibility to jointly seek the good offices of, or request mediation or conciliation by a third party, or even of a competent institution that has been established by the concerned parties. Only in the case that all

the above procedures have failed to reach an agreement, the UNWC contemplates the possibility to submit the dispute to arbitration or adjudication by the International Court of Justice.

The UNWC provides a clear and consistent legal framework. Ratification would therefore support Myanmar's efforts to address regional water resource challenges related to climate change, pollution, river flow alterations from infrastructure development, and overexploitation of fish stocks.

The advantages of transboundary cooperation in water go far beyond water, as rivers are of major economic importance: they are vital transport routes, domestic and industrial water supply, irrigation, and as home of abundant freshwater biodiversity.

Since the UNWC explicitly provides for compatibility with other existing agreements, ratification would not conflict with any previous agreements that Myanmar has signed with its neighbours.

The following benefits would therefore accrue to Myanmar if it accedes to the UNWC:

1. ***Accession could support and facilitate the protection, preservation, and management of all transboundary waters shared by Myanmar.*** Globally, 40 countries have ratified the UNWC. Within ASEAN, only Vietnam has ratified the UNWC. By ratifying the UNWC, Myanmar would demonstrate leadership and build regional momentum toward broader accession to the UNWC, which would strengthen the legal basis for mutually beneficial cooperation over shared water resources.
2. ***Accession could inform and support the development of international agreements for the protection of specific transboundary river basins.*** The Salween is the last large free flowing river in Asia and is of immense natural and cultural value. By ratifying the UNWC, Myanmar would gain experience and expertise in negotiating transboundary river agreements with China (which has imposed a moratorium on dams on its portion) and Thailand that will protect the entire length of Salween.
3. ***Accession could promote and encourage cooperation between Myanmar and its neighbours in a range of fields including and beyond water.*** Neighbouring countries can help each on a range of natural resource management issues. By ratifying the UNWC, Myanmar can demonstrate its commitment to transboundary cooperation, not just on water but also on international flows, both legal and illegal, of timber and wildlife.
4. ***Accession could inform and support the development of IWRM policies covering domestic water bodies that face competing and sometimes conflicting claims.*** While the UNWC is designed for transboundary rivers, its principles and procedures are equally relevant to domestic water bodies such as the Chindwin and Thalwin and the Ayeyarwady Delta. By ratifying the UNWC, Myanmar would gain experience and expertise that would help with IWRM implementation domestically.
5. ***Myanmar might benefit as well from the exchange of lessons and experiences from other countries that have ratified the UNWC,*** in order to reflect on potential challenges and opportunities derived from the implementation of a global framework agreement;
6. ***Strengthening cooperation through the accession of Myanmar to the UNWC would also ratify the fulfilment of its commitments within the Association of Southeast Asian Nations ASEAN,*** and particularly the ASEAN Charter and the Declaration on ASEAN Post-2015 Environmental Sustainability and Climate Change Agenda.

Accession process and capacity building

A potential process of accession to the UNWC might be facilitated through the establishment of awareness platforms to discuss the content of the UNWC and determine the commitments that might arise from its eventual accession. It might be important to include legal training to water and cooperation entities in the Government of Myanmar, particularly to facilitate their work in terms of notification, exchange of data and information, environmental impact assessments and dispute settlement. It might be useful to include specific legal training for Myanmar's Assembly of the Union, with a view to creating awareness about the UNWC and its potential for harmonising and strengthening national legislation. Specific legal training for judges might be appropriate to substantiate the rulings of National Tribunals in terms of compensation to persons in case of harm derived from transboundary uses or activities. Promotion of awareness of the UNWC at the local and community level might be adequate given the guarantees in terms of access to justice and vital human needs incorporated in this global instrument.

As Myanmar has not signed the UN Watercourses Convention, according to Arts. 35 of the UNWC and 2.1.b, 15 and 16 of the Vienna Convention on the Law of the Treaties, a process of accession would be required for Myanmar in which it expresses its consent to become a party to UNWC. This accession must be deposited with the Secretary General of the United Nations. In the case of Myanmar it might require parliamentary approval.

On the basis of its global experience, IUCN would be in the position to provide technical legal support and advice to support the capacity building programme required to ensure ratification and implementation of the UNWC.