

TRANSBOUNDARY WATER RESOURCES

AD HOC EXPERT GROUP MEETING ON
STRATEGIC ISSUES CONCERNING TRANSBOUNDARY WATER RESOURCES

New York, 14 May 1996



SUMMARY OF CONCLUSIONS

INTRODUCTION

1. The Ad Hoc Expert Group on Strategic Issues Concerning Transboundary Water Resources was organized by the United Nations Department for Development Support and Management Services (DDSMS) in New York on 14 May 1996. It was held during the period of the Third Session of the Committee on Natural Resources (CNR), an expert committee which meets once every two years and reports to the Economic and Social Council (ECOSOC) of the United Nations. The Expert Group Meeting was convened in response to a request made during the Second Session of the CNR in 1994. The Meeting benefited from the presence of members of the CNR and other invited experts in the field of transboundary waters drawn from academia, governments, international organisations and NGOs.

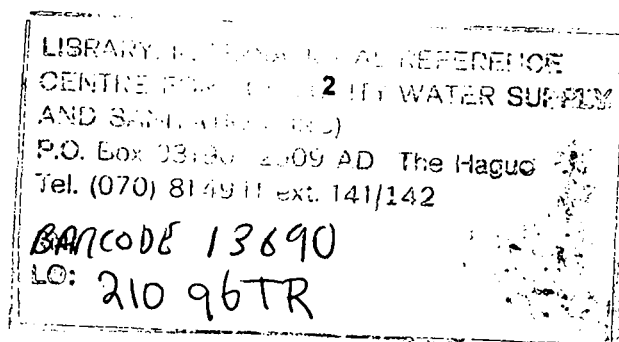
2. The topic is considered of crucial importance, since transboundary waters are among the most sensitive and strategic issues on the agenda of many countries. International freshwater systems, including transboundary aquifers, are central to national and regional development and to the integrity of a wide range of special and sometimes unique environments. Their sustainable development does, however, require close cooperation between nations based on principles of equity and good faith. Such cooperation is most effectively implemented through agreements providing for regular data exchange and joint institutional management.

3. The need to negotiate with regard to transboundary water resources is driven by a wide range of socio-economic and environmental considerations. Such considerations may include: fears about an external threat to a country's water resources; response to the conditionalities of a loan from a multilateral lending agency; and/or response to a disaster. Equally the need may be driven from a mutual perception of potential benefits from joint management of a river, lake or aquifer or entire watershed. Obtaining benefits for all parties can only be realistic when the hydrological or hydro-geological basin is viewed as a reference unit and an integrated management of both surface and groundwater is pursued at an appropriate geographical scale. One difficulty arises from the non-coincidence between administrative units and catchment basins or aquifer boundaries. Sensitive negotiations may require a third party such as the United Nations or an established international expert to act as a neutral broker.

4. There are a number of examples of international rivers and lakes where negotiations on shared waters have taken place and have resulted in agreements on the management of the basin as a whole unit, which have been mutually beneficial to the parties involved. These were discussed by the expert group. It was felt vital that comprehensive water information systems be developed on a mutually acceptable basis as a foundation for treaty negotiations. It was also considered crucial to recognise the rights of all stakeholders, both upstream and downstream, to be part of the negotiating process, if the agreement is to be adhered to, as it will more likely reflect the interests of all concerned. While the agreement may entail restrictions on use and on effluent production, this could result in regional or even global benefits.

5. The 25 experts and 10 observers who participated in the lively discussion represented a broad range of views on the current and future trends in transboundary water resources. The group attempted to take stock of the forces driving the need to negotiate issues related to transboundary water resources and draw lessons from past experience to assess the suitability of organisations and mechanisms for effecting negotiation and compliance with agreements. It is expected that the suggestions and proposals made by the group can be useful to facilitating future negotiations among developing countries on their shared water resources.

6. The discussion focused in particular on two topics: the identification of incentives for co-operation among countries sharing freshwater resources; and the role of law and institutions concerning those resources. Case studies were presented and discussed and a number of different points of view were raised. It was emphasised that each situation is unique and that it is therefore difficult to reach general conclusions that hold true for all water resource systems and the human populations dependent upon them. Nevertheless, the following recommendations may be drawn from the Expert Group's discussions.



I. INCENTIVES FOR COOPERATION

Identification of and recognition of incentives and motivations to bring countries to the negotiating table:

7. It was considered useful first to identify the motivating factors which could bring countries together to negotiate agreements on transboundary water resources. The following were considered some of the major motivating factors:

- Conflict resolution, "good neighbourliness": consensus building
- Response to emergency or disaster situations (drought, flood, heavy pollution loads)
- Installation failure/obstacles to timber floating, navigation or fishing
- Development of the resource: economic benefits and availability of markets
- High costs of not co-operating: prevent adverse downstream impacts and resulting frictions that could result from not negotiating or consulting
- Water as a limiting factor: related to new demands on the resource, population pressure, and water quality problems: may lead to discussion of water allocations by use and across boundaries (integrated basin planning eg. Master Plan for the Gambia River Basin)
- Conditionalities and incentives from donors: loans, financial assistance, compensation
- Over-exploitation, leading to depletion or deterioration of the resource
- Anticipatory preventive action

Mechanisms and processes to assist in the consensus-building process.

8. A process for moving slowly towards negotiation and agreement over transboundary water resources was discussed. It was strongly felt that the following types of initial steps could lead eventually to a process of gradual agreement which could be adhered to and accepted by all concerned parties:

- Interaction at meetings among individuals and groups at the local level: build confidence and transparency ("tete-à-tete" approach)
- Data gathering and sharing: new technologies make data more accessible/ facilitation of dissemination
- Agreement on a specific pressing sectoral issue (power, fish migration) may lead over time to an integrated management approach

- Widening of the perspective to include the concerns of all stakeholders, rather than imposing agreement from above. Agreements on equitable and sustainable use should be informed by multidisciplinary perspectives, as well as by systematic coverage of the stakeholders, as land, human and animal resources are also involved
- Transactional consensus/meetings/panels amongst technical experts at the outset.: all sides prepared with nationally-developed data and characterisation of the resource and an agreement to collaborate.
- Adaptation of existing institutions to perform functions of an international basin commission: donor assistance to improve communications and promote institution-strengthening can lead to effective co-operation which is less costly
- Markets can be a regulatory tool for consensus building and may promote more efficient use of the resource when the conditions and regulation for their operation exist. However, issues of public interest and beneficial use have to be fully considered.
- Donors should look at political realities and assist in making parties more equal: demonstrate to more powerful country value added from co-operation is greater than loss in sovereignty
- Assisted negotiations: use of a neutral authority to facilitate negotiations
- Mediation: use of third party for conflict resolution

Issues

9. A number of general issues arising from the consideration of driving forces and mechanisms were discussed. These included fundamental problems impeding the process of negotiation such as:

- Donor competition
- Donor conditionalities
- Downstream or upstream impacts
- Costs of co-operating (including data processing and sharing)
- Restrictions on sovereignty/freedom of action
- Sustained support is vital for new organisations abandoned by donors: waste of donor communities in setting them up

II. SPECIAL CONSIDERATIONS REGARDING GROUNDWATER

10. The importance and specific characteristics of groundwater resources in transboundary settings was fully recognised by the meeting, notably:

- Acceptance of transboundary aquifers and their specific/contrasting boundary conditions and three-dimensional flow domains, in addition to the well-accepted understanding of the hydraulic interdependence between surface waters and shallow groundwater
- Limits of current groundwater legislation, e.g. no acknowledgement of hydraulic interdependence, including between multilayered aquifers
- Conjunctive use and the problems of integration with surface water management
- Vulnerability of aquifers to long-term, if not permanent, contamination, land subsidence and saline intrusion
- Planned/acceptable depletion and the role of public participation in such agreement, where feasible
- Recharge zone identification and protection
- Waterlogging, salination of soils and rise in water tables
- Anticipatory measures to mitigate drought (structural and non-structural)
- Problems of cross-boundary exploitation of aquifers, *inter alia*, through directional drilling or overpumping
- Groundwater indicators for sustainable development need to be carefully considered (DDSMS paper for GEF)

III. THE ROLE OF LAW AND INSTITUTIONS

Law

11. An existing set of commonly accepted principles and rules helps to start the dialogue between countries sharing freshwater resources. For instance, it is generally fruitless to commence dialogue without prior agreement on the principle that waters have to be shared.

- Certain principles and rules seem generally accepted, such as those contained in the 1994 draft articles adopted by the International Law Commission and the International Law Association's Rules on the Uses of International Watercourses, including Groundwaters (e.g., The 1966 Helsinki Rules and the Seoul Rules).
- Concerned parties may usefully consult in applying and adjusting the rules to suit their individual situation. For example, they could define what constitutes "equitable utilization"

of shared water resources in specific cases. These specific regimes should be developed through a process involving participation of interested members of the public.

12. The framework of rules and principles governing the use of shared water resources should be sufficiently flexible to allow for social and natural changes over time and to give the countries involved a feeling of confidence that reasonable options are not foreclosed.

- One way of achieving such flexibility is to entrust implementation of general principles and rules to a joint institution or adaptation of national institutions concerned with shared freshwater resources.

13. Countries should be aware of the relationship between national and international law concerning shared water resources.

- In particular, care should be taken that sufficient regulatory control is retained in the public sector to permit fulfilment of international legal obligations.

Institutions

14. It may be advisable for the water professionals from the different countries involved to meet together before officials on the political level become directly involved.

- It is important to begin by exchanging available data and information concerning freshwater resources from the countries concerned, and to reach agreement on a mutually acceptable database in order to provide a sound basis for discussion.
- Involvement of affected local populations in the gathering of data and exchange of information can in many instances help to anticipate and forestall serious problems with water projects. The interests of stakeholders must be clearly identified. Stakeholders, or interested parties, are often involved too late in the planning process. They should be brought in at the earliest stages of that process.
- When it comes time to make decisions, it is crucial that countries be represented by those with the authority to make good on their commitments.

15. It is important that continuity of governmental policy be maintained so that countries sharing freshwater resources can feel assured that commitments made by one government will be honoured by a successor government.

16. Day-to-day management of shared water resources is best handled on the technical level.

17. Joint institutions should be self-financing, wherever possible. Provision for financing of joint bodies should be made at the outset of co-operative relationships, e.g., when agreements are made for the construction of projects related to transboundary water resources.

18. Countries sharing freshwater resources should be aware of the possibility of developing joint mechanisms of collaboration (possibly composed of existing national agencies) consisting of national officials and technicians concerned with water resources who meet with their counterparts in other concerned countries on a regular basis, without necessarily formalising these in specialised institutions which would otherwise make onerous demands on regular budgets.

19. Countries sharing freshwater resources should be aware of the different kinds of mechanisms for dispute avoidance and resolution, including not only arbitration and judicial settlement, but also fact-finding, conciliation, mediation and facilitation (assisted negotiation).

20. It is advisable to agree upon a range of dispute avoidance and settlement procedures well before any actual dispute arises. The urgency of reconciling differences in situations where construction, project or programme investment or hazard is already advanced should allow acceleration of resolution. The very existence of the mechanisms may help to avoid disputes and they can in any event prevent disputes from escalating to unmanageable levels.