

Relevant international instruments

I. International instruments related to transboundary aquifers

UN General Assembly Resolution A/RES/63/124 on the law of transboundary aquifers (2008):

Includes the draft articles on the law of transboundary aquifers prepared by the UN International Law Commission in its annex

“*Encourages* the States concerned to make appropriate bilateral or regional arrangements for the proper management of their transboundary aquifers, taking into account the provisions of these draft articles”

Only global instrument on transboundary aquifers

Non-binding instrument, but available reference and guidelines for States for their transboundary aquifers.

Main principles :

Equitable and reasonable use

No harm rule

General obligation to cooperate

Regular exchange of data and information

Bilateral and regional agreements and arrangements

Protection and preservation of ecosystems

Recharge and discharge zones

Prevention, reduction and control of pollution

Monitoring

Management

Available at http://www.isarm.org/dynamics/modules/SFIL0100/view.php?fil_Id=227

UN General Assembly Resolution A/RES/66/104 (2011)

« *Further encourages* the States concerned to make appropriate bilateral or regional arrangements for the proper management of their transboundary aquifers, taking into account the provisions of the draft articles annexed to its resolution 63/124 »

available at

<http://www.un.org/depts/dhl/resguide/r66.shtml>

II. Instruments related to transboundary waters

A. Global level

Convention on the Law of the Non-navigational Uses of International Watercourses (1997)

Only global convention governing the sharing of freshwater resources.

Not yet in force, not binding, but includes rules part of customary international law.

Defines a watercourse as « a system of surface waters and groundwaters constituting by virtue of their physical relationship a unitary whole and normally flowing into a common terminus; » → limited application to transboundary aquifers

Main principles :

Equitable and reasonable utilisation and participation
No harm rule
General obligation to cooperate
Regular exchange of data and information
Planned measures
Protection and preservation of ecosystems
Prevention, reduction and control of pollution
Management

Available at

http://untreaty.un.org/ilc/texts/instruments/english/conventions/8_3_1997.pdf

B. Regional level

1992 Convention on the Protection and Use of Transboundary Watercourses and International Lakes (UN Economic Commission for Europe)

Albania, Bosnia&Herzegovina, Croatia are Party to the Convention.

The Convention applies to all transboundary waters, defined as “any surface or ground waters which mark, cross or are located on boundaries between two or more States »

The Convention is guided by the equitable and reasonable use principle, the precautionary principle and the sustainable development. The Convention obliges Parties to prevent, control and reduce water pollution from point and non-point sources. The Convention also includes provisions for monitoring, research and development, consultations, warning and alarm systems, mutual assistance, institutional arrangements, and the exchange and protection of information, as well as public access to information.

Initially negotiated as a regional instrument, the Convention has turned into a global legal framework for transboundary water cooperation in February 2013.

Available at <http://www.unece.org/fileadmin/DAM/env/water/pdf/watercon.pdf>

Under the convention, the 1999 Protocol on Water and Health

Albania, Bosnia&Herzegovina, Croatia are Party to the Protocol.

The main aim of the Protocol is to protect human health and well being by better water management, including the protection of water ecosystems, and by preventing, controlling and reducing water-related diseases. with the objective of attaining an adequate supply of safe drinking water and adequate sanitation for everyone, and effectively protect water used as a source of drinking water.

To meet these goals, its Parties are required to establish national and local targets for the quality of drinking water and the quality of discharges, as well as for the performance of water supply and waste-water treatment. They are also required to reduce outbreaks and the incidence of water-related diseases.

Water resources management should link social and economic development to the protection of natural ecosystems. The Protocol applies to national and transboundary waters.

Main principles :

Precautionary principle

Polluter pays

Consideration of future generations

Access to information and public participation

Integrated water management

Equitable access to water

Available at

<http://www.unece.org/fileadmin/DAM/env/documents/2000/wat/mp.wat.2000.1.e.pdf>

III. Convention on Wetlands of International Importance, Ramsar Convention (1971, amended 1987)

Albania, Bosnia and Herzegovian, Croatia and Montenegro are Party.

The Convention provides the framework for national action and international cooperation for the conservation and wise use of wetlands and their resources.

The Convention's mission is "the conservation and wise use of all wetlands through local and national actions and international cooperation, as a contribution towards achieving sustainable development throughout the world".

The Ramsar Contracting Parties have committed themselves to implementing the "three pillars" of the Convention: to designate suitable wetlands for the List of Wetlands of International Importance ("Ramsar List") and ensure their effective management; to work towards the wise use of all their wetlands through national land-use planning, appropriate policies and legislation, management actions, and public education; and to cooperate internationally concerning transboundary wetlands, shared wetland systems, shared species, and development projects that may affect wetlands

Available at http://www.ramsar.org/cda/en/ramsar-documents-texts-convention-on/main/ramsar/1-31-38^20671_4000_0

IV. Specific agreements/legal settings on transboundary aquifers (as possible examples and lessons learnt)

Convention on the protection, utilization, recharge and monitoring of the Franco-Swiss Genevese aquifer (1st January 2008):

the only example of a treaty dealing with the management of a transboundary aquifer

The agreement has created a Commission with the following mandate:

- To propose a yearly aquifer utilization programme
- To ensure the protection of the resource
- To remedy possible causes of pollution
- To inventory all existing water works

Available

at

http://www.unece.org/env/water/meetings/legal_board/2010/annexes_groundwater_paper/Arrangement_French_Swiss.pdf

Constitution of the Joint Authority for the study and development of the Nubian Sandstone Aquifer Waters (Chad, Egypt, Libya, Sudan):

The agreement represents an institutional agreement related to the Joint Authority and its administrative arrangements, rather than a water management agreement. The Authority has a wide mandate. It is responsible for collecting and updating data, conducting studies, formulating plans and programs for water resources development and utilization, implementing common groundwater management policies, training technical personnel, rationing the aquifer water, and studying the environmental aspects of water resources development.

Available in http://www-naweb.iaea.org/napc/ih/documents/Nubian/Nubian_final_MSP_Sandstone.pdf (last pages of the document)

Under the **Programme for the Development of a Regional Strategy for the utilisation of the NSAS**, two agreements were developed

- *Agreement n°1* Terms of reference for the monitoring and exchange of groundwater information of the NSAS (2000)
- *Agreement n°2* Terms of reference for monitoring and data sharing (2000)

The agreements were signed by the directors of the water authorities in the four countries, but never ratified and implemented.

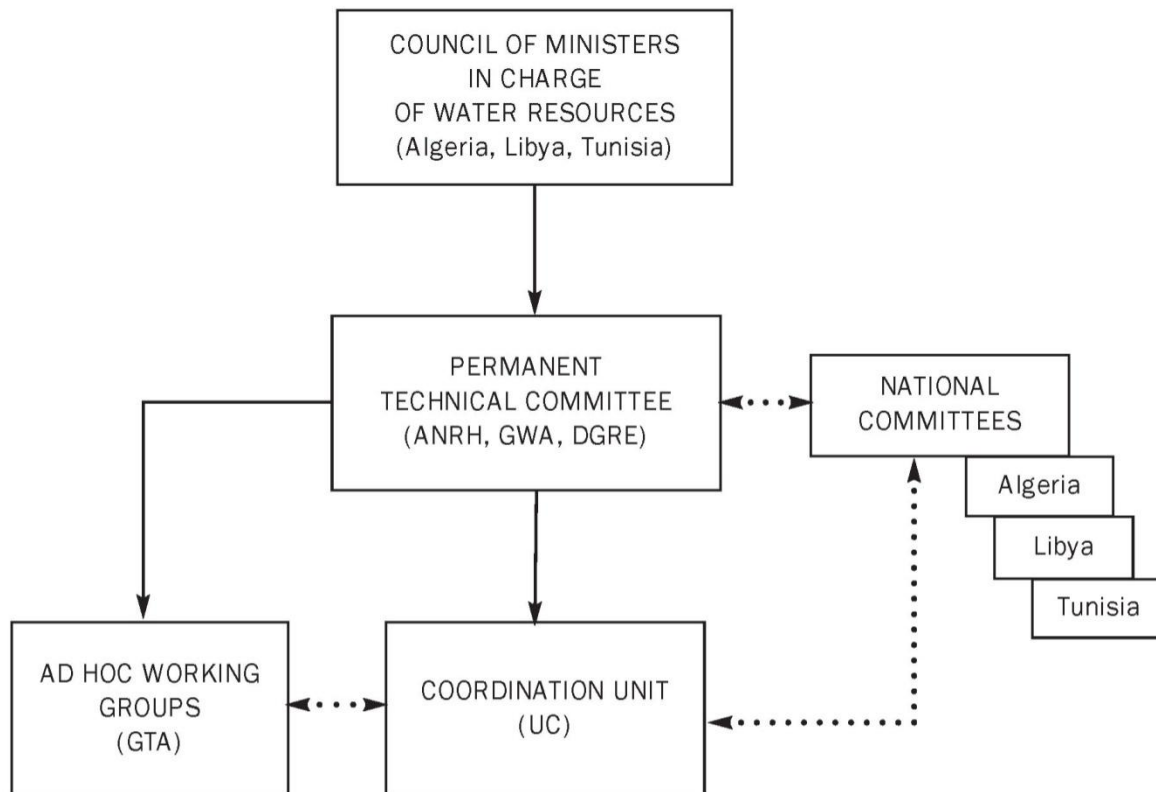
The two agreements are available in Burchi & Mechlem Groundwater in international law, FAO legislative Study 86, 2005,

<ftp://ftp.fao.org/docrep/fao/008/y5739e/y5739e00.pdf>

Consultation mechanism on The North Western Sahara Aquifer System (Algeria, Libya and Tunisia):

A first temporary mechanism among the three countries was set up in 2002. Its main task was the management of the database and the regular updating of the aquifer system model. This mechanism evolved towards a permanent structure in 2008. The mechanism is composed of (Figure 1):

- A Council of Ministers in charge of water resources in the three countries;
- A Steering Committee composed of the national institutions in charge of water resources in the three countries;
- National Committees including other institutions concerned with water resources, users associations, and non-governmental organizations (NGOs);
- National and regional working groups composed of engineers and technicians; and
- A coordination unit led by a coordinator at the Tunis-based Sahara and Sahel Observatory.



*Structure of the permanent consultation mechanism of the SASS
(Latrech, oral presentation, Tripoli 2008)*

Notes:

ANRH = Agence Nationale des Ressources Hydrauliques (Algeria)

GWA = General Water Authority (Libya)

DGRE = Direction générale des Ressources en Eau (Tunisia)

GTA = Groupes de Travail ad hoc

UC = Unité de Coordination

Guarani Aquifer Agreement (Argentina, Brazil, Paraguay, Uruguay) (2 August 2010)

The Agreement represents a broad legal framework providing the four States the basis for cooperation on the GAS. In its preamble the agreement mentions specifically Resolution 63/124 on the law of transboundary aquifers. The Guarani Aquifer Agreement is the first agreement on a transboundary aquifer to be signed after the adoption of Resolution 63/124 by the UN GA, and to refer to it. In the agreement sovereignty appears as a key principle. The agreement refers to the sustainable use of the aquifer. It acknowledges the results of the above mentioned project, and the need of extending the knowledge on the GAS. On the institutional aspects, the Guarani Aquifer Agreement provides that under the Treaty of the River Plata Basin, a Commission comprised by the four States shall be established for coordinating the cooperation.