

# Legal and Institutional Principles for Effective Basin Organizations



5<sup>th</sup> Targeted Regional Workshop for GEF IW projects in Africa

29 May 2019



International Commission  
for the Protection  
of the Danube River

Internationale Kommission  
zum Schutz der Donau

# The global legal framework

- Key principles of international water law
  - Obligation to cooperate in good faith
  - Principle of equitable and reasonable utilization
  - Principle of no significant harm → obligation of prior notification
- International water law consists of both customary international law and treaty law
  - 1992 Convention on the Protection and Use of Transboundary Watercourses and International Lakes (Helsinki Convention)
  - 1997 UN Convention on Law of the Non-Navigational Uses of International Watercourses (New York Convention)
  - Related global commitments on wetlands, biodiversity, climate change, etc.
- Both conventions supplement regional and basin-specific arrangements and promote transboundary water cooperation in a equitable and sustainable manner

## CONVENTION ON THE PROTECTION AND USE OF TRANSBOUNDARY WATERCOURSES AND INTERNATIONAL LAKES

done at Helsinki, on 17 March 1992

### PREAMBLE

The Parties to this Convention,

Mindful that the protection and use of transboundary watercourses and international lakes are important and urgent tasks, the effective accomplishment of which can only be ensured by enhanced cooperation,

Concerned over the existence and threats of adverse effects, in the short or long term, of changes in the conditions of transboundary watercourses and international lakes on the environment, economies and well-being of the member countries of the Economic Commission for Europe (ECE),

Emphasizing the need for strengthened national and international measures to prevent, control and reduce the release of hazardous substances into the aquatic environment and to abate eutrophication and acidification, as well as pollution of the marine environment, in particular coastal areas, from land-based sources,

Commending the efforts already undertaken by the ECE Governments to strengthen cooperation, on bilateral and multilateral levels, for the prevention, control and reduction of transboundary pollution, sustainable water management, conservation of water resources and environmental protection,

Recalling the pertinent provisions and principles of the Declaration of the Stockholm Conference on the Human Environment, the Final Act of the Conference on Security and Cooperation in Europe (CSCE), the Concluding Documents of the Madrid and Vienna Meetings of Representatives of the Participating States of the CSCE, and the Regional Strategy for Environmental Protection and Rational Use of Natural Resources in ECE Member Countries covering the Period up to the Year 2000 and Beyond,

## Convention on the Law of the Non-navigational Uses of International Watercourses

1997

Adopted by the General Assembly of the United Nations on 21 May 1997.  
Not yet in force. See General Assembly resolution 51/229, annex, *Official Records of the General Assembly, Fifty-first Session, Supplement No. 49* (A/51/49).

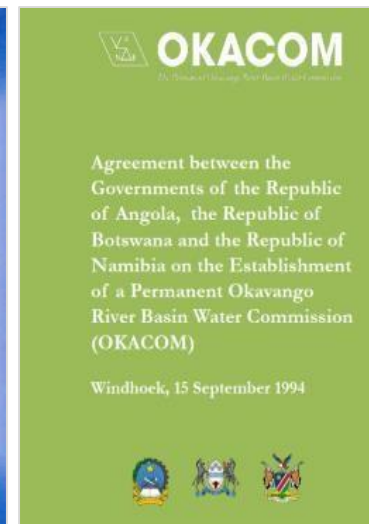
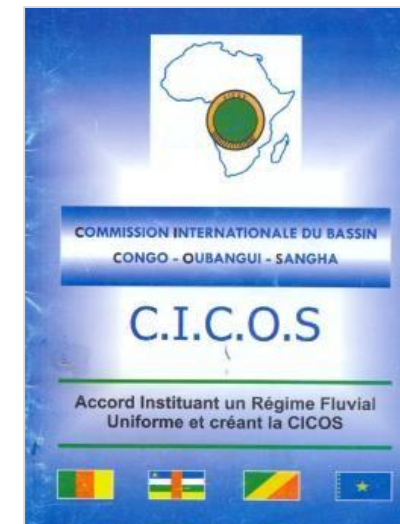
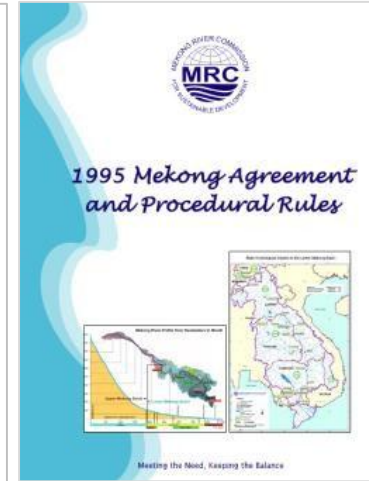


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# Basin-specific legal frameworks

- Water law principles have to be adapted to the specific basin context
- Treaties typically contain provisions on
  - the overall commitment to cooperation
  - agreed upon principles, norms and specific rules
  - the establishment of an institution
  - the organs of the institution and their roles and responsibilities
  - specific governance mechanisms (e.g. dispute-settlement)
  - means for amending/changing the agreement



# Scope and mandate of an RBO

RBOs focus on different functional issues/topics

- Water quantity
  - Water quality
  - Environmental protection
  - Basin planning
  - Drinking water
  - Agriculture and irrigation
  - Fisheries
  - Navigation
- Industrial water uses
  - Hydropower
  - Tourism
  - Flood and drought management
  - Biodiversity
  - Climate change adaptation
  - ...

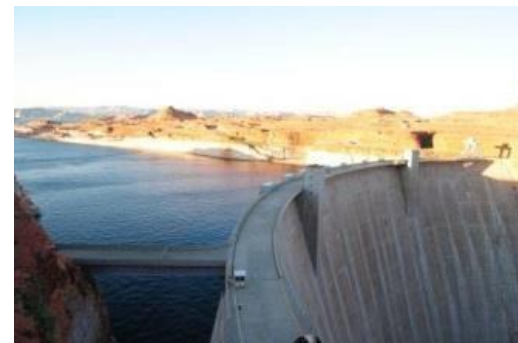
## Implementation

Project development  
Project financing  
Project Implementation  
Joint management and operation

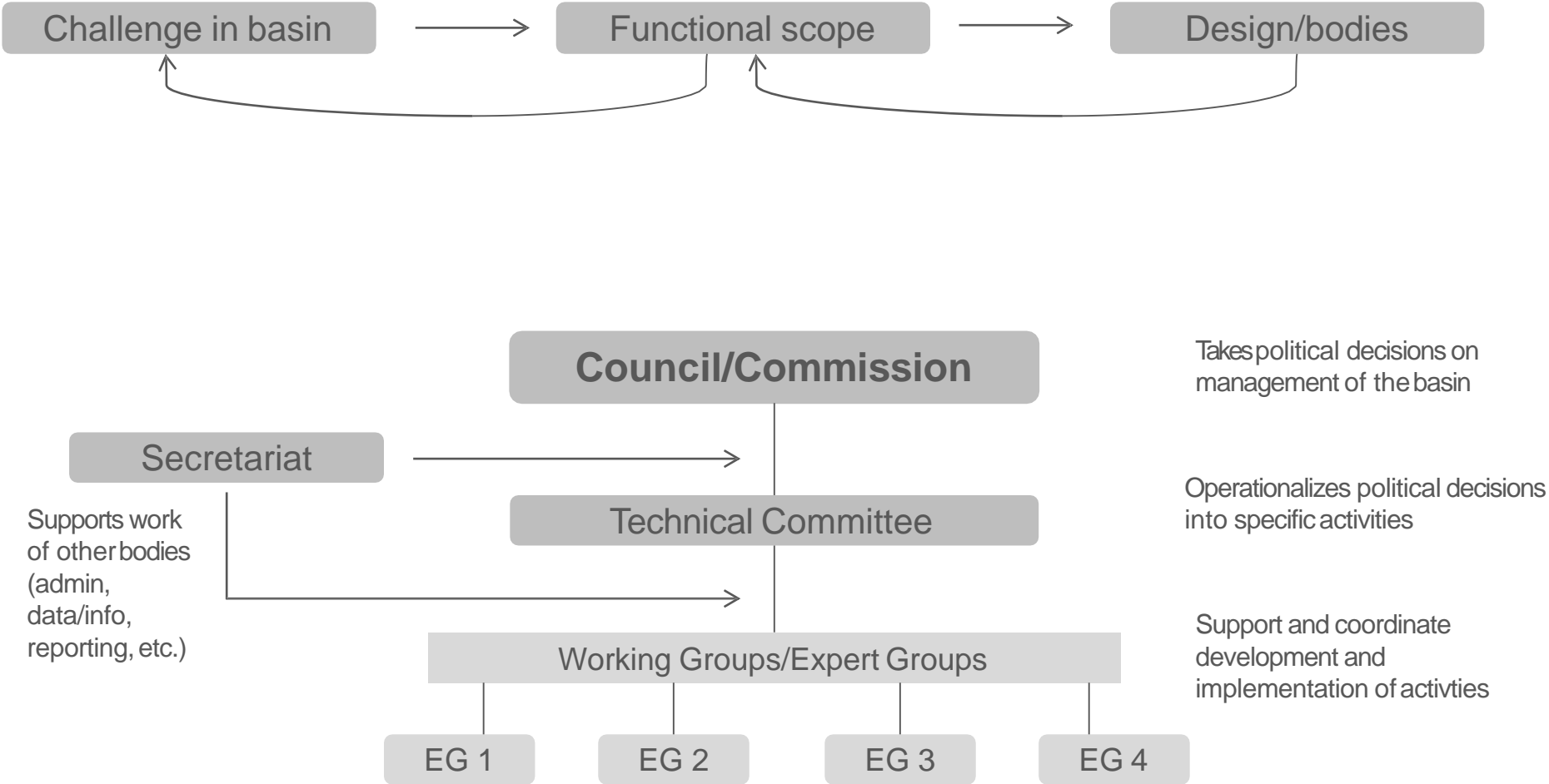


## Coordination

Policy coordination  
Harmonization of national standards  
Data exchange and management  
Joint monitoring



# The organizational structure of RBOs





# The role of RBO Secretariats

- Secretariats of RBOs provide a range of functions, including
  - Administrative and financial support
  - Organization and preparation of meetings
  - Reporting and documentation
  - Relations to external actors
  - Fund raising/relations to donors
  - Project coordination
  - Project management and implementation
  - ...
- Role of Secretariat depends on specific needs in basin and member countries and can change over time



# Decision-making in RBOs

## Decisions in RBOs are taken

- in specific decision-making fora at different governance levels (e.g. meetings of ministerial council, joint technical committee, issue-specific working groups)
- based on inputs by technical experts and secretariat as a basis for sound and informed decision-making
- based on data and analysis concerning the state of the basin and the challenges it faces
- on the basis of pre-defined decision-making procedures (processes and voting mechanism) – consensus, unanimity or majority



# Dispute-resolution in the context of RBOs

- Most important is that dispute-resolution is defined in a transboundary basin before a disagreement or dispute emerges
- Typically 3 different types of dispute-resolution mechanisms (or combination of those):
  - RBO-internal
  - Negotiation/diplomatic activities between member countries outside of RBO
  - External party
    - Regional actor – political (e.g. regional organization) or legal (e.g. SADC Tribunal)
    - Global legal actor (ICJ, etc.)
- Willingness of countries to cooperatively address a disagreement is crucial



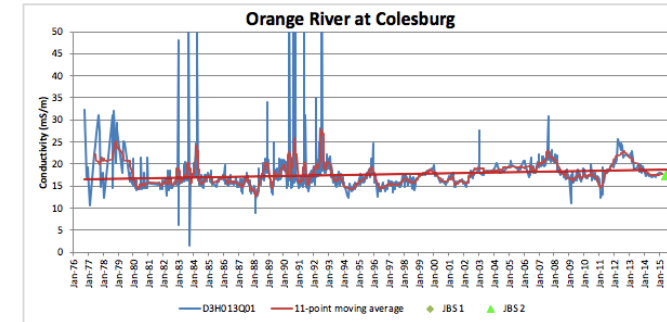


# Data and information management and sharing

The availability of data and information is crucial for sound decision-making for river basin management.

RBOs play an important role in

- acquiring data from
  - member countries
  - own analysis
  - 3rd parties (open source data, global data, etc.)
- undertaking analysis on specific issues and challenges (state of the basin, impact of specific pressures, etc.)
- ensuring and observing the quality of data and information
- organizing the exchange of data and information within the basin



## Orange-Senqu Water Information System (WIS)

The Orange-Senqu WIS supports data and information sharing between the ORASECOM riparian States. The WIS provides searchable:

- documents, data, media and software produced by ORASECOM, developed through direct or donor funding, in support of the Integrated Water Resources Management and information sharing goals of the organisation
- water resource related data collection and sharing initiatives of riparian States, and contact information of key organisations in the riparian States with water resource management related information.

All data and documents are searchable. Some important data, documents and data sources are highlighted in the following categories for easy browsing:

- |                                    |                         |
|------------------------------------|-------------------------|
| Biota and Ecosystems               | Geology and Soils       |
| Climate                            | Economy and Society     |
| Geology and Soils                  | Groundwater Resources   |
| Infrastructure                     | Integrated W.R.M.       |
| Landcover and Use                  | Other                   |
| Policy, Legislation and Strategies | Surface Water Resources |
|                                    | Water use               |

[Enter Directory](#)



# Notification and consultation mechanisms

- Requirement of international water law, operationalized into basin water law in many basins (especially those under strong infrastructure development), with RBOs often managing processes of notification and consultation
- Typically consists of
  - Notifying country submitting project information to RBO
  - RBO distributing documents to other members
  - RBO analyzing project impacts and issuing statement/assessment
  - Member countries consulting over project
- Requires strong technical and managerial capacities of RBOs



# Experiences from around the world



RBOs in the Mekong, Niger, Orange and Senegal River Basins



# The Mekong River Commission (MRC)

- Established 1995 on the basis of the 1995 Mekong Agreement
- **Mandate** to focus on “all fields of sustainable development, utilization, management and conservation of water and related resources, including, but not limited to, irrigation, hydropower, navigation, flood control, fisheries, timber floating, recreation and tourism”; currently moving towards coordination
- **Set-up** with Council (ministerial level), Joint Committee, Secretariat and National Mekong Committees
- **Financing** for core budget and program budget from member countries and large share from external development partners
- **Cost-sharing** combines equal sharing and key-based sharing (GDP, irrigation, flow, territory, population)
- **Decision-making** based on unanimity principle, in past years increasing challenges to come to timely decisions
- **Dispute-resolution** in an “amicable, timely and good neighborly manner”, through Council (1) or external mechanism (2)
- Very important role in **data and information-sharing** and management of consultation process





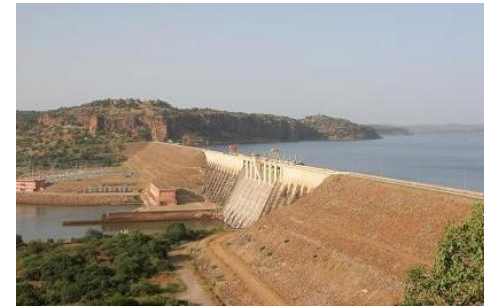
# The Niger Basin Authority(NBA)

- Established in 1980, legal basis significantly extended with 2008 Niger Basin Water Charter
- Key **mandate** focuses on economic development, including harmonizing and coordinating national policies, promoting and participating in projects for water resources development, flood and drought management and ecosystem protection; implementation focus
- Comprehensive organizational **set-up** (including Summit of Heads of State and Government)
- **Financing** by member countries, but high reliance on external financing for NBA and projects (with high financing needs)
- **Decision-making** based on consensus (although simple majority possible)
- **Dispute-resolution** by Summit of Heads of State and Government (1), internally (2) or referral to external actors (3)
- Important role of Secretariat in **data and information management**, including strong say in notification



# The Senegal Organization (OMVS)

- Established in 1972, legal regime significantly revised with 2002 Water Charter
- **Mandate** focuses on economic development on basis of water resources development (objective to coordinate development of river to exploit natural resources for economic development opportunities, especially in energy, irrigation and navigation); strong implementation focus
- Very comprehensive organizational **set-up** with 10 organizational bodies
- **Financing** based on member state contributions and external contributions, cost-sharing based on calculation of benefits from irrigation, hydropower and navigation gains from joint projects
- **Decision-making** on basis of unanimity principle, typically negotiated outcomes
- **Dispute-resolution** through conciliation and mediation in RBO(1), possibility to refer to external actors (2)
- High Commission plays key role in managing **data and information** and in managing strong notification requirements





# The Orange-Senqu River Commission (ORASECOM)

- Established 2000 on the basis of the 2000 ORASECOM Agreement (and 2000 SADC Protocol)
- **Mandate** to make recommendations on long-term safe yield of the river, equitable and sustainable utilization, sustainable development in riparian states, harmonization of policies, development of projects, harmonization of data and information collection, processing and dissemination and emergency situations; focus on coordination
- **Set-up** with Council, Secretariat and Task Teams
- **Financing** based on member contributions (for entire core budget – for program budget external contributions), cost-sharing equal
- **Decision-making** through consensus, if no decision referral to next Council
- **Dispute-resolution** partly through Council (1), then resolution to SADC Tribunal (2)
- **Data and information management** coordinated by Secretariat, including information on projects with potential negative transboundary impact



# Lessons learned

- The mandate and the set-up of RBOs vary considerably across basins as they have to match each basin's key water management issues and specific challenges
- However, a number of lessons learned can be drawn across regions and basins
  - The mandate and scope of an RBO should reflect key water management issues in the basin and account for IWRM principles
  - The RBO should be set-up in a way that reflects its mandate (coordination vs implementation) and allows for effectiveness and efficiency
  - Anchoring basin-level work in member countries through strong linkages is crucial for successful basin management
  - Water governance mechanisms need to be well-defined and well-developed to ensure successful basin management

