

Title:

Lessons Learned and Recent Experiences with the Governance of Global Transboundary International Waters including International Freshwater, International Groundwater and International Large Marine Ecosystems (LMEs)

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Abstract:

This paper describes the results of a multi-year, multi-donor GEF (United Nations Global Environment Facility) and private sector-sponsored initiative dedicated to facilitating good governance and more effective decision making in the governance of global transboundary international waters including through the identification, collection, adaptation and replication of beneficial practices and lessons learned from international experiences. The key measurable benefits of the initiative were in ensuring that various lessons learned from multi-country experiences, including identification of areas where problems and delays were commonly experienced, were assimilated by various target audiences in a meaningful way. Target audiences included local water managers, governments, academics and civil society groups, including the portfolio of GEF projects. The initiative also encouraged local participation in the sharing of experiences by diverse stakeholders with a focus on women and youth and resilience in the face of climate change.

Three Key Words:

International Waters, Governance, Experiential Learning

Introduction:

This paper describes the results of a multi-year, multi-donor United Nations Global Environment Facility (GEF) and private sector-sponsored initiative dedicated to facilitating good governance and more effective decision making in the governance of global transboundary international waters including through the identification, collection, adaptation and replication of beneficial practices and lessons learned from international experiences.

The University of British Columbia in Vancouver, Canada has been the lead partner for this project which has facilitated dialogue among individuals and organizations engaged in governance within, and between, international freshwater, international groundwater, and international large marine ecosystems (LMEs) with particular emphasis on “South-South” cooperation and learning.

Key strategic partners in this project have included a wide range of individuals and organizations including academic institutions (El Colegio de Mexico; University of La Rochelle; Bates College; Oregon State University; McGeorge School of Law; National University of Singapore; Makerere University; Wuhan University; University of New England Faculty of Law Australia; Chulalongkorn University; Agha Khan Universities; the Javeriana, Rosario, Militar - Nueva Granada, Externado de Colombia and Andes Universities in Colombia; State University of Amazonas; Texas Wesleyan University; University of Costa Rica; University of Ulster; University of Dundee; Rhodes University), governments and international agencies (FAO; UNDP; UNEP; World Bank; United Nations Center for Preventative Diplomacy for Central Asia; United Nations Office of Mediation Services), NGO's (Aquatic Resources Conservation Group; Canadian Water Research Society; Network for Environment & Sustainable Development in Africa; Asian American Partnership; WWF USA; Gender & Water Alliance); the private sector (White & Case (Attorneys); Holguin,

Neira & Pombo (Abogados); Lawson Lundell (Barristers & Solicitors); Pierce Atwood (Attorneys), and a wide range of individuals.

The key measurable benefit of this project was in ensuring that various lessons learned from multi-country experiences, including identification of areas where problems and delays are commonly experienced, were assimilated by various target audiences through experiential learning. These target audiences included: local water managers, governments, and civil society groups, including the portfolio of GEF projects. The project also encouraged local participation in the sharing of best practices by diverse stakeholders with a focus on women and youth. Climate change adaptation knowledge was also incorporated into the learning tools.

Methods:

The project had three components:

Component 1:

Identification, analysis and codification of successful approaches to international waters (IW) governance within and beyond the GEF portfolio.

Component 2:

Creation and promotion of experiential learning tools, designed in collaboration with local experts and practitioners. The output was a series of demand driven specialized experiential learning tools for good governance focusing on understanding and promoting effective legal and institutional frameworks and decision-making. The experiential learning tools included case studies, negotiations and role play simulation exercises.

Component 3:

Targeted experiential training and adaptive learning, to build local capacity to replicate experiential learning programs that foster a culture of good governance in IW. The outcome was enhanced capacity of GEF practitioners in good governance and effective decision-making, including experienced local experts to replicate learning programs.

Findings and Discussion:

For the purposes of this project the term “international waters” means water resources that are shared by two or more sovereign states and includes international freshwater, international groundwater and international Large Marine Ecosystems (LMEs). LMEs are regions of ocean space of 200,000 km² or greater, that encompass coastal areas from river basins to estuaries to the outer margins of a continental shelf or the seaward extent of a predominant coastal current. LMEs are defined by ecological criteria, including bathymetric, hydrographic, productivity and trophically linked populations. International waters also include “boundary” water resources where the boundary between two or more sovereign states is formed by an international lake or river, and they include “successive” water resources where an international river (or underground aquifer) flows from one sovereign state to another.

International waters are critically important (Paisley, 2004). Nearly half of the world’s population is located within one or more of the over 260 international freshwater drainage basins that are shared by 2 or more sovereign states (Paisley, 2004). Even more striking than the absolute number of international freshwater drainage basins is a breakdown of each nation’s land surface which falls within them (PCA, 2002). At least 145 nations include territory within international freshwater drainage basins. At least 21 nations lie in their entirety within international freshwater drainage basins, including 33 countries which have greater than 95% of their territory within international freshwater drainage basins. 19 international freshwater drainage basins are shared by 5 or more riparian countries (Wolf, 2000). The Danube has 17 riparian nations. The Congo,

Niger, Nile, Rhine and Zambezi drainage basins are shared by between 9 and 11 countries. The remaining 13 international freshwater drainage basins have between 5 and 8 riparian countries. Agreements regarding governance of international waters serve not only to protect and promote sustainable development but also affect security throughout an entire area (Kraska, 2003).

These international agreements tend to stabilize and enhance security at the regional level, and the security return generated is independent of the concrete ecological and economic benefits produced by such agreements (Paisley and Hearn, 2006). Severe deforestation, soil erosion, salinization, toxic contamination, resource exploitation, habitat destruction, drought, flooding, air pollution and water pollution are just some of the environmental calamities that can increase international tension and lead to war over international waters. Conversely, the very process of reaching accommodation while developing bilateral resources and environmental and other mechanisms for cooperation in an international waters context creates a stabilizing and more transparent atmosphere. The mere fact of negotiation usually widens political participation, builds political stability and spreads confidence between sovereign states. Even in cases in which riparians merely agree to share information and exchange data, while agreeing to disagree on substantive issues, increased confidence usually emerges. For example, in the case of international freshwater drainage basins, according to (Kraska, 2003):

The role of transboundary river agreements in promoting sustainable development extends beyond simple economic and environmental factors. In South Asia, agreements have helped to strengthen political ties. The agreements have value as vehicles to ameliorate tension and reduce the likelihood of war. Although freshwater rivers, especially transnational ones, are frequently understood to contribute to international conflict, in South Asia the process and results of concluding transboundary river agreements have had positive ripple effect on the regional security environment.

The products of this project have so far included:

- Observations from hemispheric consultations in Asia, Africa and the Americas (e.g. Project Inception meeting, Whistler, Canada, October 2008; Hemispheric meeting Americas, Mexico City, March 2009; Hemispheric meeting Asia, (with GEF IWC5), Cairns, Australia, October 2009; Hemispheric meeting Africa, Entebbe, Uganda, February 2010; Costa Rica / Panama meeting February 2011, International Symposium, Stockholm, Sweden May 2011);
- Bibliographic Research;
- Report on Legal and Institutional Frameworks of 29 Key International Waters situations developed through a strategic partnership with White & Case, Attorneys
- Series of detailed case studies of international waters agreements (e.g. Mekong River Basin, Nile River Basin, Columbia River Basin, Iullemeden international aquifer, Guinea Current LME, Benguela Current LME, Caspian Sea, Lake Tanganyika, Cartagena Convention);
- Synthesis Document;
- Draft Reference and Training Manual;

Various objectives and findings from these products are discussed below:

Observations from Hemispheric consultations in Asia, Africa and the Americas (Project Inception meeting, Whistler, Canada, October 2008; Hemispheric meeting Americas, Mexico City, March 2009; Hemispheric meeting Asia, (with GEF IWC5), Cairns, Australia, October 2009; Hemispheric meeting Africa, Entebbe, Uganda, February 2010; Costa Rica / Panama meeting February 2011; International Symposium, Stockholm, Sweden May 2011)

The objective of these meetings was to develop networks to help ensure successful implementation of the project and to help ensure that the project was as “demand side” driven as reasonably possible.

Bibliographic Research

The objective of the bibliographic research was to learn as much as possible about what research and critical thinking had already been done in the realm of governance and international waters.

Report on Legal and Institutional Frameworks in 28 Key International Waters situations developed through a strategic partnership with White & Case Attorneys in Washington, D.C.

This report discussed the legal and institutional frameworks that apply to twenty-eight (28) international water bodies.

The 28 were:

1. Amazon River Basin
2. Cartagena Convention
3. Columbia River Basin
4. Guarani Aquifer System
5. International Commission for the Conservation of Atlantic Tunas (ICCAT)
6. Joint Fisheries Development Zone between Jamaica and Colombia
7. Rio Grande / Rio Bravo
8. Barcelona Convention
9. Black Sea
10. Caspian Sea
11. Danube River Basin
12. Franco-Swiss Genevese Aquifer
13. Rhine River Basin
14. Abidjan Convention
15. Lake Tanganyika
16. Lake Victoria
17. Niger River Basin
18. Nile Basin Initiative
19. Nubian Aquifer (NSAS)
20. North West Sahara Aquifer (NWSAS)
21. Okavango River Basin
22. Senegal River Basin
23. Southern African Development Community (SADC)
24. Bay of Bengal
25. Mekong River Basin
26. Partnerships in Environmental Management for the Seas of East Asia (PEMSEA)
27. South China Seas
28. Western and Central Pacific Fisheries Commission (WCPFC)

The following eighteen (18) criteria, identified in coordination with the Board of Advisors and the Steering Committee of the Project, were used to standardize the review and reporting on the legal and institutional frameworks of the water bodies studied:

1. Legal Basis (i.e. is it based on a Treaty, Memorandum of Understanding etc.);
2. Member States (what states are parties to the agreement, are there observer states or groups);
3. Geographical Scope (what is covered within the framework);
4. Legal Personality (what is the body that implements the framework);

5. Functions (what does the framework seek to do);
6. Organizational Structure (what are the institutional designs and how do they interact);
7. Relationships (i.e. with multilateral, domestic and non-water sectors);
8. Decision Making (how are decisions within the institution made);
9. Dispute Resolution (is there a specified method for preventing and dealing with disputes among members);
10. Data Information Sharing, Exchange, and Harmonization (how do the countries share and exchange data with respect to the shared waters);
11. Notifications (how are members notified of changes to the framework);
12. Funding and Financing (how are operational costs paid for in both the long and short term);
13. Benefit Sharing (how are the benefits of the framework distributed among members);
14. Compliance and Monitoring (how do members ensure they are applying the agreement properly, and are there any reporting or evaluation mechanisms);
15. Participation and the Role of Multiple Stakeholders (how are civil society, youth and private sector groups engaged);
16. Dissolution and Termination (how is the agreement terminated);
17. Additional Remarks (any pertinent information that falls outside any of the identified criteria); and
18. Websites and References (helpful websites and citations to supporting information).

The report was based on primary materials that establish legal and institutional frameworks, such as international agreements (including treaties and conventions where applicable), protocols or action plans. Where relevant secondary materials were available (primarily for water bodies with more extensive legal frameworks), those secondary materials are identified and referenced as appropriate. The report is based on information available as of June 2010. The report also identifies and explains the eighteen criteria that are used to describe the legal and institutional frameworks of each of the water bodies discussed in this report. The report also provides a detailed discussion of the legal and institutional frameworks for each water body identified, organized by global region. As the described frameworks continue to evolve, there may be future revisions of this report, for which supplemental information would be welcome.

To review the full report online and other details of this project please go to <http://governance-iwlearn.org/>

Series of detailed case studies of international waters situations (e.g. Mekong, Nile, Columbia, Iullemeden, Guinea Current LME, Benguela Current LME, Caspian, Lake Tanganyika, Cartagena Convention)

The detailed case studies were prepared as part of the overall project. The objective of these detailed case studies included providing particular insight into how various selected international waters agreements were negotiated and how well they are working. Each detailed case study has been peer reviewed by one or more experts with direct knowledge of the agreement being analyzed. For example, in the case of the 1995 Mekong Agreement, the support and encouragement of George Radosevich, Olivier Cogels, John Dore, John Metzger and Pech Sokhem in helping to produce this paper has been very gratefully acknowledged.

Synthesis Document

The term "good governance" is being increasingly used in development literature (UNESCAP, 2011). According to UNESCAP, good governance has at least 8 major characteristics. Those characteristics are: participatory, consensus oriented, accountable, transparent, responsive, effective and efficient, equitable and inclusive and follow the rule of law (UNESCAP, 2011).

The Synthesis Document critically reviews various elements of good governance in an international waters context where governance is defined as the process of decision-making and the process by which decisions are implemented (or not implemented). The analysis focuses on the formal and informal actors involved in decision-making and implementing the decisions made, as well as the formal and informal structures that have been set in place to arrive at and implement those decisions. Good governance assures that corruption is minimized, the views of minorities are taken into account and that the voices of the most vulnerable in society are heard in decision-making. Good governance is responsive to the present and future needs of society. Very few countries and societies appear to have even come close to achieving good governance in its totality.

Six aspects of good governance in an international waters context are presented: benefit sharing, data and information sharing and exchange, dispute resolution, funding, resilience, and institutional architecture.

In our professional judgment, these represented the best combination of where the need was greatest and where various lessons learned and experiences were reasonably available.

The methodology for developing the Synthesis Document included working with a carefully chosen expert advisory board and a major international law firm to identify the legal and institutional frameworks that apply to the governance of 28 international waters situations; identifying and critically reviewing the detailed governance arrangements associated with an additional nine international waters situations; conducting an extensive computer assisted literature search; and, obtaining advice and assistance from individuals with practical experience with the governance of international waters through a series of hemispheric meetings in Asia, Africa and the Americas.

Draft Reference and Training Manual including experiential learning tools

The Draft Reference and Training Manual currently consists of chapters dealing with:

1. Introduction to International Waters
2. International Law including the law of international drainage basins, the law of international groundwater and the law of international large marine ecosystems (LME's)
3. Various Selected Aspects of Governance and International Waters including 1.Benefit Sharing 2.Dispute Resolution 3.Data and Information Sharing and Exchange 4. Institutional Architecture 5. Resilience including Climate Change 6. Finance 7. Public Participation
4. Adult Learning, Communication Skills, Cross-Cultural Communication Skills and Negotiation Skills
5. Experiential Learning Exercises
6. Bibliography

The unique emphasis on adult learning, communications skills, cross cultural communication skills, negotiation skills and experiential learning flows from the proposition that such techniques offer several benefits including:

- By focusing on simpler (but still accurate) representation of the challenges participants will face when they try to apply methods learned in training, they can see more clearly the individual and organizations capabilities that need to be developed.
- By playing assigned roles (often quite distinct from their real life roles), participants can develop a better awareness and appreciation for the perspectives of others with whom they may need to negotiate or interact.
- By using carefully crafted role-play simulations (as opposed to the exclusive use of case studies or other teaching scenarios) facilitators can ensure that every trainee will be forced to confront particular negotiation puzzles or challenges.

- By participating in well managed debriefings, participants will be able to tie the general lessons of a role play exercise to the specific needs of their organization and allow them to formulate a follow up action agenda.

Conclusions

“There is nothing more difficult to take in hand, more perilous to conduct, or more uncertain in its success, than to take the lead in the introduction of a new order of things. The reformer has enemies in all who profit by the old order, and only lukewarm defenders in all those who would profit by the new order. This coolness arises partly from fear of their adversaries who have law in their favour, and partly from the incredulity of mankind, who do not truly believe anything new until they have had actual experience of it”

Machiavelli, The Prince, 1532

The key measurable benefits of this project initiative has been in ensuring that various lessons learned from multi-country experiences, including identification of areas where problems and delays were commonly experienced, were assimilated by various target audiences in a meaningful way. Target audiences have included local water managers, governments, academics and civil society groups, including in the portfolio of GEF projects. The initiative has also encouraged local participation in the sharing of experiences by diverse stakeholders with a focus on women and youth and resilience in the face of climate change.

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