

# Governance structures for transboundary water management in the Jordan Basin

SIWI



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# Executive summary

This report was commissioned from the Stockholm International Water Institute (SIWI) by EcoPeace Middle East for the benefit of a wide range of stakeholders concerned with designing and establishing a future basin governance structure for the Lower Jordan River. This work should be considered complementary to the Regional Non-Governmental Organisation (NGO) Master Plan for Sustainable Development in the Jordan Valley released in 2015 by EcoPeace Middle East and its partners SIWI and Global Nature Fund (GNF) with the support of the European Union's Sustainable Water Integrated Management (SWIM) programme.

Throughout this report readers are guided through the main questions policy makers and other stakeholders must address when considering the development of a basin governance structure such as:

- What type of basin governance structure is most relevant?
- What type of basin instrument is most relevant?
- How the mandate of the basin governance structure could be defined?
- What type of dispute mechanisms can be embedded in order to manage conflicts that could arise between parties?
- What kind of financing mechanism could support the operation of the governance structure and the projects to be implemented in the basin?

Each of these questions are explored at length alongside a series of short case studies that demonstrate how other basin policy makers and stakeholders have addressed these foundational questions.

While each basin is unique – good practice and lessons can be transferable to a variety of different contexts. Case studies elaborated in this report describe the development of transboundary governance structures where cooperation was fostered around water issues against a background of conflicts, where water represented (and continues to represent) a possible avenue for overcoming differences between countries or in which the conflict setting of the basin contributed to the trajectory of how the governance structure developed. Many lessons of relevance can be drawn from these experiences such as:

- Some form of governance is necessary to enable and incentivize regional financing opportunities.
- Regional management of water resources can serve as a unifying starting point for building trust and regional cooperation towards conflict resolution.
- Basin governance structures can be established even in areas with ongoing border disputes.

- Governance structures can develop over time in function and scope to meet the evolving needs of their members and stakeholder communities.
- Benefits of regional cooperation should be assessed regularly and repeatedly to account for emerging challenges, new realities and shifting priorities in a basin.
- Intentionally inclusive processes involving a range of stakeholders, ensuring gender equality, and participation of community representatives creates more representative and sustainable outcomes.

The step-wise approach adopted by the authors enables this document to be used as a consulting tool to facilitate discussion among stakeholders – rather than provide definitive closed recommendations. Nonetheless, following the examination of numerous basin governance agreements, the authors present a proposed Generic Articles of a Jordan River Basin Organisation. While typical in many aspects, the Generic Articles are rooted in the context of the Jordan and invite discussion and consultation among all stakeholders. The articles represent the first detailed formulation of a basin governance structure for the Jordan and can serve as a starting point for discussions regarding what a future Jordan River basin governance structure might look like in practice.

#### Going forward, SIWI recommends:

- Undertaking a concerted multi-level stakeholder consultation process inclusive of both government and civil society voices in all riparian states.
- Workshop discussions of the proposed Generic Articles of a Jordan River Basin Commission articles with riparian stakeholders.
- Implementation of tailor made training modules to support capacity building on governance, multi-level stakeholder consultation processes and water diplomacy among riparian stakeholders.
- Joint learning tours to the basin case studies discussed in this report to explore governance options in depth.
- Regular and repeated assessment of the benefits of cooperation based on international best practices to account for evolving political, social, economic and environmental challenges in the Jordan basin.

Much work remains to harness the political, economic and social benefits of regional cooperation and basin governance in the Jordan, but the options and experiences included here can contribute to promoting 'peace, prosperity and security in the Jordan Valley' as envisioned by the Regional NGO Master Plan for Sustainable Development in the Jordan Valley.

# About the authors

This report is authored by experts from the Transboundary Water Management Unit at the Stockholm International Water Institute (SIWI) and its partners at the UNESCO-IHE Institute for Water Education. Support for this project was provided by the Swedish International Development Agency (Sida) to EcoPeace Middle East as part of their Jordan River Rehabilitation Project.

SIWI is a policy institute that generates knowledge and informs decision-making towards water wise policy and sustainable development. SIWI performs research, builds institutional capacity and provides advisory services in five thematic areas: water governance, transboundary water management, water and climate change, the water-energy-food nexus, and water economics. SIWI organizes the World Water Week in Stockholm – the leading annual global meeting place on water and development issues – and hosts the Stockholm Water Prize and the Stockholm Junior Water Prize.

The UNESCO-IHE Institute for Water Education is the largest international graduate water education facility in the world and is based in Delft, the Netherlands. The Institute confers fully accredited MSc degrees, and PhD degrees in collaboration with partner universities. UNESCO-IHE carries out educational, research and capacity development activities that complement and reinforce each other in the broad fields of water engineering, water management, environment, sanitation, and governance.

Cooperation to develop this report between SIWI and UNESCO-IHE was undertaken under the framework of a memorandum of understanding on transboundary water management and water diplomacy with the support of the Netherlands Ministry of Foreign Affairs.

The contents of this report do not necessarily reflect the positions of Sida or the individual authors and contributors.

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# Abbreviations and acronyms

ADB	Asian Development Bank
ASEAN	Association of Southeast Asian Nations
ESCAP	United Nations Economic and Social Commission for Asia and the Pacific
FASRB	Framework Agreement on the Sava River Basin
GIZ	German International Development Agency
GMS	Greater Mekong Sub-region
GNF	Global Nature Fund
ICPR	International Commission for the Protection of the Rhine
ISRBC	International Sava River Basin Commission
JPCC	Joint Permanent Commission for Cooperation between South Africa and Mozambique
KOBWA	Komati Basin Water Authority
LBPTC	Limpopo Basin Permanent Technical Committee
LHWP	Lesotho Highlands Water Project
LIMCOM	Limpopo Watercourse Commission
LMB	Lower Mekong Basin
MoU	Memorandum of Understanding
MRC	Mekong River Commission
MRCs	Mekong River Commission Secretariat
NGO	Non governmental organisation
ORASECOM	Orange-Senqu River Commission
OKACOM	Permanent Okavango River Basin Water Commission
RBO	River Basin Organizations
RHDHV	Royal HaskoningDHV
RSA	Republic of South Africa
SADC	Southern African Development Community
SBC	Sava Basin Commission
Sida	Swedish International Development Agency
SIWI	Stockholm International Water Institute
SWIM	European Union's Sustainable Water Integrated Management Framework
UNECE	United Nations Economic Commission for Europe
UNEP	United Nations Environment Programme

## 1. Introduction: Context and aim

While recent trends towards increasing transboundary water cooperation are demonstrated by a growing number of River Basin Organisations (RBOs) globally, experts point to the variant effectiveness of these organisations to leverage the benefits of multi-lateral cooperation. Some form of regional governance is considered essential to achieve the goal of a rehabilitated Lower Jordan River, fair share of the basin water among the riparian's and leverage the economic and geo-political benefits of cooperation for Palestinian, Jordanian and Israeli communities along its banks. This report seeks to inform thinking as a potential starting point to formalize a basin governance structure.

SIWI has been contracted by EcoPeace Middle East to prepare a report presenting the options available for the development of a basin governance structure for the Lower Jordan River.

**Building on the momentum for regional rehabilitation of the Lower Jordan River** | The Lower Jordan River is in crisis. According to EcoPeace Middle East an estimated 96 per cent of the river's water resources have been diverted by Israel, Syria and Jordan, and years of permitting untreated sewage to flow in the Jordan has caused a significant deterioration of its once rich biodiversity (EcoPeace Middle East, 2012). This dramatic deterioration has continued despite the 1994 Jordanian-Israeli Peace Treaty which specifically calls upon the parties to cooperate to rehabilitate the river, establish reserves and protected areas and initiate transboundary tourism programmes.

But signs are evident that a shift in awareness and political will has emerged in recent years with civil society, local and regional leadership in Jordan, Palestine and Israel engaged in supporting and implementing major sanitation works to remove pollutants from the river, the Israeli government returning the first allocation of fresh water to the river in nearly half a century, and improvements in Jordanian-Israeli bi-lateral water coordination. Relations between Palestine and Israel remain dire, including efforts to improve water and development cooperation. Ongoing efforts by national champions, municipal leaders and NGOs are demanding solutions to their water and environmental challenges under the banner of 'water can't wait' (Jerusalem Post, 2014).

Contributing to increasing regional awareness and advocacy towards improved regional cooperation for the sustainable development of the Lower Jordan River, EcoPeace Middle East and its partners at SIWI and GNF launched an effort in 2012 to undertake the first regional NGO master plan for the Lower Jordan River "to promote peace, prosperity and security in the Jordan Valley"

(RHDHV, 2015). The Regional NGO Master Plan for Sustainable Development in the Jordan Valley was produced by Royal HaskoningDHV (RHDHV) for EcoPeace Middle East and its consortium partners and supported by the European Union's SWIM framework. This process was closely coordinated with Jordanian and Palestinian national water authorities and aligned with the master plans developed by two Israeli drainage authorities in their areas of jurisdiction. Markedly, in parallel, the Israeli-Jordanian Joint Committee for the Rehabilitation of the Jordan River, a sub-committee to the Joint Water Committee of the Jordan-Israel Peace Treaty was established during this period and national leaders from all three riparian states expressed their understanding that improved regional cooperation on the rehabilitation of the Jordan River is needed in statements during the November 2014 International Conference for Sustainable Development in the Jordan Valley organized by EcoPeace Middle East and SIWI (EcoPeace Middle East, 2014). Support was further elaborated during national and regional conferences hosted by EcoPeace Middle East in May and June 2015 with participating representatives from national ministries of all three countries.

The Regional NGO Master Plan's proposal for a basin governance structure was presented with participating representatives from national ministries from all three countries during the June 2015 regional EcoPeace conference alongside an inception presentation of this SIWI report. The assembled riparian representatives and stakeholders expressed interest and support in further exploring regional governance options for the Jordan River.

**Regional NGO Master Plan** | The Regional NGO Master Plan, released publicly in June 2015, identifies a total of 127 specific interventions proposed to meet the master plan's strategic objectives. Included among the 127 interventions is a proposal to establish a Jordan River Basin Organisation with the following objectives:

1. Ensure coordinated water resources and quality management between riparian countries Jordan, Israel and Palestine (in the long term potentially adding Lebanon and Syria as well) on the shared Jordan River Basin, while addressing the legitimate social and economic needs of each of the riparian states.
2. Enable joint development and management of the Jordan River and water resource infrastructure between the riparians.
3. Act as a coordinating body for the riparian countries of the Lower Jordan River.

4. Foster cooperation of the Jordan River and its water resources through coordinated, transparent and democratic processes under the principle of 'one river, one management' (RHDHV, 2015).

Furthermore, the Regional NGO Master Plan proposes national level interventions aimed at strengthening the institutional capacity of the responsible authorities to support the regional governance interventions described above.

The Regional NGO Master Plan recognizes the proposed Jordan River Basin Organisation as a long term aim. As such, RHDHV proposed the establishment of a Steering Committee for each of the master plan's thematic areas with each composed of key Jordanian, Israeli and Palestinian governmental stakeholders to support the further development and implementation of the proposed regional and national interventions in the short and mid-terms, illustrated below in Figure 1. It was further elaborated that the proposed Steering Committee could eventually be embedded in the structures of the overall Jordan River Basin Organisation.



Figure 1: Regional Jordan Valley Coordination Scheme (RHDHV, 2015)

## 2. Purpose

This report is produced to support EcoPeace Middle East and other users including riparian governments to facilitate discussion among stakeholders as to what type of basin governance structures would be suitable to the Jordan River Basin. This process aims to assist stakeholders in advancing regional cooperation for the adoption of a transboundary governance institution, building on the processes and discussions that contributed to the formulation of the governance interventions included in the Regional NGO Master Plan.

Utilized as such, the content of this report can be negotiated in a step-by-step manner and hence agreed on to ensure buy-in through consultations with key national, regional and international experts, as well as with the authorities who will ultimately be responsible for its implementation.

Options for basin governance structures included in this report are based on relevant practice and lessons learnt. Each option is accompanied by a description of the implications of its choice.

While the document does include a set of generic articles for a future Jordan River Basin Organisation (see section 9), it is not the purpose of this report to make recommendations as to what options to choose but rather to present various options that can be discussed with all stakeholders in a participatory and inclusive manner.



Photo: EcoPeace/2015

### 3. Approach

Basin governance structures derive their authority from their participating national governments. Hence their functions are derived from a state sanctioned mandate (SIWI and BRL, 2011). The preparation of an instrument such as an agreement, comprising of a number of articles that outline its purpose, mandate, governance and financing mechanisms provides an important framework for broad discussions among regional stakeholders on all aspects of the future governance structure for the Jordan Basin.

Drawing on SIWI's previous experience in this field, it is recognized that the establishment of a basin gover-

nance structure is a social-political process that relies not only on the preparation of the instrument, but also on building trusting relationships between the actors involved in the broader decision making processes and the stakeholders in the region. Ensuring the governance structure is derived from the needs of the users and based on the realities of the geo-political context is fundamental to its long-term success. Every phase of the design and formulation should be as inclusive and deliberative as appropriate.



Photo: Eddie Gerald / geo-pix.com

### 4. Types of basin governance structures

According to the literature there are essentially three types of basins organisations that are most common in practice. They are committees, commissions and authorities (NBI 2001, Schmeier, 2013).

**Definitions of basin organisations** | Schmeier (2013) differentiates these three types of river basin organisations according to their effectiveness along a continuum underpinned by their strength of legal personality.<sup>1</sup> The strength of legal personality is determined by the riparian states and/or river basin organisation members themselves and is usually explicitly articulated in the objectives of the institution. According to Schmeier (2013) legal personality is directly positively correlated to organisational effectiveness i.e. how well the organisation achieves its own set goals outlined in its mandate and objectives.

**Implications of choice of basin organisation type** | Basin *committees* generally lack legal personality indicating that their member states intend to keep full sovereignty at the national level hence the organisation is limited to coordination or advisory functions.

The majority of *commissions* have been granted legal personality, which implies that riparian states have transferred a restricted, specified aspect of their national sovereignty to the task of managing shared water resources within a river basin or watercourse. Commissions are hence more effective in developing, implementing and maintaining basin activities than organisations without such independent actor quality or legal personality.

**Authorities** appear to be mainly found in Africa, and occur principally in the form of organisations assigned a wide mandate such as managing the overall socio-economic development of the river basin beyond the pure governance of water resources including hosting investment projects (Schmeier, 2013).

It is also common practice to design multi-level organisational structures within a basin organisation. For example, a three level structure might include a minister level council, supported by a basin commission, which has a thematic task force function attached to it and a third level of a secretariat with coordination function and associated human and financial resources. This multi-level organisation structure allows for greatest flexibility by creating opportunities for the overall mandate and functional objectives of the organisation to grow over time.

The Regional Jordan Valley Coordination Scheme proposal to establish Steering Committees for each of the master plan's thematic areas, as outlined in Figure 1, is not unlike other examples of multi-level basin organisational structure or 'incremental legal-nesting' which can contribute to trust building among riparians by providing "for the evolution of the joint mechanisms operating across the basin" (Earle and Wouters, 2015 p106).



Figure 2: Legal Personality

<sup>1</sup> "The legal personality of the RBO refers to whether an institution is a permanent association of states, equipped with organs, entitled to act as an autonomous actor in the international system by concluding agreements with other legal personalities on substantive, issue-specific as well as administrative matters and entering into legal relations with other actors of the international system, with legal powers and purposes being distinguished between the organisation and its members and equipped with legal powers exercisable on the international level" (Schmeier, 2013, p45).

# 5. Types of basin instruments

Legal instruments provide parties with a framework through which they can regulate their relationships in a variety of areas. In the absence of such instruments, parties may find themselves acting in an ad hoc manner and not being able to turn to dispute resolution mechanisms when they find themselves at odds with each other. In the context of transboundary water resources management, established rules provide transparency and predictability for State actions in relation to shared water resources. A treaty may provide an institutional and normative framework for cooperation in this field (Wouters, 2013 p.23). This is essential for States to be able to effectively plan for water resources management.

The underlying instrument that establishes the basin organisation can in fact be called anything from a treaty, convention, covenant, declaration, exchange of notes, protocol, Memorandum of Understanding or agreement. In international law, any instrument that is adopted, signed, ratified or approved, is a legally binding agreement under the Vienna Convention on the Law of Treaties (1969) as that action expresses the consent of the parties to be bound by the terms of the instrument. Some distinctions in the terminology are noted in Table 1.

Table 1: Types of basin instruments and definitions

Types of basin instrument	Definition
Treaty, Convention, Covenant, Declaration	'An international agreement concluded between states in written form governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation' (art. 2.(1)(a) Vienna Convention)
Exchange of Notes	The use of this term indicates that the agreement is contained in two or more related instruments (rather than just one).
Protocol	This name is generally used to designate supplementary or amending agreements that relate to existing ones.
Memorandum of Understanding (MOU)	This is the term used when states want to record an international commitment that is not intended to be binding as a matter of international law. However, it is the actual content of the document that will establish whether or not it is binding rather than its name.

The nomenclature of 'agreement' is most common for basin organisation instruments. Member states generally opt for the basin instrument type that reflects the process undertaken to reach an agreement (protocol or memorandum of understanding) or due to related legal instruments that the basin agreement will be legally associated (i.e. amendments or extensions of previously established agreements).

For example: In the ORASECOM Agreement

*“The Commission shall be an international organization and shall possess international legal personality with the capacity to enter into international agreements and shall further possess legal personality within the legal systems of each of the Parties.”*

(Schmeier, pers com, July 2015)

In some cases it is not explicitly stated that the organisation should have legal personality (see section 4), however this can be understood from its status vis-à-vis its member states and the international community. It is important to consider this relationship with the international community since this will have a bearing on whether the basin organisation can enter into agreements for funding; such as with the EU which requires the organisation to undergo a Pillar Assessment to ensure its entrustment to implement EU budgets.<sup>2</sup>

Similar to the choice of the basin organisation type, it is the content of the agreement, whether a strongly legally binding instrument or a less stringent approach through an MoU, that gives the agreement its legal status and personality, not the specific 'type' of instrument. An incremental approach beginning with a MoU to create a platform, agreeing to reconsider the organisation's status after a period of operating and fostering trust in the joint institution, then subsequently entering into a stronger

agreement is not uncommon, as seen in the Limpopo Basin case study (section 10) as well as in the case of the Nile where the riparians signed a 'Shared Vision'. Allowing time for trust in the institution to be established may create political will to enter into a stronger or wider agreement.

No matter the type of basin instrument advanced it needs to at least be perceived to be mutually beneficial so that the built in incentives for cooperating make the agreement self-enforcing. While the principle of pacta sunt servanda is central in treaty law indicating that once governments have signed an agreement they are bound by its terms; ultimately, it is the political willingness of member states to adopt and support the implementation of particular functions within the agreement that will ensure its effectiveness and implementation. The fact that an agreement is mutually beneficial enhances the political willingness to implement but legally there is an expectation that after signature it would be implemented.



Photo: Itamar Grinberg/ EcoPeace Middle East

<sup>2</sup> See for details: [https://ec.europa.eu/europeaid/funding/about-funding-and-procedures/audit-and-control/pillar-assessments\\_en](https://ec.europa.eu/europeaid/funding/about-funding-and-procedures/audit-and-control/pillar-assessments_en).

# 6. Defining the mandate

The mandate of the basin governance structure is delimited by the shared water resources challenges or issues it aims to address in combination with its geographical scope. There is a fine balance between how many functions the organisation aims to cover and how many issues it could deal with and yet still remain effective and financially sustainable.

**Geographical scope** | The Regional NGO Master Plan for the Jordan River Valley focused on a limited geographical scope of the Lower Jordan River Valley, noting that the Jordan Valley is part of the wider Jordan Basin, which includes catchment areas in Lebanon and Syria as well. The upper part of the Jordan River Basin is connected to the lower part of the Jordan River Basin through Sea of Galilee and the Yarmouk River (Figure 3). The Regional NGO Master Plan did not address the wider Jordan River Basin as a whole, but assumed the hydrological characteristics of Sea of Galilee and the Yarmouk as boundary conditions (RHDHV, 2015, Figure 4) focusing on the Valley from the southern tip of the Sea of Galilee to the northern tip of the Dead Sea.



Figure 3: Jordan River Basin (UNEP, 2001)



Figure 4: Regional NGO Master Plan Study Area (RHDHV, 2015)

The SIWI approach described in this report, while building on the Regional NGO Master Plan, is intended to be adaptable to changing political realities as they emerge over time, allowing for opportunities to expand the geographical scope identified in the Regional NGO Master Plan (Figure 4) to the entire Jordan River Basin (Figure 4), to potentially include Syrian and Lebanese riparians on the basis of equal representation. The geographic scope of a future basin governance structure is a critical part of multi-level stakeholder discussions.

Generally, water resource management undertaken along hydrological boundaries is considered the optimal and preferred approach globally, indeed the basin approach is a key principle of Integrated Water Resource Management. However, in the course of negotiations the parties refine and define the geographical scope of the agreement to reflect the required organisational mandate. A mandate focused specifically on technical advice on the watercourse might opt for a limited or focused geographical scope. Mandates defined more broadly to focus on sustainable development and long term planning would likely opt for the basin approach. Choosing a limited,

tailored geographical scope is not without challenges. If actors choose a limited approach actions taken outside of the agreement's jurisdiction are not controlled by the agreement and may have negative consequences on the part of the basin that is covered by the agreement. The Mekong Basin case study (section 10) is illustrative of this challenge.

**Organisational structure and functional scope** | The functions of a basin governance structure normally includes governance mechanisms for decision making, data and information management, monitoring and compliance and dispute resolution. Based on literature and common practice, three broad mandates can be described based on a combination of co-ordination and implementation functions of the basin governance structure. These are outlined in Figure 5.

**Co-ordination orientated – without secretariat**

Mostly functions as a platform for consultation between member states, often without a separate body for implementation. Often linked with Committee type of organization (see section 4).

**Co-ordination orientated – with secretariat**

Mostly functions as coordinative body. Comprises decision making body which coordinates member state delegations, implementation planning and a secretariat. Often linked with Commission type of organization (see section 4).

**Co-ordination and implementation orientated**

Functionally broad mandate and decision making power vis-à-vis member states. Organisations with this functional scope are typically multi-level structures. Often linked with Commission and Authority type of organization. (see section 4).

Figure 5: Typology of basin organisation mandates (GIZ, 2014)

The basin governance organisational structure should further be based on its functional scope, where the functional scope depends on the purpose and the collective action problems to be solved. Looking specifically at the problem-situation, the collective action problems can be grouped in twelve types, in order of declining malignity<sup>3</sup>

(Wingqvist and Nilsson, 2015):

1. Water quantity and allocation problems
2. Water quality and pollution problems
3. Environmental problems and drought management
4. Hydropower and dam construction problems
5. Climate change problems
6. Fisheries problems
7. Infrastructure developments
8. Economic development
9. Invasive species
10. Flood effects on the basins
11. Biodiversity protection
12. Navigation and transport-related problems

Linked to the problem structure, the effectiveness can be expected to be higher for basin governance structure that is put in place to deal with less malign problems. However, the most difficult problems, particularly water quantity and allocation disputes, are also the most frequent problems that basin governance structures are established to resolve (Wingqvist and Nilsson, 2015).

The mandate of a basin organisation is generally agreed to/fix when the agreement is negotiated. However there are examples where the scope has either broadened (the Rhine – ICPR) or narrowed (Mekong – MRC) over time. It is possible to build in some flexibility from the start thereby recognizing the evolution of the capacity of the basin governance structure i.e. accommodate a progressive realization of the mandate as the basin governance structure matures. A flexible approach can help to ensure efficiency by adapting the organizational capacity as the functional scope evolves.

Practice has shown that basin organisations may display a progression through three stages of maturity over the long run, namely initial, emerging, and auto-adaptive (NBI, 2011), although this progression might not be linear. The initial stage is frequently based on the formalization of previous informal technical cooperation activities and is crucial in building trust between government representatives of the different states and other stakeholders. This stage also concentrates on leveling or building capacities within the basin organisation. In the emerging stage the basin organisation starts to assume greater autonomy and responsibility. This may take the form of developing joint databases to share information or setting targets for specific issues e.g. water quality. The auto-adaptive stage is typified by a well-resourced organisation (both human and financial) that assumes responsibility for the development, implementation and monitoring of activities that fall within its mandate.

<sup>3</sup> 'Malignity' refers to the conduciveness of the RBOs to solve the collective action problems, and does not refer to the severity of the problem itself. Less malign problems are more likely to be solved through effective river basin governance (Wingqvist and Nilsson, 2015).

# 7. Regional governance dispute resolution mechanisms

Disputes can arise even though there might be existing institutions or organisations in place, i.e. the establishment of an institution or organisation in itself does not necessarily result in the removal of potential for disputes to arise. Dispute resolution mechanisms and processes are therefore an essential function of a regional governance structure, particularly in river basins that have experienced a recent history of conflict such as the Jordan River.

Disputes that could possibly fall within the ambit of a regional water governance structure could fall on this continuum between 7 and 11.<sup>4</sup> This naturally depends on the specifics of the dispute, interaction or cooperation activity which in turn depends on whether the mandate of the regional water governance structure covers that activity within its functional scope.

There are a range of dispute resolution processes that can be used to enable states to select the negotiation path to settle disputes including:

- negotiation
- enquiry (including joint fact finding)
- mediation
- conciliation
- arbitration
- judicial settlements.

There is a wide variation of options for how basin organisations or regional water governance structures choose to integrate dispute resolution mechanisms into a formal instrument or agreement. Generally these options can be categorised into two main approaches:

1. A negotiation-based approach, where informal negotiations are used to resolve issues, and
2. A formalised arbitration approach:
  - a. Undertaken by an established body within the regional water governance structure, or

b. Undertaken by a body external to regional water governance structure. For example an international organisation, donor agency, NGO or the international courts (Schmeier, 2013).

These two approaches are described in more detail below:

**Direct negotiation among the member state disputants:** Where a regional governance structure is not mandated to resolve a dispute internally, the dispute can be conveyed to the member state representatives to negotiate a solution.

**Authority to Issue Resolutions:** Integrally related to the strength of the legal personality granted to the regional water governance structure by its member states, a governance structure can explicitly articulate its ability to make decisions to effectively manage water resources in a basin including those with transboundary implications. Alternatively, a regional governance resolution agreement can pre-determine that all potential conflicts be resolved through arbitration by an **independent, neutral third party**, either a constructed group of experts or a pre-established international authority such as the International Court of Justice.<sup>5</sup>

**Arbitration by expert group body:** Expert groups can be convened to address a specific technical or political dispute. In the cases of the Sava (section 10) and Indus Basins, two basins that have a long history of conflict, the basin governance structures were mandated to establish an arbitration body for disputes with an odd number of representatives including a 'neutral representative' to be approved by both sides.<sup>6</sup> In order to resolve a situation in which a 'neutral representative' cannot be agreed upon between the parties directly, provisions can be made for third party to choose the neutral representative.<sup>7</sup>

The regional water governance agreement can also pre-determine the use of a **neutral, third party mediator** to resolve disputes to support the establishment of a basin wide governance structure and/or to resolve disputes in implementing the development, implementation and monitoring of activities that fall within its mandate. The World Bank successfully adopted this role in the Indus Basin negotiations that led to the installment of the Indus Waters Treaty and the establishment of the Permanent Indus Commission, after which the Bank removed itself. This role was particularly suited to the Bank as they were able to encourage negotiation by mobilizing funding for agreed upon actions or alternately withholding financial and technical assistance for disputed activities (Zawahri, 2006). The use of a mediator to manage attributions also offers a concrete response to overcome a frequently encountered barrier during negotiations wherein the act of offering a proposal or concessions diminishes its value in the eyes of the recipient (Ross and Ward, 1995).

Decision-making authority and defined procedures play an essential role in dispute resolution. A shared

understanding and a commitment to transparency regarding the mandate, core functions, roles, work plans and associated resources for both political decision making bodies and technical advisors will greatly contribute to mitigating potential areas of conflict before conflicts arise while ensuring that negotiations take place in an integrative rather than competitive mode. The absence of pre-defined procedures for resolving disputes can contribute to festering conflict, especially in basins where riparians may be initially averse to sharing information or share a history of conflict (Schmeier, 2013).

The positive role of direct communication between riparians should not be underestimated. The ability for basin representatives to communicate directly both through regular meetings and intermittently as needed allows for free and reliable interactions and gives the basin governance structure the ability to address issues preventatively. Moreover, regular communications transform relationships from one of crisis management to partnership, elongating the time horizon of a relationship, building trust and reframing disputes as a shared challenge with mutually acceptable solutions.



Photo: Itamar Grimberg/ EcoPeace Middle East

<sup>4</sup> Other actions along the conflict – cooperation spectrum would likely fall outside of the mandate of the basin governance structure, rather within the scope of national defense and foreign affairs.

<sup>5</sup> Example: Indus Waters Treaty, Article 9.2; Sava Basin Commission, Articles 22 and 24

<sup>6</sup> Examples: Convention on Non-Navigational Uses, Article 33.4; Indus Waters Treaty, Article 9; Sava River Basin, Articles 22 and 23.

<sup>7</sup> Example: Sava River Basin, Article 23.

# 8. Sustainable financing mechanism

The ability of a basin governance structure to fulfill its mandated tasks and operations is largely dependent on its capacity to maintain a sound and sustainable financing structure. Maintaining a sustainable financing mechanism requires member states to undertake a process of prioritizing, budgeting and allocating funding based on their possible resource streams. Regular and recurrent budgets for basin governance structures vary greatly as correlated with their mandated and functional scope with coordination orientated basin governance structures requiring significantly less financial and human resources than implementation orientated structures (GIZ, 2014).

In the 2014 overview of RBO financing published by the German International Development Agency (GIZ), financial sustainability is defined in four dimensions: sufficiency of funding, degree of self-financing, reliability of funding and resilience to cope with unforeseen financing challenges. Furthermore, the GIZ report stresses the importance of providing different modules for various budget streams: permanent budget for core functions, regular and recurrent needs, and funding for time-bound tasks (GIZ, 2014).

Typically basin governance structures' regular and recurrent budget requirements are supported by a combination of member financing, including in-kind contributions, and external financial contributions. Member contributions can be made on a basis of equal or disparate contributions involving "considerations of fairness, equity and distribution of power in the organization" (GIZ, 2014). While in the past development partners provided financial support to governance institution core costs, today the trend is for member states to fully finance core costs of governance institutions. Donor agencies and development organisations' financial contributions are often leveraged for time bound development projects, requiring member contributions as a demonstration of political buy-in (GIZ, 2014). In the 2007 SIWI study "Transboundary Water Management as a Regional Public Good Financing development – an example from the Nile Basin" the authors conclude that ideally the member states should be responsible for the "bulk of the cost incurred when managing transboundary institutions." However, since most developing countries are unable to finance large infrastructure works on the basis of member

contributions alone, the authors recommended that where necessary donor financing be leveraged to support projects that have long-term, shared benefits across the basin to contribute towards "economic growth and regional stability" (Jägerskog et al., 2007).

More recently, innovative financing mechanisms such as polluter pays and other user fee based structures have begun to be considered by several of the RBOs included in the GIZ study but none have yet implemented these types of financing arrangements (GIZ, 2014). Donor supported trust funds have been introduced in some transboundary basins to coordinate investments, insulate against shifting donor priorities and empower basin governance structures. However, donor supported trust funds and other joint investment commissions are predicated on direct demand from the heads of states of all riparians and necessitate an extensive period of assessment and strong alignment with professional practices including multi-level stakeholder consultations, and detailed political, economic, social, gender, and environmental assessments. If support for such a mechanism is established across the basin, risk can be significantly reduced with wide international political backing from key global players.

A variant of a trust fund, a joint infrastructure financial vehicle, was developed by SIWI for potential application in transboundary river basins such as the Lower Jordan River Basin. The objective of the fund is to use the reciprocity of political forces and financing to attract political buy-in and attractiveness to the financing actors. The idea is to reduce the barriers to take joint political decisions, while at the same time reducing risk – a key component in all investment decisions. The fund is set up as an independent entity, insofar that it controls and owns the assets as well as manages the operations of the agreed investment/intervention package. With the clustering of investments into segments that share similar characteristics, the fund allows for a wide variety of financing sources to contribute to the fund. The features (asset-backed financing, professional management, reducing political risk) in themselves create an environment that is preferred by investors. This means that the credit costs can be reduced.

The entity would be responsible to a Board of Trustees, or the commission within a basin organisation consist-

ing of member state delegations. The fund will, through its' tariff- or levy-based assets, deliver the excess returns from the fund to the Board of Trustees, ensuring that financing of the basin governance structure is achieved. Once the investments have been amortized (estimated at 25-30 years), the contents of the fund can also be transferred to the basin governance structure.

A specific benefit of a transboundary investment scheme is that "country risk", a premium on credits paid for each specific state, is significantly reduced by using regional investments. This benefit is also apparent in the

political perspective, since benefits will only appear if all parties agree. This incentivizes the parties to reach an agreement. Hence, the process is self-reinforcing; all steps in the positive direction will increase the potential gains for all stakeholders.

The transboundary perspective is also to be observed where national ability to raise funding is unequal; by using external funding, the political ability to agree to investments otherwise unattainable is vastly enhanced. Again; the reciprocity between the political and the financial arenas work beneficially with this model.



Photo: Itamar Greenberg/EcoPeace Middle East

# 9. Legal framework

## – Proposed generic articles of a future Jordan River Basin Commission

As stated in the Executive Summary, this report aims to facilitate discussion among stakeholders as to what type of basin governance structures would be mutually beneficial to the Jordan River and its riparians.

Building on the above sections, the Generic Articles of a Jordan River Basin Organisation or governance structure, presented below, follows the examination of basin governance agreements from numerous basins. Specific inspiration for the language in the proposal below was drawn from the agreements on the Sava, Indus, Limpopo, ORASECOM and OKACOM basins as well as the 1997 Water Convention. For more information on these and other basin governance structures please see section 10, case studies.

The Generic Articles below are maximalist in their scope and include many articles that through discussions and consultations, riparian decision makers and stakeholders may choose to modify or remove. Additional provisions covering areas not considered in the Generic Articles could also be drafted if necessary. Some agreements opt for a more minimalistic approach in terms of content, for various reasons. All articles should be considered optional in this case.

While these Articles were constructed with the three riparians of the Lower Jordan River Valley in mind there is no hindrance to expanding the agreement, and its related rights and responsibilities, to include all of the Jordan River basin's riparians as specifically mentioned in Article 8.4.

Much work remains to carry the Generic Articles forward including a multi-level stakeholder consultation process to receive feedback on the proposal and a joint exploration on lessons learned and the experiences of basins globally. The aim of including the Generic Articles in this report is to advance the discussion of how a future agreement might take shape, informed by the information provided throughout this report. Exploring these issues requires a step-wise approach which is flexible enough to navigate the intersecting issues elaborated in this report.

### DRAFT PROPOSAL FOR THE DEVELOPMENT OF A SET OF JORDAN RIVER BASIN COMMISSION ARTICLES:

#### *Preamble*

The Government of the Hashemite Kingdom of Jordan, the Government of Israel and the Government of Palestine, hereinafter referred to individually as a 'Party' and jointly as the 'Parties',

**CONSCIOUS** of the water scarcity related problems in the Jordan Valley;

**RECOGNISING** the urgency of the need to rehabilitate the Jordan River and the value of improved regional cooperation to achieve it;

**CONSIDERING** that the Jordan River serves as a natural water conveyor and source for water supply for residents in and outside of the Jordan Valley;

**DESIRING** to promote sustainable development in the Jordan Valley by striking the appropriate balance between a healthy economic developmental path for the valley and its people, while desiring a Jordan River with sufficient environmental flow to sustain a healthy eco-system;

**WISHING** to achieve pollution control and the elimination of all sources of environmental pollution in the Jordan Valley by 2025;

**RECOGNISING** the internationally accepted human right to water and its implications for all;

**INSPIRED** to create a sustainable water supply system in the Jordan Valley meeting current and future domestic and agricultural water demands whilst preserving the water resources for future generations and for the environment;

**RECOGNISING** that sustainable development will deepen the cooperation between the Parties as a means to achieve prosperity, stability and security for their respective residents in the Jordan Valley and beyond;

**COMMITTED** to the realisation of the principle of equitable and reasonable utilisation and to the principle of sustainable development with regard to the Jordan River Basin; and

**ENDORISING**, amongst other such instruments, Principle 3 of the Dublin Statement on Water and Sustainable Development of 1992 promoting the central role of women in water management, Principle 20 of the Rio Declaration of 1992 recognising the vital role in water

management; and Chapter 24 of Agenda 21 on the role of women in the same;

BEARING in mind the Convention on the Law of Non-Navigational Uses of International Watercourses adopted by the General Assembly of the United Nations in 1997 and other relevant international instruments;

Have agreed as follows:

#### **Article 1 – Principles and Definitions**

##### *1.1 Principles*

For the purposes of this Agreement, the Parties have agreed that, amongst others, the following principles will apply:

- Sustainable development: development in the Basin that meets the needs of the present without compromising the ability of future generations to meet their own needs;
- Equitable and reasonable utilisation: the use and development of the Basin with a view to attaining its optimal and sustainable utilisation taking into account the interests of the Parties consistent with the adequate protection of the Basin;
- No significant harm: in their utilisation of the Basin, the Parties shall take all appropriate measures to prevent the causing of significant harm to other Parties, and where significant harm is caused nevertheless the Parties shall take all appropriate measures, in consultation with the affected Parties, to eliminate or mitigate such harm, and where appropriate, to discuss the question of compensation;
- Intergenerational equity principle: decisions and recommendations under this Agreement shall be consistent with adequate protection of the Basin for the benefit of present and future generations; and
- Exchange of data and information: provision by the Parties for the widest exchange of information, as early as possible, on issues covered by this Agreement.

##### *1.2 Definitions*

For the purposes of this Agreement:

'Basin' means the geographic scope of surface and groundwaters of the lower part of the Jordan River Valley, which starts from the southern tip of the Sea of Galilee and ends at the northern tip of the Dead Sea as defined by the Council, or the area as may be defined by the Council from time to time;

‘Commission’ means the Jordan River Basin Commission established under this Agreement;

‘Council’ means the Jordan River Basin Council established under this Agreement;

‘Organisation’ means the Jordan River Basin Organisation established under this Agreement;

‘Secretariat’ means the Secretariat established under this Agreement.

‘Planned measures’ means any new major or minor projects or programmes, or changes in existing uses, by a Party concerning the Basin that may have a significant effect on the other Parties.

## Article 2 - Objectives of the Agreement

### **2.1 The purpose of this Agreement is to establish the Jordan River Basin Organisation.**

### **2.2 The Organisation will act as a coordinating and implementing body to foster cooperation between the Parties over the Basin. More specifically its objectives are to:**

- a. Foster cooperation over the Jordan River and the use, development, protection conservation and management of its water resources through coordinated, transparent and democratic processes under the principle of ‘one river, one management’;
- b. Ensure coordinated water resources and quality management between the Parties, while addressing the legitimate social and economic needs of each of them; and
- c. Enable the joint development and management of the Jordan River and of water resource infrastructure between the Parties.

### **2.3 The provisions of existing agreements among the Parties concerning the subject matter of this Agreement will remain in force as far as they are not in conflict with this Agreement.**

### **2.4 The Parties shall ensure that all Planned Measures are notified to the Council in a timely manner and are accompanied by available technical data and information, including the results of any environmental impact assessment.**

## Article 3 - Nature and Composition of Organisation

### **3.1 The Organisation shall be composed of the following:**

- a. The Jordan River Basin Council;

- b. The Jordan River Basin Commission; and
- c. A Secretariat.

### **3.2 The Organisation shall have the international legal capacity necessary for the exercise of its functions.**

### **3.3 Members of the Organisation and of its bodies will have adequate gender representation.**

### **3.4 The Council may establish other bodies as may be necessary for the implementation of this Agreement such as ad hoc or standing working groups or committees comprising representatives of the Parties as each Party may determine. The Council may also integrate existing bodies or organisations in accordance with Article 3.5(g)(iv).**

### **3.5 The Council**

- a. The Council is the highest body of the organisation.
- b. The Council shall consist of one member per Party who will be at the ministerial or cabinet level and who is empowered to make decisions in relation to this Agreement on behalf of his government.
- c. The Chairperson person of the Council shall be for a term of one year and shall rotate according to the alphabetical listing of the Parties.
- d. The first meeting of the Council shall be convened no later than one year after the date of entry into force of this Agreement. Thereafter, an ordinary meeting of the Council shall be held at least once a year, unless otherwise decided by the Parties, or at the written request of any Party. Ordinary meetings shall take place on a basis of rotation in the territory of each of the Parties. The Council may invite observers to its sessions, as it deems appropriate.
- e. The Council member hosting a meeting of the Commission shall, in respect of that meeting act as the chairperson and shall be responsible for making a suitable venue available for that meeting. The hosting chairperson shall be responsible for the preparation and timely distribution of the agenda and of all supporting documentation as well as the recording of the minutes of the meeting and their distribution to the Council and to the Parties within thirty days of the date of that meeting.
- f. The minutes of each meeting shall be drawn up in English and signed by all Council members.
- g. At its meetings the Council shall consider the continuous implementation of this Agreement on the basis of reports submitted by the Commission, and shall:

- i) Make policies and decisions on matters relating to this Agreement as set out in Article 2.2;
- ii) Review the work and operations of the Commission and make policies and decisions based on its recommendations on matters relating to this Agreement, particularly in relation to Article 4.1(e);
- iii) Consider Planned Measures notified to it by a Party pursuant to Article 2.4 in order to evaluate the possible effects of such Planned Measures and shall communicate such findings to the Parties within six months of the notification; where the finding is that the implementation of the Planned Measures is inconsistent with this Agreement, the Council shall request the Parties to consult with a view to arriving at an adequate and equitable resolution of the situation;
- iv) Review and evaluate the integration into the Organisation of existing bodies or organisations, including non-governmental organisations or entities, dealing or concerned with issues related to the scope of this Agreement, as mentioned in Article 3.4, for the consideration and approval of the Parties;
- v) Require the Parties to take all appropriate measures to ensure their national legislations and policies relating to matters covered under this Agreement are adapted and amended to enable the implementation of this Agreement;
- vi) Require the Parties and the Commission to take all appropriate measures to ensure coordination between this Agreement and the agreements referred to in Article 2.3;
- vii) Discuss and propose protocols and amendments to this Agreement for consideration and adoption by the Parties;
- viii) To entertain, address and resolve issues, differences and disputes referred to by any Council member, the Commission, or any Party on matters arising under this Agreement;
- ix) Consider and undertake any additional measures required for the implementation of this Agreement.

h. The Council shall adopt its own rules of procedure and may seek technical advisory services as it deems necessary.

i. Decisions of the Council shall be by unanimous vote except as otherwise provided for in its rules of procedure.

j. Decisions of the Council and minutes of its meetings and any other document adopted by the Council shall be made available to the public.

### **3.6 The Commission**

- a. The Commission shall consist of three delegations, each representing one Party.

b. Each delegation shall consist of three permanent members and such advisors as the Party may determine, provided that a delegation may be accompanied by no more than five advisors at any meeting of the Commission unless otherwise determined by the Commission for any particular meeting.

c. Each Party shall notify all the other Parties of the appointment of the members of the delegation as well as of the termination of such appointments.

d. One of the members of the delegation shall be designated by the Party concerned as the leader of its delegation and that member shall be no less than from the level of a head of department.

### **3.7 The Secretariat**

a. The Secretariat shall perform technical, administrative and executive services for the Commission and for the Council. The Secretariat shall be responsible to the Commission.

b. The Secretariat shall be composed of a Secretary and of support staff. The Secretary shall be appointed by the Commission.

c. The location and structure of the permanent office of the Secretariat shall be decided by the Council.

d. The rules and procedures of the Secretariat shall be established by the Commission and approved by the Council.

e. The functions and duties of the Secretariat are to:

- i) carry out the decisions and tasks assigned to it by the Council and Commission under the supervision of and directly responsible to the Commission;
- ii) provide technical services and financial administration and advise as requested by the Council and Commission;
- iii) formulate the annual work program of the Organisation, and prepare all other plans, project and program documents, studies and assessments as may be required;
- iv) assist the Commission in the implementation and management of decisions and policies as directed;
- v) maintain databases of data and information as directed;
- vi) prepare the sessions of the Council and Commission; and,
- vii) carry out all other assignments as may be requested by the Council or by the Commission.

Article 4 - Functions, Duties and Powers of the Commission

**4.1 The Commission shall:**

- a. implement the decisions and policies adopted by the Council pursuant to Article 3.4(g) and carry out such other tasks or functions as may be assigned to it by the Council;
- b. regularly obtain, update and exchange information and data from the Parties, including on the condition of the Basin, necessary for the planning, development and management of the Basin and for the implementation of this Agreement;
- c. assign tasks and supervise the activities of the Secretariat as required to implement this Agreement, and approve the annual work programme of the Secretariat;
- d. review and approve training for the personnel of the Parties involved in activities related to the Basin as appropriate to strengthen the implementation of this Agreement;
- e. serve as a technical advisor to the Parties and provide recommendations including on the following:

- i) the joint development and management of the Basin, and particularly the Jordan River;
- ii) the development and management of water resource infrastructure in the Basin;
- iii) the coordination of water resources management and water quality management between the Parties; and
- iv) the development, utilisation and conservation of the water resources of the Basin.

**4.2 The Commission may appoint technical experts and consultants to provide expert opinion and advice on any matter within the scope of its activities.**

**4.3 The Commission submits to the Council an annual report on its activities as well as further reports as required by the Council.**

Article 5 - Rules of Procedure of the Commission

**5.1 The Commission shall meet three times a year in ordinary session and may meet in extraordinary sessions at the request of anyone of the Parties. Ordinary meetings shall take place on a basis of rotation in the territory of each of the Parties.**

**5.2 The Commission shall determine the date and time of all meetings as well as the Party in whose territory such meeting shall take place.**

**5.3 The leader of the delegation hosting a meeting of the Commission shall, in respect of that meeting**

**act as the chairperson and shall be responsible for making a suitable venue available for that meeting. The hosting chairperson shall be responsible for the preparation and timely distribution of the agenda and of all supporting documentation as well as the recording of the minutes of the meeting and their distribution to the Parties within thirty days of the date of that meeting.**

**5.4 All three delegations must be present for a meeting of the Commission to constitute a quorum.**

**5.5 Decisions of the Commission shall be by unanimous vote. If unanimity cannot be reached on a specific matter, it will be referred to the Council and ultimately to the Parties.**

**5.6 The working language of the Commission is English.**

**5.7 The minutes of each meeting shall be drawn up in English and signed by the heads of delegation of all Parties.**

**5.8 The Commission shall ensure that any of its activities carried out pursuant Article 4.1 shall be contained in a report signed by the leader of each delegation at the meeting of the Commission at which such report is adopted and that such report is submitted to the Council.**

**5.9 The Commission shall determine its own rules of procedure in accordance with the present Agreement and to be approved by the Council. The rules of procedure shall include provisions regarding data and information exchange by the Parties to ensure uniformity of collection and data organisation by the Parties to facilitate data exchange.**

**5.10 Decisions, reports, minutes of the meetings and other relevant documents prepared and issued by the Commission and by the Council shall be made available to the public. Data and information obtained and exchange under this Agreement shall also be made available to the public. The rules of procedure of the Commission shall include provisions detailing the modalities of public access to all documentation referred to in this Article.**

Article 6 - Financial Arrangements

**6.1 The Organisation shall be financed by regular annual contributions of the Parties, and from other sources. The Parties shall contribute to the financing of the Organisation on an apportioned appropriate and equitable basis as determined by the Council.**

**6.2 The Commission shall adopt an annual budget of proposed expenditures and consider budget estimates for the calendar year thereafter. The budget will include the Secretariat, its staff, and its activities.**

**6.3 The Parties shall bear the expenses related to the participation of their representatives, experts and advisors in the Council and in the Commission.**

**6.4 The Party hosting a meeting of the Commission or of the Council shall be responsible for all costs incurred in making a venue available for the meeting.**

**6.5 An estimate of the implementation costs of any report referred to at Articles 4.3 and 5.8 shall be included in the report, which will also apportion appropriately and equitably the costs between the Parties.**

**6.6 Expenses for the collection and sharing of relevant information and data shall be appropriately and equitably allocated among the Parties.**

Article 7 – Settlement of disputes

**7.1 Any dispute between the Parties arising out of the interpretation or application of this Agreement, which has not been resolved pursuant to Article 3.4(g)(viii), shall be settled amicably between the Parties in accordance with the following provisions.**

**7.2 If the Parties to the dispute have not arrived at a settlement through negotiations requested by one of them, they may jointly seek the good services of, or request mediation or conciliation from a third party.**

**7.3 If within six months from the request for negotiations referred to in section 7.2 the Parties have not settled their dispute through negotiation or through any means referred to in section 7.2, the dispute may be submitted by either party to arbitration by an arbitral tribunal established and operating in accordance with the procedure set out in the annex to the Agreement. The arbitral award will be binding on the Parties.**

Article 8 - Entry into force and Validity

**8.1 This Agreement will enter into force on the date on which all Parties have notified each other through the diplomatic channel of their compliance with their internal procedure for the conclusion of international agreements.**

**8.2 This Agreement shall remain in force until [x]**

**or until superseded by a comprehensive agreement on [x].**

**8.3 This Agreement may be amended by mutual consent of the Parties through an Exchange of Notes between the Parties through the diplomatic channel.**

**8.4 The Parties may invite additional states to become parties to this Agreement.**

IN WITNESS WHEREOF we the undersigned duly authorised by our governments have signed this Agreement.

Done at [x] on [x] in three original copies in the English language.

For [x] For [x] For [x]

**ANNEX – ARBITRATION**

Article 1  
Unless the Parties to the dispute otherwise agree, the arbitration pursuant to section [x] of the Agreement shall take place in accordance with articles 2 to 14 of the present Annex.

Article 2  
The claimant Party shall notify the respondent Party that it is referring a dispute to arbitration pursuant to Article 7.3 of the Agreement. The notification shall state the subject matter of arbitration and include, in particular, the articles of the Agreement, the interpretation or application of which are at issue. If the Parties do not agree on the subject matter of the dispute, the arbitral tribunal shall determine the subject matter.

Article 3  
**3.1 In disputes between two Parties, the arbitral tribunal shall consist of three members. Each of the Parties to the dispute shall appoint an arbitrator and the two arbitrators so appointed shall designate by common agreement the third arbitrator, who shall be the Chairperson of the tribunal. The latter shall not be a national of one of the Parties to the dispute or of any riparian State of the Basin, nor have his or her usual place of residence in the territory of one of these parties or such riparian State, nor have dealt with the case in any other capacity.**

**3.2 In disputes between more than two Parties, parties in the same interest shall appoint one arbitrator jointly by agreement.**

**3.3 Any vacancy shall be filled in the manner prescribed for the initial appointment.**

#### Article 4

**4.1 If the Chairperson of the arbitral tribunal has not been designated within two months of the appointment of the second arbitrator, the President of the International Court of Justice shall, at the request of a Party, designate the Chairperson within a further two-month period.**

**4.2 If one of the Parties to the dispute does not appoint an arbitrator within two months of receipt of the request, the other party may inform the President of the International Court of Justice, who shall make the designation within a further two-month period.**

#### Article 5

The arbitral tribunal shall render its decisions in accordance with the provisions of this Agreement and international law.

#### Article 6

Unless the parties to the dispute otherwise agree, the arbitral tribunal shall determine its own rules of procedure.

#### Article 7

The arbitral tribunal may, at the request of one of the Parties, recommend essential interim measures of protection.

#### Article 8

**8.1 The Parties to the dispute shall facilitate the work of the arbitral tribunal and, in particular, using all means at their disposal, shall:**

- (a) Provide it with all relevant documents, information and facilities; and
- (b) Enable it, when necessary, to call witnesses or experts and receive their evidence.

**8.2 The Parties and the arbitrators are under an obligation to protect the confidentiality of any information they receive in confidence during the proceedings of the arbitral tribunal.**

#### Article 9

Unless the arbitral tribunal determines otherwise because of the particular circumstances of the case, the costs of the tribunal shall be borne by the parties to the dispute in equal shares. The tribunal shall keep a record of all its costs, and shall furnish a final statement thereof to the parties.

#### Article 10

Any party that has an interest of a legal nature in the subject matter of the dispute, which may be affected by the decision in the case, may intervene in the proceedings with the consent of the tribunal.

#### Article 11

The tribunal may hear and determine counterclaims arising directly out of the subject matter of the dispute.

#### Article 12

Decisions both on procedure and substance of the arbitral tribunal shall be taken by a majority vote of its members.

#### Article 13

If one of the Parties to the dispute does not appear before the arbitral tribunal or fails to defend its case, the other Party may request the tribunal to continue the proceedings and to make its award. Absence of a Party or a failure of a party to defend its case shall not constitute a bar to the proceedings. Before rendering its final decision, the arbitral tribunal must satisfy itself that the claim is well founded in fact and law.

#### Article 14

**14.1 The tribunal shall render its final decision within five months of the date on which it is fully constituted unless it finds it necessary to extend the time limit for a period that should not exceed five more months.**

**14.2 The final decision of the arbitral tribunal shall be confined to the subject matter of the dispute and shall state the reasons on which it is based. It shall contain the names of the members who have participated and the date of the final decision. Any member of the tribunal may attach a separate or dissenting opinion to the final decision.**

**14.3 The award shall be binding on the Parties to the dispute. It shall be without appeal unless the Parties to the dispute have agreed in advance to an appellate procedure.**

**14.4 Any controversy that may arise between the Parties to the dispute as regards the interpretation or manner of implementation of the final decision may be submitted by either Party for decision to the arbitral tribunal that rendered it.**

## 10. Case studies

The below case studies have been selected to demonstrate 'good' or relevant practices pertinent to the development of basin governance structure for the Lower Jordan. SIWI has selected case studies of diverse examples and experiences where development objectives balanced with ecosystem conservation in the interests of sustainable development. Many of these cases have seen cooperation around water issues against a background of peripheral conflicts, where water represents a possible avenue for overcoming other differences between countries. Additional case studies have been selected in which the conflict setting of the basin contributed to the trajectory of how the governance structure developed including examples where SIWI experts have provided direct support to basin governance development.

The concept of 'good practice' reflects the UN-Water thematic priority area on transboundary water's discussion on the topic i.e. "that there is not a single practice or method for managing transboundary water issues, but rather a suite of practices or methods that can help

foster cooperation and better relationships between users of transboundary water resources. This is due to the heterogeneity of the physical, political, socio-economic contexts of specific rivers, lake basins and aquifer systems (UN-Water)." The Food and Agriculture Organization of the United Nations has defined a good practice as effective and successful, sustainable, environmentally sound, socially acceptable, technically practicable, economically efficient, inherently participatory and replicable and adaptable.<sup>8</sup>

Much can be learned from the long history of basin wide governance globally. Each of the below case studies is rich with lessons, experiences and ongoing challenges of relevance to basin stakeholders in the Lower Jordan. Ongoing dialogue and exchange is encouraged between riparian representatives and stakeholders from the Lower Jordan basin and established basin governance structures globally to further elaborate on lessons learned and sharing of experiences.

### The Permanent Okavango River Basin Water Commission:

A case study of conflict management, balancing national priorities through basin wide cooperation

The Cubango-Okavango River basin is home to about 600,000 people, over half of whom live in the Angolan portion of the basin. Namibia is home to 160,000 people in the basin, with the remainder living in and around the Okavango Delta in Botswana. The two main sources, the Cubango and the Cuito, rise on the Bie Plateau in central Angola, where average annual rainfall is over 1,000 mm a year, and flow south towards Namibia. The Okavango River does not flow into the sea, rather the Okavango Delta (average annual rainfall of about 400 mm a year) where it terminates in the Kalahari Desert. Two designated Ramsar sites are located within the basin. In 1994 the three countries concluded an agreement forming the Permanent Okavango River Basin Water Commission (OKACOM) serving as "technical advisor to the parties on matters relating to the conservation, development and utilisation of water resources of common interest". The river is one of the last large undammed rivers in Africa and is a valuable source of tourism revenue for downstream Botswana. The undeveloped state of the river in Angola is largely due to the long civil war that country experienced (starting in the 1970's and ending in 2002).

The population living in southern Angola migrated to the cities in the north to avoid the conflict and there were no dams built on the river – leading to a positive impact on the river ecosystems, but at the expense of providing development benefits to the regional population. With the establishment of peace in Angola in 2002 there has been discussion about the possibility of constructing dams on the headwaters, which if done could impact the ecological functioning of the delta. In 2004 this led to a short-lived public-dispute between Botswana and Angola, eventually resolved through Angola recognising the need not to damage downstream ecosystems and Botswana recognising the right of Angola to develop. To-date the countries have used OKACOM as an avenue for communication and joint planning, thus reducing the possibility of conflict in the basin. Together the members have worked to conduct joint research and implement small-scale infrastructure and agricultural works while supporting ecotourism and sound planning across the basin. After some years of minimal coordination with local communities in the basin, OKACOM has established a strong and mutually beneficial relationship

For the full definition see: <http://www.fao.org/docrep/019/as547e/as547e.pdf>

with several community based organisations, represented in Commission meetings through the Basin Wide Forum. Having direct representation of local communities in the meetings of the Commission has brought several advantages to their operation, not least that the Commissioners receive early warning of issues causing discontent amongst local communities. Local acceptance of decisions taken by the Commission (implemented via the respective national governments) has also improved. OKACOM also takes pride in its intentional efforts to ensure strong participation of women across the organisation. In the long run it is a constant trade-off between development interests and conservation, something which could cause tensions to rise in the future should Angola be successful in gaining finance to build dams on the headwaters.

Namibia has for some years promoted a plan to transfer water from the river south to its capital city, Windhoek. Early joint studies have shown that the impact of this transfer on the delta would be minimal due to the relatively small volumes of water to be drawn – less than 0.2 per cent of the annual flow, but this would add to the incremental reduction in flow of the river.

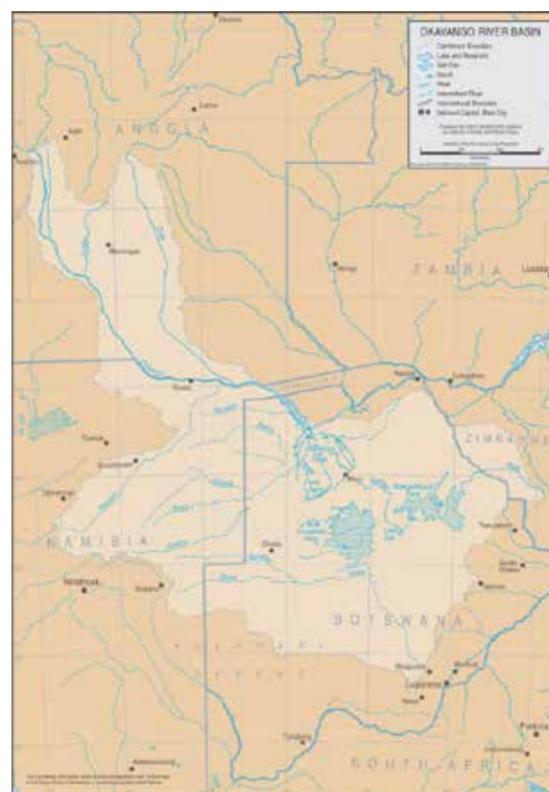


Figure 6: Okavango River Basin (UNEP/DEWA/GRID, 2001)

Table 2: Characteristics of the OKACOM

Name of Basin Organization	Permanent Okavango River Basin Water Commission (OKACOM)
Contracting Parties:	Angola, Botswana, Namibia
Established:	1994
Type of Basin Organization:	Commission
Legal Personality:	Strong (Inter-governmental organisation acting in consultative role with secretariat having legal personality)
Type of instrument/agreement:	Agreement
Type of mandate:	Serves as technical advisor to the Parties on matters relating to the conservation, development and utilisation of water resources of common interest
Maturity:	Auto-adaptive
Contents of Instrument:	Long term transboundary planning: Sustainable development, equity, prevention, transboundary management
Included Dispute Mechanisms:	Consensus decision making, identified dispute mechanism: direct negotiations between the parties, disputes sent to SADC Tribunal if unresolved in six months.
Drivers of disputes in the basin:	<ul style="list-style-type: none"> <li>• Possibility of Angola constructing dams in the headwaters</li> <li>• Possibility of Namibia transferring water to capital city</li> <li>• Negative impacts on delta ecosystem – loss of tourism revenue for Botswana</li> </ul>
Drivers of cooperation in the basin:	Recognition that preserving the river (especially the delta) ecosystem can bring benefits to all three countries – currently mainly from eco-tourism income

## The Orange-Senqu River Commission (ORASECOM)

A case study of a basin governance structure working towards equitable and sustainable development despite ongoing border disputes

The Orange-Senqu River has its headwaters in Lesotho's Maluti mountains from where it flows into South Africa, is joined by its largest tributary (the Vaal River), later forming the border with Namibia before flowing into the Atlantic Ocean. Ephemeral streams link southern Botswana to the basin. The basin is one of the most used in southern Africa and supplies most of the freshwater to the Johannesburg region, South Africa's industrial heartland with a population around 12 million people. The world's largest international transfer of water is the Lesotho Highlands Water Project (LHWP), whereby water is transferred by gravity to South Africa, earning Lesotho royalty income. The basin is important both to the major cities in the two countries (for Johannesburg the water allows it to keep expanding and in Maseru the Lesotho government benefits from the foreign income) as well as to the predominantly rural population of the basin, where it supports small-scale as well as large-scale commercial agriculture.

In 2000 the four states negotiated the formation of the Orange-Senqu River Commission (ORASECOM), constituting it as an international organisation to advise the parties on the equitable and sustainable development of the basin. The Commission provides a forum for consultation and coordination between the basin states and is currently in the process of adopting a basin development plan. ORASECOM advises the member states on matters related to development, use and conservation of the water resources in the river system. This may include recommendations on water availability, equitable and reasonable use of water resources, development of the river system, stakeholder participation, and harmonisation of policies. The Commission is controlled by the Council – where the four governments are represented by three Commissioners each.

The LHWP first phase is currently in operation, transferring 770 million cubic metres of water a year to South Africa, earning Lesotho around \$66 million (U.S. dollars) in royalty fees during 2010 (LHWP, 2011). In 2011, the two countries agreed to proceed with the second phase of the project, which will eventually increase the amount of water transferred to South Africa to 2,000 million cubic metres. While the project is in fact an intra-basin transfer (transferring water from one part of the basin to another part) there is an increasing amount which leaves the basin as this water is serving cities in the neighbouring Limpopo River basin. This has an impact on the amount of water reaching the mouth of the river – which is also the border between the Republic of South Africa (RSA) and Namibia. This has caused Namibia to raise concerns about the impact of future phases of the project and the impact on the ecosystems downstream.

Currently the wetland at the river mouth is in a critical condition – in some years the river does not reach the sea. This is largely the result of high use of the water upstream mainly by South Africa but also by Namibia. The water quality of the river has also been negatively affected, with salinity levels being high. Namibia also has an on-going dispute with RSA over payments it should make to contribute to the operation of dams upstream on the river. The storage these dams provide in the rainy season is released in the dry season for use by both countries. However RSA is insisting that Namibia needs to make payments towards the construction costs of these dams (which lie wholly within RSA), while Namibia is only accepting to pay for operation and maintenance costs. Additionally there is a border dispute between the two countries – dating back to the colonial era and an agreement between Britain and Germany to place the border to the north of the river bank in Namibia – effectively resulting in Namibia not having any river frontage. Despite these simmering disputes the two countries enjoy generally good relations, but if water-stress in the basin were to increase (as it is doing due to economic development and population growth; with climate change perhaps compounding this) there is the possibility of these disputes becoming more acute. The role of ORASECOM in mitigating such disputes will be crucial, with its good reputation for being impartial and serving as a forum for discussing potentially contentious issues will be put to the test.

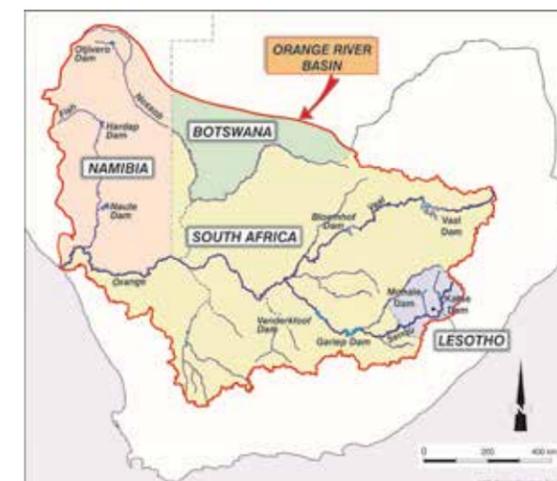


Figure 7: Orange-Senqu Basin Map (Source: WRP)

Table 3: Characteristics of the ORASECOM

Name of Basin Organization	Orange-Senqu River Commission (ORASECOM)
Contracting Parties:	Botswana, Lesotho, Namibia & South Africa
Established:	2000
Type of Basin Organization:	Commission
Legal Personality:	Strong (Inter-governmental organisation acting in consultative role with secretariat having legal personality)
Type of instrument/agreement:	Agreement
Type of mandate:	Promotes the equitable and sustainable development of the resources of the river through providing technical advice to the parties.
Maturity:	Auto-adaptive
Contents of Instrument:	Long term transboundary planning: Sustainable development, equity, prevention, trans-boundary management
Included Dispute Mechanisms:	Consensus decision making, identified dispute mechanism: direct negotiations between the parties, disputes sent to SADC Tribunal if unresolved in six months.
Drivers of disputes in the basin:	<ul style="list-style-type: none"> <li>Impacts of diverting more water out of the basin on downstream Namibia</li> <li>Payment of O&amp;M costs of dams by Namibia to RSA</li> <li>Perception that Lesotho serves only as RSA water reservoir</li> <li>Border dispute between Namibia &amp; RSA</li> </ul>
Drivers of cooperation in the basin:	<ul style="list-style-type: none"> <li>LHWP brings benefits to RSA &amp; Lesotho</li> <li>Possibility of transferring water to Botswana</li> <li>Joint dams between Namibia &amp; RSA</li> </ul>

## The Sava River Basin

A case study of a basin governance structure contribution to post-conflict cooperation and benefit sharing

Following the geopolitical changes in the region in the early 1990s, the Sava River, formerly the biggest national river in ex-Yugoslavia, became an international river. The establishment of the Stability Pact for South-Eastern Europe in 1999 provided a solid basis for triggering the cooperation of stakeholders in the region and, gradually, the creation of a new approach to water resources management in the Sava River Basin. On these grounds, the four countries of the Sava River Basin – Bosnia and Herzegovina, Federal Republic of Yugoslavia (later on Serbia & Montenegro, and then Republic of Serbia), Republic of Croatia and Republic of Slovenia, entered into a process of negotiations. Despite different and sometimes conflicting priorities, a strong political will was driving the four countries to come to an agreement establishing an appropriate framework for transboundary cooperation, in order to ensure the sustainable use, protection and management of water resources in the Sava River Basin, and thus to improve the living conditions of the population in the region.

As a key outcome of the negotiation process, the Framework Agreement on the Sava River Basin (FASRB) was developed, signed in 2002, and entered into force in 2004. This was the first development-oriented multilateral agreement in the post-conflict period, concluded in the region of the former Yugoslavia after the Dayton Peace Agreement and the Agreement on Succession.

The FASRB emphasizes the importance of trans-boundary cooperation of governments, institutions and individuals, with the key objective to provide conditions for sustainable development of the region within the basin through water cooperation. It defines three main goals of the cooperation: (1) establishment of an international regime of navigation on the Sava River and its navigable tributaries; (2) establishment of a sustainable water management in the Sava River Basin, and (3) establishment of a sustainable management of water-related hazards (i.e. floods, droughts, ice, and accidental water pollution) in the basin. By involving the whole water resources management and addressing both development

and sustainability issues, and thus linking the navigation development and the environmental protection, the FASRB provides the International Sava River Basin Commission (ISRBC) with the broadest scope of work among international basin organizations of Europe.

The ISRBC started to work for the implementation of the FASRB in 2005. Since then, the ISRBC has been an “engine” of cooperation of the Parties for the achievement of the FASRB goals. So far, the ISRBC member states have significantly advanced their cooperation in all areas covered by the FASRB (e.g. joint preparation of the Sava River Basin Management Plan and its programme of measures, establishment of the geographic information system, exchange of hydrological and meteorological data, etc.). The post-conflict management of water resources therefore served as a starting point for re-establishing trust and cooperation in the region, while the Sava River itself was a unifying factor for the four riparian countries.



Figure 8: Sava River Basin Overview Map (ISRBC, 2010)

Table 4: Characteristics of the ISRBC

Name of Basin Organization	International Sava River Basin Commission (ISRBC)
Contracting Parties:	Bosnia and Herzegovina, Croatia, Serbia, Slovenia
Established:	2005
Type of Basin Organization:	Commission
Legal Personality:	Making decisions (obligatory for the Parties) in the field of navigation, and providing recommendations on all other issues (i.e. water management)
Type of instrument/agreement:	Agreement
Type of mandate:	Coordination and implementation oriented - with Secretariat as the executive and administrative body
Maturity:	Auto-adaptive
Contents of Instrument:	<ul style="list-style-type: none"> <li>Preparation of management plans and other basin plans</li> <li>Establishment of integrated systems (information, data exchange, forecasting, warning)</li> <li>Development of water-related economic activities (inland navigation, river tourism);</li> <li>Development and implementation of water management and inland navigation policy</li> </ul>
Included Dispute Mechanisms:	<p>Direct negotiations between the parties</p> <p>If unresolved through negotiations, then:</p> <ol style="list-style-type: none"> <li>Seeking good services, mediation or conciliation from a third party; If unresolved within 6 months, then establishment of a fact-finding committee may be requested</li> <li>Dispute settlement through arbitration or International Court of Justice</li> </ol>
Drivers of disputes in the basin:	<ul style="list-style-type: none"> <li>No disputes have taken place so far. Potential drivers include:</li> <li>Degradation of water quality</li> <li>Increase of flood risk</li> <li>Improper management of sediment (e.g. through dam construction, excessive or illegal dredging)</li> </ul>
Drivers of cooperation in the basin:	<ul style="list-style-type: none"> <li>Improvement of water quality in the Sava River Basin</li> <li>Improvement of flood risk management in the basin</li> <li>Improvement of sediment management in the basin</li> <li>Restoration of waterway and navigation on the Sava River and its navigable tributaries</li> <li>Development of sustainable river tourism in the basin</li> </ul>

## The Limpopo Basin Permanent Technical Committee to Limpopo Watercourse Commission: A case study of a correlated growth of cooperation and governance strength

A positive trajectory of transboundary water cooperation maturity is present in many basins around the world and is characterized by a movement from limited, short term technical cooperation and a weak legal personality to a strong legal personality with a broad, long term mandate with the administration and financial resources to meet its objectives. Taking into consideration normal challenges over many years of cooperation, the Limpopo Basin offers us a clear example of a positive maturity trajectory corresponding to the strengthening of its governance organisation, agreement and mandate.

Progression from the Limpopo Basin Permanent Technical Committee (LBPTC) to the Limpopo Watercourse Commission (LIMCOM) took place over two decades of nurtured cooperation. As in many cases of increased transboundary water cooperation, enabling factors such as "shared projects, common institutions, legal frameworks at various levels, informal legal and institutional cooperative mechanisms, joint financing, cooperation on technical issues, joint monitoring and data exchange" contributed to a

growth of cooperation throughout this period (UN-Water). Moreover, increased cooperation at the basin level reflected the overall growth of cooperation among the four contracting states and other members of Southern African Development Community (SADC) in a variety of major social, economic and political spheres. The LBPTC continues to maintain its technical role providing information as needed to LIMCOM.



Figure 9: Limpopo Basin Map (LIMCOM, 2013.)

Table 5: Comparative Characteristics of the LBPTC and LIMCOM

Name of Basin Organization	Limpopo Basin Permanent Technical Committee (LBPTC)	Limpopo Watercourse Commission (LIMCOM)
Contracting Parties:	Botswana, Mozambique, South Africa, Zimbabwe	Botswana, Mozambique, South Africa, Zimbabwe
Established:	1986	2003
Type of Basin Organization:	Technical Committee	Commission
Legal Personality:	Weak	Strong
Type of instrument/agreement:	Agreement	Agreement
Type of mandate:	Co-ordination orientated-without secretariat	Co-ordination and implementation orientated – with secretariat
Maturity:	Initial	Auto-adaptive
Contents of Instrument:	Formalized technical cooperation related to short term needs to manage and utilize the Limpopo	Long term transboundary planning: Sustainable development, equity, prevention, transboundary management
Included Dispute Mechanisms:	Consensus decision making, no dispute mechanism identified for hung consensus	Consensus decision making, identified dispute mechanism: direct negotiations between the parties, disputes sent to SADC Tribunal if unresolved in six months.
Drivers of disputes in the basin:	<ul style="list-style-type: none"> <li>Large number of dams constructed in the basin by RSA leading to periods of water scarcity downstream</li> <li>Water quality degradation – primarily from agricultural and municipal sources in RSA</li> <li>Flooding in downstream Mozambique – which could (arguably) be reduced through changes to dam operation in RSA. However RSA is keen on maximizing water storage in the dams and has not indicated a willingness to change this stance.</li> </ul>	
Drivers of cooperation in the basin:	<p>Mutual dependence on scarce water resources in the basin has prompted various plans for water transfers within the basin – such as the RSA to Bots Molatedi transfer of 1986 supplying the city of Gaborone. Other initiatives being investigated.</p> <p>Large number of migrants from Zimbabwe to RSA escaping the economic conditions in that country has meant that Zimbabwe and RSA work together on possible developments in the north of RSA which could benefit migrants from Zimbabwe.</p>	

## The Mekong River Commission (MRC)

A case study of evolving membership and governance mandate, function, and financing in the Lancang-Mekong

The Mekong River flows 4,909 km through six countries: China, Myanmar, Thailand, Lao PDR, Cambodia, and Viet Nam. Its rich biodiversity is fundamental to the natural resource-based rural livelihoods of the 60 million people living in the Lower Mekong Basin. The source of the river's great productivity is its seasonal variation in water level and the range of wetland habitats inundated. June to October is the wet season in the Lower Mekong Basin (LMB), which in some years causes major floods in the region. Although upstream flow contributes only a small portion to the total annual flow of the Mekong River, snow melt from China contributes over 24 per cent to the total flow in the dry season. Most of the total flow volume is delivered to the Mekong from tributaries in the Lower Mekong Basin (The Mekong River Commission, [www.mrcmekong.org](http://www.mrcmekong.org)).

Cooperation on the Mekong between the riparian countries had been ongoing since 1950s in the form of the Mekong Committee under the auspices of the United Nations Economic and Social Commission for Asia and the Pacific (ESCAP). The four countries of the LMB, Cambodia, Lao PDR, Thailand and Vietnam signed the "Agreement on the Cooperation for the Sustainable Development of the Mekong River Basin" on the 5th of April 1995. China and Myanmar, which form the upper part of the Mekong basin have not signed the 1995 Mekong Agreement but have been attending MRC's governance meetings as Dialogue Partners since 1996. In addition, China signed an MOU with MRC in 2002 which is updated continuously to provide near real-time hydrological data during the wet season for flood forecasting purposes.

Economic growth is driving energy demands, water and land use changes in the region. One of the biggest drivers of tensions between the Mekong countries is hydropower development. China has already built seven dams on the Lancang, which is what the Mekong is called in China. China plans to build 21 more. The Lancang-Mekong, with its estimated hydropower potential to generate 60,000 MW (about half of it in the LMB), has gained strong interest from developers as well as policy-makers in the region such as those in Laos as an attractive choice for investment in order to export energy to its neighbors for much needed revenue.

Although hydropower is considered clean renewable energy that could greatly close the energy poverty gap, the siting and design of some dams could be very detrimental to the ecosystem, affecting people's livelihood and, especially when the projects are on an international river such as the Mekong, could become a source of increasing tension among riparian countries.

Despite concerns raised by MRC members and other stakeholders on the lack of understanding of sectoral,

cross cutting and cumulative impacts there are 11 dams planned for the Mekong mainstream with construction already underway for two, Xayaburi and Don Sahong. In addition, 77 dams are planned for the tributaries. The MRC, even with its limitations as a non-regulatory body in which commitments made by member states are non-binding, is still the countries' mandated platform for regional dialogue and cooperation on Mekong water and related resources management. Although the riparian countries have established rules and procedures enshrined in the 1995 Mekong Agreement and its subsequent instruments and frameworks for cooperation (e.g. MRC Procedures), Xayaburi exposed many weaknesses in the arrangement, both with the scope of consultation and the capacity for the MRC Secretariat as well as members' technical arms to provide scientific support for decision makers.

However, with lower Mekong being only a sub-region and ASEAN not being active in the water sector and the Asian Development Bank's (ADB) Greater Mekong Sub-region (GMS) not providing a platform for transboundary water-related discussions due to China's unwillingness to engage in the topic, MRC has retained its unique position as a facilitative and advisory body.

MRC donors agreed that the MRC is valuable as a negotiation and facilitation platform (regional discussions, strategy development, planning and decision-making at a high political level), its technical role (knowledge base, basin-wide studies, identifications of trade-offs); conflict-resolution and mitigation mechanisms; and regulations (standards, guidelines) (MRC development partner meeting, 19 March 2014). Many development partners see the current MRC reform process as crucial to focusing its mandate and better serve its members in water diplomacy. Moreover, in April 2015 China initiated consultation among all six riparian countries "with a view to establishing the Mekong-Lancang Cooperation".

MRC reform, restructuring: This is a critical time at MRC as it ends its current Strategic Plan period 2011-2015 and changes its planning processes so that MRC's work is more firmly based on a basin-wide strategy. Moreover, the Secretariat (MRCS) will be undergoing structural, operational and financial reform including streamlining of the MRCS and supporting increased member country implementation and full self-financing by 2030. Its work will be structured around its core river basin management function (i.e. data acquisition, exchange and monitoring; analysis, modelling and assessment; planning support, forecasting, warning and emergency response and implementing MRC procedures) instead of programmatically, and subsequently a new pooled funding mechanism for donors will be used. At the same time donor support is expected to significantly

reduce. Already, three long time donors have announced they will not provide funding to MRC for its next strategic period.

Some donors are observing the MRC's reform process and looking for alternative options, including allocating bilateral funding to support members like Cambodia and Laos that still have many capacity gaps to enable their undertaking decentralized activities that serve regional cooperation. Many want to see a smaller MRC and Secretariat that is more focused on water diplomacy. There is a risk, however, of further diminishing MRC's role if funding goes directly to national bodies, which may not be able to take up some functions of a regional river basin organization. National priorities may compete for attention and resources.



Figure 10: Lancang-Mekong Basin (Mekong River Commission)

Table 6: Characteristics of the MRC

Name of Basin Organization	Mekong River Commission
Contracting Parties:	Cambodia, Lao PDR, Thailand Vietnam with Myanmar and China as observers in official governance meetings as upstream riparians of the Lancang-Mekong.
Established:	1995 but cooperation on the Mekong between the Parties had been on-going since 1950s under the auspices of the United Nations Economic and Social Commission for Asia and the Pacific (ESCAP).
Type of Basin Organization:	Commission
Legal Personality:	Strong (intergovernmental organization acting in consultative role with Secretariat having legal personality).
Type of Instrument/agreement:	Agreement
Type of Mandate:	Facilitating and advisory body that promotes constructive and mutually beneficial sustainable development by providing an adequate, efficient and functional joint organizational structure to implement the Agreement.
Maturity:	Auto-adaptive
Contents of Instrument:	Long-term transboundary planning, sustainable development, reasonable and equitable utilization of water resources.
Included Dispute Mechanisms:	Built in to the Agreement, identified dispute mechanism: If Commission is unable to resolve differences and disputes then the matter shall be refer to the Governments to negotiate through diplomatic channels; and if necessary may by mutual agreement request mediation through a party mutually agreed upon.
Drivers of disputes in the basin:	<ul style="list-style-type: none"> <li>development,</li> <li>knowledge gaps,</li> <li>lack of non-State input,</li> <li>investors' influence,</li> <li>decisions making based on non-scientific considerations,</li> <li>regional institution role limited to dialogue facilitation and hampered by need for consensus</li> </ul>
Drivers of cooperation in the basin:	<ul style="list-style-type: none"> <li>Economic growth</li> <li>poverty reduction</li> <li>broader regional framework under ASEAN – the Association of Southeast Asian Nations</li> </ul>

## 11. Identifying, assessing and communicating the benefits of regional governance

In the introduction remarks of the United Nations Economic Commission for Europe's (UNECE) recently released Policy Guidance Note on the Benefits of Transboundary Water Cooperation, Secretary-General of the United Nations Ban Ki-Moon called upon regional riparians to look beyond short term national interests and embrace the wider benefits associated with transboundary water cooperation (UNECE, 6). The UNECE Policy Guidance Note goes on to elaborate practical advice to basin stakeholders to assess, communicate and integrate the environmental, security, economic, social and governance benefits of cooperation into action. As in other basins globally, basin governance for the Jordan River is challenged by concerns for establishing and maintaining national sovereignty, misperceptions of benefits and risks of cooperation, a lack of capacity and a dearth of political will. To help mitigate these challenges SIWI supports the UNECE recommendation that benefit assessments take place regularly and repeatedly to account for emerging challenges, new realities and shifting priorities within and amongst riparians to reveal new

ideas and benefits and attract associated financial support to implement solutions. The 2006 benefit assessment prepared by the Expert Group on Development Issues for the Swedish Ministry of Foreign Affairs including an extensive case study on the Jordan River riparians can serve as a benchmark for further ongoing assessment (Phillips, 2006).

Undertaking and effectively assessing the results of a benefits assessment can furthermore serve as an important entry point to establish or deepen cooperation and advance governance solutions as described in this paper. The benefit assessment will provide new information to riparians regarding the type and magnitude of potential benefits while informing the governance functions needed of joint bodies to maximize the potential benefits including those initially less apparent. UNECE developed the below typology of potential benefits as a guide to stakeholder benefit assessments based largely on an earlier framework developed by Claudia Sadoff and David Grey in 2005.

Figure 11: Typology of the potential benefits of transboundary water cooperation (UNECE, 2015)

Origin of benefits	Benefits for economic activities	Benefits beyond economic activities
<b>Improved water management</b>	<p><b>Economic benefits</b></p> <ul style="list-style-type: none"> <li>Expanded activity and productivity in economic sectors (aquaculture, irrigated agriculture, mining, energy generation, industrial production, nature-based tourism)</li> <li>Reduced cost of carrying out productive activities</li> <li>Reduced economic impacts of water-related hazards (floods, droughts)</li> <li>Increased value of property</li> </ul>	<p><b>Social and environmental benefits</b></p> <ul style="list-style-type: none"> <li>Health impacts from improved water quality and reduced risk of water-related disasters</li> <li>Employment and reduced poverty impacts of the economic benefits</li> <li>Improved access to services (such as electricity and water supply)</li> <li>Improved satisfaction due to preservation of cultural resources or access to recreational opportunities.</li> <li>Increased ecological integrity and reduced habitat degradation and biodiversity loss</li> <li>Strengthened scientific knowledge on water status</li> </ul>
<b>Enhanced trust</b>	<p><b>Regional economic cooperation benefits</b></p> <ul style="list-style-type: none"> <li>Development of regional markets for goods, services and labour</li> <li>Increase in cross-border investments</li> <li>Development of transnational infrastructure networks</li> </ul>	<p><b>Peace and security benefits</b></p> <ul style="list-style-type: none"> <li>Strengthening of international law</li> <li>Increased geopolitical stability and strengthened diplomatic relations</li> <li>New opportunities from increased trust (joint initiatives and investments)</li> <li>Reduced risk and avoided cost of conflict and savings from reduced military spending</li> <li>Creation of a shared basin identity</li> </ul>

Following the elaboration of a comprehensive benefits assessment riparian representatives and other stakeholders can focus on how to allocate the benefits fairly based on the principles of “equitable and reasonable utilization” and of “no significant harm”, this process moves beyond the traditional 20th century focused water rights allocation framework for basin governance (Sadoff and Grey, 2005). Governance benefits such as transparency and multi-level stakeholder engagement are particularly difficult to identify and achieve but provide long lasting benefits to all riparians.

Communicating the benefits is essential to move towards achieving benefits and requires the identification of one’s target audience and specific purpose be it awareness-raising, policy development or negotiation and deal making as described in Figure 12.

*‘Even rudimentary cooperation could be challenging and costly if, for example, water rights are contested, relations are strained, or capacity is low; however, the benefits of achieving such cooperation could be high.’*

(Sadoff and Grey, 2005)

## 12. Conclusions and recommended next steps

This project aimed to develop a report to serve as a starting point for further consultations and discussions with stakeholders concerning how to go about formalizing a basin governance structure for the Lower Jordan Basin. The task is now returned to the regional government representatives and other interested stakeholders to consider the wide experience and knowledge of many decades of transboundary water governance in basins from around the world, the experiences of which can be adapted and contextualized to the needs and vision of the relevant parties and users in the Jordan basin. Through review and discussion of the information and experiences collected here, riparian stakeholders can explore issues and options related to governance structure, basin instruments, mandate, dispute mechanisms, financing and specifically how a future Jordan River basin structure might be shaped.

SIWI recommends that going forward this document serve as the basis for a concerted multi-level stakeholder consultation process. This process should be designed to be broadly inclusive, ensuring gender equality and the participation of both government and civil society in all riparian states to foster representative and sustainable outcomes. As an early step, SIWI encourages the workshopping of the proposed Jordan River Basin Commission articles with riparian stakeholders and the implementation of tailor made training modules to support capacity building on key topics discussed in this paper. Furthermore, SIWI encourages the riparian parties and other concerned stakeholders to learn from other

basin governance structures first hand by conducting joint learning tours to the case studies discussed in this report. Through first hand study of how other basins manage and overcome environmental, development and political challenges that resonate with the Jordan River basin experience, the path for future governance options in the Jordan can be shaped.

Interested stakeholders should work cooperatively to assess the benefits of cooperation given the dynamic political, social, economic and environmental challenges in the Jordan basin. The UNECE Policy Guidance Note summarized in section 11 provides a detailed explanation regarding how to undertake such an assessment based on international best practices. Ideally, this process would be initiated by a mandated joint body of government representatives of the riparians to ensure that the assessment’s recommendations are closely tied to policy priorities. Alternatively, this process could be driven by an external body or regional non-governmental organisation for advocacy and awareness raising purposes (UNECE, 30). The assessment should be inclusive of different types of local, national, regional stakeholders including a range of professional disciplines, country and sector representatives, women and young people and involve basin representatives from minority communities (UNECE, 34).

Much work remains to further develop a basin governance structure for the Jordan. The options and good practices highlight in this paper aim to contribute to supporting this important objective.

Figure 12: Examples of mechanisms to communicate the benefits of transboundary water cooperation (UNECE, 2015)

Target audience	Awareness-raising	Policy development	Negotiations and deal making
National decision makers (ministries of foreign affairs, economic development and finance)	Policy briefs	Trusted persons and think tanks Analytical reports making the economic case	Joint analytical reports Independent panel of experts
National water community (ministries of environment or water, basin organizations, large water users/beneficiaries)	Policy briefs Joint multi-language website Platforms of joint bodies Study tours	Platforms of joint bodies Process of preparation of basin plans Study tours and workshops (tailored to stakeholders and themes)	Joint analytical reports Independent panel of experts
Locals (local governments, local communities, local water users/beneficiaries)	Articles and op-eds in mass media Training of journalists and teachers Joint multi-language websites Basin day events	Trusted grass-roots organizations	Public consultation mechanisms

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- 2003 Agreement on the Establishment of the Limpopo Watercourse Commission

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