Different Regions: Different Legal Approaches to Groundwater Protection

- Africa and the Americas: Agreements/cooperation on specific aquifers

- Europe: **UNECE Model Provisions on Transboundary Groundwaters** (2012): non-binding guidance for the implementation of the *Convention on the Protection and Use of Transboundary Watercourses and International Lakes* with regard to groundwater

- Arab States: **Draft Convention on Shared Water Resources in the Arab Region** under preparation

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Flexibility to React to Climate Change?

Comparison of the ILC Draft Articles, the UNECE Model Provisions and the Draft Arab Convention

- Scope and general principles
- Exchange of data and information
- Environmental provisions
- Institutional mechanisms

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UNECE Model Provisions on Transboundary Groundwaters

- non-binding guidance for the implementation of the *UNECE Convention on the Protection and Use of Transboundary Watercourses and International Lakes* (Water Convention, 40 Parties, accessible to all UN Member States)
- Scope Water Convention: "any surface or ground waters which mark, cross or are located between two or more States" but little guidance on groundwater in the Water Convention
- Work towards the Model Provisions: 2009 – 2012

  (ILC Draft Articles: 2008)
- Model provisions plus commentaries adopted by MoP in 2012
- Non-binding guidance to a binding convention
- To be used by Parties (and non-Parties) when entering into or reviewing agreements on transboundary groundwaters

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Draft Convention on Shared Water Resources in the Arab Region

- Drafting process since 2010 under the umbrella of the Arab Ministerial Water Council of the League of Arab States

- Several drafts (from shared surface and groundwater resources to only groundwater back to both)

- Objectives:

    - Legal instrument that reflects the specificities of the Arab region (water scarcity, high dependence on gw, non-recharging aquifers etc.) and specific regional concerns (Occupied Territories, some States: historic rights)

Scope

ILC Draft Articles (Art. 1)
- Utilization of transboundary aquifers
- Other activities with an impact upon aquifers
- Protection, preservation and management

UNECE Model Provisions (Pr. 1)
- Utilization and prevention, control and reduction of transboundary impact
- Activities affecting transboundary groundwater
- Also domestic groundwaters linked to transboundary surface waters

Draft Arab Convention
- Use
- Measures of cooperation, protection and management

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Main Principles

ILC Draft Articles

- Sovereignty, equitable and reasonable utilization, incl. sustainable use, no harm, cooperation

UNECE Model Provisions

- Prevention of transboundary impact (ho harm), equitable and reasonable utilization, incl. sustainability, cooperation

Draft Arab Convention

- Cooperation to attain mutual benefit and maximum sustainable utilization, equitable and reasonable utilization, no harm

Exchange of Data and Information

ILC Draft Articles

- readily available data and information including of a meteorological nature (Art. 8)
- where knowledge inadequate best efforts to collect and generate data and information
- Where possible joint monitoring (Art. 13)

UNECE Model Provisions

- establish arrangements for the exchange of information and readily available data (Pr. 6)
- programmes for the joint monitoring and assessment of quantity and quality of transboundary groundwaters (Pr. 3)

Draft Arab Convention

- exchange readily available data, information and forecasts on the conditions of the shared resource, in particular data and information on climate
- best efforts to collect and generate data
- where possible joint monitoring

Institutional Arrangements

ILC Draft Articles

- a joint management mechanism shall be established wherever appropriate (Art. 14)

UNECE Model Provisions/UNECE Water Convention

- States shall enter into bi- or multilateral agreements which shall provide for the establishment of joint bodies (Art. 9/Pr. 9)

Draft Arab Convention

- Sharing States shall develop appropriate bilateral or multilateral institutional arrangements

Protection

ILC Draft Articles

- Not utilize at a recharging aquifer at level that would prevent continuance of its effective functioning (Art. 4)
- Protection and preservation of aquifer dependent ecosystems (Art. 10)
- Protection of recharge and discharge zones (Art. 11)
- Prevention, reduction, control pollution, precautionary approach (Art. 12)

UNECE Model Provisions

- Use transboundary groundwaters in a sustainable manner (Pr. 2)
- Protection zones, prevention, control and reduction of pollution, precautionary principle, regulation land use, quality objectives (Pr. 5)
- Environmental impact assessment for all planned activities with possible adverse effect (Pr. 8)
- Convention: polluter-pays principle, intergenerational equity

Draft Arab Convention

- Maximum possible sustainable utilization
- Environmental protection article: prevent pollution

Concluding Remarks

- Regional agreements are able to reflect countries' priorities and specificities, focus in Europe on environmental protection, in Arab draft on cooperation in the context of water scarcity
- UNECE instruments offer best framework to react to consequences of climatic change
- Draft Arab Convention (+ Arab Water Strategy + ESCWA inventory): more information, dialogue and commitment to agree on legal principles = conducive to better management of shared water resources
- Some Arab States might also become members to the UNECE Water Convention – mutually supporting obligations or possibly conflicting obligations?
- Fate of ILC draft articles unclear, especially in light of the opening of the UNECE Water Convention, but draft articles have kick-started regional processes and can serve as a model for agreements

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