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REGIONAL COOPERATION ON SHARED WATER RESOURCES**PROGRESS ACHIEVED IN THE DEVELOPMENT OF A LEGAL FRAMEWORK
FOR SHARED WATER RESOURCES IN THE ARAB REGION****Summary**

The management of shared water resources is an issue of concern in the Arab region. Indeed, the demand on freshwater resources is increasing in a water scarce environment, where a significant portion of surface and groundwater resources is shared by two or more countries. Efforts to improve the management of shared water resources thus stem from the recognition that such action would have both immediate and long-term implications for economic growth, health and social welfare, food security, income and employment, land use management, peace and security and sustainable development in the Arab region.

Global legal instruments provide general directions and guiding principles for the management of shared water resources. However, addressing regional specificities and concerns by establishing regional legal instruments that would fill the gaps in global instruments is essential. The Arab Ministerial Water Council thus issued several resolutions that call for the development of a regional legal framework that aims to facilitate cooperation and the allocation of shared water resources between Arab countries.

As mandated by those ministerial resolutions, three intergovernmental consultative meetings were organized by the Economic and Social Commission for Western Asia and the League of Arab States Center for Water Studies and Arab Water Security, with support from the Federal Institute for Geosciences and Natural Resources of Germany (Bundesanstalt für Geowissenschaften und Rohstoffe (BGR)). Convened between May 2011 and December 2012, the meetings facilitated a participatory approach in the preparation and review of a set of draft articles, leading to a consensus on a draft legal framework that will be considered by the Arab Ministerial Water Council in 2013.

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Introduction

1. Although Arab countries are viewed as forming a homogeneous region that is categorized as one of the poorest in water, the region can still be subcategorized by the level of economic development and by the severity of water scarcity. Within it, countries of the Gulf Cooperation Council (GCC) are the poorest in water but have an economic capacity that allows them to overcome water scarcity through desalination and to consume water at rates that are among the highest in the world. Four of the Arab least developed countries, namely Comoros, Mauritania, Somalia and the Sudan, have an annual per capita water share that exceeds the water poverty level of 1000 cubic meters. The annual per capita share of renewable water resources falls below the water poverty line in the remaining Arab countries, with the exception of Iraq and Lebanon.
2. Countries of the Arab region mostly rely on surface water that originates outside their national borders. Such freshwater resources account for more than 50 per cent of all renewable water resources in the region. However, sharing international rivers does not characterize all countries of the region. Indeed, only 9 of the 22 member countries of the League of Arab States rely on water from rivers that originate outside the Arab region. While much attention has been devoted to those rivers, the region also shares groundwater that flows across State boundaries. Many of those aquifers are directly connected to surface water hydrological systems and would need to be treated and managed as combined hydrological units or basins. But some of the aquifers of the region contain fossil groundwater reserves that are considered non-renewable. In recent years, many countries of the region have, directly or indirectly, promoted groundwater development for domestic water supply and irrigation, which has led to an alarming decline in fossil groundwater reserves.
3. The intraregional shared water resources, particularly shared aquifers, have not been examined in a structured manner that reveals their characteristics and contribution to the water budgets of the riparian countries. Although those rivers and aquifers are perceived as not contributing much to the overall water budgets of the different countries, in many cases they constitute the only water supply to border areas, which are mostly rural and reliant on water-demanding agricultural activities.

I. BACKGROUND AND MANDATE

A. LEGAL INSTRUMENTS FOR SHARED WATER RESOURCES

4. Arab countries have always put great political emphasis on the issue of shared water resources, confirmed by a high level of solidarity within the member countries of the League of Arab States, which supports the rights of individual countries to just, fair and equitable shares of international water courses and transboundary aquifers. The allocation of shared water resources is a sensitive and complex process that is not currently defined by internationally binding rules. On the basis of the Helsinki Rules and after 23 years of deliberations, the United Nations General Assembly adopted the Convention on the Law of the Non-Navigational Uses of International Watercourses in May 1997 (United Nations Watercourses Convention), which has not yet entered into force. As non-renewable groundwater was not included in the scope of the Convention, the General Assembly requested the International Law Commission to prepare a legal instrument that addresses cooperation on the management, allocation and protection of all types of transboundary groundwater resources. Subsequently, the General Assembly adopted resolution 63/124 of 11 December 2008 on the draft articles of the law of transboundary aquifers. Those draft articles were non-binding and were revisited by the General Assembly during its sixty-sixth session held in 2011. Resolution 66/104 was adopted, in which the General Assembly encourages countries to develop appropriate bilateral or regional arrangements for the proper management of transboundary aquifers, and decides to include the item entitled "The law of transboundary aquifers" in the agenda of its sixty-eighth session for further discussions, in the light of written comments of Governments, and to continue to examine the question of the final form that might be given to the draft articles.

5. Many riparian countries of international watercourses have entered into formal or informal bilateral agreements to clarify their rights and duties in the management of shared water resources, considering water as an avenue for cooperation, not a cause of conflict. Those agreements mostly focus on specific issues such as water allocation and water quality protection. Only a few are comprehensive enough to serve as a potential basis for the integrated management of a shared river basin. The current approach supported by the principles of integrated water resources management is to pursue more comprehensive integrated agreements that involve all riparian countries and focus on fostering cooperation based on a community of interests. However, global conventions cannot adequately address the concerns and specificities of different regions. Indeed, global legal instruments mostly provide general directions and guiding principles for the negotiation process of bilateral or basin-level operational agreements. Thus, regional legal instruments are needed to complement international instruments, as they are able to tackle more effectively the regional specificities and the various interests of regional actors. A clear example of a regional legal framework is the United Nations Economic Commission for Europe Convention on the Protection and Use of Transboundary Watercourses and International Lakes. Although the Convention addresses many aspects of water management, it puts greater emphasis on water quality, pollution control and environmental protection, thus reflecting the concerns and priorities of the region. It does not cover other issues such as water availability and access to water resources in detail, since those are not pressing issues in the European context.

6. Adopting a similar approach, the Arab Ministerial Water Council (AMWC), established by the Economic and Social Council of the League of Arab States in 2008, recognized that a regional legal framework on water resources could respond to regional priorities and specificities better than global instruments would. Over the last two years, AMWC has fostered a collaborative intergovernmental process to define a unified position on the legal principles of management and cooperation in the field of shared water resources in the Arab region.

7. The establishment of AMWC demonstrates a political will to elevate water issues from the technical level to the more influential political level and foster greater regional cooperation on those vital resources. The Arab Water Security Strategy was prepared accordingly by AMWC in 2011, based on a resolution adopted at the first Arab Economic and Social Development Summit, held in Kuwait in January 2009, which calls upon AMWC to prepare a regional water security strategy, with a view to facing the challenges and future requirements of sustainable development in the Arab region. Although the strategy encompasses many water-related issues, it focuses on shared water resources and the need for appropriate tools that promote cooperation in their management, ensuring an equitable allocation of water. The Arab Water Security Strategy thus aims to focus on the development of appropriate institutional and legal arrangements and instruments to facilitate and strengthen cooperation between water-sharing countries. Several resolutions were also adopted by AMWC, mandating the Center for Water Studies and Arab Water Security (a League of Arab States institution) and the Economic and Social Commission for Western Asia (ESCWA) to prepare a legal framework on the management of shared water resources in Arab countries in order to translate policy into practice.

B. NATIONAL POSITIONS ON LEGAL INSTRUMENTS FOR SHARED WATER RESOURCES

8. There are only a few official agreements between Arab countries on shared water resources. Those between Lebanon and the Syrian Arab Republic on the Nahr Alkabeer and Orontes rivers are an example of such legal tools. Cooperation on many shared surface and groundwater resources is also often pursued through joint technical committees that are usually institutionalized, either within multisectoral political accords or based on bilateral or multilateral agreements such as memorandums of understanding. The Joint Authority for the Study and Development of the Nubian Sandstone Aquifer System, established by Egypt and Libya in 1989 and joined by Chad and the Sudan in the late 1990s, is an example of such institutional arrangements. Another less formal example is the 2007 Memorandum of Understanding between Jordan and Saudi Arabia on the use of groundwater in the Disi Aquifer that extends across their shared border. A trilateral Technical Committee, with representatives of Iraq, the Syrian Arab Republic and Turkey, was established within the framework of the Protocol of the Joint Economic Committee and constitutes a third

example of regional management tools for the water sector. Despite having been established for more than 30 years, the trilateral Technical Committee has not been able to reach a permanent comprehensive agreement between the three countries, but it did provide a platform for communication and some temporary arrangements. To date, there are no official binding agreements on shared water in the Arab region, however a wide range of cooperative modalities are in place that could form the basis for operational agreements and higher levels of institutionalized formal cooperation in the future.

9. It is important to highlight that many of the aforementioned cooperation arrangements are mostly the result of direct or indirect political negotiations at the bilateral or trilateral levels, without much reference to internationally agreed legal principles governing the management of water resources. The problem that could arise from the lack of such reference is adopting allocation principles that lead to an unjust and unfair distribution of water shares. Indeed, water hegemony and power imbalance resulting from the upstream location of riparian countries or their military or economic superiority could lead to inequitable water allocation. Realizing that fact, many Arab countries believe that a strong and effective international water law will contribute to strengthening their negotiation positions and will also lead to a more equitable allocation of shared water resources. This vision manifests itself in the fact that Arab countries represent around a third of those that have ratified the United Nations Watercourses Convention. Despite the consensus among Arab countries on this general approach, there are divergent views on some of the detailed provisions of the United Nations Watercourse Convention. Some of the concerns of Arab countries are related to the Convention's neglect of historical rights and uses as a contributing factor to allocation decisions. Some also believe that the Convention needs to highlight the legality of existing bilateral and multilateral agreements.

10. In an effort to unify the various positions of the Arab countries on guiding principles that promote cooperation and set the basis for the joint management of shared water resources in the region, the Technical, Scientific and Advisory Committee of AMWC recommended the development of a regional legal framework on shared water resources. This recommendation was then adopted and elaborated upon in a resolution of AMWC, which requested the support of ESCWA and the Center for Water Studies and Arab Water Security in the preparation of such a legal framework. The added value of a regional legal framework is three-fold: firstly, it establishes regional credibility within the international community, for Arab countries would abide by the provisions of a binding legal framework aligned with internationally accepted principles, which would in turn strengthen international law in that field. Secondly, a legal framework would unify the positions of Arab countries and strengthen the position of individual countries in their negotiations with non-Arab countries. Thirdly, such an agreement would provide a basis to harmonize, coordinate and integrate policies on the management of water resources at the regional level.

II. DEVELOPMENT PROCESS OF THE LEGAL FRAMEWORK FOR SHARED WATER RESOURCES IN THE ARAB REGION

11. The resolutions adopted by AMWC to address the issue of a regional legal framework for the management of shared water resources in the Arab region are presented in the following sections.

A. RESOLUTION NO. 20 OF THE ARAB MINISTERIAL WATER COUNCIL

12. During its second session held in Cairo on 1-2 July 2010, AMWC adopted a resolution inviting the Center for Water Studies and Arab Water Security and ESCWA to prepare a legal framework for shared water resources in the Arab region, in coordination with other partner organizations. The resolutions of AMWC seem to be oriented towards the adoption of a participatory approach in that preparation process. Such an approach aims to build consensus and ease the political sensitivity of the management of shared water resources. The resolution reads as follows:

“[AMWC] invites the Center for Water Studies and Arab Water Security and the United Nations Economic and Social Commission for Western Asia, in coordination with the Arab Center for the Studies of Arid Zones and Dry Lands and the Stockholm International Water Institute, to prepare a draft legal framework on shared waters within the Arab region in view of its discussion during the fourth meeting of the Technical Scientific Advisory Committee of the Ministerial Council”.

Arab Ministerial Water Council, Second Session, Resolution 20, Item 3

13. An expert round-table meeting was organized by the mandated organizations, with support from the Federal Institute for Geosciences and Natural Resources (Bundesanstalt für Geowissenschaften und Rohstoffe (BGR)) through the ESCWA-BGR Cooperation project, as a first step towards the implementation of that resolution (Beirut, December 2010). The outcomes of the round-table meeting highlighted the need to address certain basic considerations prior to drafting the legal framework, including definitions and the use of terms. The round-table meeting also clarified the approach and identified the directions that should guide the preparation process.

14. The discussions and outcome of the round-table meeting contributed to the elaboration of a background document, which in turn lead to the development of a preliminary draft legal framework. The mandated partner organizations agreed to propose an intergovernmental consultation meeting where representatives of countries and regional experts would discuss the preliminary legal framework. In April 2011, the Center for Water Studies and Arab Water Security reported to the Technical Scientific Advisory Committee of AMWC on the progress achieved in implementing the ministerial resolution. Support for the process was subsequently reiterated by the Executive Bureau of AMWC during its third meeting held on 27-28 April 2011, which adopted the following resolution:

“[The AMWC Executive Bureau] invites water related authorities in the Arab countries and specialized Arab organizations to actively participate in the consultative meeting to be organized by the Center for Water Studies and Arab Water Security and the United Nations Economic and Social Commission for Western Asia, in cooperation with the Federal Institute for Geosciences and Natural Resources in Germany. The meeting will be held from 24 to 26 May 2011 in Beirut and will discuss the draft legal framework for shared water resources in the Arab region”.

AMWC Executive Bureau, Third Meeting, Resolution 20, Item 4

15. In response to the above resolution, the Center for Water Studies and Arab Water Security and ESCWA, with the support of BGR, organized the First Intergovernmental Consultative Meeting on the Draft Legal Framework for Shared Water Resources in the Arab Region (Beirut, 24-26 May 2011). Experts from various Arab countries and specialized Arab organizations were invited to examine and discuss the draft legal framework. The aim of the meeting was to foster consensus on a draft legal framework, to be considered by the AMWC Executive Bureau during its meeting in June 2011, then by the third session of AMWC. The consultative meeting focused on the following issues:

- Rationale and regional specificities that justify the preparation of a legal framework for shared water resources in the Arab region;
- Scope of the legal framework and related definitions and terminology;
- General principles to be adopted in the legal framework;
- Form and function of the legal framework under the umbrella of the League of Arab States, including different types of legal formats and institutional arrangements.

16. The meeting resulted in a draft legal framework in the form of a binding convention and recommended its presentation to the AMCW Executive Bureau. The Bureau would then initiate a second round of

consultations by addressing the draft convention to Arab Governments, seeking their official comments. The meeting also recommended that ESCWA and the Center for Water Studies and Arab Water Security incorporate the comments received from Arab Governments and redraft the convention accordingly. This modified version would then be presented to the Executive Bureau and to AMWC for approval. The outcomes of the intergovernmental consultative meeting were reviewed by AWMC during its third session.

B. RESOLUTION NO. 37 OF THE ARAB MINISTERIAL WATER COUNCIL

17. The discussions of the subsequent meeting of the AMWC Executive Bureau and of the third session of AMWC in June 2011 resulted in an agreement on a change of focus. The Ministers decided to restrict the scope of the legal framework to shared aquifers, thus excluding shared surface water from the agreement. Despite the efforts of experts demonstrating the connectivity between surface and groundwater resources and the value added of their conjunctive use and management, the Ministerial Council modified its earlier resolution and decided the following:

*“[AMWC] commissions its Technical Secretariat to address the draft legal framework on shared **groundwater** in the Arab region to the relevant water agencies in Arab countries and to specialized Arab organizations to solicit their comments on it and send them to the Center for Water Studies and Arab Water Security by 30 October 2011.*

*The Center for Water Studies and Arab Water Security and the Economic and Social Commission for Western Asia shall organize a consultation meeting with the Arab countries to discuss the legal framework on shared **groundwater** in the Arab region”.*

Arab Ministerial Water Council, Third Session, Resolution 37, Items 4 and 5

18. As per this ministerial resolution, ESCWA and the Center for Water Studies and Arab Water Security modified the draft legal framework, limiting its scope to shared groundwater aquifers. The modified draft was addressed to the countries for comments, as per item 4 of the aforementioned resolution. The two institutions also organized, with support from BGR, the Second Intergovernmental Consultative Meeting on the Draft Legal Framework for Shared Water Resources in the Arab Region (Beirut, 13-14 December 2011), as per item 5 of the same resolution.

19. The meeting brought together representatives of Arab Governments and experts from specialized Arab organizations, in addition to the representatives of the organizing institutions. Participants reviewed the modified draft legal framework for shared groundwater resources in the Arab region, including the comments received from countries, with a view to fostering consensus among the participants on a revised version of it.

20. The draft articles of the law of transboundary aquifers were discussed by the United Nations General Assembly on 9 December 2011, less than a week prior to that second consultative meeting. Participants were thus informed of the outcome of those discussions, of the active role of Arab countries in the international discussions that took place between 2008 and 2011, and of the resulting General Assembly resolution 66/104. They devoted special attention to the overlap of the law of transboundary aquifers and the provisions of the United Nations Watercourse Convention, which are relevant to the decision of AMWC to restrict the scope of the legal framework.

21. Although the AMWC resolution did not call for a discussion about the reduction of the scope of the legal framework, the participants agreed to express their concern and reservations on that subject. It was agreed that this position be included in the recommendations of the participants, which would be raised to the Executive Bureau and the Ministerial Council for their consideration. Despite this reservation, the meeting participants agreed to complete the task that they were mandated to perform in accordance with the

latest AMWC resolution, and thus limited their discussions to reviewing comments related to groundwater. At the end of the meeting, the participants recommended the following:

- Agree to change the title of the legal framework from the “Legal Framework for Shared Groundwater in the Arab Region” to the “Convention on Shared Groundwater Resources in the Arab Region”;
- Call upon the AMWC Executive Bureau to reconsider amending the legal framework in its upcoming fifth session (January 2012), so that it includes all shared water resources, surface and groundwater, in the Arab region;
- Invite the Center for Water Studies and Arab Water Security to present the draft convention on shared groundwater resources in the Arab region to the AMWC Executive Bureau in its upcoming meeting for deliberations on the proposed amendment;
- Invite the Center for Water Studies and Arab Water Security to present the draft convention to AMWC to solicit its approval;
- Invite the Center for Water Studies and Arab Water Security and ESCWA to follow up the issue of the legal framework;
- Express thanks to the Center for Water Studies and Arab Water Security, ESCWA and BGR for their support, stressing the importance of their continued intensive cooperation.

C. RESOLUTION NO. 56 OF THE ARAB MINISTERIAL WATER COUNCIL

22. During the fourth session of AMWC (Baghdad, 29 May 2012), the review of the progress made in the preparation of the legal framework initiated discussions on the need to incorporate all shared water resources within a unified legal instrument, as recommended by the Second Intergovernmental Consultative Meeting. The Ministers thus decided to revert to their earlier decision by adopting the following resolution:

“Amend the draft Convention on shared groundwater between Arab countries so that it includes shared groundwater and surface water.

Mandate the Center for Water Studies and Arab Water Security and the United Nations Economic and Social Commission for Western Asia to convene the third meeting of experts with the participation of Arab and regional organizations to discuss the draft convention on shared water resources in the Arab region, and to include the amendments and proposals of Arab countries, emphasizing the importance of the participation in the meeting that shall be held during November 2012”.

Arab Ministerial Water Council, Session 4, Resolution 56, Items 2 and 3

23. On the basis of the above resolution, the mandated organizations reviewed and modified the last draft of the convention to unify all shared waters in one single legal instrument. It is important to note that the modifications thus introduced are in line with the directions and principles already agreed upon at the initial stages of the preparation process. The modified draft was addressed to the countries to solicit their comments as per item 3 of AMWC resolution 56.

24. The two mandated organizations convened the Third Intergovernmental Consultative Meeting on the Draft Legal Framework for Shared Water Resources in the Arab Region as per AMWC resolution 56, with support from BGR (Cairo, 10-11 December 2012). After the last AMWC session in May 2012, ESCWA and the Center for Water Studies and Arab Water Security had modified the earlier version of the draft convention as to encompass all shared water resources within its scope and had addressed it to countries soliciting their comments, as per item 2 of the AMWC resolution. Only Oman and Tunis sent minor comments on the draft, in addition to ACSAD. Country representatives and experts from regional

organizations reviewed the draft convention and reached consensus on a modified draft that incorporates all expressed concerns and comments. It was agreed that the modified draft would be raised to the Executive Bureau during its following meeting in January 2013. Based on the decision of the Executive Bureau, the draft convention could also be raised to the Ministerial Council at its fifth session to be held in June 2013 for approval.

III. ORIENTATION AND CONTENT OF THE DRAFT LEGAL FRAMEWORK FOR SHARED WATER RESOURCES IN THE ARAB REGION

25. The resolutions of AMWC did not provide any guidance on the shape or structure of the legal framework. The mandated organizations were to engage in substantive discussions and agree upon an approach to guide the preparation process. As mentioned previously, this was done during the round-table meeting held in December 2010. The meeting concluded with a set of directions, identified on the basis of the regional specificities and the general principles that founded many of the existing legal instruments, to be used as guidance for the preparation of the legal framework. The main guiding directions were the following:

- The legal framework should be more of a cooperative instrument than an allocation tool;
- The legal framework should promote cooperation with a minimum of specific detailed measures, which should be left for operational bilateral or basin-level agreements. This approach could minimize political objections, thus facilitating speedy approval of the legal framework;
- The scope of the legal framework is to incorporate all types of shared water resources (surface water, renewable and non-renewable groundwater);
- The legal framework should cater to the concerns of the different Arab countries, particularly on the legality of existing agreements and the adoption of the basin management approach;
- The legal framework should not depart from the universally agreed-upon guiding principles, such as the “no significant harm” principle and the “equitable and reasonable utilization” principle;
- The legal framework should avoid reference to absolute sovereignty as a guiding principle;
- The legal framework should utilize the existing institutional structure of AMWC and its related institutional arrangements;
- Given the general nature of the legal framework, provisions for amendments and additional annexes or protocols need to be included;
- In order to ensure an effective impact on the integrated management of shared water resources by Arab countries, the legal framework should have a binding legal format, that of a convention for example.

26. The round-table meeting shaped the overall structure of the legal framework. The detailed content of each section was left to be dealt with by the mandated organizations and to be discussed during the consultative meetings with Government representatives and regional experts. The initial overall structure of the legal framework, as agreed upon during the round-table meeting, proposed a preamble and the following four sections:

- Section I: Scope of the legal framework;
- Section II: General principles;
- Section III: Institutional arrangements;
- Section IV: General provisions.

27. On the basis of this structure, the mandated organizations initiated a series of internal discussions to prepare a preliminary draft that would also follow the above guiding directions. The resulting draft was discussed and modified based on the written comments submitted by Arab Governments and the outcome of the consultative meetings, also taking into account the successive resolutions issued by AMWC. The main objective of the legal framework being to adopt guiding principles that promote cooperation and lead to detailed operational bilateral and basin-level agreements between riparian countries, it was consequently agreed that detailed measures would not be included within the provisions of the legal framework issued at the regional level.

IV. PROSPECTS AND FUTURE ACTION

28. Defining water security at the national level is a difficult task that requires connecting many relevant issues including those of food security, economic and social development, hydrological systems and the prevailing legal and institutional settings. In countries where freshwater scarcity is increasing due to population pressures and shifting patterns of precipitation, and where that fact is affecting formal and informal employment and revenue in the agricultural sector, Governments are facing increased dependence on shared water resources. And because water resources are shared not only between Arab countries but also between Arab and non-Arab countries, there is a sense of uncertainty and increased vulnerability. Legal instruments on shared water based on a common understanding of what is fair and equitable can help to support better planning and future allocation decisions. The development of the legal framework on shared water in the Arab region thus serves to foster a common understanding of international principles and to unify the positions of Arab countries regarding those precious resources. This common approach also politically strengthens the negotiation positions of individual countries as they negotiate with non-Arab States and creates a suitable environment for a more effective regional cooperation.

29. The participative approach that was adopted for the preparation of the legal framework has proven to be effective in shaping it into an instrument that achieves consensus among the technical and legal experts of the different countries. Although it may be assumed that the political will for developing a legal instrument to regulate the management of shared water resources in the Arab region and to promote cooperation in that field is manifested through the series of resolutions that have been adopted by AMWC, the anticipated discussions on the draft convention at the political level will put those assumptions and the AMWC resolutions to the test.
