

THEMATIC AREA 1: CONFLICT AND COOPERATION: THEORIES AND CONCEPTS IN WATER DIPLOMACY BY DR. JUAN CARLOS SANCHEZ

An overview of the presentation was clarified to participants encompassing the following themes;

- Transboundary waters and cooperation
- Hydro Diplomacy
- Agreements from water cooperation
- Water Diplomacy and Wetlands Sustainable Use

TRANSBOUNDARY WATERS AND COOPERATION

- On why does water governance matters?

Dr. Carlos stressed the need for proper management of water to guarantee Social development; ecosystems conservation and Good relationships with neighbouring countries

- Highlighted why proper management of water requires good governance and that policies, law and institutions are the foundations for effective water management
- A lack of a comprehensive governance framework compromises the efforts to overcome the stress placed in water due to increase in demand

Governance gaps

The following were identified as governance gaps;

- Transboundary waters account for 60% of global freshwater resources and that 60% of those waters lack any type of cooperative framework
- When cooperative frameworks exist, they are often bilateral, legally weak, not holistic, and rarely fully implemented
- Institutions to implement those agreements are government led, and offer little space for civil society participation

Reminded participants on Social Development Goals 6 *of clean water and sanitation - 6.5 By 2030, implement integrated water resources management at all levels, including through transboundary cooperation as appropriate*

On potential conflicts, two factors were identified i.e.,

- a) Upstream users and uses (hydro power Vs mining)
- b) Downstream users and uses (Navigation Vs Agriculture)

Water wars & Tangible water cooperation

Water conflict rather than water wars were predicted by UN Secretary Generals since 1985 by Boutros Boutros Ghali to 2007 by Ban Ki Moon.

Historically, cooperation has prevailed over conflict and that NO wars have been fought exclusively due to water and that between 1820 and 2007, at least 700 water cooperation agreements have been signed

Overcoming challenges and preventing conflicts

Cooperation was identified as being essential to overcome transboundary water challenges and for it to be effective, it requires:

- A common vision
- Commitment from governments
- Involvement of the interested parties
- Permanent dialogue and exchange of data and information

Cooperation Stages

Four critical stages in cooperation were identified as;

- a) Unilateral action
- b) Coordination
- c) Collaboration
- d) Joint Action

Incentives for cooperation

It was highlighted that States will cooperate when it is beneficial for their interests and Interests could be of different nature notably:

- Socio-Economic
- Cultural, Political,
- Environmental

Benefits of cooperation

The following were highlighted;

1. Benefits to the river:

- *Better management of the ecosystems*

2. Benefits from the river:

- *Food and energy*

3. Reduce costs related to the river:

- *Less tension between countries*

4. Benefits beyond the river:

- *Greater cooperation, economic integration*

Cooperation and Agreements

It was noted that in case of transboundary waters, States sharing those waters are actively involved in its governance and management in a cooperative manner anchored in agreements which establish rights and duties that regulate States behaviour and their relationships for the following reasons:

- Memorialise and institutionalize cooperation
- Establish the parameters to regulate shared resources
- Provide a vehicle to maintain, enhance, and build relationships between States

Conflict and cooperation can coexist

It was put forward that the existence of water agreements and River Basin Organisation facilitate cooperation, but **cannot fully prevent potential conflicts**

A window of opportunity

It was noted that increasing demand for water does not necessarily mean a growing potential for conflicts. To the contrary, it **could open windows of opportunity for cooperation**

- **Joint governance of water resources** has the potential to increase benefits and to meet the needs of communities within a transboundary basin creating interdependences between States can ensure cooperation

WATER DIPLOMACY

What is hydro diplomacy?

It was identified as an approach based on **multi-stakeholder dialogue** to prevent conflicts through identification of needs, interests and concerns

- Its aim is to find **consensus** and a common vision to maximise the joint **benefits** from the cooperative use of waters
- The ultimate goal of water diplomacy is to **ensure transboundary water security, peace and regional integration**

Process and elements in Water Diplomacy

Stages in Process

1. Understanding the actors and challenges
2. Facilitating dialogues
3. Designing joint action plans
4. Monitoring the implementation Of the vision
5. Evaluating results
6. Adjusting and replicating

Elements

Institution
Dialogue
Consensus
Agreement
Effective use of Water

GOALS OF WATER DIPLOMACY

- Cooperative and peaceful relationships
- Integrity of ecosystems
- Water-related hazards and climate change
- Human well-being and sustainable development

ENABLING ELEMENTS IN WATER DIPLOMACY

- **Political Will**

Looking for **new and non-traditional partners** (municipal authorities)

- **Technical Capacities**

Capacity to produce and exchange **data and information**

- **Financial Capacities**

Mobilising resources for development of joint projects aimed to strengthen cooperation

- **Inclusive Participation**

Proactive engagement of all relevant stakeholders in the design and planning joint projects and activities.

Key issues to be discussed and negotiated

- Environmental integrity of ecosystems
- Economic growth
- Sustainable livelihoods
- Regional integration and peace

AFRICA CHALLENGES IN WATER DIPLOMACY

- **Challenges:**
 - Development of large water infrastructure
 - Lack of financial resources to implement transboundary water projects
- **Responses:**
 - Strengthening negotiation capacities for the development of regional water policies and agreements
 - Facilitation of regional dialogues

Guidance to elaborate nature conservation and investment plan.

AGREEMENTS FOR WATER COOPERATION

BIDING AGREEMENTS

- Convention**
- Protocol**
- Treaty**
- Pact**

NON- BIDING AGREEMENTS

- Declaration**
- Code of Conduct**
- Guidelines**
- Good Practices**

LEVEL OF AGREEMENT

Global	<ul style="list-style-type: none"> • Global level: <ul style="list-style-type: none"> • 1997 UN Watercourses Convention • 1992 UNECE Water Convention
Regional	<ul style="list-style-type: none"> • Regional level: <ul style="list-style-type: none"> • EU Water Framework Directive • SADC Shared Watercourses Protocol
Basin	<ul style="list-style-type: none"> • Basin level: <ul style="list-style-type: none"> • Nile • Mekong

- Plata
- Rhine
- Danube

Principles governing water agreements

- Cooperation
- Equitable and reasonable utilisation
- No significant harm
- Protection of Ecosystems

Structure of the agreements

Key Elements	Details
1. Scope	<ul style="list-style-type: none"> • Legal reach (what waters?) • Definitions (watercourse; uses) • Parties (States; RIOs)
2. Substantive Rules	<ul style="list-style-type: none"> • Legal duties & entitlements (equitable and reasonable utilisation; due diligence; protection)
3. Procedural Rules	<ul style="list-style-type: none"> • Operationalization of substantive rules <ul style="list-style-type: none"> • Duty to cooperate • Notification / Exchange of information
4. Institutional Mechanisms	<ul style="list-style-type: none"> • Joint bodies (RBOs) • Conference of the Parties • State agencies (Ministries, Commissions, Committees)
5. Dispute Settlement	<ul style="list-style-type: none"> • Dispute avoidance (consultation) • Dispute settlement (Good offices, mediation, adjudication) • Compliance verification (reporting; facilitation)

1. SCOPE

Scope in the UNWC

Article 2 (a) “Watercourse” – “means a system of surface waters and groundwater’s constituting by virtue of their physical relationship a unitary whole and normally flowing into a common terminus”.

2. SUBSTANTIVE RULES

Equitable and reasonable utilisation

Shared resources are not subject to equal division but to equitable use

Requires a balance of reasonable interests/uses/needs/ of the States sharing the basin

Entails cooperation to obtain joint benefits and protection/development of the river basin

Ideally requires a common institution to:

- Effectively achieve an equitable and reasonable utilization
- Promote joint management

Equitable and reasonable utilization in the UNWC

“... an international watercourse shall be used and developed by watercourse States *with a view to attaining optimal and sustainable utilisation thereof and benefits therefrom, taking into account the interests of the watercourse States concerned, consistent with adequate protection of the watercourse*”

(Art. 5(1), UN Watercourses Convention)

Factors to determine equitable and reasonable utilization

- Art 6 UNWC
 - All relevant factors have to be considered together
 - The weight to be given to each factor is determined by its relation with the other factors
- Art 10 UNWC
 - No use of an international watercourse enjoys inherent priority over other uses
 - ‘Special regard’ given to the requirements of vital human needs

No significant harm

- Watercourse States prohibited from activities that cause significant harm to other watercourse States
- What is harm?
 - Detrimental impact of some consequence upon the environment or the socio-economic development of another State
 - What is ‘significant’
More than merely perceptible or trivial and is determined on a case-by-case basis

Due diligence standard

- Art 7(1) UNWC
 - “Watercourse States shall, in utilising an international watercourse in their territories, take all appropriate measures to prevent the causing of significant harm”
 - Strong procedural component

Protection of ecosystems

- Recognize ecosystems values and functions
- Protect ecosystems individually or with other States
- Control the introduction of alien species

Protect the marine environment including estuaries

3. PROCEDURAL RULES

What are procedural rules?

- Rules that provide practical means for implementing the substantive rules and establish an operational framework for the management of a watercourse.
- The application of procedural rules is crucial for the transparency, predictability, and enforceability of international water law principles.
- *“It is reasonable ... that procedural requirements should be regarded as essential to the equitable sharing of water resources. In the absence of hard and precise rules of allocation, there is a relatively greater need for specifying requirements for advance notice, consultation, and decision procedures.”*

Schachter, Sharing the World's Resources (Columbia Uni Press New York 1977)

Procedural rules in the UNWC (I)

Strong emphasis on cooperation and process

- **Duty to cooperate:** logical extension of substantive rules (equitable and reasonable utilization, no significant harm, protection of ecosystems)
- **Regular exchange of data and information to:**
 - Protect and preserve ecosystems
 - Respond to needs or opportunities for regulation of water flows
 - Prevent or mitigate conditions that may be harmful to other States resulting from natural causes or human conduct (flood, water-borne diseases, siltation, erosion, salt-water intrusion, drought or desertification)
 - Take all practicable measures necessary by the circumstances to prevent, mitigate and eliminate harmful effects deriving from an emergency

- Duty to **exchange information and consult** others on the possible effects of planned measures (Article 11)
- Duty to **notify and provide technical data** and information before the implementation of a project (Article 12)
- Period of 6 months to **evaluate** the possible effects- can be extended (Article 13)
- If requested, duty to **provide further information** during consultation period
- Duty **not to implement** or permit the implementation of the project without consultation and negotiation to arrive at equitable resolution of the problem (Article 17)
- Possibility to proceed with project implementation **without consent** in cases of public health, public safety and the protection of equally important interests (Article 19)

Environmental impact assessment

- Share available data and information, 'including the results of any environmental impact assessment' (Art 12, UNWC)
- Transboundary EIA: a legal requirement?
 - Obligation to take all appropriate measures to prevent significant harm
 - ICJ Pulp Mills case suggested transboundary EIA as part of customary international law

4. INSTITUTIONAL ASPECTS

Article 8(2) UNWC

In determining how to implement cooperation, States **may** consider the establishment of **joint mechanisms or commissions to facilitate cooperation**

Article 24, UNWC

- Watercourse states shall, at the request of any of them, **enter into consultations** on the management of an international watercourse, which **may** include the establishment of a **joint management mechanism**.
- Management relates to:
 - Planning the sustainable development of the watercourse and implementing any plans adopted
 - Promoting a rational and optimal use
 - Supporting the protection of the watercourse

Role of Institutions

- Institutions are required to implement agreements
- Institutions become indispensable to achieve equitable utilization and a sustainable management of a basin
- Institutions coordinate competitive and concurrent needs between different actors (States and non-State)
- Institutions provide the mechanism for joint management of a basin

5. DISPUTE AVOIDANCE & SETTLEMENT

Dispute settlement in the UNWC

- In case of a dispute relating to the interpretation or application of the Convention, the parties shall, in case there is no agreement applicable between them, seek a settlement of the dispute by peaceful means
- If the parties cannot reach agreement by negotiation they may jointly use any of these mechanisms:
 - Fact finding commission
 - Good offices
 - Mediation
 - Conciliation
 - Use any joint institutions that may have established
 - Agree to submit the dispute to arbitration
 - Agree to submit the case before the International Court of Justice

Dispute settlement in International Law

- UN Charter (Art 2): *“All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered”*
- Different from national law: → *there is no ultimate arbitrator*
- Key factor- state sovereignty: States remain in control of the process: they have to consent to any mechanism to deal with a dispute

THEMATIC AREAS 2: TOOLS FOR WATER DIPLOMACY BY DR. CALLIST TINDIMUGAYA

Diplomacy is the “the art of conducting dialogue between and among states” WD is about dialogue, negotiation and reconciling conflicting interests among riparian states

- Diplomacy requires constructive dialogue and good personal qualities
 - honesty
 - perceptiveness,
 - Tact
 - good communication
 - a flair of entertainment
 - sense of timing)

Water Diplomacy Best Practices

Best Practices are useful for conducting water diplomacy more efficiently and effectively. Best practices fall in 3 categories namely:

- Improve knowledge
- Build strategic partnerships
- Develop advocacy

➤ **Improve Knowledge**

- Promote and utilize indigenous knowledge and support and share it with local communities.
- Leverage water's historic role as a healing, regenerative, positive element in faith and culture to build goodwill and local support for water diplomacy initiatives
- Defend diplomacy practice in a climate of conflict by demonstrating concrete results in improved water safety and access because of the diplomacy conducted
- Pull information and know- together into a cohesive, multi--- pronged water diplomacy strategy.
- Compile simple and clear information culled from direct experience and expertise in the field

➤ **Build Strategic Partnerships**

- Leverage not only private sector partnerships but also peer---to---peer learning and collective decision---making to achieve institutional change
- Leverage actors already active in water diplomacy as well as programs that have already demonstrated success

➤ **Develop Advocacy**

- Advocate for the resolution of water issues through creative solutions rather than through monetary investment in water management education
- Need to use both top---down and bottom---up frameworks for water diplomacy
- International engagement to build infrastructure and community, grassroots engagement to build ownership and trust.

Confidence building measures in management of shared water resources

- Diplomacy is key in building confidence among the basin states
- Confidence building measures needed in management of shared water resources namely:
 - Exchange visits (combination of political and technical teams)
 - Bilateral Water Management Committee
 - Water Monitoring systems
 - Joint databases of water and water related data
 - Notification on planned measures
 - Protection of the environment and prevention of pollution

THEMATIC AREA 3: CONFLICT TRANSFORMATION- AN ALTERNATIVE IN IWM: BY PROF. YAZIDHI BAMUTAZE

Conflict Transformation involves

- Understanding Conflict
- Addressing Conflict
- Differing Approaches to Manage, Resolve or Transform conflict
- Causes of Conflict

- Violence vs. Conflict
- Peace is a process

What we should Know when Addressing Conflict

- Every situation is unique!
- Never assume you know everything: it is a learning process!
- Same facts do not create same views!
- Differences created by:
 - Status, power or wealth
 - Age and role assigned to your gender
 - Social group or educational background
- Access to information

What is Conflict?

Conflict is a relationship between two or more parties (individuals or groups) who have, or think they have, incompatible goals.

KEY CONFLICT TRIGGERS

- Fragile landscapes prone to erosion including landslides
- Eviction of forest communities such as the Benet who for over 200 years lived on the Moorlands and used resources freely
- Shifting of conservation policies from flexible to rigid procedures
- Varying perceptions among stakeholders
- Punitive measures in law enforcement

Contrast: What is Violence?

- Violence consists of actions, words, attitudes, structures or systems that cause physical, psychological, social or environmental damage and/ or prevent people from reaching their full human potential.

Understanding Conflict

- Conflicts are a fact of life, inevitable and often creative.
- Conflicts are usually resolved without violence and lead to improved situation for most or all involved
- Conflicts arise from imbalances in relations:
 - Unequal social status
 - Unequal wealth and access to resources
 - Unequal power distribution
- Conflict is NOT necessarily destructive
- Without conflict, there would be no stimulation - groups and organisations would stagnate, societies would collapse under own weight
 - unable to adapt to changing circumstances and altering power situations
 - E.g. the roman empire collapsed because it was unable to adapt and change

Types of Conflict

- **No Conflict:** most people want it, but forget that it undermines innovation and adaptive capacity to change
- **Latent Conflict:** below the surface, may need to be brought in the open to be addressed

e.g. South Africa, Anti-Apartheid Movement (striving to bring latent conflicts into the open)

- **Open Conflict:** deep-rooted, very visible, actions needed to address root-causes and visible effects
- **Surface Conflict:** shallow roots, maybe only a misunderstanding of goals that can be addressed by means of improved communication

Management, Resolution or Transformation?

- Conflict Management: aims to limiting and avoiding future violence by promoting positive behavioural changes in the parties involved
- Conflict Resolution: addresses the causes of conflict and builds lasting relationships between hostile groups

Why Conflict Transformation

- Conflict Transformation: addresses the wider social and political sources of conflict and seeks to transform the negative energy of war into positive social and political change

Causes of Conflict

- Diverse theories/ boils down to:
 - Levels of communication
 - Incompatible positions (zero-sum view)
 - Unmet, frustrated Human needs
 - Threatening identity
 - (Intercultural) miscommunication

Steps of Conflict Transformation

- Understanding Conflict
- Conflict Analysis
- Building Strategies to address conflict
- Influencing Policy
- Intervening Directly into conflict

THEMATIC AREA 4: WATER DIPLOMACY IN PRACTICE- CASE FOR NILE BASIN INITIATIVE: A Case of the Nile Basin Initiative BY DR. CALLIST TINDIMUGAYA

Water Diplomacy Trans-boundary water management is a political decision. Non-water policies are crucial to the water sector and so there is a need to involve non-water decision-makers in water-policy decision making. Cooperative management institutions and

collaborative processes are effective policies for promoting peace and cooperation transboundary and international water basins.

The Nile Basin Initiative (NBI) is an example of collaborative management of a river basin at a regional level that employs a collaborative adaptive management approach involving the basin states

Three key characteristics of Water Diplomacy:

- need to integrate multiple perspectives (resolving problems over shared water resources requires different stakeholder groups with different expertizes)
- importance of negotiation, mediation and intercultural communication (need negotiated solutions informed by science and technology to resolve problems of water allocation and quality and competing water needs)
- Support for the wider diplomatic process (water diplomacy can assist in defining regional and international foreign policy and develop mutual relationships and international partnerships)

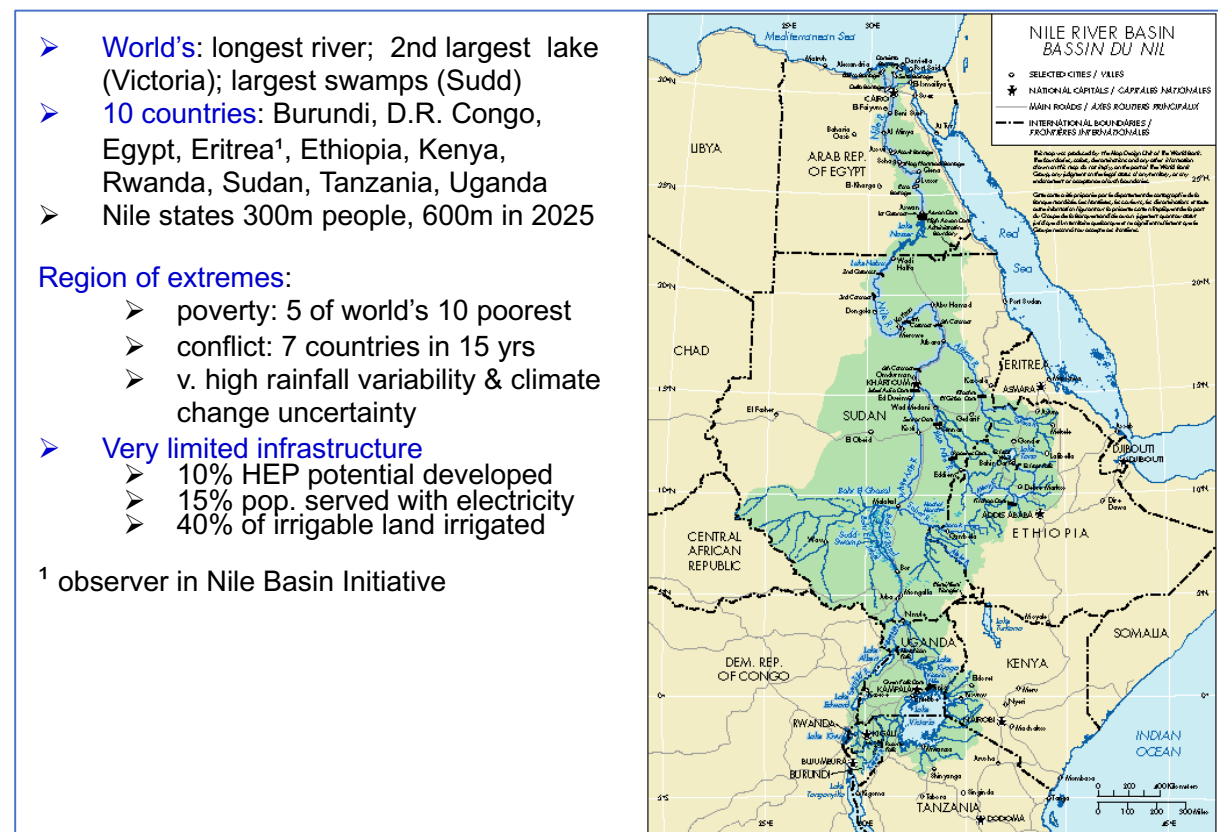


Figure 1: The Nile basin and basic characteristics

Hydrology & politics

- Nile has 2 main tributaries: White Nile and Blue Nile. Flow origins explain politics
- Small flow (2% of Amazon; 6% Congo; 12% Yangtze; 17% Niger; 26% Zambezi)
- Extreme rainfall variability, creating big risks; increased by climate change
- Uganda/equatorial flow mostly lost in Sudd

- Sudan: 65% basin area; most tributaries meet & opportunities involve
- Ethiopia: 86% of mean flow into Egypt
- Egypt: no rain & no flow additions

Futures: major climate change unknowns

Evolution of cooperation on the Nile

Nile Basin countries have been engaged in cooperative management of the Transboundary resource in different ways and at different times. These engagements have evolved leading to the formation of the Nile Basin Initiative (NBI) in February 1999.

Earlier cooperative initiatives include:

- Hydro meteorological Survey of Lakes Victoria, Kyoga, Albert, Edward and George (HYDROMET) Project (1967 to 1992)
- Technical Cooperation on the Nile (TECCONILE) Project (1992 to 1999)

Nile Basin Initiative (NBI)

NBI was formally established in February, 1999. The NBI brings all Nile Basin countries to work together to develop the resources of the Nile Basin for the benefit of all. NBI provides a platform for co-operation and for building working relationships between the riparian countries, promote regional peace and security and it is a mechanism for the implementation of the **“shared vision” through an agreed “Strategic Action Program.”**

NBI Shared Vision aims **To achieve sustainable socio-economic development through equitable utilization of, and benefit from, the common Nile Basin water resources.”**

Strategic Action Program for the Nile Basin

Main Tasks

Shared Vision Program

- Create an enabling environment for cooperative investments and action on the ground, within a basin-wide framework.
- Promote Shared Vision through a limited, but effective, set of basin-wide activities and programs

Subsidiary Action Program

- Translates the shared vision into action through sub-basin investment projects

Two tracks followed by NBI

The two tracks were kept separate as much as possible until around 2007 when negotiations basically ended. By 2008 NBI was noted to be a strong but transitional institution with successful program and remarkable achievements like: Nile Basin TF, 19 development partners, co-chaired by NBI & World Bank. However cooperation can only be sustained with permanent river basin institution, requiring Cooperative Framework like the Nile Treaty.

Nile Treaty regime central to CFA issue. 1902, 1929 & 1959 treaties are central to current concerns of all parties

Date	Parties	Name of Nile Treaty	Nile Treaty Objective/Content
1891	GB Italy	Protocol for spheres of influence in E. Africa	Italy agreed not to construct any works on Atbara that would affect flow into Nile (main concern: irrigation works)
1902	GB Ethiopia	Treaty on Frontiers between Anglo-Egyptian Sudan, Ethiopia, & Eritrea	Ethiopia agrees not to interfere with flow of Nile without consulting Great Britain & Sudan.
1906	GB Congo	Agreement on spheres of influence in E. & C. Africa	Congo agreed not construct any work which would diminish flow into Lake Albert, unless in agreement with Government of Sudan.
1925	GB Italy	Exchange of Notes re. Concessions for Barrage at Lake Tana...	Italy recognized prior hydraulic rights of Egypt & Sudan & agrees not to construct on headwaters of Blue Nile & White Nile & their tributaries works which might modify flow Nile
1929	GB Egypt	Exchange of Notes re. Use of the Waters of the River Nile for irrigation	Egypt claims 'natural & historic rights' in Nile waters; without agreement of Egypt, no measures to be taken on Nile & its tributaries in Sudan or in countries under British administration (Kenya, Tanganyika & Uganda)
1934	GB Belgium	Agreement re. Water Rights between Tanganyika & Rwanda-Burundi	Regulates utilization of boundary waters, notification of projects, water quality & navigation
1949 & 1952	GB Egypt	Exchange of Notes re. Construction of Owen Falls Dam (Uganda)	Uganda to build hydroelectric dam that "did not adversely affect discharges of water passed through"; reconfirms curves agreed in 1929; resident Egyptian engineer at Owen Falls; (1952) Egypt agrees to bear part of cost of dam to raise L. Victoria level for water storage
1959	Egypt Sudan	Agreement for the Full Utilization of the Nile Waters	Parties agree to: allocate of full yield (55.5 bcm/year Egypt; 18.5 bcm/year Sudan); Permanent Joint Technical Commission; have unified view for Nile negotiations with others

1977	Rwanda Tanzania Uganda	Agreement to Establish Kagera River Basin Organization	Establishment of KBO as regional integration and development organization (now defunct)
1993	Egypt Ethiopia	Framework for General Cooperation	Confirm intention to cooperate on Nile Waters & agree to refrain from engaging in any activity that may cause appreciable harm to interests of other
2003	Kenya Uganda Tanzania	Protocol for Sustainable Development of Lake Victoria Basin	Parties agree to cooperate on sustainable development and management of the basin. Establishment of the Lake Victoria Basin Commission

Cooperative Framework Agreement (CFA)

The CFA – first inclusive treaty on the Nile and its purpose is to provide a regional framework of “legal and institutional arrangements” ... “acceptable to all Basin countries to promote Basin-wide cooperation in water resources planning & management” CFA adopt key principles of international water law and establishes permanent Nile River Basin Commission

CFA involved a lengthy process of treaty negotiation from 1997-2008. In 1997-2006: Series of technical negotiations (panel of experts) took place and in 2006-2007 Nile Council of Minister (Nile COM) resolved many difficult reservations. In June 2007 Nile COM ‘conclude’ negotiations, closing 15 general principles and 38 Articles but one ‘reservation’ remaining

- **Outstanding issue**
 - unresolved issue related to “Water Security” (Article 14, replacing “Status of Existing Agreements”). Main words of disagreement in the formulations are on the *current uses* and *rights*
 - world-class legal team – yet no resolution
 - simple issue is ‘heart of matter’: political, not legal
- Consultations continued between 2007 and 2010
 - growing frustration, increasingly negative media

Nile –COM decisions on how to address outstanding issue

In May 2009 in Kinshasa, agreed to put the pending issue in Annex to CFA and sign off the already agreed articles. Have the issue resolved within 6 months of establishing the Nile River Basin Commission. This decision was contested by Egypt and Sudan which requested for further consultations. Consultations continued between July 2009 and April 2010. However, frustration continued to grow. In a Nile-COM meeting in Sharma el Sheikh, Egypt in April 2010, 7 countries out of 9 resolved to sign the CFA on 14 May 2010 in Entebbe and gave all countries 1 year within which to sign it. CFA signed initially by 4 countries (Ethiopia, Rwanda, Tanzania and Uganda) on 14 May 2010, joined later by Kenya 2 weeks after and later by Burundi 10 months after. The required number of countries (Six) to enable the CFA move to ratification has been realized. The ratification process launched after 14 May 2011 to pave way for establishment of a Commission in Entebbe.

If there is no Cooperate Framework Agreement deal?

- **Non-cooperation: bleak futures...?**
 - Egypt: inevitable upstream unilateral development + climate change → threat to ‘water security’; internal disputes; potential conflict risk
 - Sudan: risks with new/current unilateral dam-building agenda foreclosing cooperative options; shared interests with Ethiopia? conflict?
 - Southern Sudan: 2010 referendum? entity with key water resources, history suggests return to instability (conflict?)
 - Ethiopia: history suggests instability & isolation; poverty trap; conflict?
 - Uganda & other equatorial lakes nations: blocked water development; isolation - obstacle to investment & growth
- **Without CFA: risks to growth & peace**
 - donor fatigue, NBI will fade away and window of opportunity will close
 - Cooperation will likely happen one day – but what damage before then?
 - growing populations & water demand, few options, climate change

THEMATIC AREA 5: THE IMPACT OF CLIMATE CHANGE ON WATER RESOURCES AND IMPLICATIONS FOR WATER DIPLOMACY: BY PROF. EMMANUEL KASIMBAZI

Introduction

Water is the primary medium through which early climate change impacts is felt by people, ecosystems and economies. There is some evidence to show that freshwater resources are vulnerable, and have the potential to be strongly impacted by climate change.

Climate change could have substantial effects on the quality of water resources and this has implications for water diplomacy.

What is climate change?

Climate change is also called global warming. Climate change has been defined in many different ways.

It simply refers to the rise in average surface temperatures on Earth.

The Intergovernmental Panel on Climate Change (IPCC) defines climate change as any change in climate over time, whether due to natural variability or as a result of human activity. This change in the state of the climate can be identified by variations in the mean and/ or the variability of its properties and that persist for an extended period of time, typically decades or longer.

The UNFCCC) defines climate as a change of climate that is attributed directly or indirectly to human activity that alters the composition of the global atmosphere and that is in addition to natural climate variability observed over comparable time periods

Climate change is due primarily to the human use of fossil fuels, which releases carbon dioxide and other greenhouse gases into the air.

The gases trap heat within the atmosphere, which can have a range of effects on ecosystems, including rising sea levels, severe weather events, and droughts that render landscapes more susceptible to wildfires.

CLIMATE CHANGE AND ITS IMPLICATIONS FOR WATER RESOURCES SYSTEMS

- Climate change significantly affects water resources:
 - ❑ **Floods:** These happen due to heavy rains. The rising water levels and associated floods within Lake Victoria Basin and other areas of Uganda have had negative impacts on the people and developments.
 - ❑ **Hydropower Generation:** The increased water level can cause dislodgement of papyrus mats from encroached shorelines resulting into huge mass of floating Islands which are dangerous to hydropower infrastructure. For example, in April, 2020 the mass docked at Owen Falls Dam and choked turbines and which resulted into a temporary National power blackout. The floating islands have the capacity to block waterways and other economic activities within the water bodies as was the case in Lake Kyoga in 1998.
 - ❑ **Water Transport and Bridge Construction:** Water transport facilities operated can be affected by rising water levels. For example, the ferries along River Nile were suspended due to inundation and submergence of jetties and landing sites. In addition, construction of Kyiko Bridge, downstream of Isimba Hydropower Dam was halted.
 - ❑ **Water, Sanitation and Health:** Essential facilities such as drinking water and sanitation systems, health facilities, roads, among others get affected. Possible water borne and water related disease incidences such as cholera, dysentery, malaria, and bilharzia are likely to increase.
 - ❑ **Settlements and Establishments:** Settlements and developments around Lake Victoria and River Nile got affected with many hotels, beaches and individual house already flooded. Some of the establishments submerged such as hotels, as schools, health facilities and places of worship both churches and mosques several other beaches, markets, Gaba water works, jetties, and settlements/homes around the lake.
 - ❑ **Droughts:** These refer to very dry conditions resulting from a lack of rainfall. The droughts greatly affect the agricultural sector, which is Uganda's economical backbone. Farmers are counting losses after the food crops they planted either dried up or yielded very poor harvest.

DIPLOMATIC IMPLICATIONS OF CLIMATE CHANGE FOR WATER RESOURCES

- The rise in water levels may attract regional and international attention. For example the rise of Lake Victoria has also attracted regional and international attention since

this water flows through South Sudan, Sudan and eventually to Mediterranean Sea through Egypt.

- Five Kenyans have sued the Ugandan government in the East Africa Court of Justice for allegedly failing to control floods around the shores of Lake Victoria, resulting in displacement of people and damage to their property. They allege that Uganda has violated their fundamental human rights by breaching the EAC Treaty and the Nile Basin Comprehensive Framework Agreement on how much water Kampala is supposed to release from Lake.
- They have enjoined the East African Community (EAC) and the Lake Victoria Basin Commission in the suit, while Kenya and Tanzania governments are named as interested parties.

POLICY AND LEGAL RESPONSES TO ADDRESS CLIMATE CHANGE AND WATER DIPLOMACY

- At a global level, the policy response to climate change and water diplomacy is primarily being carried out under the United Nations Framework Convention on Climate Change (UNFCCC).
- Under the Convention, adaptation is referred to under a number of Articles and Decisions. Article 4.4 requires the developed country Parties and other developed Parties to assist the developing country Parties that are particularly vulnerable to the adverse effects of climate change in meeting costs of adaptation to those adverse effects.
- Article 4.5 requires state parties to cooperate in preparing for adaptation to the impacts of climate change; develop and elaborate appropriate and integrated plans for coastal zone management, water resources and agriculture, and for the protection and rehabilitation of areas, particularly in Africa, affected by drought and desertification, as well as floods;
- The Kyoto Protocol promotes the Clean Development Mechanism (CDM) which include Hydro power projects.
- At the EAC level, there is the EAC Climate Change Policy 2011 that is to guide Partner States and other stakeholders on the preparation and implementation of collective measures to address Climate Change in the region while assuring sustainable social and economic development.
- Adaptation priorities and the Policy include: scaling up of efficient use of water, irrigation and key fragile ecosystems such as wetlands, coastal, marine and forestry ecosystem and also reducing climate sensitive vector and water borne diseases.
- At a national level, there is the creation of National Adaptation Programmes of Action (NAPAs) whose goal is to identify priority activities that respond to a country's urgent and immediate needs with regard to climate change adaptation and that of water projects. For example, in Uganda NAP include Community Water and Sanitation Project and Water for Production Project to provide better access to and better use of

water for crop and animal production (rain water harvesting; low cost irrigation; construction of dams; community involvement and M&E).

CONCLUSION AND RECOMMENDATIONS

- Water Diplomacy is important to strengthen cooperation capacity for integrated water resources management with emphasis on hydro-climatic aspects, including: the consolidation of coordination, planning and management capacity of the ICC and the technical and institutional capacities of the participating institutions and the harmonization of a legal framework.
- However, there are still some challenges on predicting the hydrological effects of climate variability and change and to consider, in particular, the mitigation of disasters.
- Potential entry points for integrating climate and water diplomacy include:
 - ✓ Demonstrating the benefits of regional cooperation and joint adaptation planning;
 - ✓ Supporting activities that help to link regional and national adaptation activities and contribute toward better coordination between various governance levels (vertically) and between different basin-countries;
 - ✓ Facilitating access to bilateral and multilateral climate funding mechanisms.

THEMATIC AREAS 6: THE NECESSITY OF WATER DIPLOMACY IN AFRICA: ANALYSIS OF SOME CASE STUDIES

Introduction

Africa has started facing water scarcity, fear of conflicts and even “water wars”. Currently, however, water diplomacy in Africa is still a nascent field of diplomacy; its necessity and instruments are neither broadly known nor employed to their full potential.

What is water Diplomacy?

Water diplomacy is a new field of diplomacy that combines the methods of science diplomacy (focusing on close ties between the worlds of science and diplomacy) with traditional diplomatic instruments. It is defined by its emphasis on water-related topics: access to drinking water, water sanitation, water scarcity, flooding, etc. All these categories are included in the broader category of international water management.

Water diplomacy aims to catalyze technical water cooperation and, at the same time, use it as a means to develop good neighborly relations in politically sensitive areas.

Water Diplomacy requires efficient water management through the involvement of different actors who need to understand and take into account the 'water dimension' of a specific diplomatic situation. As needed, it can employ the tools of pre-emptive diplomacy, designed to head off critical international problems, and crisis management.

That is why the cooperation of government officials with the scientific community (including experts in the hard sciences, technical disciplines, the social sciences and the humanities) is crucial to successful water diplomacy.

Characteristics of Water Diplomacy

Harold Nicholson's able work classic book on diplomacy (1939) defined diplomacy as "the art of conducting dialogue between and among states".

The above definition has the following characteristics of benefit to the ongoing analysis, inter alia:

- It expresses the notion of dialogue, with a sense of purpose to achieve, and a process of management. It is among states, which brings here the aspect of sovereignty and independence into the picture,
- It has secretive character in practicing diplomatic relations, and constructive dialogue brings to the picture the personal qualities that diplomats should possess: honesty, perceptiveness, tact, good communication, a flair of entertainment, sense of timing,
- Diplomacy a major activity by governments, and
- It has an institutional aspect of diplomats as a society, and the need for the state system to communicate gives rise to diplomatic dialogue.

Why Water Diplomacy is necessary in Africa?

Water Diplomacy is necessary in Africa due to several reasons:

- There is the fast pace of scientific and technological development, the ongoing globalization processes of world production and markets, the climatic changes, the transboundary dependencies, the changing socio-political context in dealing with water challenges. So, the water sector is becoming more sensitive and vulnerable to these changes and complex issues.
- It provides a means to prevent and mitigate water-related political tensions by making simultaneous use of water know-how and diplomatic tools and mechanisms.
- It combines foreign and security policy with development policy and peace mediation, with focus on water and related resources under changing climate.
- It strengthens water cooperation and promote equitable water management in two ways: by providing diplomatic instruments for water-related settings, and by bringing water into broader (geo) political discussions.
- Diplomatic instruments such as negotiations, mediations and arbitrations should therefore be actively deployed to prevent water-related conflicts.

Review of case studies of Water Diplomacy in Africa:

- **River Senegal**

River Senegal is shared by Guinea, Mali, Mauritania and Senegal. The Organisation Pour la Mise en Valeur du Fleuve Sénégal (OMVS) has played a role in preventing and mitigating conflicts in the Senegal River Basin. Referring to the founding legal agreements of OMVS of 1972, the RBO incorporates mechanisms which can contribute to preventing and solving water

related disputes. The OMVS has a very broad mandate which includes the exploitation of the river basin water resources with the aim to promote regional economic growth and development.

The OMVS' Permanent Water Commission (CPE) plays a significant role for preventing and solving water disputes. It is the only organ of the OMVS which has continued functioning without interruption even in times of conflict. The CPE advises the Council of Ministers (the highest decision-making body) on the allocation of water rights between the riparian countries and sectors, the use of water resources for development projects, water quality monitoring and conservation measures. The Local Committees of Coordination are another tool that can contribute to conflict prevention.

With regard to OMVS' role in direct dispute resolution, the founding agreement primarily foresees negotiations between the parties to solve arising conflicts. However, the agreement also includes the possibility to refer conflicts to external bodies, including the African Union (AU) for Mediation, Conciliation and Arbitration) and the International Court of Justice.

Zambia

- The Zambezi River Basin, with a population of about 40 million inhabitants (ZAMCOM, 2016), is the fourth-largest river basin in Africa (1.39 million km²) and represents 4.5% of Africa's continental area.
- Starting in Zambia, the river flows about 3000 km eastwards, passing through seven other countries (Angola, Namibia, Botswana, Zimbabwe, Tanzania, Malawi and Mozambique) (Fig. 6) (FAO, 1997).
- The Zambezi River Basin presents a key role in terms of achieving the objectives of the Southern African Development Community (SADC) Treaty (ZAMCOM-SADC-SARDC, 2015), including the sustainable utilisation of natural resources, effective protection of the environment, promotion of peace and security, and achieving development and economic growth to alleviate poverty.
- In the transboundary river basin, basin-wide and SADC regional targets related to transboundary cooperation are in place, such as the Zambezi Watercourse Commission Agreement (ZAMSEC, 2004), the 4th Regional Strategic Action Plan for Identifies synergies and trade-offs beyond water and river basin scale.

Opportunities for Africa in developing water Diplomacy

- Use of Water Diplomacy network: use of global and regional institutions" and other (state) actors that set rules, offer advice and "technical, training and financial support" (e.g. globally the World Bank, UNDP, UNESCO and UNECE; and regionally the Africa Union, EAC, SADC and ECOWAS.
- **Use of the Ministries of Foreign Affairs:** The MFA can be encouraged to become involved in water conflict resolution through the above-mentioned organisations.
- Inter-ministerial harmonization: Regarding water diplomacy, the MFA needs to coordinate with the ministries of I&M, EL&I and OCW. F Technical advice.

- Permanent Court of Arbitration and International Court of Justice: The MFA has a key asset with the Permanent Court of Arbitration and International Court of Justice in The Hague.

Conclusion and Recommendations

Water diplomacy has great potential as a foreign policy Africa that should have specific knowledge provision that is internationally in demand and scarce/competitive, long-term investments, activity and a broad network in a related policy (sub-)area and recognize institutional responsibility.

Recommendations

- Develop and strengthen foreign policy
- Promote International River Basins examples of institutional change, and how they are coping with new trends and complexities of water management in the 21st Century.
- Implementation of International Water Law. International law can be used as a tool in transboundary water conflict prevention and arbitration.
- Efforts should be increased across the world to reach integrated and effective basin-wide and shared aquifer management agreements among all states in each international basin.
- Monitoring compliance of International Water Law: Monitoring compliance of international Law needs first to enhance the process of ratification of the UN Framework Convention of 1997 on Trans-Boundary Rivers, and second to refresh calling for initiating the global Convention on water resources;
- Strengthening Public and Popular Water Diplomacy: Public and popular participation in water governance is part of emerging trends in the 21st Century. It came to be one of the top agenda of the international community on all levels, especially in managing international River and groundwater basins. This is because that, within the high politics of international water negotiations, the concerns of local people and the need to involve the public in the process of arriving at basin management

THEMATIC AREA 7: NEGOTIATION CONCEPTS AND PROCESSES IN TRANSBOUNDARY WATER RESOURCES MANAGEMENT: BY PROF. EMMANUEL KASIMBAZI

What is negotiation?

Negotiation is one of the most popular terms and concepts frequently used and discussed in the context of contemporary international law and international relations among states. Negotiation is one of the most common approaches used to make decisions and manage disputes. Negotiation requires participants to identify issues about which they differ, educate each other about their needs and interests, generate possible settlement options and bargain over the terms of the final agreement. successful negotiations generally result in some kind of exchange or

promise being made by the negotiators to each other. The exchange may be tangible, such as money or a commitment of time or a particular behaviour, or intangible, such as an agreement to change an attitude or expectation, or an apology.

Negotiation in the Context of International Water Law

Negotiation is important in the context of international water law. International watercourses can be either a source of cooperation or conflict. The very process of reaching an understanding creates a stabilizing and more transparent atmosphere. Negotiation alone serves to widen political participation, build political stability, and spread confidence between riparian States. Negotiation and transboundary water agreements can help countries move away from the detrimental view that water conflicts are a zero-sum game. If negotiation is successful, each party will benefit.

CONDITIONS FOR NEGOTIATION

The following conditions generally make success in negotiations more likely:

- ▶ **Identifiable Parties who are willing to Participate:** The parties or groups who have a stake in the negotiations must be identifiable and willing to sit down at the bargaining table if productive negotiations are to occur.
- ▶ **Interdependence:** For productive negotiations to occur, the participants must be dependent upon each other to have their needs met or interests satisfied. The participants need either each other's goodwill, or restraint of negative action, for interests to be satisfied. If one party can get its needs met without the cooperation of the other, there will be little impetus to negotiate.
- ▶ **Readiness to Negotiate:** People must be ready to negotiate for dialogue to begin.
- ▶ **Means of Influence or Leverage:** For parties to reach agreement over issues about which they disagree, they must have some means to influence the attitudes and/or behavior of another negotiator.
- ▶ Agreement on the Issues and Some Interests
- ▶ Parties must be able to agree upon some common issues and interests for progress to be made in negotiations.
- ▶ **Will to Settle:** For negotiations to succeed, participants have to want to settle.
- ▶ **Unpredictability of Outcome:** Parties negotiate because they need something from another party.
- ▶ **A sense of Urgency and Deadline:** Negotiations generally occur when there is some pressure or urgency to reach a decision. This urgency may be imposed by either external or internal time constraints of potential negative or positive consequences if settlement is or is not reached.
- ▶ **No Major Psychological Barriers to Settlement:** Strong emotions, feelings about another party and psychological readiness to negotiate can sharply affect a party's ability to bargain with another party. Psychological barriers to settlement must be lowered if successful negotiations are to occur.
- ▶ **Issues Must be Negotiable:** For successful negotiation to occur, negotiators must believe that there are acceptable settlement options open to them as a result of participation in the process.

- ▶ **A Willingness to Compromise:** Not all negotiations require compromise. On occasion, an agreement can be reached that meets all the participants' needs and does not require a sacrifice on any party's part.
- ▶ **The Agreement must be Reasonable and Implementable:** Some settlements look good on substance, but may be impossible to implement.
- ▶ **External Factors Favourable to Settlement:** Often factors external to negotiations inhibit or encourage participants regarding settlement.
- ▶ **Resources to Negotiate:** Participants in negotiations must have the interpersonal skills necessary for bargaining and, where appropriate, the money and time to engage fully in procedure dialogue. Inadequate or unequal resources may block the initiation of negotiations or hinder settlement.

TYPES OF NEGOTIATION

- ▶ **Horizontal or in-team negotiations:** These negotiations occur between members of a negotiation team.
- ▶ **Vertical negotiations with superiors or constituents:** These occur when parties at the table do not have absolute authority to make a final decision on an issue in question. The parties may have to check with others to gain final approval.
- ▶ **Vested interest negotiations:** On occasion, an individual may decide to negotiate with members of another team "under the table" or without his or her own team's knowledge.
- ▶ **Conciliatory negotiations:** These occur when one or more parties—with the knowledge and approval of team members—hold informal private conferences with a member or members of another team in an effort to narrow the distance between the parties on substantive issues that they disagree on.
- ▶ **Sidebar negotiations:** These occur when the spokespeople for each team meet in private to determine if they can reach an agreement. Subcommittee negotiations
- ▶ **Bilateral or multilateral negotiations:** These are the formal discussions between teams of spokespeople across the table. These negotiations, often called joint sessions, may or may not be where the decisions are made. Bilateral or multilateral negotiations are often more formal sessions where the parties educate each other about the issues, put forth proposals and ratify final decisions.
- ▶ **External negotiations** occur between the parties at the table and parties who are not present in the direct bargaining yet are concerned about the outcome of the discussions.
- ▶ **Subcommittee Negotiations:** Frequently negotiations between large teams are cumbersome.

POSITIONAL BARGAINING

Positional bargaining is a negotiation strategy in which a series of positions, alternative solutions that meet particular interests or needs, are selected by a negotiator, ordered sequentially according to preferred outcomes, and presented to another party in an effort to reach agreement.

When is Positional Bargaining Often Used?

- ▶ When the resource being negotiated is limited (time, money, psychological benefits);

- ▶ When a party wants to maximize his/her share in a fixed-sum pay-off;
- ▶ When the interests of the parties are not interdependent, are contradictory or are mutually exclusive; and
- ▶ When current or future relationships have a lower priority than immediate substantive gains.

Attitudes of Positional Bargainers

- ▶ Resource is limited;
- ▶ The other negotiator is an opponent— be hard on him/her;
- ▶ Win for me means a loss for you;
- ▶ Goal is to win as much as you can;
- ▶ Concessions are a sign of weakness;
- ▶ There is a right solution— mine;
- ▶ Be on the offensive at all times.

COSTS AND BENEFITS OF POSITIONAL BARGAINING

COSTS	BENEFITS
<ul style="list-style-type: none"> • Often damages relationships 	<ul style="list-style-type: none"> • May prevent premature concessions
<ul style="list-style-type: none"> • Inherently polarizing (my way, your way) 	<ul style="list-style-type: none"> • Is useful in dividing or compromising on the distribution of fixed-sum resources
<ul style="list-style-type: none"> • Cuts off option exploration 	<ul style="list-style-type: none"> • Does not require trust to work
<ul style="list-style-type: none"> • Often prevents tailor-made solutions 	<ul style="list-style-type: none"> • Does not require full disclosure of privileged information
<ul style="list-style-type: none"> • Promotes rigid adherence to positions 	
<ul style="list-style-type: none"> • Obscures a focus on interests by premature commitments to specific solutions 	
<ul style="list-style-type: none"> • Produces compromise when better solutions may have been available 	

INTEREST-BASED BARGAINING

- ▶ Interest-based bargaining is a negotiation strategy that focuses on satisfying as many interests or needs as possible for all negotiators. It is a problem-solving process used to reach an integrative solution rather than distributing rewards in a win/lose manner. It is not a process of compromise.

When is Interest-based Bargaining Used?

- ▶ When the interests of the negotiators are interdependent
- ▶ When it is not clear whether the issue being negotiated is fixed-sum (even if the outcome is fixed-sum, the process can be used)
- ▶ When future relationships are a high priority
- ▶ When negotiators want to establish cooperative problem-solving rather than competitive procedures to resolve their differences
- ▶ When negotiators want to tailor a solution to specific needs or interests
- ▶ When a compromise of principles is unacceptable
- ❑ **Attitudes of Interest-based Bargainers**
- ▶ Resource is seen as not limited
- ▶ All negotiators' interests must be addressed for an agreement to be reached
- ▶ Focus on interests not positions
- ▶ Parties look for objective or fair standards that all can agree to
- ▶ Belief that there are probably multiple satisfactory solutions
- ▶ Negotiators are cooperative problem-solvers rather than opponents
- ▶ People and issues are separate. Respect people, bargain hard on interests
- ▶ Search for win/win solutions

COSTS AND BENEFITS OF INTEREST-BASED BARGAINING

Cost	Benefits
Requires some trust	Produces solutions that meet specific interests
Requires negotiators to disclose information and interests	Builds relationships
May uncover extremely divergent values of interests	Promotes trust
	Models cooperative behaviour that may be valuable in the future

STAGES OF NEGOTIATION

- ❑ **Stage 1: Evaluate and Select a Strategy to Guide Problem Solving**
- ▶ Assess various approaches or procedures: negotiation, facilitation, mediation, arbitration, court, etc.—available for problem solving
- ▶ Select an approach
- ❑ **Stage 2: Make Contact with Other Party or Parties**
- ▶ Make initial contact(s) in person, by telephone or by mail
- ▶ Explain your desire to negotiate and coordinate approaches
- ▶ Build rapport and expand relationship
- ▶ Build personal or organizational credibility
- ▶ Promote commitment to the procedure
- ▶ Educate and obtain input from the parties about the process that is to be used
- ❑ **Stage 3: Collect and Analyse Background Information**

- ▶ Collect and analyse relevant data about the people, dynamics and substance involved in the problem
- ▶ Verify accuracy of data
- ▶ Minimize the impact of inaccurate or unavailable data
- ▶ Identify all parties' substantive, procedural and psychological interests
- ❑ **Stage 4: Design a Detailed Plan for Negotiation**
- ▶ Identify strategies and tactics that will enable the parties to move toward agreement
- ▶ Identify tactics to respond to situations peculiar to the specific issues to be negotiated
- ❑ **Stage 5: Build Trust and Cooperation**
- ▶ Prepare psychologically to participate in negotiations on substantive issues
- ▶ Develop a strategy to handle strong emotions
- ▶ Check perceptions and minimize effects of stereotypes
- ▶ Build recognition of the legitimacy of the parties and issues
- ▶ Build trust
- ▶ Clarify communications
- ❑ **Stage 6: Beginning the Negotiation Session**
- ▶ Introduce all parties
- ▶ Exchange statements which demonstrate willingness to listen, share ideas, show openness to reason and bargain in good faith
- ▶ Establish guidelines for behaviour
- ▶ State mutual expectations for the negotiations
- ▶ Describe history of problem and explain why there is a need for change or agreement

Identify interest and/or positions

- ❑ **Stage 7: Define Issues and Set an Agenda**
- ▶ Together identify broad topic areas of concern to people
- ▶ Identify specific issues to be discussed
- ▶ Frame issues in a non-judgmental neutral manner
- ▶ Obtain an agreement on issues to be discussed
- ▶ Determine the sequence to discuss issues
- ▶ Start with an issue in which there is high investment on the part of all participants, no serious disagreement and a strong likelihood of agreement
- ▶ Take turns describing how you see the situation. Participants should be encouraged to tell their story in enough detail that all people understand the viewpoint presented
- ▶ Use active listening as well as open-ended and focusing questions to gain additional information
- ❑ **Stage 8: Uncover Hidden Interests**
- ▶ Probe each issue, one at a time or together, to identify interests, needs and concerns of the principal participants in the dispute
- ▶ Define and elaborate interests so that participants understand the needs of others as well as their own
- ❑ **Stage 9: Generate Options for Settlement**
- ▶ Develop awareness about the need for options from which the final settlement will be created
- ▶ Review needs of parties which relate to the issues

- ▶ Generate criteria or objective standards that can guide settlement discussions
- ▶ Look for agreements in principle
- ▶ Consider breaking issues into smaller, more manageable issues and generating solutions for sub-issues
- ▶ Generate options either individually or through joint discussions
- ▶ **Use one or more of the following procedures:**
 - Expand the pie so that benefits are increased for all parties
 - Alternate satisfaction so that each party has his/her interests satisfied, but at different times
 - Trade items that are valued differently by parties
 - Look for integrative or win/win options
 - Brainstorm
 - Use trial-and-error generation of multiple solutions
 - Try silent generation in which each individual develops privately a list of options and then presents his/her ideas to other negotiators
 - Use a caucus to develop options
 - Conduct position/counter-position option generation
 - Separate generation of possible solutions from evaluation
- ▶ Review needs of parties which relate to the issues
- ▶ Generate criteria or objective standards that can guide settlement discussions
- ▶ Look for agreements in principle
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 - Use a caucus to develop options
 - Conduct position/counter-position option generation
 - Separate generation of possible solutions from evaluation
- ☐ **Stage 10: Assess Options for Settlement**
 - ▶ Review the interests of the parties
 - ▶ Assess how interests can be met by available options
 - ▶ Assess the costs and benefits of selecting options
- ☐ **Stage 11: Final Bargaining**
 - ▶ Final problem solving occurs when:
 - ▶ One of the alternatives is selected

- ▶ Incremental concessions are made and parties move closer together
- ▶ Alternatives are combined or tailored into a superior solution
- ▶ Package settlements are developed
- ▶ Parties establish a procedural means to reach a substantive agreement
- ❑ **Stage 12: Achieving Formal Settlement**
- ▶ Agreement may be a written memorandum of understanding or a legal contract
- ▶ Detail how settlement is to be implemented—who, what, where, when, how—and write it into the agreement
- ▶ Identify “what ifs” and conduct problem solving to overcome blocks
- ▶ Establish an evaluation and monitoring procedure
- ▶ Formalize the settlement and create enforcement and commitment mechanisms:
 - ▶ Legal contract
 - ▶ Performance bond
 - ▶ Judicial review
 - ▶ Administrative/executive approval

PREPARING TO NEGOTIATE

- ▶ Consideration of these items will help you to be more successful in planning and implementing negotiations.
- ▶ **What are your needs and interests?** To negotiate successfully, you need to identify your needs and interests. Interests fall into three categories: substantive, procedural, and psychological. Take time to identify your interests and to assess how strongly you are committed to them.
- ▶ **Who are the people or parties that you need to negotiate with to satisfy your interests?** Negotiators should identify the people with whom they must make a deal to get their needs met.
- ▶ **What are the substantive, procedural and psychological interests of the other primary and secondary parties?** To reach an agreement in negotiation, the solution must, at the least, meet the minimal needs of all the principal parties. To formulate proposals, you need to know these interests.
- ▶ **Given the needs and interest of the parties, decide if the problem is negotiable. Are the needs totally incompatible?** Are the parties totally independent of each other, so that the satisfaction of needs is not dependent on the cooperation of one another? If the two preceding questions are true, negotiations will have a very low probability of succeeding. If they are not true, continue assessing the possibilities of negotiation.
- ▶ **What means of influence do you have to persuade the other party to meet your needs?** Consider the forms of negotiator power: control of the process, communication, data, and experts, use of authority, associates, rewards and coercion. Determine the benefits and costs of using each form of influence.
- ▶ Given the interests of all the parties, what will be the issues or statement of the problems that need to be discussed?
- ▶ **Do you and the other primary parties have (or will have) the authority to negotiate a binding settlement?** Will your superiors authorize you to negotiate on

their, or the organization's, behalf? What is the ratification process for an agreement reached at the bargaining table? If you do not have the authority to negotiate, who does?

- ▶ **Have any of the parties taken positions on the issues?** A position is a particular solution that meets the needs of a party but not necessarily the needs of the other negotiators. People adhere to positions because they meet interests. Determine what interests the position is meant to satisfy. Are there ways to meet the interest's other than the stated position?
- ▶ **How important are the issues and interests to each of the parties?** Which are they least likely to change? Are there any issues that might be trusted or dropped?
- ▶ **What events or dynamics will make it harder for you or for other parties to negotiate?** Consider court dates, past interactions, lack of information, laws, internal organizational policies or the political or economic climate. What can you do to change these dynamics and reverse negative trends?
- ▶ **What events or dynamics encourage negotiations and promote settlement?**
- ▶ **What settlement options on each issue might go into a "mutually acceptable" proposal?** A mutually acceptable proposal is designed to meet your needs as well as those of other negotiators
- ▶ **What should be the physical setting for the negotiations? Should they be face-to-face, over the telephone, conducted on a one-on-one basis or in a large group?** What should be the shape of the room, the table, size of chairs, etc.?
- ▶ **How can a conciliatory tone that promotes a positive relationship with other negotiators be established at the beginning of the session?**
- ▶ **How should you organize your team?**

What negotiation strategy should you use? Decide if you want to use positional or interest-based bargaining.

OPENING STATEMENTS FOR NEGOTIATORS

Opening statements are brief speeches or monologues made by the disputing parties that outline the basic premises of the negotiations. The following outline is designed to help disputants be more effective in their opening.

Purpose:

- ▶ To make face-to-face introductions
- ▶ To establish a positive tone
- ▶ To educate the parties about the negotiation process
- ▶ To reach an agreement on standards of behavior
- ▶ To obtain a commitment to begin the process

Procedure:

- ▶ Introduce yourself and other parties
- ▶ Welcome the negotiator(s) and affirm their willingness to discuss the issues or negotiate a settlement. Make a conciliatory statement that sets a positive tone, but does not make a concession
- ▶ Review why people are there in neutral terms

- ▶ An attempt by the parties to reach their own agreement through discussions or negotiations?
- ▶ An opportunity for all parties to gain benefits?
- ▶ Is it voluntary
- ▶ Explain how you perceive negotiation process. Is it:
- ▶ Describe the problem-solving process that you propose to use:
- ▶ Each person will talk and describe the situation
- ▶ Topics for discussion will be mutually agreed upon
- ▶ An agenda will be developed jointly
- ▶ All needs will be examined
- ▶ Agenda items will be discussed one-by-one
- ▶ The parties will look for solutions that are mutually satisfactory
- ▶ The agreement will be written down and formalized according to parties' desires
- ▶ Agree on the use of private meetings (caucus), breaks or time to consult with other parties
- ▶ Identify procedural guidelines that will help them promote efficient negotiation
- ▶ Ask and/or answer questions regarding process
- ▶ Obtain a commitment to begin the process from each party

NEGOTIATOR POWER AND INFLUENCE

A negotiator's power is relative and depends upon the particular people, problem and external situation. A very powerful negotiator in one situation may be extremely weak in another.

- ▶ **Means of Influence**
- ▶ **Management of the Negotiation Process**
 - ▶ Planning a cooperative and informative opening
 - ▶ Sequencing of the stages of negotiation
 - ▶ Ordering the agenda
 - ▶ Placing an easily solved item at the beginning of the session
 - ▶ Managing the problem-solving steps to be used on each agenda item
 - ▶ Assisting the other party to make the transition from positional to interest-based bargaining
- ▶ **Management of Communication Within and Between the Parties**
 - ▶ Managing behavioural communication through active listening,
 - ▶ Assisting parties to move from extreme positions by softening the specificity, timing and consequences of their demands.
- ▶ **Management of Body Language and Physical Setting**
 - ▶ Demonstrating attentive, concerned and open body language
 - ▶ Showing dissatisfaction, frustration, intransigence
 - ▶ Establishing the shape of the negotiating table and seating arrangements
 - ▶ Arranging for a room of appropriate size for desired results
 - ▶ Providing caucusing space

- ▶ Locating negotiations in a neutral space or one favourable to a particular party's interests
- ▶ **Management of the Timing**
 - ▶ Deciding when negotiations will be proposed and started
 - ▶ Determining how long the negotiations as a whole and individual sessions will last
 - ▶ Imposing, modifying and removing deadlines
 - ▶ Controlling the timing of information exchange
 - ▶ Managing the time when offers are made (or accepted)
 - ▶ Designing the timing of implementation
- ▶ **Management of Information Exchange Between Parties**
 - ▶ Identifying what information is needed
 - ▶ Requesting information
 - ▶ Asking why a proposal is important to another party
 - ▶ Making general suggestions
 - ▶ Making specific suggestions
 - ▶ Presenting concrete proposals or offers
 - ▶ Referring other parties to sources of information or experts
- ▶ **Management of Associates**
 - ▶ Identifying and encouraging associates of other parties to influence them
 - ▶ Inhibiting associates' influence on other parties by minimizing contact or value of information
 - ▶ Creating doubt about accuracy of associate's opinion or data
- ▶ **Management of Experts**
 - ▶ Making experts available to build your case
 - ▶ Casting doubt on experts who present information contrary to your case
 - ▶ Referring other parties to substantive, procedural or psychological experts
- ▶ **Management of Authoritative Power**
 - ▶ Appealing to law, regulation or common practice
 - ▶ Asking for support of people in authority
 - ▶ Arranging for institutional mandate for your position
- ▶ **Management of Habit**
 - ▶ Asking for a continuation of past practice
 - ▶ Appealing to transition
- ▶ **Management of Other Parties' Doubt**
 - ▶ Questioning validity or applicability of another party's arguments
 - ▶ Testing the reasons of another party's proposals or ideas
 - ▶ Posing hypothetical problems that might result from a particular solution
 - ▶ Exploring another party's best alternative to a negotiated agreement (BATNA)
 - ▶ Exploring another party's worst alternative to a negotiated agreement (WATNA)
 - ▶ Exploring another party's most likely alternative to a negotiated agreement (MLATNA)

- ▶ **Management of Rewards and Benefits for Other Parties**
 - ▶ Providing indirect rewards for cooperation or agreement (respect, benefits to be received upon final agreement, symbolic or small rewards)
 - ▶ Providing direct rewards (substantive benefits, favourable timing of settlement, of receipt of benefits)
- ▶ **Management of Coercive Influence**
 - ▶ Imposing physical hardship or discomfort: location of negotiation setting, timing of meetings, duration of meetings (marathons)
 - ▶ Imposing psychological coercion: intimidation, humiliation
 - ▶ Imposing substantive coercion: court costs, delay costs, other threats
 - ▶ Imposing procedural coercion: deadlines, threats to withdraw

THEMATIC AREA 8: ANALYSIS OF TRANSBOUNDARY WATER CONFLICTS AND MANAGEMENT BY PROF. EMMANUEL KASIMBAZI

Introduction

Conflicts over freshwater resources generally have to do with either “too much” or “too little” or “too polluted water”.

The field of “conflict resolution” has matured as a multidisciplinary field involving psychology, sociology, social studies, law, business, anthropology, gender studies, political sciences, and international relations.

Causes of International Water Conflicts

- Multiple perspectives on water rights such as “Harmon Doctrine”, “historical rights”, and rights to “equitable and reasonable utilization” (conflicting perceptions of water entitlements);
- Hegemons and the distribution of power: The basin-wide power distribution is also important for cooperation potential. The anarchical system water relations tend to be hegemonic, where the ‘first among equals’ determines the status quo. (‘hydro-hegemony’).
- Absence of treaties and joint institutions: In basins with functional treaties and joint mechanisms, disputes are more likely to be solved
- Unilateral action and sudden developments (large unilateral development projects without consultation);
- Existing political tension;
- Rapid demographic or environmental changes in the river or aquifer basin;

Factors that influence Water Conflicts Prevention

- **Transboundary Water Governance:** Good transboundary water governance can, to prevent conflicts, introduce solutions and facilitate negotiations. Effective national governance can also reduce transboundary conflict potential;

- **Water Negotiations:** Essentially, states need to deem it favourable to conclude a formal agreement. This argument is based on the basic rationalist assumption that states will want to create an institution if the expected benefits outweigh the costs;
- **Scientific foundation:** A scientific framework of all relevant factors for the equitable distribution of water must exist prior to negotiation. Without models of amongst others population growth; water quality and quantity in wet and dry seasons; current and planned usages of the river flow; socio-economic contribution of energy or irrigation development projects; and environmental impact on the ecosystem – constructive negotiation cannot take place;
- **Side-payments:** Side-payments are effective instruments in treaty negotiations to compensate for upstream-downstream asymmetry if the downstream state has the financial capacity for it
- **Issue linkage:** Issue linkage is another instrument that can overcome conflicting interests between riparian states

Dispute Resolution Mechanisms of Transboundary Water Conflicts

Alternative Dispute Resolution (ADR, sometimes also called “Appropriate Dispute Resolution”) is a general term, used to define a set of approaches and techniques aimed at resolving disputes in a non-confrontational way. It covers a broad spectrum of approaches, from party-to-party engagement in negotiations as the most direct way to reach a mutually accepted resolution, to arbitration and adjudication at the other end, where an external party imposes a solution.

The UN Water courses Convention (UN 1997, Article 33, para. 2) provides five dispute resolution mechanisms when simple negotiations fail, namely:

- **Inquiry and Fact-finding:** Many international disputes arise from disagreements on questions of fact. Inquiry and fact-finding are procedures specifically designed to produce an impartial finding of disputed facts. Fact-finding, as a course of action, will frequently resolve a dispute before any binding process is necessary. Fact-finding, or inquiry, allows states to refer questions to panel of experts for impartial third-party investigation of factual or technical matters before diplomatic negotiations.
- Conciliation “is a process of formulating proposals of settlement after an investigation of the facts and an effort to reconcile opposing contentions, the parties to the dispute being left free to accept or reject the proposals formulated”

In conciliation, an impartial third party is requested by the conflicting states to help them resolve the dispute by examining the facts and suggesting the terms of a settlement likely to be acceptable to them. Thus, conciliation may combine elements of mediation and inquiry. However, conciliation is a more formal procedure, usually performed by a commission of the representatives of the parties to the dispute as well as independent nationals of other states.

A sole conciliator may also carry out conciliation. The conciliator seeks to establish objectively the facts and applicable law in a dispute through independent investigation,

which is followed by reporting of findings and recommendations to the parties, who may accept the recommendations or chose another form of dispute settlement

Good offices and mediation

- A third party offering good offices to the conflicting states acts a 'go-between' in order to persuade them to enter into negotiations. Neutral states, joint bodies, and international organizations, as well as individuals, can offer good offices. Once the negotiations have started, the functions of good offices are usually deemed to be completed.
- The World Bank initially offered its good offices to India and Pakistan in their conflict over the Indus river waters. As will be seen later, its role gradually extended to a more dynamic and in many respects decisive involvement in the resolution of the dispute.

Mediation

- Mediation is a voluntary process (except where there is a law of mandatory mediation in place).
- Mediation is a process that employs a neutral/impartial person or persons to facilitate negotiation between the parties to a dispute in an effort to reach a mutually accepted resolution. Mediation is a process close in its premises to negotiation: "mediation is an assisted and facilitated negotiation carried out by a third party". The mediators, who are hired, appointed, or volunteer to help in managing the process, should have no direct interest in the conflict and its outcome, and no power to render a decision. They have control over the process, but not over its outcome. Power is vested in the parties, who have control over the outcome: they are the architects of the solution.
- . With mediation both parties convene with the third-party at the same time, whereas with conciliation they meet separately to achieve concessions after which the third-party comes with recommendations to solve the dispute.
- Mediation by a third-party during and after negotiations for formal water agreements is

The Advantages of Mediation are:

- **Flexibility:** The mediation process can be adapted to meet the needs of the parties during the process and in formulating a solution. This may involve the choice over location of the mediation, the time frame, the people who are to be involved, the selection of acceptable objective criteria, and many other choices related to the process. Most important, mediation is not conducted under a fixed set of rules, as is the case in a court of law.
- **Informality:** Mediation is an informal process, designed to suit the needs of the parties. It appeals to parties who feel that they want to be partners in the process of resolving their conflict and take part in the decision on the fate of their dispute. It allows the parties to present their arguments in an informal manner, not bound by the procedures of the legal system.
- **Confidentiality:** Mediation is confidential, off the record, and away from the public eye and the press. The mediator is bound not to divulge any of the information he/she hears from one party to the other or to anyone else without permission, so the parties can feel free to confide in the mediator.

- **Non-Binding Nature:** Mediators assist the parties to reach a negotiated settlement, an agreement, which is then usually put in writing. If the parties are not happy with the process or the outcome, they have not relinquished the right to use another dispute resolution mechanism in order to resolve their dispute, for example they can go to court or to an arbitrator.
- **Savings on resources:** Mediation is generally faster than the judicial process, it is less costly, and saves on resources (time, money, and energy). It can often be scheduled at the convenience of the parties, avoiding long court delays and associated costs.

Negotiation

This is the means of dispute resolution most often employed by states when trying to resolve any international conflict, including those over transboundary water resources. Depending on the issues at stake and the number of states involved, *negotiation* can take different forms, from bilateral talks and diplomatic correspondence to an international conference. It can be used at all stages of the conflict. Diplomatic negotiations are sometimes preceded by the meetings of experts (such as the “Picnic Table Meetings” between Israeli and Jordanian water experts prior to formal negotiations). It has been suggested that where an impasse in negotiation exists, states may consider separating the question into component parts or agreeing to a procedure to solve the problem rather than a definitive settlement of the legal interest.

Adjudication

Adjudication is another method that can be used as an alternative in the international arena (The International Court in The Hague) and in the national local system.

The courts have the ability to enforce the law in the case of a failure of the parties to reach agreement through negotiation or mediation. There is a law, and a way to enforce it without the consent of the parties. In international disputes, where states are involved, when problems arise due to opposing interests, such as security and/or resources, an outside enforcer cannot act where it is not acceptable to one or more of the parties involved. Ruling by the International Court can end the conflict only if the two countries agree to abide by its ruling.

Arbitration

Arbitration, like adjudication, requires the prior *consent* of each party to the dispute. This is usually done through a special agreement between the parties – *a compromise* – unless there exists an international (multilateral or bilateral) agreement in force binding on the parties to the dispute that provides for compulsory arbitration (as in the case of the 1998 Rhine Convention). Having agreed to submit their dispute to arbitration, the parties to the process have a considerable degree of choice concerning the seat and the composition of the arbitral panel, the procedure to be followed, questions to be addressed by the tribunal, and so forth. Generally, each party appoints their respective arbitrator, and these two then select a third (agreed to by the parties) for the panel (sometimes called “an umpire”). The arbitral decisions are taken by

majority vote, unless the parties have agreed to refer their dispute to a sole arbitrator. The decision, which can be kept confidential, is binding on the parties who, however, can agree on an appeal procedure prior to arbitration. Apart from the well-known Lake Lanoux dispute between France and Spain, arbitration has been invoked on a number of occasions to resolve water controversies.

Role of Transboundary Water Law treaties in Water Conflicts

- A “**good**” agreement comprise that addresses conflicts should have the following elements:
- **Inclusive membership:** As state interests are interconnected by the shared watercourse, inclusive membership is beneficial in a river basin. When China and Myanmar are not part of the Mekong River Commission or when Egypt and Sudan do not join the Nile Cooperative Framework Agreement, they are not only free riding but also increasing uncertainty and tensions for the other riparian states.
- **Scope:** A high-quality agreement is unambiguous in its “geographic or hydrological scope” and the activities it allows in those watercourses.
- The definition of terms as “international watercourse” and “river basin” can, for example, include or exclude aquifers and riparian states. The salience of documenting all possible uses of these rivers is illustrated by the Indus Waters Treaty. The vagueness of the activities permitted by India concerning the three rivers that were allocated to Pakistan in the 1960 Indus Waters Treaty presently still leads to conflicts.
- **Substantive Articles:** There are two key substantive principles that need to be certified in all regional water treaties for good water governance. The principles of “equitable and reasonable use” and of avoiding “significant harm” to other riparian states should be included.
- **Procedural articles:** Articles on data-sharing and prior notification of “planned measures” need to be included, since they are prerequisites for effective cooperation. Another key procedural article is that on flexibility of the treaty to adjust to future challenges in terms of droughts, floods, population growth and uses of the river.
- **Joint institution:** Crucial to the enforcement of an agreement is the founding of a joint institution in the form of a RBO. Strict rules are important for joint mechanisms, though they also need to be adaptive to future challenges.
- **Dispute resolution articles:** Various dispute resolution mechanisms need to be included with increasing delegation of control to third-parties an idea shared by many water and legal experts is that arbitration and adjudication are necessary, but last resort instruments. In short, the goal ought to be to aim as high as possible with a ranking from diplomatic to judicial instruments in the order of negotiation, good offices, fact-finding, mediation, conciliation, arbitration and adjudication.
- **Compliance enhancement:** Enforcement (monitoring, sanctioning) and enabling (capacity-building) compliance articles are preferably included. The Rhine Commission applies both streams.

SUMMARY

Transboundary conflicts are rising and this requires the need to address all of the elements of transboundary water conflict resolution processes. The existing mechanisms exhibit complementarity and they can be combined together to form a mechanism with strong analytical capacity. Therefore, there is the potential of using hybrid mechanisms that integrate two or more of the mechanisms. The use of integrated mechanisms requires more collaboration and openness by practitioner to research and academic community

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