The right to water for man or for birds?

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Introduction

- Conflicting international obligations:
  > Right to water (human rights documents)
  > Duty to protect wetlands (Ramsar convention)
- Principle of reasonable and equitable use
- Common river basin management
- Can conflicts be solved along these lines?
- Multilateral situations
- Case: Orange River (southern Africa)
<table>
<thead>
<tr>
<th>The right to water (I)</th>
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<tbody>
<tr>
<td>• Intl. Conv. on economic, social and cultural Rights, Art. 12</td>
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<td>• General Comment No. 15</td>
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<td>• Conv. on the rights of the child, Art. 24</td>
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<td>• Conv. on the elimination of all forms of discrimination against women, art. 14(2)(h)</td>
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<td>• Little attention for relationship to environmental policy</td>
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The right to water (II)

- National constitutions
- S27 Bill of Rights South Africa
  - Social right
  - Enforceable in courts
  - National legislation
    - National Water Act, Water Services Act
    - 25 litres of safe drinking water within 200 metres
Obligation to protect wetlands

- 1971 Ramsar Convention (wetlands of international importance)
  - Wise use: maintaining ecological character
  - Transboundary wetlands
  - Participation local communities/stakeholders
  - Integration in river basin management
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<th>Reasonable/equitable use + common river basin management</th>
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<td>• UN Conv. on the law of the non-navigational uses of intl. watercourses</td>
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<td>• UNECE Conv. on intl. watercourses and transboundary lakes</td>
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<td>&gt; Joint body</td>
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<td>&gt; Ecosystem (integrated) approach</td>
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<td>• SADC Protocol on shared watercourse systems</td>
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<td>• Conclusion: obligation to balance all water uses maintaining the integrity of the ecosystem</td>
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Case study: Orange river

- Orange-Senqu river basin
- Population of 14+ million
- Orange River Mouth transboundary wetland under the Ramsar Convention
  - Limited downstream rainfall
  - Intensified upstream water uses
  - Area degraded
Orange River Basin
Orange River Mouth wetland
Findings (I)

• (1) Principles of reasonable/equitable use + common river basin management are helpful to transnational decision-making on water uses

> Common ground, guidance to talks

> Integration of concepts at the intl. level (water management/nature conservation, not –yet – human rights)

> People only know and use the basic concepts
Findings (II)

1. National law makes things complicated
   - Different legal systems and a variety of competent authorities (in each country)
     - Different legal qualifications of water types
     - Different goals, sometimes too optimistic goals
       > The “Reserve” (SA NWA)
     - Improvement by new acts, aligned by the SADC protocol, but differences remain
       > Water Resources Management Act
Findings (III)

- (3) There are a lot of joint commissions
  - ORASECOM (Botswana, Lesotho, Nam, SA)
  - Permanent Water Commission (Nam, SA)
  - Joint Irrigation Authority (Nam, SA)
  - ORMIMC (Nam, SA)
    - All stakeholders
    - No formal legal status
    - Driving force behind initiatives
(4) Co-operative governance approach is applied, but is no guarantee for success

> Informal structures involving all stakeholders offer a platform to reach agreements

> Establishment of co-management
  - Sustainable use
  - Voluntary compliance
  - At which level? (river basin or wetland?)

> The law is kept out of the process
After agreements have been reached: legal procedures will have to be followed

Risky:

- Does existing legislation enable the execution?
- Do stakeholders recognize the agreements in the final decisions taken by competent authorities?
- Do competent authorities discard informal structures after an agreement has been reached?
- Do competent authorities fall back in their old positions?
Conclusions (I)

- Right to water more or less recognized as a human right in international law
- Little attention to possible conflicts with other uses, such as nature conservation
- Integration of international fresh water law and nature conservation law:
  - Common river basin management
  - Reasonable and equitable, and sustainable use
Conclusions (II)

• Legal complexity makes it difficult to balance these interests, especially in a multilateral setting

• Co-operative governance approach is an important mechanism

• Stakeholders temporarily withdraw from the legal specifics

• Implementation of agreements is risky

• The co-operative governance process should continue after agreement has been reached