

# **Water Diplomacy: a Niche for the Netherlands?<sup>1</sup>**

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# I. Executive Summary

## Water Diplomacy

Conflicts over freshwater resources – such as rivers and aquifers – generally have to do with too much, too little or too polluted water. When defining water diplomacy, many different issue areas, actors and levels of contact come to mind. A distinction can be made between the perspective of riparian states among each other – those states that are located on or alongside a transboundary freshwater resource – on the one hand, and that of niche diplomacy, that is foreign policy specialisation, on the other hand. From a niche diplomacy perspective, water diplomacy activity is possible within a chain that starts from conflict prevention to increasingly more severe measures of intervention, including: good offices, mediation, fact-finding, conciliation, arbitration and adjudication.

## Water Diplomacy as a Niche for the Netherlands

Water diplomacy has great potential as a foreign policy niche for the Netherlands. A policy domain can be called a niche if it abides by three criteria:

1. specific knowledge provision that is internationally in demand and scarce/competitive;
2. long-term investments, activity and a broad network in a related policy (sub-)area;
3. niche recognition in the form of institutional responsibility.

Niche diplomacy is a method for small and middle powers such as the Netherlands to effectively contribute to *global public goods development*, by building on an existing expert position and an established network. In a nutshell, the Netherlands is equipped to play a role in water conflict prevention and resolution – and to be acknowledged for it – due to the existing, but scattered, activity of the ministries, the Dutch water sector and the influential International Organisations (IOs) in the Netherlands.

## Policy Recommendations

Many states, non-state actors and IOs are engaged in transboundary water affairs. The Ministry of Foreign Affairs (MFA) is advised to play the following roles:

1. *Neutral broker* via IOs: In the absence of a World Freshwater Court, the Netherlands accommodates the two main candidates: the Permanent Court of Arbitration (PCA, 2011 *Indus Waters* arbitration) and the International Court of Justice (ICJ, 1997 *Gabčíkovo-Nagymaros* case). The MFA is recommended to promote the role of the PCA in facilitating water conflict arbitration and similarly for the ICJ concerning adjudication.
2. *Central hub*: A central hub takes leadership in inter- and intra-national coordination for a dominant position in the international water diplomacy network. Many states and Dutch ministries show dispersed activity, and the MFA should aim to orchestrate the European and domestic activities in a way that adds more than the sum of its parts.
3. *Enabler*: An enabling MFA assists non-state actors and IOs to be active in a manner that is beneficial to them and for the broader conflict prevention niche. In concrete terms, the MFA would do well to facilitate (transboundary) (ground)water governance consultancy and basin-wide capacity-building trainings.
4. *Norm entrepreneur*: The MFA can build on its water network and past activity as the Chairman of the Drafting Committee to set up a lobby for the eleven ratifications still needed in order for the 1997 UN Watercourses Convention to go into force. The Netherlands can, in like manner, contribute to the global public goods development in the field of transboundary aquifers.

*The niche potential is clearly present; the challenge now for the MFA is to make water diplomacy a political priority in Dutch foreign policy.*

## II. Introduction

The grounds for conducting this pilot study into water diplomacy are threefold. First, the Scientific Council for Government Policy (WRR) recently advised the government to start with niche diplomacy in the field of water management (WRR 2010b, 65-67). The WRR mentions water governance as a possible niche, but does not concretely address how to further develop this policy domain (WRR 2010, 65, 127). Second, the present coalition intends to focus development cooperation on areas where the Netherlands has added value, such as “water management, agriculture and civil society” (Coalition Agreement 2010, 9). Water governance is a promising field for foreign and development policy, since worldwide water shortage is not only caused by physical scarcity, but by water distribution decisions in the political arena as well (UNDP 2006, 2). Third, just as water issues can function as a catalyst for further economic integration between watercourse states themselves, such issues also provide an entrance point bilaterally for a knowledge partner such as the Netherlands. The study fits the focus of the present coalition on economic diplomacy, since a part of the water expertise of the Netherlands is nested in the private sector.

In brief, these three dimensions warrant a study into the potential of water diplomacy for the governing coalition for the period of 2011-2015. Emphasis is also put on how the Ministry of Foreign Affairs and the water sector can augment this potential. The scope is narrowed to freshwater diplomacy with regard to transboundary river<sup>2</sup> and aquifer<sup>3</sup> basins.

Before answering the central question on the potential of water diplomacy as a foreign policy niche for the Netherlands, **Chapter 1** evaluates the rationale behind water conflicts, the factors that encourage effective transboundary water management and the key substantive and procedural articles in international watercourse and aquifer law. **Chapter 2** offers a conceptualisation of the term “water diplomacy”. It clarifies that water diplomacy can have various meanings depending on the level (bilateral to global), type (conflict-resolution, treaty development, etc.) and directness (inter-riparian or third-party niche diplomacy) of contact. The viewpoint of water diplomacy as Dutch niche diplomacy is given particular attention. **Chapter 3** provides an overview of the key water diplomacy players and networks. It also depicts the merits of the Dutch water sector. Finally, **Chapter 4** presents the conclusions and policy advice to the Ministry of Foreign Affairs (MFA) and Dutch water sector.

The methodology used to substantiate arguments throughout this report is based on a literature study of academic papers and government documents, structured interviews with policy-makers, water experts and professionals with hands-on and regional experience, and a questionnaire sent to the Dutch embassies of states in Euphrates-Tigris, Ganges-Brahmaputra, Indus, Jordan, Mekong, Nile River and Nubian Aquifer Basin (*see Annex 3 and 4*). The relevance of this study lies academically and policy-wise in the evaluation of niche and water diplomacy for foreign policy. This report argues that specialisation in foreign policy benefits from specific knowledge, a broad network and the facilitation of non-state actors. As such, this report can also be useful for the Commission that studies the modernisation of Dutch diplomacy.

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<sup>2</sup> The 1997 UN Convention on the Non-Navigational Uses of International Watercourses defines an international watercourse as “a system of surface waters and groundwaters constituting by virtue of their physical relationship a unitary whole and normally flowing into a common terminus [...] parts of which are situated in different States”(UN 1997, Art. 2, paras. a-b).

<sup>3</sup> According to the UNGA resolution 63/124 on the Draft Articles on Transboundary Aquifers, a transboundary aquifer is “a permeable water bearing geological formation underlain by a less permeable layer and the water contained in the saturated zone of the formation; parts of which are situated in different States”(UNGA 2008, Art. 2, paras. a, c).

# 1. Transboundary Water Conflicts and Management

“Too much, too little, too dirty” has been, in a nutshell, the summary of water issues worldwide for decades. Notable examples of these problems are, in the same order, the Mekong River, the West Bank Mountain Aquifer, and the Indus River. Along rivers and aquifers more and more activities are concentrated on using surface and groundwater for consumption, irrigation and hydropower. **Section 1.1** briefly deals with the general factors that lead to water conflicts, whereas **Section 1.2** does the same for specific variables that contribute to transboundary water cooperation.

## 1.1. The Rationale Behind International Water Conflicts

Although there is no “general template” to frame disputes over watercourses (Sands 2003, 419), certain variables do seem to frequently obstruct transboundary water cooperation.

1. **Multiple perspectives on water rights:** One dispute enabler is the presence of conflictive perceptions of water rights in a river basin. Three streams can be identified, that is, the “Harmon Doctrine”, “historical rights”, and rights to “equitable and reasonable utilization” (Salman 2003, 164; Delli Priscoli and Wolf 2009, 58-60). First, the Harmon Doctrine is based on the controversial judgment of Attorney General Judson Harmon a century ago, ruling that a “country is absolutely sovereign over the portion of an international watercourse within its borders”, which entails that an upstream riparian state can ignore the needs of downstream states (McCaffrey 1996, 549). A riparian state is a state that is located on or alongside a (transboundary) freshwater resource. Upstream states often advocate that their contribution to the watercourse gives them more rights than downstream states. Upstream Turkey, China, India and Ethiopia do so regarding the Euphrates, Mekong, Ganges and Nile River respectively (Salman 2003, 164). However, the legality of the Harmon Doctrine has been frequently rejected, for instance by the *Lac Lanoux* case, and is not codified in international treaties (Delli Priscoli and Wolf 2009, 58). In the case of aquifers, limited notions of sovereignty have a basis in international customary law (UNGA 2008, Art. 3). Second, “historical rights” are in return argued for by downstream states that were guaranteed high water allocations in the past. The examples here are mainly Egypt and Sudan with their 1929 and 1959 colonial water agreements over the Nile, or Pakistan over the Indus River (Delli Priscoli and Wolf 2009, 58; Nicol and Cascao 2011, 318). In legal terms, these states tend to give more weight to the principle of not causing “significant harm” to existing users, than they do to the third principle of “equitable and reasonable utilization”. The latter principle is mainly supported by disadvantaged states, which are either downstream riparian states (e.g. Bangladesh) or upstream states confronted with a downstream hegemon (e.g. Ethiopia).
2. **Hegemons and the distribution of power:** The basin-wide power distribution is also important for cooperation potential (Zawahri and Mitchell 2011; Gleick 1993; Lowi 1993). Relations between riparian states in Africa, Asia and the Middle East are neither hierarchic (e.g. sub-national or colonial) nor communal (e.g. the European Union) (Zeitoun, Mirumachi and Warner 2011, 165). Rather, in an anarchical system water relations tend to be hegemonic, where the ‘first among equals’ determines the status quo (*ibid*). Zeitoun and Warner (2006) coined the term ‘hydro-hegemony’. From a realist perspective, the geographical position of the hegemon determines the likelihood of cooperative agreements (Lowi 1993, 10-11). With a downstream hegemon, such as the United States with the Columbia River, cooperation can take place, since the hegemon cannot unilaterally control the source. Quantitative research

has shown that within a hegemonic multi-stakeholder basin, riparian states that share interests do conclude bilateral agreements (Zawahri and Mitchell 2011). The most detrimental situation for basin-wide cooperation is an upstream hegemon who abides by the Harmon Doctrine, such as Turkey with the Euphrates River and China with the Mekong River (Lowi 1993, 10). Although such a realist reading of international water relations points out potentially salient variables, it is rather narrow and not universally applicable. To wit, power is not only based on military and economic capacity, but also on technical and legal aptitude, alliances, capacity for side-payments and issue-linkage, an upstream location, and a beneficial status quo that gives a particular state more time to negotiate without serious consequences (Cascao 2009, 248; Daoudy 2009, 367; Dinar 2009, 334). Side-payments and issue-linkage can compensate asymmetric power relations (Daoudy 2009, 382; Dinar 2009, 352). Also an emphasis on international water law and institutionalisation of contact through river basin organisations (RBOs) can challenge hydro-hegemony (Zeitoun and Jäkerskog 2011, *forthcoming*).

3. **Absence of treaties and joint institutions:** In basins with functional treaties and joint mechanisms, disputes are more likely to be solved (McCaffrey 2003, 87; Zawahri and Gerlak 2009, 213), whereas the lack thereof contributes to conflicts (Wolf 2007, 8). The Euphrates and Tigris River Basin is exemplary, where an effective RBO could inhibit unilateral development projects and the ensuing conflicts (Zawahri and Gerlak 2009, 219). International water treaties cannot guarantee cooperation, but water disputes are in any case more likely to arise when there are no relevant water agreements (Boisson de Chazournes 2003, 91; Vinogradov, Wouters and Jones 2003, 72). The absence of regulating treaties, RBOs or even “technical working groups” exacerbates water conflicts (Wolf 2007, 12).
4. **Unilateral action and sudden developments:** A disruptive variable of change is unilateral action by a riparian state that implements a project to the disadvantage of the other riparian states (Wolf 2007, 8). Examples include independent dam construction, aquifer usage and water diversion. A sudden population surge or environmental drawback can also trigger conflicts. Other quick changes can occur after secession, unification or independence (*ibid*).
5. **Existing political tension:** Stephen McCaffrey (2003, 53) notes that water cooperation is frequently unsuccessful in a situation of unrelated “political tension between the states concerned”. The 1994 Israel-Jordan Peace Treaty was, for instance, not signed before the easing of the tensions between Israel and the PLO with the 1993 Oslo Accords (Haddadin 2000). The Indus Rivers Treaty between Pakistan and India is a notable exception.

In sum, obstructions to transboundary water cooperation – which can coexist or interact – are:

1. an upstream hegemon without the political will to cooperate;
2. conflicting perceptions of water entitlements;
3. rapid demographic or environmental changes in the river or aquifer basin;
4. large unilateral development projects without consultation;
5. the lack of a treaty between riparian states;
6. the absence of a River Basin Commission; and
7. general hostile political relations.

## 1.2. Specific variables that influence successful water cooperation

General factors that favour constructive transboundary water management are as follows: good bilateral relations or the absence of political tension within a river or aquifer basin; water

scarcity, vulnerability and interdependence; a specific treaty with explicit substantive and procedural rules governing the basin; and an RBO with sufficient delegated power to perform independent technical studies and a conflict settlement mandate. In terms of conflict prevention, effective (transboundary) water governance is an important requirement (see **Section 1.2.1**). The legal best practices, negotiation necessities and other conflict resolution mechanisms are considered, sequentially, in the subsequent sections.

### **1.2.1. Transboundary Water Governance**

According to the UNDP (2006, 2) water scarcity also depends on the ineffective management of water resources. Good transboundary (ground)water governance can, to prevent conflicts, introduce solutions and facilitate negotiations. Effective national governance can also reduce transboundary conflict potential. Solutions can be found in many directions, but transboundary arrangements to decrease the variability of discharges are important. Regarding river basins, states can invest in the resilience of the total transboundary river system, in order to store water in the rainy season and to enable the groundwater resources to recharge. This water can then be used in the dry seasons. Technical, economic and social water governance advice from third parties can contribute to benefit-sharing solutions (Phillips *et al.* 2006). A Water Resources Sector Strategy from the World Bank argues that “[e]xperience has shown that cooperative programs for water resources have been important to regional integration and stability” (World Bank 2004, 12).

### **1.2.2. Water Negotiations**

Essentially, states need to deem it favourable to conclude a formal agreement (*ibid.* 221; Zawahri and Gerlak 2009, 213). This argument is based on the basic rationalist assumption that states will want to create an institution if the expected benefits outweigh the costs (Keohane and Nye 1977). Other factors also play a role in negotiations over water-sharing agreements.

1. **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. A basic lesson of argumentation theory is that if there is no agreement on the starting point, i.e. the scientific framework, it is hard to resolve the substantive dispute. Since each party brings their own experts with different opinions, a neutral fact-finding mission with an “authoritative” report is a good starting point (Sands 2003; 421).
2. **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 (Dinar 2006, 412). In order to find mutually satisfactory agreements, downstream states can reimburse upstream states for hydropower, pollution or flood control projects (Dinar 2009, 333). For instance, in the case of the Rhine River the regional powers Germany and France are upstream to the Netherlands. France only agreed to decrease chloride pollution with a 1976 agreement since the Netherlands – and to a lesser extent Germany and Switzerland – offered financial compensation (*ibid.* 341).
3. **Issue linkage:** Issue linkage is another instrument that can overcome conflicting interests between riparian states (Daoudy 2009, 367; Dinar 2009, 334; Zeitoun, Mirumachi and Warner 2011, 163). It plays a role when a downstream state has leverage on a different issue in relation to the upstream (hegemonic) state (Mostert



2005, 7). Water conflicts are especially suitable for issue-linkage, since it includes many uses such as consumption, agriculture, and energy demands and their link to state security (Daoudy 2009, 368). The benefit-sharing model is essentially based on issue-linkage, since it tries to turn zero-sum games into win-win situations by combining various benefits.

#### **Box 1: Issue linkage in the Euphrates-Tigris River Basin**

In the Euphrates River Basin, Turkey is the upstream country, as the water stems from its Anti-Taurus mountain region. Syria and Iraq are the downstream riparian states with serious water scarcity, to the degree that a 1999 North Atlantic Treaty Organisation (NATO) conflict scenario predicted that three dry summers would lead to an invasion of Turkey by Syria and Iraq in 2010 (Lorenz and Erickson 1999, 47 taken from Jongerden 2010). The present conflict is exacerbated by the Greater Anatolia Project (*Guneydogu Anadolu Projesi*), which aims to construct 22 dams in total (Jongerden 2010, 138). Issue linkage has been salient in this basin, such as with the bilateral agreements with Iraq (1984) and Syria (1987), where Turkey assured a minimum average water flow of 500 cubic meters per second. The political deal with Syria was that it would, in turn, be tougher on the Kurdistan Workers Party (PKK), which contributed to the departure of their leader Abdullah Öcalan from Syria (Daoudy 2009, 377-379; Dinar 2009, 336; Jongerden 2010).

#### **1.2.3. Dispute Resolution Mechanisms**

Negotiations are frequently insufficient to reach solutions over water allocations in treaties or large infrastructure projects. The UN Watercourses Convention provides five dispute resolution mechanisms when simple negotiations fail, namely, good offices, mediation, conciliation, arbitration and adjudication (UN 1997, Article 33, para. 2). There exists a natural ordering in these means of dispute resolution. When negotiations stop or fail the ensuing step can be good offices, mediation, fact-finding or conciliation. The difference between good offices and mediation is that the former is a passive means of starting or continuing negotiations and the latter is known for active interventions and third-party proposals (Salman 2003, 176). 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. All these forms of dispute settlement are, in contrast to arbitration and adjudication, not legally binding, unless otherwise agreed upon. It has to be noted that, in reality, the former mechanisms of conflict resolution sometimes intertwine or succeed each other, e.g. a mediator or fact-finder that offers a recommendation for the resolution of the dispute (Vinogradov, Wouters and Jones 2003, 29).

Mediation by a third-party during and after negotiations for formal water agreements is often crucial to reach agreements and to subsequently implement them (Dinar 2000; 400; Elhance 2000, 220; Zawahri 2009, 304). The lack thereof in the Euphrates-Tigris Basin partially explains the lack of an efficient RBO and enduring conflicts (Zawahri 2009, 304). Some general conditions determine the success of international water conflict mediation:

1. the riparian state representatives must think that “unilateral action” is not an option;
2. the failure of an agreement comes with “unacceptable economic or political costs”;
3. the riparian representatives need to have “sufficient authority to speak” for their state;
4. the domestic and third parties must “exert pressure for a resolution”;
5. the mediator needs to be legitimate for all parties;
6. the mediator or mediating party has credibility and a proven track record;
7. the mediating party needs technical know-how and accurate scientific data;
8. the third party promises the ‘carrot’ of financial assistance (Susskind and Babbitt 1992, 48; Nishat and Faisal 2000, 305; Zawahri and Gerlak 2009, 213).

The financial carrot has been significant for the conclusion of various treaties, such as in the case of institutional development of the Mekong River Commission (Browder 2000), the 1996 New Delhi Treaty on Sharing of the Ganges Waters (Nishat and Faisal 2000) and the 1960 Indus Waters Treaty (Salman 2003). More information on the roles and required qualities of water diplomats is given in **Annex 5**.

#### **1.2.4. Transboundary Water Law Treaties**

Treaties regarding watercourses are frequently “agreements to disagree reduced into writing” (Sands 2003, 418). That is to say, these agreements are often open to interpretation due to the compromises in the texts and, as a consequence, often lead to disputes. For instance, the present 1960 Indus Waters Treaty is ambiguous about the level to which India can use the three rivers that were allocated to Pakistan. On a very basic level, there is a distinction to be made between rivers or aquifer basins where there is no treaty or joint institution, cases where the “treaty is not, or is no longer, functional” and cases where “there is a functional treaty, sometimes including a joint mechanism” (McCaffrey 2003). The Nile, Jordan, Euphrates River Basins and West Bank Aquifer belong to the first category. The Amudarya, the Danube and the Syrdarya River fall amongst others under the second category. The latter category includes the Ganges, Indus and Mekong River Basins (*ibid*).

Certain factors, treaty provisions and pointers are salient for most watercourse treaties. Vinogradov, Wouters and Jones (2003, 70) argue that a “good” agreement comprises specifically worded provisions on “scope, substantive rules, procedural rules, institutional mechanisms, and dispute avoidance/settlement procedures”. In addition, basin-wide membership is conducive to conflict prevention.

1. **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.
2. **Scope:** A high-quality agreement is unambiguous in its “geographic or hydrological scope” and the activities it allows in those watercourses (Vinogradov, Wouters and Jones 2003, 46). The definition of terms as “international watercourse” and “river basin” can, for example, include or exclude aquifers and riparian states (*ibid*). 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.
3. **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 (Bertilsson 2010; Vinogradov, Wouters and Jones 2003, 18-19). They are codified in the UN Convention on the Non-Navigational Uses of International Watercourses (*henceforth* the Watercourses Convention), which aims to be a “framework convention” for regional treaties (UN 1997, Preamble). These two principle substantive articles are also examples of international customary law (Boisson de Chazournes 2003, 108-9; Wouters 2003, 117; Caflich 2003, 238; Vinogradov, Wouters and Jones 2003, 12-13). Ideally shares are clearly stated in agreements, based either on guaranteed volumetric allocations per second (Ganges Water Sharing Treaty) or on entire streams (Indus Waters Treaty).

### Box 2: The Ganges-Brahmaputra River Basin

The Ganges flows from tributaries in China, India, Nepal and Tibet, through India and into Bangladesh, ending in the Bay of Bengal. Albeit that there is generally sufficient water for riparian states India and Bangladesh, the dry month January-May necessitates an agreement. On 12 December 1996 such an agreement came in the form of the New Delhi Treaty on Sharing of the Ganges Waters. The treaty includes articles on the length (thirty years); volumetric water allocation guarantees per season; “principles of equity, fairness, and no harm to either party”; the establishment of a Joint Committee; and dispute settlement guidelines (McCaffrey 2003, 77). The 1996 Treaty has a dry-season provision that orders Bangladesh and India to convene when the share of Bangladesh falls below 50,000 cubic metres per second outside of regular dry seasons.

4. **Procedural articles:** Articles on data-sharing and prior notification of “planned measures” need to be included, since they are prerequisites for effective cooperation (Bertilsson 2010; Vinogradov, Wouters and Jones 2003, 19, 57). Ideally states delegate monitoring and data-sharing authority to the RBO to create reliable data as a basis for negotiations (Stinnett and Tir 2009, 232-233). 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.
5. **Joint institution:** Crucial to the enforcement of an agreement is the founding of a joint institution in the form of a RBO (Wolf 2007, 8; McCaffrey 2003, 53; Vinogradov, Wouters and Jones 2003, 61; Stinnett and Tir 2009, 235). Strict rules are important for joint mechanisms, though they also need to be adaptive to future challenges.
6. **Dispute resolution articles:** Various dispute resolution mechanisms need to be included with increasing delegation of control to third-parties (Stinnett and Tir 2009, 233). An idea shared by many water and legal experts is that arbitration and adjudication are necessary, but last resort instruments (Jennings 2003, 28; Sands 2003, 23). 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.
7. **Compliance enhancement:** Enforcement (monitoring, sanctioning) and enabling (capacity-building) compliance articles are preferably included. The Rhine Commission applies both streams.

### Box 3: The Legal Regime of the Nubian Sandstone Aquifer

The Nubian Sandstone Aquifer System (NSAS) is a series of connected aquifers spread over two million square kilometres covering Libya, Egypt, Chad and North-Sudan (Puri and Aureli 2009, 276). The region is arid with “irregular rainfall” and the NSAS is a “finite, non-renewable water resource” (*ibid*). Most water is extracted for agricultural use by Egypt and Libya (*ibid*. 277; Salem and Pallas 2001, 41). Out of a total of 273 transboundary aquifers, only five are bound by a treaty. The Nubian Sandstone Aquifer is one of them. In 1992, Egypt and Libya signed the Regulation of the Joint Authority for the Study and Development of the Nubian Sandstone Aquifer and later also Chad (1998) and Sudan (1999) joined (Stephan 2009, 13). The joint mechanism is in charge of data collection and diffusion; technical education of personnel; and policy advice on groundwater management and environmental impact (*ibid*; Puri and Aureli 2009, 277). However, the agreement lacks dispute settlement rules (Burchi and Spreij 2003, 6; UNDP 2011b, 213). The 2000 Tripoli Agreement on Monitoring and Exchange of Groundwater Information of the NSAS does provide for mandatory data-sharing – including water salinity, yearly extractions and water level and socio-economic data (*ibid*). In 2006, the aquifer states started the *Formulation of an Action Programme for the Integrated Management of the Shared Nubian Aquifer*, funded by the GEF in cooperation with the UNDP, IAEA and UNESCO-IHP (IAEA 2006; Puri and Aureli 2009, 277).

## 2. Conceptualising Water Diplomacy

When defining water diplomacy many different issue areas, actors and levels of contact come to mind. A distinction can be made between the perspective of riparian states on the one hand and that of third parties on the other hand. The latter will be discussed in general in **Section 2.2** and in the context of Dutch niche diplomacy in **Section 2.3**. The former involves various actors and can take place on many levels, both in terms of geographical scale and depth of the diplomacy.

### 2.1. Water Diplomacy from a Riparian Perspective

Water diplomacy, also referred to as hydro-diplomacy, can be broadly defined as *all contact between (non-)state actors and at least one state or international governmental organisation over transboundary freshwater resources such as lake, river and aquifer basins*.<sup>4</sup>

Water diplomacy occurs on many levels. In terms of geographical scale, the contact can be on the bilateral (India and Pakistan on the Indus), basin-wide (Nile Basin Initiative), regional (EU Water Directive), and on the global level (UN Watercourses Convention). A salient characteristic of water diplomacy is the involvement of various technical actors in the negotiation process. Technical expertise from engineers, hydrologists and economists is necessary to have a scientific framework of a river or aquifer basin. This can function as a negotiation starting point. Next, politicians, diplomats and lawyers bargain over substance, compromises and treaty articles. These various actors are internationally active in treaty discussions, but are also present in technical and political committees of River Basin Organisations (RBOs). Non-state actors are salient in transboundary water affairs, but the conceptualisation below only touches upon them from the perspective of a state.

Depending on the level of conflict, existing cooperation, and divergent aspirations, water diplomacy takes on different forms. The most commonsensical application is the contact that exists between riparian states to settle water disputes. Conflict is best not seen as a dichotomous variable, i.e. war or peace, but rather as an ordinal one. Wolf *et al.* (2003, 5) suggest such an ordering that ranges from a “[f]ormal declaration of war” to military, economic and diplomatic sanctions respectively or even “[m]ild verbal expressions displaying discord in interaction”. The stage of the conflict determines the dispute settlement mechanism that can be used. Common steps are negotiation, good offices, impartial fact-finding, mediation and conciliation, whereas arbitration and adjudication only occur when all previous steps have failed (Subedi 2003, 34).

At the other end of the spectrum cooperation varies from trust building, to scientific cooperation, to economic cooperation, to an international treaty and a joint institution, and finally to regional integration (Wolf *et al.* 2003, 5; Sadoff and Grey 2005, 5). Sadoff and Grey (2002, 392-393) argue that water diplomacy, when seen as bi- or multilateral contact with the goal of cooperation, can lead to four types of benefits:

1. “*benefits to the river*” of good governance that prevents overexploitation;
2. “*benefits from the river*” such as food from irrigation and hydropower;
3. “*reducing costs arising because of the river*” such as costly sanctions;
4. “*benefits beyond the river*” where water relationships are a “catalyst” for further cooperation and even “economic integration”.

“Benefits beyond the river” follow the Neo-Functionalist argument of “spill over” (Phillips *et al.* 2006, 15). According to this logic, transboundary water cooperation can spill over to other

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<sup>4</sup> Please note that lakes and other freshwater resources such as glaciers and ice-caps are not within the scope of this report, which focuses on transboundary rivers and aquifers.

areas just as the European Coal and Steel Community added to regional integration in Europe. For example, due to scarce water in the South African Development Community (SADC) there is a high level of interdependence between the states that can function as a “driver of peaceful negotiations and cooperation” (*ibid.* 35). Regional integration is facilitated by possibilities for benefit-sharing, since issue-linkage augments the “basket of benefits” (Phillips *et al.* 2006, 36). Water cooperation as a catalyst for trade expansion is most apparent in the agriculture and hydro-energy sectors, which depend on the transboundary river or aquifer. The Lesotho Highlands Water Project is a dam development project funded by South Africa (95%) and Lesotho (5%) that diverts water from the Orange River to the Vaal River in South Africa in exchange for financial compensation and hydropower benefits for Lesotho (Bertilsson 2010; Vinogradov, Wouters and Jones 2003, 52).

#### **Box 4: Regional Integration in the Mekong River Basin**

The Mekong River flows from the Himalayas in Tibetan China through China, Myanmar (Burma), Thailand, Cambodia, Laos and Vietnam into the South China Sea. On the 5<sup>th</sup> of April in 1995, the four downstream states Thailand, Cambodia, Laos and Vietnam signed the *Agreement on the Cooperation for the Sustainable Development of the Mekong River Basin*. The Mekong Agreement refers to the principle of benefit-sharing in its Preamble. One concrete example is that Thailand pays Laos for hydro-electricity (Sadoff and Grey 2002, 400; Schmeier 2009). In 1992, the Asian Development Bank helped to found the Greater Mekong Subregion (GMS) and all the riparian states are member-states. The GMS aims to boost integration in “agriculture, energy, environment, human resource development, investment, telecommunications, tourism, [...] transport and trade” (ADB 2011). Schmeier (2009, 47-48) argues that water cooperation has formed the basis for political and economic integration with the GMS, albeit that multilateral integration and trade have been modest so far.

In short, water diplomacy occurs on many levels, by various actors and can range from conflict prevention, to treaty-making, to ensuring regional integration. In all cases, it is often a lengthy process and third parties play a large role.

## **2.2. Water Diplomacy from a Third Party Perspective**

From a third party point of view water diplomacy is one of aiding or convincing (riparian) states as a part of national (e.g. Netherlands) or organisational (e.g. World Bank) foreign and/or development policy. The roles states and international organisations (IOs) can play, vary over the geographical scale, type of service offered, and the depth of involvement.

On a global level, states can actively pursue the development of international water law, such as striving for the creation or ratification of a convention on transboundary aquifers or international watercourses. On a regional level development actors – such as the World Bank, the UNDP, the Global Environment Facility (GEF), United States Agency for International Development (USAID), the UK Department for International Development (DFID), Swedish International Development Cooperation Agency (SIDA) or the Netherlands Directorate-General for International Cooperation (DGIS) – can act as donors for projects regarding drinking water and sanitation, irrigation, flood control, hydropower, etcetera. Such aid can be financial, such as World Bank funding for the implementation of the Indus Rivers Treaty, or knowledge-based via technical assistance, capacity-building programmes, and RBO technical committee envoys.

These methods of development assistance also contribute to conflict prevention or even resolution by enabling the signing of a treaty. Policy-makers and scholars that use the term water diplomacy often imply conflict resolution. Conflict settlement mechanisms are

good offices, mediation, fact-finding, conciliation, arbitration and adjudication. This level of third party diplomacy is often referred to as “track I diplomacy”, since it targets official government representatives (Bigdon and Korf 2004, 3; Mostert 2005, 20). Examples include the World Bank mediation and the Permanent Court of Arbitration (PCA) involvement in the Indus Rivers conflicts between India and Pakistan. On a lower level of politics, track I diplomacy also occurs in the form of programmes for government representatives that encourage data-sharing (e.g. the EXACT Regional Water Data Banks project).

#### **Box 5: Dutch Involvement in the Jordan River Basin**

The principal headwaters of the Jordan River are the Hasbani River from Lebanon, the Dan, originating in Israel and the Banias from the Golan Heights in Syria. The Jordan River forms the border between Israel and the West Bank on the one hand and Jordan on the other hand. “[P]re-existing political tensions in the Middle East” hinder cooperation, whereas other riparian states might have been able to use their “wider relationship” to solve the dispute (McCaffrey 2003, 56). Since 2002, the Netherlands sponsors the Executive Action Team (EXACT) Multilateral Working Group on Water Resources, a knowledge sharing and cooperation enhancing working group established after the Oslo Accords between Israel, Jordan and the Palestinian Authority. This EXACT working group is led by the United States. The EU and Italy are also donors. The Netherlands sponsors five projects on artificial recharge and water treatment in Israel, Jordan and the Palestinian Territories. Through the Middle East Desalination Research Center (MEDRC) in Oman, the Netherlands is also involved in desalinisation research and training in the interest of a sustainable water supply for the Middle East and North Africa (MENA) Region. Both Israel and the Palestinian Authority are partners to the centre.

“Track II diplomacy” is not aimed at government officials, but at knowledge groups and civil society (*ibid*). As such, depoliticised solutions are searched for through research and trainings. An example is a Palestine-Israeli Non-Governmental Organisation (NGO) that forwarded the Geneva Initiative where experts from both sides enter into a dialogue and present a model solution to the (water) conflict. Track II diplomacy can also include government representatives that do not confront each other but meet through third party capacity-building (UNESCO and Arab Water Academy trainings).

In sum, there are various ways of implementing third party water diplomacy as a part of foreign policy. The four main diplomatic instruments are:

1. promoting the advancement of international water law (conflict prevention);
2. development and technical assistance (conflict prevention);
3. capacity-building trainings (conflict prevention); and
4. good offices, mediation, fact-finding and conciliation (conflict resolution).

Water diplomacy can also be seen as part of foreign policy to make a difference in the field of freshwater resources. Multiple IOs and states are active in this sector, and for a state such as the Netherlands it could even be a form of niche diplomacy.

### **2.3. Water Diplomacy from a Niche Diplomacy Perspective**

The Scientific Council for Government Policy (WRR 2010a, 2010b) has recently advised the Dutch Government to engage in niche diplomacy. The key words according to the WRR are specialisation, sustainability, visible foreign policy, individual agenda-setting, and knowledge (WRR 2010a, 13; WRR 2010b, 64-65). Australian foreign Minister, Gareth Evans, defined niche diplomacy as: “concentrating resources in specific issue areas best able to generate returns worth having, rather than trying to cover the field” (Evans and Grant 1991, 323). In more practical terms, a niche is a specific policy area in which a state has specific knowledge, a

developed network, and sustainable activity. It asserts these in the hope of distinguishing itself in the international community, for which it is accordingly rewarded in terms of international institutional responsibility (Cooper 1997; Evans and Grant 1991; Henrikson 2007; WRR 2010b; Van Genderen 2011).

In the WRR reports, water management is recommended as a possible niche, next to food security (WRR 2010a, 13; WRR 2010b, 65-67). However the WRR reports offer solely a preliminary “thinking exercise” on niche diplomacy (WRR 2010b, 65, 127). Hence, the WRR does not offer specific recommendations on how to increase that potential. The discussion below treats, respectively, the international demand and supply of water knowledge, the Dutch national interest, and opportunities for the Netherlands within the water diplomacy niche.

### **2.3.1. An International Political Market: Supply and Demand**

The idea of a “political market” can be useful to understand niche diplomacy (Henrikson 2007, 67-68). Where companies use economic niches in the market for profit, many small and middle powers strive to specialise in order to gain influence and create or adapt international institutions. In market terminology, the success of such a niche largely depends on the “demand”, since it has to be able to “sell” the importance of its specific knowledge or contribution abroad (*ibid.* 68). Consequently, a state becomes “relevant” to other states that require such knowledge and can gain influence as a knowledge partner (*ibid.*, Cooper 1997).

From a political market perspective two factors are important for niche development. On the one hand, *international demand* for your knowledge is essential. Great powers like the United States and China – or regional powers like Germany, France and the United Kingdom in Europe – have the capacity to set the agenda for other states, but that is less true for small and middle powers. The Netherlands therefore has a larger possibility of contributing to the international community if it addresses issues that are internationally relevant such as water governance in the MENA-region.

On the other hand, a state can only claim a niche on the basis of the uniqueness of the product, service or knowledge due to its scarcity or competitive position. It is almost impossible to be the leader in a whole policy domain, which renders further specialisation desirable. Human rights are a good example here. Finland aims to have the right to broadband internet become an international legal right; the Netherlands fights for LGBT rights and Bolivia tries to take leadership on the right to water. Similarly in the international water sector China invests in hydro energy through dams; France houses the two leading drinking water companies Suez and Veolia; and in terms of branding, the Stockholm World Water Week is well known. In which sub-sectors is the Dutch water sector then competitive? The supply side of the Netherlands mainly lies in flood control, water quality improvement and water governance (I&M 2009, 243).

1. **Flood control:** The main international strength of the Dutch water sector lies in the flood control and delta technology sector. In 2009, delta technology accounted for four of the 6.5 billion euro of the total Dutch water-related export, amounting to a global market share of around six per cent (NWP 2011, 13-14). In the subfield of delta construction, the Netherlands is the market leader with forty per cent of the global market that is freely accessible – mainly due to the companies Van Oord and Boskalis (NWP 2011, 13). The international demand is rising due to climate change and population growth. Many states query for Dutch water expertise regarding flood prevention, such as the United States after hurricane Katrina, Indonesia, Bangladesh, and Vietnam.
2. **Drinking water and sanitation:** In the WRR report (2010a, 13, 271), the Dutch government was advised to focus its development policy on food security and water. The Ministry of General Affairs (MGA) and the Directorate-General for International

Cooperation (DGIS) subsequently agreed that these Dutch strengths deserve emphasis due to the regional demand and their status as Millennium Development Goals (MFA 2010, 4; MGA 2011, 3). In 2008, 900 million people did not have access to a sustainable water source and 2.6 billion people lacked access to improved sanitary facilities (WHO 2010, 7). The international demand for aid and knowledge is thus vast. The Dutch supply has also been large, since the Netherlands aimed to grant fifty million people access on both levels by 2015 (I&M 2009, 242). Only the African and Asian Development Bank went beyond that goal (WHO 2010, 65). Between 2006-2008 only Japan, the United States and Germany donated more to water and sanitation (WHO 2010, 88-89). Despite the removal of clear targets with the present coalition government, the Netherlands will still play a large role in the water and sanitation sector. With Prince Willem-Alexander of Orange as the chair of the UNSG Advisory Board on Water and Sanitation, the Netherlands also enjoys niche recognition.

3. **Water governance:** The knowledge of the Dutch water sector in (ground)water governance of (transboundary) rivers is particularly relevant for water diplomacy in the sense of transboundary conflict prevention. The Netherlands offers national technical assistance, to states such as Egypt, Syria and Vietnam, and transboundary technical assistance on integrated water resources management and remote sensing in many basins such as the Mekong and Nile River Basin. In short, there is a large *international demand* for water knowledge from many countries that face water pollution, floods and fresh water scarcity. On the supply side, the Netherlands is *competitive* with its knowledge and projects in flood control, drinking water and sanitation and water governance.

### 2.3.2. Niche diplomacy and National Interest

Niche diplomacy is traditionally seen as the active foreign policy specialisation that middle powers use to still have influence (Cooper, 1997). The reason is that middle powers do not have the capacity to be active in all sectors (Behringer 2005, 307; Cooper, Higgott and Nossal 1993, 25; Cooper 1997, 5). After 1945, almost every Foreign Minister has labelled the Netherlands a 'middelgrote mogendheid', that is, a 'middle power' (Heldring 2007). Indeed, the most recent Prime Ministers Kok (1994-2002), Balkenende (2002-2010) and Rutte (2010-present) and Foreign Ministers Van Aartsen (1998-2002), De Hoop Scheffer (2002-2003), Bot (2003-2007), and Verhagen (2007-2010) all refer to the Netherlands as not a 'klein' [small], but a 'middelgroot land' [medium-sized country] (Balkenende 2002; 2003; 2005a; 2005b; Bot 2003; 2005; De Hoop Scheffer 2003; Kok 1994; 2001; Rutte 2011; Verhagen 2005). Concerning the reason for this middle power self-image, Dutch ministers often cite their active foreign behaviour next to their economic strength (Balkenende 2005a, Bos 2009; Bot 2005; Verhagen 2007). It can be argued that, if anything, a middle power identity is based on:

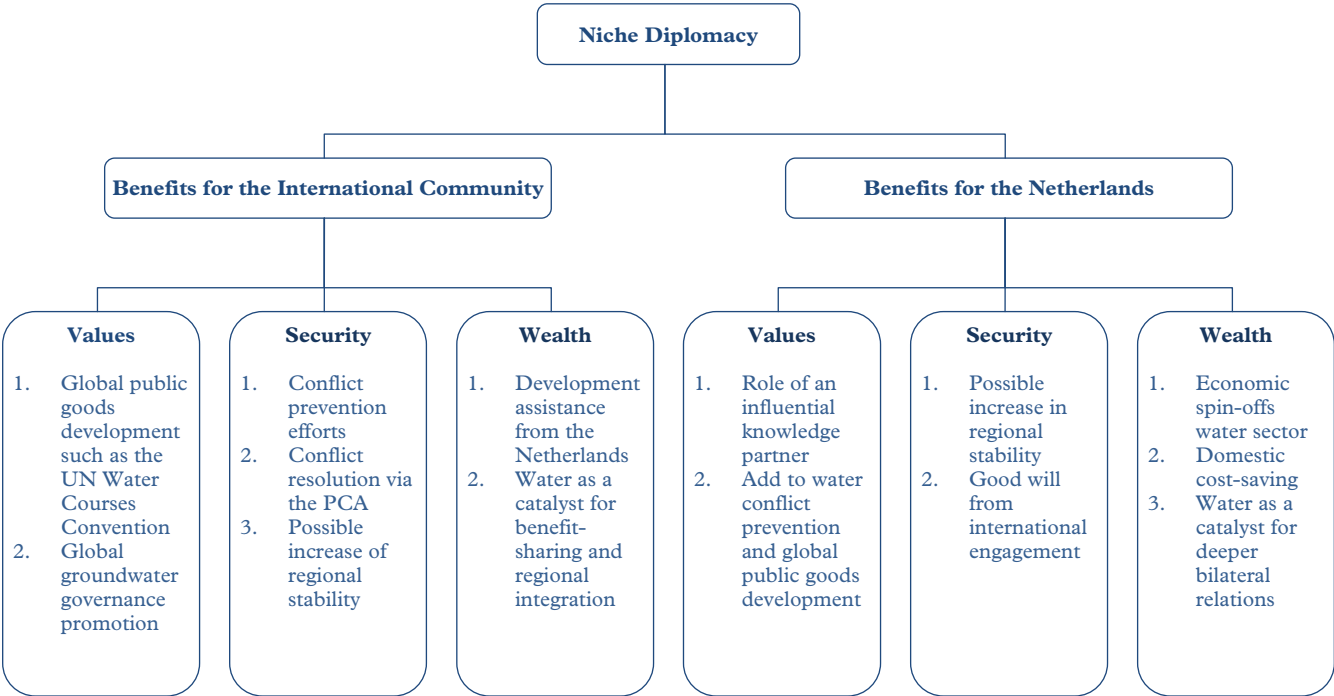
1. the absence of the economic and military *capacity* comparable to great powers such as the permanent five members of the UN Security Council, the BRIC countries, Germany and Japan;
2. *niche diplomacy* on specific issues within development cooperation, human rights, environmental matters, peacekeeping or other sectors; and
3. *international recognition* by other states of this identity with institutional responsibility (Van Genderen 2011, 14-15).

Niche diplomacy is thus also opportunistic action in an international society that rewards foreign activity with 'enhanced status', 'institutional positions' and influence (Cooper, 1997: 5). However, boosting the general standing of a country is not a sufficient ground to



implement niche diplomacy (Van Genderen 2011, 18). If the MFA, I&M and EL&I aim to make water diplomacy a policy priority they can do so for various reasons. Such grounds include the following: contributing to global public goods; cost-saving; economic diplomacy; improved bilateral relations; helping out to foster a positive image in regions where that image is very negative; and increasing regional or international stability (see **Figure 1**).

**Figure 1: Benefits of Water Diplomacy as Niche Diplomacy**



- 1. Norm entrepreneurship in global public goods:** It is the instrument for small and middle powers to make a difference internationally on issues that are important to them (Evans 1991; Cooper 1997; Cooper 2009; Henrikson 2005). Since smallness is mostly a perceptual matter – between the Netherlands’ own conception and recognition by other states (Hey 2003, Keohane 1968) – international activity can be rewarding. Hence there are aspiring states that are militarily, geographically and demographically small, but have the economic capacity to engage in niche diplomacy just like middle powers. To name a few, Qatar, Singapore, Switzerland, Sweden and the Netherlands have such a capacity and willingness. Activity in peacekeeping, human rights or water efforts can be rewarded with a greater voice in the NATO; a seat in the Human Rights Council or with UN positions respectively. The foremost reason for specialisation is that a knowledge partner position grants smaller powers the opportunity to increase their contribution to global public goods. For instance, the chairmanship of Prince Willem-Alexander of Orange of the UNSGAB gives the Netherlands a greater voice in water and sanitation affairs. The network and expertise can be used in favour of a role as a “norm entrepreneur” in international water law (Ingebritsen 2002).
- 2. Cost-effectiveness:** Many non-state actors and IOs in the Netherlands contribute to water conflict prevention and resolution, albeit in a dispersed manner. Coordination and facilitation of this activity by the MFA is a cost-effective way to contribute to global problems. Specialising foreign policy and development cooperation can be cost-effective. The present coalition has vowed to cut spending by 18 billion euro in four

years. Development assistance will drop from 0.8% of the GDP in 2010 to 0.7% in 2012, which includes funding for peacekeeping missions (MFA 2010, 5). Thematically, DGIS narrows their development cooperation focus to Dutch strengths such as water and food security (Coalition Agreement 2010, 9; MFA 2011b, 6-7). Despite general cuts, in 2011 that means an additional thirty million euro for water and climate, where the Netherlands has “added-value” (Knapen 2011b; MFA 2010, 16; MFA 2011a, 3). Niche development largely financed from the development cooperation budget is extra cost-effective, since development spending of 0.7 per cent of the GDP is an OECD norm. Niche diplomacy does not entail that the Netherlands ought to halve its representation at the UN Security Council, NATO or World Trade Organisation (WTO), or that unforeseen chances on other themes cannot be acted upon. In terms of costs, the WRR agrees that niche development costs are “negligible” relative to total foreign policy expenditures (WRR 2010, 65).

3. **Economic spin-off:** A niche in water or food security can also lead to economic spin-offs. With peacekeeping, human rights and various other policy priorities this link is not there. The WRR (2010a, 2010b) advised the Netherlands to develop water and food security further in its foreign policy due to a competitive advantage in the water and agriculture sector. Water is also an economic top sector of the Ministry of Economic and Agricultural Affairs (EL&I) that deserves extra stimulation (Coalition Agreement 2010, 10, Topteam Water 2011). Water export rather steadily comprises roughly two per cent of the total export of the Netherlands (Gibcus and Snel 2010, 6). Paying more attention to conflict prevention in Dutch foreign policy can, for example, enable international consultancy in water governance and remote sensing, i.e. (hydrological) data gathering by means of aircrafts or satellites, which is for a large part situated in the private sector.
4. **Catalyst for bilateral relations:** Also for bilateral relations in general – and development cooperation partners specifically – water is a promising issue. The inter-ministerial programme *Water Mondiaal* addresses sustainable bilateral cooperation with Bangladesh, Egypt, Indonesia, Mozambique and Vietnam. With these states there is a special relation since they can use Dutch knowledge of delta technology and water governance (I&M 2009, 245). In **Section 2.2** it was already mentioned that water cooperation can function as a catalyst for bilateral cooperation in other sectors as well. Such spill-over can be promoted by the Netherlands. Many emerging economies in South-East Asia and the MENA-region have trouble with water abundance, scarcity or pollution. With the Dutch water sector expertise in water governance and flood control, further relations can be enabled. In relations with development partners, water governance already receives special attention. Within development cooperation the choice for the fifteen partner countries partially depended on applicability of four themes of which water was one (MFA 2011a, 14). The Netherlands will intensify their water relations with Benin, Ghana, Kenya, Mali, Rwanda, and South Sudan.
5. **Public diplomacy compatibility:** With a visibly active foreign policy, states also show their good will. The fact that many non-state actors contribute to a reputation of water knowledge and involvement adds to this credibility. Fostering good will through Clingendael water diplomacy trainings at the Arab Water Academy could, for instance, improve the Dutch reputation in Arab countries. Water diplomacy can be a very positive public diplomacy tool that enables a state to “win friends around the globe” (Seib 2011).
6. **Regional stability:** Water diplomacy in the sense of aiding conflict prevention by training courses, international legal development or mediation can add to regional stability. The Netherlands and Europe benefit from a stable environment in North

Africa, Eurasia and the Middle East. In the 2009 report, *Verkenningen*, from the Ministry of Defence (MinDef), water conflicts are seen as a possible scenario, especially in the Middle East and Africa, as water stress is likely to increase in the future (MinDef 2010, 137). European states including the Netherlands can become involved in the resolution of such resource-based conflicts (*ibid.* 78). Water diplomacy is needed since water scarcity has to do with inadequate water governance as well, rather than solely with physical scarcity (UNDP 2006). With the expected population growth to 9 billion people in 2050 and 10 billion people in 2100 (UN News 2011), conflicts over food and water could become more heated.

In short, there are many grounds for making water diplomacy – in the sense of conflict prevention and resolution – a foreign policy priority. The main reason is that transboundary water affairs is an area in which the Netherlands, with its expertise and network, can add to global public goods.

### 2.3.3. Opportunities in the Water Diplomacy Niche

A specific policy domain can be called a niche if it abides by three criteria:

1. specific knowledge provision that is internationally in demand and scarce/competitive;
2. long-term investments, activity and a broad network in a related policy (sub-)area;
3. niche recognition in the form of institutional responsibility.

As mentioned above the Dutch water sector has such specific water knowledge that the MFA can facilitate to play a role in water conflict prevention and resolution (see **Section 3.1**). Apart from a central coordinative and enabling function, the MFA itself can also play a role as a norm entrepreneur. The Netherlands has a tradition and reputation in international legal leadership. In 1609, Hugo Grotius wrote *Mare Liberum*, on the freedom of the seas. In international freshwater law, the Netherlands has been active in the past and it can contribute to global public goods development once more.

## 1. UN Convention on the Non-Navigational Uses of International Watercourses

The UN Convention on the Non-Navigational Uses of International Watercourses (*henceforth* UN Watercourses Convention) has been open for signature from 21 May 1997 onwards.

### Box 6: The UN Watercourses Convention

It is the first attempt at a legally binding document on international watercourses (Boisson de Chazournes 2003, 92). The treaty weighs upstream and downstream interests and “legal entitlements” (Boisson de Chazournes 2003, 94; Vinogradov, Wouters and Jones 2003, 17). Certain articles have already crystallised into international customary law, which is legally binding. This is certainly true for Article 5 on the principles of reasonable and equitable utilisation (*Gabčíkovo-Nagymaros* case para. 85; Boisson de Chazournes 2003, 108-9; Wouters 2003, 117) and Article 7 on “no significant harm” (*Corfu Channel* and *Trail Smelter* case; Caflisch 2003, 238) – which have been thoroughly discussed in the UN and ILC. For this reason, they project a “compromised, carefully balanced and skilfully crafted text” (Subedi 2003, 38). The framework agreement is, however, rather vague at times, which leaves room for different interpretations; treaty enforcement is not backed up by mandatory arbitration or adjudication; and unconfined aquifers are not covered by the 1997 Convention (Delli Priscoli and Wolf 2009, 57). The Watercourses Convention and its draft articles have already been used as a “roadmap” with the Cooperative Framework Agreement of the Nile and the Revised protocol on Shared Watercourses in the SADC (Boisson de Chazournes 2003, 95-96).

As of 10 November 2011, 24 states had ratified, accepted, acceded to or approved the Watercourses Convention (see **Annex 6**). Article 36 of the treaty posits that

[t]he present Convention shall enter into force on the ninetieth day following the date of deposit of the thirty-fifth instrument of ratification, acceptance, approval or accession with the Secretary-General of the United Nations (UN 1997).

Hence only eleven more states need to follow to have the convention enter into force. Funding and autonomous lobbying are opportunities for the Netherlands to become associated with the UN Watercourses Convention. The Netherlands could join the World Wildlife Fund (WWF) global initiative for the ratification process of the UN Watercourses Convention. The campaign globally focuses on awareness raising, regionally on EU, SADC and ECOWAS bloc ratification and nationally on capacity-building and consultancy.

The Netherlands itself has already played a large role in the EU campaign for bloc ratification. In 2009, the Netherlands gave a presentation on the UN Watercourses Convention in front of the EU Water Directors. The Netherlands was also Chairman of the Drafting Committee during the 1997 UN Watercourses Convention drafting negotiations. In this role, the Netherlands was able to add an article that made arbitration or ICJ adjudication optional after a declaration (UN 1997, Art. 33, para. 10). If the Netherlands wants to play a role in the success, 2012 is the year to prepare a final lobby. The WWF expects to reach the 35 member parties before the end of 2013. The Netherlands can set the agenda at the EU and table the Convention in its broad network of development partners with a water focus.

## **2. The Draft Articles on the Law of Transboundary Aquifers**

Groundwater comprises 97 per cent of global freshwater – when excluding freshwater in the form of ice and snow in polar ice and glaciers – and is responsible for half of the global drinking water supply (Stephan 2009, 4; Stephan 2010). Hence it greatly exceeds the amount of water covered by the 1997 UN Watercourses Convention. Nevertheless, the field of international law concerning transboundary aquifers is still undeveloped in comparison to that of international rivers.

### **Box 7: The Draft Articles on the Law of Transboundary Aquifers**

On December 11<sup>th</sup> of 2008, the UN General Assembly (UNGA) adopted Resolution A/RES/63/124 on the law of transboundary aquifers (UNGA 2008). The draft articles aim to have the same framework character the UN Watercourses Convention. As such, the draft articles show a great resemblance in terms of substantive and procedural articles on the principle of equitable and reasonable utilisation, the obligation not to cause significant harm, and prior notification of planned measures and data-sharing. However, major differences exist as well. First, the draft articles have not been subject to negotiation and compromise, which enables more far-going obligations. For instance, there is a clause on the “sovereignty over the portion of a transboundary aquifer or aquifer system located within its territory” (UNGA 2008, Art. 3). This sovereignty is limited to those uses that are “in accordance with international law and the present articles” (UNGA 2008, Art. 3). Second, the draft articles lack rigid dispute settlement rules. Article 15 provides for consultation, negotiation and voluntary fact-finding, whereas the 1997 Convention establishes mandatory fact-finding with *de facto* conciliation capacity and possible arbitration and adjudication (UN 1997, Art. 33; UNGA 2008, Art. 15).

The Netherlands could lobby to turn the draft articles into a convention, but that might not be the best solution. The precedent from the UN Watercourses Convention tells that the formal renegotiation procedure can take two to three years and the ratification another ten to fifteen years. For the development of customary international law, a set of guidelines or a resolution can be more promising. Although the draft articles are not legally binding at present, they serve as guidelines for regional frameworks. For example, the 2010 agreement on the Guarani Aquifer System (Argentina, Brazil, Paraguay, Uruguay) refers to Resolution 63/124 (Stephan 2010). If the United Nations General Assembly (UNGA) decides to go for a convention, the

Netherlands can help in the campaign. If not, the Netherlands could seek to play a larger role in groundwater governance (see **Chapter 4**).

### **3. UNECE Water Convention**

The 1992 United Nations Economic Commission for Europe (UNECE) Convention on the Protection and Use of Transboundary Watercourses and International Lakes (UNECE Water Convention) also presents opportunities. This Convention has a broad scope and includes transboundary aquifers. In 2003 an amendment was adopted for articles 25 and 26 of the UNECE Water Convention, giving states outside the UNECE region the opportunity to become a party to the treaty (UNECE 2009). The Netherlands and Serbia have ratified the amendments and Germany, Switzerland and the Czech Republic are currently doing so. The Netherlands, i.e. the MFA and I&M, could lobby with the abovementioned states for the 23 necessary ratifications for the amendment to go into force. Subsequently the lobby could be directed at non-European states to adopt the UNECE Water Convention.

### 3. The Water Diplomacy Network

In general the “international architecture” of transboundary water resources management consists of:

1. “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 and UNDP; regionally the EU, SADC and ECOWAS; nationally development agencies such as DGIS, knowledge institutions like the Water Governance Centre, training institutions such as the Arab Water Academy, think tanks such as SIWI or facilitating organisations such as the Strategic Foresight Group);
2. transboundary river and aquifer basin organisations (e.g. the Permanent Indus Committee and the Joint Authority of the Nubian Sandstone Aquifer);
3. “national water management institutions” (e.g. the Ministry of Water Resources in India or, more specifically, the Institute for Groundwater in Egypt)
4. local capacity-building and “training programmes” (e.g. Mekong Institute) (WWF 2010, 1).

On a global level, UN-Water is a very small organisation that aims to be a platform for the coordination of the 28 other UN agencies that are active in water affairs. In the Task Force on Transboundary Waters, which is coordinated by UNESCO and UNECE, there are still 17 members. **Section 3.1** and **3.2** discuss the Dutch water diplomacy network and possibilities for inter-state cooperation. This section briefly touches upon the key IOs and states globally.<sup>5</sup>

1. **World Bank:** The World Bank is globally the most active donor and facilitator in transboundary river cooperation. The Bank is deeply involved in the Indus and Nile, but also in the Mekong and Euphrates River Basin. The success of the Bank also lies in its ability to raise state funds for its programme, such as almost 200 million US dollars for the Nile Basin Initiative so far. This is particularly impressive as the water diplomacy sector is generally rather scattered. An example of successful mediation is the nine years of World Bank involvement in the Indus dispute between Pakistan and India, which led to the 1960 Indus Waters Treaty (Salman 2003; Zawahri 2009).

#### **Box 8: Mediation and Arbitration in the Indus River Basin**

The Indus River originates in China, in the Tibetan plateau, but passes mostly through India and Pakistan, finally emptying into the Arabian Sea. Nine years of World Bank mediation led to the 1960 Indus Waters Treaty (Zawahri 2009). According to Salman (2003, 187-192), the reasons for success were the following:

1. long-term high-level contact between Bank President Black and the riparian state PMs;
2. “flexibility” in its proposals to suit both parties;
3. capacity to both “obtain concessions and to apply pressure” due to financial aid;
4. ability to raise the 800 million US dollars needed for the implementation stage;
5. the “active role in the implementation” stage by the Bank to keep the treaty in force.

The 1960 Treaty hands the flows from the Eastern Rivers (the Sutlej, Beas and Ravi) to India and the Western Rivers (the Indus, Jhelum and Chenab) to Pakistan (Indus Waters Treaty 1960; Wouters 2003, 138). The World Bank has often intervened: in the Baghliar conflict, an independent expert mediated and presently India and Pakistan have referred a dispute to the Permanent Court of Arbitration. The case concerns an Indian 330MW Kishanganga hydropower project on the Indus River tributary Jhelum, which Pakistan sees as a violation of the Indus Waters Treaty.

<sup>5</sup> *Please note:* These IOs and states were frequently mentioned in the interviews, the literature and the questionnaires. This short inventory is non-exhaustive and the authors apologise for possible omissions.

2. **UNESCO:** The United Nations Educational, Scientific and Cultural Organisation in Paris hosts one of the main UN programmes in the field of freshwater resources: the International Hydrological Programme (IHP). In relation to water diplomacy, two activities in the framework of the programme are especially important. “From Potential Conflict to Cooperation Potential” (PCCP) uses research, track II training, workshops and capacity-building programmes to promote transboundary river cooperation (UNESCO 2011). Regarding aquifer best practices development, UNESCO-IHP has the International Shared Aquifer Resource Management (ISARM) Initiative. UNESCO is also active via the category 1 UNESCO centre UNESCO-IHE and the category 2 centres, which operate under the auspices of UNESCO (e.g. IGRAC and the Dundee IHP-HELP Centre for Water Law, Policy and Science). UNESCO-IHE and IGRAC are considered further in **Section 3.1**. The Dutch input into the IHP is channelled through the National Committee IHP-HWRP.
3. **GEF:** The Global Environment Facility is an international financing organisation, which has the International Waters projects as one of its focal points. In the first fifteen years, after its inception in 1991, the GEF financed projects for the value of 1 billion US dollars (UN-Water 2008, 12). The GEF projects focus on legal, institutional and conflict management aspects of transboundary waters (*ibid*). The GEF is the main financier of the transboundary aquifer research and projects. The GEF finances the new initiative on *Groundwater Governance: A Global Framework for Country Action*, from UNESCO-IHP, the Food and Agriculture Organisation (FAO), the International Association of Hydrogeologists (IAH), and the World Bank.
4. **UNDP:** The United Nations Development Programme has a current project load in transboundary water resources of 1 billion US dollars, including co-financing from for instance the GEF (UN-Water 2008, 13). The UNDP approach, such as in the Nile, the Euphrates and the Mekong River Basin, is threefold: fact-finding to build a technical framework; “Strategic Action Programmes” and aid in the implementation of this programme with trust- and capacity-building, technical and legal advice; and fund-raising (UN-Water 2008, 13; UNDP 2011a).
5. **IAEA:** The International Atomic Energy Agency (IAEA) is mainly active in transboundary aquifer management. The IAEA focuses, for example, on technical, legal and institutional frameworks to promote cooperation in the Nubian Sandstone Aquifer system, North-Western Sahara Aquifers, the Nile Basin Aquifers, and the Guarani Aquifer system (UN-Water 2008, 12). The Nile Basin Aquifer project aims to incorporate the groundwater strategy into the broader river and lake cooperation (*ibid*).
6. **Regional UN organisations:** The United Nations Economic Commission for Europe (UNECE) spreads the knowledge from the 1992 Convention on the Protection and Use of Transboundary Watercourses and International Lakes. In Central Asia it facilitates the transboundary waters dialogue and offers technical assistance (UNECE 2011). The United Nations Economic and Social Commission for Western Asia (UN ESCWA) offers advice and capacity-building programmes for transboundary aquifer conflict prevention (ESCWA 2011a). ESCWA engages policy-makers, decision-makers and parliamentarians of the Arab Region in workshops with training manuals on water resources law and governance, data-sharing, negotiation and dispute resolution (ESCWA 2011b). In Africa, the United Nations Economic Commission for Africa (UNECA) advises and tries to establish dialogues among riparian states of Lake Chad, the Congo, the Nile, and the Zambezi River (UN-Water 2008, 13-14). The United Nations Economic and Social Commission for Asia and the Pacific (UN ESCAP) established the Mekong Committee, which is currently known as the Mekong River

Commission (MRC). To the MRC, ESCAP still provides technical advice on “basin development” and “flood control” (*ibid.* 14).

7. **FAO:** The Development Law Service of the FAO helps set up legal and institutional frameworks for basin-wide solutions to transboundary water resources. The FAO focuses on links with agriculture, but also advises on other issues, such as environmental impact. An example is the Consultation Arrangement that the FAO set up in 2007 for Libya, Algeria and Chad for the Northern Sahara Aquifer System (UN-Water 2008, 11-12). In the Nile River Basin, the FAO provides “agricultural, demographic, socioeconomic and environmental data” related to the water resource (*ibid.* 12).
8. **States:** The European Commission, Germany, the Netherlands, Norway, Sweden and the United States are very active players not only via their development aid but also through their respective MFAs. For instance, the Nile Basin Trust Fund donors are: Canada, Denmark, the European Commission, Finland, France, the Netherlands, Norway, Sweden, the United Kingdom and the World Bank (UNDP 2011b, 207). In addition, “the African Development Bank, Germany, Italy, Japan, Switzerland and the United States” offer aid as well (*ibid.*). The EU, France, Germany, the Netherlands, Norway, Sweden and the United States have various activities in the Jordan River Basin (e.g. EXACT, MEDRC and autonomous projects). The Mekong River Commission Donor Consultative Group comprises the Asian Development Bank, Australia, Belgium, Denmark, the European Commission, Finland, France, Germany, Japan, the Netherlands, New Zealand, Sweden, the United States and the World Bank (MRC 2010, 8).

### 3.1. Dutch actors, their roles and value added

Non-state actors and IOs within the Netherlands are the basis of the niche potential for the Netherlands. Networks of non-state actors have shown to be influential in international policy-making and legal development in other sub-sectors such as human rights and the environment (Keck and Sikkink 1998). Arguably, this is also the case in transboundary water affairs. Examples of prominent non-state actors in transboundary water affairs include the Compass Foundation and the Strategic Foresight Group in water conflict mediation in the Middle East; the WWF in campaigning for the UN Watercourses Convention; and knowledge institutions and private actors such as IGRAC, WaterWatch and Deltares that offer transboundary scientific data and consultancy. States play a large role too, but often through non-state actors and international organisations. For instance, Norway partially funds the WWF campaign for the UN Watercourses Convention and the Netherlands is the largest donor of the World Bank’s Nile Basin Initiative.

In the water diplomacy niche, the Netherlands, and specifically the MFA in cooperation with I&M, can function as an autonomous norm entrepreneur (see **Section 2.3.3**). However, the MFA also has the capability to take the role of an enabler, a central hub and a neutral broker via IOs. An enabling MFA assists non-state actors and IOs to be active in such a way that is beneficial to them and the Netherlands (WRR 2010b, 120). A central hub arranges inter- and intra-national coordination for a dominant position in the international water diplomacy network. A neutral broker plays a role in water conflict resolution, by itself, or via IOs.

These roles are better explained with the help of a model of the *Dutch Network in Transboundary Water Affairs* (see **Annex 7**).<sup>6</sup> The graph depicts knowledge institutions, the

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<sup>6</sup> See **Annex 1** for a list of abbreviations.



private sector, governmental parties, IOs located in the Netherlands and IOs that the Netherlands supports in the field of water diplomacy. On the *x-axis* the parties are categorised in the water, governance or diplomatic (cross-)sector on the basis of their predominant activity. On the *y-axis* the parties are categorised in the research, consultancy, transboundary conflict prevention, mediation or adjudication (cross-)sector by their main activity.<sup>7</sup>

1. **Governmental parties:** The MFA, EL&I, I&M, the Ministry of Education, Culture and Science (OCW), and the National Committee IHP-HWRP are depicted. The latter for its coordinating and representative role in several working groups of UNESCO's IHP and the WMO. OCW sponsors UNESCO-IHE; EL&I enables the water consultancy firms and consults Turkey on water management via the Service for Land and Water Management (DLG); and I&M plays a role in conflict prevention by means of international water law advocacy, UNESCO-IHP and UNECE. The interviewees indicate that the MFA is mainly equipped for conflict prevention, but upon request can also be a neutral broker. It is a central hub in the network that enables the non-state actors, works via IOs and is responsible for inter-ministerial coordination on this topic. Coordination is required with I&M to streamline a lobby for the UN Watercourses Convention or the UNECE amendments; with OCW to discuss UNESCO-IHP affairs; and with EL&I to mitigate possible tensions between conflict prevention and economic spin-offs from private sector technical advice.
2. **Knowledge institutions:** There is a wide range of expertise in water diplomacy (Clingendael, UT, UNESCO-IHE), international water law (EUR, THIGJ, UNESCO-IHE, UvA, VU), water governance (EUR, IGRAC, TU Delft, UNESCO-IHE, UT/ITC, UU, VU, WGC, WUR/Alterra), and hydrology (IGRAC, TU Delft, UNESCO-IHE, UT/ITC, UU, VU, Wetsus, WUR/Alterra). WUR/Alterra has also done a consultancy project on integrated water resources management in the Nile River Basin (Alterra 2011). In 2003, UNESCO-IHE was awarded the status of a category 1 centre of UNESCO after a long campaign. UNESCO-IHE is the only water institution with that status, and as such a genuine UNESCO centre instead of a category 2 centre "under the auspices of UNESCO" (UNESCO 2005, 1). The Netherlands also has a category 2 centre on groundwater affairs, namely, the International Groundwater Resources Assessment Centre (IGRAC). IGRAC is a leading institution in the field of aquifer data development and sharing with its Global Groundwater Information System and a core member of the UNESCO-ISARM programme (IGRAC 2011). Next, networking organisations such as the NWP and the Water Governance Centre (WGC), also play an intermediary role in facilitating research, consultancy and conflict prevention via technical and water governance advice.

#### **Box 9: Capacity-building trainings**

The Netherlands has a lot of water knowledge, and capacity-building trainings can translate this knowledge into a contribution to conflict prevention. UNESCO-IHE, which is also in an IO as a Category 1 UNESCO institute, organises regional workshops in cooperation with UNESCO-IHP and regional partners. An example is the *Transboundary Water Conflict Management and International Water Governance* training in the Mekong Basin from November 2010 and February 2011. In November 2010, 27 academics and government officials from Myanmar, Thailand, Laos, Cambodia and Vietnam were taught skills for water conflict management (Mekong Institute 2010). Clingendael contributes to the Arab Water Academy's water diplomacy training for representatives from Arab Ministries of Water and Foreign Affairs. Further cooperation between multiple knowledge institutions in the Netherlands would help niche development.

<sup>7</sup> Knowledge institutions such as Clingendael, THIGJ, UNESCO-IHE, WGC are exceptions. They deliver both research and (plan to be active in) trainings regarding transboundary rivers.

In addition, institutes such as Clingendael, UNESCO-IHE, THIGJ, and the WGC are active in capacity-building trainings in the areas of (ground)water law, governance and negotiations. The MFA can function as a central hub that brings together legal, diplomatic and water knowledge, possibly with the help of the Water Governance Centre. Moreover, the MFA can enable capacity-buildings trainings, technical consultancy and other projects from the knowledge institutions that contribute to water conflict prevention.

3. **Private sector:** In the Netherlands, a lot of expertise on remote sensing (FutureWater, WaterWatch) and integrated (ground)water resources management (Acacia Water, Deltares, DHV, MetaMeta and Royal Haskoning) is nested in consultancy firms. To name a few examples, Royal Haskoning (2010) has ensured good local water governance in Uruzgan, Afghanistan; MetaMeta (2011) in Ethiopia; DHV (2011) in China; Deltares (2011) in Syria; and Acacia Water (2011) in Bangladesh. The private sector also does transboundary water projects, which contribute to conflict prevention or even lay a scientific basis for conflict resolution. FutureWater (2011) and WaterWatch (2011) do remote sensing work for the World Bank's Nile Basin Initiative. The MFA, in close cooperation with EL&I, should enable win-win situations of conflict prevention via technical advice and economic spin-offs. However, there can be a tension between the two activities, which asks for inter-ministerial harmonization.
4. **IOs in the Netherlands:** The Netherlands also houses the Permanent Court of Arbitration (PCA) that has arbitrated a conflict between France and the Netherlands over the Rhine and presently deals with a conflict over the Indus between India and Pakistan. The International Court of Justice (ICJ) has also dealt with the Danube River dispute between Hungary and Slovakia in the *Gabčíkovo-Nagymaros* case. Consequently, with the absence of a global independent freshwater court, The Hague already accommodates the two major candidates, with the ICJ and the facilitating services of the PCA.

In relation to adjudication, arbitration is sometimes favoured by states due to their control over the members of the arbitration court and since arbitration is more likely to encompass win-win situations and “negotiated settlements” (Caflich 2003, 238). For instance, of the present seven judges in the Pakistan-India case, each party appointed two candidates. Although the awards of the PCA are legally binding, just as the judgments of the ICJ, they are less loaded due to the absence of the UN principal organ link, and draw less publicity (*ibid.* 423). Furthermore, the PCA is a neutral organ that provides confidential hearings and awards upon request. There is also more control over the procedure and calendaring, which favours a quick resolution, as compared to the ICJ (Caflich 2003, 238; Sands 2003, 422-423; Schofield 2011). However, a reason for states to resort to the International Court of Justice instead of the Permanent Court of Arbitration is that the ICJ is funded by all member states, which makes this form of dispute settlement less expensive (Caflich 2003, 238).

Former Secretary-General Tjaco Van den Hout asserts, “the PCA stands ready to serve as *ad hoc* Registry and Secretariat, if the parties so desire, in the resolution of a water dispute (be it by arbitration, conciliation, mediation, fact-finding, or assisted negotiation)” (Van den Hout 2003, xv). The Netherlands could benefit from lobbying for the PCA as an international forum of water arbitration, since it is already situated in The Hague and the Secretary-General (SG) of the PCA is traditionally Dutch. In terms of niche diplomacy, the emerging water caseload of the Permanent Court of Arbitration is a valuable development for the Netherlands as “Water Valley” and for

The Hague as “legal capital of the world” (Dutch Water Sector 2011). The Netherlands can thus fulfil the role of a neutral broker and central hub via the PCA or ICJ.

5. **IOs with Dutch involvement:** The Netherlands already has a considerable international network via support to the ADB, African Development Bank (AfDB), EXACT, the GEF, and the International Union for the Conservation of Nature (IUCN) in the Ganges River Basin; participation as a riparian state in the International Commission for the Protection of the Rhine (ICPR), the International Meuse Commission (IMC) and the International Scheldt Commission (ISC); and support and third-party participation in the Arab Water Academy, Middle East Desalination Research Center (MEDRC), Mekong River Commission (Donor Consultative Group), UNECE, and the World Bank (Nile Basin Initiative, the Groundwater Management Advisory Team (GW-MATE), Red Sea/Dead Sea peace canal study). The Netherlands undertakes efforts and has a network in water conflict prevention through technical advice, track II diplomacy, and capacity-building trainings.

#### **Box 10: The Nile Basin Initiative**

The Nile that empties into the Mediterranean Sea via Egypt has the Blue and White Nile as its main tributaries. The Blue Nile starts in Ethiopia and after crossing North Sudan it is responsible for 87 per cent of the water that reaches the Aswan Dam in Egypt. The White Nile stems both from tributaries in Burundi and Rwanda, flowing through the Democratic Republic of Congo, and from Lake Victoria, shared by Tanzania, Kenya and Uganda. Both these flows pass South and North Sudan and deliver 13 per cent of the total water that reaches the Aswan Dam in Egypt. After Sudan gained independence the 1959, *Agreement for the Full Utilisation of the Nile Waters* guaranteed 55,5 and 18,5 billion cubic meters per year to Egypt and Sudan respectively (Cairo Agreement 1959, Art. 2). Egypt and Sudan, as downstream states, accrue 90 per cent of the water, whereas upstream Ethiopia is not a party to the treaty and accounts for 85 per cent of the water reaching Egypt (McCaffrey 2003, 58). Hence the upstream riparian states want a basin-wide agreement instead with equitable shares (Cascao 2009, 245; Nicol and Cascao 2011). In 1999, the World Bank, the Nile riparian states and Eritrea (observer) launched the Nile Basin Initiative (NBI). Apart from trust building and technical programmes, the goal of the NBI is to create a Cooperative Framework Agreement with basin-wide rules to replace earlier treaties (UNDP 2011b, 201; NBI 2011). Burundi, Ethiopia, Kenya, Rwanda, Tanzania, and Uganda have signed the agreement, which will go into force after parliamentary ratification by six states. Contact between Egypt and Ethiopia on the Nile has recently intensified, after the regime change in Egypt and the announcement of the construction of the Renaissance Dam by Ethiopia.

### **3.2. Autonomous action or cooperation?**

Niche diplomacy has the undertone of independent action, but that is not necessarily correct. It is an approach to be relevant to the international community and to be acknowledged for it by international colleagues and publics. Cooperation can also lead to a larger impact. There are many European states engaged in transboundary freshwater affairs, often scattered in different basins and projects. The Nile Basin Initiative of the World Bank is a current example of cooperation, where the Netherlands pools its funds with Canada, Denmark, the European Commission, Finland, France, Norway, Sweden and the United Kingdom. Nonetheless, when it comes to mediation, it is the United States that brings Ethiopia and Egypt back to the negotiating table.

The European Commission, Germany, the Netherlands, Norway, Sweden and the United States are very active via development and foreign affairs. Due to the many visible

knowledge institutions, private actors and IOs within the Netherlands, the Netherlands can cooperate with the confidence that it will be recognised for its efforts. An alternative that warrants further research is the European External Action Service (EEAS), EU's Common Foreign and Security Policy (CFSP) and the UNECE. Under the Managing Director for Global and Multilateral Issues, there is a modest, but distinct, Peacebuilding, Conflict Prevention and Mediation Unit. The European Commission is, moreover, a donor in many river basins. The EU's CFSP is an alternative that can also coordinate European foreign policy, without delegating as much responsibility to the EEAS. Lastly, if the MFA seeks an active role in conflict facilitation in Central Asia, cooperation with I&M and Germany would have a larger impact than autonomous efforts.

If the MFA wants to have a large impact on water conflict prevention and possibly mediation, a proposal to contribute via the EEAS, the CFSP, UNECE or, in any case, (some of) the active EU member-states would be worth considering. The Netherlands can, despite cooperation, remain visible by means of prominent organisations in the knowledge niche (UNESCO-IHE) and the water law niche (ICJ/PCA).

## 4. Conclusion

The main goal of this study is to advise the Ministry of Foreign Affairs on the potential of water diplomacy as a foreign policy niche in the period 2011-2015. The report answers two central questions. The answer to the first question – what is the definition of water diplomacy from international practice and the perspective of the Netherlands? – is dealt with below in **Section 4.1**. The second question – what and where are the chances for the Netherlands concerning water diplomacy and international law of transboundary rivers and aquifers? – is answered in **Section 4.2**.

### 4.1. Concluding Remarks Conceptualisation

Water diplomacy has various meanings, depending on the actors, the level and the type of diplomacy. In very general terms, water diplomacy includes all contact between (non-) state actors and at least one other state or international governmental organisation over transboundary water resources such as seas, lakes, rivers and aquifers. The type of diplomacy varies from conflict management and agreement seeking to water-based interaction as a catalyst for regional integration and international law development. The level of diplomacy can be bilateral (e.g. upstream-downstream), multilateral (e.g. basin-wide), regional (regional integration institution), and global (UN, international law). Actors correspondingly vary per situation, with roles such as parties to a conflict, scientific teams or neutral brokers.

A more specific perception of water diplomacy views it as a foreign policy instrument. It enables a state to play a role in a chain from water conflict prevention to low-level and direct means of conflict resolution. Aiding a state with national water governance can avoid future conflicts. Knowledge on transboundary law, governance and diplomacy prevents conflicts and offers solutions. Transboundary conflict mediation addresses imminent or current conflicts. Water conflict prevention and resolution are possible sectors in which a state can invest as an example of niche diplomacy. Niche diplomacy is an activity in a specific foreign policy area in which that state has the network, expertise and capacity for issue-specific leadership. Three evaluation criteria exist for niche diplomacy:

1. specific knowledge provision that is internationally in demand and scarce/competitive;
2. long-term investments, activity and a broad network in a related policy (sub-)area; and
3. niche recognition in the form of institutional responsibility.

This perspective is interesting for the Dutch MFA in *multilateral affairs*. The policy recommendations in **Section 4.2** explain this further.

Water diplomacy from a Dutch perspective can also be broadly defined as the use of the water network, reputation and knowledge of the Netherlands as a part of *bilateral affairs*. The Netherlands is very active and knowledgeable in the areas of delta technology and drinking water and sanitation, but also on water governance. That water knowledge is in high demand in upcoming markets and countries in Latin-America, the MENA region and Asia. The bilateral transfer of this knowledge can be compatible with the prevention of future transboundary conflicts. Since a lot of Dutch technical knowledge is located in the private sector, such water diplomacy also corresponds with Dutch water sector economic diplomacy. Water can even function as a potential bilateral access enabler to intensify bilateral relations.

### 4.2. Vision on Dutch Water Diplomacy for the Period 2011-2015

In the abovementioned water diplomacy chain, the Netherlands is mainly equipped to be active in conflict prevention and indirectly via high-level conflict resolution. Regarding the former, the Netherlands can deliver national and transboundary water governance advice, capacity-building trainings, and entrepreneurship in global public goods development. Concerning the latter, the Netherlands accommodates the Permanent Court of Arbitration and International Court of Justice. To answer the central question of this pilot study, based on the three evaluation criteria, water diplomacy is indeed a promising niche for the Netherlands.

1. *Specific knowledge provision that is internationally in demand and scarce or competitive:*

There is a widespread demand for water technology, governance, and law expertise. The Netherlands has knowledge in the field of hydrology, remote-sensing, transboundary (ground)water governance, international water law, water negotiations and water conflict settlement, which is spread over several knowledge institutions and consultancy firms. Such knowledge is not scarce, since there are many knowledgeable actors, but it is certainly competitive.

- a. With UNESCO-IHE, the Netherlands is the only state that accommodates a category 1 UNESCO institute specialised in water affairs. On top of that, Delft also houses IGRAC, a category 2 UNESCO centre specialised in groundwater resources.
  - b. Due to the absence of a world freshwater court, the ICJ (1997 *Gabčíkovo-Nagymaros* case) and PCA (2011 *Indus River* registry) are the main alternatives. Their knowledge regards arbitration and adjudication, but it has to be noted that Dundee University, in Scotland, presently takes the lead in general international water law expertise.
2. *Long-term investments, activity and a broad network in a related policy (sub-)area:*  
 There is a strong basis of activities, a reputation, and a high-level water network to build future water diplomacy activities on. The Netherlands:
- a. is the largest donor of the Nile Basin Initiative;
  - b. is involved on a technical level in various basins (Nile, Jordan, Mekong) and states (Syria, Turkey, China, etc.);
  - c. has been a strong supporter of the UN Watercourses Convention from the very start;
  - d. is engaged in water diplomacy training courses in the MENA-region (Clingendael) and in Asia (UNESCO-IHE);
  - e. has a great domestic and international water network it can use to its advantage; and
  - f. has a reputation as a state that is historically knowledgeable in water affairs.
- Further political engagement in this issue area can build on that image, on that network, and on present and past activities to try to contribute to water conflict prevention.
3. *Niche recognition in the form of institutional responsibility:*  
 There are a wide variety of prominent actors active in water conflict prevention and mediation – such as the World Bank, UNDP, UNESCO, the United States, Germany, Norway, etcetera. In the World Bank projects on the Nile and Mekong, the Netherlands funds the organisation and, in return, is represented in technical committees and the donor groups. However, on a political level, other donors such as the United States are more influential. With all these actors present, the Netherlands will not be able to be internationally acknowledged as the *main* player in the entire water diplomacy niche. However, the Netherlands has certain strong points.
- a. It can play a large role in water conflict arbitration and adjudication through the PCA and ICJ;
  - b. It can become one of the main hubs of water diplomacy capacity-building and training by means of UNESCO-IHE and Clingendael training courses for government representatives. The Oregon State University, the Stockholm International Water Institute (SIWI) and the University of East Anglia are other large players. However, UNESCO-IHE as the only full UNESCO centre and Clingendael's connection to the Arab Water Academy are promising. The Netherlands also has a dominant position in the UNESCO-IHP programme because of its knowledge role and funding of a third of the UNESCO-IHE budget.
  - c. Lastly, regarding the UN Watercourses Convention, Norway currently funds the WWF campaign and France has taken the leadership in the last EU Water Directors meeting. Nonetheless, the Netherlands has been active from the start of the 1997 negotiations as Chairman of the Drafting Committee. A revival of the campaign now will not only give

the Netherlands a role in global public goods development, but also part of the credit for the possible success in the coming two years.

In short, the Netherlands has such visible institutions that recognition for its role in conflict prevention through capacity-building, technical consultancy and international water law is within reach. A few side notes are in order:

- a. It is not argued that water diplomacy has to be the main or only specialisation, since opportunities such as food security should also be investigated (WRR 2010b, 68).
- b. Importantly, niche diplomacy is not a replacement of foreign policy, but rather an additional strategy for efficiency through specialisation.
- c. Niche diplomacy is not equal to, but compatible with public diplomacy. Concrete activities in (transboundary) water affairs are a great basis for communication.
- d. Niche diplomacy is not necessarily done by one state. Instead, the MFA is advised to strive to pool the dispersed activities of the active states in the field, for instance, via the European Union.
- e. The MFA cannot excel in this niche autonomously. It is principally equipped for leadership in water conflict prevention due to the knowledge and activities of its domestic non-state actors and IOs. It is therefore well advised to practice modern diplomacy by enabling these institutions.

## **The Role of the Ministry of Foreign Affairs**

The WRR (2010b, 65) stated in 2010 that Dutch policymakers were wrong to suggest that they already practised niche diplomacy. One year later this statement is doubtful, especially for water affairs. The Dutch water sector has a long tradition of international activeness in delta technology, water governance, and water and sanitation. The Ministry of Economic Affairs, Agriculture and Innovation has named nine “top sectors”, of which water is one. The Minister for Development Cooperation named water as one of the four focus areas. The Ministry for I&M, EL&I, and the DGIS are engaged in niche development with the help of the Netherlands Water Partnership. The case made here is that water diplomacy or water conflict prevention, which has a strong political dimension, is a distinct opportunity for the MFA within this broader niche. *The MFA can take on the role of a neutral broker, a central hub, an enabler, and a norm entrepreneur in water diplomacy.*

### **1. The MFA as a Neutral Broker Through IOs**

The Minister for Development Cooperation recently argued that the Netherlands could function as mediator in national and transboundary water conflicts due to its technical expertise of water governance and its neutrality (Knapen 2011a). Regarding national water conflicts, this is certainly the case since Dutch water governance experts and hydrologists are advising states such as China, Syria, Egypt, Bangladesh, and many others. The qualitative research gathered through interviews with and questionnaires from water experts and policy advisors indicates a more complex answer regarding transboundary water conflict mediation. Water-hegemony, such as India, China and Turkey, are often not keen on third-party involvement. The Netherlands is generally perceived as neutral, but riparian states still favour UN parties or the World Bank as a facilitator or a mediator. The MFA is, therefore, in general advised to focus on conflict prevention, although two options remain for the MFA if it wants to play a part in water conflict resolution.

- a. **Neutral broker upon request:** A mediating role can grow over time due to technical advice or capacity-building activities in the river or aquifer basin. If such an appeal comes, the political situation in the basin should be examined first. The goodwill to facilitate negotiations can backfire if one of the parties does not want to alter the status

quo and blames the mediator for the failure of the negotiations. If the political situation seems fruitful then the MFA has the capacity to function as a mediator if it takes action to compose a water mediation team (see **Annex 5**). The interviews indicate that effective mediation requires various qualities and basin-specific technical, economic and political knowledge, diplomatic skills, a deep understanding of hydrology, governance and transboundary water law; skills which are not easily captured in a single person.

b. **Action through other organisations:** The MFA is encouraged to become involved in water conflict resolution via the following organisations.

- i. *CFSP/European External Action Service:* The EU's Common Foreign and Security Policy and the EEAS Peacebuilding, Conflict Prevention and Mediation Unit are instruments that the MFA can use to enlarge its influence and to streamline the scattered action of many European states in transboundary water affairs. While acting via the CFSP/EEAS, the Netherlands can still contribute technical, legal and regional experts to mediation teams. Further enquiry is necessary to see which member-states would be willing to work through the CFSP or further strengthen the EEAS.
- ii. *UNECE:* I&M already cooperates with Germany in the UNECE context. If the MFA wants to be active in conflict facilitation in Central Asia, it would do well to coordinate with I&M and Germany to have a larger impact.
- iii. *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. The MFA should lobby for the inclusion of both of them in transboundary water treaties articles on arbitration and adjudication. Since transboundary water affairs are often very sensitive, states tend to prefer the control they have over the choice of judges, confidentiality and level of involvement with the PCA. The Netherlands could therefore especially aid and promote the PCA to become the main forum for transboundary water conflict arbitration. As Surya Subedi (2003, 35) suggested earlier, the PCA could even be "developed into an institution capable of offering mediation and other diplomatic means of resolving disputes". The Netherlands could:
  1. finance an international expert workshop to further examine the role of the PCA in water conflict arbitration and mediation;
  2. advise riparian states that are formulating a river basin treaty to include the PCA in dispute settlement provisions, similar to the Indus Rivers Treaty and the Rhine Convention; and
  3. promote the already existing Financial Assistance Fund for states that in the future want to make use of the PCA regarding a water conflict, yet which lack the financial capacity for the legal costs.

The fact that the Secretary-General of the PCA is traditionally Dutch emphasises the involvement of the Netherlands.

## 2. The MFA as a Central Hub and an Enabler

To iterate the general point made by WRR (2010b, 30) for the specific case of water diplomacy: in an international society where networks of states, non-state actors and IOs are increasingly important, the Netherlands should aim for a dominant position in the water diplomacy network. The MFA can function as a *central hub* and an *enabler* in the water diplomacy web, both domestically and internationally.



- a. **Central hub:** A central hub brings together domestic and international actors that can together add more than the sum of their parts.
  - i. *Headquarters and key positions:* In line with niche diplomacy, the Netherlands would do well to promote the country for influential water conflict prevention related headquarters, and its citizens for prominent institutional positions. Regarding the headquarters, the Netherlands should also value the ICJ, PCA, UNESCO-IHE and IGRAC.
  - ii. *International and domestic coordination:* As discussed above, the international activities on conflict resolution and prevention are dispersed. The Netherlands can play a role through the CFSP/EEAS to coordinate with other EU member-states and maximise impact. Domestically, there is a solid foundation for future water diplomacy activities, but the sector, depicted in **Annex 7**, is also still very much scattered. The MFA could (co-)finance parties such as the Water Governance Centre to organise symposia, bringing water and legal experts and diplomats together. A *water diplomacy forum* that assembles domestic and international experts to coordinate action would also strengthen the Netherlands as a water diplomacy hub. A first expert meeting could, for instance, go into the role of the CFSP, EEAS or the PCA in water diplomacy. The overview of Dutch actors and activities in this report is a first start for coordinated action and consortium building. A fruitful example is capacity-building training, where a combination of knowledge regarding international water law, diplomacy and negotiation, hydrology and water governance can create a valuable package for states seeking solutions to water conflicts.
  - iii. *Inter-ministerial harmonisation:* Regarding water diplomacy, the MFA needs to coordinate with the ministries of I&M, EL&I and OCW. For instance, the MFA would have to synchronise a possible lobby for the UN Watercourses Convention with I&M, which is represented in the EU Council for Water Directors.
- b. **Enabling state:** An enabling state facilitates non-state actors and IOs to engage in activities that are beneficial to them and the state (WRR 2010b, 120). The MFA is advised to stand out in water conflict prevention by facilitating institutions specialised in capacity-building, training, and technical advice.
  - i. *Capacity-building and training:* A key sector for the Netherlands within water conflict prevention is the transferral of knowledge through education and training. In November 2010 and February 2011 UNESCO-IHE, for example, delivered a *Transboundary Water Conflict Management and International Water Governance* training for professionals and academics from the Mekong River Commission member-states. The MFA is recommended to deliberate with UNESCO-IHE and UNESCO-PCCP about similar track II diplomacy activities in other river basins. In the interviews with policy advisors and water experts and in the questionnaires from the embassies, this suggestion was widely acknowledged. The Euphrates, Ganges, Indus, Jordan (and regional aquifers), Mekong, Nile, Senegal and Zambezi River Basins were put forward. A programme that focuses on international water law (EUR, THIGJ, UNESCO-IHE, UU, UvA, VU), water governance (TU Delft, UNESCO-IHE, UT, WGC, WUR) and water negotiations (Clingendael, UNESCO-IHE) combines the available knowledge in the Netherlands (see **Annex 7**). Capacity-building trainings can thereby also promote consortium building in the Netherlands.

- ii. *Technical advice*: The Netherlands is often queried for advice on integrated (ground)water resources management and many other technical water issues. The MFA can use the Water Governance Centre, which has the ambition to function as an intermediary between international demand and Dutch supply of water governance expertise. National good water governance can partially lessen international water conflicts. Since much Dutch knowledge on (ground)water governance stems from the private sector, enabling technical advice at times has an economic spin-off. It has to be noted that there can be a tension between economic and water diplomacy. Still, private sector technical advice that aids in conflict prevention can be a win-win situation. The MFA, EL&I and I&M would do well to streamline their efforts in this regard. In case of technical water advice, the role of the MFA is twofold.
  1. The embassies are vital in scanning, linking and communicating the supply and demand for knowledge and in particular after water crises. After a disaster, the embassy can quickly offer knowledge and enable the Dutch water sector to help. The World Bank or regional development banks call for technical experts too. The MFA would do well to create a crisis assistance fund and a pool of experts in, for instance, drinking water and sanitation, integrated (ground)water resources management and remote sensing. Apart from crisis relief, these experts can also update the Dutch water sector early on about tenders and demand.
  2. The MFA is essential for early announcements of tenders and opportunities with regard to transboundary water governance. It has a broker function in forums such as the World Bank, the regional development banks, and international river basin organisations. In so doing, the MFA enables firms - like Acacia Water, Deltares, DHV, MetaMeta, FutureWater and WaterWatch - and knowledge institutions - such as UNESCO-IHE, UT, UU, VU and WUR/Alterra - to participate in transboundary conflict prevention via research, models, and a scientific basis for negotiations.

### 3. The MFA as a Norm Entrepreneur

Christine Ingebritsen (2002) argues that Scandinavian states portray themselves as 'norm entrepreneurs' in the fields of climate change, development aid, and conflict resolution. The Netherlands has the potential of norm entrepreneurship in transboundary water law.

- a. **UN Watercourses Convention**: The MFA is recommended to set up a final campaign for the 1997 Convention on the Non-Navigational Uses of International Watercourses. Currently, eleven states are still needed to reach the 35 necessary ratifications. The Netherlands has been active in the past as Chairman of the Drafting Committee during the 1997 drafting negotiations and via an I&M presentation in 2009 during the biannual Council for EU Water Directors. Due to the Netherlands, there is an article on the optional declaration to add arbitration or ICJ adjudication as ultimate dispute settlement mechanisms (UN 1997, Art. 33, para. 10). The MFA can be a norm entrepreneur if it prepares a final lobby in cooperation with I&M and the WWF for the Convention to go into force before 2013.
- b. **Groundwater governance and law**: The MFA is recommended to encourage the development of groundwater law and governance, which are still in their infancy.
  - i. On December 11<sup>th</sup> of 2008 the UN General Assembly (UNGA) adopted Resolution A/RES/63/124 on the law of transboundary aquifers (UNGA 2008). The MFA is advised to advocate the importance of these *draft articles*

*on the law of transboundary aquifers*, but not necessarily to lobby for a new convention. The UN Watercourses Convention teaches us that renegotiation and ratification can take a very long time. Besides, the draft articles will also be used as mere guidelines, such as in the Guarani Aquifer Basin.

- ii. Regarding groundwater governance, UNESCO-IHP, the GEF, the FAO, the IAH and the World Bank have started the project *Groundwater Governance: A Global Framework for Country Action*. It is an inventory of best practices for groundwater governance that ultimately has to result in policy advice. Regional Consultation Workshops with government and groundwater experts form the main input for this inventory. The MFA can suggest, together with IGRAC, to organise the European Consultation Workshop in Delft at IGRAC.
- c. **UNECE Water Convention:** A way to promote codification of transboundary aquifer law in other regions is through the amendments to article 25 and 26 of the broader UNECE Water Convention. The Netherlands and Serbia have ratified the amendments and Germany, Switzerland and the Czech Republic are currently doing so. The MFA, in close collaboration with I&M, should consider a lobby with the abovementioned states for the 23 necessary ratifications for the amendment to go into force. Once that goal is achieved, the lobby should focus on non-European states to adopt the UNECE Water Convention.
- d. **International policy context:** The MFA can address (ground)water governance and law in (side-events to) scheduled high-level water meetings as well. To name a few: the 2012 World Water Forum (Marseille); the 2012 Rio+20 Conference on Sustainable Development; the 2013 UN International Year of Water Cooperation; and in the follow-up of the 2015 Millennium Development Goals.

In sum, there is definitely a potential for niche diplomacy, in particular in conflict prevention and arbitration. However, it requires a coordinated and coherent effort to involve other states, IOs and non-state actors. If the Netherlands wants to fulfil a role as a neutral broker, a central hub, an enabler, and a norm entrepreneur, the challenge for the MFA is to conduct the orchestra.

## Annex 1: List of Abbreviations

<b>ADB</b>	Asian Development Bank
<b>AfDB</b>	African Development Bank
<b>CEO</b>	Chief Executive Officer
<b>CFSP</b>	Common Foreign and Security Policy
<b>DfID</b>	Department for International Development
<b>DGIS</b>	Directorate-General for International Cooperation
<b>DLG</b>	Service for Land and Water Management
<b>ECOWAS</b>	Economic Community Of West African States
<b>EEAS</b>	European External Action Service
<b>EL&amp;I</b>	Ministry of Economic Affairs, Agriculture and Innovation
<b>EU</b>	European Union
<b>EUR</b>	Erasmus University Rotterdam
<b>EXACT</b>	Executive Action Committee
<b>GDP</b>	Gross Domestic Product
<b>GEF</b>	Global Environment Facility
<b>GMS</b>	Greater Mekong Subregion
<b>GW-MATE</b>	Groundwater Management Advisory Team (World Bank)
<b>FAO</b>	Food and Agriculture Organisation of the United Nations
<b>I&amp;M</b>	Ministry of Infrastructure and the Environment
<b>IAEA</b>	International Atomic Energy Agency
<b>IAH</b>	International Association of Hydrogeologists
<b>ICJ</b>	International Court of Justice
<b>ICPR</b>	International Commission for the Protection of the Rhine
<b>IGRAC</b>	International Groundwater Assessment Centre
<b>IMC</b>	International Meuse Commission
<b>IO</b>	International Organisation
<b>ISC</b>	International Scheldt Commission
<b>IUCN</b>	International Union for the Conservation of Nature
<b>HWRP</b>	Hydrology and Water Resources Programme (WMO)
<b>LGBT</b>	Lesbian, Gay, Bisexual & Transgender
<b>MEDRC</b>	Middle East Desalination Research Centre
<b>MFA</b>	Ministry of Foreign Affairs
<b>MGA</b>	Ministry of General Affairs
<b>MinDef</b>	Ministry of Defence
<b>MRC</b>	Mekong River Commission
<b>-DCG</b>	MRC Donor Consultative Group
<b>NATO</b>	North Atlantic Treaty Organisation
<b>NBI</b>	Nile Basin Initiative
<b>NGO</b>	Non-governmental Organisation
<b>NSAS</b>	Nubian Sandstone Aquifer System
<b>NWP</b>	Netherlands Water Partnership
<b>OCW</b>	Ministry of Education, Culture and Science
<b>OECD</b>	Organisation for Economic Co-operation and Development
<b>PLO</b>	Palestine Liberation Organisation
<b>PCA</b>	Permanent Court of Arbitration
<b>RBO</b>	River Basin Organisation
<b>SADC</b>	South African Development Community
<b>SIDA</b>	Swedish International Development Cooperation Agency
<b>SIWI</b>	Stockholm International Water Institute
<b>THIGJ</b>	The Hague Institute for Global Justice
<b>TNO</b>	Netherlands Organisation for Applied Scientific Research

<b>TU Delft</b>	Delft University of Technology
<b>UN</b>	United Nations
<b>UNDESA</b>	United Nations Department of Economic and Social Affairs
<b>UNDP</b>	United Nations Development Programme
<b>UNECA</b>	United Nations Economic Commission for Africa
<b>UNECE</b>	United Nations Economic Commission for Europe
<b>UNEP</b>	United Nations Environment Programme
<b>UNESCAP</b>	United Nations Economic and Social Commission for Asia and the Pacific
<b>UNESCO</b>	United Nations Educational, Scientific and Cultural Organisation
<b>-IHE</b>	IHE - UNESCO Institute for Water Education
<b>-IHP</b>	International Hydrological Programme
<b>-ISARM</b>	Internationally Shared Aquifer Resources Management
<b>-PCCP</b>	From Potential Conflict to Cooperation Potential
<b>UNESCWA</b>	United Nations Economic and Social Commission for Western Asia
<b>UNGA</b>	United Nations General Assembly
<b>UNSG</b>	United Nations Secretary-General
<b>UNSGAB</b>	UNSG Advisory Board on Water and Sanitation
<b>USAID</b>	United States Agency for International Development
<b>UU</b>	Utrecht University
<b>UvA</b>	University of Amsterdam
<b>UT/ITC</b>	University of Twente/Faculty of Geo-Information Sci. and Earth Observation
<b>VU</b>	VU University Amsterdam
<b>WGC</b>	Water Governance Centre
<b>WHO</b>	World Health Organisation
<b>WMO</b>	World Meteorological Organisation
<b>WRR</b>	Scientific Council for Government Policy
<b>WTO</b>	World Trade Organisation
<b>WUR</b>	Wageningen University & Research centre
<b>WWF</b>	World Wildlife Fund

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### Annex 3: List of Interviewed Persons

#	Name	Organisation
1	Anten, Louise	MFA, DSO
2	de Bree, Nicole	I&M
3	de Schutter, Joop	UNESCO-IHE
4	de Vries, Arjen	Acacia Water
5	Dekker, Bob	I&M
6	Diks, Marjolein	MFA
7	Douven, Wim	UNESCO-IHE
8	Ebskamp, Bas	ex-Arab Water Academy
9	Eckstein, Gabriel	Texas Wesleyan University
10	Gupta, Joyeeta	VU University Amsterdam
11	Kraak, Eelke	Oxford University
12	Kruizinga, Irene	Kruizinga Consult
13	Lammers, Johan	Former legal adviser MFA
14	Lamoree, Ben	NWP
15	Leentvaar, Jan	UNESCO-IHE
16	Loures, Flavia	WWF
17	Martens, Roel	EL&I
18	Meerts, Paul	Clingendael
19	Mostert, Erik	Delft University of Technology
20	Nooteboom, Sibout	Erasmus University Rotterdam
21	Salamé, Léna	UNESCO
22	Schofield, Garth	Permanent Court of Arbitration
23	Smidt, Ebel	Delft University of Technology
24	Soons, Alfred	Utrecht University
25	Steeghs, Renilde	MFA
26	Stephens, Raya	UNESCO
27	Sterk, Henk	EL&I
28	Susskind, Lawrence	MIT
29	ter Haar, Bas	MFA/Clingendael
30	Ton, Ron	Clingendael
31	Trondalen, Jon Martin	Compass Foundation
32	van den Bosch, Maarten	MFA
33	van der Groep, Martijn	I&M
34	van der Molen, Irna	University of Twente
35	van der Valk, Michael	National Committee IHP-HWRP
36	van der Zwan, Henk	MFA
37	van Geuns, Lucia	Clingendael
38	van Meel, Paul	DHV
39	van Oosteren, Stein	MFA
40	van Someren, Ester	MFA
41	van Steenbergen, Frank	MetaMeta
42	Veenis, Niels	MFA
43	Vis, Rinus	Deltares
44	Vlaanderen, Niels	I&M
45	Warner, Jeroen	Wageningen University
46	Wester, Flip	Wageningen University
47	Westerhuis, Taco	EL&I
48	Zeitoun, Mark	University of East Anglia

## Annex 4: Questionnaire for the Embassies

‘Water Diplomacy as a Niche for the Netherlands’

*Clingendael Institute, MFA/Water Department (DME/MW), Water Governance Centre*

*Please answer the four questions below related to water diplomacy and the Euphrates-Tigris, Ganges-Brahmaputra, Indus, Jordan, Mekong, Nile or Nubian River/Aquifer Basin.*

1. How is the Dutch government or water sector presently involved in the transboundary water management of this basin – with an emphasis on present projects, financial aid and/or strategic actors?

#	Name(s)	Active Organisation	Financing Organisation	Activity
1.				
2.				
3.				

2. Which other states, networks or organisations are active in this river basin?

#	Name(s)	Actor(s)	Activity
1.			
2.			
3.			

3. Is there a role for the Netherlands in water conflict mediation or prevention in this river basin from the perspective of your embassy? If so, what kind of role?

#	Role	Qualified	Explanation
0.	Is the Netherlands qualified to play a role in water conflict resolution/prevention in this river basin?	YES / NO	
1.	Leadership in international water law: lobby for the 1997 UN Watercourses Convention to go into force	YES / NO	
2.	Provision of water diplomacy workshops/courses for national representatives of the riparian states	YES / NO	
3.	Offering water technical and legal expertise to the riparian states	YES / NO	
4.	Mediation between riparian states	YES / NO	
5.	Other:		
6.	Other:		

4. Do you have other advice for the Water Department (DME/MW) of the MFA regarding water diplomacy?

#	Advice
1.	
2.	
3.	

## Annex 5: The Role and Required Qualities of Water Diplomats

Third parties can play a large role in water conflicts by means of mediation. Key to water conflicts is that states need to query for the services of a mediator. There are three exceptions to this rule. International organisations such as the World Bank can manoeuvre themselves in such a position through their financial leverage and continuous involvement, as in the Nile Basin Initiative. Another option is that IOs such as UNESCO, which provides basin-wide training programmes including one with representatives from the Mekong riparian states, can later be asked for advice or mediation services. Lastly, RBOs can also have a technical committee with water experts that can mediate or facilitate if the parties do not raise objections. International Organisations, technical experts and, to a lesser degree, state representatives thus often become mediators due to existing involvement in the river basin.

Water conflict mediation frequently occurs and it often takes years before results are achieved. In **Section 1.3**, general variables that influence mediation have been mentioned, but the mediators or “water diplomats” themselves can also influence the outcome. In the existing literature on water conflict mediation, various factors are said to play a role in its effectiveness. Factors that make a successful mediator are:

1. neutrality toward both or all parties;
2. legitimacy for both or all parties;
3. status from a proven track record if it is an individual;
4. interpersonal proficiency to understand interests and deal with emotions;
5. technical expertise and the capacity to refer to scientific data;
6. (financial) leverage and power if it is a representative from an IO or state;
7. ability to build confidence and get concessions;
8. capacity to guide negotiations to a compromise; and
9. occasional informality;
10. shared culture and values (Bercovitch 1996, 27; Nishat and Faisal 2000, 305; Salman 2003, 177-179; Susskind and Babbitt 1992, 48; Trondalen 2008, 19-21; Zawahri and Gerlak 2009, 213).

The interviews with international water experts, policy advisors, and diplomats offered a similar picture (Annex 3). Neutrality and legitimacy are essential preconditions. Financial or political power leverage can also work if the riparian states lack these themselves. Next there are various qualities that a water diplomat must possess. The main qualities that a water mediator or mediating team needs to have, that many professional mediators lack, is technical, legal and regional river or aquifer basin know-how. The possibility of a water mediation team is mentioned, since the combination of diplomatic, legal, regional, hydrological knowledge and skills is hard to find in a single person. Naturally there are exceptions. The interviewees also indicated that a (multinational) team with experts is considered more neutral than one of government representatives. The interviewees named the qualities below as vital to water mediation:

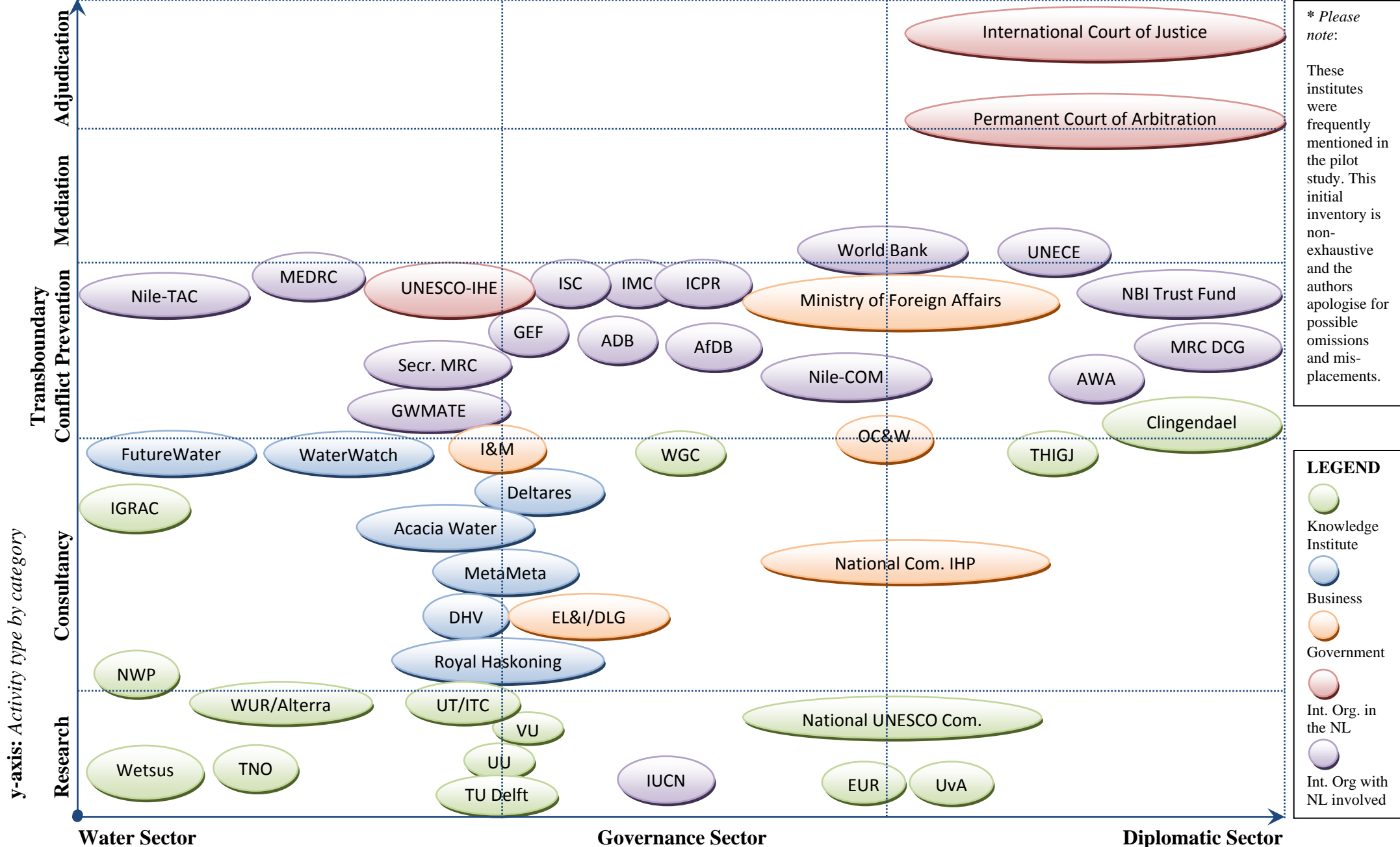
1. neutrality;
2. legitimacy;
3. financial or other power leverage;
4. technical water knowledge;
5. knowledge of international water law and treaties;
6. regional technical, economic and political expertise of the basin;
7. diplomatic capacity to guide a dialogue;
8. empathy, interpersonal and trust-building skills;
9. charisma and leadership ability;
10. significant clout or status.

## Annex 6: Status of the UN Watercourses Convention

<b>Participant</b>	<b>Signature</b>	<b>Ratification, acceptance(A), Accession(a), approval(AA)</b>
<b>Burkina Faso</b>		22 Mar 2011 a
<b>Côte d'Ivoire</b>	25 Sep 1998	
<b>Finland</b>	31 Oct 1997	23 Jan 1998 A
<b>France</b>		24 Feb 2011 a
<b>Germany</b>	13 Aug 1998	15 Jan 2007
<b>Greece</b>		2 Dec 2010 a
<b>Guinea-Bissau</b>		19 May 2010 a
<b>Hungary</b>	20 Jul 1999	26 Jan 2000 AA
<b>Iraq</b>		9 Jul 2001 a
<b>Jordan</b>	17 Apr 1998	22 Jun 1999
<b>Lebanon</b>		25 May 1999 a
<b>Libyan Arab Jamahiriya</b>		14 Jun 2005 a
<b>Luxembourg</b>	14 Oct 1997	
<b>Morocco</b>		13 Apr 2011 a
<b>Namibia</b>	19 May 2000	29 Aug 2001
<b>Netherlands</b>	9 Mar 2000	9 Jan 2001 A
<b>Nigeria</b>		27 Sep 2010
<b>Norway</b>	30 Sep 1998	30 Sep 1998
<b>Paraguay</b>	25 Aug 1998	
<b>Portugal</b>	11 Nov 1997	22 Jun 2005
<b>Qatar</b>		28 Feb 2002 a
<b>South Africa</b>	13 Aug 1997	26 Oct 1998
<b>Spain</b>		24 Sep 2009 a
<b>Sweden</b>		15 Jun 2000 a
<b>Syrian Arab Republic</b>	11 Aug 1997	2 Apr 1998
<b>Tunisia</b>	19 May 2000	22 Apr 2009
<b>Uzbekistan</b>		4 Sep 2007 a
<b>Venezuela (Bolivarian Republic of)</b>	22 Sep 1997	
<b>Yemen</b>	17 May 2000	

Source: UN Treaty Collection Chapter XXVII (12), Environment, 10-11-11.

# Annex 7: Dutch Network in Transboundary Water Affairs\*



\* Please note:  
 These institutes were frequently mentioned in the pilot study. This initial inventory is non-exhaustive and the authors apologise for possible omissions and misplacements.

**LEGEND**

- Knowledge Institute
- Business
- Government
- Int. Org. in the NL
- Int. Org. with NL involved

y-axis: Activity type by category

x-axis: Organisation sector by category