Global High-Level Panel on Water and Peace

Discussion Note

Investing in basins of risk

What elements should a putative code of conduct for business operating in basins at risk include?

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The analysis and recommendations in this note represent only the opinion of the authors.

Objective of this paper

This brief provides a short overview on potential elements of a code of conduct for business operating in basins at risk. It aims to support the High-Level Panel (HLP) in deliberating how to prevent and cope with water-related transboundary conflicts, to incentivize multi-sectoral and transboundary water cooperation and to promote best practices in water cooperation. To this end, it begins with a short analysis of the links between the economic and other values of water that business needs to navigate, and how the resulting challenges are magnified in transboundary settings. It then deduces a number of potential elements of a code of conduct to help business to avoid harming the hydrological and political environment in basins at risk, and to contribute to improving these.

Business, water and transboundary basins

Water is a key business risk, taking the top spot in the World Economic Forum's 2015 Global Risk report (WEF 2015). With water scarcity increasing due to population and economic growth and environmental degradation, competition for use of water is increasing, too. This makes sustainable access to water along the entire value chain a direct self-interest for business. There are, moreover, more indirect longer-term interests related to sustainability and reputation.

Transboundary basins add another layer of complexity as water uses and underlying values not only have to be reconciled within a hierarchically structured state, but across several societies. These underlying values are frequently difficult to navigate because they relate not only to the economic, but also to the cultural, environmental and sometimes spiritual value of water. This often results in an 'emotional hierarchy' where water for drinking, for example, would usually be regarded as more legitimate than water for mining (cf. Cramwinckel et al. 2014).

Given different levels (and perceptions) of vulnerability to water scarcity, what appears as legitimate use of water resources in one part of the basin may be seen differently in other parts. Water pricing is not necessarily a helpful guide because water is frequently priced below its 'true cost' for political reasons, and because users may judge competing users by their 'deservingness' – perceptions that will almost necessarily differ.

Elements of a code of conduct

In order to underpin the legitimacy and long-term sustainability of their impacts on water, businesses need to know and visibly respect the underlying values. The first requires comprehensive stakeholder consultations, the second transparent and predictable processes as well as a commitment to preventing significant harm to all underlying values as far as possible. The final report of the World Commission on Dams provides a helpful first operationalization of these requirements because the most significant operational impacts of business in transboundary basins will either directly involve dams or produce effects (water abstraction, pollution or impact on ecosystems) that are comparable to the potential consequences of dams and have thus been conceptually included (World Commission on Dams 2000). The resulting guidelines for action can be boiled down to:

- a balanced and comprehensive, basin-wide assessment of all options and their consequences;
- the opportunity for informed participation by all stakeholders;
- the avoidance of significant ecological and social harm, and entitlement to adequate livelihood benefits.

In many ways, these recommendations mirror key principles of international water law, i.e.

- the principle of equitable and reasonable utilization and participation (art. 5 & 6 UNWC);
- the obligation not to cause significant harm (art. 7 UNWC) and to cooperate (art. 8-10 UNWC);
- the prior notification of planned measures and, if necessary, negotiations (art. 11-19 UNWC);

- the protection of ecosystems and management of watercourses (art. 20-26 UNWC).

Adopted by the UN's General Assembly in 1997, the United Nations Water Convention (UNWC) entered into force in 2014, but is only directly binding for the 36 states that ratified it. Although neither the recommendations of the World Commission on Dams nor the UNWC are universally binding, the principles embodied therein constitute the essence of long-running and extensive efforts to reconcile the divergent interests in water use and to codify customary law. Adhering to the spirit of these principles will hence help business balance the underlying values both procedurally and substantively. They can be divided into commitments to precautionary measures in terms of preliminary assessments and commitments to equitable and sustainable outcomes.

Commit to preliminary assessments

The above recommendations and principles are abstract, but have been operationalized through various types of assessments. Two types of preliminary assessments stand out as particularly relevant. Due to their interlinkages, they should ideally be conceived and carried out in tandem. The first are strategic environmental assessments that include assessments of the cumulative effects of basin-wide planning and future environmental vulnerabilities, especially the predicted effects of climate change. Such assessments need to integrate the effects of major projects across the relevant sectors (water, energy, transport, agriculture, regional development) and generally include stakeholder information and consultation processes (see e.g. UNECE 2015).

The second type of assessment relates to social impacts, especially in terms of peace and conflict assessments. The likely social and political consequences of investment and operations in transboundary basins need to be assessed *ex ante*, in particular with a view to consequences occurring beyond a host country's borders to prevent unintended and potentially volatile feedback mechanisms. Large-scale upstream water consumption (e.g. through 'land grabbing' which often invokes 'water grabbing') or pollution can significantly impact downstream livelihoods, triggering fragility and/or inter-state backlash. The conflict potential of environmental and/or social changes resulting from major abstraction, pollution, displacement, etc. needs to be analysed, weighed against the benefits of such actions, and mitigated wherever possible.

Carrying out such assessments is not exclusively incumbent on businesses of course, but business can strengthen governance by supporting such assessments, especially in fragile and transboundary contexts. Investors could e.g. commit, through a code of conduct, to advocate for systematic, independent and inclusive assessments with host governments, to make financing available (in ways that do not undermine the independence of the assessments), and to accept resulting recommendations (subject to certain safeguards).

Commit to equitable and sustainable outcomes

Thorough assessments are only a necessary, but not a sufficient condition for equitable and sustainable outcomes. To ensure the latter, business can also commit to creating 'shared value', e.g. by

- supporting governance in pursuit of the right to access to water (especially for utilities),
- supporting the protection of water resources, and
- supporting adequate benefits for the local population, including but going beyond compensation for any losses that result from investment or operations.

The challenges ahead

If the High Level Panel envisages facilitating the emergence of a code of conduct for businesses operating in basins at risk, it may want to discuss the following questions:

Which sectors should the code of conduct target as a matter of priority?

How can companies be convinced to participate in setting up the code of conduct, and to subscribe to its recommendations? Should the emphasis lie on achieving the broadest possible participation (and focus on curbing worst practices) or should it focus on establishing best practices? Or, realistically, how should it balance these different objectives?

Given the time horizon of water infrastructure, how can companies be convinced to adopt a similarly long-term view? E.g., if a hydro-power dam is slated to be re-financed within 25 years, what incentives could be established at the global level to make the investor take into account a dam's hydrological consequences for the next 50 or 100 years?

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