

## The Global Water Partnership: Between Institutional Flexibility and Legal Legitimacy

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### Abstract

The Global Water Partnership (GWP) represents a new kind of institution that raises various interesting questions in terms of international institutional law. Established in 1996 as a “virtual organization”, it progressively evolved to become in 2002 a twofold institution structured around, on the one hand, a network without legal personality and, on the other hand, an international organization with full legal personality under international law. This article aims to analyze this unique structure and its consequences on membership and organic issues. The reasons underpinning this evolution will also be studied. If institutional flexibility prevailed in the early life of the institution, practical problems and concerns about legal legitimacy have led to a more formal structure in its later life. Principles such as those developed by the Global Administrative Law (GAL) project, namely legitimacy, transparency and accountability, have been also widely used to shape and organize this structure.

### Keywords

international organizations; international institutional law; water law; global administrative law

Established jointly by the Swedish International Development Agency (SIDA), the United Nations Development Program (UNDP) and the World Bank in 1996, the Global Water Partnership (GWP) is an institution

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aiming to “support the sustainable development and management of water resources at all levels”.<sup>1</sup> Its mission is to foster integrated water resources management (IWRM), which has been defined by GWP as a “process which promotes the coordinated development and management of water, land and related resources in order to maximize economic and social welfare without compromising the sustainability of ecosystems and the environment”.<sup>2</sup>

Initially, it has been structured as a network open to all organizations involved in water resources management, which includes developed and developing country government institutions, agencies of the United Nations, bi- and multi-lateral development banks, professional associations, research institutions, non-governmental organizations and the private sector. GWP has to date over 2,100 partner organizations in 153 countries, 74 country partnerships and 13 regional subdivisions.<sup>3</sup>

Since its creation in 1996, the legal status of GWP has greatly evolved. If the institutional flexibility induced by the choice of a network prevailed, practical problems and also concerns about political and legal legitimacy have led to the creation of an international organization in 2002 which co-exists with the Network.

Being as it is both a network and an international organization, GWP is undoubtedly a unique institution that raises many interesting questions in terms of international institutional law. Since its inception, cooperation between public and private entities was a necessity for GWP and its structure progressively evolves to this end. On two occasions, its functioning has been assessed through external independent evaluations.<sup>4</sup> The different recommendations made on these occasions, among them the need to

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<sup>1</sup>) <[www.gwp.org/en/About-GWP/](http://www.gwp.org/en/About-GWP/)>, visited on 12 January 2012.

<sup>2</sup>) Global Water Partnership Technical Advisory Committee, “Integrated Water Resources Management”, 4 *TAC Background Paper* (2000) p. 22 (available at: <[www.gwptoolbox.org/images/stories/gwplibrary/background/tac\\_4\\_english.pdf](http://www.gwptoolbox.org/images/stories/gwplibrary/background/tac_4_english.pdf)>, visited on 12 January 2012).

<sup>3</sup>) World Bank Independent Evaluation Group, “The Global Water Partnership”, 4 *Global Program Review* (2010) ix. Full text available at: <[siteresources.worldbank.org/EXTGLO-REGPARPROG/Resources/GWP.pdf](http://siteresources.worldbank.org/EXTGLO-REGPARPROG/Resources/GWP.pdf)>, visited on 12 January 2012.

<sup>4</sup>) The first and second external independent evaluation of GWP took place in 2003 and 2008 respectively. See the Full Text of the External Review of GWP 2003 at <[www.gwp.org/Global/The%20Challenge/Resource%20material/External%20Review%20of%20GWP%20Final%20Report%20June%202003%5B1%5D.pdf](http://www.gwp.org/Global/The%20Challenge/Resource%20material/External%20Review%20of%20GWP%20Final%20Report%20June%202003%5B1%5D.pdf)> and the Joint Donor External Review 2008 at <[www.gwp.org/Global/The%20Challenge/Resource%20material/GWP\\_final\\_evaluation\\_report\\_Marcho8.pdf](http://www.gwp.org/Global/The%20Challenge/Resource%20material/GWP_final_evaluation_report_Marcho8.pdf)>, visited on 12 January 2012.

increase legitimacy, accountability and transparency, have been progressively integrated by GWP. This constant evolution and assessment process has also made GWP a complex organization in terms of organic structure, with different influences coming from both the public and private sectors. Principles such as those developed by the Global Administrative Law (GAL) project, namely legitimacy, transparency and accountability, have been widely used to shape and organize this structure.

The structure of this article is as follows. First, the legal status of GWP will be studied (1). Secondly, the question of the membership to this organization, which encompasses a wide range of different actors, will be addressed (2). In the third section, I will try to clarify the complex organic structure of GWP (3). Lastly, the place occupied and the role played by the GAL principles in the organization will be analyzed (4).

## **1. The Evolving Legal Status of GWP**

The legal status of GWP has evolved over time. After being initially created as a “virtual organization” with no legal status (1.1), it split in 2002 into two entities, the Network and the Organization (1.2).

### *1.1. GWP as a “Virtual Organization”<sup>5</sup> (1996–2002)*

At the meeting held in Stockholm in December 1995 during which the concept of GWP was formed, a variety of reasons led the participants to opt for an informal model rather than a conventional international organization.<sup>6</sup> At that time, water was already a matter that many international agencies were dealing with.<sup>7</sup> To create another organization in that field would probably

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<sup>5</sup> J. Holmberg, “Knowledge-intensive networks for development: the case of the Global Water Partnership”, 17 *Human Systems Management* (1998) p. 39. *Ibid.*, p. 43; M. Catley-Carson, “Foundations of Partnerships: A Practitioner’s Perspective”, in A. Liebenthal, O. N. Feinstein G. K. Ingram, *Evaluation Development: the Partnership Dimension* (World Bank Series on Evaluation and Development, Vol. 6, 2004) p. 26. The concept of “virtual organization” has been defined as “a goal-oriented enterprise composed of multiple members who reside in geographically dispersed locations and use technology media to communicate and coordinate the fulfillment of a defined objective or task”. See for example M. Workman, “Virtual team culture and the amplification of team boundary permeability on performance”, 16 *Human Resource Development Quarterly* (2005) pp. 435–458.

<sup>6</sup> Holmberg, *supra* note 5, p. 43.

<sup>7</sup> To cite a few examples: the FAO, UNDP, UNEP, UNESCO, WHO, WMO, and IUCN.

have limited the specificity of GWP and potentially emphasized the overlap of competences among them. Furthermore, no substantive financial support had been available to launch such an organization.<sup>8</sup>

Thus, the decision was made to adopt a structure modeled on the Consultative Group for International Agriculture Research (CGIAR).<sup>9</sup> This model consists of an informal and flexible network, with membership based on a voluntary basis. Decision-making is by consensus, in order to avoid “the political posturing that would quickly result from a formal voting system”.<sup>10</sup>

Various qualifications have been used to refer to GWP, one being that of a “non-governmental organization”.<sup>11</sup> Some concern about this qualification must, however, be highlighted. Although a Secretariat for the partnership had been established in Stockholm, there was, strictly speaking, no “organizational structure” or “established headquarters”.<sup>12</sup> Furthermore, no agreement had been signed with, for example, Sweden, to give a domestic legal status to GWP.<sup>13</sup>

For the first six years of its existence, GWP Secretariat had been hosted by SIDA. GWP was using SIDA’s personnel administration, accounting procedures and administrative facilities.<sup>14</sup> Agreements were concluded on behalf of GWP by SIDA.<sup>15</sup> This arrangement worked very well during the early years of GWP and it benefited much from this relationship, having as it did, a lean, unbureaucratic and cost-effective structure.

Although this model has its advantages in terms of flexibility, a number of practical problems became apparent and calls were made to reform this

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<sup>8)</sup> Holmberg, *supra* note 5, p. 43.

<sup>9)</sup> *Ibid.*

<sup>10)</sup> *Ibid.*

<sup>11)</sup> For such a qualification *see* for example A. Kibaroglu, *Building a Regime for the Waters of the Euphrates-Tigris River Basin* (Kluwer Law International, 2002) p. 94 and 100.

<sup>12)</sup> On this criterion *see* for example A. Reinisch, “The changing international legal framework for dealing with non-state actors”, *in* Ph. Alston (ed.), *Non-State Actors and Human Rights* (Oxford University Press, 2005) p. 40.

<sup>13)</sup> On this criterion *see* D. Thürer, “The emergence of non-governmental organizations and transnational enterprises in international law and the changing role of States”, *in* R. Hofmann (ed.), *Non-State Actors as New Subjects of International Law* (Duncker Humblot, 1999) p. 43.

<sup>14)</sup> Holmberg, *supra* note 5, p. 44.

<sup>15)</sup> *Ibid.*

entity. Reasons leading to a reform of the structure of GWP were mainly linked to its status as an organization hosted by SIDA. It became increasingly apparent that the two organizations were fundamentally different from one another. SIDA was structurally designed to implement Swedish bilateral aid programs. The line of responsibility was clear between the electorate, the Parliament, the Government and the implementing authority. The administration of GWP fits easily in this system as it represented international partners and worked with several donors. One of the practical difficulties concerned the limits of the accounting and IT systems as they were restricting certain donors in their funding of GWP. For example, it was not possible to transfer funds by virtue of a bilateral relationship. Furthermore, another difficult aspect was the dual relationship established between GWP and SIDA in which, on the one hand, SIDA was a donor to GWP and, on the other hand, it was legally responsible as a host. Challenges to the arrangement were also apparent in the area of employment. The staff at the Secretariat were initially employed by SIDA on Swedish Governmental employment conditions, which in particular made recruitment and employment of international staff more difficult (*e.g.* period of contract, benefit levels, taxes, resident and work permits etc.).

A large investigation was undertaken before any transformation was made. In essence, it concluded that the only legal form that would help GWP to overcome these challenges, whilst maintaining its Secretariat in Sweden, was to establish an international organization. A structural realignment was then considered, taking into account recommendations made in the Report on the Management Advisory Review of GWP by Selçuk Ozgediz and Bjorn Axelsson in 1998.<sup>16</sup> This report, for example, advised GWP to separate its governance arm from its operational arm and ensure that the two roles were not mixed.<sup>17</sup>

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<sup>16</sup> S. Rana and L. Kelly, “The Global Water Partnership. Addressing Challenges of Globalization: An Independent Evaluation of the World Bank’s Approach to Global Programs – Case Study”, *The World Bank Operations Evaluation Department* (2004) p. 14, note 13.

<sup>17</sup> *Ibid.*

### 1.2. *GWP as an “Institutional Janus” (2002–present)*

In July 2002, GWP split into two parts: a Global Water Partnership Network and a Global Water Partnership Organization (GWPO).<sup>18</sup> Whereas the Network has no legal personality,<sup>19</sup> GWPO is an intergovernmental organization<sup>20</sup> with “full legal personality under international law”.<sup>21</sup>

It must be noted that GWPO was not established on the basis of a treaty, but on a Memorandum of Understanding (MoU). It appears that GWP’s first intention was to attain such legal status by way of a treaty, but abandoned the idea because of the length of time it would have taken to complete this process.<sup>22</sup>

This MoU was opened for signature on 28 January 2002 and an invitation to become the “original sponsoring partner” was sent by the Swedish Government to various States and international organizations. To date, eight States<sup>23</sup> and two international organizations<sup>24</sup> have signed the MoU. GWPO and its staff enjoy privileges and immunities.<sup>25</sup> An agreement was signed with the host State, Sweden, on 14 March 2002 to this end.

It may be interesting to note that, whereas the objectives of the Network are defined in a very clear and precise manner in the Statutes,<sup>26</sup> those of the

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<sup>18</sup>) The Statutes for the Global Water Partnership Network and the Global Water Partnership Organization (the Statutes), March 2002, article 1 § 1. Full text available at: <[www.gwp.org/Global/About%20GWP/Legal%20documents/GWP,%20GWPO%20Statutes.pdf](http://www.gwp.org/Global/About%20GWP/Legal%20documents/GWP,%20GWPO%20Statutes.pdf)>, visited on 12 January 2012.

<sup>19</sup>) *Ibid.*, article 1 § 2.

<sup>20</sup>) The Memorandum of Understanding on the Establishment of the Global Water Partnership Organization, (MoU) 28 January 2002, article 1 § 1. This was not really a creation but rather a transformation of the GWP Secretariat into an international organization.

<sup>21</sup>) The Statutes, article 1 § 3.

<sup>22</sup>) S. M. A. Salman, “Evolution and Context of International Water Resources Law”, in L. Boisson de Chazournes and S. M. A. Salman (eds.), *Water Resources and International Law* (Martinus Nijhoff, 2005) p. 51, note 16.

<sup>23</sup>) Sweden, Denmark, the Netherlands, Chile, Argentina, Hungary, Pakistan and Jordan.

<sup>24</sup>) The World Bank and the World Meteorological Organization (WMO).

<sup>25</sup>) The Statutes, article 13.

<sup>26</sup>) The Statutes, article 2 § 1: “The objective of the Network is to develop and promote the principles of integrated water resources management and to that end: a) Identify critical needs and stimulate Partners to meet such needs within their available human and financial resources; b) Support action at national, regional, local or river-basin level that will lead to the adoption and implementation of the principles of integrated water resources management; c)

organization are relatively broad: its objective is to “support and work with the Network”.<sup>27</sup> By this it is meant that GWPO is confined to the role of “legal representative” of the Network.<sup>28</sup> With respect to this objective, it concluded for example, the Memoranda of Understanding with the Water Supply and Sanitation Collaboration Council<sup>29</sup> and with the International Network of Basin Organisations.<sup>30</sup> These Memoranda of Understanding are signed by GWPO, although both the Network and the Organization are defined as parties.<sup>31</sup>

This unique institutional structure can be explained by the *raison d'être* of GWP since its creation, which has been to gather different partners from both public and private sectors on an equal footing. This objective would have been impossible in the case of the creation of only one international organization. This creation also shows the limits of the network model as a governance structure. Facing demands in terms of legitimacy, GWP had to evolve to a more formal structure. Similar developments can be found in other “soft organizations”, e.g. the OSCE, which was established as a highly informal CSCE, or the Black Sea Economic Cooperation, which began as

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Help match needs to available resources; d) Strengthen mechanisms for sharing information and experience”.

<sup>27)</sup> *Ibid.*, article 2 § 2. This raises the question of the utility of the Organization in the case of the dissolution of the Network. In this case, an extraordinary meeting would be organized by the Steering Committee to decide whether the Organization should be dissolved or remodeled (article 16 § 2 of the Statutes).

<sup>28)</sup> World Bank Independent Evaluation Group, “The Global Water Partnership”, *supra* note 3, vii.

<sup>29)</sup> Full text of the Memorandum of Understanding available at: <[www.gwp.org/Global/Activities/MoU%27s/GWP-WSSCC%20MoU.pdf](http://www.gwp.org/Global/Activities/MoU%27s/GWP-WSSCC%20MoU.pdf)>, visited on 12 January 2012.

<sup>30)</sup> Full text of the Memorandum of Understanding available at: <[www.gwp.org/Global/Our%20Approach/Strategic%20Allies/MoU%20INBO%20GWPO%202010-2013.pdf](http://www.gwp.org/Global/Our%20Approach/Strategic%20Allies/MoU%20INBO%20GWPO%202010-2013.pdf)>, visited on 12 January 2012.

<sup>31)</sup> In some cases, MoUs are in fact treaties under another name. To determine if the MoU could be interpreted as a treaty, its content must be carefully analyzed. In these cases, MoUs concluded by GWPO contain one final clause declaring that the parties “reserve the right to act independently where either institution believes it is within their best interest. Both parties reserve the right to their own independence and no contract by either party shall be legally binding upon the other”. Thus, it is doubtful that it could be interpreted as treaty but it may be more accurately characterized as a political commitment with no binding effect. For more information on MoUs see A. Aust, *Modern Treaty Law and Practice*, 2nd ed. (Cambridge University Press, 2007) pp. 32–57.

a series of meetings, to which over time a secretariat was added, and where decision-making procedures became clearer and more streamlined. These transformations contradict the common understanding that “informal” by definition means “more effective”. It shows that sometimes an entity becomes more “formal” or “legal” in order to boost its effectiveness.

## 2. Membership

Since the beginning of GWP, members had been called “partners”. The 2003 and the 2008 external evaluations of GWP have both emphasized the lack of clarity caused as a result of this situation.<sup>32</sup> Following this, GWP released a “policy on partners”<sup>33</sup> which stated that the term “Partner” “has tended to be used synonymously with the term member”.<sup>34</sup> According to the Statutes, GWP has two categories of members, the Sponsoring Partners (2.1) and the Partners of the Network (2.2). Although they do not have official governance powers, the Financial Partners (2.3) will also be considered.

### 2.1. *Sponsoring Partners*

The “Sponsoring Partners” are the members of GWPO.<sup>35</sup> Thus, these can be only States and International Organizations. A distinction is made in the Statutes between “original” and other Sponsoring Partners. Original Sponsoring Partners are those which were already Partners of the Network and which have been invited to sign or have signed the MoU establishing GWPO.<sup>36</sup>

Other States and International Organizations can achieve this status if they comply with four cumulative conditions, among which one difference exists depending on whether a State or an International Organization is concerned: they must (1) sign the MoU establishing GWPO,<sup>37</sup> (2) be

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<sup>32)</sup> Joint Donor External Review 2008, *supra* note 4, p. 31.

<sup>33)</sup> See the full text at: <[www.gwp.org/Global/About%20GWP/Legal%20documents/GWP%20Policy%20on%20Partners.pdf](http://www.gwp.org/Global/About%20GWP/Legal%20documents/GWP%20Policy%20on%20Partners.pdf)>, visited on 12 January 2012.

<sup>34)</sup> *Ibid.*, p. 1.

<sup>35)</sup> The Statutes, article 4 § 1.

<sup>36)</sup> *Ibid.*, article 4 § 2.

<sup>37)</sup> *Ibid.*, article 4 § 3 of the Statutes; MoU, article III.



approved by a decision of the Meeting of the Sponsoring Partners,<sup>38</sup> (3) be a Partner of the Network,<sup>39</sup> and either (4a) be a State which has a “record of support for the objective of the Network”<sup>40</sup> or (4b) be an International Organization which has a “global role in water affairs as well as a record of support for the objectives of the Network”.<sup>41</sup>

It is also interesting to consider whether States and International Organizations that have been invited by the Swedish Government to sign the MoU, but have not signed it yet, have to comply with these conditions to become a Sponsoring Partner.<sup>42</sup> One moot aspect is whether article V of the MoU establishing GWPO is to be interpreted in a way that the original invitation to sign the MoU was limited in time.<sup>43</sup> The fact that some original Sponsoring Partners did sign the MoU after 31 March 2002 could imply that there is no limitation. This question has not yet been addressed and ultimately the Sponsoring Partners as the signatories of the MoU should determine how to interpret it. If article V is interpreted as a limitation in time for invited States and International Organizations to join, these States would have to meet the conditions of article 4 § 3. If on the other hand there was no deadline, the invited States can still join by signing the MoU and the prerequisites of article 4 § 3 do not have to be followed.

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<sup>38)</sup> *Ibid.* For more information on this organ *see infra*, 3.2.1.

<sup>39)</sup> The Statutes, article 4 § 3, al. a. and b.

<sup>40)</sup> *Ibid.*, article 4 § 3, al. a.

<sup>41)</sup> *Ibid.*, article 4 § 3, al. b.

<sup>42)</sup> That concerns Brazil, France, Germany, India, Japan, South Africa, Spain and the United Kingdom.

<sup>43)</sup> MoU, article V: “(1) This Agreement shall be open for signature by the States and Intergovernmental Organisations listed in Annex 2, having been invited by the Swedish Government, in consultation with the presiding Chair of the Global Water Partnership Network, to sign this Agreement, until 31 March 2002. (2) This Agreement shall enter into force on the day upon which at least three signatories as referred to in paragraph 1 of this Article, including two States, have provided the Depositary with notification that the formalities required by their national legislation or their governing statutes have been completed. (3) After the entry into force of this Agreement, any State and Intergovernmental Organisation, referred to in paragraph 1, shall become a Party to it immediately after receipt by the Depositary of notification that the formalities required by their national legislation or their governing statutes have been completed”.

## 2.2. *Partners*

Requirements to become a “Partner of the Network” are defined at article 3 of the Statutes. According to the latter, “any entity, except individuals” may become a partner.<sup>44</sup> An exhaustive list of entities follows, which includes States, national, regional and local governmental institutions, intergovernmental organizations, international and national non-governmental organizations, academic institutions and research institutions, companies, and service providers in the public sector.<sup>45</sup>

In order to become a Partner to the Network the entity must, furthermore, recognize and commit to implement the principles of IWRM<sup>46</sup> endorsed by the Network,<sup>47</sup> and be approved by a decision of the Executive Secretary.<sup>48</sup> Another criterion of selection was to comply with the “Dublin-Rio principles”.<sup>49</sup> There is, however, no mention of such criterion in the Statutes. This can be explained by the fact that the “Dublin-Rio principles” are considered by GWP as a part of the IWRM Strategies.<sup>50</sup> In the application form to become a Partner, it is required to agree to “abide by the Dublin-Rio principles”.

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<sup>44</sup>) The Statutes, article 3 § 1.

<sup>45</sup>) *Ibid.*

<sup>46</sup>) *Ibid.*, article 3 § 2

<sup>47</sup>) *See supra*, Introduction.

<sup>48</sup>) The Statutes, article 3 § 2. For more information on this organ *see infra*, 3.2.4.

<sup>49</sup>) Rana and Kelly, *supra* note 16, p. 18, § 4.12. The “Dublin-Rio Principles” were defined during the Dublin Conference on Water and the Environment (January 1992) and the United Nations Conference on Environment and Development in Rio de Janeiro (June 1992). They are divided into three parts: the *ecological principle*: Land and water should be managed together, and attention needs to be paid to the environment; the *institutional principle*: Water resources management is best done when all stakeholders participate, taking into account gender; the *instrument principle*: Water is a scarce resource, and greater use needs to be made of incentives and economic principles in improving allocation and enhancing quality. For more information *see* M. Solanes and F. Gonzalez-Villareal, “The Dublin Principles for Water as Reflected in a Comparative Assessment of Institutional and Legal Arrangements for Integrated Water Resources Management”, 3 *TAC Background Papers* (1999). Full text available at: <[www.wsscc.org/resources/resource-publications/dublin-principles-water-reflected-comparative-assessment](http://www.wsscc.org/resources/resource-publications/dublin-principles-water-reflected-comparative-assessment)>, visited on 12 January 2012.

<sup>50</sup>) <[www.gwp.org/The-Challenge/What-is-IWRM/Dublin-Rio-Principles/](http://www.gwp.org/The-Challenge/What-is-IWRM/Dublin-Rio-Principles/)>, visited on 12 January 2012.

According to the Statutes, to be a Partner implies assuming some obligations such as to coordinate its relevant activities with those of other concerned organizations,<sup>51</sup> share information and experiences freely with the other Partners<sup>52</sup> and give advice and professional contributions to the Network, the Organization and other Partners.<sup>53</sup>

As Partners, they have the right to participate and vote during the Network Meeting, to be consulted before nominations by the Nomination Committee, to recommend amendments to the Statutes, to vote on a proposal to dissolve the Network, to adopt strategic directions and policies, to review and comment on the annual activity report of the Steering Committee and decide on the expulsion of Partners.<sup>54</sup>

The inclusive – or participatory – approach adopted by GWP since its very inception is also explained by the fact that GWP is based on the principles of IWRM. The growing number of partners to the Network since its creation has clearly strengthened the legitimacy of GWP as a unique forum gathering a large array of different actors. However, as the number of partners increased, the structure of the Network has become more complex and some issues have arisen according to the successive external reviews of GWP. According to the 2003 external evaluation, some groups were listed multiple times in different levels and there was no renewal process to ensure that non-participating members were removed.<sup>55</sup> A list of all the Partners of the Network is now updated by the Secretariat.

### 2.3. *Financial Partners*

Financial Partners are donors that support GWP but have no official role in its governance.<sup>56</sup> In contrast to the other two categories of partners mentioned above, no mention is made in the Statutes of a particular status of these Partners. However, the Statutes declare that “the operations of the Organization shall be financed by voluntary contributions and donations

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<sup>51)</sup> The Statutes, article 3 § 4, al. a.

<sup>52)</sup> *Ibid.*, article 3 § 4, al. b.

<sup>53)</sup> *Ibid.*, article 3 § 4, al. c.

<sup>54)</sup> *Ibid.*, article 9 § 2.

<sup>55)</sup> Rana and Kelly, *supra* note 16, p. 18, § 4.13.

<sup>56)</sup> World Bank Independent Evaluation Group, “The Global Water Partnership”, *supra* note 3, xiv.

from governments and others”.<sup>57</sup> All other sources of financing have to be approved by the Steering Committee as compatible with the objectives of the Network and the Organization.<sup>58</sup> There is no obligation to contribute financially to GWP stemming from a status of Partner and Sponsoring Partner.<sup>59</sup>

In 1996, there were four initial financial partners to GWP: Sweden, the World Bank, Denmark and the United Kingdom.<sup>60</sup> Switzerland and France joined in 1997, and the Netherlands and Norway in 1998.<sup>61</sup> Germany and Spain started to finance GWP in 2001 and 2003 respectively.<sup>62</sup> It is noteworthy that two of the lead financial partners and founders, UNDP and the World Bank, ceased funding in 2000 and 2002 respectively.<sup>63</sup> There were 14 financial partners of GWP in 2008.<sup>64</sup>

The financial partners initially met twice a year but now there is only one annual meeting – they form on this occasion the Financial Partners Group (FPG) – to provide a forum for “information exchange and debate on the water priorities that need to be addressed and the criteria for providing financial assistance to various initiatives focused around IWRM”.<sup>65</sup> It provides a two-way communication channel at the global level between GWP – as a development partner of the donors – and the donors. It is also a forum where donors can exchange views, and share their policies and

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<sup>57)</sup> The Statutes, article 14 § 1.

<sup>58)</sup> *Ibid.*

<sup>59)</sup> *Ibid.*, article 14 § 2

<sup>60)</sup> World Bank Independent Evaluation Group, “The Global Water Partnership”, *supra* note 3, p. 34.

<sup>61)</sup> *Ibid.*

<sup>62)</sup> *Ibid.*

<sup>63)</sup> *Ibid.* It seems that the World Bank’s intention from the start was, in line with its principles, to support the establishment of the network, but that the Network should then grow to become independent of World Bank funds. Although being one of the funding partners, UNDP has not been a global core donor of GWP. GWP and UNDP rather cooperate on specific projects such as capacity building through the GWP Toolbox and UNDP CapNet as well as country reports. UNDP also provides funding to the regions. The only funding provided by UNDP to GWP before 2000 seems to be support for a website existing at the time called GWP Water Forum.

<sup>64)</sup> *Ibid.*, p.19.

<sup>65)</sup> Rana and Kelly, *supra* note 16, p. 19, § 4.15.

approaches to water resources management. From 1996 to 2002, the FPG had statutes that governed its work. When GWPO was established, the FPG was however not included in the statutes as an organ of GWPO/GWP.

Although they do not have formal governance powers, financial partners' influence should not be underestimated. Indeed, as noted by the World Bank, "their informal influence and observations have carried great weight given their financial clout".<sup>66</sup> It is interesting to note, for example, that during the 2002 FPG meeting in Madrid, most of the donors showed a clear unwillingness to increase GWP funding levels.<sup>67</sup> After GWPO was instituted, nine of the financial partners significantly increased their contributions.<sup>68</sup>

### 3. Organs of GWP

The organic structure of GWP is quite complex. Due to the split of GWP in 2002, its structure is not unified and thus can be divided into three categories: the common organ of the Organization and of the Network (3.1), the proper organs of GWPO (3.2) and the proper organs of the Network (3.3).

#### 3.1. Common Organ: the Chair of GWP

The Chair is the only organ common to the Network and to the Organization. It is the "head and spokesperson for the Network as well as the Organization",<sup>69</sup> which represents them in all forums, and chairs the Network Meeting and the meetings of the Steering Committee.<sup>70</sup> The Chair is nominated by the Nomination Committee<sup>71</sup> and appointed for a renewable mandate that shall not exceed three years by the Annual Meeting of the Sponsoring Partners.<sup>72</sup>

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<sup>66</sup> World Bank Independent Evaluation Group, "The Global Water Partnership", *supra* note 3, p. 41, § 4.5.

<sup>67</sup> Rana and Kelly, *supra* note 16, p. 17, § 4.8

<sup>68</sup> World Bank Independent Evaluation Group, "The Global Water Partnership", *supra* note 3, p. 35, § 3.54.

<sup>69</sup> The Statutes, article 6 § 1.

<sup>70</sup> *Ibid.*

<sup>71</sup> *Ibid.*, article 8 § 4.

<sup>72</sup> *Ibid.*, article 6 § 2.

### 3.2. *Proper Organs of the Organization*

According to the Statutes,<sup>73</sup> the Organization consists of the Meeting of the Sponsoring Partners (3.2.1), the Steering Committee (3.2.2), the Nomination Committee (3.2.3), the Executive Secretary and the Secretariat (3.2.4).

#### 3.2.1. *The Meeting of the Sponsoring Partners*

The Meeting of the Sponsoring Partners is a plenary and non-permanent organ of GWPO. It meets on an annual basis, as notified by the Steering Committee, or on extraordinary sessions if the Steering Committee finds it necessary<sup>74</sup> or if one third of the Sponsoring Partners request so.<sup>75</sup>

Each of the Sponsoring Partners has one seat.<sup>76</sup> Observers may be invited by the Steering Committee, and may be given the right to address the Meeting but shall have no right to vote.<sup>77</sup> Decisions are taken by simple majority of the present and voting Sponsoring Partners.<sup>78</sup> A quorum of half plus one of the Sponsoring Partners is also required.<sup>79</sup> The possibility is given to the Sponsoring Partners to hold their Meeting “through distant communication”.<sup>80</sup> In this case, decisions shall be taken by a simple majority of all Sponsoring Partners.<sup>81</sup>

During these Meetings, the Sponsoring Partners receive and consider the yearly activity report and financial statement of the Steering Committee,<sup>82</sup> approve the audit reports and the nomination of new Sponsoring Partners,<sup>83</sup> and appoint the Chair, the members of the Steering Committee, as well as External and Internal Auditors.<sup>84</sup>

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<sup>73)</sup> *Ibid.*, article 5 § 2.

<sup>74)</sup> *Ibid.*, article 10 § 1, al. a.

<sup>75)</sup> *Ibid.*, article 10 § 1, al. b.

<sup>76)</sup> *Ibid.*, article 10 § 3.

<sup>77)</sup> *Ibid.*

<sup>78)</sup> *Ibid.*, article 10 § 9.

<sup>79)</sup> *Ibid.*

<sup>80)</sup> *Ibid.*, article 10 § 2.

<sup>81)</sup> *Ibid.*, article 10 § 9.

<sup>82)</sup> *Ibid.*, article 10 § 5, al. a. and b.

<sup>83)</sup> *Ibid.*, article 10 § 5, al. c. and d.

<sup>84)</sup> *Ibid.*, article 10 § 5, al. e., f., g. and h.

In practice, the Meeting of the Sponsoring Partners is mostly composed of the diplomatic missions of the members of the Organization, which have “minimal knowledge of the GWP”.<sup>85</sup> According to the 2008 evaluation, they tend to “confirm what comes to them from the Steering Committee and serve little useful purpose”.<sup>86</sup>

### 3.2.2. *The Steering Committee*

The Steering Committee is the “executive body” of GWPO.<sup>87</sup> The members of the Steering Committee meet at least twice a year on the convocation of the Chair.<sup>88</sup> Meetings can also be held through distant communication.<sup>89</sup>

The Steering Committee is composed of 11 to 21 members, as decided by the Meeting of the Sponsoring Partners, and has to include, as *ex officio* members, the Chair, the Executive Secretary, one representative of the United Nations Sub-Committee on Water Resources, one member representing all Regional Water Partnerships and Regional Technical Committees, and the Chair of the Technical Committee.<sup>90</sup> The other members shall be appointed by the Meeting of the Sponsoring Partners for a period that shall not exceed three years, which may be subject to renewal once.<sup>91</sup> When appointing them, the Meeting of the Sponsoring Partners shall aim to ensure that the composition of the Steering Committee “reflects a balance in terms of professional background, geographical representation, gender and level of development of the Person’s home State”,<sup>92</sup> and must take into consideration the “member’s capacity to take active part in the work of the Steering Committee”.<sup>93</sup> The Nomination Committee shall propose a list of potential members to the Meeting of Sponsoring Partners.<sup>94</sup> In the

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<sup>85</sup>) World Bank Independent Evaluation Group, “The Global Water Partnership”, *supra* note 3, p. 41, § 4.4.

<sup>86</sup>) *Ibid.*; Joint Donor External Review 2008, *supra* note 4, p. 31.

<sup>87</sup>) The Statutes, article 7 § 1.

<sup>88</sup>) *Ibid.*, article 7 § 5.

<sup>89</sup>) *Ibid.*, article 7 § 6.

<sup>90</sup>) *Ibid.*, article 7 § 2.

<sup>91</sup>) *Ibid.*, article 7 § 3.

<sup>92</sup>) *Ibid.*, article 10 § 7, al. a.

<sup>93</sup>) *Ibid.*, article 10 § 7, al. b.

<sup>94</sup>) *Ibid.*, article 8 § 4, al. b.

case of the Meeting of Sponsoring Partners deviating from the proposal, it shall explain its decision in a written report, which shall be communicated to the Nomination Committee, the Partners and the Steering Committee without delay.<sup>95</sup> Observers may be invited.<sup>96</sup> Decisions are to be taken by simple majority, and a quorum of at least half of the members plus one is required.<sup>97</sup> In the case of a meeting through distant communication, a quorum of three-quarters applies.<sup>98</sup>

It is interesting to note that while there is a strict institutional demarcation<sup>99</sup> between the organs of the Organization and the organs of the Network, certain organs of GWPO are competent to “manage the Network and its operations”.<sup>100</sup> The Steering Committee is one of these organs as its mission includes “develop[ing], steer[ing] and organiz[ing] the work of the Organization *and* guid[ing] the co-operation between the Partners within the Network ..., [in order to] facilitate for the Network to attain its objective and implement the strategic directions and policies adopted by the Network Meeting”.<sup>101</sup> Among its missions, the Steering Committee, for example, creates and appoints a Technical Committee,<sup>102</sup> creates committees or groups as it finds necessary for the performance of its functions,<sup>103</sup> appoints the members of the Nomination Committee,<sup>104</sup> recommends new Sponsoring Partners,<sup>105</sup> or ensures that Partners respect the principles of the Network and, in this respect, may recommend to the Network Meeting the expulsion of a Partner in the case of a violation of these principles.<sup>106</sup>

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<sup>95)</sup> *Ibid.*, article 10 § 8.

<sup>96)</sup> *Ibid.*, article 7 § 5.

<sup>97)</sup> *Ibid.*, article 7 § 8.

<sup>98)</sup> *Ibid.*

<sup>99)</sup> See the Statutes, article 5 § 3: “The Network and its operations are managed by ... *Other entities operating with or within the Network are not parts of the Organisation*” (emphasis added).

<sup>100)</sup> *Ibid.*

<sup>101)</sup> The Statutes, article 7 § 1 (emphasis added).

<sup>102)</sup> *Ibid.*, article 7 § 7, al. b.

<sup>103)</sup> *Ibid.*, article 7 § 7, al. c.

<sup>104)</sup> *Ibid.*, article 7 § 7, al. g.

<sup>105)</sup> *Ibid.*, article 7 § 7, al. i.

<sup>106)</sup> *Ibid.*, article 7 § 7, al. j.



The Steering Committee has established three permanent subcommittees: an Audit and Finance Subcommittee, a Programme Subcommittee and a Human Resources Subcommittee. These are not organs but committees that support the Steering Committee in performing its functions. The Steering Committee also from time to time establishes *ad hoc* working groups to prepare and work on a particular matter.

Before 2004, the lead financial partners (The World Bank, the UK Department for International Development, UNDP and SIDA) had a seat on the Steering Committee, which resulted in the Steering Committee being perceived as a “club”.<sup>107</sup> Its composition was reformed in May 2004, following a proposal of the Nominating Committee.<sup>108</sup> The status of observer was then attributed to donors. For the 2004–2008 period, four co-sponsors, twelve non-donors, two financial partners as observers, five *ex officio* members and one permanent observer (the World Water Council) made up the Steering Committee.<sup>109</sup>

However, during this same period, many factors – the range of divergent interests, its large and frequently changing membership and a poor dynamics between the donors and non-donors – made the Steering Committee a “very weak body, which was unable to set strategic directions and oversee management effectively”.<sup>110</sup> According to the 2008 Joint Donor External Evaluation, “the Steering Committee largely unrepresentative of the GWP members, is too large to function effectively and at present meeting structures do not allow its members to debate and agree strategic direction”.<sup>111</sup> This report recommends reducing the size of the Steering Committee to ten elected representatives from the partner countries and regions, and that it ensure it fulfils its role as a decision making body.<sup>112</sup>

The recommendations of the External Review have been considered in a Steering Committee review. Following the conclusions of this and also of discussions with the Financial Partners on their engagement in the

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<sup>107</sup>) Rana and Kelly, *supra* note 16, p. 19, § 4.15.

<sup>108</sup>) *Ibid.*

<sup>109</sup>) World Bank Independent Evaluation Group, “The Global Water Partnership”, *supra* note 3, p. 7, § 1.16.

<sup>110</sup>) *Ibid.*, p. 42, § 4.7.

<sup>111</sup>) Joint Donor External Review 2008, *supra* note 4, p. 4.

<sup>112</sup>) *Ibid.*, p. 6.

Steering Committee, the number of members of the Steering Committee was decreased as to its actual seventeen members (five *ex officio* members and twelve elected members).<sup>113</sup> Nomination Committee by-laws have been developed which further clarifies the Steering Committee composition, nomination procedure and selection criteria. These emphasize the role of Regional Water Partnerships in identifying candidates to strengthen regional representation.<sup>114</sup> There are four observers (the World Bank, UNDP, the World Water Council and one representative of the Financial Partners Group, currently the UK Department for International Development). Additionally, in terms of the work of the Steering Committee there has been an effort to strengthen decision-making and keep the Steering Committee up to date between the actual meetings. The tasks of the three permanent subcommittees (Audit and Finance, Programme, and Human Resources) have been further streamlined and elaborated, which facilitates preparation for meetings, increases the level of familiarity of Steering Committee members with certain topics and simplifies dialogue and decision making between meetings. According to the 2009–2013 Strategy of GWP, the membership and nominations process “will evolve as (the Steering Committee) works to meet the challenges of the new strategy period”.<sup>115</sup>

### 3.2.3. *The Nomination Committee*

The Nomination Committee is composed of five or seven members, as decided by the Steering Committee.<sup>116</sup> All of its members are to be appointed by the Steering Committee for a period that shall not exceed three years, which may be subject to renewal once.<sup>117</sup>

Its mission is to nominate the Chair, the members of the Steering Committee and the external auditors.<sup>118</sup> All of these nominations have to be presented to the Meeting of the Sponsoring Partners for formal

<sup>113</sup>) See <[www.gwp.org/About-GWP/Governance-Funding/Steering-Committee/](http://www.gwp.org/About-GWP/Governance-Funding/Steering-Committee/)>, visited on 12 January 2012.

<sup>114</sup>) See *infra*, 3.3.2.

<sup>115</sup>) GWP, *Strategy 2009–2013*, p. 22. Full text available at: <[www.gwp.org/en/About-GWP/Publications/Strategy-Documents/](http://www.gwp.org/en/About-GWP/Publications/Strategy-Documents/)>, visited on 12 January 2012.

<sup>116</sup>) The Statutes, article 8 § 1.

<sup>117</sup>) *Ibid.*, article 8 § 2.

<sup>118</sup>) *Ibid.*, article 8 § 4, al. a., b. and c.

appointment. It also nominates representatives of the Partners as internal auditors if requested by at least ten Partners from five different countries at the Network Meeting.<sup>119</sup> All of the nominations must be presented to the Partners at least three months before the Annual Meeting of the Sponsoring Partners.<sup>120</sup> Partners can make comments on the nominations, and the Nomination Committee “shall be prepared to modify its nominations in the light of comments of the Partners”.<sup>121</sup> The nominations and the relevant comments must be presented to the Sponsoring Partners one month before the Annual Meeting.<sup>122</sup> All decisions must be taken by consensus or, if a consensus cannot be reached, by a majority of two-thirds of the Members of the Nomination Committee.<sup>123</sup>

#### 3.2.4. *The Executive Secretary and the Secretariat*

The Executive Secretary and the Secretariat are the administrative organs of the Organization. The Executive Secretary is the “chief executive officer of the Organization and the head of the Secretariat”<sup>124</sup> and also serves as the secretary of the Steering Committee.<sup>125</sup> It is appointed by the Steering Committee for a mandate that shall not exceed five years, which may be subject to renewal.<sup>126</sup>

The Executive Secretary implements the decisions of the Steering Committee and executes the instructions from the Chair.<sup>127</sup> It also approves new Partners of the Network.<sup>128</sup> The Secretariat is appointed by the Executive Secretary, which can appoint as many staff as necessary to carry out the objectives of the Network and the Organization.<sup>129</sup> For the period 2004–2008, it

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<sup>119)</sup> *Ibid.*, article 8 § 4, al. d.

<sup>120)</sup> *Ibid.*, article 8 § 5.

<sup>121)</sup> *Ibid.*

<sup>122)</sup> *Ibid.*

<sup>123)</sup> *Ibid.*, article 8 § 6.

<sup>124)</sup> *Ibid.*, article 11 § 1.

<sup>125)</sup> *Ibid.*

<sup>126)</sup> *Ibid.*, article 11 § 2.

<sup>127)</sup> *Ibid.*, article 11 § 3, al. a. and b.

<sup>128)</sup> *Ibid.*, article 11 § 3, al. c.

<sup>129)</sup> *Ibid.*, article 11 § 3, al. e.

has been assessed that the changes made to the structure of the Secretariat have been largely consistent with the evolving needs of the Organization.<sup>130</sup>

### 3.3. *Proper Organs of the Network*

The Structure of the Network consists of different organs that operate at the global level (3.3.1), the regional level (3.3.2) and the national and sub-national levels (3.3.3).

#### 3.3.1. *At the Global Level: The Network Meeting and the Technical Committee*

In many ways, the Network Meeting and the Meeting of the Sponsoring Partners may be seen as Siamese twins as they are both plenary organs of each “side” of GWP and both represent a “legitimacy factor”. Indeed, the Network Meeting is providing legitimacy by the number of its Partners while the Meeting of the Sponsoring Partners is providing legitimacy by the status and the political legitimacy of his Members.

Each of the Partners can participate and vote at the Annual Network Meeting on the convocation of the Steering Committee, unless otherwise decided.<sup>131</sup> Extraordinary sessions can be convened if the Steering Committee finds it necessary or upon the request of one fifth of the Partners.<sup>132</sup>

The Network Meeting usually takes place during the Annual Consultative Partners Meetings.<sup>133</sup> However, if the latter is not a formal meeting, which is open to non-Partners and during which no formal decisions binding on GWP are taken,<sup>134</sup> Network Meeting access is restricted to Partners of GWP registered with GWPO.<sup>135</sup> Observers may be invited by the Chair but have no right to vote.<sup>136</sup>

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<sup>130</sup>) Joint Donor External Review 2008, *supra* note 4, p. 33.

<sup>131</sup>) The Statute, article 9 § 1.

<sup>132</sup>) *Ibid.*

<sup>133</sup>) GWP, *By-Laws for the Network Meeting of GWP*, p. 1. Full text available at: <[www.gwp.org/Global/About GWP/Legal documents/By-Laws for Network Meeting.pdf](http://www.gwp.org/Global/About%20GWP/Legal%20documents/By-Laws%20for%20Network%20Meeting.pdf)>, visited on 12 January 2012.

<sup>134</sup>) *Ibid.*

<sup>135</sup>) *Ibid.*

<sup>136</sup>) *Ibid.*

During these Meetings, the Partners will adopt the strategic directions and policies of the Network,<sup>137</sup> recommend action to be taken by the Steering Committee on the basis of the strategic directions and policies,<sup>138</sup> make comments on the annual financial and activity report of the Steering Committee<sup>139</sup> and consider and decide on the expulsion of Partners, after the recommendation of the Steering Committee.<sup>140</sup> Amendment to the Statutes may be adopted by a two-thirds majority vote of the Network Meeting and a unanimous decision of the Meeting of the Sponsoring Partners.<sup>141</sup>

The Technical Committee (TEC)<sup>142</sup> was established in 1996 by the Interim Steering Committee, before the formal establishment of GWP, in order to create the “analytical framework for sustainable water resources management”.<sup>143</sup> Composed of up to 12 internationally recognized professionals selected for their experience, the TEC provides professional and scientific advice to GWP by performing analyses of strategic issues affecting water management or giving advice and guidance on IWRM priorities.<sup>144</sup> The members of TEC are appointed by the Steering Committee.<sup>145</sup> They serve in their personal capacity for about 30 working days per year but for no more than three-year terms.<sup>146</sup> The TEC reported to the Chair until May 2007, when the reporting line changed to the Executive Secretary.<sup>147</sup>

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<sup>137)</sup> The Statute, article 9 § 2, al. a.

<sup>138)</sup> *Ibid.*, article 9 § 2, al. b.

<sup>139)</sup> *Ibid.*, article 9 § 2, al. c.

<sup>140)</sup> *Ibid.*, article 9 § 2, al. d.

<sup>141)</sup> *Ibid.*, article 17 § 1.

<sup>142)</sup> It was previously named Technical Advisory Committee – the change from TAC to TEC happened in 2001.

<sup>143)</sup> World Bank Independent Evaluation Group, “The Global Water Partnership”, *supra* note 3, p. 2.

<sup>144)</sup> *Ibid.*, p. 8, § 1.18.

<sup>145)</sup> Joint Donor External Evaluation 2008, *supra* note 4, p. 32.

<sup>146)</sup> World Bank Independent Evaluation Group, “The Global Water Partnership”, *supra* note 3, p. 8, § 1.18.

<sup>147)</sup> Joint Donor External Evaluation 2008, *supra* note 4, p. 32.

### 3.3.2. *At the Regional Level: From the Regional Technical Advisory Committees to the Regional Water Partnerships*

Regionalism fits with water management.<sup>148</sup> Regional organs of the Network therefore appeared early in the life of GWP. The two first Regional Technical Advisory Committees (RTAC), for Southern Africa and Southeast Asia, were established in 1996 and 1997 respectively.<sup>149</sup> As the number of partners progressively expanded, GWP was structured around nine different RTACs. In 2000, a process of transformation from RTAC to Regional Water Partnerships (RWP) – a structure with a stronger system – was decided upon.<sup>150</sup> This transformation was progressive and some confusion appeared to exist between the two types of structures.<sup>151</sup> The need to establish RWP as separate legal entities from the Network was emphasized.<sup>152</sup> By the end of the 2004–2008 period, all the RTACs were replaced by RWPs.<sup>153</sup>

GWP currently has thirteen RWPs.<sup>154</sup> It has been stressed that making the RWP a distinct legal entity is their own decision, and that in this way they can acquire a certain degree of financial autonomy from GWP.<sup>155</sup> In 2008, only one of them – the West Africa RWP – has a legal status.<sup>156</sup> For the 2009–2013 period, the focus of attention will be on RWPs becoming

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<sup>148</sup> See for example L. Boisson de Chazournes, “Freshwater and International Law: The Interplay between Universal, Regional and Basin Perspectives”, *The United Nations World Water Assessment Programme – Insights* (UNESCO, 2009).

<sup>149</sup> World Bank Independent Evaluation Group, “The Global Water Partnership”, *supra* note 3, p. 8, § 1.18.

<sup>150</sup> According to the Guidelines for the Formation of Regional Water Partnerships, “this transformation involves a shift from working with a small multidisciplinary team of water professionals to a much larger, broad based cross sectoral and multi-stakeholder group of people”. See the full text at <[www.gwpl.org/download/guidelines-for-formation-of-RWPs.pdf](http://www.gwpl.org/download/guidelines-for-formation-of-RWPs.pdf)>, visited on 12 January 2012.

<sup>151</sup> External Review of GWP 2003, *supra* note 4, p. 20.

<sup>152</sup> *Ibid.*, p. 22.

<sup>153</sup> Joint Donor External Evaluation 2008, *supra* note 4, p. 2.

<sup>154</sup> Rana and Kelly, *supra* note 16, p. 7, § 2.9. These RWPs concern the following “regions”: Southern Africa, Eastern Africa, West Africa, Central Africa, the Mediterranean, Central and Eastern Europe, Central America, South America, Central Asia and the Caucasus, South Asia, Southeast Asia, China and Caribbean.

<sup>155</sup> Joint Donor External Evaluation 2008, *supra* note 4, p. 2.

<sup>156</sup> World Bank Independent Evaluation Group, “The Global Water Partnership”, *supra* note 3, p. 6, § 1.13.

as autonomous as possible, in order “to raise and manage resources and to plan strategy”.<sup>157</sup>

The structure of RWPs generally follows that existent at the global level. Generally, each RWP has its own Steering Committee (or equivalent) and an elected Chair, and each has its own administrative structure, operational strategy, and work plan.<sup>158</sup> Depending on the available resources, the administration of each RWP may be full or part-time and may be voluntary.<sup>159</sup> All Secretariats of the RWPs are formally attached to international or national host institutions.<sup>160</sup>

### 3.3.3. *At the National and Sub-national Levels*

GWP also have organs at the national and sub-national levels: the Country Water Partnership (CWP) and the Area Water Partnership (AWP). The establishment of such entities originates from the application by GWP of the Dublin-Rio Principles that stated that “water should be managed at the lowest appropriate level”.<sup>161</sup> GWP believes that water governance is mainly an issue to be addressed at the country and local level, although international action will serve to increase awareness of the issues.<sup>162</sup>

Initiated in 1998, CWPs gather Partners of the Network at the Country level. There are currently 74 CWPs. A condition of “financial self-sustainability in a reasonable period” is required by GWP for the establishment of

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<sup>157</sup>) GWP, *Strategy 2009–2013*, *supra* note 115, p. 21.

<sup>158</sup>) World Bank Independent Evaluation Group, “The Global Water Partnership”, *supra* note 3, p. 8, § 1.21.

<sup>159</sup>) *Ibid.*

<sup>160</sup>) *Ibid.*

<sup>161</sup>) GWP, *Local Action Through Area Water Partnerships*, p. 1. Full text available at: <[www.gwp.org/Global/The%20Challenge/Resource%20material/AWP\\_Report.pdf](http://www.gwp.org/Global/The%20Challenge/Resource%20material/AWP_Report.pdf)>, visited on 12 January 2012.

<sup>162</sup>) GWP, *Dialogue on Effective Water Governance*, 2003. Quoted by A. Allan and P. Wouters, “What Role for Water Law in the Emerging ‘Good Governance’ Debate”, 5 *Water Resources Impact* (2003) p. 86.

any new CWP.<sup>163</sup> These partnerships have been described as more loosely organized than the RWPs<sup>164</sup> but they are generally modeled on them.<sup>165</sup>

The AWP's have been initiated in 2001 as the organs of the Network acting at the sub-national level. There were 16 AWP's in 2003 at the basin, city or district level.<sup>166</sup> Most of them have an informal structure and use a host organization for their operation.<sup>167</sup>

#### 4. The Principles of Global Administrative Law and GWP

Concerns about legitimacy (4.1), accountability (4.2) and transparency (4.3) have all been raised during the successive external evaluations of GWP.

##### 4.1. *Legitimacy*

The notion of legitimacy is hard to grasp and can cover many different mechanisms.<sup>168</sup> In the context of GWP, it has been defined as “the way in which governmental and managerial authority is exercised in relation to those with a legitimate interest in a global program”.<sup>169</sup> Accordingly, the legitimacy of GWP derives from the legitimacy of its membership and of the inclusive approach adopted.

During the period 2004–2008, this legitimacy has been accordingly qualified as “strong”, taking into account the increasing numbers of its Partners, the visibility of the Network Meeting, its associations with “global

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<sup>163</sup> See GWP, *Conditions for Accreditation*, p. 5. Full text available at: <[www.gwp.org/Global/About%20GWP/Legal%20documents/GWP%20Conditions%20for%20Accreditation.pdf](http://www.gwp.org/Global/About%20GWP/Legal%20documents/GWP%20Conditions%20for%20Accreditation.pdf)>, visited on 12 January 2012.

<sup>164</sup> Rana and Kelly, *supra* note 16, p. 11, § 3.10.

<sup>165</sup> World Bank Independent Evaluation Group, “The Global Water Partnership”, *supra* note 3, p. 8, § 1.21.

<sup>166</sup> GWP, *Strategy 2009–2013*, *supra* note 115, p. 19.

<sup>167</sup> GWP, *Local Action Through Area Water Partnerships*, *supra* note 161, p. 5.

<sup>168</sup> See for example L. Boisson de Chazournes, “Changing Roles of International Organizations: Global Administrative Law and the Interplay of Legitimacies”, 6 *International Organizations Law Review* (2009) pp. 664–666.

<sup>169</sup> World Bank Independent Evaluation Group, “The Global Water Partnership”, *supra* note 3, xiv.



water leaders”,<sup>170</sup> and its governance structure allowing the participation of all stakeholders.<sup>171</sup>

The Strategy for 2009–2013 is also interesting in this regard, as it is identifying three different “sources of legitimacy”.<sup>172</sup> The first source is the Partners and the Annual Consulting Partners. The Nomination Committee provides a second “legitimacy hub” by securing a balance between the Sponsoring Partners and the Regions and as a factor of consensus across GWP.<sup>173</sup> More interesting is the “legal legitimacy” provided by the Sponsoring Partners.<sup>174</sup> This “legal legitimacy” would come from the fact that these Sponsoring Partners are States and International Organizations who signed the MoU establishing GWPO. The concept of legitimacy can be seen in some circumstances as being not simply a political question but also a legal one. The concept of “legal legitimacy” would describe the part of the legitimacy of an institution that comes not from its conformity with “values”, but rather from the respect of legal norms. The criterion of distinction will be the nature, legal or not, of the source.<sup>175</sup> It is noteworthy that in the context of GWP, the criterion of distinction is not the source, compliance with law or respect of values – but the status – legal or not, of the members. The fact that GWPO is an international organization composed of States and international organizations provides the institution with this legal legitimacy, while the Network is providing another form of legitimacy that is more of a political nature.

In that regard, the establishment of GWPO is a good example of the key-role that political and/or legal State-centered legitimacy still plays for promoting international cooperation. It also shows that this type of legitimacy needs to be complemented by other forms of legitimacy in order to strengthen the soundness of governance structure, such as legitimacies based on effectiveness, knowledge or regional representativeness.

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<sup>170</sup>) *Ibid.*, xxi.

<sup>171</sup>) *Ibid.*

<sup>172</sup>) GWP, *Strategy 2009–2013*, *supra* note 115, p. 22.

<sup>173</sup>) *Ibid.*

<sup>174</sup>) *Ibid.*

<sup>175</sup>) Boisson de Chazournes, *supra* note 168, p. 664.

#### 4.2. *Accountability*

Accountability is also a key-concept in the functioning of GWP. It had been defined as “a mechanism to control power of a public body by calling it to account”.<sup>176</sup> As previously addressed, numerous accountability mechanisms had been instituted between the various organs of both the Organization and the Network. There are different means to this end: the presentation of yearly activity and financial reports (of the Steering Committee before the Meeting of the Sponsoring Partners and the Partners), or the granting of supervision powers (to the Steering Committee by the Partners of the principles of the Network).<sup>177</sup> In these cases, the organs are held accountable to one another. There are also mechanisms giving the responsibility of the good functioning of certain parts of GWP’s activity to one organ. This is, for example, the case in respect of the Executive Secretary, who is “responsible for the financial management and accounting of the Organization”.<sup>178</sup> Lastly, accountability is also achieved with the conduct of an audit of the financial management and transactions of the Organization by an External Auditor on an annual basis.<sup>179</sup>

At the regional and national levels, one of the conditions required from every RWP and CWP is to “have financial and operational accountability”.<sup>180</sup> In this context, accountability is ensured through the producing of audited account and annual activity reports.<sup>181</sup> It is also ensured by the establishment of a structure that allows the secretariat of the RWP or CWP concerned to be accountable to its governing body.<sup>182</sup>

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<sup>176</sup> M. Kanetake, “Enhancing Community Accountability of the Security Council through Pluralistic Structure: The Case of the 1267 Committee”, *Max Planck United Nations Yearbook*, n°12 (2008) p. 121.

<sup>177</sup> It is interesting to note that no accountability mechanisms have been established to hold the Sponsoring Partners accountable.

<sup>178</sup> The Statutes, article 11 § 3, al. f.

<sup>179</sup> The Statutes, article 15.

<sup>180</sup> GWP, *Conditions for Accreditation*, *supra* note 163, p. 6.

<sup>181</sup> *Ibid.*

<sup>182</sup> *Ibid.*

### 4.3. *Transparency*

In this context of the IEG evaluation, transparency – as a criterion for assessing the governance and management of GWP – has been defined by this panel as “the extent to which a program’s decision-making, reporting, and evaluation processes are open and freely available to the general public. This is a metaphorical extension of the meaning used in physical sciences - a ‘transparent’ objective being one that can be seen through”.<sup>183</sup> This evaluation has highlighted a lack of transparency during the period 2004–2008.<sup>184</sup>

According to the Report of IEG, the weaknesses in GWP’s functioning concerned essentially a lack of transparency over the release of information and in respect of funding. For example, it has been assessed that “not all the non-confidential information has been available on the GWP website”.<sup>185</sup> Furthermore, it had been noted that information about RWPs and CWPs was “notably lacking on the main GWP website”.<sup>186</sup>

With respect to the lack of transparency over funding, the process of resource allocation to RWPs has been described as “opaque” as the criteria and procedures to this end were unclear during the 2004–2008 period.<sup>187</sup>

Starting from 2009, efforts on the part of GWP in order to increase transparency have been made.<sup>188</sup> Transparency is now described as one of the “core values of GWP”.<sup>189</sup>

## 5. **Concluding Remarks**

What is perhaps most striking over the 15 years of GWP’s existence is its capacity to evolve. One of the factors that explains this evolution is the role played by reputation in the life of this organization. There is constant

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<sup>183</sup>) Independent Evaluation Group, *Sourcebook for Evaluating Global and Regional Partnership Programs: Indicative Principles and Standards*, 2007. Quoted by World Bank Independent Evaluation Group, “The Global Water Partnership”, *supra* note 3, xv.

<sup>184</sup>) World Bank Independent Evaluation Group, “The Global Water Partnership”, *supra* note 3, xxiv.

<sup>185</sup>) *Ibid.*, p. 46, § 4.22.

<sup>186</sup>) *Ibid.*, p. 46, § 4.23.

<sup>187</sup>) *Ibid.*, p. 39, § 3.64.

<sup>188</sup>) *Ibid.*, p. 46, § 4.22.

<sup>189</sup>) GWP, *Strategy 2009–2013*, *supra* note 115, p. 7 ; GWP, *Conditions for Accreditation*, *supra* note 163, p. 6.

attention paid to the reputational risks induced by each and every action which can be described as part of the activity of GWP. Reputational pressure in this evolution can be seen as a factor of accountability of the organization.<sup>190</sup>

Reputation is however not only a risk but also an opportunity for GWP. The current Executive Secretary of GWP has accurately described this situation by stating at the 2009 Consulting Partners Meeting that “our reputation is our capital”.<sup>191</sup> The importance accorded to reputation by GWP can be explained first by its funding necessities. As mentioned before, GWP is mainly financed through voluntary contributions of its financial partners. It has happened previously that some crucial financial partners have ceased their funding to GWP. This had and still could have a decisive impact on the very existence of GWP.

Furthermore, it must not be forgotten that water management is a very competitive area. Since its inception, GWP is engaged in a sort of a competition with its “twin brother”, the World Water Council (WWC). The latter was established in 1996 as an association under French law and is based in France. It serves as at a platform for raising the awareness of water issues and seeking means of improving water management.<sup>192</sup> During the early life of both institutions, it seemed that they were engaged rather in a competitive relationship than a cooperative one. This could be primarily explained by the potential overlap of competence between the two institutions.<sup>193</sup> However, from 2004 both institutions made a move towards collaboration

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<sup>190</sup>) See for example I. Johnstone, “Do International Organizations have Reputation?”, 7 *International Organizations Law Review* (2010) pp. 235–239.

<sup>191</sup>) GWP, *Implementing the GWP Strategy 2009–2013 – Report on the Global Water Partnership Consulting Partners Meeting*, p. 1. Full text available at: <[www.gwp.org/Global/About%20GWP/Strategic%20documents/GWP\\_CP\\_Meeting\\_Aug2009.pdf](http://www.gwp.org/Global/About%20GWP/Strategic%20documents/GWP_CP_Meeting_Aug2009.pdf):epslanguage=en>, visited on 12 January 2012.

<sup>192</sup>) More precisely, it is entrusted with five objectives: to identify critical water issues of local, regional and global importance on the basis of ongoing assessments of the state of water, to raise awareness about critical water issues at all levels of decision making, to bring together stakeholders and promote the implementation of effective water-related policies and strategies worldwide, to provide advice and relevant information to institutions and decision-makers on the development and implementation of policies and strategies for sustainable water resources management and to contribute to the resolution of issues related to transboundary waters.

<sup>193</sup>) For more information see Salman, *supra* note 22, pp. 50–57

with the signature of a “Framework for Cooperation between GWP and WWC”.<sup>194</sup> According to this framework, the Executive Director of WWC and the Executive Secretary of GWP are *ex-officio* members of the governing bodies of the two organizations. Provision for regular coordination meetings between the two organizations – at least two per year – was put in place. They agreed to share information and committed to avoid overlap and maximize synergies between themselves. They have found ways to establish “pacific coexistence” among them. Working in collaboration with other institutions specialized or having a part of their activity in water management is a factor of reputation for GWP. Aware of this, GWP has concluded a number of MoUs with other “strategic allies”, such as the Asian Development Bank or the Food and Agriculture Organisation.<sup>195</sup>

Reputation, efficient management and competition are not concerns that are usually associated with international organizations, and seem more prevalent in the private sector. As a public-private institution both with respect to its membership and its structure, GWP represents a new kind of international organization largely influenced by the dynamics of the private sector. This development will certainly have a bearing on other institutional evolutions for years to come.

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<sup>194)</sup> See the document at <[www.gwp.org/Global/Our%20Approach/Strategic%20Allies/MoU%20WWC%20final%20signed-%202004.pdf](http://www.gwp.org/Global/Our%20Approach/Strategic%20Allies/MoU%20WWC%20final%20signed-%202004.pdf)>, visited on 12 January 2012.

<sup>195)</sup> See the MoUs at <[www.gwp.org/en/Our-approach/Strategic-Allies/](http://www.gwp.org/en/Our-approach/Strategic-Allies/)>, visited on 12 January 2012.