

Defining Parties to an agreement or other arrangement, and its relation with Third Parties

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Who can become a party to a treaty on transboundary waters?

- States, international/regional organizations, local and provincial authorities
- Only member States to a given treaty could become party to protocol(s)
- Parties could depend on the nature of the transboundary water agreement:
 - **River agreement** : riparian countries (e.g. Uruguay and Rio de La Plata Statutes, boundary waters)
 - **Basin specific agreements** - basin States (e.g. 1994 Danube Convention)
- For agreements which cover entire watercourse, every watercourse State is entitled to become a party to such treaty (Art. 4 (1) UN Watercourses Convention)

Why is required a clear determination of parties?

- International law does not define the parties that can ratify or accede to a treaty.
 - e.g. Mekong and the Rhine agreements do not specify the parties but define a geographic scope
- However a clear definition helps:
 - in identifying parties to a given treaty
 - to determine who could become a member to the treaty, and
 - to determine who are bound by the treaty

How do we define parties to a treaty?

- In principle, a ‘Party’ means a State which has consented to be bound by the treaty and for which the treaty is in force (Art.2 (1) (g), Vienna Convention on the Law of the Treaties (VCLT))
- Usually water treaties refer to ‘Contracting Parties’.
- Legally speaking: **Party** ≠ **Negotiating state** ≠ **Contracting state**. They indicate a different status of a State with regard to a given treaty
- Defining parties by their names is also possible in the case of bilateral treaties or treaties restricted to a limited number of parties (e.g. Statute on the Uruguay river)

Do we need to have all basin States in an agreement?

- International law does not require to have all basin States as parties to an agreement on transboundary waters
- States could conclude a ***basin wide treaty*** (e.g. 1994 Danube Convention and 1999 Rhine Convention), or only one ***between some riparian States*** (1959 Treaty on the Nile- only Egypt and Sudan), Indus Water Treaty (no Afghanistan and China), and Statute on the Uruguay River (no Brazil)
- **Advantages of having all basin States:** better implementation of general principles of international water law, including equitable and reasonable use, obligation not to cause a significant harm, better protection for the whole ecosystem, exchange of data.

Relations with ‘third States/parties’

- In principle, treaties only place obligations for the contracting parties (Art.34 of the VCLT).
- They do not have legal effects on third parties (*res inter alios acta, pacta tertiis nec nocent nec prosunt*)
- There is a possibility to address third States in a treaty (Arts. 34-38 of the VCLT) (e.g. the Kzyl-Orda Agreement of 1993)
- Third State in a given water basin is entitled to participate in consultations whenever some watercourse States negotiate agreements on sub-basin level (Art.4 (2) UNWC).



Thank you for
your attention!