

**The 1992 UNECE Water Convention and
the 1997 UN Convention on International Watercourses
in the International Water Law Process**

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Compatible conventional rules and their synergyin the International Water Law Process

“Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law”, Report of the Study Group of the International Law Commission, 2006:

“The principle of harmonization. It is a generally accepted principle that when several norms bear on a single issue they should, to the extent possible, be interpreted so as to give rise to a single set of compatible obligations”.



The Vienna Convention on the Law of Treaties *Article 31*

General rule of interpretation

1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.

2. The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes: [...]

3. There shall be taken into account, together with the context:
[...]

c) any relevant rules of international law applicable in the relations between the parties.
[...]"

Paragraph 9 of the NYC: "Recalling also the existing bilateral and multilateral agreements regarding the non-navigational uses of international watercourses".



One Major Difference

“[...] the added value of the Water Convention lies in the institutional framework it set up in order to assist the Parties in complying with its provisions and in further developing them, on the one hand, and in the mandatory character of institutional cooperation between Riparian Parties, on the other. Both features are not present under the New York Convention”. (*Guide to Implementing the UNECE Water Convention, 2009, p. 9*)

NYC Article 8

General obligation to cooperate

- “1. Watercourse States shall cooperate on the basis of sovereign equality, territorial integrity, mutual benefit and good faith in order to attain optimal utilization and adequate protection of an international watercourse.
2. In determining the manner of such cooperation, watercourse States may consider the establishment of joint mechanisms or commissions, as deemed necessary by them, to facilitate cooperation on relevant measures and procedures in the light of experience gained through cooperation in existing joint mechanisms and commissions in various regions.”



UNECE Water Convention, Article 2 (6):

“The Riparian Parties shall cooperate on the basis of equality and reciprocity, in particular through bilateral and multilateral agreements, in order to develop harmonized policies, programmes and strategies covering the relevant catchment areas, or parts thereof, aimed at the prevention, control and reduction of transboundary impact and aimed at the protection of the environment of transboundary waters or the environment influenced by such waters, including the marine environment”.

Article 9 (1) :

“1. The Riparian Parties shall on the basis of equality and reciprocity enter into bilateral or multilateral agreements or other arrangements, where these do not yet exist, or adapt existing ones, where necessary to eliminate the contradictions with the basic principles of this Convention, in order to define their mutual relations and conduct regarding the prevention, control and reduction of transboundary impact. The Riparian Parties shall specify the catchment area, or part(s) thereof, subject to cooperation. These agreements or arrangements shall embrace relevant issues covered by this Convention, as well as any other issues on which the Riparian Parties may deem it necessary to cooperate”.



Article 9 (2):

“[...] The agreements or arrangements mentioned in paragraph 1 of this article shall provide for the establishment of joint bodies. The tasks of these joint bodies shall be, inter alia, and without prejudice to relevant existing agreements or arrangements, the following:

(a) To collect, compile and evaluate data in order to identify pollution sources likely


to cause transboundary impact;

(b) To elaborate joint monitoring programmes concerning water quality and quantity;

(c) To draw up inventories and exchange information on the pollution sources mentioned in paragraph 2 (a) of this article;

(d) To elaborate emission limits for waste water and evaluate the effectiveness of control programmes;

(e) To elaborate joint water-quality objectives and criteria having regard to the provisions of article 3, paragraph 3 of this Convention, and to propose relevant measures for maintaining and, where necessary, improving the existing water quality;

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- f) To develop concerted action programmes for the reduction of pollution loads from both point sources (e.g. municipal and industrial sources) and diffuse sources (particularly from agriculture);
 - (g) To establish warning and alarm procedures;
 - (h) To serve as a forum for the exchange of information on existing and planned uses of water and related installations that are likely to cause transboundary impact;
 - (i) To promote cooperation and exchange of information on the best available technology in accordance with the provisions of article 13 of this Convention, as well as to encourage cooperation in scientific research programmes;
 - (j) To participate in the implementation of environmental impact assessments relating to transboundary waters, in accordance with appropriate international regulations”.

Art. 10 of the UN/ECE 92 Convention requires that all consultations between its riparian parties “be conducted through a joint body established under article 9 [...]”



...and their synergyin the International Water Law Process

- A Misconception Perceived by Some: Water Quantity vs. Water Quality Issues
- The physical interdependence between water quantity and quality issues
- Interrelation between economic and environmental concerns under both Conventions



General Principles for the Interpretation of Both Conventions Articulating good faith and equity *infra legem*

-The “community of interest” concept; the non-abuse of right; good neighbourliness principles:

“According to the non-abuse of right doctrine, “a State may not “exercis[e] a right [...] in a way which impedes the enjoyment by other States of their own rights (...)” (Kiss).

“(...) the principle of law of voisinage holds to the effect that the exercise of one’s own rights should not prejudice the rights of one’s neighbours” (Swiss Federal Tribunal, 1900)



The Physical Scope of application of the two Conventions

UNECE Water Conv., Art. 1 (2)

"Transboundary impact" means any significant adverse effect on the environment

resulting from a change in the conditions of transboundary waters caused by a human activity, the physical origin of which is situated wholly or in part within an area under the jurisdiction of a Party, within an area under the jurisdiction of another Party. Such effects on the environment include effects on human health and safety, flora, fauna, soil, air, water, climate, landscape and historical monuments or other physical structures or the interaction among these factors; they also include effects on the cultural heritage or socio-economic conditions resulting from alterations to those factors;



UNECE Water Conv., Art. 2(6):

“6. The Riparian Parties shall cooperate on the basis of equality and reciprocity, in particular through bilateral and multilateral agreements, in order to develop harmonized policies, programmes and strategies covering the relevant catchment areas, or parts thereof aimed at the prevention, control and reduction of transboundary impact and aimed at the protection of the environment of transboundary waters or the environment influenced by such waters, including the marine environment.



NYC Art. 1 (1):

“The present Convention applies to uses of international watercourses and of their waters for purposes other than navigation and to measures of protection, preservation and management related to the uses of those watercourses and their waters.”

Art. 6 (1)

Utilization of an international watercourse in an equitable and reasonable manner within the meaning of article 5 requires taking into account all relevant factors and circumstances, including: (a) geographic, hydrographic, hydrological, climatic, ecological and other factors of a natural character; ([...]d) The effects of the use or uses of the watercourses in one watercourse State on other watercourse States;”

Part IV (Arts. 20-26) on "protection, preservation and management“

Art.21 (2): "prevent, reduce and control the pollution of an international watercourse that may cause significant harm to the other watercourse States [...]".



The Substantive Principles

Dispelling a prejudice: the integrated approach to the no-harm and the equitable utilization principle

UNECE Water Conv. Art1 (1):

"The Parties shall take all appropriate measures to prevent, control and reduce any transboundary impact

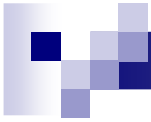
[para. 2, lett. c,:]The Parties shall, in particular, take all appropriate measures: [...t]o ensure that transboundary waters are used in a reasonable and equitable way, taking particularly into account their transboundary character, in the case of activities which cause or are likely to cause transboundary impact".



Article 5

Equitable and reasonable utilization and participation

1. Watercourse States shall in their respective territories utilize an international watercourse in an equitable and reasonable manner. In particular, an international watercourse shall be used and developed by watercourse States with a view to attaining optimal and sustainable utilization thereof and benefits therefrom, taking into account the interests of the watercourse States concerned, consistent with adequate protection of the watercourse.
2. Watercourse States shall participate in the use, development and protection of an international watercourse in an equitable and reasonable manner. Such participation includes both the right to utilize the watercourse and the duty to cooperate in the protection and development thereof, as provided in the present Convention.



NYC Article 7 and the interpretative synergies deriving from the UNECE Water Convention

Obligation not to cause significant harm

1. Watercourse States shall, in utilizing an international watercourse in their territories, take all appropriate measures to prevent the causing of significant harm to other watercourse States.
2. Where significant harm nevertheless is caused to another watercourse State, the States whose use causes such harm shall, in the absence of agreement to such use, take all appropriate measures, having due regard for the provisions of articles 5 and 6, in consultation with the affected State, to eliminate or mitigate such harm and, where appropriate, to discuss the question of compensation.



The “Significant Harm” to be prevented according to the No-harm rule and the equitable utilization principle

- A “real impairment of use” (ILC)
- Need for joint assessment, hence cooperation



Cooperation in the application of the substantive principles

Guide to Implementing the UNECE Wat Conv.:

“The obligation of cooperation stands out as an independent obligation. However, as repeatedly stressed, it is an integral part of the three-pillar normative cornerstone of the Convention together with the principle of equitable utilization, under article 2 (2 c), and the obligation of prevention, under article 2 (1). That is to say that cooperation between riparians is instrumental to full compliance with the obligation of equitable utilization, as well as with that of prevention, control and reduction of transboundary impact”. (p.44)