

From Practitioner to practitioner: training on how to use the two global Water Conventions

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Session 3: What are the main obligations and how to implement them?

Introduction to the equitable and reasonable utilisation principle

Belemlilga Eleonore

The principle

- ▶ The principle is well recognised as part of the customary international law (*ICJ Judgement in the case concerning the Gabčíkovo-Nagymaros Project (Hungary/Slovakia) on the Danube River, where the Court referred to the watercourse State's "basic right to an equitable and reasonable sharing of the resources of an international watercourse"*).
- ▶ Right to use the waters of the basin without depriving other states of their rights
- ▶ Duty to share equitably the beneficial uses of the waters



The UNECE Water Convention

- ▶ The 1992 Convention on the Protection and Use of Transboundary Watercourses and International Lakes

 - ▶ Article 2 (paragraphs 2 (c) and 5 (c))
 - ▶ 2. The Parties shall, in particular, take all appropriate measures:
 - ▶ ... (c) To ensure that transboundary waters are used in a reasonable and equitable way, taking into particular account their transboundary character, in the case of activities which cause or are likely to cause transboundary impact;

 - ▶ 5. In taking the measures referred to in paragraphs 1 and 2 of this article, the Parties shall be guided by the following principles:
 - ▶ ... (c) Water resources shall be managed so that the needs of the present generation are met without compromising the ability of future generations to meet their own needs.
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The UNECE Water Convention

- ▶ Equitable use implies taking into account sustainability
- ▶ The principle reflects the community of interest and the equality of rights of all riparians in the use of a shared water body
- ▶ International water bodies should be managed by ‘shared regulation’ rather than by a single State; art 9 promotes bilateral and multilateral cooperation



The UN watercourses convention

- ▶ The universal acceptance as a principal binding rule in the field of transboundary water resources has been enhanced by its codification in articles 5, 6 and 10 of the 1997 Convention on the Law of the Non-Navigational Uses of International Watercourses



The UN watercourses convention

- ▶ **ART. 5 - Equitable and reasonable utilisation and participation**
 - ▶ I. Watercourse States shall in their respective territories utilise 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 utilisation** thereof and **benefits** therefrom, taking into account the **interests** of the watercourse States concerned, consistent with **adequate protection of the watercourse**.
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The UN watercourses convention

- ▶ This principle combines the right of use and the duty of cooperation. States shall not act unilaterally.
 - ▶ The different notions should take into account different factors (art 6) and be agreed among States.
 - **sustainable** takes into account the need to balance economic, social and environmental values in the use of natural resources
 - **optimum utilisation** means the most economically feasible and, if possible, the most efficient use.
 - **reasonable** implies taking into account the needs of the other States, it takes into account factors developed in article 6 such as the socio economic development of a State
 - **equitable utilisation** doesn't mean equal portion but is linked to the notion of no harm.
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ART. 6 - Factors relevant to equitable and reasonable utilisation

I. Utilisation 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,**
 - ▶ b) The **social and economic** needs of the watercourse States concerned;
 - ▶ c) The **population** dependent on the watercourse in each watercourse State;
 - ▶ d) The **effects** of the use or uses of the watercourses
 - ▶ e) **Existing and potential uses** of the watercourse;
 - ▶ f) **Conservation, protection, development and economy of use** of the water resources of the watercourse and **the costs of measures** taken to that effect;
 - ▶ g) The **availability of alternatives**, of comparable value, to a particular planned or existing use.
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The UN watercourses convention

- ▶ 2.watercourse States concerned shall, when the need arises, enter into consultations in a spirit of cooperation.
- ▶ 3. The weight to be given to each factor is to be determined by its importance in comparison with that of other relevant factors.....
- ▶ **article 10**, paragraph 2, provides that, “special regard” be given to **vital human needs**. It implies drinking water and water for food.



The Volta Basin

- ▶ On the VBA Convention on the Status of the Volta river and establishment of the Volta Basin Authority (2007):
 - ▶ Art 4 : The parties commit themselves to cooperate closely for the rational and sustainable utilization of the water resources of the Volta Basin, on the basis of the following principles:
 - ▶ (a) the use of the water resources of the basin and participation in their development in an equitable and reasonable manner
 - ▶
- ▶ Perspective: The VBA water charter should develop the principles in order to provide factors and institutionnal arrangements fo their application.



References

- ▶ UN Watercourses Convention Users' Guide :
<http://www.unwatercoursesconvention.org/the-convention/>
- ▶ Water Convention Implementation Guide:
<http://www.unece.org/index.php?id=33657>
- ▶ Analysis of the two Water Conventions :
<http://www.unece.org/index.php?id=39028>
- ▶ Substantive Norms in International Water Law, By Prof. Emmanuel Kasimbazi, IVWL training 2015, Uganda
- ▶ UN Watercourses Convention User's Guide Fact Sheet Series: Number 4
Equitable and Reasonable Utilisation
- ▶ VBA Convention on the Status of the Volta river and establishment of the
Volta Basin Authority (2007)



Thank you

