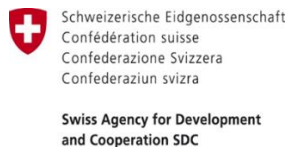


Training workshop “From practitioner to practitioner:
how to use the two global Water Conventions to promote cooperation on the ground”

Introduction to international water law: two global Water Conventions and their substantive and procedural norms

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Water Convention



Outline

- Evolution of international water law: How it developed and why there are now two conventions and the draft articles
- Two global conventions:
 - evolution and current status
 - key obligations, similarities and differences
- Key messages

Evolution of international water law

IWL is formed and influenced by developments in various areas:

- **WATER**: from navigation to various uses of surface water finally to IWRM and ecosystems
- **ENVIRONMENT**: from the control of pollution and protection to sustainable management
- **HUMAN RIGHTS**: personal and political rights (1st generation) - socio-economic and cultural rights (2G) to collective rights: healthy environment, water (3G)
- **LAW MAKING**: treaties evolve to treaty regimes, with political and administrative decision-making and scientific and technological apparatus

Theories of allocation

The doctrine of limited territorial sovereignty:

Coastal States should respect each other's sovereignty and have equal rights to use of watercourse (International legal custom)



Community of interest

... perfect equality of all riparian States ... exclusion of any preferential privilege of any one riparian state (not a custom yet)

The doctrine of absolute territorial sovereignty:

Unlimited use of water without considering the needs of downstream



The doctrine of absolute territorial integrity:

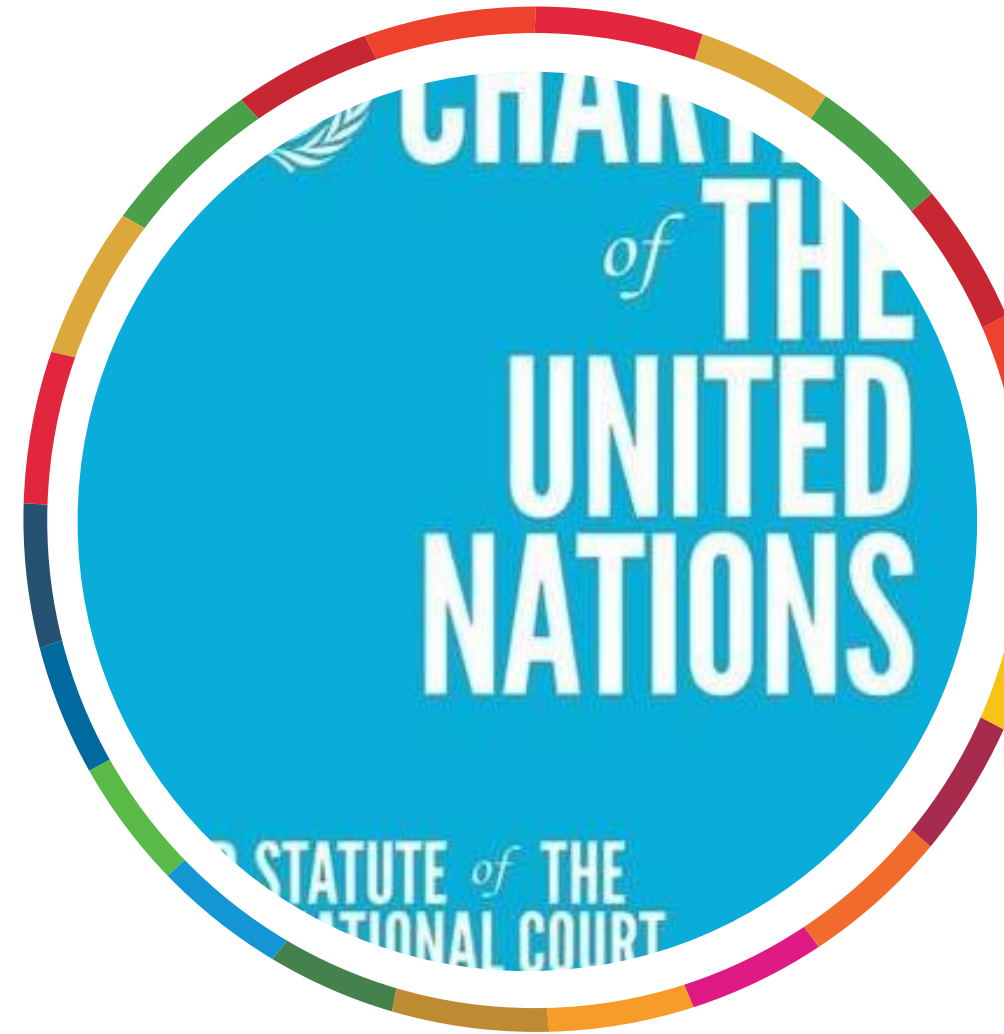
the inadmissibility of changing the natural flow of the rivers in the upstream



Sources of international law

The Statute of the ICJ, Art. 38

- a) international **conventions**, whether general or particular, establishing rules expressly recognized by the contesting states;
- b) international **custom**, as evidence of a general practice accepted as law;
- c) the general **principles of law** recognized by civilized nations;
- d) **judicial decisions** and the **teachings** of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.



Selected treaties

1. Treaties of universal application (global treaties)

- Convention on the Protection and Use of Transboundary Watercourses and International Lakes (1992)
- Convention on the Law of the Non-Navigational Uses of International Watercourses (1997)

2. Treaties of regional application

- Revised Protocol on Shared Watercourses in SADC (2000)
- Directive 2000/60/EC of the European Parliament and of the Council establishing a framework for Community action in the field of water policy

3. Basin-specific and bilateral agreements

- Convention on the Protection of the Rhine (1998)
- Treaty between India and Pakistan Regarding the Use of the Waters of the Indus (1960)
- Agreement between Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan on Cooperation in the Field of Joint Management of the Use and Conservation of Water Resources of Interstate Sources (1992)

Non-binding instruments (soft law)

Institute of International Law

- 1911 Madrid Resolution on International Regulations regarding the Use of International Watercourses
- 1961 Salzburg Resolution on Utilisation of Non-maritime International Waters
- 1979 Athens Resolution on the Pollution of Rivers and Lakes & International Law

International Law Association

- 1966 Helsinki Rules on the Users of the Waters of International Rivers
- 2004 Berlin Rules on Water Resources

The United Nations System

- Declarations and Resolutions

Other organisations (OECD, Council of Europe, etc)

International courts and arbitration

- Permanent Court of International Justice
 - Case relating to the Territorial Jurisdiction of the International Commission of the River Oder, Judgement of 1929
 - The Diversion of Water from the Meuse, Judgement of 1937
- International Court of Justice
 - Case concerning the Gabčíkovo - Nagymaros Project (Hungary/Slovakia), Judgement 1997
 - Pulp Mills on the River Uruguay (Argentina v Uruguay) Judgment 2010
 - Dispute over the Status and Use of the Waters of the Silala (Chile v. Bolivia) – Judgment 2022
- Arbitral awards
 - Lake Lanoux Arbitration (France v. Spain) (1957).
 - Helmand River Delta Case - Arbitral Awards of 1872 and 1905
 - Indus Water Kishenganga Arbitration (Pakistan v India), Final Award 2013

1992 Water Convention: history & evolution

- **Building foundation & shared understanding of problems and solutions**
 - 1956 | European Water Pollution Conference
 - 1960s | Establishment of the UNECE Committee on water issues
 - 1960-90s | Adoption of recommendations, declarations, decisions
 - 1989 | Decision of the CSCE Conference on the need for a framework convention
 - 1990 | Request by the Senior Advisers to prepare a draft Convention
- **Intergovernmental negotiation process involving 25 countries**
 - 1990 – 1991 | Development of the draft Convention (5 sessions of the WG)
 - 1992 | The Convention is signed and in force since 1996
- **Normative and institutional development**
 - 1996-2023 | 2 protocols, the Convention bodies; guidelines and strategies; pilot projects
 - 2013 | The Convention becomes global
 - Membership: 50 parties 1990-2000 - **32**; 2001-2010 - **7**; 2011-2020 - **6**; 2021-2023 - **5**

UN Watercourses Convention: history

1959 | UNGA Res 1401 (XIV) Preliminary studies of the legal problems relating to the utilization and use of international rivers (initiated by Bolivia)

1963 | Report by the SG on Legal problems relating to the utilization and use of international rivers - A/5409

1970 | UNGA Res 2669 (XXV): Progressive development and codification of the rules of international law relating to international watercourses (initiated by Finland)

1974-1994 | ILC works on the preparation of draft articles (5 Special Rapporteurs, inputs from the countries)

1994 | UNGA Res 49/52 states to submit comments on the draft articles; 6th (Legal) Committee convene as a WG of the Whole to develop a convention

1996-1997 | WG develops the Convention: 1st session (7-25/10/1996) - 12 meetings; 2nd Session (24/03-4/04.1997) – 6 meetings

1997 | UNGA adopts the Convention (GA Res.51/229)

Membership: 37 parties 1990-2000 - **8**; 2001-2010 – **13**; 2011- 2020 – **16**

Draft Articles on the Law of Transboundary Aquifers

- 1994 | the ILC adopts the Draft Articles on international watercourses and a **resolution on confined transboundary groundwater**
- 2002 | the ILC includes the topic of shared natural resources in its program of work
- 2008 | UN GA takes note of a set of 19 Draft Articles developed by the ILC; recommend States to make **appropriate bilateral or regional arrangements** on their basis; and consider the elaboration of a convention (Res 63/124)
- The Draft Articles acknowledges the **complementary relationship** between universal and regional or aquifer-specific legal instruments.

Two global water conventions

1992 Water Convention

- Signed in 1992; in force in 1996
- **Status:** 26 signatories, 50 parties
- Developed as a regional, become **global**
- **Framework** instrument
- 3 parts, 28 articles, 4 annexes
- **Three pillars:** prevent transboundary impact, ERU and duty to cooperate
- **Strong institutional support**

1997 Watercourses Convention

- Signed in 1996; in force in 2014
- Status: 16 signatories, 37 Parties
- **Global** instrument
- **Framework** instrument
- 7 parts, 37 articles, 1 annex
- **Core obligations:** ERU, no harm, protection of ecosystems, planned measures, fact-finding
- **Absence of institutional support**

Parties and signatories to two conventions

(29.06.2023)

	1992 Water Convention	1997 Watercourses Convention
Europe	24P: Albania, Austria, Azerbaijan, Belarus, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Czech R, Estonia, EU, Latvia, Liechtenstein, Lithuania, North Macedonia, Poland, Moldova, Romania, Russia, Serbia, Slovakia, Slovenia, Switzerland, Ukraine, UK (S)	2: Ireland, UK
	14: Denmark, Finland, France, Germany, Greece, Hungary, Italy, Luxembourg, Montenegro, Netherlands, Norway, Portugal, Spain, Sweden	
Africa	3: Cameroon, Senegal, Togo	7: Benin, Burkina Faso, Cote d'Ivoire, Libya, Morocco, Niger, South Africa
	5: Chad, Ghana, Guinea-Bissau, Namibia, Nigeria	
Asia	2: Kazakhstan, Turkmenistan	7P: Jordan, Lebanon, Qatar, Syria, State of Palestine, Tunisia, Vietnam, Yemen (S)
	2: Iraq, Uzbekistan	
America		2S: Paraguay (S), Venezuela (S)

1992 Water Convention

1997 Watercourses Convention

1. SCOPE

- Transboundary waters - any surface or ground waters [*connected & confined aquifers*] - art 1(1)
- prevention, control & reduction of transboundary impact
- ecosystems
- Parties and Riparian Parties

- Watercourse - a system of surface waters and groundwaters [*connected/related aquifers*] - arts 2
- other than navigation and measures of protection, preservation and management - art 1(1)
- ecosystems
- Watercourse States

2. SUBSTANTIVE OBLIGATIONS

2.1. Equitable and reasonable use

- take all appropriate measures to ensure that transboundary waters are used in a reasonable and equitable way – art 2(2)(c)
- Linked with other provisions (e.g. art. 2(5)(c) the needs of future generations)

- codifies this fundamental customary rule – art 5
- a non-exhaustive list of factors – art 6(1)
- links with other substantive and procedural rules (e.g. no harm, sustainable use, cooperation)

1992 Water Convention

1997 Watercourses Convention

2.2. No significant harm

- take all appropriate measures to prevent, control and reduce any transboundary impact – art. 2(1)
- minimum requirements to comply in arts. 2(3), 2(4), 3(1)) and annexes

- take all appropriate measures to prevent the causing of significant harm - art. 7(1)
- relationship with ERU & consultations - art 7(2)

2.3. Protection of international watercourses and their ecosystem

- TW to be used with the aim of ecologically sound & rational water management, env. protection, conservation & restoration of ecosystems' - art 2(2).
- 'transboundary impact' - - art 1(2)
- precautionary, polluter-pays, intergenerational equity principles - art 2(5).
- ecosystem approach - art 3(1)(i)

- IW shall be used and developed... with a view to attaining optimal and sustainable utilization thereof - art 5(1)
- environmental consideration included in ERU
- protection, preservation - art 20-23

1992 Water Convention

1997 Watercourses Convention

3. PROCEDURAL OBLIGATIONS

3.1. Cooperation

- | | |
|---|---|
| <ul style="list-style-type: none">• Principle of cooperation – art 2(6) & specific mechanisms (art. 9-15)• Obligation to establish joint bodies - art 9 | <ul style="list-style-type: none">• General obligation to cooperate – art 8• May establish a joint management mechanism - art 24(1) |
|---|---|

3.2. Regular information exchange

- | | |
|--|--|
| <ul style="list-style-type: none">• Exchange of information - art 13 | Regular exchange of data and information - art 9 |
|--|--|

3.3. Consultations

- | | |
|---|--|
| <ul style="list-style-type: none">• 'aim at cooperation regarding the issues covered by the [...] Convention' (art 10)• '[a]ny such consultations shall be conducted through a joint body [...] where one exists (art 10) | <ul style="list-style-type: none">• consult on planned measures, and to achieve and maintain ERU - article 6(2)• also on watercourse agreements (art 3(5)), harm elimination or mitigation (art 7(2), pollution control (art 21(3)), management (art 24(1)), installations (art 26(2)). |
|---|--|

1992 Water Convention	1997 Watercourses Convention
3.4 Prior notification on planned measures, reply or absent of reply	
<ul style="list-style-type: none"> • Joint bodies as a forum for exchange on planned uses - art 9(2)(h). • + The Espoo Convention 	<ul style="list-style-type: none"> • Detailed procedures - arts 11-19
3.5. Environmental impact assessment	
<ul style="list-style-type: none"> • EIA and other means of assessment to prevent, control and reduce TI - art 3(1) (h) • Among tasks of joint bodies – art 9(2)(j) • Joint monitoring & assessment (art 11) • The Espoo Convention 	<ul style="list-style-type: none"> • EIA is a source of ‘available technical data and information’ under notification – art 12’
3.6. Emergency cooperation	
<ul style="list-style-type: none"> • Critical situation - arts 14-15 • Contingency planning - art 3(1)(j) • Warning and alarm systems – art 14 	<ul style="list-style-type: none"> • Harmful conditions & emergency situations - arts 27-28

1992 Water Convention	1992 Watercourses Convention
4. IMPLEMENTATION AND COMPLIANCE REVIEW	
<ul style="list-style-type: none"> • Reporting • Sound institutional framework to support implementation and compliance: MoP, WGs, TFs, Implementation Committee 	<ul style="list-style-type: none"> • Absence of governing mechanisms (e.g MoP, Secretariat) to facilitate and review implementation and compliance
5. DISPUTE SETTLEMENT	
<ul style="list-style-type: none"> • means acceptable to the parties – art 22 • arbitration (annex IV) 	<ul style="list-style-type: none"> • a range of means, including an impartial fact-finding commission - art 33

Institutional framework of 1992 Water Convention



Key messages

- **International law** as applied to transboundary waters **constantly evolves**
- **Two global water conventions** codify customary norms and define other obligations, while complementing each other
- Equitable and reasonable use, no-harm, and an emerging obligation to protect ecosystems are independent norms but also **complement each other** and work in tandem
- Substantive norms necessitate a **sound procedural and institutional system** to interpret, implement and develop these norms
- Well-developed institutional apparatus of the Water Convention makes it a **living and evolving instrument**: two Protocols, other complementing UNECE MEAs, model for basin agreements, new issues such as climate change, nexus, benefit sharing