

International Water Law and Relevant Conventions

Transboundary Water Cooperation and International
Water Law

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stecs@ceu.edu



Overview

Sources of international law

State Responsibility and Obligation to Cooperate in Good Faith

UNECE Water Convention (Helsinki, 1992)

UN Watercourses Convention (New York, 1997)

EIA – Espoo Convention, Pulp Mills case

The origins and sources of international law

SOURCES (Art. 38, Statute of the ICJ)

- Customary norms, general principles, jus cogens, state practice
- Treaties
- Decisions of international tribunals
- Writings of eminent jurists



Obligation to Cooperate

Obligation to Cooperate in Good Faith

Due diligence obligation of prevention

The International Court of Justice in the *Pulp Mills on the River*

Uruguay case (Argentina v. Uruguay, 2010), in para. 101, stated:

“The Court points out that the principle of prevention, as a customary rule, has its origins in the due diligence that is required of a State in its territory. It is ‘every State’s obligation not to allow knowingly its territory to be used for acts contrary to the rights of other States’ (*Corfu Channel (United Kingdom v. Albania)*, Merits, Judgment, I.C.J. Reports 1949, p. 22).”

State Responsibility

Trail Smelter arbitration (*US v Canada*)

Lac Lanoux (*Spain v. France*)

Pulp Mills, in para. 101, further states:

“A State is thus obliged to use all the means at its disposal in order to avoid activities which take place in its territory, or in any area under its jurisdiction, causing significant damage to the environment of another State. This Court has established that this obligation ‘is now part of the corpus of international law relating to the environment’ (*Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, I.C.J. Reports 1996).”

State Responsibility

Obligation of Compensation

Polluter Pays Principle

Due Diligence includes obligation to conduct EIA where appropriate

UNECE Water Convention

UNECE Convention on the Protection and Use of Transboundary Watercourses and International Lakes (Helsinki, 1992)

Entered into force 1996

41 Parties (Greece and FYR of Macedonia without amendments)

Amended to permit global membership

Framework Convention (cooperation framework)

Due diligence (not exactly “no harm”)

Equitable use



UN Watercourses Convention

- UN Convention on the Law of the Non-Navigational Uses of International Watercourses (New York, 1997)

Entered into force 2014

36 Parties (including Greece and Montenegro)

Based on ILC Draft Principles on Equitable Use

Principle of equitable participation

Assessment framework (Art 6 factors)



Article 6 factors

- (a) Geographic, hydrographic, hydrological, climatic, ecological and other factors of a natural character;
- (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 in one watercourse State on other watercourse States;
- (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.

Principles of Construction

NY Convention is based upon “codification” exercise

Helsinki was evidence of norms

Where possible treaties should be interpreted as being complementary

The two conventions have many common aspects

Differences are mainly ones of emphasis



Key differences

Helsinki leans towards protection, NY towards use

- equitable use doctrine

Accession process (amendment and decision)

Scope – groundwaters (confined) – ILC draft articles

Institutional arrangements – Helsinki has a Secretariat and MOPs

Consequently there is a possibility to advance the regime through, e.g., a work programme

- Model Provisions on Transboundary Flood Management (2006)



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Model Provisions on Transboundary Groundwaters (2012)

Linkage with EIA/SEA

Pulp Mills case confirms that there is an international legal obligation sometimes to conduct EIA/SEA

Espoo Convention is currently the most elaborated international legal instrument on EIA. *Kyiv Protocol on SEA* ditto for SEA.

EU context also relevant.

NEXUS assessment.



2015-2030 SD Agenda

Sustainable Development Goals

Sendai Framework on Disaster Risk Reduction

Addis Ababa Framework on Financing for SD

Paris Agreement on Climate Change



SDGs (2015)



6 CLEAN WATER AND SANITATION



Ensure availability and sustainable management of water and sanitation for all

TARGETS

6.1 by 2030, achieve universal and equitable access to safe and affordable drinking water for all

6.2 by 2030, achieve access to adequate and equitable sanitation and hygiene for all, and end open defecation, paying special attention to the needs of women and girls and those in vulnerable situations

6.3 by 2030, improve water quality by reducing pollution, eliminating dumping and minimizing release of hazardous chemicals and materials, halving the proportion of untreated wastewater, and increasing recycling and safe reuse globally

6.4 by 2030, substantially increase water-use efficiency across all sectors and ensure sustainable withdrawals and supply of freshwater to address water scarcity, and substantially reduce the number of people suffering from water scarcity

6.5 by 2030 implement integrated water resources management at all levels, including through transboundary cooperation as appropriate

6.6 by 2020 protect and restore water-related ecosystems, including mountains, forests, wetlands, rivers, aquifers and lakes

6.a by 2030, expand international cooperation and capacity-building support to developing countries in water and sanitation related activities and programmes, including water harvesting, desalination, water efficiency, wastewater treatment, recycling and reuse technologies

6.b support and strengthen the participation of local communities for improving water and sanitation management

7 AFFORDABLE AND CLEAN ENERGY



Ensure access to affordable, reliable, sustainable and modern energy for all

TARGETS

7.1 by 2030 ensure universal access to affordable, reliable, and modern energy services

7.2 increase substantially the share of renewable energy in the global energy mix by 2030

7.3 double the global rate of improvement in energy efficiency by 2030

7.a by 2030 enhance international cooperation to facilitate access to clean energy research and technologies, including renewable energy, energy efficiency, and advanced and cleaner fossil fuel technologies, and promote investment in energy infrastructure and clean energy technologies

7.b by 2030 expand infrastructure and upgrade technology for supplying modern and sustainable energy services for all in developing countries, particularly LDCs and SIDS

SDG 6 establishes global political priorities in the context of water

Safe drinking water

Sanitation

Protection from pollution

Efficiency of use

IWRM

Restore Ecosystems

Technology transfers

Participation

- Thank you for your attention!

stecs@ceu.edu

stephenstec@gmail.com

