



Book Unit 3 - Regulation at the Regional and Subregional Levels

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Course: Introductory Course to the International Legal Framework on Freshwater Resources

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1. The 1992 UNECE Convention on the Protection and Use of Transboundary Watercourses and International Lakes

The rules governing shared watercourses have also been established in regional contexts, and have resulted in several conventions, protocols and agreements, which represent the reference point for states which share watercourses and intend to cooperate in their conservation, management and use.

An important example of regulation of transboundary water resources at the regional level is the 1992 Convention on the Protection and Use of Transboundary Watercourses and International Lakes (Water Convention or Helsinki Convention), which was concluded under the auspices of the Economic Commission of Europe (UNECE) at Helsinki.

The Convention entered into force on 6 October 1996, with 26 signatories and 40 parties as of June 2015. In 2003, the Convention became a global legal framework for transboundary water cooperation after being amended to allow accession by all the United Nations Member States. The amendment entered into force in 2013, however there have not been any accessions of Parties outside the UNECE region yet.

Objective and scope

The Helsinki Convention deals with the prevention, control and reduction of transboundary impacts relating to international watercourses and lakes, with a strong emphasis on pollution prevention.

It establishes a framework for cooperation between the member countries of the UNECE on the prevention and control of pollution of specific transboundary watercourses by ensuring rational use of water resources with a view to sustainable development.

Transboundary waters are defined as any surface or ground waters that mark, cross or are located on the boundaries between two or more states.

Measures

Under the Convention, the Parties shall take all appropriate measures:

- To prevent, control and reduce pollution of waters causing or likely to cause transboundary impact;
- To ensure that transboundary waters are used with the aim of ecologically sound and rational water management, conservation of water resources and environmental protection;
- 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;
- To ensure conservation and, where necessary, restoration of ecosystems.

Actions designed to deal with water pollution must address pollution at source, and measures adopted on this basis must not result directly or indirectly in a transfer of pollution to other parts of the environment.

Principles

The Helsinki Convention establishes that parties must be guided, in their actions, by the following fundamental principles:

- The precautionary principle, according to which action to avoid the release of hazardous substances must not be postponed, despite the lack of a proven causal link between the substances and the transboundary impact;
- The “polluter pays” principle, according to which the costs of pollution prevention, control and reduction measures must be borne by the polluter; and
- Water resources must be managed so that the needs of the present generation are met without compromising the ability of future generations to meet their own needs.

Other obligations

The Convention also establishes obligations in the field of monitoring, research and development, consultations, warning and alarm systems, mutual assistance, institutional arrangements, and the exchange and protection of information, as well as public access to information.

The Protocol on Water and Health

Two Protocols were adopted under the Helsinki Convention: the Protocol on Water and Health and the Protocol on Civil Liability and Compensation for Damage caused by the Transboundary Effects of Industrial Accidents on Transboundary Waters.

The main aim of the Protocol on Water and Health, adopted in London in 1999, is to protect human health and well being by better water management, including the protection of water ecosystems, and by preventing, controlling and reducing water-related diseases.

It is the first international agreement of its kind adopted specifically to attain an adequate supply of safe drinking water and adequate sanitation for everyone and effectively protect water used as a source of drinking water.

To meet these goals, the parties are required to establish national and local targets for the quality of drinking water and the quality of discharges, as well as for the performance of water supply and wastewater treatment. They are also required to reduce outbreaks and the incidence of water-related diseases.

It entered into force in 2005 and, as of June 2015, it has 26 Parties.

The Protocol on Civil Liability

The Protocol on Civil Liability and Compensation for Damage caused by the Transboundary Effects of Industrial Accidents on Transboundary Waters was adopted and signed by 22 countries in Kiev, Ukraine, in 2003, under both the Helsinki

Convention and the ECE Convention on the Transboundary Effects of Industrial Accidents. The Protocol is open for ratification by parties to one or both Conventions, but any other Member state of the United Nations may accede to the Protocol upon approval by the Meeting of the Parties. The Protocol on Civil Liability will enter into force once 16 states have ratified it.

The Protocol on Civil Liability allows individuals affected by the transboundary impact of industrial accidents on international watercourses to bring a legal claim for adequate and prompt compensation. Companies can be held liable for accidents at industrial installations as well as during transport via pipelines. The liability covered by the Protocol includes physical damage, damage to property, loss of income, the cost of reinstatement and response measures. The Protocol contains provisions ensuring non-discriminatory treatment of pollution victims, by ensuring that victims of the transboundary effects cannot be treated less favourably than victims from the country where the accident has occurred.

2. Protocol on Shared Watercourse Systems in the Southern African Development Community

The Southern African Development Community (SADC) is a regional economic community that has the goal of promoting the integration of the regional economy and poverty alleviation, food security and industrial development.

It was established in 1992 and comprises fourteen countries: Angola, Botswana, the Democratic Republic of Congo, Lesotho, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Swaziland, Tanzania, Zambia and Zimbabwe. It is based on a treaty that is supplemented by sectoral protocols.

The first SADC Protocol on Shared Water Course Systems (SADC Protocol), developed with the assistance of UNEP, was signed in 1995, and ratified in September 1998.

Following adoption of the United Nations Convention on the Law of the Non-Navigational Uses of International Watercourses in 1997, a revised Protocol was developed, in line with the provisions of the UN Convention. The Revised Protocol was signed on 7 August 2000, and entered into force on 22 September 2003. At the time of writing, the following countries had ratified the Protocol: Botswana, Lesotho, Mauritius, Mozambique, Namibia, South Africa, Swaziland, Malawi and Tanzania.

Objective

Overall objective of the Revised Protocol is:

“[...] to foster closer cooperation for judicious, sustainable and co-ordinated management, protection and utilisation of shared watercourses and advance the SADC agenda of regional integration and poverty alleviation.”

In order to achieve this objective the Protocol seeks to:

- promote and facilitate the establishment of shared watercourse agreements and Shared Watercourse Institutions for the management of shared watercourses;
- advance the sustainable, equitable and reasonable utilisation of the shared watercourses;
- promote a co-ordinated and integrated environmentally sound development and management of shared watercourses;
- promote the harmonisation and monitoring of legislation and policies for planning, development, conservation, protection of shared watercourses, and allocation of the resources thereof; and
- promote research and technology development, information exchange, capacity building, and the application of appropriate technologies in shared watercourses management.

Principle of unity and coherence of each shared watercourse

The Protocol introduces the principle of “*unity and coherence of each shared watercourse*” which implies the need to harmonize uses of the water in the interests of sustainability and regional integration.

It requires member states to undertake to respect and apply the existing rules of general or customary international law relating to the utilization and management of the resources of shared watercourse systems and, in particular, to respect and abide by the principles of community interests in the equitable utilization of those systems and related resources.

Institutions

The Protocol also requires member states to establish appropriate institutions necessary for the effective implementation of the provisions of the protocol, which include, among others, River Basin Commissions between Basin States and River Authorities or Boards in respect of each drainage basin, with the following objects:

- Develop a monitoring policy for shared watercourse systems;
- Promote the equitable utilization of shared watercourse systems;
- Formulate strategies for the development of shared water course systems; and,
- Monitor the execution of integrated water resource development plans in shared watercourse systems.

3. Agreements concerning specific watercourses

The international regimes described earlier in this course establish general rules to be followed by states sharing freshwater resources. States will therefore normally be guided by those rules in the management of such shared resources, and on their basis they will develop mechanisms for cooperation, often in the form of legally binding agreements regulating the specific water bodies, containing the rights and duties of the respective states and relevant institutional arrangements.

Riparian states are becoming increasingly aware of the need to cooperate with other riparian states for the management of shared water resources at the basin level, based on the recognition that the hydrological linkage between land, freshwater river basins and coastal waters does not allow for the management of these resources in isolation. From this perspective, for certain water systems not only states whose territory directly adjoins the water body but also all those whose water resources contribute to or are affected by such a water body should be involved in any cooperative arrangement, whether legally binding or not.

Nile River

In the case of the Nile basin, for instance, ten countries (Kenya, Tanzania, Uganda, Sudan, Egypt, Burundi, Rwanda, Ethiopia and the Democratic Republic of Congo) are involved in the Nile Basin Initiative, which was established in 1998 as a dialogue to create a regional partnership to facilitate the common pursuit of sustainable development and management of Nile waters and in the context of which a number of significant steps have been taken towards closer and more stable cooperation.

International Network of Basin Organization

Based on the recognition of this widespread form of cooperation and considering the high number of basin organisations existing in the world, an International Network of Basin Organization was established in 1996, with the following objectives:

- Establishing a network of organizations interested in global river basin management, and facilitate exchanges of experiences and expertise among them;
- Promoting the principles and means of sound water management in sustainable development cooperation programmes;
- Facilitating the implementation of tools for institutional and financial management, for programming and for the organization of data banks;
- Promoting information and training programmes for the different actors involved in water management including local elected officials, users' representatives and the executives and staff of member organizations;
- Encouraging education of the population, the young in particular; and
- Evaluating ongoing actions and disseminate their results.

Cooperation and management

Although there exist many examples of basin-wide cooperation, of the more than 263 international water basins existing today, more than 158 still lack any type of cooperative management framework. Furthermore, the majority of those basins enjoying some form of cooperation do not have comprehensive agreements including all the riparian states in the basin. And among the existing agreements, the majority lack the tools necessary to promote long-term holistic basin-wide resource management. Therefore, much work still needs to be done before adequate legal regimes are developed throughout the world.

Although the general rules on cooperation and management of shared water resources are provided in the International Watercourses Convention as well as, when applicable, in relevant regional and subregional instruments, each river basin has its own characteristics, and it is therefore difficult to provide a brief overview of the existing agreements regulating specific watercourses. Anyone interested in a specific arrangement has to check that instrument directly.