General principles of international water law

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Introduction

At the global level, three instruments on TB water bodies:

- Convention on the Protection and Use of Transboundary Watercourses and International Lakes (1992)
- Draft articles on the law of transboundary aquifers (ILC 2008, UN GA Resolutions 2008 & 2013)
The UNECE Water Convention

- 1989 Conference on Security and Cooperation
  - Call for UNECE Water Convention
  - 40 parties + the EU to date
- 1996-present
  - Concerted and successful effort to implement and develop the treaty regime
- 2003 Amendment to allow States outside the UNECE region to join
Status of ratification of the UNECE Water Convention

40 countries and the European Union

Parties

Countries in accession

Non Parties
UN Watercourses Convention

- UN GA Res 1401 (XIV), 1959
  - survey practice
- UN GA Res 2669 (XXV), 1970
  - International Law Commission (ILC) to codify and progressively develop the law
- 1976-1994
  - work of the ILC (in consultation with States)
- 1996-1997
  - negotiations in sixth committee of the GA
- 1997 Convention on the Law of the Non-navigational uses of international watercourses adopted
- 2014 Entry into force
  - 36 Parties to date
The draft articles on the law of TBA

The process:

UN International Law Commission

- Introduces in its programme of work the topic of “Shared Natural Resources” (2002)
  - Transboundary groundwaters
  - Oil
  - Natural gas

- 2008: the ILC adopts the draft articles on the law of TB aquifers at second reading ➔ Deferred to the UN GA
The draft articles on the law of TBA

UN GA Resolutions on the law of TBA ((63/124 (2008); 66/104 (2011); 68/118 (2013)) :

- Non binding instrument
- Only instrument covering TBA

  encourages the States concerned to make appropriate bilateral or regional arrangements for the proper management of their transboundary aquifers, taking into account the provisions of the draft articles
The draft articles on the law of TBA Resolution 68/118 (2013): change in language: *Commends* to the attention of Governments the draft articles on the law of transboundary aquifers (...) as guidance for bilateral or regional agreements and arrangements for the proper management of transboundary aquifers;

➔ Will to promote the DA as declaration of principles
Introduction

Based on the DA:
Model Provisions on TB GW (2012) under the UNECE Water Convention:

➢ Guidance & assistance for States regarding transboundary groundwater agreements,
Introduction

Different scopes:

- UNECE Water Convention: wide scope: applies to all « surface or ground waters which mark, cross or are located on boundaries between two or more States; »
Introduction

Different scopes:

- **UNWC**: applies to:
  - uses of international watercourses and of their waters for purposes other than navigation
  - to measures of protection, preservation and management related to the uses of those watercourses and their waters.

Defines a watercourse: a system of surface waters and groundwaters constituting by virtue of their physical relationship a unitary whole *and* normally flowing into a common terminus;

- Limited consideration of transboundary aquifers
Introduction

**Different scopes:**

Draft articles: Apply to all transboundary aquifers

- (a) Utilization of transboundary aquifers or aquifer systems;
- (b) Other activities that have or are likely to have an impact upon such aquifers or aquifer systems; and
- (c) Measures for the protection, preservation and management of such aquifers or aquifer systems.
Core principles of IWL

▸ **Equitable and reasonable utilization**
  UNECE Water Convention article 2§2c & 5c
  UNWC articles 5 & 6
  DA articles 4 & 5

▸ **No harm rule**
  UNECE Water Convention article 2§1
  UNWC Convention article 7
  DA article 6

▸ **Obligation to cooperate**
  UNECE Water Convention article 2§6
  UNWC article 8
  DA article 7
Equitable & reasonable use

Implies an “equality of rights” ≠ equal share of the uses and benefits of the watercourse.

➔ the quantity of water is *not* to be divided into identical portions.

➔ Each State is entitled to use and benefit from the water body in an *equitable manner*. 
Equitable & reasonable use

States shall use an international watercourse or a TBA in an equitable and reasonable way:

- In view of reaching optimal utilization and benefit
- Non-recharging aquifer: to maximize the long-term benefits derived from the use of water & to consider present and future needs
- And ensuring adequate protection
- Recharging aquifer: maintain its effective functioning

- Sustainable development embedded in the principle
- Equitable participation

The right to utilize the watercourse and the duty to cooperate in the protection and development of the watercourse
Equitable & reasonable use
Factors
Practical implementation of the principle: ➔ case by case assessment of factors
Indicative list in UNWC & DA
No priority or weight is assigned to the factors and circumstances listed,
“Special regard” be given to vital human needs.
No harm rule

Obligation of conduct not of result ➔ due diligence

➔ Harm not caused intentionally or by neglect

If a harm is caused in the utilization of an international watercourse, *despite due diligence*:

1. there is an agreement on that use: case settled according to the agreement

2. No agreement: the States consult together to determine if the use is equitable and reasonable and how to eliminate or mitigate the harm, and eventually compensation.
Obligation to cooperate

General obligation of international law

➢ Basis:
  ▪ sovereign equality,
  ▪ territorial integrity
  ▪ mutual benefit
  ▪ Sustainable development (DA)

➢ Objectives:
  ▪ optimal utilization and
  ▪ adequate protection
Obligation to cooperate

- Represents the background context for the application of provisions on specific forms of cooperation such as:
  - Regular exchange of data and information
  - Protection, preservation and management
  - Planned measures

- Cooperation through joint mechanisms, such as commission, joint authority or any other institution established by the States
Thank you for your attention