Water allocation in the European Union: the interaction between UNECE, EU water law and basin treaties

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The curious absence of water allocation in the European Union

- Historically transboundary water allocation not an EU-wide political issue
- EU water law born within EU 12-15 (before the 2004 expansion)
- The largest and most complex basins well watered with modest temporal variations
  - Rhine
  - Meuse
  - Danube (upstream Alpine sections)
- No major changes in water use (population, agriculture, industry, energy, transport)
- One major exception: Spanish-Portuguese rivers
- Allocation matters seen as small scale bilateral issues (Lac Lanoux arbitration)
- Cooperation dominated by pollution and ecological questions
The interaction among the four layers of European water law and governance (1)

The UNECE level

- Basic principles in the Water Convention
- Equitable and reasonable utilization & no-harm rule
- Helpful in providing some framework, but too vague in the context of hard disputes
- Example of the Gabčíkovo-Nagymaros litigation: 20 years of unresolved dispute of water allocation
- Part of EU law!
The interaction among the four layers of European water law and governance (2)

**European Union**
- Major constitutional constraint: water quantity management under unanimity decision-making, European Parliament no co-legislator
- EU water law almost exclusively concerned with quality issues, water quantity addressed incidentally, water allocation completely lacking
- European Commission
  - High resistance against the issue – conflict potential, member state pressure
  - Downplaying/avoidance/undue pressure (“don’t open Pandora’s box”)
- Result: gross asymmetry between highly detailed transboundary planning and quality management requirements and the lack of cross-border quantity control
The interaction among the four layers of European water law and governance (3)

Basin treaties and commissions

• Rhine, Elbe, Meuse, Odra convention:
  • No or superficial mention of quantity management (floods),
  • Allocation omitted
• Danube Protection Convention: goes in some way to address national and basin wide water balance, but no rules for allocation
• Sava Framework Agreement: more comprehensive approach, moving beyond the one dimensional qualitative focus ("integrity of water regime")
The interaction among the four layers of European water law and governance (4)

**Bilateral water treaties**
- Relatively high number of basic allocation rules or principles
- Most of them however too general to be practically applicable
- Several successful examples of confined management regimes (Lake Vuoksi, Lac Lanoux)
- One outstanding exception: 1998 Albufeira Convention
  - Detailed allocation mechanisms
  - Regularly revised allocation figures
  - Flexible regime adaptation to meteorological extremes
Evaluation and outlook

- High contrast with the rest of the world: one-sided focus on the environmental problems of NW Europe in the 1970s and 80s ossified in UNECE, EU law and basin treaties
- Transboundary cooperation dominated by EU law, especially by the Water Framework Directive - Hardly any institutionalised interaction among the various layers
- Allocation issues should be addressed at EU level, but strong political and legal constraints
- Europe has no experience in water allocation, except for the Iberian peninsula
- The intensification of climate change and river flow variability: the lack of clear rules and mechanisms likely to increase hydropolitical tensions (Rhine, lower Danube basin)