General provisions: obligation to prevent, control and reduce transboundary impact; equitable and reasonable utilization; principle of cooperation

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Water Convention (Art. 2) – General provisions

- Prevent, control and reduce transboundary impact
- Equitable and reasonable utilization
- Cooperation
The No-Harm Rule

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Article 2 par. 1

“The Parties shall take all appropriate measures to prevent, control and reduce any transboundary impact”
The Notion of Transboundary Impact

• The definition of Article 2 par. 1
• Both water quantity and water quality are covered
• The impact has to be “significant”
• The assessment has to be made on a case by case basis taking into account the circumstances of each river basin
The three elements of the no-harm rule

• Obligation to prevent, control and reduce transboundary impact
• Prevent : long-term obligation of an anticipatory character
• Control and reduce : obligations arising once the transboundary impact has already occurred
The No-Harm Rule and the Equitable and Reasonable Utilization Principle

• No hierarchy between the two rules under the Water Convention

• A combined application of both: the occurrence of transboundary harm as a factor for the determination of the equitable character of a use.
Nature of the Obligations under Article 2 Par. 1

• No absolute obligations but obligations of a due diligence nature
• Flexibility as to the content and the timing of the measures to be adopted
• The level of economic, technological and administrative capacity of a State to be taken into account
• Assessment of the degree of the required diligence on a case-by-case basis
The Identification of the Appropriate Measures

• The measures have to be appropriate for each river basin and its characteristics
• The four objectives of the appropriate measures according to article 2 par. 2
• The requirements of article 3
• Procedural duties and the need for cooperation
Conclusion

• The due diligence nature of the rule allows for its adjustment to the conditions of each river basin

• The implementation of the no-harm rule is supplemented by a set of other rules and principles of the Convention
Water Convention (Art. 2) – General provisions

- Prevent, control and reduce transboundary impact
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Overall objective of sustainability
The equitable and reasonable utilization
Cooperation

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Equitable & reasonable use: article 2 par. 2c & 5c

2. The Parties shall, in particular, take all appropriate measures: ...

• (c) 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;
5. In taking the measures referred to in paragraphs 1 and 2 of this article, the Parties shall be guided by the following principles: ...

• (c) Water resources shall be managed so that the needs of the present generation are met without compromising the ability of future generations to meet their own needs.
Equitable & reasonable use & sustainable development

- Art 2§2c to be read in conjunction with art 2§5c:
  - the principle of equitable use incorporates the principle of sustainable development
  - an utilization of the watercourse providing maximum benefit to the riparian States in a manner incompatible with its preservation as a natural resource cannot be qualified as « equitable and reasonable »
Practical implementation

➢ reflects the community of interest and the equality of rights of all riparians in the use of a shared water body
➢ requires a case-by-case assessment
➢ Precondition: cooperation:
  ➢ mutual exchange of data and information on the concerned basin and country specific factors,
➢ Guidance from the UNWC (article 6) on the factors
  ➢ no use or category of uses enjoys inherent priority; except *vital human needs*
Practical implementation

- Procedural and institutional requirements of the ECE Water Convention:
  Instrumental to assess and identify factors
  - bilateral and multilateral joint bodies, the Meeting of the Parties and the meetings of its subsidiary bodies
  - Effective inter-State cooperation
Cooperation: article 2§6

The Riparian Parties shall cooperate on the basis of equality and reciprocity,

- through bilateral and multilateral agreements,
- in order to develop harmonized policies, programmes and strategies
- covering the relevant catchment areas, or parts thereof,
- aimed at the prevention, control and reduction of transboundary impact
Cooperation: article 2§6

- independent obligation
- instrumental to allow full compliance with the two other obligations
- on a permanent basis (agreement)
- aim: achieve the objectives of the Convention (prevent TB impact)
- catchment area (not only the water body): integrated approach
Cooperation: article 2§6

Practical provisions in the Convention:

- consultations,
- establishment of joint bodies,
- joint monitoring and assessment,
- exchange of information,
- warning and mutual assistance

(articles 9 to 15)