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## Summary

**International water law (IWL) providing an underlying legal framework that enables countries to cooperate peacefully and use water resources in a way that maximises shared socio-economic and environmental benefits. IWL comprises international treaties, bilateral and multilateral basin agreements, and principles. This Tool introduces the key universal legal frameworks on transboundary waters, discusses the main governing principles of IWL, and highlights the key mechanisms for facilitating cooperation and dispute settlement.**

### What is International Water Law?

The use of transboundary water resources requires a legal framework which allows to prevent conflicts, maximise socio-economic benefits, and protect ecosystems. International water law comprises agreements, manifested in rules, treaties and principles (Tool A2.01), that were created to foster cooperation among states sharing freshwater resources. Despite primarily governing inter-State relations, international water law is also relevant and produces impacts on the national legal level. International conventions should be ratified and implemented at the domestic level in order to ensure the compliance of States with norms and principles of international law embodied in such conventions.

Sources of international water law include customary law (Tool A2.03), bi- or multilateral treaties, regional framework treaties and treaties with universal scope of application. There are more than 400 agreements that govern international cooperation on freshwater resources (OSU International Freshwater Treaties Database). The following instruments are considered the universal legal frameworks on transboundary waters:

- **Helsinki Rules:** One of the first comprehensive codification of the law of international watercourses were the 1966 Helsinki Rules on the Uses of Water of International Rivers (Helsinki Rules), adopted by the International Law Association and regulating “the use of water of an international drainage basin”.
- **UN Watercourses Convention:** Among the treaties with universal scope of application, the 1997 United Nations Convention on the Law of the Non-Navigational Uses of International Watercourses (UN Watercourses Convention) was the first global convention, which codified international law on transboundary water resources. Despite being adopted in 1997, the Convention entered into force only in 2014, due to the slow process of ratification.
- **UNECE Water Convention:** Another framework treaty, the Water Convention on the Protection and Use of Transboundary Watercourses and International Lakes, was adopted in 1992 and entered into force in 1996. Although originally adopted as a regional instrument in pan-European region, it has been opened for accession to all UN Member States in 2016.

## **Key Governing Principles**

Several universal principles governing the use of shared waters are key for the international water law, such as the principle of equitable and reasonable utilisation (Art.5, UN Watercourses Convention, 1977), the obligation not to cause significant harm (Art.7), as well as the duty to cooperate (Art.8) and protect ecological systems (Art. 20) (UN, 1977).

- **The principle of equitable and reasonable utilisation:** provides that the riparian State should use the water resources within its territory in a manner which does not prejudice the interests of other riparian States. It affirms the equality of rights of downstream and upstream States, and is inextricably linked to the concept of a “community of interest”, a concept of a community of interests among basin states which requires balancing those interests to account for each State’s needs and uses (McIntyre, 2007; McCaffrey, 2019). Pursuing common interests and aiming to optimise the utilisation of water resources, watercourse States are required to cooperate with each other to maximise the benefits, obtained from the use of shared resource. The cooperation may take several forms such as joint institutional mechanisms, exchange of data and notification on planned measures.
- **The obligation not to cause significant harm:** stems from the overarching obligation of every State to ensure that the activities taking place within its territory do not cause significant harm to the territory of another State (McCaffrey, 2019). The UN Watercourses Convention provides that the States are obliged to exercise due diligence in utilising international watercourses in a way which does not cause significant harm to other riparian States.
- Within the general **duty to cooperate**: universal and regional water agreements provide for the procedure of notification and consultation, which oblige a riparian State to notify and consult with other riparian State when planning any economic activity that will produce adverse impacts on the international watercourse. This procedure enables the riparian States to mitigate and prevent conflicts which might arise over the uses of international watercourse in conjunction with the planned measures. These three principles, together with the procedural obligation to settle the disputes peacefully, have been recognised as customary rules of international water law (Tanzi, 2015).
- **The ecological protection:** of transboundary watercourses is a principle that is recognised by several international legal instruments. For example, the UN Watercourses Convention provides for the definition of water ecosystems (Art.20), which includes the areas surrounding the watercourse and may affect the equilibrium of the whole ecosystem if negatively affected (UN, 1977). The UNECE Water Convention also incorporates several other procedural rules on environmental protection, such as obligation to take measures to minimize transboundary impact (Art.3.1) and reaffirms the principle of precaution and polluter-pays principle (Art.2.5) (UNECE, 1996).

## Key Mechanisms for Dispute Settlement

International law provides several mechanisms and procedures to avoid or settle water disputes. There is no obligation to resort to any specific means to solve water disputes, unless the riparians agree to do so. Following the mechanisms in general international law, such as the UN Charter (Art. 2, 33, Charter of the United Nations, 1945), states first have to consent to apply specific dispute settlement mechanisms, respecting state sovereignty. States can opt for binding dispute settlement methods, resorting to arbitration or the International Court of Justice, or choose non-binding methods, such as negotiations (only involves the parties to the dispute) or alternative methods involving a third party such as good offices, mediation, and conciliation (Tool C6.02).

Several conventions foresee the resort to dispute settlement mechanisms diplomatic or judicial. Both global conventions, the UN Watercourses and the UNECE Water Convention provide for resolution of disputes via judicial means, namely, arbitration. In addition, the UN Watercourses Convention provides a fact-finding mechanism that can be triggered at the request of any of the parties to a dispute (Art.33, UN Watercourses Convention, 1977). Some regional agreements may also provide for several stages of dispute settlement. For example, the Convention on Protection of the Rhine obliges

the parties to first aim to resolve the dispute by negotiation, but if the dispute persists, one of the parties may refer it to arbitration (Art. 16, Convention on Protection of the Rhine, 1999). In some cases, such as in Gabčíkovo-Nagymaros, negotiations may also follow the judicial dispute settlement. Joint bodies and river basin commissions also have an important role in settling water disputes (Tool C6.03). As they are established to foster cooperation, states may grant them powers to resolve their water disputes (Art.68, Treaty on the Rio de la Plata, 1973; Art.58, Statue on the Uruguay River, 1982).



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