

INTERNATIONAL  
**ENVIRONMENTAL LAW**

Inland waters protection

*Ilona Jancarova*

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**Allocation Doctrines**

- Absolute territorial sovereignty (Harmon doctrine – articulated in case of diversion of the Rio Grande by the U.S., which adversely affected Mexican interests)
- Absolute territorial integrity
- Limited territorial sovereignty (obligation not to cause significant harm)
- Equitable utilization of water resources (decisions of ICJ and UN Watercourses Convention)

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**USE OF COMMON NATURAL RESOURCES**

**Principle of equity among coriparian states:**

- Upstream states have the right to use waters
- Upstream states have a duty to take into account the interests of downstream states

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**Convention on the Law of Non-Navigational uses of International Watercourses**  
 (New York 1997)

Goals:

1. optimal and sustainable utilization,
2. co-operation,
3. information exchange,
4. pollution prevention
5. the protection, preservation and management of ecosystems
6. managing emergency situations.



**Equitable utilization doctrine**

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**LAKE LANOUX ARBITRATION  
 1957 (France v. Spain)**

**Treaty of Bayonne of May 26, 1866:**  
*"Article 11: When in one of the two States it is proposed to construct works or to grant new concessions which might change the course or the volume of a watercourse of which the lower or opposite part is being used by the riparian owners of the other country, prior notice will be given to the highest administrative authority of the Department or of the Province to which such riparian owners are subject by the corresponding authority in the jurisdiction where such schemes are proposed, so that, if they might threaten the rights of the riparian owners of the adjoining Sovereignty, a claim may be lodged in due time with the competent authorities, and thus the interests that may be involved on both sides will be safeguarded. If the work and concessions are to take place in a Commune contiguous to the border, the engineers of the other Country will have the option, upon proper notice given to them reasonably in advance, of agreeing to inspect the site with those in charge of it."*

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**Case Law**

- **Lake Lanoux** - States must strive to reach agreements prior to the creation of operation that can pose potential problems.



establishment of the principle of prior consultation

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**Convention on the Protection and Use of Transboundary Watercourses and International Lakes (Helsinki 1992)**

Objective: - the protection and the rational usage of transboundary watercourses and lakes

Obligations:

- to **take all appropriate measures to prevent, control and reduce any transboundary impact**
- pollution prevention and reduction
- sustainable management of water resources
- to monitor and evaluate water conditions
- information exchange
- to prepare emergency notification and warning system



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**Convention on the Protection and Use of Transboundary Watercourses and International Lakes (Helsinki 1992)**

Protocol on Water and Health (London 1999)

Protocol on Civil Liability and Compensation for Damage Caused by the Transboundary Effects of Industrial Accidents Kiev 2003) – *not signed by the CR*

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**Convention on the Protection and Use of Transboundary Watercourses and International Lakes (Helsinki 1992)**

Protocol on Water and Health (London 1999)

Objectives:

- to support human health protection and well-being by:
- improvement of the water management
- improvement of quality and quantity of drinking water
- protection of water ecosystems

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### Convention on the Protection and Use of Transboundary Watercourses and International Lakes (Helsinki 1992)

Protocol on Civil Liability and Compensation for Damage Caused by the Transboundary Effects of Industrial Accidents (Kiev 2003) - *not in force yet (signatories: 24; parties: 1)*

- Aim - to give individuals affected by the transboundary impact of industrial accidents on international watercourses (e.g. fishermen or operators of downstream waterworks) a legal claim for adequate and prompt compensation.
- Definitions of industrial accident ; damage
- Obligations of the operators to have financial insurance
- Polluter-pay principle

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### Convention on the International Commission for the Protection of the Elbe (Magdeburg 1990)

#### Objectives:

- to allow the use of water from bank infiltration for drinking water supply purposes
- agricultural use of water and sediments
- to improve conditions of ecosystems to be as close as possible to the natural conditions with sound diversity of species
- **to reduce pollution of the North Sea by the Elbe**

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### Convention on Co-operation for the Protection and Sustainable Use of the Danube River (Sofia 1994)

#### Objectives:

- sustainable water management
- protection and rational use of surface waters and groundwater
- reduction of hazards originating from accidents involving hazardous substances and floods
- **to reduce pollution of the Black Sea from Danube river**

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### Declaration on the Environment in the Danube River Basin (1994)

- Strategic Action Plan
- Program for the Implementation of SAP (investment activities sponsored from PHARE project)
- Environmental Program for the Danube Basin (improvement of environmental conditions)
- Accidental Emergency Prevention and Warning System (focused on timely warning in cases of accidents)

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### Convention on the International Commission for the Oder River Protection against Pollution Wroclaw 1996

#### Objectives:

- permanent reduction of the pollution of Baltic Sea caused by Oder River
- to restore aquatic and related ecosystems to get close to natural conditions with adequate diversity of species
- to allow the use of the water from bank infiltration for the drinking water supply
- agricultural use of water and sediments

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### Case Law

- Gabcikovo – Nagymaros
- 1977 Agreement
- 1988 withdrawal from the project (Hungary); Variant C (Slovakia)
- 1993 the dispute was submitted to the ICJ

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## Gabcikovo – Nagymaros

The court was asked to decide following questions:

- Whether Hungary could withdraw from the 1977 treaty?
- Whether Slovakia was entitled to proceed with the provosional unilateral solution in its territory?

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## Gabcikovo – Nagymaros

### Judgment:

Both parties are to pay damages to one another.

- Slovakia - because the countermeasures it had undertaken were not proportionate and, thus, it was breach of international law
- Hungary - because it had breached its obligation under an international treaty

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