



**IWRA Webinar**  
**‘Why does the UN Watercourses  
Convention’s entry into force matter?’**  
**14<sup>th</sup> July, 2014**

***The UN Watercourses  
Convention and the  
Protection of Watercourse  
Ecosystems***

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# Emergence of the “Ecosystems Approach”

- 1997 UN Watercourses Convention
  - Art 20: protect & preserve wc ecosystem
    - ILC: specific application of Art 5 (adequate protection)
    - equitable balancing; ‘essential basis for sust. dev.’;
    - ample precedent in State practice;
  - Art 6(1): ecological factors relevant re ERU
  - Part IV: Protection, Preservation & Mgt.
    - Art 21 (environmental pollution);
    - Art 22 (alien & invasive species);
    - Art 23: (protect marine environment);
    - Art 24: (sustainable mgt.); Art. 25 (regulate flow)



# Emergence of the “Ecosystems Approach”

- 1992 UNECE Helsinki Convention:
  - Art 2(2)(d): conservation & restoration;
  - Art 3(1)(i): States promote ecosystems approach;
  - Art 2(2)(b): ‘ecologically’ sound mgt & protection
  - 1994 Danube Convention (Arts 1(c), 2(3)&(5));
  - 1994 Meuse & Scheldt Agreements (Art 3);
  - 1998 Rhine Convention (Arts 2, 3 & 5);
  - [1990 Elbe Convention (Art 1(2))]



# Emergence of the “Ecosystems Approach”

- 2008 ILC Draft Arts on Transboundary Aquifers
  - Art 5(1)(i): role of aquifer in related ecosystem
  - Art 10: protect & preserve dependent ecosystems



# Emergence of the “Ecosystems Approach”

- Basin Agreements
  - 1969 Rio Plata Basin Treaty (Art 1)
  - 1974 Statute of the Senegal River (Art 4)
  - 1975 Statute of Uruguay River (Art 36)
  - 1978 Treaty for Amazonian Co-op (Art VII)
  - 1978 Great Lakes Quality Agreement (Art II)
  - 1980 Convention re Niger Basin Authority (Art 4(2))
  - 1987 Zambezi Agreement (Work Prog 6(c))
  - 1990 Elbe Convention (Art 1(2)); post-UNECE BAs
  - 1995 Mekong Agreement (Arts 3 & 7)
  - [1995 SADC Protocol Shared Watercourses (Art 2)]



# Emergence of the “Ecosystems Approach”

- Declarative Practice / ‘Soft-Law’
  - 1977 UN Mar del Plata Declaration
  - 1980 ILA Draft Arts Rel btn Water, NRs&Env
  - 1987 WCED/EGEL: Legal Principles & Recs
  - 1992 Dublin Statement on Water and SD
  - 1994 CSD Sectoral Review: Freshwater Res
  - 1992 Chapter 18, Agenda 21 (180 States):
    - preserve hydrological, biological & chemical functions of ecosystems; water an integral part of ecosystem; safeguard functioning of aquatic ecosystems;



# Emergence of the “Ecosystems Approach”

- Judicial Support: “Ecosystems Approach”
  - *Gabčíkovo-Nagymaros Case* (precaution):
    - ‘vigilance and prevention, irreversible character of damage, limitations re reparation of damage’
  - *Pulp Mills Case*: customary duty re (eco) EIA
  - *Kishenganga Arbitration* (PCA):
    - Obligations re environmental / ecological flows
    - Art 31(3)(c) VCLT (*Iron Rhine Case*); gen intl law
  - *San Juan River Case*
    - Relevance of Ramsar Designation
    - Territorial implications: wetlands env inseparable



# Emergence of the “Ecosystems Approach”

- Global Non-Water Conventions
  - 1968 African Convention on Nature (Art V)
  - Regional treaties re land-based marine poll.
  - 1971 Ramsar (Wetlands) Convention:
    - Designate & conserve important wetlands sites
    - Art 5: cooperate internationally: consult re shared water system (internal or TB wetland); harmonise
  - 1992 Convention on Biological Diversity:
    - Art 3: prevention of TB harm re biodiversity
    - Art 5: cooperate: EIA, notification, info ex. (Art 14)
    - Art 7: *in situ* conservation, protected areas





# Definition of “Ecosystems Approach”

- No formal definition; CBD “ecosystem”:
  - functional unit, biotic & abiotic elements
- 1992 UNECE: “transboundary impact”:
  - incl human health & safety, flora, fauna, soil, air, water, climate, landscape, or interaction
- 1994 ILC Commentary: “ecosystem”:
  - ecological unit, living & non-living, interdep.
- Brunnée & Toope (*YIEL* 1994)
  - whole system, species and physical env, interconnectedness. spatially broad. integrity



# Means of Implementation

- Technical Guidance ('communication'):
  - UNECE 1993 *Guidelines on Ecosystems Approach in Water Management*
  - Ramsar STRP, *Wise Use of Wetlands* (4<sup>th</sup> ed. 2010): Handbook 3 (Laws & Insts); Handbook 6 (Water-Related Guidance); Handbook 7 (River Basin Mgt, [incl. Intl. Co-op]); Handbook 8 (Water Allocation & Mgt)
- National Legislative Implementation:
  - 11+ modes of nat. implementation (Burchi)



# Means of Implementation

- Environmental Flows (methodology):
  - 2007 Brisbane Declaration (definition)
  - Ramsar STRP: ecological vulnerability of wetlands; review of methodologies, *etc.*)
  - 2012 Ramsar&CBD, flows re healthy estuarine ecos
  - UNESCO 2013: *Basin Water Allocation Planning*
  - IUCN/WANI FLOW Toolkit; ‘community of practice’
  - ILC Arts on TB Aquifers: role re related ecosystems
  - 2013 *Kishenganga Arbitration (IA)*: min. env. flow: ‘systemic integration’ under VCLT Art 31(3)(c); EIA
  - 2011 *San Juan River Case (PMs)*: wetlands protection; wetlands environmentally inseparable



# Means of Implementation

- **Ecosystem Services (Payments):**
  - Analytical Framework: econ/soc valuation of ES; integration of non-marketable benefits; upstream provision / downstream utilisation of ES; balance 'benefits' in ERU; duty to prevent of TB harm
  - 2005 Millennium Ecosystems Assessment:
    - Supporting; Provisioning; Regulating; Cultural
  - Technical Guidance:
    - 2008 CBD Sec. Report, Annex I: ES & Allocation
    - 2013 Ramsar Sec: *TEEB for Water & Wetlands*
    - 2011 WRI Report: methodologies re impact assessment
    - PES: IUCN (2006); UNECE (2009); IPBES?