



**THE HUMAN RIGHT TO WATER  
AND ITS IMPLICATIONS FOR  
THE LAW OF TRANSBOUNDARY  
AQUIFERS**

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# GENERAL OVERVIEW

- The Law of Transboundary Aquifers
- The Human Right to Water
- A Proposal of Conciliation



**THE LAW OF  
TRANSBOUNDARY  
AQUIFERS**

# GENERAL FRAMEWORK

	<b>International Watercourses</b>	<b>Transboundary Aquifers</b>
Scope	Transboundary surface waters, as well as other connected surface waters or groundwaters	Confined and unconfined transboundary aquifers
Legal background	Convention on the Non-Navigational Uses of International Watercourses (UNWC) Bilateral and regional treaties Customary international law	Draft Articles on the Law of Transboundary Aquifers (DALTA) Bilateral and regional treaties

# MAIN OBLIGATIONS

- **Equitable and reasonable use**
- Prohibition of transboundary harm
- Cooperation

# EQUITABLE AND REASONABLE USE

## **International Watercourses (UNWC)**

Art. 5(1) Attainment of an optimal and sustainable utilization, taking into account the interests of the watercourse States concerned, along with adequate protection of the watercourse

## **Transboundary Aquifers (DALTA)**

Art. 4 Equitable and reasonable accrual of benefits, as well as maximization of long-term benefits

# VITAL HUMAN NEEDS

## **International Watercourses (UNWC)**

Art. 10(2) “In the event of conflict between uses of an international watercourse, it shall be resolved (...) with special regard being given to the requirements of vital human needs”.

## **Transboundary Aquifers (DALTA)**

Art. 5(2) “(...) in weighing different kinds of utilization of a transboundary aquifer or aquifer system, special regard shall be given to vital human needs.”



**THE HUMAN  
RIGHT TO  
WATER**



# GENERAL FRAMEWORK

## Implicit protection

ICESCR (General Comment n. 15)

ICCPR (General Comment n. 36)

## Explicit recognition

Convention on the Rights of the Child

Convention on the Elimination of All Forms of  
Discrimination Against Women

Convention on the Rights of Persons with  
Disabilities

# ICESCR (GC 15)

- Availability
- Quality
- Accessibility

# INTER-AMERICAN SYSTEM

## Right to Life

- State as a guarantor of a minimum standard of living
  - Authorities knew or should have known of the risk to the right to life
  - Measures within the State's scope of authority

## Progressive Development

- “Autonomous” human right to water
- Interconnection with the right to a healthy environment
- Transboundary human rights implications

# OTHER REGIONAL FRAMEWORKS

## European System

- Potential violation of the right to respect for private and family life
  - Endangerment of human or environmental health
  - Direct and serious effects with intense and repeated consequences

## African System

- Guidelines on the Right to Water in Africa (2019)”
  - Similar to GC 15
  - Priority to human needs in water management



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# **A PROPOSAL OF CONCILIATION**

# SYSTEMIC INTERPRETATION

- VCLT, art. 31(3)(c) - interpretation of a treaty must consider “(...) any relevant rules of international law applicable in the relations between the parties”.
- Joint consideration of the human right to water and the principle of equitable and reasonable utilization

# SUBSIDIARY PROTECTION

- Human rights as a safeguard where there are no other applicable rules on transboundary aquifers
- Challenges of justiciability and the role of human rights courts

**THANK YOU!**

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