

# UN Watercourses Convention

## User's Guide Fact Sheet Series: Number 10

### Theories of Resource Allocation

#### Introduction to different theories of resource allocation

Before the customary international law governing international watercourses began to emerge in the 1950s, there were **two conflicting approaches reflecting the claims and counterclaim of States over their share of transboundary resources**. These two approaches are: the theory of absolute territorial sovereignty (also known as the Harmon Doctrine); and, and the theory of absolute territorial integrity. Their similarities and differences are outlined below.

#### Absolute territorial sovereignty v. absolute territorial integrity

The doctrine of “**absolute territorial sovereignty**” favours upstream States, allowing the unlimited use of the waters of a transboundary watercourse located within national borders regardless of any consequences that may occur downstream. In short it insists upon the complete freedom of action of the upstream State.

Conversely, the doctrine of “**absolute territorial integrity**” favours the downstream States wishing to prohibit any development in an upstream State that would interfere with the natural flow of such a watercourse.

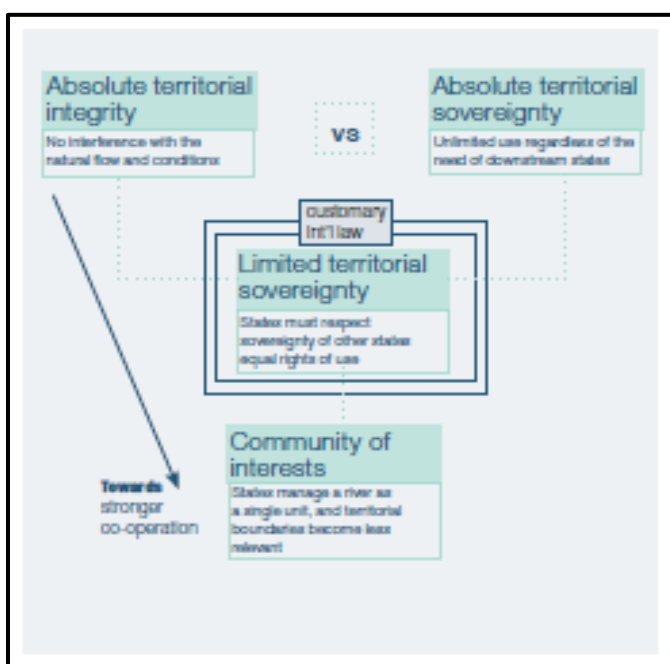
However, **both of these traditional doctrines oversimplify the complex issues associated with modern resource allocation**. For example, they equally deny that sovereignty entails duties as much as rights.

#### Limited territorial sovereignty

Today, the more balanced concept of “**limited territorial sovereignty**” is widely accepted as the foundation upon which the general laws and principles of international watercourses have evolved and which are embodied within the provisions of the UN Watercourses Convention. **This doctrine stipulates that all watercourse States enjoy an equal right to the utilisation of a shared resource, and each watercourse State must respect the sovereignty and reciprocal rights of other watercourse States.**

The concept of limited territorial sovereignty is also strongly reflected in the principle of equitable and reasonable utilisation. **One of the main advantages of this principle is that it simultaneously recognises the rights of both upstream and downstream nations without sacrificing the principle of sovereignty.**

#### Diagram showing relationship between theories

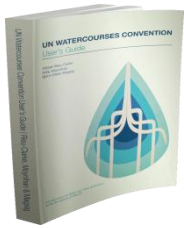


Source: Rieu-Clarke., et al. *UN Watercourses Convention – User's Guide* (2012), 103

#### Photo of the Barron River in Australia



Source: <http://www.globalwaterforum.org/wp-content/uploads/2012/01/Barron-river-Cairns.jpg>



Visit our on-line resource at [www.unwatercoursesconvention.org](http://www.unwatercoursesconvention.org)

This fact sheet is based on the *UN Watercourses Convention User's Guide*:

- Electronic version available on-line at: [www.dundee.ac.uk/water](http://www.dundee.ac.uk/water)
- Hardcopy available to order by emailing: [water@dundee.ac.uk](mailto:water@dundee.ac.uk)

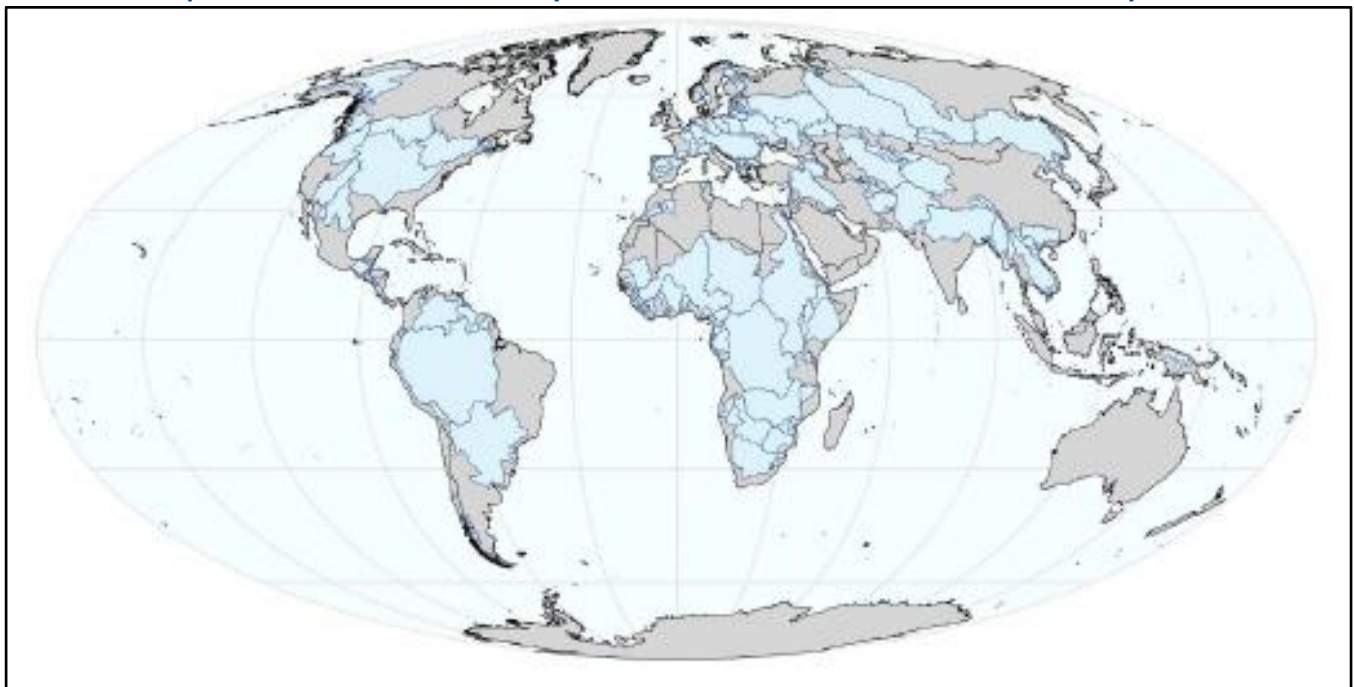


### Community of interest

The concept of “*community of interest*” indicates the current trend and future general direction in which the law and practice in this field appears to be moving towards. It derives from the idea that a community of interest in the water is created by the natural, physical and also social unity of the watercourse, **by its nature water is a common property and should be shared by the community**. When compared to the principle of limited territorial sovereignty, the community of interest includes more accurate conception of the relationships of the States. It also encapsulates the notion of watercourses as being part of a broader hydrological system and implies collective action when managing it.

To conclude, it can be said that nowadays there is little support for the isolationist theories of absolute territorial sovereignty or integrity. **At present, the doctrine of limited territorial sovereignty is most accurately reflects the actual situation produced by State practice, but mindful that community of interest theory is rapidly developing.**

### Map of the world's transboundary river basins and the international borders they cross



Source: Rieu-Clarke, A., et al. *UN Watercourses Convention – User's Guide* (2012), at 26, citing: TFDD, Oregon State University (1999)

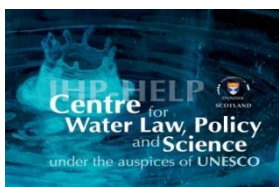
### ADDITIONAL RESOURCES

#### **FURTHER READING**

Rieu-Clarke, A., Moynihan, R. and Magsig, B., *UN Watercourses Convention – User's Guide* (CWLPS 2012), at 100 - 105

#### **RELATED UN WATERCOURSES CONVENTION SECTIONS**

Part II – Arts 5 & 6



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