

UN Watercourses Convention

User's Guide Fact Sheet Series: Number 2

Scope of the Convention #2

What is the difference between a “watercourse” and a “drainage basin”?

The UN Watercourses Convention uses the term “*international watercourse*” - meaning a “*watercourse, parts of which are situated in different States*” (Art. 2(b)). A “*watercourse*” is defined as “*a system of surface waters and ground waters constituting by virtue of their physical relationship a unitary whole and normally flowing into a common terminus*” (Art. 2(a)).

This definition differs from the approach of the International Law Association’s (ILA) Helsinki Rules on the Uses of the Waters of International Rivers, which uses the term “*international drainage basin*” - defined as “*a geographical area extending over two or more States determined by the watershed limits of the system of waters, including surface and underground waters, flowing into a common terminus*”.

It has been maintained that, through its use of the term “*drainage basin*”, the scope of the Helsinki Rules is more expansive than that of the UN Watercourses Convention. A question has therefore been raised over whether the approach of the Convention is restrictive in only applying to the waters, whereas the Helsinki Rules adopted a seemingly more expansive definition of the entire drainage area meaning the land and water of a river basin.

What are the relevant factors?

During the drafting of the Convention, the International Law Commission (ILC) gathered State opinion on whether the concept of an “*international drainage basin*” should be the appropriate basis for their study. **Some States objected to the concept arguing that it could result in regulation not only of the use of the water but also of the land territory.** Ultimately, the expression “*international watercourse*” was chosen by the International Law Commission (ILC) and supported by States.

Whilst the “*international watercourse*” approach taken by the UN Watercourses Convention was supported by most States based on its more restrictive scope, some leading academics refute the argument that such an approach is actually less expansive in scope than the “*international drainage basin*”.

The use of the term “*watercourse*” should be considered within the wider context of the Convention, which is focused on the protection, preservation and management of international watercourses. **In many situations, it may therefore be necessary to consider land-based activities beyond the watercourse itself in order to ensure its protection, preservation and management.**

UN WATERCOURSES CONVENTION TEXT

ART. 2 - Use of terms

For the purposes of the present Convention:

a) “Watercourse” means a system of surface waters and groundwaters constituting by virtue of their physical relationship a unitary whole and normally flowing into a common terminus;

b) “International watercourse” means a watercourse, parts of which are situated in different States;

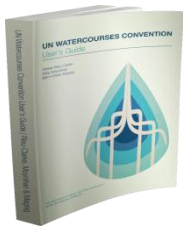
ILA’S HELSINKI RULES ON INTERNATIONAL RIVERS

CHAPTER 1 - General

Art. I - The general rules of international law as set forth in these chapters are applicable to the use of the waters of an international drainage basin except as may be provided by convention, agreement or binding custom among the basin States.

Art. II - An international drainage basin is a geographical area extending over two or more States determined by the watershed limits of the system of waters, including surface and underground waters, flowing into a common terminus.

Art. III - A “basin State” is a State the territory of which includes any portion of an international drainage basin.



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

- Electronic version available on-line at: www.dundee.ac.uk/water
- Hardcopy available to order by emailing: water@dundee.ac.uk



Overlap with the concept of "ecosystem"?

Such an expansive approach can be most clearly seen in the inclusion of the concept of ecosystem protection pursuant to Article 20 of the UN Watercourses Convention, which obliges States to protect and preserve the ecosystems of international watercourses. **The ILC defined an "ecosystem" as an "ecological unit consisting of living and non-living components that are interdependent and function as a community"**. In this context, land-water interactions may be included within the scope of the Convention.

Ultimately, what the Convention seeks to achieve is respect for the principle of limited territorial sovereignty. Hence, the question to be asked whenever the rights and obligations of a watercourse State are being examined is: Does an activity by one watercourse State affect, or potentially affect, the rights of another State to use an international watercourse in an equitable and reasonable manner? If the answer is yes, then the Convention will apply regardless of where in a drainage basin the activity takes place.

Diagram representing a drainage basin system including some of the main watercourse ecosystems



Source: <http://www.longtom.org/about-ltwc/watershed-diagram/>

ADDITIONAL RESOURCES

FURTHER READING

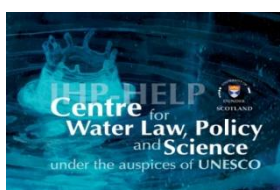
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International Law Association (1966) *Report of the Fifty-Second Conference* Helsinki 447-553 ILA: London, U.K (Helsinki Rules)

Salman, S.A. The Helsinki Rules, the UN Watercourses Convention and the Berlin Rules: Perspectives on International Water Law (2007) 23(4) *Water Resources Development* 625

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Wescoat, J.L. *Beyond the River Basin: The Changing Geography of International Water Problems and International Watercourse Law* (1992) 3 *Colorado Journal of International Environmental Law and Policy* 301



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