

UN Watercourses Convention

User's Guide Fact Sheet Series: Number 4

Equitable and Reasonable Utilisation

The principle of Equitable and Reasonable Utilisation

The principle of equitable and reasonable utilisation is the cornerstone of the UN Watercourses Convention and the fundamental doctrine guiding water-sharing for international watercourses. It entitles a watercourse State to an equitable and reasonable share of the uses and benefits of the particular watercourse, and also creates the reciprocal obligation not to deprive other States of their respective rights in this regard.

This principle, as codified under Article 5(1) of the Convention, aims to reconcile conflicting interests across international borders, so as to “**provide the maximum benefit to each State from the uses of the waters with the minimum detriment to each**” (ILA Helsinki Rules 1966 – See Fact Sheet #3 in this series).

Several terms apply: “*sustainable use*” reflects the need to balance economic, social and environmental values in the use of natural resources and to take into account the carrying capacity of international watercourses. “*Optimum utilisation*” means the most economically feasible and, if possible, the most efficient use.

In pursuing that goal, **watercourse States must not act unilaterally in ways that would fail to consider the equitable interests of co-riparian States in the use, management and protection of an international watercourse. States must also act in conformity with the adequate protection of international watercourses** against detrimental conditions such as erosion and pollution.

What is meant by “equitable”?

“**Equitable**” utilisation does not necessarily mean an **equal portion** of the resource or equal share of uses and benefits. The application of equitable and reasonable utilisation in a particular watercourse will not prohibit a use that causes damage unless it exceeds the limits of the using State’s equitable share of the watercourse.

Equitable utilisation is governed by the principle of sovereign utilisation of the watercourse which stipulates that **every riparian State has a right to the utilisation of the watercourse which is qualitatively equal to the rights of the co-riparians**. However, this **must not be mistaken for the right to an equal share** of the uses and benefits; **nor does it imply that the water itself has to be divided into equal shares**.

UN WATERCOURSES CONVENTION TEXT

ART. 5 - Equitable and reasonable utilisation and participation

1. Watercourse States shall in their respective territories utilise an international watercourse in an equitable and reasonable manner. In particular, an international watercourse shall be used and developed by watercourse States with a view to attaining optimal and sustainable utilisation thereof and benefits therefrom, taking into account the interests of the watercourse States concerned, consistent with adequate protection of the watercourse.

2. Watercourse States shall participate in the use, development and protection of an international watercourse in an equitable and reasonable manner. Such participation includes both the right to utilise the watercourse and the duty to co-operate in the protection and development thereof, as provided in the present Convention.

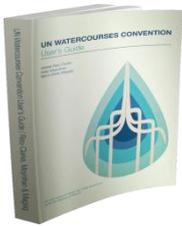
ART. 6 - Factors relevant to equitable and reasonable utilisation

1. Utilisation of an international watercourse in an equitable and reasonable manner within the meaning of Article 5 requires taking into account all relevant factors and circumstances, including:

- a) Geographic, hydrographic, hydrological, climatic, ecological and other factors of a natural character;
- b) The social and economic needs of the watercourse States concerned;
- c) The population dependent on the watercourse in each watercourse State;
- d) The effects of the use or uses of the watercourses in one watercourse State on other watercourse States;
- e) Existing and potential uses of the watercourse;
- f) Conservation, protection, development and economy of use of the water resources of the watercourse and the costs of measures taken to that effect;
- g) The availability of alternatives, of comparable value, to a particular planned or existing use.

2. In the application of Art 5 or paragraph 1 of this article, watercourse States concerned shall, when the need arises, enter into consultations in a spirit of cooperation.

3. The weight to be given to each factor is to be determined by its importance in comparison with that of other relevant factors. In determining what is a reasonable and equitable use, all relevant factors are to be considered together and a conclusion reached on the basis of the whole.



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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



What is meant by “reasonable”?

The principle of equitable and reasonable use recognises equity as a broader umbrella under which the concept of reasonableness becomes relative. This means that what may be considered to be perfectly reasonable by one State can be inequitable when looked at within the broader picture of the whole watercourse and the various needs and interests of co-riparian States. Hence, “reasonable” uses are still subject to an “equitable” allocation.

Reasonableness also differs from the concepts of “beneficial” or “best possible” use. It encompasses the contemporary conception of rationality and takes factors such as the socio-economic development of a State into consideration. Yet, even if a use of an international watercourse has been identified as reasonable, it might still be challenged when balanced with other uses through the lens of equity.

What are the relevant factors?

Since the principle of equitable and reasonable utilisation is rather general and flexible and the use of the watercourse is not based on the notion of equity, the concept demands the weighing and balancing of the competing (reasonable) interests of States; taking into account all relevant factors and circumstances. Most uses are not static hence changing scenarios with changing natural conditions can trigger a need to reconsider the relevant factors in each case. **Article 6 of the Convention provides an indicative list of the key factors and circumstances to be taken into account** when determining what constitutes an equitable and reasonable use.

Vital human needs?

The minimum individual water requirements for human survival are considered “vital human needs” which must always be protected under the principle of “equitable and reasonable utilisation”. **Article 10 of the Convention** establishes that, in the case of conflicting uses across international borders, watercourse States must give special regard to vital human needs in solving such a conflict. That is, **special attention is to be paid to providing sufficient water to sustain human life, including both drinking water and the water required for the production of food** in order to prevent starvation. In balancing this provision with consideration of “all relevant factors” under Articles 5 and 6 of the Convention, the need to account for “the availability of an alternative” water supply within Article 6 may consequently limit the application of “vital human needs” under Article 10 where domestic water supplies are also available in close proximity to an international watercourse.

ADDITIONAL RESOURCES

FURTHER READING

Rieu-Clarke, A., Moynihan, R. and Magsig, B., *UN Watercourses Convention – User's Guide* (CWLPS 2012), at 100-116

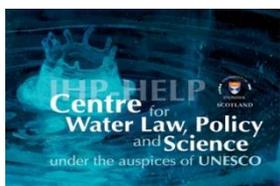
Vinogradov, Sergei, Patricia Wouters, and Patricia Jones, *Transforming Potential Conflict into Cooperation Potential: The Role of International Water Law*. Edited by UNESCO, Technical Documents in Hydrology: Pc-Cp Series. Paris: UNESCO, 2003.

RELATED UN WATERCOURSES CONVENTION SECTIONS

Art 7 – Obligation Not to Cause Significant Harm

Art 10 – Relationship between Different Kinds of Uses

Part IV – Protection, Preservation and Management



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