

# Creating Synergies between International Climate Change Law and International Water Law

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# Introduction

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- International water law (IWL) and International Climate Change Law (ICCL) have been developing separately and in parallel.
- Yet, there is a need to create synergies between these regulatory frameworks as:
- Water is the most critical resource that will be impacted by climate change
- Existing arrangements related to water management are not sufficient to address the changes and uncertainties brought by global warming.

First Layer: Climate Change and  
Transboundary Water Resources in  
International Law

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# Climate Change through the Lens of IWL

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- Various provisions within international water conventions are relevant for climate change adaptation

*monitoring ; research ; planning ; management ; joint institutions ; precautionary principle and measures to control and reduce transboundary impacts ; protection of ecosystem; cooperation with developing states ; emergency provisions and warning and alarm systems.*

- Policy documents emanating from these instruments addressing climate change. E.g. 2009 Guidance on Water and Adaption to Climate Change.

# Transboundary Water Resources through the Lens of ICCL

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- International climate change instruments do not focus on water resulting in very limited mentioning of this resource within these mechanisms.
- The UNFCCC addressed the topic of water indirectly through its focus on ensuring the adaptation of ecosystems to climate change, protecting food production while calling for the promotion and cooperation.
- The Paris Agreement recognizes the vulnerability of food production to climate change mentions various rights including the right to health and the right to development, which are related to water.

## Second Layer: Climate Change in Basin Water Agreements

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# Status of Climate Change within Basin Water Agreements

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- Existing basin water agreements do not address directly climate change but allow adaptation to circumstances resulting from it through its provisions.
- Basin water agreements are rigid treaties that need to be amended and renegotiated to address climate change given their lack of flexibility mechanisms and the existence of weak substantive provisions.
- Climate change will affect water quantity, quality, existing systems and pose new governance problems where these factors will be further complicated in the transboundary context due the participation of various political actors.

# Flexibility Mechanisms within Basin Water Agreements

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- There are various flexibility mechanisms either currently being incorporated within basin water agreements or suggested by scholars.
- There are four main categories of mechanisms:
  - (1) flexible allocation strategies
  - (2) drought provisions
  - (3) amendment and review procedures;
  - (4) joint management institutions

# Creating Climate Change Synergies within IWL and Basin Agreements

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**Party/Layer 1: IWL**

**Topic: Climate Change**

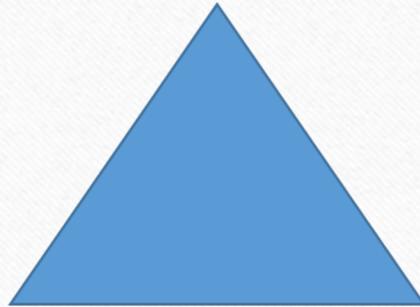
**Party/Layer 2: Basins Water Agreements**

Figure 1: Current Approach

# Creating Climate Change Synergies within IWL and Basin Agreements

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Topic: Climate Change



Party/Layer 1: IWL  
Party/Layer 2: Basin agreements

Figure 2: Needed Approach

# Creating synergies by adding climate change as an independent factor

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- **Adding climate change as an independent factor** in the context of equitable and reasonable utilization principle within basin and international water conventions.
- Given that climatic conditions are mentioned only in one of the factors related to the principle of equitable and reasonable utilization within the UNWC, a new independent factor concerning only climate change can be added within IWL conventions and basin water agreements.
- Adding this factor will send a clear message of the importance of considering climate change in transboundary water governance which is currently not the case.

# Creating synergies by adding climate change as an independent factor

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- **Adding an independent climate change factor** within a substantive water law provision means that states implementing the procedural provisions will have to seriously consider global warming when applying the provisions of the basin water agreements in this case the procedural provisions and which are relevant to climate change.
- These are regular exchange of data and information; research; planning; management; joint institutions; protection of ecosystem; emergency provisions and so on

## Creating synergies by adding flexibility mechanisms within basin and international water conventions

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- **Adding flexibility mechanisms within basin and international water conventions.**
- Various mechanisms were examined previously which allow having the necessary flexibility in the context of transboundary water agreements as such flexibility is needed to tackle the changes and uncertainties resulting from climate change.
- IWL need to start acknowledging the existence of such flexibility mechanisms which is not currently the case as IWL conventions and instruments do not include provisions related to such mechanisms.

## Creating synergies by adding flexibility mechanisms within basin and international water conventions

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- This can occur through a direct acknowledgement from organizations like the UNECE of the importance of these mechanisms, through amendment of existing instruments, via the adoption of new policy documents and via the inclusion of a provision related to these mechanisms within future IWL agreements.
- More nations need to include these flexibility mechanisms within basin water agreements.
- This can occur when new water agreements are being established or through the adoption of follow-up agreements and policy instruments in case agreements are already in place.

## Creating synergies by adding a provision concerning the equitable and reasonable utilization

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- **Adding a provision concerning the equitable and reasonable utilization of water resources in ICCL.**
- ICCL includes few provisions addressing directly water resources and more provisions addressing this topic indirectly in the context for instance of protecting the ecosystem or specific human rights and ensuring food production.
- The international community could include a new provision within future climate change treaties or instruments related to the principle of equitable and reasonable utilization of water resources.

## Creating synergies by adding a provision concerning the equitable and reasonable utilization

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- This provision will highlight the need to consider the impact of climate change on water resources in the general context of ICCL.
- Such mentioning will create a direct link with this same provision within IWL allowing the implementation of the provisions of IWL in this context.
- The inclusion of such provision will allow also the application of the rest of the relevant Articles within ICCL such as exchange of data and information, cooperation, general assistance to developing countries and so on while considering the impact of climate change on water resources.