



# PRINCIPLES OF NATIONAL WATER LAW AND THEIR IMPLICATIONS FOR CONFLICT RESOLUTION

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- How does water law regulate scarcity and quality?
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# What is water law?

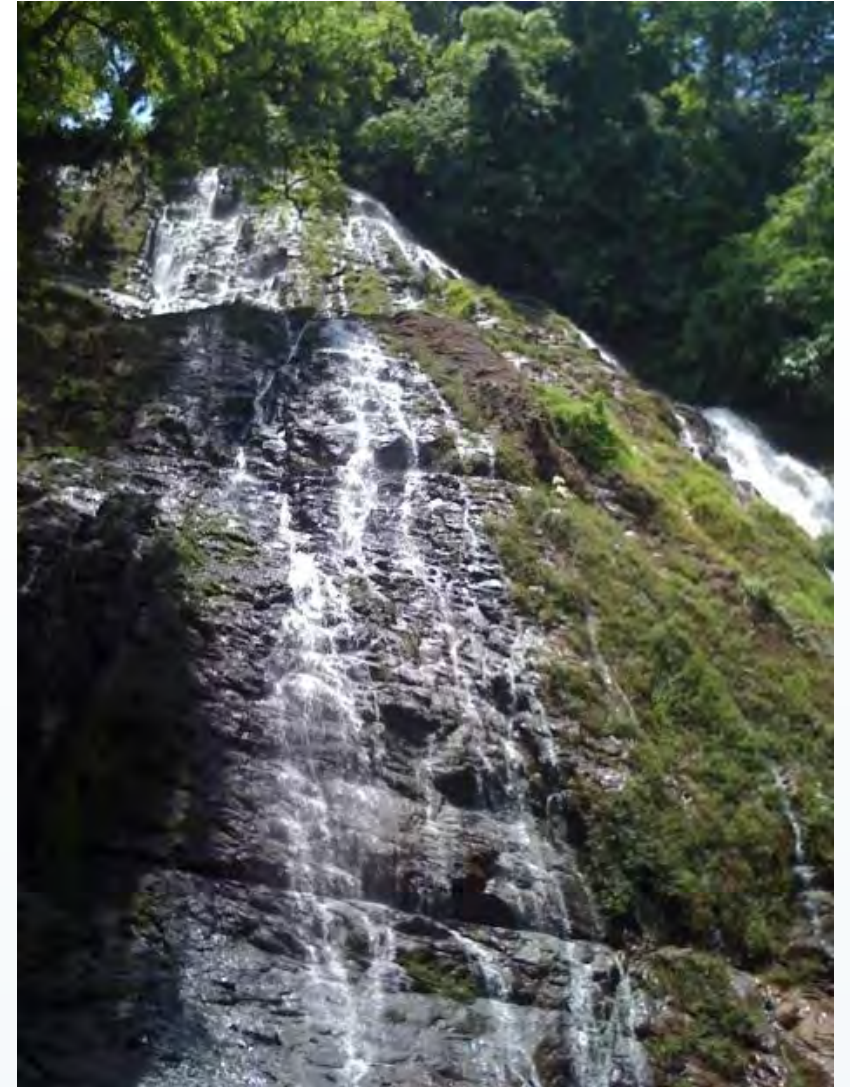
Is the field of law dealing with the use, sharing and protection of water

The oldest water laws have their origins in the earliest human civilizations such as the Indus, and the Mesopotamian

Historically, water law has developed closely connected to geographical and political contexts.

However, recently includes common 'forces' that have spread as common principles e.g., sustainability or 'best available science'

Provide a framework to resolve disputes and policy issues relating to water



# Why do we need water law?

Water is needed for human survival, socioeconomic development, etc.

Water is scarce (or perceived), polluted or otherwise challenged

Can lead to competition over water, disagreements over how to govern water, conflicts over how to allocate/share water



# How does law regulate water?

- Water law regulates water in many different ways – each country establishes its own necessities and interests
- Core aspects that the laws tend to regulate include ownership, uses, quantity and quality.
- Besides these aspects a set of guiding principles have been developed in order to improve water use, sharing and protection of water as well as to avoid conflicts

# How does law regulate water scarcity?

- Water scarcity is a frequent problem in many countries around the world (increasing due to climate change)
- In general the control at the macro-level, only occurs in industrialised countries - where withdrawal limits restricting water extractions have been adopted.

Examples:

- Australia water allocation/sharing plans under the 'environmentally sustainable level of extraction'.
- In most developing countries the control tends to be, at micro-level through licences or permits at the scale of individual use – this leads to many problems regarding water scarcity



# What are law principles?

- A principle is like a formula that can be coherently applied from case to case, from law to law – it is applied in a non-discriminatory manner, it is fair as it treats all cases alike.
- Principles unlike rules are open-ended: they can apply to all similar cases.
- Principles are values used to identify the relevant instruments for addressing a problem.
- For each principle, there may be a counter principle (leading to the identification of alternative instruments)
- Normally, to solve problems a collection of principles are assembled. Sometimes, negotiations on this assemblage leads to contradictory principles being included

# Sustainable use water

- Water should be used without compromising the ability of future generations to use it to satisfy their needs.
- In Australia, the 2004 National Water Initiative mandates that:

*'governments have a responsibility to ensure that surface and groundwater is allocated and used to achieve socially and economically beneficial outcomes in a manner that is environmentally sustainable...'*

- In Costa Rica, the 1995 Organic Environmental Law requires that:

*'the state shall ensure the rational use of the elements of the environment...including water...It is also required to promote an economic and environmentally sustainable development...'*





# Precautionary principle

- The precautionary principle addresses how environmental decisions are made in the face of scientific uncertainty.
- This principle is concerned with taking anticipatory actions to avoid environmental harm before it occurs.
- For example, the 2002 German Federal Water Act set '*strict standards for precautionary measures when granting of permits for using surface and groundwater*'.



# Pollution prevention principle

- It reflects that protection of groundwater is best achieved by preventing environmental harm or pollution, rather than relying on remedies or compensation.
- Example, European Union's 2000 Water Framework Directive '*implementation of measures are necessary to prevent or limit the input of pollutants into groundwater and to prevent the deterioration of the status of all groundwater bodies*'.





# Public participation

- The role of public participation in groundwater governance is becoming increasingly recognised among governments.
- For example, in Spain the 2001 Water Law creates water user's groups and establishes that '*water user's groups must be created from among the users of overexploited aquifers*'.
- The key objective of such groups is to share the water responsibilities of the government and, in particular, in decision-making regarding groundwater extraction rights.



# Polluters-pays principle

- It refers to take actions needs to be taken to ensure that polluters and users of natural resources bear the full environmental and social costs of their activities.
- The polluter-pays principle has been closely integrated with the protection of natural resources, including that of surface water and of course groundwater.
- Example: Directive 2004/35/EC '*Environmental liability with regard to the prevention and remedying of environmental damage*'.





# Implications of water law principles for conflict resolution

- Appropriate implementation of water laws (and core principles) help to address and pre-empt conflicts related to water
- However, it is essential to understand the nature of the system to be regulated and the relations humans have had with the system through the centuries (overexploitation)
- It is important to understand the growing and cumulative nature of the problems associated with the way we use and abuse water (leading to conflicts)
- It is critical to appreciate the causes of conflicts – the underlying drivers (or pressures) including the role of power in shaping these drivers.
- The nature of conflicts will differ in different types of contexts as will the drivers affecting the conflicts - solutions thus have to be tailor-made to the situation.
- However, core water law principles can considerably play a role in conflict resolution.

# Conclusions

- Water law principles are the pillar of water law, which seek to be coherently applied from case to case, from law to law and in a non-discriminatory manner.
- Water law principles are open-ended and should be applied to all similar cases.
- A key role of water law principles is to prevent water conflicts – however this is often difficult.
- Despite this, when conflicts arise some principles such as sustainable use, precautionary, pollution prevention, public participation, polluters-pay can be used to address/inform conflict resolution.