INTERNATIONAL LEGAL FRAMEWORK ON TRANSBOUNDARY USE OF RIVERS AND COOPERATION ON ADAPTATION TO CLIMATE CHANGE

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Recently have we can see a renewed and growing interest in hydropower in transboundary rivers, but there are many environmental risks attached to hydropower development and moreover, existing interstate cooperative arrangements in this context are often weak. The international and regional practice proved that efficient river basins agreements river basins are heavily reliant on ‘out of basin’ principles for water sharing. In the absence of effective governance of dams, hydropower has been and will continue to fuel the potential for water to become a source of serious conflict between countries.

Access to safe water and sanitation was a priority issue in the UN’s Millenniun Development Goals and the 2002 World Summit on Sustainable Development. Reports for the Second International Conference on Water and Climate (France, October 2017) and water scarcity already affects almost every continent and more than 40 percent of the people on our planet.

By 2025, 1.8 billion people will be living in countries or regions with absolute water scarcity, and two-thirds of the world’s population could be living under water stressed conditions of all biomes, freshwater ecosystems are the most threatened, and 1/5 of freshwater fish species are in rapid decline [1].

The first international law started to regulate inter-State activities other than navigation. The UN Convention on the Law of the Non-navigational Uses of International Watercourses, covers all uses other than navigation was adopted on May 1997. This Convention is not ratified by the Moldova, but it based on state practice and on agreements concerning individual river basins or regional watercourses, becoming a customary law which according to the art.38(1) of the Statute of international Court of Justice shall apply in international disputes.

As a guiding instrument for treaties at the regional and basin levels, providing comprehensive codifications of general, universal norms, such as that states are to use an international watercourse in a way that is "equitable and reasonable" in relation to other states sharing the watercourse (Article 5) and take all "appropriate measures" to prevent causing "significant harm" to co-riparian states (Article 7) [2].

The principle of "equitable and reasonable" in sharing the watercourse requires a case-by-case assessment, mutual exchange of data and information on a basin, as well as consultations and cooperation with the obligation of prevention, control and reduction of transboundary impact. In this context the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention) 1997 (status in force: Moldova 1997) and the Protocol on Strategic Environmental Assessment (2010) (status in force: Moldova 2018) Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (1998) (status in force: Moldova 1999) Convention on the Transboundary Effects of Industrial Accidents 1992 (status in force: Moldova 1994) have strengthening transboundary water cooperation [3].

The protection of Transboundary Rivers and lakes is addressed in a much more extensive manner by the UNECE Helsinki Convention on the Protection and Use of Transboundary Watercourses and International Lakes was adopted in March 1992 and entered into force on the 6 October 1996 (status in force: Moldova 1994). An interesting element is that the Convention being a regional instrument, by the amendment from 2003 [4], which aims at extending the Convention's geographic scope, the aspiration towards more universality was achieved.

The convention as legal instrument promotes the equitable utilization and environmental protection of international watercourses, catalyzing regional approach of equitable utilization and sustainable development around the world.

This approach is also found in the two additional protocols of the Helsinki Convention which were adopted; the Protocol on Water and

Health to the 1992 Convention on the Protection and Use of Transboundary Watercourses and International Lakes, from 17 June 1999, and the Protocol on Civil Liability and Compensation for Damage Caused by the Transboundary Effects of Industrial Accidents on Transboundary Waters, from 21 May 2003.

The international legal framework in sharing the watercourse includes the precautionary principle, which implies taking action even before adverse impacts are fully proven scientifically.

Climate change is a major challenge for water management and turn affect aquatic ecosystems. United Nations Framework Convention on Climate Change was adopted on June 1992 and entered into force on December 1992 (status in force: Moldova 1995), does not specifically aim to enable transboundary climate change adaptation through the sustainable and cooperative management of international watercourses, but convention facilitates transboundary cooperation on adaptation to climate change through its provisions and mechanisms for institutional cooperation. The influence on climate change impact should be considered when applying tools such as the strategic environmental assessment and the environmental impact assessment.

The Espoo Convention may provide a framework for ensuring that activities proposed within the framework of a country’s adaptation strategies do not cause significant adverse transboundary impacts in neighboring countries. Its Protocol on Strategic Environmental Assessment introduces climate change considerations into the development of plans and programmes.

Moldova have signed and ratified the Paris Agreement, which imposes a number of new international legal obligations on the parties [5]. One of the Paris Agreement's requirements is to prepare and implement a low carbon development strategy until 2050. Agreement specifies that each of its parties is to define and communicate a national target relating to the global response to climate change.

More attention should be paid to adaptation to the effects of climate change, especially important for Moldova in this regard is the relationship between water resources management and climate

change: the probability of a future lack in potable water resulting from climate change needs to be taken into account, and a policy and legislation support developed to address these adverse effects.

The state programme should has two subprogrammes (environment and climate action). It also introduces integrated projects, which operate on a large scale, starting at regional or multi-city level. These aim to implement environmental and climate change policy by applying plans and strategies based on international standards and integrating these policies further into other policy areas.

The main problem of the Republic of Moldova in the field of water management in the fact that despite substantial decrease over the past 25 years of independence of the population, industrial production, water abstraction and discharges, the water quality shows no improvement. At the same time, water stakeholders keep explaining the fresh water quality deterioration by reduction of water availability and consider water scarcity as the main problems of Moldova. It proves that promotion of Integrated water resources management (IWRM) and rethinking of water security (is still far from understanding and implementation in Moldova, despite the successful legal approval of European approaches to IWRM and environmental.

It is necessary to further strengthen the regional co-operation in transboundary river basin management on the administrative level. It focuses on river basin management plans as best models for a single system of water management instead of according to administrative or political boundaries.

References:

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