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Shared Water Basins in the European Union. The interaction between European Union Law and International Law

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Outline

- Diversity of international instruments: multi-level water governance
- The interplay between European Union Law and Public International Law

- 15 EU States out of 35 are Parties to the UNWC (Germany, Denmark, Finland, France, Greece, Hungary, Italy, Ireland, Luxembourg, Netherlands, Norway, Portugal, Spain, Sweden, United Kingdom)

- The largest block of State parties to the Convention
Multi-Level Water Governance

- **UNECE Convention on the Protection and Use of Transboundary Watercourses and International Lakes (1992):** entered into force on 1996 (40 Contracting Parties)
  - Originally designed as a regional framework for European and Central Asian countries
  - Since 2013, the Convention is opened to all UN member States
  - The EU is a Party to the Convention
  - This Convention inspired other agreements such as the Danube (1994), Rhine (1999), Scheldt (1994) and Oder (1996) agreements
Multi-Level Water Governance

- **European Union Law**
Multi-Level Water Governance

- European Union Law

- Implementation of EU obligations under international conventions (i.e. UNWC and UNECE Water Conventions)

The WFD contributes “to the implementation of Community obligations under international conventions on water protection and management, notably the United Nations Convention on the protection and use of transboundary water courses and international lakes . . . and any succeeding agreements on its application” (preamble of the WFD)
Multi-Level Water Governance

European Union Law

- Development of international water law
  - Scope of application: “A framework for the protection of inland surface waters, transitional waters, coastal waters and groundwater” (art.1.1 of the WFD)
  - Joint management of water resources at the level of river basin district defined as “the area of land and sea, made up of one or more neighboring river basins together with their associated groundwaters and coastal waters” (art. 2.15 of the WFD)
Multi-Level Water Governance

- European Union Law
  - Transboundary management of water resources at the level of international river basin districts

“Member States shall ensure that a river basin covering the territory of more than one Member State is assigned to an international river basin district. At the request of Member States involved, the Commission shall act to facilitate the assigning to such international river basin districts” (art.2.3 of the WFD)
Multi-Level Water Governance

  - It specifies the WFD, establishing “specific measures to control and prevent groundwater pollution” (art.1.1)
  - Common criteria for the assessment of good groundwater chemical status (art.1.1 (a))
  - Common criteria for the identification and reversal of upward trends in pollution levels (art.1.1 (b))
Interplay between EU Law and Public International Law

- Mutual supportiveness between EU law and agreements on transboundary water resources to promote environmental protection of water resources

  Member States may use “existing structures stemming from international agreements” to coordinate their activities towards the implementation of the directive (art.3 (4) and (6) of the WFD)

  For groundwater shared by two or more EU States: the establishment of threshold values is subject to coordination between member States in accordance with article 3.4 of the WFD (art.3.3 of the Groundwater Directive)
Interplay between EU Law and Public International Law

Important transboundary basins (i.e. Danube, Rhine) are shared with countries that are not members of the European Union

- When river basins extend beyond the EU, member States “shall endeavour to establish appropriate coordination” with third States, with the aim of attaining the objectives of the WFD (art. 3(5) of the WFD)

- For groundwater extending beyond the territory of the Community: “member States shall endeavour to establish appropriate coordination” with non-member States in accordance with article 3.5 of the WFD (art.3.4 of the Groundwater Directive)
Interplay between EU Law and Public International Law


- 15 Contracting Parties: both EU (Austria, Bulgaria, Czech Republic, Croatia, Germany, Hungary, Romania, Slovakia and Slovenia) and non-EU (Bosnia and Herzegovina, Moldova, Montenegro, Serbia and Ukraine) member States


- 5 Contracting Parties: France, Germany, Luxembourg, Netherlands, Switzerland and European Community
Interplay between EU Law and Public International Law

- Joint Commissions to implement EU law (International Commission for the Protection of the Rhine (ICPR); International Commission for the Protection of the Danube River (ICDPR))

- EU Member States interact with international organizations such as United Nations Economic Commission for Europe (UNECE)
Interplay between EU Law and Public International Law

- Relationship between EU and candidate countries in the management and protection of transboundary water resources

Examples

- Agreement on the Protection and Sustainable Development of the Prespa Park Area between Greece, Albania and the Former Yugoslav Republic of Macedonia (2 February 2010)

- Framework Agreement on the Sava River Basin between Bosnia and Herzegovina, Croatia, Slovenia and Serbia (3 December 2002)
Interplay between EU Law and Public International Law

The *Etang de Berre* case (Case C-239/03, Commission v. French Republic, 7 October 2004)

- Pollution of the *Etang de Berre* (a salt water lake connected to the Mediterranean Sea)
- Land-based sources of pollution (Durance river) generated by the turbines of a power plant of Electricité de France (EDF)
Conclusions

- The EU WFD constitutes a regional approach to transboundary water resources in the European Union and beyond
- The EU Law promotes cooperation between EU and non-EU States (i.e. single river basin management plans for the Danube and Rhine rivers)
- The European Court of Justice contributes to the protection of aquatic ecosystems
Thank you!

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