

**TRANSBOUNDARY FRESHWATER ECOSYSTEMS  
IN INTERNATIONAL LAW**

A global water crisis with far-reaching and interconnected environmental, social, health and economic impacts threatens the world. Healthy ecosystems and ecosystem services are degrading, and access to a sustainable water supply is increasingly inequitable both within and between states. This book demonstrates how to overcome the global freshwater ecosystem crisis by matching the scientific recommendations with an international legal framework fit for the task, which re-orientates international water law towards a stronger ecosystem approach that also protects vulnerable societies. It illustrates how to understand the fragmented legally binding and non-binding instruments of the United Nations Economic Commission for Europe environmental treaties as one coherent legal regime, which contributes to strengthening general rules and principles of the law concerning transboundary freshwater ecosystems. With the recent global opening of the UNECE regime, this book explores its potential role within the European region, Central Asia, Caucasus, Africa and beyond.

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Cambridge University Press  
978-1-108-49070-2 — Transboundary Freshwater Ecosystems in International Law  
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# Transboundary Freshwater Ecosystems in International Law

THE ROLE AND IMPACT OF THE UNECE  
ENVIRONMENTAL REGIME

**RUBY MOYNIHAN**  
University College Cork



**CAMBRIDGE**  
UNIVERSITY PRESS

Cambridge University Press  
978-1-108-49070-2 — Transboundary Freshwater Ecosystems in International Law  
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Frontmatter  
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## CAMBRIDGE UNIVERSITY PRESS

University Printing House, Cambridge CB2 8BS, United Kingdom  
One Liberty Plaza, 20th Floor, New York, NY 10006, USA  
477 Williamstown Road, Port Melbourne, VIC 3207, Australia  
314–321, 3rd Floor, Plot 3, Splendor Forum, Jasola District Centre,  
New Delhi – 110025, India  
103 Penang Road, #05–06/07, Visioncrest Commercial, Singapore 238467

Cambridge University Press is part of the University of Cambridge.

It furthers the University's mission by disseminating knowledge in the pursuit of education, learning, and research at the highest international levels of excellence.

[www.cambridge.org](http://www.cambridge.org)

Information on this title: [www.cambridge.org/9781108490702](http://www.cambridge.org/9781108490702)

DOI: 10.1017/9781108854641

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First published 2021

*A catalogue record for this publication is available from the British Library.*

### *Library of Congress Cataloging-in-Publication Data*

Names: Moynihan, Ruby, 1984– author.

Title: Transboundary freshwater ecosystems in international law : the role and impact of the UNECE environmental regime / Ruby Moynihan, University College Cork.

Description: Cambridge, United Kingdom; New York, NY: Cambridge University Press, 2021. | Includes bibliographical references and index.

Identifiers: LCCN 2020055285 (print) | LCCN 2020055286 (ebook) | ISBN 9781108490702 (hardback) | ISBN 9781108796194 (paperback) | ISBN 9781108854641 (epub)

Subjects: LCSH: Water boundaries. | Environmental law, International. | Fresh water—Law and legislation. | Water conservation—Law and legislation. | Freshwater ecology.

Classification: LCC KZ3685 .M69 2021 (print) | LCC KZ3685 (ebook) | DDC 344.04/6343—dc23

LC record available at <https://lccn.loc.gov/2020055285>

LC ebook record available at <https://lccn.loc.gov/2020055286>

ISBN 978-1-108-49070-2 Hardback

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Dedicated to my rock and pillars: Bjørn-Oliver and Fenja Kōwhai Moynihan  
Magsig, and Valerie and Peter Moynihan

Earth with a sigh awakes; and tremors play, Coy in her leafy trees, and falt'ring  
creep Across the daisy lawn and whisper, "Well-a-day," Soft, low and sweet.

Johannes Carl Andersen, 'Soft, Low and Sweet

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Cambridge University Press  
978-1-108-49070-2 — Transboundary Freshwater Ecosystems in International Law  
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Cambridge University Press  
978-1-108-49070-2 — Transboundary Freshwater Ecosystems in International Law  
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## Preface

At the beginning of this new decade came a dramatic warning to humanity of a rapidly escalating global freshwater ecosystem crisis and an urgent call for concerted action to bend the curve of ecosystem degradation. A fair and resilient legal architecture to protect the world's freshwater resources is one of the most pressing cross-cutting challenges of our time. According to the United Nations (UN), by 2050, at least one in four people is likely to live in a country affected by chronic or recurring shortages of fresh water. The inspiration for this book grew from a decade of observing how, despite collectively having the tools at our disposal to address the global water crisis, water inequity between and within states is not disappearing but growing, with wealthy nations increasing their consumption of water resources including by importing water-intensive goods produced in poorer, often water-scarce, nations. Poor and marginalised communities are increasingly pushed to the brink of survival by the continued destruction of freshwater ecosystems and their life-supporting ecosystem services. These societies are also the most affected by the rising frequency of extreme drought and flooding events. Almost half of the global population lives within the shared transboundary river basins stretching across the political boundaries of 153 countries. Shared transboundary freshwater ecosystems are under increasing stress from the competing demands for water to produce food, energy and other industrial purposes. This book proposes a novel framework for the reorientation of the existing international framework towards a stronger ecosystem approach to the use and protection of shared freshwater resources. In doing so, it recognises the fundamental role of healthy ecosystems and ecosystem services in reversing the global water crisis and addresses the growing inequities in access to a safe and sustainable water supply both within and between states.

The global water crisis is intimately connected to and will determine how well humanity is able to address and mitigate the impacts of almost all other

major global crises, including the climate crisis, global health pandemics, food security and involuntary migration. Despite warnings that we are teetering on the brink of widespread freshwater ecosystem collapse, we do have a small window of opportunity and the tools to recover. This book explores the role and limits of our international legal architecture in getting us there. Amidst a surging tide of nationalism, where many states are turning away from engaging with long-established international institutions, this book provides a counter-narrative. It explores the growing importance of international cooperation over freshwater resources, especially through regional regimes. More specifically, it seeks to understand the rising role of the UN Economic Commission for Europe (UNECE) regional approach to international law on transboundary freshwater ecosystems. Conceived in 1946 to facilitate economic recovery and cooperation in post-war Europe, the UNECE has solidified its position as a facilitator of institutional cooperation regarding environmental protection between the countries of East and West Europe, now extending into Central and Western Asia and most recently Africa. With the recent opening of almost all UNECE regional environmental treaties to all UN member states, the central purpose of this book is to explore the UNECE environmental instruments as a structurally distinctive regime. It demonstrates how these instruments and their institutions can be interpreted and understood to form a common framework of rules, principles and approaches that collectively contributes to the clarification and development of international environmental law generally and international, regional and national law on transboundary freshwater ecosystems. When the UNECE environmental binding and non-binding instruments are read together as one regime, they provide the strongest existing legal framework of its kind anywhere in the world. Such a frame is desperately needed to address numerous shortcomings in international water law and ensure implementation of the water-related sustainable development goals (SDGs). This book explores the role of the UNECE in supporting the realisation of the 2030 global agenda for sustainable development, especially SDG 6, which aims to ‘ensure availability and sustainable management of water and sanitation for all’ by 2030, and indicator 6.5.2 on transboundary water cooperation.

International courts and tribunals have played a key role in developing and expounding rules and principles of international environmental law that are relevant to environmental protection in transboundary river basins. This book explores how far courts have been prepared to go to clarify the content of customary and conventional rules and to generate cross-fertilisation between relevant rules and principles that apply both to international water disputes and other areas of international environmental law, especially law of the sea.

It also identifies instances where courts have arguably not gone far enough and examines how such gaps in understanding could be filled by an increasingly sophisticated UNECE regime. Further, this book examines the role of the UNECE regime at the river basin level. It explores the value and limitations of being a member of the regime for countries and river basins who are already bound to comply with detailed European Union (EU) law, those bordering the EU, and countries further afield in Eastern Europe with Soviet-era administrative legacies, as well as Central Asia and the Caucasus.

This book explores the UNECE's recent global ambition. As most of the UNECE conventions become available for all UN member states to join and considering the recent accession by Chad and Senegal to the UNECE Water Convention, this book provides a timely critique of this expanding regime. This research largely supports the UNECE's endeavour to embrace a global role, because it has already been effectively supporting the development of international law and promoting internationally shared values on transboundary waters across countries with diverse cultural, social, economic and environmental contexts for some time. However, this global agenda must be sought and driven by countries outside the UNECE, to ensure the plurality of approaches to international and regional cooperation are respected. The UNECE's overarching future success will require a more rapid and deeper collective state response, generating a paradigm shift towards an ecosystem approach that puts our drastically deteriorating freshwater ecosystems and the increasingly vulnerable people that rely upon them more firmly at the heart of this regime.

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978-1-108-49070-2 — Transboundary Freshwater Ecosystems in International Law  
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## Acknowledgements

A huge thank you, *vielen Dank* and *tēnā koutou* to the following people, governments and institutions across diverse countries and research cultures who have generously funded or contributed intellectually to this project. As a grateful recipient of the Irish Research Council (IRC) Postdoctoral Fellowship, I would like to thank the IRC for its generous support of the expansion of the research into this book. It was completed during my time as a lecturer and postdoctoral fellow at University College Cork and I thank my colleague Professor Owen McIntyre (University College Cork) for his support in this endeavour. Thank you also to the Victoria University of Wellington, where I have carried out research for this book as a senior visiting scholar to the New Zealand Centre for Public Law. Thanks especially to Associate Professor Joanna Mossop for your contribution.

Stepping back to the foundations of this book project that began in bonnie Scotland, I am grateful to the Scottish government's Hydro Nation Scholarship Programme and my mentors, Jon Rathjens, Barry Grieg (Scottish government) and Bob Ferrier (James Hutton Institute), whose initial funding sowed the seeds. I owe a great debt of gratitude to my supervisors at the University of Edinburgh, Professor Alan Boyle (Emeritus Professor, University of Edinburgh) and Professor Elisa Morgera (University of Strathclyde), whose intellectual guidance was profound in shaping not only this book but also my engagement with public international law and the environment. Thank you to Professor Laurence Boisson de Chazournes (University of Geneva) and Professor James Harrison (University of Edinburgh) for thoughtful and perceptive comments during a lively *viva voce* examination. Thank you to Professor Patricia Wouters (Xiamen University) for the early days in Dundee, UK, where it all began and long-time mentors Professor Alistair Rieu-Clarke (Northumbria University, UK) and Professor Elizabeth Kirk (University of Lincoln, UK) for their continued support. *Vielen*

*Dank an* Professor Wolfgang Köck, Dr Moritz Reese and the Umwelt- und Planungsrecht (UPR) team at the Helmholtz-Zentrum für Umweltforschung (UFZ) (Centre for Environmental Research) who contributed enormously to my understanding of the role and relationship between natural sciences and environmental law during my wonderful years at this institute in Leipzig. With the aim of ensuring this research captures the contemporary challenges of the United Nations Economic Commission for Europe (UNECE), I am grateful to the staff at the UNECE, especially the director of the Environment Division, Marco Keiner, and the team at the UNECE Water Convention Secretariat in Geneva, Sonja Köppel, Bo Libert and Heide Jekel, for their valuable contributions.

On a personal note, thank you to my parents, Val and Peter – despite being often thousands of kilometres away, their encouragement and support is a driving force. Thank you to Olive, Alice and Calahn, who travelled far to visit me at different stages of the research journey. Thank you to my Pfälzische family, Magsig and Feß, for a beautiful garden in which to write. Finally, to my husband, Bjørn-Oliver – whose love and friendship knows no bounds. *Du bist ein Elefant für mich*. And to our daughter, Fenja Kōwhai – whose smile is everything that is good.

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1856

General Treaty for the Re-establishment of the Peace between Austria, France, the United Kingdom, Prussia, Sardinia and Turkey and Russia (30 March 1856; entered into force 27 April 1856) 114 CTS 409 [1856 Treaty of Paris]

1919

Treaty of Peace between the Allied and Associated Powers and Austria (10 September 1919; entered into force 16 July 1920) 112 BSP 317 [Saint Germain Peace Treaty]

1920

Treaty of Trianon between the Allied and Associated Powers and Hungary (4 June 1920; entered into force 31 July 1921) 6 LNTS 187 [Treaty of Trianon]

1945

Charter of the United Nations (26 June 1945; entered into force 24 October 1945)  
1 UNTS XVI [UN Charter]

1946

Statute of the International Court of Justice (18 April 1946) Annexed to the UN Charter

1948

Universal Declaration of Human Rights, UNGA RES 217 A (III) (10 December 1948)  
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Document ID/8

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1954

Convention between the Governments of the Federal People's Republic of Yugoslavia and the Federal Government of the Austrian Republic Concerning Water Economy Questions Relating to the Drava (25 May 1954; entered into force 15 January 1955) 1956 UNTS 128 [Drava Convention]

1957

Treaty on the Functioning of the European Union (25 March 1957; entered into force 1 January 1958) 2012 OJ C 326, 47 [TFEU]

1959

Agreement Concerning the Regulation of Lake Inari by Means of the Kaitakoski Hydroelectric Power Station and Dam (29 April 1959) 346 UNTS 167 [Lake Inari Agreement]

1960

Treaty between India and Pakistan Regarding the Use of the Waters of the Indus (19 September 1960; entered into force 1 April 1960) 419 UNTS 125 (1960)

1961

Treaty Relating to Cooperative Development of the Water Resources of the Columbia River Basin (17 January 1961; entered into force 16 September 1964) 542 UNTS 244 [Columbia River Treaty]

1966

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1969

Vienna Convention on the Law of Treaties (23 May 1969; entered into force 27 January 1980) 1155 UNTS 331

1970

UNGA, Declaration of Principles of International Law Concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the United Nations (24 October 1970) UNGA RES 2625, 25 UN GAOR Supp 18, UN Doc A/5217 at 121; reprinted in 65 AJIL 243 (1971) [Declaration of Principles of International Law Concerning Friendly Relations]



*Treaties and Other Instruments*

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1971

Convention on Wetlands of International Importance Especially as Waterfowl Habitat (2 February 1971; entered into force 21 December 1975) 996 UNTS 245; reprinted in 11 ILM 963 (1972) [Ramsar Convention]

1972

Declaration of the United Nations Conference on the Human Environment, 5–16 June 1972 in Stockholm (16 June 1972) UN Doc A/CONF.48/14 [1972 Stockholm Declaration]

1974

Nordic Environmental Protection Convention (19 February 1974; entered into force 5 October 1976) 1092 UNTS 279; reprinted in 13 ILM 511

1975

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1976

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## Abbreviations

ASEAN	Association of Southeast Asian Nations
BSP	British and Foreign State Papers
CARU	Comisión Administradora del Río Uruguay
CBD	Convention on Biological Diversity
CBDR	common but differentiated responsibilities
CEP	UNECE Committee on Environmental Policy
CIL	customary international law
CMEA	Council for Mutual Economic Assistance
CMPs	conferences and meetings of the parties
COP	conference of the parties
CSCE	Conference on Security and Cooperation in Europe
CTS	Consolidated Treaty Series
LNTS	League of Nations Treaty Series
DRBP	Danube River Basin District Management Plan
DRPC	Danube River Protection Convention
EC	European Community
ECHR	European Convention on Human Rights
ECLAC	UN Economic Commission for Latin America and the Caribbean
ECOSOC	UN Economic and Social Council
ECtHR	European Court of Human Rights
EECCA	Eastern Europe, Caucasus and Central Asia
EEZ	exclusive economic zone
EfE	Environment for Europe
EG	ICPDR Expert Group
EIA	environmental impact assessment
EPDRB	Environmental Programme for the Danube River Basin

EU	European Union
EUWFD	EU Water Framework Directive
EUWI	EU Water Initiative
EXCOM	UNECE Executive Committee
FAO	Food and Agriculture Organization of the UN
FASRB	Framework Agreement on the Sava River Basin
ICJ	International Court of Justice
ICPDR	International Commission for the Protection of the Danube River
ICPR	International Commission for the Protection of the Rhine
IGO	inter-governmental organisation
ILA	International Law Association
ILC	International Law Commission
ILMs	international legal materials
ILR	International Law Reports
ISRBC	International Sava River Basin Commission
ITLOS	International Tribunal for the Law of the Sea
IUCN	International Union for Conservation of Nature
IWAS	International Water Research Alliance Saxony
IWRM	integrated water resources management
KHEP	Kishenganga Hydroelectric Project
MEA	multilateral environmental agreement
MOP	Meeting of the Parties
MoU	memorandum of understanding
MPA	marine protected area
MRC	Mekong River Commission
NGO	non-governmental organisation
NJHEP	Neelum–Jhelum Hydroelectric Project
NPP	nuclear power plant
NSA	non-state actor
OJ	official journal
OSCE	Organization for Security and Co-operation in Europe
OSPAR	Convention for the Protection of the Marine Environment of the North-East Atlantic
PCA	Permanent Court of Arbitration
PCIJ	Permanent Court of International Justice
PRTR	Pollutant Release and Transfer Register
RBC	river basin commission
RBMP	river basin management plan
RCM	regional coordination mechanism



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RIAA	Reports of International Arbitral Awards
SADC	Southern African Development Community
SDGs	Sustainable Development Goals
SEA	Strategic Environmental Assessment
TFEU	Treaty on the Functioning of the European Union
TOR	terms of reference
UK	United Kingdom
UN	United Nations
UNCCD	UN Convention to Combat Desertification
UNCLOS	UN Convention on the Law of the Sea
UNDP	UN Development Programme
UNECA	UN Economic Commission for Africa
UNECE	UN Economic Commission for Europe
UNEP	UN Environment Programme
UNESCAP	UN Economic and Social Commission for Asia and the Pacific
UNESCWA	UN Economic and Social Commission for Western Asia
UNFCCC	UN Framework Convention on Climate Change
UNGA	UN General Assembly
UNICEF	UN Children's Fund
UNOG	UN Office at Geneva
UNOIOS	UN Office of Internal Oversight Services
UNTS	UN Treaty Series
UNWC	UN Watercourses Convention
USA	United States
VCLT	Vienna Convention on the Law of Treaties
WHO	World Health Organization

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